

SUPREME COURT OF QUEENSLAND

CITATION: *Blue Dog Group Pty Ltd v Credit Suisse Equities (Australia) Pty Limited & Ors* [2026] QSC 230

PARTIES: **BLUE DOG GROUP PTY LTD (ACN 099 973 458)**
(Plaintiff)
v
CREDIT SUISSE EQUITIES (AUSTRALIA) PTY LIMITED (ACN 068 232 708)
(First Defendant)
ARGONAUT SECURITIES PTY LIMITED (ACN 108 330 650)
(Second Defendant)
EUROZ HARTLEYS LIMITED (ACN 104 195 057)
(Third Defendant)
MR MATTHEW WIECHERT
(Fourth Defendant)
MR SOREN AANDAHL
(Fifth Defendant)
OASIS INVESTMENTS II MASTER FUND LTD
(Sixth Defendant)
OASIS MANAGEMENT COMPANY LTD
(Seventh Defendant)
MR SETH FISCHER
(Eighth Defendant)

FILE NO/S: BS No 2951 of 2024

DIVISION: Trial Division

PROCEEDING: Interlocutory Application

ORIGINATING COURT: Brisbane

DELIVERED ON: 29 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 18 August 2026

JUDGE: Williams J

ORDER: **1. Pursuant to rule 670 of the UCPR, the plaintiff provide security for the costs of completion of disclosure in the following sums by way of payment into court, or such other form of security satisfactory to the Registrar, within 14 days of this order:**

- (a) in respect of the first defendant, \$200,000;
 - (b) in respect of the second defendant, \$90,000;
 - (c) in respect of the third defendant, \$90,000;
 - (d) in respect of the fifth defendant, \$90,000;
 - (e) in respect of the sixth and seventh defendants, \$90,000; and
 - (f) in respect of the eighth defendant, \$70,000.
2. Pursuant to rule 674 of the UCPR, the proceeding be stayed insofar as it concerns steps taken by the plaintiff as against the first defendant, the second defendant, the third defendant, the fifth defendant, the sixth and seventh defendants, and the eighth defendant respectively until such time as the plaintiff complies with order 1(a)-(f) in respect of the relevant defendants.
 3. The parties are to prepare an agreed order in respect of disclosure, to be provided to the Associate to Williams J by 8 October 2026.
 4. The parties are to liaise and agree orders as to costs, to be provided to the Associate to Williams J by 8 October 2026. If the parties cannot agree they are to agree directions for brief further submissions to be filed and served in respect of costs, to be provided to the Associate to Williams J by 8 October 2026.

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – SECURITY FOR COSTS – FACTORS RELEVANT TO EXERCISE OF DISCRETION – PLAINTIFF’S OR APPLICANT’S IMPECUNIOSITY – GENERALLY – where the plaintiff commenced representative proceedings against the defendants – where the first, second, third, fifth, sixth, seventh and eighth defendants seek security for costs from the plaintiff for up to and including the completion of disclosure – where it is submitted that the plaintiff will not be able to pay the defendants’ costs if ordered to pay them – where amongst other objective circumstances, the plaintiff did not provide financial information – whether the court should exercise its discretion to order security for costs against the plaintiff

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – SECURITY FOR COSTS – FACTORS RELEVANT TO EXERCISE OF DISCRETION – OTHER PARTICULAR CASES AND MATTERS – where the fifth and eighth defendants have both claimed privilege against self-incrimination in respect of their pleading and disclosure obligations – whether a claim against self-

incrimination should disentitle the fifth and eighth defendants to seek security, or reduce the security amount

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – SECURITY FOR COSTS – FACTORS RELEVANT TO EXERCISE OF DISCRETION – JUSTICE OF CASE – where the plaintiff submits that the proceedings have a distinct public interest element and that security should be reduced or avoided – where the prohibition on inside information and insider trading is recognised as being in the interest of the public – where the outcome of the plaintiff's proceeding is to obtain monetary relief – whether it is appropriate in the present proceedings to reduce or avoid security ordered against the plaintiff

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – SECURITY FOR COSTS – AMOUNT AND NATURE OF SECURITY – where the costs to be paid to each defendant differs due to differences in positions and evidence – where the costs are to be considered in respect of costs already incurred, and estimated future costs – where the plaintiff submits that the security amount sought by each defendant is too high – whether costs sought from each defendant should be awarded in a reduced amount

Civil Proceedings Act 2011 (Qld) s 1317E

Corporations Act 2001 (Cth) s 760A, s 1043A, s 1317HA, s 1335

Uniform Civil Procedure Rules 1999 (Qld) r 5, r 670, r 671, r 672

Adeva Home Solutions Pty Ltd v Queensland Motorways Management Pty Ltd (2021) 9 QR 141, cited

ADLU Pty Ltd & Anor v Ertch (Queensland) Pty Ltd & Anor [2025] QSC 328, cited

Australian Securities & Investments Commission v ABC Fund Managers Ltd (No 2) (2001) 39 ACSR 443, cited

Base 1 Projects Pty Ltd v Islamic College of Brisbane Ltd [2012] QCA 114, cited

Bahr v Nicholay (1987) 163 CLR 490, cited

BCEG International (Australia) Pty Ltd v Xiao [2021] NSWSC 1027, cited

Chong v CC Containers Pty Ltd (2015) 49 VR 402, cited

Clayton Utz v Dale (2015) 47 VR 48, cited

DGR Global Ltd v P.T. Limited [2025] QCA 122, cited

Jones v Dunkel (1959) 101 CLR 298, cited

Monto Coal 2 Pty Ltd v Sanrus Pty Ltd (2019) 3 Qd R 143, cited

Pappas v New World Oil Developments (1993) 43 FCR 594, cited

Re Skytraders Pty Ltd [2024] NSWSC 984, cited

SLB Investments Queensland Pty Ltd (in liq) v Queensland

Motorways Management Pty Ltd [2026] QSC 81, considered *Valeba Pty Ltd v Mulpha Sanctuary Cove (Developments) Pty Ltd* [2012] QSC 286, cited

COUNSEL: P Dunning KC, with P Ahern KC for the plaintiff
I Ahmed SC, with O Cook for the first defendant
A Nicholas for the second defendant
K M Boomer for the third defendant
K Dyon for the fifth defendant
G Beacham KC, with W Thompson for the sixth and seventh defendants
M O Jones KC, with N Dudley for the eighth defendant

SOLICITORS: Dr William Wild Legal for the plaintiff
Mallesons for the first defendant
Barry Nilsson for the second defendant
Colin Biggers & Paisley for the third defendant
Jones Day for the fifth defendant
Wotton Kearney for the sixth and seventh defendants
Buchanan Rees Dispute Lawyers for the eighth defendant

- [1] The first, second, third, fifth, sixth, seventh and eighth defendants seek orders that the plaintiff provide security for costs up to and including the completion of disclosure. Security is claimed in respect of past costs between 5 May 2026 and early August 2026 in relation to the pleadings and future costs in respect of disclosure (**Second Tranche**).
- [2] The proceeding is a representative proceeding and is managed on the Class Actions List pursuant to Practice Direction 8 of 2023. The parties provided competing proposed draft orders and filed affidavits in support of their positions in the proposed draft orders. Oral submissions were also made during a hearing that lasted a full day.
- [3] The plaintiff does not contest:
 - (a) that a threshold requirement in r 671 of the *Uniform Civil Procedure Rules 1999* (Qld) (**UCPR**) has been met; and
 - (b) the form of security by a payment into Court (if security is ordered).
- [4] The Court still needs to be satisfied that at least one of the threshold requirements in r 671 UCPR has been met to give rise to the Court's discretion to order the plaintiff to provide security in the amount the court considers appropriate.
- [5] What is in issue is:
 - (a) whether the Court's discretion should be exercised to order security for costs in respect of each of the defendants?¹

¹ It is not necessary to consider the fourth defendant. All references in these reasons to the defendants, exclude a reference to the fourth defendant.

- (b) if so, what amount of security should be ordered to be provided in respect of each of the defendants?
- [6] It is also contentious as to whether the first issue is in dispute in respect of all of the defendants.
- (a) In respect of the first, second, third, sixth and seventh defendants the plaintiff does not contest that it is open for the Court to be satisfied that the discretion should be exercised to order security, and the issue in dispute is the quantum of the security to be provided.
 - (b) In respect of the fifth and eighth defendants there is an additional consideration as they are both individuals who have claimed the privilege against self-incrimination. Orders have been made dispensing with the need for them to plead to identified paragraphs of the statement of claim and from disclosure in respect of documents the subject of the claim for privilege. In these circumstances, there is an issue as to whether only quantum is in issue or whether both the exercise of the discretion and quantum are in issue in respect of the fifth and eighth defendants.
- [7] Before turning to consider the issues and whether one of the requirements in r 671 has been satisfied, the nature of the proceeding will be briefly considered.

What is the class action about?

- [8] The proceeding is brought by the plaintiff in a representative capacity pursuant to Part 13A of the *Civil Proceedings Act 2011* (Qld) pleading claims pursuant to s 1317E and s 1317HA of the *Corporations Act 2001* (Cth) (**Corporations Act**) for breaches of s 1043A of the Corporations Act. The breaches alleged are insider trading on or around 28 April 2018.
- [9] The plaintiff was at all material times a shareholder of Blue Sky Alternative Investments Ltd (**Blue Sky**), which was a publicly listed company on the Australian Stock Exchange until 31 August 2021.
- [10] It is alleged that Blue Sky shares traded at:
- (a) \$13.20 to \$11.33 per share between 1 and 9 March 2019;
 - (b) \$11.47 per share at 11.48am on 28 March 2018;
 - (c) \$10.40 per share at 12.33pm on 28 March 2018;
 - (d) \$5.62 per share at closing on 5 April 2018; and
 - (e) not higher than \$6.19 per share thereafter.
- [11] On 29 May 2019 Blue Sky was suspended from official quotation on the Australian Stock Exchange and receivers and managers and voluntary administrators were appointed.
- [12] The defendants are alleged to have different involvement in the pleaded breaches.
- (a) The fifth defendant, Mr Aandahl, was the Director of Research and Chief Investment Office of Glaucus Research Group California LLC. It is alleged

that the fifth defendant, with the fourth defendant, published or caused to be published a report on 28 March 2018 (the **Glaucus Report**), which purported to value the Blue Sky shares at “77% lower than current prices”.

- (b) The sixth defendant (Oasis Investments II Master Fund Ltd), the seventh defendant (Oasis Management Company Limited) and the eighth defendant (Mr Fischer), are alleged to have created a significant short position in Blue Sky shares between 9 and 28 March 2018. The plaintiff contends that this was as a result of the possession of inside information relating to the Glaucus Report and its publication.
- (c) The first defendant (Credit Suisse Equities (Australia) Pty Limited), the second defendant (Argonaut Securities Pty Limited), and the third defendant (Euroz Hartleys Limited) are brokers. It is alleged that:
 - (i) The first, second and third defendants were responsible for selling Blue Sky shares on behalf of the sixth and seventh defendants between 9 and 28 March 2018: which was immediately prior to the publication of the Glaucus Report.
 - (ii) The first defendant purchased Blue Sky shares immediately following the publication of the Glaucus Report to cover the sixth and seventh defendants’ position.
 - (iii) The first, second and third defendants acted with knowledge of certain inside information or in the circumstances where they could reasonably deduce that information.

[13] In respect of the progression of the proceeding:

- (a) The Amended Statement of Claim was filed on 17 December 2025 following challenges to the pleading.
- (b) The fifth and eighth defendants were granted leave to assert the privilege against self-incrimination by orders made on 3 February 2026.
- (c) On 20 February 2026 the plaintiff paid \$375,000 as security for costs up to and including the close of pleadings (**First Tranche**).
- (d) Pleadings closed on 5 May 2026 with the plaintiff filing and serving its replies.
- (e) On 1 June 2026 the plaintiff filed a Further Amended Statement of Claim, which included matters arising out of the defence of the sixth and seventh defendants.
- (f) Amended defences were filed in June 2026.
- (g) Further orders were made in respect of the fifth and eighth defendants’ assertion of the privilege against self-incrimination on 15 June 2026 (varying the order in respect of pleading) and 30 July 2026 (in respect of disclosure).

Has one of the prerequisites in r 671 of the UCPR been satisfied?

[14] Security for costs is sought under r 670 of the UCPR or alternatively s 1335 of the Corporations Act. While there are differences in the language used, it is common

ground that there is no material difference between the discretionary considerations under either r 671 of the UCPR or s 1335 of the Corporations Act.

[15] It is not contentious that the Court has jurisdiction under one or both of these provisions. Consideration will be given to r 671 of the UCPR as to whether the Court is satisfied that at least one of the threshold requirements has been met. The alternative basis under s 1335 of the Corporations Act is also likely to be established but will not be separately considered for expediency.

[16] Rule 670 of the UCPR states:

- “(1) On application by a defendant, the court may order the plaintiff to give the security the court considers appropriate for the defendant’s costs of and incidental to the proceeding.
- (2) This rule applies subject to the provisions of these rules, particularly rules 671 and 672.”

[17] Rule 671 relevantly provides:

- “The court may order a plaintiff to give security for costs only if the court is satisfied—
- (a) the plaintiff is a corporation and there is reason to believe the plaintiff will not be able to pay the defendant’s costs if ordered to pay them; or
- ...
- (h) the justice of the case requires the making of the order.”

[18] The evidence includes correspondence leading up to the order in respect of the First Tranche of security and also correspondence in relation to the Second Tranche of security, which is currently being sought. The correspondence includes a number of statements by the solicitor for the plaintiff confirming that the plaintiff acknowledged that it would provide security for costs.

[19] The evidence includes, on 11 May 2026 the solicitors for the first defendant wrote to the plaintiff’s solicitor and asked:

- (a) whether the plaintiff accepted that it was required to provide security for costs; and
- (b) if it was not accepted, to provide copies of financial statements for the last three years, copies of current management accounts and particulars of the source of the plaintiff’s funds for the legal costs of the proceeding, including whether any non-parties have provided funds.²

[20] After a number of follow-ups for a response, the plaintiff’s solicitor responded on 28 May 2026 stating:

“The plaintiff’s position in respect of security for costs is unchanged from that communicated to the defendants in the earliest stages of this

² At page 76 of the exhibit to the affidavit of Alexander Morris sworn on 7 August 2026; page 204 of the Courtbook.

proceeding. It will provide security for the defendants' costs where it ought to do so. As you are aware, in February 2026 the plaintiff did provide security for the costs of the defendants to the close of pleadings.

The plaintiff accepts that it ought to provide reasonable further security for costs to defendants for the next stage of the proceeding, namely to the completion of disclosure. This is reflected in paragraph 4 of the proposed draft document management plan we provided to all parties yesterday.”³

[21] The letter of 28 May 2026 went on to engage with the issues in respect of the scope of disclosure and the quantum of security. No response was otherwise provided in respect of the request for financial information.

[22] Further, the letter dated 5 August 2026 from the plaintiff's solicitor states that:

“The plaintiff does not dispute the threshold or prerequisite issue, namely that pursuant to rule 671 of the [UCPR], security for costs may be ordered. The question to be determined at the hearing on 18 August 2026, or by consent, is one of quantum.”⁴

[23] The threshold test in r 671(a) of the UCPR was considered by the Court of Appeal in *DGR Global Ltd v P.T. Limited*.⁵ The Court of Appeal described the required assessment for r 671(a) as:

“[68] ... The power to order security requires an assessment to be undertaken, the outcome of which is reason to believe that the plaintiff will be unable to pay an adverse costs order. The assessment required may differ from case to case and be dependent upon the objective circumstances of a particular case. ... The threshold test fell to be satisfied only if the outcome of that kind of assessment inclined the mind towards reason to believe that the appellant would be unable to pay an adverse costs order when it likely fell due.”

[24] The test for the threshold question is a “low threshold” and is an “undemanding test”, being a preliminary view based on limited materials.⁶

[25] The approach is to consider whether the objective circumstances are sufficient to incline the mind towards accepting that the plaintiff will not be able to pay the defendants' costs if ordered to pay them.⁷ Here, the objective circumstances include that:

(a) The plaintiff is a corporation.

³ At points 3 and 4 at page 83 of the exhibit to the affidavit of Alexander Morris sworn on 7 August 2026; page 211 of the Courtbook.

⁴ At pages 119 to 120 of the exhibit to the affidavit of Alexander Morris sworn on 7 August 2026; pages 247-8 of the Courtbook.

⁵ [2025] QCA 122.

⁶ *Re Skytraders Pty Ltd* [2024] NSWSC 984 at [20] citing *Re Felan's Fisheries Pty Ltd* [2016] NSWSC 1351 at [10]; *Monto Coal 2 Pty Ltd v Sanrus Pty Ltd* (2019) 3 Qd R 143, 153-154 [41] citing *Cornelius v Global Medical Solutions Australia Pty Ltd* (2014) 98 ACSR 301, 305 [16] – [17].

⁷ *DGR Global Ltd v P. T. Limited* [2025] QCA 122.

- (b) The plaintiff has previously agreed to pay the First Tranche of security.
 - (c) Considerable costs have been incurred to date, with multiple pleading amendments by the plaintiff.
 - (d) The claim is now against eight defendants.
 - (e) The proceeding is a representative proceeding. The plaintiff sues for the benefit of the group members and not solely for its own benefit.
 - (f) Group members are not parties to the proceeding and costs orders may not be made against group members, except in limited circumstances.
 - (g) No litigation funder is involved to fund the proceeding. The defendants' only recourse for costs is against the plaintiff.
 - (h) The costs of the representative proceeding are likely to be large given the relative complexity of the issues and the large amount of quantum sought.⁸
 - (i) For the purposes of the Second Tranche of security sought by the defendants, the plaintiff:
 - (i) accepted it was required to provide security; and
 - (ii) did not indicate it did not accept it was required to provide security and otherwise provide copies of financial statements for the last three years, copies of current management accounts and particulars of the source of the plaintiff's funds for the legal costs of the proceeding, including whether any non-parties have provided funds.
 - (j) The Further Amended Statement of Claim pleads that:
 - (i) The plaintiff owns 4.4 million fully paid ordinary shares in Blue Sky.
 - (ii) The plaintiff suffered a loss of \$33,352,000 by reasons of the breaches, being the difference between the price at which the plaintiff would have, or could have, sold its Blue Sky shares and the saleable value of the Blue Sky Shares at the close of business on 5 April 2018.
- [26] Taking into account these objective circumstances, I am satisfied that the defendants have established that there is a rational basis to be satisfied there is reason to believe the plaintiff will not be able to pay the defendants' costs if ordered to pay them.
- [27] Further, given the objective factors identified above and the express admission by the plaintiff, I am also satisfied that rule 671(h) arises and the justice of the case requires the making of the order.
- [28] Accordingly, the threshold requirement in r 671(a) and/or (h) of the UCPR is established and the power pursuant to r 670 of the UCPR arises.

⁸ The eighth defendant submits the quantum is \$580 million.

Whether the Court’s discretion should be exercised to order security for costs in respect of each of the defendants?

[29] The power in r 670 of the UCPR is discretionary and while it is broad and unfettered,⁹ whether the discretion should be exercised in a particular case is informed by the matters listed in r 672 of the UCPR.

[30] Rule 672 of the UCPR states:

“In deciding whether to make an order, the court may have regard to any of the following matters –

- (a) the means of those standing behind the proceeding;
- (b) the prospects of success or merits of the proceeding;
- (c) the genuineness of the proceeding;
- (d) for rule 671(a) – the impecuniosity of a corporation;
- (e) whether the plaintiff’s impecuniosity is attributable to the defendant’s conduct;
- (f) whether the plaintiff is effectively in the position of a defendant;
- (g) whether an order for security for costs would be oppressive;
- (h) whether an order for security for costs would stifle the proceeding;
- (i) whether the proceeding involves a matter of public importance;
- (j) whether there has been an admission or payment into court;
- (k) whether delay by the plaintiff in starting the proceeding has prejudiced the defendant;
- (l) whether an order for costs made against the plaintiff would be enforceable within the jurisdiction;
- (m) the costs of the proceeding.”

[31] This list of discretionary factors is not prescriptive, nor is it exhaustive. The Court’s discretion to order security for costs is unfettered and is to be exercised taking into account all of the circumstances of the case.¹⁰

[32] The exercise of the discretion was described by Margaret Wilson J (with whom McMurdo P and Applegarth J agreed) in *Base 1 Projects Pty Ltd v Islamic College of Brisbane Ltd*¹¹ as follows:

“[23] The determination of an application for security for costs calls for the exercise of a judicial discretion in all the circumstances of the particular case. The exercise of that discretion requires the assessment and weighing of relevant factors, some of which may be inter-related...”

⁹ *DGR Global Ltd v PT Limited* [2025] QCA 122 at [86].

¹⁰ *Valeba Pty Ltd v Mulpha Sanctuary Cove (Developments) Pty Ltd* [2012] QSC 286 at [6].

¹¹ [2012] QCA 114.

- [33] Another relevant factor is that the exercise of the power in r 670 of the UCPR to award security for costs is to be exercised in accordance with r 5 of the UCPR.¹² Rule 5 provides:

“5 Philosophy—overriding obligations of parties and court

- (1) The purpose of these rules is to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense.
- (2) Accordingly, these rules are to be applied by the courts with the objective of avoiding undue delay, expense and technicality and facilitating the purpose of these rules.
...

- [34] Having established the precondition in r 671(a) of the UCPR, the persuasive onus is on the defendants to persuade the Court to exercise the discretion to order security for costs, by reference to the discretionary factors and in all of the circumstances. The evidentiary onus may be on the defendants or the plaintiff depending on the nature of the particular discretionary factors sought to be relied upon.¹³
- [35] Given the differences in the positions and evidence between the parties, it is appropriate to separately consider the issue of whether it is appropriate to exercise the discretion in respect of each of the defendants.
- [36] It is convenient to deal with the defendants in this order: the first defendant, the second defendant, the third defendant, the sixth and seventh defendants together, the fifth defendant and then the eighth defendant.
- [37] Matters will be dealt with in detail in respect of the defendants in which they first arise. In respect of subsequent defendants, the same or a similar matter may be dealt with by incorporating the previous reasoning.

Whether the Court should exercise its discretion to order security in respect of the first defendant?

- [38] By the letter from the plaintiff’s solicitor to the solicitors for the defendants dated 5 August 2026, the plaintiff expressly states that the question to be determined at the hearing or by consent is “one of quantum”.¹⁴
- [39] Further, at [18] of the plaintiff’s submissions and [3] of the plaintiff’s reply submissions this is confirmed. That is, the question is how much security should be awarded “to do justice in all of the circumstances and having regard to each defendant’s evidentiary onus on their applications.”

¹² *Adeva Home Solutions Pty Ltd v Queensland Motorways Management Pty Ltd* (2021) 9 QR 141 at [24(b)], citing *Yarra Australia Pty Ltd v Oswal* (2013) 41 VR 245, 268-269 at [115].

¹³ *DGR Global Ltd v P.T. Limited* [2025] QCA 122 at [69]. See also *Cornelius v Global Medical Solutions Australia Pty Ltd* (2014) 98 ACSR 301 at [18]-[20] and *LivingSpring Pty Ltd v Kliger Partners* (2008) 20 VR 377 at [20] to [22].

¹⁴ At page 120 of the exhibit to the affidavit of Alexander Morris sworn on 7 August 2026; page 248 of the Courtbook.

[40] The first defendant's position is that the plaintiff has conceded that it is open for the Court to exercise the discretion to order security. In any event, the objective factors, including those articulated above in respect of the threshold issue, favour the exercise of the discretion to order security for the first defendant's costs.

[41] At the hearing, senior counsel for the plaintiff confirmed that the plaintiff did not contend that the discretion should not be exercised in respect of the first defendant.¹⁵ In any event, the objective factors, including those articulated above in respect of the threshold issue, favour the exercise of the discretion to order security for the first defendant's costs.

[42] In all of these circumstances, I am satisfied that it is appropriate to exercise the discretion under r 670 of the UCPR to order that the plaintiff pay an amount as security for the first defendant's costs.

Whether the Court should exercise its discretion to order security in respect of the second defendant?

[43] The plaintiff's position in correspondence and submissions in respect of the second defendant is the same as outlined in respect of the first defendant summarised above at [38]-[39].

[44] The second defendant submits that the relevant discretionary matters favour the making of an order, including:

- (a) r 672(a) - the means of those standing behind the proceeding: there is no evidence that any person is standing behind the plaintiff and is willing to provide security or to give an undertaking to meet the second defendant's costs.
- (b) r 672(h) - whether an order for security for costs would stifle the proceeding: there is no evidence to conclude that an order would stifle the proceeding.
- (c) r 672(k) - whether there has been delay in bringing the application for security: there is no relevant delay. The proceeding is case managed on the Class Actions List and in accordance with directions by the Court the parties conferred in relation to the Second Tranche of security.

[45] In any event, the objective factors, including those articulated above in respect of the threshold issue, favour the exercise of the discretion to order security for the second defendant's costs.

[46] In all of these circumstances, I am satisfied that it is appropriate to exercise the discretion under r 670 of the UCPR to order that the plaintiff pay an amount as security for the second defendant's costs.

Whether the Court should exercise its discretion to order security in respect of the third defendant?

[47] The plaintiff's position in correspondence and submissions in respect of the third defendant is the same as outlined in respect of the first defendant summarised above at [38]-[39].

¹⁵ T1-73 L30-35.

- [48] The third defendant's position is that the plaintiff has conceded that it is open for the Court to exercise the discretion to order security.
- [49] In any event, the objective factors, including those articulated above in respect of the threshold issue, favour the exercise of the discretion to order security for the third defendant's costs.
- [50] In all of these circumstances, I am satisfied that it is appropriate to exercise the discretion under r 670 of the UCPR to order that the plaintiff pay an amount as security for the third defendant's costs.

Whether the Court should exercise its discretion to order security in respect of the sixth and seventh defendants?

- [51] The plaintiff's position in correspondence and submissions in respect of the sixth and seventh defendants is the same as outlined in respect of the first defendant summarised above at [38]-[39].
- [52] The sixth and seventh defendants' position is that the plaintiff has conceded that it is open for the Court to exercise the discretion to order security.
- [53] In any event, the objective factors, including those articulated above in respect of the threshold issue, favour the exercise of the discretion to order security for the sixth and seventh defendants' costs.
- [54] In all of these circumstances, I am satisfied that it is appropriate to exercise the discretion under r 670 of the UCPR to order that the plaintiff pay an amount as security for the sixth and seventh defendants' costs.

Whether the Court should exercise its discretion to order security in respect of the fifth defendant?

- [55] It was contentious to some degree between the plaintiff and the fifth defendant whether the fifth defendant is disentitled to security as he had sought relief from pleading and disclosure to the extent of his claim to privilege from self-incrimination. There is some lack of clarity as to whether the plaintiff accepts or not that the fifth defendant will necessarily incur costs in completing disclosure despite claiming the privilege.
- [56] Given the nature of the claim for privilege against self-incrimination and the orders that have been made, there are steps that need to be taken and costs will be incurred in respect of the fifth defendant's defence of the plaintiff's claim.
- [57] The claiming of the privilege against self-incrimination does not operate as a disentitling factor in respect of the exercise of the discretion. It may be one of the factors to be considered, together with the fact that in the circumstances of this proceeding it does not mean that the fifth defendant does nothing.
- [58] Further, in correspondence there appears to be an indication by the plaintiff's solicitor that quantum of security was the only issue to be determined. That is the issue which is addressed by the fifth defendant's submissions. While there may not be a clear, express concession by the plaintiff, the issue of quantum is the real issue in dispute.

- [59] In any event, the objective factors, including those articulated above in respect of the threshold issue, favour the exercise of the discretion to order security for the fifth defendant's costs.
- [60] In all of these circumstances, I am satisfied that it is appropriate to exercise the discretion under r 670 of the UCPR to order that the plaintiff pay an amount as security for the fifth defendant's costs.
- [61] The claiming of the privilege against self-incrimination and the dispensation orders will be considered further in respect of the calculation of the amount of security to be provided.

Whether the Court should exercise its discretion to order security in respect of the eighth defendant?

- [62] It was also contentious to some degree between the plaintiff and the eighth defendant whether the eighth defendant is disentitled to security as he had sought relief from pleading and disclosure to the extent of his claim to privilege from self-incrimination. There is some lack of clarity as to whether the plaintiff accepts or not that the eighth defendant will necessarily incur costs in completing disclosure despite claiming the privilege.
- [63] As discussed above in respect of the fifth defendant, given the nature of the claim for privilege against self-incrimination and the orders that have been made, there are steps that need to be taken and costs will be incurred in respect of the eighth defendant's defence of the plaintiff's claim.
- [64] The claiming of the privilege against self-incrimination does not operate as a disentitling factor in respect of the exercise of the discretion. It may be one of the factors to be considered, together with the fact that in the circumstances of this proceeding it does not mean that the eighth defendant does nothing.
- [65] Further, in correspondence there appears to be an indication by the plaintiff's solicitor that quantum of security was the only issue to be determined. That is the issue which is addressed by the eighth defendant's submissions. While there may not be a clear, express concession by the plaintiff, the issue of quantum is the real issue in dispute.
- [66] In any event, the objective factors, including those articulated above in respect of the threshold issue, favour the exercise of the discretion to order security for the eighth defendant's costs.
- [67] In all of these circumstances, I am satisfied that it is appropriate to exercise the discretion under r 670 of the UCPR to order that the plaintiff pay an amount as security for the eighth defendant's costs.
- [68] The claiming of the privilege against self-incrimination and the dispensation orders will be considered further in respect of the calculation of the amount of security to be provided.

What amount of security should be ordered to be provided in respect of each of the defendants?

- [69] Given the differences in the positions and evidence between the parties, it is appropriate to separately consider the issue of the quantum of security to be paid by the plaintiff in respect of the defendants.
- [70] A similar approach as outlined at paragraphs [36]-[37] above will be adopted in respect of this issue.
- [71] The parties are not in dispute as to the general principles to be applied by the Court in considering the amount of security. These general principles were recently summarised by me in *SLB Investments Queensland Pty Ltd (in liq) v Queensland Motorways Management Pty Ltd*¹⁶ as including:

“The following general principles apply to the task of setting the “appropriate”¹⁷ security amount:

- (a) the Court is to adopt a “broadbrush” approach, rather than a strict mathematical analysis;¹⁸
- (b) the Court does not undertake a costs assessment on an anticipatory or final basis;¹⁹
- (c) consistent with the objectives of the UCPR as stated in r 5, in setting the amount of the security the Court is to avoid undue delay, expense and technicality and facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense;²⁰
- (d) an order for security is a provision against a contingent amount that depends on a number of things that are not amenable to precise predictions;²¹
- (e) the Court does not attempt to provide a complete indemnity. Rather, security for costs is security against risk of non-payment. The intention is to provide protection against the risk that a costs order in the defendant’s favour may not be satisfied;²²
- (f) the usual approach is for the applicant for security to estimate the recoverable costs to which the plaintiff is exposed and then apply a discount, if appropriate, to that amount to arrive at a sum that represents a fair and proper security against the risk of non-payment, in all of the circumstances;²³

¹⁶ [2026] QSC 81 at [35].

¹⁷ Pursuant to r 670 of the UCPR. It is the “sufficient” amount pursuant to s 1335 of the Corporations Act.

¹⁸ *Great Barrier Reef Yacht Club Villas Pty Ltd v Insurance Australia Ltd* [2024] QSC 320 at [270].

¹⁹ *Aqua Blue (Noosa) Pty Ltd v Soil Surveys Engineering Pty Ltd & Ors* [2010] QSC 176 at [41].

²⁰ *Adeva Home Solutions Pty Ltd v Queensland Motorways Management Pty Ltd* (2021) 9 QR 141 at [24(b)].

²¹ *Lanai Unit Holdings P/L v Mallesons Stephen Jaques* [2016] QSC 2 at [52].

²² *Great Barrier Reef Yacht Club Villas Pty Ltd v Insurance Australia Ltd* [2024] QSC 320 at [272] and [273].

²³ *Great Barrier Reef Yacht Club Villas Pty Ltd v Insurance Australia Ltd* [2024] QSC 320 at [273].

- (g) the discount that is applied may take into account a variety of factors relevant to the particular circumstances being considered. The discount includes consideration of reasonableness, such that the costs of a “luxury car taking a scenic route” may not be reasonable but the costs of a “standard reliable car taking a direct route” would be;²⁴
- (h) while courts have often applied a discount for general uncertainties and the risk of over-estimation to arrive at a sum that represents a fair and proper security against the risk of non-payment in all of the circumstances,²⁵ consistent with the protective objective of security for costs, this should not outweigh the assessment of the estimated recoverable costs;²⁶
- (i) the Court is to look at the whole case, including the chance of it resolving before trial.²⁷ The estimation process includes the “feel” of the case after considering the relevant factors; and
- (j) courts have been conservative in the approach to quantum and the Court is to make a realistic estimate of recoverable costs.²⁸”

[72] Despite this concurrence as to the principles to be applied, there is significant divergence as to the application of those principles. Further, it appears that in fact mini-assessments are being undertaken and mathematical precision is being sought.²⁹

[73] Further, it also appears that there is an unfortunate “race to the bottom” occurring, which results in the plaintiff’s proposed security amounts being very low. The consequence is that the proposed security amounts may not be able to be properly characterised as a realistic estimate of recoverable costs, nor as a fair and proper security against the risk of non-payment in all of the circumstances.

[74] The starting point is what is to be covered by the security amount in respect of each of the defendants. There are two components to the Second Tranche of security sought:

- (a) Costs incurred after 5 May 2026 in respect of the pleadings phase. This is in effect a “top up” of the First Tranche of security (**Category 2A**).
- (b) Estimated future costs to be incurred up to and including disclosure (**Category 2B**).

[75] All amounts of costs incurred or future estimates of costs are GST exclusive, unless stated to the contrary.

²⁴ *Allen Dodd as Trustee for the Dodd Superannuation Fund v Shine Corporate Ltd* [2018] QSC 40 where Martin J at [21] adopts the analogy of Applegarth J in *Lee v Abedian & Ors* [2017] QSC 22 at [74] and [75] to an application for security for costs.

²⁵ *Great Barrier Reef Yacht Club Villas Pty Ltd v Insurance Australia Ltd* [2024] QSC 320 at [273].

²⁶ *Les & Zelda Investments Pty Ltd v Whitehaven Coal Ltd* [2020] NSWSC 1091 per Parker J in respect of the analogous provision, s 1335 of the *Corporations Act 2001* (Cth).

²⁷ *Bryan E Fencott and Associates Pty Ltd v Eretta Pty Ltd* (1987) 16 FCR 497, 515 per French J.

²⁸ *Aqua Blue (Noosa) Pty Ltd v Soil Surveys Engineering Pty Ltd* [2010] QSC 176 at [41]; *Emanuel Management Pty Ltd (in liq) v Foster’s Brewing Group Ltd* [2003] QCA 552 at [16] per Dutney J, with whom, on this issue, Jerrard JA and Philippides J agreed.

²⁹ See for example Annexures A to D of the Plaintiff’s Outline of Submissions.

- [76] Turning to consider the task of setting the appropriate security amount in respect of each of the defendants.

What amount of security should be ordered to be provided in respect of the first defendant?

- [77] The first defendant relies upon the affidavits of Alexander Morris sworn 7 August 2026 and 13 August 2026. The plaintiff relies upon the affidavit of William Wild affirmed 13 August 2026 and the affidavit of Adam Bloom sworn 17 August 2026.

Category 2A

- [78] In respect of Category 2A, the first defendant's costs incurred since 5 May 2026 are approximately \$168,503.10 (excluding GST). Mr Morris's first affidavit identifies the basis of these costs. Some of the tasks related directly to the pleadings phase, but some related to reviews, scoping the approach to disclosure and the application for security for costs.
- [79] Mr Wild's affidavit does not directly challenge these costs, but the affidavit deals with issues relevant to Category 2B. Similarly, Mr Bloom's affidavit and the exhibited report are largely relevant to Category 2B. However, Mr Bloom's report is relevant to the estimate of recoverable costs based on the actual costs incurred, including the "percentage" that is likely to be recoverable on the standard basis in respect of both solicitors' fees and disbursements, including counsel's fees.
- [80] Mr Morris in his first affidavit takes the orthodox approach of setting out the relevant solicitor hourly rates and the hourly and daily rates for counsel. In respect of Category 2A, Mr Morris then outlines the matters relevant to the costs incurred since the close of pleadings on 5 May 2026. For the period from 5 May 2026 to 6 August 2026 \$152,814.60 (excluding GST) in solicitors' fees and \$15,688.50 (excluding GST) in disbursements (including counsel's fees) had been incurred. The solicitors' fees excluded unbilled work in progress, including the preparation of Mr Morris' affidavit and the proposed orders, so it may be a "conservative" figure.
- [81] The plaintiff makes a number of submissions in respect of the Category 2A costs, including a preliminary issue of whether the First Tranche of security has been exhausted. In respect of this issue, the first defendant relies on the first affidavit of Mr Morris at [46] to [48] where Mr Morris outlines the costs incurred from 11 February 2026 up to and including 5 May 2026, being \$162,229.43 (excluding GST). Mr Morris estimates approximately \$112,808.95 would be recoverable and this exceeds the First Tranche of security of \$75,000.
- [82] In respect of the issue of the exhaustion of the First Tranche of security, I accept the evidence of Mr Morris and am satisfied that the First Tranche of security has been exhausted. This conclusion is reached even if more conservative recoverability assumptions are adopted.
- [83] The plaintiff submits that the summary of the tasks undertaken suffers from a "lack of particularity" and are "suggestive of costs that are unrecoverable on an assessment". The level of particularity is acceptable in the circumstances where the Court does not require the detail that would be contained in a costs statement, and a

mini-assessment of costs is not to be undertaken for the purpose of setting an appropriate amount for security for costs.

- [84] Further, the plaintiff submits that to the extent that this work was in respect of the preparation of the defence, the solicitors' fees are a high proportion of the costs incurred. In large scale complex litigation in the current age it is not unusual for the solicitors acting on a matter to be substantially involved with counsel in the preparation and finalisation of pleadings. A similar argument was advanced in *SLB Investments Queensland Pty Ltd (in liq) v Queensland Motorways Management Pty Ltd & Ors*³⁰ and was ultimately rejected as follows:

“[60] Both the first defendant and the plaintiff are represented by a legal team constituted by a number of counsel and solicitors. The solicitor firms acting for the first defendant and the plaintiff are both experienced in large scale litigation and are able to manage the appropriate division of tasks between the members of the legal team, both counsel and solicitors. No general principle limits the ability for the necessary work to be undertaken by the most appropriate people.³¹”

- [85] I do not accept the plaintiff's criticism in this regard.
- [86] The plaintiff further submits that the Category 2A costs include the costs of pleading to amendments of the Further Amended Statement of Claim made as a consequence of the approach taken by the sixth and seventh defendants and the first, second and third defendants (as the brokers of the sixth and seventh defendants) in their defences. It is submitted that given the pleadings as to the nature of the transactions and whether the sales had been conducted on behalf of the sixth and seventh defendants or not, the plaintiff was required to amend the pleading as these were not matters that could be properly dealt with in reply.
- [87] This is not a matter involving a counterclaim where consideration may need to be given to the issues relevant to the claim and the counterclaim. Nor is this a proceeding where the plaintiff is effectively a defendant to the proceeding. The plaintiff, in its own capacity and as the representative party on behalf of group members, is the moving party of the cause of action and seeks relief against the defendants. The consequential amendments to the plaintiff's pleaded case as a result of the pleading in the defences remains in the nature of a “sword”, rather than a “shield”. Whilst there may have been some inefficiencies as a result of the way that the pleadings progressed, ultimately these costs arise out of the plaintiff's pursuit of its claim. In these circumstances, I do not consider that as a matter of principle the costs should be excluded from the quantification of the appropriate security amount.
- [88] Based on the report of Mr Bloom, the plaintiff submits that the solicitors' costs should be reduced to 30% to 50% of actual costs and counsel's fees should be reduced to 80% of actual costs to reflect the likely recoverable amounts.
- [89] Mr Bloom acknowledges that the observations contained in his report are “general only and based on costs assessment principles” and that time had not permitted him

³⁰ [2026] QSC 81.

³¹ Compare *Armstrong Scalisi Holdings Pty Ltd v Piscopo (Trustee) in the matter of Collins* [2017] FCA 423.

to analyse the “many components” in the affidavits filed by the defendants. Further, in respect of the estimate of recoverable costs by applying a percentage reduction to the costs calculated by the hourly rates, Mr Bloom observes:

“that approach strikes me as inherently unreliable to estimate likely costs recoverable on a costs assessment for a Queensland proceeding.”

[90] Mr Bloom’s report expands further on this reasoning and concludes:

“The assumption of that recovery percentage is based on what a firm considered what may be claimable party and party costs, and excluding any arguably solicitor/client work that may not be recoverable on a standard basis assessment. Therefore, the firm is effectively self-assessing its own incurred or anticipated professional costs, which strikes me as an unreliable approach.”

[91] The application of a percentage recoverability inherently recognises that the total costs incurred or estimated would include some costs which would not be recoverable due to their nature (such as reporting) or being duplication and inefficiencies. This approach also factors in that some work would be done at higher and lower hourly rates. Applying a percentage recoverability in effect applies a moderating factor. The range of potential percentages reflects that different circumstances may require a variety of factors to be reflected in the percentage applied.

[92] A flaw with Mr Bloom’s logic is that an estimate of recoverable costs for the purposes of security for costs is to be undertaken without doing an actual costs assessment, or a form of mini-assessment.

[93] Applying a percentage reduction based on certain assumptions is widely used in undertaking estimates of recoverable costs both in respect of actual costs incurred and also estimates of future costs. Further, to suggest that it is limited to a method in New South Wales fails to have regard to its use in applications for security in Queensland under the UCPR. Recent examples include *ADLU Pty Ltd & Anor v Ertch (Queensland) Pty Ltd & Anor*³² and *SLB Investments Queensland Pty Ltd (in liq) v Queensland Motorways Management Pty Ltd & Ors*.³³

[94] The authorities clearly provide for a broadbrush approach to the assessment of the likely recoverable costs. The application of a percentage reduction to reflect that not all costs would be recoverable on a costs assessment is a useful approach to the task.

[95] The quantification of the percentage is usually something that is informed by a number of different factors in all of the circumstances of the case. The hourly rates are one factor but it is also relevant to consider the nature of the work, the experience level of those undertaking the work and the allocations between them. This is particularly relevant to the estimate of future costs undertaken in respect of Category 2B considered below.

[96] This issue is also usually addressed by the deponent of the affidavit, usually being the partner on the record. Mr Morris deposes to the reasonableness of those costs having regard to the work done and the complexity of the proceeding. Further, ultimately in

³² [2025] QSC 328.

³³ [2026] QSC 81.

respect of both Category 2A and Category 2B Mr Morris based on his extensive experience in large complex litigation (including class actions) deposes to expecting that the first defendant would recover approximately 65% of solicitors' fees, 90% of counsel's fees and 100% for other disbursements.

[97] The weight to be given Mr Bloom's evidence is governed by the general nature of the comments in his report and also the limited understanding of this particular proceeding. Mr Bloom's evidence is to be given little weight in the circumstances.

[98] I accept the evidence of Mr Morris as to the costs incurred between 5 May and 6 August 2026, the reasonableness of those costs and the estimate of the likely recoverability of those costs, subject to whether there needs to be any further "global discount" and/or "interests of justice" reduction. This will be considered following consideration of the Category 2B costs.

Category 2B

[99] The Category 2B costs component are more contentious between the parties.

[100] Mr Morris in his first and second affidavits deals with the estimate of future costs up to and including the completion of disclosure and arrives at a figure of approximately \$319,815 (excluding GST). This estimate does not include the current application and any interlocutory application regarding disclosure.

[101] Also relevantly, this estimate does not include the costs of the first defendant reviewing documents disclosed by other parties.³⁴ It includes an estimate of the costs for the first defendant giving disclosure in accordance with the proposed document management plan.³⁵

[102] Mr Morris in his first affidavit adopts the orthodox approach of scoping the task to be undertaken for disclosure, identifying the various assumptions and arriving at an estimate of the scope of work to be completed. This is informed by the issues in dispute on the pleadings.

[103] The parties were unable to agree on disclosure by categories, despite initial attempts to agree a document management plan based on that approach. Consequently, the proposed document management plan is for disclosure to occur in accordance with the general disclosure obligation of documents directly relevant to allegations in issue between the parties.

[104] Mr Morris has turned his mind to what is required to be disclosed and outlines the issues to be considered for the reasonable searches at [77] of the first affidavit. Very generally the issues include the terms and circumstances of the sixth defendant's engagement of the first defendant, the first defendant's trading in Blue Sky shares in the period from 3 January 2017 to 31 December 2018 (including trading on behalf of the sixth defendant), whether the sixth defendant informed the first defendant of the pleaded information or engaged in communications with the first defendant from which these matter could be deduced, whether the sixth defendant entered into securities lending arrangements with lenders of Blue Sky shares and what the first

³⁴ Compare to the estimates of other defendants to be considered later in these reasons.

³⁵ See Tab 1 of the Court Book.

defendant knew or was able to ascertain about those arrangements and the loss and damage alleged to have been suffered by the plaintiff and group members, including any profits made by the first defendant or the sixth defendant.

- [105] Further, given the plaintiff's pleading at [51A] of the Sixth Further Amended Statement of Claim Mr Morris considers that it will be necessary to conduct reasonable searches to identify and review all correspondence between potentially relevant custodians of the first defendant and personnel of the sixth defendant, within the period alleged to be relevant.
- [106] To inform the scoping of this task Mr Morris relies on an estimating exercise undertaken by an inhouse solicitor of the first defendant. The starting point is that it is likely that during the relevant period there were a significant number of communications between personnel of the global group of companies of which the first defendant is part of, and the personnel of the sixth defendant.
- [107] Preliminary searches have been undertaken including:
- (a) Identifying the key trading personnel of the first respondent responsible for executing trades in Blue Sky shares on behalf of the sixth defendant. This resulted in 23 email addresses being identified as potentially having corresponded with the sixth defendant in relation to trading in Blue Sky shares.
 - (b) A search for emails and "Bloomberg chat communications" in relation to those 23 email addresses for the period August 2017 to May 2018. This search returned 40,750 results (not including the number of any attachments).
- [108] Mr Morris also deposes that the scope of disclosure also requires searches for internal communications and records and also communications with other clients. This is likely to involve the review of an additional 10,000 documents.
- [109] The disclosure exercise therefore is estimated to involve a review of approximately 50,000 documents. Mr Morris compares this volume of documents for review to other class actions in his experience and he considers that 50,000 documents for review is less than typical for a class action.
- [110] The plaintiff is critical of this comparison exercise. However, that criticism misses what Mr Morris is doing. The comparison is not to set the scope of the disclosure review but is rather a cross check as to the reasonableness of the estimate of the size of the review. The fact that the plaintiff says this matter is not or should not be document intensive like some other financial class actions is supported by Mr Morris' cross-checking exercise. Mr Morris can be understood as saying that this quantum of documents is relatively low for a large and complex class action.
- [111] Ultimately, Mr Morris expresses the view that an estimate of 50,000 for review is a reasonable and conservative estimate.
- [112] The next step in the scoping exercise is the estimation of the number of documents that will be relevant following the review process. Mr Morris estimates that 10% of the documents reviewed will be relevant based on his experience in undertaking disclosure in complex litigation and class actions.

[113] The review task has also been further broken down in the first affidavit of Mr Morris. Relevant factors include:

- (a) It is estimated that it will take 3 months to complete the disclosure exercise.
- (b) There are some complicating features, including that the first defendant has been acquired and has ceased operations as an on-going business. The relevant records are archived and in some cases are accessed through legacy systems. Further, only a limited number of people with knowledge of the first defendant's records remain employed by UBS Group AG, who acquired the first defendant.
- (c) A third-party provider will process the documents for review and conduct a first-tier review of the 50,000 documents. The costs of this stage are estimated at \$88,000. This estimate is based on a per-document review cost, hourly rates for certain redactions and review management and a quarterly fee for processing and hosting documents electronically.
- (d) Mallesons will supervise the first-tier review and also conduct a second-tier review of 5,000 documents (being the 10% of 50,000 assumed to be relevant). The costs of supervising the first-tier review and undertaking the second-tier review are estimated as \$210,550.
- (e) The costs of Mallesons supervising the first-tier review and conducting the second-tier review is estimated on the basis of an estimation of hours across partner, senior associate, solicitor and graduate levels at the corresponding hourly rates. The estimate provides for 100 hours of solicitor and graduate time and 200 hours of senior associate time, with 10 hours partner time. Given the nature of a second-tier review, which is likely to include checks for legal professional privilege, allocation of senior associate time as the largest component would logically be the appropriate level for the work to be undertaken.
- (f) Mr Morris identifies the assumptions relied upon for the purpose of the estimate. These include that Mallesons will undertake 10% random sample testing of documents marked not relevant by the third-party provider and regular supervision of the third-party provider's review team. In respect of the second-tier review Mallesons will review all documents identified as relevant during the first-tier review and make final determinations as to relevance. Mallesons will also undertake a quality assurance check for consistency of coding and categorisation across the documents to be disclosed.

[114] The Category 2B costs also include a component in relation to future reviews prior to the completion of disclosure. An amount of \$21,265 has been estimated, based on a breakdown of solicitors at the various levels and counsel.

[115] At the conclusion of this exercise, Mr Morris arrives at estimated future costs of approximately \$319,815. Mr Morris then applies the percentage recoverability of 65% for solicitors' fees, 90% for counsel and 100% for other disbursements. When totalled with Category 2A costs the figure of \$354,330.70 is the estimate of recoverable costs. This amount is then further reduced to \$200,000 being the amount sought as security.

- [116] The plaintiff raises a number of other issues in submissions in respect of the Category 2B costs. The criticisms include the percentage solicitor and counsel fee reductions, the first-tier review costs, the estimate of 50,000 documents for review and duplication. The plaintiff also raises a global discount and the interest of justice which will be separately dealt with below.
- [117] The plaintiff takes issue with the scoping of the disclosure, the estimate of costs to undertake disclosure and the estimate of likely recoverable costs. In support of this position, the plaintiff relies upon the affidavit of Dr Wild and the affidavit of Mr Bloom.
- [118] Dr Wild deposes that “it is highly unlikely that any party to this proceeding, having conducted appropriate filtering searches for potentially relevant documents to provide to their solicitor for review, would have 50,000 documents or any amount approaching that number”. This view is reached considering a variety of matters including the preliminary disclosure by second and third defendants and the statutory record keeping requirements.
- [119] However, this evidence of Dr Wild illustrates a lack of a full understanding, and possibly experience, of the general disclosure requirements under the UCPR and what is required to meet that obligation. If the plaintiff had agreed disclosure by categories, that is likely to have reduced the scope of disclosure substantially. This is deposed to by Mr Morris. For example, an agreement to limit the disclosure of emails to specific individuals responsible for placing trades in a defined period, rather than all correspondence, is likely to significantly reduce the volume of documents to be reviewed. However, given the identified issues in dispute and the general obligation of disclosure, the plaintiff cannot now complain about the scope of the task that is required to be undertaken.
- [120] Dr Wild may be highly experienced in respect of financial matters but that is not particularly pertinent to the scoping of the disclosure task.
- [121] Dr Wild also relies on the number of documents disclosed by other defendants as preliminary disclosure and in answer to a subpoena. That preliminary disclosure and the subpoena were relatively narrow and confined in nature. The general disclosure required here is wider in scope.
- [122] Further, this comparison exercise also fails to appreciate the difference between the number of documents reviewed and the number of documents ultimately disclosed. A large number of documents may need to be reviewed to identify a comparatively small number of documents to be disclosed. Whilst the preliminary disclosure and the subpoena may have resulted in a relatively small number of documents being produced, that does not inform how many documents were reviewed as part of that exercise. It is accordingly, of no use in estimating the scope of the disclosure task to be undertaken by the first defendant.
- [123] Dr Wild also appears to take a narrow view of the scope of the issues in dispute that require reasonable searches to be undertaken. Dr Wild focusses on the limited period of 19 days between 9 and 28 March 2018. Whilst that is obviously the key period relevant to the plaintiff’s pleaded case, the pleadings give rise to wider issues that require consideration of documents beyond that narrow date range.

- [124] Whilst the plaintiff is critical of the analysis of the issues in dispute undertaken by Mr Morris, the plaintiff did not take up the opportunity of limiting the disclosure obligation in a narrow and focussed way through categories. Further, the plaintiff did not accept at the hearing that non-compliance with the disclosure obligation was acceptable.
- [125] The obligation of disclosure is on the first defendant and it would be inappropriate to “constrain” the disclosure task indirectly through an estimate for the purposes of security for costs. On the basis that the scoping of the task by Mr Morris is reasonable and logical, the evidence of Mr Morris is to be preferred to that of Dr Wild.
- [126] I accept the evidence of Mr Morris in respect of the Category 2B costs, including the scope of the task and the relevant assumptions for the purpose of the estimate for security of costs. Further, I accept the evidence of Mr Morris that the proposed approach is more cost efficient than if Mallesons did the first-tier review process. Accordingly, the first defendant has discharged the evidentiary onus in respect of the estimate of 50,000 documents for the first-tier review.
- [127] In respect of the estimate of recoverable costs, the plaintiff raises several issues which need to be separately considered.
- [128] In respect of the application of a percentage to estimate the recoverability of professional fees, the plaintiff relies again on the report of Mr Bloom suggesting that 30% to 50%, rather than 65%, would be appropriate.
- [129] The first defendant contends that the evidence of Mr Morris should be preferred to that of Mr Bloom. The first defendant points to a number of deficiencies in Mr Bloom’s report including:
- (a) Mr Bloom was instructed to “critique” the estimates rather than to provide an opinion as an independent expert.
 - (b) Mr Bloom’s opinion, in any event, is limited given his limited knowledge of the issues in the proceeding and that, on his own admission, he did not have the opportunity to analyse the affidavits.
 - (c) Mr Bloom’s statement of a recovery rate of 30% to 50% of actual costs is a bare assertion.
 - (d) To the extent that Mr Bloom’s reasoning for the opinion can be discerned, it appears to focus on the hourly rates, skilled versus non-skilled scale rates and an actual costs assessment. The Court is to undertake a broadbrush assessment of the likely recoverable costs.
 - (e) The focus on the hourly rates by Mr Bloom does not grapple with the range of hourly rates and the allocation of hours at the various rates. The practical effect of this is that a significant portion of the work is done at rates which are below the scale of costs rate accepted by Mr Bloom. The consequence of this is that the bulk of the work estimated to be done is at 78% to 112% recoverable just on the comparison with the approved rate alone. The partner work is 53% recoverable using Mr Bloom’s approved rate but this has to be considered in light of the smaller number of hours allocated at the partner level. In the circumstances, it is submitted that Mr Bloom’s analysis is unreliable.

- (f) Mr Bloom also comments on the distinction between fixed rate work and the skilled hourly rate. Whilst asserting this contention, Mr Bloom does not seek to identify what work would fall within the fixed rate in the scale. I accept the submission made on behalf of the first defendant that most of the work undertaken in respect of disclosure would be properly characterised as skilled work.
 - (g) Mr Bloom acknowledges he cannot comment or challenge the volume of disclosure. Despite this, Mr Bloom does appear to challenge the assumptions made as to the volume of disclosure. In this regard, I do not accept the evidence of Mr Bloom and the evidence of Mr Morris is to be preferred.
- [130] Mr Bloom's evidence is largely general in nature and is subject to a number of qualifications that are acknowledged by Mr Bloom himself. Mr Bloom's opinions are not informed by a full understanding of the issues in dispute, nor the scope of the work that is required to be undertaken. Overall, the evidence of Mr Bloom is not particularly helpful in arriving at a realistic estimate of recoverable costs and I accept the submission of the first defendant that the evidence of Dr Bloom should be given little weight.
- [131] Accepting the evidence of Mr Morris, the 65% recoverability for professional fees and 90% for counsel's fees is reasonable.
- [132] In respect of the plaintiff's criticisms of the electronic disclosure costs, this is based on an estimate provided by Law in Order and exhibited to the affidavit of Dr Wild. A review of this estimate indicates that it is a generic estimate only and is based on certain assumptions, including 10,000 documents and 5GB of data. The email includes various hourly rates, some of which are noted as being "as required". The overall costs of the electronic disclosure task are not transparent on the face of the email.
- [133] Whether these costs are recoverable on a costs assessment depends on whether they are reasonable and proper. However, putting forward an example of a market rate does not establish that the costs are not proper and reasonable. The Law in Order estimate is hearsay and does not disclose what parameters were discussed to obtain the estimate.
- [134] The evidence does not establish that the component of the costs in Category 2B referable to electronic disclosure and hosting should be excluded or further reduced on the basis that it is unreasonable or not proper. Having accepted the evidence of Mr Morris and the reasonableness of the costs, the plaintiff's criticism in this regard falls away.
- [135] The issue of review of the disclosure of other parties does not arise in respect of the first defendant. That has expressly been excluded.
- [136] Subject to the consideration of a "global discount" and a "public interest" reduction below, I do not accept the criticisms raised by the plaintiff in respect of the first defendant's estimate of the likely recoverable costs in respect of the Category 2B costs.

Amount of security sought by the first defendant

- [137] As identified previously, Mr Morris estimates the first defendant's recoverable costs on a standard basis up to and including disclosure as \$354,330.70. The first defendant seeks an amount of security of \$200,000 in respect of the costs incurred and expected to be incurred up to and including the completion of disclosure. A significant further reduction has been applied to reach this figure, which is approximately 40% of the first defendant's estimated likely costs.
- [138] The plaintiff contends that an amount of security of no more than \$50,000 should be ordered in respect of the first defendant. That accords with approximately 10% of the first defendant's estimated likely costs.
- [139] Given the findings I have made in respect of the Category 2A costs and the Category 2B costs, the amount of \$50,000 is plainly too low. Considering the nature and scope of the tasks and the nature and complexity of the proceeding, it is not a realistic estimate of recoverable costs.
- [140] As recognised in the summary of general principles outlined above, the objective is to arrive at a sum that represents a fair and proper security against the risk of non-payment, in all of the circumstances. Such a low amount of security would not be "fair and proper" in all of the circumstances. Using the car analogy, the plaintiff's quantification of security drops below that of a "standard reliable car taking a direct route", to be an unreliable vehicle that is not capable of going the required distance.
- [141] The Courts have traditionally taken a conservative approach to the quantum of security and that is reflected in the first defendant's proposed security amount.
- [142] The plaintiff submits that the Court should consider applying a "global discount" and an "interest of justice" reduction. These are likely to have been factored into the plaintiff's proposed security amount and are subject to the above comments. It is appropriate to also address them separately.
- [143] Whether it is appropriate to apply a "global discount" depends on a variety of factors. The submissions of the plaintiff identify matters such as duplication, unrecoverable reporting and other inefficiencies. This may be appropriate in some circumstances if the proposed security amount has not factored that in already.
- [144] Here, as discussed above, the first defendant's proposed security amount applies a further reduction on the estimate of likely recoverable costs. To apply a further discount in these circumstances would be inappropriate and in effect "double dipping" to the plaintiff's benefit.
- [145] The plaintiff also raises whether there should be a further reduction to "do justice in all of the circumstances". The plaintiff submits that the case has "a distinct public interest dimension to it" and this is a relevant discretionary consideration to reduce security, and even avoid security. The discretion is unfettered and is to be considered in all of the circumstances. Depending on the particular circumstances, it may be open for the Court to apply a further reduction.
- [146] In this regard the plaintiff relies on the statement of the object of Chapter 7 of the Corporations Act set out in s 760A which states as follows:

“The main object of this Chapter is to promote:

- (a) confident and informed decision making by consumers of financial products and services while facilitating efficiency, flexibility and innovation in the provision of those products and services; and
- (b) fairness, honesty and professionalism by those who provide financial services; and
- (c) fair, orderly and transparent markets for financial products; and
- (d) the reduction of systemic risk and the provision of fair and effective services by clearing and settlement facilities.”³⁶

[147] The plaintiff submits:

“The integrity of trade in the market for securities is both promoted and protected by the provisions that the plaintiff sues upon, and the fact that a private suit for damages is available to promote the integrity of that system. The object of Chapter 7 of the Corporations Act are to promote confident and informed decision making by consumers of financial products; and fair, orderly and transparent markets for financial products.³⁷ It is significant that Parliament created a *sui generis* norm of conduct in relation to inside information and insider trading, which does not depend on common law principles for the establishment of liability, loss or causation.”

[148] Whilst the prohibition on inside information and insider trading has a public interest in maintaining the integrity of the financial markets, the plaintiff’s proceeding is to obtain monetary relief and not some altruistic outcome. A regulator, such as the Australian Securities and Investments Commission, may take action to protect the integrity of the financial markets or to clarify the law. That is not the case here.

[149] The plaintiff also seeks to rely on the “goal” of the exercise of the Court’s discretion to support a further reduction. That is, the goal of the exercise of the Court’s discretion is to ascertain what amount, if any, is necessary for the plaintiff to provide by way of security to ensure that “the proceedings do not amount to an abuse of process”, as against that defendant. The High Court decision in *Bahr v Nicolay*³⁸ is relied upon for the proposition that the amount of security, if any, is the amount that is necessary to stop the proceedings being oppressive to the particular circumstances of the defendant.

[150] The first defendant submits that *Bahr v Nicolay* was not concerned with the amount of security to be ordered, but rather whether the Court had an inherent power to order security. The reasoning of Toohey J does not limit the power as contended for by the plaintiff.

³⁶ MFI B. Legislation as at compilation date 1 July 2019.

³⁷ Corporations Act, s 760A.

³⁸ (1987) 163 CLR 490 at 493.

- [151] Further, the proposition contended for by the plaintiff is at odds with the protective purpose which is widely accepted in the authorities and reflected in the general principles summarised earlier in these reasons. The protective purpose is to protect the defendant against the risk of not being able to recover any costs that may be ordered in its favour.³⁹
- [152] Here it is accepted at the threshold stage that the risk that the plaintiff would be unable to meet any costs order arises. It is that risk which is then protected against. That risk remains, even if there is a public interest element to the proceeding from the perspective of the plaintiff or the wider group members.
- [153] Further, rule 672 includes in the discretionary factors whether the order for security for costs would be oppressive. That is consistent with several of the underlying concerns, including the potential for the proceedings to be stifled⁴⁰ and other potential countervailing considerations. Rule 670 of the UCPR provides that the Court in the exercise of the discretion “may order ... the security the Court considers appropriate”. Considerations going to the “appropriate” amount (or “sufficient” amount pursuant to s 1335 of the Corporations Act) are relevant, but do not expressly limit the amount of security in the way contended for by the plaintiff.
- [154] The discretion is unfettered and is to be considered in all of the circumstances. Depending on the particular circumstances, it would be open for the Court to apply a further reduction. If a further reduction was justified in respect of the public interest dimension, it would only be a relatively minor reduction in all of the circumstances, and in respect of the first defendant. Given the discounts and reductions that have already been applied to a conservative starting point, no further reduction is warranted in respect of the security amount claimed by the first defendant.
- [155] Accordingly, it is appropriate to order that the amount of security of \$200,000 be provided in respect of the first defendant.

What amount of security should be ordered to be provided in respect of the second defendant?

- [156] Turning to consider the second defendant. The second defendant seeks an order that the plaintiff provide security for the second defendant’s costs in the amount of \$140,000 up to and including the completion of disclosure.
- [157] The plaintiff submits that an appropriate security amount in respect of the second defendant is in the range of \$26,500 to \$40,000.
- [158] The second defendant relies upon the evidence in the affidavit of Jordan Farr affirmed on 12 August 2026 and the second affidavit of Mr Farr affirmed on 18 August 2026.
- [159] The plaintiff relies on the affidavit of Dr Wild and also the affidavit of Mr Bloom. The findings and comments made in respect of this evidence in relation to the first defendant is adopted in respect of the second defendant.

³⁹ See *SLB Investments Queensland Pty Ltd (in liq) v Queensland Motorways Management Pty Ltd* [2026] QSC 81 at [35(h)] and [94(a)].

⁴⁰ Which is separately identified in r 672(h).

- [160] As evidenced by the correspondence, when the plaintiff and the second defendant were negotiating about disclosure by categories, the estimate to undertake disclosure was \$135,000. The second defendant offered to accept \$100,000 by way of security by letter dated 28 July 2026.
- [161] Disclosure is now to proceed as general disclosure, rather than by categories. The second defendant revised the estimate of costs to complete general disclosure to \$192,945 and offered to accept \$125,000 by way of security by letter dated 11 August 2026.
- [162] It is convenient to consider both the Category 2A costs and Category 2B costs.

Category 2A

- [163] The second defendant identifies costs incurred since 5 May 2026 in the amount of \$36,573 in professional fees, excluding counsel's fees. The tasks undertaken are set out at [19] of the first affidavit of Mr Farr and include consideration of the Sixth Further Amended Statement of Claim (including a revised version), investigating the further allegations, preparing a request for further and better particulars and preparing the second defendant's amended defence.
- [164] Mr Farr's affidavit identifies the hourly rates of the solicitors at the identified levels and junior counsel, and deposes to the rates being reasonable given the size and complexity of the proceeding.
- [165] Two of the issues raised by the plaintiff are relevant to the consideration of the second defendant's Category 2A costs. Firstly, whether the evidence establishes that the previous security has been exhausted and secondly, whether the 65% recoverability rate in respect of professional fees is reasonable in the circumstances.
- [166] The second affidavit of Mr Farr deals with the First Tranche of security and deposes to the view that the First Tranche of security of \$75,000 has been exhausted. The evidence of Mr Farr is that the costs incurred by the second defendant are \$342,337.85 (excluding GST). This consists of \$259,557.50 in professional fees and \$82,780.34 in disbursements. Even applying the plaintiff's more conservative percentage of recoverability, the costs incurred clearly extinguish the First Tranche of security.
- [167] The second affidavit of Mr Farr also updates the work undertaken since 5 May 2026 to \$52,525 (excluding GST), being \$47,525 in professional fees and \$5,000 in counsel's fees (but does not include counsel's fees since 25 June 2026).
- [168] Applying the 65% percentage recoverability in respect of professional fees and 90% for counsel's fees, the estimated recoverable costs in respect to Category 2A are:
- (a) \$30,891.25 in professional fees; and
 - (b) \$4,500 for counsel's fees,
- being a total of \$35,391.25.

Category 2B

- [169] Turning to consider the Category 2B costs.

[170] Mr Farr estimates that the costs of general disclosure will be \$192,945 (excluding GST), broke down as follows:

- (a) \$15,900 for review and disclosure on behalf of the second defendant. This assumes 5,000 documents to be reviewed and disclosure of less than 500 documents.
- (b) \$105,745 for review of the disclosure of the plaintiff and the other defendants. This assumes 25,000 documents disclosed by other parties.
- (c) \$22,700 for other tasks. This is assumed to be two review hearings and further correspondence between parties in relation to disclosure.
- (d) \$48,600 for third-party document hosting costs.

[171] To arrive at an estimate of recoverable costs, Mr Farr applies a 65% recoverability rate in respect of professional fees and 90% in respect of disbursements. The total of estimated recoverable costs for disclosure is \$143,064.25.

[172] Based on this estimate, the second defendant seeks security in the amount of \$140,000, which applies a further reduction.

[173] It is submitted on behalf of the second defendant that Mr Farr is an experienced practitioner, with particular experience in complex multi-party litigation such as the current proceeding. Accordingly, it is submitted that the Court could act on the evidence of Mr Farr.

[174] In response to the affidavit of Dr Wild the second defendant submits that some of the criticisms levelled at the scope of the disclosure task cannot be maintained in light of the plaintiff pressing for general disclosure. Particularly, the second defendant submits:

“The plaintiff cannot insist upon general disclosure and simultaneously contend that the exercise is a minor one to which no significant cost will attach”.

[175] As discussed above in respect of the first defendant, there is merit in that contention. The obligation of disclosure is on the second defendant and unless there is express agreement to limit disclosure, the plaintiff cannot complain about the steps necessary for the disclosure task to be undertaken.

[176] This equally applies in respect of the comparison exercise undertaken by the plaintiff with the pre-proceeding disclosure. That was limited to trading records and confirmations for the period 20 to 28 March 2018. General disclosure under the UCPR is far wider and there is no correlation between the number of documents previously produced and those that will need to now be disclosed.

[177] Further, the plaintiff’s criticisms fail to appreciate that even with the pre-proceeding disclosure a larger number of documents may have needed to be reviewed to identify the relatively small number of documents that were produced. The same applies for the general disclosure obligation. A larger pool such as the estimated 5,000 documents may need to be reviewed to identify the 500 estimated documents to be produced. That is inherent in the disclosure task.

- [178] The second defendant acknowledges that the largest amount of costs in the estimate relates to the review of disclosure by other parties. It is anticipated that the work involved will be substantial, whatever the ultimate number of documents to be reviewed.
- [179] Ultimately, the second defendant contends that the security sum sought is conservative and less than the estimated recoverable costs.
- [180] Many of the criticisms raised by the plaintiff relevant to the second defendant have been considered in respect of the first defendant. I will not revisit them in full but adopt a similar approach.
- [181] The findings in respect of Dr Wild's evidence and Mr Bloom's report are adopted.
- [182] In respect of the range of percentage recoverability, the plaintiff acknowledges the different charge out rates of Barry Nilsson and contends for a 50% to 70% rate (which is greater than that proposed in respect of other defendants). Therefore, the difference between that range and the 65% proposed by the second defendant is less significant.
- [183] The plaintiff contends for counsel's fees at 80%, rather than the 90% recoverability estimate used by Mr Farr. Here, the second defendant has retained an experienced junior counsel, in contrast to other parties who have retained one or more senior counsel. This also tends to support the 90% recoverability rate for counsel as reasonable in all of the circumstances.
- [184] I accept the evidence of Mr Farr, including in respect of the allocation of the work to the appropriate level of experience and between solicitors and counsel. Further, I accept Mr Farr's evidence that 65% of professional fees and 90% of counsel fees/disbursements is a reasonable estimate of recoverable costs in all of the circumstances.
- [185] The plaintiff criticises the component of the estimate in relation to the review of other disclosed documents based on an estimate that 25,000 documents will be disclosed by other parties and need to be reviewed. The plaintiff submits that the review costs should be reduced to 20% as the estimate of documents is too high, and the hosting fees reduced accordingly.
- [186] Currently there is much uncertainty as to the likely number of documents that will be disclosed by the parties. The plaintiff contends that an estimate of 5,000 disclosed documents across all parties should be applied for the review exercise. The other defendants make assumptions for the estimate of the number of documents to be disclosed by them and also the number of documents to be reviewed on the basis they are disclosed by other parties.⁴¹ The estimated range is between 10,000 and 25,000 documents to be reviewed.
- [187] In respect of the first defendant, Mr Morris estimates 5,000 documents to be considered in the second-tier review. No estimate is provided as to the number of documents to be disclosed. Given the nature of the second-tier review, I do not consider that the 10% estimate of documents to be disclosed is applied again at the

⁴¹ Except for the first defendant that does not attempt the second exercise.

second-tier stage. That would result in a figure that is likely to underestimate the documents to be disclosed through the whole process.

- [188] For the purposes of estimating the documents likely to be disclosed, I consider that a reasonable estimate is to adopt the approximate 5,000 figure in respect of the first defendant on the basis that the second-tier review is a cross-check and the documents to be disclosed is likely to be a far higher percentage than at the first-tier stage. The other parties estimate reviewing a smaller number of documents as the starting point, and hence estimate a smaller number of documents being disclosed.
- [189] I also consider that the 10% “hit rate” is only an estimate of what documents are to be disclosed. Some categories of documents, for example internal records, may in fact have a higher rate of relevance than more generic categories such as emails and other correspondence. But again, this is not an exact science.
- [190] I accept the plaintiff’s submission that the estimate of 25,000 documents to be reviewed is too high. However, I also find that the plaintiff’s estimate of 5,000 total disclosed documents is too low, particularly given the likely component to be disclosed by the first defendant.
- [191] Based on the affidavits relied upon by the defendants and the “feel” of the case after considering the relevant factors, I find that an estimate of 10,000 disclosed documents to be reviewed is reasonable in all of the circumstances.
- [192] Considering the components of the costs estimated by the second defendant:
- (a) Two components are not impacted by this adjusted figure, namely:
 - (i) the estimate of \$15,900 for review and disclosure on behalf of the second defendant, consisting of:
 - (A) \$13,900 in professional fees; and
 - (B) \$2,000 as counsel fees.
 - (ii) The estimate of \$22,700 for other tasks, comprising of:
 - (A) \$14,700 for professional fees; and
 - (B) \$8,000 for counsel.
 - (b) Two components are impacted by this adjusted figure, namely:
 - (i) \$105,745 for review of 25,000 documents disclosed by other parties, comprising of:
 - (A) \$93,745 for professional fees; and
 - (B) \$12,000 for counsel.
 - (ii) \$48,600 for third-party document hosting costs, on assumption of 75GB at \$18 per GB per month for 12 months and license and hosting fees.
- [193] Adjusting the number of documents to be reviewed to 10,000 is approximately 40% of the estimated 25,000. While again not an exact science, estimating 40% of the review and hosting costs would be a broadbrush estimate of the costs of the review

component. This would be approximately \$42,298 (\$37,498 for professional fees and \$4,800 for counsel) and \$19,440 for disbursements respectively.

[194] Applying a reduction of the professional fees of 65% and 90% for counsel's fees and other disbursements across these figures to arrive at an estimate of recoverable costs as follows:

- (i) for review and disclosure on behalf of the second defendant:
 - (A) \$9,035 in professional fees; and
 - (B) \$1,800 as counsel fees.
- (ii) for other tasks:
 - (A) \$9,555 for professional fees; and
 - (B) \$7,200 for counsel.
- (iii) for review of 10,000 documents disclosed by other parties:
 - (A) \$24,373.70 for professional fees; and
 - (B) \$4,320 for counsel.
- (iv) \$17,496 for third-party document hosting costs.

[195] Based on this approach, the estimate of recoverable costs in respect of the Category 2B costs for the third defendant is \$73,780.

Amount of security sought by the second defendant

[196] The second defendant sought security in the amount of \$140,000 based on an estimate of recoverable costs of \$143,064.25. For the reasons outlined above, the amount estimated in respect of the review of the disclosure of other defendant's disclosure needs to be reduced to an assumption of a review of 10,000 documents, in addition to disclosure on behalf of the second defendant.

[197] The security amount sought included a reduction on the estimated recoverable costs, and may not have included any component of the additional costs incurred from 5 May 2026.⁴² However, they may have been taken into account in assessing the reasonableness of the security amount sought.

[198] Based on the above analysis, the revised estimate of recoverable costs (including Category 2A) is \$109,171.

[199] I have previously considered the plaintiff's submissions in respect of a "global discount" and a "public interest" reduction. As discussed previously, adjustments of this nature are open for the Court to make but it depends on the consideration of all of the factors and the particular circumstances.

⁴² It is not clear from the calculations that any component was included for the Category 2A costs in the estimate of recoverable costs for calculating the security amount.

- [200] A further reduction may be made to reflect the broadbrush approach to setting the security amount. However, I do not consider that a substantial reduction is warranted in all of the circumstances.
- [201] In all of the circumstances and considering the various competing factors, including the “feel” of the case, the appropriate amount of security to be provided by the plaintiff in respect of the second defendant is \$90,000.

What amount of security should be ordered to be provided in respect of the third defendant?

- [202] Turning to consider the third defendant. The third defendant seeks an order that the plaintiff provide security in the amount of \$125,000 up until the end of disclosure. The third defendant relies upon the affidavit of Adrian Konstantinidis affirmed 13 August 2026 and the second affidavit of Mr Konstantinidis affirmed 18 August 2026.
- [203] The plaintiff contends that an amount of security within the range of \$22,000 to \$32,000 would be appropriate. The plaintiff relies on the affidavit of Dr Wild and also the affidavit of Mr Bloom. The findings and comments made in respect of this evidence in relation to the first defendant is adopted in respect of the third defendant.
- [204] Both Category 2A and Category 2B costs are to be considered.

Category 2A

- [205] The third defendant has incurred costs from 5 May 2026 to 7 August 2026 of \$80,000.
- [206] In respect of the issue of whether the First Tranche of security has been exhausted, the second affidavit of Mr Konstantinidis deposes that the First Tranche has been exhausted. This conclusion is supported by a consideration of the costs incurred to the close of pleadings. Even applying the plaintiff’s more conservative recoverability rates, the amount of costs incurred to 5 May 2026 clearly exceeds the First Tranche of security.
- [207] The first affidavit of Mr Konstantinidis sets out the breakdown of the \$80,000 incurred from 5 May 2026 as follows:
- (a) Professional fees of approximately \$60,000; and
 - (b) Counsel’s fees of approximately \$20,000.
- [208] The affidavit contains the rates of both senior and junior counsel retained on behalf of the third defendant and Mr Konstantinidis deposes to the reasonableness of the rates.
- [209] The affidavit identified the nature of the work undertaken in general terms, including preparing the further amended defence of the third defendant. Clearly not all of the work within Category 2A related to the pleadings phase, and it includes preliminary work in respect of disclosure. Mr Konstantinidis also deposes that these costs were necessarily and properly incurred.

- [210] I accept the evidence of Mr Konstantinidis, including in respect of the costs incurred to date and the nature of the work undertaken.
- [211] The criticism raised by the plaintiff in respect to the percentage recoverability applied, also is relevant in respect of these costs. Mr Konstantinidis applies a 70% recoverability rate to professional fees and 100% to counsel's fees.
- [212] The plaintiff contends that between 50% to 70% of professional fees would be the appropriate percentage recoverability rate given Colin Biggers & Paisley's hourly rates and 80% for counsel's fees.
- [213] The 70% of professional fees are within both approaches and there is no reason to depart from that calculation. In respect of counsel's fees, it would be appropriate to allow some reduction to reflect that not all costs would be recoverable on an assessment. Other defendants contend for 90% recoverability in respect of counsel's fees. Consistent with the broadbrush approach and as it is the midway point between the plaintiff and the third defendant's position, I adopt the 90% rate as a reasonable estimate of the recoverability of counsel's fees.
- [214] Applying these rates to the costs incurred, the estimated recoverable costs in respect to Category 2A are;
- (a) \$42,000 professional fees; and
 - (b) \$18,000 for counsel's fees,
- being a total of \$60,000.

Category 2B

- [215] In respect of Category 2B costs, the third defendant estimates future costs to complete disclosure in the amount of \$110,675. This is in respect of the third defendant providing disclosure and reviewing the disclosure of the other parties.
- [216] The first affidavit of Mr Konstantinidis estimates the future costs in respect of disclosure as follows:
- (a) \$7,150 being the estimate for the third defendant's disclosure;
 - (b) \$75,780 being the estimate for the third defendant to review disclosure by the other parties;
 - (c) \$18,385 being the estimate for a further review hearing; and
 - (d) \$9,360 for third-party eDiscovery, processing and hosting costs.
- [217] In respect of the third respondent's own disclosure, Mr Konstantinidis outlines the allegations in the pleadings that will require reasonable searches for documents and then review of those documents. These are set out at [33] of the first affidavit. Mr Konstantinidis also identifies that the third defendant will need to consider correspondence with the sixth and seventh defendants, as well as internal documents.
- [218] Other than Dr Wild's general evidence about the narrow issues in dispute and his expectation for a relatively small number of documents to be disclosed, the plaintiff does not directly challenge this evidence.

- [219] Further, as discussed above in respect of the first defendant, the obligation of disclosure is on the third defendant and the scoping exercise of the solicitor with the conduct of the matter is particularly relevant to the work that is required to be undertaken.
- [220] It is estimated that 500 documents will need to be reviewed, based on a preliminary scoping of the disclosure task. The majority of the hours undertaking the review will be done at solicitor level, with appropriate work undertaken at senior associate and partner level.
- [221] The estimate of \$7,150 relates to the necessary searches, collecting and processing the documents, first and second level review, reviews for privilege and resolution of any privilege questions, preparation of a list of documents and a disclosure statement and production.
- [222] This estimate includes \$1,400 for junior counsel's involvement, with the balance professional fees.
- [223] Applying the recoverability rates identified above of 70% for professional fees and 90% for counsel's fees, the estimated recoverable costs for the third defendant's disclosure is \$5,285:
- (a) \$4,025 for professional fees; and
 - (b) \$1,260 for counsel's fees.
- [224] The second component to be considered is the estimate in relation to the review of disclosure by other parties. Mr Konstantinidis estimates that 15,000 documents from all other parties will need to be reviewed. Further, an estimate is prepared on the basis of the number of hours at partner, senior associate, solicitor and paralegal levels to undertake this task. The estimate is based on the average review rate of 100 to 150 documents per hour primarily at the solicitor level, with lesser hours at the senior associate level. The estimate also includes \$5,250 in respect of junior counsel's involvement.
- [225] The estimate for the review task is \$70,530 for professional fees and \$5,250 for counsel's fees.
- [226] Subject to the estimate of the number of documents to be reviewed, I accept the evidence of Mr Konstantinidis as to the scope and methodology of the review exercise.
- [227] As discussed in respect of the second defendant, the estimate of a review of 15,000 documents is too high based on what is currently known in respect of disclosure. The estimate should be adjusted to be in relation to 10,000 documents.
- [228] Again, while a percentage discount has an element of imprecision, it accords with the broadbrush approach to be applied by the Court. Accordingly, the estimates for each of the components of the review should be reduced to 66%, namely:
- (a) \$46,550 for professional fees; and
 - (b) \$3,465 for counsel's fees.

- [229] The recoverability rates of 70% and 90% then need to be applied, being \$32,585 and \$3,119 respectively. The total estimate of recoverable costs for the review is therefore estimated at \$35,704.
- [230] In respect of the costs of the review hearing, the professional costs are estimated as \$5,885 and \$9,000 for senior counsel and \$3,500 for junior counsel. Applying the recoverability rates of 70% and 90% to these figures, the estimate of recoverable costs would be \$4,120 for professional fees and \$8,100 and \$3,150 respectively for counsel. The total being \$15,370.
- [231] The final component is the estimated costs of eDiscovery, processing and hosting costs. These should be reduced proportionally to reflect the reduction in the volume of documents to be processed and stored. Whilst this may involve an element of imprecision, it accords with the broadbrush approach. Applying 66% of these costs is \$6,177.60. Further applying the 90% recoverability rate, the estimate of recoverable costs is \$5,560.
- [232] Based on this approach, the estimate of recoverable costs in respect of the Category 2B costs for the third defendant is \$61,919.

Amount of security sought by the third defendant

- [233] The security amount sought by the third defendant of \$125,000 is a further reduction on estimate of recoverable costs in the amount of \$148,026 (being 70% of professional fees and 100% of counsel's fees in respect of the estimate of costs of \$190,675 (excluding GST). The third defendant's proposed security amount did incorporate a further reduction on the estimated recoverable costs.
- [234] The total revised estimate of recoverable costs is \$122,000. Consideration needs to be given as to whether a further reduction should be applied, particularly given that the estimates are at the upper end of the recoverability range and may be considered less conservative than to the estimates being considered.
- [235] I have previously considered the plaintiff's submissions in respect of a "global discount" and a "public interest" reduction. As discussed previously, adjustments of this nature are open for the Court to make but it depends on the consideration of all of the factors and the particular circumstances.
- [236] A further reduction may be made to reflect the broadbrush approach to setting the security amount and that the starting position is at the higher end of the recoverability range in respect of solicitors' fees. Further, the estimate of costs for the further review includes senior counsel, with no explanation as to why that is necessary in respect of disclosure. However, I do not consider that a substantial reduction is warranted in all of the circumstances.
- [237] In all of the circumstances and considering the various competing factors, including the "feel" of the case, the appropriate amount of security to be provided by the plaintiff in respect of the third defendant is \$90,000.

What amount of security should be ordered to be provided in respect of the sixth and seventh defendants?

- [238] Turning to consider the sixth and seventh defendants. The sixth and seventh defendants seek an order for security for costs up to the completion of disclosure in the amount of \$180,000.
- [239] This amount is calculated by reference to an estimate of \$270,482, being \$96,122 in respect of Category 2A costs and \$174,360 in respect of Category 2B costs. The estimated recoverable costs are \$196,157, being \$122,919.60 for professional fees, \$41,737.50 for counsel's fees and \$31,500 for eDiscovery costs (across both Category 2A and 2B).
- [240] The sixth and seventh defendants rely on the affidavit of Amanda Beattie sworn 10 August 2026 and the second affidavit of Ms Beattie sworn 17 August 2026.
- [241] The plaintiff contends that the security amount should be no more than \$50,000 in respect of the sixth and seventh defendants. The plaintiff also contends that the amount of the sixth and seventh defendants, in combination with the eighth defendant, should be a total of no more than \$50,000.
- [242] The plaintiff relies on the affidavit of Dr Wild and also the affidavit of Mr Bloom. The findings and comments made in respect of this evidence in relation to the first defendant is adopted in respect of the sixth and seventh defendants.
- [243] At the initial stages, the eighth defendant was jointly represented by the lawyers acting on behalf of the sixth and seventh defendants. More recently, the eighth defendant has been separately represented. There is now a divergence in positions taken by the corporate entities and the individual eighth defendants. Whilst there may be some cross-over, their positions are now separate.
- [244] The position of the eighth defendant will be considered further below. However, there is no reason that requires the security amount to be cumulative in respect of the sixth and seventh and eighth defendants. Further, there is no requirement that the security amount in effect be capped as between the sixth, seventh and eighth defendants. The usual principles apply to arrive at the appropriate security amount in all of the circumstances.

Category 2A

- [245] The first affidavit of Ms Beattie deposes to the hourly rates charged by Wotton Kearney at the partner, special counsel, associate, solicitor and paralegal levels. Ms Beattie further deposes to the hourly and daily rates of senior and junior counsel retained on behalf of the sixth and seventh defendants.
- [246] In respect of the Category 2A costs, the costs incurred from 7 May 2026 to 6 August 2026 in respect of pleadings are:
- (a) \$67,372 in professional fees; and
 - (b) \$28,750 in counsel's fees.

- [247] Further, Ms Beattie deposes to the tasks undertaken in respect of these costs. The tasks include considering the plaintiff's further amended statement of claim and preparing and finalising the sixth and seventh defendants' amended defence.
- [248] More particularly, in respect of considering the further amended defence and amended reply and preparing the amended defence the costs include \$31,539 for professional fees and \$12,000 for junior counsel and \$6,750 for senior counsel. Further, considering and responding to the plaintiff's request for particulars, r 222 documents request and responding to alleged inconsistencies in the amended defence, the costs include \$35,833 professional fees, \$5,500 for junior counsel and \$4,500 for senior counsel.
- [249] Ms Beattie considers that these costs are reasonable having regard to the work done and the complexity of the proceeding.
- [250] The plaintiff raises the issue of whether the security in respect of the First Tranche has been exhausted. Security of \$75,000 was provided in respect of the sixth, seventh and eighth defendants when they were jointly represented. Ms Beattie's second affidavit addresses the costs incurred between 3 February and up to but not including 5 May 2026, which are the \$102,897 professional fees and counsel's fees of \$49,267. Further, Ms Beattie applies recoverability rates of 65% and 90% respectively to arrive at an estimate of recoverable costs of \$111,223.
- [251] Ms Beattie deposes in her first affidavit that the \$75,000 security amount had been exhausted. A consideration of the costs incurred identified in Ms Beattie's second affidavit confirm this. Even if the plaintiff's more conservative recoverability rates are used, the estimated recoverable costs would exceed the security provided in respect of the First Tranche.
- [252] The plaintiff also raises the issue of the appropriate recoverability rates to be applied to professional fees and counsel's fees. The plaintiff submits a range of 30% to 50% for professional fees and 80% for counsel's fees in respect of the sixth and seventh defendants.
- [253] For the reasons previously articulated, the recoverability rates of 65% for professional fees and 90% in respect of counsel's fees are reasonable in the circumstances. This takes into account the Wotton Kearney rates and the allocation of the work at the various lawyer levels in respect of both solicitors and counsel.
- [254] Applying these rates to the Category 2A costs incurred from 7 May 2026 to 6 August 2026 the following estimates of recoverable costs are arrived at:
- (a) \$43,792 in professional fees; and
 - (b) \$25,875 in counsel's fees,
- being a total of \$69,667.
- Category 2B*
- [255] Ms Beattie's first affidavit also deposes to the Category 2B costs being the estimate of future costs in relation to:

- (a) the review and production of disclosure on behalf of the sixth and seventh defendants;
- (b) consideration of the disclosure of the other parties;
- (c) other disclosure related tasks; and
- (d) eDiscovery costs.

[256] The estimate is made on the assumption that no more than 5,000 documents are to be reviewed for the purpose of the disclosure by the sixth and seventh defendants and that the documents disclosed by other parties do not exceed 15,000 documents. Ms Beattie estimates the likely costs are \$174,360. This consists of \$121,735 for professional fees, \$17,625 for counsel fees and \$35,000 in eDiscovery costs.

[257] In respect of the disclosure by the sixth and seventh defendants, Ms Beattie outlines the process as including a first level relevance review by junior lawyers overseen by a special counsel, a second level review by a special counsel overseen by a partner and the escalation of a discrete number of documents to a partner or counsel.

[258] In respect of these disclosure tasks, Ms Beattie estimates \$57,520 for professional fees spread over paralegal, solicitor, special counsel and partner levels, \$1,375 for junior counsel and \$4,500 for senior counsel.

[259] In respect of the review of the other parties' disclosure, Ms Beattie outlines the process of a review by junior lawyers and paralegals overseen by special counsel and consideration of key documents and queries by a partner or junior counsel.

[260] The estimate of 15,000 is based on the plaintiff having relatively limited disclosure, the fifth and eighth defendants being subject to the dispensation in respect of the claim of privilege against self-incrimination, the estimate of 5,000 for the first defendant and less than 500 for the first defendant.

[261] In respect of this disclosure review, Ms Beattie estimates \$49,575 for professional fees spread over paralegal, solicitor, special counsel and partner levels, \$1,375 for junior counsel and \$4,500 for senior counsel.

[262] The other disclosure related tasks include preparing for and attending a review hearing, finalising the document management plan, considering confidentiality requirements and correspondence with the parties. This excludes any application in respect of disputes about disclosure.

[263] Ms Beattie estimates the following further costs in respect of the disclosure related tasks: \$14,640 for professional fees at the various levels, \$1,375 for junior counsel and \$4,500 for senior counsel.

[264] The estimate of costs of eDiscovery, including storage and assistance from internal eDiscovery staff in respect of the management and production of documents, is \$35,000.

[265] To arrive at an estimate of the sixth and seventh defendants' recoverable costs on a standard basis Ms Beattie then applies a 65% recoverability rate to the professional fees and a 90% recoverability rate to the disbursements, including counsel's fees. The

estimate of the recoverable costs is \$196,157. The amount of \$180,000 is sought as the security amount.

- [266] The plaintiff raises the same issues in respect of the recoverability rate in respect of professional fees and counsel's fees and disbursement. For the reasons previously articulated, the rate of 65% recoverability for professional fees and 90% for disbursements, including counsel's fees is reasonable in the circumstances.
- [267] I also adopt the findings made in respect of Dr Wild's affidavit and Mr Bloom's affidavit from the discussion in respect of the first defendant. Those matters apply equally here.
- [268] I accept Ms Beattie's evidence as to the number of documents and the procedure for disclosure of documents by the sixth and seventh defendants.
- [269] Accordingly, in respect of the estimate in relation to disclosure of documents by the sixth and seventh defendants, \$57,520 for professional fees spread over paralegal, solicitor, special counsel and partner levels, \$1,375 for junior counsel and \$4,500 for senior counsel is reasonable.
- [270] These figures then need to have the recoverability rates of 65% and 90% applied to arrive at the reasonable estimate of recoverable costs: namely, \$37,388 in professional fees and \$5,287 in counsel's fees.
- [271] As discussed in respect of the second defendant, the estimate of a review of 15,000 documents is too high based on what is currently known in respect of disclosure. The estimate should be adjusted to be in relation to 10,000 documents. Otherwise, I accept the evidence of Ms Beattie in relation to the review task and procedure.
- [272] Again, while a percentage discount has an element of imprecision, it accords with the broadbrush approach to be applied by the Court. Accordingly, the estimates for each of the components of the review should be reduced to 66%, namely:
 - (a) \$32,720 for professional fees; and
 - (b) \$3,878 for counsel's fees.
- [273] These figures then need to have the recoverability rates of 65% and 90% applied to arrive at the reasonable estimate of recoverable costs: namely, \$21,268 for professional fees and \$3,490 for counsel's fees.
- [274] In relation to the other disclosure related tasks, I accept the evidence of Ms Beattie in relation to the scope of these tasks and the estimates.
- [275] The estimates of \$14,640 for professional fees at the various levels and \$5,875 for counsel then need to have the recoverability rates of 65% and 90% applied to arrive at the reasonable estimate of recoverable costs: namely, \$9,516 for professional fees and \$5,287 for counsel's fees.
- [276] In respect of the estimate of \$35,000 for eDiscovery costs this also needs to be reduced given the reduced number of documents estimated to be reviewed and stored.

[277] This figure should be reduced proportionally to reflect the reduction in the volume of documents to be processed and stored. Whilst this may involve an element of imprecision, it accords with the broadbrush approach. Applying 66% of these costs is \$23,100. Further applying the 90% recoverability rate, the estimate of recoverable costs is \$20,790.

[278] Based on this approach, the estimate of recoverable costs in respect of the Category 2B costs for the sixth and seventh defendants is \$103,026.

Amount of security sought by the sixth and seventh defendants

[279] The security amount sought by the sixth and seventh defendants of \$180,000 is a further reduction on estimate of recoverable costs in the amount of \$196,157.

[280] The total revised estimate of recoverable costs is \$172,693. Consideration needs to be given as to whether a further reduction should be applied.

[281] I have previously considered the plaintiff's submissions in respect of a "global discount" and a "public interest" reduction. As discussed previously, adjustments of this nature are open for the Court to make but it depends on the consideration of all of the factors and the particular circumstances.

[282] A further reduction may be made to reflect the broadbrush approach to setting the security amount. However, I do not consider that a substantial reduction is warranted in all of the circumstances.

[283] In all of the circumstances and considering the various competing factors, including the "feel" of the case, the appropriate amount of security to be provided by the plaintiff in respect of the sixth and seventh defendants is \$90,000.

What amount of security should be ordered to be provided in respect of the fifth defendant?

[284] The fifth defendant seeks an order that the plaintiff pay security in the amount of \$152,000. The plaintiff submits that the security ordered should be no more than \$20,000.

[285] The fifth defendant relies on the first affidavit of Maria Yiasemides sworn 10 August 2026 and the second affidavit of Ms Yiasemides sworn 18 August 2026. The plaintiff relies on the affidavit of Dr Wild and also the affidavit of Mr Bloom. The findings and comments made in respect of this evidence in relation to the first defendant is adopted in respect of the fifth defendant.

[286] The same issues considered in respect of the other defendants arise in respect of the fifth defendant, with the additional issue in relation to the claim of the privilege against self-incrimination and the dispensation orders made.

[287] Both Category 2A and Category 2B costs arise for consideration.

Category 2A

[288] The Category 2A costs are the costs incurred in completing the further pleadings task in the amount of \$25,000.

- [289] The issue of whether the earlier security of \$75,000 has been exhausted similarly arises here. The second affidavit of Ms Yiasemides deposes to the First Tranche of security being exhausted. Based on the figures set out in that affidavit I accept the evidence that the First Tranche of Security has been exhausted.
- [290] The first and second affidavits of Ms Yiasemides deal with the costs incurred from 7 May 2026 in relation to the further work done in respect of the pleadings. Ms Yiasemides' first affidavit describes the work arising out of the further amended statement of claim being consideration of that pleading, filing an amended defence, considering the amended defences of the other defendants and considering the plaintiff's amended reply.
- [291] The second affidavit of Ms Yiasemides provides a further breakdown of the \$25,000 as follows:
- (a) \$19,143 in professional fees; and
 - (b) \$5,795 for counsel's fees.
- [292] I accept the evidence of Ms Yiasemides that these costs were reasonably necessary to complete the identified tasks.
- [293] Consistent with the approach previously discussed and the reasons for that approach, a recoverability rate should be applied to both professional costs and counsel's fees.
- [294] The approach on behalf of the fifth defendant is to apply a 70% recoverability rate for professional fees and 90-100% for counsel's fees and disbursements.⁴³ The plaintiff contends that the recoverability rate should be 30% to 50% of professional fees and 80% of counsel's fees.
- [295] The hourly charge out rates for Jones Day set out in the affidavits of Ms Yiasemides are at the higher end of the range, particularly the partner rate. Some of the concerns raised by the plaintiff in respect of applying a recoverability rate as an estimate of recoverable costs have more weight in respect of higher hourly rates for professional fees.
- [296] Even allowing for a spread of the work being done across the levels of rates, a further adjustment of the recoverability rate for professional fees is warranted in the circumstances.
- [297] In all of the circumstances, a recoverability rate of 60% for professional fees and 90% for counsel's fees should be applied.
- [298] Accordingly, the estimate of recoverable costs in respect of Category 2A is:
- (a) \$11,485 in professional fees; and
 - (b) \$5,215 for counsel's fees,
- being a total of \$16,700.

⁴³ Although a 70% recoverability rate seems to have been applied across the total costs.

Category 2B

- [299] The fifth defendant's estimate of costs to complete disclosure is \$193,000 based on the fifth defendant's disclosure of documents (not subject to the dispensation order), the review of the disclosure by the other defendants, eDiscovery costs and a further review hearing in relation to disclosure.
- [300] In respect of the disclosure by the fifth defendant, the fifth defendant is to undertake general disclosure subject to the orders made on 13 February 2026 and 30 July 2026 dispensing with the pleading and disclosure obligation in respect of matters/documents subject to a claim of the privilege against self-incrimination.
- [301] It appears to be common ground that the effect of the orders is that the fifth defendant is obliged to undertake disclosure in the usual way subject to a claim against disclosure of certain documents based on an assertion of the privilege against self-incrimination.
- [302] Ms Yiasemides is an experienced legal practitioner, including in large litigation matters. The estimate is prepared on the assumption that the fifth defendant will have limited documents requiring collection and review. The relevant tasks are described as:
- (a) advising on and undertaking the necessary searches to identify the documents in respect of which disclosure is sought from the fifth defendant and collecting those documents;
 - (b) reviewing those documents for relevance and to the extent relevant for privilege, including to identify the documents in respect of which the fifth defendant asserts the privilege against self-incrimination;
 - (c) preparing a disclosure list and disclosure statement;
 - (d) producing any documents in respect of which the privilege against self-incrimination is not claimed; and
 - (e) arranging for the loading of the disclosed documents to an eDiscovery platform for review.
- [303] The affidavit of Ms Yiasemides provides a breakdown of the estimate of costs to complete these tasks. The majority of time is allocated at the associate level for the reasons explained by Ms Yiasemides in her affidavit. The estimated costs are:
- (a) In relation to the review and assessment of documents for disclosure by the fifth defendant:
 - (i) \$10,597.50 for professional fees;
 - (ii) \$1,900 for junior counsel.
 - (b) In relation to undertaking searches, preparing the disclosure list and production:
 - (i) \$14,490 for professional fees;
 - (ii) \$1,900 for junior counsel.

- [304] The recoverability rates of 60% and 90% should then be applied to these figures, with estimated recoverable costs for disclosure by the fifth defendant being \$15,052.50 for professional fees and \$3,420.
- [305] The second aspect to be considered is the costs of reviewing the disclosure of the other defendants. The estimate of costs for the review task assumes that 20,000 will be disclosed by the other defendants and will need to be reviewed. The assumption is also that an associate will undertake the tasks with only some assistance at partner level or by counsel. The assumed rate is 120 documents per hour and 167 hours are estimated to complete the task.
- [306] Based on this approach, Ms Yiasemides estimates the costs as follows:
- (a) \$115,537.50 for professional fees;
 - (b) \$15,200 for counsel.
- [307] As discussed in respect of the second defendant, the estimate of a review of 20,000 documents is too high based on what is currently known in respect of disclosure. The estimate should be adjusted to be in relation to 10,000 documents. Otherwise, I accept the evidence of Ms Yiasemides in relation to the review task and procedure.
- [308] Again, while a percentage discount has an element of imprecision, it accords with the broadbrush approach to be applied by the Court. Accordingly, the estimates for each of the components of the review should be reduced to 50%, namely:
- (a) \$57,768.75 for professional fees; and
 - (b) \$7,600 for counsel's fees.
- [309] These figures then need to have the recoverability rates of 60% and 90% applied to arrive at the reasonable estimate of recoverable costs: namely, \$34,661.25 for professional fees and \$6,840 for counsel's fees.
- [310] In relation to eDiscovery services, the estimate of costs is \$20,000. This includes loading the disclosed documents onto an eDiscovery platform and hosting on that platform for 3 months.
- [311] The evidence does not disclose how the volume of documents impacts that estimate, however is likely that a halving of the documents to be processed and hosted would reduce the estimate of the eDiscovery costs.
- [312] This figure should be reduced proportionally to reflect the reduction in the volume of documents to be processed and stored. Whilst this may involve an element of imprecision, it accords with the broadbrush approach. Applying 50% of these costs is \$10,000. Further applying the 90% recoverability rate, the estimate of recoverable costs is \$9,000.
- [313] The final component to be considered is the costs of a further review prior to the completion of disclosure. Ms Yiasemides estimates the costs as follows:
- (a) \$11,025 for professional fees; and
 - (b) \$1,900 for counsel's fees.

[314] These figures then need to have the recoverability rates of 60% and 90% applied to arrive at the reasonable estimate of recoverable costs: namely, \$6,615 for professional fees and \$1,710 for counsel's fees.

[315] Based on this approach, the estimate of recoverable costs in respect of the Category 2B costs for the fifth defendants is \$77,298.75.

Amount of security sought by the fifth defendant

[316] The security amount sought by the fifth defendant of \$152,000 is 70% of the total costs estimate of \$218,000.

[317] Based on the above analysis, the total revised estimate of recoverable costs is \$93,998.75. Consideration needs to be given as to whether a further reduction should be applied.

[318] I have previously considered the plaintiff's submissions in respect of a "global discount" and a "public interest" reduction. As discussed previously, adjustments of this nature are open for the Court to make but it depends on the consideration of all of the factors and the particular circumstances.

[319] A further reduction may be made to reflect the broadbrush approach to setting the security amount. However, I do not consider that a substantial reduction is warranted in all of the circumstances.

[320] Further, the plaintiff submitted that the fact that the fifth defendant has claimed the privilege against self-incrimination is a factor relevant to the exercise of the discretion to award security and also to set the appropriate amount of security.

[321] By its very nature, the privilege against self-incrimination is able to be asserted by an individual and nothing is to be read into that. Practically the claim of the privilege may mean that the plaintiff does not know the fifth defendant's evidence or position in respect of certain matters unless and until the fifth defendant waives the claim for privilege. The discretion to award security and the quantum of security would appear consistent with the protection of the privilege. The position contended for by the plaintiff appears to be at odds with the privilege and could operate to undermine the privilege. The authorities provided by the parties in respect of the effect of claiming the privilege against self-incrimination tend to support this position. Whether any *Jones v Dunkel*⁴⁴ inference may be drawn ultimately depends on a number of matters including what happens at trial and whether the individual elects to waive the privilege or not.⁴⁵

[322] Here tasks are required to be done and the fifth defendant is not disentitled from an award of security in that regard. Further, other than the general reduction identified above, there is no basis to further reduce the security amount by reason only of the fifth defendant's claim of the privilege against self-incrimination.

⁴⁴ (1959) 101 CLR 298.

⁴⁵ *Australian Securities & Investments Commission v ABC Fund Managers Ltd (No 2)* (2001) 39 ACSR 443 at [109]-[112]; *BCEG International (Australia) Pty Ltd v Xiao* [2021] NSWSC 1027 at [28]-[32]; *Chong v CC Containers Pty Ltd* (2015) 49 VR 402 at [206]-[212] and [215]-[229]; *Clayton Utz v Dale* (2015) 47 VR 48 at [189]-[200]; *Pappas v New World Oil Developments* (1993) 43 FCR 594 at 595.

- [323] In all of the circumstances and considering the various competing factors, including the “feel” of the case, the appropriate amount of security to be provided by the plaintiff in respect of the fifth defendant is \$90,000.

What amount of security should be ordered to be provided in respect of the eighth defendant?

- [324] The eighth defendant seeks security in the amount of \$70,000. The plaintiff contends that the security amount ordered should be no more than \$30,000.
- [325] Further the plaintiff contends that security for the eighth defendant and the sixth and seventh defendants should be no more than \$50,000 in combination. Given that the plaintiff has chosen to join the eighth defendant as a party and pleads a case directly against the eighth defendant there is no reason that the eighth defendant should be disentitled to be awarded security for that reason alone. The eighth defendant’s interests are separate from the sixth and seventh defendants’. The usual discretionary factors apply and the amount of security is to be considered in all of the circumstances.
- [326] The same issues considered in respect of the other defendants arise in respect of the eighth, with the additional issue in relation to the claim of the privilege against self-incrimination and the dispensation orders made (similar to the fifth defendant discussed above).
- [327] The eighth defendant relies on the affidavit of Simone Rees sworn 10 August 2026. The plaintiff relies on the affidavit of Dr Wild and the affidavit of Mr Bloom. The findings and comments made in respect of this evidence in relation to the first defendant is adopted in respect of the fifth defendant.
- [328] Both Category 2A and Category 2B costs arise for consideration.

Category 2A

- [329] The Category 2A costs sought are the eighth defendant’s costs incurred since the close of pleadings.
- [330] The issue of whether the First Tranche of disclosure has been exhausted does not arise in the same way in respect of the eighth defendant. At the time of the First Tranche of security the eighth defendant was not separately represented. The First Tranche of the security has been exhausted on the evidence of the sixth and seventh defendants, with whom there was previously joint representation.
- [331] The eighth defendant seeks security in respect of the costs incurred since the close of pleadings on 5 May 2026. The affidavit of Ms Rees identifies the relevant solicitor and counsel hourly rates and identifies the costs incurred from the close of pleadings as:
- (a) \$64,533.50 for professional fees;
 - (b) \$74,608.92 for counsel’s fees; and
 - (c) \$1,609.19 for disbursements.

- [332] These costs relate to tasks including reviewing the plaintiff's further amended statement of claim, undertaking investigations and taking instructions in respect of the allegations, preparing and filing an amended defence, considering and applying for the dispensation orders, reviewing the amended defences of the other parties and the amended reply and correspondence between the parties as to matters including the amended pleadings and disclosure.
- [333] Ms Rees deposes to these costs being necessary and properly incurred and that the amount is reasonable given the complexity of the proceeding.
- [334] Ms Rees applies a recoverability rate of 65% for professional fees, 90% for counsel's fees and 100% for other disbursements to arrive at an estimate of the recoverable costs.
- [335] The plaintiff contends that the recoverability rate in respect of the eighth defendant should be 40% to 60% for professional fees and 80% for counsel's fees. For the reasons previously articulated, and in the context of the eighth defendant and the matters deposed to in Ms Rees' affidavit, a recoverability rate of 65% for professional fees and 90% for counsel's fees and disbursements is reasonable in the circumstances.
- [336] Applying a recoverability rate of 65% for professional fees and 90% for counsel's fees and disbursements, the estimate of recoverable costs in respect of Category 2A is:
- (a) \$41,947 in professional fees;
 - (b) \$67,148 for counsel's fees; and
 - (c) \$1,448 for disbursement,
- being a total of \$110,543.

Category 2B

- [337] The estimate of costs for the eighth defendant to complete disclosure is \$77,250. Ms Rees' affidavit assumes that 10,000 documents will be disclosed by the parties and need to be reviewed. The procedure for the review of the documents is on the basis that a junior solicitor and junior counsel would do the initial review and only selected documents would be elevated to senior counsel and the partner.
- [338] The estimate does not include any allowance for an application in respect of disclosure, nor a further review.
- [339] Ms Rees estimates the costs of the review task as follows:
- (a) \$28,750 for professional fees; and
 - (b) \$33,500 for counsel.
- [340] Consistent with the "triage" approach described by Ms Rees, these figures reflect the bulk of the work being undertaken by a solicitor and junior counsel.
- [341] Ms Rees deposes that these estimates are conservative and the actual time is likely to exceed these estimates. This approach has been adopted to arrive at a reasonable estimate of likely costs for the purposes of the security amount.

- [342] As the estimate adopts an assumption of a review of 10,000 documents no adjustment is required as to the volume of documents to be reviewed.
- [343] Ms Rees then applies a recoverability rate of 65% for professional fees, 90% for counsel's fees and 100% for other disbursements to arrive at an estimate of the recoverable costs.
- [344] Consistent with the above approach, a recoverability rate of 65% for professional fees and 90% for counsel's fees and disbursements should be applied. The estimate of recoverable costs in respect of the disclosure review is \$18,687 for professional fees and \$30,150 for counsel.
- [345] The estimate also includes disbursements for eDisclosure costs including hosting fees and eDisclosure services in the amount of \$15,000. Given the assumption of 10,000 documents there is no need for a proportionate reduction in respect of the volume of documents processed and/or stored.
- [346] I accept the evidence of Ms Rees in respect of these costs.
- [347] The recoverability rate of 90% should be applied, with an estimate of recoverable costs in the amount of \$13,500.
- [348] Based on this approach, the estimate of recoverable costs in respect of the Category 2B costs for the eighth defendant is \$62,337.

Amount of security sought by the eighth defendant

- [349] The security amount sought by the eighth defendant of \$70,000 is a substantial discount of the likely recoverable costs on a standard basis of \$174,541.49 calculated by the eighth defendant (or \$172,880 in accordance with the above analysis).
- [350] The security amount sought reflects a reasonable and proportionate amount that was offered to try to reach a compromise in respect of the security amount.
- [351] As identified previously, consideration needs to be given as to whether a further reduction should be applied.
- [352] I have previously considered the plaintiff's submissions in respect of a "global discount" and a "public interest" reduction. As discussed previously, adjustments of this nature are open for the Court to make but it depends on the consideration of all of the factors and the particular circumstances.
- [353] No further reduction is warranted in all of the circumstances in respect of the eighth defendant.
- [354] Further, the plaintiff submitted that the fact that the eighth defendant has claimed the privilege against self-incrimination is a factor relevant to the exercise of the discretion to award security and also to set the appropriate amount of security.
- [355] For the reasons outlined in respect of the fifth defendant, the eighth defendant is not disentitled from seeking security. Further, there is no basis to further reduce the security amount by reason only of the eighth defendant's claim of the privilege against self-incrimination.

- [356] The eighth defendant has taken a reasonable and appropriate approach to estimating the costs and the likely recoverable costs. Further, the eighth defendant has sought a conservative security amount in all of the circumstances.
- [357] As identified in the eighth defendant's submissions in reply, even applying "extreme" parameters proposed by the plaintiff including the lower recoverability rates of 50% for professional fees and 80% for counsel's fees and assuming 5,000 documents to be reviewed, the security amount of \$70,000 remains reasonable.
- [358] In all of the circumstances and considering the various competing factors, including the "feel" of the case, the appropriate amount of security to be provided by the plaintiff in respect of the eighth defendant is \$70,000.

Orders

1. Pursuant to rule 670 of the UCPR, the plaintiff provide security for the costs of completion of disclosure in the following sums by way of payment into court, or such other form of security satisfactory to the Registrar, within 14 days of this order:
 - (a) in respect of the first defendant, \$200,000;
 - (b) in respect of the second defendant, \$90,000;
 - (c) in respect of the third defendant, \$90,000;
 - (d) in respect of the fifth defendant, \$90,000;
 - (e) in respect of the sixth and seventh defendants, \$90,000; and
 - (f) in respect of the eighth defendant, \$70,000.
2. Pursuant to rule 674 of the UCPR, the proceeding be stayed insofar as it concerns steps taken by the plaintiff as against the first defendant, the second defendant, the third defendant, the fifth defendant, the sixth and seventh defendants, and the eighth defendant respectively until such time as the plaintiff complies with order 1(a)-(f) in respect of the relevant defendants.
3. The parties are to prepare an agreed order in respect of disclosure, to be provided to the Associate to Williams J by 8 October 2026.
4. The parties are to liaise and agree orders as to costs, to be provided to the Associate to Williams J by 8 October 2026. If the parties cannot agree they are to agree directions for brief further submissions to be filed and served in respect of costs, to be provided to the Associate to Williams J by 8 October 2026.