

SUPREME COURT OF QUEENSLAND

CITATION: *Wagner v Wagner* [2026] QSC 139

PARTIES: **ROBERT JOHN WAGNER**
(first applicant)
ALAN JOSEPH WAGNER
(second applicant)
VERONICA MARY BLAIR
(third applicant)
CHRISTOPHER MARK WAGNER
(fourth applicant)
v
THOMAS JOHN WAGNER, DAVID GEORGE WAGNER, MICHAEL NEILL WAGNER AND MARTIN PAUL WAGNER AS EXECUTORS OF NEILL JOHN WAGNER, DECEASED
(respondents)

FILE NO: BS 905 of 2025

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 18 June 2026

DELIVERED AT: Brisbane

HEARING DATE: 27 May 2026

JUDGE: Treston J

ORDER:

1. That paragraphs 7 to 15 of the directions made on 25 November 2025 be vacated.
2. By 26 June 2026, the respondents instruct Herron Todd White to prepare full formal valuations in respect of 449-451 South Street, Harristown and 445 Seventeen Mile Road, Helidon, both in the State of Queensland, including but not limited to valuing any mining lease associated with those properties.
3. The respondents are to disclose to the applicants all instructions or information, whether written or oral, to Herron Todd White for the purpose of obtaining the full formal valuations within two business days of giving any such instructions.
4. The respondents are to disclose to the applicants the full formal valuations of Herron Todd White within

two business days of receipt by the respondents or their solicitors.

5. Within seven days of receiving the Herron Todd White valuations, the respondents are to:

- (a) provide a copy of the Herron Todd White valuations to RSM Australia (RSM); and**
- (b) instruct RSM to update the limited scope valuation of 12 December 2025 to a full formal valuation, including but not limited to taking into account the Herron Todd White valuations.**

6. The respondents are to disclose to the applicants all instructions or information, whether written or oral, to RSM for the purpose of obtaining the full formal valuations within two business days of giving any such instructions.

7. I will hear the parties as to costs.

CATCHWORDS: SUCCESSION – FAMILY PROVISION – PROCEDURE – EVIDENCE – where applicants seek provision to be made for them – where a dispute has arisen as to the size of the estate and the adequacy of valuations of land and shareholdings obtained by the executors – where applicants seek to compel the executors to obtain further valuations and ask certain questions concerning their conclusions – whether executors have discharged their obligation to place all relevant information before the court on a family provision application in respect of land valuations – whether valuation complies with orders made in the proceeding in respect of the shareholding valuations – further valuations ordered

Uniform Civil Procedure Rules 1999 (Qld) r 5

John de Groot and Bruce Nickel, *Family Provision in Australia*, (LexisNexis Butterworths, 7th ed)

Dijkhuijs (formerly Coney) v Barclay (1988) 13 NSWLR 639

Re Hall (1959) SRNSW 218

Re Newell (1932) 49 WN(NSW) 181

Re Pope (1975) 11 SASCR 571

Vasiljev v Public Trustee [1974] NSWLR 497

Warren v McKnight (1996) 40 NSWLR390

COUNSEL: C Brewer for the applicants
L Harrison KC with S Carius for the respondents

SOLICITORS: Cornford-Scott Lawyers for the applicants
Wonderley and Hall for the respondents

- [1] This application concerns the scope of the duty of an executor to place all relevant evidence before the court in the context of a family provision application.

Background to the dispute

- [2] The deceased died on 12 June 2024. The deceased was survived by 11 children, all adults, four of whom were appointed as executors of the estate and four of whom are applicants for further provision out of the estate. The deceased is also survived by his wife, Mary.
- [3] On 27 March 2025, the Chief Justice made orders, by consent, including that by 30 April 2025, the respondents were to file and serve an affidavit containing or exhibiting:

“ ...

- (b) an estimate, formed from the evidence available to the respondents of the assets, liabilities and value of the estate of the deceased as at:
 - (i) the date of death; and
 - (ii) the date of the respondents’ initial affidavit.”

The matter was placed on the Wills and Estates List.

- [4] On 18 June 2025, Justice Callaghan made orders, by consent, that the respondents provide to the applicants’ solicitor a copy of their instructions and brief to experts engaged by the respondents for the purpose of valuing estate assets (subject to any confidentiality protocol being agreed). That order was vacated on 15 July 2025 and replaced with a regime for the agreement of a confidentiality protocol and disclosure of financial information to a variety of parties, including RSM Australia “ ... to enable RSM Australia to value the deceased’s shareholdings in JH Wagner & Sons Pty Ltd, F Williams & Co Pty Ltd, and Wrights Helidon Quarry Pty Ltd ...”.¹
- [5] On 11 September 2025, Justice Copley made orders, by consent, that the respondents were to “...instruct RSM Australia to prepare a valuation of the deceased’s shareholding in the Companies...” (**the September 2025 Orders**).
- [6] On 25 November 2025, I made an order that on or before 10 December 2025 the respondents were to:
- (a) disclose to the applicants the valuations carried out by RSM Australia in respect of the deceased’s shareholding in the Companies, subject to certain confidentiality orders which had been made on 11 September 2025;
 - (b) disclose to the applicants a copy of the valuations of Herron Todd White in respect of 449-451 South Street, Harristown, Queensland and of 445 Seventeen Mile Road, Helidon, Queensland, again subject to the confidentiality orders made on 11 September 2025; and

¹ JH Wagner & Sons Pty Ltd, F Williams & Co Pty Ltd, and Wrights Helidon Quarry Pty Ltd hereafter the **Companies**.

- (c) file and serve an affidavit containing an updated estimate of the assets, liabilities and value of the estate as at the deceased's date of death and the date of the respondents' initial affidavit in the family provision application (**the November 2025 Orders**).
- [7] A variety of further orders were also made, including a direction that the parties attend, participate in and act reasonably and genuinely in a mediation to be conducted on or before 27 March 2026.
- [8] The reports of RSM (**the RSM Report**) and Herron Todd White (**the HTW Valuations**) were disclosed on their receipt by the respondents' solicitor on 12 December 2025. An affidavit deposing to the estate's assets, liabilities and value was also provided, both at the date of death and at the date of the affidavit.
- [9] Herron Todd White assessed the land at 449-451 South Street, Harristown as having a value of \$2.65 million and the land at 445 Seventeen Mile Road, Helidon at \$300,000.
- [10] As to the deceased's shares in JH Wagner & Sons Pty Ltd, the five A-class shares were valued by RSM at some \$6.733 million at the date of death and \$5.766 million at the date of the report. The five C-class shares were said to have the same values at the same dates. The value of the shareholding in Wrights Helidon Quarry Pty Ltd (108 ordinary shares) and F. Williams & Co. Pty Ltd (2 ordinary shares), that RSM was also engaged to value was negligible in comparison, both at the time of death and the report. In total therefore, some \$13.4 million of shares at date of death.
- [11] The applicants raise a number of complaints about both valuations. The applicants refused to participate in the mediation by the date contained in the November 2025 Orders, contending that they did not have a clear picture as to the true value of the estate. The executors submit that there is no reason why the matter should not proceed to mediation as contemplated by the November 2025 Orders.
- [12] At the heart of the dispute is a complaint by the applicants about the adequacy of the expert reports disclosed by the executors. Broadly:
- (a) in relation to the Land Valuations, the applicants contend that the desktop assessments carried out by Herron Todd White do not meet the requirements of a valuation for the purposes of the directions which were made, and ask that the executors be instructed to commission a full, formal valuation; and
 - (b) in relation to the Share Valuations, the applicants raise a variety of issues in relation to the valuation of the shares and contend that RSM should be directed to address these issues. Those issues include the effect on the valuation of:
 - (i) the use of differing valuation methods at the date of death and the date of the valuation;
 - (ii) capital gains tax;
 - (iii) discounts applied for lack of control and/or lack of marketability; and
 - (iv) the provision of asserted relevant documentation.
- The applicants seek a series of questions to be answered by RSM to address those issues.

An executor's duty to put evidence before the court as to the value of the estate

[13] A personal representative has a number of duties in the context of family provision applications. They include a duty not to distribute assets after there has been notice of an application,² a duty to uphold the will or distribution on intestacy, and a duty to provide the court with all necessary information.³ Details of all necessary information includes details of the assets and liabilities of the estate.

[14] In *Vasiljev v Public Trustee*,⁴ Hutley JA of the New South Wales Court of Appeal said:

“These rules put the executor in a position of great responsibility, as he is the only defender of the will. In *In the Will of WF Lanfear (Deceased)*, Williams J, speaking with the concurrence of Nicholas CJ in Eq., said:

“In an ordinary case, specially where the estate is a small one, it is the duty of the executors either to compromise the claim, or to contest it and seek to uphold the provisions of the will. For that purpose **they should place all the relevant evidence before the Court relating, not only to the case generally, but to any particular circumstances which the Court should take into consideration** relating to any particular gift in the will ...”

(my emphasis) (footnotes omitted)

[15] Hutley JA's view was expressed with the concurrence of Hardie JA and Reynolds JA.

[16] In *Dijkhuijs (formerly Coney) v Barclay*,⁵ Kirby P described the executor's duty as follows:

“When the matter returns to be tried, it would be **desirable that the normal obligation of an executor should be observed as was stated by Williams J in *In the Will of W F Lanfear (Deceased)* (1940) 57 WN (NSW) 181 at 183 and as restated by Hutley JA in *Vasiljev* (at 503). It is the duty of an executor to place all relevant evidence before the court. If there is evidence in the possession of the executor relevant, whether positively or negatively, to the “factors which warrant the making of the application” under the Act, I see nothing in the procedure envisaged by s 9(1) of the Act which will relieve the executor of the duty to provide that evidence to the court.** The duty of the court to have regard to “all the circumstances” of the case signifies the potential width of the court's inquiry. Far from warranting the course which was adopted by the executor at the trial here (which forced the appellant to read the bulk of the executor's affidavits) I believe that the terms of the subsection **reinforce the duty**

² Although there are notable exceptions to that duty, including where there can be no doubt that debts can be paid, or where there may be consent of parties affected by an interim distribution.

³ *Re Hall* (1959) 59 SR (NSW) 219, 226.

⁴ [1974] 2 NSWLR 497, 503 (Hutley JA, Hardie and Reynolds JJA agreeing) citing *In the Will of WF Lanfear (Deceased)* (1940) 57 WN (NSW) 181 (Williams J).

⁵ (1988) 13 NSWLR 639 (Kirby P).

of the executor to “place before the court ... evidence which might have any bearing on any issues ... raised by the applicant's evidence or which might arise at the hearing”: cf *Re S J Hall (Deceased)* (1958) 59 SR (NSW) 219 at 226; 76 WN (NSW) 288 at 293. The object of the Act can only be attained if the determination required by s 9(1), and any subsequent determination of an order in favour of an eligible person, is made upon relevant evidence. The executor, defending the will, will often be in the best position to provide that evidence. It has long been held to be his duty to do so.” (my emphasis)

[17] The duty to place all relevant evidence before the court is part of the general duty to assist the court,⁶ which includes providing information on affidavit as to the assets and liabilities of the estate. That is because the true value of the estate is a matter of fundamental importance in every family provision application.⁷

[18] Pursuant to the previous Practice Direction of this Court, No. 8 of 2001 at para [11], the personal representative of the estate had an obligation to file and serve an affidavit which included a list of estate assets and liabilities, including estimates of value, specifying the date of the estimation or valuation and material relevant to all matters in issue on the application. Pursuant to the Amended Practice Direction No. 14 of 2023, at para [41]:

“Unless the Court orders otherwise, or reasonable notice is given that strict proof is necessary, parties may agree to give evidence in a family provision application as follows:

- (a) a kerbside appraisal by a real estate agent of any real property;
- (b) an estimate of the value, or a monetary amount, for the non-monetary assets of the estate other than real estate; ...”

[19] Recognising that this proceeding is one by its value, nature and complexity warranted judicial supervision, the parties caused it to be placed on the Wills and Estate List shortly after it was commenced. The ends sought by placement on the List, in accordance with para [4] of Amended Practice Direction No. 14 of 2023, include to:

- “(a) ensure that, at the trial, the parties focus on matters genuinely in issue;
- (b) minimise time spent at trial proving matters not genuinely in issue;
- (c) ensure that evidence at trial is presented as efficiently as is consistent with a fair hearing of the case;
- (d) ensure that the prospects of settlement, whether of the whole proceeding, or some issue or issues in it, have been fully explored before dates are allocated for the trial of the matter;

⁶ *Re Newell* (1932) 49 WN (NSW) 181 (Long Innes J); *Re Pope* (1975) 11 SASCR 571 (Bray CJ).

⁷ John de Groot and Bruce Nickel, *Family Provision in Australia*, (LexisNexis Butterworths, 7th ed), 6.11.

- (e) ensure that a case is properly ready before trial dates are allocated to it;
- (f) minimise the risk of an adjournment of the trial;
- (g) to the extent consistent with a just hearing, ensure that the cost of litigation is reduced; and
- (h) ensure that the parties do not use the resources of an estate in a manner that is out of proportion to the size of the estate or any provision that may be made in a family provision proceeding.”

- [20] In the context of different estates therefore, it can fairly be supposed that the proper discharge of the executor’s duty to place all relevant evidence before the court as to the details and value of the estate’s assets and liabilities might be achieved differently. Much will depend upon the size and nature of the estate. At one end of the spectrum, a court might be confronted with an estate comprising a family home and little else, in which case a kerbside appraisal might suffice. At the other end there may be a complicated set of corporate, partnership or trust arrangements where estimates or appraisals are not likely to reflect the estate’s true value. In between, will lie a vast sea of different factual circumstances. There is therefore no one prescription of what will be required of a personal representative in every case to inform the court properly as to the details and value of the estate’s assets and liabilities. But it remains the case as identified by Kirby P in *Dijkhuijs*, that it is the duty of the executor to do so.
- [21] That does not mean that it is an executor’s obligation to establish the case for those who challenge the will. Necessarily, an executor takes an adversarial role against the applicants so as to uphold the will or intestacy and support the interests of the beneficiaries.⁸
- [22] Suffice to say that where valuations are required, agreed, or ordered, the executors are obliged to obtain an independent valuation based on an impartial and accurate assessment of the available information. That does not mean that the executors are obliged to put every possible argument or alternative scenario to the valuer. The executors are not obliged to explore every assumption that may or may not be made out at a trial. Equally, however, they are not at liberty to skew the outcome by the withholding of relevant and accurate information, or by limiting the instructions in such a way that the valuation obtained may not fairly represent the true value of the estate.

The executor’s resistance to the application for further information

- [23] The executors do not dispute that they are required to put relevant evidence before the Court, including as to the value of the estate. They contend however that the objective facts and the procedural history demonstrate that the executors have put that evidence before the Court in a transparent, impartial and orthodox manner. They contend that if the applicants are dissatisfied with the valuation evidence they may either:
- (a) take objection to all parts of the reports which the executors rely upon;

⁸ *Warren v McKnight* (1996) 40 NSWLR 390, 395–396.

- (b) cross-examine the experts on the matters to be challenged;
 - (c) submit their further questions to the current experts and commission a supplementary report; or
 - (d) brief their own expert to prepare expert reports in response.
- [24] The executors accept that the process of cross-examining the expert on matters to be challenged or taking objection to all or part of their reports, are matters that can only be attended to at trial. The submissions that rely upon a course of conduct available to the applicants only at a trial are unpersuasive so early in this proceeding. Leaving such issues to a trial is inconsistent with the philosophy espoused in r 5 of the *Uniform Civil Procedure Rules 1999* (Qld) (**UCPR**) to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense. It is also inconsistent with parties being properly appraised as to the true value of the estate for the purpose of promoting resolution by mediation or negotiation as promoted by Amended Practice Direction No. 14 of 2023. The arguments in [23](a) and (b) above are not therefore any defence to this application.
- [25] There is no evidence before me that the applicants would not be in a position to brief their own expert to prepare a report in response nor to ask questions of the existing expert for the purpose of obtaining a supplementary report. If that is the appropriate course, the court ought to consider whether the burden of making those further inquiries (and bearing the cost associated with them), should properly fall upon the applicants, or whether the scope of the executors' duty extends to making those additional inquiries.
- [26] For the reasons which follow, I am not satisfied that the valuations obtained by the executors are ones which properly discharge the executors' duty to place all relevant evidence before the court in a way which is impartial and accurate.
- [27] It follows that I do not have to draw any conclusions as to whether the applicants ought to obtain their own expert reports or ask questions of the respondents' expert.

The land valuation complaint

- [28] Both land value assessments are described as an "Indicative Desktop Assessment".
- [29] The executive summary pertaining to each property records that the purpose of the assessment is to provide an indicative assessment with no physical inspection of the subject property and based on the information provided by the instructing party, being the executors of the deceased's estate.
- [30] The basis of the assessment of the Harristown property is described in the Heron Todd White report as follow:

"Market Value "As Is" on a stand-alone basis with allowances made for the property to be used without the benefit of adjoining property.

Specific instructions have been provided to undertake an Indicative Desktop Assessment of the subject property by relying on specified documents and information. This Indicative Desktop Assessment does not involve a physical inspection of the subject property. In this regard

the Instructing Party accepts the commercial risks associated with the Indicative Desktop Assessment.” (my underlining)

[31] Similarly, the basis of the assessment of the Helidon property is:

“Indicative Assessment “As Is” excluding the mining lease/quarry permit and any attendant liability for rehabilitation.

Specific instructions have been provided to undertake an Indicative Desktop Assessment of the subject property by relying on specified documents and information. This Indicative Desktop Assessment does not involve a physical inspection of the subject property. In this regard the Instructing Party accepts the commercial risks associated with the Indicative Desktop Assessment.” (my underlining)

[32] Both desktop assessments go on to record:

“The Instructing Party should therefore be aware that the desktop process carries with it risks which entail a degree of likely variation greater than would be expected to be produced by a valuation that came about as a result of a physical inspection. The methodology adopted and undertaking this assessment carries with it risks including:

- (a) the risk of inaccuracy of information contained in a desktop assessment as compared to a valuation.
- (b) the fact that the valuer cannot verify the accuracy of information contained in a desktop assessment as would be the case in a valuation; and
- (c) the fact that a desktop assessment will have significant limitations when compared to a valuation, including the potential for a greater degree of variation in the resulting indicative assessment of value.” (my underlining)

[33] Attached to each valuation is a copy of the letter of instructions from the estate’s solicitors to the valuer. Neither letter instructs that the valuation ought to be carried out as an “indicative desktop assessment” without the benefit of a physical inspection. Furthermore, the letter in respect of the Helidon property does not include any instruction to exclude the mining lease/quarry permit. Both letters of instruction in fact request “an independent valuation”.

[34] The executors offered no explanation as to how the desktop assessments came to be prepared on such a limited basis when there was no such limitation contained in their written instructions.

[35] When the solicitors for the applicants questioned why the reports were prepared on that basis, they were met with this response:

“You have also engaged in some further commentary about the valuation reports prepared by HTW (the **HTW reports**). We do not accept any criticism of the HTW Reports. HTW is an experienced valuer. There is no contradictory expert evidence to call into question

the correctness of the valuation. We also note that the valuations are far more rigorous than the kerbside appraisals contemplated by the Practice Direction (Amended Practice Direction no. 14 of 2023)."

- [36] Given the valuer's reference to the fact that "specific instructions... [were] provided to undertake an Indicative Desktop Assessment..." when no such instruction appears in the letter of instructions attached to each report, it can fairly be inferred that some other instructions must have been provided by some other means.
- [37] The executor's response suggesting that the desktop assessment was more rigorous than the kerbside valuation referred to in para [41] of the Amended Practice Direction misses the point. The kerbside valuation is placed in the context where the parties so agree, or the court does not otherwise order. It will not suffice where an order is made, or if a party is placed on reasonable notice that strict proof is required.
- [38] It can be seen from the progress of the orders made, that there was a substantial dispute about the value of the estate, particularly the Companies. There were orders for the executors to provide affidavits estimating the value of the estate on 27 March, 15 July, 11 September and 25 November 2025. There were orders requiring the delivery up of instructions and the experts' brief on 18 June and 11 September 2025. There were orders requiring the provision of information to RSM Australia and their instruction (subject to the agreement of a confidentiality protocol) from 15 July 2025, and an order on 11 September 2025 for a valuation of the Companies (once the confidential protocol had been agreed). I accept that there was not a specific order for a valuation of the land. Nevertheless, part of what informed the value of those Companies was the value of the land which they owned, and the respondents do not contend to the contrary. It follows that for the shareholding to be accurately valued, the land must be so too.
- [39] Nothing in the material suggests that anything other than a full valuation was to be carried out of the land.
- [40] The risks of inaccuracy in a desktop assessment as highlighted by the valuers are unacceptable ones in the context of this estate. Indeed, that valuer's description of the risk of inaccuracy of information contained in a desktop assessment "as compared to a valuation" highlights that the former is not a proper substitute for the latter, and is certainly not so in this case.
- [41] Further factors lead me to the conclusion that the executors have not discharged their obligation as described in *Dijkhuijs*. This is not a small estate, which demands the mincing of cost at the expense of accuracy. It is a contested application brought by four applicants for provision in a large estate (approximately \$13.5 million at the date of death⁹). Against the applicants are a number of beneficiaries and their interests depend too on an accurate valuation of the estate. Furthermore, the value of the land affects the value of the shares for which a valuation was ordered to be carried out by RSM. Finally, the history of the orders made thus far in the proceeding demonstrate the real need for the estimates of value to be accurate and reliable. It follows that there needs to be a valuation (not a desktop assessment) of both pieces of land, which

⁹ \$13.5 million in shares. In addition, an unpaid present entitlement of approximately \$900,000 plus cash of approx. \$900,000.00 and other as yet unresolved items including 5 motor vehicles, 6 trailers and a forklift.

includes a physical inspection, and that is properly unconstrained in taking into account all and any other factors relevant to a proper valuation, including the effect of the mining lease, if any. There will be orders to that effect.

- [42] That is not to say that in every case a full valuation will be required. But here, the desktop assessment values the two pieces of land at almost \$3 million. According to the reports, those assessments come with “significant limitations” when compared to a valuation. That land valuation then affects the valuation of the shares. I cannot conclude what the flow on effect to the overall value of the estate is of land valuations with “significant limitations”. Suffice to say that in circumstances where the value of the land itself is considerable, and the consequence of the true value on the share value is real, a valuation embedded with “significant limitations” is not a proper discharge of the executors’ duty to provide information which is accurate.
- [43] It follows that it does not fall to me to consider whether the applicants ought to brief their own expert to prepare a report in response or to ask questions of the existing expert for the purpose of obtaining a supplementary report.

The share valuation complaint

- [44] As set out above, on 11 September 2025 this Court made an order, by consent, that the respondents were to “...instruct RSM Australia to prepare a valuation of the deceased’s shareholdings in the Companies...” at the date of death and the date of valuation. That reflected the existing engagement with RSM by the executors for valuing the Companies.
- [45] In early July 2025, the applicants were provided with the executors’ letter of instruction to RSM. That letter of instruction sought a list of material that RSM would ordinarily require to value company shares.
- [46] On 22 July 2025, the respondents provided a list of documents that they had been informed that RSM would require from the Companies, subject to a confidentiality protocol being agreed. Most of those documents were apparently not within the possession or control of the executors as they were the books and records of the Companies, separately represented. Discussion about a confidentiality regime ensued. A revised confidentiality protocol was proposed by the applicants on 22 August 2025 and ultimately agreed. The documents contained in schedule one to that protocol were provided by the Companies.
- [47] When the solicitors for the executor provided written instructions to RSM on 22 May 2025 they advised:

“Pursuant to the Practice Direction governing Family Provision Applications in the Supreme Court of Queensland, the parties have consented to the making of a Directions Order, pursuant to which our clients, as Executors of the estate are required to provide evidence as to the value of the deceased’s shareholding in the above entities.

...

We confirm our clients request for you to provide an independent valuation report which will identify: -

1. The value of the deceased's shareholding in each of the [the Companies] as at the date of his death, namely 12 June 2024;
2. The value of the deceased's shareholding in the [the Companies] at the present day (the valuation date);
3. The standard of value will be market value;
4. The basis of the values will be as going concerns;
5. The purpose of your valuation will be to identify the value of the deceased's shareholdings."

[48] On 28 July 2025, RSM responded to the solicitors for the executor providing their engagement letter to undertake "Limited Scope Valuation services" to the executors. The letter records:

"You have requested RSM to assist be [sic] preparing a Limited Scope Valuation of the Deceased's shareholding in [the Companies]". (my underlining)

[49] Again, there was in fact no such request in the executors' letter of 22 May 2025 that the valuation be a Limited Scope Valuation.

[50] According to Appendix 3 to the RSM Report a "Limited Scope Valuation engagement" is:

"... an Engagement or Assignment to perform a Valuation and provide a Valuation Report where the scope of works is limited or restricted. The scope of work is limited or restricted where the Member is not free... to employ the Valuation Approaches, Valuation Methods and Valuation Procedures that a reasonable and informed third-party would perform taking into consideration all the specific facts and circumstances of the Engagement or Assignment available to the Member at that time, and it is reasonable to expect that the effect of the limitation or restriction on the estimate of value is material. A limitation or restriction may be present and known at the outset of the Engagement or Assignment or may arise or become known during the course of a Valuation Engagement. A Limited Scope Valuation Engagement may also be referred to as "restricted-scope valuation engagement" or an "indicative valuation engagement". (my underlining)

[51] In contrast, a "Valuation Engagement" is described as:

" ... an Engagement or Assignment to perform a Valuation and provide a Valuation Report where the Member is free to employ the Valuation Approaches, Valuation Methods, and Valuation Procedures that a reasonable and informed third party would perform taking into consideration all the specific facts and circumstances of the Engagement or Assignment available to the Member at that time.

Where a Member has entered into a Valuation Engagement but during the course of performing the Valuation Engagement the Member becomes aware of a limitation or restriction that, if it had been known at the time the Engagement or Assignment was entered into, would

have made the Engagement or Assignment a Limited Scope Valuation Engagement then the Valuation Engagement will become a Limited Scope Valuation Engagement.” (my underlining)

[52] When complaints were made by the applicants about the RSM Report (complaints, that I accept, were wide ranging and not directed to this issue), the executors’ solicitor responded on 26 February 2026 by saying:

“We note that:

1. Mr Lethbridge of RSM Australia is an eminently qualified and experienced expert.
2. The Executors retained RSM Australia to provide an expert valuation of the Deceased’s shareholdings.
3. RSM Australia was briefed with all requested documents as provided by [the Companies] for the purpose of preparing the RSM Report, subject to the confidentiality protocol to which all parties, including your clients, agreed.
4. The Executors, quite properly, left it to the expert to perform the valuation task, conducting such investigations and adopting such methodologies as the expert considered appropriate.
5. The Executors intend to rely upon the RSM Report has [sic] part of their evidence at trial.

The report speaks for itself. The Executors should not be put to the expense of engaging in commentary about it and are not required to do so. Your clients will have the opportunity to cross-examine the expert on his report at trial if they so wish. Your clients will also have the opportunity to make submissions about the report at trial and the Executors will respond in the ordinary way...”

[53] Like the HTW Valuations, there seems to be a difference between that which RSM was instructed in writing to carry out, being “an independent valuation report” and that which was recorded as being instructed to carry out, and in fact carried out, being a “Limited Scope Valuation”. Again, there is no evidence before me as to how RSM came to prepare something different to that which was requested in the written instructions.

[54] But perhaps more importantly in respect of the RSM reports, it does not seem to me that the “Limited Scope Valuation” properly accords with order 5 of the September 2025 Orders, “...to prepare a valuation of the deceased’s shareholdings in the Companies”. RSM describe that, with a “Limited Scope Valuation” it is reasonable to expect that the effect of the limitation on the estimate of value is “material”. That suggests that the limited scope valuation is not one in which the court can have confidence that the valuation is accurate and reliable.

[55] If there were some particular hurdles to performing a valuation in accordance with the September 2025 Orders which meant that a “Limited Scope Valuation” needed to be carried out by RSM, then the executors could have brought that matter to the

attention of the Court for directions. Those directions could have addressed the limitations on the valuation that were to be carried out, and explanations provided as to why, including information about the differential costs between a valuation and a limited scope valuation. That did not occur.

- [56] But the position is not as identified by the solicitors for the executors at para [52] above, that the expert was merely to perform the valuation task as the expert considered appropriate. While of course the expert must be independent and carry out their task independently, the expert's report must also comply with the Court's order. I am not satisfied that this expert report so complies with the order made. In saying this, I make no criticism of RSM whatsoever. I cannot resolve on the facts before me how they came to perform a limited scope valuation, but that is not what was ordered.
- [57] The difference between, on one hand, a full valuation, and on the other, a "Limited Scope Valuation" is not a distinction without a difference. The substantial caveats on the confidence that can be reposed in the limited scope valuation, along with the recognition by RSM that they were not free to employ the "Valuation Approaches, Valuation Methods and Valuation Procedures that a reasonable and informed third-party would perform" as would be the case in a full valuation, and that the effect of that on the outcome is "material", is enough to conclude that the limited scope valuation does not satisfy the order made.
- [58] In this application, the applicants sought to explore this issue by asking the executor to ask RSM a series of questions, being:
- (a) for what reason is the valuation a limited scope valuation?
 - (b) what limitation or restriction was RSM aware of that made the valuation a limited scope valuation?
 - (c) what information would be required for the valuation to not be a limited scope valuation?
- [59] It is unnecessary for me to order that those questions be answered. The executors were ordered to obtain a valuation, not a limited scope valuation, and they ought to do so unless there is good reason to be relieved from the terms of order, or to have them varied. No such application was made at any time, including at the hearing of this application.
- [60] There will be an order for the executors to obtain a valuation in accordance with the September 2025 Orders. It was further sought by the applicants' that RSM be provided a copy of updated land valuations once they are prepared. It follows from my conclusion that full land valuations are necessary, that RSM will have to reassess the value of the shares based on the full valuations of the relevant properties.
- [61] The balance of the applicants' complaints are much more granular, and in my view do not fall to be decided in the absence of proper valuations. It is therefore unnecessary to explore further the scope of the executors' duty to answer the many questions put to them by the applicants.
- [62] The applicants have, in substance, been successful, however the orders which I make are not precisely that which the applicants' sought. I will therefore hear the parties as to costs.