



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

No: NSD1292/2015

**LARRY CROWLEY**  
Applicant

**WORLEYPARSONS LIMITED ACN 096 090 158**  
Respondent

### **ORDER**

**JUDGE:** JUSTICE JAGOT

**DATE OF ORDER:** 27 November 2017

**WHERE MADE:** Sydney

#### **BY CONSENT, THE COURT ORDERS THAT:**

##### *Amended group definition and opt out date*

1. Pursuant to section 33K and/or section 33ZF of the *Federal Court of Australia Act* 1976 (Cth) (**Act**), leave be granted to the Applicant to amend:
  - a. the Originating Application filed 27 October 2015 to delete paragraph 2(c) under the heading 'Representative action'; and
  - b. the Further Amended Statement of Claim filed 22 February 2017 to delete paragraph 1(b)(iii).
2. Pursuant to sections 33J and 33ZF of the Act, 4.00 pm on 1 February 2018 be fixed as the date on or before which a group member may opt out of this proceeding (**Class Deadline**).

##### *Form and distribution of notices to group members*

3. Pursuant to sections 33X and 33Y of the Act, the form and content of the opt out and claim registration notice set out in Schedule A (**Notice**) is approved.
4. Pursuant to section 33J of the Act, any group member who wishes to opt out of this proceeding must, before the Class Deadline, deliver an opt out form in the form of pages 11 to 12 of the Notice (**Opt Out Form**) to the New South Wales District Registry of the Federal Court of Australia.



5. Pursuant to section 33Y of the Act, the Notice be given to group members according to the following procedure:
  - a. On or before 5 December 2017, the Applicant cause the Notice, the Applicant's Further Amended Statement of Claim (as amended pursuant to Order 1) and the Respondent's Defence to be displayed on the website of the Applicant's solicitors, <http://www.acalawyers.com.au>, and to remain so displayed on and until the Class Deadline;
  - b. On or before 5 December 2017, the Respondent cause the Notice to be sent to each person or entity listed in the Respondent's share register as having purchased shares in the defendant between 14 August 2013 and 19 November 2013 inclusive, such Notices to be sent by email where an email address is available, or failing that, by ordinary mail;
  - c. On or before 5 December 2017, the District Registrar of the New South Wales District Registry of the Federal Court of Australia cause the Notice, to be:
    - i. posted on the Federal Court website; and
    - ii. available for inspection at the District Registry of the Federal Court in Sydney, Melbourne, Canberra, Brisbane, Adelaide, Perth, Hobart and Darwin.
6. The costs of and incidental to the procedure set out in Order 5 above be initially borne by the Applicant but on the basis that those costs will subsequently fall to be dealt with by the Court as part of the costs of the proceeding.
7. If, on or before the Class Deadline, the solicitors for either party receive a notice purporting to be an opt out notice referable to this proceeding, the solicitors file such notice in the New South Wales District Registry of the Federal Court of Australia within fourteen (14) days of receipt and the notice shall be treated as an opt out notice received by the Court at the time when it was received by the solicitors.
8. The Applicant's and Respondent's solicitors be granted leave to inspect the Court file and to copy any opt out notices filed by group members.

### ***Class closure***

9. Subject to order 11 below, pursuant to section 33ZF of the Act, any group member who wishes to participate in the distribution of any amount agreed in settlement of



this proceeding must, by the Class Deadline, register by submitting a completed registration form in the form of page 10 of the Notice (**Registration Form**) through the ‘WorleyParsons Class Action Claims Registration’ webpage established on the website of the Applicant’s solicitors (**New Registered Group Members**).

10. In completing the Registration Form, and in order to register for the purpose of Order 9 above, each New Registered Group Member be required to submit:

- a. the group member’s name, address and email address;
- b. any relevant and available Holder Identification Number (HIN) or Security Reference Number (SRN);
- c. the number of WorleyParsons Limited securities (WOR securities) held by the group member immediately prior to the commencement of trade on 14 August 2013;
- d. for each purchase by the group member of WOR securities during the period from 14 August 2013 to 19 November 2013 (inclusive), all transactional information regarding the purchase, including in respect of each such purchase:
  - i. the date of purchase;
  - ii. the quantity of securities purchased;
  - iii. the consideration paid (including brokerage); and
- e. For each sale by the group member of WOR securities during the period from 14 August 2013 to 19 November 2013 (inclusive), all transactional information regarding the sale, including in respect of each such sale:
  - i. the date of sale;
  - ii. the quantity of securities sold; and
  - iii. the consideration received (net of brokerage).

11. A group member be deemed to have complied with Order 10 above if, as at the Class Deadline, the group member has:

- a. retained the Applicant’s solicitors in writing to act for that group member in connection with this proceeding; and
- b. engaged JustKapital Litigation Pty Limited in writing to provide litigation funding services to that group member in connection with this proceeding,



**(Existing Registered Group Members).**

12. To the extent that they have not already done so, Existing Registered Group Members be required to submit to the Applicant's solicitors as soon as practicable but, in any event, by no later than the Class Deadline, the same information as New Registered Group Members are required to submit to the Applicant's solicitors pursuant to Orders 10(a) to (e) above.
13. By 4.00 pm on 22 February 2018, the Applicant deliver to the solicitors for the Respondent (in electronic form) de-identified trading data for all Existing Registered Group Members, which shall contain:
  - a. a unique identification number for each Existing Registered Group Member;
  - b. the information referred to in Orders 10 (c), (d) and (e) above for each Existing Registered Group Member; and
  - c. any amendments to the information in the Registration Form, as notified to the Applicant's solicitors by that date.
14. By 4.00 pm on 22 February 2018, the Applicant deliver to the solicitors for the Respondent (in electronic form), de-identified trading data for all New Registered Group Members, which shall contain:
  - a. a unique identification number for each New Registered Group Member;
  - b. the information referred to in Orders 10 (c), (d) and (e) above for each New Registered Group Member; and
  - c. any amendments to the information in the Registration Form, as notified to the Applicant's solicitors by that date.
15. By 4.00pm on 22 February 2018, the Applicant deliver to the Court (in an envelope marked "Confidential List of Group Members") trading data for New Registered Group Members and Existing Registered Group Members, which contain the information in the Registration Form submitted by group members pursuant to Orders 10 and 12 above for each New or Existing Registered Group Member and any amendments to the information in the Registration Form (as notified to the Applicant's solicitors by that date).
16. Pursuant to section 33ZF of the Act, any group member who does not opt out and who is not a New Registered Group Member or Existing Registered Group Member:



- a. will remain a group member for all purposes, including for the purpose of being bound by any judgment in this proceeding and being entitled to participate in any award of damages by the Court if this proceeding does not settle; but
- b. subject to any further order of the Court, will not be entitled to receive a distribution from any settlement of this proceeding.

***Funded Class***

17. Subject to further order, each group member who registers for the class action in accordance with Orders 9 to 11 above will also be bound by the requirements in Orders 18 to 23 below.
18. The following definitions apply in Orders 19 to 22 below:
  - a. **Adverse Costs Order** means any Costs Order made in favour of the Respondent against the Applicant in this proceeding in respect of costs incurred during the conduct of the proceeding;
  - b. **Costs Order** means an order made by the Court requiring one or more parties to this proceeding to pay the costs incurred by another party or parties to the proceeding;
  - c. **Funder** means JustKapital Litigation Pty Ltd;
  - d. **Funding Agreements** means the respective Funding Agreements between the Applicant, Existing Registered Group Members and the Funder relating to the funding of this proceeding, in the form of Schedule B to these Orders;
  - e. **Resolution** means when all or part of the Resolution Sum is received, and where the Resolution Sum is received in parts, a “Resolution” occurs each time a part is received;
  - f. **Resolution Sum** means the amount or amounts, or the value of benefits, for which the proceeding is settled, or for which judgment is given, in favour of the Applicant, Existing Registered Group Members and New Registered Group Members, including any interest and including costs recovered pursuant to a Costs Order or by agreement;



- g. **Settlement** means any settlement, compromise, discontinuance or waiver of the proceeding or part of the proceeding with the approval of the Court, and 'settles' shall be construed accordingly.

***Application of Resolution Sum***

19. Any Resolution Sum will be received by the solicitors for the Applicant to be paid immediately into an account kept for that purpose.
20. The solicitors for the Applicant will forthwith pay out of the account referred to in Order 19 above the payments referred to in Order 21 below with the balance to be distributed in accordance with any distribution scheme approved by the Court.

***Costs and Commission***

21. Upon Resolution and subject to any contrary order made in the course of an application for approval under section 33V of the *Federal Court of Australia Act 1976* (Cth), each New Registered Group Member will pay to the Funder or its nominee, from the Resolution Sum:
- a. an amount equal to each New Registered Group Member's share of the costs and expenses paid by the Funder in connection with this proceeding, determined in accordance with the Funding Agreements, as if each New Registered Group Member had entered into a funding agreement with the Funder containing those terms;
  - b. an additional amount, on account of GST, being the amount obtained by multiplying the prevailing rate of GST by an amount equal to the consideration to be received by the Funder for any taxable supply made to the New Registered Group Member by the Funder; and
  - c. an amount equal to the percentage of the Resolution Sum for which the Funding Agreements provides to be payable by way of funding fee or commission.

***Termination by the Funder***

22. If the Funder terminates its obligations under, and pursuant to the terms of, the Funding Agreements, then it will not be entitled to any payment from New Registered



Group Members pursuant to Order 21(c), but will continue to be entitled to receive payment from New Registered Group Members pursuant to Orders 21(a) and 21(b) above, although only from the Resolution Sum.

23. Termination by the Funder of the Funding Agreements does not affect the following accrued obligations of the Funder to the Applicant or Existing Registered Group Members:
- a. payment of any outstanding costs and expenses in connection with this proceeding incurred up to the date the termination takes effect; and
  - b. payment of any Adverse Costs Order in respect of costs which arise in, or are attributed to, the period ending on the date the Funder's termination becomes effective.

### ***Evidence***

24. On or before 22 December 2017, the Applicant is to file and serve any affidavits containing the lay evidence upon which he proposes to rely at trial.
25. On or before 30 March 2018, the Applicant is to file and serve its expert evidence.
26. On or before 18 May 2018, the Respondent is to file and serve any affidavits containing the lay evidence upon which it proposes to rely at trial.
27. On or before 15 June 2018, the Respondent is to file and serve its expert evidence.
28. On or before 6 July 2018, the Applicant is to file and serve any expert evidence in reply.

### ***Mediation***

29. A mediation in this matter is to be conducted no later than 27 July 2018. In the absence of agreement by the parties as to a mediator, the mediation shall be conducted by the District Registrar.

### ***Hearing***

30. The initial trial is to be fixed for hearing for two weeks between 17 and 28 September 2018, with further hearing dates to be allocated as appropriate. For this purpose, the parties are to notify the Court by 13 July 2018 of the estimated length of the hearing.



*Other Orders*

31. The parties have liberty to apply on two days' written notice.

**Date that entry is stamped: 28 November 2017**

*Warrick Soden*  
Registrar





1

## SCHEDULE A

### OPT OUT AND CLAIM REGISTRATION NOTICE

#### FEDERAL COURT OF AUSTRALIA

*Shareholder Class Action against WorleyParsons Limited*

*(regarding shares purchased between 14 August and 19 November 2013)*

If you wish to participate in this class action you must comply with this notice (unless you have already registered to participate in this class action). If you do not do so your rights may be lost. If you have not already registered, you have three options:

1. Do nothing and lose any rights to any compensation if this action settles
2. Register to receive any compensation that may become available in this class action
3. Complete an 'opt out' form and lose a right to any compensation available in this action but keep your right to try and get compensation yourself

#### 1. Why is this notice important?

A class action has been commenced against WorleyParsons Limited (**WorleyParsons**) in the Federal Court of Australia by Larry Crowley, as a representative party on behalf of himself and all WorleyParsons shareholders who:

- (i) acquired shares in WorleyParsons (ASX:WOR) between 14 August 2013 and 19 November 2013;
- (ii) suffered loss and damage as a result of the conduct of WorleyParsons (as alleged); and
- (iii) have not settled their claims with WorleyParsons.

Such persons are defined as **group members**.

The Federal Court has ordered that this notice be published for the information of persons who might be group members and thus may be affected by the action. **If you are a group member**



**you should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.

This notice is part of a court-ordered process to assist the parties to attempt to resolve this proceeding by settlement. In order to do that, the parties need to know how many group members would participate in any settlement of the proceeding, and the potential value of their claims.

Group members wishing to participate in any potential settlement of the proceeding must register their claims by **4.00 pm on 1 February 2018**. If you do not register, you may lose any rights you have to compensation.

## **2. What is a class action?**

A class action is an action that is brought by one person (**Applicant**) on his or her own behalf and on behalf of a group of people (here, group members) against another person (**Respondent**) where the Applicant and the group members have similar claims against the Respondent.

Group members in a class action are **not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicant is responsible for the costs.

Group members are bound by any judgment or settlement entered into in the class action unless they have opted out of the proceeding. This means that:

- (a) if the class action is successful, group members may be eligible for a share of any settlement monies or Court-awarded damages;
- (b) if the class action is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the class action, group members will not be able to pursue their claims against the Respondent in separate legal proceedings unless they have opted out.



### **3. What is Opt Out?**

The Applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action. An explanation of how group members are able to opt out is found below in the section headed "What group members must do".

### **4. What is this class action?**

This class action against WorleyParsons is brought by Mr Crowley on behalf of himself and group members.

In summary, the Applicant alleges that WorleyParsons engaged in misleading or deceptive conduct, and breached its continuous disclosure obligation to keep the Australian Securities Exchange (**ASX**) informed of all information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of WorleyParsons shares. In particular it is alleged that, in August 2013, WorleyParsons made misleading representations as to its forecast financial performance in the financial year ending on 30 June 2014.

WorleyParsons denies the allegations and is defending the class action.

### **5. Are you a group member?**

As noted above, you are a group member if you acquired shares in WorleyParsons during the period from 14 August 2013 and 19 November 2013 and you suffered loss and damage as a result of WorleyParsons' conduct (as alleged) and have not settled your claims with WorleyParsons.

If you are unsure whether or not you are a group member, you should contact ACA Lawyers on +61 2 9216 9898 or email [info@acalawyers.com.au](mailto:info@acalawyers.com.au) or seek your own legal advice without delay.



**6. Will you be liable for legal costs?**

You will **not become liable for any legal costs** simply by remaining as a group member for the determination of the common questions. However:

- (a) If the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage the Applicant's lawyers, ACA Lawyers, or other lawyers to do that work for you. A copy of the terms on which ACA Lawyers are acting in the class action may be obtained from them by contacting ACA Lawyers at [info@acalawyers.com.au](mailto:info@acalawyers.com.au) or on (02) 9216 9898; and
- (b) Class actions are, nevertheless, often settled out of court. If this occurs in the WorleyParsons class action, you may be able to claim from the settlement amount without retaining a lawyer.

The WorleyParsons Class Action is funded by JustKapital Litigation Pty Ltd (**JustKapital**). This means that JustKapital has agreed to pay all the legal and other costs associated with the action, including any adverse costs orders. Accordingly, if the class action is unsuccessful, group members will have no liability for legal costs.

If, however, the class action is successful and you ultimately receive compensation, then you may be liable for the following costs, which will only be payable by way of a deduction from your compensation amount, and not otherwise:

- (a) a commission to JustKapital; and
- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicant in running the class action but which are not able to be recovered from WorleyParsons.

**Under no circumstances will class members be required to pay more in legal costs and commissions than they receive in compensation.**

Please note, you will be required to pay any other costs you incur on your own behalf, including legal advice you choose to obtain from lawyers other than ACA Lawyers.



## 7. Funding of this Class Action?

For the purposes of funding this class action, the Applicant and some group members have entered into funding agreements with JustKapital (**Funding Agreements**), the terms of which include:

- (a) JustKapital will pay the costs incurred in conducting the class action;
- (b) JustKapital will pay any adverse costs orders which are made in the class action against the Applicant;
- (c) At the conclusion of the class action (whether by settlement or judgment), JustKapital is entitled to receive, as a first priority out of that group member's share of the settlement or judgment amount:
  - (i) reimbursement of the amounts paid by JustKapital under the Funding Agreements (which includes legal costs and disbursements); and
  - (ii) a commission.

The Applicant has sought orders from the Court which means that the above funding arrangements will apply to all group members, even if they have not entered into a Funding Agreement with JustKapital (**Common Fund Orders**). All group members who have not opted out of the action will in effect be bound by the funding arrangements and will ultimately be bound to contribute, out of any amount to which they become entitled to receive by way of settlement or judgment of their claims, an amount payable to JustKapital (including legal costs, disbursements and commission) as if they had agreed to the funding arrangements with JustKapital (subject to approval of the Court). A copy of the Funding Agreement may be inspected upon request by contacting ACA Lawyers at [info@acalawyers.com.au](mailto:info@acalawyers.com.au) or on (02) 9216 9898.

It is possible that the Court may vary aspects of the funding agreement, or other orders in respect of funding arrangements. An example of an alternative order is an "equalisation order", which would result in JustKapital being paid only the total amount to which it is entitled under the funding arrangements it has actually agreed with group members, but that amount being shared across all group members rather than only those who have entered the funding arrangements.



Group members will not be required to pay any amounts to JustKapital (or to ACA Lawyers) unless and until there is a successful outcome in the class action, whereupon any amounts payable will be (subject to approval of the Court) deducted from the amount to which each group member is otherwise entitled (but under no circumstances will they exceed that amount). No group member will be out-of-pocket simply by remaining as a group member.

**8. What will happen if you choose to remain a group member?**

Unless you opt out, you will be bound by the outcome of the class action. If the class action is successful, and if you have registered in accordance with "Option A" below, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and group members. If the action is unsuccessful or is not as successful as you might have wished, you will not be able to bring proceedings or take action against WorleyParsons in respect of the matters the subject of the class action.

**Note:** Group members who retain ACA Lawyers and enter into a funding agreement with JustKapital before 4pm AEST on 1 February 2018, or who have already retained ACA Lawyers and entered into a funding agreement with JustKapital, will be registered to participate in the class action by ACA Lawyers and may disregard this notice.

**9. Why is this notice being published?**

The Federal Court has ordered that this notice be published for the information of persons who might be group members and thus may be affected by the WorleyParsons class action. The parties to the class action have agreed to mediate before an agreed mediator, or failing agreement on a mediator between the parties by the District Registrar. The mediation will be held by no later than 27 July 2018, and following the closure of registration (Option A, below) or Opting Out (Option B, below).

**10. What group members must do**

If you are a group member in the WorleyParsons class action, and you wish to remain a group member but have not retained ACA Lawyers, you must select one of the following options:

***Option A – Register your interest in receiving compensation***



If you wish to make a claim for any loss you may have suffered as a result of WorleyParsons' conduct, as alleged, you must complete the "Group Member Registration Form", which can be obtained via the ACA Lawyers website at <http://www.acalawyers.com.au/worleyparsons-class-action> (unless you have already registered prior to receiving this notice).

Registrations must be completed and submitted online before **4:00pm AEST on 1 February 2018**. Registrations received after this time will not be accepted with the result that you will be treated as having not responded to this notice (see Option C below).

As set out below, you will find copies of the court papers which detail the claims made in the WorleyParsons class action at this website.

If you register, the funding arrangements reflected in the Funding Agreements will apply to you and you will ultimately be bound to contribute, out of any amount to which you become entitled to receive by way of settlement or judgment of your claims, an amount payable to JustKapital (including legal costs, disbursements and commission) as if you had agreed to the funding arrangements with JustKapital. A copy of the Funding Agreement may be inspected upon request. The terms of the Funding Agreement will be considered by the Court (and, in some circumstances, can be varied) in the event the class action is resolved by way of settlement.

***Option B – Opt out and cease to be a group member***

If you do not wish to remain a group member in the WorleyParsons class action, you must opt out of the proceeding by completing the "Opt Out Notice" below. If you opt out of the WorleyParsons class action, you:

1. will not be affected by any orders made in the WorleyParsons class action;
2. will not be permitted to participate in the distribution of any damages award or settlement outcome; and
3. will be able to commence separate proceedings on your own behalf if you so wish.

Opt out forms must be submitted directly to the New South Wales District Registry of the Federal Court of Australia before **4:00pm AEST on 1 February 2018**. Opt out notices received after this time will not be accepted, and you will remain as a group member in the



WorleyParsons class action but will not be permitted to participate in any compensation award if the class action is settled (see Option C below).

***Option C – Not respond to this notice***

If you do nothing, you will remain a group member in the WorleyParsons class action and you will be bound by any settlement, but **you will not be permitted to participate in or otherwise benefit from the settlement**. Further, in that event, any cause of action you might otherwise have had against WorleyParsons in respect of the matters the subject of the class action will no longer be available to you.

In other words, if you do nothing, you will lose your right to make any claim for damages or other relief against WorleyParsons in relation to the matters the subject of the class action if the class action is settled.

If you do nothing in response to this notice, in the event that the mediation is unsuccessful and the matter proceeds to trial, you will have a further opportunity to participate in the class action, which may involve a further registration process.

**11. Where can you obtain copies of relevant documents?**

You may access copies of the Court papers which detail the relevant documents filed in connection with the WorleyParsons class action, by:

1. viewing them at the ACA Lawyers website, which is accessible at <http://www.acalawyers.com.au/macmahon-holdings-class-action>;
2. inspecting them by appointment between 9.00am and 5.00pm AEST at the Sydney office of ACA Lawyers; or
3. visiting a District Registry of the Federal Court in Melbourne, Sydney, Canberra, Brisbane, Perth, Adelaide, Hobart or Darwin.

**12. Questions?**

Please consider the above matters carefully. If you are unclear about whether you are a group member, or if you have any other questions regarding the WorleyParsons class action, you





should contact ACA Lawyers by writing to "WorleyParsons Class Action", Level 3, 44 Martin Place, Sydney NSW 2000, or by sending an email to [info@acalawyers.com.au](mailto:info@acalawyers.com.au). Alternatively, you can seek legal advice from other solicitors. You should not delay in making your decision.

If you wish to register (Option A), but do not have access to the internet or are otherwise unable to register in accordance with Option A, please call +61 2 9216 9898 between the hours of 9:00am to 5:00pm AEST by no later than 4:00pm AEST on Friday 1 February 2017.

At the time of your call, please ensure you have all available information relevant to your trading transactions in WorleyParsons securities.



**OPTION A**

**GROUP MEMBER REGISTRATION**

To register as a group member and retain your right to claim damages, please complete the Group Member Registration Form available at <http://www.acalawyers.com.au/worleyparsons-class-action>.

**Note:** Group members who retain ACA Lawyers and enter into a funding agreement with JustKapital Litigation Pty Ltd before 4pm AEST on 1 February 2018, or who have already retained ACA Lawyers and entered into a funding agreement with JustKapital Litigation Pty Ltd, will be registered to participate in the class action by ACA Lawyers and may disregard this notice.



**OPTION B**

Form 21  
Rule 9.34

**OPT OUT NOTICE**

No. NSD 1292 of 2015

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

**LARRY CROWLEY**

Applicant

**WORLEYPARSONS LIMITED (ACN 096 090 158)**

Respondent

To: The Registrar  
Federal Court of Australia  
New South Wales District Registry  
Level 17, Law Courts Building, Queens Square, Sydney NSW 2000

..... (print name), a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976* (Cth), that [he, she or it] (circle as applicable) is opting out of the representative proceeding.

Date: .....

Signed by (print name) .....

Group member/Lawyer for the Group member

(please complete the next page)



**Group member details**

Telephone: .....

Email: .....

Address: .....

.....

ACN/ABN (if a company or trustee): .....

HIN/SRN: .....

If the shares were acquired on behalf of another person/entity, name of that person/entity:

.....

**If you are signing as the solicitor or representative of the group member:**

Name: .....

Capacity in which you are signing: .....

Telephone: .....

Email: .....

Address: .....

.....



**SCHEDULE B**  
**FUNDING AGREEMENT**



BETWEEN:

JUST KAPITAL LITIGATION PTY LIMITED

AND:

THE CLAIMANT

---

**LITIGATION FUNDING AGREEMENT**

---

WORLEYPARSONS CLASS ACTION



Registration & Acceptance of Terms Form	
WorleyParsons Limited	
<i>Please complete all applicable sections of the following 6 pages</i>	
<b>Funder</b>	JustKapital Litigation Pty Limited
<b>Qualified shares</b>	WorleyParsons Limited Ordinary Shares (ASX Code: WOR)
<b>Claimant Details (tick as appropriate)</b>	
Company <input type="checkbox"/>	Company name: _____ ACN: _____
Individual(s) <input type="checkbox"/>	Name/s: _____ <small>(Title) (First Name) (Surname)</small> _____ <small>(Title) (First Name) (Surname)</small>
Partnership <input type="checkbox"/>	Partnership name: _____
<b>Address Details</b>	
<b>Street Address</b>	
Address: _____	
Town: _____	
State: <input type="text"/>	Postcode: <input type="text"/>
Country: _____	
<b>Postal Address</b> <small>(if different from Street Address)</small>	
Address: _____	
Town: _____	
State: <input type="text"/>	Postcode: <input type="text"/>
Country: _____	
<b>Contact Person</b>	
Name: _____ <small>(Title) (First Name) (Surname)</small>	
Position: _____	
Phone: ( ) _____	Mobile: _____
Facsimile: ( ) _____	Email: _____

(00137199.doc-v)

WOR LITIGATION FUNDING AGREEMENT – 2015 – Page 2



Signing Block		
<b>SIGNED</b> by or on behalf of and with the authority of the Claimant	Signature Date / /	Print Name and Position
	Signature Date / /	Print Name and Position
	If applicable, affix Company Seal	
Please confirm the capacity in which you are signing this document	<input type="checkbox"/> in my/our personal capacity <input type="checkbox"/> as director of the Claimant <input type="checkbox"/> as trustee of the Claimant <input type="checkbox"/> as agent of the Claimant  <i>(lawyer, accountant, investment manager, etc. Please specify)</i> _____	
Details of Share Ownership		
1. If the Claimant is the <b>registered owner</b> of the Qualified Shares  <i>If the Claimant is <u>not</u> the registered owner, please go to step 2</i>	What is the capacity in which the Claimant is the registered owner of the Qualified Shares? <input type="checkbox"/> owns shares on own behalf <i>(section complete)</i> or on behalf of a beneficial owner, as: <input type="checkbox"/> trustee for the beneficial owner of the shares <input type="checkbox"/> nominee for the beneficial owner of the shares <input type="checkbox"/> custodian for the beneficial owner of the shares <input type="checkbox"/> Responsible Entity for the beneficial owner of the shares  <i>(go to step 3)</i>	





<b>2</b>	<p><b>If the Claimant is <u>NOT</u> the registered owner of the Qualified Shares</b></p>	<p>What is the name of the Registered Owner? <i>(please enter)</i></p> <p>_____</p> <p>What is the Holder Identification Number of the Registered Owner (if available)? <i>(please enter)</i></p> <p>_____</p> <p>In what capacity does the Registered Owner own the Qualified Shares?</p> <p><input type="checkbox"/> as trustee for the Claimant</p> <p><input type="checkbox"/> as nominee for the Claimant</p> <p><input type="checkbox"/> as custodian for the Claimant</p> <p><input type="checkbox"/> as Responsible Entity for the Claimant</p> <p>In what capacity is the Claimant entitled to claim in respect of the Qualified Shares?</p> <p><input type="checkbox"/> as beneficial owner of the shares</p> <p style="text-align: center;"><i>(section complete)</i></p> <p><input type="checkbox"/> as trustee for the beneficial owner of the shares</p> <p><input type="checkbox"/> as Responsible Entity for the beneficial owner of the shares</p> <p><input type="checkbox"/> as agent for the beneficial owner of the shares</p> <p style="text-align: center;"><i>(go to step 3)</i></p>			
<b>3</b>	<p><b>If the Claimant is <u>NOT</u> the beneficial owner of the Qualified Shares</b></p>	<p>If the Claimant does not own the Qualified Shares on their own behalf and is not the beneficial owner, please list the name of the entity or entities on whose behalf the Qualified Shares are owned:</p> <p>_____</p> <p>or:</p> <p><input type="checkbox"/> Refer to the attached schedule of Beneficial Owners <i>(tick)</i></p>			
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%; padding: 5px;"> <p><b>SIGNED</b> on behalf of and with the authority of <b>JustKapital Litigation Pty Limited</b></p> </td> <td style="width: 20%; padding: 5px;"> <p>Signature _____</p> <p>Date:    /    / 2015</p> </td> <td style="width: 40%; padding: 5px;"> <p>Name _____</p> </td> </tr> </table>			<p><b>SIGNED</b> on behalf of and with the authority of <b>JustKapital Litigation Pty Limited</b></p>	<p>Signature _____</p> <p>Date:    /    / 2015</p>	<p>Name _____</p>
<p><b>SIGNED</b> on behalf of and with the authority of <b>JustKapital Litigation Pty Limited</b></p>	<p>Signature _____</p> <p>Date:    /    / 2015</p>	<p>Name _____</p>			
<p>{00137199.docx}</p> <p style="text-align: right;">WOR LITIGATION FUNDING AGREEMENT – 2015 – Page 4</p>					



**DETAIL OF QUALIFIED SHARE HOLDINGS**

<b>HIN or SRN (if available)</b>	
<b>Number of WOR shares held at close of trade on 13 August 2013</b>	

*Please insert details of all WOR ordinary share (ASX: WOR) transactions during the period from the 14 August 2013 to 19 November 2013 into the acquisition and sale transaction tables on pages 5 and 7.*

*Please attach copies of any contract notes, share register statements or transaction history statements confirming the transactions listed in the tables on pages 6 and 7 when returning your registration documents to ACA Lawyers.*

***If you can provide a trading history electronically, whether by e-mail, CD, or in hardcopy, please do so instead of completing the tables on pages 6 and 7.***





DETAIL OF QUALIFIED SHARE HOLDINGS - SALES						
Transaction Date	Quantity	Price Per Security (AUD \$X.XX excluding brokerage and GST)	Net Price (Quantity X Price Per Security)	Brokerage (incl. GST)	Total Proceeds (Net Price MINUS brokerage for sells)	
ALL WOR shares SOLD from 14 August 2013 to present						

(00137199 doc-vj) WOR LITIGATION FUNDING AGREEMENT – 2015 – Page 7



**LITIGATION FUNDING AGREEMENT  
WORLEYPARSONS LIMITED SECURITIES**

**THIS AGREEMENT**

**BETWEEN:** JUSTKAPITAL LITIGATION PTY LIMITED of Suite 6, 245 Churchill Avenue,  
Subiaco WA 6008 ("JK")

**AND:** THE CLAIMANT ("the Claimant")

**RECIPIALS:**

- A. The Claimant and numerous Other Funded Persons have one or more Claims against the Respondent arising out of their acquisition of shares in WorleyParsons Limited (WOR).
- B. A Class Action is proposed to be commenced against the Respondent in respect of some or all of the Claims of the Claimant and the Other Claims of the Other Funded Persons in order to prosecute and resolve the Claims and the Other Claims.
- C. The Claimant and JK have agreed that JK will provide funding for the Class Action on the terms set out in this Agreement (hereafter the LFA).
- D. JK proposes to appoint the Lawyers to provide the Legal Work to the Claimant and to Other Funded Persons on the terms set out in the document entitled Terms of Engagement attached to this LFA.
- E. The Claimant acknowledges that JK has, by virtue of its obligations and entitlements (including its entitlement to receive a percentage of any Resolution Sums) set out in this LFA, an interest in the Claims, the Proceedings and any Resolution Sums.

**AGREEMENT:**

**1. Investigation, Monitoring and Reporting**

- 1.1 The Claimant acknowledges that by virtue of the terms of this LFA, JK has an interest in the outcome of any Proceedings.
- 1.2 The Claimant consents to JK:
  - (a) obtaining access to material documents and statements concerning the Claims and the Proceedings from the Lawyers, including any documents obtained by way of discovery, subpoena or any other coercive power of the Court which may lawfully be accessed by JK for the purpose of:
    - (i) investigating the evidentiary basis for the Claims (documentary and oral);
    - (i) collating the material documents and statements;
    - (i) monitoring the progress of the Proceedings;
    - (ii) evaluating any Settlement offer;



- (iv) investigating, designing and implementing any Alternative Dispute Resolution Process for the resolution of the Claims and the Other Claims, other than through legal proceedings;
    - (v) investigating any other matter that JK determines is relevant to its financial interest the Claims and the Proceeding; and
    - (vi) investigating the capacity of the Respondents to meet any award or order made against them relating to the Claims and or Proceedings;
  - (b) otherwise communicating with the Lawyers in relation to the progress of the Proceedings.
- 1.3 The Claimant hereby authorises JK to seek and obtain any information and documentation which JK believes may be relevant to the Claims from any person or entity.
- 1.4 The Claimant consents to JK providing a copy of this LFA to third parties who request evidence of the authority granted to JK pursuant to sub-clause 1.2.
- 2. The Lawyers' Retainer**
- 2.1 JK will appoint the Lawyers to provide Legal Work to the Claimant and Other Funded Persons pursuant to the Terms of Engagement
- 2.2 The Lawyers will charge for Legal Fees and Disbursements in accordance with the Terms of Engagement and Legal Costs Agreement.
- 2.3 The Claimant agrees that if there is any inconsistency between the terms of the Legal Costs Agreement between the Claimant and the Lawyers and this LFA or the Terms of Engagement, the terms of this LFA or the Terms of Engagement, as applicable, will prevail.
- 2.4 In the event that the Terms of Engagement are amended by agreement between JK and the Lawyers, the Lawyers will promptly provide written notice to the Claimant of the amendment(s).
- 3. Proceedings and Control of Litigation**
- 3.1 The Claimant and JK agree that the Lawyers may appoint one or more Representatives with respect to some or all of the Claims and/or Other Claims.
- 3.2 Subject to this clause and clauses 4, 5 and 13, the Representative(s) will give binding instructions to the Lawyers and make binding decisions on behalf of the Claimant in relation to the Claims and the Other Claims up to the delivery of Judgment on the common issues raised by the Proceedings, finalisation of a Settlement, or discontinuance of the Proceedings.
- 3.3 In the event that a Representative relinquishes or is removed from their Representative role, the Claimant and JK agree, subject to any order of the Court, that the Lawyers may appoint one or more replacement Representatives with respect to the relevant Claims and/or Other Claims.
- 3.4 The Claimant and JK agree that JK does not have control over, or the right to make final decisions in, any of the Proceedings, other than as outlined in this LFA.
- 3.5 JK may give day to day instructions to the Lawyers on all matters concerning the Claims and or Proceedings, however, subject to this clause and clauses 4, 5 and 13, the Representative in any Proceeding may override any instruction given by JK regarding that Proceeding by giving instructions directly to the Lawyers



- 3.6 For the duration of this LFA, JK will:
- (a) by implementing the Conflicts Management Policy, comply with the requirements of the Regulations; and
  - (b) provide timely and clear disclosure to the Claimant of any material breach of the Regulations by JK in relation to the subject matter of this LFA.
- 3.7 Unless otherwise dealt with by this LFA, if the Lawyers notify JK and the Claimant that the Lawyers believe that circumstances have arisen such that they may be in a position of conflict with respect to any obligations they owe to JK and those they owe to the Claimant, then the Lawyers' obligations to the Claimant prevail. For the avoidance of doubt, the Lawyers can continue to offer advice to and take instructions from the Claimant in such circumstances.
- 3.8 Nothing in sub-clause 3.5, sub-clause 3.6 or sub-clause 3.7 entitles the Claimant to breach, or authorises the breach of, any terms of this LFA.
- 3.9 The Claimant acknowledges that it will be bound by an order of the Court in any Proceeding in which the Claimant is represented regarding its rights with respect to the Claims, including delivery of Judgment on common issues, the making of common findings, or approval of a Settlement.
- 3.10 JK will not retain the Lawyers as their solicitors for any purpose connected with this LFA or connected with any Proceeding to which this LFA applies.
- 4. Settlement Decisions**
- 4.1 Without limiting the authority of the Representative pursuant to sub-clause 3.2 or the rights of the Claimant pursuant to sub-clause 4.3, the Claimant authorises the Representative to make or take any action constituting a Settlement Decision (and if the Claimant is the Representative, the Claimant agrees to take such action on its own behalf) provided that the Lawyers have advised that the Settlement Decision is reasonable in all the circumstances.
- 4.2 The Lawyers must provide clear and full disclosure and advice to the Claimant about the proposed Settlement and its terms at least 14 days prior to the proposed Settlement becoming binding on the Claimant. If applicable, the Lawyers must provide clear and full disclosure of the terms of the proposed Settlement to the Court prior to the proposed Settlement becoming binding on the Claimant.
- 4.3 In recognition of the fact that JK has an interest in the Resolution Sum, if:
- (a) the Representative:
    - (i) wants to Settle a Proceeding for less than JK considers appropriate; or
    - (ii) does not want to Settle a Proceeding when JK considers it appropriate to do so and/or on the terms that JK considers appropriate; or
  - (b) the Claimant:
    - (i) wants to Settle their Claim or Claims for less than JK considers appropriate; or
    - (ii) does not want to Settle their Claim or Claims, when JK considers it appropriate to do so and/or on the terms that JK considers appropriate,



then the Claimant agrees that JK and the Representative and/or Claimant, as applicable, will seek to resolve their difference of opinion in accordance with the Settlement Dispute Resolution procedure set out at sub-clause 13.3.

- 4.0 Where there is a proposed Settlement of any Claims not yet the subject of proceedings, which also involves the Settlement of Other Claims, the Claimant agrees to be bound by that proposed Settlement and agrees that the Lawyers are instructed to do all that is necessary to settle the Claims as part of that proposed Settlement, provided:
- (a) more than 50% by value of Funded Persons whose claims are the subject of that proposed Settlement vote in favour of it; and
  - (b) advice is received from the most senior counsel of those retained by the Lawyers in respect of the Proceeding and the Claims (or if no counsel has been retained, Independent Counsel appointed and suitably briefed by the Lawyers) that the proposed Settlement is fair and reasonable in all of the circumstances.

The Lawyers will determine the value of each claim for the purposes of this sub-clause.

- 4.9 Counsel may proceed as he or she sees fit to inform himself or herself before forming and delivering his or her opinion pursuant to sub-clause 4.8 and shall have regard to the matters set out in Schedule 2. Counsel may give his or her opinion orally or in writing. If the opinion is given orally, counsel shall also provide it in writing at the earliest opportunity unless JK and (in the case of a Class Action that has commenced) the Representative agree otherwise.
- 4.10 The costs of counsel in providing the opinion referred to in sub clause 4.9 will be paid by JK and will form part of the Project Costs.

## 5. Appeal Decisions

- 5.1 JK retains full discretion over whether it provides funding for any litigation in respect of an appeal of a decision made by a Court in any Proceeding. If JK does elect to fund an Appeal, JK will pay the Legal Costs and Disbursements in connection with the Appeal and will pay any Adverse Costs Order if the Appeal is unsuccessful. The costs of any Appeal will form part of the Project Costs.
- 5.2 If there is a decision in any Proceeding (whether final or interlocutory in nature) which is not in favour of the Claimant or Representative, and JK wishes an Appeal to be lodged, then, subject to the Representative's instructions, the Lawyers will lodge and prosecute the Appeal in the name of the Representative.
- 5.3 If there is a decision in any Proceeding (whether final or interlocutory in nature) in favour of the Claimant or Representative, the Respondent appeals, and JK wishes to defend the appeal, then, subject to the Representative's instructions, the Lawyers will defend the Appeal in the name of the Representative.
- 5.4 In the event that JK funds an Appeal of any Proceeding under this clause 5, and subsequently a Resolution Sum is received in respect of the Proceeding, then the calculation of JK's entitlement to an Assignment of an amount of the Resolution Sum under sub-clause 11.1(b) shall be varied as follows:
- (a) where JK's entitlement is calculated as a percentage of the Resolution Sum, then the percentage amount that JK otherwise would be entitled to under that sub-clause will be increased by 5% (for example, an entitlement to 30% of the Resolution Sum would be increased to 35% of the Resolution Sum), and





- (b) where JK's entitlement is calculated as a multiple of Project Costs, then the amount that JK otherwise would be entitled to under that sub-clause will be increased by 0.5 (for example, an entitlement to 2.5 times the total of the Project Costs would be increased to 3 times the total of the Project Costs)

The calculation of JK's entitlement under this sub-clause 5.4 otherwise shall be determined in accordance with sub-clause 11.1(b).

**6. Obligations of Claimant**

**6.1 The Claimant must:**

- (a) provide full and honest instructions to the Lawyers, including, without limitation, full and accurate instructions in respect of the information required to be supplied in the Registration & Acceptance of Terms Form;
- (b) do anything reasonably requested by the Lawyers promptly in such manner as to avoid unnecessary cost and delay;
- (c) inform the Lawyers and JK of any change in contact details or any information, circumstance or change in circumstances likely to affect any issue in any of the Proceedings;
- (d) follow all reasonable legal advice given by the Lawyers and/or counsel retained by the Lawyers in relation to the Proceedings; and
- (e) if requested by the Lawyers, provide a written statement in relation to the Claims, give evidence and where appropriate procure its officers, servants and agents to do so.

**6.2 The Claimant agrees to keep and preserve any documents relating to the Respondents, the Proceedings and/or the claims that the Claimant has in his, her or its possession, custody or control, and the Claimant:**

- (a) will provide to the Lawyers all information and documents relevant to the Proceedings and the claims if and when so requested;
- (b) authorises the Lawyers, without waiving privilege, to provide the information and documents referred to above to JK; and
- (c) if ordered to do so by a Court in Proceedings relevant to its Claims, authorises the Lawyers to provide the information and documents to the Respondents and any third party the subject of an order of the Court.

**6.3 The Claimant authorises the Lawyers to provide the share holdings and transaction data information contained in the Detail of Qualified Share Holdings to the Respondents and/or any third party for the purposes of the Proceedings and/or Claims, including without limitation pursuant to any Alternative Dispute Resolution Process, subject to the Lawyers procuring the agreement of the Respondents and/or any third party, as applicable, to hold that information confidentially and not to use the information for any purposes other than purposes of the Proceedings.**

**6.4 The Claimant agrees that all information, communication or documents provided to it at any time by the Lawyers, JK or their respective officers, servants or agents in relation to the Claims:**



- (a) is or may be, and will be treated as, confidential information within the meaning of equity, and attracts privilege within the meaning of Part 3.10 of the *Evidence Act 1995* (Cth); and
- (b) may be subject to joint interest privilege that the Claimant is not at liberty to waive.

6.5 The Claimant:

- (a) will immediately notify JK if the Claimant is requested or required to disclose any information relating to the negotiation, terms or performance of this LFA and if so requested by JK will take such steps as may reasonably be available to prevent disclosure of such parts of the information as JK may nominate;
- (b) will not disclose to any person, save for its legal and financial advisors for the purpose of obtaining confidential legal or financial advice, or JK any information:
  - (i) to which sub-clause 6.4 applies;
  - (ii) to which Privilege or obligations of confidence attach; or
  - (iii) which is or may be protected from disclosure by reason that disclosure would or may provide the Respondents with a strategic or tactical advantage in any Proceeding;

save in accordance with advice from the Lawyers for the purposes of the prosecution of those Proceedings or the prior written consent of JK (if the information was provided by it), or the Lawyers (if the information was provided by them).

6.6 The obligations in sub-clause 6.5 are continuing obligations.

6.7 The Claimant will not during the period of this LFA:

- (a) have any communication with the Respondents, its officers, servants or agents relating to the Claims or any compromise of the Claims other than through the Lawyers or upon their reasonable advice;
- (b) disclose to the Respondents any information of a kind referred to in sub clause 6.4;
- (c) terminate the Claimant's instructions to the Lawyers or instruct other lawyers unless this LFA is terminated in accordance with clause 16.

6.8 The Claimant hereby authorises the Lawyers to make any application in those Proceedings which are taken for the benefit of the Claimant for an order permitting officers, servants or agents of JK to obtain copies of documents obtained in those Proceedings by subpoena, discovery, notice to produce, call or other process upon such terms and conditions as the Court may deem appropriate. Without limiting anything else in this LFA the costs of and incidental to such application and the costs of inspecting, copying and reviewing any documents permitted to be provided to JK under this clause shall form part of the costs for which JK is liable to pay under this LFA.

6.9 For the duration of this LFA the Claimant irrevocably instructs the Lawyers to:

- (a) comply with all orders of the Court and all statutory provisions, regulations, rules and directions which apply to the Claimant in relation to the Claims and the Proceedings;
- (b) keep JK fully informed of the progress of any Proceedings relevant to the Claims of the Claimant;



- (c) immediately inform JK of all Settlement offers or offers to engage in any Alternative Dispute Resolution Process received from the Respondent and allow JK the opportunity to attend any Alternative Dispute Resolution Process agreed with any Respondent
- (d) on behalf of the Claimant, take any step necessary to give full effect to and enforce any Settlement reached in accordance with the terms of the LFA and if approved by the Court (if applicable),

and this sub-clause is evidence of those instructions.

#### 7. Confidentiality and Provision of Documents

- 7.1 Unless specifically prohibited by the terms of a Court order or another professional obligation, the Lawyers will provide to JK on request a copy of any document relevant to any Proceedings.
- 7.2 In providing to JK any documents or information about the Claims and the Proceedings, the Claimant does not intend to waive any Privilege that may attach to such documents or information.
- 7.3 JK and the Claimant agree that all information, communications and documents provided to it or that is generated by JK in the course of the Project or that is provided to it by the Lawyers or any counsel instructed by the Lawyers, is provided, acquired or generated in circumstances where the Claimant is contemplating, participating in or conducting litigation against one or more of the Respondents.
- 7.4 JK and the Claimant acknowledge that all information referred to in sub-clause 7.1 is, or may be, and will be treated as, confidential information within the meaning of equity, and attracts privilege within the meaning of Part 3.10 of the *Evidence Act 1995 (Cth)*; unless already in the public domain. JK agrees to preserve that confidentiality and privilege unless disclosure is authorised, agreed or contemplated by this LFA, or is otherwise required by law.
- 7.5 Where any information is provided to JK, JK shall:
  - (a) adopt proper and effective procedures for maintaining the confidentiality and safe custody of the information;
  - (b) ensure that access to the information is only provided to JK staff who are engaged in the functions for which the information was provided to JK,
  - (c) only use the information for purposes for which the information was provided; and
  - (d) not disclose the information contained therein to any person other than the Lawyers or counsel retained in any Proceedings.

#### 8. Disclosure of Information

- 8.1 The Claimant warrants that, to the best of the Claimant's knowledge, at the date of this LFA there is no information in the custody, possession or control of the Claimant which has been requested and is materially relevant to the Claims or the outcome of the Proceedings or the potential for any judgment sum to be recovered in respect of the Claims, which has not been disclosed to JK.
- 8.2 If, after the date of this LFA, JK requests any further information or the Claimant becomes aware of any information which has or may have a material impact on the Claims, the

{00137199.doc-v}



Proceedings or the potential for any judgment sum to be recovered, the Claimant will immediately inform JK of that information.

**9. Funding and Project Costs**

9.1 JK will fund the Project Costs of the Claimant and other Funded Persons on the terms of this LFA and the Terms of Engagement, subject to the following conditions:

- (a) the Claimant meeting its obligations under this LFA;
- (b) JK's rights of termination of this LFA and Other Funding Agreements under sub-clause 9.3 and clause 15;
- (c) JK is not required to fund any amount of Claims Registration Costs incurred by the Lawyers that is in excess of the Claims Registration Funding Limit. Though it has no obligation to do so, in its sole discretion JK may elect to continue to fund the Lawyers' Claims Registration Costs beyond the Claims Registration Funding Limit, and
- (d) JK is not required to fund any amount of the aggregate Legal Costs and Disbursements of the Lawyers that is in excess of the Funding Limit. Though it has no obligation to do so, in its sole discretion JK may elect to continue to fund the Lawyers' Legal Costs and Disbursements beyond the Funding Limit.

9.2 For the avoidance of doubt, any Adverse Costs Order and Security for Costs amounts paid by JK are not included in the calculation of Legal Costs and Disbursements for the purpose of determining whether the Funding Limit has been exceeded. JK's obligations under sub-clauses 9.5 and 9.6 will continue to operate notwithstanding the Funding Limit being exceeded (if applicable).

9.3 Upon completion of the Preliminary Funding Period, JK will:

- (a) determine, in its sole discretion, whether it will provide funding for any Class Action against the Respondent and any other party; and
- (b) promptly issue a Funding Confirmation Notice to all Funded Persons confirming its decision to fund the commencement of a Class Action against the Respondent and/or any other party; or
- (c) promptly issue a Funding Termination Notice to all Funded Persons confirming its decision *not* to fund the commencement of a Class Action against the Respondent and/or any other party.

9.4 If, pursuant to sub-clause 9.3:

- (a) JK issues a Funding Confirmation Notice, then the Funding Confirmation Notice will confirm that the Preliminary Funding Period has ended for the purposes of sub-clause 9.1(b), sub-clause 9.3, sub-clause 11.1 and Terms 6 and 7 of the Terms of Engagement; or
- (b) JK issues a Funding Termination Notice, then the Funding Termination Notice will confirm the termination of this LFA and Other Funding Agreements pursuant to clause 15.1, and the accrued rights and obligations of JK and Funded Persons will be determined in accordance with sub-clauses 15.6 and 15.7.

9.5 JK will pay any Adverse Costs Order, and will take any steps necessary to confirm this obligation with the Court and the Respondents. If there is any Resolution Sum or other

{00137199 doc-v}



monies from a Proceeding in the Trust Account at the time of the Adverse Costs Order being made then these monies will first be employed to pay the Adverse Costs Order in that Proceeding and JK will pay any balance outstanding after such payment. The Lawyers will pay out those monies from the Trust Account at the request of JK.

- 9.6 JK will provide any Security for Costs in any Proceeding to the extent required by an order of the Court in the form required by such order, or as agreed with the Respondents.
- 9.7 JK' obligations in sub-clause 9.1 to sub-clause 9.6 do not arise before the expiry of the 14 day period referred to in sub-clause 19.1.
- 9.8 If the Respondents make any payment by way of costs during the course of any Proceedings then such payment will be made into the Trust Account on trust for JK and may be utilised by JK in paying or reimbursing Project Costs in that Proceeding and by the Lawyers in paying or reimbursing the Remaining Costs. The Lawyers will make payment of such monies in accordance with this LFA as directed by JK from time to time.

#### 10. Receipt of Resolution Sum

- 10.1 The Claimant and JK agree that the Lawyers are authorised to:
- (a) receive any Resolution Sum;
  - (b) immediately pay any Resolution Sum into the Trust Account kept for that purpose;
  - (c) maintain separate records for each Resolution Sum arising from the Proceedings; and
  - (d) forthwith pay out of the Trust Account all payments referred to in sub-clauses 11.4(a) to 11.4(d) (inclusive) upon cleared funds becoming available.
- 10.2 The Claimant consents to:
- (a) any Resolution Sum comprising money being combined in the Trust Account with other resolution sums comprising money under Other Funding Agreements; and
  - (b) the appointment of the Lawyers as Administrators of any scheme for the distribution of any Resolution Sum (with fees to be charged on the same basis as fees for Legal Work).
- 10.3 The Lawyers will hold that part of the Resolution Sum assigned and disposed of or otherwise due to JK under this LFA on trust for JK.
- 10.4 Subject to the instructions of both the Representative and JK, the Lawyers are authorised to make arrangements for an alternative method for distribution of the Resolution Sum, as long as that process requires the deposit of that part of the Resolution Sum assigned and disposed of or otherwise due to JK under this LFA into the Trust Account.

#### 11. Distribution of Resolution Sum

- 11.1 Immediately upon Resolution, JK is entitled, as assignee under the Assignments, to be paid the following amounts from any Resolution Sum:
- (a) an amount (including any applicable GST) equal to the Claimant's Share of the Project Costs incurred by JK in the Proceedings and/or Settlement to which the Resolution Sum relates; and



- (b) an amount, as consideration for the financing of the Claims and Proceedings, being equal to the Claimant's Share of a percentage portion of the Resolution Sum, determined as follows:

Date of Resolution	Calculation of Amount
(i) Within 12 months of JK issuing a Funding Confirmation Notice to Funded Persons	25% of the Resolution Sum, or an amount no less than 2 times the total of the Project Costs (including any applicable GST) incurred and paid by JK in the Proceedings and/or Settlement to which the Resolution Sum relates, whichever is greater.
(ii) Between 12 months and 18 months after JK issues a Funding Confirmation Notice to Funded Persons	30% of the gross Resolution Sum, or an amount 2.5 times the total of the Project Costs (including any applicable GST) incurred and paid by JK in the Proceedings and/or Settlement to which the Resolution Sum relates, whichever is greater.
(iii) More than 18 months after JK issues a Funding Confirmation Notice to Funded Persons	35% of the gross Resolution Sum, or an amount 3 times the total of the Project Costs (including any applicable GST) incurred and paid by JK in the Proceedings and/or Settlement to which the Resolution Sum relates, whichever is greater.

For the avoidance of doubt, for the purposes of this sub-clause, if the Claimant becomes a Funded Person *after* JK issues a Funding Confirmation Notice to Other Funded Persons, then the Date of Resolution will be measured from the date that the Funding Confirmation Notice was issued to Other Funded Persons.

- 11.2 The Claimant hereby assigns and disposes to JK, as consideration for the financing of the Claims and Proceedings, that part of any Resolution Sum equal to:
- (a) the amount referred to in sub-clause 11.1(a); and
  - (b) the amount referred to in sub-clause 11.1(b) (including any variation to that amount pursuant to sub-clause 5.4), but where that amount is greater than the balance of the Resolution Sum after the assignments referred to in sub-clause 11.2(a) and the payments referred to in sub-clause 11.3, as applicable, then the assignment under this sub-clause 11.2(b) will be limited to that balance.
- 11.3 Upon Resolution:
- (a) the Lawyers are entitled to be paid from the Resolution Sum the Remaining Costs that have been incurred under this LFA and in accordance with the Terms of Engagement, in respect of the performance of Legal Work to date; and
  - (b) any Administrator is entitled to be paid from the Resolution Sum any Administration Expenses.
- 11.4 Subject to any Court order, immediately upon receipt of any Resolution Sum, the Claimant authorises the Lawyers to pay from the Resolution Sum:
- (a) first, to JK, any amounts referred to in sub-clause 11.1(a);
  - (b) second, to JK, any amounts referred to in sub-clause 11.1(b) (including any variations to those amounts pursuant to sub-clause 5.4);
  - (c) third, to the Lawyers, any amounts referred to in sub-clause 11.3(a);

(00137199 doc-v)



- (d) fourth, to any Administrator, any amounts referred to in sub-clause 11.3(b); and
  - (e) fifth, the balance to the Claimant and Other Funded Persons (whose Other Claims are the subject of the Resolution Sum) on a pro rata basis by reference to the amount of the Claim and the Other Claims the subject of the Resolution Sum, such amount to be determined in each case by the Lawyers.
- 11.5 The Claimant and JK agree that JK's total entitlement under the assignments made pursuant to sub-clause 11.2 cannot exceed the total amount of the Resolution Sum.
- 11.6 If, in spite of sub-clause 9.5, but subject to sub-clause 10.4, the Claimant directly or indirectly receives all or any part of the Resolution Sum, the Claimant will pay it over to the Lawyers to be paid into the Trust Account and dealt with on the terms of this LFA.
- 11.7 The obligation in sub-clause 11.6 is a continuing obligation and survives any Termination of this LFA save for a Termination under sub-clause 19.1.
- 11.8 JK may assign, transfer and otherwise grant participations or sub-participations in all or any part of the benefit of this LFA, including its interest in the Resolution Sum and the assignments under sub-clause 11.2.
- 12. No Encumbrance**
- 12.1 The Claimant will not cause, permit or assert any charge, lien or other encumbrance or right over or otherwise attaching to the Resolution Sum after the date of this LFA, except with the prior written consent of JK, which consent may be withheld by JK at its discretion.
- 13. Dispute Resolution**
- 13.1 The Claimant acknowledges that:
- (a) the Proceedings are intended to be brought on behalf of Other Funded Persons as well as the Claimant;
  - (b) the majority of decisions made regarding the Claims and/or Proceedings will be made on behalf of all Funded Persons, and it is reasonable for JK to provide day to day instructions to the Lawyers on all matters concerning the Claims and/or Proceedings subject to the rights of the Representative and/or the Claimant under this LFA;
  - (c) in order to resolve the Claims and the Other Claims in a timely and cost effective manner, it may be necessary to compromise the Claims pursuant to a Settlement;
  - (d) typically, time is of the essence in negotiating and securing any proposed Settlement with any Respondents; and
  - (e) having regard to the above matters, the dispute resolution processes set out under this clause 13 are reasonable and fair.
- 13.2 The Claimant and JK agree that
- (a) all disputes regarding Settlement Decisions and Settlement will be dealt with under sub-clause 13.3 of this LFA;



- (b) all disputes concerning the Claims and/or Proceedings other than in respect of Settlement Decisions and Settlement or Major Decisions will be dealt with in accordance with sub-clause 13.4 of this LFA.
  - (c) all disputes regarding Major Decisions other than Settlement Decisions and Settlement will be dealt with under sub-clauses 13.5 to 13.11 (inclusive) of this LFA, and
  - (d) unless they have exhausted the dispute resolution processes outlined in this clause 13, no party may institute court or arbitration proceedings in respect of any dispute arising from this document, or in respect of the requirements of this LFA (including any dispute as to subject matter, breach, termination or validity of the document or as to any claim in tort, equity or pursuant to any statute).
- 13.3 The Claimant and JK agree that all disputes regarding Settlement Decisions and Settlement will be referred to counsel for advice on whether, in counsel's opinion, Settlement of the Proceeding or Claims on the terms and in the circumstances identified by the Representative, JK or both, is reasonable in the circumstances. Under this sub-clause:
- (a) the Claimant and/or Representative (as applicable) must provide notice of any objection to the proposed Settlement within 5 business days of receiving the advice from the Lawyers referred to in sub-clause 4.2;
  - (b) upon receiving the objection referred to in sub-clause 13.3(a), the Lawyers shall brief counsel within 5 business days of receiving the objection;
  - (c) for the purposes of this sub-clause 13.3, in the first instance counsel will be the most senior counsel of those retained by the Lawyers in respect of the Proceeding and/or Claims concerned. If no counsel has been retained, then independent counsel will be appointed and suitably briefed by the Lawyers;
  - (d) counsel may proceed as he or she sees fit to inform himself or herself before forming and delivering his or her opinion pursuant to this sub-clause 13.3, and shall have regard to the matters set out in Schedule 2. Counsel may give his or her opinion orally or in writing;
  - (e) if counsel's opinion is that the Settlement is reasonable then the Claimant agrees that the Lawyers will be instructed to do all that is necessary to settle the Proceeding, provided that any necessary approvals from the Court to the Settlement are sought and obtained;
  - (f) the costs of counsel in providing an opinion under this sub-clause 13.3 will be paid by JK and will form part of the Project Costs;
  - (g) the Claimant agrees that, if it does not provide notice of objection to the proposed Settlement within the time specified in sub-clause 13.3(a), the Lawyers and the Representative shall take all action necessary to implement the Settlement; and
  - (h) nothing set out in sub-clauses 13.3(a) to 13.3(g) (inclusive) above affects the Claimant's right to lodge an objection to the proposed Settlement in accordance with the Court approval process.
- 13.4 Where a dispute arises regarding the Claims and/or Proceedings other than in respect of Settlement Decisions and Settlement or Major Decisions, the dispute will be referred to counsel, who will issue a binding Determination of the dispute. Under this clause.





- (a) the Lawyers shall brief counsel within 5 business days of receiving notice of the dispute from any party;
  - (b) in the first instance counsel will be the most senior counsel of those retained by the Lawyers in respect of the Proceeding and/or Claims concerned. If no counsel has been retained, then independent counsel will be appointed and suitably briefed by the Lawyers;
  - (c) the Determination will be final and binding; and
  - (d) the parties to the dispute will pay, in equal shares, the costs of the Determination.
- 13.5 Where a dispute arises regarding a Major Decision other than a Settlement Decision and Settlement, a party will give the other notice of the existence of that dispute. Within 7 days of the receipt of that notice, each party, either personally or through their nominated representative, will meet and discuss the dispute with a view to agreeing a resolution to it.
- 13.6 So long as the dispute does not give rise to a conflict between the interests of the Claimant and the interests of Other Funded Persons, the Lawyers may act as representatives for the Claimant. Under no circumstances will the Lawyers act as representatives for JK.
- 13.7 If, within 14 days of receipt of the notice of a dispute issued under sub-clause 13.5, that dispute has not been resolved, either party may refer that dispute to mediation. The mediation will be conducted by a mediator agreed by both parties or, failing agreement, a person nominated by the President of the Law Institute of Victoria
- 13.8 The mediation will be conducted in a manner and at a place specified by the person appointed as mediator, and must be completed within 14 days of the appointment of the mediator, or one month from the date on which the dispute was referred to mediation (whichever is later). The costs of the mediator will be shared by the parties equally.
- 13.9 If the dispute is not resolved within the time specified in sub-clause 13.0, then, within 40 days of the date on which the dispute was referred to mediation, either party to the dispute may issue a notice referring the dispute to an independent third party for Determination. The independent third party will be a person agreed between the Claimant and JK, or failing agreement, a person nominated by the President of the Law Society of New South Wales.
- 13.10 The Claimant and JK agree that, if a Determination of a dispute raised by the Claimant is issued under sub-clause 13.9, then:
- (a) the Determination will be final and binding; and
  - (b) the parties to the dispute will pay, in equal shares, the costs of the Determination.
- 13.11 In the case of a dispute raised by the Claimant under sub-clause 13.5, if the Claimant fails to comply with sub-clauses 13.5 to 13.10 inclusive, then, to the extent permitted by law:
- (a) JK will not be liable upon any claim by the Claimant; and
  - (b) the Claimant will be absolutely barred from making any claim against JK, arising out of or in any way in connection with the event, circumstance, act, omission, fact, matter or thing (as the case may be) in respect of which the dispute arose.
- 13.12 The Parties agree to use their best endeavours to resolve any dispute under this clause 13.



13.13 Unless and until this LFA is validly terminated under this clause 13, each party shall continue to perform its obligations under this LFA notwithstanding the existence of the dispute and without prejudice to any adjustment to each party's rights, duties and liabilities as may be required on the resolution of the dispute.

13.14 Sub-clauses 13.1 to 13.13 inclusive survive the termination of this LFA.

#### 14. Duration of Agreement

14.1 Subject to clauses 15, 16 and 19 below, this LFA commences on the Date of Commencement and continues in operation until:

- (a) all Proceedings, and any appeals funded by JK, have concluded; and
- (b) JK has complied with all of its obligations arising pursuant to this LFA or Other Funding Agreements, and the Resolution Sums (if any) have been disbursed in accordance with the said agreements.

#### 15. Termination by JK

15.1 JK is entitled to terminate its obligations under this LFA, other than obligations accrued, by issuing a Funding Termination Notice giving 7 days written notice to the Claimant that the LFA and JK's obligations (other than obligations accrued) are terminated.

15.2 If JK's appointment of the Lawyers to provide Legal Work to the Claimant is terminated, JK will promptly issue a Lawyers Termination Notice to the Claimant, and inform the Claimant whether JK wishes to appoint other solicitors in place of the Lawyers.

15.3 If sub-clause 15.2 applies and JK informs the Claimant that JK wishes to appoint other solicitors in place of the Lawyers, those solicitors will become the Lawyers for the purposes of this LFA in place of the existing Lawyers. If this occurs:

- (a) it does not result in termination of this LFA, however the Claimant will have the right to terminate the LFA pursuant to sub-clause 16.1(b); and
- (b) it will not result in the replacement solicitors assuming any obligations of the Lawyers accrued to the date the appointment of the Lawyers is terminated.

15.4 If JK appoints other solicitors in place of the Lawyers, and the Claimant does not exercise its rights of termination of the LFA under sub-clause 16.1(b), then:

- (a) the Claimant's Legal Costs Agreement with the existing Lawyers will terminate under the terms of that Legal Costs Agreement; and
- (b) the Claimant will enter into a new Legal Costs Agreement, on substantially the same terms, with the new Lawyers.

15.5 If sub-clause 15.2 applies and JK informs the Claimant that JK does not wish to appoint other solicitors in place of the Lawyers:

- (a) this LFA will terminate as at the date of such notice;
- (b) JK remains liable for the obligations referred to in sub-clause 15.7; and
- (c) it will not result in the replacement solicitors assuming any obligations of the Lawyers accrued to the date the appointment of the Lawyers is terminated.



- 15.6 If JK terminates its obligations pursuant to sub-clauses 15.1 or 15.5, the disposition and Assignments referred to in sub-clause 11.2(b) will be terminated and JK will not be entitled to any amount pursuant to sub-clause 11.1(b), but will continue to be entitled to receive amounts pursuant to sub-clause 11.1(a).
- 15.7 All obligations of JK under this LFA cease on the date JK's termination becomes effective, save for obligations accrued to that date, and JK shall account to the Claimant for any money held by JK on behalf of the Claimant which is payable to the Claimant in respect of accrued obligations pursuant to this LFA.
- 15.8 The accrued obligations of JK referred to in sub-clause 15.7 comprise:
- (a) payment of any outstanding Project Costs incurred up to the date the notice of termination takes effect and
  - (b) payment of any Adverse Costs Order in respect of costs which arise in, or are attributed to, the period beginning on the Date of Commencement and ending on the date JK's termination becomes effective.
- 16. Termination by Claimant**
- 16.1 The Claimant may terminate this LFA forthwith by written notice to JK:
- (a) if JK commits a serious breach of this LFA and does not remedy the breach within 30 days after receiving written notice from the Claimant; or
  - (b) JK issues a Lawyers Termination Notice to the Claimant and JK appoints other solicitors in place of the Lawyers pursuant to clause 15.3.
- 16.2 If this LFA is terminated by the Claimant pursuant to sub-clause 16.1(a) above then:
- (a) JK remains liable for the obligations referred to in sub-clause 15.8 above; and,
  - (b) the disposition and Assignments referred to in sub-clause 11.2(b) will be terminated and JK will not be entitled to any amount pursuant to sub-clause 11.1(b), but will continue to be entitled to receive amounts pursuant to sub-clause 11.1(a).
- 16.3 If this LFA is terminated by the Claimant pursuant to sub-clause 16.1(b) above, then:
- (a) JK remains liable for the obligations referred to in sub-clause 15.8 above; and
  - (b) JK will continue to be entitled to receive amounts pursuant to sub-clause 11.1(a) and 11.1(b)(i), irrespective of the time between JK issuing a Funding Confirmation Notice to Funded Persons and the date of Resolution.
- 16.4 If the Proceedings are conducted as a representative proceeding or class action and the Claimant provides instructions or exercises a right to exclude itself from that action, then upon exercise of those instructions or that right, this LFA will terminate. If there is a resolution of the claims at the time of that Termination or at any later time, sub-clause 9.5, clause 10 and clause 11 will continue to apply and the Claimant will be liable to account to JK, from the relevant Resolution Sum, the amounts set out in sub-clause 11.1. The obligations in this clause are continuing obligations and survive any termination of this LFA.
- 16.5 The Claimant acknowledges that JK will have invested significant funds in respect of the Project, and it would therefore be inequitable for the Claimant to have a unilateral right to terminate this LFA at any time.



**17. Assignment**

17.1 Subject to the exception in sub-clause 17.2, neither this LFA nor any right or obligation hereunder can be assigned, in whole or part, by either party without the prior express written consent of the other. Such written consent shall not be unreasonably withheld and, no additional consideration shall be necessary.

17.2 Either party may, without the written consent of the other, assign this LFA, and the entirety of its rights and obligations hereunder, to a legal successor following, or in connection with:

- (a) the transfer or sale of its business, or such part of that business that is related to this LFA, to that legal successor; or
- (b) in the event of its merger, consolidation, change in control or similar corporate transaction, to that legal successor.

17.3 In relation to sub-clause 17.2:

- (a) the assignor shall provide written notice of the proposed assignment to the other party as soon as practicable;
- (b) the other party shall have 7 days in which to issue a notice of dispute to the assignor under sub-clause 13.5;
- (c) the assignment shall become effective following that 7 day period or, alternatively, the completion of any dispute resolution process initiated pursuant to clause 13; and
- (d) the assignee shall assume all assigned obligations of the assignor under this LFA. Any purported assignment in violation of this clause shall be void and of no effect.

**18. General**

18.1 The written terms of this LFA constitute the entire agreement between the parties.

18.2 Neither the Claimant nor JK intend to be partners or fiduciaries with or to each other. Nothing in this LFA shall constitute the Claimant and JK as partners or fiduciaries.

18.3 There shall be no variation or amendment to the terms of this LFA except in writing signed by each of the Claimant and JK.

18.4 A facsimile transmission of this LFA signed by any party to it will be treated as an original signed by that party.

18.5 The Claimant and JK will:

- (a) act in good faith toward each other and be just and faithful in their dealings with each other in all matters arising out of or connected with this LFA,
- (b) save as provided in this LFA, not do or permit to be done anything likely to deprive any party of the benefit for which the party entered this LFA.

18.6 If any provision of this LFA, or the application thereof to any person or circumstances, shall be or become invalid or unenforceable, the remaining provisions shall not be affected and each provision shall be valid and enforceable to the full extent permitted by law

18.7 If this LFA or any part thereof is annulled, voided or held unenforceable the Claimant will forthwith do all things necessary, including without limitation executing any further or other



agreement or instrument, to ensure that JK receives any remuneration, entitlement or other benefit to which this LFA refers or is contemplated by this LFA. The Claimant irrevocably agrees that production of a copy of this LFA shall be conclusive evidence of the Claimant's undertaking as set out in this clause.

- 18.8 The Claimant and JK will promptly execute all documents and do all things that either of them from time to time reasonably requires of the other to effect, perfect or complete the provisions of this LFA and any transaction contemplated by it.
- 18.9 The Claimant and JK will keep the contents of this LFA confidential in so far as it concerns the terms of the relationship between the Claimant and JK, except where disclosure to a Court is required or disclosure is, made by JK to the Respondents or their agents.
- 18.10 The Claimant acknowledges and accepts that:
- (a) JK has entered into or will enter into Other Funding Agreements, the terms of which may differ from the terms of this LFA, and may fund other claims and proceedings against the Respondents which are unrelated to the Claims;
  - (b) it is possible that there may be members of a Proceeding who have not entered into an Other Funding Agreement with JK.
- 18.11 Termination of this LFA will not affect JK's right to do anything authorised or contemplated by any Other Funding Agreement.
- 18.12 The singular includes the plural and vice versa.

#### 19. Cooling off Period

- 19.1 The Claimant, may, by written notice given to JK within 14 days after the Date of Commencement, withdraw from this LFA. Such Withdrawal (although terminating this LFA) will not be treated as a Termination. Time is of the essence.
- 19.2 If the Claimant withdraws in accordance with sub-clause 19.1, the Claimant shall have no continuing or further obligation to JK save for any obligations of confidence arising in respect of information received by the Claimant prior to the Withdrawal. Nothing in sub-clause 19.1 shall derogate from any obligations in relation to Privilege attaching to any information received by the Claimant prior to the Withdrawal.

#### 20. Governing Law

- 20.1 This LFA is to be construed in accordance with and governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of New South Wales.

#### 21. Notices

- 21.1 All notices given under this LFA shall be in writing and may be served personally, by post, facsimile or by email. The parties agree that the most efficient and least costly way for them to communicate with each other is by email and that, wherever possible, written communications between them will be by email and not by posted or faxed paper documents. The Claimant accordingly consents to receiving communications (including copies of documents) from JK by email.
- 21.2 The address for service of JK will be:

JustKapital Pty Ltd  
Suite 6, 245 Churchill Avenue, Subiaco WA 6008

{00137199.doc-v}

WDR LITIGATION FUNDING AGREEMENT - 2015 - Page 24



21.3 Unless JK agrees otherwise with the Claimant:

- (a) the address for service of the Claimant will be the email address of the Claimant noted on the Registration and Acceptance of Terms Form included in this LFA, or otherwise as notified to JK and the Lawyers in writing if that email address changes; and
- (b) in circumstances where JK and the Lawyers are not so notified of a change in email address, service of any notice by JK (including any Funding Confirmation Notice, Funding Termination Notice or Lawyers Termination Notice) will be deemed effective if the notice is sent by email transmission to the last known email address of the Claimant, as previously notified by the Claimant to JK and the Lawyers.

21.4 Notices shall be deemed to be received on the day after they are posted and the day they are transmitted by facsimile or email.

## 22. Acknowledgment

22.1 By signing this LFA, the Claimant acknowledges that:

- (a) JK recommended to the Claimant that the Claimant obtain independent legal advice prior to executing the I FA as to the I FA's meaning and effect; and
- (b) the Claimant has received and read JK' Disclosure Statement.

## 23. Definitions and Interpretation

23.1 In this LFA, unless the contrary intention appears:

**Administration Expenses** means the cost of the administration of any scheme for the distribution of any Resolution Sum, including fees charged by the Administrator and expenses paid by the Administrator including (but limited to) court fees, barristers' fees, external photocopying fees, IT project management fees, data processing fees, process service fees, expert report fees, external costs consultants fees, interstate agents' fees, travel and accommodation fees.

**Administrator** means the person or entity appointed to administrate a scheme for the distribution of any Resolution Sum.

**Adverse Costs Order** means any costs order made in favour of a Respondent against the Representative or Claimant, in any of the Proceedings in respect of costs incurred during the term of this I FA

**Alternative Dispute Resolution Process** means any form of negotiation, discussions, mediation, conciliation, expert determination or other form of consensual dispute resolution process which seeks to Settle the Claims and/or the Proceedings, and includes, without limitation, any such process instituted prior to the commencement of proceedings.

**Appeal** means an appeal under clause 5.

**Claimant** means the company or individual whose details appear on page 2 of this LFA and the successors or assigns of that company or individual.

**Claimant's Share** means the share borne by the Claimant calculated by reference to the proportion that the amount of the Claims the subject of the Proceedings or the Settlement



concerned bears to the total amount of the claims of all Funded Persons the subject of the Proceedings or Settlement concerned. Where there are no other claims so subject, then the Claimant's Share is 100%. The amount of the Claims and claims of all Funded Persons in those Proceedings shall be as determined by the Lawyers.

**Claims** means the claims the Claimant and/or other Funded Persons have or may have against one or more of the Respondents for relief in relation to or arising out of the acquisition by the Applicant of an interest in any WorleyParsons Limited Securities.

**Claims Registration Costs** means fees and disbursements charged by the Lawyers under the Legal Costs Agreement and Terms of Engagement during the Preliminary Funding Period which relate solely to the facilitation of the registration of the Claims of the Claimant and/or the Other Claims of Other Funded Persons.

**Claims Registration Funding Limit** refers to the funding limit set forth in Term 10(a)(i) of the Terms of Engagement.

**Class Action** means proceedings to be commenced under Part IVA of the *Federal Court of Australia Act 1976* (Cth) against the Respondents.

**Conflicts Management Policy** means JK's policy, as amended from time to time, for managing conflicts.

**Costs Order** means an order made by a Court requiring one or more parties to any of the Proceedings and/or JK to pay the costs incurred by another party or other parties to those Proceedings.

**Court** means the court in which any of the Proceedings are conducted.

**Date of Commencement** means the date on which this LFA, signed by the Claimant, is received by JK.

**Detail of Qualified Share Holdings** means pages 5 to 7 of this LFA.

**Determination** means a determination issued by counsel or an independent third party (as applicable) of a dispute between the Claimant and JK under sub-clauses 13.4 or 13.8 of this LFA.

**External Controller** means:

- (a) in relation to an individual, the Official Trustee in Bankruptcy, the Official Receiver in Bankruptcy, a trustee in bankruptcy and a controlling trustee; and
- (b) in relation to a body corporate, an administrator (including a voluntary administrator and an administrator under a deed of company arrangement, scheme of arrangement, compromise or other arrangement), a provisional liquidator and a liquidator.

**Funded Person** means any person who has entered into this LFA or an Other Funding Agreement, and whose LFA or Other Funding Agreement has not been terminated pursuant to this LFA. Except where the context otherwise indicates, Funded Persons include the Claimant.

**Funding Confirmation Notice** means a Notice issued by JK pursuant to sub-clause 9.3(b) confirming that JK will continue to fund the Project beyond the Preliminary Funding Period.

**Funding Limit** refers to the funding limit set forth in Term 10(a)(ii) of the Terms of Engagement.



**Funding Termination Notice** means a Notice issued by JK pursuant to sub-clause 9.3(c) or sub-clause 15.1 confirming that the LFA is terminated.

**GST** has the same meaning as in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Independent Counsel** means a barrister with at least fifteen (15) years of experience in litigation similar to the litigation and who is not affiliated in any way with the Claimant, the Lawyers or JK.

**Judgment** means any judgment of a competent Court against one or more of the Respondents in respect of any Claim or Other Claim or part of any Claim or Other Claim.

**LFA** means this funding agreement.

**Lawyers** means ACA Lawyers or any other solicitors appointed in their place by agreement of JK and the Representative.

**Lawyers Termination Notice** means a Notice issued by JK pursuant to sub-clause 15.2 confirming that JK's appointment of the Lawyers to provide Legal Work to the Claimant is terminated.

**Legal Costs Agreement** means the agreement or agreements entered into between the Lawyers and the Claimant and Other Funded Persons for the Lawyers to act as lawyers to investigate and prosecute the Claims.

**Legal Costs and Disbursements** means fees and disbursements charged by the Lawyers under the Legal Costs Agreement and Terms of Engagement.

**Legal Work** means such advice, legal and administrative services which the Lawyers consider reasonably necessary to investigate and prosecute the Claims, as defined in the Legal Costs Agreement.

**Major Decisions** means decisions to be made regarding:

- (a) the commencement of any Proceeding;
- (b) the Settlement or discontinuance of any Proceeding;
- (c) any Appeal of any Proceeding;
- (d) the addition or removal of Respondents to or from any Proceeding;
- (e) the amendment by JK of the Terms of Engagement under sub-clause 2.4 of this LFA;
- (f) the termination of this LFA by the JK under clause 15 of this LFA;
- (g) the termination by JK of the Lawyers' appointment to provide Legal Work to the Claimant under sub-clause 15.2 of this LFA;
- (h) the appointment by JK of alternative Lawyers to provide Legal Work to the Claimant under sub-clause 15.3 of this LFA; or
- (i) whether any party to this LFA has materially breached any obligation under this LFA.

**Other Claims** means claims Other Funded Persons have or may have against one or more of the Respondents for loss and damage caused to those Other Funded Persons by the conduct of those one or more Respondents which claims are the same, similar, or related to the Claims.

**Other Funded Person** means any Funded Person other than the Claimant.





**Other Funding Agreement** means any agreement for the provision of funding by JK to a person other than the Claimant with the same, similar or related claims as the Claims.

**Privilege** means, unless the context otherwise requires, legal professional privilege and includes any joint privilege or common interest privilege.

**Preliminary Funding Period** means the period from the commencement of the Project Investigation until the date on which JK issues a Funding Confirmation Notice confirming that the aggregate value of the Claims and the Other Claims of Funded Persons is sufficient for JK to agree to fund the commencement of a Class Action against the Respondent.

**Proceedings** means any and all Class Actions to prosecute some or all of the Claims of the Claimant and/or some or all of the Other Claims of Other Funded Persons, and proceedings brought in contemplation of a Class Action, and includes, without limitation:

- (a) proceedings brought on a representative basis under Part IVA of the *Federal Court of Australia Act 1976* (Cth) against one or more of the Respondents;
- (b) proceedings brought as a 'test case' to establish findings which are of benefit to some or all of the Claims;
- (c) any Alternative Dispute Resolution Process;
- (d) proceedings brought in contemplation of Proceedings, including without limitation proceedings for preliminary discovery and/or applications for Court directions in respect of any matter relevant to the contemplated Proceedings;
- (e) any Appeal; and
- (f) if any Respondent (or any property, assets or liabilities of any Respondent) comes under the control of an External Controller, all relevant methods of pursuing some or all of the Claims in the external administration of that Respondent, including the lodgement of proofs of debt.

**Project** means the Project Investigation and the conduct of the Proceedings in order to achieve Resolution of the Claims and the Other Claims, with the aim of maximising Settlement or judgment proceeds, net of Project Costs, in respect of the Claims and the Other Claims as quickly as possible, having due regard to all risks, and, in particular, the risk of the Proceedings being unsuccessful.

**Project Costs** means those costs and expenses incurred at any time up to the conclusion of this LFA comprising:

- (a) the Legal Costs and Disbursements charged by the Lawyers for all Legal Work in accordance with this LFA, including costs incurred in the course of the Project Investigation;
- (b) the costs involved in the provision by JK of any security for costs;
- (c) any Adverse Costs Order paid by JK;
- (d) all of JK out of pocket costs and expenses paid or incurred in relation to the Project (including in relation to any consultants engaged by JK other than those already referred to in this definition); and
- (f) any GST payable on any Supply made by any entity as a result of the above costs or expense being incurred.

**Project Investigation** means:

- (a) the Lawyers' Legal Work performed in connection with the investigation of the Proceedings, the Claims and the Other Claims, and includes without limitation the Lawyers' investigation into whether Proceedings may be brought, their strengths and weaknesses and prospects of success; and
- (b) JK's investigation referred to in sub-clause 1.2 of this LFA.

**Registration & Acceptance of Terms Form** means pages 2 to 4 of this LFA.



**Regulations** means the *Corporations Amendment Regulation 2012 (No. 6)* (Cth) as amended from time to time.

**Remaining Costs** means the following amounts (including GST) which do not form part of the Project Costs, but which are recoverable by the Lawyers from any Resolution Sum arising out of any Proceeding to which the Remaining Costs relate, pursuant to sub-clauses 11.3 and 11.4:

- (a) the reasonable legal fees of the Lawyers incurred during the Preliminary Funding Period for the sole purpose of investigating, preparing for, prosecuting and resolving the Claims, the Other Claims and the Proceedings, that pursuant to Term 6(d) of the Terms of Engagement were not paid by JK;
- (b) 25% of the reasonable legal fees of the Lawyers incurred following the conclusion of the Preliminary Funding Period up to the conclusion of this LFA for the sole purpose of investigating, preparing for, prosecuting and resolving the Claims, the Other Claims and the Proceedings, that pursuant to Term 6(d) of the Terms of Engagement were not paid by JK;
- (c) without duplication of amount specified in (a) and (b) above, any Legal Costs and Disbursements incurred by the Lawyers which were not paid by JK pursuant to the Claims Registration Funding Limit and/or the Funding Limit, specified in Term 10 of the Terms of Engagement and
- (d) interest under Term 8 of the Terms of Engagement.

**Representative** means any Funded Person who is a representative party in a Proceeding

**Resolution** means when all or any part of the Resolution Sum is received and where the resolution sum is received in parts or where there is more than one Proceeding, a "Resolution" occurs each time a part is received or in respect of each Proceeding.

**Resolution Sum** means the amount or amounts of money or the value of benefits for which the Claims are Settled, or for which Judgment is given in favour of the Claimant in any Proceedings and includes any interest and costs recovered pursuant to a Costs Order or by agreement. There will be a separate Resolution Sum for each separate Proceeding. The Resolution Sum includes any ex gratia payments and any payments in respect of the Claims where any Respondent (or any property, assets or liabilities of any Respondent) is, or comes under, the control of an External Controller.

**Respondents** means WorleyParsons Limited (ACN 096 090 158) and any other person or entity which the Lawyers recommend be joined to any of the Proceedings and in respect of whom JK accepts, in its absolute discretion and in writing, Adverse Costs Order exposure.

**WorleyParsons Limited Securities** means ordinary shares issued by WorleyParsons Limited and listed on the Australian Securities Exchange.

**Security for Costs** means any amount paid or required to be paid in a Proceeding pursuant to sub-clause 9.6.

**Settlement** means any settlement, compromise, discontinuance or waiver, except where approval of the Court is required, in which case it means any settlement, compromise, discontinuance or waiver with the approval of the court and "Settle" or "Settles" shall be construed accordingly.

**Settlement Decision** means a decision to enter into a Settlement or a decision to not enter into a Settlement.

**Supply** has the same meaning as in the GST Act.

**Termination** means:

[00137199.doc-v]

WOR LITIGATION FUNDING AGREEMENT – 2015 – Page 29



- (a) a termination in accordance with clauses 15 or 16; and
- (b) any completion, failure, avoidance, rescission, annulment or other cessation of effect of this IFA

**Terms of Engagement** means the terms and conditions applicable to the engagement of the Lawyers by JK which are attached as Schedule 1 to this LFA and as amended.

**Trust Account** means the account kept by the Lawyers referred to in clauses 9, 10 and 11.

**Withdrawal** means a withdrawal under sub-clause 19.1.



## Schedule 1

### Terms of Engagement

This agreement is made the 25th day of November 2014.

**BETWEEN:** ACA LAWYERS PTY LIMITED of Suite 1, Level 14, 25 Eligh Street Sydney New South Wales 2030 ("the Lawyers")

**AND:** JUSTKAPITAL LITIGATION PTY LIMITED of Suite 6, 245 Churchill Avenue, Subiaco WA 6008 ("JK").

#### 1. INTERPRETATION

Unless otherwise defined herein or the context clearly requires otherwise:

- (a) terms defined in the LFA will have the meanings when used herein as so defined, and;
- (b) terms defined in the text of these Terms will have the meanings when used herein as so defined.

#### 2. APPOINTMENT OF THE LAWYERS

- (a) JK hereby appoints the Lawyers to represent and advise the Claimant with respect to the Claims and the prosecution of the Litigation and to provide project management and administrative services with respect thereto (collectively, **Lawyers Professional Fees**).
- (b) The Lawyers will:
  - (i) act consistently with the terms of the LFA; and
  - (ii) do all things which the LFA contemplates the Lawyers will do.
- (c) The Lawyers agree that if there is any inconsistency between these Terms and the terms of any Retainer (including the Legal Costs Agreement) between the Lawyers and the Claimant, these Terms prevail.

#### 3. COMMENCEMENT OF THE REPRESENTATION

The Lawyers will inform JK in writing in a timely fashion of:

- (a) the names of the individual lawyers and experts who will undertake Legal Work in connection with the Claims and the Project;
- (b) the hourly and daily rates of barristers retained or proposed to be retained; and
- (c) the Lawyers' estimate of Lawyers Professional Fees and Disbursements to the conclusion of the Project, including any material change in any earlier estimates.

#### 4. REPORTING

- (a) The Lawyers will keep JK fully informed of all matters concerning the Claims and the Project, including any mediation and settlement discussions. The Lawyers will



promptly provide to JK any document or information reasonably requested by JK. The Lawyers will ensure that the Claimant and JK are given all necessary information in order to facilitate informed instructions.

- (b) Without limiting Term 4(a), if, after the date of these Terms, the Lawyers become aware of any information which has or may have a material impact on the Claims, the Litigation, or the potential for any judgment sum to be recovered, the Lawyers will immediately inform JK of that information.

#### 5. COSTS, DISBURSEMENTS AND INTEREST

- (a) The Lawyers will charge Lawyers Professional Fees by reference to the time reasonably and properly spent at the hourly rates as outlined in Term 8. Detailed time records must be kept by the Lawyers to facilitate time details being provided in accordance with Term 6(e).
- (b) No fee will be charged by the Lawyers for any fee earners, other than those notified to JK pursuant to Term 3, without the prior consent of JK. JK will not be liable to pay the fees of any barristers or experts other than those notified to JK pursuant to Term 3 or those briefed with JK's consent. JK will not unreasonably refuse to provide its written consent.
- (c) The Lawyers are entitled to reimbursement from JK for Disbursements that are reasonably incurred by the Lawyers in the Project and including:
  - (i) external photocopying and scanning (at cost),
  - (ii) local, STD and ISD facsimiles at cost
  - (iii) travel and accommodation (where necessary), and
  - (iv) other reasonable expenditures supported by invoices.

#### 6. INVOICES

- (a) The Lawyers will render monthly invoices to JK with respect to Lawyers Professional Fees and Disbursements for the prior monthly period, accompanied by:
  - (i) the details contemplated by Term 6(e);
  - (ii) itemised invoices from barristers and experts (both also being allocated to each event as in Term 6(e)) and for any other significant disbursements.
- (b) The monthly invoices will outline, at the hourly rates notified to JK under Term 9, the Lawyers Professional Fees incurred by the Lawyers since the preceding invoice.
- (c) Following the issuance of the Funding Confirmation Notice, and provided that such invoice is provided to JK at the end of the relevant calendar month, within 14 days of receiving a monthly invoice for any Lawyers Professional Fees and Disbursements other than those Lawyers Professional Fees and Disbursements required to be invoiced under Term 7, JK will pay to the Lawyers a monthly retainer fee of \$70,000 including GST.
- (d) On every third month following the issuance of the Funding Confirmation Notice, ACA Lawyers will provide a quarterly reconciliation of actual Professional Fees and Disbursements incurred in the prior three months, as follows;
  - (i) calculating the amount of Professional Fees payable by JK in accordance with the Terms of engagement, being seventy five percent (75%) of the

{00137199.doc-v}

WOR LITIGATION FUNDING AGREEMENT – 2015 – Page 32



- Lawyers Professional Fees inclusive of any applicable GST on such seventy five percent (75%) as invoiced in the prior three months;
- (ii) adding the Disbursements invoiced in the prior three months; and
  - (iii) subtracting from this amount the three retainer fee payments of \$70,000 including GST, being \$210,000 plus GST
- (e) If the amount resulting from the calculation at 6(d) is greater than \$0 (i.e. the amount payable by JK exceeds the amount actually paid by JK during the prior three months) This amount will be paid by JK within one (1) month of receiving the quarterly reconciliation, in addition to the monthly retainer fee.
- (f) If the amount resulting from the calculation at 6(d) is less than \$0 (i.e. the amount payable by JK is less than the amount actually paid by JK during the prior three months), this amount will be deducted from the next monthly retainer fee paid by JK. If the amount to be deducted exceeds \$70,000, this amount will be deducted on a pro rata basis from the next two monthly retainer fees payable by JK.
- (g) The twenty five percent (25%) of the Lawyers Professional Fees inclusive of any applicable GST thereon which are not payable by JK shall constitute Remaining Costs.
- (h) The time details for fees of the Lawyers must include, for each time entry:
- (i) the date upon which the time was spent;
  - (ii) which solicitor or paralegal spent the time;
  - (iii) the time spent in six-minute units; and
  - (iv) a description of the Legal Work performed.
- (i) In the event JK disputes the reasonableness of any Lawyers Professional Fees or Disbursements charged by the Lawyers hereunder (whether or not payable or reimbursable by JK or included in Remaining Costs) and the Lawyers and JK are unable to resolve such dispute within 15 days after such dispute is first brought to the attention of the Lawyers, such dispute shall be referred to Independent Counsel for resolution, and the determination of such Independent Counsel shall be binding on the Lawyers and JK.

## 7. PRELIMINARY FUNDING PERIOD

- (a) Upon signing these Terms of Engagement, within 14 days of receiving an invoice for any Lawyers Professional Fees incurred by the Lawyers in the preliminary merit investigation of the class action and during the Preliminary Funding Period, JK will pay to the Lawyers \$150,000 including GST.
- (b) Upon signing these Terms of Engagement, within 14 days of receiving an invoice for any Disbursements incurred by the Lawyers during the Preliminary Funding Period, JK will pay to the Lawyers the amount of the Disbursements incurred to a cap of \$22,577.50.
- (c) The Lawyers Professional Fees incurred during the Preliminary Funding Period are capped at \$200,000 and Disbursements incurred during the Preliminary Funding Period are capped at \$36,000 for disbursements. Any professional fees and disbursements incurred in excess of the amounts referred to in (a) and (b) above, up to these caps, will be invoiced and paid in accordance with clause 6.
- (d) The balance of any Lawyers Professional Fees incurred during the Preliminary Funding Period shall constitute Remaining Costs.



**8. PAYMENT OF THE REMAINING COSTS**

- (a) The following costs are considered the Remaining Costs for the purposes of the LFA:
- (i) the reasonable legal fees of the Lawyers incurred during the Preliminary Funding Period for the sole purpose of investigating, preparing for, prosecuting and resolving the Claims, the Other Claims and the Proceedings, that pursuant to Term 7(d) were not paid by JK;
  - (ii) the 25% of Lawyers Professional Fees inclusive of any applicable GST incurred over the life of the Proceedings, that pursuant to Term 6(g) were not paid by JK;
  - (iii) without duplication of amounts specified in (i) and (ii) above, any Legal Costs and Disbursements incurred by the Lawyers which were not paid by JK pursuant to the Funding Limit and/or Claims Registration Funding Limit specified in Term 10;
  - (iv) interest from the date of the issue of a monthly statement or invoice with respect to any of the fees referred to in Terms 8(a)(i), 8(a)(ii) and 8(a)(iii) at the rate prescribed by the relevant Legal Profession regulations or rules and pursuant to those regulations or rules.
- (b) Remaining Costs constitute ACA Lawyers' deferred fees and will be payable only from the Resolution Sum pursuant to clause 11 of the LFA.

**9. HOURLY RATES**

The hourly rates (inclusive of GST) of the Lawyers notified to JK in these Terms are as follows:

Title	Full Hourly Rate (\$AU)	75% Hourly Rate (\$AU)
Principal	\$660.00	\$495.00
Senior Associate	\$500.00	\$375.00
Lawyer	\$350.00	\$262.50
Paralegal/IT staff	\$150.00	\$142.50

**10. FUNDING LIMITS**

- (a) Other than by prior written in agreement, In no event will JK be obliged to pay or reimburse the Lawyers or any other party for Legal Costs and Disbursements incurred on behalf of the Claimant or Other Funded Persons in any Proceedings the subject of the LFA which exceed:
- (i) AU\$236,000 (inclusive of GST) in relation to preliminary merit investigation and Claims Registration Costs; or
  - (ii) AU\$3,583,547.50 (inclusive of GST) in the aggregate.
- (b) The Lawyers will be obliged to continue with the Proceedings until a final Resolution notwithstanding that the funding limits set forth in this Term 10 have



been reached (but without prejudice to any other right the Lawyers may have to terminate these Terms or their Retainer).

- (c) For the avoidance of doubt, the Lawyers will not seek to recover any Legal Costs and Disbursements from the Claimant or JK other than (a) from JK pursuant to these Terms and subject to the limits in Term 10(a), and (b) from any Resolution Sum to the extent permitted by clause 11 of the LFA.

#### 11. TERMINATION OF APPOINTMENT

- (a) The Lawyers may terminate their appointment by JK to provide the Legal Work to the Claimant on 60 days' written notice to JK and to the Claimant concerned, in the following circumstances:
  - (i) if JK fails to pay any costs in accordance with the terms of the LFA or these Terms after JK has been given 30 days written notice to do so;
  - (ii) if the LFA concerned is terminated; or
  - (iii) if the Lawyers terminate the Agreement for Legal Services entered into between the Lawyers and the Claimant relating to the Litigation in accordance with their right to do so.
- (b) JK may terminate the appointment of the Lawyers to provide the Legal Work to the Claimant:
  - (i) by agreement with the Lawyers;
  - (ii) by written notice to the Lawyers in the event of professional misconduct or negligence by the Lawyers that has or is reasonably likely to cause material loss to the Claimant or JK; or
  - (iii) upon 60 days' written notice to the Lawyers.
- (c) If the Lawyers' appointment to provide Legal Work to the Claimant is terminated pursuant to either Term 11(a) or Term 11(b), the Lawyers remain liable for obligations under these Terms accrued to the date of termination of their appointment, but thereafter all obligations and entitlements of the Lawyers cease in so far as they concern JK, except:
  - (i) the entitlements under Term 5 to receive the payments from JK in respect of Legal Work up to the date of termination, unless the termination of the Lawyers is under Term 11(b)(ii); and
  - (ii) the entitlement under Term 8(b) to receive such of the Remaining Costs in respect of Legal Work up to the date of termination, unless the termination of the Lawyers is under Term 11(b)(ii).

#### 12. ADDRESS FOR SERVICE

- (a) JK's address for service will be as set out in the LFA.
- (b) The Lawyers' address for service is ACA Lawyers, Suite 1, Level 14, 25 Bligh Street NSW 2000 Australia.

#### 13. VARIATION

These Terms may only be varied in writing signed by the Lawyers and JK.





14. ACKNOWLEDGMENT

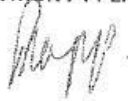
Neither JK nor the Lawyers intend to be partners or joint ventures with or to each other. Nothing in this document shall constitute JK and the Lawyers as partners or joint ventures.

15. GOVERNING LAW

This document is entered into in New South Wales, Australia, and is to be construed in accordance with and governed by the laws of New South Wales.

Executed effective as of the date first written above.

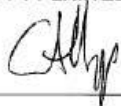
JK:  
JUSTKAPITAL LITIGATION PTY LIMITED

  
By: \_\_\_\_\_

Name: Philip Kapp

Title: Chairman

LAWYERS:  
ACA LAWYERS PTY LIMITED

  
By: \_\_\_\_\_

Name: Craig Allsopp

Title: Principal



## Schedule 2

### Criteria to be applied by Counsel in giving an Opinion on a Proposed Settlement

1. In reviewing a proposed Settlement pursuant to sub-clauses 4.3 or 4.8 of the LFA, counsel must be satisfied that the Settlement will be fair and reasonable, taking into account the Claims and the Other Claims that will be the subject of the Settlement and any potential conflicts of interest between JK, the Lawyers and the group members whose Claims and Other Claims are subject to the proposed Settlement.
2. In satisfying himself or herself that the proposed Settlement is fair and reasonable, counsel should take into account, among other things, the following factors:
  - (a) the amount offered to each group member;
  - (b) the prospects of success in the Proceedings (i.e. the weaknesses, substantial or procedural, in the case advanced by the Representative);
  - (c) the likelihood of the group members obtaining judgment for an amount significantly in excess of the proposed Settlement sum;
  - (d) whether the proposed Settlement sum falls within a realistic range of likely outcomes;
  - (e) the attitude of the group members to the proposed Settlement;
  - (f) the likely duration and cost of the Proceedings if continued to judgment;
  - (g) the terms of the LFA about the procedure to be applied in reviewing and deciding whether to accept any Settlement offer, including any factors that will and will not be taken into account in deciding to Settle;
  - (h) whether JK might refuse to continue to fund the Proceedings if the proposed Settlement does not take place; and
  - (i) whether the proposed Settlement involves any unfairness to any group member or any categories of group members for the benefit of others.
3. Counsel should also take into account the potential for conflicts of interest between group members in accordance with the test applied by Jessup J in *Darwalla Milling Co Pty Ltd v F Hoffman-La Roche Ltd (No 2)* (2006) 236 ALR 322 at [41], which relevantly states:

*"I propose to turn then to the question whether the settlement, including the distribution scheme, involves any actual or potential unfairness to any group members, or categories of group members, having regard to all relevant matters, including whether the overall settlement sum, even if reasonable as such, involves unfair compromises by some members, or categories of members, for the benefit of others, and whether the distribution scheme fairly reflects the apparent or assumed relative losses suffered by particular members, or categories of members. Any consideration of the fairness and reasonableness of the settlement in the present case must take into account not only the overall settlement sum and its relationship with the amount that might be considered a best possible outcome after a successful trial, but also the structure and workings of the scheme by which that sum is proposed to be distributed amongst group members. The fairness and reasonableness of the settlement, from the point of view of any one group member, will necessarily depend on both of these factors."*