

SUPREME COURT OF QUEENSLAND

CITATION: *Murphy Operator Pty Ltd & Ors v Gladstone Ports Corporation Ltd (No 3)* [2019] QSC 118

PARTIES: **MURPHY OPERATOR PTY LTD (ACN 088 269 596)**
(first plaintiff/first applicant)

AND

TOBARI PTY LTD (ACN 010 172 237)
(second plaintiff/second applicant)

AND

SPW VENTURES PTY LTD (ACN 135 830 036)
(third plaintiff/third applicant)

v

**GLADSTONE PORTS CORPORATION LIMITED
(ACN 131 965 896)**

(defendant/first respondent)

LCM OPERATIONS PTY LTD

(second respondent)

FILE NO/S: SC No 7495 of 2017

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 14 May 2019

DELIVERED AT: Rockhampton

HEARING DATE: 26 April 2019

JUDGE: Crow J

ORDER: **Notices to group members**

- 1. Pursuant to section 103T(5) of the Civil Proceedings Act 2011 (Qld) (CPA), notice (Application Notice) be given to group members of the matters stated in the notices referred to in paragraphs 2 and 3 below.**
- 2. Pursuant to s 103U of the CPA, the Application**

Notice be in the terms set out in:

- a) for notices sent to group members' postal or email addresses, and the website of the plaintiffs' solicitors – Annexure A to these Orders;
 - b) for newspaper notices – Annexure B to these Orders.
3. Pursuant to s103T(5) and s 103U(2) of the CPA, the Application Notice be given to group members by the solicitors for the plaintiffs, within 14 days after the date of these Orders, causing notices:
- a) in respect of group members who have already registered with the plaintiffs' solicitors – to be sent in the terms of Annexure A by email to the registered email address, alternatively by pre-paid ordinary post to the registered postal address, of the group member;
 - b) for all group members – to be published in terms of Annexure B published in one edition of each of:
 - (i) *Courier-Mail*;
 - (ii) *Gladstone Observer*;
 - (iii) *Fraser Coast Chronicle*;
 - (iv) *The Morning Bulletin* (Rockhampton);
 - (v) *News Mail* (Bundaberg);
 - (vi) *Daily Mercury* (Mackay);
 - (vii) *Gympie Times*; and
 - (viii) *Sunshine Coast Daily*;
 and posted in terms of Annexure A on the website of the plaintiffs' solicitors on a page accessible via a link prominently displayed on the homepage dedicated to this proceeding.
4. Within 21 days after the last publication pursuant to order 3 above, the solicitors for the plaintiffs shall file and serve an affidavit deposing to the steps taken pursuant to Order 3 above, the rates of 'returned' mail, and the rates and nature of enquiries from group members in response to the Application Notice.

Points of Claim documents

5. By 4pm on 17 May 2019 the plaintiffs file and serve on the defendant and the second respondent a Points of Claim document which identifies the factual and legal issues they contend are relevant to the court's determination of paragraphs 6 and 7

of the Funding Application.

- 6. By 4pm on 24 May 2019, the defendant and the second respondent file and serve on the plaintiffs and each other a Points of Defence document which identifies:**
 - a) whether it agrees or disagrees that the issues identified by the plaintiffs in their Points of Claim document are relevant to the court's determination of paragraphs 6 and 7 of the Funding Application;**
 - b) any other issues it contends are relevant to the court's determination of paragraphs 6 and 7 of the Funding Application.**
- 7. By 4pm on 29 May 2019 the plaintiffs file and serve on the defendant and the second respondent a Points of Reply document which identifies whether they agree or disagree that the issues referred to in paragraph 6(b) above are relevant to the court's determination of paragraphs 6 and 7 of the Funding Application.**

Affidavits and disclosure

- 8. By 4pm on 7 June 2019:**
 - a) the plaintiffs file and serve any further affidavit evidence on which they intend to rely in relation to the Funding Application;**
 - b) LCM file and serve any affidavit evidence on which it intends to rely in relation to the Funding Application.**
- 9. By 4pm on 14 June 2019, the defendant:**
 - a) file and serve any affidavit evidence on which it intends to rely in relation to the Funding Application;**
 - b) file and serve any application for an order for disclosure by the plaintiffs and/or the second respondent in relation to the Funding Application, and any material intended to be relied in support of such an application.**
- 10. Any application filed under paragraph 9 (b) be heard at 9am on 17 June 2019 at Rockhampton.**
- 11. By 4pm on 21 June 2019 the plaintiffs and the second respondent file and serve any responsive affidavit material on which they intend to rely in relation to the Funding Application.**

12. **The plaintiffs file and serve written submissions on the defendant and second respondent by 8 July 2019.**
13. **The second respondent file and serve written submissions on the plaintiffs and the defendant by 10 July 2019.**
14. **The defendant file and serve its written submissions on the plaintiffs and the second respondent by 5pm 15 July 2019.**
15. **The plaintiffs and second respondent file and serve any written submissions in reply by 5pm 17 July 2019.**
16. **There be a hearing of paragraphs 6 and 7 of the Funding Application at 9.00am on 18 July 2019 at Rockhampton.**
17. **Liberty to apply.**
18. **Costs of the hearing on 26 April 2019 be reserved.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – SEPARATE DECISION OR DETERMINATION – GENERALLY – where applicants seek a declaration that the relevant funding agreements are not by reason of maintenance, champerty or public policy unenforceable - where applicants seek an order stating a case to the Court of Appeal pursuant to rule 483 of the *Uniform Civil Procedure Rules* – where applicants alternatively seek a declaration pursuant to s 103ZA of the *Civil Proceedings Act* or the inherent jurisdiction of the Court that the relevant funding agreements are not by reason of maintenance, champerty or public policy unenforceable – where first respondent argues that that the factual basis underpinning the questions is uncertain – where first respondent argues a determination must be left to when all parties who have an interest in the subject matter are before the court – whether it is inappropriate for an order to be made to state a case to the Court of Appeal – whether an order should be made to hear the funding application in the trial division

Uniform Civil Procedure Rules 1999 (Qld) r 483
Civil Proceedings Act 2011 (Qld) s 103T, s 103U, s 103ZA

Brewster v BMW Australia Ltd [2019] NSWCA 35
Westpac Banking Corporation v Lenthall [2019] FCAFC 34

Land and Resources Tribunal v Schmidt [2006] 1 Qd R 161
Campbells Cash and Carry Pty Ltd v Fostif Pty Ltd (2006)
 229 CLR 386
*British Cash and Parcel Conveyors Ltd v Lamson Store
 Service Co Ltd* [1908] 1 KB 1006
Clairs Keeley (a Firm) v Treacy (2003) 28 WAR 139
Clairs Keeley (a Firm) v Treacy (2004) 29 WAR 479
Fostif Pty Ltd v Campbells Cash & Carry Pty Ltd [2005] 63
 NSWLR 203
Makhoul v Barnes (1995) 60 FCR 572
Castillon v P & O Ports Ltd (No 2) [2008] 2 Qd R 219

COUNSEL: LWL Armstrong QC and M May for the applicants
 JD McKenna QC and SB Hooper for the first respondent
 C Jennings for the second respondent

SOLICITORS: Clyde & Co for the applicants
 King & Wood Mallesons for the first respondent
 Piper Alderman for the second respondent

[1] On 1 April 2019 the plaintiffs filed an application seeking the following orders:

Participation

1. Pursuant to rule 31(3) of the Uniform Civil Procedure Rules (UCPR), alternatively rule 69 of the UCPR, alternatively section 103ZA of the *Civil Proceedings Act 2011 (Qld)* (CPA), alternatively in the inherent jurisdiction of the Court, an order that LCM Operations Pty Ltd ACN 616 451 033 (LCM) be a respondent party to this application.
2. In the alternative to Order 1, pursuant to section 103ZA of the CPA, alternatively in the inherent jurisdiction of the Court, an order that LCM have leave to intervene in the hearing of this application.
3. In the alternative to Orders 1 and 2, pursuant to section 103ZA of the CPA, LCM be joined as a third party:
 - (a) until the determination of this application (including any stated case, or appeal from such determination); alternatively
 - (b) until further order of the Court.

Case stated for Court of Appeal

4. Pursuant to rule 483(2) of the UCPR, an order stating a case for the opinion of the Court of Appeal in terms of Annexure A to these reasons.

Questions referred to Court of Appeal

5. In the alternative to Order 4, pursuant to rule 483(1) of the UCPR, alternatively section 103ZA of the CPA, an order referring to the Court of Appeal for hearing and determination the question whether the order sought in paragraph 6, alternatively paragraph 7, below should be made.

Declarations

6. In the alternative to Orders 4 and 5, pursuant to section 103ZA of the CPA, alternatively in the inherent jurisdiction of the Court, a declaration that:
 - (a) the agreement titled “*Representative Proceeding Funding Agreement, Representative, The 2017 Gladstone Fisheries Scheme*” between LCM, Murphy Operator Pty Ltd, Tobari Pty Ltd and SPW Ventures Pty Ltd is not, by reason of maintenance, champerty or public policy, unenforceable; further or alternatively
 - (b) the agreements titled “*Representative Proceeding Funding Agreement, Member, The 2017 Gladstone Fisheries Scheme*” between LCM and funded group members are not, by reason of maintenance, champerty or public policy, unenforceable.

Common fund order

7. In the alternative to Orders 4, 5 and 6, an order (**common fund order**) that, upon LCM undertaking to abide by the funding annexed as Annexure B to this application, the Plaintiffs and each Group Member shall pay to LCM and Clyde & Co, from any settlement sum receivable or damages awarded in respect of the claims the subject of the Proceeding (**Recoveries**):
 - (a) such legal costs incurred in the investigation, preparation and prosecution of the claims as may be approved by the Court, plus any applicable GST; and
 - (b) thirty-five per centum (35%) of the said Recoveries, or such other proportion as the Court may allow in connection with the settlement or judgment as the case may be.

Notice of funding applications

8. Pursuant to s.103T(5) of the CPA, notice (**Application Notice**) of the hearing of the *[insert reference to Order 4, 5 or 6/7 as applicable]* be given to group members.

Content of Application Notice

9. Pursuant to s.103U of the CPA, the Application Notice be in the terms set out in:

- (a) for notices sent to group members' postal or email addresses, and the website of the plaintiffs' solicitors – Annexure C to these Orders;
- (b) for newspaper notices – Annexure D to these Orders.

Giving Application Notice

10. Pursuant to s103T(5) and 103U(2) of the CPA, the Application Notice be given to group members by the solicitors for the plaintiffs, within 14 days after the date of these Orders, causing notices:
- (a) in respect of group members who have already registered with the plaintiff's solicitors – to be sent in the terms of Annexure C by email to the registered email address, alternatively by pre-paid ordinary post to the registered postal address, of the group member;
 - (b) for all group members – to be published in the terms of Annexure D in one weekday edition of *The Australian* newspaper, and published in one edition of each of:
 - (i) *Courier-Mail*;
 - (ii) *Gladstone Observer*;
 - (iii) *Fraser Coast Chronicle*;
 - (iv) *The Morning Bulletin* (Rockhampton);
 - (v) *News Mail* (Bundaberg);
 - (vi) *Daily Mercury* (Mackay);
 - (vii) *Gympie Times*; and
 - (viii) *Sunshine Coast Daily*;

and posted in terms of Annexure D on the website of the plaintiffs' solicitors on a page accessible via a link prominently displayed on the homepage dedicated to this proceeding.

Report Back

11. Within 21 days after the last publication pursuant to order 10 above, the solicitors for the plaintiff shall file and serve an affidavit deposing to the steps taken pursuant to Order 10 above, the rates of 'returned' mail, and the rates and nature of enquiries from group members in response to the Application Notice.

Other

12. Such further or other directions as the Court may deem appropriate.

13. The costs of and incidental to the application for or implementation of these Orders shall be the parties' costs in the proceeding.
- [2] The application was listed for hearing in Brisbane on 5 April 2019 which resulted in a set of directions for a further hearing date in Rockhampton on 26 April 2019. At the commencement of the application LCM Operations Pty Ltd (LCM), appeared and consented to an order that it be joined as a respondent to the application filed 1 April 2019. Orders were therefore made joining LCM as a respondent to the application. LCM supported the applicants' submission on all issues which in summary was to seek to have a case stated to the Court of Appeal in respect of the legitimacy of the funding agreements and the common fund order. LCM joins in the applicants' submissions that it is appropriate to state a case to the Court of Appeal in light of the importance and complexity of the issues that arise and the utility of that procedure as recently demonstrated in *Brewster v BMW Australia Ltd*.¹
- [3] The first respondent, Gladstone Ports Corporation Limited (GPC) opposes the stating of the case to the Court of Appeal and seeks orders that the issues be determined as an ordinary application. The applicants and the first respondent jointly propose notices to group members with the object that any group member who wishes to appear and argue in respect of the validity of the funding agreements or the common fund order will have an opportunity to put submissions forward. That is entirely appropriate as they are affected parties. The defendants seek the following orders:

Dismissal of paragraphs 1-5 of the Funding Application

1. Paragraphs 1 to 5 of the Plaintiffs' Application filed 1 April 2019 (**Funding Application**) are dismissed.

Amended Application

2. By 4pm on 30 April 2019, the plaintiffs file and serve an amended Funding Application, which:
 - (a) names LCM Operations Pty Ltd (LCM) as a respondent to the application;
 - (b) deletes paragraphs 1 to 5 and 8 to 11 of the application (including deletion of Annexures A, C and D).
3. By 4pm on 30 April 2019, the plaintiffs provide to LCM a copy of these orders.

Notices to group members

4. Pursuant to sections 103T(5) of the *Civil Proceedings Act 2011* (Qld) (CPA), notice (Application Notice) be given to group members of the matters stated in the notices referred to in paragraphs 5 and 6 below.
5. Pursuant to s103U of the CPA, the Application Notice be in the terms set out in:

¹ [2019] NSWCA 35; *Westpac Banking Corporation v Lenthall* [2019] FCAFC 34.

- (a) for notices sent to group members' postal or email addresses, and the website of the plaintiffs' solicitors – Annexure A to these Orders;
 - (b) for newspaper notices – Annexure B to these Orders.
6. Pursuant to s.103T(5) and 103U(2) of the CPA, the Application Notice be given up to group members by the solicitors for the plaintiffs, within 14 days after the date of these Orders, causing notices:
- (a) in respect of group members who have already registered with the plaintiff's solicitors – to be sent in the terms of Annexure A by email to the registered email address, alternatively by pre-paid ordinary post to the registered postal address, of the group member;
 - (b) for all group members – to be published in terms of Annexure B in one weekday edition of *The Australian Newspaper*, and published in one edition of each of:
 - (i) *Courier-Mail*;
 - (ii) *Gladstone Observer*;
 - (iii) *Fraser Coast Chronicle*;
 - (iv) *The Morning Bulletin* (Rockhampton);
 - (v) *News Mail* (Bundaberg);
 - (vi) *Daily Mercury* (Mackay);
 - (vii) *Gympie Times*; and
 - (viii) *Sunshine Coast Daily*;

and posted in the terms of Annexure A on the website of the plaintiffs' solicitors on a page accessible via a link prominently displayed on the homepage dedicated to this proceeding.
7. Within 21 days after the last publication pursuant to order 6 above, the solicitors for the plaintiff shall file and serve an affidavit deposing to the steps taken pursuant to Order 6 above, the rates of 'returned' mail, and the rates and nature of enquiries from group members in response to the Application Notice.

Points of Claim documents

8. By 4pm on 3 May 2019:
- (a) the plaintiffs file and serve on the defendant a Points of Claim document which identifies the factual and legal issues they

contend are relevant to the court's determination of paragraphs 6 and 7 of the Funding Application;

- (b) LCM file and serve on the defendant a Points of Claim document which identifies the factual and legal issues it contends are relevant to the court's determination of paragraphs 6 and 7 of the Funding Application.
9. By 4pm on 17 May 2019, the defendant file and serve on the plaintiffs and LCM a Points of Defence document which identifies:
- (a) whether it agrees or disagrees that the issues identified by the plaintiffs and LCM in their respective Points of Claim documents are relevant to the court's determination of paragraphs 6 and 7 of the Funding Application;
 - (b) any other issues it contends are relevant to the court's determination of paragraphs 6 and 7 of the Funding Application.
10. By 4pm on 31 May 2019, the plaintiffs and LCM file and serve on the defendant a Points of Reply document which identifies whether they agree or disagree that the issues referred to in paragraph 9(b) above are relevant to the court's determination of paragraphs 6 and 7 of the Funding Application.

Affidavits and disclosure

11. By 4pm on 14 June 2019:
- (a) the plaintiffs file and serve any further affidavit evidence on which they intend to rely in relation to the Funding Application;
 - (b) LCM file and serve any affidavit evidence on which it intends to rely in relation to the Funding Application.
12. By 4pm on 28 June 2019, the defendant:
- (a) file and serve any affidavit evidence on which it intends to rely in relation to the Funding Application;
 - (b) file and serve any application for an order for disclosure by the plaintiffs and/or LCM in relation to the Funding Application.
13. There be a further hearing in relation to the Funding Application at [time] on [date] at [place]. *[This date would be after 28 June 2019]*
14. Liberty to apply.
15. Costs of the hearing on 26 April 2019 be reserved.

[4] Rule 483 of the *Uniform Civil Procedure Rules 1999* (Qld) provides:

483 Order for decision and statement of case for opinion

- (1) The court may make an order for the decision by the court of a question separately from another question, whether before, at, or after the trial or continuation of the trial of the proceeding.
- (2) The Supreme Court, other than the Court of Appeal, may also state a case for the opinion of the Court of Appeal.

[5] In *Land and Resources Tribunal v Schmidt*,² the Court of Appeal stated:

“A case stated is a process by which a court or Tribunal in the course of proceedings before it submits to a superior court for its decision or opinion on a question of law that arises from facts as found by the court or Tribunal and stated in the case: *Industrial Equity Ltd v Commissioner for Corporate Affairs* [1990] V.R. 780, 782 — 783.”

- [6] Annexed to the application are three annexures. Annexure A is the draft statement of case. Paragraph 12 of Annexure A sets out four questions being the ultimate questions which the applicants seek to be stated to the Court of Appeal. Annexure B consists of the funding terms and Annexure C sets out not only the draft notice to group members but also some 430 further pages of marked annexures.
- [7] The questions that the applicants seek to be stated to the Court of Appeal are defined with specificity and it is accepted that resolution of the issues is important to class action litigation in Queensland. If there was certainty as to the factual basis underpinning the questions then undoubtedly it would be appropriate to state a case to the Court of Appeal. The applicants argue that no evidence is required beyond the material set forth in the draft case stated. The applicants argue that the issues to be stated to the Court of Appeal are issues of law and that a factual inquiry into issues of “control” have no relevance to the existence or non-existence of champerty. GPC disputes this fundamental proposition as not reflective of the true state of the law and submits there are factual issues between the parties relating to the issue of control which are critical to the questions which seek to be stated. The resolution of this issue in the applicants’ favour requires sharp distinctions to be drawn between champerty (as an aggravated form of maintenance), abuse of process and contrariety to public policy which, as the plurality of the High Court in *Fostif’s* case³ demonstrate has eluded courts now for more than a century.
- [8] The difficulty, as explained by the plurality in *Fostif’s* case is that the torts of maintenance and champerty appear to have little if any rational basis in “modern” times. The plurality accepted that⁴ over a 111 years ago (in 1908) the torts were not based upon any “logical principle”. I would respectfully adopt the conclusion of Fletcher Moulton LJ that “in my opinion it is far easier to say what is not maintenance than to say what is maintenance.” It is inappropriate in my view on an interlocutory application, and without full argument from the parties and without reference to persons whose interests may be affected by such a ruling (ie the group members), to embark

² [2006] 1 Qd R 161

³ *Campbells Cash and Carry Pty Ltd v Fostif Pty Ltd* (2006) 229 CLR 386.

⁴ Paragraph 78 at 430 citing Fletcher Moulton LJ in *British Cash and Parcel Conveyors Ltd v Lamson Store Service Co Ltd* [1908] 1 KB 1006 at 1013-1014.

upon a definitive examination of the case stated issues on the basis that “control” (in the sense of a degree of intermeddling), has no relevance to the existence or nonexistence of champerty. Resolution of such issues is complicated by the lack of an apparent rational basis for the continuation of torts which emerged several hundred years ago in their application to “modern” times.

- [9] The torts of maintenance and champerty were abolished in the United Kingdom in 1967, in Victoria in 1969, in New South Wales in 1993, in South Australia in 1992 and abolished in the Australian Capital Territory in 2002. GPC relies on passages from the Western Australian cases of *Clairs Keeley No. 1*⁵ and *Clairs Keeley No. 2*⁶ in support of its submission that issues of control are important in the determination of issues of maintenance and champerty. The *Clairs Keeley* cases are of some assistance, however as pointed out by the applicant, it was not a class action and accordingly not subject to the legislative checks and balances of the class action regime which has been implemented in the *Civil Proceedings Act 2011* (Qld). In *Fostif*, Kirby J at 125 cited with approval the reasons of Mason P in the Court of Appeal in *Fostif*.⁷ In paragraphs 113 and 114 of his judgment Mason P expressed his non-acceptance to portions of *Clairs Keeley No. 2* as accurately representing the state of the law on maintenance and champerty.
- [10] These difficult issues, absent legislative intervention must be resolved, however that determination must be left to when all parties who have an interest in the subject matter are before the court. It is accepted that ordinarily incidental issues ought not to be the subject of final and binding judgments on interlocutory applications.⁸ However, binding determinations which may give rise to an estoppel between parties can be made on interlocutory application of issues where parties have full opportunity to investigate, adduce and test evidence to allow the court to make a final determination.⁹ Given the potential for questions of fact to be raised upon the application, and given the need to allow the group members to participate in this hearing, I conclude that it is inappropriate for a case to be stated to the Court of Appeal. The application will then be heard in the ordinary course of the trial division pursuant to the orders to be made.
- [11] The applicants submit that it is unnecessary to make an order for any Points of Claim documentation (as sought in paragraphs 8 to 10 of first respondents draft orders) as the issues to be determined in the application are well defined. GPC’s submission in respect of the Points of Claim document is that it may be sufficient for the plaintiffs to “simply deliver a document in the form or to the same effect as paragraphs 1 to 11 of the “Draft Statement of Case.”¹⁰ Because of the importance of the issue it seems to me there is merit in the defendant’s submission in this regard, that is, in requiring the applicants to deliver a Points of Claim document and I will make that direction. I do not see the utility in LCM being required to file what I anticipate will be essentially the same document. LCM having been made a respondent to the application ought to file and serve on the applicants and GPC a Points of Claim Defence document within seven (7) days of receipt of the applicants Points of Claim document.

⁵ *Clairs Keeley (a Firm) v Treacy* (2003) 28 WAR 139

⁶ *Clairs Keeley (a Firm) v Treacy* (2004) 29 WAR 479

⁷ [2005] 63 NSWLR 203 at paragraphs 88-112.

⁸ *Makhoul v Barnes* (1995) 60 FCR 572, *Castillon v P & O Ports Ltd (No 2)* [2008] 2 Qd R 219.

⁹ *Mullen v Conoco Ltd* [1988] QB 382 at 390-393.

¹⁰ Footnoted to paragraph 70 of GPC’s written submission

- [12] LCM raises in its outline of written submissions the issue of the redaction of the retainer agreement and funding agreements with respect to dollar amounts for lawyers' fee cap and funding budget amounts, percentages and the number of identified steps on the basis that it is confidential information that if disclosed "may give the defendant a tactical advantage in the conduct of any settlement discussions". The issue has been raised by LCM but not yet answered by GPC who anticipates that there may be the necessity for a further hearing in respect of "disclosure issues". It follows that the orders to be made are similar to those suggested by GPC in GPC's draft order which preserve the disclosure issues.
- [13] There is some dispute between the parties as to the form of the notices in Annexure A (the personal notice) and in Annexure B (the newspaper advertisement). There remains five paragraphs of draft notices which are the subject of dispute, paragraphs 1.4, 3.3 and 4.1 of Annexure A and paragraphs 1.4 and 3.2 of Annexure B. The applicants urge that the "target audience" are fisherman in provincial Queensland and that the unnecessarily technical alterations suggested by GPC tend to obfuscate the issues rather than set them out in a form which is readily understood. Although the defendant's submissions on paragraphs 1.4, 3.3 and 4.1 have some technical merit I would conclude that they may have the tendency to confuse a non-legally qualified reader of the already complicated personal and newspaper notices to group members. The alterations suggested by GPC in respect of the notices are to be accepted other than the alterations suggested in 1.4, 3.3, 4.1 of Annexure A (personal notice) and 1.4 and 3.2 of Annexure B (newspaper advertisement).
- [14] I make the following orders:

Notices to group members

1. Pursuant to section 103T(5) of the Civil Proceedings Act 2011 (Qld) (CPA), notice (**Application Notice**) be given to group members of the matters stated in the notices referred to in paragraphs 2 and 3 below.
2. Pursuant to s 103U of the CPA, the Application Notice be in the terms set out in:
 - a) for notices sent to group members' postal or email addresses, and the website of the plaintiffs' solicitors – Annexure A to these Orders;
 - b) for newspaper notices – Annexure B to these Orders.
3. Pursuant to s103T(5) and s 103U(2) of the CPA, the Application Notice be given to group members by the solicitors for the plaintiffs, within 14 days after the date of these Orders, causing notices:
 - a) in respect of group members who have already registered with the plaintiffs' solicitors – to be sent in the terms of Annexure A by email to the registered email address, alternatively by pre-paid ordinary post to the registered postal address, of the group member;
 - b) for all group members – to be published in terms of Annexure B published in one edition of each of:
 - (i) *Courier-Mail*;
 - (ii) *Gladstone Observer*;

- (iii) *Fraser Coast Chronicle*;
- (iv) *The Morning Bulletin* (Rockhampton);
- (v) *News Mail* (Bundaberg);
- (vi) *Daily Mercury* (Mackay);
- (vii) *Gympie Times*; and
- (viii) *Sunshine Coast Daily*;

and posted in terms of Annexure A on the website of the plaintiffs' solicitors on a page accessible via a link prominently displayed on the homepage dedicated to this proceeding.

4. Within 21 days after the last publication pursuant to order 3 above, the solicitors for the plaintiffs shall file and serve an affidavit deposing to the steps taken pursuant to Order 3 above, the rates of 'returned' mail, and the rates and nature of enquiries from group members in response to the Application Notice.

Points of Claim documents

5. By 4pm on 17 May 2019 the plaintiffs file and serve on the defendant and the second respondent a Points of Claim document which identifies the factual and legal issues they contend are relevant to the court's determination of paragraphs 6 and 7 of the Funding Application.
6. By 4pm on 24 May 2019, the defendant and the second respondent file and serve on the plaintiffs and each other a Points of Defence document which identifies:
 - a) whether it agrees or disagrees that the issues identified by the plaintiffs in their Points of Claim document are relevant to the court's determination of paragraphs 6 and 7 of the Funding Application;
 - b) any other issues it contends are relevant to the court's determination of paragraphs 6 and 7 of the Funding Application.
7. By 4pm on 29 May 2019 the plaintiffs file and serve on the defendant and the second respondent a Points of Reply document which identifies whether they agree or disagree that the issues referred to in paragraph 6(b) above are relevant to the court's determination of paragraphs 6 and 7 of the Funding Application.

Affidavits and disclosure

8. By 4pm on 7 June 2019:
 - a) the plaintiffs file and serve any further affidavit evidence on which they intend to rely in relation to the Funding Application;
 - b) LCM file and serve any affidavit evidence on which it intends to rely in relation to the Funding Application.
9. By 4pm on 14 June 2019, the defendant:
 - a) file and serve any affidavit evidence on which it intends to rely in relation to the Funding Application;

- b) file and serve any application for an order for disclosure by the plaintiffs and/or the second respondent in relation to the Funding Application, and any material intended to be relied in support of such an application.
10. Any application filed under paragraph 9 (b) be heard at 9am on 17 June 2019 at Rockhampton.
 11. By 4pm on 21 June 2019 the plaintiffs and the second respondent file and serve any responsive affidavit material on which they intend to rely in relation to the Funding Application.
 12. The plaintiffs file and serve written submissions on the defendant and second respondent by 8 July 2019.
 13. The second respondent file and serve written submissions on the plaintiffs and the defendant by 10 July 2019.
 14. The defendant file and serve its written submissions on the plaintiffs and the second respondent by 5pm 15 July 2019.
 15. The plaintiffs and second respondent file and serve any written submissions in reply by 5pm 17 July 2019.
 16. There be a hearing of paragraphs 6 and 7 of the Funding Application at 9.00am on 18 July 2019 at Rockhampton.
 17. Liberty to apply.
 18. Costs of the hearing on 26 April 2019 be reserved.