

# NOTICE OF FILING

## Details of Filing

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Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

## Important Information

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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No. VID312/2021

Federal Court of Australia District  
Registry: Victoria Division:  
General

**MINNIE MCDONALD**

Applicant

**COMMONWEALTH OF AUSTRALIA**

Respondent

**REPORT OF APPLICANT, RESPONDENT AND ADMINISTRATOR  
ON THE APPLICANT'S AGREED COSTS**

1. This is a report prepared by the Applicant, Respondent (**Parties**), Shine Lawyers and Administrator in accordance with order 10 of the orders of her Honour Chief Justice Mortimer dated 28 May 2025 (**28 May Orders**) (**Costs Joint Report**).
2. This report is prepared to assist her Honour in understanding the position of the Parties with respect to any amount for the Applicant's costs which exceed the Applicant's Agreed Costs Component.
3. The Costs Joint Report addresses the following:
  - (a) What has been agreed to with respect to the Costs Reference<sup>1</sup>, including payments to be made from the Applicant's Agreed Costs Component, the Administrator's Agreed Costs Component and the Settlement Fund Account, if required;
  - (b) An update to the Court in respect of the Costs Position, including providing the Court with estimates around the impact on the Settlement Fund Account, if at all; and
  - (c) What has been agreed to with respect to the distribution of payments, including the sequence of payments to be made.

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<sup>1</sup> 28 May Orders, see order 10(a)-(c).  
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## Terminology

4. This report adopts the terminology used in the Deed of Settlement (**Deed**) dated 30 August 2024, including the Settlement Distribution Scheme (**SDS**) which is Annexure A to the Deed, amended by the orders dated 29 August 2025 approving variations to the Scheme.

## Costs Reference

5. The Costs Referee's second report was provided to the Court and the Parties on 18 December 2025.
6. The Costs Reference finds the following for the pre-18 December 2024 costs:
- (a) The Applicant's Actual Costs are: \$145,641.19 (inc GST)
7. The Costs Reference finds the following for 18 December 2024 and following costs:
- (a) The Applicant's Allowed Costs are \$6,234,273.41 (inc GST) (exc Costs Referees fee)<sup>2</sup>.
8. Therefore, the Applicant's Actual Allowed Costs are \$6,379,914.60 (inc GST) (exc Costs Referees fee)<sup>3</sup>.

## Summary of the Parties' positions

9. The Parties and the Administrator have conferred in respect of the payment of the Applicant's Actual Costs and the distribution of payments.
10. The affidavit of Julia Kaye of 8 October 2025 identified that while the majority of the Administrators' revised fees (outlined further below) would be met by interest accruing on the Settlement Fund Account, the 'shortfall' of \$1,050,440.83 would be payable from the Administration Costs Component of \$6,000,000.<sup>4</sup> That left an **Estimated Surplus** in the Agreed Administration Costs Component of \$4,949,559.17.<sup>5</sup> The Administrators have advised that this Estimated Surplus is unlikely to significantly change, as discussed further below.
11. The Parties agree that the Applicant's remaining costs be paid as follows:
- (a) \$3,262,500.60 (inc GST) be paid from the Applicant's Agreed Costs Component (which has now been paid by the Commonwealth pursuant to Order 9 of the 28 May Orders).
- (b) \$3,117,414.00 (inc GST) be paid from the Estimated Surplus of the Agreed Administration Costs Component.

<sup>2</sup> \$6,263,643.41 (including Costs Referees fee) (including GST).

<sup>3</sup> \$6,409,284.60 (including Costs Referees fee) (including GST).

<sup>4</sup> Affidavit of Julia Kaye dated 8 October 2025 at [24].

<sup>5</sup> See also affidavit of Sarah Thomson dated 13 October 2025 at [13] and orders 15 and 16 of the 28 May Orders.

(c) \$0.00 be paid from the Settlement Fund Account.

12. The Parties agree that the Costs Assessor Costs be paid as follows:

(a) \$29,370.00 (inc GST) from the agreed Costs Assessor's Costs Component<sup>6</sup> (this amount has been separately paid by the Commonwealth).

13. The below provides further context for how the Parties and the Administrator reached this position.

### **Update on Costs Position**

14. The Parties provide a short summary of the payment of costs below:

(a) The 28 May Orders approved the payment of:

(i) The Applicant's legal costs and disbursements up to 17 December 2024 in a total amount of \$14,154,489.20 comprised of the following:

(1) Applicant's Agreed Costs (that is, assessed and approved on a party and party basis) in the amount of \$11,737,499.40 (inc GST) (with \$9,738,386.63 to be paid to the funder) to be paid by the Respondent;<sup>7</sup> and

(2) Applicant's Actual Costs in the amount of \$2,416,989.80 (being the amount above the party/party assessment for the Applicant's Agreed Costs) to be deducted from the Settlement Fund Account; and

(ii) The funder's ATE insurance of \$1,045,000 and commission set at \$10,800,000.00 (being 20% of the settlement sum for 3,000 Eligible Claimants), both to be deducted from the Settlement Fund Account upon 3,000 Eligible Claimants being determined by the Administrators.

(b) The 28 May Orders also set out the process for the assessment and approval of costs post 18 December 2024.

(c) The total of the Applicant's Agreed Costs Component is \$15,000,000.00 (inc GST):

#### Payment of Approved Agreed Costs to 17 December 2024

(i) Payment was made by the Commonwealth to the Applicant in the amount of \$11,737,499.40 (inc GST), being the Applicant's approved Agreed Costs on a party/party basis up to (and including) 17 December 2024. After this amount

<sup>6</sup> Deed, cl 2.14.1.

<sup>7</sup> Note that there is a typo in the Costs Referee's second report at [6] that reports this figure as \$11,773,499.40. The correct figure, per the Court's orders, is \$11,737,499.40.

was paid, \$3,262,500.60 (inc GST) remained in the Applicant's Agreed Costs Component.

Assessment and Payment of Agreed Costs post 18 December 2024

- (ii) Pursuant to order 4 of the 28 May orders, Ms Harris was appointed to conduct a further costs reference to determine the reasonableness of the Applicant's costs and disbursements from 18 December 2024 onwards (**Costs Reference**), and what of those costs were party/party.
- (iii) The Costs Assessor was briefed in relation to all costs incurred from 18 December 2024 to 31 October 2025 on 28 November 2025.
- (iv) The Costs Assessor provided her Costs Reference to the Parties and the Court on 19 December 2025.
- (v) In that report, the Costs Assessor assessed the Applicant's reasonable legal costs and disbursements from 18 December 2024 for undertaking Outreach/Registration and any other amounts sought to be deducted as the Applicant's Actual Costs to be \$6,263,643.41 (inc GST), which included \$29,370.00 (inc GST) for the Costs Assessor's Costs of the Costs Reference.
- (vi) Further, the Costs Assessor assessed the reasonable costs of additional pre-18 December 2024 Registration work to be \$145,641.19 (inc GST).
- (vii) Pursuant to order 9 of the 28 May orders, the Respondent made payment to the Applicant in the amount of \$3,262,500.60 (inc GST), being the remaining amount of the Applicant's Agreed Costs Component.<sup>8</sup>
- (viii) Pursuant to order 8 of the 28 May orders, the Parties took steps in good faith to reach an agreement on the amount payable for the remainder of the Applicant's Actual Costs (\$3,117,414.00 (inc GST))<sup>9</sup>.
- (d) The total of the Agreed Administrators Costs Component is \$6,000,000 (including any GST).
  - (i) The Administrators' costs were initially approved in the amount of \$1.8 million (exc GST).<sup>10</sup>
  - (ii) Pursuant to clause 2.15.11(a) of the Deed, the Administrators' costs are to be met in the first instance from the interest earned on the Settlement Fund

<sup>8</sup> A part-payment of \$2,449,125.45 was made on 13 January 2026 in payment of the Applicant's Agreed Costs. A further and final payment of \$816,375.15 was made on 20 January 2026 in final payment of the Applicant's Agreed Costs.

<sup>9</sup> Comprising the amounts of the allowed costs (\$6,263,643.41 (inc GST) plus \$145,641.19 (inc GST)) less the amounts separately paid by the Commonwealth for the remainder of the Applicant's Agreed Costs (\$3,262,500.60 (inc GST) and to the Costs Assessor for the Costs Reference (\$29,370.00 (inc GST)).

<sup>10</sup> See Order 11 of the orders dated 14 November 2024.

Account. The Administrators' costs to date have been paid out of the interest earned on the Settlement Fund Account.<sup>11</sup>

- (iii) In September 2025, the Administrators confirmed that they would incur an additional \$1,114,744 in costs for the Administration Process. Their revised total costs are \$2,905,892 (exc GST), or \$3,196,481.20 (inc GST). The Administrators filed an interlocutory application seeking the Court's approval of their revised costs on 25 September 2025.
- (iv) Order 2 of the orders dated 24 November 2025 approved the increased costs of \$3.196 million (inc GST).
- (v) The Administrator provided a model setting out the expected interest likely to be earned on the Settlement Fund Account until January 2026<sup>12</sup>. The model suggests that the total amount of costs they will seek to be recovered from the Agreed Administration Costs Component is \$1,050,440.83.
- (vi) The Administrator has confirmed that they do not "anticipate [the Surplus] will be significantly different to the number set out in the affidavit" and that "the Agreed Administration Costs Component remains at about \$5M...[they] do not anticipate that it will be significantly different [to the Estimated Surplus provided in the Affidavit of Julia Kaye dated 8 October 2025]".<sup>13</sup>

#### Assessment and Payment of Actual Costs post 18 December 2024

- (vii) Following the Costs Reference, the Parties reached agreement on the Applicant's Actual Costs and order of payments as follows:
  - (1) \$3,262,500.60 be paid from the Applicant's Agreed Costs Component;
  - (2) \$3,117,414.00<sup>14</sup> be paid from the Surplus of the Agreed Administration Costs Component in payment of the Applicant's Actual Costs.

#### *Surplus from Agreed Administration Costs Component*

- (e) The Parties and the Administrator agree that there will be a surplus of money in the Agreed Administration Costs Component (the Estimated Surplus, caused by the

<sup>11</sup> See affidavit of Ms Julia Kaye dated 25 September 2025, [98].

<sup>12</sup> See affidavit of Ms Julia Kaye dated 8 October 2025, [7]-[27].

<sup>13</sup> Email chain between Sarah Thomson (Shine Lawyers) and Julia Kaye (Deloitte) dated 18 December 2025; Email reply from Mel Boeckman (Deloitte) and Samantha Boardman (Shine Lawyers) dated 20 January 2026 (to be produced on request).

<sup>14</sup> See fn 7 above.

majority of the Administrators' approved costs being paid by the accrued interest of the Settlement Fund Account.

- (f) The Parties agree that the Estimated Surplus can be used to pay the Applicant's costs of the Outreach/Registration Program. This agreement was reflected in the draft proposed orders for the Second Approval Hearing, provided to the Court via email on Monday, 16 December 2024 at 7:38pm AEST.
- (g) The Administrators estimate a Surplus of \$4,949,559.17.
- (h) The calculation performed by the Administrators assumes that interest will be applied first to the Administration Costs, and that the Administration Costs Component is then to be called on in payment of the Administrator's Actual Costs.
- (i) This approach is consistent with the Deed.<sup>15</sup>

#### *Applicant's Actual Costs*

15. The Parties provide the following update in relation to the Applicant's Actual Costs in replacement of the *Applicant's Costs and Modelling* outlined in the affidavit of Sarah Jayne Thomson dated 13 October 2025 insofar as it related to the agreed projected distribution of costs from the various cost's components, and the Settlement Fund Account:

#### Applicant's Agreed Costs Component

- (a) The Applicant's Agreed Costs Component covered a portion of the Applicant's Actual Costs, being \$3,262,500.60 of a total of \$6,263,643.41, assessed by the Costs Referee to be fair and reasonable.

#### Agreed Administration Costs Component

- (b) The amount Shine Lawyers are seeking to recover from the Agreed Administration Costs Component for Registration/Outreach Program costs (being the balance of the Applicant's Actual Costs) is \$3,117,414.00.
- (c) This amount is less than the estimate Shine Lawyers previously provided in the affidavit of Sarah Jayne Thomson dated 13 October 2025 and does not exceed the Estimated Surplus (\$4,949,559.17 less \$3,117,414.00 equals \$1,832,145.17).

#### Settlement Fund Account

- (d) The Parties do not anticipate that any further amount will be required to be recovered from the Settlement Fund Account in payment of the Applicant or the Administrator's costs.

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<sup>15</sup> See clause 2.15.11 of the Settlement Distribution Scheme.

16. Table 1 below distils the above projections into a table, and Table 2 shows a breakdown with regard to the various Agreed Costs components, and the deductions already approved and paid to date:

Table 1

<b>Summary of Applicant's Agreed and Actual Costs</b>	
<b>Applicant's additional costs 1 Nov 24 to 17 Dec 24</b>	\$145,641.19 (inc GST)
<b>Applicant's Actual Allowed Costs and disbursements from 18 Dec 24 to 31 Oct 25 (excluding Costs Referees fee)</b>	\$6,234,273.41
<b>Breakdown of payment from Agreed Costs Components</b>	
Applicant's Agreed Costs	\$3,262,500.60
Applicants' Actual Costs (Registration/Outreach/Administration)	\$3,117,414.00

Table 2

<b>Agreed Costs Components Balance Sheet (all figures GST inc)</b>		
	<b>Applicant's Agreed Costs Component</b>	<b>Agreed Administration Costs Component</b>
Opening balance	\$15,000,000.00	\$6,000,000.00
Approved and paid to date (28 May Orders)	\$11,737,499.40	
Remaining balance	\$3,262,500.60	\$6,000,000.00
Administrators' costs not covered by interest		\$1,050,440.83
Estimated Surplus		\$4,949,559.17

Remaining amount of the Applicant's Agreed Costs, which have been paid to date	\$3,262,500.60	
Applicant's Actual Costs (Registration / Outreach / Administration)		\$3,117,414.00
Final balance	\$0.00	\$1,832,145.17