



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1908/2016

GAVIN SMITH and others named in the schedule
Applicants

DEPARTMENT OF DEFENCE and another named in the schedule
Respondents

CHRIS EVES and another named in the schedule
Others

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 15 June 2020

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Approval Costs

1. Pursuant to s 54A of the FCAA, Roland Matters is appointed as a referee (**Referee**) to inquire and report to the Court, in relation to the reasonableness of the "Approval Costs" (as defined in the Settlement Distribution Scheme in the form being pages 128 to 151 of exhibit BA-1 to the affidavit of Benjamin Allen affirmed 28 May 2020 as amended by the orders made on 5 June 2020) proposed to be charged to the Applicants and Group Members (**Further Costs Reference**).
2. The Further Costs Reference will commence forthwith and:
 - a. the 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. This may include enquiries by telephone and direct communication, without intervention of lawyers, with any person who the Referee believes may have relevant information. The Referee may seek submissions from the applicants' solicitors and shall take such submissions into account;



- b. to facilitate the just, efficient and cost-effective resolution of the reference the Referee is to make such directions as the Referee considers appropriate as to the conduct of the reference, including for the attendance of any person, the production of documents and records relevant to legal costs, and/or the provisions of any submissions;
 - c. the Referee shall submit the report arising from the reference to the Court and to the Applicants on or before 21 days after the applicants' solicitors have provided evidence of the "Approval Costs" or such further date as the Court may determine;
 - d. the Applicants' solicitors shall make available all information and records which the Referee believes are relevant to the reference;
 - e. the Referee and parties shall have liberty to seek directions with respect to any matter arising in the Reference upon 24 hours' notice, or such other notice ordered by the Court;
 - f. the costs of and incidental to the appointment of the referee (and the Referee's reasonable costs) shall be paid by the applicants in the first instance or on their behalf, but otherwise shall be costs in the proceeding;
 - g. the Referee's costs of the Further Costs Reference in this proceeding are fixed at no more than \$1,500 (inclusive of GST) subject to further order.
3. Order 7 of the orders made on 5 June 2020 be amended to include:
- (e) *the "Approval Costs" in the amount approved by the Referee in the Further Costs Reference.*

Date that entry is stamped: 15 June 2020


Registrar



Schedule

No: NSD1908/2016

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

Second Applicant	KIM SMITH
Third Applicant	ANN AND LINDSAY CLOUT SMSF PTY LTD ACN 154 516 006
Fourth Applicant	ANN CLOUT
Fifth Applicant	LINDSAY CLOUT
Sixth Applicant	JOHN ARTHUR HEWITT
Eighth Applicant	MARSHALLS TRANSPORT PTY LTD
Ninth Applicant	NICHOLAS MARSHALL
Tenth Applicant	MELISSA MARSHALL
Respondent	COMMONWEALTH OF AUSTRALIA (DEPARTMENT OF DEFENCE)
Second Other	NICK OSBORNE