FEDERAL COURT OF AUSTRALIA

Prygodicz v Commonwealth of Australia (Robodebt settlement) [2026] FCA 1029

File number:	VID 1252 of 2019
Judgment of:	**BEACH J**
Date of judgment:	23 June 2026
Catchwords:	**REPRESENTATIVE PROCEEDINGS** — Robodebt scheme — fiasco in public administration — ministerial incompetence — failure of relevant Ministers and public servants to ascertain unlawfulness of scheme — knowledge of or reckless indifference to such unlawfulness — tort of misfeasance in public office — new evidence coming to light as a result of a Royal Commission — setting aside of original settlement — resolution of appeal proceedings — amendments to claims in the proceedings — new deed of settlement — settlement approval under s 33V(1) of the *Federal Court of Australia Act 1976* (Cth) — funding commission — discussion of return on investment methodology — common fund order made — settlement approved — settlement distribution scheme ordered under s 33V(2) — consequential orders
Legislation:	*Federal Court of Australia Act 1976* (Cth) ss 33V, 33ZF, 37M, Part IVA *Federal Court Rules 2011* (Cth) r 39.05(f)
Cases cited:	*Bolitho v Banksia Securities Ltd (No 18) (remitter)* [2021] VSC 666 *Endeavour River Pty Ltd v MG Responsible Entity Ltd* [2019] FCA 1719 *Endeavour River Pty Ltd v MG Responsible Entity Ltd (No 2)* [2020] FCA 968 *Galactic Seven Eleven Litigation Holdings LLC v Davaria* (2024) 302 FCR 493 *J Wisbey & Associates Pty Ltd v UBS AG (No 3)* [2025] FCA 1018 *McCoy v Hino Motors Ltd (No 2)* [2025] VSC 553 *McCoy v Hino Motors Ltd (No 3)* [2026] VSC 195 *McDonald v Commonwealth of Australia* [2025] FCA 380; (2025) 309 FCR 584 *Money Max Int Pty Ltd v QBE Insurance Group Ltd* (2016)

	245 FCR 191 *Street v Western Australia* [2024] FCA 1368
Division:	General Division
Registry:	Victoria
National Practice Area:	Administrative and Constitutional Law and Human Rights
Number of paragraphs:	259
Date of hearing:	22 and 23 June 2026
Counsel for the Applicants:	Mr DJ Batt KC and Mr G Kozminsky
Solicitors for the Applicants:	Gordon Legal
Counsel for the Respondent:	Mr R Knowles KC and Ms M Jackson
Solicitor for the Respondent:	Thomsons Lawyers
Counsel for the First Intervener (Omni Bridgeway (Fund 5) Lion Pty Limited):	Ms RM Doyle SC, Ms L O'Rorke and Mr N Dias
Solicitors for the First Intervener (Omni Bridgeway (Fund 5) Lion Pty Limited):	Arnold Bloch Leibler
Counsel for the Second Intervener (Gordon Legal Pty Ltd):	Mr WAD Edwards KC and Ms HA Tiplady
Contradictors:	Mr LWL Armstrong KC and Mr GT Rees

ORDERS

VID 1252 of 2019

BETWEEN:	**KATHERINE PRYGODICZ** First Applicant
	ELYANE PORTER Second Applicant
	STEVEN FRITZE (and others named in the Schedule) Third Applicant
AND:	**COMMONWEALTH OF AUSTRALIA** Respondent

ORDER MADE BY:	**BEACH J**
DATE OF ORDER:	**23 JUNE 2026**

THE COURT ORDERS THAT:

Set Aside

1. Pursuant to r 39.05(f) of the *Federal Court Rules 2011* (Cth), paragraphs 1 to 4 (inclusive) of the orders made on 11 June 2021 be set aside.

Further Amended Originating Application

2. Pursuant to s 33K of the *Federal Court of Australia Act 1976* (Cth), and r 8.21 of the Rules, the applicants have leave to file and serve a Further Amended Originating Application in substantially the same form as exhibit AG-2 to the Affidavit of Andrew Alexander Grech dated 15 October 2025.

Settlement Approval

3. Pursuant to s 33V of the Act, the settlement of the proceeding be approved on the terms set out in:
   (a) the Deed of Settlement annexed as AG-1 to the Affidavit of Andrew Grech dated 9 September 2025 (**Settlement Deed**); and
   (b) the Settlement Distribution Scheme (**Settlement Scheme**) in the form annexed as AG-16 to the affidavit of Andrew Grech dated 23 June 2026.

4. Pursuant to ss 33V and 33ZF of the Act, the Court authorises the applicants *nunc pro tunc* to enter into and give effect to the Settlement Deed, including the Settlement Scheme, for and on behalf of Group Members.

5. Pursuant to s 33ZB of the Act, the persons affected and bound by the settlement of the proceeding are the applicants, the Group Members, the respondent, and the Scheme Administrator (as defined in the Settlement Deed and Settlement Scheme).

6. Pursuant to s 33ZF of the Act, the parties and the Scheme Administrator each have leave to apply to the Court for orders in respect of any issue arising in relation to the administration of the Settlement Scheme, including as provided by the Settlement Scheme.

Appointment of Scheme Administrator

7. Pursuant to ss 33V and 33ZF of the Act, Gordon Legal be appointed as the Scheme Administrator, to act in accordance with the Settlement Scheme and have the powers and immunities contemplated by the Scheme.

8. For the purpose of the Eligibility Notices to be issued by the Scheme Administrator pursuant to clause 5.5 of the Settlement Scheme, the appointment of the Scheme Administrator pursuant to order 7 above has effect from the later of 6 July 2026 or the date of these orders.

Participation in settlement

9. Group Members who submitted a late registration form between 4.00pm (AEST) 6 March 2026 and 4.00pm (AEST) on 15 May 2026 be permitted to participate in the settlement of the proceeding.

10. The following Group Members be permitted to participate in the settlement of the proceeding:

    (a) Group Members who are referred to in paragraphs 15, 16, and 18 of the affidavit of Andrew Grech dated 19 June 2026;

    (b) the Group Member referred to in the affidavit of Andrew Grech dated 22 June 2026; and

    (c) the Group Member with Registration ID VBUVBDEX.

Reinstatement of group members

11. Pursuant to s 33ZF of the Act, each of the 386 Group Members who had opted out of the proceeding and who have since registered and applied to be reinstated as Group Members, identified in Annexure AG-8 to the affidavit of Andrew Grech dated 15 June 2026, be reinstated as a Group Member in the proceeding.

12. Pursuant to s 33ZF of the Act, each of the 145 Group Members who had opted out of the proceeding and who have since sought to register to participate in the settlement of the proceeding but who have not applied to be reinstated, identified in Annexure AG-9 to the affidavit of Andrew Grech dated 15 June 2026, be reinstated as a Group Member in the proceeding.

13. Pursuant to s 33ZF of the Act, to the extent necessary to permit their participation in the settlement of the proceeding, any Group Member referred to in paragraph 10 of these orders who previously opted out of the proceeding and who has not applied to be reinstated, be reinstated as a Group Member in the proceeding.

Distributions from the settlement sum

14. Pursuant to ss 33V and 33ZF of the Act, the following distributions be approved:

    (a) $13,500,000 (inclusive of GST) be paid by the Commonwealth to Gordon Legal for the applicants' legal costs and disbursements incurred in connection with the proceeding and for the legal costs and disbursements incurred in connection with proceeding VID982/2024 (**Appeal Proceeding**) by the applicants in that proceeding (such amount to be distributed from the Legal Costs Sum as defined in the Settlement Deed) within 10 business days of the Appeal Period (as defined in the Settlement Deed) expiring;

    (b) a total amount not to exceed $60,000,000 (inclusive of GST) be paid by the Commonwealth by incremental payments to the Scheme Administrator for costs fairly and reasonably incurred by it in respect of the implementation and operation of the Settlement Scheme (as provided for in cl 5.4 of the Settlement Scheme) (such amount to be distributed from the Settlement Scheme Administration Costs Sum, as defined in the Settlement Deed);

    (c) $475,000,000 (inclusive of GST) be paid by the Commonwealth to the Scheme Administrator’s interest-bearing controlled moneys account within 10 business days of the date of these orders (**Compensation Sum**);

(d) within two business days of receipt of the Compensation Sum, the Scheme Administrator is to make the following payments from the Compensation Sum (in accordance with cl 5.2 of the Settlement Scheme):

(1) to Omni Bridgeway (Fund 5) Lion Pty Ltd (the **Funder**), an amount of $35,000,000 (including any applicable GST) for its funding commission, pursuant to s 33V(2) of the Act; and

(2) to the following persons, in the following amounts:

(a) $20,000 to the first applicant;

(b) $20,000 to the second applicant;

(c) $20,000 to the third applicant;

(d) $20,000 to the fourth applicant;

(e) $20,000 to the fifth applicant;

(f) $20,000 to the sixth applicant;

(g) $25,000 to the first applicant in VID982/2024; and

(h) $25,000 to the second applicant in VID982/2024

pursuant to ss 33V(2) and 33ZF of the Act for their time and out-of-pocket expenses in performing their role as representatives of Group Members in the conduct of the proceeding or the Appeal Proceeding (as applicable); and

(e) within the later of two business days of receipt of the Compensation Sum or five business days of receipt of a tax invoice from each of the Contradictors, the Scheme Administrator is to pay the amount in the tax invoices, which is not to exceed $130,000 including GST from the Compensation Sum to the Contradictors for their costs.

15. Any amount of the Compensation Sum which remains in the Scheme Administrator's nominated interest-bearing controlled moneys account at the termination of the Settlement Scheme is to be returned by the Scheme Administrator to the Commonwealth within 20 business days of the termination of the Settlement Scheme.

Reporting during the Settlement Scheme

16. Within 10 business days of the end of each calendar quarter during its appointment as Scheme Administrator, the Scheme Administrator is to provide a detailed quarterly

report to the Costs Assessor and the Commonwealth (**Scheme Quarterly Report**) recording the progress of the scheme administration, and of the costs incurred, against the Current Cost Estimate set out in Annexure AG-11 to the affidavit of Andrew Grech dated 15 June 2026 (including, but not necessarily limited to, against each of the 'Phases/Workstreams' and 'Task' in the 'Detailed Summary' tab (Phases)) in respect of:

(a) the preceding calendar quarter; and

(b) cumulatively, for the entire scheme administration up to and including the preceding calendar quarter.

17. Within 10 business days of the Scheme Administrator's costs reaching 80% (being $45,532,250 including GST) of the total estimated costs under the Current Cost Estimate (being $56,915,312.12 including GST), the Scheme Administrator is to provide a detailed report to the Court and the parties (Scheme 80% Report) recording:

(a) the actual progress of the scheme administration, and of the costs incurred, against the Current Cost Estimate (including with reference to the number of claims and progress through the Phases), for the entire scheme administration to the date that costs reached 80%; and

(b) the expected future progress of the scheme administration, and the costs likely to be incurred for the remainder of the scheme administration, including by reference to each of the Phases.

18. Upon receipt of the Scheme 80% Report, any party is at liberty to apply for the matter to be listed for a case management hearing.

19. In orders 16 to 18, 'costs incurred' means the costs recorded in the Scheme Administrator's final tax invoices (for periods in respect of which the Costs Assessor's review process is complete), and costs incurred and claimed (or to be claimed) by the Scheme Administrator but not yet reviewed by the Costs Assessor, at the time of providing the Scheme Quarterly Report or Scheme 80% Report (as the case may be).

Provision of information by Commonwealth to Scheme Administrator

20. For the purposes of carrying out the Settlement Scheme, the Commonwealth may provide the Scheme Administrator with information about Eligible Group Members as referred to in cl 9.4 of the Settlement Scheme and any other information which the Commonwealth considers is reasonably necessary for the carrying out of the Settlement Scheme.

Dismissal of the Proceeding

21. Pursuant to ss 22, 23, or 33ZF of the Act, and/or r 1.32 of the Rules, and/or the Court's implied jurisdiction and upon the date that the Settlement Scheme terminates in accordance with cl 9.2 thereof, this proceeding be dismissed:

    (a) without prejudice to:

        (1) the right of any party to make an application to enforce the Settlement Deed in a new proceeding;

        (2) the right of any Group Member who has opted out of the proceeding;

        (3) the right of the Scheme Administrator to refer any issues relating to the Settlement Scheme to the Court for direction or determination; and

    (b) with no order as to costs.

Costs

22. There be no order as to costs in the proceeding.

23. All outstanding costs orders in the proceeding are vacated.

Non-publication orders

24. Pursuant to s 37AF(1)(b) of the Act, on the ground that the order is necessary to prevent prejudice to the proper administration of justice, and until further order, the evidence of the applicants and the submissions of the Contradictor identified in Annexure A to these orders not be published or disclosed without the prior leave of the Court to any person other than those persons specified in Annexure A.

25. Pursuant to s 37AF(1)(b) of the Act, on the ground that the order is necessary to prevent prejudice to the proper administration of justice, and until further order, the evidence and submissions of the Funder identified in Annexure B to these orders not be published or disclosed without the prior leave of the Court to any person other than those persons specified in Annexure B.

Time to appeal

26. The time by which the respondent or the Funder must file any application for leave to appeal or any notice of appeal in respect of Order 14(d)(1) be fixed as the date that is 28 days after the delivery of written reasons.

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

ANNEXURE A

[The order entered is available on the Commonwealth Courts Portal, which attaches Annexure A]

ANNEXURE B

[The order entered is available on the Commonwealth Courts Portal, which attaches Annexure B]

REASONS FOR JUDGMENT

(*ex tempore*, revised from transcript)

BEACH J:

1 The Robodebt scheme implemented by the Commonwealth was a fiasco in public administration and an abrogation of ministerial responsibility and competent oversight. Those who were its authors and those who promoted its implementation acted in contumelious disregard of individual rights. And although its financial consequences to its victims have been brought to an end by these proceedings, the suffering that has been produced is immeasurable and ongoing, and for which no monetary compensation could ever be adequate.

2 These reasons record the *ex tempore* decision that I handed down dealing with the settlement of these proceedings against the Commonwealth. As I foreshadowed to the parties at that time, the written form of my reasons adds some supplementary but not inconsistent detail elaborating on the funding commission and also my rejection of a tender process to select the settlement administrator. Let me then proceed to set out what I previously said.

3 There are three applications before me. The main application is made under s 33V of the *Federal Court of Australia Act 1976* (Cth) seeking my approval of the settlement. But there are two other applications that I need to deal with that are preliminary to the settlement application. The first application seeks to set aside the 2021 settlement orders. The second application seeks to amend the originating application to essentially do two things. First, it is sought to add a new category of group members. Second, it is sought to add a new claim for the tort of misfeasance in public office.

4 Let me start with the application to set aside the 2021 settlement orders.

The setting aside application

5 By the setting aside application, the applicants have sought an order pursuant to r 39.05(f) of the *Federal Court Rules 2011* (Cth) setting aside paragraphs 1 to 4 of the 2021 orders. Those are the operative orders by which the Court approved the 2021 settlement, authorised the distribution of the settlement sum under the first settlement distribution scheme, and gave effect to the releases and associated arrangements recorded in the previous settlement deed.

6 The objective of the setting aside application is to clear the way for me to approve the settlement agreed upon recently. The orders sought by the setting aside application seek to

achieve the practical effect of allowing the proposed appeal in proceeding VID 982 of 2024, which I will discuss later, whilst avoiding the time, cost, inconvenience and complexity of invoking the Court's appellate jurisdiction to achieve that outcome.

7 The applicable principles as to r 39.05(f) are uncontroversial. One important factor is the identification of the party in whose favour an order has been entered, and the consent of that party. However, if all parties consent, I can resolve to exercise the power without determining which party had the benefit of the order that was to be set aside. It is also necessary to have regard to whether the orders might adversely affect the rights or interests of third parties.

8 In the present case, the applicants and the Commonwealth, who were the beneficiaries of the 2021 orders, have consented to the orders sought under the setting aside application. And nor are there any adverse effects on the rights or interests of third parties. In particular in this regard, under the proposed settlement the Commonwealth has agreed not to seek to recover sums paid previously to group members under the 2021 settlement. Nor has it sought anything other than what might be described as the usual form of releases. Accordingly, there is no real possibility of third party interests being adversely affected by the setting aside application. To the contrary, the objective of the setting aside application is to permit the approval of the new settlement, which significantly increases the compensation available to existing group members and extends compensation to additional individuals who were not compensated by the 2021 settlement.

9 For these reasons, I will make the setting aside orders.

10 Let me turn to the amendment application.

The amendment application

11 By the amendment application, the applicants have sought leave to file a further amended originating application. The amendment application has sought to effect two substantive amendments to the originating process.

12 First, it introduces a new category of group member, being what I will describe as the category 5 secondary claimants. The introduction of that new category of group member was agreed between the parties as one component of the proposed settlement and reflects the particular circumstances of this proceeding. There are many documented cases of persons whose deaths were connected to the assertion of a Robodebt. The inclusion of category 5 reflects that reality and ensures that persons who suffered a recognised psychiatric illness as a consequence of the

death of a group member are not excluded from the settlement. Because these secondary claimants were not group members in the original proceeding, absent the proposed amendment those persons would have had no right to participate in or benefit from any judgment or settlement.

13 Second, the amendment application introduces a claim on behalf of the applicants and group members for the tort of misfeasance in public office. I will come back to the elements of that later. The proposed settlement provides for the payment of monetary compensation to group members referable to that new cause of action. Accordingly, that claim needs to be formally introduced into the proceeding so that I can approve a settlement which takes that claim as part of the relevant foundation.

14 In the circumstances, in my view it is appropriate to make the orders sought in the amendment application, with the further modification to the proposed further amended originating application as discussed with senior counsel for the applicants yesterday.

15 Let me now turn to the main application before me being the settlement approval application.

Settlement approval application — some background

16 Let me begin with some background that has been conveniently laid out in the material before me. Let me start off by giving a brief summary of the Robodebt scheme.

The Robodebt scheme

17 Between approximately July 2015 and November 2019, the Commonwealth implemented an automated debt recovery process through the then Department of Human Services which was to become known as the Robodebt scheme. The scheme utilised income information obtained from the Australian Taxation Office, which was then evenly apportioned across a specified period, to determine a person's notional or assumed fortnightly income. This process was known and has been described in this proceeding and other proceedings as income averaging. That notional or assumed fortnightly income amount was then compared with the income previously reported by the person, to identify possible overpayments of social security benefits.

18 Once a possible overpayment was identified in respect of any particular social security recipient, the Robodebt scheme required that the person provide sufficient further information to explain the discrepancy in income. Failure to do so resulted in a determination that the person owed a debt to the Commonwealth in a specified amount (a Robodebt). Thereafter, the

Commonwealth required repayment by a variety of methods, including by deducting amounts from future social security payments, garnishing tax returns and recovering money from bank accounts.

19 By its own confession, the Commonwealth did not have a proper legal basis to raise, demand or recover debts which were asserted using only income averaging. And if that was not clear in March 2015, it certainly became clear by 2017. Yet as appears from the chronology of events, even as at 2017 there was another two and a half years to go through to November 2019 before the plug was pulled on this scheme.

20 As a result of its use of the Robodebt scheme, the Commonwealth unlawfully asserted debts totalling at least $1.763 billion against approximately 433,000 people. It then pursued people to repay those wrongly asserted debts and recovered approximately $751 million from about 381,000 of them. The Commonwealth maintained this scheme despite numerous decisions of the then Administrative Appeals Tribunal rejecting income averaging as a basis for asserting a social security debt, and despite the Commonwealth being in receipt of legal advice to the effect that it was not lawful to use income averaging as a basis to assert a social security debt.

21 Let me say something about this proceeding and the earlier 2021 settlement.

This proceeding and the 2021 settlement

22 This proceeding being a representative proceeding under Part IVA of the FCA Act was commenced on 19 November 2019. Initially, two claims were advanced being a restitutionary claim for unjust enrichment and a claim in negligence for economic loss and distress damages. The relevant pleading was later amended to include claims for aggravated and exemplary damages in respect of the negligence claim and exemplary damages in respect of the unjust enrichment claim. The bases for those additional claims were allegations that the Commonwealth had actual knowledge that it was acting unlawfully.

23 On 11 June 2021, Murphy J of this Court approved a settlement of this proceeding in the sum of approximately $112 million. Under that settlement, those group members whose debts were partly or wholly based on income averaging and from whom amounts had been recovered received a share of the settlement sum. Let me proceed further forward in the chronology.

The proposed appeal

24 On 18 August 2022, the Commonwealth established a Royal Commission into the Robodebt scheme, and on 7 July 2023 the report of that Commission was published.

25 The Commission resulted in the public disclosure of many thousands of documents relating to the Robodebt scheme, many of which had not been discovered in this proceeding and were not available to the applicants or their legal advisers at the time of the 2021 settlement.

26 Those documents provided the foundation for allegations that certain public officers of the Commonwealth by their conduct in designing, implementing and maintaining the Robodebt scheme engaged in the tort of misfeasance in public office, including that the relevant public officers knew of or were recklessly indifferent to the unlawfulness of the Robodebt scheme, and that the Commonwealth was vicariously liable for the misfeasance of its officers.

27 As a result, on 23 September 2024, Mr Nathan Knox and Mr David Mandell, both of whom had been group members in this proceeding, made an application for an extension of time in which to appeal against the orders made by Murphy J approving the 2021 settlement. Upon the extension being granted and assuming a successful appeal, the idea was that claims of misfeasance in public office could then be advanced in this proceeding.

28 On 7 February 2025, these applicants also applied for this Court to receive further evidence on the proposed appeal.

29 The proposed notice of appeal was relevantly to the effect that the orders approving the 2021 settlement should be set aside in light of the further evidence regarding the knowledge, recklessness and misfeasance of certain identified public officers of the Commonwealth. Further, it was to the effect that had the further evidence been available at the time of the application for the approval of the 2021 settlement, it would not have been open for the primary judge to find that the settlement was within the range of reasonable outcomes, having regard to the likelihood of group members obtaining judgment for an amount significantly in excess of the settlement sum. It was therefore hypothesised that the primary judge would have refused the approval application made at the earlier time.

30 The appeal proceeding, as so informally described before me, was set down for a four day hearing in the August 2025 sittings of the Full Court. The appeal proceeding was partly funded by Omni Bridgeway pursuant to a litigation funding agreement.

31 On 2 and 3 July 2025 a mediation took place before the Honourable John Sackar AM KC which concerned both the appeal proceeding and the present proceeding.

32 As a result of that mediation, heads of agreement were entered into on 3 July 2025 and the settlement deed as currently before me was entered into on 3 September 2025. The agreement recorded in the settlement deed was conditional upon the Court setting aside paragraphs 1 to 4 of the orders made by Murphy J on 11 June 2021 approving the 2021 settlement, granting leave for certain amendments to be made to the originating application, and approving the settlement under s 33V of the FCA Act. As I have said I have already dealt with the first and second conditions, which have now been satisfied.

33 Let me say something about the settlement itself.

The settlement itself and its structure

34 Under the settlement deed the Commonwealth is to pay up to $548.5 million, comprising: (a) an amount not exceeding $475 million to be distributed to the applicants and group members in accordance with the terms of the settlement deed and settlement distribution scheme; (b) an amount not exceeding $13.5 million in respect of the legal costs and disbursements in the conduct of the proceedings; and (c) an amount not exceeding $60 million for the costs and disbursements of administering the settlement distribution scheme.

35 This $548.5 million is in addition to the $112 million paid by the Commonwealth under the 2021 settlement, which it has been agreed the Commonwealth will not seek to recoup.

36 Let me say something about the categories of group members under the new settlement.

Group member categories

37 The settlement scheme provides for group members to be allocated to one of a number of categories, reflecting the nature and extent of the debt raised against them and their consequent entitlements under the settlement scheme.

38 Category 1 comprises group members whose asserted overpayment debts said to be due to the Commonwealth were partly or wholly Robodebts, but where no part of those debts was recovered or received by the Commonwealth. As I have indicated, by a Robodebt I mean a debt raised on the basis of the unlawful income averaging.

39 Category 2 comprises group members whose asserted overpayment debts were wholly Robodebts and where part or all of those debts was recovered or received by the Commonwealth.

40 Category 3(a) comprises group members whose debts were initially Robodebts but were then recalculated on a basis other than income averaging, and the recalculated debt was less than the amount recovered by the Commonwealth.

41 Category 3(b) comprises group members whose debts were initially Robodebts but were then recalculated, and the recalculated debt was equal to or more than the amount recovered by the Commonwealth.

42 Category 4 comprises group members whose debts were not Robodebts but were determined based on income information provided by the group member in response to a Robodebt notification, being correspondence from Centrelink referring to a difference between ATO income information and that used by Centrelink in assessing entitlements, and requesting the recipient to confirm or update their income information. I should say that category 4 group members are not eligible to receive payments under the settlement scheme.

43 Category 5, the new category, being secondary claimants, comprises persons who were in a close personal relationship with a deceased category 1, 2, 3(a) or 3(b) group member at the time of the group member's death, where the death was materially contributed to by the assertion of a Robodebt and the secondary claimant has suffered a recognised psychiatric illness or condition as a result. Category 5 is a new cohort introduced by the proposed further amended originating application, for which I have just granted leave to file and serve.

44 Let me make one other point. Where a group member falls within more than one category, the scheme administrator, as defined in the settlement deed and whom I am ultimately appointing Gordon Legal to be, will assign the group member to the category providing the highest payment amount.

The settlement distribution scheme

45 Now pursuant to orders made on 31 October 2025, a registration process has taken place.

46 The settlement distribution scheme provides for a structured process for the administration and distribution of the compensation sum to eligible claimants. In summary, the scheme operates as follows.

47 Under the scheme, the compensation sum is to be paid into the scheme administrator's controlled moneys account, where it accrues interest for the benefit of group members. The Commonwealth will then provide group member categorisation data to the scheme administrator, who will then notify registered group members of their assigned category. Eligible claimants, other than group members in category 5, may then elect between a fixed payment or an individualised assessment of their claim.

48 The fixed payment pathway is intended to provide a fast and cost-effective method of resolution for group members. Group members may elect this option if, for example, they consider themselves to have less significant claims, they prefer to receive payment more quickly, or they are not in a position to provide evidence substantiating their claims.

49 Two tiers of fixed payment are available. Fixed payment A in an amount of $1,750 is available to any category 2 and category 3(a) group members. Because those group members made repayments or had amounts recovered from them concerning their unlawful Robodebts, they are not required to provide any evidence to substantiate their claims. Fixed payment B in an amount of $1,000 is available to any category 1 and category 3(b) group members who satisfy the scheme administrator that they have suffered economic loss or compensable non-economic loss caused by the assertion of a Robodebt. Because category 1 and category 3(b) group members did not make repayments towards their Robodebts, this threshold is necessary to establish a basis for compensation.

50 Under the individualised assessment pathway, eligible claimants are entitled to submit a notice of claim providing details of their losses and supporting evidence. Upon receiving a notice of claim, the scheme administrator must then assess the claim against the claims assessment principles set out in the scheme. In doing so, the scheme administrator may request further documentation or information, or arrange an interview with the claimant. The principal advantage of the individualised assessment pathway is that group members may receive significantly larger settlement payments if the claims are established to the satisfaction of the scheme administrator.

51 Specifically, under this pathway the available heads of loss are the following: (a) additional economic loss, being foreseeable economic loss caused by the assertion of a Robodebt but excluding amounts already repaid by the Commonwealth; (b) non-economic loss consequential on economic loss or physical harm, capped at $20,000; (c) compensation for a personal injury in the form of a recognised psychiatric illness or condition, capped at $50,000; (d) aggravated

damages that are uncapped; (e) interest on the above heads of loss; and (f) in the case of the estate of a deceased group member, reasonable funeral and burial expenses.

52 Category 5 group members are not entitled to a fixed payment and must proceed to individualised assessment.

53 Following the assessment of all individualised claims, the scheme provides for a moderation process to ensure the quality and consistency of those assessments across the cohort. Thereafter, relevant group members will receive a preliminary notice of assessment and may seek re-assessment of their claims within 60 days.

54 If the total of all individualised assessments exceeds the amount of the compensation sum including earned interest remaining after allowing for the fixed payments, individualised assessment entitlements will be reduced pro rata. But I should note here that although the claims process has not commenced, the evidence before me is to the effect that having regard to the proposed fixed payment amounts and indicative elections made by registered group members, the compensation sum is likely to accommodate payment of individualised assessment claims at close to 100% of their assessed value.

55 On the evidence before me it is estimated that on current projections all fixed payments will be made by February 2027 and all individualised assessment claims will be paid by the end of July 2028.

56 Let me turn now to the applicable legal principles.

Applicable legal principles

57 Section 33V(1) of the FCA Act provides that a representative proceeding may not be settled or discontinued without the approval of the Court. Section 33V(2) provides that if the Court approves the settlement, it may make such orders as are just with respect to the distribution of any money paid under the settlement.

58 The applicable principles are well established. I have set them out a number of times in other cases and I will not go into the detail of those matters now except to make the following short points.

59 As I stated in *J Wisbey & Associates Pty Ltd v UBS AG (No 3)* [2025] FCA 1018 at [7] to [9] and [12], the discretion to approve a settlement under s 33V is broad, and "the central question is whether the proposed settlement is a fair and reasonable compromise of the claims made on

behalf of the group members who will be bound by the settlement". It is necessary to approach that question by reference to whether the proposed settlement is fair and reasonable as between the parties (*inter partes* fairness) and whether the proposed settlement is fair and reasonable as between group members (*inter se* fairness). In exercising its supervisory jurisdiction under s 33V, the Court assumes a protective role in relation to group members' interests.

60 And at [10] and [11] I made the following additional points. In assessing the reasonableness and fairness of the settlement, it is accepted that there is often more than one reasonable settlement, that reasonableness is a range and therefore the question is whether the proposed settlement falls within that range. That range of reasonable outcomes will, inter-alia, reflect the different assessments of the risks associated with the proceedings and the different appetites for those risks, as between the parties involved. Appreciating that to be the case, it is not the role of the Court in approving the settlement to second-guess the commercial strategies or decisions made by an applicant's legal representatives provided that the settlement falls within the range of reasonable outcomes.

61 In assessing such matters, the Court will ordinarily take into account the amount offered to each group member, the prospects of success in the proceeding, the likelihood of the group members obtaining judgment for an amount significantly in excess of the settlement offer, the terms of any advice received from counsel and from any independent expert in relation to the issues which arise in the proceeding, the likely duration and cost of the proceeding if continued to judgment, and the attitude of the group members to the settlement.

62 If the Court approves the settlement, s 33V(2) then stipulates that the Court may determine what orders "are just with respect to the distribution of any money paid under [the] settlement". Pursuant to that power, the Court may supervise the distribution of settlement proceeds amongst group members and any amounts that will be paid out of the settlement proceeds by way of legal costs or other costs incurred in conducting the proceeding or in administering and distributing the settlement sum. In weighing the proposed distribution, the Court will seek to ensure that the arrangement achieves a broadly fair and cost-effective division of the proceeds (*J Wisbey* at [13]).

63 I will not elaborate further. The factors relevant to assessing the fairness of a distribution scheme are well known and I will not repeat them here.

64 Let me turn then to the general question of the fairness of the settlement overall. That is what I have described as *inter partes* fairness.

Fairness of the settlement overall and *inter partes*

65 Now little needs to be said on this topic as the fairness in terms of the *inter partes* dimension is well apparent. The Commonwealth is required to pay up to $548.5 million, of which $475 million is to be made available as the compensation sum. Further, as I have already indicated, this is all additional to the $112 million that was already paid by the Commonwealth under the 2021 settlement, which as I say it is not seeking to recover.

66 I have had the benefit of a confidential counsel's opinion from the applicants and I have also had the benefit of the contradictors' analysis. They both express the view that the settlement overall is fair and reasonable. I agree with that view from my own assessment.

67 In my view the proposed settlement overall, dealing with the concept of *inter partes* fairness, is fair and reasonable and in the interests of group members. The settlement falls well within the range of reasonable outcomes, having regard to the litigation risks, the delay in a contested adjudication, the magnitude of the settlement, and the additional benefits conferred by the proposed settlement on group members.

68 But I would like to say something about the added claim concerning the tort of misfeasance in public office.

69 The elements of the tort of misfeasance in public office are not easily made out. First, one has to have an act that is beyond power, that is, invalid. Second, the act or conduct must be carried out by a public officer in purported discharge of his public duties. Third, in so carrying out the act or conduct, the public officer must have knowledge of or be recklessly indifferent to the unlawfulness of his act or conduct and intend or have knowledge that the act or conduct will or will likely harm the plaintiff, or conscious and reckless indifference to the risk of injury. Fourth, it must be shown that there is damage to the plaintiff caused by the act or conduct.

70 In the present case in terms of the added claims, the putative tortfeasors in this case were the Secretary and a Deputy Secretary of the then Department of Human Services, the General Manager, Business Integrity and the Chief Counsel, Legal Services within that Department, as well as a Deputy Secretary of the Department of Social Services.

71 The factual case and forensic evidence is well laid out in the Royal Commission report, which although hearsay and opinion could be used and referred to on this s 33V application; I will put to one side the interesting s 79 expert opinion question as we are not here dealing with a technical question where one or more commissioners has technical qualifications.

72 If this matter had gone to trial, the debate would have been principally concerned with the ambit and application of the relevant legal principles and inferences concerning the states of mind of individual public servants, to be drawn from the base facts. Further, the applicants' claims also necessitated establishing the Commonwealth's liability.

73 First, the applicants would have contended that the Commonwealth ought to be held vicariously liable for the torts of its officers because each was acting within the scope of their employment. Public servants are employees of the Commonwealth. Vicarious liability can arise where employees were acting within the scope or course of their employment. That principle has been recognised as applicable to employees of the Commonwealth. Moreover, there does not appear to be any basis to contend that the primary tortfeasors were acting outside the scope of their employment. The tort pertained to the operation of a government debt collection program, the proceeds of which were all for the benefit of the Commonwealth, which was ratified by government ministers and by the Cabinet at the relevant time.

74 Second, an alternative means by which the Commonwealth's liability may have been established was on the basis of plain vanilla agency principles involving the direct attribution of the relevant acts and conduct. It could be said that the public servants' acts and conduct were done with the Commonwealth's express, implied or apparent authorisation or subsequent ratification, such that there was an acceptance of their acts and conduct as the Commonwealth's own. And the conduct of which complaint is made was conduct undertaken in the course of and for the purpose of executing that agency.

75 Further, one can see from the Royal Commission report that the liability of the Commonwealth for the acts and conduct of its public servants would not have been difficult to establish. It is worth referring to a few extracts from that report.

76 The Commission said in its overview at p xxiii:

> And in relation to welfare services, in January 2015 the newly-appointed Minister for Social Services, Mr Morrison described himself in an interview as planning to be a "strong welfare cop on the beat;" because Australians were
>
> > "not going to cop people who are going to rort [the social security] system."

> It was in this climate that the essential features of the Robodebt scheme were conceived by employees of the Department of Human Services (DHS), were put by way of an Executive Minute in February 2015 to the Minister for Human Services, Senator the Hon Marise Payne, and to Mr Morrison as Minister for Social Services. Approved by the latter, they made their way in the form of a New Policy Proposal (NPP) through Cabinet with remarkable speed. In May 2015, as part of its 201516 [sic] Budget, the government adopted a measure named Strengthening the Integrity of Welfare Payments. Described as a package for "enhancing ... fraud prevention and debt recovery and improving assessment processes" in relation to the payment of social security benefits, it was expected to save $1.7 billion over five years. Most of those savings were to come from the Employment Income Matching measure, the initiative which began Robodebt, which was proposed to recover overpayments resulting from incorrect declarations of income. Another measure in the package, titled "Taskforce Integrity", involved the secondment of Australian Federal Police officers and was designed to crack down on welfare fraud. The two were often, and not coincidentally, mentioned in the same breath.

77 The Commission further said in its overview at p xxv:

> In late 2014, in response to DHS's initial canvassing of the Robodebt concept, DSS had obtained an opinion from its employed "in-house" lawyers. Their advice had emphasised the requirement in the statutory benefit entitlement rate calculators to consider actual fortnightly earning or receipt of income, expressing concern that averaging might, therefore, not be consistent with the legislative framework. A policy advice given at the same time similarly pointed out that calculation by averaging did not accord with the legislation and a debt amount calculated in that way might be wrong.
>
> In February the following year, DHS officers provided the Ministers for Social Services and Human Services with the Executive Minute containing a number of proposals including Employment Income Matching (Robodebt). It pointed out that (consistently with its 2014 advice) DSS had advised policy change might be, and legislative change would be, needed to implement the Employment Income Matching initiative. On 20 February 2015, Mr Morrison signed the Minute, indicating his agreement that initiatives including Employment Income Matching be developed as a package of NPPs and that DHS work with DSS to advance consideration of the necessary policy and legislative change.
>
> By 3 March 2015 an NPP reflecting the Employment Income Matching initiative had been prepared for inclusion in an exposure draft of a Social Security Portfolio Budget Submission. It contained no reference to legal risks and said that legislation was not required. The Scheme was approved by Cabinet and proceeded without the legislative change to support averaging which DSS had said was needed. That awkward question was avoided in the NPP by the simple expedient of not mentioning averaging and saying instead, falsely, that the new approach would not change how income was assessed or payments calculated.

78 The Commission in Section 3 "How did this happen?" said at p 28:

> Mr Morrison was appointed as the Minister for Social Services in December 2014. His approach as a minister, including as the Minister for Social Services, was to:
>
> > Respect the experience, professionalism and capability that the Public Service brings to the table, both in terms of policy advice and implementation skills, and then having set the policy direction, expect them to get on and deliver it.

> The policy direction set by Mr Morrison in the Social Services portfolio, which was publicly communicated by him, was one of "ensuring welfare integrity". The nature of that approach was coloured by notions of people who were "rorting the system" and Mr Morrison's presence as a "welfare cop on the beat". Inadvertent non-compliance was often mentioned in the same breath as cases of fraud, and no pains were taken to emphasise any distinction.
>
> As would be expected, members of the senior executive of both DSS and DHS were aware of Mr Morrison's policy direction, and the drive for savings. In this context, a pervasive sense of pressure filtered down the management hierarchy.

79 The Commission in Section 9 "Welfare cop" said at p 70:

> Mr Morrison's "welfare cop" approach to the Social Services portfolio has been discussed previously. In an interview on 21 January 2015, Mr Morrison highlighted the relationship between the Social Services portfolio and the government's objective to provide a balanced budget.
>
> That interview caught the attention of Ms Golightly, who sent Ms Campbell a link to it. Ms Campbell gave evidence that she recalled the interview and the language used by Mr Morrison. She agreed that the language was significant to her, and to Ms Golightly, because it indicated the direction Mr Morrison wanted to take in his leadership of the portfolio. It is unremarkable that the senior executives of both DHS and DSS would keep abreast of such knowledge.
>
> On Wednesday 21 and Thursday 22 January 2015, Mr Pratt and Ms Wilson met with Mr Morrison. In the Wednesday meeting, Mr Morrison asked for information on DHS compliance activity, including data matching. Mr Pratt's notes of the Thursday meeting include the phrases, "Welfare cop" and "Integrity package by Budget."
>
> Neither Mr Pratt nor Ms Wilson raised problems DSS had identified with the PAYG proposal, but that was not unreasonable. The PAYG proposal was still in fairly early stages of development, DSS had communicated their views on the problems with it, and DHS had not yet responded to those concerns. The precise substance and content of the meeting with Mr Morrison is unclear, but it can be accepted that it was a high-level meeting at which the "integrity package" may have been discussed, but not necessarily the PAYG proposal.
>
> By 22 January 2015 Mr Morrison had clearly communicated to the public, the secretaries of DSS and DHS, and deputy secretaries Wilson and Golightly his intention to achieve budget savings through his portfolio. He had also conveyed the approach he intended to take to the portfolio generally, including through the language of a "crackdown" on welfare cheats, "rorting" the system, and the concept of himself as a "welfare cop."
>
> In doing so, Mr Morrison contributed to a certain atmosphere in which any proposals responsive to his request would be developed. The context was apt to encourage the development of proposals which reflected the approach and tone of his powerful language.

80 The Commission later said at pp 105 and 106:

> … Mr Morrison was responsible for administering the Social Security Act according to law and it was his department which provided the advice referred to in the Executive Minute that legislative change was required. He had directed DHS to develop the NPP, and as the Cabinet minister for the Social Services Portfolio, he was its sponsor. The

Cabinet Handbook, 8th Edition provided:

> 23. In upholding the principles of collective responsibility and Cabinet solidarity, Ministers must:
>
> …
>
> (f) ensure that Cabinet submissions provide enough detail on risk and implementation challenges to ensure the Cabinet can make an informed decision on the efficacy of the proposal
>
> …
>
> 80. Ministers are expected to take full responsibility for the content, quality and accuracy of advice provided to the Cabinet under their name. Ministers bringing forward submissions are also responsible for ensuring that the consultation necessary to enable a fully informed decision to be taken occurs at both ministerial and officials [sic] levels. It is particularly important that there is agreement on factual matters, including costs.

The language of the NPP drafted in response to Mr Morrison's direction stated "The new approach will not change how income is assessed or overpayments calculated" in direct contrast to the language in the Executive Minute. Although Mr Morrison understood the NPP to involve the use of income averaging, it was objectively impossible for any reader without further knowledge to appreciate that. To a reader with knowledge of DHS's past averaging practices, the "no change" sentence would convey the contrary: that DSS was not proposing to use income averaging as contemplated in the proposal, because it had never previously been used in that way.

The NPP was directly relevant to the DSS responsibility for income support policy and was therefore relevant to Mr Morrison's administration of the department. He knew from the Executive Minute that the use of income averaging might require a change of that policy. It was significant because it involved the question of potential unlawfulness (raised by the DSS advice that the proposal needed legislative change) and because of the large scale of the DHS proposal which affected hundreds of thousands of current or former social security recipients.

Mr Morrison knew that the use of income averaging was the primary basis of the "new approach" described in the Executive Minute and that DSS had advised DHS that legislative change was required to implement the DHS proposal in that way. The NPP represented a complete reversal of the legal position without explanation. Mr Morrison was not entitled without further question to rely upon the contradictory content of the NPP on the question of the DSS legal position when he proposed the NPP to the ERC. The proper administration of his department required him to make inquiries about why, in the absence of any explanation, DSS appeared to have reversed its position on the need for legislative change. If he had asked Ms Wilson, she would have told him that it was because DHS had (ostensibly) reversed its position on using income averaging. He chose not to inquire.

Mr Morrison allowed Cabinet to be misled because he did not make that obvious inquiry. He took the proposal to Cabinet without necessary information as to what it actually entailed and without the caveat that it required legislative and policy change to permit the use of the ATO PAYG data in the way proposed in circumstances where: he knew that the proposal still involved income averaging; only a few weeks previously he had been told of that caveat; nothing had changed in the proposal; and he had done nothing to ascertain why the caveat no longer no longer applied. He failed to meet his

> ministerial responsibility to ensure that Cabinet was properly informed about what the proposal actually entailed and to ensure that it was lawful.

81 I will not linger too much further on the genesis of this perversion of proper processes. But the idea that what occurred by various public servants in early 2015 could not be attributed to the Commonwealth and could not make the Commonwealth liable is not a sensible proposition.

82 One can move further forward into 2016 and 2017 where you had apparently Mr Alan Tudge commencing as the Minister for Human Services in February 2016 (p 137). The Royal Commission report deals in Section 9 "Conflating and inflating fraud" (pp 140 and 141) with Mr Tudge's massaging of the media messaging; see also the discussion at pp 177 to 179.

83 And as to Mr Tudge's media strategy, the Commission said at p 179:

> Mr Tudge's engagement in this media strategy, and use of the media in this way, had the effect of discouraging criticism of the Scheme, and inhibiting open dialogue and analysis of the flaws of the Scheme. It also had the effect of undermining the credibility of complaints and concerns about flaws in the Scheme.
>
> As a minister, Mr Tudge was invested with a significant amount of public power. Mr Tudge's use of information about social security recipients in the media to distract from and discourage commentary about the Scheme's problems represented an abuse of that power. It was all the more reprehensible in view of the power imbalance between the minister and the cohort of people upon whom it would reasonably be expected to have the most impact, many of whom were vulnerable and dependent on the department, and its minister, for their livelihood.

84 One can also see from the media strategy of Mr Tudge as outlined by the Royal Commission report how he did not deal properly with reports of suicides (see at pp 181 to 184). Further, how he dealt with and used an Ombudsman's report, which the Royal Commission found to have been procured by deception involving the Department of Social Services, I will not dwell on (see at pp 225 and 226).

85 Further, it is quite clear from the Royal Commission report that by the start of 2017 the problems with Robodebt were becoming well known. It was said that "the beginning of 2017 was the point at which Robodebt's unfairness, probable illegality and cruelty became apparent. It should then have been abandoned or revised drastically, and an enormous amount of hardship and misery … would have been averted" (p xxvii). But that was not the approach. As I say, the scheme was not wound up until the end of 2019.

86 Again, when one looks at the question of the Commonwealth's liability, in 2017 there is no doubt in my mind that the Minister's direct engagement at that time and thereafter would have

put, I would have thought, the attribution of responsibility and liability on the Commonwealth for the acts of its public servants beyond doubt.

87 In my view whatever else be said about the risks of establishing the tort of misfeasance in public office against the public servants, it would have been smooth sailing to sheet home responsibility to, and therefore liability of, the Commonwealth.

88 Moreover, whatever be said about the strength of the case for the tort occurring in 2015, by 2017 and with the knowledge of the problems then apparent, the continuation of Robodebt from 2017 through to November 2019 was clearly disreputable, with the case for establishing the tort even stronger.

89 Let me turn then to the settlement distribution scheme and deal with the second dimension to the question of fairness, which as I said is the question of fairness *inter se* as between group members.

Settlement distribution and fairness *inter se* as between group members

90 In my view, the proposed settlement distribution scheme is fair and reasonable as between group members *inter se*.

91 As the applicants' counsel point out, one of the central features of the scheme is the dual pathway approach, by which eligible claimants are entitled to choose between a fixed payment and an individualised assessment. So, group members who opt for a fixed payment obtain the benefit of a highly streamlined process, which entails only minimal demands on group members to provide documentation or substantiate loss, beyond the task of registration, and which would lead to a compensation payment expeditiously. That approach is appropriate given the quantum of fixed payments and the disproportionate cost and impacts that would be suffered if each fixed payment claimant were required to undergo an individualised assessment.

92 In contrast, those group members who consider that their circumstances warrant individual assessment may obtain potentially materially larger settlement payments, subject only to the caps that I have referred to earlier and of course the ability of the compensation sum *in globo* to accommodate all such claims.

93 Now those two options reflect the reality that the circumstances of group members are likely to be highly variable, in contrast say to a shareholders' class action where group members' losses are uniform or able to be more easily calculated by reference to a cookie-cutter

arithmetical formula. The dual approach in my view strikes the correct balance between efficiency and individualised attention, to meet the needs of all group members.

94 Further, as to the group member categorisations that I have outlined, that is, categories 1 through to 5 which entail differentiated treatment for different eligible claimants, that is also fair and reasonable and reflects the different circumstances and entitlements of group members as they arise from the nature of the debts raised against them. This of course has been succinctly explained by Mr David Batt KC for the applicants.

95 First, group members in categories 2 and 3(a) are entitled to receive payments from the compensation sum in view of the fact that those persons paid money to the Commonwealth in response to an unlawfully raised Robodebt. Those group members, because of that circumstance alone, very likely suffered at least some inconvenience and stress consequent on the economic loss suffered by reason of the payment of the unlawful debt. As such, group members in these categories are entitled to fixed payments without any requirement of further proof. For the same reason, those group members are entitled to a slightly larger fixed payment.

96 Second, group members in category 1 and category 3(b) are entitled to a lesser fixed payment. Because category 1 group members never paid any money, directly or indirectly, in satisfaction of the unlawful debt, and because category 3(b) group members always owed more than what they paid the Commonwealth, their economic loss is not self-evident. For that reason, the requirement under the scheme that those persons substantiate some additional compensable loss is a proportionate threshold that ensures the compensation sum is not expended on claims that have no foundation.

97 Third, group members in category 4 received Robodebt notifications but no unlawful Robodebts were ever raised against them. Under the settlement, those persons are not entitled to receive any distribution from the compensation sum. In my view, such an exclusion is fair and reasonable for the reasons that I discussed and debated with Mr Lachlan Armstrong KC and Mr Rees, the contradictors, late yesterday.

98 Fourth, category 5 group members must undergo an individualised assessment before being eligible to receive a distribution. That reflects the complexity of establishing their threshold eligibility, which requires proof of a close personal relationship with a deceased group member, a material causal connection between the group member's death and the assertion of a Robodebt, and a recognised psychiatric illness suffered by the claimant.

99 Now under the scheme, and as I have already indicated, where a group member elects an individualised assessment, payments for non-economic loss consequential on economic loss or physical harm are capped at $20,000, and compensation for a personal injury in the form of a recognised psychiatric illness or condition is capped at $50,000. But these caps are not unreasonable and appropriately recognise that the compensation sum is finite.

100 Generally as to the settlement scheme, the scheme is comprehensively drawn and it comprises suitable provisions for the range of matters with which it deals.

101 Now of course I have had the benefit of the applicants' counsels' views, I have had the benefit of the contradictors' views and I have also reviewed the material for myself. But there is one matter that it is convenient to deal with at this point, and that is the objections that have been made by group members to the settlement itself and the settlement distribution scheme.

Objections made by group members

102 As at 6 March 2026, there have been 467 objections that have been lodged to the proposed settlement. Now in one sense that is a very small fraction of the approximately 116,000 group members who have registered to participate in the settlement, let alone of the total number of group members. Moreover, on the analysis undertaken by Gordon Legal that I accept, only a small minority of the objections specify a ground of objection that concerns the proposed settlement, and a number complain about the Robodebt scheme itself, which it is not my role to address although I am sympathetic to the complaints made.

103 Of the small number of objections that dealt with the matters that I need to address, the principal complaint is that the settlement inadequately compensates group members for the harm caused by the Robodebt scheme. But taking into account the settlement sum and the risks involved if the matter was not resolved, in my view those objections do not give any justification for the settlement not to be approved.

104 Now in terms of some of the objections, it is convenient for me quickly to go through Gordon Legal's table that has been provided in terms of the objections up to 6 March 2026, although I must say that further affidavit material has been put before me that deals with objections received after that time. But generally speaking they raise similar objections to those that were filed up to 6 March 2026. The generic categories are the following:

Theme	Number of Objections	Example
1. Objection regarding the adequacy of the Settlement Sum	15	"The amount of compensation offered under the proposed settlement does not fairly reflect the financial loss and psychological impact caused by the unlawful Robodebt scheme."
2. Objection to the amount of the proposed Funding Commission	3	Example A: "I believe the admiration [sic] fees are excessive as is the 20% commission sought by the funders. They are entitle to costs and a reasonable profit. These compensation payments should not be watered down so that victims get the short end of the stick again." Example B: "I also believe that too much of the settlement money is allocated to funders, legal costs and administrative expenses rather than directly compensating affected Group Members." Example C: "Funder settlement should be calculated on a low risk basis $20 million is the suitable amount."
3. Objection claiming that Group Members were not adequately informed of what comprises the Funding Commission	1	"Group members were not given enough information about what comprises the funding commission in the Second Settlement Notice to consider whether it is fair and reasonable. For instance, how much of it is for the reimbursement of legal costs? How much of it is for the after the event insurance costs? As group members are required to contribute the funding commission, more information should be given to them. For example, group members should be given a copy of the Litigation Funding Agreements entered into between the Funder, the Knox Applicants, and certain group members. This is especially relevant as a litigation funder was not used in the First Robodebt Settlement."
4. Objection to the ineligibility of Category 4 Group Members	5	"It is not acceptable to me that Category 4 Robodebts are not compensated for their pain and anguish when they have done nothing wrong."
5. Objection to the content and distribution of Court ordered notices	5	"I did not receive clear or adequate information about how the settlement would affect my legal rights and entitlements before the deadline to object."
6. Objection to the amount of the proposed Settlement Administration Costs	2	"The amount of $60m to administer the settlement is clearly manifestly excessive and should be significantly reduced. Given the pool of potential claimants on the compensation is limited to only those who have registered, it is impossible to envision that the costs of administering the distribution of the settlement amount would be anywhere near this high ... it seems utterly inappropriate for Gordon Legal to be appointed to administer the settlement fund. On its face this seems like a bordering-on-unethical attempt to profit from the settlement

		beyond the allocated legal fees and the litigation funding amount.”
7. Objection to the amount of the proposed Legal Costs	2	“A disproportionate amount of the fund goes to legal costs rather than affecting class members” “Group members were not adequately informed about their to make further submissions after the filing of the Costs Referee's report.”
8. Objection to varying entitlements depending on Group Member Category	1	“Unfair Difference between payment categories.”
9. Objection to a registration requirement for eligibility	2	“As identified by Justice Murphy, the First Robodebt Settlement included many group members who are vulnerable, marginalised and economically disadvantaged. This is the same cohort of group members now involved in the Second Robodebt Settlement excluding Category 5 and group members that apply to be reinstated. This cohort are unlikely to appreciate the need to register to be entitled to compensation especially as they did [not] need to register to receive compensation in the First Robodebt Settlement.”
10. Objection claiming the Fixed Payments are inadequate	2	“The proposed fixed payment amounts do not reflect the severity of the unlawful conduct, the length of time the system operated, or the emotional and financial damage suffered by ordinary Australians. The Royal Commission revealed widespread harm, yet the compensation does not align with this scale of misconduct.”
11. Objection claiming the proposed evidentiary requirements are too onerous	1	“The proposed settlement framework requires Group Members to prove that they suffered compensable non-financial loss or psychiatric harm resulting from the Robodebt-raised debt. This requirement does not reflect the practical circumstances of victims at the time. Individuals subjected to Robodebt were frequently in severe financial hardship, lacked resources to seek medical assistance, and did not have the capacity to obtain or preserve evidence. The scheme therefore places victims in the position of proving harm during a period in which they were least able to seek help, creating an unfair structural barrier to compensation.”
12. Objection arguing the Settlement Scheme should not be administered by Gordon Legal	2	“Settlement of the Scheme should be processed by a [sic] independent company at arms length from other parties.”
13. Objection arguing the reimbursement payments to lead applicants should be paid by Gordon Legal	1	“$200,000. Participants were working with Gordon Legal, if they valued their assistance at that juncture shouldn't they cover the amount.”

105 One type of objection, putting aside how it is expressed, is regarding the adequacy of the settlement sum overall. But it is not an objection that in my view would prevent me from approving the settlement given that I take the view that the settlement overall is favourable to the group members.

106 Further, there are specific objections to the amount of the funding commission that is proposed to be paid to the funder, but I will come back to that question.

107 Further, there are some objections made by people that say that they were not adequately informed as to what comprises the funding commission but I do not agree with that objection. I think, in fairness to the funder, that there has been more than adequate notice given to group members of what the funding commission is that has been sought by the funder.

108 Further, there is a set of objections made by people objecting to the ineligibility of category 4 group members to receive any compensation. I understand the point, but again, it is not a bar to my approving the settlement.

109 Further, there is objection to the content and distribution of the notices sent to people that were sent out under Court orders. Can I say at this stage that there have been a lot of notices sent out which have publicised these proceedings and informed group members on what steps they need to take. No notification procedure is perfect, and in my view and notwithstanding any identified deficiencies, that is no bar to me now approving the settlement.

110 Further, there is a set of objections made by people as to the proposed settlement administration costs, which will be up to an amount of $60 million. But the settlement administration costs are being separately funded by the Commonwealth, and I am going to make orders that permit the Commonwealth essentially to be able to monitor what costs are incurred in relation to the settlement administration. So that is adequately protected. And as I say, the $60 million is a separate sum outside the compensation fund.

111 Further, there has been an objection raised as to the amount of the proposed legal costs. But the independent costs referee appointed by the Court has essentially assessed Gordon Legal's reasonable costs in a sum around about $15.5 million, yet the settlement I am going to approve will only allow an amount of $13.5 million. So in a sense, Gordon Legal are receiving $2 million less than what they might otherwise be entitled to receive, and so that objection made by group members does not go anywhere.

112 Further, there is a set of objections made concerning the five different categories of claimants and the differential treatments. I have gone through that in some detail, and again, some of these comments are not as fully informed as perhaps they need to be, but that is quite understandable. But looking carefully at the categories, they seem to appropriately divide up the universe of potential claimants, and that is something that I raised directly with the contradictors. Neither they nor I could identify a potential category that had been left out. Obviously, category 5 has been added in from the earlier 2021 settlement, and as I say, category 4 is in there with no entitlement to compensation. But category 4 was dealt with in a similar and appropriate way, as I understand the position, under the 2021 settlement.

113 Further, there was an objection made to the registration requirement for eligibility to get compensation, and it is apparent that Murphy J under the first Robodebt settlement took a different view about the need for registration. But given the complexity as to what is before me and what was negotiated between the applicants and the Commonwealth, it seems to me that in the circumstances of this new context the registration process was properly imposed and there is no difficulty with it.

114 Further, there are some complaints about the proposed evidentiary requirements to make a claim being too onerous. But no doubt, if people are missing documents or the like, the scheme administrator and the scheme administrator's team will take those matters into account and adopt a sensible approach to any assessment.

115 Further, there were a set of objections asserting that the settlement scheme should not be administered by Gordon Legal. It was suggested that it should be done by an independent company. But I dealt with that issue a few months ago and I rejected that approach. I thought that Gordon Legal, with its well-known legal expertise and experience in this area, and given that it had been involved in the present litigation for some years, was best placed to administer the scheme subject to some supervisory role that the Commonwealth would have in terms of the expense and the time frame. Of course, if there are any problems in relation to any of those matters, the parties can approach the Court to get further directions. I will say something later in these reasons concerning the tender process that had previously been raised with me.

116 Further, in terms of the reimbursement payments to the lead applicants, there are objections made by some that if there are to be reimbursement payments to lead applicants, they should be paid by Gordon Legal personally. But in my view there is no basis whatsoever for that assertion. I will return to the quantum of these payments later.

117 Finally, to add to what I have just said, let me just say something briefly about the oral evidence that I heard from group members and others. Yesterday I heard from various individuals about their objections and other criticisms. I should say that I have taken these into account. None of them warrant my not approving the settlement or the settlement distribution scheme.

118 But I did appreciate hearing their perspectives and the fortitude that they have shown, particularly the two mothers whose sons would have admired the courage that they have shown, particularly in honouring their memories yesterday and saying all that needed to be said on their behalf.

119 Let me say something more generally about the class's reaction to the settlement. So far I have talked about the content of the objections, none of which in my view justify not approving the settlement overall or the payments to be made, save for the funding commission which I will come to in a moment. But a broader question to consider is the overall reaction of the class to the proposed settlement.

120 I have referred to the very low objection rate which might support the notion of general satisfaction with the settlement. But there is another metric which leads me to the second point. There is a question whether the registration rate, which is around 34.4%, should be regarded as high, and therefore implying support for the settlement, or low and therefore implying a lack of enthusiasm.

121 The contradictors did not consider that the registration rate here provided any clear signal and I am inclined to agree. The settlement has been widely publicised, in the context of high profile litigation, and with the benefit of the earlier history of the first settlement. Those factors would tend to predict a higher rather than lower registration rate. On the other hand, the class has the special characteristic that a significant portion thereof is plausibly likely to be persons who struggle to deal with any kind of bureaucracy or officialdom, which even a benign class action settlement registration process has features of. So some may have refrained from registering or if they have sought to do so done so imperfectly, although I have sought to address the latter scenario where this could be identified by Gordon Legal in terms of, for example, admitting late registrants. I agree with the contradictors that the registration rate is neither impressively high nor troublingly low.

122 In summary, I do not take either the rate of objections or the rate of registrations as strongly indicative either of support for or dissatisfaction with the settlement. The reactions of the class to the proposed settlement is a neutral factor in the present case.

123 Let me now turn to the question of the funding commission.

The funding commission

124 Omni Bridgeway (Fund 5) Lion Pty Ltd has funded the reopening of the initial settlement approval and the proceedings which culminated in the present settlement.

125 The funder seeks a common fund order of 15% of the $475 million compensation sum which comes out to a figure of $71.25 million. The funder says that a funding commission fixed at 15% of the compensation sum is just in the context of these proceedings.

126 First, it is said that the commission sought is proportionate with the total compensation sum of $475 million, and the amount of approximately $403.75 million which the group members will receive.

127 Second, the funder says that it assumed at the outset of these proceedings significant financial risk, including the burden of any adverse costs orders made, the ultimate quantum of which could not be accurately estimated at that time and which was largely out of its control.

128 Third, the funder points out, correctly, that a 15% commission rate is less than the 20% rate applicable under the litigation funding agreements entered into by the funder with the applicants in respect of these proceedings. That of course is so, but what is being sought before me is a common fund order, so one can step outside the contractual framework which was made with a more limited number of people. But it is fair to point out that the funder has accepted that on any view its commission rate should be 15% rather than the contractually stipulated 20%.

129 Fourth, all of the applicants support the payment of the proposed funding commission.

130 Generally, the funder says that a 15% commission rate is proportionate and appropriate in the context of this settlement, having regard in particular to the following aspects of the risks associated with these proceedings. First, the application to reopen the first settlement, which included applications for an extension of time to appeal and to adduce fresh evidence on appeal, involved complex considerations; I should note here that the litigation funding agreements referred to this as Stage 1. Second, the prospects and likely duration of any trial of the

proceedings which might follow the successful execution of the application to reopen were also uncertain; the litigation funding agreements dealt with this as Stage 2. It was estimated that the proceedings may run for years. Third, as set out in the funder's written submissions in chief and in reply, there were also other risks. Generally speaking, the funder says that these features combined to create an unusual risk profile for a funder.

131 Now just a few general points before I get into some further detail. I accept, and the funder put this point powerfully in many and various ways, that if it had not funded these proceedings, it was unlikely that any other funder in the market would have done so. The funder put the point that in that event the proceedings may not have been pursued at all, in which case group members would not have received anything over and above what they obtained in the first settlement. In fairness to the funder, I accept those points. Moreover, I accept that had optimal resources not been devoted to the litigation, a compensation sum of this size may not have been achieved, or may not have been achieved at such an early stage in the litigation and that in part is due obviously to the funder providing funding.

ROI – return on investment

132 Contrastingly, the contradictors and the Commonwealth have taken a different approach to the relevant commission that should be allowed. The contradictors and the Commonwealth have rejected a percentage commission rate approach and have said rather that I should adopt a return on investment (ROI) methodology, which entails taking a base investment amount and applying a multiple to come up with a figure to be allowed for the funding commission.

133 The contradictors and the Commonwealth seemed to agree on the base investment amount. To elaborate, the Commonwealth and the contradictors contend that the funder's investment should be treated as the amount that it has paid or was liable to pay as at 5 May 2026, namely, $5,887,475.69, rounded to $5.9 million; this figure I should say now needs to be slightly updated. But they have differences in their approach in two other respects.

134 Mr Richard Knowles KC for the Commonwealth suggests that one multiple should be used but only gives a range. The Commonwealth suggests that a multiple of between 1 to 6 could be applied to the investment figure to determine the funder's commission. This would result on its calculations in the funder's commission being fixed at a sum between approximately $5.9 million and $35.3 million. That has all got to be updated slightly by about 5%, but that is generally its position.

135 Contrastingly, the contradictors do not suggest a range. But they rather suggest that two different multiples should be used. The contradictors distinguish between the costs incurred by the funder prior to mediation and after mediation. The contradictors contend that the funder's commission should be fixed by applying a multiple of 5 to its pre-mediation costs, and a multiple of 3 to its post-mediation costs, resulting in a total commission of $22.7 million, although again this figure needs to be slightly updated.

136 So, one can see that there is a little bit of a difference between the parties. You have got the contradictors putting a figure of $22.7 million, you have got the funder seeking $71.25 million, and you have got the Commonwealth suggesting a range somewhere between $5.9 million and $35.3 million. How to resolve all of that?

137 Now the funder accepts that I may consider its ROI as part of determining the appropriate CFO and accordingly its rate of commission to be ordered in the circumstances of this case. But it says that the use of an ROI analysis must be informed by the following principles.

138 First, it says that the multi-factorial assessment required by *Money Max Int Pty. Ltd v QBE Insurance Group Ltd* (2016) 245 FCR 191 cannot be collapsed into the singular consideration of a funder's rate of return on deployed capital. But it accepts that an analysis of a funder's rate of return can assist in any assessment as to whether commission rates are reasonable.

139 Second, it says that an ROI analysis ought not to be undertaken in a manner which ignores the critical factor of the litigation risks, assessed prospectively and avoiding hindsight bias, that a funder takes on at the commencement of the proceeding. It says that to focus solely on the ROI would be to underestimate the risks assumed at the commencement of the proceeding, including those which did not crystallise. It would also obscure the necessary inquiry into whether the commission sought is proportionate to the amount sought and recovered, the recovery in hand by group members and group member objections.

140 Third, it says that any ROI analysis should be informed by the terms of a funder's funding agreement. Now it accepts that whilst funding arrangements do not constrain my exercise of discretion under s 33V(2), the terms of those arrangements and the basis on which the funder was prepared to advance funding remain relevant to the assessment of a funder's commission.

141 Fourth, the funder says that its decision and agreement to fund the proceeding on the basis that its return would be calculated as a percentage of the resolution sum, as opposed to its ROI, has been recognised as conventional in the litigation funding market. It says that some funders

provide funding on terms which provide for the receipt of either a percentage funding commission or a multiple of the funder's investment, whichever is the greater. But it says that such terms may be undesirable, as they can result in a very large proportion of a settlement sum being paid to a funder in the case where costs represent a substantial proportion of the settlement sum. Further, it says that where a CFO is calculated in a manner which is tied to the ROI, it may also serve to disincentivise funders from agreeing to early settlements when costs are low, or to pursue settlements beyond an amount that will cover a multiple on capital deployed. Contrastingly, it says that a percentage commission fixed by reference to the proceeding's outcome serves to align the funder's interests with those of group members. And in the present case it says that by fixing its recovery as a percentage of group members' recovery, as opposed to its deployed capital, it was exposed to risk in a manner which was more directly tied to the outcome in the proceeding, rather than referable only to its expenditure.

142 Fifth, it says that the practice of courts when making CFOs has been consistent with the above principles. In an annexure to its submissions, it has identified the subset of those cases in Professor Vince Morabito's empirical study of funding commissions payable from settled representative proceedings from 27 October 2016 to 1 February 2025 in which a court relied on an ROI analysis in making a CFO.

143 It says that the court fixed a funder's commission as a multiple of its investment or considered evidence concerning a funder's ROI in 15 out of 36 cases in which it made a CFO. Specifically, in 4 of those cases, the funder's commission in the funding agreement was expressed to be a multiple of its investment, or the greater of a multiple of its investment and a percentage of the settlement sum. Of the other 11 cases, there were 4 cases in which the court ordered a commission fixed on the basis of evidence of the funder's ROI. And there were 7 cases in which evidence of the funder's ROI was a factor the court considered in determining the appropriate funding commission, but did not ultimately fix the commission by reference to the ROI.

144 It says that the lowest funding commission set by the court adopting such an ROI analysis was 16% of the gross settlement sum. Further, it says that when applying such an ROI analysis to vary funders' commissions from the rate agreed in the funding arrangements, there was only one case in which the court approved a funder's commission which reflected a percentage decrease of greater than 40%. In that case, the funder sought a substantially discounted commission, which the court approved, because the funding arrangements provided for its

commission to be fixed as a multiple of its cash outlay, and that formula resulted in a disproportionate commission compared to the settlement sum. Further, it says that of the 4 cases in which the court fixed the funder's commission by reference to evidence of the funder's ROI, the largest decrease in commission was from 30% to 18.66%.

145 Now I accept that this is what the statistics available to me show, but where this all takes me is another matter.

146 Sixth, the funder says that it is telling that if I were to adopt the Commonwealth's proposed ROI methodology, its total commission would be fixed within a range between approximately 1.2% and 7.4% of the compensation sum, depending on which multiple between 1 and 6 was adopted. And it says that if I adopted the contradictors' proposed ROI methodology, the funder's total commission would be 4.8% of the compensation sum. Further, it says that in circumstances where the applicable funding rate under the litigation funding agreements is now 15%, the Commonwealth's proposed ROI methodology would result in a discount on the applicable funding rate of between 91.8% and 50.4%, and the contradictors' proposed ROI methodology would result in a discount to the applicable rate of 68.1%.

Litigation funding agreements — Stages 1 and 2

147 Before proceeding further I should say something about the structure of the litigation funding agreements, which embodied the funder's management of its potential liability by a staged funding structure. The funding agreements contemplated that the funder's exposure would be managed in two stages.

148 Stage 1 comprised steps to set aside the 2021 settlement. The funder here agreed to provide funding up to a budget cap of $A to cover: (a) 50% of the fees incurred prior to the date of funding (23 August 2024), capped at $B (the prior funded fees); (b) 100% of Gordon Legal's pre-funding disbursements in arrears of $C; (c) from the date of funding onwards: (i) 100% of the reasonable disbursements within the investment budget; (ii) 75% of reasonable legal fees of Gordon Legal subject to the Stage 1 cap of $D; and (iii) all other project costs and any adverse costs order; and (d) in the event of "success" of Stage 1 – a further 25% of the prior funded fees.

149 As the contradictors point out, an important trigger mechanism was then prescribed being the concept of Stage 1 success and the shift into Stage 2.

150 Stage 1 success was defined to mean the Court setting aside the first settlement and permitting the class action to proceed, "without group members first being required to repay the settlement sum or the Court ordering that a bond, guarantee, or similar be given in respect of the settlement sum". In the event of Stage 1 success the funder would pay the remaining 25% of Gordon Legal's prior funded fees of $E.

151 Stage 2 would then commence, being the pursuance of any and all claims against the Commonwealth in respect of the Robodebt scheme. And for Stage 2 the funder would pay: (a) 100% of reasonable disbursements within the investment budget for Stage 2; and (b) 75% of reasonable professional costs up to the Stage 2 cap of any unspent amount from the Stage 1 cap plus $F. A separate budget was then provided for Stage 2, being $G.

152 The total initial budget for Stages 1 and 2 was therefore $H. This was increased by agreement in April 2025 to a total funding commitment of $I, being $J in Stage 1 and $K in Stage 2. One can use those figures but round them off to a total of $6.4 million, comprising Stage 1 of $2.3 million and Stage 2 of $4.1 million.

153 In September 2025, and importantly after the present proposed settlement was negotiated, the funding agreements were varied to the effect that Gordon Legal's legal expenditure up to that time would be treated as Stage 1 and paid, on the basis of "Stage 1 Success", and the definition of "Stage 2" would be amended to include work associated with the present settlement approval process. As the contradictors point out, this variation recognised that the settlement obviated the original division between the appeal proceeding on the one hand and the resumed trial proceeding on the other hand. It recognised that there was now a settlement and that the parties were in the position of being able to focus on obtaining Court approval for that settlement. It was in these circumstances that the funder agreed to assume liability for the whole of Gordon Legal's past and expected fees and disbursements of $L.

154 It is necessary to point out other aspects of the funding agreements.

155 The parties including the funder had various rights to terminate and various residual rights in the event of termination. So, the funder would have remained "on risk" to a considerable extent even if it had terminated the funding agreements, for instance, in respect of adverse costs incurred up to the date of termination.

156 The funding agreements provided that in the event of a successful resolution of class members' claims, whether by settlement or judgment, the funder would be entitled to a remuneration

payment of between 15% and 25% of any settlement sum, depending on the time taken to achieve it.

157 I agree with the contradictors that the staged structure of the present funding agreements has significance. The funder was not unconditionally exposed to the risk of the full litigation budget provided in the funding agreement. Its immediate contractual obligation was limited to the Stage 1 budget.

158 Further, I accept that that exposure was not limited to the funder's own outlays. If Stage 1 had been unsuccessful then the funder would have been exposed to adverse cost orders. But that was the extent of its exposure for Stage 1. The funder was only bound to proceed to Stage 2 if Stage 1 was successful, and even then it was free to terminate the funding agreements. But if it had terminated then it would have remained liable for its own costs incurred up to the date of termination, and for any adverse costs to the extent that the adverse costs were incurred up to that date.

159 In short, the funder's actual performance of the funding agreements in the present case never exposed it to a contractual risk higher than the Stage 1 budget of $2.3 million plus the risk of adverse cost orders if Stage 1 were unsuccessful. Further, it may be accepted that the funder sought but could not obtain adverse costs insurance for Stage 1. But in a practical sense that exposure was not uncapped and open ended, in the sense that it was limited to the reasonable costs of the appeal proceeding.

160 Now it may be accepted that the post-mediation variation to the funding agreements involved the funder accepting contractual responsibility for a revised and blended sum of $5.9 million. But I agree with the contradictors that that increase did not carry the higher risk of the original Stage 1 budget. This was a variation that occurred in the aftermath of a successful mediation. Of course there was some risk that the settlement would not be approved, but it could not be sensibly maintained that the risk profile of the litigation for the funder after the successful mediation was comparable to its risk profile before then.

161 The funder's risk in relation to own costs including the funded applicants' costs was therefore limited. So was its risk in respect of adverse costs payable to the Commonwealth. Again, in any practical sense they were limited to the Commonwealth's costs up to and including the appeal hearing. Further, I agree with the contradictors that whilst those costs were undoubtedly

going to be substantial, it is also fair to assume that they would have been comparable to the applicants' Stage 1 budget, that is, around $2.3 million.

Analysis

162 Let me now turn to some relevant principles.

163 In *Money Max*, Murphy, Gleeson and Beach JJ provided (at [80]) the following list of matters to be considered when approving a reasonable funding commission rate for a common fund order:

(a) The funding commission rate agreed by sophisticated class members and the number of such class members who agreed. This factor can be said to show acceptance of a particular rate by astute class members.

(b) The information provided to class members as to the funding commission. That may be important to understand the extent to which class members were informed when agreeing to the funding commission rate.

(c) A comparison of the funding commission with funding commissions in other Part IVA proceedings and/or what is available or common in the marketplace. It will be relevant to know the broad parameters of the funding commission rates available in the market.

(d) The litigation risks of providing funding in the proceeding. The funder before me emphasised this, as did the Full Court in *Money Max*, as being a critical factor and the assessment must avoid the risk of hindsight bias and recognise that the funder took on those risks at the commencement of the proceeding.

(e) The quantum of adverse costs exposure that the funder assumed. This is another important factor and the assessment must recognise that the funder assumed that risk at the commencement of the proceeding.

(f) The legal costs expended and to be expended, and the security for costs provided by the funder.

(g) The amount of any settlement or judgment. This of course could be of particular significance when a very large or very small settlement or judgment is obtained. The Full Court observed, in dealing with the percentage approach, that the aggregate commission received will be a product of the commission rate and the amount of settlement or judgment. The Full Court went on to say that it will be

important to ensure that the aggregate commission received is proportionate to the amount sought and recovered in the proceeding and the risks assumed by the funder.

(h) Any substantial objections made by class members in relation to any litigation funding charges. This may reveal concerns not otherwise apparent to the Court.

(i) Class members' likely recovery "in hand" under any pre-existing funding arrangements.

164 I should say that I have applied these factors and the multi-factorial approach. Further, I have also considered the funder's and the contradictors' discussion and application of these *Money Max* factors which I will discuss in more detail. But it is convenient to note here 3 matters that were not in issue and that I have taken into account.

165 First, it is not unimportant that the litigation funding agreements entered into provided for the funder to receive a commission calculated as a percentage of the compensation sum, with the percentage to be calculated by reference to the timing of a "Resolution" and the "Commencement Date" of 23 August 2024.

166 Second, the funding commission to be paid to the funder was set out in the litigation funding agreements entered into by it and the applicants, copies of which were filed with the Court in September 2025 and were available for inspection from the Court file and upon request to Gordon Legal by any group member.

167 Third, pursuant to the Court's orders made on 31 October 2025, in November 2025 a notice in the form approved by the Court was given to group members informing them of the details of the proposed settlement. The notice informed group members that it was intended that the Court would be asked to make a CFO providing for the funder to be paid $71.25 million being 15% of the compensation sum, or a lesser amount that the Court considers to be just. In response, only a handful of objections were made to the proposed funding commission sought by the funder as had been identified in the notice.

168 Now in terms of the approach of the contradictors and the Commonwealth, the funder has stressed the novelty of any application of any proposed ROI methodology in this case. But it is not in contest that the Court may have regard to the funder's ROI.

169 The parties before me debated the ins and outs of various cases discussing the question of funding commissions including references made to ROI multiples in particular instances; see

for example *Street v Western Australia* [2024] FCA 1368, *Endeavour River Pty. Ltd. v MG Responsible Entity Ltd* [2019] FCA 1719, *Endeavour River Pty. Ltd. v MG Responsible Entity Ltd (No 2)* [2020] FCA 968, *McDonald v Commonwealth of Australia* [2025] FCA 380; (2025) 309 FCR 584 (partial report only), *McCoy v Hino Motors Ltd (No 2)* [2025] VSC 553, *McCoy v Hino Motors Ltd (No 3)* [2026] VSC 195, *Bolitho v Banksia Securities Ltd (No 18) (remitter)* [2021] VSC 666 and *Galactic Seven Eleven Litigation Holdings LLC v Davaria* (2024) 302 FCR 493. With due respect to the discussion in these cases, none of them greatly assisted me in dealing with the present context. Some of them address an ROI type analysis, some not. But none of them rule it out either as a relevant consideration or that it could be appropriate to use it as the principal methodology in a particular case, assuming of course that one has taken into account and weighed all *Money Max* factors.

170 Further, one should not get too anxious about the arithmetic. If one starts with a % figure, one can always work out an ROI multiple and vice versa, accepting of course that each starts with a different base. So, let us say that you start with a % figure commission applied to the base of either the gross settlement sum or the net settlement sum. You will come up with say $Y as the amount of the funder's commission. But you can then back-solve to work out an ROI multiple. You work out the funder's $ investment (costs funded, ATE premiums, etc) and then divide $Y by that $ investment to get an ROI multiple. Contrastingly, let us say that you are starting with an ROI multiple. You work out the funder's $ investment and then apply the ROI multiple to come up with say $Z as the amount of the funder's commission. But then you can back-solve to work out what this transposes to in terms of a % figure on the base of either the gross settlement sum or the net settlement sum.

171 Now the arithmetical transposition is not difficult, but of course each method starts with a different base. The % commission figure starts with the base of either the gross settlement sum or the net settlement sum. Contrastingly, the ROI methodology uses the base of the funder's investment in the litigation to which the ROI method is applied. But who chooses the base and the method? The funder may have chosen the method in the handful of litigation funding agreements that it signed people up to, and it might have had a perfectly legitimate reason for that choice. But where a common fund order is sought and the vast majority of group members did not sign such agreements, it is for the Court to make the determination and not the self-interested funder. Of course the Court has to consider the funder's and the signed up named applicants' choice and to give such a choice significant weighting, but it is not determinative

of the base or method to choose in determining what is "just" under s 33V(2) in making a common fund order.

172 In the present case I do not consider the % commission approach to be appropriate. Even at 15% it would give the funder a return that is excessive and disproportionate to its investment, the risks that it became subject to and the benefit that it conferred on group members in funding the litigation.

173 Now as I have indicated, the funder says that the multi-factorial assessment required by *Money Max* cannot be collapsed into the singular consideration of a funder's rate of return on deployed capital. I should say that I agree with that proposition in the way that it has been expressed in generality.

174 Further, the funder says that an ROI analysis ought not be undertaken in a manner which ignores the litigation risks that a funder takes on at the commencement of the proceeding. Now I agree that one should look at those risks. But in my view risk analysis is not a static and once and for all analysis. Risks may change and any assessment should reflect this.

175 Further, the funder says that any ROI analysis should be informed by the terms of a funder's funding agreement. Again I agree with that proposition. But of course the contractual funding arrangements do not constrain the Court's exercise of discretion under s 33V(2). But of course the terms of those arrangements, and the basis on which the funder was prepared to advance funding, remain relevant to my assessment of the appropriate funder's commission to approve in the present case.

176 Further, in terms of policy questions, I do not consider that it is appropriate to adopt any bias against an ROI analysis on the basis that this will unduly incentivise funders to increase the "cost base" or investment. There are more than adequate procedures to deal with such a problem in a specific case. Any artificially inflated costs can be taxed down or ultimately disallowed.

177 Further, it has been suggested by the funder that using the ROI method might disincentivise funders from agreeing to early settlements when costs are low. But again in my view there are adequate steps that can be taken to address such questions particularly by the applicants and their legal representatives if that is a real problem in a particular case.

The effect of the commission charge on the interests of group members

178 I accept the funder's point that the Court's supervisory power over its funding commission under s 33V(2) arises from the Court's concern to protect group members' interests. Consequently, the Court's discretion to make such orders as are just is confined by the necessity that any order made is just, the general duty to act judicially, and the scope and purpose of Pt IVA, including the protective role of the Court in relation to the interests of group members. I also accept that I should not import any asymmetrical social philosophy to reduce a funder's commission where to do so would be antithetical to the purpose of Pt IVA, namely, enhancing access to justice. I also accept that the focus is on the benefit secured by the applicant and group members from the existence of the funding arrangements themselves, and what, in light of that benefit, is just and reasonable for the Court to approve by way of a deduction from the settlement fund.

179 And as the funder has correctly pointed out, it is against this background that the Full Court's statement in *Money Max*, that it expected courts would approve funding commission rates that avoid excessive or disproportionate charges to class members, should be understood. That is, the Court's inquiry into the proportionality of any return to funders does not arise in a vacuum but instead by reason of the effect of that return on group members' interests. None of this is in any doubt in my view.

180 And in the light of these principles, there are two matters that I have weighed being, first, the benefit secured for group members by the funder's commendable funding of the proceedings and, second, the effect of its proposed 15% commission rate on group members' interests. In undertaking this assessment, and as submitted by the funder, I accept that group members' rights are properly understood to possess a net value which is affected by the expense of a risk premium to secure litigation funding.

181 What is the effect of the proposed 15% commission on group members' recoveries?

182 The group members fall within categories 1, 2, 3(a), 3(b), (4) and (5). Category 5 is a new cohort. Category 4 group members are not eligible for compensation under the proposed settlement. Under the settlement distribution scheme, eligible claimants other than category 5 group members may elect between a fixed payment and an individualised assessment of their claim. Based on indicative elections made by registrants during the registration process, I agree with the funder that it can reasonably be inferred that the significant majority of claimants are likely to elect for fixed payments. The applicants' lawyer has calculated that the compensation

amount that will be available for distribution, assuming that the funder receives a 15% commission, will be sufficient to pay the entirety of group members who seek fixed payments. That is to say, the funder's commission will not affect these group members' interests.

183 The prospective effect of the proposed 15% commission rate on group members' interests is limited to those group members who seek an individualised assessment. The applicants' lawyer calculated that the compensation sum is likely to be able to accommodate the payment of individualised assessment claims at close to 100% of their assessed value, and said that if those claims need to be proportionally reduced, that reduction will likely be modest.

184 In my view, none of this requires me to give more to the funder than I consider to be proportionate and just in the circumstances.

The funder's capital at risk

185 The Commonwealth and the contradictors allege that the funder's investment should be treated as the amount that it has paid or was liable to pay as at 5 May 2026, being approximately $5.9 million. The contradictors observe that, following the settlement deed, the litigation funding agreements were amended so that the funder assumed liability for Gordon Legal's past and expected fees and disbursements of approximately $5.9 million. The contradictors further submit that, of this amount, the costs incurred by the funder before mediation ought to be treated differently from the funder's costs after mediation on the basis that the latter costs had a lower risk profile. But the funder says that this analysis is flawed.

186 First, it says that to the extent that it is sought to characterise the funder's investment as limited to the amount it actually expended, as opposed to its funding commitment, such analysis relies on impermissible *ex post* reasoning. In this case, the proceedings settled in the upper end of the range and with substantially lower expenditure than may have been necessary, increasing the funder's rate of return on capital deployed when the commission was calculated as a percentage of the compensation sum. But it says that hindsight bias should be avoided and it says that it took on the risks when the outcome on liability and quantum was uncertain.

187 It says that the risks which were assumed by the funder were assumed on a prospective basis and the weight to be afforded to them ought not to be diluted by impermissible hindsight reasoning which unduly focuses on the fact that aspects of the financial and legal risks shouldered by the funder ultimately did not crystallise.

188 Second, to the extent that it is said that the funder's commitments under the funding arrangements were of a different calibre after the parties entered into the settlement deed, this still relies upon impermissible hindsight bias. It says that none of this reflects its exposure and risk arising at the time it agreed to fund the proceeding. It says that a funder's return should not be adjusted by reference to a retrospective recalibration of the risk profile of a proceeding in reliance on the very terms of settlement which have brought the proceedings to an end.

189 As to the funder's exposure, it says that the relevant starting point is at the outset of Stage 1.

190 At that time, its exposure comprised its proposed investment across Stages 1 and 2, which totalled at least $5,084,612, the costs of ATE insurance, which totalled $2,652,959.55, and its exposure to adverse costs: for Stage 1, those costs were unlimited but could reasonably be estimated to be $1,201,900; for Stage 2, those costs would be any amount above the ATE Stage 2 limit of indemnity of $5,585,178.

191 In total, therefore, its exposure at the outset of Stage 1 was at least $8,939,472.05.

192 Subsequently, on 11 April 2025, the funder approved a revised investment budget, pursuant to which its funding obligation across Stages 1 and 2 increased to at least $6,393,812.50. In turn, its total exposure increased to at least $10,248,672.05. By this stage, the mediation had not occurred, and it could not have known that the settlement would vary its exposure.

193 The funder says that the Court's assessment of the risk arising from its exposure ought not to be affected by the fact that, following the mediation, the parties agreed to a resolution of the proceedings. It says that it may be accepted that after the mediation, the costs paid by the funder had a different risk profile. But it says that this is not to the point. Before the mediation, it had entered into agreements which committed it to a total financial exposure of at least $10,248,672.05. And it was this funding commitment which allowed the proceedings to be pursued to a successful mediation. It says that it is that commitment for which a funding commission is sought which properly recognises the exposure to risk which was assumed at the outset.

194 Generally, the funder says that in circumstances where its capital at risk is assessed as at least $8,939,472.05 at the outset of Stage 1 or at least $10,248,672.05 following the revised investment budget, the 15% commission sought by it will result in a return ranging between 6.95 and 7.97 times that figure.

195 Further, it says that its exposure, in respect of both the capped legal fees and uncapped disbursements, may have increased if the investment budget or the revised investment budget was exceeded. Further, it says that the initial trial would not have resolved the litigation and further steps would have been required to translate success in that trial to individual success for group members. Further, the investment budget or revised investment budget did not allow for appeals.

196 Further, the contradictors proceed on the basis that the litigation risks were confined to those arising in Stage 1 of the proceedings, that is, the application to reopen the initial settlement. But the funder says that if the contradictors' position relies on the timing of the settlement, that position is tainted by hindsight bias. At the outset of Stage 1, the funder could not have known if, let alone when, the parties would agree to settle the proceeding. It was therefore exposed to the risks of Stages 1 and 2.

197 Further, the contradictors assert that, by reason of the Stage 1 and Stage 2 delineation in the litigation funding agreements, the funder was never exposed to a contractual risk higher than the Stage 1 budget and adverse costs. But the funder says that under the litigation funding agreements, the funder was liable to pay Stage 2 costs if Stage 1 was successful. In any case, the funder says that it allocated the full budget for Stage 1 and Stage 2 for the proceedings and, consequently, those funds were not available for any other case or investment. I would note here that such internal "allocation" and book entries does not entail that such funds have actually been put at risk; creating in effect an internal reserve is a different concept.

198 Further, the contradictors say that the funder's rights to terminate under the litigation funding agreements confined the risk to which it was exposed. But the funder says that the commercial reality was that having committed significant funds to reopen the initial settlement, it was in the funder's interests financially and reputationally to ensure the proceedings were pursued to their conclusion. If it did not do so, it would have to forfeit its recovery of any commission being the purpose of its initial investment. It would also face the unattractive prospect of a continuing liability for any adverse costs incurred prior to the funder's termination. In that event, the withdrawal of funding would have served to increase the risk that the proceeding would be discontinued. Further, the funder says that the exercise of its termination rights would also risk reputational damage, both because of the serious consequences for the applicants and group members in the proceeding and by reason of the broader potential for the funder to be perceived as unreliable by the plaintiff law firms that regularly act in Australian class actions.

This could result in such firms being more likely to seek funding from other market participants in the future.

199 I should note here that commercially speaking what the funder says makes sense. But strictly, it could contractually choose to terminate the litigation funding agreements after Stage 1. In looking at the question of risk assessment and even accepting the *ex ante* perspective, these rights of termination, which if exercised could crystallise risk at a particular point, cannot be ignored.

200 Further, the contradictors' characterisation of the risks arising at Stage 1 appear to be informed by the fact that, seven months after the funder committed to fund the proceedings, the Commonwealth confirmed that it would not require repayment of amounts paid under the initial settlement agreement and consequently that risk evaporated. But the funder says that at the outset of Stage 1, it could not have known whether or when the Commonwealth would demand repayment of amounts paid under the initial settlement agreement.

201 I am not sure where this point really takes the funder. It is not strongly relevant to the Stage 1 risk. It more goes to reducing the prospect of a settlement or its quantum with the Commonwealth if Stage 1 was successful and then Stage 2 embarked on. And if that was part of the risk matrix, I have no difficulty that it should be taken into account. But so taking this into account, it does not affect the calculus that I have done.

202 Now in assessing the funder's risk I agree with Ms Rachel Doyle SC for the funder that I should principally not adopt a hindsight approach but should put myself in the shoes of the funder and to assess the risks going forward from an *ex ante* position. But that is not a static analysis and a once and for all assessment at the time of the entry into of the funding agreements.

203 In relation to such risk analysis, I am largely in agreement with the contradictors' approach in terms of looking at the risks and in conceptually analysing the matter by reference to two divisions, the Stage 1 and Stage 2 division that I have earlier summarised and also the division between the costs incurred before the successful mediation and the costs incurred thereafter. I do not accept the funder's approach that one should only look at the matter holistically on a project basis, nor that one should only look at the question of risk assessment at the initial time of the funding agreements being entered into. Of course, it is important that that should be taken into account but it is not the sole input into any risk analysis in this case particularly given that various stages had different conditional and unconditional commitments.

204 Let me say something about Ms Doyle's aide memoire that she handed up to me this morning, which is a one page document setting out calculations for what were described as Figure 1, Figure 2 and Figure 3 and the relevant "base" or "investment". These figures can be tabulated as follows:

Figure One:	$6,684,064 (legal fees + insurance premium paid)
Figure Two:	$8,939,472 (initial investment budget + estimated adverse costs exposure stage 1 + total insurance premiums paid and to be paid for stage 2)
Figure Three:	$10,248,672 (revised investment budget as at April 2025 + estimated adverse costs exposure stage 1 + total insurance premiums paid and to be paid for stage 2)

205 Figure 1 is close to the position that the contradictors have adopted for the base.

206 Figure 3 is what I would describe as Ms Doyle's ambit claim and I would put it to one side.

207 As for Figure 2, it has its flaws. First, it uses a budgeted figure and it combines stage 1 and stage 2 which on one view is problematic. Second, it treats the risk of adverse costs as if they were actually incurred. But the risk, as the contradictors pointed out, is ultimately dealt with by the application of the multiple. Third, it includes also the Premium B figure as well as the Premium A figure.

208 Now if I was to take Ms Doyle's Figure 1 and apply a multiple of 5, the figure of $35 million that I will allow to the funder is in fact above Figure 1 if I applied a multiple of 5.

209 And if I was to take Ms Doyle's Figure 2 and slightly ratchet it down by removing the Premium B aspect, then applying a multiple of 4 would come in under the $35 million that I will allow.

210 This all confirms to me that if I allow $35 million then that is appropriate commission for the funder.

Summary

211 As I hope I have already made clear, I agree with both the funder and the contradictors that reference to other cases and comparators is not that helpful whether one looks at these other cases in terms of a percentage commission approach or an ROI approach. I also accept, as Ms Doyle correctly points out, that in the Australian context, a percentage commission approach has usually been the preferred approach.

212 But this case has some unique features which justify me not applying a standard methodology or a standard percentage, and putting other cases to one side, particularly figures reached in commercial class actions. First, the funding arrangements and the associated risks are to be seen in the light of the Stage 1 and Stage 2 structure. Second, there was relatively speaking an early resolution and settlement. Third, many of the costs incurred or capital deployed by the funder took place in the time frame after there had been in principle a successful outcome from the mediation. These features justify me not using the usual percentage commission rate approach.

213 Looking at the capital employed or committed by the funder but adopting for the most part the risk analysis submitted to me by the contradictors, I will make a common fund order in favour of the funder with the total amount of commission for the funder fixed in the sum of $35 million. Now I should say here that the figure that I will accept and approve is well above what the contradictors put to me of $22 million.

214 This figure has been reached taking into account both the legal costs funded and also the applicable ATE premiums funded. I have considered both of those questions in terms of the investment. I have used this as the base with a multiple then used to derive the figure approximately, coming up with the figure of $35 million which is within but at the upper end of the Commonwealth's range, but is more generous than the contradictors would have it.

215 This figure has been reached after applying the *Money Max* multi-factorial approach.

216 This figure achieves proportionality between the actual risks that were assumed by the funder and the return that it now seeks.

217 This figure will not create a disincentive to funders funding other cases when one appreciates the unique features of this case.

218 This figure has not been adopted principally using hindsight bias in terms of risk assessment concerning the capital deployed.

219 This figure has been reached giving considerable weight to the benefit to group members achieved by the funder providing funding. And the funder as I say is to be very much commended for providing the funding.

220 Overall, the figure that I have reached conforms with the overall prescription in s 33V(2) of the FCA Act of being a just amount.

221 Finally, Ms Doyle suggested that I would be doing something unprecedented that might cause unhappiness in the funding market by adopting the approach that I have. First, it was said that the amount allowed would result in a single digit percentage commission figure that was unheard of. Second, it was said that it was unprecedented for a court to halve or more than halve the commission amount sought by a funder.

222 But in my view these are little more than jury points. Moreover, this case has unique features, that is, it is an outlier. Once my written reasons are published, I am sure as I have said that funders generally will appreciate how and why I have reached the figure that I have and why it is just under s 33V(2) in the particular circumstances of this case.

223 That is all that I want to say about the question of funding at the moment. Let me move then to the question of legal costs.

Legal costs

224 As I have indicated, pursuant to the Court's orders of 31 October 2025, a referee was appointed to inquire into and report to the Court on the lump sum amount of reasonable legal costs that should be awarded in respect of the applicants' legal costs for work done up to the settlement approval hearing.

225 The costs referee's report was provided to the Court and I have that in the many volumes of my court book and I have had a look at it.

226 The sum of $15,456,185 is the amount of legal costs assessed by the costs referee to be fair and reasonable in all the circumstances for all work completed up to and including the settlement approval hearing. This amount includes professional fees, disbursements, uplift and GST. No challenge has been made to that assessment by any party.

227 Given that the parties agreed to a cap on legal costs payable by the Commonwealth of $13.5 million, there is no difficulty in approving that $13.5 million amount. There are 2 points to make. First, the $13.5 million is $2 million below the costs referee's assessment. Second, the legal costs sum is to be paid directly by the Commonwealth and does not reduce the compensation sum available to group members. In such circumstances, and because the costs referee has assessed the fair and reasonable amount of legal costs and disbursements as being almost $2 million more than the cap for which the settlement deed provides, I will approve the amount of that cap, namely $13.5 million, as being the legal costs and disbursements to be paid by the Commonwealth.

228 Let me turn to some other topics.

Appointment of scheme administrator

229 As I have already indicated, I have no difficulty in Gordon Legal being appointed as the scheme administrator. It seems to me that Gordon Legal will be able to effectively and efficiently administer the settlement distribution scheme in the interest of group members. And I will so provide in my orders.

230 Gordon Legal has acted for victims of the Robodebt scheme since 2019. They have significant experience in the subject matter of this proceeding and, through their long history in this litigation, have familiarity with the complex underlying issues that will necessarily inform the assessment of group members' claims in the proposed settlement. Gordon Legal has also had conduct of the registration process, through which group members have developed a familiarity with and level of confidence in Gordon Legal in connection with this proceeding. Further, Gordon Legal's role in conducting the registration process also means that it is in the springboard position of having a workforce, including approximately 70 trained paralegals, which has extensive experience in dealing with the subject matter of the claims and individual group members. Gordon Legal has also, subject to my approval of the settlement and its appointment as scheme administrator, engaged BDO Australia to provide a comprehensive treasury function, taxation services and funds investment and management services, and to administer settlement payments awarded pursuant to the proposed scheme, under the supervision of the scheme administrator. Further, subject to my approval of the settlement, Gordon Legal has agreed or is in the process of finalising agreements with other entities and firms to perform roles in the conduct of the administration or to consult in the preparation of the website portal for the administration.

231 Now should I have put all of this out to tender?

232 The contradictors were appointed in part to address the question of whether the appointment of a scheme administrator ought to be determined following a tender process. And it was the contradictors' position before me that in the specific and unusual circumstances of this settlement distribution a tender was warranted. They expressed the view that given the unusual scale and duration of the putative settlement administration process, and the Commonwealth's proposal that any tender process be carefully constrained, it was worth undertaking that limited tender process to test whether there might be innovations, in the manner of achieving the steps

contemplated by the proposed settlement distribution scheme, that could yield a material improvement to the process.

233 Now I accept that the principal consideration is the best interests of the group members. Their interests lie in having the settlement funds distributed efficiently. Efficiency entails both fairness or appropriateness as to the relativities in the payments received by different claimants, and timeliness in achieving those distributions. And in addition to fairness and timeliness, the characteristics of the group members necessitate that the administration process be undertaken with compassion and sensitivity.

234 Further, I accept that s 37M of the FCA Act should be considered given the issue of the costs burden for the Commonwealth.

235 Further, as the contradictors pointed out, a cost/benefit analysis is required. On the one hand, the better the evidence of a comprehensive and internally tested proposal from an incumbent firm, the less prospect that a competitor would offer a sufficiently better alternative as to make a tender process worthwhile. If the exercise seems unlikely to yield a meaningfully better proposal, then the risks of delay and the reality of costs to the tenderers ought not be visited on anyone. On the other hand, the greater the scale and costs, and the longer the timelines of a given administration scheme, the more likely it becomes that slight differences between tenders might yield sufficient ultimate benefits as to justify the tender exercise.

236 Now there are three issues raised that are worth addressing directly, namely, the Commonwealth's suggestion of the benefits flowing from a more transparent appointment process, the Commonwealth's suggestion of benefits in opening up the market for the provision of settlement administration services, and the relevance of public money. Now a fourth issue was raised concerning the risk that the appointment of an administrator other than Gordon Legal might confuse group members in relation to the connection if any between this Robodebt compensation scheme and other reparations schemes either being run or foreshadowed by the Commonwealth. But I found this fourth issue underwhelming and it can be put to one side.

237 As to transparency, a tender process is not a necessary prerequisite to transparency. Even without a tender process, transparency can be achieved by my close and public scrutiny of the proposed administrator and what is being proposed.

238 As to the question of opening up the market, a practice of tendering class action settlement administration exercises is likely to promote a market of service providers and, in time,

disseminate expertise and foster competition, ultimately to the benefit of class members in future litigation. But this consideration should be given little if any weight. It is the interests of the parties and the group members to the present proceeding before me which are the determinative factors.

239 As to the question of public money, one should not give great weight to the consideration that the costs of the administration process in the present matter are to be paid from public money. After all, the group members are themselves members of the public whose money it is. Of course it is a legitimate and important objective to try to minimise the costs to be paid by the Commonwealth as administration costs. But the Court's protective or supervisory role in class action settlements is directed at the protection of class members, not a well-resourced respondent like the Commonwealth. But I accept that the s 33V and s 33ZF powers are still subject to s 37M. Minimising the costs to the parties, including a well-resourced respondent, is not irrelevant.

240 Let me deal with some other matters.

241 The disadvantages of a tender process at least include probable delay and real cost to at least the firms who tender, including the incumbent firm which otherwise would be able to move directly to or preparing for the administration exercise itself. A tender process will cause delay at least in the commencement of the administration process. Further, the issue of the burden of administration costs is a legitimate one.

242 There are three aspects of financial or resource costs being: (a) those costs of the tender process that the Commonwealth offers to bear; (b) those costs of the tender process that the Commonwealth does not offer to bear, namely the costs that will be incurred by the firms that decide to participate in the process; and (c) the potential reduction in the eventual administration costs that might result from a tender process. As to (a), the fact that the Commonwealth offers to bear the costs of the tender referee, any procurement consultant and any counsel or solicitors engaged to assist the tender referee is a matter that I have taken into account. As to (b), I am not troubled by the potential tender costs for firms other than Gordon Legal. Those firms would make a knowing election to chance those costs in order to compete for the work. I am more concerned about the tender costs that would be visited on Gordon Legal. They are additional costs to the firm resulting from a proposal that the Commonwealth advances really in its own interests. As to (c), I am not convinced that it has been shown that there would likely be real potential cost savings that a competitive tender process might achieve

for the administration. Other alternative tenderers to Gordon Legal might promise much to win the tender but then deliver little in terms of significant costs savings when the reality of what is involved becomes apparent.

243 Further, it is difficult to know or assess what benefits alternative administrators may be able to achieve in terms of the management or resourcing of the settlement distribution scheme process. But one cannot discount the possibility that other firms might have innovative ideas.

244 Generally, the most significant factor for me is the importance of administering the settlement with the necessary compassion and sensitivity in light of the characteristics of the cohort of group members, including that many group members are vulnerable, marginalised and economically disadvantaged. This factor clearly favours Gordon Legal, rather than an alternative administrator such as an accounting firm that may seek to impose and prioritise algorithmic procedures.

245 Now the contradictors concluded that taking into account the advantages and disadvantages of Gordon Legal's proposal to be appointed the scheme administrator, and the potential advantages and disadvantages for scheme administration that might be procured by a tender process, on a "very close balance" the unusual scale of this particular settlement distribution gave rise to a sufficient prospect that other firms might offer material improvements as to justify an attempt to find out whether that is so.

246 But having carefully considered what was put to me by the applicants, Gordon Legal, the contradictors and the Commonwealth, in my view the balance favoured not putting the matter out to tender.

Scheme administration costs

247 The applicants seek an order approving the distribution of the amount of the settlement scheme administration costs provided for in the settlement deed, being up to $60 million. The actual amount to be paid by the Commonwealth will be subject to the terms and requirements of the settlement deed.

248 In my view such an order is justified. First, under the settlement, any funds ultimately distributed for scheme administration costs are subject to independent assessment by the Court-appointed costs assessor. Second, an essential component of the settlement is that the scheme administrator be sufficiently well-resourced and equipped to manage the complex administration task that this proceeding and settlement necessitate. Finally, these costs are

separate from and thus do not reduce the compensation sum available to group members. I will make the necessary order approving of that regime.

Reimbursement payments to the applicants

249 The applicants seek my approval for the payment of an amount from the compensation sum to each applicant to reimburse them for the considerable investment of time and out of pocket expenses incurred by reason of the performance of their roles as applicants in this proceeding and in the appeal proceeding. Specifically, and consistently with the settlement deed, the amounts sought by way of reimbursement are $20,000 for each applicant and $25,000 for each of the two appeal applicants.

250 I will approve the payments. In my view those payments should fairly compensate those persons for the considerable time spent and inconvenience incurred over a number of years performing the role of applicants, very largely for the benefit of others. Further, such payments are within the range of reimbursement payments approved by me and other judges of this Court in other representative proceedings, as confirmed by the empirical studies carried out from time to time by Professor Morabito.

Concluding observations

251 Let me make some final observations before I go to the orders. These are my general personal observations.

252 This Robodebt debacle is something that we have to learn the lessons from or should I say Commonwealth ministers and their departments have to learn the lessons from.

253 Surely ministers must properly inform themselves of the technical and legal complexities of automated systems and schemes to which members of the public are to be subjected. Such a motivation and skill set are not optional extras. Further, the concept of being a responsible minister does not mean finding a public servant to take responsibility for the policy that you have sought to push through. And nor is the role of a minister simply to educate yourself about the policy through a one page document. And nor is the intellectual exercise simply limited to following the instruction on a "post it" note, which tells you where to place your signature on the executive minute.

254 Now when dealing with automated processes and systems, any moral hazard problem becomes magnified. If you have not conscientiously and diligently taken steps to either master the detail

yourself, or made sure that others reporting to you have done so, you are likely as in this case to inflict real harm on others in imposing automated systems or processes. And as in this case, the relevant ministers and their departments had the freedom and control to take great risks with Robodebt and its implementation, yet they were insulated and detached from the consequences of such risks if they came to fruition, which they obviously did.

255 Now why am I making these points? Robodebt is over as a system or process, although not of course for the victims and their families, many of whom are still suffering significantly in its aftermath, and some whose spirit only remains in our memory.

256 Today we of course have generative artificial intelligence. And we will later move into artificial general intelligence. The benefits and rewards of such systems will be several orders of magnitude above the types of automated systems that we have seen in the past. But the complexity and risks of such systems and processes will be equally if not more magnified or amplified.

257 Surely the lessons learnt from Robodebt can be put to good advantage, not for the technology as such which is morally neutral, but for its human designers, implementers and controllers.

258 Let me turn then to the orders.

259 I will make orders in terms of the latest set of minutes that were provided to me by the parties before lunch, save and except that in order 3(b), instead of the settlement distribution scheme being an annexure to the orders, there will have to be some reference made to the settlement distribution scheme in the form of, I suspect, yet another affidavit from the applicants' lawyer that I have not caught up with at the moment – and I will come back to that – so that we can then just cross-reference that. In terms of order 14(d)(i), in terms of the amount to be paid to the funder, I will modify 14(d)(1) of the orders to provide to Omni Bridgeway (Fund 5) Lion Pty Ltd an amount of $35 million for its funding commission, pursuant to s 33V(2) of the Act. And in suborder (2) of 14(d), I will leave in (a) through to (h) the dollar amounts, but delete the phraseology "...or other amount determined by the court" in each case, so that, for example, (2)(a) will read $20,000 to the first applicant and seriatim. And other than that, I will approve the settlement under s 33V(1) of the FCA Act. And I will approve the deductions under s 33V(2), to the extent that they are being deducted from the settlement sum rather than being separately paid by the Commonwealth, and otherwise make the orders in the terms submitted

to me. [Discussion also as to postponing the commencement of the appeal period until written reasons were issued.]

I certify that the preceding two hundred and fifty-nine (259) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Beach.

Associate:

Dated: 30 July 2026

SCHEDULE OF PARTIES

VID 1252 of 2019

Applicants

Fourth Applicant:	FELICITY BUTTON
Fifth Applicant:	SHANNON THIEL
Sixth Applicant:	DEVON COLLINS