



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1812/2017

GREGORY JOHN LENTHALL and others named in the schedule
Plaintiffs

WESTPAC BANKING CORPORATION ABN 33 007 457 141 and another named in the
schedule
Defendants

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 28 September 2018

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. Pursuant to ss 23 and 33ZF of the *Federal Court of Australia Act 1976* (Cth) (**FCA**) and rule 1.32 of the *Federal Court Rules 2011* (Cth) (**FCR**), the Applicants and group members shall pay from any Resolution Sum (as defined in the Funding Terms being Annexure “A” to these orders) the amounts referred to in subclauses 6(a) to (c) of the Funding Terms, prior to any distribution to group members, in accordance with the Funding Terms.
2. Order 1 is subject to the undertaking by JustKapital Litigation Pty Limited (ACN 168 872 606), the Applicants, and Shine Lawyers to each other and to the Court that they will comply with their obligations under the Funding Terms, such undertaking being in the terms of Annexure C.
3. Pursuant to ss 33ZF(1) and 37P(2) of the *Federal Court of Australia Act 1976* (Cth) (**FCA**), Mr Roland Matters, Legal Costs Consultant, is appointed as a costs referee (**Costs Referee**) for the purpose of:
 - (a) conducting regular inquiries every two months as to the question of whether the legal costs charged or proposed to be charged by the Applicants’ solicitors throughout the proceeding are fair and reasonable (**Reference**), having regard to:



- i. any relevant authorities considering Court approvals of settlements of representative proceedings under s 33V of the FCA;
 - ii. any applicable provisions of the Legal Profession Uniform Law;
 - iii. paragraph 15 of the Court's Class Actions Practice Note (GPN-CA) dated 25 October 2016; and
 - iv. the matters set out at Annexure B to these Orders; and
- (b) providing, in accordance with Order 7 below, regular confidential written reports to the Applicant's solicitors and JustKapital Litigation Pty Ltd stating the Cost Referee's opinion on the question set out at 3(a) above (**Reports**).
4. The Reference commence immediately or on such other date as ordered by the Court or nominated by the Costs Referee.
5. Each Report of the Costs Referee will address the following matters, and any other matters that the Costs Referee thinks fit:
 - a. whether the costs sought to be charged by the solicitors for the Applicants in relation to the preparation and conduct of the proceeding are fair and reasonable, including having regard to the matters set out at Order 3(a) above;
 - b. if costs sought to be charged by the solicitors for the Applicants in relation to the preparation and conduct of the proceeding are not fair and reasonable, which costs should be disallowed and by how much;
 - c. in respect of any costs which are proposed to be disallowed, the basis on which the Costs Referee considers these costs should be disallowed; and
 - d. identification of ways in which the Applicants' solicitors may have been able to reduce the incidence of unreasonable costs in the conduct of the proceeding, if applicable.
6. If, in the course of preparing a Report in accordance with the Reference, the Costs Referee identifies legal costs incurred in the course of the Applicants' solicitors' performance of legal work on behalf of the Applicants and group members that falls



outside the Scope of Work (as defined in Annexure B), but which the Costs Referee nevertheless considers are fair and reasonable and should be allowed to be recovered by the Applicants' solicitors, the Costs Referee is to provide the basis for this opinion in that Report.

7. The Costs Referee will provide to the Applicants' solicitors confidential reports prepared pursuant to the following timetable:
 - a. the first Report, being a report of the Applicants' solicitors' costs up to and including 16 September 2018, including costs:
 - i. incurred in the course of preparing for the commencement of the proceeding; and
 - ii. incurred in this proceeding,such Report being required to be provided on a date six weeks after the date of these orders.
 - b. Thereafter, every two months (**Reporting Period**) for the remainder of the proceeding, with respect to the Applicants' solicitors' costs incurred in the proceeding in the two month period since the final date the subject of the prior Report.
8. Without affecting the powers of the Court as to costs, the solicitors for the Applicants are to be liable for the reasonable fees of the Costs Referee in the first instance, which fees will become part of the Applicants' costs.
9. The Costs Referee will perform the Reference having regard to the following guidelines:
 - a. the Costs Referee is to consider and implement the Reference without undue formality or delay, so as to enable a just, efficient and cost-effective resolution of the Reference;
 - b. the Costs Referee is to ensure that the reviews of costs are conducted in a manner which is proportionate to the amount claimed.



10. The Costs Referee may make any enquiries that the Costs Referee thinks fit and may have access to such materials in the possession of the solicitors for the Applicants that the Costs Referee thinks appropriate.
11. The Costs Referee have liberty to approach the Associate to Justice Lee to seek clarification of any aspect of the Reference, including whether or not it is necessary to undertake particular work.
12. The solicitors for the Applicants forthwith deliver to the Costs Referee a copy of these orders and make available all information and records which the Costs Referee believes are relevant to the Reference.
13. The Costs Referee and Applicants have liberty to seek directions with respect to any matter arising from the Reference upon 24 hours' notice, or such other notice as is ordered by the Court.
14. Subject to Order 15 and any further order of the Court, for the purpose of any order made pursuant to ss 33V or 33ZJ of the FCA approving payment or part-payment of the Applicants' legal costs and disbursements out of any settlement sum or Court award of damages in the proceeding, the total amount so approved will not exceed the aggregate of the total amounts of such legal costs and disbursements allowed in any Reports filed pursuant to the Reference.
15. The Applicants have liberty to apply to the Court seeking an order varying or rejecting any Report filed by the Costs Referee, or part thereof, in respect of the matters set out at Order 5(a) and 5(b) above. If the Applicants make such an application:
 - a. subject to further order, the Applicants are to serve the Costs Referee with the application and any supporting material filed with the affidavit at least five business days prior to the return of the application; and
 - b. the Court may make such further orders regarding the filing and service of evidence and submissions in respect of the application and the hearing of the application, and as to the confidentiality or otherwise of any materials filed in connexion with the application, as it sees fit.



16. To the extent there is any inconsistency between these Orders and FCR Div 28.6, these Orders prevail.
17. The costs of the Applicants' Interlocutory Application filed 23 March 2018 be costs in the cause.

Date that entry is stamped: 28 September 2018

Warrick Soden
Registrar



Schedule

No: NSD1812/2017

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

Second Plaintiff	SHARMILA LENTHALL
Third Plaintiff	SHANE THOMAS LYE
Fourth Plaintiff	KYLIE LEE LYE
Second Defendant	WESTPAC LIFE INSURANCE SERVICES LIMITED ABN 31 003 149 157
Intervener	JUSTKAPITAL LITIGATION PTY LIMITED



Annexure “A”

Funding Terms

A. Definitions

1. The following definitions apply in these Funding Terms:

- (a) “**Administration Expenses**” means the cost of the administration of any scheme for the distribution of any Resolution Sum, including fees charged by and expenses paid by the administrator (being the person or entity appointed to administrate a scheme for the distribution of any Resolution Sum), including 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;
- (b) “**Adverse Costs Order**” means any Costs Order made in favour of the Respondents against the Applicants or any Group Member in the Proceeding or in any subsequent proceeding brought by any Group Member against the Respondents in reliance on the findings made in any judgment in the Proceeding, in respect of costs that the Respondents incurred during the Funding Period;
- (c) “**Applicants**” means any named Applicant or representative party in the Proceeding;
- (d) “**Claim**” means the claim or claims the Applicants have or may have against the Respondents for loss and damage caused to the Applicants by the conduct of the Respondents which claim is the same as or similar to the claims the subject matter of the Proceeding.
- (e) “**Costs Order**” means an order made by the Court requiring one or more parties to the Proceeding to pay the costs incurred by another party or parties to the Proceeding, the amount of which has been agreed, taxed or quantified by the Court;
- (f) “**Funder**” means JustKapital Litigation Pty Limited (ACN 168 872 606).



- (g) “**Funding Agreements**” means the funding agreements entered into by the Applicants with the Funder.
- (h) “**Funding Period**” means the period commencing on the date of these orders and ending on the date of the judgment in respect of any Settlement approval application or judgment in the initial trial of the Applicants’ claims and the common issues, whichever is first to occur;
- (i) “**Group Members**” means all persons who are identified as group members in the Proceeding, and who do not opt out of the Proceeding by the time specified by the Court for doing so;
- (j) “**GST**” means goods and services tax;
- (k) “**Independent Counsel**” means a barrister with at least fifteen (15) years of experience in litigation similar to the Proceeding and who is not affiliated in any way with the Applicants, the Lawyers, the Respondents or the Funder;
- (l) “**Lawyers**” means Shine Lawyers or any other solicitors appointed in their place by the Applicants with the Funder’s consent;
- (m) “**Legal Costs Agreement**” means the agreement or agreements entered into between the Lawyers and the Applicants for the Lawyers to act as lawyers to investigate and prosecute the Claims;
- (n) “**Legal Costs and Disbursements**” means fees and disbursements charged by the Lawyers under the Legal Costs Agreement and “Terms of Engagement” (the latter being Schedule 1 to the Funding Agreements) excluding costs incurred prior to the entry into the Legal Costs Agreement other than costs of obtaining legal advice;
- (o) “**Legal Work**” means such advice, and legal services which the Lawyers consider reasonably necessary to investigate, prosecute and resolve the Proceeding, as defined in the Legal Costs Agreement;
- (p) “**Proceeding**” means the proceeding brought in the Federal Court of Australia pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) against the Respondents in relation to the pricing of insurance products issued by



Westpac Life Insurance Services Limited ABN 31 003 149 157 and includes the Claims brought by Group Members against the Respondents.

- (q) “**Project**” means the conduct of the Proceeding in order to achieve Resolution of the Claims and the Other Claims;
- (r) “**Project Costs**” means those costs and expenses incurred at any time prior to the conclusion of the Funding Period, being:
 - (i) the Legal Costs and Disbursements charged by the Lawyers for all Legal Work;
 - (ii) any Adverse Costs Order(s) paid or to be paid by the Applicants and funded by the Funder (including the cost of any ATE insurance and deed of indemnity paid by the Funder in respect of Adverse Costs Orders);
 - (iii) reasonable costs associated with any scheme for the distribution of any Resolution Sum, including the costs of any Administrator which is appointed;
 - (iv) the costs of any subsequent proceeding brought by any Group Member against the Respondents in reliance on the findings made in any judgment in the Proceeding;
 - (v) any GST payable on any taxable supply made by any entity as a result of the above costs or expenses being incurred.
- (v) “**Resolution**” means when all or any 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;
- (w) “**Resolution Sum**” means the amount or amounts of money for which (a) the Claims and the claims of Group Members are Settled, or (b) judgment is given in favour of the Applicants and/or the Group Members in the Proceeding, or in any subsequent proceeding brought by any Group Member against the Respondents in reliance on the findings made in any judgment in the Proceeding, including (but not limited to) any interest and costs recovered pursuant to a Costs Order or by agreement.



- (x) “**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," “Settles” or “Settled” shall be construed accordingly.

B. Obligations of the Funder

2. The Funder must fund the Project Costs of the Applicants and Group Members, by:
- (a) paying to the Lawyers the Legal Costs and Disbursements charged by the Lawyers for all Legal Work in accordance with the Funding Agreements and the Legal Costs Agreement;
 - (b) paying the costs of any ATE insurance and / or any deed of indemnity obtained by the Funder covering any Adverse Costs Order;
 - (c) paying any Costs Order which the Court makes in the Proceeding against the Applicants or any Group Member in favour of the Respondents, in so far as those costs were incurred either before or during the Funding Period;
 - (d) providing any security for costs in the Proceeding, in the form that the Court orders, or in the absence of any order, in such other form as the Funder determines and the Respondents accept; and
 - (e) paying the reasonable fees of the Costs Referee.

C. Receipt and Application of Resolution Sum

3. Any Resolution Sum will be received by the Lawyers and paid immediately into a trust account kept for that purpose with an authorised deposit-taking institution (ADI) within the meaning of the *Banking Act 1959* (Cth).
4. If the Applicants or any Group Member obtains any Settlement or obtains any judgment in respect of the Claims, they will:
- (a) treat any money received from the Respondents in connection with the Settlement or judgment as the Resolution Sum; and
 - (b) cause the money to be delivered to the Lawyers to be dealt with as part of the Resolution Sum.
5. Subject to any Court order, the Lawyers will:



- (a) first, pay to the Funder out of the account referred to in paragraph 3 above all payments referred to in paragraph 6 below;
- (b) second, pay to themselves any unpaid portion of the Legal Costs and Disbursements (including any uplift fee payable on “Lawyers Professional Fees” pursuant to the Legal Costs Agreement) and any amounts in relation to GST but not exceeding such amounts as the Court determines to be fair and reasonable in all the circumstances;
- (c) third, pay all Administration Expenses approved by the Court; and
- (d) fourth, distribute the balance to the Group Members on a pro rata basis by reference to the claims of the Applicants and all Group Members in accordance with any distribution scheme approved by the Court.

D. Costs and Commission

6. Upon Resolution, the Funder or its nominees shall be paid the following amounts from any Resolution Sum, prior to any distributions to the Lawyers, Applicants and Group Members:
 - (a) an amount equal to the total moneys paid by the Funder pursuant to paragraph 2(a), (c) and (e) above, whether paid before or after the date of these orders; and
 - (b) an amount, as consideration for the funding of the Proceeding being the lesser of (i) three times the amount referred to in paragraph 6(a) above; or (ii) 25% of the net Resolution Sum (being the Resolution Sum minus the amount referred to in paragraph 6 (a) above), as approved by the Court; and
 - (c) if the Funder funds an appeal or the defence of an appeal, or any further appeal or the defence of any further appeal, a further amount expressed as the lesser of a multiple of legal costs or a percentage of the net Resolution Sum at a rate approved by the Court, in respect of each appeal so funded,but not exceeding any such amounts as the Court determines to be fair and reasonable in all the circumstances.
7. The amounts referred to in paragraph 6 above will not become due or owing by the Applicants and Group Members to the Funder unless and until Resolution.



E. Relationship Between the Applicants, Lawyers and Funder

8. The Lawyers' professional duties are owed to the Applicants and not to the Funder.
9. Subject to paragraphs 10 and 11, the Funder will give the Lawyers day-to-day instructions in respect of all matters concerning the Claims.
10. The Applicants have the right at any time to give instructions concerning the Claims which override any instructions given by the Funder.
11. Subject to paragraph 12 below, if the Lawyers notify the Funder and the Applicants 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 the Applicants and those they owe to the Funder, then the Lawyers' obligations to the Applicants prevail (and for the avoidance of doubt, the Lawyers can continue to offer advice to and take instructions from the Applicants in such circumstances).
12. The Lawyers will:
 - (a) keep the Funder fully informed of all matters concerning the Claims and the Project, including any mediation and settlement discussions (and, for the avoidance of doubt, shall immediately inform the Funder of all offers from the Respondents of Settlement, or offers to engage in an alternative dispute resolution process, and allow the Funder the opportunity to attend any such alternative dispute resolution process agreed to);
 - (b) promptly provide to the Funder any document or information reasonably requested by the Funder;
 - (c) ensure that the Applicants and the Funder are given all necessary information in order to facilitate informed instructions (including, for the avoidance of doubt, any information which has or may have a material impact on the Claims, the claims of Group Members, the Proceeding, or the potential for any judgment sum to be recovered);
 - (d) unless specifically prohibited by the terms of a Court order or another professional obligation, provide to the Funder a copy of any document obtained in any Proceeding by way of discovery, subpoena or any other



coercive power of the Court, subject to the Funder, its officers and employees' implied undertaking given to the Court.

13. The Funder will:

- (a) implement its Conflicts Management Policy so as to comply with the *Corporations Amendment Regulation 2012 (No. 6) (Cth)*;
- (b) provide the Applicants with timely and clear disclosure of any material breach of the *Corporations Amendment Regulation 2012 (No. 6) (Cth)*; and
- (c) not retain the Lawyers as its solicitors for any purpose connected with the Proceeding.

F. Confidentiality

14. The Funder undertakes to the Court that any documents discovered in the Proceeding to which it has obtained access, or subsequently obtain access in the course of the Proceeding, will only be used for the purpose of the Proceeding and will not be disclosed to any other person or party for any other purpose.

15. Where any information is provided to the Funder, the Funder 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 the Funder's staff who are engaged in the functions for which the information was provided to the Funder;
- (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 the Proceeding, the Applicants or Group Members or ATE insurer.

Dispute Resolution

16. If there is a disagreement between the Funder and the Applicants as to whether the Proceeding should be Settled, or the appropriate terms for Settlement of the Proceeding, the dispute will be referred to Independent Counsel for advice on



whether, in his or her opinion, Settlement of the Proceeding or Claims on the terms and in the circumstances identified by the Applicants, the Funder, or both, is reasonable in the circumstances, for the purposes of which:

- (a) the Applicants must provide notice of any objection to the proposed Settlement within 5 business days of receiving advice from the Lawyers about a proposed Settlement, and:
 - (i) upon receiving the objection referred to in sub-clause (a), the Lawyers shall brief Independent Counsel within 5 business days of receiving the objection;
 - (ii) The Independent Counsel may proceed as he or she sees fit to inform himself or herself before forming and delivering his or her opinion. The Independent Counsel may give his or her opinion orally or in writing;
 - (iii) if the Independent Counsel's opinion is that the Settlement is reasonable then the Applicants agree 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;
 - (iv) the costs of the Independent Counsel in providing an opinion under this sub-clause will be paid by the Funder and will form part of the Project Costs;
- (b) if the Applicants do not provide notice of objection to the proposed Settlement within the time specified in sub-clause (a), the Lawyers shall take all action necessary to implement the Settlement.

17. If there is a disagreement between the Funder and the Applicants about any appeal of the Proceeding, or the addition or removal of any Respondent to or from the Proceeding (**dispute**):

- (a) a party will give the other party 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 to a resolution to it;
- (b) so long as the dispute does not give rise to a conflict between the interests of the Applicants and the interests of other Group Members, the Lawyers may act as representatives for the Applicants, but under no circumstances will the Lawyers act as representatives for the Funder;
 - (c) if, within 14 days of receipt of the notice of a dispute issued under sub-clause (a), that dispute has not been resolved, either party may refer that dispute to mediation, to be conducted by a mediator agreed to by both parties or, failing agreement, a person nominated by the President of the New South Wales Law Society;
 - (d) 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;
 - (e) if the dispute is not resolved within the time specified above, 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 Counsel for determination, and the Independent Counsel will be a person agreed to between the Applicants and the Funder, or failing agreement, a person nominated by the President of the New South Wales Law Society; and
 - (f) the determination by the Independent Counsel will be final and binding, and the parties to the dispute will pay, in equal shares, the costs of the determination.
18. If there is a disagreement between the Funder and the Applicants regarding the Claims and/or Proceeding other than in respect of matters the subject of clauses 16 and 17, the dispute will be referred to counsel, who will issue a binding determination of the dispute, and:
- (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 or if the most senior counsel of those retained by the Lawyers is not available to be briefed in relation to the dispute, 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.
19. If there is a disagreement between the Funder and the Applicants as to the appointment of new Lawyers:
- (a) a party will give the other party 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 to a resolution to it;
 - (b) if, within 14 days of receipt of the notice of a dispute issued under sub-clause (a), that dispute has not been resolved, either party may refer that dispute to mediation, to be conducted by a mediator agreed to by both parties or, failing agreement, a person nominated by the President of the New South Wales Law Society;
 - (c) 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. The costs of the mediator will be shared by the parties equally;
 - (d) if the dispute is not resolved within the time specified above, 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 Counsel for determination, and the Independent Counsel will be a person agreed to between the Applicants and the Funder, or failing agreement, a person nominated by the President of the New South Wales Law Society; and



- (e) the determination by the Independent Counsel will be final and binding, and the parties to the dispute will pay, in equal shares, the costs of the determination.

Termination

- 20. The funding arrangements under these Funding Terms may only be terminated by order of the Court, granted on application made by the Applicants, the Funder or a Group Member, upon notice given to the Applicants, the Funder, and such other persons as ordered by the Court.
- 21. If an application is made by the Funder under paragraph 20 above, and the Court grants that application, then (subject to any contrary order of the Court):
 - (a) the Funder will not be entitled to receive any payment from any Resolution Sum pursuant to paragraph 6(b) or (c) above;
 - (b) the Funder will continue to be entitled to receive payment from any Resolution Sum pursuant to paragraph 6(a) above but not exceeding any such amount as the Court determines to be fair and reasonable in all the circumstances;
 - (c) all obligations of the Funder under these Funding Terms will cease on the date the Funder's termination becomes effective, save for the following obligations accrued to the date of termination:
 - (i) payment of any outstanding Project Costs incurred up to the date of termination;
 - (ii) indemnification of the Applicants and Group Members for any Legal Costs and Disbursements reasonably incurred and payable to the Lawyers up to the date of termination; and
 - (iii) payment of any Adverse Costs Order against the Applicants and any Group Members in the Proceeding in respect of costs which arise in, or are attributed to, the period ending on the date the Funder's termination becomes effective.
- 22. If an application is made by the Applicants or a Group Member under paragraph 20 above, and the Court grants that application, then (subject to any contrary order of the Court):



- (a) the Funder will continue to be entitled to receive payment from any Resolution Sum pursuant to paragraph 6 above but not exceeding any such amount as the Court determines to be fair and reasonable in all the circumstances;
- (b) all obligations of the Funder under these Funding Terms will cease on the date the Funder's termination becomes effective, save for the following obligations accrued to the date of termination:
 - (i) payment of any outstanding costs pursuant to paragraph 2 above incurred up to the date of termination;
 - (ii) indemnification of the Applicants and Group Members for any Legal Costs and Disbursements reasonably incurred and payable to the Lawyers up to the date of termination; and
 - (iii) payment of any Adverse Costs Order against the Applicants and any Group Members in the Proceeding in respect of costs which arise in, or are attributed to, the period ending on the date the Funder's termination becomes effective.

Funding Agreements and Legal Costs Agreements

- 23. The Funder acknowledges and agrees that these Funding Terms prevail over any inconsistent provision in the Funding Agreements and that the Funding Agreements are deemed to be varied accordingly.
- 24. The Lawyers acknowledge and agree that these Funding Terms prevail over the terms of the Legal Costs Agreements to the extent of any inconsistency and that the Legal Costs Agreements are deemed to be varied accordingly.



ANNEXURE B

Scope of Recoverable Legal Work

1. For the purpose of conducting the Reference pursuant to Order 3 of these Orders, the Costs Referee will have regard to the recoverable legal work set out at paragraph 2 below (**Scope of Work**), and to the terms on which the Applicants' solicitors may charge professional fees at hourly rates for work performed set out at paragraphs 3 and 4 below.
2. The Scope of Work includes such legal costs and disbursements as are reasonably necessary in relation to the conduct of the proceedings.

Solicitors' Hourly Rates

3. The hourly rates able to be charged by the Applicants' solicitors unless varied pursuant to paragraph 4 are as follows:

Position	Rate (excluding GST)
Partner/National Special	\$750
Counsel/Special Counsel	
Senior Lawyer/ Associate/ Accredited	\$560
Specialist/ Legal Manager/ Department Manager	
Junior Lawyer	\$425
Graduate, Law Clerk	\$240
Paralegal	\$320
Law Clerk/ Articled Clerk	\$240

4. Subject to any order of the Court otherwise providing, the rates set out at paragraph 3 above will increase in line with the Consumer Price Index no more than once per financial year.



ANNEXURE C

FORM OF UNDERTAKING

NSD1812 OF 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Gregory John Lenthall and others named in the Schedule

First Applicant

Westpac Banking Corporation ABN 33 007 457 141

First Respondent

Westpac Life Insurance Services Limited ABN 31 003 149 157

Second Respondent

UNDERTAKING

[JustKapital Litigation Pty Limited *OR* Shine Lawyers Limited *OR* [each of the Applicants]
undertakes to [the other JustKapital Litigation Pty Limited *OR* Shine Lawyers Limited *OR* [each of
the Applicants] and to the Court to comply with its obligations under the Funding Terms being
Annexure A to the orders [dated] and the terms of Order 1 of those Orders.

Signature: _____

Party: [JustKapital Litigation Pty Limited *OR* Shine Lawyers Limited *OR* [each of the Applicants]]

Signatory:

Capacity:

Date of signature: