



Federal Court of Australia

District Registry: Victoria Registry

Division: General

No: VID649/2018

VINCE IMPIOMBATO and another named in the schedule
Applicants

BHP GROUP LIMITED
Respondent

ORDER

JUDGE: Justice Moshinsky

DATE OF ORDER: 5 December 2025

WHERE MADE: Melbourne

Order amended pursuant to rule 39.05 of the *Federal Court Rules 2011*

THE COURT ORDERS BY CONSENT THAT:

Settlement Approval

1. Pursuant to ss 33V and 33ZF of the *Federal Court of Australia Act 1976* (Cth) (the **Act**), the Court approves:
 - a. settlement of the proceeding on the terms set out in the Deed of Settlement entered into between the Applicants, the Respondent, Phi Finney McDonald Pty Ltd (ACN 618 727 905) (**Phi Finney McDonald**), Maurice Blackburn Pty Ltd (ABN 21 105 657 949) (**Maurice Blackburn**), G&E KTMC Funding LLC (the **Funder**), Grant & Eisenhofer P.A. and Kessler Topaz Meltzer & Check, LLP and dated 9 September 2025 (**Settlement Deed**); and
 - b. the scheme for distribution of the settlement sum (and any schedules therein) (the **Settlement Distribution Scheme**) annexed to the affidavit of Cameron Peter Myers sworn on 4 December 2025,

(together, **Settlement Documents**).
2. If and to the extent necessary, pursuant to s 33ZF of the Act, the Court authorises the Applicants *nunc pro tunc* for and on behalf of persons who meet the definition of “Group Member” in paragraph 3 of the third further amended consolidated statement of claim filed on 25 March 2025 and who have not opted out of the proceeding in accordance with the orders dated 13 March 2024 (**Group Members**) to enter into and give effect to the Settlement Documents and the transactions contemplated therein for and on behalf of Group Members.



3. Pursuant to ss 33ZB and 33ZF of the Act, the persons affected and bound by these orders are:
 - a. the Applicants;
 - b. the Respondent; and
 - c. the Group Members.

Deeds of Indemnity

4. The Respondent is to return to the Applicants' solicitors or destroy all deeds of indemnity executed by AmTrust Europe Limited and provided by the Applicants as security for the Respondent's costs of the proceeding, within 3 days of:
 - a. if no appeal or an application for leave to appeal from the Settlement Approval Orders is commenced, the expiration of the 49-day period provided for any appeal from orders approving the settlement of this proceeding under s 33V of the Act is made (**Settlement Approval Orders**); or
 - b. if an appeal or an application for leave to appeal from the Settlement Approval Orders is commenced, the date of the ultimate determination of the matters the subject of the appeal (including any subsequent appeal or application to appeal).

Appointment of Administrator of the Settlement

5. Pursuant to s 33ZF of the Act, Phi Finney McDonald and Maurice Blackburn are appointed as Scheme Administrator of the Settlement Distribution Scheme (**Scheme Administrator**) and are to act in accordance with the rules of the Settlement Distribution Scheme, subject to any direction of the Court.

Participating Group Members

6. Pursuant to s 33ZF of the Act, the four persons identified in paragraphs 43-46 of the affidavit of Cameron Peter Myers sworn 4 December 2025 be defined as Registered Group Members as if they had registered their claim by the Class Deadline in accordance with paragraph 9 of the orders made on 13 March 2024.
7. Pursuant to ss 33V and 33ZF of the Act, only "**Registered Group Members**" (as defined in the orders made on 13 March 2024, 11 July 2025 and 31 October 2025 and paragraph 6 above) are entitled to receive any distribution per the Settlement Distribution Scheme.

Common Fund Order

8. Pursuant to s 33V of the Act, all Registered Group Members are to pay to the Funder a pro-rata percentage of the Funder Entitlements (as defined in the Settlement Distribution Scheme) from any distribution received from the settlement.



Referee's Reports

9. Pursuant to s 54A(3) of the Act, the Court adopts the reports of the Costs Referee appointed pursuant to the orders made on 31 October 2025, being the revised report of Ms Elizabeth Harris dated 27 November 2025 and the supplementary report of Ms Harris dated 28 November 2025.

Settlement Distribution

10. Pursuant to ss 33V(2) and 33ZF of the Act, for the purposes of the Settlement Distribution Scheme:
 - a. the "Applicants' Reimbursements", being reasonable compensation for the time and expenses incurred by the Applicants in the interests of prosecuting the proceeding on behalf of group members as a whole, is approved in the amount of \$40,000.00 (incl. GST) and is to be paid to each of the Applicants in the following proportions:
 - i. \$20,000 to be paid to the First Applicant; and
 - ii. \$20,000 to be paid to the Second Applicant;
 - b. the "Applicants' Costs and Disbursements", being costs and disbursements incurred in connection with the proceeding on the Applicants' own behalf and on behalf of all group members in the proceeding including conditional fees and uplift and any costs or disbursements not paid by the Funder, is approved in the amount of \$23,310,736.65 (incl. GST) to be paid to the Applicants' solicitors in the following proportions:
 - i. the amount of \$9,364,009.87 (incl. GST) to be paid to Phi Finney McDonald; and
 - ii. the amount of \$13,946,726.78 (incl. GST) to be paid to Maurice Blackburn;
 - c. the "Administration Costs", being costs and disbursements estimated to be incurred by the Scheme Administrator in connection with the administration of the Settlement Distribution Scheme, is approved in the amount of \$623,770 (incl. GST); and
 - d. the "Funder Entitlements", being costs and expenses incurred and to be incurred directly by the Funder, and a funding commission to be paid to the Funder, is approved in the amount of \$31,689,263.35 (incl. GST).



11. Pursuant to ss 33V(2) and 33ZF of the Act, Phi Finney McDonald is to pay all monies received pursuant to the costs orders made in favour of the First Applicant in the appeal proceedings VID59/2019 and VID127/2019 and held on trust into the “**Settlement Distribution Fund**” (as defined in the Settlement Deed) within 5 business days of the Settlement Distribution Fund being opened, and those monies will thereafter form part of the Settlement Distribution Fund and be distributed in accordance with the Settlement Distribution Scheme.

Final Orders

12. All costs orders made to date in the proceeding be vacated.
13. There be no order as to costs.
14. The proceeding be dismissed upon notification by the Scheme Administrator to this Court of the completion of the administration of the Settlement Distribution Scheme, on the basis that the dismissal is a defence and absolute bar to any common claims between the Applicants and Group Members, which relate to matters or issues the subject of this proceeding and which the Applicants make, made or were capable of making on behalf of Group Members in this proceeding.
15. Pursuant to s 33ZF of the Act, the releases and pleas in bar in the Settlement Deed and paragraph 14 of these orders operate without prejudice to:
 - a. the right of any party to the Settlement Deed (including any Registered Group Member) to make an application to enforce the Settlement Deed in a new proceeding; or
 - b. the right of the Scheme Administrator to refer any issues relating to the Settlement Distribution Scheme to the Court for direction or determination in accordance with the terms of the Settlement Distribution Scheme.

Liberty to apply

16. Any person affected by these orders, including for the avoidance of doubt the Scheme Administrator, has liberty to apply in relation to the Settlement Distribution Scheme.

Date orders authenticated: 5 December 2025


Registrar

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



Schedule

No: VID649/2018

Federal Court of Australia

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Division: General

Second Applicant

KLEMWEB NOMINEES PTY LTD (AS TRUSTEE FOR THE
KLEMWEB SUPERANNUATION FUND)