



Federal Court of Australia
District Registry: Victoria
Division: General

No: VID58/2019

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

Applicant

BHP GROUP LIMITED

Respondent

ORDER

JUDGE: JUSTICE MIDDLETON, JUSTICE BEACH and JUSTICE LEE

DATE OF ORDER: 19 July 2019

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Consolidation

1. Pursuant to r 30.11 of the *Federal Court Rules 2011 (FCR)* and s 33ZF of the *Federal Court of Australia Act 1976 (Cth) (Act)*, the proceeding *Klemweb Nominees Pty Ltd as trustee for the Klemweb Superannuation Fund v BHP Group Ltd* (VID1077/2018 (**Klemweb Proceeding**)) be consolidated with the proceeding *Impiombato v BHP Group Ltd* (VID649/2018) (**Impiombato Proceeding**) and the consolidated proceeding be known as *Vince Impiombato, and Klemweb Nominees Pty Ltd as trustee for the Klemweb Superannuation Fund v BHP Group Ltd* to be identified as VID649/2018 (**Consolidated Proceeding**).
2. The applicant in the Impiombato Proceeding (**Impiombato Applicant**) and the applicant in the Klemweb Proceeding (**Klemweb Applicant**) are to be the joint representative applicants in the Consolidated Proceeding (**Joint Applicants**).
3. Pursuant to r 1.32 of the FCR and s 33ZF of the Act, Maurice Blackburn Pty Ltd (**Maurice Blackburn**) and Phi Finney McDonald Pty Ltd (**Phi Finney McDonald**) (together, the **Solicitors**) are granted leave to be jointly named as



solicitors on the record for the Joint Applicants in the Consolidated Proceeding on the following bases:

- (a) a litigation committee will be established comprised of an equal number of solicitors from the Solicitors (with no more than three practitioner from each firm), which will be responsible for making major strategic decisions, managing the litigation and allocating tasks between the Solicitors over the course of the litigation on an equal basis (calculated by reference to hours of work performed by each of the Solicitors), with the primary determinant of the allocation of work to be the interests of group members having regard to:
 - (i) the skills and experience of the Solicitors and their respective staff;
 - (ii) the objective of ensuring that the total legal costs are reasonable and proportionate; and
 - (iii) the objective of minimising, to the greatest extent possible, the legal costs incurred through overlapping or duplicated work;
- (b) the Solicitors will work together to reduce duplication in work, while ensuring that each has a sufficient degree of oversight over the work performed by the other;
- (c) the Solicitors will nominate one physical address and one email address for service on the Joint Applicants;
- (d) one set of counsel will be engaged to represent the Joint Applicants and the group members in the Consolidated Proceeding;
- (e) all correspondence and other communication from the Joint Applicants' solicitors to the Respondent's solicitors will be sent or made by only Maurice Blackburn or Phi Finney McDonald;
- (f) the Joint Applicants will jointly:
 - (i) make any interlocutory applications that are necessary in the Consolidated Proceeding save for any application in respect of non-common issues;



- (ii) respond to any interlocutory applications filed by the Respondent in the Consolidated Proceeding;
 - (iii) retain, brief and instruct expert witnesses in the Consolidated Proceeding; and
 - (iv) conduct the discovery process in the Consolidated Proceeding, including the coordination of electronic discovery, requests, processes and technology;
- (g) the Respondent need only produce one set of discovery documents to the Joint Applicants in the Consolidated Proceeding; and
- (h) by 31 July 2019 the Joint Applicants are to enter into a cooperative litigation protocol (as set out at **Annexure A** below) which addresses the manner in which the Solicitors are to cooperate in the conduct of the Consolidated Proceeding (**Cooperative Litigation Protocol**).
4. Costs incurred in the Klemweb Proceeding and Impiombato Proceeding will be costs in the Consolidated Proceeding.
5. In the event that the Joint Applicants in the Consolidated Proceeding are required to provide security for costs, G&E KTMC Funding LLC (**Funder**) will provide a form of security for costs that is acceptable to the Respondent, or as otherwise ordered by the Court.
6. In the event that an adverse costs order is made against the Joint Applicants in the Consolidated Proceeding, the Funder will each meet any such order.

Common Fund Order

7. Subject to further order, pursuant to s 33ZF of the Act, r 1.32 of the FCR and/or the implied power of the Court, the Funding Terms attached as **Annexure B (Funding Terms)** be approved and be binding upon the Joint Applicants, the group members, the Funder and the Solicitors (as defined in the Funding Terms).
8. Order 7 is subject to the provision of an undertaking by each of the Funder, the Impiombato Applicant, Phi Finney McDonald, the Klemweb Applicant and Maurice Blackburn to each other and to the Court that they will comply with



their obligations under the Funding Terms, being those in **Annexure C** (as may be further modified as the Court thinks fit).

Pleadings

9. Pursuant to rr 8.21 and 16.51 of the FCR, the Joint Applicants in the Consolidated Proceeding are granted leave to file and serve, within 28 days after these orders are made:
 - (a) a consolidated originating application; and
 - (b) a consolidated statement of claim.
10. Pursuant to s 33K(1) of the Act, the Joint Applicants be granted leave to amend the group definition in proceeding VID649/2018.
11. Pursuant to r 1.34 of the FCR:
 - (a) the requirements of r 8.23(2) of the FCR are dispensed with for the purpose of the consolidated originating application to be filed by the Joint Applicants in the proposed Consolidated Proceeding;
 - (b) the requirements of r 16.59(2) of the FCR are dispensed with for the purpose of the consolidated statement of claim to be filed by the Joint Applicants in the Consolidated Proceeding.

Costs Reference

12. Pursuant to ss 33ZF(1) and 37P(2) of the Act (and subject to any variation ordered by the Docket Judge), an independent costs referee not selected by the Solicitors but to be identified by the Docket Judge (**Costs Referee**) is to be appointed for the purpose of:
 - (a) conducting inquiries every four months (commencing from the date of these Orders) as to the question of whether there is unnecessary or excessive work (including any unnecessary or excessive duplication of work) being performed by the Solicitors in the Consolidated Proceeding; and
 - (b) providing confidential written reports (of no more than 10 pages) to the Court and the Solicitors every four months (commencing from



after the date of these Orders) stating the Costs Referee's opinion on the question set out at 12(a) above, including any recommendations for reducing duplication where identified or otherwise reducing costs.

13. The Solicitors must cooperate and provide such information, access to personnel and access to documents as the Costs Referee may require.
14. Without affecting the powers of the Court as to costs, the reasonable fees of the Costs Referee will become part of the Joint Applicants' costs.
15. Subject to any further order of the Court, for the purpose of any order made pursuant to ss 33V or 33ZJ of the Act approving payment or part-payment of the Joint Applicants' legal costs and disbursements out of any settlement sum or Court award of damages in the Consolidated Proceeding, the total amount so approved will not include an amount that is referable to costs identified by the Costs Referee as being incurred unnecessarily or unreasonably including costs for work that is unnecessarily or excessively duplicative.

Other

16. The Consolidated Proceeding be listed for a case management on a date to be notified by the Associate to Justice Moshinsky for the purpose of:
 - (a) making further timetabling orders for the hearing and determination of the BHP Group Ltd stay application dated 27 July 2018; and
 - (b) making any further orders addressing any further issues arising from these orders and the final disposition of the appeal.

Date that entry is stamped: 19 July 2019

Wendell Soden
Registrar



ANNEXURE A

BHP Class Action

Cooperative Litigation Protocol

Klemweb Nominees Pty Ltd (as trustee for the Klemweb Superannuation Fund)

Vince Impiombato



PARTIES

- 1 **Klemweb Nominees (as trustee for the Klemweb Superannuation Fund)**
c/o Maurice Blackburn Pty Ltd of Level 21, 380 La Trobe Street,
Melbourne Victoria 3000
- 2 **Vince Impiombato**, c/o Phi Finney McDonald Pty Ltd of Level 4, 325 Flinders
Lane, Melbourne Victoria 3000
(collectively, the '**Applicants**').

RECITALS

- A On 31 May 2018, Vince Impiombato (**Impiombato Applicant**) commenced proceeding VID649 of 2018 (**Impiombato Proceeding**) against BHP Group Ltd, previously BHP Billiton Ltd, (**BHP**) in the Federal Court of Australia (**Federal Court**) pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**). The Impiombato Proceeding was issued by Phi Finney McDonald Pty Ltd (**Phi Finney McDonald**), the solicitors for the Impiombato Applicant, with funding from G&E KTMC Funding LLC (**GKF**).
- B On 31 August 2018, Klemweb Nominees Pty Ltd as trustee for the Klemweb Superannuation Fund (**Klemweb Applicant**) commenced proceeding VID1077 of 2018 (**Klemweb Proceeding**) in the Federal Court against BHP pursuant to Part IVA of the Federal Court Act. The Klemweb Proceeding was issued by Maurice Blackburn Pty Ltd (**Maurice Blackburn**), the solicitors for the Klemweb Applicant.
- C On 28 May 2019, following a partly successful appeal by the Klemweb Applicant, the Full Court of the Federal Court ordered the Klemweb Applicant and the Impiombato Applicant to confer on whether a joint proposal for the consolidation of their respective proceedings could be agreed.
- D On 13 June 2019, the Applicants submitted a joint proposal seeking orders to consolidate both their proceedings.
- E On 21 June 2019, the Full Court handed down its reasons for judgment.



IT IS AGREED AND THE APPLICANTS INSTRUCT as follows:

1 COMMENCEMENT DATE

- 1.1 The term of this Protocol shall begin from the date on which it is executed (**Commencement Date**).
- 1.2 The term of this Protocol shall continue until terminated pursuant to clause 14.

2 APPLICANTS AND GROUP MEMBERS

- 2.1 The Klemweb Applicant and the Impiombato Applicant have each given their instructions to be joint representative applicants in the Consolidated Proceeding (the **Applicants**).
- 2.2 Maurice Blackburn is and will be instructed by the Klemweb Applicant.
- 2.3 Phi Finney McDonald is and will be instructed by the Impiombato Applicant.
- 2.4 In the event that either of the Klemweb Applicant and/or the Impiombato Applicant do not become or cease to be a representative applicant in the Consolidated Proceeding (**Former Representative Applicant**), then:
 - a) the Former Representative Applicant will no longer be bound by the terms of this Protocol other than clause 10;
 - b) in the event that any other person who is a group member in the Consolidated Proceeding (**Group Member**) instructs the lawyers for the Former Representative Applicant that it will act as a representative applicant (**Replacement Representative Applicant**) and those instructions are accepted by the lawyers for the Former Representative Applicant, then:
 - i as soon as reasonably practicable, the Former Representative Applicant will enter into an accession deed poll with the Replacement Representative Applicant by which the Replacement Representative Applicant undertakes to step into the shoes of the Former Representative Applicant in respect of its rights, obligations and liabilities in respect of the Consolidated Proceeding, and to become bound by the terms of this Protocol, as if they were named as a representative applicant (in respect of the proceeding associated with the Former Representative Applicant) under the terms of this Protocol; and



- ii Phi Finney McDonald and Maurice Blackburn are instructed to jointly take all necessary steps to secure the appointment of the Replacement Representative Applicant as a representative applicant in the Consolidated Proceeding.
 - c) In the event that there is no proposed Replacement Representative Applicant pursuant to clause 2.4(b), then the remaining Applicant will use reasonable endeavours to enter into a Protocol replacing this Protocol to govern the further conduct of the Consolidated Proceeding as soon as is reasonably practicable.
- 2.5 Maurice Blackburn will not be required, and it is agreed that Maurice Blackburn is not intending, to enter into a retainer with any Phi Finney McDonald client for the purpose of the Consolidated Proceeding.
- 2.6 Phi Finney McDonald will not be required, and it is agreed that Phi Finney McDonald is not intending, to enter into a retainer with any Maurice Blackburn client for the purpose of the Consolidated Proceeding.

3 LITIGATION COMMITTEE

- 3.1 Maurice Blackburn and Phi Finney McDonald are instructed to convene a Litigation Committee comprising two lawyers appointed by Maurice Blackburn and two lawyers appointed by Phi Finney McDonald. The identity of the lawyers so appointed will be, initially:
- a) Andrew Watson, Principal and Irina Lubomirska, Special Counsel of Maurice Blackburn; and
 - b) Ben Phi, Managing Director and Brett Spiegel, Principal Lawyer of Phi Finney McDonald;
- but may be amended at the discretion of the appointing firm.
- 3.2 The Litigation Committee shall be responsible for:
- a) the making of major decisions in accordance with clause 4;
 - b) management of the litigation;
 - c) determining the distribution and coordination of work between Maurice Blackburn and Phi Finney McDonald in accordance with clause 3.9.
- 3.3 The Litigation Committee will communicate by whatever means and at whatever frequency is necessary for the efficient and effective conduct of the



Consolidated Proceeding.

- 3.4 GKF has a standing right to be involved in any discussion or deliberation by the Litigation Committee in relation to any step in the Consolidated Proceeding. The Litigation Committee, however, has an overriding duty to the Applicants and to act in accordance with their instructions.
- 3.5 Phi Finney McDonald will provide written or verbal reports to GKF on the progress of the litigation upon request or otherwise as reasonably required.
- 3.6 Subject to clause 3.7, the Litigation Committee will operate by unanimous agreement. Each member of the Litigation Committee will act on the basis of utmost good faith in accordance with their obligations to the Court and under any existing retainer and legal costs agreement and in the case of Phi Finney McDonald's representatives pursuant to, or otherwise consistent with, GKF's funding agreement.
- 3.7 Upon agreement by at least one Litigation Committee member from each of Maurice Blackburn and Phi Finney McDonald, the Litigation Committee may delegate, to either Maurice Blackburn or Phi Finney McDonald (and their legal personnel), sole carriage and responsibility for decision-making in relation to any aspect of the Consolidated Proceeding so as to promote efficiency and reduce duplication in the conduct of the Consolidated Proceeding.
- 3.8 If the Litigation Committee is not able to reach unanimous agreement on any decision relating to the Consolidated Proceeding, then the dispute resolution procedure set out at clause 11 will apply.
- 3.9 In respect of all matters that are common between the Klemweb Proceeding and the Impiombato Proceeding, for the purposes of reducing duplication of costs and effort, work conducted from the Commencement Date onwards is to be distributed between the personnel of Maurice Blackburn and Phi Finney McDonald in a manner which so far as possible ensures:
 - a) equal distribution (by reference to hours of work performed by each law firm);
 - b) the number and seniority of legal personnel conducting a task in relation to the common issues will be no more than if there was only a single representative proceeding against BHP.

The overarching determinants of the allocation of work shall, however, be facilitating the overarching purpose (being the just resolution of the relevant



disputes accruing to law and as quickly, inexpensively and efficiently as possible) and advancing the interests of group members including having regard to: (i) the objective of ensuring that the total legal costs are reasonable and proportionate; and (ii) the objective of minimising, to the greatest extent possible, the legal costs incurred through overlapping or duplicated work;

3.10 For the purposes of ensuring compliance with clause 3.9 a), Maurice Blackburn and Phi Finney McDonald shall periodically exchange, at least every four months, itemised lists or detailed invoices of time recorded on the matter in a given period.

4 MAJOR DECISIONS

4.1 Any major decision in the litigation will be:

- a) made in accordance with clauses 3.4, 3.6, 3.7 and 3.8;
- b) subject to the operation of, and compliant with, any common fund terms ordered by the Court (**CF Terms**) and retainers and legal costs agreements; and
- c) if applicable, made following and taking into account any advice from Joint Counsel.

4.2 Subject to clause 1.1, 'major decisions' shall include the following in respect of the Consolidated Proceeding:

- a) a decision which in its terms or its effect is inconsistent or interferes with the terms on which funding is provided by GKF, other than to the extent the decision is already explicitly provided for in this Protocol and/or the CF Terms;
- b) any matters which are of significant importance to the conduct of the Consolidated Proceeding;
- c) a decision requiring the Applicants to seek approval from the Federal Court;
- d) the making of any interlocutory applications or the response to any interlocutory applications filed by BHP;
- e) the claims made in, and parties to, the pleadings in the Consolidated Proceeding (**Consolidated Pleadings**);
- f) a decision to add, remove or substantially amend claims made;



- g) a decision to amend the relevant claim period;
- h) a decision to amend the definition of “group member”;
- i) a decision to open or close the class;
- j) the making, acceptance or rejection of a settlement offer and any terms of settlement;
- k) discovery to be sought from, provided to or negotiated with BHP;
- l) a decision to accept or amend the loss methodology used to calculate the damages claimed by (or otherwise assessed on behalf of) the Applicants and Group Members;
- m) a decision to issue any notices or respond to any notices under the Federal Court Act (including any issued by the Court under its own motion);
- n) a decision to appeal or not appeal any order, judgment or decision of the Court (including a decision to defend or not defend any appeal by BHP);
- o) a decision to retain or change counsel;
- p) a decision to retain, brief or instruct an independent expert witness or consulting expert (together, **Experts or Consultants**);
- q) a decision to terminate any retainers with Experts or Consultants;
- r) the filing of any evidence from Experts or Consultants including responding to any responsive evidence filed by BHP;
- s) the filing of any lay evidence (other than evidence from the Impiombato Applicant or the Klemweb Applicant);
- t) the approval of the fee structure of any contracts or fee agreements with Experts or Consultants;
- u) a decision to terminate this Protocol pursuant to clause 14; and
- v) a decision to discontinue the Consolidated Proceeding.

5 FINANCIAL TERMS FOR THE CONSOLIDATED PROCEEDING

- 5.1 Maurice Blackburn will perform legal work on a No Win, No Fee basis, charging a 6.25% uplift.



5.2 GKF will pay:

- a) 100% of the disbursements (and is exclusively responsible for adverse costs orders and security for costs);
- b) Phi Finney McDonald under its current terms of engagement for performing legal work; and
- c) premiums associated with existing after-the-event insurance arrangements (which shall remain in place for the Consolidated Proceeding).

5.3 The Applicants will seek an order varying the common fund order made in proceeding VID649 of 2018 (**Amended Common Fund Order**) such that the maximum amount to be deducted in respect of reimbursement of amounts in clauses 5.1 and 5.2 above, and funding fees or commission will not exceed:

- a) 15% of gross recovered amounts up to and including \$150,000,000; and
- b) 10% of gross recovered amounts in excess of \$150,000,000.

5.4 In the event the Court approves a percentage or an amount under the Amended Common Fund Order, payments out of the approved amount shall be made in accordance with the following priority:

- a) First, to GKF for reimbursement of all amounts paid under clause 5.2a) and 5.2c) above;
- b) Second, to Maurice Blackburn and GKF in equal shares for payment to Maurice Blackburn of up to 60% of its fees, and to GKF for the reimbursement/payment of 60% of Phi Finney McDonald's legal fees;
- c) Third, to Maurice Blackburn and GKF in the following pro rata shares:
 - (i) one third to Maurice Blackburn for payment of an amount up to the balance of its legal fees;
 - (ii) one third to GKF for reimbursement of an amount up to the balance of Phi Finney McDonald's fees; and
 - (iii) one third to GKF for funding commission;
- d) Fourth, when all legal fees have been paid, the balance to GKF for the balance of its funding commission.

6 COUNSEL

6.1 In the first instance, three counsel of appropriate seniority are to be jointly



briefed by the Applicants for the purposes of the Consolidated Proceeding with any future decision to retain replacement or additional counsel (to prepare for or appear at any initial trial) being made consistently with the Applicants complying with their obligation to further the overarching purpose (**Joint Counsel**).

6.2 In respect of any matters which are the subject of contest or dispute between the Applicants, each of the Applicants must brief counsel other than Joint Counsel for the purposes of any interlocutory proceedings unless agreed otherwise by the Applicants. For the avoidance of doubt, this clause shall not affect the appointment of any Joint Counsel for the purposes of clause 11.

6.3 Subject to clause 6.1, any or all of Joint Counsel initially briefed may be replaced by alternative counsel to be chosen by the Litigation Committee in accordance with clause 4.1 of this Protocol.

7 CORRESPONDENCE

7.1 As far as practicable, correspondence to BHP or to the Court shall be jointly sent on behalf of the Applicants and will be approved by at least one Litigation Committee member from each of Maurice Blackburn and Phi Finney McDonald.

7.2 Correspondence to Group Members will be jointly sent in accordance with, and relying on the procedure identified in, clause 7.1.

7.3 Alternatively to clause 7.2, Maurice Blackburn and Phi Finney McDonald may send correspondence only to their respective clients at their own discretion.

7.4 Phi Finney McDonald will create and host an email account (service@bhpclassaction.com) in order to allow correspondence to be received from the Court and the solicitors for other parties to the litigation (**Joint Service E-mail Address**). The Joint Service E-mail Address will be configured so that any e-mail sent to it is immediately forwarded to each member of the Litigation Committee and any other employees of Maurice Blackburn and Phi Finney McDonald and/or any designated representatives of GKF as requested. Further common email addresses may be established as necessary and configured as agreed by the Litigation Committee (provided that GKF may opt in to receive any such correspondence).

7.5 The Applicants nominate the physical address of Phi Finney McDonald, Level



4, 325 Flinders Lane, Melbourne Victoria 3000 as the physical address for service of the Applicants for the purpose of the Consolidated Proceeding.

8 OUT OF POCKET EXPENSES & DISBURSEMENTS

- 8.1 After the Commencement Date, disbursements incurred for the benefit of the Consolidated Proceeding will be wholly paid by GKF on behalf of the Applicants.
- 8.2 It is agreed that the most efficient way of managing this arrangement is for:
- a) Phi Finney McDonald to, as far as practicable, primarily incur and pay any disbursements in accordance with this Protocol and seek reimbursement from GKF;
 - b) Where Maurice Blackburn has incurred and paid any disbursements in accordance with this Protocol, then Maurice Blackburn will provide an invoice in respect of the disbursements so incurred to Phi Finney McDonald, which will in turn provide that invoice to GKF. GKF shall reimburse Maurice Blackburn for any disbursements so incurred and invoiced.
- 8.3 At any time, Maurice Blackburn or Phi Finney McDonald may elect to replace the arrangement in clause 8.2 with a different arrangement agreed to by the Litigation Committee.
- 8.4 Unless agreed otherwise, where a disbursement for the benefit of the Consolidated Proceeding is likely to exceed \$5,000 then both Phi Finney McDonald and Maurice Blackburn must approve the expenditure before it is incurred.

9 DISCOVERY

- 9.1 Maurice Blackburn and Phi Finney McDonald are instructed to use the Relativity electronic discovery software to be managed by Maurice Blackburn with SKY Discovery to host documentary evidence in the proceeding unless otherwise agreed by the Applicants.
- 9.2 A Relativity usage protocol will be developed (and shall be updated from time-to-time if necessary) and approved by the Litigation Committee to ensure a consistent approach is adopted in respect of the management and usage of the document database and approach to discovery review.



9.3 If SKY Discovery becomes unsuitable for hosting the document database, the Litigation Committee may decide to migrate the document database to another external provider.

9.4 Maurice Blackburn will seek payment of professional fees incurred in the administration of the Relativity discovery database and for disbursements will submit invoices for reimbursement by GKF in accordance with clause 8.2 above.

10 PRIVILEGE & CONFIDENTIALITY

10.1 The Applicants acknowledge that all information passed between parties to this Protocol is strictly confidential and subject to legal professional and common interest privilege (as is relevant), unless otherwise agreed by the Litigation Committee.

10.2 Such information will only be used for the purposes of the Consolidated Proceeding, the Klemweb Proceeding and/or the Impiombato Proceeding.

10.3 To the extent that such information is passed to any third parties then it will be subject to a confidentiality agreement unless:

- a) required by law, by a Court or by a regulatory authority of competent jurisdiction (in which case if only one party is subject to that requirement, notice of the disclosure will be provided where lawful to the other party as soon as reasonably practicable after the first party becomes aware of the requirement including providing that notice before the disclosure if that is possible and lawful);
- b) the third party is subject to a professional obligation of confidence to the disclosing party; or
- c) otherwise agreed by the Litigation Committee.

Where information is passed to GKF it will also be subject to common interest privilege.

10.4 This clause 10 survives any termination of this Protocol.

11 DISPUTE RESOLUTION

11.1 Subject to clause 11.2, any dispute arising within the Litigation Committee that cannot be resolved by the Litigation Committee will be referred to the most senior of the Joint Counsel for a final decision, which the parties agree will bind them.



11.2 If a dispute arises which would be referred to the most senior counsel pursuant to clause 11.1 and any member of the Litigation Committee or counsel considers that it is not appropriate for such counsel to determine the dispute, the Litigation Committee may refer the dispute to an independent adjudicator appointed by the Litigation Committee, save that, failing agreement within a reasonable time by the Litigation Committee as to such independent adjudicator, the Litigation Committee must refer the dispute to an independent adjudicator to be appointed by the President of the Law Institute of Victoria for a final decision, in respect of which decision, the parties agree to be bound.

12 BEST INTERESTS OF GROUP MEMBERS

12.1 The Applicants consider that this Protocol serves to benefit Group Members.

12.2 The Applicants shall instruct Maurice Blackburn and Phi Finney McDonald to interpret and give effect to this Protocol in a manner whereby the overarching considerations shall be facilitating the overarching purpose and advancing the interests of Group Members.

13 COSTS REFEREE

13.1 In the event a costs referee is appointed by the Court (**Costs Referee**) for the purposes of conducting periodic inquiries into, and drafting reports on, inter alia, whether there is unnecessary or excessive work including unnecessary or excessive duplication in the work performed by Maurice Blackburn and Phi Finney McDonald, Maurice Blackburn and Phi Finney McDonald shall assist the Costs Referee in undertaking such inquiries including by providing the Costs Referee with reasonable access to costs invoices and address the Cost Referee's queries as reasonably required.

13.2 In the event that:

- a) either an Applicant or its solicitors (**Complainant**) consider that cooperation with the other Applicant or its solicitors (**Complaine**) in the conduct of the Consolidated Proceeding is being undertaken other than in the interests of Group Members or is functioning poorly;
- b) those concerns have been communicated in writing to the Complaine; and
- c) following the expiration of 7 days from receipt of notice of those concerns, the most senior counsel referred to in clause 6.1 considers that the Complaine has not provided a satisfactory response or



remediation:

then the Complainant shall without delay provide an outline of their concerns to the Costs Referee (copying in the Complainee) and the Costs Referee and/or the Complainant shall raise the matter with the Court at the earliest opportunity.

14 TERMINATION AND VARIATION OF PARTIES

14.1 If there is a termination of the Protocol by one or more of the Applicants or by order of the Court which is not provided for in this clause 14, the Applicants will attempt to agree on the appropriate course, and if they cannot agree, the dispute will be resolved in accordance with the dispute resolution provisions in clause 11.

14.2 The Applicants will use their utmost good faith to attempt to resolve any dispute and in giving effect to the outcome of any dispute resolution process conducted in accordance with clause 11 (and clause 11 will apply to such dispute between the Applicants as if it were a dispute “within the Litigation Committee” as contemplated by that clause).

Termination by Consent of Parties

14.3 This Protocol may be terminated by consent of all the Applicants on terms which they agree with notice of such termination to be provided to the Court within 2 business days.

Termination if no orders for Consolidated Proceeding

14.4 This Protocol will terminate if:

- a) the Court declines to make orders for the consolidation of the Impiombato Proceeding and the Klemweb Proceeding; or
- b) the consolidation of the Impiombato Proceeding and the Klemweb Proceeding is undone by order of the Court.

Termination at Conclusion of Consolidated Proceeding

14.5 This Protocol (except those clauses which are expressly stated to survive termination) will terminate when the Court delivers a final judgment and any appeal period expires or any appeal is determined, or in the event of a settlement following settlement approval and dismissal of the proceeding.



15 GENERAL

- 15.1 The Applicants each agree to enter into any further agreement and/or to apply to the Court to achieve the objectives and purposes of this Protocol.
- 15.2 Maurice Blackburn and Phi Finney McDonald must:
- a) maintain at all times Professional Indemnity insurance for an amount of at least \$2 million (or such lesser amount as agreed between the parties); and
 - b) each provide to the other, on receipt of a reasonable request, proof of insurance (such as a certificate of currency).
- 15.3 Any principal lawyer of Maurice Blackburn or principal lawyer of Phi Finney McDonald (or their equivalent) may issue a press release or media statement or respond to a journalist's request for comment relating to the Consolidated Proceeding provided that such communication is consistent with any decision made, or otherwise does not pre-empt any decision to be made, by the Litigation Committee.
- 15.4 This Protocol may only be amended by a document duly executed by each of the Applicants and such amended Protocol is to be filed with the Court within 2 business days.
- 15.5 This Protocol is governed by the law applicable in Victoria and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of courts located in Victoria.
- 15.6 If a provision in this Protocol is held to be invalid, illegal or unenforceable, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or other provisions.
- 15.7 This Protocol may be executed in counterparts.

Signed:

David Webb for Klemweb Nominees Pty Ltd

Date:

Signed:

Vince Impiombato

Date:



ANNEXURE B

BHP GROUP LTD SHAREHOLDER

CLASS ACTION FUNDING TERMS

1. Definitions and interpretation

The following definitions apply in these Funding Terms:

BHP	means BHP Group Ltd (ACN 004 028 077, previously BHP Billiton Ltd) and BHP Group Plc (3196209, previously BHP Billiton Plc).
BHP Securities	means an ordinary fully-paid share issued by BHP and listed on the Australian Securities Exchange, the London Stock Exchange or the Johannesburg Stock Exchange.
Claim(s)	means the claim or claims the Joint Applicants have or any Group Member has or may have against any one or more Respondents for loss, damages and/or costs caused to the Joint Applicants or Group Members by the conduct of one or more of the Respondents in relation to or arising out of the Joint Applicants' or Group Member's acquisition of an interest in BHP Securities during the period specified in the Statement of Claim filed in respect of the Consolidated Proceeding as amended from time to time, or such other period as the Lawyers advise and the Funder accepts.



Consolidated Proceeding

means the proceeding resulting from the consolidation of the Impiombato Proceeding and the Klemweb Proceeding and any other legal proceedings to prosecute some or all of the Claims, including:

1. proceedings brought in contemplation of the Consolidated Proceeding; and
2. any other proceedings or process as part of or consequent on the class action (including any alternative dispute resolution processes engaged to resolve some or all of the Claims),

but does not include any appeals of such legal proceedings or related enforcement actions unless the Funder has (in its absolute discretion) agreed to fund the particular appeal or enforcement proceedings.

Costs Order

means any order made by a Court requiring one or more parties to the Consolidated Proceeding to pay the costs incurred by another party or parties to the Consolidated Proceeding.

Court

means the Federal Court of Australia.

Disbursements

means any expense the Lawyers incur whether as principal or agent on the Joint Applicants and/or Group Members' behalf in relation to Legal Work, including (without limitation) barristers and other experts' fees, searching fees, lodging fees, travel expenses, courier fees and photocopying fees.

Expenses

means all Professional Fees (including Remaining Costs), and Disbursements, and any other expenses involved in performing Legal Work and/or bringing proceedings against the Respondent.



Funder	means G&E KTMC Funding LLC, its successors and assigns.
Funding Agreement	means a funding agreement between the Funder and a Group Member in relation to the Claims, including the funding agreement between the Funder and Mr Vince Impiombato entered into on 24 May 2018.
Funding Period	means the period commencing on the date that the Court approves these Funding Terms and ending upon the Termination Date.
Funding Terms	means these terms.
Gross Recovery	means the gross amount payable by way of Settlement or judgment in respect of the Claims, inclusive of any amount paid pursuant to a Costs Order against a Respondent.
Group Member(s)	means all persons who are identified as group members in the Consolidated Proceeding and who do not validly opt out of the Consolidated Proceeding.
Interlocutory Costs Order	means an order that the Respondent or an Other Party or any of them pay the Applicants' costs or any part thereof prior to any Settlement of the Claims or final court determination of the Applicants' Claims.
Impiombato Applicant	means Mr Vince Impiombato.
Impiombato Proceeding	means proceeding VID 649/2018 prior to becoming a Consolidated Proceeding including the period prior to commencement of that proceeding.



Joint Applicants

means the joint representative applicants in the Consolidated Proceeding who have entered into a Phi Finney McDonald Retainer Agreement and a Funding Agreement with the Funder, or a Maurice Blackburn Retainer Agreement, whom, as at the commencement of the Funding Period are:

1. the Impiombato Applicant; and
2. the Klemweb Applicant.

**Cooperative
Litigation Protocol**

means an agreement between the Applicants setting out the terms and manner in which the Consolidated Proceeding shall be conducted.

Klemweb Applicant

means Klemweb Nominees Pty Ltd (as trustee for the Klemweb Superannuation Fund).

Klemweb Proceeding

means proceeding VID 1077/2018 prior to becoming a Consolidated Proceeding including the period prior to commencement of that proceeding.

Lawyers

means:

1. Phi Finney McDonald or any firm of lawyers appointed in their place by the Impiombato Applicant, and with the Funder's consent; and
2. Maurice Blackburn, or any firm of lawyers appointed in their place by the Klemweb Applicant.



Legal Work

means such advice and legal services to the Applicants and Group Members or for the Group Members' benefit, incurred on or after 1 November 2017 to: (a) investigate the Claims; (b) prosecute the Claims; (c) negotiate a Settlement of the Claims; (d) comply with the Funding Agreements and these Funding Terms; (e) negotiate to secure and maintain funding on behalf of the Group Members in relation to the Claims; and (f) provide all project management and administrative services with respect thereto.

Maurice Blackburn means Maurice Blackburn Pty Ltd (ACN 105 657 949).

Maurice Blackburn Retainer Agreement means the retainer and costs agreement between Maurice Blackburn and a Group Member, including the costs agreement signed by the Klemweb Applicant on 30 August 2018.

Other Parties

means any other person or entity which:

1. becomes a party to the Consolidated Proceedings at the initiative of a Respondent; or
2. the Lawyers recommend be joined to the Consolidated Proceeding and in respect of whom the Funder agrees in writing to accept adverse Costs Order exposure.

Outlay means all Expenses paid by the Funder plus any premium paid by the Funder for the provision of any insurance or bond against an adverse costs order.

Phi Finney McDonald means Phi Finney McDonald Pty Ltd (ACN 618 727 905).



Phi Finney McDonald Retainer Agreement	means the retainer and costs agreement between Phi Finney McDonald and a Group Member, including the costs agreement signed by the Impiombato Applicant on 24 May 2018.
Professional Fees	means the Lawyers' reasonable professional fees incurred for the sole purpose of performing the Legal Work.
Remaining Costs	<p>means the 'at risk' component of the Lawyers' Professional Fees, only payable to Lawyers by the Funder in the event of Resolution, comprising:</p> <p>for Phi Finney McDonald Pty Ltd:</p> <p>"PFM Conditional Fees" being the 40% deferred portion of its reasonable professional fees incurred for the sole purpose of performing the Legal Work; plus</p> <p>an "PFM Uplift Fee" being a success fee calculated as a 25% uplift on the PFM Conditional Fees;</p> <p>for Maurice Blackburn:</p> <p>"MBL Conditional Fees" being the deferred portion of its reasonable professional fees incurred for the sole purpose of performing the Legal Work; plus</p> <p>an "MBL Uplift Fee" being a success fee calculated as a 6.25% uplift on the MBL Conditional Fees.</p>
Resolution	means when all or any part of a Resolution Sum other than an Interlocutory Costs Order amount is received and, where a Resolution Sum is received in parts (other than in respect of any Interlocutory Costs Order amount), a "Resolution" occurs each time a part is received.



Resolution Sum	means the amount or amounts, or the market value of any goods or services, for which some or all of the Claims are Settled, or for which judgment is given, including the value of any favourable terms of future supply of goods or services, any interest and any costs recovered pursuant to a Costs Order in favour of the Joint Applicants or by agreement.
Respondent	means BHP Group Ltd (previously BHP Billiton Ltd) and any Other Parties named as defendants or respondents in the Consolidated Proceeding.
Retainer Agreements	means the Phi Finney McDonald Retainer Agreement and the Maurice Blackburn Retainer Agreement.
Settlement	means any full or partial settlement, agreement, compromise, discontinuance, withdrawal, dismissal or waiver of the Claims or part of the Claims, and “Settle”, “Settles” and “Settled” shall be construed accordingly.
Termination Date	means the date on which the termination of these Funding Terms in accordance with clause 8 below becomes effective.
Trust Account	is defined as an interest-bearing trust account established and maintained by Phi Finney McDonald for the sole purpose of receiving Resolution Sums under these Funding Terms.

- 1.1. Unless the context otherwise requires, the following rules of interpretation apply to these Funding Terms:
 - 1.1.1. a reference to any agreement or document is a reference to such agreement or document as validly amended, varied, restated, assigned or novated from time to time (in each case, other than in breach of the relevant agreement or the provisions of these Funding Terms, in which case it shall remain a reference to such agreement or document immediately prior to such amendment); and



- 1.1.2. a reference to any legislation or legislative provision includes any statutory modification, amendment or re-enactment of that legislation or legislative provision, and includes any subordinate legislation or regulations issued under that legislation or legislative provision.

2. Funding Agreements and Retainer Agreements

- 2.1. For the duration of the Funding Period, these Funding Terms will prevail over the Funding Agreements.
- 2.2. Upon the request of a Group Member, Maurice Blackburn and/or Phi Finney McDonald shall provide that Group Member with a copy of their respective Retainer Agreements on a confidential basis.

3. Obligations of the Funder

- 3.1. The Funder must pay the Outlay. For avoidance of doubt, the Outlay does not include any Professional Fees payable to Maurice Blackburn, including Remaining Costs.
- 3.2. Subject to any Court order to the contrary, the Funder will meet any Costs Order incurred in the Consolidated Proceeding after the Funding Period.
- 3.3. If the Joint Applicants agree or are ordered to provide security for costs in the Consolidated Proceeding, the Funder will provide a form of security for costs on behalf of the Joint Applicants that shall be acceptable to the Respondent (and any other applicable party to the Consolidated Proceeding), or as otherwise ordered by the Court.
- 3.4. The Funder will not be obliged to fund any appeal or defence of appeal of the Consolidated Proceeding but will have the option of doing so.
- 3.5. The Funder will not be obliged to accept adverse Costs Order exposure in respect of an additional respondent but will have the option of doing so.

4. Costs and Commission

- 4.1. Subject to further order, upon Resolution the amounts payable to the Funder, Maurice Blackburn and Phi Finney McDonald, in accordance with the Cooperative Litigation Protocol, shall be paid or distributed from any Resolution Sum prior to any distribution to Group Members, and shall not exceed:
 - 4.1.1. 15% of a Gross Recovery of up to and including \$150,000,000; and
 - 4.1.2. 10% of any Gross Recovery in excess of \$150,000,000.



- 4.2. The amount referred to in clause 4.1 above will not become due or owing by the Joint Applicants and Group Members unless and until a Resolution occurs and must not exceed the aggregate Resolution Sums.
- 4.3. All Resolution Sums are to be paid to, and received by, the Lawyers and paid immediately into a Trust Account opened by Phi Finney McDonald and kept for that purpose.
- 4.4. If, despite clause 4.3 above, the Joint Applicants or any Group Member directly receive any amounts, assets or benefits in respect of a Settlement or judgment of some or all of the Claims, he, she or it will cause the amounts, assets or benefits to be paid or directed to the Lawyers to be dealt with as part of the Resolution Sum including, if appropriate, the realisation of the market value of any such assets or benefits.
- 4.5. The Lawyers will pay out of any Resolution Sum held on the Trust Account the amounts referred to in clause 4.1 above in accordance with these Funding Terms and the Cooperative Litigation Protocol prior to any distribution to the Joint Applicants and Group Members in accordance with any distribution scheme approved by the Court.
- 4.6. The Group Members will not seek to encumber any part of the Resolution Sum in a manner which adversely affects the Funder's and Lawyers' entitlements under the Funding Terms.

5. Relationship Between the Joint Applicants, Lawyers and Funder

- 5.1. Phi Finney McDonald's professional duties are owed to the Impiombato Applicant and not to the Funder.
- 5.2. Maurice Blackburn's professional duties are owed to the Klemweb Applicant.
- 5.3. The Funder will give day-to-day instructions to Phi Finney McDonald on all matters concerning the Claims and the Consolidated Proceeding, subject to clauses 5.4, 5.5, 7 and 9 below.
- 5.4. The Impiombato Applicant may override any instruction given by the Funder, subject to clauses 7 and 9 below. The Impiombato Applicant may give binding instructions to Phi Finney McDonald and make binding decisions on behalf of the Group Members in relation to the Claims up to the time of any Court approval of Settlement of the Claims or the delivery of judgment in respect of the common issues in the Consolidated Proceeding (including, but not limited to, instructions and decisions in relation to Settlement), save



where, in the reasonable professional opinion of Phi Finney McDonald, separate instructions are required from the Group Members.

- 5.5. The Klemweb Applicant may give binding instructions to Maurice Blackburn and make binding decisions on behalf of the Group Members in relation to the Claims up to the time of any Court approval of Settlement of the Claims or the delivery of judgment in respect of the common issues in the Consolidated Proceeding (including, but not limited to, instructions and decisions in relation to Settlement), save where, in the reasonable professional opinion of Maurice Blackburn, separate instructions are required from the Group Members.
- 5.6. Subject to clauses 7 and 9 below, if the Lawyers notify the Funder and the Joint 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 Joint Applicants and any obligations they owe to the Funder, then the Lawyers' obligations to the Joint Applicants prevail (and for the avoidance of doubt, the Lawyers can continue to offer advice to and take instructions from the Joint Applicants in such circumstances).
- 5.7. Phi Finney McDonald will:
 - 5.7.1. keep the Funder fully informed of all matters concerning the Claims and the Consolidated Proceeding, including any mediation and settlement discussions; and
 - 5.7.2. ensure that the Funder is given all necessary information and advice in order for the Funder to provide informed instructions.
- 5.8. The Funder will:
 - 5.8.1. implement conflict management protocols so as to comply with the *Corporations Amendment Regulation 2012 (No. 6) (Cth)*;
 - 5.8.2. agree that, should any conflict arise as between the interests of the Funder and the interests of the Joint Applicants and Group Members, then the Lawyers may continue to provide the Legal Work to the Joint Applicants and Group Members and the Funder will raise no objection to them doing so;
 - 5.8.3. provide the Joint Applicants with timely and clear disclosure of any material breach of the *Corporations Amendment Regulation 2012 (No. 6) (Cth)*;



- 5.8.4. not retain the Lawyers as their solicitors for any purpose connected with the Consolidated Proceeding;
- 5.8.5. upon the request of a Group Member, provide that Group Member with a copy of the current and applicable conflict management protocols as referred to above at clause 5.8.1.

6. Confidentiality

- 6.1. The Funder shall strictly maintain the confidentiality of any information provided to the Funder by the Joint Applicants or the Lawyers for a purpose connected to the Consolidated Proceeding and shall adopt proper and effective procedures for maintaining the confidentiality and safe custody of the information.
- 6.2. Where any information is provided to the Funder, the Funder shall:
 - 6.2.1. adopt proper and effective procedures for maintaining the confidentiality and safe custody of that information;
 - 6.2.2. only use that information for purposes for which the information was provided; and
 - 6.2.3. not disclose the information contained therein to any person other than the Joint Applicants, Lawyers or counsel retained in the Consolidated Proceeding and any third parties it is required to disclose information to in the course of, and for the purpose of, the Consolidated Proceeding, including to any provider of after-the-event insurance, advisor, sub-litigation advisor, attorney, consultant, associated company, insurer, shareholder or agent — provided it takes reasonable steps to ensure that any third party also retain the confidentiality of the documents.

7. Settlement

- 7.1. If there is a disagreement between the Funder and the Joint Applicants as to whether to settle the Consolidated Proceeding, or as to the appropriate terms for the Settlement of the Consolidated Proceeding, within 5 days of either of the Funder or the Joint Applicants providing notice of any such disagreement:
 - 7.1.1. the Lawyers will brief the most senior counsel of those retained by the Lawyers to advise as to whether, in senior counsel's opinion,



settlement of the Consolidated Proceeding on the terms is fair and reasonable in all of the circumstances;

- 7.1.2. representatives of the Funder may attend any conference with senior counsel at which the issue is to be discussed;
 - 7.1.3. the legal costs of obtaining senior counsel's advice shall be met by the Funder as part of the Expenses; and
 - 7.1.4. the advice of senior counsel will be final and binding on both the Joint Applicants and the Funder.
- 7.2. Without limiting clause 7.1 above, in determining whether a proposed settlement is reasonable having regard to all the circumstances, senior counsel may proceed as he or she sees fit to inform himself or herself before forming and delivering his or her advice, but any such determination shall include the following considerations:
- 7.2.1. the strengths and weaknesses of the claims of all Group Members;
 - 7.2.2. the quantum of the claims of all Group Members and any difficulties which might exist in proving that quantum;
 - 7.2.3. the recoverability of a judgment sum from the Respondent;
 - 7.2.4. the extent to which further legal costs incurred in the Consolidated Proceeding are likely to be recoverable from the Respondent;
 - 7.2.5. the risk of the Funder being ordered to pay adverse costs and the quantum of such costs. Counsel will have regard to this factor as though all Group Members carried such risk rather than the Funder;
 - 7.2.6. the requirements of the Federal Court of Australia's Practice Note GPN-CA;
 - 7.2.7. the matters set out at paragraph [248.95] of the Australian Securities and Investments Commission's *Regulatory Guide 248: Litigation schemes and proof of debt schemes: Managing conflicts of interest* (April 2013); and
 - 7.2.8. any other matters senior counsel considers relevant.

8. Termination

- 8.1. The Funder's obligations under these Funding Terms may only be terminated by order of the Court, granted on application made by the Joint Applicants, Group Members or the Funder, and upon notice given to the Joint Applicants, the Funder and such other persons as ordered by the



Court.

8.2. If the Funding Terms are terminated under clause 8.1 above then (subject to any contrary order of the Court) all obligations of the Joint Applicants, the relevant Group Members, the Funder and the Lawyers under these Funding Terms will cease on the Termination Date, save for the following:

8.2.1. where there has been no material breach of these Funding Terms by the Funder and the application pursuant to clause 8.1 is made by a Group Member, the Funder will continue to be entitled to receive payment from any Resolution Sums (whether received before or after the Termination Date) pursuant to clause 4 unless otherwise ordered by the Court;

8.2.2. where there has been a material breach of these Funding Terms by the Funder, the Funder will only be entitled to receive payment from any Resolution Sum (whether received before or after the Termination Date) as ordered by the Court;

8.2.3. where there has been no material breach of these Funding Terms by the Funder and the application pursuant to clause 8.1 is made by the Funder, the Funder will continue to be entitled to receive payment from any Resolution Sums (whether received before or after the Termination Date) pursuant to clause 4 unless otherwise ordered by the Court; and

8.2.4. The Funder must pay:

8.2.4.1. any outstanding costs pursuant to clause 3.1, 3.2 and 3.3 above incurred up to the Termination Date; and

8.2.4.2. to the extent such amounts are not captured by clause 8.2.4.1 above, any quantified Costs Order against the Joint Applicants in respect of costs which arise in, or are attributed to, the period ending on the Termination Date.

9. Dispute Resolution

9.1. Subject to clause 7 and clause 9.2, any dispute arising between any of the Funder, the Joint Applicants and/or the Lawyers (including a dispute between members of the litigation committee) regarding the conduct of the Consolidated Proceeding that cannot be resolved within a reasonable period of time will be referred to the most senior counsel of those retained by the



Lawyers for a final decision, which the Funder, the Joint Applicants and the Lawyers agree will bind them.

- 9.2. If a dispute arises which would be referred to senior counsel pursuant to clause 9.1 and the Funder, the Joint Applicants, the Lawyers or counsel considers that it is not appropriate for counsel to advise on or determine the dispute, the Lawyers may refer the dispute to an independent adjudicator, save that, failing agreement within a reasonable time by the Funder, the Joint Applicants and the Lawyers as to such independent adjudicator, the dispute is to be referred to an independent adjudicator to be appointed by the President of the Law Institute of Victoria for a final decision, which the Funder, the Joint Applicants the Lawyers agree will bind them.
- 9.3. For the avoidance of doubt, the disputes regulated pursuant to this clause include:
 - 9.3.1. any appeal of the Consolidated Proceeding;
 - 9.3.2. the addition or removal of Respondents to or from the Consolidated Proceeding;
 - 9.3.3. the termination of the Lawyers' appointment; or
 - 9.3.4. the appointment of alternative Lawyers.



ANNEXURE C – FORM OF UNDERTAKING

No. VID 649 of 2018

Federal Court of Australia
District Registry: Victoria
Division: General

VINCE IMPIOMBATO

First Applicant

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

Second Applicant

BHP GROUP LIMITED (ACN 004 028 077)

Respondent

UNDERTAKING

[G&E KTMC Funding LLC OR Mr Vince Impiombato OR Phi Finney McDonald Pty Ltd OR Klemweb Nominees Pty Ltd atf the Klemweb Superannuation Fund OR Maurice Blackburn Pty Ltd] undertakes to *[the other four of G&E KTMC Funding LLC OR Mr Vince Impiombato OR Phi Finney McDonald Pty Ltd OR Klemweb Nominees Pty Ltd atf the Klemweb Superannuation Fund OR Maurice Blackburn Pty Ltd]* and to the Court to comply with its obligations under the Funding Terms (being Annexure B to the orders dated ___2019) and the terms of Order ___ of those Orders.

Signature: _____

Party: *[G&E KTMC Funding LLC OR Mr Vince Impiombato OR Phi Finney McDonald Pty Ltd OR Klemweb Nominees Pty Ltd atf the Klemweb Superannuation Fund OR Maurice Blackburn Pty Ltd]*

Signatory:

Capacity:

Date of signature: