IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

Not Restricted

S CI 2012 4538

KATHERINE ROWE — Plaintiff

v

AUSNET ELECTRICITY SERVICES PTY LTD
(ACN 064 651 118) & Ors
(according to the attached Schedule) — Defendants

- and -

AUSNET ELECTRICITY SERVICES PTY LTD
(ACN 064 651 118) — Plaintiff by Counterclaim

v

ACN 060 674 580 PTY LTD
(ACN 060 674 580) & ORS
(according to the attached Schedule) — Defendants by Counterclaim

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JUDGE:	EMERTON J
WHERE HELD:	Melbourne
DATE OF HEARING:	13 May 2015
DATE OF JUDGMENT:	27 May 2015
CASE MAY BE CITED AS:	Rowe v AusNet Electricity Services Pty Ltd & Ors
MEDIUM NEUTRAL CITATION:	[2015] VSC 232

PRACTICE AND PROCEDURE – Application for approval of settlement of group proceeding – *Supreme Court Act 1986* (Vic) Part 4A –Whether terms of settlement fair and reasonable – Whether settlement distribution scheme fair and reasonable – Whether claim for legal fees and disbursements reasonable – 'Murrindindi class action'– Settlement approved.

APPEARANCES:	Counsel	Solicitors
For the Plaintiff	Ms F McLeod SC Mr R Attiwill QC Mr A Fraatz Ms F Forsyth Ms M Szydzik	Maurice Blackburn
For the State Parties	Ms R Nelson	Norton Rose Fullbright Australia
For the objector, Hancock Victorian Plantations Pty Ltd	Mr T Scotter	Minter Ellison

HER HONOUR:

Introduction

1 This proceeding arises out of the events that took place in Victoria on 'Black Saturday', 7 February 2009, and is one of a series of class actions resulting from the bushfires that ravaged large parts of Victoria on that day. The fire that is the subject of this proceeding began near Murrindindi to the north-east of Melbourne and spread widely, almost obliterating the township of Marysville. The Murrindindi fire resulted in the deaths of 40 people and caused physical and psychological injury to many more. It damaged and destroyed houses, schools, community facilities, government buildings, businesses, livestock, plantations and all manner of other property.

2 The proceeding was commenced on 7 August 2012 in the name of Rod Liesfield as an 'open' class group proceeding under Part 4A of the *Supreme Court Act 1986* (Vic). The plaintiff sought compensation for loss and damage suffered as a result of the Murrindindi fire.

3 The group members were,[1] in substance, persons who suffered personal injury, dependants of persons who died, persons who suffered loss of and damage to property and persons who lived in or had property in the Murrindindi bushfire area and suffered economic loss as a result of the Murrindindi fire.

4 On 3 October 2014, Dr Katherine Rowe was substituted as the lead plaintiff. Dr Rowe, lost her husband, Dr Kenneth Rowe, in the Murrindindi fire, as well as the two properties that they owned in Marysville. She also suffered psychological injuries.

5 The defendants to the proceeding are AusNet Electricity Services Pty Ltd ('AusNet'), the operator of the electricity distribution system the failure of which allegedly

[1] Steps have been taken over the course of the proceeding to define group members by reference to the registration of claims. Class closure orders have now been made.

caused the Murrindindi fire; ACN 060 674 580 Pty Ltd ('UAM'), a maintenance company contracted by AusNet to undertake periodic inspections of its assets including those at Murrindindi; and the State parties, being the Secretary of the Department of Environment, Land, Water and Planning ('DELWP'), the Country Fire Authority ('CFA') and the State (specifically, Victoria Police).

6 The plaintiff alleges negligence by AusNet based on the design, construction, maintenance and inspection of its electricity distribution assets (wires and poles) at Murrindindi, the training and supervision of inspectors in relation to its patrol of the Murrindindi assets and the reconnection of electricity on Black Saturday following a power failure. It is also alleged that AusNet is liable for breach of its statutory duty, in nuisance, under a derivative liability and as principal for the acts and omissions of its agent, UAM.

7 UAM is alleged to have been negligent in its inspection of the Murrindindi assets and in the training and supervision of its inspectors.

8 The State parties are alleged to be liable in relation to the failure to provide adequate warnings of the Murrindindi fire on 7 February 2009 and the Secretary of DELWP is also alleged to be liable in relation to planned burning.

9 AusNet has made counterclaims against UAM and the State parties.

10 The defendants deny the claims made by the plaintiff (and, where relevant, the counterclaims).

11 There is no dispute between the parties that the Murrindindi fire originated to the west of Wilhelmina Falls Road and just to the north of an old mill. It is also common ground that on Black Saturday, a particular conductor (a power line) spanning two power poles on the western side of Wilhelmina Falls Road failed as a result of arcing between the conductor and a stay wire supporting the relevant pole. The conductor broke and fell, draping itself over a fence abutting the roadside reserve. The conductor was live and this caused at least one strand in the fence to become

electrified.

12 The plaintiff contends that the fence contained a metal strainer and that, as a consequence, all of the fence wires became electrified. Green vegetation in contact with the fence then created an electrical path to the ground, producing sparks and embers, which fell into the tinder dry grass along and underneath the fence, igniting the fire.

13 AusNet contends that the fire started away from the fence, and that it was not caused by the electrification of the fence. Among other things, it contends that the arcing between the conductor and the stay wire most likely occurred after the fire had started (as a result of smoke in the air) and that the electric current in the fence would not have been sufficiently strong to ignite a fire.

14 The factual and legal issues in the proceeding are complex and the trial was set down to be heard over several months. The parties proposed to call 21 expert and 131 lay witnesses, and to tender thousands of pages of exhibits.

15 However, on 6 February 2015, the parties agreed upon terms for the settlement of the proceeding. Those terms are recorded in a Deed of Settlement executed on that day (the 'Deed'). The proposed settlement is governed by the Deed and by a document that sets out a mechanism for the distribution of the settlement sums to group members[2] known as the 'Settlement Distribution Scheme' (the 'Scheme').

16 On 18 February 2015, Dixon J made orders (the 'February settlement orders') providing for the notification of the settlement to group members. The February settlement orders required a notice and information sheet on the settlement approval application to be published in state and local newspapers and to be sent via email and standard post to registered group members, as well as uploaded to the websites of the plaintiff's solicitors and the Supreme Court of Victoria.

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[2] And to Dr Rowe

Application for settlement approval

17 Pursuant to s 33V of the Supreme Court Act, a group proceeding may not be settled or discontinued without the approval of the Court. If the Court gives such approval, it may make such orders as it thinks fit with respect to the distribution of any money, including interest, paid under a settlement or paid into Court.

18 By amended summons filed on 19 February 2015, the plaintiff seeks approval of the proposed settlement. Two affidavits have been filed in support of the summons:

(a) the affidavit of Brooke Dellavedova, principal at Maurice Blackburn, sworn 6 May 2105 (the 'Dellavedova affidavit'); and

(b) the affidavit of Catherine Mary Dealehr, legal costs specialist, sworn 6 May 2015 (the 'Dealehr affidavit').

19 The plaintiff also relies on the written opinion of her counsel as to whether the proposed settlement is fair and reasonable and in the interests of group members (the 'Confidential Opinion'). The Confidential Opinion has been filed on a confidential basis in accordance with the February settlement orders and with the established practice in group proceedings under Part 4A of the Supreme Court Act.

20 Pursuant to paragraph 4(b) of the February settlement orders, the plaintiff filed in an envelope marked 'Not to be opened without leave of the Court or a judge' the Dellavedova affidavit and the Dealehr affidavit. The Confidential Opinion is an exhibit to the Dellavedova affidavit.

21 The Court has made orders preserving the confidentiality of those affidavits. The confidentiality order sought by the plaintiff in the summons has been extended to include an affidavit sworn on 11 May 2015 on behalf of an objector to the Scheme, Hancock Victorian Plantations Pty Ltd ('HVP') by its in-house solicitor, Warwick Andrew Williams, along with a brief written submission in response prepared on behalf of the plaintiff.

22 Confidentiality has been preserved because these documents contain material which

exposes the frank views of the plaintiff's legal advisors about the merits of her claims and the risks associated with the action and/or material which is subject to a claim for legal professional privilege.

23 However, prior to the hearing of the application, the plaintiff filed, on a non-confidential basis, a comprehensive set of submissions in support of the application for approval of the settlement (the 'Open Submissions'). The Open Submissions set out much of the detail of the arrangements for settlement and oral submissions describing these arrangements were made in open court. In the course of this judgment I have also attempted to describe the relevant processes and arrangements in order to give group members the best possible understanding of them.[3]

24 The Court convened in Melbourne on 13 May 2015 to hear submissions from the plaintiff as to why the settlement ought to be approved and to consider objections to the settlement made by group members. Two days were set aside for the hearing but it only took one day. In the event, only one objector, HVP, attended the hearing to make submissions. HVP's objection is considered below.

25 Counsel for the plaintiff took the Court through most aspects of the settlement, including the notification of group members in accordance with the February settlement orders. The Court is satisfied that there has been substantial compliance with the notification requirements in the February settlement orders and that group members have been given adequate notice of the proposed settlement and their right to object to it.

Group members/claimants

26 Pursuant to orders of J Forrest J made on 21 October 2013,[4] group members could opt out of the proceeding by filing an opt out notice by 28 February 2014. Twenty-five group members filed an opt out notice pursuant to these orders (with one of

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3 While not every part of the confidential material contains confidential information of the kind described, and confidentiality in these types of proceedings should not extend beyond what is strictly necessary for the administration of justice, I do not consider that it would be practical, helpful or appropriate to order that the material be 'filleted' to permit the selective release of parts of it.

4 And then amended by the orders of Dixon J on 4 March 2014.

them subsequently opting back in). Those persons who are not group members, may not participate in the settlement and are not bound by the release in the Deed.

27 Class closure orders were initially made by Dixon J on 4 March 2014 and subsequently amended a number of times.[5] These orders required group members to register their claims by certain dates. The classes of group members were then closed for a number of purposes, including the settlement.

28 For the purposes of the settlement, claimants have been divided into categories:

(a) those claiming for personal injury and/or dependency ('I-D claimants'); and

(b) those claiming for property or economic loss ('ELPD claimants').[6]

29 The effect of the class closure orders is as follows:

(a) I-D claimants and ELPD claimants may participate in the settlement and are bound by the release in the Deed;

(b) persons who suffered personal injury or who have dependency claims and who have not registered their claims are not group members, may not participate in the settlement and are not bound by the release in the Deed. This preserves the rights of persons who, for example, were injured in the Murrindindi fire but do not yet appreciate that they have suffered an injury or who have yet to develop a compensable injury; and

(c) persons who suffered property or economic loss who have not registered their claims are group members, but may not participate in the settlement (without leave of the Court or late acceptance under the Scheme by the Scheme Administrator) and are bound by the release in the Deed.

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5 4 April 2014, 30 May 2014, 8 December 2014, 22 January 2015 and 6 February 2015.

6 ELPD claims have been further divided as follows:

(a) claims by persons for compensation for property or economic loss which was uninsured or not fully insured (above–insurance loss claimants); and

(b) claims by insurers for compensation in respect of an indemnity provided to a client of the insurer (subrogated claimants).

30 There are presently 393 I-D claims and 2,236 ELPD claims, which have been consolidated by household into 1,057 ELPD claims.

The Settlement

31 The Deed provides for the defendants to pay the sum of $300 million (the 'settlement sum') in settlement of the claims of the plaintiff and group members, with no admission of liability and inclusive of costs. AusNet is to contribute $260.9 million, UAM $10 million and the State Parties $29.1 million to the settlement sum.

32 In addition to the payment of the settlement sum, the Deed provides for various matters, including the release to be given by group members and an acknowledgement by the plaintiff and the State parties that the State parties' contribution to the settlement sum ($29.1 million) is to be applied in the payment of I-D claims.

33 In broad terms, the Scheme deals with the settlement sum by allocating $34 million to the I-D claims and the balance to the ELPD claims. It sets out procedures for assessing and valuing I-D claims and ELPD claims, and for distributing the available funds *pro rata* according to the value of each claim. It imposes a cap of 80% of the final assessed value for individual I-D claims,[7] and allocates any surplus from the I D claims to the ELPD claims.

34 The Scheme provides for the appointment of the principal in charge of class actions at Maurice Blackburn as the Scheme Administrator.[8] The Scheme Administrator and his or her staff are under a duty to the Court to administer the Scheme fairly according to its terms and each has the same immunities from suit as attach to the office of a judge of the Supreme Court of Victoria. This is said to be appropriate, given that the Scheme Administrator and the Administrator's staff are administering a Court-approved scheme.

35 The Scheme provides that after receipt of the settlement sum from the defendants

7 Plus interest, but less any review costs amount.
8 Or another person nominated by that principal.

and before making any distribution, the Scheme Administrator must:

(a) pay the plaintiffs' costs and disbursements as approved by the Court to Maurice Blackburn; and

(b) make 'reimbursement payments' as approved by the Court to the original plaintiff, Mr Liesfield, to Dr Rowe, and to sample group members in order to compensate them for the time and inconvenience of attending to matters on behalf of group members.

36 Following these two payments, the Scheme then provides for the balance of the settlement sum to be split, with $34 million allocated to an 'I-D claims fund' for the payment of I-D claims and the balance to an 'ELPD claims fund' for the payment of ELPD claims.[9] The payment of $34 million to the I-D claims fund is intended to give effect to the requirement in the Deed that the contribution to the settlement sum paid by the State parties be applied only to I-D claims.

37 As discussed, the Scheme caps the recovery for I-D claimants at 80% of the value of their assessed claims. This is the same as the cap in the Kilmore scheme. The cap operates so that:

(a) if the I-D claims fund is insufficient to compensate all the I-D claims up to a recovery rate of 80% of the final assessed value, the shortfall will be borne equally by all I-D claimants; and

(b) if the value of all I-D claims has been over-estimated pre-settlement, so that the available funds would allow a compensation rate higher than 80%, the cap will apply to limit the recovery rate to that level, and any excess funds will be allocated to the ELPD claims fund.

38 This mechanism is intended to reduce any disparity in recovery rates as between I-D claims and ELPD claims.

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9 Interest which has accrued on the settlement sums received from the defendants prior to payment into the settlement distribution fund is to be allocated in the same proportions as the principal allocations.

39 The Scheme contains detailed procedures for assessing the claims of individual group members. The assessment procedure is different for I-D claims and ELPD claims.

40 For I-D claims, the following procedure will apply:

(a) claim information will be delivered to a barrister specialising in the personal injury jurisdiction, who may then confer with the claimant (and may refer the claimant to a medico-legal assessment by a medical practitioner) and deliver an initial assessment valuing the particular claim;

(b) any claimant dissatisfied with the initial assessment will have the opportunity to seek a review of that assessment;

(c) the initial assessment, as modified by any review assessment, will determine a claim value, and each I-D claimant will share in the I-D claims fund in the proportion which his or her claim bears to the total value of all claims against that fund;

(d) payments in respect of I-D claims made against the I-D claims fund will be capped at 80% of the final assessed value; and

(e) the balance then remaining in the I-D claims fund will be transferred into the ELPD claims fund, to reduce the difference in compensation rates which will nevertheless exist as between I-D and ELPD claims.

41 The Scheme also provides that where statutory benefits may be more beneficial than a particular settlement would offer, the claimant is given the opportunity to reconsider the extent of his or her participation in the settlement once the likely financial 'bottom line' can be estimated and compared to the value of the statutory benefits.

42 So far as ELPD claims are concerned, the procedure is as follows:

(a) each claimant's information will be collated either by the Scheme

Administrator's staff or by an ELPD assessor appointed by the Scheme Administrator to value the claims;

(b) the ELPD Assessor will then provide the ELPD claimant with a provisional assessment of their claim as well as a provisional statement of reasons disclosing the bases (including any calculations) for the provisional assessment. This step has no equivalent in the I-D Claims assessment procedure, but has been adopted for the ELPD claims process in recognition of the fact that those claims are likely to be more document-intensive and afford more opportunity for items to be missed by the assessor;

(c) the ELPD claimant then has an opportunity to provide feedback to the assessor in relation to any perceived error or omission in the provisional assessment, before a final assessment is issued. If any such feedback is received from an ELPD claimant, the ELPD assessor is required to investigate the alleged error or omission before issuing the (non-provisional) notice of ELPD assessment;

(d) Once the (non-provisional) ELPD assessment is completed by the ELPD Assessor, this along with a statement of reasons, is provided to the Scheme Administrator and the ELPD claimant;

(e) any ELPD claimant dissatisfied with the ELPD assessment has the opportunity to seek a review of that assessment, to be conducted by a senior ELPD assessor;

(f) all ELPD assessments will be done in accordance with assessment principles set out in the Scheme, specifically those in Schedule A;

(g) the components of the (non-provisional) assessment, as modified by any review assessment, will be subject to certain 'ELPD multipliers'; and

(h) the adjusted assessments will form the basis on which ELPD claimants will share *pro rata* in the ELPD claims fund.

43 In addition, the Scheme makes special provision for claimants who are minors or persons under a disability within the meaning of Order 15 of the *Supreme Court (General Civil Procedure) Rules 2005* and who are therefore subject to the supervisory jurisdiction of the Senior Master's office.

44 The Scheme permits interim distributions, but only upon the resolution of the final value of at least 30% of I-D claims and 40% of ELPD claims, and then only up to 60% of the final assessed value of each claim.

45 Pursuant to these arrangements, the plaintiff's solicitors have estimated that the recovery rate for I-D claimants will be about 70% of their assessed compensation, and about 60% for ELPD claimants.[10]

46 The Court will have ongoing supervision of the implementation of the Scheme.

Applicable legal principles

47 This settlement follows a number of other settlements in bushfire class actions, most recently (and notably) the settlement of the proceeding brought against AusNet, UAM and State parties by Carol Ann Matthews in respect of the massive bushfire that started at Kilmore on Black Saturday (the 'Kilmore proceeding'). In the course of that conflagration, 119 people died, more than 1,000 people suffered serious injury and approximately 1,772 homes and properties were destroyed or damaged. The trial of the Kilmore proceeding took place over 208 days before the proceeding was settled.

48 The settlement of the Kilmore proceeding was approved by Osborn J on 23 December 2014.[11] The Deed and the Scheme in the present proceeding are based on the deed of settlement and the scheme for the distribution of settlement sums in the Kilmore proceeding. Not surprisingly, then, many of the matters considered for the approval of the settlement of the Kilmore proceeding are also relevant to this approval. I have therefore derived great assistance from Osborn J's careful

10 Excluding interest.

11 *Matthews v AusNet Electricity Services Pty Ltd* [2014] VSC 663 ('*Matthews*').

consideration of the arrangements in the Kilmore settlement.

49 In *Matthews*, Osborn J identified the following two questions as critical in an application for court approval under s 33V of the Supreme Court Act:

(a) whether the proposed settlement is fair and reasonable as between the parties having regard to the claims of group members; and

(b) whether the proposed settlement is in the interests of group members as a whole and not just in the interests of the plaintiff and the defendants.[12]

50 In substance, these questions require the court to consider whether the settlement is fair and reasonable as between the parties and whether it is fair and reasonable as between the recipients of the settlement sum (the beneficiaries of the Scheme), namely the plaintiff and the group members.[13]

51 The court must be independently satisfied of the fairness and reasonableness of the proposed settlement. It will not be sufficient to simply assess whether the opinions expressed by the plaintiff's legal advisers appear on their face to be reasonable.[14] Furthermore, the almost complete absence of substantive objections to the settlement cannot relieve the court of its obligations.[15] Nevertheless, the assessment which the court is able to make can ultimately be no more than one which confirms whether or not the proposed settlement is within the range of fair and reasonable outcomes.[16] Importantly, in making such an assessment, the relative prospects of success can only be broadly gauged.[17]

52 In considering whether the proposed settlement of a class action falls within the

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12 Ibid [34].

13 I will refer to the plaintiff and group members collectively simply as the group members.

14 Ibid [37].

15 Ibid [38]. It should be noted that while no objections were made to the proposed settlement in this proceeding, the Court did receive several objections in relation to the proposed scheme. These are dealt with later in the judgment.

16 Ibid [39] and the cases referred to therein.

17 Ibid [40].

range of fair and reasonable outcomes, a court will consider the following matters:[18]

(a) the complexity and duration of the litigation;

(b) the reaction of the group to the settlement;

(c) the stage of the proceedings at which settlement is proposed;

(d) the relative risks of establishing liability;

(e) the relative risks of establishing loss and damage;

(f) the risks of continuing a group proceeding;

(g) the ability of the defendants to withstand a greater judgment and the range of reasonable outcomes governing the settlement in light of the best feasible recovery;

(h) the range of reasonableness governing the settlement in light of all the attendant risks of litigation on the one hand and all the advantages of settlement on the other; and

(i) the terms of any advice received from counsel and/or from any independent expert in relation to the issues that arise in the proceeding.[19]

53 These considerations provide guidance to the court rather than representing some kind of a checklist. There is no checklist of considerations that necessarily identifies fairness or its absence in any particular case.[20]

Is the settlement fair and reasonable?

As between the parties

54 When considering the reasonableness of the settlement as between the parties, I have had regard to the Confidential Opinion, the pleadings and, to a more limited extent,

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18 *Williams v FAI Home Security Pty Ltd* (2000) 180 ALR 459.
19 Ibid 465 [19].
20 *Matthews* [42].

the descriptions of the expert evidence put forward by the parties to date, as well as to the legal context in which the claims are brought and the defences are advanced.

55 In determining the reasonableness of the settlement, it is convenient to start by considering - at a high level - the risk that that the plaintiff will fail to establish liability against one or more of the defendants.

56 I have considered the liability risks as they are described and analysed in the Confidential Opinion. Those risks are not to be lightly dismissed, as the proceeding raises complex issues of law and fact. The plaintiff and group members face some risk of an adverse result at trial, including the risk of a nil outcome. The proposed settlement avoids that risk, and this is a significant factor in favour of its approval.

57 In *Matthews*, Osborn J considered the permutations of success and failure in respect of the different issues and claims in the Kilmore proceeding and noted that some of these permutations exposed the plaintiff to potentially drastic consequences in respect of costs. His Honour concluded that the plaintiff faced not only some real risk that the claim would wholly fail, but she also faced a series of alternative scenarios, in a number of which the practical result was likely to be materially worse than 100% recovery and, in some, materially worse than the proposed settlement. In his Honour's view, those conclusions as to the risks were, in themselves, sufficient to justify the conclusion that the advantage of certainty of a positive outcome was sufficient to bring the settlement within the range of reasonable settlements between the parties.

58 In my view, the same considerations apply here and militate in favour of approving the settlement.

59 In considering the impact of liability risk on the fairness and reasonableness of the settlement, it is also relevant that the estimated recovery rate for both I-D claimants and ELPD claimants is very high. Maurice Blackburn has assessed the recovery rate as 70% of the assessed claim for I-D claimants and as 60% of the assessed claim for ELPD claimants. Having regard to these estimated recovery rates, the settlement

would be reasonable even if the liability risks were truly negligible. This is principally because any larger amount awarded to group members upon judgment at the end of a lengthy trial would most likely be significantly eroded by unrecoverable costs.

60 Of course, the ability of the plaintiff and group members to recover 60-70% of the assessed value of their claims ultimately depends on the reliability of the estimations of the quantum of total claims made by the plaintiff's solicitors.

61 Maurice Blackburn has taken steps to estimate the quantum of all claims using a process of sampling and extrapolating the results across the group. The estimation of the quantum of all I-D claims is based on the estimations of I-D claims made for the purposes of the Kilmore proceeding. The quantum of all ELPD claims was estimated by referring a sample of 150 claims (assessed on an household basis) to an independent loss assessor. Cross-checks were then undertaken on a smaller sample.

62 I have carefully considered the methodologies described in the Dellavedova affidavit for estimating the amount of claims. I am satisfied that a serious and conscientious effort has been made to accurately estimate the quantum of both I-D claims and ELPD claims and that it is legitimate to consider the reasonableness of the settlement having regard to likely recovery rates that are based on these estimates.

63 Having regard to the liability risks and the estimated recovery rates, I am satisfied that the settlement is a fair and reasonable one.

64 In *Matthews*, Osborn J also identified a number of incidental advantages of settlement, including:

(a) early finalisation of the proceeding;

(b) avoidance of continuing personal anxiety, stress and suffering;

(c) advancement of payment; and

(d) containment of legal costs.[21]

65 Again, such incidental advantages are relevant to the reasonableness of the proposed settlement.

66 In my view, the advantage of early finalisation of the proceeding is a very important one. Even if the plaintiff were successful at trial on all issues, having regard to the size of the claim and the complexity of the issues involved, it is probable that the judgment in her favour would be appealed to the Court of Appeal and then, subject to a grant of special leave, to the High Court of Australia. Each stage would give rise to further costs and would delay by years the resolution of group members' claims.

67 Given the traumatic nature of the events giving rise to the class action, there must be a considerable benefit to avoiding long delays and in achieving finality in the litigation.

68 Furthermore, even if the plaintiff were successful on appeal, only the common issues and Dr Rowe's own damages would be finally determined by the proceeding. Each group member would then need to prove loss and damage individually, along with any matter falling outside the common questions or otherwise requiring individual inquiry and determination. Some group members may have difficulty proving their claims, particularly given the effects of trauma on memory and the likely loss of records. Difficulties may also arise in the light of the many complexities in the types of claims made by group members. Some may require expert evidence and/or complex legal argument. This would have to be funded by the individual group member.

69 There is also the benefit of advancement of payment. Maurice Blackburn anticipates that the settlement of the proceeding will result in the assessment of all claims within the next 12 months. There is plainly a material advantage in the early receipt of funds pursuant to the settlement, even if there were a possibility of obtaining greater compensation at some uncertain time in the future.

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21 *Matthews* [308].

70 Finally, the containment of legal costs by settlement before the trial commences has obvious benefits. The costs incurred in this case by all parties are already very high. The costs of trial and likely appeals if the proceeding does not settle may involve many more tens of millions of dollars. Furthermore, the streamlined way in which the assessment of damages will take place under the Scheme will limit the expenses which would otherwise confront group members in seeking to obtain compensation for their losses.

71 Having regard to these factors, I am well satisfied that the settlement is reasonable and fair as between the parties.

As between group members

72 It is necessary for the Court to be satisfied not only that the settlement is reasonable as between the parties, but also as between the group members.

73 In my view, there are particular matters relevant to the fairness and reasonableness of the settlement as between group members that require the Court's consideration. They are:

(a) the split between I-D claimants and ELPD claimants;

(b) the assessment principles for ELPD claims in Schedule A to the Scheme;

(c) the objections received;

(d) the proposed payment of the plaintiff's costs;

(e) the proposed reimbursement payments; and

(f) the proposed future administration costs.

The split between I-D and ELPD claimants

74 The settlement does not treat I-D claimants and ELPD claimants in exactly the same way. That part of the settlement sum contributed by the State parties is dedicated to the payment of I-D claims and I-D claimants are expected to recover a higher

proportion of the value of their assessed claims than ELPD claimants.

75 Despite the apparent priority given to I-D claims as a result of the requirements of the State parties, I consider it to be reasonable for the group as a whole to accept the basis upon which the State parties have agreed to settle the proceeding. This is especially so having regard to the 'cap' on I-D claims, and the provision that any surplus then to be distributed to the ELPD claims fund.

76 There has been no objection to the split by any group member. It is not asserted by any ELPD claimant that the split gives rise to unfairness or makes the settlement unreasonable in any way. As Osborn J said in *Matthews*:

> … the commercial advantages of finality and advanced payment resulting from settlement of the ELPD claims are readily calculable and the absence of objection to the settlement split as such confirms that it is commercially sensible.[22]

77 I too am satisfied that the split does not prevent the settlement being fair and reasonable as between group members.

Assessment of ELPD claims and Schedule A

78 The Scheme provides for all ELPD claims to be assessed pursuant to the assessment principles in Schedule A, and otherwise in accordance with the laws of the State of Victoria. So far as the Scheme is silent as to the assessment of any loss, the loss is to be assessed according to the laws of the State of Victoria and Victorian loss valuation practice.

79 Schedule A takes the form of a table containing three columns. Items of loss occupy the first column. Beside each item of loss, in the second column, there is a brief narrative setting out the basis of valuation for that item. Thus, beside the column of items such as 'farm fences', 'house' or 'domestic contents', there is a basis for valuation column with descriptions such as 'actual cost', 'diminution in value', 'replacement cost' and so on. The third column contains a multiplier for each item.

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22 Ibid [394].

Once loss values have been determined by the assessor, those values are to be adjusted using the relevant multiplier.

80 As Osborn J said in *Matthews*, the Schedule seeks to address a number of matters:

(a) the valuation of homes as opposed to non-home buildings, and the question of whether 'diminution of value' or 'reasonable reinstatement' is the proper basis for valuation;

(b) the complications involved in treating claims in different circumstances where home and non-home buildings have been rebuilt, partially rebuilt before property sale or not rebuilt before a property sale;

(c) the valuation of fences;

(d) the valuation of ordinary home contents and domestic chattels as opposed to collectibles, and normal livestock as opposed to breed stock or bloodstock;

(e) issues regarding the valuation of gardens and trees, which have emerged from the exchange of a series of expert opinions;

(f) income losses by employees or self-employed persons not because of personal injury but because of damage to business assets or time off work to attend to personal assets or other disruptions from the fire, or wages lost by employees stood down because of the damage to their employer's assets or slowdown in trade;

(g) lost corporate income from damage to business assets or trade slowdown;

(h) pure economic loss not covered by the above items;

(i) the costs of alternative accommodation;

(j) the valuation of claimants' own/volunteer labour and own/donated materials; and

(k) the question of 'inconvenience damages'.[23]

81 According to the plaintiff, the purpose of Schedule A is to provide a fair and efficient assessment process for ELPD claims but also to provide sufficient flexibility to accommodate unanticipated circumstances that may arise throughout the duration of the Scheme's operation. In most instances, Schedule A provides a basis for valuation consistent with accepted legal principle and an ELPD multiplier of one. However, in a number of instances, the basis for valuation departs from that which would be applied in an individual assessment of loss. The plaintiff says that this has been done for three reasons:

(a) to provide for a proportionate and cost-efficient and more certain assessment of items that may be difficult or relatively expensive to value on a comprehensive individual basis;

(b) to provide caps on various items of economic loss; and

(c) to prioritise compensation for houses, contents, vehicles and inconvenience.

82 The use of the multiplier is therefore intended to effect a prioritisation of those items of loss which are likely to have caused individuals the greatest hardship, as well as to reflect the prospects of success of a particular type of claim or the difficulty in establishing a particular form of loss. A multiplier of less than one for a particular item of loss is said to reflect inherent risks peculiar to that type of claim if the claim were to go to judgment.

83 The relativities between the different types of provision made for different kinds of loss are plainly relevant to whether the settlement is fair as between different types of claim and, in turn, different claimants.

84 In *Matthews*, Osborn J accepted that the arrangement provided for in Schedule A was a fair and reasonable one when looked at in the broad. Among the reasons given by his Honour were: (a) that it was fair to hold the claimant group generally to the

[23] Ibid [419].

position advanced at trial as constituting the proper basis for compensation; and (b) that the potential claims were so heterogeneous that unless some simplified scheme of assessment was provided, the process of assessment of damages would be impractically costly, contentious and delayed. His Honour also found that the Schedule responded sensibly to the experience of assessment to damages in other bushfire claims in recent times.

85 I accept that the arrangement for the recoupment of losses based on the categories and narrative rules in Schedule A is fair and reasonable. It provides a fair, practical and efficient way of dealing with a process that could otherwise be enormously costly and time-consuming.

86 In *Matthews*, Osborn J accepted that the multipliers were well founded and I too accept that, as a general principle, it is appropriate to use multipliers as proposed.

87 However, the Court has received an objection to the Scheme, the focus of which is the operation of Schedule A and its use of multipliers. It is convenient to turn to consider the objections at this point.

Objections

88 The Court has received four notices of objection to the settlement.

89 Three of those notices are in identical form. They are from Mr Don Brown, Bloodstock Breeder Services Pty Ltd, and DGB Builders Pty Ltd. Mr Brown is the owner of the two companies. Other than a high level submission set out in the notice itself, no material has been put before the Court in support of these objections. The objection appears to be that the allocation to business losses is too low and that the terms of the settlement are unfair to group members who are business owners. There is also a complaint that the terms of settlement are materially uncertain.

90 HVP made a much more comprehensive objection, supported by the affidavit made by Mr Williams, which describes the factual basis for and the details of the objection. Counsel for HVP made oral submissions at the hearing and handed up a proposed

set of orders to deal with the three aspects of HVP's objection.

91 Mr Williams deposed that the Murrindindi fire burnt several thousand hectares of HVP's pine plantation forests in the Acheron Valley and killed the vast majority of the plantation. HVP mounted a salvage effort to retrieve all commercially saleable wood, but was left with the task of managing a large amount of unsalvageable wood on the site. Almost the entire plantation destroyed by the Murrindindi fire has now been replanted.

92 HVP's plantation losses fall into two age classes. The majority of the area (approximately 2,700 hectares) was carrying a crop of trees up to 11 years of age (the 'younger cohort'), and a smaller area (approximately 350 hectares) was carrying a mature crop of between 29 and 37 years of age (the 'older cohort').

93 HVP submitted that the Scheme does not fairly and reasonably compensate HVP for the losses it has suffered, having regard to the principles and multipliers in Schedule A and the nature of its losses. It seeks to raise what it says is a specialised issue about losses in long duration operations like plantations, because they differ from conventional business losses that can be recouped in a much shorter timeframe. HVP stresses that it does not object to the settlement per se, but to the way the assessment principles and multipliers in Schedule A work in the case of plantation losses.

94 According to HVP, the provision in Schedule A for the reinstatement of the younger cohort, combined with the provision for loss of corporate profits, does not properly compensate it for its loss of the younger cohort because that approach does not recognise the considerable amount of time required to bring the plantation to its pre-fire level. HVP accepts the use of the replacement cost approach, but wants certainty that the replacement cost includes a base re-establishment cost consisting of costs such as removal or treatment of debris, cultivation of soil, application of herbicide, tree planting (including the cost of trees), fertiliser application and (potentially) the cost of removing wild, self-sown pines that have established due to the fire. In

addition, HVP wants the base re-establishment cost for each stand to be compounded to take into account the pre-fire age of the stand. The appropriate rate is, in HVP's submission, 'an industry standard' of 7.5% per annum.

95 As for the older cohort, HVP again contends for the adoption of what it says is 'an industry standard' approach to valuing plantation losses, this time using a discounted cash flow analysis. Insofar as this might already be open under the category in Schedule A that is designated to apply to 'any item not categorised above', HVP objects to the multiplier attached to that category, arguing that it is being unfairly penalised for having to make the entire claim for the older cohort under this category when other forms of business loss are treated more favourably under other categories.

96 In addition, HVP wants a separate item or category to be created to enable it to recoup fire suppression expenses incurred by it on or around Black Saturday. As a compromise, it proposes an order that these expenses be assessed as 'labour expended' under a particular item in Schedule A and, as to other costs such as vehicles and materials, that they be assessed under another specific item.

97 The plaintiff opposes the making of special orders for HVP and submits that what HVP is seeking is, in effect, a 'bespoke' order that suits its own interests but does not cure any injustice to any other member of the group and in fact disadvantages all other group members. Counsel for the plaintiff informed the Court that there were five other claims relating to plantations, and that none of those businesses had objected to the Scheme. Furthermore, the same arrangements applied to plantation losses in the Kilmore proceeding, apparently without objection.

98 The plaintiff says that, in relation to the loss of the younger cohort, it will be a matter for the ELPD assessor to decide whether the costs and interest sought by HVP are 'replacement costs' under Schedule A and that HVP is not entitled to a bespoke order to give it certainty about how Schedule A will be applied by the assessors, in circumstances where none of the other ELPD claimants enjoy such certainty.

99 As to the loss of the older cohort, the plaintiff submits that if HVP is correct and it is standard industry practice to value mature plantations using a discounted cash flow analysis, this can be accommodated under the catch-all category in Schedule A, in relation to which Victorian loss valuation practice applies. Insofar as HVP has a difficulty with the multiplier for this category, this is a relatively small matter, as HVP apparently accepts that a multiplier of less than one is appropriate for this kind of loss.

100 Finally, the plaintiff says that the orders sought in relation to the fire suppression expenses are again an attempt by HVP to obtain certainty about the application of the principles in Schedule A by the ELPD loss assessors. The complaint does not raise a problem with the Schedule itself so much as with how HVP fears the assessors might administer the Scheme.

101 There is force to the plaintiff's submissions that the orders sought by HVP in relation to the treatment of the younger cohort and the fire suppression expenses are directed to ensuring that Schedule A is administered in a particular way. The orders sought by HVP amount to directions to the ELPD loss assessors as to how to apply Schedule A.

102 It is not the role of the Court to dictate to the ELPD loss assessors how particular losses are to be assessed, particularly when no assessment has been made and no particular error by any assessor has been identified. HVP will have the opportunity in due course to comment on any provisional assessment with which it is dissatisfied and it has rights of review in relation to the assessment that is ultimately made.

103 Furthermore, the Court does not have evidence to enable it to make some of the orders sought, even if it was minded to make special orders for HVP. For example, the proposed compounding interest rate of 7.5% sought for the replacement cost of the younger cohort is not substantiated in any way. The Court has no idea whether the rate of 7.5% would be appropriate, even if HVP had an entitlement to interest of this kind.

104 Indeed, other than instructions about HVP's potential losses that were given 'on the run' during the course of the hearing, there was no evidence of what would be involved in dollar terms if orders were made as proposed by HVP. As a result, it is difficult for the Court to assess what impact HVP's proposed orders would have on the other group members. However, it must be the case that the proposed orders would disadvantage the other group members because the proposed orders are directed to securing 'a larger piece of the pie' for HVP. It would be important for the Court to understand the extent of that disadvantage if it were to tinker with or adjust the Scheme as proposed.

105 This is not to criticise HVP, which has raised a genuine concern about the fairness of the Scheme for particular types of business operations. However, one of the difficulties with an arrangement like the Scheme, which is designed to provide an efficient and cost-effective means of assessing a wide variety of losses, is that there will inevitably be some losses that are not easily categorised and in respect of which there is uncertainty as to the application of the Scheme. The Scheme does not and could not exhaustively describe the loss assessment methodology that will apply to each category of losses and the factors and assumptions that will be taken into account in assessing each claim. These are matters for the ELPD loss assessors.

106 Having regard to the way in which the Scheme is designed to operate, it is not the role of the Court to make special arrangements to secure certainty of outcome or a particular benefit for any particular group member.

107 I have carefully considered the objection made by HVP. In effect, aside from the problem of uncertainty, the real concern raised by HVP at this stage relates to the multiplier that will be used to value its loss of the older cohort. However, this relates to only 10% of the plantation, and the difference in the multiplier that HVP says would be appropriate and the one in Schedule A is, in fact, small.

108 In considering proposals for the distribution of settlement funds between group members, the question is whether the proposals achieve a satisfactory 'rule of

thumb' distribution. The arrangements should be framed to achieve a broadly fair division of the proceeds, treating like group members alike and as cost-effectively as possible.[24] However, not all group members will necessarily obtain an optimal outcome.

109 HVP's objection must be considered in the context of the benefits HVP will receive under the Scheme, including an assessment of its losses undertaken by an assessor who is to act as an independent arbitrator, receipt of a provisional assessment allowing any perceived errors or admissions to be addressed, the availability of a review to be conducted by a senior ELPD assessor and, of course, a recovery that is more certain, more cost-effective and speedier than if it had to litigate its individual claim to conclusion through the many stages that would have entailed. There are many benefits to HVP in the settlement, and it must accept the things that do not entirely suit it in the Scheme as well as the things that do.

110 In the circumstances, the Court will not make the special orders sought by HVP.

111 I am satisfied that the arrangements in Schedule A are fair and reasonable in the context of the variety and complexity of the claims in the claims group and the need to establish a claims assessment process that is efficient and cost-effective as well as fair. In my view, the Scheme strikes a reasonable balance between providing a fair assessment of ELPD losses and the practical considerations I have mentioned.

Plaintiff's Costs

112 Both the Deed and the Scheme contemplate that the plaintiff's costs and disbursements of and incidental to the investigation and prosecution of the claims will be paid to Maurice Blackburn before any distribution to group members. The plaintiff seeks an order that those costs and disbursements be fixed in the sum of $20,164,595.26.

113 It is necessary to consider whether this payment affects the reasonableness of the

[24] *Darwalla Mining Co Pty Ltd v Hoffman-LaRoche Limited* [2006] FCA 1338, [34], [60]-[64]; *Thomas v Powercor* [2001] VSC 614, [25].

settlement as between the plaintiff and other members of the group. The Court's role is to satisfy itself that the plaintiff's costs, which will be deducted from the settlement sum, are reasonable in all the circumstances. This is because group members, who are to share the liability for the fees and disbursements, are limited in their capacity to act as contradictors to the claim for costs, given that the information available to them is limited.

114 In this case, group members have no way of evaluating whether the figure of over $20 million for costs and disbursements is reasonable. They do not know how the sum has been quantified and have not had access to the confidential affidavit of the costs consultant, Ms Dealehr, filed in support of this application.

115 I have therefore taken some trouble to review Ms Dealehr's assessment of the plaintiff's reasonable costs and disbursements.

116 Ms Dealehr was retained by Maurice Blackburn to provide an opinion relating to the reasonable legal costs incurred by the plaintiff in the proceeding. She also provided such a report for the settlement of the Kilmore proceeding although in that proceeding, the Court also had the benefit of a report from a second independent costs consultant, Mr Mazzeo.

117 Ms Dealehr calculated the total amount of reasonable legal costs and disbursements in the proceeding up until and including 30 April 2015. The figure of $20,164,595.26 is Ms Dealehr's assessment of Maurice Blackburn's reasonable professional fees and disbursements (including GST) in the proceeding to that date.

118 Maurice Blackburn's initial basis for charging was a conditional costs agreement (along with a conditional costs disclosure notice) signed on 5 October 2012 by Mr Liesfield as the representative party in the proceeding. On 21 August 2014, Maurice Blackburn provided Dr Rowe, as the substituted lead plaintiff, with a second conditional costs agreement (and a second conditional costs disclosure notice), which she signed on 28 August 2014. The terms and conditions of the second costs agreement and the disclosures found in the second disclosure notice were, in their

essential terms, identical to the terms and conditions of the first costs agreement and the disclosures in the first disclosure notice.

119 The first and second costs agreements provided for Maurice Blackburn's professional fees to be calculated based on hourly professional rates set out in the appendices. These rates varied, depending on the classification of the operator. On 24 July 2013, Maurice Blackburn advised the plaintiff of rate increases involving an average increase in the rate for operators of 3.91%. In 2014, further increases were notified to the plaintiff with an average increase of 3.84%.

120 Both the first and second costs agreements and the accompanying disclosure notices provided for Maurice Blackburn to act on a no win/no charge basis. In the event of a successful outcome, Maurice Blackburn would be entitled to a 25% uplift fee. Maurice Blackburn has claimed that such an uplift is warranted in the light of the settlement. Ms Dealehr agrees with this proposition and generally considers the hourly rates claimed under the costs agreements to be reasonable.[25]

121 In *Matthews*, Osborn J considered the methodological principles approved by Gordon J in *Modtech Engineering Pty Ltd v GPT Management Holdings Ltd*[26] and approved of the steps taken by Ms Dealehr for assessing the reasonable costs of the Kilmore proceeding.[27]

122 The methodology used by Ms Dealehr in the Kilmore proceeding has been largely replicated here. Professional fees in the Kilmore proceeding were based on the Supreme Court scale with a complexity loading. In this case, professional fees are purely time-based charges. This has allowed Ms Dealehr to omit the steps undertaken in the Kilmore proceeding involving converting time-based charges to Supreme Court scale and adding a complexity loading. [28]

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25 Ms Dealehr also considers the claim for minimum six minute units to be reasonable and in accordance with modern legal practice.

26 [2013] FCA 626.

27 *Matthews* [2014] VSC 663, [362].

28 Ms Dealehr states that in her experience, where a plaintiff's professional fees are calculated on Supreme Court scale with a complexity loading like that claimed in the Kilmore proceeding, the

123 Otherwise, Ms Dealehr has used the methodology in the Kilmore proceeding. She has:

(a) calculated the time spent by each of the operators;

(b) applied the claimable rates for operators pursuant to the costs agreements and disclosure notices and the rates update letters;

(c) identified and excised the number of hours relating to non-recoverable matters by reference to costs that were not claimable;

(d) applied any relevant discounts after considering the nature of the work claimed or the manner in which the work was done;

(e) applied GST at 10% for professional fees; and

(f) applied the 25% uplift fee.

124 As she did for the plaintiff's costs in the Kilmore proceeding, Ms Dealehr worked off Maurice Blackburn's automated time and billing system, 'Elite'. Entries in Elite for work completed between 1 June 2012 and 30 April 2015 were transposed to an Excel spread-sheet to enable Ms Dealehr to analyse the information.

125 Ms Dealehr proceeded to confirm that charge rates for operators were appropriate, and to apply them to the entries. This involved assigning codes to different types of work or actions. The professional fees were calculated at the appropriate rates for each operator and then allocated to one of a number of categories. Ms Dealehr analysed each category of work to consider the relative size and nature of the work done and determine the reasonableness of the professional fees. The total amount of professional fees pursuant to the rates specified in the costs agreements was calculated to be $9,964,223.50.

126 Moving to step three, Ms Dealehr removed non-recoverable hours relating to the

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professional fees would be higher than calculating professional fees applying hourly rates similar to those claimed in this matter.

costs agreements and administration costs. There then followed - as part of step four - an analysis of whether discounts should apply in relation to or resulting from the following:

(a) duplication of work;

(b) the number of solicitors attending team meetings;

(c) possible discrepancies in recording of time devoted to work for which charges were made;

(d) multiple solicitors attending court to instruct;

(e) apparent inefficiencies in the discovery process;

(f) charges levied for administrative work that would not be allowed on a taxation; and

(g) difficulty sometimes experienced in translating the solicitors' general record of time spent on work into an acceptable form for taxation purposes.

127 In the event, Ms Dealehr only applied discounts to reduce to zero non-claimable professional fees, bulk entries and undefined fees. This resulted in an overall discount of 3.24% or $322,840.84. In addition, she applied a $23,522 discount as a result of lawyers doing the work of non-lawyers.

128 Steps five and six, involving the application of GST and the 25% uplift, were carried out mathematically.

129 As to the reasonableness of disbursements, Ms Dealehr conducted a manual audit of accounts and invoices generated by Maurice Blackburn, examining each invoice to confirm that it was relevant to the proceeding and error-free. In this context, Ms Dealehr considered the barristers' fees. She expressed the opinion that the 25% uplift fee charged by the barristers was reasonable. She observed that the ratio of non-court work to court work was very high, but found that this reflected the fact that the

proceeding settled immediately prior to trial. However, where fees were substantial she made a small reduction on fees for preparation and/or reading.

130 Ms Dealehr also reviewed the fees charged by the experts that were retained, having considered the written retainers, the amounts charged, the basis for charging, the reports provided and work completed. She concluded that these fees were reasonable. Other expenses (relating to witnesses, media, document and litigation support, medical, court-related and travel, as well as miscellaneous expenses) were also reviewed and found to be reasonable.

131 It appears to me that Ms Dealehr has done a thorough job using a methodology previously approved of by the Court and that her opinion as to the reasonable costs and disbursements in the proceeding is well-founded and reliable. However, I am conscious that the Court does not have the benefit of a second expert opinion as it did in the Kilmore proceeding. I am also aware that this Court has recently dealt with the question of the plaintiff's costs in a group proceeding by requiring those costs to be reviewed by a Costs Registrar or Judicial Registrar experienced in costs matters.[29]

132 Having given the matter considerable thought, I have concluded that it is sufficient in this case to rely on the single expert opinion of Ms Dealehr. Her opinion is based on a methodology that has been previously approved of by this Court and which also seems to me to be reasonable. Furthermore, having regard to the fact that Maurice Blackburn's 'Elite' records included over 20,000 entries, I do not consider that it would be of particular utility to order a 'high level' review by a Costs Registrar. Such a review would barely scratch the surface.

133 In accepting Ms Dealehr's assessment of the plaintiff's reasonable costs and disbursements, I am comforted by two further matters.

134 First, those costs are in line with estimates given to the plaintiff during the course of the proceeding. On 19 September 2012, Maurice Blackburn advised the plaintiff that

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29 *Downie v Spiral Foods Pty Ltd & Ors* [2015] VSC 190 (the 'Bonsoy proceeding').

the estimate of total legal costs was in the range of $7.5 million to $10 million, inclusive of disbursements and the uplift fee. Dr Rowe, as the substitute lead plaintiff, was advised on 21 August 2014 in the second disclosure notice of the same estimate of total legal costs. On 29 October 2014, Dr Rowe was provided with an updated estimate in the amount of $12,692,027. On 19 December 2014, Dr Rowe was provided with a further update in the amount of $15,232,068. As at 19 December 2014, approximately $2 million of disbursements, including fees from counsel and experts, had either not yet been received or, alternatively, had not been incurred by Maurice Blackburn. The estimates seem to me to have been realistic and they do not indicate that costs were running away at any point. There seems to have been a fairly steady and measured progression towards the final figure.

135 Secondly, I have been provided with confidential figures representing the amount of costs incurred by AusNet and the State parties. Having regard to those costs, the plaintiff's costs appear reasonable.

136 Finally, I observe that the amount of costs represents no more than 7% of the amount recovered from the defendants. This is a lower percentage than in the Kilmore proceeding and a significantly lower percentage than in the Bonsoy proceeding.

137 In all the circumstances, I am prepared to approve the payment of the plaintiff's costs and disbursements in the amount of $20,164,595.26.

Reimbursement payments

138 It is proposed to pay to each of the plaintiffs, Mr Liesfield and Dr Rowe, a fixed amount to reimburse them for the significant time and effort that they dedicated to the proceeding. It is also proposed to pay sample group members an amount for their time and effort. The proposed payments are not said to be based on time recording or any other verifiable measure. Rather, Maurice Blackburn has simply nominated fixed sums for the individuals concerned. Similar payments were approved in the Kilmore proceeding.

139 The amounts in question are very small, particularly having regard to the settlement

sum and to the time and effort contributed by the plaintiffs and sample group members to advance the proceeding.

140 I am well satisfied that these reimbursement payments are reasonable. They recognise the burden borne by the plaintiffs and, in particular, sample group members. Those individuals accepted the burden of being dragged through awful personal tragedies in conferences with solicitors and counsel and the likelihood that they would be called upon to testify about their experiences and very personal losses in a public forum, all the while being live-streamed into their communities. No other group member has been asked to endure anything like that. Under the Scheme, group members will avoid anything other than private conferences about their loss and damage, which should be a much more gentle process for them.

141 The fact that it was proposed to make reimbursement payments was notified to group members pursuant to the February settlement orders. No objection was made to the making of such payments.

142 I approve the reimbursement payments.

Future administration costs

143 The Scheme provides for costs incurred by the Scheme Administrator and staff in connection with the assessment of claims to be paid out of the settlement sum. These administration costs are to be paid in the first instance, and hopefully entirely, from interest accruing on the settlement sum.

144 The fees charged by the Administrator and his or her staff are to be charged at the rates set out in a schedule to the Scheme. The hourly rates are submitted to be unexceptional commercial rates for legal work.

145 The Scheme provides for amounts payable to any person in respect of the administration of the Scheme to be monitored by the Court. All such amounts must be identified in a report to the Court prior to payment and may only be paid upon and to the extent of approval by the Court.

146 I am satisfied that the requirement for the approval of the Court before administration costs are paid is an appropriate safeguard. Once the implementation of the Scheme has begun, a re-assessment of the administration costs can be undertaken at any time, should it be necessary to do so.

147 The arrangements for the payment of future administration costs do not compromise the fairness or reasonableness of the settlement, in my view.

Conclusion

148 For the foregoing reasons, I am satisfied that the settlement is fair and reasonable and in the interests of group members as a whole. Although it necessarily involves a range of compromises, and not all group members will benefit from the settlement to precisely the same extent, there are good reasons for this, and the settlement undoubtedly confers substantial benefits on all group members.

149 The Court will make the orders sought by the plaintiff in the summons.

SCHEDULE OF PARTIES

S CI 2012 04538

BETWEEN:	
KATHERINE ROWE	Plaintiff
- and -	
AUSNET ELECTRICITY SERVICES PTY LTD (ACN 064 651 118)	First Defendant
ACN 060 674 580 PTY LTD (ACN 060 674 580)	Second Defendant
SECRETARY TO THE DEPARTMENT OF ENVIRONMENT AND PRIMARY INDUSTRIES	Third Defendant
COUNTRY FIRE AUTHORITY	Fourth Defendant
STATE OF VICTORIA	Fifth Defendant
- and -	
AUSNET ELECTRICITY SERVICES PTY LTD (ACN 064 651 118)	Plaintiff by Counterclaim
- and -	
ACN 060 674 580 PTY LTD (ACN 060 674 580)	First Defendant by Counterclaim
SECRETARY TO THE DEPARTMENT OF ENVIRONMENT AND PRIMARY INDUSTRIES	Second Defendant by Counterclaim
COUNTRY FIRE AUTHORITY	Third Defendant by Counterclaim
STATE OF VICTORIA	Fourth Defendant by Counterclaim
KATHERINE ROWE	Fifth Defendant by Counterclaim