

SUPREME COURT OF QUEENSLAND

CITATION: *JDM v Hodges & Anor* (No 2) [2019] QSC 139

PARTIES: **JDM** (Applicant)
v
GEMMA ANNE HODGES
(First Respondent)
and
AAI LIMITED (ABN 48005297807)
(Second Respondent)

FILE NO/S: Cairns Supreme Court File No 155 of 2019 (formerly Cairns District Court File No 74 of 2015)
Cairns Supreme Court File No 576 of 2018
Brisbane Supreme Court File No 11327 of 2018

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Cairns (and Supreme Court at Brisbane in respect of file 11327 of 2018)

DELIVERED ON: 3 June 2019

DELIVERED AT: Cairns

HEARING DATE: 10 May 2019

JUDGE: Henry J

ORDERS: **1. Pursuant to ss 12 and 245 of the *Guardianship and Administration Act 2000* Australian Unity Trustees Limited (ABN 55 162 061 556) (“the administrator”) be appointed administrator for the plaintiff to receive and manage:**

(a) **the balance of settlement monies paid to the plaintiff pursuant to the compromise of District Court proceedings number D74/15 (now Supreme Court proceeding number 155/19) (“the personal injuries proceeding”) after deductions of statutory refunds, standard basis legal costs and outlays in respect of the personal injuries proceeding, and settlement monies already expended by the trustee of the administration trust for and on behalf of the plaintiff;**

- (b) **all assets and all property which has been purchased by the trustee of the administration trust for the plaintiff from the proceeds of the settlement monies including:**
 - (i) **house and property situated at 5 Corinna Close, Edmonton purchased for and on behalf of the plaintiff in the sum of \$317,269.43.**
 - (ii) **Mitsubishi Lancer sedan vehicle purchased for and on behalf of the plaintiff in the sum of \$16,250.00.**
- 2. **The administrator be empowered to invest all monies received and held under this order pursuant to s 51 of the *Guardianship and Administration Act 2000*.**
- 3. **Within seven days of this order the plaintiff's solicitors serve a copy of it on the administrator appointed by the Court.**
- 4. **Within 60 days of the date of this order the administrator give the Queensland Civil and Administrative Tribunal a financial management plan within the meaning of the *Guardianship and Administration Act 2000* for approval.**
- 5. **Within 21 days of this order the second defendant pay to the administrator administration and management fees in the sum of \$374,295.00.**
- 6. **Within 21 days of this order the plaintiff's solicitors pay to the administrator the sum of \$56,588.14 being all monies held in the trust account of the plaintiff's solicitors for and on behalf of the plaintiff forming part of the balance of settlement monies received by the plaintiff's solicitors.**
- 7. **Within 21 days of this order the plaintiff's mother in her role as trustee of the administration trust for the plaintiff:**

- (a) **obtain the return of all monies invested by the administration trust, including the investment with ASGARD Infinity eWRAP Investment Account, including any profits obtained thereon to date;**
 - (b) **pay to the administrator all monies held by the said administration trust as trustee for the plaintiff including but not limited to:**
 - (i) **all monies received by the said administration trust from the settlement monies paid in compromise of the proceedings (less outlays, purchases and expenses paid from the administration trust on behalf of the plaintiff to date);**
 - (ii) **all monies placed with any other entity by way of investment in the period since receipt of the settlement monies**
 - (c) **transfer to the administrator all assets held by the said administration trust as trustee for the plaintiff being assets purchased and/or acquired from the monies received by the administration trust from the settlement monies (including the real property and vehicle identified in subparagraph 1(b) hereof).**
8. **Interest under s 59(2) of the *Civil Proceedings Act 2011* shall not be payable by the second defendant on the administration and management fees outstanding from the second defendant, provided that payment is made prior to the expiration of 21 days from the date of this order, and then shall only accrue and be calculated from the day following such expiry.**
9. **The second defendant pay:**
- (a) **90 per cent of the plaintiff's costs of the originating application (Cairns Supreme Court file 576/18, filed 31.10.18 and in amended form 28.02.19);**

- (b) the plaintiff's costs of the application to transfer Cairns District Court file 74/15;
- (c) the plaintiff's costs of the second defendant's application (Brisbane Supreme Court file 11327/18, filed 17.10.18);
- (d) the plaintiff's costs of the personal injuries proceeding (Cairns Supreme Court file 155/19, formerly Cairns District Court file 74/15) excluding the plaintiff's costs of the amended application (as pursued in the personal injuries proceeding in the form filed as an amended application on 23.04.19 in Cairns Supreme Court file 576/18 and, on and from 10.05.18, in Cairns Supreme Court file 155/19);

each to be assessed, if not agreed, on the standard basis, to the solicitors for the plaintiff within 21 days of the said assessment or agreement.

10. The plaintiff pay the second defendant's costs of the amended application (as pursued in the personal injuries proceeding in the form filed as an amended application on 23.04.19 in Cairns Supreme Court file 576/18 and, on and from 10.05.18, in Cairns Supreme Court file 155/19), to be assessed, if not agreed, on the standard basis
11. The plaintiff's costs of the personal injuries proceeding and applications mentioned herein excluding its costs of the amended application (as pursued in the personal injuries proceeding in the form filed as an amended application on 23.04.19, in Cairns Supreme Court file 576/18 and, on and from 10.05.18, in Cairns Supreme Court file 155/19), to be assessed if not agreed on the indemnity basis ("the indemnity costs").
12. Following the assessment of the indemnity costs or agreement as to their amount the administrator is to:
 - (a) pay the difference between the standard

basis costs of the plaintiff's solicitors, and the indemnity costs of the plaintiff's solicitors to the plaintiff's solicitors from the monies received under paragraphs 6 and/or 7 of this order; or

unless the administrator in relation to the difference between the assessed indemnity costs and assessed standard basis costs decides to:

- (b) **pay such lesser sum as it may agree with the plaintiff's solicitors; or**
 - (c) **apply to the Court for further directions.**
13. **The Registrar of the Court provide a copy of this order and copies of the affidavits read on this application to the Principal Registrar of the Queensland Civil and Administrative Tribunal forthwith.**
14. **Each of the parties, the administrator, and the plaintiff's solicitors have liberty to apply on the giving of two business days' notice in writing.**

CATCHWORDS: HEALTH LAW – GUARDIANSHIP, MANAGEMENT AND ADMINISTRATION OF PROPERTY OF PERSONS WITH IMPAIRED CAPACITY – ADMINISTRATION AND FINANCIAL MANAGEMENT – where settlement funds payable to the applicant are to be administered by a trustee – where the second respondent is to pay to the trustee administration and management fees – where the second respondent says the parties have agreed on the amount to be paid and the applicant says they have not – whether the parties have in fact agreed on the amount to be paid and, if so, what that amount is – whether it remains for the Court to assess that amount and, if so, what the assessed amount should be

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL RULE: COSTS FOLLOW EVENT – OTHER PARTICULAR CASES AND MATTERS – where the originating application was unsuccessful due to a jurisdictional issue and the amended application was ultimately successful – where the amended application was based almost entirely on work already performed by both parties for the originating application – whether costs ought follow the event

Guardianship and Administration Act 2000 (Qld) ss 12, 51, 59, 245

JDM v Hodges & Anor [2019] QSC 65

COUNSEL: M D Glen for the applicant
M Grant-Taylor QC for the second respondent

SOLICITORS: Murray Lyons Solicitors for the applicant
Bray Lawyers for the second respondent

[1] The jurisdictional problem confronting the originating application in Cairns Supreme Court file 576/18 was explained in my reasons delivered 19 March 2019.¹

[2] Since then:

- (a) On 22 March 2019 I ordered the transfer to the Cairns Supreme Court of Cairns District Court file 74/15 – “the personal injuries proceeding” – which has now become Cairns Supreme Court file 155/19;
- (b) On 10 May 2019 I:
 - (i) gave leave for the amended originating application in file 576/18 to become an application within the personal injuries proceeding;
 - (ii) ordered the affidavits filed in the originating application be deemed filed in file 155/19;
 - (iii) ordered the transfer of Brisbane Supreme Court file 11327/18 to the Cairns Supreme Court and the dismissal by consent of that file’s originating application;
 - (iv) heard any remaining argument on the amended application; and
 - (v) heard argument to costs associated with the jurisdictionally ill-fated originating application, the amended application and the originating application filed in Brisbane.

Determination of the amended application

[3] Many of the orders sought by the amended application require no elaboration here. They are uncontroversial logistical orders consequential to determination of what monetary amount is to be ordered to be paid to the entity to be appointed to administer and manage the settled amount of damages.

[4] The contested issue for determination is:

¹ *JDM v Hodges & Anor* [2019] QSC 65.

- (a) whether the parties have agreed on the amount to be ordered to be paid to administer and manage the settled amount of damages and, if so, what that amount is; or
- (b) whether it remains for the Court to assess the amount and, if so, what the assessed amount should be.
- [5] The jurisdictional obstacle to resolution of that issue has been removed because the ordering of an amount to be paid as administration and management fees is now sought in the context of this Court determining the only unresolved component of the personal injuries proceeding.
- [6] Despite drafting defects in the release and schedule recording the parties' settlement I have previously found that by executing those documents the second respondent ("AAI") agreed to pay "reasonable administration and management fees to be agreed or assessed".² The phrase "to be agreed or assessed" in that context means that if an amount is agreed as reasonable administration and management fees, the amount agreed is the amount to be paid but, if there is no such agreement, the amount of those fees is the amount to be assessed.
- [7] AAI asserts the quantum of the fees has been agreed and thus the amount of the reasonable administration and management fees which this Court should order is the amount which has been agreed. The applicant plaintiff, JDM, on the other hand contends there has been no agreement on the amount of the reasonable administration and management fees, from which it follows it remains for this Court to assess what a reasonable administration and management fee is and to order that amount be paid.
- [8] Determination of whether there has been agreement is informed by the following chronology of relevant correspondence between the parties:³
- 16 November 2016. Email from AAI to JDM enquiring, inter alia, whether any steps or enquiries had been taken in relation to the management of the settlement funds.
 - 17 November 2016. Email from JDM to AAI suggesting, "using the Public Trustee estimate provided to you previously, on the net figure of \$450,000 being administered, as a guide".
 - 9 January 2017. Letter from JDM to AAI, enclosing "a copy of letter from Public Trustee dated 16 December 2016 enclosing quote for administration fees" and asking for payment of \$325,254.31 to JDM's solicitors "in full and final satisfaction of anticipated administration fees".
 - 15 February 2017. Letter from JDM to AAI, enclosing the Public Trustee's amended estimate of administration and investment management fees totalling \$319,970.77. The letter concluded:

² *JDM v Hodges & Anor* [2019] QSC 65 [10].

³ Exhibit 1 in the hearing of 1 March 2019. References to correspondence from or to JDM and AAI are to correspondence generated by their respective legal representatives.

“We would be pleased to receive payment in the sum of \$319,970.77 within the next fourteen (14) days.”

- 7 March 2017. Email from JDM to AAI, stating:

“We refer to our letter of 27 February 2017 requesting payment of the administration fees and note we have not received your response. Please confirm your client’s agreement to paying the quoted fees in the sum of \$319,970.77 by 12 noon, Friday 10 March 2017. Should we not receive confirmation of same, we will be forced to file an application seeking the appropriate orders.”
- 15 March 2017. Email from AAI to JDM, stating AAI would “pay the costs as per the most recent revised Public Trustee quote”.
- 3 May 2017. Email from JDM to AAI, noting the balance of the agreed funds had not been received and stating, “This matter was resolved on the 15th March 2017 and the delay is now unacceptable”.
- 5 May 2017. Letter from AAI to JDM, stating:

“When our client agreed to pay the sum of \$319,970.77 administration fees it was on the basis that the Public Trustee would be managing your client’s damages. ... We understand that your client is now looking around for other funds to manage the settlement sum. At no stage was our client provided with any information or quotations or documents from these entities.”

The letter explained that in the circumstances AAI was not prepared to pay the aforementioned sum to JDM’s solicitor’s trust account and intimated AAI would liaise with the Public Trustee once JDM provided the relevant contact details and reference number.

- 5 May 2017. Email from JDM to AAI in response to the aforementioned letter, noting there was no agreed or legal requirement that the funds be managed by the Public Trustee and requesting confirmation that AAI intended “to pay the agreed administration fees” to JDM’s solicitor’s office.
- 8 May 2017. Letter from AAI to JDM, maintaining its previous position and concluding:

“Our client’s position remains that it will pay the administration fees to the fund who was administering your client’s settlement money as soon as you provide us with those details. It will not pay the money into your firm’s trust account.”
- 2 June 2017. Letter from JDM to AAI, requesting it to “deposit the agreed administration fees of \$319,970.77” into “the administration trust for [JDM]”, with account details being included.
- 13 June 2017. Letter from JDM to AAI, apparently referring to a request for JDM to release details of JDM’s administrator to AAI. JDM’s letter asserted

that who JDM elected to utilise as administrator “should be of no concern” to AAI. The letter subsequently reiterated JDM’s previous request “that the agreed sum of \$319,970.77 be paid”.

- 23 June 2017. Letter from AAI to JDM, maintaining AAI’s right to “know who the administrator is”. The letter explained AAI’s reluctance to pay a sum of \$319,970.77 into a bank account titled “The Administration Trust for [JDM]” and made the point:

“For all our client knows the account may have been opened by the plaintiff or a family member and there will be no fees charged. In this situation your client would be unjustly enriched.”

The letter continued:

“We again call on your client to provide us with the identity of the trustee that will administer the funds.”

- 8 September 2017. Email from JDM to AAI, stating, inter alia:

“[W]hilst your client has made it clear they will not be paying the agreed amount, please advise the sum your client now believes they are liable to pay.”
- 11 September 2017. Letter from AAI to JDM, explaining AAI did not have an issue with the amount and its concern was as set out in the letter of 23 June 2017.
- 27 November 2017. Letter from AAI to JDM, again seeking a response to the issues raised in their letter of 23 June 2017.
- 1 December 2017. Letter from JDM to AAI, detailing administration expenses said to total \$319,970.77, acknowledging JDM’s mother would not be able to act as trustee for JDM indefinitely and asserting:

“It is anticipated that a commercial trustee will have to be engaged once their mother is incapable of continuing to act as trustee.”

The letter again requested payment “of the agreed administration expenses in the sum of \$319,970.77”.

- 20 December 2017. Letter from JDM to AAI, referring to the letter of 1 December 2017 and again requesting “payment from your client in the sum of \$319,970.77 as previously agreed”.
- 19 February 2018. Letter from AAI to JDM, asserting, inter alia:

“[I]t was implied in the settlement agreement that a professional trustee would be appointed to manage the funds otherwise our client would not have agreed to pay fees to administer and manage the funds.

The suggestion that the plaintiff's mother be the administrator was never raised or contemplated by your client until after the settlement funds were paid. ... It is also our client's position that your client's mother cannot charge for her time."

- 3 April 2018. Letter from JDM to AAI, stating, inter alia:
 "As you seem to no longer consider your client bound by the agreement to pay an agreed administration fee of \$319,970.77, we have obtained a quote from our client's financial adviser."

The letter then enclosed a report from MRFS Financial Services, estimating total fees in the amount of \$340,031.93. JDM's letter went on to request AAI's "agreement to payment of trust administration and management fees in the sum of \$340,031.93".

- 22 May 2018. Email from JDM to AAI, noting, given there had been no response to their letter of 3 April, "we trust that your client will not agree to paying the claimed \$319,970.77" and enquiring what AAI proposed "to try and resolve this matter without our incurring the cost of an application". This letter's nomination of the amount of \$319,970.77 was presumably an error given the letter of 3 April 2018 sought agreement to the payment of \$340,031.93.

- [9] In the end result, the amended application seeks payment of administration and management fees in the sum of \$374,295 to the administrator who is appointed.⁴
- [10] AAI relies upon the above correspondence as evidencing agreement that the amount of reasonable administration and management fees is \$319,970.77. The correspondence certainly shows there was agreement by AAI on 15 March 2017 to pay that amount. However, the subsequent correspondence shows there had been no meeting of the parties' minds as to the purpose of the payment of the amount.
- [11] At the time of the above chain of correspondence both parties appear to have assumed a payment for administration and management fees was required to be made by AAI. AAI evidently understood the payment was to pay the Public Trustee for administration and management fees. JDM on the other hand considered the payment was to pay a trust to be administered by JDM's mother.
- [12] The uncertainty as to what was being agreed is hardly surprising in light of the infelicitous drafting of the release and schedule in dealing with this payment. Quite apart from the deficiency discussed and overcome by inference in my previous reasons at [10], the schedule's reference to "reasonable administration and management fees" only alluded to the notion of the fees being agreed or assessed. It mentioned nothing about the identity or nature of the person or entity to be paid such fees.
- [13] JDM's position now is different than it was as at the time of the supposed agreement in the above chain of correspondence. The orders she now seeks involves the

⁴ A greater proposed sum in the amount of \$418,000 had featured in the initial application, but the amendment to the amount occurred prior to the hearing of any argument in connection with this matter.

administration and management fees being paid to an independent administrator proposed for appointment by the Court. However, the present consensus of both parties, namely that administration and management fees should be paid to an independent administrator, did not exist as at the time of their supposed agreement.

- [14] Whether a party agrees that an amount proposed for payment is reasonable depends on the degree of freedom it will have in using the payment. It is one thing for a party to agree to a monetary amount as reasonable if assessed notionally, with the party being at liberty to expend the amount as it may decide in the future. It is quite another to agree to a monetary amount as reasonable if assessed by reference to restrictions upon its future use. Such agreement as was given by JDM was in the understanding it was to the former. Such agreement as was given by AAI was on the understanding it was to the latter. It is not to the point whether one party's interpretation of what was implied by the release and schedule was preferable to the others'. The issue is whether there was as a matter of fact an agreement between the parties. The parties were agreeing to fundamentally different things. There was no agreement.
- [15] It is therefore necessary to assess an amount to be paid for "reasonable administration and management fees".
- [16] The amount proposed by JDM is \$374,295. On the evidence referred to in the above chain of correspondence the Public Trustee and MRFS Financial Services nominated lower amounts. But the Public Trustee's quote of \$319,970.77 was given over two years ago and MRFS Financial Services' estimate of \$340,031.93 was given over a year ago. No more recent estimates from the Public Trustee or MRFS are in evidence. Deviations in economic forecasts can vary markedly over time. The proposed fee of \$374,295 is not such a marked progression from the quantum of those old amounts as to suggest it is for that reason unreasonable. There is, in any event, positive evidence that it is reasonable.
- [17] The filed evidence shows JDM's solicitor approached four private trustee companies seeking quotes. Two were unwilling to administer the settlement funds because they did not meet a minimum asset service level to justify a lifetime administration appointment. One of the trustees approached provided administration fee quotes totalling \$418,000. The manager of estates and trusts at Australian Unity Trustees Limited provided an estimate in the sum of \$374,295. The manager providing that estimate deposed to the substance of its calculation and to the fact that the fees were, to his knowledge, comparable to the current market or potentially cheaper. As much appears to be consistent with the fact the other quote was \$418,000.
- [18] I assess reasonable administration and management fees to be the amount of \$374,295. I will order the payment of that amount to Australian Unity Trustees Limited, which will be the administrator appointed by my orders.

Costs associated with the jurisdictionally ill-fated originating application and the amended application

- [19] The ordinary rule that costs should follow the event supports the conclusion that JDM should pay AAI's costs of the jurisdictionally ill-fated originating application, whereas AAI should pay JDM's costs of the application to transfer the District Court proceeding and the amended application. However, the evidence adduced in the originating application (both on affidavit and cross-examination) was relied upon in the amended application. Only a small amount of the written and oral submissions advanced in the originating application went to the jurisdictional issue. Most of them, including the further written submissions, went to the matters eventually determined in the amended application – so much so that in the amended application neither side advanced any new arguments. In short, all of the work performed for the originating application, but for that involved in meeting the jurisdictional issue, ended up being work performed for the amended application.
- [20] I estimate the jurisdictional issue would not have incurred more than about five percent of each side's actual costs in the originating application. If JDM had pursued her relief correctly in the first place AAI would not have been put to the cost of meeting the jurisdictional issue at all. Nor would it have been put to the cost of having to meet the amended application.
- [21] Setting aside the five per cent of work expended on the jurisdictional issue the best measure of the unnecessary additional cost AAI was actually put to is the cost of it having to meet the amended application – an additional event which would not have been necessary but for JDM's failure to pursue the application correctly at the outset.
- [22] The costs of the additional work associated with that amended application would have been much less than that associated with the originating application, because the relevant material work was performed in the context of the originating application. The lesser additional costs incurred in meeting the amended application were costs AAI would not have had to meet if JDM litigated the issue correctly in the first place. It is those additional costs which should properly be met by JDM.
- [23] Accordingly, the orders most accurately reflecting the underlying costs realities and responsibilities for them being incurred are that JDM pay AAI's costs of the amended application and that AAI pay JDM's costs of the application to transfer as well as 90 per cent of JDM's costs of the originating application. The latter figure's 10 per cent reduction derives from the aforementioned five per cent estimate and the likelihood that the parties' costs were similar.⁵
- [24] In the order sought by JDM it is proposed that all of her costs in the personal injuries proceeding and the applications be assessed on the indemnity basis, with the gap between that total and the costs to be paid by AAI, to be paid from funds held for JDM to JDM's solicitor. That is an uncontroversial means for JDM's legal representatives to be paid for work performed for their client, with one exception. The Court is not privy to JDM's instructions to her lawyers or their advice to her and should not order payment of a costs component which might be in issue as between JDM and her lawyers. It should remain a matter between JDM and her lawyers to consider whether she ought

⁵ Thus the ten per cent derives from JDM both being required to bear five per cent of AAI's costs and not being entitled to five per cent of her own costs.

have to pay them for the extra cost of having to bring the amended application when that additional cost could have been avoided if the correct relief had been pursued in the first place.

Costs associated with the originating application filed in Brisbane

- [25] The originating application filed by AAI in Brisbane was for a declaration that on the true and proper construction of the release AAI was not presently obliged to pay any monies in discharge of its obligation.
- [26] It may be accepted that AAI's application was brought with the intention of forcing a resolution of the impasse which had developed between the parties. The reasonableness or otherwise of its conduct would be material if JDM was pressing for indemnity costs. She is not.
- [27] AAI elected not to press its application, consenting to its adjournment to the Registry and, more recently, to its dismissal. Costs should follow the event. The application was ultimately unsuccessful. AAI should bear JDM's costs of meeting the application.

Orders

- [28] My orders will refer to JDM as the plaintiff and AAI as the second defendant. My orders are:
1. Pursuant to ss 12 and 245 of the *Guardianship and Administration Act 2000* Australian Unity Trustees Limited (ABN 55 162 061 556) ("the administrator") be appointed administrator for the plaintiff to receive and manage:
 - (a) the balance of settlement monies paid to the plaintiff pursuant to the compromise of District Court proceedings number D74/15 (now Supreme Court proceeding number 155/19) ("the personal injuries proceeding") after deductions of statutory refunds, standard basis legal costs and outlays in respect of the personal injuries proceeding, and settlement monies already expended by the trustee of the administration trust for and on behalf of the plaintiff;
 - (b) all assets and all property which has been purchased by the trustee of the administration trust for the plaintiff from the proceeds of the settlement monies including:
 - (i) house and property situated at 5 Corinna Close, Edmonton purchased for and on behalf of the plaintiff in the sum of \$317,269.43.
 - (ii) Mitsubishi Lancer sedan vehicle purchased for and on behalf of the plaintiff in the sum of \$16,250.00.

2. The administrator be empowered to invest all monies received and held under this order pursuant to s 51 of the *Guardianship and Administration Act 2000*.
3. Within seven days of this order the plaintiff's solicitors serve a copy of it on the administrator appointed by the Court.
4. Within 60 days of the date of this order the administrator give the Queensland Civil and Administrative Tribunal a financial management plan within the meaning of the *Guardianship and Administration Act 2000* for approval.
5. Within 21 days of this order the second defendant pay to the administrator administration and management fees in the sum of \$374,295.00.
6. Within 21 days of this order the plaintiff's solicitors pay to the administrator the sum of \$56,588.14 being all monies held in the trust account of the plaintiff's solicitors for and on behalf of the plaintiff forming part of the balance of settlement monies received by the plaintiff's solicitors.
7. Within 21 days of this order the plaintiff's mother in her role as trustee of the administration trust for the plaintiff:
 - (a) obtain the return of all monies invested by the administration trust, including the investment with ASGARD Infinity eWRAP Investment Account, including any profits obtained thereon to date;
 - (b) pay to the administrator all monies held by the said administration trust as trustee for the plaintiff including but not limited to:
 - (i) all monies received by the said administration trust from the settlement monies paid in compromise of the proceedings (less outlays, purchases and expenses paid from the administration trust on behalf of the plaintiff to date);
 - (ii) all monies placed with any other entity by way of investment in the period since receipt of the settlement monies;
 - (c) transfer to the administrator all assets held by the said administration trust as trustee for the plaintiff being assets purchased and/or acquired from the monies received by the administration trust from the settlement monies (including the real property and vehicle identified in subparagraph 1(b) hereof).
8. Interest under s 59(2) of the *Civil Proceedings Act 2011* shall not be payable by the second defendant on the administration and management fees outstanding from the second defendant, provided that payment is made prior to the expiration of 21 days from the date of this order, and then shall only accrue and be calculated from the day following such expiry.
9. The second defendant pay:

- (a) 90 per cent of the plaintiff's costs of the originating application (Cairns Supreme Court file 576/18, filed 31.10.18 and in amended form 28.02.19);
- (b) the plaintiff's costs of the application to transfer Cairns District Court file 74/15;
- (c) the plaintiff's costs of the second defendant's application (Brisbane Supreme Court file 11327/18, filed 17.10.18);
- (d) the plaintiff's costs of the personal injuries proceeding (Cairns Supreme Court file 155/19, formerly Cairns District Court file 74/15) excluding the plaintiff's costs of the amended application (as pursued in the personal injuries proceeding in the form filed as an amended application on 23.04.19 in Cairns Supreme Court file 576/18 and, on and from 10.05.18, in Cairns Supreme Court file 155/19);

each to be assessed, if not agreed, on the standard basis, to the solicitors for the plaintiff within 21 days of the said assessment or agreement.

10. The plaintiff pay the second defendant's costs of the amended application (as pursued in the personal injuries proceeding in the form filed as an amended application on 23.04.19 in Cairns Supreme Court file 576/18 and, on and from 10.05.18, in Cairns Supreme Court file 155/19), to be assessed, if not agreed, on the standard basis.
11. The plaintiff's costs of the personal injuries proceeding and applications mentioned herein excluding its costs of the amended application (as pursued in the personal injuries proceeding in the form filed as an amended application on 23.04.19, in Cairns Supreme Court file 576/18 and, on and from 10.05.18, in Cairns Supreme Court file 155/19), to be assessed if not agreed on the indemnity basis ("the indemnity costs").
12. Following the assessment of the indemnity costs or agreement as to their amount the administrator is to:
 - (a) pay the difference between the standard basis costs of the plaintiff's solicitors, and the indemnity costs of the plaintiff's solicitors to the plaintiff's solicitors from the monies received under paragraphs 6 and/or 7 of this order; or

unless the administrator in relation to the difference between the assessed indemnity costs and assessed standard basis costs decides to:
 - (b) pay such lesser sum as it may agree with the plaintiff's solicitors; or
 - (c) apply to the Court for further directions.
13. The Registrar of the Court provide a copy of this order and copies of the affidavits read on this application to the Principal Registrar of the Queensland Civil and Administrative Tribunal forthwith.

14. Each of the parties, the administrator, and the plaintiff's solicitors have liberty to apply on the giving of two business days' notice in writing.