

To the Interested Persons as addressed

15 November 2023

By email and post

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 ABN 57 413 197 086**

As previously advised, KordaMentha Shelf Co (APMSPSAF) Pty Ltd ('New Trustee') was appointed replacement trustee of the Fund on 22 June 2021 pursuant to an Order of the Supreme Court of New South Wales ('the First Order'). Subsequently, on 6 May 2022, by Order of the Supreme Court of New South Wales ('the Second Order'), the Court 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.

By way of update, all property of the Fund has been realised by the New Trustee and the net proceeds transferred to the Liquidators. Prior to any distribution of the net proceeds to members of the Fund, the Liquidators need to identify:

- which set of Rules govern the Fund
- when the Fund dissolved
- what member classes of the Fund exist.

The Liquidators have considered these items in detail and are now making an application for directions from the Court ('Rules Application'). The Liquidators are also seeking the views of Interested Persons on these questions.

Purpose of the Rules Application

As briefly set out above, the purpose of the Rules Application is to seek orders, directions and/or declarations that:

1. the document entitled "APM Botany Mill Security Plan Sickness & Accident Fund Rules" dated 1 July 2005 ('2005 Rules') (enclosed at Appendix A) applies as the Rules which govern the Fund or alternatively, that the Liquidators would be justified in proceeding on the basis that the 2005 Rules contain the Rules which govern the Fund
2. the Fund dissolved on 1 July 2012, or alternatively, the Liquidators would be justified in proceeding on the basis that the Fund dissolved on 1 July 2012

3. the following member classes of the Fund exist, or alternatively, the Liquidators would be justified in proceeding on the basis that the following member classes exist ('Member Classes'):
 - a. full members
 - b. honorary members
 - c. unfinancial members
4. the Liquidators would be justified in proceeding on the basis that the Member Classes are to be determined in accordance with the directions given at points 1 and 2 above.

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

- Interlocutory Process dated 8 November 2023 which has been filed with the Supreme Court of NSW, at Annexure B
- The Liquidators' Affidavit sworn 3 November 2023 at Annexure C.

A copy of Exhibit CMC-1 to the Liquidators' Affidavit is available on the KordaMentha website at <https://www.kordamentha.com/creditors/apm-security-plan-sickness-accident-fund>.

What do you need to do?

The Liquidators invite all Interested Persons to share their views on the Rules Application, specifically, items 1-4 above. The Liquidators will consider all responses and include them in a supplementary affidavit filed with the Court prior to the hearing of the Rules Application.

Should you wish to share your views, please provide your response via email at botanymillfund@kordamentha.com or mail to KordaMentha, GPO Box 2523 Sydney NSW 2001.

Your response is required by 1 December 2023.

Next Steps

Once the Rules Application has been heard, the Liquidators will report to all Interested Persons on the Court's directions. The Liquidators will then seek further information from Interested Persons regarding their membership of the Fund and views on the distribution of the net proceeds. This information will be provided to Interested Persons in due course.

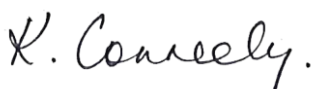
Please note at this stage, the Liquidators are only seeking views from Interested Persons in respect of the Rules Application.

Further information

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 my office by email at botanymillfund@kordamentha.com.

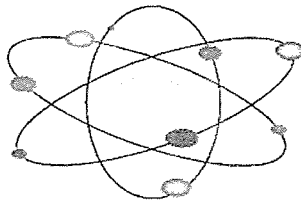
Yours sincerely



Kate Conneely
Liquidator and Director of New Trustee

Enc.

**Appendix A – "APM Botany Mill Security Plan Sickness & Accident Fund Rules" dated
1 July 2005**



APM

BOTANY MILL SECURITY PLAN SICKNESS & ACCIDENT FUND

PO Box 95 Matraville NSW 2036

Telephone: 02 9695 3555 Fax: 02 9666 3048

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APM Botany Mill Security Plan Sickness & Accident Fund

1. NAME

The name of THE FUND shall be "APM Botany Mill, Security Plan, Sickness & Accident Fund" hereafter referred to as "THE FUND". Any reference to 'THE COMPANY', will be taken to mean "Amcor Ltd" trading as "Amcor Fibre Packaging Australasia".

2. OBJECTIVE

The objective of THE FUND is to create and maintain sufficient financial resources, through Fortnightly or Monthly contributions of its members and THE COMPANY, and Investments, which will enable THE FUND to provide benefits as set out herein.

Rules.

APM Botany Mill Security Plan Sickness & Accident Fund

3 MEMBERSHIP

3.1 Eligibility

All full time permanent staff and employees of THE COMPANY, employed either at AFPA Botany Mill or by NSW Recycling Department, will be eligible for membership of THE FUND.

3.2 Minimum service period

A member will need to have been in the employ of THE COMPANY for Twenty six (26) weeks and to have paid Twenty six (26) weeks contributions to THE FUND before they are able to claim any benefits from THE FUND, (except for sickness benefits as provided under paragraph 5.4.1 & 5.4.2) or high cost Ancillary benefits as prescribed in *Appendix 1*).

An employee who after six (6) months probationary employment with THE COMPANY is not offered a full time position shall have refunded to him, from THE FUND, any contributions he has made, except if he has claimed Sickness Benefits as provided under 5.4.1. & 5.4.2. However an employee who is offered a full time position after the six (6) months probationary employment, will have to be employed for a further twenty six (26) weeks to qualify for the high cost Ancillary benefits as prescribed in (*Appendix A*)

3.3 Definition of Dependants

Dependants will include:

- i) Wife or Husband
- ii) Common law spouse
- iii) Dependant children up to 18 years of age
- iv) Student child up to 25 years of age
- v) Daughter housekeeper

The Committee may use its discretion in respect of unclear circumstances or in respect of wholly dependant persons not defined above.

3.4 Membership of THE FUND will cease

- i) On the member leaving the employ of THE COMPANY.
- ii) On the member being transferred from AFPA Botany or NSW Recycling, .
- iii) On the expulsion from THE FUND in accordance with the rules.

3.5 Unfinancial Members

A member shall be unfinancial if their contributions are over one month in arrears. Unfinancial members shall not be entitled to benefits under the scheme.

APM Botany Mill Security Plan Sickness & Accident Fund

3.6 Power to Suspend or Expel

The Committee of Management shall have the power to suspend or expel members of the fund for breaches of any of the rules of THE FUND. A member liable for suspension or expulsion shall be called upon to appear before the committee to show cause why they should not be suspended or expelled from THE FUND.

3.7 Honorary Membership

Honorary Membership of THE FUND may be granted to members with 10 years continuous service by the Committee under the following conditions,

- i) Upon the member reaching or surpassing normal retirement age.
- ii) Upon the member retiring due to health reasons which would qualify them for an Invalid Pension.
- iii) Upon the member reaching 55 years of age, is made redundant, accepts a Voluntary Redundancy or retires, and who pays to THE FUND an amount equivalent to 25% of what they would have contributed had they remained employed with THE COMPANY until their 65th birthday.

4. CONTRIBUTIONS.

Each member shall contribute an amount equivalent to \$2.00 per week.

Employee contributions will be deducted from wages, fortnightly, (salaried staff monthly). Any member in receipt of payment from THE FUND shall continue to contribute to THE FUND.

APM Botany Mill Security Plan Sickness & Accident Fund

5. BENEFITS

5.1 Ancillary Benefits

Members and their dependents (as defined) are eligible for Ancillary Benefits as prescribed in *Appendix A*. Where certain benefits as prescribed in *Appendix A*, have a Yearly limit, that year will be defined as from 1st July until 30th June. Yearly limit total covers a member and all his dependants.

The Committee will consider written request from members for benefits not expressly referred to in *Appendix A*, where those benefits relate to the health or welfare of the member or his dependants. The Committee's decision in such matters is final. The Committee may review the limits, as defined, in (*Appendix A*).

5.1.1 Annual Limit for Ancillary Benefits

That an annual limit of \$1,200 per member per year be imposed on the amount of monies that a member is reimbursed for sickness & accident claims. This will be reviewed on an annual basis.

A limit of \$600 is to be applied for the six months from 1st January to the 30th June 2002. There is no such limit for the six months ended 31st December 2001. If the imposition of the limit causes undue hardship to a member, they can apply in writing to the Secretary of the Committee for possible Trauma Relief Assistance. Any such case will be assessed by review of the Committee. In all other respects the Ancillary Benefits Table is unchanged with respect to available benefits and section claim limits.

5.1.2 Claims for Ancillary Benefits

Claims must be made on the claim form provided to the Secretary of the Fund and signed by the claimant. All claims must be accompanied by original itemised receipts, or for members, in Private Health Funds claiming the difference between what the Private Health Fund refund and the original charge, the tabled receipt from the Private Health Fund is acceptable.

5.1.3 Time Limit

A time limit for claim of reimbursement is to be applied. For an expense to be reimbursed, a claim must be submitted within 60 days, from date of making payment.

5.2 Funerals

Members and their dependants as defined and Honorary Members are eligible for Funeral Benefits as prescribed in *Appendix B*.

5.3 Use of Point Clare facilities

Members and Honorary members will have access to THE FUNDS facilities at Point Clare NSW. The rules relating to the use of these facilities are set out in *Appendix C*.

APM
Botany Mill Security Plan Sickness & Accident Fund

5.4 Sickness Benefit

5.4.1 Weekly Benefit (not Workers Compensation)

A weekly benefit will be paid to a Member absent from work as a result of sickness or accident, and who is not in receipt of sick pay, Workers Compensation payments or any other payment except Government sickness benefits. The rate of this payment is prescribed in *Appendix A*.

5.4.2 Weekly Benefit (Workers Compensation Absence)

A weekly benefit will be paid to any member who is absent as a result of an injury received whilst in the employ of THE COMPANY and who is receiving Workers Compensation payments for such injury, but no other payments. The rate of this payment is prescribed in *Appendix A*.

5.4.3 Third Party Insurance Claims

Any member who subsequently receives a settlement via a Workers Compensation claim, or a Third Party Insurance claim etc, which has a component for lost wages which coincides with the period for which they have been paid Sickness Benefits, shall reimburse THE FUND for said payments.

5.4.4 Period of Benefits

- i) Full benefits will be paid for a period of up to thirty nine (39) weeks. The Committee shall have the power to continue to pay benefits at two thirds (2/3) the prescribed rate for a further thirteen (13) weeks.
- ii) A member who, having been on Sickness Benefits and returned to work, within three (3) months of such return to work again qualifies for Sickness Benefits, shall have all periods of absence treated as a continuous absence in respect of Paragraph 5.4.4 i.

5.4.5 Claims and/or Doctors Certificates

- i) Claims must be made in writing and on the Claim Form provided, to the Secretary of THE FUND and signed by the claimant. Each claim made upon THE FUND must be accompanied by a Doctors Certificate stating the nature of the illness or injury. On expiration of the original certificate continuation Certificates must be supplied.
- ii) Any claim related to the recurrence of any illness or injury in respect of which benefits have previously been paid shall require a new letter and Claim Form to be written to the Secretary of THE FUND and be accompanied by the relevant Doctors Certificate.
- iii) A Member being admitted to hospital shall be paid benefit from the day of admission to the day of discharge, provided a written claim as per paragraph 5.4.5 i. Above.
- iv) A Doctors Certificate need not be supplied to THE FUND in respect of Workers Compensation absences. Claims however should be lodged with the Secretary as soon as possible on the Claim Form provided.

APM Botany Mill Security Plan Sickness & Accident Fund

5. BENEFITS continued

5.4.6 Absence of Three (3) or more days

A member must be absent from work for three (3) clear working days as a result of the sickness or accident in respect of which he is making a claim before benefits become payable.

5.4.7 Notification of return to work

Members on sickness benefits must notify the Secretary in writing immediately on return to work.

5.4.8 Medical Examination

The Committee shall have the right to request that a member be examined by a Doctor chosen by the Committee in respect to the illness or injury for which a sickness benefit is sort. The fee for such an examination will be paid by THE FUND. Any members failing to attend such an examination shall be debarred from receiving benefits from THE FUND.

5.4.9 Medical Referee

In the event of there being a disagreement of opinion between the Doctor nominated by the Committee and members private Doctor, a medical referee whose appointment shall be agreed to by both parties shall be consulted, and his decision shall be binding on both parties. The fee for the referee shall be paid by THE FUND.

5.4.10 Expulsion - working and receiving benefits

Any member accepting employment of any kind without the permission of the Committee whilst receiving benefits from THE FUND shall be expelled and shall forfeit all claims against THE FUND.

5.4.11 Misconduct - To receive Benefits

Any member feigning sickness or reducing himself to sickness through his own misconduct shall not be entitled to any benefits from THE FUND. The decision of the Committee being final in such cases.

APM Botany Mill Security Plan Sickness & Accident Fund

6. MANAGEMENT

6.1 Committee

The affairs of THE FUND shall be controlled by a Committee of Management which will be comprised of three (3) Management representatives being: The Chairman, The Treasurer, and The Secretary, who will be appointed by THE COMPANY, and six (6) representatives of THE FUND who shall be elected from the members of THE FUND.

A list of the current Committee can be found in *Appendix D*.

6.2 Elections

Elections, if required, will be by ballot and taken at the Annual General Meeting of THE FUND.

6.3 Eligibility for Election

All adult members of THE FUND shall be eligible for election to the Committee.

6.4 Nominations

Nominations shall be made in writing, signed by the proposer and the nominee, and shall be forwarded to the Secretary at least seven (7) days prior to the date of the election. If insufficient nominees have been received by the prescribed date, then further nominees may be taken from the floor at the Annual General Meeting.

6.5 Returning Officer

There shall be a Returning Officer appointed by the Committee, who shall supervise all arrangements for elections.

6.6 Terms of Office

Elected members of the Committee shall hold office for twelve (12) months or until the next Annual General Meeting.

6.7 Vacancies

In the event of there being a vacancy on the Committee at any time (of an elected representative), the remaining members of the Committee may appoint a successor until the next Annual General Meeting. In the event of a vacancy on the Committee of an appointed officer THE COMPANY shall appoint a replacement.

6.8 Meetings

The Committee shall meet at least once every two months.

Any member of the committee can request a committee meeting at any time and provided a quorum can be obtained a meeting will be held.

6.9 Quorum

A quorum (of the Committee) shall consist of five (5) members.

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6.10 Notice of General Meeting

Notice of a General Meeting shall be attached to Payslips, as well as being put in the mail boxes in reception not less than eight (8) days before the proposed date of such meeting.

6.11 Quorum

A quorum (for the purpose of a General Meeting) shall consist of twelve financial members of THE FUND.

6.12 Simple Majority Decides

All questions at meetings shall be decided by a majority of the Members present, but in the case of equality of votes the Chairman shall have a second and casting vote.

6.13 Indemnity

Each officer and/or Committee member of THE FUND acting with due authority or under instructions on behalf of THE FUND shall stand in the position of agent for all purposes within the objects of THE FUND and shall be Indemnified by THE FUND, and all costs, losses and/or liabilities which any such officer or Committee member may suffer or incur by reason of any contract entered into or act or thing done by him in any such capacity jointly or severally, shall be paid by and from the resources of THE FUND.

6.14 Secretary's Duties

The Secretary shall attend meetings of THE FUND and keep books in a faithfully manner. The Secretary will attend to sickness and accident claims and make payments on behalf of THE FUND.

6.15 Treasurers Duties

The Treasurer shall receive all monies on account of THE FUND and deposit them in the bank account as the rules direct and prepare a balance sheet for the Annual General Meeting.

6.16 Chairman's Duties

The chairman will preside at all meetings of THE FUND and follow and apply the rules of THE FUND as set out.

6.17 Bank Account Operation

Bank Account operations shall be made by any two (2) of the Chairman, Secretary, Treasurer or Members Trustee signing conjointly.

APM Botany Mill Security Plan Sickness & Accident Fund

7. MEETINGS

7.1 Committee

The Committee shall meet at least once every two months to deal with any matters arising from or since the last meeting.

Any member of the committee can request a committee meeting at any time and provided a quorum can be obtained a meeting will be held

7.2 Annual

THE FUND's financial year shall extend from July 1st until June 30th in the following year. The Annual General Meeting shall be held between July and September in each year for the purpose of considering the annual accounts and the Committee Report, to elect the Management Committee for the ensuing twelve (12) months, and conduct such business of which notice has been given in accordance with the rules.

7.3 Special General Meeting (Chairman calls)

The Chairman shall call a General Meeting of members at any time they consider necessary, and the place of the meeting shall be decided by the Chairman. Members must be given eight (8) days notice of such meeting and the purpose of the meeting explained. A quorum shall consist of twelve (12) or more financial members.

7.4 Special General Meeting (Members request)

Any twenty (20) financial members can at any time request the Chairman in writing to call a Special General Meeting, which shall be called within fourteen (14) days after the receipt of such a request. All members shall be entitled to attend General Meetings and shall be entitled to vote.

A quorum shall consist of twelve (12) or more financial members.

7.5 Alterations to Rules

The rules of THE FUND shall only be altered or added to at a General Meeting by a three fourths (3/4) majority of the members present and entitled to vote. Notice of such intention to alter any rule must be attached to Payslips, as well as being put in the mail boxes in reception, at least eight (8) days prior to the date of the meeting. Notwithstanding the foregoing no alteration or addition to any of the rules shall be valid unless THE COMPANY consents to such changes.

7.6 Alterations to Contributions or Benefits

Alterations to contributions by the members and alteration to benefits (as listed in *Appendix A*) may be authorised by a three fourths (3/4) majority of the members present at a General Meeting or by a three fourths (3/4) majority of the full Committee.

APM Botany Mill Security Plan Sickness & Accident Fund

8. TRUSTEES

8.1 Number

The Trustees shall be three (3) in number
A list of the current Trustees can be found in *Appendix D*.

8.2 Who are they

- i) One Trustee shall be called the appointed Trustee, his appointment being made by the Company. He shall be the Chairperson of the Trustees, and shall hold office at the pleasure of THE COMPANY or until he resigns.
- ii) One Trustee shall be the "Members Trustee", who shall be elected by the Members of THE FUND at the Annual General Meeting
- iii) The third Trustee shall be the Secretary of THE FUND.

8.3 Replacing Trustees

Should the appointed Trustee, or the Secretary cease to hold office THE COMPANY will appoint another Trustee in their place. If the elected Trustee dies or vacates office before the expiration of their term of office, the remaining Trustees shall appoint a member to fill the vacancy until the next Annual General Meeting.

8.4 Meetings

The Trustees shall meet at least once every six (6) months. Two (2) Trustees may call a meeting by giving three (3) days notice in writing to the Secretary.

8.5 Investment of Funds

The Trustees may invest the monies of THE FUND or any part thereof in any of the following ways with the consent of the Committee, or by a four/fifths (4/5) majority of members present and entitled to vote in General Meetings.

- i) Bank guaranteed low risk fixed term deposits.
- ii) In the public funds.
- iii) In the purchase of land or in the erection or alteration of offices or other buildings thereon.
- iv) In shares (preference or ordinary) or debentures of Amcor Ltd or PaperlinX Ltd.
- v) In any other security expressly directed by the rules of THE FUND not being personal security.

8.6 Signatures

With respect to all matters concerning investments of THE FUND, the signature of the Secretary and one other Trustee shall be necessary.

8.7 Indemnity

Each of the Trustees of THE FUND, acting with due authority or under instruction on behalf of THE FUND shall stand in the position of agent for all purposes within the objects of THE FUND and shall be indemnified by THE FUND, and all costs, losses and or liabilities which any such Trustee may suffer or incur by reason of any contact entered into or act or thing done by him in any such capacity jointly or severally, shall be paid by and from the resources of THE FUND.

APPENDIX A

Table of Ancillary Benefits

Note: Notwithstanding the limits set out below, Total ancillary benefits (excluding trauma relief) are subject to the \$1200 annual limit as prescribed in clause 5.1

1 SICKNESS BENEFITS Weekly Sickness Benefit (not Workers Compensation) see item 5.4.1 Weekly Sickness Benefit (Workers Compensation) see item 5.4.2	\$60 per week \$ 8 per week
2 AMBULANCE SERVICE Ambulance benefit, limited to five (5) services per annum	100% of charge
3 DENTAL BENEFITS Fillings, Restorations, Surgical Extractions, Peri/Endodontics Orthodontic Services, Prosthodontics, Bridge & Crown, Root Canal, Wisdom Teeth extractions (* 12 month qualifying period) Dentures. Full or partial replacement or repairs (* 12 month qualifying period) Other. Miscellaneous dental services not prescribed above	\$80 per Treatment \$1000 per annum* \$700 per annum * \$40 per service
4 THERAPIES NOT PROVIDED BY A MD Physiotherapy and Therapeutic Massage Counselling/Occupational Therapy Speech Therapy Psychological counselling Chiropractic Treatment Osteopathic Treatment Podiatry Acupuncture Naturopath Consultations Dietician	\$40 per service \$40 per service \$40 per service \$40 per service \$40 per service \$40 per service \$40 per service \$40 per service \$40 per service
5 OPTICAL Members are entitled to claim, after the 12 month qualifying period*, each 2 years, up to the amount shown (the amount includes any claims for dependants), Spectacles and/or Contact Lenses NOTE: Disposable Contact Lenses are included in this category, however a maximum of \$300 may be claimed per 2 years* for Disposable Contact Lenses, as part of the total \$800	\$800 per 2 years *
6 MISCELLANEOUS Hearing Aids, limited to one payment each two years (* 12 month qualifying period) Nebuliser / CPAP Home Nursing (when ordered by Doctor) Trauma Relief assistance, As Agreed on by the Committee Television Rental whilst in hospital Maternity Payment (Baby Payment) Corrective Shoes (from 1 st July)	\$803 per unit per ear * \$150 per annum \$30 per service, \$400 per annum \$800 per annum no limit \$600 per child* \$300
ANNUAL LIMIT: THERE IS AN ANNUAL OVERALL LIMIT OF \$1,200 THAT CAN BE REBATED TO ANY ONE MEMBER IN ANY ONE (1) FINANCIAL YEAR. FOR THIS PURPOSE TRAUMA RELIEF GRANTED BY THE COMMITTEE WILL BE CONSIDERED OUTSIDE THE LIMIT.	
TIME LIMIT: ALL EXPENSES MUST BE CLAIMED WITHIN 60 DAYS OF MAKING PAYMENT.	

APPENDIX B

Funeral Benefits

A Funeral Benefit shall be payable from THE FUND to members or their dependants, or to that person who undertakes to answer for the funeral expenses of the deceased. Provided that wherever a husband and wife are both members then only one payment is made.

Full Member

On the death of a member or their dependant THE FUND will pay all funeral expenses for that member or their dependant up to an amount of \$5000.

Honorary Member

Upon the death of an Honorary Member a funeral benefit shall be payable from THE FUND to the person who undertakes to answer for the funeral expenses of the deceased. The amount of this benefit will be \$800.

Proof of Death

Proof of Death is required before any benefit is paid.

APPENDIX C

Rules relating to Point Clare Facilities

A. POINT CLARE BOOKINGS

1. Sick or convalescing members (but not Honorary Members) have absolute priority over any other members in the use of Point Clare, regardless of the rules as set out below. Sick or convalescing members do not pay the required fee.
 2. Bookings can not be made more than three (3) months in advance, but should be made at least one month in advance. The bookings will be first in first served except as explained below.
 3. Except as outlined in point 4, members are restricted to one (1) use of Point Clare facilities per year and may not always book in for the same time every year.
 4. A member may use the Point Clare facilities more than once a year only if no other member who has not had a booking in the current year has made a booking for the same period. These second bookings can only be confirmed one month prior to the booking date. At this point these second bookings will take precedence over any late first bookings.
-
5. A member may use Point Clare at the same time each year only if no other member who has not previously had a booking for that time of the year has made a booking. As with second bookings (point 4) these bookings can only be confirmed one month prior to the booking date.
 6. Honorary Members may only use the facilities once a year. They can only book one month in advance and may not book during NSW school vacation periods.
 7. Fees payable for the use of Point Clare must be made within seven (7) days of the booking being placed. This fee will be refunded if the booking is cancelled no later than seven (7) days before the booking start date. However, if the booking is cancelled after this time, the fee will only be refunded at the discretion of the Sick & Accident Fund Committee. Your booking will not be guaranteed until this fee is paid. If a member has placed a second booking and this booking is subsequently rejected (as per points 4 & 5) this fee will be refunded.

APPENDIX C

Rules relating to Point Clare Facilities

B. TENANCY RULES - POINT CLARE

ALL TENANTS ARE REQUESTED TO OBSERVE THE FOLLOWING RULES.
FAILURE TO DO SO MAY MEAN THAT YOU WILL BE REQUESTED TO APPEAR
BEFORE THE COMMITTEE OF MANAGEMENT.

1. The premises must be LOCKED AND MADE SECURE when leaving. This includes locking ALL BUILDINGS when going off site for any reason whatsoever (eg shopping etc).
2. Flats must be left clean and tidy.
3. No visitor or person other than an immediate dependant of a member, i.e. family member who resides and is supported by the member, may stay overnight, except where prior permission has been granted by the Committee extra overnight visitor(s)*, may be allowed. This exception will be at the absolute discretion of the Committee. (*extra overnight visitors cannot exceed the bedding supplied in each of the Cottages, see item 5)
4. No camping gear, caravan or the like, including sleeping in vehicles on any part of the property is permitted. This requirement is by order of Gosford Shire Council. Failure of any member to observe this order may seriously affect the tenancy provisions approved by the Council.
5. The tenant is responsible for removal of all waste materials from inside the flats into the otto bins provided. This includes paper, bottles and cans.
6. The motor boat is not to be used until the member has spoken to the caretaker and received instruction in its use.
7. When all flats are in use, the use of the boat is to be co-ordinated day about by the tenants, in agreement with each other.
8. No vehicle is to be driven past the double gates unless authorised by the caretaker.
9. The caretaker has full authority in the absence of any committee member, to ask the tenant to conform with such rules, and failure to do so will result in the tenant being requested to vacate the premises without delay.
10. The caretaker has the right to make an inventory check of all equipment and the premises prior to and after the tenant vacates. Any items damaged, broken, missing, altered or changed, will be discussed with the tenant with the view to that person being held responsible.
11. Strictly NO ANIMALS OR PETS OF ANY KIND are allowed to be kept on the premises anywhere by any tenant or person who resides with that tenant.
12. The Committee has the power to take any necessary action that they see fit.

APPENDIX C

Rules relating to Point Clare Facilities

C. GENERAL

1. Members Complaints

Members should submit in writing to the Secretary of THE FUND, within fourteen (14) days of returning from Point Clare any such matter about which they are concerned. The Committee will investigate all such complaints and report back.

2. Caretaker

The Caretaker - appointed by the Committee is the responsible person in charge at all times. He is empowered by the Committee to safeguard the premises and its facilities whilst it is being used or vacant.

3. Committee

Committee members involved in working bees or required to carry out any repair shall, if necessary, have preference over other members to occupy the premises to carry out such work.

4. Penalties

Any member of THE FUND who disregards or breaks any rule may be dealt with by the Committee. The Committee may require members in this instance to appear before the Committee.

5. About the Cottages

The House, referred to as Flat 3, sleeps 6. Comprising of 1 Queen bed and 4 single beds.

The Units:

Flat 2 on the Waterside of the property sleeps 6. Comprising of 4 single beds, and a double bed (futon bed in lounge room).

Flat 1 on the Roadside of the property sleeps 4. Comprising of 1 queen bed and a futon that converts to a double bed.

Kitchen equipment, is supplied. It is necessary to take pillows/bedding//towels and items of a personal nature.

APPENDIX D

Current Trustees and Members of the Committee

Trustees

Chairperson of Trustees	Eric Bartschi
Members Trustee	Fiona Faust
Secretary/Trustee	Edwin Caldwell

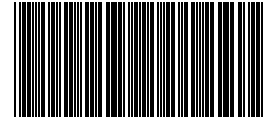
Committee

Chairperson	Eric Bartschi
Treasurer	Peter Ryan
Secretary	Edwin Caldwell
Elected representatives	Fiona Faust Craig Walters Gerard O'Connell Craig Pickett Raelene Oliver Paul Curtis

Appendix B – Interlocutory Process dated 8 November 2023



Filed: 8 November 2023 10:56 AM



D0001ST6LE

Form 3

INTERLOCUTORY PROCESS – COVERSHEET AND ACKNOWLEDGEMENT

IN THE MATTER OF Kordametha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2022/00130874

FILING DETAILS

Filed for	Catherine Margaret Conneely and Scott David Langdon in their capacity as joint and several liquidators of the APM Security Plan Sickness & Accident Fund, Applicant 1
Legal representative	Bernard Colin Walrut
Legal representative reference	
Telephone	
Your reference	1000-122-769

HEARING DETAILS

This application will be heard at Supreme Court Sydney on 20 November 2023 at 09:15 AM

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Interlocutory Application, along with any other documents listed below, were filed by the Court.

Corporations Law Interlocutory Process (Form 3) (2023.11.08 - Interlocutory Process (Judicial advice application).pdf)

Other supporting documentation (2023.11.03 - Affidavit of Kate Conneely sworn 3 November 2023.pdf)

[attach.]

Form 3

(rules 2.2, 15A.4, 15A.8 and 15A.9)

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

No 2022 of 00130874

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

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

Plaintiff

**CATHERINE MARGARET CONNEELY AND SCOTT DAVID HARRY LANGDON IN THEIR CAPACITY
AS JOINT AND SEVERAL LIQUIDATORS OF THE APM SECURITY PLAN SICKNESS & ACCIDENT
FUND (IN LIQUIDATION) ABN 57 413 197 086**

Applicants

INTERLOCUTORY PROCESS

A. DETAILS OF APPLICATION

This application is made under sections 90-15 and 90-20 of Schedule 2 to the *Corporations Act, 2001* (Cth) (**Act**), section 63 of the *Trustee Act, 1925* (NSW) and the implied/inherent jurisdiction of the Court.

Through this application, the Applicants, Catherine Margaret Conneely and Scott David Harry Langdon in their capacity as joint and several liquidators of the APM Security Plan Sickness & Accident Fund ABN 57 413 197 096 (**Fund**) seek the Court's advice and directions in respect of certain matters material to the determination of the members of the Fund.

On the facts stated in the affidavit of Catherine Margaret Conneely sworn 3 November 2023 and such further affidavits as may be filed, the Applicants apply for the following relief:

1. An order declaring that the document entitled "APM Botany Mill Security Plan Sickness & Accident Fund Rules" dated 1 July 2005 (**2005 Rules**) contains the rules which govern the Fund.
2. In the alternative to the order sought in paragraph 1, an order that the Liquidators would be justified in proceeding on the basis that the 2005 Rules contains the rules which govern the Fund.
3. An order declaring that the Fund was dissolved on 1 July 2012.
4. In the alternative to the order sought in paragraph 3, an order that the Liquidators would be justified in proceeding on the basis that the Fund was dissolved on 1 July 2012.

Filed on behalf of: Catherine Margaret Conneely and Scott David Harry Langdon in their capacity as joint and several liquidators of the Fund, the Applicants

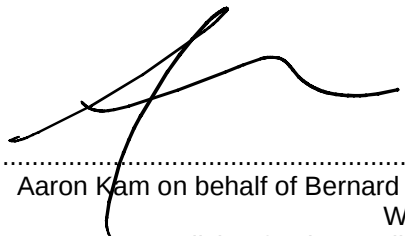
Prepared by:
Ashurst Australia
Lawyers
5 Martin Place
Sydney NSW 2000

Solicitor's Code: 51098
DX: 388 Sydney
Tel: (02) 9258 6000
Fax: (02) 9258 6999
Ref: 1000-122-769

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5. An order declaring that the only member classes of the Fund are (collectively, **Member Classes**):
 - (a) full members;
 - (b) honorary members; and
 - (c) unfinancial members.
6. In the alternative to the order sought in paragraph 5, an order that the Liquidators would be justified in proceeding on the basis that the only member classes of the Fund are the Member Classes.
7. An order that the Liquidators would be justified in proceeding on the basis that the members of the Member Classes are to be determined in accordance with the 2005 Rules and on the basis that the Fund was dissolved on 1 July 2012.
8. An order that the Applicants' remuneration, costs and expenses of making this application be paid out of the assets of the Fund.
9. An order that, subject to the order in paragraph 10 below, pursuant to section 7 of the *Court Suppression and Non-publication Orders Act, 2010* (NSW), on the grounds that the order is necessary to prevent prejudice to the proper administration of justice and is otherwise necessary in the public interest and that public interest significantly outweighs the public interest in open justice, the confidential exhibit marked "CMC-2" (**Document**) to the affidavit of Catherine Margaret Conneely sworn on 3 November 2023 is to be marked "confidential" on the Court file and is not to be published or accessed, except pursuant to an order of the Court.
10. An order that the order in paragraph 9 above, does not prevent the Applicants or their legal representatives, servants, agents and/or employees, from disclosing, publishing or accessing the Document and the information contained therein.
11. Such further or other orders, declarations and advice as the Court considers appropriate.

Date: 8 November 2023



 Aaron Kam on behalf of Bernard Colin
 Walrut,
 Solicitor for the Applicants

This application will be heard by
 Queens Square, Sydney at [am/pm] on

at Law Courts Building,

B. NOTICE TO RESPONDENT(S)

TO: N/A

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence.

Before appearing before the Court, you must, except if you have already done so or you are the plaintiff in this proceeding, file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff in the originating process.

Note

Unless the Court otherwise orders, a respondent that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

This interlocutory process is filed by Ashurst Australia, solicitors for the applicant.

D. SERVICE

The applicant's address for service is:

c/- Ashurst Australia
Lawyers
5 Martin Place
Sydney NSW 2000
Ref: 1000-122-769

It is intended to serve a copy of this interlocutory process on each respondent and on any person listed below:

Australian Securities and Investments Commission

Appendix C - Liquidators' Affidavit sworn 3 November 2023

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

No 2022 of 00130874

IN THE MATTER OF APM SECURITY PLAN SICKNESS & ACCIDENT FUND (IN LIQUIDATION)

ABN: 57 413 197 086

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

Plaintiff

**CATHERINE MARGARET CONNEELY AND SCOTT DAVID HARRY LANGDON IN THEIR CAPACITY
AS JOINT AND SEVERAL LIQUIDATORS OF THE APM SECURITY PLAN SICKNESS & ACCIDENT
FUND (IN LIQUIDATION) ABN 57 413 197 086**

Applicants

AFFIDAVIT

On 3 November 2023, I, Catherine Margaret Conneely of Level 5, Chifley Tower, 2 Chifley Place, Sydney NSW 2000, say on oath:

A Introduction

1. I am a registered liquidator, chartered accountant and partner of KordaMentha.
2. I am a director of the Plaintiff, KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799 (**New Custodian Trustee**), along with my partners of KordaMentha, Scott David Harry Langdon, 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 (**PP New**) as trustee of the trust (**Custodian Trust**) associated with the APM Security Plan Sickness & Accident Fund (in liquidation) ABN 57 413 197 086 (**Fund**), pursuant to orders made by Ward CJ in Eq (as the President was then) in Supreme Court of New South Wales proceedings 2021/00179305 (**22 June 2021 Orders**).
4. Subsequently, Mr Langdon 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 (**6 May 2022 Winding Up Orders**).

Filed on behalf of: The Applicants

Prepared by:
Ashurst Australia
Lawyers
5 Martin Place
Sydney NSW 2000

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

BWALVAARKAM\691631519



5. I make this affidavit from my own knowledge and the books and records of the Custodian Trust and Fund obtained by New Custodian Trustee and the Liquidators (**Books and Records**), except where otherwise indicated. Where I make this affidavit from facts outside my personal knowledge, I am informed by the source stated and believe those facts to be true. Where I refer to an opinion being held by me, I do so after having discussed the matter with Mr Langdon and having confirmed he also holds the opinion to which I depose.
6. Exhibited to me at the time of swearing this affidavit are two bundles of documents titled "'Exhibit CMC-1" and "Confidential Exhibit CMC-2". Unless otherwise stated, where I refer to documents in this affidavit, I do so by reference to the page number in **Exhibit CMC-1** and **Confidential Exhibit CMC-2**.
7. Confidential Exhibit CMC-2 contains documents which disclose the details of Interested Persons (as defined below). The Liquidators seek an order under section 7 of the *Court Suppression and Non-publication Orders Act 2010* (NSW) limiting disclosure of these documents.

B Purpose of this affidavit and reliance on previous affidavits

8. This affidavit is filed in support of the Interlocutory Process dated 3 November 2023 (**Interlocutory Process**) seeking, principally, orders, directions and/or declarations under section 90-15 of the *Insolvency Practice Schedule (Corporations)* (IPSC), being Schedule 2 to the *Corporations Act 2001* (Cth) (**Act**) that:
 - (a) the document entitled "APM Botany Mill Security Plan Sickness & Accident Fund Rules" dated 1 July 2005 at **pages 1 to 19 of Exhibit CMC-1 (2005 Rules)** applies as the set of Rules which govern the Fund or alternatively that the Liquidators would be justified in proceeding on the basis that the 2005 Rules apply as the set of Rules which govern the Fund;
 - (b) the Fund dissolved on 1 July 2012 or alternatively, the Liquidators would be justified in proceeding on the basis that the Fund dissolved on 1 July 2012;
 - (c) the following member classes of the Fund exist or alternatively, the Liquidators would be justified in proceeding on the basis that the following member classes exist (**Member Classes**):
 - (i) full members;
 - (ii) honorary members; and
 - (iii) unfinancial members; and
 - (d) the Liquidators would be justified in proceeding on the basis that the Member Classes are to be determined in accordance with the directions given in paragraphs (a) and (b) above.



9. I seek leave to rely on the following affidavits filed in Supreme Court of New South Wales proceedings 2021/00179305 (**Trustee Proceedings**):

- (a) affidavit of Catherine Margaret Conneely sworn 22 June 2021;
- (b) affidavit of Catherine Margaret Conneely sworn 28 October 2021 (**Second Conneely Affidavit**);
- (c) affidavit of Catherine Margaret Conneely sworn 24 March 2022 (**Third Conneely Affidavit**); and
- (d) affidavit of Catherine Margaret Conneely sworn 2 December 2022 (**Fourth Conneely Affidavit**).

C History of the Fund and Custodian Trust

10. By way of summary of the matters deposed to in paragraphs 11 to 38 below, based on New Custodian Trustee's and the Liquidators' investigations to date:

- (a) the Fund (and Custodian Trust) may have been established as early as the 1950's (based on, among other things, the incorporation of the prior custodian trustee of the Custodian Trust, A.P.M. Investments Ltd (**APM Investments**), in October 1955) in order to provide, among other things, sickness, accident and funeral benefits to employees of Australian Paper Manufacturers Ltd's (**APM**) paper mill at Botany Road, Matraville NSW 2036 (**Botany Mill**), and was funded by contributions from its members and APM;
- (b) the Fund was operated by a committee of management (**Committee**) and was/is governed by published rules as purportedly varied from time to time (**Rules**);
- (c) the Fund, which I understand to be an unincorporated association, was considered to be unable to hold property in its own right, with certain property of the Fund being held by various trustees of the Custodian Trust for the benefit of the Fund;
- (d) member contributions to the Fund and payments of health and medical benefit claims ceased by around 2012, and it would appear that since about August 2019 (if not earlier) there has been no Committee to operate the Fund, despite the Fund having (at that time) a range of assets including real property, shares and cash worth several million dollars. However, funeral and mortality benefit claims (of which no mention was made as to these benefits ceasing) have continued to be paid since the Fund was placed into "caretaker mode", as deposed to at paragraph 98 below;
- (e) since about May 2020, Opal Packaging Australia Pty Ltd ACN 636 682 883 (**Opal**) has owned and operated the Botany Mill which has been the subject of corporate reconstructions and sales since the 1950's;



- (f) in October 2020, Opal became aware of a letter to the Fund from the Australian Taxation Office (**ATO**), advising that the Fund has not lodged an income tax return with the ATO since at least about the financial year ending 30 June 2014;
 - (g) communications have been received by Opal from various individuals about the winding up of the Fund and distribution of its assets, and whether or not there would be a distribution of those assets to members and, if so, on what basis; and
 - (h) there is uncertainty regarding:
 - (i) the provenance of the document entitled "Australian Paper Manufacturers Limited Botany Mill Security Plan Sickness and Accident Fund New South Wales Rule Book 1979" at **pages 20 to 30 of Exhibit CMC-1 (Earliest Rules)**. I note that this is the earliest set of Rules that I have located in the Books and Records, but, as deposed to below, may not necessarily be the earliest set of Rules;
 - (ii) whether the Rules have been properly altered/amended in accordance with the Earliest Rules' terms (or any subsequent Rules);
 - (iii) which set of Rules presently apply to the Fund;
 - (iv) the eligible class of members of the Fund, given that the different sets of Rules that exist have had varying requirements for membership over time; and
 - (v) how the assets of the Fund should be distributed in the winding up of the Fund.
11. My investigations indicate that the Fund was established in the early 1950's with the intention of providing various benefits to all full-time employees of APM based in New South Wales (**NSW**), and provision is also made for employees of a separate entity known as "Demcon". My investigations, including through conducting Australian Securities and Investments Commission (**ASIC**) searches, have not revealed any further details to identify the entity known as Demcon and there are a number of entities (registered and deregistered) which include the word "Demcon" in their name. At **pages 31 of Exhibit CMC-1** is a copy of an ASIC extract for the name "Demcon".
12. I have located Rules dated subsequent to the Earliest Rules (**Subsequent Rules**). The Subsequent Rules are addressed in section F below.
13. APM was subsequently renamed APM Ltd in 1984, Amcor Ltd in 1986 and Amcor Pty Ltd in August 2019 (**Amcor**). I refer to APM and Amcor interchangeably in this affidavit. At **pages 32 to 46 of Exhibit CMC-1** is a copy of an ASIC search for Amcor.
14. Since its establishment, ownership of the Botany Mill itself, and the ensuing management of the Fund, has been transferred to several entities, namely, Orora Ltd ACN 004 275 165 (**Orora**) and, in May 2020, Opal.



15. My investigations indicate that the Botany Mill historically consisted of various paper machines, which were housed in the Botany Mill. Around July 2012, the last of the operating paper machines, B7 and B8, ceased operation and were decommissioned. These machines were subsequently replaced by a new machine in a new building, B9, which has been operational since early 2013. At **pages 47 to 53 of Exhibit CMC-1** is an extract of a Statement of Environmental Effects in respect of the Botany Mill relating to this information.
16. I understand that the Fund is not incorporated nor registered; and, historically, both individuals and an entity associated with APM, APM Investments (renamed A.P.M. Investments Proprietary Ltd in 1955 and Amcor Investments Proprietary Ltd in 1986), have held assets under the Custodian Trust. At **pages 54 to 63 of Exhibit CMC-1** is a copy of an ASIC search for APM Investments.
17. On or about 23 January 1958, Frank Morris Hunter and William Basil Morris purchased 67 Victory Parade, Tascott NSW 2250 (Certificate of Title no. 16/9417 and formerly Vol 7433 Fol 173) (**67 Victory Parade**). At **page 64 of Exhibit CMC-1** a copy of the Certificate of Title in respect of 67 Victory Parade.
18. My investigations indicate that 67 Victory Parade was financed using monies contributed to the Fund and purchased on trust for the Fund. At **pages 65 to 66 of Exhibit CMC-1** is a copy of a note prepared by Peter Ryan, Commercial Manager, Botany Mill, dated 19 October 2011 (**Ryan Note**).
19. Based on the Ryan Note, I understand that the Fund was "funded" by contributions from Amcor's employee members, which were deducted from their respective pay, as well as contributions from Amcor, and that the contributions from Amcor decreased over the years and eventually ceased in around 2007, although it is not clear exactly when those contributions ceased or the amounts that were contributed by Amcor.
20. On about 6 May 1966, Mr Hunter and Mr Morris transferred 67 Victory Parade to APM Investments. At **pages 67 to 69 of Exhibit CMC-1** is a copy of a document described as a "Trust Deed" (**1966 Deed**) and "Form of Acknowledgment", both dated 6 May 1966, pursuant to which 67 Victory Parade was transferred to APM Investments on trust for the Fund.
21. On or about 31 August 1981, Harold George Dennis and William Mark Ovens purchased 69 Victory Parade, Tascott NSW 2250 (Certificate of Title no. 15/9417 and formerly Vol 12794 Fol 19) (**69 Victory Parade**). At **pages 70 to 71 of Exhibit CMC-1** is a copy of the Certificate of Title in respect of 69 Victory Parade.
22. My investigations indicate that 69 Victory Parade was financed using monies contributed to the Fund and purchased on trust for the Fund. A statutory declaration of Mr Ovens dated 11 May 2016 in relation to this property is at **pages 72 to 76 of Exhibit CMC-1**.
23. On 13 June 2012, Fiona Faust (who I understand was a Committee member at this time) emailed Mr Ryan with a list of the 32 purported "current" members of the Fund (**June 2012 Member List**). I



understand this to be reference to "full members" (as referred to in the various sets of Rules) of the Fund. At **page 1 of Confidential Exhibit CMC-2** is a copy of this email.

24. On about 15 June 2012, Mr Ryan emailed members of the Fund informing them that Amcor had decided to wind up the Fund and that the three remaining members of the Committee believe that from 1 July 2012, the Fund should be run in "caretaker mode" such that, among other things, member deductions will cease and payment of health and medical benefit claims will also cease from that time (**June 2012 Email**). At **page 77 of Exhibit CMC-1** is a copy of this email.
25. On about 31 December 2013, Amcor implemented a scheme of arrangement for a demerger of its packaging distribution businesses with Orora, then a wholly owned subsidiary of Amcor, and also listed on the Australian Securities Exchange (**ASX**): see the judgment of Jagot J in *Amcor Ltd, in the matter of Amcor Ltd* [2013] FCA 1183. At **page 78 of Exhibit CMC-1** is a copy of an Amcor deal release dated 31 December 2013, confirming the implementation of the demerger.
26. On 10 April 2015, PP New replaced APM Investments as trustee of the Custodian Trust. Following this, title to 67 Victory Parade, together with Amcor, Orora and PaperlinX Ltd ACN 005 146 350 shares held on behalf of the Fund, were transferred without consideration to PP New. At **pages 79 to 90 of Exhibit CMC-1** is a copy of an ASIC search of PP New and at **pages 91 to 101 of Exhibit CMC-1** is a copy of a document described as "Deed of Retirement and Appointment of Custodian Trustee" dated 10 April 2015 recording these matters.
27. On about 16 June 2016, PP New replaced Mr Ovens as a trustee of the Custodian Trust. My investigations have not located any document in the Books and Records recording Mr Ovens' initial appointment as a trustee of the Custodian Trust. At **pages 102 to 110 of Exhibit CMC-1** is a copy of a document described as "Deed of Retirement and Appointment of Custodian Trustee" dated 16 June 2016 recording these matters.
28. On about 16 September 2016, title to 69 Victory Road was transferred without monetary consideration to PP New, following a request made by Edwin Caldwell as Secretary of the Fund to Mr Ovens. At **pages 111 to 112 of Exhibit CMC-1** are copies of property searches of this property, and at **pages 113 to 114 of Exhibit CMC-1** is a copy of a letter from Mr Caldwell to Mr Ovens dated 24 June 2015 (**2015 Letter**).
29. On about 26 August 2019, a meeting between Mr Caldwell, Eric Bartschi and Fiona Faust (who together appear to have been acting as the Committee at the time) was held. At **page 115 of Exhibit CMC-1** is a copy of unsigned minutes of a meeting of Mr Caldwell, Mr Bartschi and Ms Faust on 26 August 2019. The minutes record discussion about, among other things, closure of bank accounts of the Fund and the potential winding up of the Fund, with the retirement of Mr Caldwell (who joined the Botany Mill in 1981 according to the 2015 Letter) and uncertainty about Mr Bartschi's time left in the business (Mr Bartschi having been employed at Botany for over 30 years according to that same letter). That letter also noted Ms Faust had been employed at Botany for 20 years as at 2015. None of these individuals are currently employed by Opal at the Botany Mill.



30. On about 10 October 2019, Orora announced that it was entering into a binding agreement to sell its Australasian fibre business to a wholly owned subsidiary of Nippon Paper Industries Co Ltd. At **pages 116 to 117 of Exhibit CMC-1** is a copy of an Orora News Release dated 10 October 2019.
31. The subsidiary which ultimately acquired Orora's Australasian fibre business, including PP New, was Opal. My investigations indicate that completion of the acquisition occurred on about 30 April 2020.
32. On about 22 September 2020, the ATO sent a letter to the Fund, advising of its overdue income tax returns from 1 July 2014 to 30 June 2019. At **pages 118 to 119 of Exhibit CMC-1** is a copy of this letter.
33. At **pages 120 to 122 of Exhibit CMC-1** is a copy of an email chain dated 27 and 28 October 2020 between Gordon Morgan and Jacob Chretien, GM Technical – Paper & Recycling of Opal. Mr Morgan, purportedly on behalf of a group of ex-employees (pre-2012), enquired about the liquidation of the Fund.
34. Included as an attachment to the email from Mr Morgan dated 28 October 2020 (3.46 pm) is a copy of a letter dated 3 November 2003 from Shaun Kilmartin, the General Manager of the Botany Mill at the time to Philip Illidge of the CFMEU. The letter states in part (emphasis as per the letter):

"If Amcor Fibre Packaging – Botany Mill ceases operations and closes, the fund would be wound up and the net proceeds from all the properties and monies would be distributed between all living members on the basis of the members length of service at Botany Mill.

Such a process would require legal advice to verify compliance to regulations etc. and the implementation would take a number of months if required."

35. Notwithstanding the email referred to in the preceding paragraph, I note, based on my review of the Rules identified in the Books and Records, that there is no winding up provision in any of the Rules. Accordingly, the Liquidators will need to make a subsequent application for directions as to how the assets of the Fund should be distributed in the winding up of the Fund.
36. On or about 13 July 2021 the Liquidators issued various circulars in respect of the Fund requesting any information and documents about the Fund and Custodian Trust to, among others, the following individuals:
- (a) Mr Caldwell. At **pages 2 to 5 of Confidential Exhibit CMC-2** is a copy of the circular to Mr Caldwell;
 - (b) Mr Ryan At **pages 6 to 9 of Confidential Exhibit CMC-2** is a copy of the circular to Mr Ryan;



- (c) Ms Faust;
- (d) Mr Bartschi; and
- (e) Mr Ovens.

At **pages 123 to 126 of Exhibit CMC-1** is a copy of the circular sent to Ms Faust, Mr Bartschi and Mr Ovens. In response to the circulars, on or about 20 July 2021, the Liquidators had direct contact with Mr Caldwell via telephone discussions. On 20 July 2021, Mr Caldwell provided an email summary of his knowledge of the Fund and its operations to the Liquidators. At **pages 10 to 11 of Confidential Exhibit CMC-2** is a copy of that email.

37. In response to the circulars, I am informed by Elyse Diamond of KordaMentha that she has had direct contact via telephone with the following individuals in 2021 and 2022:

- (a) Mr Ryan;
- (b) Ms Faust; and
- (c) Mr Bartschi,

I am informed by Ms Diamond that she was not provided with any material relevant to this application.

38. The Liquidators have not received any direct contact from Mr Ovens in response to the circulars which were issued to his last known postal address. The Liquidators have not been able to locate a phone number for Mr Ovens.

D Current status of the Fund and Custodian Trust

D.1 First Course of Action

39. As a result of the matters referred to in the section C above, on 22 June 2021, PP New made an application (**First Application**) before Ward CJ in Eq, seeking orders appointing New Custodian Trustee in substitution of PP New as trustee of the Custodian Trust, vesting the property held on trust for the Fund (**Property**) in New Custodian Trustee and authorising New Custodian Trustee to undertake a prescribed course of action in respect of the Fund and Custodian Trust (**First Course of Action**). At **pages 127 to 129 of Exhibit CMC-1** is a copy the 22 June 2021 Orders.
40. Following the First Application and in accordance with the 22 June 2021 Orders, New Custodian Trustee undertook the First Course of Action. I deposed to the steps taken by New Custodian Trustee pursuant to the First Course of Action in paragraphs 17 to 69 of the Second Conneely Affidavit. In summary, the steps included:

- (a) conducting a review of the Books and Records;



- (b) issuing a notice to current and past members of the Fund, creditors, claimants and contributories or potential creditors, claimants and contributories of the Fund and the persons who have been acting as officeholders on behalf of the Fund (together, **Interested Persons**) seeking, among other things, information about the Fund and Custodian Trust;
 - (c) identifying and liaising with Interested Persons;
 - (d) liaising with financial institutions; and
 - (e) identifying the assets (i.e., Property) and liabilities of the Fund.
41. After undertaking the First Course of Action, on 2 November 2021, New Custodian Trustee made an application (**Second Application**) before Ward CJ in Eq, seeking orders authorising New Custodian Trustee to, among other things, convene and hold a meeting of Interested Persons to vote on the future of the Fund, along with various consequential steps to facilitate the holding of the First Meeting (**Second Course of Action**). At **pages 130 to 134 of Exhibit CMC-1** is a copy of the orders made by Ward CJ in Eq in the Trustee Proceedings on 2 November 2021 (**2 November 2021 Orders**).

D.2 Second Course of Action

42. Following the Second Application and in accordance with the 2 November 2021 Orders, New Custodian Trustee undertook the Second Course of Action. I depose to the steps taken by New Custodian Trustee pursuant to the Second Course of Action in paragraphs 15 to 90 of the Third Conneely Affidavit. In summary, these steps included:
- (a) opening new bank accounts in the name of the Fund;
 - (b) renewing term deposits in the name of the Fund;
 - (c) issuing a notice to Interested Persons providing notice of, among other things, the 2 November 2021 Orders and the meeting of Interested Persons to be held on 9 December 2021 to vote on the future of the Fund (i.e., to continue the Fund or wind it up) (**First Meeting**);
 - (d) preparing and issuing a report to Interested Persons for the First Meeting (**24 November Report**);
 - (e) considering responses from Interested Persons to the proposals in the 24 November Report about the future of the Fund;
 - (f) holding the First Meeting;
 - (g) procuring the transfer of 67 Victory Parade and 69 Victory Parade (together, **Point Clare Properties**) (and other Property) from PP New to New Custodian Trustee;



- (h) identifying further Property; and
 - (i) considering next steps in relation to the future of the Fund and preparing the relevant application seeking directions and orders for the future of the Fund.
43. After undertaking the Second Course of Action, on 6 May 2022, New Custodian Trustee made an application (**Third Application**) before Hammerschlag CJ in Eq, seeking, among other things, orders authorising New Custodian Trustee to, among other things, bring proceedings to wind up the Fund (**Winding Up Proceedings**), sell the Property, bring proceedings seeking the Court's opinion, advice and direction in relation to the sale of any of the Property (to the extent necessary) (**Approval Application**) and transfer the sale proceeds of the Property (and any other funds held by New Custodian Trustee) to the Liquidators (**Third Course of Action**). At **pages 135 to 138 of Exhibit CMC-1** is a copy of the orders made by Hammerschlag CJ in Eq in the Trustee Proceedings on 6 May 2022 (**6 May 2022 Orders**).

D.3 Third Course of Action

44. Following the Third Application and in accordance with the 6 May 2022 Orders, New Custodian Trustee undertook the Third Course of Action. I depose to the steps taken by New Custodian Trustee pursuant to the Third Course of Action in paragraphs 18 to 59 of the Fourth Conneely Affidavit. In summary, these steps included:
- (a) immediately following the Third Application, bringing the Winding Up Proceedings. At **pages 139 to 140 of Exhibit CMC-1** is a copy of the 6 May 2022 Winding Up Orders;
 - (b) issuing a notice to Interested Persons providing notice of, among other things, the 6 May 2022 Orders and 6 May 2022 Winding Up Orders;
 - (c) selling the Property, namely:
 - (i) 289,200 fully paid ordinary shares in Amcor plc;
 - (ii) 231,360 fully paid ordinary shares in Orora Ltd; and
 - (iii) the Point Clare Properties (subject to obtaining the Court's opinion, advice and direction in respect of the sale);
45. In addition to the steps undertaken by New Custodian Trustee identified in the preceding paragraph, subsequently:
- (a) on 2 December 2022, New Custodian Trustee filed the Approval Application in respect of the sale of the Point Clare Properties;
 - (b) on 12 December 2022, Black J heard the Approval Application and ordered that it was in the Court's opinion, advice and direction to New Custodian Trustee, as trustee of the



Custodian Trust, that it would be justified in completing the sale of the Point Clare Properties. At **pages 141 to 143 of Exhibit CMC-1** is a copy of the orders made by Black J in the Trustee Proceedings on 12 December 2022;

- (c) on 4 January 2023, the settlement of the Point Clare Properties occurred; and
 - (d) on 14 September 2023, New Custodian Trustee transitioned control of the proceeds of the sale of the Property and other funds from New Custodian Trustee to the Liquidators (**Proceeds**).
46. New Custodian Trustee commenced the process of preparing the Fund's financial statements for FY15 to FY23. Since the Liquidators' appointment, this task transitioned to their responsibility and they have subsequently undertaken:
- (a) the preparation of accounts and financial statements;
 - (b) auditing processes; and
 - (c) the preparation of tax returns,
- for the Fund's activities over a substantial period of time.

D.4 APM Picnic Fund and Toy Fund

47. During the Liquidators' review of the Books and Records, the Liquidators identified, among others:
- (a) an "APM Picnic Fund" which held two bank accounts with a combined balance of approximately \$37,000 (**Picnic Accounts**); and
 - (b) a "Toy Fund" which appeared to be referenced various times in the Books and Records.
48. In accordance with the 6 May 2022 Orders, those funds in the AMP Picnic Fund bank account vested in New Custodian Trustee, and have now subsequently been transferred to the Liquidators as a result of the Third Course of Action.
49. Based on the Liquidators' investigations, we have not identified any bank account associated with the "Toy Fund".
50. Further, the Liquidators have been unable to identify any information from the Books and Records which would indicate whether the "APM Picnic Fund" or "Toy Fund" were directly governed by any of the Rules.
51. In the absence of any detail as to the relevant rules governing those funds, the Liquidators intend to distribute those funds to members in accordance with the method to which the Liquidators have



sought the Court's directions on. This is in circumstances where, based on my investigations in respect of the Fund, I am of the view that:

- (a) the funds held in the Picnic Accounts likely form part of the property held on trust for the Fund in circumstances where:
 - (i) there is reference to an annual Christmas picnic in the minutes of meeting of the Fund from as early as 10 February 1999. It appears that funding for the picnics was obtained from member contributions. At **pages 12 to 15 of Confidential Exhibit CMC-2** is a copy of minutes of meeting dated on or about 22 November 2001; and
 - (ii) there is a reference in the Ryan Note to the Fund organising, executing and part-funding the "Mill Christmas Picnic" (with approximately two thirds of the available membership attending) and that on average a Christmas Picnic committee meeting will meet four to six times a year. At **pages 65 to 66 of Exhibit CMC-1** is a copy of the Ryan Note; and
- (b) the membership base of the Picnic Fund and the Toy Fund does not appear to be different to that of the Fund and they appear to be sub-funds within the Fund which have been established for specific purposes.

E Directions Application and Preliminary Questions

- 52. Now that the Proceeds have been transferred to the Liquidators, the next substantive stage of the winding up of the Fund will involve the Liquidators seeking directions from the Court under section 90-15 of the IPSC about the approach to be adopted to the distribution of the Proceeds to Interested Persons (after payment of relevant expenses) (**Distribution Application**).
- 53. However, prior to making the Distribution Application, I believe it will be necessary to firstly identify (**Preliminary Questions**):
 - (a) which set of Rules govern the Fund;
 - (b) when the Fund dissolved; and
 - (c) what member classes of the Fund exist.
- 54. The Preliminary Questions are the subject of the directions sought by the Liquidators under section 90-15 of the IPSC in this application. I provide further background in respect of the Preliminary Questions in section F below.



F Rules

55. At the following pages of **Exhibit CMC-1** are copies of the Rules that I have located in the Books and Records:
- (a) the Earliest Rules dated 1979, a copy of which is at **pages 20 to 30**;
 - (b) an updated version of the Earliest Rules, dated 1982 (**1982 Rules**), a copy of which is at **pages 144 to 155**;
 - (c) an updated version of the 1982 Rules, dated August 2000 (**2000 Rules**), a copy of which is at **pages 156 to 174**;
 - (d) an updated version of the August 2000 Rules, dated December 2001 (**2001 Rules**), a copy of which is at **pages 175 to 193**;
 - (e) the 2005 Rules, being an updated version of the December 2001 Rules, dated July 2005, a copy of which is at **pages 1 to 19**;
 - (f) an updated version of the 2005 Rules, dated April 2008 (**2008 Rules**), a copy of which is at **pages 194 to 212**; and
 - (g) an undated version of the Rules (**Undated Rules**) which may, given its title refers to "AFPA Botany Mill Security Plan Sickness & Accident Fund" and the amount of member's weekly contributions (35 cents), appear to precede the 2001 Rules, and potentially the 2000 Rules, a copy of which is at **pages 213 to 230**.
56. The date of each of the abovementioned Rules is located at the bottom of the first page of each of those Rules.
57. At **pages 231 to 267** of **Exhibit CMC-1** is a schedule prepared by Ashurst which compares the changes in each set of Rules (except for the Undated Rules) against the previous version. Text which is underlined records new text inserted into the relevant Rules and text with a ~~strike through~~ records text which has been deleted from the relevant Rules. As noted above, none of the Rules contain any winding up provisions.
58. I note that the Earliest Rules, 1982 Rules, 2000 Rules, 2001 Rules, 2005 Rules and Undated Rules were located in the Books and Records provided to New Custodian Trustee in or around June 2021, prior to the First Application. Additional Books and Records have since been provided by Interested Persons to New Custodian Trustee since its appointment as trustee of the Custodian Trust – which included the 2008 Rules. Accordingly (and for the reasons identified in this section of the affidavit), it is possible that the Rules located by New Custodian Trustee are not a comprehensive set of the Rules.



59. At paragraphs 61 to 79 below, I outline the clauses in each of the Rules governing how the Rules can be altered and whether I have located any documents to suggest that a subsequent set of Rules was altered in accordance with a preceding set of Rules.
60. At paragraph 94 below, I depose to why I consider that the 2005 Rules should apply as the set of Rules which govern the Fund.

F.1 Earliest Rules

61. In respect of the Earliest Rules:

- (a) I have not located any earlier version of the Earliest Rules which govern the Fund. However, it is likely that an earlier set of Rules exists in circumstances where the Earliest Rules are dated 1979 and, based on my investigations, the Fund was established in the 1950's and Messrs Hunter and Morris, as at May 1966, had "general control of the investments and management of moneys which may be in the fund of the said Fund" (see the 1966 Deed at **pages 67 to 69 of Exhibit CMC-1**) – and this power is likely to have been derived from a set of Rules; and
- (b) I have not located any documents to suggest that the Earliest Rules were altered in accordance with any alteration clause in a potentially earlier version of the Earliest Rules.

62. Clause 7(e) of the Earliest Rules provides (**Earliest Rules Alteration Clause**):

Alteration to Rules:

The rules of the Fund shall only be altered or added to at a general meeting by a three-fourths majority vote of the members present and entitled to vote.

Notice of such intention to alter any rule must be posted on the Fund's Official Notice Board at least seven days prior to the date of meeting.

Notwithstanding the foregoing, no alteration or addition to any of the rules shall be valid unless the Company consents to such changes.

63. The terms "Fund" and "Company" are not defined. However, based on my review of the Earliest Rules, "Fund" appears to be a reference to the Fund and "Company" appears to be a reference to APM.

F.2 1982 Rules

64. In respect of the 1982 Rules:

- (a) I have not located any Rules dated between the Earliest Rules and 1982 Rules and it appears that the 1982 Rules are an updated version of the Earliest Rules; and



- (b) I have not located any documents to suggest that the 1982 Rules were altered in accordance with the Earliest Rules Alteration Clause, namely, a notice of intention to alter the Rules, minutes of a general meeting resolving (by a three fourth's majority of members present and entitled to vote) to alter the Rules and the consent of APM to the alterations to the Rules.

65. Clause 7(e) of the 1982 Rules provides (**1982 Rules Alteration Clause**):

Alteration to Rules:

The rules of the Fund shall only be altered or added to at a general meeting by a three-fourths majority vote of the members present and entitled to vote.

Notice of such intention to alter any rule must be posted on the Fund's Official Notice Board at least seven days prior to the date of meeting.

Notwithstanding the foregoing, no alteration or addition to any of the rules shall be valid unless the Company consents to such changes.

F.3 2000 Rules

66. In respect of the 2000 Rules:

- (a) apart from potentially the Undated Rules, I have not located any Rules dated between the 1982 Rules and 2000 Rules and it appears that the 2000 Rules are an updated version of the 1982 Rules; and
- (b) I have not located any documents to suggest that the 2000 Rules were altered in accordance with the 1982 Rules Alteration Clause, namely, a notice of intention to alter the Rules, minutes of a general meeting resolving (by a three fourth's majority of members present and entitled to vote) to alter the Rules and the consent of APM to the alterations to the Rules.

67. Clause 7.5 of the 2000 Rules provides (**2000 Rules Alteration Clause**):

Alterations to Rules

The rules of THE FUND shall only be altered or added to at a General Meeting by a three fourths (3/4) majority of the members present and entitled to vote. Notice of such intention to alter any rule must be attached to Payslips, as well as being put in the mail boxes in reception, at least eight (8) days prior to the date of the meeting. Notwithstanding the foregoing no alteration or addition to any of the rules shall be valid unless THE COMPANY consents to such changes.

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68. The 2000 Rules are the first set of Rules I have located in the Books and Records which include a table of "ancillary benefits" to members (and their dependants) (Appendix A), "funeral benefits" to members (and their dependants) and honorary members (Appendix B) and rules relating to the Point Clare Properties (Appendix C)
69. Appendix A sets out the prescribed benefits to members (and their dependants) and the maximum amounts that can be claimed in respect of these amounts. Appendix B sets out the prescribed funeral benefits to members (and their dependants) and honorary members. Appendix C sets out the rules relating to the Point Clare Properties which provide, among other things, that fees are payable for the use of the Point Clare Properties. Similar appendices are located in each subsequent set of Rules I have located in the Books and Records.

F.4 2001 Rules

70. In respect of the 2001 Rules:
- (a) apart from potentially the Undated Rules, I have not located any Rules dated between the 2000 Rules and 2001 Rules and it appears that the 2001 Rules are an updated version of the 2000 Rules or Undated Rules; and
 - (b) I have not located any documents to suggest that the 2001 Rules were altered in accordance with the 2000 Rules Alteration Clause, namely, a notice of intention to alter the Rules (attached to payslips), minutes of a general meeting resolving (by a three fourth's majority of members present and entitled to vote) to alter the Rules and the consent of APM to the alterations to the Rules.
71. The following documents record the process which appears to have been followed in relation to the alterations which appear in the 2001 Rules:
- (a) at **pages 268 to 270 of Exhibit CMC-1** is a copy of minutes of a Committee meeting of the Fund on 23 November 2001. The minutes record (my emphasis added):

It was then suggested that a limit of \$1200 per year that each member is able to claim. Ed suggested that the member contribution be increased to \$2 per week. All members of the committee who were at the meeting agreed to this and have decided that it will apply from 1st January 2002.
 - (b) at **page 271 of Exhibit CMC-1** is a copy of a document titled "Changes to Member Contributions and Payments from 1st January 2002" dated 29 November 2001. The document, which appears to have been issued by the Committee, states in part:

"...The Committee agreed at a meeting on Friday 23rd November that the following changes are to be made to Fund Arrangements, effective 1st January 2002.



1. That the member contribution rate be increased from 35 cents per week to \$2 per week, effective from Mill Payroll commencing Monday 31st December.

2. That an annual limit of \$1,200 per member per year be imposed on the amount of monies that a member is reimbursed for sickness & accident claims. This will be reviewed on an annual basis...

Attached is a revised payroll deduction form, which requires the member's authorisation for the increased amount to be deducted from their pay. In accordance with the Fund rules, failure to sign and return this form to Ed Caldwell by 19th December, for applying to the first pay for January 2002, could make the member non-financial and therefore not entitled to benefits."

- (c) at pages 272 to 273 of Exhibit CMC-1 is a copy of a document titled "January 2002 Revised Payroll Deduction Authority". The document states in part:

"I understand and agree, that from the first pay period beginning on or after 31st December 2001, the deduction will be either \$4.00 per fortnight (Mill Employee) or \$8.67 per month (Staff Employee)."

I note that this document is the only document in the Books and Records which distinguishes between a "Mill Employee" and a "Staff Employee". In the circumstances, the Liquidators do not propose to distinguish between a "Mill Employee" and a "Staff Employee" when dealing with distributions of the Fund. Further, I note that a deduction of \$4.00 per fortnight is equivalent to a deduction of \$8.67 per month.

- (d) at pages 274 to 275 of Exhibit CMC-1 is a copy of a document titled "Annual General Meeting of the Sickness & Accident Fund" dated 39 November 2001. The document contains various proposed rule changes and states in part:

"4. Contributions.

Each member shall contribute an amount of \$0.35??, per week to be deducted directly from their fortnightly or monthly pay."

It appears that this document may be a draft as it is dated "39" November 2001 and the extract from the document above refers to a contribution amount of "\$0.35??";

- (e) at pages 276 to 279 of Exhibit CMC-1 is a copy of minutes of an annual general meeting of the Fund on 14 December 2001. The minutes record that the Committee proposed rule changes, including, to clause 4, such that each member shall contribute an amount equivalent to \$2.00 per week. The minutes record that the changes to the Rules were proposed by Mr Caldwell and seconded by Phil Illidge however it is not clear whether the members at the annual general meeting voted in favour of the changes to the Rules;

- (f) the weekly member contribution increased from 35 cents (in the 2000 Rules) to \$2.00 (in the 2001 Rules) as per the minutes referred to in the preceding subparagraph; and
 - (g) at **pages 280 to 281 of Exhibit CMC-1** is a copy of unsigned minutes of a meeting of the Committee on 23 January 2002. The minutes record that one member of the Fund dropped out because of the new rules and the Committee agreed that specific clauses in the Rules could be misinterpreted. Based on the timing of this meeting, it appears that the Committee was referring to the 2001 Rules.
72. In summary of the matters referred to in the preceding paragraph, the following process appears to have been adopted in relation to the alterations which appear in the 2001 Rules:
- (a) the Committee suggested alterations to the earlier Rules, including increasing the weekly contribution amount;
 - (b) the Committee informed members of the Fund of the increased weekly contribution amount and required member's authorisation for the increased amount to be deducted from their pay;
 - (c) the Committee proposed Rule alterations at an annual general meeting of the Fund; and
 - (d) a number of the proposed Rule alterations are reflected in the 2001 Rules, for example, the increase in the contribution amount from 35 cents to \$2.00 per week.
73. The process referred to in the preceding paragraph does not appear to be in accordance with the 2000 Rules Alteration Clause or any of the earlier Rules Alteration Clauses.
74. Clause 7.5 of the 2001 Rules provides (**2001 Rules Alteration Clause**):

Alterations to Rules

The rules of THE FUND shall only be altered or added to at a General Meeting by a three fourths (3/4) majority of the members present and entitled to vote. Notice of such intention to alter any rule must be attached to Payslips, as well as being put in the mail boxes in reception, at least eight (8) days prior to the date of the meeting. Notwithstanding the foregoing no alteration or addition to any of the rules shall be valid unless THE COMPANY consents to such changes.

F.5 2005 Rules

75. In respect of the 2005 Rules:
- (a) I have not located any Rules dated between the 2001 Rules and 2005 Rules and it appears that the 2005 Rules are an updated version of the 2001 Rules; and



- (b) I have not located any documents to suggest that the 2005 Rules were altered in accordance with the 2001 Rules Alteration Clause, namely, a notice of intention to alter the Rules (attached to payslips), minutes of a general meeting resolving (by a three fourth's majority of members present and entitled to vote) to alter the Rules and the consent of APM to the alterations to the Rules.

76. Clause 7.5 of the 2005 Rules provides (**2005 Rules Alteration Clause**):

Alterations to Rules

The rules of THE FUND shall only be altered or added to at a General Meeting by a three fourths (3/4) majority of the members present and entitled to vote. Notice of such intention to alter any rule must be attached to Payslips, as well as being put in the mail boxes in reception, at least eight (8) days prior to the date of the meeting. Notwithstanding the foregoing no alteration or addition to any of the rules shall be valid unless THE COMPANY consents to such changes.

F.6 2008 Rules

77. In respect of the 2008 Rules:

- (a) I have not located any Rules dated between the 2005 Rules and 2008 Rules and it appears that the 2008 Rules are an updated version of the 2005 Rules; and
- (b) I have not located any documents to suggest that the 2008 Rules were altered in accordance with the 2005 Rules Alteration Clause, namely, a notice of intention to alter the Rules (attached to payslips), minutes of a general meeting resolving (by a three fourth's majority of members present and entitled to vote) to alter the Rules and the consent of APM to the alterations to the Rules.

78. Clause 7.5 of the 2008 Rules provides (**2008 Rules Alteration Clause**):

Alterations to Rules

The rules of THE FUND shall only be altered or added to at a General Meeting by a three fourths (3/4) majority of the members present and entitled to vote. Notice of such intention to alter any rule must be attached to Payslips, as well as being put in the mail boxes in reception, at least eight (8) days prior to the date of the meeting. Notwithstanding the foregoing no alteration or addition to any of the rules shall be valid unless THE COMPANY consents to such changes.

79. I have not located any Rules dated after the 2008 Rules or any documents which suggest that the 2008 Rules were altered in accordance with the 2005 Rules Alteration Clause.



F.7 Undated Rules

80. In respect of the Undated Rules:

- (a) they appear to precede the 2001 Rules (and potentially the 2000 Rules). This is in circumstances where:
 - (i) the member's weekly contribution amount in the 2000 Rules and Undated Rules is 35 cents per week;
 - (ii) the member's weekly contribution amount in the 2001 Rules is \$2.00 per week;
 - (iii) the title of the 2000 Rules and Undated Rules refers to "AFPA Botany Mill Security Plan Sickness & Accident Fund"; and
 - (iv) the title of the 2001 Rules refers to "APM Botany Mill Security Plan Sickness & Accident Fund"; and
- (b) I have not located any documents to suggest that the Undated Rules were altered in accordance with the 1982 Rules Alteration Clause or the 2000 Rules Alteration Clause, namely, a notice of intention to alter the Rules, minutes of a general meeting resolving (by a three fourth's majority of members present and entitled to vote) to alter the Rules and the consent of APM to the alterations to the Rules.

81. In circumstances where these Rules are undated, I have not given any weight to them for the purposes of Scenario 1 and Scenario 2 (defined below).

F.8 Minutes

82. At **pages 282 to 290 of Exhibit CMC-1** is a schedule prepared by my staff of the minutes of Committee meetings and annual general meetings located in the Books and Records and copies of those minutes.

83. Based on my review of the Books and Records, it does not appear that these are a complete set of the minutes of the Fund. For example, at **pages 291 to 293 of Exhibit CMC-1** is a copy of a letter from Mr Caldwell (on behalf of the Fund) to Domenic Strati dated 8 December 2014. The letter states in part:

6. The minutes of meetings of the committee of management [Committee] made available to you are complete and authentic records of all such meetings held during the year. All other statutory records were properly kept during the period.

84. I have not located any minutes from 2014 in the Books and Records, nor have I located what appears to be a fulsome set of minutes for any year of the Fund's history. I have also contacted Mr Strati for any Books and Records held in respect of the Fund, however, Mr Strati advised he no

longer holds records pertaining to the Fund given the substantial time period that has passed since Mr Strati last acted on behalf of the Fund.

85. Apart from the minutes referred to in section F, I have not located any other minutes in the Books and Records relating to the alteration of the Rules. Therefore, it is likely that alterations may have been made to the Rules without evidence available to support the alterations.

F.9 Adoption of the Rules

86. Notwithstanding the lack of evidence in the Books and Records which support alterations to the Rules in accordance with the relevant Rules Alteration Clauses, it appears that the Rules subsequent to the Earliest Rules were adopted by the Committee and members (or certain members – see, for example, paragraph 71 above). For example:

- (a) at **pages 16 to 17 of Confidential Exhibit CMC-2** are copies of an Amcor payslip for the fortnight ended 23 February 2003. The payslip records a deduction of \$4 for the "NSW Sick Fund". This reflects the increase in the weekly contribution amount which was purportedly affected by the 2001 Rules (and remained the same in the subsequent versions of the Rules);
- (b) at **pages 294 to 296 of Exhibit CMC-1** and **page 18 of Confidential Exhibit CMC-2** are copies of a letter from the Fund to Reginald Fletcher dated 17 March 1986, letter from Gary Nelson to Ms Faust dated 19 September 2011 and a sundry payments receipt dated 4 October 2011 in respect of a mortality payment for Mr Fletcher. These documents record the Fund paying Valerie Fletcher a mortality payment for Mr Fletcher in the amount of \$800. The benefit paid to Ms Fletcher reflects the amount prescribed in the 2000 Rules for honorary members (and remained the same in subsequent versions of the Rules). In earlier versions of the Rules, this amount was \$400;
- (c) at **pages 19 to 21 of Confidential Exhibit CMC-2** are copies of a claim form dated 5 December 2011 in respect of a maternity payment and a form dated 7 December 2011 whereby the claim appears to have been approved by the members of the Committee. I note that a maternity/baby payment of \$600 only appears in the 2005 Rules and does not appear in any previous versions of the Rules;
- (d) at **pages 22 to 24 of Confidential Exhibit CMC-2** are copies of a claim form dated 5 April 2012 in respect of a maternity payment and a form dated 8 May 2012 whereby the claim appears to have been approved by the members of the Committee. I note that a maternity/baby payment of \$600 only appears in the 2005 Rules and does not appear in any previous versions of the Rules; and
- (e) at **pages 25 to 26 of Confidential Exhibit CMC-2** are copies of Fund claim forms dated 27 and 28 June 2012. The claim forms record a benefit of \$80 paid for a dental claim and a



benefit of \$800 paid for an optical service claim respectively. The benefits paid to members reflect the amounts prescribed in the ancillary benefits schedule which appear in the 2000 Rules (and remain largely unchanged in subsequent versions of the Rules).

F.10 Non-compliance of the Rules

87. Notwithstanding the matters deposed to in section F.9 above, based on my review of the Books and Records, I have identified various instances of non-compliance with the Rules. For example:

(a) from the 2001 Rules and onwards, there has been an annual limit of \$1,200 for ancillary benefits under the Fund. A review of the benefit payment reports of the Fund for the period 2009 to 2012 (**Payment Reports**) at **pages 27 to 210 of Confidential Exhibit CMC-2** reveals that this rule was not complied with. For example:

- (i) one member of the Fund received \$1,272 in total ancillary benefits in 2009;
- (ii) six members of the Fund received total ancillary benefits between \$1,350 and \$1,710 in 2010; and
- (iii) seven members of the Fund received total ancillary benefits between \$1,250 and \$1,601 in 2011;

(b) based on my review of the Payment Reports, notwithstanding the June 2012 Member List:

- (i) the Fund made payments to nine individuals who were not included on the June 2012 Member List totalling \$2,692.95 between 25 June 2012 and 5 July 2012. It is unclear what class of members these individuals were however I note that benefits are only payable to restricted and honorary members and in respect of the latter, they are only entitled to funeral benefits but not ancillary benefits; and
- (ii) at least three of these individuals could have qualified as honorary members as they had been members for at least 20 years at the time the relevant payments were made (in which case, they may have only been eligible for funeral benefits). Notwithstanding this, these individuals received payment of ancillary benefits.

88. It is unclear whether the Payment Reports are a comprehensive record of all of the benefits paid by the Fund over this period and additional benefits could have been paid which are contrary to the Rules.

F.11 Relevance of the Rules which govern the Fund

89. I consider it necessary to firstly identify which set of Rules govern the Fund and when the Fund dissolved before seeking directions about the classes of members of the Fund.



90. This is in circumstances where, depending on which set of Rules apply, there will be different member classes, different requirements to qualify for member classes and different circumstances in which membership will cease. At **pages 297 to 301 of Exhibit CMC-1** is a document prepared by my solicitors, Ashurst, which summarises the various member classes and membership cessation provisions in the Rules (with reference to the relevant provision in the Rules) (**Member Class Schedule**).
91. As outlined in the Member Class Schedule:
- (a) there are as many as four member classes depending on which Rules apply – full members, restricted members, unfinancial members and honorary members;
 - (b) there are different requirements to qualify for these member classes depending on which set of Rules apply. For example:
 - (i) full members in the Earliest Rules include employees of Demcon but in subsequent Rules, they do not include employees of Demcon (and as deposed to in paragraph 11, my searches have not revealed any further details to identify the entity known as Demcon); and
 - (ii) unfinancial members in the Earliest Rules and 1982 Rules are members whose contributions are two weeks in arrears but in subsequent Rules, they are members whose contributions are over one month in arrears; and
 - (c) membership ceases in different circumstances depending on which set of Rules apply. For example, in the Earliest Rules and 1982 Rules, membership will cease on the member leaving the employ of APM and on expulsion from the Fund in accordance with the Rules. However, in the 2001 Rules and subsequent Rules, membership will also cease upon the member being transferred from AFPA/AFP Botany or NSW Recycling, Enfield and Newcastle. Based on the Books and Records, the Liquidators have been unable to determine details about the relevant entities referred to as "AFPA/AFP Botany or NSW Recycling, Enfield and Newcastle" (and also referred to below at paragraph 112). The Liquidators have not been able to identify any employees or members being transferred from any of these "entities". Accordingly, the Liquidators do not propose to distinguish between the entities when dealing with distributions of the Fund.
92. Absent directions about which set of Rules govern the Fund, it will be impossible for the Liquidators to accurately identify the member classes of the Fund and in turn, the members that make up a particular member class.
93. The Liquidators are otherwise concerned that if they adopt a particular position without obtaining directions about which set of Rules govern the Fund (and this position is ultimately found to be



incorrect), the Liquidators may be subject to criticism and/or challenge by Interested Persons in relation to the position adopted.

F.12 2005 Rules govern the Fund

94. As to which set of Rules apply to govern the Fund, I consider the practical view is that the 2005 Rules should apply in the following circumstances:

- (a) the 2005 Rules are the most current Rules located in the Books and Records provided to New Custodian Trustee in or around June 2021 (see paragraph 58);
- (b) it can be inferred by the conduct of members who remained with the Fund and paid increased contributions that the Rules subsequent to the Earliest Rules, in particular, the 2005 Rules, were adopted by the members of the Fund (see paragraph 86) despite there being no evidence to suggest that there was unanimous adoption by all members of any Rules subsequent to the Earliest Rules (nor is there any evidence that the Earliest Rules were adopted in accordance with any potential Rules in existence prior to the Earliest Rules – see paragraph 61);
- (c) while there appears to be in existence a copy of the 2008 Rules which are subsequent to the 2005 Rules, the Liquidators could not locate a copy of the 2008 Rules in the Books and Records provided to New Custodian Trustee in or around June 2021. As deposed to above at paragraph 58, the 2008 Rules were provided by Interested Persons to New Custodian Trustee since its appointment as trustee of the Custodian Trust and its provenance is not clear. In any event, the changes between the 2005 Rules and the 2008 Rules are not material in substance (the key changes being increased annual limits for certain ancillary benefits); and
- (d) for the reasons deposed to at paragraph 80 above, the Undated Rules appear to precede 2001 Rules (and potentially the 2000 Rules).

G Dissolution of the Fund

95. I understand that a relevant question in order to identify the members of the Fund will be whether (and if so, when) the Fund has been dissolved or terminated – and therefore, when the relevant member classes have closed. I understand that this is a relevant question because, among other things, the later the dissolution or termination of the Fund, the less likely that there will be any "full" members of the Fund. This is in circumstances where, as deposed to below, member contributions effectively ceased in FY13 and according to each set of Rules, "full" members become unfinancial members where contributions are two weeks in arrears or, from the 2000 Rules onwards, one month in arrears.

96. Based on my review of the Books and Records, the earliest suggestion of any winding up (or dissolution) of the Fund was around 15 June 2012. In the June 2012 Email, Mr Ryan (on behalf of



the Committee) informed the members of the Fund at the time that Amcor Australasia made a decision to wind up the Fund. The email states in part (my emphasis added):

Recently Amcor Australasia made a decision to wind-up the Botany Mill Sickness & Accident Fund....

In view of this decision, the three remaining Mill S&A committee members believe that from July 1st the Fund should be run in caretaker mode. That is, member deductions will cease and payment of health & medical benefit claims will also cease from that time. Member use of Point Clare Facilities will continue as the committee believes this helps in maintaining the facilities. This decision is partly made in view of the large number of members who had to leave the Fund in May and June.

97. Based on searches conducted by Ashurst, it appears that Amcor Australasia was a business name registered to Orora between 6 April 2000 and 13 July 2014. At **pages 302 to 308 of Exhibit CMC-1** is a copy of a historical Australian Business Number search for Orora. As deposed to in paragraph 25, Orora was previously a subsidiary of Amcor until its demerger from Amcor on or about 31 December 2013 and it appears that the reference to "Amcor Australasia" could be a reference to Orora. I note however, that there does not appear to be any winding up provision, or otherwise any of the Rules which provides for Orora (or anyone, including the Committee) to determine that the Fund should be wound up and placed into caretaker mode.
98. Based on my review of the Books and Records (in particular, the financial reports for the Fund for FY13 (**FY13 Report**) and FY14 (**FY14 Report**) at **pages 309 to 350 of Exhibit CMC-1**), I note the following in respect of the Fund being run in "caretaker mode" from 1 July 2012:
- (a) member deductions reduced from \$11,233 in FY12 to \$248 in FY13 and to \$0 in FY14. I have not located any documents in the Books and Records which explain why member deductions occurred in FY13 (while the Fund was in caretaker mode);
 - (b) sickness and accident benefits reduced from \$68,181 in FY12 to -\$2,689 in FY13 and to \$0 in FY14. I have not located any member claim forms in the Books and Records which relate to claims after 30 June 2012 and this reflects the FY13 Report and FY14 Report;
 - (c) mortality benefits (of which no mention was made as to these benefits ceasing in the June 2012 Email) increased from \$5,800 in FY12 to \$7,400 in FY13 and reduced to \$1,600 in FY14. Unlike sickness and accident benefits, mortality benefits appeared to have continued while the Fund was run in "caretaker mode". I have not located any documents in the Books and Records which identify which members these benefits were paid to. However, in respect of:
 - (i) FY13 – it is possible that the benefits were paid in relation to one member (or their dependent) – who are entitled to an amount of \$5,000 and to three honorary

members – who are each entitled to an amount of \$800 (based on the 2000 Rules and all subsequent versions of the Rules); and

- (ii) FY14 – it is likely that the benefit was paid in relation to two honorary members;
- (d) mortality benefits (of which no mention was made as to these benefits ceasing in the June 2012 Email) appear to have been paid in FY15, FY16 and FY17. In relation to:
 - (i) FY15 – at **pages 211 to 212 of Confidential Exhibit CMC-2** are copies of cheque butts dated 15 July 2014 and 3 March 2015. In respect of:
 - (A) the 15 July 2014 cheque butt – the amount of the cheque is \$800 and the payee is the Estate of Stanley Senior. Based on my review of the Books and Records, Mr Senior appears to have been an honorary member of the Fund from at least 30 May 1979. At **page 213 of Confidential Exhibit CMC-2** is an extract from a bound book titled "Retired Employees Mortality Fund" which was included in the Books and Records. The extract contains a list of honorary members of the Fund as at 30 May 1979; and
 - (B) the 3 March 2015 cheque butt – the amount of the cheque is \$800 and the payee is Ruth Yates. Based on my review of the Books and Records, Ms Yates does not appear to have been member of the Fund however I have identified a "J.Yates" who was an honorary member of the Fund from at least 1983. At **page 214 of Confidential Exhibit CMC-2** is an extract from a bound book titled "Retired Employees Mortality Fund". The extract contains a list of honorary members of the Fund as at 1983;
 - (ii) FY15 – at **pages 215 to 220 of Confidential Exhibit CMC-2** is a copy of an email from Joe Alvarez to Mr Chretien dated 11 March 2022, a Bank Australia Statement of Account showing payment of \$5,000 on 28 September 2015 and a cheque butt dated 10 September 2015 in the amount of \$5,000. The email indicates that \$5,000 was paid to Mr Alvarez on 28 September 2015 in respect of a contribution towards Mr Alvarez's wife's funeral. This is an amount equivalent to the mortality benefit payable to full members under the 2000 Rules (and all subsequent versions of the Rules). Based on my review of the Books and Records, I have not been able to identify Mr Alvarez (or his wife) as members of the Fund;
 - (iii) FY16 – at **page 221 of Confidential Exhibit CMC-2** is a copy of a cheque butt dated 1 December 2015. The amount of the cheque is \$800 and the payee is Carl Borden. Based on my review of the Books and Records, a "C Borden" appears to have been an employee who worked at the Botany Mill from at least 28 June 1982 however he does not appear to have been an honorary member of the Fund. At



pages 222 to 233 of Confidential Exhibit CMC-2 is a copy of an employee listing as at that date; and

- (iv) FY17 – at **page 234 of Confidential Exhibit CMC-2** is a copy of a cheque butt dated 12 September 2016. The amount of the cheque is \$800 and the payee is Alice Farrell. Based on my review of the Books and Records, a "A Farrell" appears to have been an employee who worked at the Botany Mill from at least 28 June 1982 however Ms Farrell does not appear to have been an honorary member of the Fund. However, the Books and Records record a "J Farrell" as an honorary member and the payment of \$800 was made to an Alice Farrell. there may have been a relationship between Alice Farrell and "J Farrell". At **pages 222 to 233 of Confidential Exhibit CMC-2** is a copy of an employee listing as at that date.
 - (e) booking fees (presumably for the Point Clare Properties) reduced from \$650 in FY12 to \$0 in FY13 and \$0 in FY14;
 - (f) in accordance with the June 2012 Email, members appeared to continue using the Point Clare Properties while the Fund was being run in caretaker mode. For example:
 - (i) at **page 351 of Exhibit CMC-1** is a copy of an email from Ms Faust to Adrian Dawson dated 18 January 2017. The email relates to an invoice issued by Mr Dawson in relation to the Point Clare Properties and states in part: "... which makes it very difficult for our guests to park their vehicle"; and
 - (ii) at **page 352 of Exhibit CMC-1** is a copy of an email from Amanda Caldwell to Mr Caldwell and Ms Faust dated 12 December 2017. The email from Ms Caldwell attaches receipts in relation to the Point Clare Properties and states in part: "... please make sure Nat is copied on any emails about tenants or otherwise to do with the property while I'm gone."
99. Based on the unsigned minutes of a Committee meeting held on 26 August 2019 at **page 353 of Exhibit CMC-1**, on or about this date, Mr Caldwell, Mr Bartschi and Ms Faust (who appear to have been acting as the Committee at the time) met and discussed the "potential" winding up of the Fund. The minutes record, among other things:

5. Discussed the potential wind up of the fund. With the retirement of Ed and uncertainty of Eric's time in the business we feel the time is right to commence the wind up process.

a. Agreed that Eric and Fiona will discuss with Chris Rosser and inform him what we intend to do.

b. Involve Jason Arnheim and advise the we are commencing the wind up of the fund.

100. Based on my investigations, Chris Rosser was the Orora General Manager at the time and Jason Arnheim was the Orora General Counsel Australasia at the time.
101. I have not located any documents (such as minutes or emails) in the Books and Records in relation to the Committee's discussions with Mr Rosser or Mr Arnheim after the meeting referred to in paragraph 99.
102. The unsigned minutes suggest that, notwithstanding the June 2012 Email, the winding up of the Fund had not yet commenced.
103. As deposed to above, the Fund was placed into liquidation on 6 May 2022.

H Member classes

H.1 *Potential members*

104. Prior to considering the member classes, my staff and I considered the maximum number of potential members of the Fund (i.e., without adopting any particular Rules or a dissolution date of the Fund) based on the Books and Records and other evidence received from Interested Persons to date.
105. At **pages 235 to 253 of Confidential Exhibit CMC-2** is a copy of a listing of potential members (1,004) of the Fund prepared by my staff (**Potential Member List**). The list is based on:
- (a) the 32 individuals referred to in the June 2012 Email;
 - (b) the 100 individuals who have contacted New Custodian Trustee / the Liquidators since New Custodian Trustee was appointed as replacement trustee of the Custodian Trust; and
 - (c) the 872 individuals identified in the Books and Records, broken down as follows:
 - (i) 294 in a hard copy leather bound book. At **pages 254 to 305 of Confidential Exhibit CMC-2** is a copy of the book;
 - (ii) 252 in the same hard copy leather bound book however these members are referred to as "honorary"; and
 - (iii) 326 on honorary boards at the Botany Mill. At **pages 289 to 290 of Exhibit CMC-1** are copies of photos of these honorary boards.
106. The Potential Member Listing is indicative only and is in no way determinative. Any determination will require a proper assessment of the supporting evidence submitted by the relevant member to substantiate their claim to qualify for a particular member class (once this has been determined). In relation to the supporting evidence required to substantiate a member's claim, this is akin to the proof of debt process under the Act. I note there is no prescribed form of evidence required to



substantiate a creditor's claim and the liquidator is required to exercise their discretion when admitting or rejecting a proof of debt. As such, the Liquidators do not seek guidance or a direction from the Court as to what evidence is considered acceptable noting, also, that the evidence will depend on the circumstances of each particular case i.e. a new member is likely to have better evidence than an older member given the passage of time. Without being exhaustive, the Liquidators would expect to see documents which substantiate membership of the Fund, such as, pay slips, tax returns, employment contracts and/or statutory declarations from the members.

H.2 Summary of member classes

107. The composition of the Potential Member List will likely change depending on which Rules govern the Fund and when the Fund dissolved. This is because there are different criteria to qualify for a particular membership class depending on which Rules are adopted and members are likely to have ceased as members or changed membership class depending on the dissolution date.
108. As set out in the Rules Table and deposed to in paragraph 91 above, there are as many as four classes – full members, restricted members, unfinancial members and honorary members. However, in circumstances where the 2005 Rules apply, there are three classes – full members, unfinancial members and honorary members. I note that the restricted members class ceased following changes implemented by the 2000 Rules.
109. I have considered the member classes in the following scenarios:
- (a) the 2005 Rules with a Fund dissolution date of 1 July 2012 (**Scenario 1**); and
 - (b) the 2005 Rules with a Fund dissolution date of 6 May 2022 (**Scenario 2**).
110. I consider these scenarios to be the most likely in circumstances where:
- (a) as deposed to above, I consider the practical view is that the 2005 Rules should apply to govern the Fund. Accordingly, I have adopted the 2005 Rules for Scenario 1 and Scenario 2; and
 - (b) based on my review of the Books and Records, the Fund appears to have ceased the majority of its activities on 1 July 2012 being the date it was placed into "caretaker mode". The balance of the activities of the Fund (i.e., payment of limited benefits and use of the Point Clare Properties) progressively reduced until the Fund was placed into liquidation on 6 May 2022. Accordingly, I have adopted dissolution dates of 1 July 2012 and 6 May 2022.

H.3 Scenario 1 and Scenario 2

111. My analysis below is indicative only of the potential members of the Fund and is in no way determinative. As noted at paragraph 106 above, any determination will require a proper assessment of the supporting evidence submitted by the relevant member to substantiate their



claim to qualify for a particular member class, including whether by statutory declaration, or otherwise.

112. In Scenario 1 and Scenario 2, the following member classes exist (capitalised terms as they appear in the 2005 Rules):

(a) **Full members** (see clauses 3.1, 3.2, 3.6 and 3.7):

- (i) all full time permanent staff and employees of Amcor, employed either at AFPA Botany Mill or by NSW Recycling Department, will be eligible for membership of the Fund. As deposed to at paragraph 91 above, the Liquidators have been unable to determine details about the relevant entities referred to as "AFPA Botany Mill" or "NSW Recycling Department" and accordingly, do not propose to distinguish between these entities when dealing with distributions of the Fund;
- (ii) a member will need to have been in the employ of Amcor for 26 weeks and to have paid 26 weeks contributions to the Fund before they are able to claim any benefits from the Fund (except for sickness benefits) or prescribed high cost Ancillary benefits; and
- (iii) an employee who after six months probationary employment with Amcor is not offered a full time position shall have refunded to him, from the Fund, any contributions he has made, except if he has claimed Sickness Benefits. However, an employee who is offered a full time position after the 6 months probationary employment, will have to be employed for a further 26 weeks to qualify for prescribed high cost Ancillary benefits,

subject to:

- (iv) membership of the Fund ceasing:
 - (A) on the member leaving the employ of Amcor;
 - (B) on the member being transferred from AFPA Botany or NSW Recycling; or
 - (C) on the expulsion from the Fund in accordance with the rules; and
- (v) the Committee of Management shall have the power to suspend or expel members of the fund for breaches of any of the rules of the Fund. A member liable for suspension or expulsion shall be called upon to appear before the committee to show cause why they should not be suspended or expelled from the Fund.

(b) **Honorary members** (see clause 3.7):

- (i) Honorary Membership of the Fund may be granted to members with 10 years' continuous service by the Committee under the following conditions:



- (A) upon the Member reaching or surpassing normal retirement age;
- (B) upon the Member retiring due to health reasons which would qualify them for an Invalid Pension; and
- (C) upon the member reaching 55 years of age, is made redundant, accepts a Voluntary Redundancy or retires, and who pays to the Fund an amount equivalent to 25% of what they would have contributed had they remained employed with the Company until their 65th birthday.

(c) **Unfinancial members** (see clause 3.5):

- (i) a member shall be unfinancial if their contributions are over one month in arrears; and
- (ii) unfinancial members shall not be entitled to benefits under the Scheme.

113. In relation to the two potential dissolution dates and adopting the 2005 Rules:

- (a) in the event that the Fund dissolved on 1 July 2012, based on the Books and Records and other evidence received from Interested Persons to date, there is likely to be:
 - (i) 32 full members;
 - (ii) 346 unfinancial members; and
 - (iii) 626 honorary members; and
- (b) in the event that the Fund dissolved on 6 May 2022, based on the Books and Records, other evidence received from Interested Persons to date, there is likely to be:
 - (i) 0 full members;
 - (ii) 364 unfinancial members; and
 - (iii) 640 honorary members.

114. For the purposes of determining the number of members in the preceding paragraph:

- (a) in respect of paragraph 113(a), the Liquidators have assumed:
 - (i) a member is a full member where the member is on the June 2012 Member List. It is possible that a full member is also a honorary member and in such instance, the Liquidators have allocated that member to the full member category;
 - (ii) a member is an unfinancial member where the member is not on the June 2012 Member List or an honorary member; and



(iii) a member is a honorary member where:

(A) the member is recorded as a honorary member in the Books and Records;
or

(B) the member satisfies the honorary membership conditions provided by the relevant Rules (referred to in paragraph 112(b)(i) above). This is in circumstances where:

(I) the Liquidators have been unable to locate any evidence in the Books and Records of the Committee granting honorary members (notwithstanding the Rules contemplating that the Committee is required to grant a member honorary membership once the pre-conditions referred to above have been met); and

(II) the Liquidators consider that the Fund and/or Committee may have adopted an approach whereby, upon a member satisfying the pre-condition relating to time served (i.e. 10 years' continuous service), a member would be automatically granted honorary membership; and

(b) in respect of paragraph 113(b), the Liquidators have assumed:

(i) there are no full members because all contributions from members ceased on 1 July 2012 – well before the assumed dissolution date;

(ii) a member is unfinancial member where the member is not a honorary member; and

(iii) a member is honorary member having regard to the matters referred to in paragraph 114(a)(iii) above.

115. As deposed to in paragraph 113, the changes between the member composition for the two dissolution dates include the reduction of full members from 32 to 0 and a consequential increase in the number of the unfinancial members and honorary members. This is because:

(a) as deposed to at paragraph 110(b) above, the Fund appears to have ceased the majority of its activities (including member contributions) on 1 July 2012 being the date it was placed into "caretaker mode";

(b) as deposed to at paragraph 112(c) above, a member shall be unfinancial if their contributions are over one month in arrears (from the 2000 Rules onwards, and certainly according to the 2005 Rules) and shall not be entitled to benefits under the Scheme;



- (c) there is no requirement for honorary members to make regular contributions to the Fund and it does not appear that they can become an unfinancial member. They can, however, be expelled in various circumstances. However, I have not located any evidence in the Books and Records which indicates that an honorary member was expelled in accordance with any of the Rules; and
- (d) there is no evidence in the Books and Records to suggest that the Committee granted any members honorary membership, however, the Liquidators consider that the Fund and/or Committee may have adopted an approach whereby, upon satisfying the honorary membership conditions provided by the relevant Rules, a member would be automatically granted honorary membership.

116. I consider that adopting a Fund dissolution date of 1 July 2012, being the date the Fund was placed into "caretaker mode", would be the equitable and practical position to adopt because adopting a Fund dissolution date of 6 May 2022 would result in there being nil full members as all members would have ceased making contributions to the Fund. Further, these full members would not have had the opportunity to subsequently become honorary members which requires in certain circumstances, among other things, the member to make a contribution to the Fund. As a consequence, it is possible that those full members as at 1 July 2012 may not receive any distribution from the Fund.

I Potential distribution scenarios

117. I understand that there are a number of methods by which the Proceeds, 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):

- (a) on a pari passu basis (**Distribution Scenario 1**);
- (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 (**Distribution Scenario 2**); and
- (c) on a length of service basis (this appears to have been the general position adopted in 2003, see paragraph 34) (**Distribution Scenario 3**).

118. My understanding about these distribution methods is based on my review of case law and a document entitled "Wind up of Fairfield Maryvale Welfare fund" (**Fairfield Distribution Method**). A copy of this document is at **pages 354 to 355 of Exhibit CMC-1**.

119. This Fairfield Distribution Method outlines the distribution method in respect of a similar fund established by Amcor. However, the exact distribution method and justification for the method is not entirely clear (particularly in the absence of the fund's rules and other books and records of that

fund – which I have not been able to locate). However, some of the features of this distribution method include:

- (a) a distribution to honorary members according to what their accrued entitlement would have been under the fund (calculated by an actuary). I infer that the accrued entitlement is their entitlement to a guaranteed mortality benefit of \$5,000 as identified in the Fairfield Distribution Method;
- (b) a surplus to honorary members based on age, with older members receiving a larger share (calculated by an actuary); and
- (c) a surplus to current members based on days of membership of the fund (calculated by an actuary). The actuary took into account the payment of \$3,000 due to members on retirement after 15 years of service and being at least 50 when calculating the surplus. It is not clear whether the current members received any other entitlement.

120. I outline below the possible outcome of each of the potential distribution scenarios, should the Court direct that:

- (a) the 2005 Rules apply as the set of Rules which govern the Fund or alternatively that the Liquidators would be justified in proceeding on the basis that the 2005 Rules apply as the set of Rules which govern the Fund;
- (b) the Fund dissolved on 1 July 2012 or alternatively, the Liquidators would be justified in proceeding on the basis that the Fund dissolved on 1 July 2012; and
- (c) the Liquidators would be justified in proceeding on the basis that the Member Classes are to be determined in accordance with the directions given in two preceding sub-paragraphs.

1.1 Distribution Scenario 1

121. In Distribution Scenario 1, the Proceeds are distributed to full and honorary members of the Fund as at 1 July 2012 on a pari passu basis. Based on my understanding:

- (a) full members would receive the same amount as honorary members; and
- (b) unfinancial members would not be entitled to receive benefits under the Fund.

122. The process of working out the entitlements under this distribution scenario would be straightforward and inexpensive. This is in circumstances where:

- (a) the Liquidators would identify the full members and honorary members based on the directions given by the Court in respect of the applicable Rules, winding up date and the appropriate level substantiation which should be provided by a member as to their membership class (for example, a statutory declaration setting out the member's details,



the date of commencement and cessation of their service, their last known membership class and contribution, and any other dealings they have had with the Fund) (the Liquidators would also need to undertake this process for Distribution Scenario 2 and Distribution Scenario 3); and

- (b) once the Liquidators have identified the full members and honorary members, the Liquidators would simply calculate the entitlement of each member by dividing the Proceeds (after payment of relevant expenses) between the number of members on a pari passu basis. This method is comparable to the method adopted in a liquidation where it appears that members have an entitlement or outstanding claim.

1.2 Distribution Scenario 2

123. In Distribution Scenario 2, the Proceeds are distributed to full and honorary members of the Fund as at 1 July 2012 on a proportionate basis depending on the entitlement of each member class to receive benefits under the Fund. Based on my understanding:

- (a) full members would receive more than honorary members; and
- (b) unfinancial members would not be entitled to receive benefits under the Fund.

124. The process of working out the entitlements of the different member classes will likely be difficult, expensive and ultimately require the Court's approval. This is in circumstances where:

- (a) it will be difficult to quantify certain non-financial benefits provided under the Fund, for example, both full members and honorary members are entitled to use of the Point Clare Properties. However, sick or convalescing members (but not honorary members) have absolute priority over any other members in the use of the Point Clare Properties, and honorary members may only use the Point Clare Properties and they can only book one month in advance and may not book during NSW school vacation period; and
- (b) noting the difficulty in quantifying certain non-financial benefits provided under the Fund, it will likely be necessary to engage an expert in order to quantify the entitlements of the different member classes and to obtain Court approval. Based on my experience, I estimate that it would cost at least \$100,000 to engage an expert, in addition to the costs of obtaining Court approval.

1.3 Distribution Scenario 3

125. In Distribution Scenario 3, the Proceeds are distributed to full and honorary members of the Fund as at 1 July 2012 on a length of service basis. Based on my understanding:

- (a) the Fund would be distributed between all members on the basis of the member's length of service at Botany Mill; and



- (b) unfinancial members would not be entitled to receive benefits under the Fund.
126. The process of working out the entitlements under this distribution scenario would also likely be difficult, expensive and ultimately require the Court's approval. This is in circumstances where:
- (a) it will be difficult to identify the length of service of the relevant members based on the available Books and Records; and
- (b) assuming that it is possible to identify the length of service of the relevant members, it will likely be necessary to engage an expert in order to quantify the entitlements of the relevant members and to obtain Court approval. Based on my experience, I estimate that it would cost at least \$100,000 to engage an expert, in addition to the costs of obtaining Court approval.
127. Further, in each of the three distribution scenarios above:
- (a) it is possible that members, their dependents or the person who undertakes for the funeral expenses of the deceased member or dependant, may have a claim in respect of the funeral benefits in the event that a member or dependant has died. As deposed to in paragraph 98 above, since 1 July 2012, funeral and mortality benefits (of which no mention was made as to these benefits ceasing in the June 2012 Email) have continued to be paid., Based on the Liquidators' review of the Books and Records, funeral benefits appear to be paid until approximately 2018. Although the Liquidators do not have sufficient evidence to definitively confirm whether all benefits due were paid in the period, the Liquidators have not identified any outstanding claims in respect of funeral benefits in the Books and Records; and.
- (b) members ultimately entitled to a distribution may have died post-1 July 2012. In this instance, it is the Liquidators' view that any distribution ought to be paid to that member's estate because they would have been entitled to a distribution as at the dissolution date.
128. Based on my understanding of the work required to be undertaken in respect of each of the distribution methods, I consider that the most efficient and cost effective scenario to adopt is Distribution Scenario 1. This is because the Liquidators would not need to incur the costs of engaging an actuary to quantify the entitlements of the different member classes and relevant members. As a result, I consider that Distribution Scenario 1 will result in members (as a whole) receiving a greater distribution compared to Distribution Scenario 2 and Distribution Scenario 3. This is the Liquidators' preferred distribution method to adopt.
129. After the Court has given directions about the Rules, the Fund dissolution date and Member Classes, the Liquidators intend to give notice to potential members of the distribution method they propose to adopt and will then seek directions from the Court (with notice to potential members)



that (amongst other matters) they would be justified in adopting and implementing that distribution method.

J Notice and reporting to Interested Persons

130. Prior to the hearing of this application, the Liquidators will provide notice of the application to Interested Persons and invite them to provide their views on and any response to the application. I will file a supplementary affidavit prior to the hearing of the application which includes any responses received.
131. Following the determination of this application, the Liquidators will report to Interested Persons on the Court's directions and identify the potential distribution methods referred to in section I. The report will:
- (a) invite members to submit proofs of debt or claim (including providing an appropriate level substantiation as to their membership class (for example, a statutory declaration setting out, to the extent possible, the member's details, the date of commencement and cessation of their employment, their last known membership class and contributions paid, and any other dealings they have had with the Fund)); and
 - (b) then subsequently invite members who are admitted as financial or honorary members to vote on the proposed distribution methods or alternatively identify alternative methods and explain why those methods are appropriate. The responses from members will be filed as part of the evidence for the Distribution Application.
132. Absent unanimous consent of the members on a distribution method, it is likely that the Distribution Application will be a contested application with the various members putting forward their proposed distribution method.

K Communications with Opal

133. On or about 30 August 2023, the Liquidators' legal representatives, Ashurst, wrote to Opal seeking Opal's views and comments in relation to certain contributions to the Fund, including any information about contributions made to the Fund. A copy of the email from Ashurst to Opal is at **pages 306 to 307 of Confidential Exhibit CMC-2**.
134. On or about 30 August 2023, Ashurst received responses from the Group General Counsel at Opal (**Opal Responses**) noting that:
- (a) it was Amcor who previously made contributions to the Fund. Ownership of the Fund was subsequently transferred from Amcor to Orora and then to Opal;
 - (b) it is unlikely that any information about Amcor's contributions will exist. The records in relation to Amcor's contributions will not have been held beyond 7 years; and



- (c) Amcor/Orora will not have any different information other than what has already been provided to Opal (that is, books and records in the Liquidators' possession).

A copy of the emails from Opal to Ashurst is at **pages 308 to 311 of Confidential Exhibit CMC-2.**

SWORN at Sydney, New South
Wales

Signature of deponent


Aaron Kam

Name of witness

Level 11, 5 Martin Place, Sydney NSW 2000

Address of witness

Solicitor

Capacity of witness

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 known the deponent for at least 12 months.

Signature of witness



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).