

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD213/2011  
File Title: Tammy Maree Stanford & Anor v DePuy International Limited & Anor  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 17/06/2019 10:39:42 AM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59  
Rule 29.02(1)

## Affidavit

No. NSD 213 of 2011

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Tammy Stanford** and Another

Applicants

**DePuy International Limited** and Another

Respondents

Affidavit of: **Julian Klaus Schimmel**  
Address: Level 32, 201 Elizabeth Street, Sydney NSW 2000  
Occupation: Solicitor  
Date: 14 June 2019

### Contents

Document number	Details	Para	Page
1.	Affidavit of <b>Julian Klaus Schimmel</b> in support of the Administrators' application for orders amending the Settlement Scheme, approving payment of Administration Costs and other matters, affirmed on 14 June 2019	1-83	1-30
2.	Annexure <b>JKS-156</b> , being the 2019 MB Administration Report	9	31-102
3.	Annexure <b>JKS-157</b> being a copy of PricewaterhouseCoopers taxation advice	46	103-109
4.	Annexure <b>JKS-158</b> , being a copy of a draft of a further amended Settlement Scheme	47	110-150

Filed on behalf of (name & role of party) Maurice Blackburn Pty Limited and Shine Lawyers Pty Limited as Joint Scheme Administrators  
Prepared by (name of person/lawyer) Julian Klaus Schimmel  
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(include state and postcode)

[Version 2 form approved 09/05/2013]

I, Julian Klaus Schimmel, solicitor, of Level 32, 201 Elizabeth Street, Sydney, in the State of New South Wales, affirm:

1. I am a Principal Lawyer of Maurice Blackburn Pty Limited (**Maurice Blackburn**).
2. Maurice Blackburn acted for the first applicant and a number of Group Members in this proceeding. On 29 June 2016, the Court made orders appointing Maurice Blackburn and Shine Lawyers as the joint administrators (**Administrators**) of the Settlement Scheme (**Scheme**) in this proceeding. On 14 June 2017, the Court ordered that Maurice Blackburn and Shine be joined as parties to the proceeding for the limited purpose of exercising the liberty granted by the Court in order 2(c) made on 29 June 2016. I am responsible for Maurice Blackburn's conduct of the settlement administration.
3. Since the approval of the settlement on 29 June 2016, in June of each subsequent year the Administrators have provided annual updates to the Court as to the progress of the settlement administration. Consistently with the practice adopted in previous years, the Administrators now provide their annual report to the Court in accordance with clause 14.6 of the Federal Court of Australia's *Class Actions Practice Note (GPN-CA)*. In doing so, the Administrators provide an update as to:
  - (a) the progress of the settlement since the Administrators provided their most recent report to the Court in June 2018; and
  - (b) the remaining work to be done in administering the settlement.
4. In addition, I make this affidavit in support of an application for orders:
  - (a) approving further amendments to the Scheme; and
  - (b) approving payment of Administration Costs.
5. I am authorised to make this affidavit on behalf of the Administrators. Except where otherwise indicated I make this affidavit from my own knowledge. Where I give evidence based on information provided to me by other people or on my review of documents, that evidence is true to the best of my knowledge, information and belief. In this affidavit I use terms that are defined in the Scheme and in the Settlement Deed.



6. I have also reviewed a draft affidavit of Rebecca Jancauskas of Shine Lawyers that is proposed to be filed on behalf of the Administrators in support of the current application.

### OVERVIEW

7. Since the Administrators' appearance before the Court in June 2018 (**June 2018 Update**) and my 20 June 2018 affidavit (**June 2018 Affidavit**), the Administrators have continued to make significant progress in finalising Group Members' claims and reaching the position where all claims excepting for recently registered claims and a handful of more complex claims have been completed. Administration costs and progress has largely tracked as the Administrators had anticipated as at the time of the June 2018 Update.
8. In Section A below I elaborate on the status of Group Members' claims, however by way of brief summary at the outset, I note that compensation payments have now been made to 1,492 (93%) of the 1,604 Group Members who have been found eligible to receive compensation, and 55 of the 111 unpaid Eligible Group Members are in the process of having their Liens resolved and we therefore expect that most will be paid within the next month or two. By way of further summary:
- (a) eligibility determinations have been completed for all but those recently registered Group Members;
  - (b) Fast Track Resolution payments have been made to 98% of Group Members who have elected to take up that payment option, with payments of \$77,230,000.00 having been made to these Group Members;
  - (c) Individual Assessment payments have been made to 72% of Group Members who have elected Individual Assessment, with payments of \$42,952,995.12 having been made to these Group Members at the rate of 90 cents in the dollar as recommended by actuarial experts, Geoff Atkins and Adam Payne of Finity in June 2018.
  - (d) Updated advice has been received from the actuarial experts, Finity, providing that the 72% of Group Members who have elected Individual Assessment and been paid at 90 cents in the dollar of their total assessed compensation can now be paid a further tranche or "top up" payment of 10 cents in the dollar, meaning they will have been paid 100% of their total assessed compensation.



Group Members who have elected Individual Assessment and had their claims finalised from now on will be paid at 100% of their total assessed compensation. This top up payment is made in accordance with clause 10.4 of the Scheme. The Administrators anticipate making an application for approval of a final payment in accordance with clauses 10.6 and 10.7 of the Scheme in 12 to 18 months' time.

9. The remainder of this affidavit is structured as follows.

- (a) **Section A:** I set out the progress of the administration by reference to the status of Group Members' claims.
- (b) **Section B:** I set out the work performed in relation to the administration for which costs approval is sought.
  - (i) In support of the June 2018 application for approval of Administration Costs, Maurice Blackburn prepared the 2018 MB Administration Report which was at **JKS-147** of my June 2018 Affidavit. For the purposes of this current application, Maurice Blackburn has prepared an update to the 2018 MB Administration Report. A copy of the "**2019 MB Administration Report**" is at **JKS-156** to this affidavit.
  - (ii) This application relates to Administration Costs incurred by Maurice Blackburn for the period April 2018 to March 2019 (**2019 Relevant Period**). The 2019 MB Administration Report sets out the monthly amounts of professional fees for each of the 26 areas of settlement administration work and provides a description of the nature of the work done and any trends and expectations for future work.
  - (iii) This application for approval of Administration Costs is again supported by evidence from an independent costs expert, Mr Ross Nicholas. Mr Nicholas previously prepared reports dated 15 June 2016 (in support of settlement approval) and dated 8 June 2017, 23 June 2017 and 20 June 2018 (in relation to the approval of Administration Costs in previous years).



- (iv) The total amounts for which approval are sought by the four firms involved in the administration of the settlement are as follows (all amounts are inclusive of GST):

	<b>General fees (clause 13.1)</b>	<b>Disbursements</b>	<b>Claim preparation fees (clause 13.2)</b>	<b>Total</b>
<b>Maurice Blackburn</b>	\$1,442,651.10	\$824,367.95	\$1,005,400.00	<b>\$3,272,419.05</b>
<b>Shine</b>	\$1,105,738.95	\$438,231.31	\$649,000.00	<b>\$2,192,970.26</b>
<b>DBH</b>	\$161,020.71	\$7,021.82	\$169,950.00	<b>\$337,992.53</b>
<b>LAM</b>	\$117,263.30	\$10,176.74	\$86,900.00	<b>\$214,340.04</b>
<b>Total</b>	<b>\$2,826,674.06</b>	<b>\$1,279,797.82</b>	<b>\$1,911,250.00</b>	<b>\$6,017,721.88</b>

- (v) During the 2019 Relevant Period, Maurice Blackburn's professional fees tracked broadly in line with expectations at the time of the 2018 MB Administration Report. Maurice Blackburn's average monthly professional fees under clause 13.1 for the 2019 Relevant Period have reduced by almost half in comparison to the 2018 Relevant Period.
- (c) **Section C:** I set out the work done by the Administrators in engaging and instructing Finity and the advice received.
- (d) **Section D:** I discuss the proposed amendments to the Scheme. These amendments are sought on the basis of taxation advice received by the Administrators, and the Administrators consider that the amendments will result in a direct financial benefit to Group Members.
- (e) **Section E:** I discuss the remaining work that will need to be done in order complete the settlement administration, including timelines and current predictions as to costs. The Administrators maintain their expectation that the total Administration Costs (at the conclusion of the settlement administration in circa 2023) will be less than the assumed amount of \$26 million that had been incorporated in the actuarial modelling set out in Mr Atkins' expert report for the purpose of settlement approval.

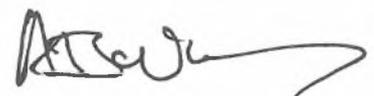
**SECTION A – PROGRESS OF THE SETTLEMENT ADMINISTRATION**

10. I provide the following report on the progress of the settlement administration by reference to the various stages of the process by which Group Members' claims are determined pursuant to the Scheme. This data is current as at 12 June 2019, and encompass the claims being handled by all four firms involved in the administration:

- (i) **Registrations**: a total of 1,777 potential Group Members have registered claims in accordance with clause 4 of the Scheme (**Registrants**), excluding claims that have since withdrawn.
- (ii) **Claim Allocations**: claims of Registrants have been allocated as follows:
  - (i) 767 (43.2%) to Maurice Blackburn;
  - (ii) 729 (41%) to Shine Lawyers;
  - (iii) 142 (8%) to Duncan Basheer Hannon;
  - (iv) 139 (7.8%) to Lempriere Abbot McLeod.
- (iii) **Eligibility determinations**: a total of 1,718 (97% of Registrants) eligibility determinations have been completed in accordance with clause 5 of the Scheme, with Notices of Eligibility having been sent to all these Group Members.
- (iv) **Outcome of eligibility determinations**: of the 1,718 Registrants to whom a Notice of Eligibility has been sent:
  - (i) 1,604 (93%) were found to be eligible to receive compensation (**Eligible Group Members**); and
  - (ii) 114 (7%) were found to not satisfy the criteria for eligibility to receive compensation (**Ineligible Registrants**). To date, four Ineligible Registrants have requested an Eligibility Review pursuant to sub-clause 9.1(a) of the Scheme. Maurice Blackburn has had responsibility for two Eligibility Reviews, one of which was withdrawn and one which was unsuccessful, and Shine has responsibility for two Eligibility Reviews, both of which we unsuccessful.

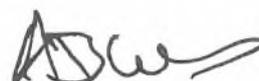


- (v) **Elections**: of the 1,604 Eligible Group Members to whom a Notice of Eligibility has been sent:
- (i) 1,310 (81.8%) Group Members have elected the Fast Track Resolution pursuant to clause 6 of the Scheme, and I note that this rate of election is the same as the rate that was reported in June 2018;
  - (ii) 293 (18.2%) Group Members have elected (or been deemed to have elected in accordance with clause 6.4 of the Scheme) to have their claim assessed under clause 7 of the Scheme (**Individual Assessment**); and
  - (iii) 1 (0.1 %) has not yet made an election and is within the 42 day period provided for election by clause 6.3 of the Scheme.
- (vi) **Individual Assessment**: of the 293 Eligible Group Members who have elected Individual Assessment, 253 Claim Books have been prepared and allocated to an Assessor, of which 231 have been finally assessed by Assessors in accordance with clause 7.3 of the Scheme.
- (vii) **Liens**: of the 1,604 Eligible Group Members who have made an election:
- (i) 1,507 (94%) have had their Liens resolved in accordance with clause 8 of the Scheme;
  - (ii) 97 (6%) have Liens that are still in the process of being resolved;
  - (iii) a total of \$5,221,689.83 has been paid by the Administrators to lienholders for Residual Liens in accordance with clause 8.3 of the Scheme (noting that the Respondents are responsible for the payment of Assumed Liens in accordance with clause 8.2 of the Scheme). I also note that on the basis of the records maintained by the Administrators, more than \$3,000,000.00 has been paid by the Respondents in relation to Assumed Liens.
- (viii) **Legal Incapacity Claims**: To date, the Administrators have identified 18 Group Member's under a legal incapacity. Of those, pursuant to clause 12 of the Scheme, 14 claims have been approved by Court order (10 of which have subsequently been paid and four are awaiting payment in the next monthly payment schedule), the Administrators are preparing an

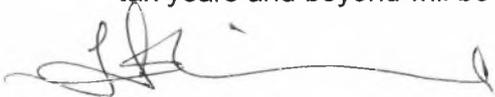


Interlocutory Application for a further three claims, and the remaining one claim is progressing through the Individual Assessment process.

- (ix) **Final Compensation Payments**: of the 1,507 Eligible Group Members who have had their Liens resolved, final payments totalling \$120,182,995.12 have been made to 1,492 Eligible Group Members, representing 84% of Registrants (or 93% of Eligible Group Members).
- (x) **Status of claims that have not yet been paid**: taking into account the number of Registrants (1,777) and the number who have been paid (1,492), and excluding Ineligible Group Members (114), there are 171 Registrants who have not yet been paid. These Registrants are at the following different stages:
- (i) 59 Registrants have not yet had their eligibility determined, though 23 of these have been invited to withdraw their claims;
  - (ii) 1 Group Member has been found eligible but has not yet made an election for the Fast Track Resolution or Individual Assessment;
  - (iii) 45 Group Members have made an election and are in the process of having their Liens resolved, and with payment to most of these Group Members therefore likely to be made within the next month or two;
  - (iv) 10 Group Members have been found eligible, made an election, have had their Liens resolved and are awaiting payment, for some of these Group Members, the delay in making payment is due to outstanding Grant of Probate that the Executors of Group Members' estates are obtaining or the need to obtain approval for the resolution of claims by Group Members who are under a legal incapacity;
  - (v) 25 additional Group Members elected Individual Assessment and have had their Claim Books prepared, and are awaiting assessment by an Assessor or the Assessor has requested further material in order to be able to complete the assessment, which is currently being obtained by the Administrators;
  - (vi) 31 additional Group Members elected Individual Assessment and are awaiting preparation or finalisation of their Claim Books.

- (xi) **Interim Payment Applications**: interim payments were made to 89 Eligible Group Members in accordance with clause 10.8 of the Scheme.
11. Pursuant to clauses 10.2 and 10.3 of the Scheme, the Administrators are responsible for the investment and management of the Settlement Sum. Since the Settlement Sum was transferred by the Respondents into the Settlement Account on 18 August 2016, the Administrators have maintained a number of different bank accounts, including a low interest transaction account as well as various term deposit accounts that attract higher interest rates.
12. From time to time throughout the course of the settlement administration, various amounts have been transferred between those accounts in order to strike a balance between:
- (i) immediate availability of funds in a transaction account for the purpose of making ongoing payments to Group Members, lienholders and other third parties (for example, experts advising the Administrators as well as hospitals and doctors from whom medical records were sought); and
  - (ii) maximising the interest earned on the Settlement Sum by means of investment in term deposit accounts of varying durations.
13. As at 12 June 2019, the total amount remaining in the various bank accounts is \$86,953,858.87, taking into account all payments made to Group Members, lienholders and for the Applicants' Costs (as approved on 29 June 2016) and Administrations Costs, and taking into account the interest earned to date. This total amount is presently distributed among the following accounts:
- (i) \$13,758,860.10 in the transaction account;
  - (ii) \$73,194,998.77 in a term deposit;
14. As at 1 June 2019, the total interest earned on the Settlement Sum since the settlement accounts were opened is \$11,424,877.70. This includes the pro rata amount of interest notionally earned to date on the term deposit that is yet to mature (with the result that interest has not yet accrued on those accounts). However, as I discuss in more detail in Section D below, the Administrators expect that they will have a tax liability in previous tax years as a result of this interest income, but that if the proposed Scheme amendments are approved the tax implications for the 2019 tax years and beyond will be more favourable.



**SECTION B – WORK PERFORMED AND ADMINISTRATION COSTS**

15. The 2019 MB Administration Report at **JKS-156** contains a breakdown of the monthly amounts of professional fees for each of the 26 areas of the settlement administration work, together with supplementary explanation of and comments on the nature of the work and any patterns and trends during the 2019 Relevant Period (1 April 2018 to 31 March 2019).
16. I prepared the 2019 MB Administration Report with input and assistance from Elizabeth Mukherji, Senior Associate and Megan Greaves, Associate who are responsible for the day to day conduct of the settlement administration. In the 2019 MB Administration Report and in this affidavit, a reference to Maurice Blackburn means the Maurice Blackburn settlement administration team and a reference to the Administrators means Maurice Blackburn and Shine jointly.

**Section B.1 – Administration Costs under clause 13.1 of the Scheme**

17. In Sections B and F of my June 2018 Affidavit, I gave evidence regarding historical Administration Costs as well as my expectations and predictions regarding future Administration Costs. Administration Costs as reported in this affidavit have met the expectations and predictions that I gave in June 2018.
18. In addition to the detailed commentary in the 2019 MB Administration Report, I make the following general remarks about Administration Costs and the work involved in the administration of the settlement since the June 2018 Court update.
19. *First*, Maurice Blackburn's Administration Costs for the 2019 Relevant Period have tracked as anticipated at the time of the June 2018 Court update. *Secondly*, Maurice Blackburn's average monthly fees for the 2019 Relevant Period reduced by almost half in comparison to the 2018 Relevant Period.
20. By way of explanation of this reduction in Administration Costs under clause 13.1 of the Scheme, I first address the different areas of work involved in the settlement administration and, as was also the case in 2018, I do so by reference to the 26 "task codes" that were implemented by the Administrators in 2017. I then address the declining pattern of Administration Costs over time during the 2019 Relevant Period.



- (a) In three (3) of the 26 areas of work in the settlement administration, Maurice Blackburn's average monthly costs increased significantly in comparison to the 2018 Relevant Period. These increases were consistent with my expectations in June 2018 and reflect the evolving priorities and areas of focus in the settlement administration. These areas of work were:
- (i) processing individual assessments (task code 08) – the increase in fees was directly related to the increase in the number of individual assessments being processed as well as increased time associated with some of the more complex claims. Over the 2019 Relevant Period Maurice Blackburn finalised a total of 103 individual assessments (95 Maurice Blackburn Group Members and 8 DBH Group Members) – this means that the average amount per claim is approximately \$2,100, which equates to approximately 3.5 to 4 hours of time in order to process each Individual Assessment;
  - (ii) reviews (task code 09) which, in the vast majority of cases, are reviews sought by Group Members in relation to their individually assessed compensation amounts – average monthly costs were nevertheless still reasonably modest, with approximately \$3,500 on average in each month during the 2019 Relevant Period; and
  - (iii) management of group member data (task code 13) which, as I discuss in greater detail below, is critical in order to ensure the accuracy and reliability of actuarial advice.
- (b) There were six (6) areas of work in which Maurice Blackburn's average monthly costs were comparable to the average monthly fees in the 2018 Relevant Period. These areas of work were:
- (i) registrations (task code 01);
  - (ii) engagement of experts (task code 14);
  - (iii) preparing for court applications (task code 16);
  - (iv) payments (task code 19);



- (v) explants (task code 22) – while costs in this area of work were similar in relative terms to the average monthly costs in the 2018 Relevant Period, in absolute terms these costs were modest; and
  - (vi) legal incapacity (task code 24).
- (c) In each of the remaining 16 areas of work for which chargeable work is carried out, there was a substantial reduction in Maurice Blackburn’s average monthly costs in comparison to the 2018 Relevant Period:
- (i) in each of these 16 areas of work, average monthly costs were less than 50% of the average monthly costs for the 2018 Relevant Period;
  - (ii) in ten (10) of the 16 areas there was a reduction of 75% or more compared to the 2018 Relevant Period;
  - (iii) as a result of the settlement administration “infrastructure” having bedded down and now only requiring minor ongoing development, there were substantial reductions in “non-core” work (as I described it in my June 2018 Affidavit at [34]), including workflow and process development (task code 10), IT systems and development (task code 17) and dealing with Assessors (task code 03).

21. Having discussed the relative reduction in Administration Costs under clause 13.1 in the 2019 Relevant Period in comparison to the 2018 Relevant Period, I also note that the five areas of work that generated the largest fees in absolute dollar terms are as follows:

- (a) preparing for court application (task code 16);
- (b) processing individual assessments (task code 09);
- (c) payments (task code 19);
- (d) legal incapacity (task code 24); and
- (e) managing group member data (task code 13).

22. I also note that in 14 of the 25 chargeable areas of work, Administration Costs under clause 13.1 were in the order of \$3,000 or less on an average monthly basis, which

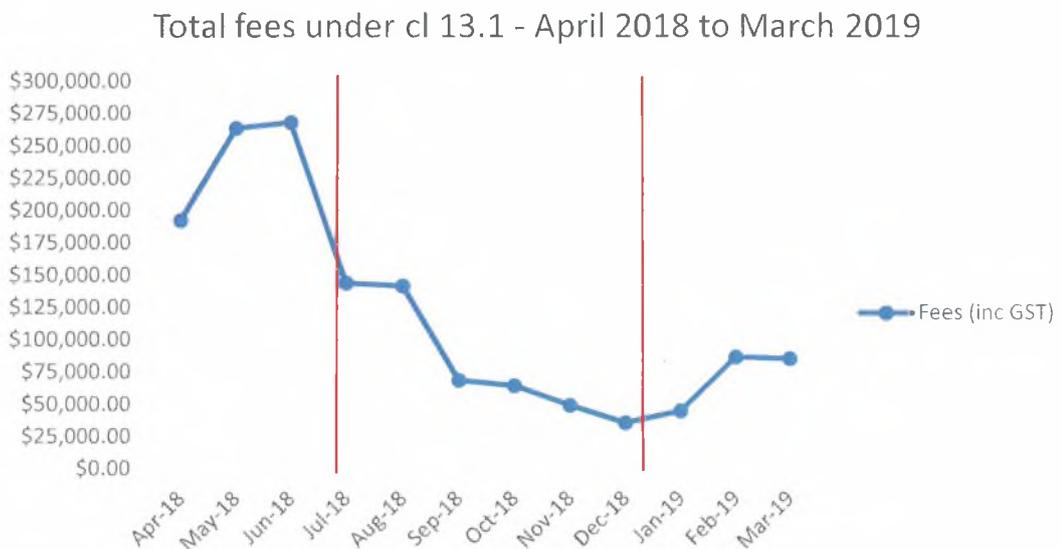


equates to approximately six (6) or seven (7) hours of work in a month, and in 19 of 25 areas of work the average monthly fees were less than \$5,000.

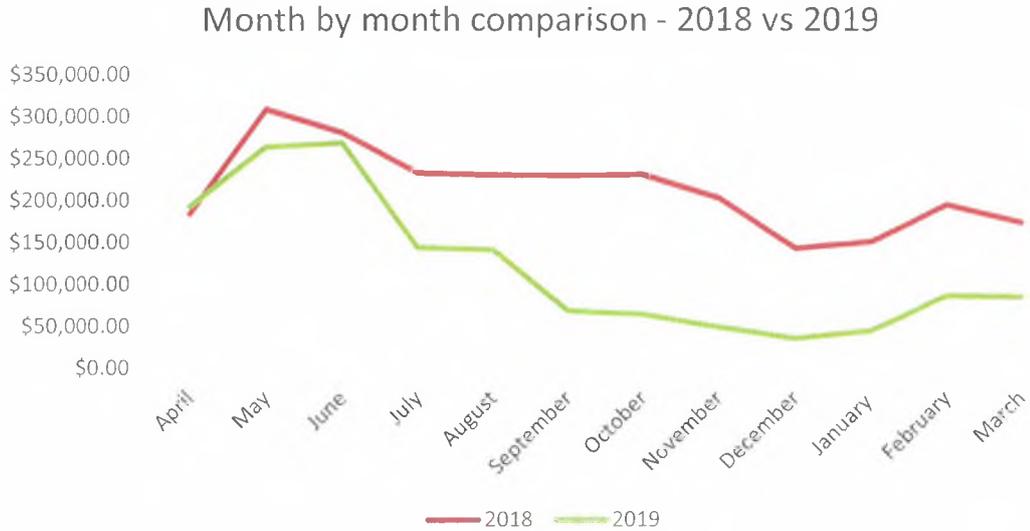
23. As to the pattern of clause 13.1 fees over time, in my June 2018 Affidavit at [99] and [106] I gave evidence regarding my expectations regarding Administration Costs under clause 13.1 from March 2018 until early 2019. As predicted:

- (a) from **March to June 2018**, fees were broadly similar to those in the second half of 2017, which was largely due to the work necessary in order to prepare for the hearing in June 2018 as well as associated claim related work that fed into preparation for the hearing;
- (b) from **July to December 2018**, fees stabilised and reduced in comparison to the period from March to June 2018;
- (c) in **early 2019**, there was a slight increase in fees compared to the second half of the 2018 calendar year – this was largely due to a push by the Administrators to finalise as many outstanding claims as possible, including so that data for those claims could be incorporated in the updated actuarial advice and in that context and for that purpose there was also additional work associated with auditing of data.

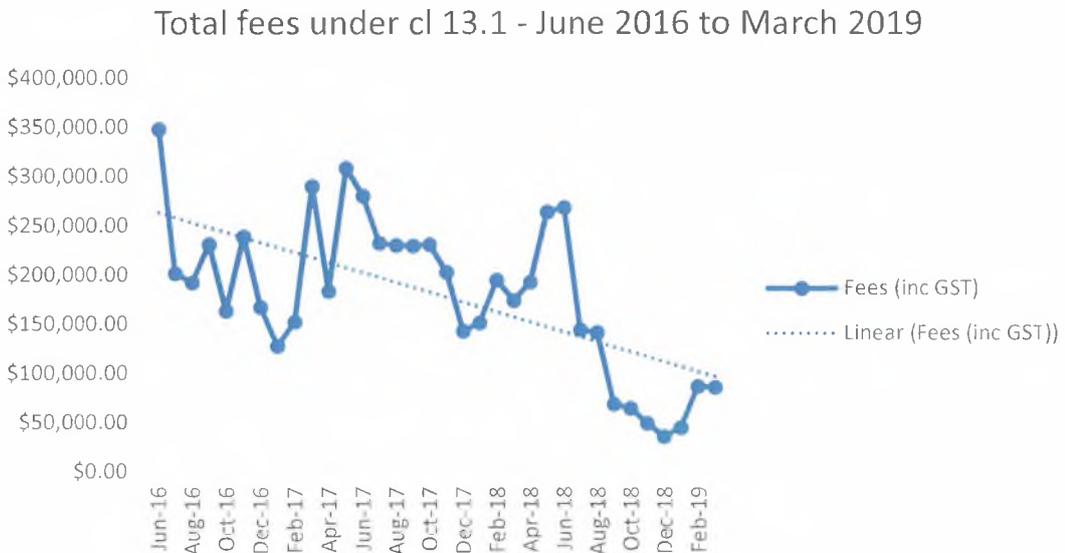
24. These patterns of fees are illustrated in the following graph, with red vertical lines delineating the three periods described above.



25. I also note that in a month by month comparison of fees in successive calendar years, it can be seen in the following graph that there was an appreciable reduction in fees for the 2019 Relevant Period in comparison to the 2018 Relevant Period.



26. Finally, I note the following illustration of Maurice Blackburn’s fees under clause 13.1 of the Scheme from the commencement of the administration in June 2016 until March 2019. Overlaid on the monthly fees there is also a statistically generated “line of best fit”, which shows an overall downward trend in costs despite monthly fluctuations over time.



**Section B.2 – Administration Costs under clause 13.2 of the Scheme**

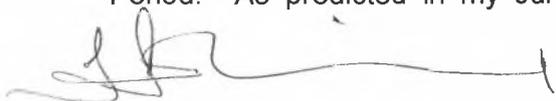
27. During the 2019 Relevant Period, work associated with Eligibility Books continued but at a reduced level. This reduction is directly related to the reduced number of claims being registered and there being no backlog from claims registered earlier.
28. The primary focus of administration work under clause 13.2 of the Scheme during the 2019 Relevant Period has been the preparation of Individual Assessment Claim Books and the resolution of liens. The work involved in preparing Claim Books and resolution of liens remains the same as set out in my June 2018 Affidavit at [42] to [52].

**Section B.3 – Administration work performed where no costs are sought by Maurice Blackburn**

29. For the 2019 Relevant Period, Maurice Blackburn's administration team carried out 499 hours of work that is not being claimed as Administration Costs.
30. As was also the case for the "no charge" work in the 2018 Relevant Period (as summarised in my June 2018 Affidavit at [56] to [59]), in the 2019 Relevant Period the "no charge" work generally consisted of the following:
- (a) time spent instructing and engaging Ross Nicholas as an independent costs expert;
  - (b) work done in order to rectify errors; for example, if there was a clerical error in making payment to a Group Member and this necessitated correspondence with the Group Member and other work in order to rectify the error, payment is not sought for those attendances;
  - (c) work done by Maurice Blackburn's litigation technology staff for the purpose of the administration;
  - (d) work that was done where I or my team made a discretionary decision not to seek payment.

**Section B.4 – Disbursements**

31. As noted above, Maurice Blackburn seeks approval to be reimbursed a total of \$824,368 for disbursements paid by Maurice Blackburn during the 2019 Relevant Period. As predicted in my June 2018 Affidavit, a significant majority of these

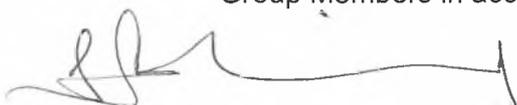


disbursements relate to Assessor fees. I provide the following breakdown of disbursements, stratified by reference to the type of disbursement:

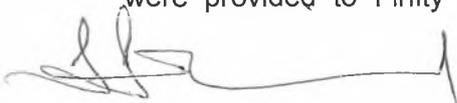
- (a) Assessor fees of \$589,580 (71.5%) for individual assessments, reviews, opinions regarding claims by Group Members who are under a legal incapacity, and opinions from Senior Counsel regarding the complex interaction between statutory compensation schemes such as workers compensation and Department of Veterans Affairs and Group Members' entitlements pursuant to the Scheme;
- (b) Expert fees of \$186,354 (22.6%);
- (c) Fees for medical records and reports of \$28,043 (3.4%);
- (d) Counsel fees of \$14,167 (1.7%) for the hearing in 2018 and associated preparation;
- (e) Other miscellaneous expenses (court fees, transcript fees, courier fees etc) of \$6,224 (0.8%).

### **SECTION C – ACTUARIAL ADVICE**

32. The actuarial experts, Geoff Atkins and Adam Payne of Finity have prepared two reports in this matter:
- (a) their first report dated 17 June 2016 was prepared for the purpose of settlement approval application; and
  - (b) their second report dated 19 June 2018 contained recommendations regarding the first instalment payment of 90 cents in the dollar to Group Members whose claims were individually assessed.
33. Since the hearing in June 2018, the Administrators have been in regular communication with Finity regarding the progress of the administration and the timing of further actuarial advice.
34. In February 2019 the Administrators commenced the process of engaging Finity to provide further advice, namely:
- (a) whether, at this stage, it is appropriate to recommend a final payment to Group Members in accordance with clause 10.6 and 10.7 of the Scheme; or



- (b) alternatively, whether a further installment payment can be made to individually assessed Group Members in accordance with clause 10.4 of the Scheme.
35. On 1 March 2019, the Administrators provided Finity with a complete export of all administration data stored on Maurice Blackburn's settlement administration database (the **Online Database**). Finity reviewed this data and confirmed that they were satisfied that a sufficient number of Group Members' claims had been determined to justify seeking further actuarial advice in accordance with 10.4 or alternatively 10.6 and 10.7 of the Scheme. On 30 April 2019, Finity were provided with an updated complete export of all administration data for the purposes of preparing their advice.
36. As foreshadowed my June 2018 Affidavit at [94] and discussed under task code 13 of the 2019 MB Administration Report, the Administrators have undertaken an internal audit of the administration data in preparation for Finity's updated advice.
37. In addition to the internal audit, on 9 April 2019 the Administrators engaged an audit consulting firm, RSM Australia (**RSM**) to undertake a review in accordance with an agreed scope of work and report on their findings. The engagement of RSM was done at Finity's recommendation and the purpose of the engagement was to assist Finity in assessing the completeness and reliability of the administration data. When engaging RSM, the Administrators worked with Finity to identify the key points of administration data upon which the actuarial modelling and advice would be based and which should be subject to independent review by RSM.
38. The Administrators provided RSM with complete access to the Online Database which contains the primary dataset relied upon by Finity for the purpose of their advice. RSM were given access to both the interface used by the administration teams and the "back end" data tables where all administration data is stored. RSM were also provided access to source documents requested for agreed samples of Group Members. RSM spent a total of seven days at the offices of Maurice Blackburn reviewing the administration data. As Maurice Blackburn is responsible for hosting and maintaining the Online Database on behalf of the Administrators, data for the entire administration could be accessed from Maurice Blackburn's offices.
39. On 6 June 2019, RSM documented the findings from their work. These findings were provided to Finity who subsequently confirmed (as is now also stated in



section 1.3 of Finity's report) that the work undertaken by RSM provided Finity with a sufficient level of confidence about the completeness and accuracy of the administration data upon which they were basing their updated advice.

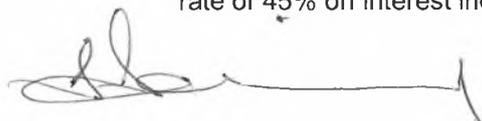
40. The Administrators have now received and filed a report prepared by Mr Atkins and Mr Payne of Finity dated 12 June 2019. In summary this report contains:

- (a) Advice that the estimated number of eligible Group Members has been revised from 1,881 at the time of the Second Report in June 2018, to 1,731. The reduction in the number of estimated Group Members arises from a combination of fewer revisions occurring than were previously projected and a number of potential Group Members evidently not applying to join the Scheme;
- (b) the payment percentage for individually assessed Group Members can be increased from 90% to 100%. This means that those Group Members who have been individually assessed and paid at a rate of 90% of their total assessed compensation can be paid a top-up payment to bring them up to 100% and those eligible Group Members who are individually assessed from now on can be paid at 100% of their total assessed compensation
- (c) based on the progress of the administration to date, it is likely there will be a surplus in the settlement fund after paying all individually assessed Group Members at 100% and therefore a top-up payment to all Group Members (including those Group Members who elected Fast Track Resolution) in accordance with clause 10.7(a) will be possible.

41. I also note the following correction to be made to Finity's report. After the report was filed, Mr Atkins and I realised that some of the dates mentioned in section 6.1.1 were incorrect. Ms Mukherji has confirmed with Mr Atkins that these typographical errors should be corrected and that these errors do not affected Mr Atkins' modelling, analysis or conclusions. The paragraphs in section 6.1.1 should read as follows, with underlining of the corrected text:

#### 6.1.1 Income tax

In the Second Report we stated that there was uncertainty about the possible liability of the fund for income tax and we were instructed to assume an income tax rate of 45% on interest income.



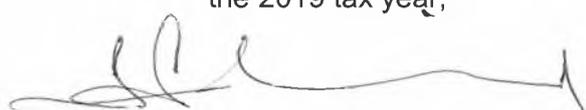
The Scheme Administrators have now instructed us that there will be an income tax assessment of \$3.9 million for the period up to 30 June 2018 and that from 1 July 2018 forward income tax will be based on investment income less scheme administration expenses.

In our cash flow model we have included the \$3.9m of tax expenditure in 2019/20 and calculated income tax for periods from 1 July 2018 onwards as 45% of (investment income less scheme administration expenses).

42. I also note that Mr Atkins' cash flow model includes \$3.9 million of tax expenditure in 2019/2020 because that is the period in which the expenditure will be paid, although the tax liability relates to the 2018 and earlier tax years.

#### **SECTION D – AMENDMENTS TO THE SCHEME**

43. The Administrators seek an order approving amendments to the Scheme (the current Scheme is dated 2 August 2018 and is the fifth version of the Scheme).
44. The Administrators now propose amendments to clauses 10.1 and 13.1(b) of the Scheme on the basis of taxation advice received from PricewaterhouseCoopers (**PwC**). On the basis of that advice, I understand that the amendments are expected to impact on the tax assessment for the year ending 30 June 2019 in a manner that increases the funds that are available to pay to Group Members. The Administrators are the trustees of a trust created by clause 10.1 of the Scheme. The trust has generated income as a result of interest earned on the Settlement Accounts and there is an issue as to the tax liability that arises from that income.
45. In December 2017, the Administrators engaged PwC to prepare and lodge tax returns on behalf of the Scheme as well as provide taxation advice to the Administrators.
46. A copy of the advice that PwC prepared for the Administrators is at **JKS-157**.
47. A copy of the proposed further amended Settlement Scheme is at **JKS-158**.
48. Based on the estimate of tax payable provided to the Administrators by PwC:
- (a) the tax payable by the Administrators for the year ending 30 June 2019 based on the Scheme in its current form would be approximately \$1,350,000.00, which is 45% (the highest marginal tax rate) of the interest income earned in the 2019 tax year;



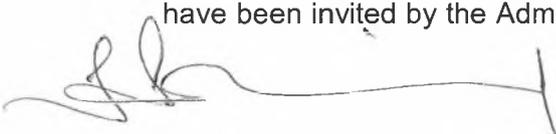
- (b) the tax payable by the Administrators for the year ending 30 June 2019 based on the Scheme in the proposed amended form would be nil.

## **SECTION E – FURTHER WORK AND ADMINISTRATION COSTS**

49. In this section of my affidavit I outline the Administrators' plans and expectations for the remainder of the settlement administration and in doing so I also discuss predictions as to future Administration Costs for the settlement administration as a whole.
50. This section of my affidavit has been prepared in consultation with Ms Jancauskas in particular in relation to the future conduct of the settlement administration and associated costs. The evidence in this final section of my affidavit reflects Ms Jancauskas' and my jointly held views and expectations as the lawyers responsible for the conduct of the two firms appointed as Administrators of the settlement.
51. As I said in my previous affidavits filed in June 2017 and June 2018, the Administrators continue to predict that total Administration Costs following the conclusion of the settlement administration in 2024 will be less than the amount of \$26 million that Mr Atkins assumed for the purpose of his actuarial modelling for the settlement approval application in June 2016. At the time of preparing my previous affidavits there was too much uncertainty regarding the future of the administration so as to enable reasonably reliable estimates of overall costs to be formulated, however in my view the settlement has now reached a stage where these estimates can be made, even if they still carry some uncertainty. If the Court approves the Administration Costs for which approval is presently being sought:
- (a) total Administration Costs to date will be approximately \$17.6 million; and
- (b) our best estimate at the present time is that total Administration Costs will be between \$22.8 million and \$23.3 million, subject of course to the Court's approval of future amounts.

### **Current status of the administration**

52. As at 12 June 2019 and as noted in Section A above, a total of 1,492 Group Members have received payment. This means that more than 400 Group Members having received payment since my June 2018 Affidavit. Excluding the 114 Group Members who have been found ineligible, and excluding 23 Group Members who have been invited by the Administrators to withdraw their claims due to lack of merit




regarding their eligibility, this means that 90 per cent of Group Members have now received payment.

53. Putting to one side the Group Members who have been invited by the Administrators to withdraw their claims, there are 148 Registered Group Members who have not yet been paid. These Group Members' claims are at different stages of the Scheme's processes, which can be categorised as follows:

- (a) **Early stages** – there are **37 Group Members** whose claims are in early stages of progression through the Scheme's processes – this category includes Group Members whose eligibility has not yet been determined, or whose eligibility has been determined favourably however the Group Member has not yet made an election as to the Fast Track Resolution or Individual Assessment;
- (b) **Middle stages** – there are **56 Group Members** who elected Individual Assessment and whose claims are at varying stages of preparation – in particular, 25 Group Members have had their Claim Books prepared and are awaiting determinations by Assessors (and in some cases the Assessors have requested additional materials to be prepared or obtained) and the remaining 31 Group Members are in the process of having their Claim Books prepared; and
- (c) **Final stages** – there are **55 Group Members** whose claims are in late stages – all Group Members in this category are at varying stages of finalising their claim, including having their Liens resolved, or awaiting payment in the next cycle, and in some instances this also involves ancillary work associated with deceased estates or legal incapacity.

54. The composition of these categories is fluid from month to month as Group Members' claims progress; for example a Group Member whose claim is in its early stages will move into the middle category upon making an election for Individual Assessment. Nevertheless this categorisation of claims provides an insight into the Administrators' priorities over the next 12 months and timeframes for the resolution and payment of these claims, as discussed in the next section below.

55. In addition, based on the most recent actuarial advice from Mr Atkins and Mr Payne, at the present time the Administrators are operating on the assumption that an **additional 100 Group Members** will enter the settlement administration process



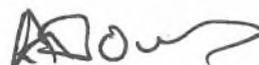
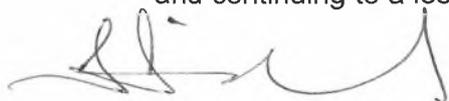
between now and June 2023, in advance of the settlement administration being wound up in the first half of 2024.

### **Arrangements for the future conduct of the settlement administration**

56. During the second half of 2018 Maurice Blackburn and Shine had a number of discussions regarding the future of the settlement administration in which it was agreed that in the longer term it would be in the best interests of Group Members for only one firm to be involved in completing the administration. Subject to the Court's views and any orders of the Court, we agreed that Maurice Blackburn should ultimately assume sole responsibility for the settlement administration. This is due to the functional reasons that Maurice Blackburn:

- (a) developed and hosts the settlement administration database (that is, the Online Database discussed in Section C above) that records critical information regarding Group Members' claims, and this database is also directly linked to the online registration facility as well as the online portal used by Assessors in order to input the results of their assessments and also the online payment facility used by Group Members in order to enter banking details; and
- (b) is the account holder for the various bank accounts constituting the Settlement Account and, relatedly, Maurice Blackburn has been responsible for payments to Group Members, lienholders and others and in this regard Maurice Blackburn has in conjunction with its bankers developed the technical systems and processes that are needed in order to effect periodic EFT payments en masse in the circumstances of this administration.

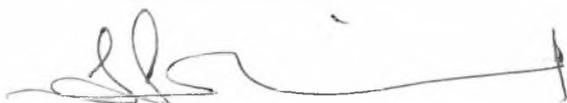
57. The Administrators consider that the joint appointment has been beneficial for Group Members in terms of the efficiency of claims processing as well as some of the reasons relating to class action settlements involving personal injury claims as discussed by Murphy J in *Caason Investment Pty Ltd v Cao (No 2)* [2018] FCA 527 at [158]. However as a result of the constantly diminishing number of extant claims and the modest estimate of future registrations, the Administrators formed the view that if only one firm is responsible for the administration, this would reduce costs as the number of ongoing claims continues to decline, and that this benefit will outweigh the potential value of continuing to have multiple firms involved in the administration (as has been the case for the first three years of the administration, and continuing to a lesser extent for the next 12 months).



58. As the first steps in implementing these arrangements, the Administrators made amendments to the online registration facility and also resolved that any claims registered from October 2018 onwards would only be allocated to Maurice Blackburn and not to Shine, DBH or LAM. These processes will result in the eventual withdrawal of Shine as well as DBH and LAM once they complete the assessment of claims for which they are currently responsible and once any associated general administration work likewise reduces over time.
59. Due to the somewhat unpredictable timeframes associated with the finalisation of claims, it is difficult to estimate exactly when this will occur. However, having regard to the three different categories described above, our prediction is that:
- (a) by **September 2019**, the Administrators will have paid most if not all of the 55 Group Members in the final stages of their claim as described above;
  - (b) by **December 2019**, the Administrators will have finalised and paid the claims of:
    - (i) many of the 56 Group Members who are currently in the middle stages of their individually assessed claims; and
    - (ii) some of the 37 Group Members who are currently in the early stages of their claims and in particular those who later decide to elect the Fast Track Resolution;
  - (c) by **June 2020**, the Administrations will have finalised and paid most if not all of the remaining Group Members whose claims had not been finalised and paid by the earlier timeframes discussed immediately above.
60. In other words, I expect that all or almost all of the 148 presently unpaid Group Members will have been paid by June 2020. Among these 148 Group Members, 75 claims are allocated to Shine, 9 to DBH and 25 to LAM, with the balance allocated to Maurice Blackburn.
61. As the second step in transitioning towards one firm having sole responsibility for the settlement administration, Shine has already begun to wind back its involvement in certain areas of the administration, and I expect that this will be the case even more so for the remainder of the 2019 calendar year and beyond. These areas of work include registrations / allocations (task code 1), dealing with Assessors (task code 3), Committee functions (task code 5), interim payments (task code 6),

deemed revisions (task code 7), workflow / process development (task code 10), bulk updates to Group Members (task code 12), engagement of experts such as PwC, Finity (task code 14), IT systems development and maintenance (task code 17), financial / accounting issues (task code 18).

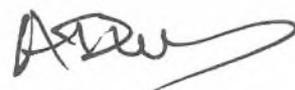
62. This means that for the remainder of 2019 and continuing until around June 2020, Shine's ongoing work will relate primarily to claim preparation work as well as "core" areas of general administration work that is directly related to the processing of claims through the Scheme (such as eligibility determinations (task code 2), preparing and sending notices (task code 4), processing individual assessments (task code 8), reviews (task code 9), payments (task code 19) and dealing with deceased estate and legal incapacity issues (task codes 23 and 24)). There will be residual work by Shine in dealing with LAM (task code 20) in order to assist them to finalise their own claims and also with Maurice Blackburn in order to coordinate the Administrators' work (task code 21) and other third parties (task code 25). In a more limited sense, I also expect some work to be done by Shine for the case management hearing in June 2020 (task code 16) and this will also involve work in managing Group Member data (task code 13).
63. Over the next 12 months, any new registrations will be allocated solely to Maurice Blackburn as outlined above. These new claims will be processed in the usual way and I expect that some of these claims will be ongoing as at June 2020. Maurice Blackburn will also gradually assume more responsibility for general administration work as Shine's work continues to taper off (and likewise the work of DBH and LAM will taper off).
64. Beyond June 2020, the roles of Shine, DBH and LAM will have entirely or almost entirely concluded and Maurice Blackburn will become solely responsible for the settlement administration. In approximately 12 months' time, the Administrators will also apply for orders formalising the arrangements for the future conduct of the administration including any amendments to the Scheme and variation of the order made on 29 June 2016 by which Shine and Maurice Blackburn were jointly appointed as the Administrators of the Scheme.
65. In the next sections of my affidavit I provide an estimate of future Administration Costs until the completion of the settlement administration, and I do so by providing separate estimates for costs under clause 13.1, costs under clause 13.2 and disbursements.



**Future Administration Costs – clause 13.1**

66. In light of the future conduct of the settlement administration as outlined above, my team and I considered and estimated future Administration Costs under clause 13.1 of the Scheme. In preparing this estimate, we evaluated each of the 26 task codes and prepared an estimate for each month from April 2019 until March 2024. In preparing these monthly estimates for each task coded area of work, we considered:
- (a) our general expectations regarding the levels of work required in different areas of the settlement administration over time, taking into account our plans for the future conduct of the administration and the implications of the arrangements discussed above;
  - (b) for some areas of work such as eligibility determinations, preparing and sending notices, processing individual assessments and payments, costs are somewhat correlated to the number of claims, so our estimates were prepared in light of historical costs and then recalibrated by reference to the number of future claims;
  - (c) in other areas of work, such as managing Group Member data or preparing for a Court application or the engagement of experts, costs are not directly related to the number of extant claims at any given time;
  - (d) in some instances, costs are influenced by certain milestones or events – the most obvious example is the preparation for court applications which has historically generated significant costs that are mostly clustered around the months of March to June in readiness for a hearing in June of each year, and with associated work involved in engaging experts during those times.
67. In light of the process outlined above, our estimate is that Maurice Blackburn's fees under clause 13.1 for the five years from April 2019 until March 2024 will be in the range of \$2.2 million to \$2.4 million.
68. The five areas of work that have the highest estimates are as follows, and collectively these five areas of work account for an estimated \$1.49 million, which is approximately two thirds of Maurice Blackburn's estimated total future costs under clause 13.1:

- (a) Preparing for court application (\$599,000);

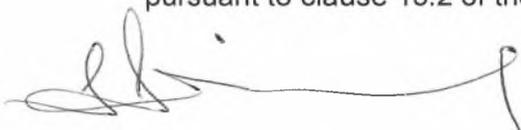


- (b) Payments (\$256,000);
- (c) Engagement of experts (\$245,000);
- (d) Processing individual assessments (\$243,000);
- (e) Eligibility determinations (\$146,000).

69. In 15 of the 26 task coded areas of work, our average monthly estimate is less than \$1,000 per month (which equates to around two hours of work per month) for the remaining 60 months of the administration.
70. Although we used our best efforts to provide our present estimate of future costs, it is difficult to predict with certainty the nature or extent of work several years into the future. In some instances we made generous allowances that might ultimately turn out to be significant over-estimates, however I expect that there will also be other areas where costs turn out to be higher than estimated. In future years of the settlement administration we will refine our estimates on an ongoing basis and over time I expect that the estimates will become increasingly more accurate.
71. Shine undertook a similar exercise in estimating their future costs under clause 13.1 by reference to each of the task coded areas of work, but on the basis that their costs would cease to be incurred from July 2020 onwards. Ultimately it may be necessary for Shine to continue to undertake a low volume of work in finalising a small number of claims for a short period beyond June 2020, however for present purposes the Administrators assume that Shine's work will cease in 12 months' time in June 2020. Ms Jancauskas informs me that her estimate of Shine's costs under clause 13.1 of the Scheme is in the range of \$400,000 to \$450,000.
72. In addition, on the basis that DBH's and LAM's work will taper off over the next 12 months and having regard to their historical costs, I estimate that DBH and LAM may incur costs under clause 13.1 of around \$30,000 each.
73. On this basis, I estimate that total Administration Costs under clause 13.1 from April 2019 until March 2024 will be in the range of \$2.6 million to \$2.9 million.

#### **Future Administration Costs – clause 13.2**

74. I have estimated the future Administration Costs that are likely to be incurred pursuant to clause 13.2 of the Scheme, taking into account:




- (a) the number of registered claims including any elections that have already been made;
- (b) the number of claims where no election has been made, including the 100 claims that I assume (on the basis of Mr Atkins' advice) will be registered in the future, and for all these claims assuming an election rate of 70 per cent for the Fast Track Resolution (consistently with Mr Atkins' assumption regarding future election rates);
- (c) the costs approved by the Court in 2017 and 2018 as well as the costs for which approval is currently sought and, conversely, the total number of claims for which approval has not yet been sought under clause 13.2; and
- (d) in light of the above, current allocations of claims to Maurice Blackburn, Shine, DBH and LAM and the status of those claims.

75. My estimate of future Administration Costs under clause 13.2 across the four firms is as follows:

	<b>Fast Track Resolution</b>	<b>Individual Assessment</b>	<b>Total</b>
<b>MB</b>	\$229,250	\$399,750	\$629,000
<b>Shine</b>	\$79,500	\$481,500	\$561,000
<b>LAM</b>	\$12,500	\$157,500	\$170,000
<b>DBH</b>	\$6,000	\$79,500	\$85,500
<b>Total</b>	<b>\$327,250</b>	<b>\$1,118,250</b>	<b>\$1,445,500</b>

76. The spread of these costs across the four firms may vary to a minor extent if any claims are re-allocated, however at the present time I consider that the total amount is a reasonable estimate of future costs under clause 13.2, particularly having regard to the total number of claims and their likely distribution among the two different compensation pathways.

#### **Future Administration Costs – disbursements**

77. Having regard to the categories of disbursements identified in Mr Nicholas' reports, I have considered and estimated the future disbursements that are likely to be incurred after June 2019. This estimate is for the settlement administration as a

whole (rather than only the types of disbursements that have historically tended to be paid by Maurice Blackburn):

<b>Disbursements</b>	<b>Total</b>	<b>Notes</b>
Finity (actuarial experts)	\$260,000	Takes into account the cost of previous reports and assumes that a report will be needed in three of the five remaining years from July 2019 until June 2024  This estimate also includes this year's report, the costs of which have not yet been invoiced to Maurice Blackburn
PwC (tax advisors)	\$50,000	Assumes \$5,000 per year from 2020 until 2024 in order to prepare tax returns, and assumes a larger amount including for advice in 2019
Ross Nicholas (costs expert)	\$160,000	Takes into account the cost of previous reports and assumes that a report will be needed in three of the five remaining years from July 2019 until June 2024  This estimate also includes this year's report, the costs of which have not yet been invoiced to Maurice Blackburn
Assessors	\$500,000	Assumes that there are 120 assessments to be completed  Based on previous trends, assumes these are split at 85% at a higher rate of \$4,400 per claim and 15% at the lower rate of \$2,750 per claim
Review Assessors	\$75,000	Assumes a rate of \$5,280 per claim and, based on previous trends, assumes 12% of the 120 future assessments result in a Review
Assessor advice (Statutory compensation scheme cross over issues; Legal incapacity; etc)	\$35,000	Lump sum based on current estimates of the likely need for this type of advice until the end of the settlement administration
Medical records and reports	\$110,000	Relates primarily to medical records  Assumes 146 Group Members still require medical records and (consistently with previous experience) these medical records cost \$750 per claim
Miscellaneous costs (transcript fees; filing fees; courier costs; etc)	\$30,000	Assumes \$5,000 in each year from 2019 until 2024
<b>Total</b>	<b>\$1,220,000</b>	

78. Some of the assumptions and other estimates used in the calculations in the above table might ultimately prove to vary in one direction or another, however these are




the best estimates that I am presently able to give based on my experience over the last three years and my expectations regarding the future. There may be other unexpected types of disbursements from time to time, although I would expect that these other types of expenses will overall be relatively modest.

### Future Administration Costs – summary and conclusion

79. In summary, total future Administration Costs are presently estimated as follows:

Nature of costs	Amount
Clause 13.1 – General administration costs	\$2.6 million to \$2.9 million
Clause 13.2 – Claim preparation costs	\$1.44 million
Disbursements	\$1.22 million
<b>Total</b>	<b>\$5.26 million to \$5.56 million</b>

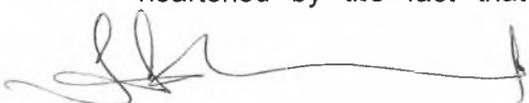
80. Taking into account the Administration Costs approved in 2017 and 2018 and sought to be approved in 2019 totalling \$17.6 million, in our estimation the total Administration Costs until the completion of the settlement administration in 2024 will be in the range of \$22.8 million to \$23.3 million.

81. If our estimates prove to be correct, the average Administration Costs for the estimated 1,731 Group Members will be \$13,500. This average estimate of the cost per claim (incorporating both fees and disbursements) takes into account all work involved in registering, preparing, assessing, resolving and paying each person's claim, and it also takes into account all costs involved in establishing the tailored processes and systems that were needed in order to administer the settlement in a reliable, accurate, consistent and acceptably risk free manner.

82. In my June 2018 Affidavit at [111] to [113], I gave evidence regarding an independent legal costing expert's report on the range of reasonable solicitor-client costs in uncontested damages assessments in the Supreme Court and Country Court of Victoria. That report is now publicly available at the following URL, and the report can be made available to the Court if it would be useful to do so:

<https://www.mauriceblackburn.com.au/media/4476/alcg-report.pdf>

83. While Administration Costs for claim preparation under clause 13.2 are inflexibly calculated by reference to fixed fee amounts and the total volume of claims, I am heartened by the fact that Administration Costs under clause 13.1 declined




significantly in comparison to the previous 12 months for which approval was sought in June 2018. There is evidently a downward trend in Administration Costs under clause 13.1 and I expect these costs to stabilise at a modest level each month especially beyond June 2020. In future years I will continue to refine my estimates of Administration Costs and report these updated estimates to the Court each year.

Affirmed by the deponent  
at Sydney  
in New South Wales  
on **14 June 2019**  
Before me:

)  
)   
) \_\_\_\_\_  
) Signature of deponent



\_\_\_\_\_  
Signature of witness

Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (NSW)

**ANNA BETH WILLIAMS**  
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