

To the Interested Persons as addressed

8 October 2024

Dear Sir/Madam

**KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799 as trustee for
APM Security Plan Sickness & Accident Fund (In Liquidation) ('the Fund') trust ('Trust')
ABN 57 413 197 086**

Liquidation remuneration and disbursement application

KordaMentha Shelf Co (APMSPSAF) Pty Ltd ('New Trustee') was appointed replacement trustee of the Fund Trust on 22 June 2021 pursuant to an Order of the Supreme Court of New South Wales ('the Court'). Subsequently, on 6 May 2022 by Order of the Court ('the Winding Up Order'), Kate Conneely and I, Scott Langdon, were appointed joint and several liquidators of the Fund. I advise that Kate Conneely subsequently retired as a liquidator of the Fund on 7 February 2024. For the avoidance of doubt, I continue to be appointed as sole liquidator of the Fund ('the Liquidator').

On 29 June 2022, the New Trustee provided notice of its first application seeking approval of the New Trustee's remuneration and disbursements. This was subsequently approved by the Court by Order dated 8 July 2022. On 11 November 2022 and 27 February 2023, the New Trustee provided notice of its second application seeking approval of the New Trustee's remuneration and disbursements. This was subsequently approved by the Court by Order dated 10 March 2023. On 18 May 2023 and 19 July 2023, the New Trustee provided notice of its third application seeking approval of the New Trustee's remuneration and disbursements. This was subsequently approved by the Court by Order dated 28 July 2023.

Pursuant to the Winding Up Order, the Liquidator's remuneration and disbursements are to be paid from the assets of the Trust on an indemnity basis, subject to the Court's review and approval.

Accordingly, on 23 August 2023, the Liquidator sought approval of the (then) Liquidators' remuneration and disbursements. This was subsequently approved by the Court on 28 September 2023.

I advise all Interested Persons that the Liquidator is now seeking to apply for the Court's review and approval for the Liquidator's remuneration and disbursements. The Application is in respect to the Liquidator's remuneration and disbursements for the period 14 August 2023 to 21 July 2024.

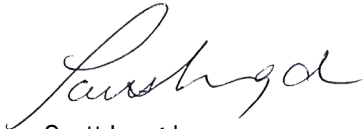
Enclosed, for your reference, in respect of the Application, is the:

- Background to the Liquidator's appointment at Annexure A
- Notice of intention to apply for remuneration at Annexure B
- Affidavit of Scott Langdon sworn on 27 September 2024 at Annexure C

I advise the notice of intention is now presently attached under Annexure B. Further information in respect of the Fund is available on the KordaMentha website at <https://www.kordamentha.com/creditors/apm-security-plan-sickness-accident-fund>.

Should you have any queries in relation to this matter, please contact Connor Orr of my office on (07) 3338 0225 or by email at connor.orr@kordamentha.com.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Scott Langdon', written in a cursive style.

Scott Langdon
Liquidator

Enc.

Annexure A – Background and Notice of Application

KordaMentha Shelf Co (APMSPSAF) Pty Ltd ('New Trustee') was appointed replacement trustee of the Fund Trust on 22 June 2021 pursuant to an Order of the Supreme Court of New South Wales ('the First Order'). The First Order authorised New Trustee to undertake a course of action in respect of the Trust ('First Course of Action'). The First Order further provided that New Trustee's remuneration and disbursements in respect of the First Course of Action be paid from the assets of the Trust on an indemnity basis, subject to New Trustee making an application to the Court for review of its remuneration and disbursements within 6 months of the date of the First Order.

Subsequently, on 2 November 2021, by further Order of the Supreme Court of New South Wales ('the Second Order'), New Trustee was authorised to undertake a second course of action in respect of the Trust ('Second Course of Action'). As a part of the Second Course of Action, New Trustee was authorised to make an application to the Court to, among other things, seek the Court's direction in relation to the future of the Fund ('Judicial Advice Application'), the Second Order varied the First Order to allow New Trustee to bring its application for review of its remuneration and disbursements in respect of the First Course of Action and the Second Course of Action within four weeks after the Court determines the Judicial Advice Application.

On 6 May 2022, the Court determined the Judicial Advice Application and gave its opinion, advice and direction to the New Trustee that it would be justified in, among other things, bringing proceedings to wind up the Fund ('the Third Order'). The Third Order authorised New Trustee to undertake a further course of action in respect of the Trust ('Third Course of Action'). The Third Order further provided that New Trustee's remuneration and disbursements in respect of the Third Course of Action be paid from the assets of the Trust on an indemnity basis, subject to New Trustee making an application to the Court for review of its remuneration and disbursements within 6 months of the date of the Third Order. On the same day, by Order of the Supreme Court of New South Wales, Scott Langdon and Kate Conneely were appointed as joint and several liquidators of the Fund.

As set out in the Liquidators' update to Interested Persons, dated 15 November 2023, all Property of the Fund has been realised. Since then, the Liquidator has taken steps to consider how the net proceeds of the realisations might be distributed to eligible members of the Fund. These matters were considered in detail in an application for directions from the Court ('Rules Application'), in which the views of Interested Persons were also invited.

On 22 February 2024, the Liquidator obtained orders from the Court in respect of these matters. The full Orders can be found on the KordaMentha website.

In summary, the Orders confirmed:

1. Kate Conneely ceased to be a liquidator of the Fund
2. The Liquidator would be justified in proceeding on the basis that the document entitled "APM Botany Mill Security Plan Sickness & Accident Fund Rules" dated 1 July 2005, contained the Rules which govern the Fund
3. The Liquidator would be justified in proceeding on the basis that members of the Fund who are entitled to participate in a distribution of its assets are those persons who were members immediately prior to Amcor Ltd commencing to make its employees redundant as a consequence of decommissioning the B7 and B8 machines in or around May 2012.

Following the direction of the Court, the Liquidators have proceeded to compile a list of members who may be entitled to participate in a distribution of its assets. On 31 May 2024 the liquidators issued correspondence setting out the Court's orders and invited the members of the Fund to complete a Member Substantiation Form.

In this correspondence, formal notice is provided to all Interested Persons that the Liquidator intends to file its application seeking the Court's review and approval of the Liquidator's remuneration and disbursements for the period 14 August 2024 to 21 July 2024.

Further to this background, enclosed, for your notice, in respect of the remuneration and disbursement Application, is the:

- Notice of intention to apply for remuneration (Annexure B)
- Affidavit of Scott Langdon sworn on 27 September 2024 (Annexure C).

A copy of the notice of intention to apply for remuneration is available on the KordaMentha website at <https://www.kordamentha.com/creditors/apm-security-plan-sickness-accident-fund>.

Annexure B – Notice of intention to apply for remuneration

Form 16

(rules 9.1, 9.2, 9.3, 9.5)

IN THE SUPREME COURT OF NEW SOUTH WALES

DIVISION: EQUITY

REGISTRY: SYDNEY

CORPORATIONS LIST

IN THE MATTER OF APM SECURITY PLAN SICKNESS & ACCIDENT FUND

ABN: 57 413 197 086

KORDAMENTHA SHELF CO (APMSPSAF) PTY LTD ACN 642 981 799

Plaintiff

and

**SCOTT DAVID HARRY LANGDON IN HIS CAPACITY AS LIQUIDATOR OF THE APM SECURITY PLAN
SICKNESS & ACCIDENT FUND ABN 57 413 197 086**

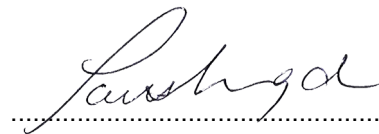
Applicant

NOTICE OF INTENTION TO APPLY FOR REMUNERATION

TO: Interested Persons as addressed

TAKE NOTICE that, not less than 21 days after this notice is served on you, I, Scott David Harry Langdon of Level 5, Chifley Tower, 2 Chifley Square, Sydney NSW 2000 the liquidator of the APM Security Plan Sickness & Accident Fund, intend to apply to the Court to determine my remuneration. If you object to my application, you must, within 21 days after being served with this notice, serve on me a notice of objection stating the grounds of objection to the remuneration claimed.

Date: 8 October 2024



Scott David Harry Langdon
Liquidator of the APM Security Plan Sickness & Accident Fund

Filed on behalf of: The Applicants

Prepared by:

Ashurst Australia

Lawyers

Level 11, 5 Martin Place

Sydney NSW 2000

AUSTRALIA\EXPERTISEADMIN\

DX: 355 Sydney

Tel: (02) 9258 6000

Fax: (02) 9258 6999

Ref: 1000-122-769

Attention: Aaron Kam – aaron.kam@ashurst.com

Annexure C – Affidavit of Scott Langdon sworn on 27 September 2024

IN THE SUPREME COURT OF NEW SOUTH WALES
DIVISION: EQUITY
REGISTRY: SYDNEY
LIST: CORPORATIONS

No 130874 of 2022

IN THE MATTER OF APM SECURITY PLAN SICKNESS & ACCIDENT FUND
ABN: 57 413 197 086

KORDAMENTHA SHELF CO (APMSPSAF) PTY LTD ACN 642 981 799

Plaintiff

**SCOTT DAVID HARRY LANGDON IN HIS CAPACITY AS LIQUIDATOR OF THE APM SECURITY PLAN
SICKNESS & ACCIDENT FUND ABN 57 413 197 086**

Applicant

AFFIDAVIT

On 27 September 2024, I, Scott David Harry Langdon of Level 5, Chifley Tower, 2 Chifley Square, Sydney NSW 2000, registered liquidator and chartered accountant, say on oath:

A Introduction

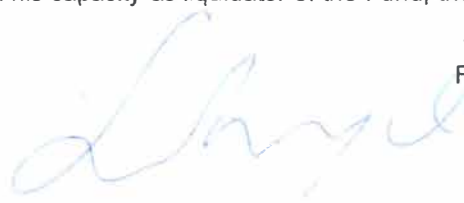
1. I am a registered liquidator, chartered accountant and partner of KordaMentha.
2. I am also a director of the plaintiff, KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799 (**New Custodian Trustee**), along with my partners of KordaMentha, Mark Anthony Korda and Mark Francis Xavier Mentha.
3. New Custodian Trustee was appointed in substitution of PP New Pty Ltd ACN 088 406 437, as trustee of the APM Security Plan Sickness & Accident Fund ABN 57 413 197 086 (**Fund**) trust (**Custodian Trust**), pursuant to orders made by Ward CJ in Eq (as the President then was) on 22 June 2021 in Supreme Court of New South Wales proceedings 2021/00179305 (**SC Proceedings**).
4. Subsequently, Catherine Margaret Conneely and I were appointed as joint and several liquidators of the Fund (**Liquidators**) pursuant to orders made by Hammerschlag CJ in Eq on 6 May 2022 in these proceedings.
5. Subsequently, Ms Conneely ceased to be a liquidator of the Fund on 22 February 2024 and I have continued as sole liquidator of the Fund since then, pursuant to orders made by Black J on 22 February 2024 in these proceedings in respect of the Judicial Advice Application (defined below).

Filed on behalf of: Scott David Harry Langdon in his capacity as liquidator of the Fund, the Applicant

Prepared by:

Ashurst Australia
Lawyers
5 Martin Place
Sydney NSW 2000

697154660



Tel: (02) 9258 6000
Fax: (02) 9258 6999
DX: 388 Sydney
Ref: 1000-122-769

As Ms Conneely only ceased to be a liquidator of the Fund on 22 February 2024, I have accounted for the fact that the majority of the work undertaken in the Period (as defined below) was carried out while Ms Conneely was still a liquidator of the Fund by referring to the defined term 'Liquidators' (where necessary).

6. I make this affidavit from my own knowledge and the books and records of the Fund (**Books and Records**), except where otherwise indicated. Where I make this affidavit from facts outside of my personal knowledge, I am informed by the source stated and believe those facts to be true.
7. The investigations referred to in this affidavit have been carried out by me and by staff at KordaMentha who have acted on my instructions. My references to KordaMentha or New Custodian Trustee in this affidavit also include, where the context so dictates, information which I have obtained from those staff.
8. Exhibited to me at the time of swearing this affidavit is a bundle of documents titled Exhibit SL-1. Unless otherwise stated, where I refer to documents in this affidavit, I do so by reference to the page number in Exhibit SL-1.

B Purpose of this affidavit

9. This affidavit is filed in support of the interlocutory process dated 27 September 2024 seeking the Court's determination of the remuneration payable to me as Liquidator pursuant to sections 60-10(1)(c) and 90-15 of the Insolvency Practice Schedule (Corporations) (**IPS**) being Schedule 2 to the *Corporations Act 2001* (Cth), in the amount of \$164,768.14 (including GST and disbursements) from 14 August 2023 to 21 July 2024 inclusive (**Period**).

C Background

10. I seek leave to rely upon the following affidavits filed on behalf of New Custodian Trustee in the SC Proceedings:
 - (a) Ms Conneely's affidavit sworn 22 June 2021 (**First Conneely Affidavit**);
 - (b) Ms Conneely's affidavit sworn 28 October 2021 (**Second Conneely Affidavit**);
 - (c) Ms Conneely's affidavit sworn 24 March 2022 (**Third Conneely Affidavit**);
 - (d) Ms Conneely's affidavit sworn 3 November 2022;
 - (e) Ms Conneely's affidavit sworn 2 December 2022 (**Fifth Conneely Affidavit**);
 - (f) Ms Conneely's affidavit sworn 9 December 2022;
 - (g) Ms Conneely's affidavit sworn 3 March 2023 (**Seventh Conneely Affidavit**);
 - (h) Ms Conneely's affidavit sworn 5 May 2023 (**Eighth Conneely Affidavit**);
 - (i) Ms Conneely's affidavit sworn 23 August 2023 (**Ninth Conneely Affidavit**);
 - (j) Ms Conneely's affidavit sworn 19 September 2023; and
 - (k) Ms Conneely's affidavit sworn 5 February 2024.



11. I refer to paragraph 12 of the Second Conneely Affidavit where she deposed to the matters leading up to the commencement of the SC Proceedings.
12. I refer to paragraphs 11 to 19 of the Conneely Affidavit where she deposed as to the Appointment of the New Custodian Trustee and the courses of action undertaken.

D Summary of work undertaken by the Liquidators

13. Since 14 August 2023, my staff and I have undertaken the following work (distinct from that of New Custodian Trustee as deposed to in the Conneely Affidavit mentioned above). This relates to work outside of the scope of the various courses of action which have been approved by the Court and includes, but is not limited to:
 - (a) investigations in relation to Property, potential members of the Fund, the rules governing the affairs of the Fund over time (**Rules**), the members of the Committee of the Fund, the various benefits payable to members of the Fund and the classes of members of the Fund, and generally, the affairs of the Custodian Trust and Fund;
 - (b) undertaking a financial review of the Fund, with the assistance of Rothsay Chartered Accountants (now known as InCorp Advisory Australia) (**In Corp**), including annual bookkeeping and the preparation of financial statements, undertaking audits and completing tax lodgements (where required) for the financial years ended 2015 to 2023 at this time only, with future periods to follow;
 - (c) liaising with external tax advisors to calculate tax payable in respect of the New Custodian Trustee's realisations of the Fund's assets and making that payment;
 - (d) liaising with statutory bodies including the Office of State Revenue and Australian Taxation Office in respect of the Fund's tax obligations;
 - (e) liaising with the Liquidators' solicitors, Ashurst, to prepare an application under section 90-15 of the IPS seeking judicial advice from the Court in respect of, among other things, the relevant Rules which govern the Fund (there are various versions which do not appear to have been properly altered in accordance with the alteration provisions of the Rules), the dissolution date of the Fund and the member classes of the Fund (**Judicial Advice Application**);
 - (f) undertaking a review of the Books and Records to support findings in respect of the various iterations of the Rules, member classes and more general affairs of the Custodian Trust and Fund;
 - (g) ongoing cash flow management of the Fund's assets and preparation of estimated outcome statements to forecast potential distribution scenarios;
 - (h) liaising with Ashurst to prepare this application; and
 - (i) reporting to and communicating with Interested Persons, generally and in respect of the Judicial Advice Application and substantiation of membership of the Fund.

14. I provide further detail of the work undertaken by the Liquidators in section H below.

E Categorisation of work undertaken by the Liquidators

15. The process for categorising and recording fees undertaken in connection with the liquidation of the Fund (**Liquidation**) is described below.
16. Each staff member of KordaMentha maintains a computerised time sheet system, capturing time spent on various engagements on a daily basis. The time spent on various engagements is recorded in that time sheet on the basis of six minute units.
17. The system requires the person entering the time in the computerised system first to nominate the category of work performed before entering their time. My staff and I allocated our time to the following categories:
- (a) "Administration and risk mitigation";
 - (b) "Litigation/legal"
 - (c) "Statutory compliance";
 - (d) "Assets";
 - (e) "Trading"; and
 - (f) "Interested Persons".
18. These records have been extracted from the computerised system for the purpose of this application. The extracts, to the best of my knowledge and belief, only record time spent by each of my staff and I in relation to the Liquidation. KordaMentha has retained a separate file for the trusteeship of the Custodian Trust to ensure there is no overlap and these entries are not included in this application.

F Time-based method

19. The Liquidators have calculated their remuneration on the basis of an hourly rate for each staff member who carried out work in respect of the Liquidation multiplied by the number of hours spent by each person on the tasks performed (i.e. a time-based method).
20. The rates charged by the Liquidators are the hourly rates for the relevant staff member (at the time that each task was being performed) of KordaMentha. At **page 2 of Exhibit SL-1** is a copy of a schedule which provides an overview of the quantum of the remuneration claimed by the Liquidators during the Period in respect of the liquidation, and includes, among other things, the hourly rates (exclusive of GST) of each relevant staff member of KordaMentha as applicable during the Period. KordaMentha's rates are updated on 1 July every year.
21. I believe that the rates are reasonable given:
- (a) the work actually performed;
 - (b) the experience of each staff member;

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- (c) the responsibility of each staff member in relation to the work performed by them;
 - (d) the complexity of the various tasks performed by each staff member;
 - (e) rates charged by comparable firms for such work;
 - (f) the costs incurred by my firm in performing the work in relation to Liquidation; and
 - (g) the risks undertaken by KordaMentha in allowing the Liquidators to accept the appointment as liquidator of the Fund and conducting the work in relation to the appointment.
22. In the First Conneely Affidavit, which was filed in support of a successful application for the appointment of New Custodian Trustee as trustee of the Custodian Trust, at paragraphs 59 to 62, Ms Conneely indicated to the Court that New Custodian Trustee proposed to calculate its remuneration using a time-based method and expressed the opinion that this approach was appropriate. New Custodian Trustee had adopted this method throughout the trusteeship and the Liquidators have also adopted this method throughout the liquidation.
23. I still consider that the time-based method rather than one of the other methods – for example, fixed fee, percentage (i.e. the fee is based on a percentage rate of a particular variable such as assets recovered) and contingency (i.e. contingent on a particular outcome), is the most appropriate for reasons including:
- (a) the method allows the Liquidators to produce a detailed analysis of time spent on each task by each individual staff member utilised in the Liquidation;
 - (b) the method provides full accountability to Interested Persons in the method of calculation and ensures that Interested Persons are only charged for work that is actually performed; and
 - (c) the method fairly reflects the necessary work performed, noting that there are a number of tasks that are required to be performed but do not relate to the realisation of assets, for example, investigations in relation to the potential members of the Fund, undertaking a financial review of the Fund and general administration and risk mitigation.

G Remuneration claimed

24. At **pages 3 to 12 of Exhibit SL-1** is a summary of the key work performed by the Liquidators during the Period in respect of the Liquidation.
25. At **page 2 of Exhibit SL-1** is a schedule which provides an overview of the quantum of the remuneration claimed by the Liquidators during the Period in respect of the Liquidation. The schedule identifies the following information:
- (a) each individual who carried out work during the Period;
 - (b) their position within KordaMentha;
 - (c) their hourly charge out rate;
 - (d) their total hours of work;



- (e) the total remuneration charged in respect of their work; and
- (f) the remuneration charged in respect of each of the categories referred to in paragraph 17.
26. I have also included a detailed schedule at **pages 3 to 12 of Exhibit SL-1** setting out each time entry allocated to the categories identified in paragraph 17 above during the Period in respect of the Liquidation. I have reviewed the narrations for all the work claimed in this application on a line-by-line basis. From my knowledge of the work carried out and at Ms Conneely and my supervision of the tasks undertaken, I am satisfied that the time recorded for each of the tasks is commensurate with what was required to be undertaken and that the records are accurate.
27. In my view, all of the tasks detailed in this affidavit were necessary for the Liquidation and in order to maximise realisations for the benefit of Interested Persons.
28. KordaMentha follows the Australian Restructuring Insolvency and Turnaround Association Code of Professional Practice (**ARITA Code**) in relation to the insolvency appointments KordaMentha undertakes, including the Liquidation. At **pages 13 to 67 of Exhibit SL-1** is a copy of "Practice Statement Insolvency 5: Remuneration reporting" which came into effect on 31 March 2021 and is contained in the fourth edition of the ARITA Code.

H Remuneration for the Period

H1 Summary

29. Immediately below is a summary of the amounts claimed in respect of work undertaken by the Liquidators in the relevant categories identified in paragraph 17 above in connection with the Liquidation during the Period. At paragraphs 30 to 48 below, I provide specific details of the work my staff and I performed during the Period by reference to those categories.

Category	Remuneration sought to be approved for the Period
Administration and risk mitigation	\$14,277.00
Litigation/legal	\$33,395.00
Assets	\$672.50
Interested Persons	\$24,995.00
Statutory compliance	\$58,382.00
Trading	\$11,348.00
TOTAL (excluding GST)	\$143,069.50

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H2. Administration and risk mitigation

30. The total amount of remuneration sought with respect to this category for the Period in respect of the Liquidation is \$14,277.00 (excluding GST).
31. A schedule setting out each time entry allocated to this category during the Period in respect of the Liquidation is at **page 3 of Exhibit SL-1**. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
32. In summary, the Liquidators have undertaken the following work in respect of the administration and risk mitigation category:
- (a) maintaining the New Custodian Trustee website for Interested Persons;
 - (b) general liquidation step plan and timing discussions to inform the Judicial Advice Application;
 - (c) regular team meetings to discuss status of liquidation appointment and workflow;
 - (d) general administration including filing of documents and document finalisation;
 - (e) attending to physical mailout correspondence to Interested Persons;
 - (f) attending to ongoing management of Relativity, the online document management platform for Books and Records; and
 - (g) preparation and review of liquidation remuneration, time entries and billing.

H3. Litigation/legal

33. The total amount of remuneration sought with respect to this category for the Period in respect of the Liquidation is \$33,395.00 (excluding GST).
34. A schedule setting out each time entry allocated to this category during the Period in respect of the Liquidation is at **pages 4 to 5 of Exhibit SL-1**. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
35. This category has been used to record time spent liaising with Ashurst, in particular, in respect of the various applications made or to be made by the Liquidators, namely, the prior remuneration application (**Third Remuneration Application**) and the Judicial Advice Application. In summary, the Liquidators have undertaken the following work in respect of the litigation/legal category:
- (a) preparing the affidavit in support of the Judicial Advice Application;

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- (b) considering the issues which were likely to arise in respect of the Judicial Advice Application and Third Remuneration Application;
 - (c) liaising with and assisting Ashurst in respect of the preparation of the Third Remuneration Application. This included considering, reviewing and collating relevant information and documentation for the Third Remuneration Application;
 - (d) liaising with and assisting Ashurst and counsel in considering the issues in respect of the Judicial Advice Application;
 - (e) considering the issues in respect of the Judicial Advice Application, including rule changes, member classes and benefits;
 - (f) reviewing and collating information regarding the Judicial Advice Application issues, including iterations of Rules, benefits paid and membership documents;
 - (g) completing the analysis in respect of member classes and benefits for the purpose of informing the Judicial Advice Application;
 - (h) attending court;
 - (i) liaising with Ashurst with regard to the Interested Persons updates and correspondence and substantiation documentation process; and
 - (j) liaising with and assisting Ashurst in respect of various other issues pertaining to the liquidation.
36. As previously stated at paragraph 60 of the Ninth Conneely Affidavit, the level of risk or responsibility in this Liquidation is higher than a typical external administration process *"in large part due to the paucity of the records of the Fund, uncertainty with respect to the affairs of the Fund and the potential competing interests of Interested Persons with respect to the distribution of the Proceeds."* Due to this, and in order to protect the Liquidators from claims by Interested Persons, the Liquidators considered it necessary to make the Judicial Advice Application.

H4. Assets

37. The total amount of remuneration sought with respect to this category for the Period in respect of the Liquidation is \$672.50 (excluding GST).
38. A schedule setting out each time entry allocated to this category during the Period in respect of the Liquidation is at **page 10** of **Exhibit SL-1**. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.

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39. The Liquidators have spent limited time in respect of this category as the Property was realised by New Custodian Trustee. In summary, the Liquidators have managed the bank accounts, on an ongoing basis, in respect of the assets category.

H5. Interested Persons

40. The total amount of remuneration sought with respect to this category for the Period in respect of the Liquidation is \$24,995.00 (excluding GST).
41. A schedule setting out each time entry allocated to this category during the Period in respect of the Liquidation is at **pages 11 to 12 of Exhibit SL-1**. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
42. My staff and I have been required to consider and respond to a number of enquiries in respect of the Liquidation during the Period. In summary, the Liquidators have undertaken the following work in respect of the Interested Persons category:
- (a) maintaining a dedicated email inbox for any queries from Interested Persons and responding to the queries;
 - (b) reviewing and considering additional information provided by Interested Persons;
 - (c) maintaining and updating a master list of Interested Persons, including where correspondence is returned to sender;
 - (d) responding to various queries received from Interested Persons via email and phone calls;
 - (e) continuing categorisation of various types of Interested Persons identified in investigations and maintaining a list of Interested Persons;
 - (f) preparing and publishing newspaper adverts for Interested Persons inviting substantiation of membership in the Fund;
 - (g) preparing and issuing notice to Interested Persons inviting persons to substantiate their membership in the Fund; and
 - (h) consolidating and reviewing submitted member substantiation forms and maintaining a listing of Interested Persons/potential members, ahead of a distribution application to be prepared.

H6. Investigations and statutory compliance

43. The total amount of remuneration sought with respect to this category for the Period in respect of the Liquidation is \$58,382.00 (excluding GST).
44. A schedule setting out each time entry allocated to this category during the Period in respect of the Liquidation is at **pages 6 to 8 of Exhibit SL-1**. This schedule includes the name of the person who

performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.

45. In summary, the Liquidators have undertaken the following work in respect of the investigations and statutory compliance category:

- (a) reviewing books and records in document management platform, Relativity;
- (b) liaising with various statutory bodies, including the Office of State Revenue and Australian Tax Office (ATO);
- (c) ongoing statutory lodgements to the Australian Taxation Office - Business Activity Statements;
- (d) liaising with external accountants in respect of the preparation of accounts for the period FY15 to FY23;
- (e) liaising with external accountants in respect of the preparation of financial statements for the period FY15 to FY23;
- (f) liaising with external accountants in respect of the preparation of tax returns for the period FY15 to FY23;
- (g) assisting external auditors with review of accounts of the Fund;
- (h) reviewing, considering and comparing accounts and financial reports prepared;
- (i) reviewing draft auditor's reports and liaising with external auditors on various comments and queries;
- (j) reviewing company tax returns prepared by external tax advisors and reconciling with ATO account balances;
- (k) continuing consideration of and investigating member listings, classes and allocations;
- (l) reviewing claim forms and lists in books and records to corroborate member substantiation forms;
- (m) consolidating data from the Rules and comparing to Fund transactions and benefits over time;
- (n) updating estimated outcome statement to forecast distributions based on various scenarios under investigations memorandums; and
- (o) attending to the preparation of bank reconciliations for each bank account held by the Fund.



H7. Trading

46. The total amount of remuneration sought with respect to this category for the Period in respect of the Liquidation is \$11,348.00 (excluding GST).
47. A schedule setting out each time entry allocated to this category during the Period in respect of the Liquidation is at **page 10** of **Exhibit SL-1**. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
48. This category has been used to record time spent on general accounting tasks and day-to-day administration connected with the Fund. In summary, the Liquidators have undertaken the following work in respect of the investigations and statutory compliance category:
 - (a) general accounting tasks, including, processing receipts, attending to bank account reconciliations and processing receipts and payments onto Insol;
 - (b) preparation and review of historical cash flow statements to ensure adequate historical management of assets;
 - (c) preparation and review of forecast cash flow statements to ensure adequate management of the Property; and
 - (d) preparation of an Estimated Outcome Statement to forecast Proceeds, being the net amount of the sale proceeds of the property held under the Custodian Trust and any other funds held by the New Custodian Trustee, available for distribution as the Fund enters liquidation.

I Matters relevant to consideration of remuneration

49. I note that the Court must have regard to whether the remuneration of an external administrator is reasonable and takes into account any or all of the matters listed in section 60-12 of the IPS when reviewing a remuneration determination. In the circumstances, I consider each of these matters (where relevant) in turn below.

I1 The extent to which the work by the Liquidators was necessary and properly performed (s 60-12(a))

50. I consider that the work performed by the Liquidators as deposed to above was properly incurred by the Liquidators. This work was foreshadowed in previous affidavits filed in the SC Proceedings, including, paragraphs 82 to 84 of the Third Conneely Affidavit (which was filed in support of New Custodian Trustee's application for the appointment of the Liquidators). In this regard, I note that the work performed by the Liquidators related to, for the most part, the litigation/legal and investigations and statutory compliance categories and will be necessary in order to ultimately determine how the Proceeds should be distributed to Interested Persons.

12. The period during which the work was performed by the Liquidators (s 60-12(c))

51. The work performed by the Liquidators in respect of the Liquidation occurred over the period 14 August 2023 to 21 July 2024 (a period of approximately 11 months). The total professional fees over this period were \$143,069.50 (excluding GST and disbursements), equating to approximately \$13,006.32 (excluding GST and disbursements) per month.

13. The quality and complexity of the work performed by the Liquidators (s 60-12(d) and (e))

52. I consider the work performed by the Liquidators (and Ashurst) has been of a high quality. The majority of the remuneration incurred related to the Judicial Advice Application, and investigations and statutory compliance. I note that the Judicial Advice Application is a complex application in that it sought the Court's advice in respect of a number of questions in connection with the Liquidation which arose, in large part, because of the paucity of the records of the Fund and resulting uncertainty with respect to the affairs of the Fund. As deposed to above, the Liquidators consider the application was necessary in order for the Liquidators to distribute the Proceeds to Interested Persons.

14. The level of risk or responsibility accepted by the Liquidators (s 60-12(g))

53. I considered that the level of risk or responsibility was higher than a typical external administration process, in large part due to the paucity of the records of the Fund, uncertainty with respect to the affairs of the Fund and the potential competing interests of Interested Persons with respect to the distribution of the Proceeds. In order to protect the Liquidators from claims by Interested Persons that they have not acted in accordance with the interests of Interested Persons with respect to the distribution of the Proceeds, the Liquidators considered it necessary to make the Judicial Advice Application.

15. The value and nature of any property dealt with, or likely to be dealt with, by the Liquidators (s 60-12(h))

54. As deposed to in the Third Conneely Affidavit, the Property as at appointment of New Custodian Trustee consisted of the properties located at 67 Victory Parade, Tascott NSW 2250 (**67 Victory Parade**) and 69 Victory Parade, Tascott NSW 2250 (**69 Victory Parade**), shares in Amcor Plc (**Amcor Shares**) and shares in Orora Ltd (**Orora Shares**) and cash held in various bank accounts maintained with St George Bank and Bank Australia (which have since been transferred to Macquarie). The total value of the Property currently held by the Liquidators is approximately \$7.1 million (see page 68 of Exhibit-SL1), broken down as follows being the current cash balances of the various accounts maintained by the Liquidator with Macquarie Bank (less payments made and taxation paid, and taking in to account the asset realisations as previously deposed):

- (a) \$1,750,000 – 67 Victory Parade (being the sale price of the property – see paragraph 57 of the Fifth Conneely Affidavit and paragraph 27 of the Eighth Conneely Affidavit);

- (b) \$1,300,000 – 69 Victory Parade (being the sale price of the property – see paragraph 57 of the Fifth Conneely Affidavit and paragraph 27 of the Eighth Conneely Affidavit);
 - (c) \$4,837,388 – Amcor Shares (being the realised value of the shares, net of brokerage costs – see paragraph 25 of the Fifth Conneely Affidavit); and
 - (d) \$705,471 – Orora Shares (being the realised value of the shares, net of brokerage costs – see paragraph 25 of the Fifth Conneely Affidavit).
55. I am not aware of any further property held on the trust for the Fund.
16. The number, attributes and conduct, or the likely number, attributes and conduct, of Interested Persons (s 60-12(i))
56. The Liquidators have identified approximately 1,008 Interested Persons of the Fund and have contact details of approximately 421 Interested Persons (all being former employees of the Fund or relatives of the former employees). In previous applications made by New Custodian Trustee for approval of its remuneration (and disbursements), Interested Persons have not sought to oppose or be heard on these applications. I anticipate that the number, attributes and conduct of Interested Persons in respect of these applications will likely be the same for this application.
17. The time properly taken by the Liquidators in performing the work (s 60-12(i))
57. In addition to the matters deposed to in paragraphs 19 to 23 above in relation to the rates and the calculation of the Liquidators' remuneration during Period, I note that:
- (a) the work performed by the Liquidators was delegated to staff members of KordaMentha having regard to their respective rates, skill and experience and the complexity of the Liquidation;
 - (b) the majority of the work was performed by either an Executive Analyst/Business Analyst or a Senior Business Analyst/Senior Executive Analyst (or delegated to appropriate administration staff) who had the experience to carry out day-to-day tasks under the supervision of more senior staff. The Executive Analyst's hourly charge out rate was \$395-\$495 for FY24 and \$550 for FY25 and the Business Analyst's hourly charge out rate was \$395 for FY24 and \$475 for FY25, with both of them accounting for 30% of the professional fees sought. The Senior Business Analyst's hourly charge out rate was \$450 for FY24 and the Senior Executive Analyst's hourly charge out rate was \$550 for FY24;
 - (c) general administrative tasks falling into the administration and risk mitigation category were performed by less senior but appropriately qualified staff such as Administration Assistants and Undergraduates.
 - (d) together, the total professional fees for analysts and administration staff accounted for circa 67% of the professional fees sought; and
 - (e) the Senior Business Analyst/Executive Analyst/Senior Executive Analyst was primarily supervised by me and Ms Conneely (before her appointment ceased) (hourly charge out rate \$850 for FY24) and a Director/Executive Director (hourly charge out rate \$850 for

FY24 and \$925 for FY25). Together this senior supervision accounted for 21% of the total professional fees sought.

J Work to be undertaken

J1 Members of the Fund

58. In respect of the ongoing Liquidation, following the determination of the Judicial Advice Application, the Liquidators have been in a position to call for potential members to substantiate their membership to the Fund.
59. This is important as it will enable us to identify the members of the Fund who are entitled to a distribution of the Proceeds. My staff and I have started reviewing the books and records of the Fund to determine the members that may be entitled to a distribution and, in consultation with Ashurst, will consider the basis of the members' claims.
60. The Liquidators were not in a position to previously distribute the Proceeds due to the challenges that have arisen in identifying and locating all the members of the Fund. These challenges have included the following:
- (a) upon appointment a significant amount of time had passed since the date of the Fund's records setting out the members of the Fund, leading to non-current contact information for members of the Fund, a need to advertise the substantiation process in national and state newspapers and to rely on word of mouth to alert Interested Persons to the substantiation process; and
 - (b) the age of many members of the Fund, the passage of time which has elapsed since the members' tenure at the Botany Mill, and the ability of members to locate and obtain documentation to substantiate any membership of the Fund.
61. Since the Judicial Advice Application, my staff and I received documentation from 116 members who the Liquidators consider may eligible to participate in the distribution of the Fund. My staff and I have since extended the time for Interested Persons to submit information regarding their status as members of the Fund and are continuing to work through information and documents provided by other Interested Persons to determine their eligibility to participate in the distribution.
62. Once the members of the Fund have been identified, I will turn to considering the method by which the Proceeds can be distributed.

J2. Distribution scenarios and application

63. I understand that there are a number of methods by which the Proceedings, in the context of an unincorporated association (such as the Fund) can be distributed. This includes to full and honorary members (as at 1 July 2012, being the date the Fund was dissolved):
- (a) on a pari passu basis;

(b) on a proportionate basis depending on the entitlement of each member class to receive benefits under the Fund – for example, full members would receive more than honorary members; and

(c) on a length of service basis,

64. Once I determine the most appropriate distribution method to adopt, I intend to give notice to potential members of the distribution method I propose to adopt and seek directions from the Court (with notice to potential members) that (amongst other matters) I would be justified in adopting and implementing the distribution method in question.

65. In seeking directions from the Court, I would need to engage with Ashurst to prepare and file evidence in support of the directions sought. The application may take up to 6 months or longer to be determined, particularly if any members choose to participate and file evidence of their own.

J3. Financial review of the Fund

66. The Liquidators will also continue to undertake the financial review of the Fund with the assistance of In Corp, including annual bookkeeping and the preparation of financial statements, undertaking audits and completing tax lodgements where required for each subsequent financial year.

K Other matters

67. At **page 68 of Exhibit SL-1** is a summary of receipts and payments for the Liquidation for the Period.

68. The Liquidators have not and do not propose on seeking approval of their remuneration for the Liquidation for the Period under section 60-10(1)(a) of the IPS. This is in circumstances where:

- (a) in the past, New Custodian Trustee has been required to seek Court approval of its remuneration and disbursements paid in respect of the trusteeship of the Custodian Trust; and
- (b) Interested Persons have not historically expressed a view on New Custodian Trustee's remuneration and disbursements (see for example the Seventh Conneely Affidavit) and, in respect of the remuneration sought now, I consider the position will likely be the same.

IBarr

[Handwritten signature]

69. I will swear a further affidavit which annexes the notices to be issued under rule 9.2(2) of the *Supreme Court (Corporations) Rules 1999 (Cth)* and any response/s from Interested Persons.

SWORN at ~~SYDNEY, NSW~~ MELBOURNE, VIC

Signature of deponent

Name of witness Iman Kaur Barr

Address of witness 5 Martin Place, Sydney NSW 2000

Capacity of witness Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

1 I saw the face of the deponent.

2 I have confirmed the deponent's identity using the following identification document:

Current driver licence

Identification document relied on (may be original or certified copy)

Signature of witness

IBarr

Endorsement by witness: I have signed a scanned copy of the signed document sent to me electronically by the deponent, having witnessed the signature of the deponent over audio visual link in accordance with section 14G(2) of the *Electronic Transactions Act 2000* (NSW).