



Federal Court of Australia

District Registry: Victoria Registry

Division: General

No: VID312/2021

**MINNIE MCDONALD**

Applicant

**COMMONWEALTH OF AUSTRALIA**

Respondent

**LLS FUND SERVICES PTY LTD (ABN 51 627 975 213)**

First Intervener

**SHINE LAWYERS**

Second Intervener

## **ORDER**

**JUDGE:** Chief Justice Mortimer

**DATE OF ORDER:** 28 May 2025

**WHERE MADE:** Hobart

### **THE COURT NOTES THAT:**

- A. On 14 November 2024, the Court made the first tranche of final orders in respect of the **Settlement Approval Application** dated 11 October 2024 (**First Tranche Orders**).
- B. On 20 December 2024, the Court made the second tranche of final orders in respect of the Settlement Approval Application (**Second Tranche Orders**).
- C. Unless otherwise stated, a capitalised term in these Orders bears the same meaning as that as defined in the Settlement **Deed**, including the **Scheme**, made between the Applicant and the Commonwealth of Australia and dated 30 August 2024, as varied by the Orders dated 16 September 2024, the First Tranche Orders and these Orders.
- D. For the purposes of clause 5.2 of the Deed, the parties have agreed in writing to the variation of the Deed made by order Z(a) below.
- E. On 24 September 2024, the Court appointed Ms Elizabeth Harris (**Costs Assessor**) to conduct a reference and make a report to the Court in relation to the Applicant's legal costs up to the settlement approval hearing.



**THE COURT ORDERS THAT:**

**Payment of the Applicant's legal costs and disbursements up to 17 December 2024**

1. Pursuant to sections 23 and 33V of the *Federal Court of Australia Act 1976* (Cth) (**Act**), the Court approves:
  - (a) payment by the Respondent to the applicant's solicitors, Shine Lawyers of **\$11,737,499.40 (GST inclusive)** for the Applicant's Agreed Costs up to 17 December 2024, payment to be made within 7 days of the date of these Orders;
  - (b) deduction from the Settlement Fund Account of an amount of \$1,872,829.10 (GST inclusive) for the Applicant's Actual Costs up to 17 December 2024, to be paid by the Administrator to Shine Lawyers in accordance with order 20 of these Orders; and
  - (c) deduction from the Settlement Fund Account of an amount of \$544,160.70 (GST inclusive) in respect of the uplift fee, to be paid by the Administrator to Shine Lawyers in accordance with order 20 of these Orders, making a total deduction in favour of Shine Lawyers of **\$2,416,989.80**.
2. Within 7 days of receipt of the funds described in order A(a), Shine Lawyers must reimburse the Litigation Funder in the amount of **\$9,738,386.63**.

**Applicant's legal costs and disbursements from 18 December 2024 to the end of the Outreach/Registration**

3. The Applicant's Agreed Costs in respect of undertaking the outreach and registration program from 18 December 2024 to the Registration Date (**Outreach/Registration**) will be assessed, determined and paid in accordance with cl 2.13 of the Settlement Deed, as modified by orders 4 to 13, and any order made in relation to order 15 below.
4. Taking account of the reasons delivered on 17 April 2025, and in accordance with the timing set out in order 6, the Costs Assessor conduct an inquiry (**Reference**) and make a report or reports in writing to the Court stating, with reasons, the Costs Assessor's opinion on the following issues:
  - (a) Q.1. pursuant to cl 2.13.8.b of the Deed, the reasonableness of the Applicant's 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; and

- (b) Q.2. what proportion of those costs (excluding any uplift component) would be recoverable as costs between party and party, within the meaning of Schedule 1 of the Rules.
5. Orders 37, 39 and 41 of the Orders made 16 September 2024 apply in relation to the Reference and the making of the report(s) referred to in order 4 above.
  6. Between the making of these orders and the Registration Date, the Costs Assessor may conduct the Reference in tranches and make a report on each such tranche, as soon as reasonably practicable.
  7. The Costs Assessor is to submit the report or reports to the Court in accordance with r 28.66 of the Rules addressed to the chambers of the Chief Justice and copied to the legal representatives of the parties and interveners.
  8. Within 14 days of the Costs Assessor providing a report under order 7 to the parties and interveners, the Applicant and Respondent must take steps in good faith to reach an agreement on what amount(s) is payable for the remainder of the Applicant's Agreed Costs.
  9. If there is agreement between the Applicant and Respondent on a sum of the Applicant's Agreed Costs under order 8, that agreed sum is to be paid by the Respondent to Shine Lawyers, without further order from the Court, until the maximum of \$15,000,000 for the total of the Applicant's Agreed Costs is reached.
  10. In absence of agreement, and/or once the maximum for Applicant's Agreed Costs of \$15,000,000 is reached, the parties and Shine Lawyers are to file a single document of no more than 10 pages, addressing:
    - (a) any remaining part of the Applicant's Agreed Costs of \$15,000,000 about which they disagree with the Reference(s), and set out the basis for their disagreement;
    - (b) the sum(s) they agree on the basis of the Reference(s) should be payable as deductions from the Settlement Fund Account for the Applicant's Actual Costs; and
    - (c) where they disagree with the Reference(s) about the Applicant's Actual Costs, and set out the basis for their disagreement.



11. The document referred to in order 10 is to be filed as soon as practicable after the Registration Date.
12. Following the filing of the document referred to in order 11, the Court will determine:
  - (a) under order 10(a), any amount payable for the remaining part of the Applicant's Agreed Costs;
  - (b) under order 10(b), any agreed amount payable for the Applicant's Actual Costs; and
  - (c) under order 10(c) any further amount payable in respect of the Applicant's Actual Costs.
13. The Court:
  - (a) will notify the parties if it considers it requires further evidence and/or submissions to make the determinations contemplated by order 12; and
  - (b) subject to further order, will make the determination referred to in order 12 on the papers.

#### **Payments to the Funder**

14. Subject to order 20 the Court approves:
  - (a) payment to the Litigation Funder of a funding commission of 20% of \$18,000 multiplied by the number of Eligible Claimants determined by the Administrator up to a maximum of 8,750 Eligible Claimants (being up to **\$31,500,000**) to be deducted from the Settlement Fund Account in accordance with order 20 below; and
  - (b) Payment to the Litigation Funder of **\$1,045,000** deducted from the Settlement Fund Account in respect of after-the-event insurance premiums to be deducted from the Settlement Fund Account in accordance with order 20.

#### **Use of Agreed Administration Costs Component for other payments or costs**

15. After the Registration Date, the Administrator must notify the parties and the Court, as soon as reasonably practicable, of their best estimate of what the Surplus will be in the Agreed Administration Costs Component. The **Surplus** is the amount of the Agreed Administration Costs Component of \$6,000,000 less the Administrator's best estimate



at the time specified in these orders as the total Administration Costs (after any part payment or amounts to be paid by interest in accordance with cl 2.15.11.a of the Deed).

16. Leave is granted to the parties and Shine Lawyers to apply to the Court after the Registration Date about how that Surplus should be distributed.

#### **Directions to the Administrator**

17. The Administrator is directed to hold the sum of \$8,000,000 in the Settlement Fund Account pending any further order in respect of the Applicant's Actual Costs in accordance with order 12 above and order 21 below.
18. In complying with these orders, the Administrator is authorised to proceed at their reasonable discretion. Such discretion includes matters such as the establishment of separate accounts for the purposes of complying with the directions of the Court.
19. The Administrator has leave to apply for further directions from the Court if necessary.

#### *Priority and sequence of payments from the Settlement Fund Account*

20. Subject to further order, the payments approved pursuant to these Orders be made by the Administrator in the sequence and amounts and at times specified in order 1 and order 14 of these orders and **Annexure A** to these orders.
21. After the Registration Date and any determinations made by the Court pursuant to order 12, the parties and interveners are to file with the Court proposed orders covering:
  - (a) deductions from the Settlement Fund Account for the distribution to Eligible Claimants;
  - (b) deductions from the Settlement Fund Account for the payment of the remainder of Litigation Funder's commission;
  - (c) deductions from the Settlement Fund Account for the payment of any further amounts for the Applicant's Actual Costs; and
  - (d) the timing and sequence of those deductions.

#### **Releases by Group Members**

22. Any releases, or covenants not to sue given by Group Members are restricted to the claims the subject of this proceeding, and similar or related claims that could have been the subject of this proceeding, insofar as such releases and covenants not to sue are consistent with Part IVA of the Federal Court of Australia Act.



23. Liberty to apply.

**Amended Originating Application and variation of orders to correct error**

24. Leave be granted to the Applicant to correct an error in the Applicant's further amended originating application filed 12 February 2024 by:

- (a) amending paragraph 13(a) of the further amended originating application to replace "Western Australia" with "Northern Territory".

25. The Applicant file and serve a second further amended originating application incorporating the amendment referred to in order 24(a) by Friday, 30 May 2025.

26. Pursuant to rule 39.05(h) of the *Federal Court Rules 2011* and the powers referred to in the orders to which this order relates:

- (a) order 1(a) of the First Tranche Orders be varied to insert after '5 September 2024' the following:

‘, with the following variation to the definition of Defined Group Member in clause 1.1.1 of the Deed:

**Defined Group Members**

means all persons who, as at the date of the Settlement Approval, are described in the ~~Originating Application~~ Statement of Claim to be Group Members in the Class Action, save for those Group Members who have opted out of the Class Action pursuant to notices filed with the Court in accordance with s 33J of the FCA Act. For the avoidance of doubt, a reference in this Deed to the Defined Group Members includes the SGMs.’

- (b) all references to the Deed in the First Tranche Orders and the Second Tranche Orders be read as a reference to the Deed as varied by order 26(a) above.

Date orders authenticated: 28 May 2025

  
Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



## **ANNEXURE A – SEQUENCE OF PAYMENTS**

1. The following directions to the Administrator determine how monies received into the Settlement Fund Account pursuant to cl 2.6 and 2.11 of the Scheme are to be dealt with.
2. If there is any inconsistency between these directions and the Settlement Deed and/or the Settlement Distribution Scheme, these directions are to prevail.

### **Interest**

3. Interest earned on the Settlement Fund Account is to be applied in the first instance to the payment of Administration Costs in accordance with cl 2.15.11.a of the Settlement Deed and cl 40 of the Scheme. If such interest exceeds the Administration Costs (including future Administration Costs) it may be applied by the Administrator to deductions from the Settlement Fund Account which are approved by the Court and, if any interest remains after payment of deductions, will be available for distribution in accordance with cl 41 of the Scheme.
4. Interest earned on the Settlement Fund Account may only be paid in accordance with paragraph 3 above.

### **Interim Payment Reserve**

5. To the extent that the Administrator has not paid all the Interim Payments likely to be made, the Administrator is to continue to reserve in the Settlement Fund Account any further amount necessary to make further Interim Payments to living Eligible Claimants in accordance with cl 2.11 of the Deed and order 1 of the Orders made on 20 December 2024 (**Interim Payment Reserve**).
6. Any further Interim Payments to living Eligible Claimants should be made as soon as reasonably practicable.

### **Reimbursement Payments**

7. To the extent that the Administrator has not paid the Reimbursement Payments in accordance with order 1 of the Orders made on 20 December 2024, they are directed to pay as soon as reasonably practicable any remaining amounts for the Reimbursement Payments to the individuals identified in order 13(c) of the Orders made on 14 November 2024.



### **Deductions**

8. Once 3,000 Eligible Claimants are determined by the Administrator, the Administrator must make payments from the Settlement Fund Account in the following amounts and sequence:
  - (a) payment of ATE premiums of **\$1,045,000**;
  - (b) payment of Applicant's Actual Costs to 17 December and uplift in the amount of **\$2,416,989.80**; and
  - (c) payment of the Litigation Funder's commission set at 20% of the settlement sum for 3,000 Eligible Claimants being the amount of **\$10,800,000**.