

defaults and materials adverse change under an employment agreement dated 1<sup>st</sup> July 2016 and Security Agreement executed 16<sup>th</sup> April 2017,

**AND WHEREAS** the aforementioned Security Interest and Charge have been assigned PPSR Registration Number 201703240058831,

**NOW TAKE NOTICE** that the floating charge comprised within the Charge and otherwise is to convert into a fixed charge with immediate effect with respect to the property described in schedule 1 and that Charge is Crystallised by this Notice of Crystallisation of Charge and that the property described within schedule 1 is also seized in accordance with the provisions of the PPSA under this Notice of Seizure of Collateral issued under s 123 of the PPSA

Dated this 6<sup>th</sup> April 2018; Signed on behalf of the Chargee by its duly authorised attorney/agent



Andrew Morton Garrett, Managing Controller  
OENOVIVA (UK & IRELAND) PTY LTD ACN; 156 587 183 (CONTROLLER APPOINTED) AS TRUSTEE of THE  
ANDREW GARRETT FAMILY TRUST ABN; 78 761 760 976

## SCHEDULE 1

### PROPERTY SUBJECT TO FIXED CHARGE.

All of the assets and undertaking of **the Chargor in all of its capacities** which are not otherwise subject to a fixed charge by virtue of the Charge including without limitation;

- ❖ Entitlement to receive money from accounts held by **the Chargor**, including Bank Accounts held with any Bank.
- ❖ entitlement to any loan accounts made to any other related or unrelated entities owed to **the Chargor**
- ❖ **the Chargor's** entitlement to be paid money in respect to invoices raised by it owed to **the Chargor** at the date of this Notice.
- ❖ Interests in Real Estate
- ❖ Negotiable Instruments
- ❖ Intellectual Property
- ❖ Goodwill
- ❖ Investments of any kind
- ❖ Shares held in Public and Private Companies
- ❖ Plant & Equipment
- ❖ Assets and Undertakings
- ❖ Stock
- ❖ Fixtures and fittings
- ❖ any other thing of value
- ❖ Rights of Any Kind
- ❖ Indemnities
- ❖ Security Interests

- ❖ Charges held over other entities
- ❖ Choses in Action against any person including the Commissioner of Taxation, Silva, Commonwealth Bank of Australia, Murdoch Clarke, PKF and others



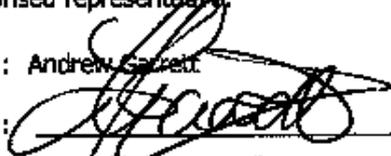
### Engagement Agreement

#### Engagement Schedule

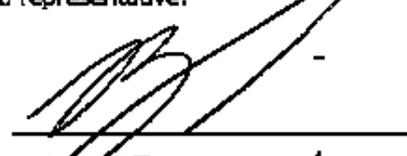
- 1. We/Us/Our : OenoViva (Uk & Ireland) Pty Ltd (Controller Appointed) as trustee for the Andrew Garrett Family Trust ABN 78 761 760 976 of Level 1, 2 Drewery Place, Melbourne, Victoria, 3000
- 2. You/Your : Steel-Con Holdings Pty Ltd ABN; 83 074 454 587 whose address is 87-89 Cove Hill Road, Bridgewater, Tas 7030
- 3. Start Date : 01/07/2016
- 4. End Date : 30/06/2026
- 5. Services : Staff Resourcing Services
- 6. Fees : Total Cost Of Remuneration (TCR) + 5.0% of TCR
- 7. Authorised Rep. Name : Brennan Fitzallen  
 Authorised Rep. Phone : + 61 (0) 418 127 408  
 Authorised Rep. Email : [brennan.fitzallen@fitzallen-forestry.com](mailto:brennan.fitzallen@fitzallen-forestry.com)
- 8. A/c's Payable Contact Name : Andrew Garrett  
 A/c's Payable Contact Phone : 0424 324 135  
 A/c's Payable Contact E-Mail : [admin@dynamic-cws.com.au](mailto:admin@dynamic-cws.com.au)
- 9. Invoice Delivery Email : [brennan.fitzallen@fitzallen-forestry.com](mailto:brennan.fitzallen@fitzallen-forestry.com)  
 Invoice Frequency : Monthly
- 10. Payment Method : Electronic Funds Transfer
- 11. Payment Term : Net
- 12. Additional Services :

Acknowledgement: I agree with the Schedule above and the attached Terms and Conditions.

Executed by **OenoViva (Uk & Ireland) Pty Ltd** by its authorised representative:

Name : Andrew Garrett  
 Signature :   
 Date : 01/07/2016

Executed by **Steel-Con Holdings Pty Limited** by its authorised representative:

Name : \_\_\_\_\_  
 Signature :   
 Date : 1/7/2016



Service Terms

Services

We have offered for the Nominated Person to provide the Services to You and You agree for Us to supply the Nominated Person, for the period commencing on the Start Date and finishing on the End Date or for the Assignment Term, on the terms and conditions set out herein.

Part 1 - Timesheets

- 1.1. Timesheets are required to be completed by the Nominated Person and submitted to You through Our timesheet system.
1.2. Where We supply multiple Nominated Persons to You, We may require Time & Rate Sheets to be completed by You and submitted to Us in lieu of time sheets.
2.1. Subject to the terms of the Assignment Schedule, We shall be solely responsible for any contributions or payments required by law to be made to or on behalf of the Nominated Person except for expenses You require the Nominated Persons to incur.
3.1. You agree:
(a) that You will use Our Services exclusively and that You will immediately transfer all Your existing Staff, including employees and labour contractors to Our employment or engagement respectively, as the case may be;
(b) that We may immediately increase the Rate charged for a Nominated Person from the date of Increase for any component of their Remuneration Package, including Superannuation under an Industrial Instrument, or other government legislation, at the same rate of Increase, for any Grade, level or classification, under which they qualify;
(c) to ensure that the Nominated Person is at all times in a safe and proper working environment, and where suitable is properly inducted into the workplace and provided with safety equipment, training and information necessary to provide a safe workplace.
(d) that where the Nominated Person foresees a risk of injury at the workplace, they will not be required to enter the workplace or may leave the workplace immediately.
(e) that You, Your employees, agents or contractors will not direct or otherwise request the Nominated Person to perform any duty which is not within the Nominated Person's expertise and technical skills, or which might cause the Nominated Person to be in breach of any law, regulation, standard, code or guidelines which may cause the Nominated Person to become restricted, prevented or disqualified from performing the Services in the State or Territory where the Nominated Person is working and that You will pay or reimburse any fee for a Licence required during the term of this Agreement;
(f) to allow reasonable access by the Commonwealth and Us to Your premises for the purpose of monitoring the Nominated Person in respect of the services provided by the Nominated Person to You.

- (g) that We have made no warranties in respect of the Nominated Person's performance of the Services under this Agreement other than as required by law and that We shall not be held liable for the supply, or failure to supply any particular deliverable required under this Agreement;
(h) that You will not pay the Nominated Person any money except to reimburse legitimate business expenses under this Agreement; and
(i) that You have not charged at any time before this Agreement commences and will not charge any money to the Nominated Person and where You do so, that We will have a claim to recover the money charged on behalf of the Nominated Person as well as interest;
(j) that unless other arrangements have been agreed to and specified in the Assignment Schedule, You will be solely responsible for any payroll tax obligations associated with engaging the Services of the Nominated Person;
(k) you declare that where You have provided a Payroll Tax Declaration the information You have provided in that Declaration is true and correct for the purposes of Revenue Ruling PTA027 under the Payroll Tax Act 2007;
(l) that where the Nominated Person is a Permanent Employee of Us, or is Sponsored by Us:
(i) the Billing Rate is based on the Nominated Person working the Standard Hours only and that You agree that any hours worked in excess of that will cause a proportionate increase in the amount to be billed and increase the Billing Rate by a factor in line with the applicable Industrial Instrument whichever is the greater;
(ii) the Nominated Person may take statutory public holidays, and any leave approved by Us including annual, personal, carers and sick leave in accordance with the National Employment Standards and You will pay to Us at the Billing Rate for the Minimum Frequency plus GST calculated on a pro rata basis;
(iii) that where the Nominated Person has accrued but untaken annual leave at the End Date or at the end of the Assignment Term or upon earlier termination of this Agreement or where there is four (4) weeks accrued leave, this may be charged to You at the Billing Rate plus GST calculated on a pro rata basis;
(iv) that where the Nominated Person was previously an employee or contractor of You then You are responsible for all accrued leave and other obligations due to them during that time.

- 4.1. Unless terminated earlier in accordance with this Agreement, Our obligation to supply the Nominated Person will terminate on the End Date or at the end of the Assignment Term, as specified in the Particular Nominated Person's Assignment Schedule unless the Nominated Person is otherwise reassigned in accordance with this Agreement or another agreement.
4.2. We may immediately terminate this Agreement or the particular Nominated Person's Assignment Agreement:
(a) where the Nominated Person has provided Us with notice of termination of employment; or
4.3. You may immediately terminate this Agreement if:
You determined that the Nominated Person commits an act of Serious Misconduct.
4.4. Either party may terminate the particular Nominated Person(s) Assignment Agreement immediately if:
(a) the Nominated Person is convicted of an indictable offence;



**Service Terms**

- (b) either party becomes aware that the Nominated Person is not legally eligible to be, or otherwise restricted from, performing the Services.
- 4.5. Where You have notified Us that You are terminating this Agreement under Part 6 either immediately or with notice, You will within 24 hours of such notification, notify the Nominated Person that You have given Us notice to terminate this Agreement.
- 4.6. Other than as described elsewhere in this Part 7, this Agreement may only be terminated, by either party giving the other one (1) month's written notice or 24 hours notice where the Nominated Person is a casual employee of Us.
- 4.7. Where written notice is provided by You to Us in accordance with Clause 6.5, the Nominated Person may continue to perform the Services for the duration of the notice period. If You inform Us in writing, the Nominated Person can cease performing the Services immediately, in which case We will invoice You for the duration of the notice period, at the Billing Rate for the Minimum Frequency plus GST;
- 4.8. You must notify Us in writing one (1) month's prior to the End Date or the end of the Assignment Term that You do not wish the Nominated Person to perform or provide the Services after the End Date or the end of Assignment Term or 24 hours where the Nominated Person is a casual employee of Us. If We do not receive such written notification from You, We may at Our discretion after the End Date or the end of the Assignment Term.
  - (a) continue to provide the Services of the Nominated Person to You until We receive the written notification from You; and
  - (b) invoice You pro-rata for that notice period on the same terms as if this Agreement was to continue.
- 5.1. In the event that You request the Nominated Person to continue to perform or provide the Services beyond the End Date or the end of the Assignment Term, the terms of a new Assignment Schedule may be agreed and signed by Us and You.
- 5.2. Where the parties agree to a reassignment or where the Nominated Person continues to provide the Services past the End Date or the end of the Assignment Term without a new Assignment Schedule being agreed and signed, this Agreement will continue to bind the parties.
- 6.1. You acknowledge and agree:
  - (a) that the particular Nominated Person's Assignment Agreement is subject to the availability of the Nominated Person
  - (b) that receipt of electronic communications (for example, email) by Us from You will constitute a valid acceptance of this Agreement and the Assignment Schedule for the provision or performance of Services by the Nominated Person.
- 6.2. If during the term of the Agreement You require Us to supply other and/or additional Nominated Persons to provide Services, the parties agree that this Agreement may be varied by the completion of an additional Assignment Schedule which shall be agreed in writing by the parties, in which case You and We will be bound by the terms and conditions of this Agreement in relation to the additional Assignment Schedule for the supply of the other and/or additional Nominated Persons.
- 6.3. You acknowledge and agree that any claim against Us in accordance with Clause 5.1(c) and 5.1(d) will be investigated and We may recoup costs of defending the claim plus contribution to damages based on Your percentage of responsibility, if You are found to be in breach of Your obligations. We may also continue to charge You the agreed fee while the Nominated Person is unable to work due to a claim or injury.



### Terms & Conditions

#### Introduction

These terms, read together with the Engagement Schedule, and Service Terms, set out Our offer to You to supply the Services from the Start Date. Your acceptance of these terms by email or otherwise, or any request You make for provision of the Services, will give rise to a binding contract between You and Us on these terms.

The relationship between You and Us is one of principal and contractor. Nothing in this Agreement constitutes a relationship of employment, agency, joint venture or partnership between You and Us or You and the Nominated Person.

#### Part 1 - Services

- 1.1. So that We may provide the Services to You, You appoint Us Your agent to attend on Your behalf to such matters as are necessary for the purposes of providing to You the Services, for the period commencing on the Start Date and finishing on the termination of this Agreement, subject to the terms and conditions set out herein.
- 1.2. The Service Terms define Your and Our obligations for each of the Services. If ever common usage or practice, any employment agreement or other contract You have made conflict with the Service Terms, the Service Terms prevail in so far as defining Your and Our obligations to each other under this Agreement. You warrant that You have satisfied Yourself that the Service Terms are suitable for the purposes of meeting Your obligations to third parties (including Nominated Employees and authorities) whether under contract or otherwise at law.
- 1.3. Where We provide further or additional Services to You, the additional Services and the associated Fees will be deemed added to the Services Schedule once We have issued Our first invoice for the new Services to You.

#### Part 2 - Invoicing

- 2.1. You agree to pay Our Fees plus GST where applicable.
- 2.2. We will invoice You for Our services, and the Invoice Frequency is subject to change by agreement.
- 2.3. The directors, officers and proprietors in the case of a partnership or sole trader, agree to immediately notify Us if there is any change in their financial situation that may impact Us or Our Payment Term;
- 2.4. We may confirm a mutually agreed increase in Our Fees to You by notification on Our tax invoice to You.
- 2.5. Where the actual On-Costs Incurred by Us in respect to the Nominated Person exceed the amount quoted on the Engagement Schedule, then the On-Costs percentage are increased by the amount of the increase and may be invoiced from the date of the increase.

#### Part 3 - Payment

- 3.1. In return for the provision of the Services, You will pay:
  - (a) the fees calculated as per Our Fee Schedule and if stated on a Assignment Schedule, at the Billing Rate at the Frequency of Rate, and if applicable multiplied by the time worked for You by Us;
  - (b) any commissions and/or bonus payments as agreed between You and Us in writing; and
  - (c) any other related expenses which are incurred by Us or are required by You of Us or a Nominated Person in providing or performing the Services, provided, such expenses have been previously agreed between You and Us.
- 3.2. You agree:
  - (a) that for any amounts forwarded by Us to You by bank transfer, that We will not be liable for any local bank charges, any currency exchange rates by the banks or any time period that the bank takes to effect the deposit.

(b) that where We receive a refund due to You, for Us to bank the refund in Our bank account; deduct Our fees, and taxes, such as GST, from the amount sent to You.

- 3.3. You must pay the Disbursement Funds in advance and strictly in accordance with the manner prescribed by the Engagement Schedule and We may deduct Our Fees from those funds.
- 3.4. You must pay the Fees in advance, upon presentation of Our Tax Invoice and within the Payment Term.
- 3.5. You acknowledge that We are under no obligation to make any payments which may be required to perform the Services including those to Nominated Employees, unless You have complied fully with Your obligations under Part 3.
- 3.6. If the Payment Method is direct debit We will debit Your nominated bank account within 24 hours of the last Business Day of the Payment Term.
- 3.7. Where the last day(s) of the Payment Term falls on a weekend or a public holiday in the State or Territory in which the Services are being provided, then the term will be shortened so that the last day of the Payment Term falls on the most recent prior Business Day.
- 3.8. If Your payment of Our tax invoice is dishonoured, then You must immediately reimburse Us for any bank charges incurred and pay to Us an administration fee of \$50 plus GST.
- 6.5. If You fail to pay any amount due on Our tax invoice by the date of expiry of the Payment Term then You will be charged an additional 1% plus GST for every 14 days or part thereof of the balance owing on any of Our tax invoices including GST and this charge will be Direct Debited or such other method as We agree in writing, to Your account, at the frequency We determine.

#### Part 4 - Our Obligations

- 4.1. We shall be responsible for providing the Services to You in a timely and reliable manner as prescribed by the relevant Service Terms.
- 4.2. You acknowledge that Our obligations are limited to competently performing the tasks required of Us in the Service Terms and that We are not liable for any costs, loss or damage You may suffer that is not caused solely by Our failure to comply with the Service Terms.
- 6.6. The measure of Our competency will be that reasonably expected of an employee performing the Services with their ordinary incident and rate of error.
- 4.3. Upon Your request We will supply You with any financial data in Our possession that You may require in order to satisfy Your Statutory requirements and will supply any Information and Documentation in Our possession to comply with any lawful request from a Government authority, unless You have not paid Our invoices in full.

#### Part 5 - Your Obligations

- You agree:
- (a) That You will strictly abide by the requirements of the relevant Service Terms for each of the Services We provide including the timely provision of information, documents and funds;
  - (b) To provide such information, consents or disclosures and to complete such forms or applications in the Approved Format and as may be necessary for Us to perform the Services at the frequency required by Us from time to time;
  - (c) To provide Us with the guidance, instruction, checking, supervision and audit, of the nature ordinarily afforded to an employee by an employer to enable Us to provide the Services in a manner that best meets Your requirements;
  - (d) That We will not be liable for any fines, penalties or interest imposed on You by reason of Your failure to pay any liability



### Terms & Conditions

by the due date or otherwise comply with the Service Terms or Your other obligations under this Agreement;

- (e) That You will be responsible for supplying accurate information according to the deadlines imposed by Law, the Service Terms or agreed with Us in writing from time to time, and that You will ensure that Your Authorised Representative remains contactable;
- (f) That You will advise Us in a timely manner of any changes in information or circumstances that You become aware of, that may affect the provision of the Services by Us;
- (g) That where We are providing a Service that involves payment of Your liabilities, You must provide the funds We require no later than the time prescribed by the relevant Service Terms;
- (h) That Your Authorised Representative will be the contact for all enquiries and has Your authority to bind You and to provide Us with such information and instruction as We may require from time to time;
- (i) That We or an associated entity may, act as Your agent, to engage any Contractor on Your behalf to provide the Services to You and that We may bill and collect from You, for amounts due by You to them;
- (j) To indemnify Us and keep Us indemnified against any direct or indirect loss, damage, cost or claim arising in any way in relation to any act or omission by You, Your employees, agents or customers or suppliers in relation to the provision of the Services; or any breach by You of this Agreement.

7.7.

after the End Date. If We do not receive written notification from You, the services under the Agreement will continue unless We notify You in writing that We opt out of the further term. If We opt out of the further term(s) We may, at Our discretion, after the End Date continue to provide the Services to You on a month to month basis.

7.8.

Where written notice is provided by You to Us in accordance with clause, We may continue to perform the Services for the duration of the notice period. If You inform Us in writing that We can cease performing the Services immediately We will invoice You for the duration of the notice period, at the same rate as the most recently issued invoice in proportion to the period of notice.

#### Part 8 - Reassignment

8.1.

Termination of this Agreement shall not affect any accrued rights or remedies the parties have under this Agreement.

8.2.

The term of this agreement may be extended or Services may be added or removed by agreement in writing between the parties to substitute a new Services Schedule.

Where the parties agree to a reassignment or where We continue to provide the Services past the End Date without a new Services Schedule being agreed and signed, this Agreement will continue to bind the parties until terminated in accordance with Clause 6.

#### Part 9 - Liability

9.1.

To the extent permitted by law, You agree that We will not be liable to You, or any person claiming through You, for any direct or indirect loss (including consequential loss or loss of profits), damages or costs or claims however sustained or incurred by You, Your employees, contractors or agents or any third party, arising in any way in relation to this Agreement or from Our performance or provision of the Services. To the extent that, such a liability may not be excluded by law, You agree that Our liability to You is limited to the extent permitted by that law.

#### Part 6 - Security

You hereby grant a security as a charge to be registered on the PPSR to secure all moneys owed by you to us under this Agreement

#### Part 7 - Termination

- 7.1. Subject to the following, Our obligation to supply the Services will terminate on the End Date, unless the Services are continued in accordance with this Agreement.
- 7.2. We may immediately terminate this Agreement if initial or subsequent credit investigations carried out on You are deemed by Us to present an unacceptable potential credit risk
- 7.3. We may immediately terminate this Agreement by notice in writing or suspend the provision of Services if You fail to pay any money due to Us within the Payment Term.
- 7.4. You may immediately terminate this Agreement by notice in writing if:
  - (a) We have committed an act of Serious Breach of Contract; or
  - (b) We are performing Our responsibilities unsatisfactorily in a material respect and You have given Us written notice of the full details of the fact and the remedy required including adequate time for completion and Our unsatisfactory performance has not been corrected for thirty (30) days after the reasonable date of completion of the remedy.
- 7.5. Either party may terminate this Agreement by notice in writing immediately if:
  - (a) both parties agree in writing;
  - (b) the other party breaches a term of this Agreement and fails to remedy such breach within fourteen (14) days of a written demand from the first party that they do so;
  - (c) the other party commits an act of bankruptcy or becomes insolvent; or
  - (d) the other party is prevented for a period of one month or more, from performing its obligations under this Agreement due to a force majeure.
- 7.6. Unless otherwise terminated in accordance with this Agreement, You must notify Us in writing at least sixty days prior to the End Date if You do not wish Us to perform or provide the Services

#### Part 10 - Assignment of Agreement

10.1.

You agree that We may, at Our absolute discretion, assign all Our powers, rights and obligations under this Agreement ("assignment" for the purposes of this Part only) to a third party ("the third party assignee") and You acknowledge that upon an assignment We are automatically released from the terms and conditions of this Agreement except for any obligation already incurred and that the third party assignee assumes Our powers, rights and obligations under this Agreement.

10.2.

You agree to be bound to the third party assignee to perform Your obligations under this Agreement so as to ensure that the third party assignee obtains the full benefit of this Agreement.

#### Part 11 - Confidentiality, Intellectual Property & Restraint

11.1.

We will not use or disclose any confidential information which You have provided to Us other than with Your consent or for the purposes of performing Our obligations under this agreement and except to the extent required by law, including to the Commonwealth in accordance with any undertakings or Agreements We may have.

11.2.

You must not use or disclose any Confidential Information including Our methods and trade secrets of which You become aware as a result of Our performance of Our obligations under this Agreement.

11.3.

You acknowledge and agree that We own all material and intellectual property rights created by Us in performing or providing the Services, except for those created by a Nominated Person, which You own.

11.4.

At the End Date, or upon earlier termination under this Agreement, each party must forthwith return to the other all materials, Confidential Information and other property belonging to that other party and must not make copies of such information or materials.



## Terms & Conditions

11.5. The obligations concerning Confidential Information and intellectual property shall continue after the expiration or termination of this Agreement.

### Part 12 - General Provisions

12.1. This Agreement includes any attached or linked or referred schedule, or Service Terms, and constitutes the entire Agreement between the parties and supersedes and replaces any prior understanding. In entering into this Agreement both parties acknowledge that they have not relied on any representations, warranties, terms, conditions or obligations real or written, express or implied other than those contained in this Agreement.

12.2. This Agreement may only be varied by agreement of the parties in writing including writing by electronic communication.

12.3. You acknowledge and agree that We may treat all electronic communications, (e.g., email) received by Us from You or Your email address as sent or authorised by You; including to the extent that any such communication may affect the parties' respective obligations under this Agreement.

12.4. Both parties agree that all communications including any document created and/or required by law to be given in writing may be provided in electronic form.

12.5. All powers, rights or provisions under this Agreement are valid, whether exercised or not and the exercise of any power, right or provision does not, exclude the exercise of any other power, right or provision. If a provision of the Agreement is found to be invalid or unenforceable, it shall be deemed deleted without affecting the balance of this Agreement.

12.6. Where there is a conflict in specific terms and conditions between any attached or linked or referred schedule, or Service Terms, and the balance of the Agreement, the terms of the Service Terms shall take precedence followed by any Engagement Schedule and then by an Assignment Schedule and shall apply to resolve any such conflict.

12.7. If a dispute arises in relation to this Agreement, the parties agree to give one another notice in writing of their respective positions and undertake to negotiate in good faith to resolve the dispute.

12.8. A right, power or remedy in Our favour may only be waived in writing by Us. Failure or delay by Us in exercising a right, power or remedy does not prevent its subsequent exercise or constitute waiver of that right, power or remedy.

12.9. This Agreement is to be covered by the laws in force in the State of incorporation or registration of Us and the parties must submit to the exclusive jurisdiction of the courts in that place.

12.10. If during the term of the Agreement You require Us to supply other and/or additional Services, the parties agree that this Agreement may be varied so that You agree to pay Us the additional fees for those Services as per Our current Fee Schedule, and Our Service Terms for those services, or by the completion of an additional Services Schedule, which shall be agreed in writing by the parties, in which case You and We will be bound by the terms and conditions of this Agreement in relation to the additional Services Schedule for the supply of the other and/or additional Services.

### Part 13 - Definitions

**Agreement** means the contract formed by both parties executing this agreement comprising these terms, the Services Schedule, the Fee Schedule and Service Procedures and any document incorporated by reference herein.

**Approved Format** means the format, frequency and method of transmission of forms or information as determined by Us from time to time.

**Assignment Schedule** means the assignment schedule provided to You by Us under this Agreement, which sets out the terms of hire from time to time for individual or multiple Nominated Persons under and during the term of this agreement and which may also include a spreadsheet sent from either party

that the other party accepts as well as a New Starter Candidate Form that You send Us and which We accept and issue an employment agreement to the Nominated Person as a result.

**Assignment Term** means the period of time as specified in the Assignment Schedule or Letter of Appointment.

**Billing Rate** means the billing rate We will charge You for the Services provided by the Nominated Persons exclusive of GST as specified in the Assignment Schedule.

**Business Day** means a day on which trading banks are open for business in the State or Territory where the Services are provided or performed and does not include a Saturday, a Sunday or a public holiday.

**Business Items** means an item of income, expense, capital, asset or liability of the Business.

**Business Savings** means the resulting decrease in expenditure or increase in revenue or gain in asset value or decrease in liability or gain in capital in the Business Items since the Start Date, for the period in question, compared to the existing costs or income of the item, immediately prior to the implementation, for a comparable period for comparable volumes for a comparable process or procedure.

**Business Savings Percentage** means the percentage of the Savings We will be paid.

**Confidential Information** includes all confidential, non-public or proprietary information & documentation and intellectual property of the Provider given to the Recipient regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this Agreement relating to the business, technology or other affairs of the Provider of the Confidential Information.

**Contractor** means a person or entity that is not an employee of You.

**Direct Debit Request** means the Direct Debit Request between You and Us.

**Disbursement** means the expenses incurred by Us, the Nominated Employee or the Nominated Person on Your behalf in providing the Service and; those We require to pay or to settle Your obligations to third parties.

**EFT** means electronic funds transfer between banks.

**End Date** means the end date specified in the Engagement Schedule or the Assignment Schedule as the case may be, or where there is no end date specified, the date that results from adding the Term to the Start Date.

**FBT** means fringe benefits tax.

**Fees** means those fees as specified in the Engagement Services Schedule or Assignment Schedule or Fee Schedule.

**Frequency of Rate** means the frequency of the Billing Rate as set out in the Assignment Schedule on a monthly, fortnightly, weekly, daily or hourly basis.

**GST** has the meaning it has in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**GST Group** has the meaning given to it in the GST Act.

**Industrial Instrument** means an instrument made under or given effect by or recognised under a law of the Commonwealth or the State or Territory that regulates workplace relations and prescribes terms and conditions of employment between employers and employees including, but not limited to, an award or agreement made under or given effect by or recognised under the Fair Work Act 2009 or a State or Territory law that regulates the relationship between employers and employees.



**Terms & Conditions**

**Insolvent** means Insolvent under administration or Insolvent (each as defined in the Corporations Act 2001) or is unable to pay its debts as and when they fall due.

**Intellectual Property** means business names, characteristics, copyrights, designs, discoveries, drawings, inventions, logos, notes, objects, matter, patents, processes, slogans, software including object code and source code, specifications, systems, trademarks, trade secrets and other products created, records and data used in or associated with the Providers business and whether existing at the date of this agreement or brought into existence subsequent to this Agreement and in any form whether paper or electronic or other. This includes opportunities that may arise from contact with the Providers clients, development of business or ideas from the Providers activity or activity from contractors paid by the Provider, shall all be deemed to be the Providers Intellectual Property

**Invoice Frequency** means the frequency at which We will Invoice You as specified in the Engagement Services Schedule.

**Licence** means a licence, registration or membership that the Nominated Person is required to hold in order to provide the Services in the Workplace.

**National Employment Standards** are a set of legislative minimum employee entitlements contained in the Fair Work Act 2009.

**Nominated Employees** means employees that You agree for Us to perform or provide the Services for.

**Nominated Persons** means the person provided by Us to You to perform or provide the Services as set out in the Assignment Schedule.

**On-Costs** means the total of the rates applicable for payroll tax, public liability insurance, professional indemnity insurance and workers compensation insurance (generally based on the industry they are in or WIC code) each individually rounded up to the next whole percentage, in respect to the Nominated Person.

**Packaging Fees** means those fees agreed by the Nominated Employees to be salary sacrificed from their Total Remuneration Packages unless stated otherwise in the Engagement Services Schedule.

**Pay Cycle** means the Interval at which Your Nominated Employees or Persons are paid.

**Pay Date** means the day the Nominated Employee is to be paid their salary for a particular Pay Cycle.

**Payment Method** means the method by which You will pay for the Services as specified in the Engagement Schedule or Assignment Schedule as the case may be. It will be by electronic funds transfer unless You have authorised a direct debit.

**Payment Terms** means the number of days from the Invoice Date before the Invoice becomes due for payment in full as specified in the Engagement Schedule or Assignment Schedule or failing that then in the attached Terms & Conditions and failing that then on the Invoice.

**Payroll Tax Declaration** means that You declare that You are liable for payroll tax and will pay the payroll tax liability that arises out of on-hiring the Nominated Person (as service provider) to Your client.

**PPSR** means the Personal Property Security Register established under the provisions of the *Personal Property Security Act 2009* (Cth)

**Remuneration Package** means the components of a Nominated Person's or Nominated Employee's remuneration that We agree to pay and includes: gross salary and wages; contractor payments bonuses and commissions; superannuation; allowances; other remuneration packaged amounts.

**Restraint Period** means the period commencing from the termination of this Agreement and expiring on lesser of 12 months and the term equivalent to the term of this Agreement.

**Salary Sacrifice** means sacrificing a component of salary in exchange for the receipt of allowances and/or benefits.

**Service Terms** means any document or guide by that name in respect to the provision of the Services issued by Us which may be amended by Us from time to time, which is also published on Our website.

**Services** means the performance or provision of the services provided by Us to You as specified in the Engagement Schedule and/or provided by the Nominated Person as specified in the Assignment Schedule.

**Services Schedule** means the Engagement Services Schedule which has been provided to You by Us with or for incorporation into this Agreement.

**Shared Business Savings Period** means the agreed period from which a recommendation for a particular item of Business Costs is adopted.

**Start Date** means the start date specified in the Engagement Schedule or the Assignment Schedule as the case may be.

**Time & Rate Sheet** means the schedule to be provided by You to Us in a format approved by Us and in accordance with Our frequency and deadlines providing details of Nominated Employees or Nominated Persons, as the case maybe, hours worked and the Rate to be Invoiced to You.

**Total Cost of Remuneration** means the total financial cost of employing or engaging the Nominated Employees or Nominated Persons accrued for the particular period and is calculated as Remuneration Package plus (Remuneration Package x On-costs).

**Total Cost of Payroll** means the sum of Total Cost of Employment for all Nominated Employees paid in a particular payment period plus the Fees payable to Us for Our Services in that Pay Period, unless otherwise agreed in writing between the parties.

**We/Us/Our** means the entity specified in the Engagement Services Schedule or the Assignment Schedule as the case may be.

**Workforce** means all permanent and contract workers of Us including Australian citizens and Australian permanent residents and Overseas Temporary Workers.

**You/Your** means the entity specified in the Engagement Services Schedule or Assignment Schedule as the case may be.



**Engagement Agreement**

**Engagement Schedule**

- 1. We/Us/Our : OenoViva (Uk & Ireland) Pty Ltd (Controller Appointed) as trustee for the Andrew Garrett Family Trust ABN 78 761 760 976 of Level 1, 2 Drewery Place, Melbourne, Victoria, 3000
- 2. You/Your : Steel-Con Holdings Pty Ltd ABN; 83 074 454 587 whose address is 87-89 Cove Hill Road, Bridgewater, Tas 7030
- 3. Start Date : 01/07/2016
- 4. End Date : 30/06/2026
- 5. Services : Staff Resourcing Services
- 6. Fees : Total Cost Of Remuneration (TCR) + 5.0% of TCR
- 7. Authorised Rep. Name : Brennan Fitzallen  
 Authorised Rep. Phone : + 61 (0) 418 127 408  
 Authorised Rep. Email : [brennan.fitzallen@fitzallen-forestry.com](mailto:brennan.fitzallen@fitzallen-forestry.com)
- 8. A/c's Payable Contact Name : Andrew Garrett  
 A/c's Payable Contact Phone : [0424 324 135](tel:0424324135)  
 A/c's Payable Contact E-Mail : [admin@dynamic-cws.com.au](mailto:admin@dynamic-cws.com.au)
- 9. Invoice Delivery Email : [brennan.fitzallen@fitzallen-forestry.com](mailto:brennan.fitzallen@fitzallen-forestry.com)  
 Invoice Frequency : Monthly
- 10. Payment Method : Electronic Funds Transfer
- 11. Payment Term : Net
- 12. Additional Services :

Acknowledgement: I agree with the Schedule above and the attached Terms and Conditions.

Executed by **OenoViva (Uk & Ireland) Pty Ltd**  
by its authorised representative:

Executed by **Steel-Con Holdings Pty Limited**  
by its authorised representative:

Name : Andrew Garrett  
Signature : \_\_\_\_\_  
Date : \_\_\_ / \_\_\_ / \_\_\_

Name : \_\_\_\_\_  
Signature : \_\_\_\_\_  
Date : \_\_\_ / \_\_\_ / \_\_\_



**Service Terms**

**Services**

We have offered for the Nominated Person to provide the Services to You and You agree for Us to supply the Nominated Person, for the period commencing on the Start Date and finishing on the End Date or for the Assignment Term, on the terms and conditions set out herein.

**Part 1 - Timesheets**

1.1. Timesheets are required to be completed by the Nominated Person and submitted to You through Our timesheet system. Where timesheets have been supplied to You by the Nominated Person, You agree to authorise those time sheets as correct and provide them to Us within the deadlines specified. By agreement We may vary these deadlines from time to time.

1.2. Where We supply multiple Nominated Persons to You, We may require Time & Rate Sheets to be completed by You and submitted to Us in lieu of time sheets. You agree to complete these Time & Rate Sheets and provide them to Us within the deadlines specified by Us. At Our discretion We may vary these deadlines from time to time.

2.1. Subject to the terms of the Assignment Schedule, We shall be solely responsible for any contributions or payments required by law to be made to or on behalf of the Nominated Person except for expenses You require the Nominated Persons to incur.

3.1. You agree:

- (a) that You will use Our Services exclusively and that You will immediately transfer all Your existing Staff, including employees and labour contractors to Our employment or engagement respectively, as the case may be;
- (b) that We may immediately increase the Rate charged for a Nominated Person from the date of increase for any component of their Remuneration Package, including Superannuation under an Industrial Instrument, or other government legislation, at the same rate of increase, for any Grade, level or classification, under which they qualify;
- (c) to ensure that the Nominated Person is at all times in a safe and proper working environment, and where suitable is properly inducted into the workplace and provided with safety equipment, training and information necessary to provide a safe workplace. You will comply with all relevant work, health and safety licensing and, equal employment opportunity and workers compensation statutory requirements, standards, codes and guidelines. You will ensure that Your work environment is free from any form of discrimination, harassment, bullying and violence and You will immediately notify Us of all accidents or incidences and injuries or at the commencement of periods of restricted duties involving the Nominated Person.

(d) that where the Nominated Person foresees a risk of injury at the workplace, they will not be required to enter the workplace or may leave the workplace immediately. You agree to supply Us with any information required by Us to determine that it is a safe workplace and that WHS processes are compliant;

(e) that You, Your employees, agents or contractors will not direct or otherwise request the Nominated Person to perform any duty which is not within the Nominated Person's expertise and technical skills, or which might cause the Nominated Person to be in breach of any law, regulation, standard, code or guidelines which may cause the Nominated Person to become restricted, prevented or disqualified from performing the Services in the State or Territory where the Nominated Person is working and that You will pay or reimburse any fee for a Licence required during the term of this Agreement;

(f) to allow reasonable access by the Commonwealth and Us to Your premises for the purpose of monitoring the Nominated Person in respect of the services provided by the Nominated Person to You.

(g) that We have made no warranties in respect of the Nominated Person's performance of the Services under this Agreement other than as required by law and that We shall not be held liable for the supply, or failure to supply any particular deliverable required under this Agreement;

(h) that You will not pay the Nominated Person any money except to reimburse legitimate business expenses under this Agreement; and

(i) that You have not charged at any time before this Agreement commences and will not charge any money to the Nominated Person and where You do so, that We will have a claim to recover the money charged on behalf of the Nominated Person as well as interest;

(j) that unless other arrangements have been agreed to and specified in the Assignment Schedule, You will be solely responsible for any payroll tax obligations associated with engaging the Services of the Nominated Person;

(k) you declare that where You have provided a Payroll Tax Declaration the information You have provided in that Declaration is true and correct for the purposes of Revenue Ruling PTA027 under the Payroll Tax Act 2007;

(l) that where the Nominated Person is a Permanent Employee of Us, or is Sponsored by Us:

(i) the Billing Rate is based on the Nominated Person working the Standard Hours only and that You agree that any hours worked in excess of that will cause a proportionate increase in the amount to be billed and increase the Billing Rate by a factor in line with the applicable Industrial Instrument whichever is the greater;

(ii) the Nominated Person may take statutory public holidays, and any leave approved by Us including annual, personal, carers and sick leave in accordance with the National Employment Standards and You will pay to Us at the Billing Rate for the Minimum Frequency plus GST calculated on a pro rata basis;

(iii) that where the Nominated Person has accrued but untaken annual leave at the End Date or at the end of the Assignment Term or upon earlier termination of this Agreement or where there is four (4) weeks accrued leave, this may be charged to You at the Billing Rate plus GST calculated on a pro rata basis;

(iv) that where the Nominated Person was previously an employee or contractor of You then You are responsible for all accrued leave and other obligations due to them during that time.

4.1. Unless terminated earlier in accordance with this Agreement, Our obligation to supply the Nominated Person will terminate on the End Date or at the end of the Assignment Term, as specified in the Particular Nominated Person's Assignment Schedule unless the Nominated Person is otherwise reassigned in accordance with this Agreement or another agreement.

4.2. We may immediately terminate this Agreement or the particular Nominated Person's Assignment Agreement:

(a) where the Nominated Person has provided Us with notice of termination of employment; or

4.3. You may immediately terminate this Agreement if:

You determined that the Nominated Person commits an act of Serious Misconduct.

4.4. Either party may terminate the particular Nominated Person(s) Assignment Agreement immediately if:

(a) the Nominated Person is convicted of an indictable offence;



## Service Terms

- (b) either party becomes aware that the Nominated Person is not legally eligible to be, or otherwise restricted from, performing the Services.
- 4.5. Where You have notified Us that You are terminating this Agreement under Part 6 either immediately or with notice, You will within 24 hours of such notification, notify the Nominated Person that You have given Us notice to terminate this Agreement.
- 4.6. Other than as described elsewhere in this Part 7, this Agreement may only be terminated, by either party giving the other one (1) month's written notice or 24 hours notice where the Nominated Person is a casual employee of Us.
- 4.7. Where written notice is provided by You to Us in accordance with Clause 6.5, the Nominated Person may continue to perform the Services for the duration of the notice period. If You inform Us in writing, the Nominated Person can cease performing the Services immediately, in which case We will invoice You for the duration of the notice period, at the Billing Rate for the Minimum Frequency plus GST;
- 4.8. You must notify Us in writing one (1) month's prior to the End Date or the end of the Assignment Term that You do not wish the Nominated Person to perform or provide the Services after the End Date or the end of Assignment Term or 24 hours where the Nominated Person is a casual employee of Us. If We do not receive such written notification from You, We may at Our discretion after the End Date or the end of the Assignment Term.
- (a) continue to provide the Services of the Nominated Person to You until We receive the written notification from You; and
- (b) invoice You pro-rata for that notice period on the same terms as if this Agreement was to continue.
- 5.1. In the event that You request the Nominated Person to continue to perform or provide the Services beyond the End Date or the end of the Assignment Term, the terms of a new Assignment Schedule may be agreed and signed by Us and You.
- 5.2. Where the parties agree to a reassignment or where the Nominated Person continues to provide the Services past the End Date or the end of the Assignment Term without a new Assignment Schedule being agreed and signed, this Agreement will continue to bind the parties.
- 6.1. You acknowledge and agree:
- (a) that the particular Nominated Person's Assignment Agreement is subject to the availability of the Nominated Person
- (b) that receipt of electronic communications (for example, email) by Us from You will constitute a valid acceptance of this Agreement and the Assignment Schedule for the provision or performance of Services by the Nominated Person.
- 6.2. If during the term of the Agreement You require Us to supply other and/or additional Nominated Persons to provide Services, the parties agree that this Agreement may be varied by the completion of an additional Assignment Schedule which shall be agreed in writing by the parties, in which case You and We will be bound by the terms and conditions of this Agreement in relation to the additional Assignment Schedule for the supply of the other and/or additional Nominated Persons.
- 6.3. You acknowledge and agree that any claim against Us in accordance with Clause 5.1(c) and 5.1(d) will be investigated and We may recoup costs of defending the claim plus contribution to damages based on Your percentage of responsibility, if You are found to be in breach of Your obligations. We may also continue to charge You the agreed fee while the Nominated Person is unable to work due to a claim or injury.



### Terms & Conditions

#### Introduction

These terms, read together with the Engagement Schedule, and Service Terms, set out Our offer to You to supply the Services from the Start Date. Your acceptance of these terms by email or otherwise, or any request You make for provision of the Services, will give rise to a binding contract between You and Us on these terms.

The relationship between You and Us is one of principal and contractor. Nothing in this Agreement constitutes a relationship of employment, agency, joint venture or partnership between You and Us or You and the Nominated Person.

#### Part 1 - Services

- 1.1. So that We may provide the Services to You, You appoint Us Your agent to attend on Your behalf to such matters as are necessary for the purposes of providing to You the Services, for the period commencing on the Start Date and finishing on the termination of this Agreement, subject to the terms and conditions set out herein.
- 1.2. The Service Terms define Your and Our obligations for each of the Services. If ever common usage or practice, any employment agreement or other contract You have made conflict with the Service Terms, the Service Terms prevail in so far as defining Your and Our obligations to each other under this Agreement. You warrant that You have satisfied Yourself that the Service Terms are suitable for the purposes of meeting Your obligations to third parties (including Nominated Employees and authorities) whether under contract or otherwise at law.
- 1.3. Where We provide further or additional Services to You, the additional Services and the associated Fees will be deemed added to the Services Schedule once We have issued Our first invoice for the new Services to You.

#### Part 2 - Invoicing

- 2.1. You agree to pay Our Fees plus GST where applicable.
- 2.2. The directors, officers and proprietors in the case of a partnership or sole trader, agree to immediately notify Us if there is any change in their financial situation that may impact Us or Our Payment Term;
- 2.3. We may confirm a mutually agreed increase in Our Fees to You by notification on Our tax invoice to You.
- 2.4. Where the actual On-Costs incurred by Us in respect to the Nominated Person exceed the amount quoted on the Engagement Schedule, then the On-Costs percentage are increased by the amount of the increase and may be invoiced from the date of the Increase.

#### Part 3 - Payment

- 3.1. In return for the provision of the Services, You will pay:
  - (a) the fees calculated as per Our Fee Schedule and if stated on a Assignment Schedule, at the Billing Rate at the Frequency of Rate, and if applicable multiplied by the time worked for You by Us;
  - (b) any commissions and/or bonus payments as agreed between You and Us in writing; and
  - (c) any other related expenses which are incurred by Us or are required by You of Us or a Nominated Person in providing or performing the Services, provided, such expenses have been previously agreed between You and Us.
- 3.2. You agree:
  - (a) that for any amounts forwarded by Us to You by bank transfer, that We will not be liable for any local bank charges, any currency exchange rates by the banks or any time period that the bank takes to effect the deposit.

(b) that where We receive a refund due to You, for Us to bank the refund in Our bank account, deduct Our fees, and taxes, such as GST, from the amount sent to You.

- 3.3. You must pay the Disbursement Funds in advance and strictly in accordance with the manner prescribed by the Engagement Schedule and We may deduct Our Fees from those funds.
- 3.4. You must pay the Fees in advance, upon presentation of Our Tax Invoice and within the Payment Term.
- 3.5. You acknowledge that We are under no obligation to make any payments which may be required to perform the Services including those to Nominated Employees, unless You have complied fully with Your obligations under Part 3.
- 3.6. If the Payment Method is direct debit We will debit Your nominated bank account within 24 hours of the last Business Day of the Payment Term.
- 3.7. Where the last day(s) of the Payment Term falls on a weekend or a public holiday in the State or Territory in which the Services are being provided, then the term will be shortened so that the last day of the Payment Term falls on the most recent prior Business Day.
- 3.8. If Your payment of Our tax invoice is dishonoured, then You must immediately reimburse Us for any bank charges incurred and pay to Us an administration fee of \$50 plus GST.
- 6.5. If You fail to pay any amount due on Our tax invoice by the date of expiry of the Payment Term then You will be charged an additional 1% plus GST for every 14 days or part thereof of the balance owing on any of Our tax invoices including GST and this charge will be Direct Debited or such other method as We agree in writing, to Your account, at the frequency We determine.

#### Part 4 - Our Obligations

- 4.1. We shall be responsible for providing the Services to You in a timely and reliable manner as prescribed by the relevant Service Terms.
- 4.2. You acknowledge that Our obligations are limited to competently performing the tasks required of Us in the Service Terms and that We are not liable for any costs, loss or damage You may suffer that is not caused solely by Our failure to comply with the Service Terms.
- 4.3. Upon Your request We will supply You with any financial data in Our possession that You may require in order to satisfy Your Statutory requirements and will supply any Information and Documentation in Our possession to comply with any lawful request from a Government authority, unless You have not paid Our invoices in full.

#### Part 5 - Your Obligations

- You agree:
- (a) That You will strictly abide by the requirements of the relevant Service Terms for each of the Services We provide including the timely provision of information, documents and funds;
  - (b) To provide such Information, consents or disclosures and to complete such forms or applications in the Approved Format and as may be necessary for Us to perform the Services at the frequency required by Us from time to time;
  - (c) To provide Us with the guidance, instruction, checking, supervision and audit, of the nature ordinarily afforded to an employee by an employer to enable Us to provide the Services in a manner that best meets Your requirements;
  - (d) That We will not be liable for any fines, penalties or interest imposed on You by reason of Your failure to pay any liability



### Terms & Conditions

by the due date or otherwise comply with the Service Terms or Your other obligations under this Agreement;

- (e) That You will be responsible for supplying accurate information according to the deadlines imposed by Law, the Service Terms or agreed with Us in writing from time to time, and that You will ensure that Your Authorised Representative remains contactable;
- (f) That You will advise Us in a timely manner of any changes in information or circumstances that You become aware of, that may affect the provision of the Services by Us;
- (g) That where We are providing a Service that involves payment of Your liabilities, You must provide the funds We require no later than the time prescribed by the relevant Service Terms;
- (h) That Your Authorised Representative will be the contact for all enquiries and has Your authority to bind You and to provide Us with such information and instruction as We may require from time to time;
- (i) That We or an associated entity may, act as Your agent, to engage any Contractor on Your behalf to provide the Services to You and that We may bill and collect from You, for amounts due by You to them;
- (j) To indemnify Us and keep Us Indemnified against any direct or indirect loss, damage, cost or claim arising in any way in relation to any act or omission by You, Your employees, agents or customers or suppliers in relation to the provision of the Services; or any breach by You of this Agreement.

#### Part 6 - Security

You hereby grant a security as a charge to be registered on the PPSR to secure all moneys owed by you to us under this Agreement

#### Part 7 - Termination

- 7.1. Subject to the following, Our obligation to supply the Services will terminate on the End Date, unless the Services are continued in accordance with this Agreement.
- 7.2. We may immediately terminate this Agreement if initial or subsequent credit investigations carried out on You are deemed by Us to present an unacceptable potential credit risk
- 7.3. We may immediately terminate this Agreement by notice in writing or suspend the provision of Services if You fail to pay any money due to Us within the Payment Term.
- 7.4. You may immediately terminate this Agreement by notice in writing if:
  - (a) We have committed an act of Serious Breach of Contract; or
  - (b) We are performing Our responsibilities unsatisfactorily in a material respect and You have given Us written notice of the full details of the fact and the remedy required including adequate time for completion and Our unsatisfactory performance has not been corrected for thirty (30) days after the reasonable date of completion of the remedy.
- 7.5. Either party may terminate this Agreement by notice in writing immediately if:
  - (a) both parties agree in writing;
  - (b) the other party breaches a term of this Agreement and fails to remedy such breach within fourteen (14) days of a written demand from the first party that they do so;
  - (c) the other party commits an act of bankruptcy or becomes insolvent; or
  - (d) the other party is prevented for a period of one month or more, from performing its obligations under this Agreement due to a force majeure.
- 7.6. Unless otherwise terminated in accordance with this Agreement, You must notify Us in writing at least sixty days prior to the End Date if You do not wish Us to perform or provide the Services

after the End Date. If We do not receive written notification from You, the services under the Agreement will continue unless We notify You in writing that We opt out of the further term. If We opt out of the further term(s) We may, at Our discretion, after the End Date continue to provide the Services to You on a month to month basis.

7.7. Where written notice is provided by You to Us in accordance with clause, We may continue to perform the Services for the duration of the notice period. If You inform Us in writing that We can cease performing the Services immediately We will invoice You for the duration of the notice period, at the same rate as the most recently issued invoice in proportion to the period of notice.

7.8. Termination of this Agreement shall not affect any accrued rights or remedies the parties have under this Agreement.

#### Part 8 - Reassignment

8.1. The term of this agreement may be extended or Services may be added or removed by agreement in writing between the parties to substitute a new Services Schedule.

8.2. Where the parties agree to a reassignment or where We continue to provide the Services past the End Date without a new Services Schedule being agreed and signed, this Agreement will continue to bind the parties until terminated in accordance with Clause 6.

#### Part 9 - Liability

To the extent permitted by law, You agree that We will not be liable to You, or any person claiming through You, for any direct or indirect loss (including consequential loss or loss of profits), damages or costs or claims however sustained or incurred by You, Your employees, contractors or agents or any third party, arising in any way in relation to this Agreement or from Our performance or provision of the Services. To the extent that, such a liability may not be excluded by law, You agree that Our liability to You is limited to the extent permitted by that law.

#### Part 10 - Assignment of Agreement

10.1. You agree that We may, at Our absolute discretion, assign all Our powers, rights and obligations under this Agreement ("assignment" for the purposes of this Part only) to a third party ("the third party assignee") and You acknowledge that upon an assignment We are automatically released from the terms and conditions of this Agreement except for any obligation already incurred and that the third party assignee assumes Our powers, rights and obligations under this Agreement.

10.2. You agree to be bound to the third party assignee to perform Your obligations under this Agreement so as to ensure that the third party assignee obtains the full benefit of this Agreement.

#### Part 11 - Confidentiality, Intellectual Property & Restraint

11.1. We will not use or disclose any confidential information which You have provided to Us other than with Your consent or for the purposes of performing Our obligations under this agreement and except to the extent required by law, including to the Commonwealth in accordance with any undertakings or Agreements We may have.

11.2. You must not use or disclose any Confidential Information including Our methods and trade secrets of which You become aware as a result of Our performance of Our obligations under this Agreement.

11.3. You acknowledge and agree that We own all material and intellectual property rights created by Us in performing or providing the Services, except for those created by a Nominated Person, which You own.

11.4. At the End Date, or upon earlier termination under this Agreement, each party must forthwith return to the other all materials, Confidential Information and other property belonging to that other party and must not make copies of such information or materials.



## Terms & Conditions

11.5. The obligations concerning Confidential Information and intellectual property shall continue after the expiration or termination of this Agreement.

### Part 12 - General Provisions

12.1. This Agreement includes any attached or linked or referred schedule, or Service Terms, and constitutes the entire Agreement between the parties and supersedes and replaces any prior understanding. In entering into this Agreement both parties acknowledge that they have not relied on any representations, warranties, terms, conditions or obligations real or written, express or implied other than those contained in this Agreement.

12.2. This Agreement may only be varied by agreement of the parties in writing including writing by electronic communication.

12.3. You acknowledge and agree that We may treat all electronic communications, (e.g., email) received by Us from You or Your email address as sent or authorised by You; including to the extent that any such communication may affect the parties' respective obligations under this Agreement.

12.4. Both parties agree that all communications including any document created and/or required by law to be given in writing may be provided in electronic form.

12.5. All powers, rights or provisions under this Agreement are valid, whether exercised or not and the exercise of any power, right or provision does not, exclude the exercise of any other power, right or provision. If a provision of the Agreement is found to be invalid or unenforceable, it shall be deemed deleted without affecting the balance of this Agreement.

12.6. Where there is a conflict in specific terms and conditions between any attached or linked or referred schedule, or Service Terms, and the balance of the Agreement, the terms of the Service Terms shall take precedence followed by any Engagement Schedule and then by an Assignment Schedule and shall apply to resolve any such conflict.

12.7. If a dispute arises in relation to this Agreement, the parties agree to give one another notice in writing of their respective positions and undertake to negotiate in good faith to resolve the dispute.

12.8. A right, power or remedy in Our favour may only be waived in writing by Us. Failure or delay by Us in exercising a right, power or remedy does not prevent its subsequent exercise or constitute waiver of that right, power or remedy.

12.9. This Agreement is to be covered by the laws in force in the State of Incorporation or registration of Us and the parties must submit to the exclusive jurisdiction of the courts in that place.

12.10. If during the term of the Agreement You require Us to supply other and/or additional Services, the parties agree that this Agreement may be varied so that You agree to pay Us the additional fees for those Services as per Our current Fee Schedule, and Our Service Terms for those services, or by the completion of an additional Services Schedule, which shall be agreed in writing by the parties, in which case You and We will be bound by the terms and conditions of this Agreement in relation to the additional Services Schedule for the supply of the other and/or additional Services.

### Part 13 - Definitions

**Agreement** means the contract formed by both parties executing this agreement comprising these terms, the Services Schedule, the Fee Schedule and Service Procedures and any document incorporated by reference herein.

**Approved Format** means the format, frequency and method of transmission of forms or information as determined by Us from time to time.

**Assignment Schedule** means the assignment schedule provided to You by Us under this Agreement, which sets out the terms of hire from time to time for individual or multiple Nominated Persons under and during the term of this agreement and which may also include a spreadsheet sent from either party

that the other party accepts as well as a New Starter Candidate Form that You send Us and which We accept and issue an employment agreement to the Nominated Person as a result.

**Assignment Term** means the period of time as specified in the Assignment Schedule or Letter of Appointment.

**Billing Rate** means the billing rate We will charge You for the Services provided by the Nominated Persons exclusive of GST as specified in the Assignment Schedule.

**Business Day** means a day on which trading banks are open for business in the State or Territory where the Services are provided or performed and does not include a Saturday, a Sunday or a public holiday.

**Business Items** means an item of income, expense, capital, asset or liability of the Business.

**Business Savings** means the resulting decrease in expenditure or increase in revenue or gain in asset value or decrease in liability or gain in capital in the Business Items since the Start Date, for the period in question, compared to the existing costs or income of the item, immediately prior to the implementation, for a comparable period for comparable volumes for a comparable process or procedure.

**Business Savings Percentage** means the percentage of the Savings We will be paid.

**Confidential Information** includes all confidential, non-public or proprietary information & documentation and intellectual property of the Provider given to the Recipient regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this Agreement relating to the business, technology or other affairs of the Provider of the Confidential Information.

**Contractor** means a person or entity that is not an employee of You.

**Direct Debit Request** means the Direct Debit Request between You and Us.

**Disbursement** means the expenses incurred by Us, the Nominated Employee or the Nominated Person on Your behalf in providing the Service and; those We require to pay or to settle Your obligations to third parties.

**EFT** means electronic funds transfer between banks.

**End Date** means the end date specified in the Engagement Schedule or the Assignment Schedule as the case may be, or where there is no end date specified, the date that results from adding the Term to the Start Date.

**FBT** means fringe benefits tax.

**Fees** means those fees as specified in the Engagement Services Schedule or Assignment Schedule or Fee Schedule.

**Frequency of Rate** means the frequency of the Billing Rate as set out in the Assignment Schedule on a monthly, fortnightly, weekly, daily or hourly basis.

**GST** has the meaning it has in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**GST Group** has the meaning given to it in the GST Act.

**Industrial Instrument** means an instrument made under or given effect by or recognised under a law of the Commonwealth or the State or Territory that regulates workplace relations and prescribes terms and conditions of employment between employers and employees including, but not limited to, an award or agreement made under or given effect by or recognised under the Fair Work Act 2009 or a State or Territory law that regulates the relationship between employers and employees.



## Terms & Conditions

**Insolvent** means insolvent under administration or insolvent (each as defined in the Corporations Act 2001) or is unable to pay its debts as and when they fall due.

**Intellectual Property** means business names, characteristics, copyrights, designs, discoveries, drawings, inventions, logos, notes, objects, matter, patents, processes, slogans, software including object code and source code, specifications, systems, trademarks, trade secrets and other products created, records and data used in or associated with the Providers business and whether existing at the date of this agreement or brought into existence subsequent to this Agreement and in any form whether paper or electronic or other. This includes opportunities that may arise from contact with the Providers clients, development of business or ideas from the Providers activity or activity from contractors paid by the Provider, shall all be deemed to be the Providers Intellectual Property

**Invoice Frequency** means the frequency at which We will invoice You as specified in the Engagement Services Schedule.

**Licence** means a licence, registration or membership that the Nominated Person is required to hold in order to provide the Services in the Workplace.

**National Employment Standards** are a set of legislative minimum employee entitlements contained in the Fair Work Act 2009.

**Nominated Employees** means employees that You agree for Us to perform or provide the Services for.

**Nominated Persons** means the person provided by Us to You to perform or provide the Services as set out in the Assignment Schedule.

**On-Costs** means the total of the rates applicable for payroll tax, public liability insurance, professional indemnity insurance and workers compensation insurance (generally based on the industry they are in or WIC code) each individually rounded up to the next whole percentage, in respect to the Nominated Person.

**Packaging Fees** means those fees agreed by the Nominated Employees to be salary sacrificed from their Total Remuneration Packages unless stated otherwise in the Engagement Services Schedule.

**Pay Cycle** means the interval at which Your Nominated Employees or Persons are paid.

**Pay Date** means the day the Nominated Employee is to be paid their salary for a particular Pay Cycle.

**Payment Method** means the method by which You will pay for the Services as specified in the Engagement Schedule or Assignment Schedule as the case may be. It will be by electronic funds transfer unless You have authorised a direct debit.

**Payment Terms** means the number of days from the Invoice Date before the invoice becomes due for payment in full as specified in the Engagement Schedule or Assignment Schedule or failing that then in the attached Terms & Conditions and failing that then on the Invoice.

**Payroll Tax Declaration** means that You declare that You are liable for payroll tax and will pay the payroll tax liability that arises out of on-hiring the Nominated Person (as service provider) to Your client.

**PPSR** means the Personal Property Security Register established under the provisions of the *Personal Property Security Act 2009* (Cth)

**Remuneration Package** means the components of a Nominated Person's or Nominated Employee's remuneration that We agree to pay and includes: gross salary and wages; contractor payments bonuses and commissions; superannuation; allowances; other remuneration packaged amounts.

**Restraint Period** means the period commencing from the termination of this Agreement and expiring on lesser of 12 months and the term equivalent to the term of this Agreement.

**Salary Sacrifice** means sacrificing a component of salary in exchange for the receipt of allowances and/or benefits.

**Service Terms** means any document or guide by that name in respect to the provision of the Services issued by Us which may be amended by Us from time to time, which is also published on Our website.

**Services** means the performance or provision of the services provided by Us to You as specified in the Engagement Schedule and/or provided by the Nominated Person as specified in the Assignment Schedule.

**Services Schedule** means the Engagement Services Schedule which has been provided to You by Us with or for incorporation into this Agreement.

**Shared Business Savings Period** means the agreed period from which a recommendation for a particular item of Business Costs is adopted.

**Start Date** means the start date specified in the Engagement Schedule or the Assignment Schedule as the case may be.

**Time & Rate Sheet** means the schedule to be provided by You to Us in a format approved by Us and in accordance with Our frequency and deadlines providing details of Nominated Employees or Nominated Persons, as the case maybe, hours worked and the Rate to be invoiced to You.

**Total Cost of Remuneration** means the total financial cost of employing or engaging the Nominated Employees or Nominated Persons accrued for the particular period and is calculated as Remuneration Package plus (Remuneration Package x On-costs).

**Total Cost of Payroll** means the sum of Total Cost of Employment for all Nominated Employees paid in a particular payment period plus the Fees payable to Us for Our Services in that Pay Period, unless otherwise agreed in writing between the parties.

**We/Us/Our** means the entity specified in the Engagement Services Schedule or the Assignment Schedule as the case may be.

**Workforce** means all permanent and contract workers of Us including Australian citizens and Australian permanent residents and Overseas Temporary Workers.

**You/Your** means the entity specified in the Engagement Services Schedule or Assignment Schedule as the case may be.



### Business Licence Terms & Conditions

#### Business Licence Schedule

- 1. **We/Us/Our/Licensee** : Oenoviva (UK & Ireland) Pty Ltd (Controller Appointed) as trustee for the Andrew Garrett Family Trust ABN 78 761 760 976 of Level 1, 2 Drewery Place, Melbourne, Victoria, 3000
- 2. **You/Your/Owner** : Steel-Con Holdings Pty Ltd ABN; 83 074 454 587 whose address is 87-89 Cove Hill Road, Bridgewater, Tas 7030
- 3. **Start Date** : 15/03/2017
- 4. **End Date** : 14/03/ 2027
- 5. **Licence Fee** : 1% of Licensed Revenue
- 6. **Payment Frequency** : Calendar Monthly In arrears
- 7. **Profit Share** : 10%
- 8. **Authorised Representative Name** : Brennan Fitzallen  
**Authorised Representative Phone** : + 61 (0) ~~412 480 486~~ 412 126 408  
**Authorised Representative E-Mail** : [brennan.fitzallen@fitzallen-forestry.com](mailto:brennan.fitzallen@fitzallen-forestry.com)
- 9. **Invoice Delivery E-Mail** : [admin@fitzallen-forestry.com](mailto:admin@fitzallen-forestry.com)  
**Invoice Frequency** : Monthly
- 10. **Payment Method** : EFT
- 11. **Terms & Conditions** : Business Licence Terms & Conditions Attached

Acknowledgement: I agree with the Schedule above and the attached Terms and Conditions.

Executed by **Oenoviva (UK & Ireland) Pty Ltd** by its authorised representative:

Name : Andrew Garrett  
 Signature :   
 Date : 15/03/2017\_

Executed by **Steel-Con Holdings Pty Ltd** by its authorised representative:

Name :   
 Sign Here  :   
 Date : 15/03/2017



### Business Licence Terms & Conditions

This Agreement commences on the Start Date between the Owner and the Licensee and continues until terminated in accordance with this Agreement.

#### Recitals

- A. The Owner is the owner of the Business.
- B. In order to maintain & improve the returns from the Business the Owner has agreed to licence the Business to the Licensee pursuant to the terms of this Agreement.

The parties covenant and declare as follows:

#### 1. Licence of Business

- (a) The Owner agrees to licence to the Licensee the Business and the Business Assets for the purposes of the Licensee conducting the Business for the Licence Period.
- (b) In consideration for the Licence, the Licensee agrees to pay the Licence Fee (exclusive of GST) on the Payment Day after each Payment Frequency for the duration of the Licence Period.

#### 2. Obligations of the Licensee

##### 2.1. Costs

The Licensee is liable to pay any and all costs, expenses and fees necessary to operate and maintain the Business, including by paying any registration or subscription necessary for the continued use of the Business Assets, for the Licence Period.

##### 2.2. Control and Assignment

The Licensee must at all times keep the Business and the Business Assets under its control and not purport to sell, assign, transfer sublet, part with possession or in any way encumber the Business or the Business Assets for the Licence Period.

##### 2.3. Risk

The Licensee accepts all risk in the Business and the Business Assets during the Licence Period.

##### 2.4. Insurance:

- (a) The Licensee must properly maintain the Owner's current insurance policy for the Business and / or the Business Assets for the Licence Period.
- (b) The insurance policy must be maintained in the Owner's name.
- (c) The Licensee shall provide a certificate of currency for the insurance upon request by the Owner.

##### 2.5. Indemnity

The Licensee indemnifies and holds the Owner harmless from and against all costs and expenses, damages, liabilities or claims of any nature whatsoever resulting from or in any way arising from or related to the possession, use or operation of the Business and/ or the Business Assets by the Licensee, its servants or agents during the Licence Period.

##### 2.6. Inspection

The Licensee shall permit any representative of the Owner access to the Business and/or the Business Assets wherever they are kept at all reasonable times for the purpose of inspecting the Business and/or the Business Assets.

##### 2.7. Return

The Licensee must return the Business Assets to the Owner at the end of the Licence Period in substantially the same condition (subject to reasonable wear and tear) as at the commencement of the Licence Period.

#### 3. GST

- 3.1. The consideration for a Supply under this Agreement (other than under this Clause 3) is exclusive of any GST imposed on the Supply.

- 3.2. If a Supply under this contract is subject to GST:

- (a) the party receiving the Supply must pay, in addition to the other consideration payable or to be provided for the Supply, an additional amount equal to the GST; and
- (b) the party receiving the Supply must pay the additional amount to the supplier at the same time as the other consideration.

However, subject to Clause 3.3 below, the party receiving the Supply need not pay the additional amount until the supplier gives the party receiving the Supply a Tax Invoice.

- 3.3. In relation to Supplies made by You to Us under this Agreement and to the extent that the requirements prescribed in relation to the Issuing of Recipient Created Tax Invoices in the GST Law and Australian Taxation Office publications are met, it is agreed that:

- (a) We are permitted to Issue Recipient Created Tax Invoices in respect of those Supplies;
- (b) You must not Issue Tax Invoices in respect of those Supplies;
- (c) You acknowledge that You are registered for GST when this Agreement is entered into and that You will notify Us if You cease to be registered; and
- (d) We acknowledge that We are registered for GST at the time this Agreement is entered into and that We will notify You if We cease to be registered.

- 3.4. If the additional amount referred to in Clause 3.2 differs from the amount of GST payable by the supplier on the Supply:

- (a) the supplier or We, in the case of a supply in respect of which a Recipient Created Tax Invoice has been issued, must promptly Issue an Adjustment Note; and
- (b) an amount equal to the difference must be paid by the supplier to the party receiving the supply, or by the party receiving the supply to the supplier, as appropriate.

- 3.5. If any party is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the payment must exclude any part of that cost or expense which is attributable to GST for which that party or the Representative Member of any GST Group of which that party is a Member is entitled to an Input Tax Credit.

#### 4. Termination

- (a) This Agreement terminates on the End Date or Expiry of the Licence Period, provided either You or Us have given notice of Termination in writing 28 days prior to the End Date, otherwise the new End date will be 12 months hence from the current End Date.
- (b) On the termination of this Agreement the Owner may enter into the Premises and seize, remove and retake possession of and carry away the Business and / or the Business Assets or any part thereof provided that any such termination of this Agreement and retaking possession of the Business shall not affect the right of the Owner to recover from the Licensee any monies due to the Owner under this Agreement or damages, and the Licensee will pay the reasonable costs of any such repossession.
- (c) If the Licensee removes any of the Business Assets from the Premises then upon termination of this Agreement it will pay to the Owner their reasonable costs of returning those Business Assets to the Premises.

#### 5. No Title

- (a) Nothing in this Licence shall confer upon the Licensee any right, title or interest in or to the Business and/or the Business Assets.
- (b) The Licensee must not hold itself out as having any interest in or ownership of the Business and/or the Business Assets other than as Licensee pursuant to this Agreement.



### Business Licence Terms & Conditions

#### 6. Benefit of Trading

- (a) The Licensed Revenue vests absolutely in the Licensee, without any set off, deduction, claim or reduction by the Owner.
- (b) The Licensee shall be solely liable for and shall meet in accordance with their terms, all Licensed Trading Liabilities.
- (c) In the event that the Licensee has generated a profit after receipt of Licensed Revenue in accordance with Clause 5(a) and payment of Licensed Liabilities in accordance with Clause 5(b) then the Licensee will pay to the Owner the Profit Share of the profit so generated.

#### 7. Employees

- (a) The Licensee acknowledges that the Owner has terminated the employment of all Employees.
- (b) The Licensee may offer some or all of the Employees employment in the Business, but such employment must be limited to the Licence Period.
- (c) The Licensee acknowledges and agrees that the Owner has no ongoing obligations to the Employees on entry into this Agreement.

#### 8. The Premises

You warrant, promise and represent to the Licensee that the Lessor will consent to the grant of the License.

#### 9. The Leased Assets

- (a) The Licensee acknowledges that the Leased Assets are subject to leases or other finance agreements with the Asset Lessors.
- (b) The Owner warrants, promises and represents to the Licensee that you will use your best endeavours to cause the Asset Lessors to consent to the Licensee taking possession of the Leased Assets.

#### 10. Business Assets

The Licensee agrees that:

- (a) The Business Assets are licensed as is, in their existing location, state of repair and condition.
- (b) Without limitation, loss of or damage to, and omission of any of the Business Assets entitles the Licensee to terminate this Agreement and claim compensation and/or damages from the Owner
- (c) The Licensee has inspected the Business Assets and relies upon that inspection and upon any description warranty and/or representation given by the Owner as to the state of repair of any of the Business Assets.
- (d) The Owner will not be liable for any loss or damage occasioned the Licensee in relation to the existence or state of repair or condition of or any other matter concerning any item of the Business Assets save for any loss or claim occasioned by any fraudulent, dishonest or grossly negligent act or omission by the Owner.
- (e) The Owner warrants and represents that the Business Assets are in good working order as sighted, including with respect to:
  - (i) the state of repair or maintenance or serviceability of any of the Business Assets;
  - (ii) compliance with any requirements of applicable law or of any government agency relating to the use and/or operation of any of the Business Assets;
  - (iii) the quality, fitness or suitability for any purpose of any of the Business Assets; or

(iv) the safety or fitness for purpose of any of the Business Assets.

#### 11. Warranties

##### 11.1. No further warranties

Neither the Owner make any express or Implied representation or warranty at all, including:

- (a) As to the accuracy, completeness or otherwise of anything set out in a recital, schedule or annexure to this document.
- (b) As to markets or supplies.
- (c) As to future matters, including future costs, revenues or profits.
- (d) The financial return which may be obtained from the use and/or operation of the Business Assets and/or the Business (or any part of them).

##### 11.2. Exclusion of Implied obligations

To the maximum extent permitted by law, every other condition, warranty, term, provision, representation or undertaking (express, implied, written, oral, collateral, statutory or otherwise) is excluded altogether or (if exclusion is unlawful) limited to the payment of:

- (a) in the case of goods, the lesser of the cost of having the goods repaired and the cost of replacing the goods or of acquiring equivalent goods; or
- (b) in the case of services, the cost of having the services supplied again.

##### 11.3. No Liability

- (a) The Owner is not personally liable under the terms of this Agreement.
- (b) The Licensee acknowledges that it has contracted with the Owner who is only liable for any breach of this Agreement by the Owner.

##### 11.4. Quality of information

The Licensee acknowledges and agrees with the Owner (on behalf of itself and for each related body corporate) that the discussions about the License and the provision of information relating to the Business and/or the Business Assets were made by the Owner and accepted by the Licensee and this document is entered into, on the basis and condition that:

- (a) Neither the Owner nor any of its related bodies corporate have made or make any representation or warranty as to the accuracy or completeness of any information.
- (b) Neither the Owner nor any of its related bodies corporate accepts any duty of care for the provision of any information to the Licensee or to any related body corporate of the Licensee or to any provider of finance or to any other person.
- (c) Neither the Owner nor any of its related bodies corporate are under any liability to the Licensee or to any related body corporate of the Licensee or to any provider of finance or to any other person if, for whatever reason, if any information is or becomes inaccurate, incomplete or misleading in any way.
- (d) Neither the Licensee nor any of its related bodies corporate relies on the Owner to provide accurate or complete information and the Licensee relies upon its own investigations in decided whether enter into this Agreement.
- (e) In the absence of fraud, neither the Licensee nor any of its related bodies corporate has any right or remedy against the Owner nor against any of their related bodies corporate in relation to inaccurate or misleading information, and cannot bring a claim relating to that information, except as expressly set out in this Agreement.



### Business Licence Terms & Conditions

(f) By You licensing Us and engaging Our services pursuant to this Agreement or continuing to license Us & using Our services You hereby agree to charge all of Your assets and undertakings as Chargor in Our favour as Chargee to secure Your performance to Us under this agreement, and that You agree that the charge hereby created by Your acceptance of Our Terms and Conditions in this Agreement is a charge capable of registration by Us as a security interest over all of Your property pursuant to the Personal Property Security Act 2009, and that this charge is binding on You even if not executed by You, that You agree to enter into by Your acceptance of Our Business Licence Terms and Conditions by virtue of You licensing our services hereunder.

#### 12. Sale of Business

- (a) The Licensee acknowledges that the Owner may offer the Business for sale subject to this license.
- (b) The Licensee must allow reasonable access to the Owner and potential buyers, if required, to inspect the Business and/or the Business Assets.
- (c) The Owner agree to provide to the Licensee a copy of any offer received by them to acquire the Business or the Business Assets within 2 business days of its receipt.
- (d) The Owner agree to give the Licensee the last right to offer to acquire the Business.

#### 13. Costs

Each party shall pay and bear its own costs of and incidental to the preparation, negotiation and execution of this Agreement, but the Licensee shall pay all stamp duty on this Agreement and on documents contemplated by it.

#### 14. Assignment

We may assign Our rights or obligations under this Agreement.

#### 15. General Provisions

- (a) This Agreement is governed by and construed in accordance with the laws of Victoria.
- (b) No variation of this Agreement nor consent to a departure by a party from a provision, shall be of effect unless it is in writing, signed by the parties.
- (c) This Agreement shall, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:
  - (i) That provision shall, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
  - (ii) If the provision or part of it cannot effectively be read down, that provision or part of it shall be deemed to be void and severable and the remaining provisions of this Agreement shall not in any way be affected or impaired and shall continue notwithstanding that illegality, invalidity or unenforceability.
- (d) Subject to express provisions in this Agreement to the contrary, each party by signing or executing this Agreement is deemed to unconditionally sign this Agreement with the intention of being immediately legally bound by this Agreement.

#### 16. Security

The Licensee acknowledges that the Owner agrees to license to the Licensee the Business and the Business Assets for the purposes of the Licensee conducting the Business for the Licence Period, but such agreement is conditional upon the Licensee indemnifying the

Owner against all costs and expenses, liabilities or claims of any nature whatsoever resulting from the possession, use or operation of the Business and/or the Business Assets by the Licensee, its servants or agents during the Licence Period. The Licensee shall grant to the Owner at the commencement of this Licence Agreement a charge over its right title and interest in the assets of the Licensee to secure the indemnity granted to the Owner.

The owner hereby grants a charge to be registered on the PPSR to secure all moneys owed by the Owner to the Licensee

#### 17. Confidentiality, Intellectual Property & Restraint

- (a) We or You will not use or disclose any confidential information which You or We have provided to each other, other than with consent of the other party or for the purposes of performing obligations under this agreement and except to the extent required by law, including to the Commonwealth in accordance with any undertakings or Agreements We or You may have.
- (b) We or You must not use or disclose any Confidential Information including methods and trade secrets of which You or We become aware as a result of Our performance of Our obligations under this Agreement.
- (c) We and You acknowledge and agree that We own all material and intellectual property rights created by Us and You respectively in performing or providing the services to fulfil this Agreement.
- (d) Upon termination under this Agreement, each party must forthwith return to all the other materials, Confidential Information and other property belonging to that other party and must not make copies of such information or materials.
- (e) The obligations concerning Confidential Information and Intellectual property shall continue after the expiration or termination of this Agreement.

#### 18. Definitions & Interpretation

##### 18.1. Interpretation

In the Interpretation of this Agreement, unless the context or subject matter otherwise require:

- (a) Singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, a government authority, and other legal entities, and where necessary, include successor bodies;
- (d) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
- (e) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time; and
- (f) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

##### 18.2. Definitions

In this Agreement, unless the context or subject matter otherwise require:

**Agreement** means the contract comprising these terms, the Business Licence Schedule, including any: amendments, addendums, Schedules and Service Terms or document incorporated by reference herein.

**Asset Lessors** means the asset lessors listed in schedule 1.

**Business** means the business owned and operated by the Owner, and includes the Business Assets.

**Business Assets** means each of:



## Business Licence Terms & Conditions

- (a) Any and all websites owned and operated by the Owner;
- (b) Any and all trademarks owned by the Owner;
- (c) Plant and equipment;
- (d) Any and all operation manuals and systems relating to the Business;
- (e) Any and all confidential or sensitive information relating to the Business or the Owner's operation of the Business, including:
  - (i) trade secrets;
  - (ii) registered business names;
  - (iii) manufacturing processes;
  - (iv) databases;
  - (v) product lists; and
  - (vi) customer lists.

**Business Day** means a day on which trading banks are open for business in the State or Territory where the Licence is provided or performed, but not including a Saturday, a Sunday or a public holiday.

**Business Licence Schedule** means the document(s) of that name which has been provided to You by Us with or for incorporation into this Agreement.

**Charge** means that Charge created in accordance with Clause 11.4(f)

**Confidential Information** means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this Agreement relating to the business, technology or other affairs of the Provider of the Confidential Information.

**EFT** means electronic funds transfer between banks.

**Employees** means the employees listed in schedule 2

**End Date** means initially the end date as set out in the Business Licence Schedule and thereafter as specified in Clause 3(e).

**GST** has the meaning it has in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Information and Documentation** means all forms, documents, calculations and processes whether originated or generated in writing or electronically to give effect to the Services.

**Invoice Frequency** means the frequency at which We will prepare Your Invoice to Us as specified in the Business Licence Schedule.

**Leased Assets** means the Assets set out in schedule 1 to this Agreement.

**Lessor** means the lessor set out in schedule 1

**Licence** means the licence granted by the Owner in accordance with Clause 2 of this Agreement.

**Licence Fees** means those fees as set out in the Business Licence Schedule, to which GST must be added.

**Licence Period** means the term of this Agreement being the period from the Start Date or last End Date to the current End Date as defined in Clause 3 (a) of this Agreement.

**Licensed Revenue** means any and all revenue generated by the Licensee in conducting the Business during the period in question during the Licence Period.

**Licensed Trading Liabilities** means all trading liabilities incurred by the Licensee by reason of its conducting the Business and its use of the Business Assets.

**Officer** has the meaning set out in s9 of the Corporations Act 2001

**Payment Day** means the first Business day after each Payment Frequency.

**Payment Frequency** means either weekly or calendar monthly as specified in the Business Licence Schedule.

**Payment Method** means the method by which We will pay You the Licence Fee & Profit Share as specified in the Business Licence Schedule. It will be by electronic funds transfer unless noted otherwise.

**Premises** means all the locations at which You carry on the Business.

**PPSR** means the Personal Property Security Register established under the provisions of the *Personal Property Security Act 2009* (Cth)

**Profit Share** means the percentage or amount of profit each financial year or part year We will pay You as specified in the Business Licence Schedule.

**Service Terms** means any document or guide by that name in respect to the provision of the services to fulfil the Licence issued to Us which may be amended by Us from time to time.

**Start Date** means the start date as set out in the Business Licence Schedule.

**State or Territory** means a State or Territory of the Commonwealth of Australia.

**We/Us/Our/Licensee** means the legal entity specified to in the business Licence Schedule.

**You/Your/Owner** means the legal entity or entities specified in the business Licence Schedule.

**BRENNAN PAUL FITZALLEN**  
**(“The Trustee”)**

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**DECLARATION OF TRUST**

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The person or persons described in this schedule as the Trustee being registered as the holder of the issues capital described in the Schedule (“the Loans Securities”) HEREBY DECLARE that:

The persons described in the schedule as the Beneficial Owners have provided the value in respect to the issued capital of Fitzallen Industries Pty Ltd and associated trusts including the Fitzallen Industries Property Trust, the Fitzallen Wood Fibre Resources Trust and the Fitzallen Engineered Wood Fibre Products Trust

That the Beneficial Owners are entitled to ownership of the aforementioned issued capital.

The Issued Capital will, at all times, be held by the trustee and related trustees UPON TRUST for the Beneficial Owners.

The Beneficial Owners are and have at all times been entitled to the benefits of the issued capital together with all dividends, interest, damages, distributions and profits accrued and to accrue in respect thereof.

The Beneficial Owners are entitled to hold the issued capital.

The Trustee or its successor or assignee will, when called upon by the Beneficial Owners, execute a transfer of the Issued Capital to the Beneficial Owners or to such other person or persons, company or corporation as the Beneficial Owners shall direct.

The Beneficial Owners are hereby authorised to complete any transfer of the Issued Capital by inserting the name of any transferee and the Trustee or otherwise completing such transfer to be duly registered.

The Trustee undertakes to deal with the issued capital and exercise and perform all the rights, duties and powers attributable to the owner of the security as directed by the Beneficial Owners.

Dated 31<sup>st</sup> January 2017



Signed sealed and delivered by  
Brennan Paul Fitzallen,  
Sole Director and Secretary  
The Trustee

**BRENNAN PAUL FITZALLEN**  
**(“The Trustee”)**

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**THE SCHEDULE**

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1. **The Trustee:** Brennan Paul Fitzallen  
**Address:** 10/15 Hunter Street,  
HOBART, TASMANIA, 7000

2. **The Issued Capital**

**410,000 X \$1 Ordinary Shares issued in Fitzallen Industries  
Pty Ltd ACN; 51 448 417 032**

**1,270,000 X \$1 Units in the Fitzallen Industries Property  
Trust ABN;**

**100 X \$1 Units in the Fitzallen Wood Fibre Resources Trust  
ABN; 64 979 337 719**

**100 X \$1 Units in the Fitzallen Engineered Wood Fibre  
Products Trust ABN; 41 437 640 649**

3. **The Beneficial Owners:**

The Trustees of the Fitzallen Family Trust ABN; 89 702 393 361  
in trust for the Beneficiaries of the Fitzallen Family Trust as at  
the 27<sup>th</sup> June 2017 as to 50%.

**Address:** 10/15 Hunter Street, Hobart, Tasmania, 7000

The Trustees of the Andrew Garrett Family Trust ABN; 78 761  
760 976 trading as Dynamic-CWS in trust for the Beneficiaries  
of the Andrew Garrett Family Trust No 4 as to 50%.

**Address:** 10/15 Hunter Street, Hobart, Tasmania, 7000



**ANNEXURE 4; Transcripts of 14<sup>th</sup> October 2014 evidencing the BETHCAR SRATEGY**

**ROYAL COMMISSION INTO INSTITUTIONAL  
RESPONSES TO CHILD SEXUAL ABUSE**

**Public Hearing - Case Study 19  
(Day 98)**

Level 17, Governor Macquarie Tower  
Farrer Place, Sydney

On Friday, 24 October 2014 at 10am

Before the Chair: Justice Peter McClellan AM  
Commissioner: Mr Robert Fitzgerald AM

Counsel Assisting: Mr David Lloyd

1 <HELEN ALLISON, on former affirmation: [10am]

2  
3 <EXAMINATION BY MR LLOYD CONTINUING:

4  
5 MR LLOYD: Q. Ms Allison, I just want to correct one  
6 matter from yesterday. I put to you that you had assumed  
7 supervision of this file in April 2012, whereas in fact in  
8 your statement I think you say that you did that in August  
9 2012. Just to remind you, in answer to my incorrect  
10 proposition, you gave evidence that you thought you assumed  
11 supervision duties in June 2012.

12  
13 Could I just ask you was that answer accurate, or were  
14 you misled by my error?

15 A. I'll just find this paper. I'm sorry, I can't find  
16 that piece of paper now. I thought it was June.

17  
18 Q. As in the June 2012 answer you think is the accurate  
19 one?

20 A. I think so.

21  
22 Q. Thank you. I think we had got to the point yesterday  
23 on the question of particulars where you had agreed that by  
24 May 2010 all of the particulars that the Crown Solicitor's  
25 Office had been requesting had been provided?

26 A. Yes, that's correct.

27  
28 Q. Could I take you, please, to tab 44 in the annexures  
29 to your statement. It's in volume 2 of the witness bundle.  
30 Do you see this is an email from Mr Manollaras to Ms Young  
31 at the department of 22 June 2010?

32 A. Yes.

33  
34 Q. Do you see in the second paragraph there,  
35 Mr Manollaras reports of a number of novel arguments  
36 advanced by Mr Catsanos at court the previous day, and one  
37 of those novel arguments was that the determination of the  
38 limitation question occur at the ultimate hearing, rather  
39 than prior to the ultimate hearing? Do you see that?

40 A. Sorry, can you repeat the question? I was reading.

41  
42 Q. Do you see that Mr Manollaras, in the second  
43 paragraph, reports a number of novel arguments advanced by  
44 Mr Catsanos in court the previous day, including that the  
45 limitation question be determined at the ultimate trial?

46 A. That's not quite what he says. He says that the  
47 evidence of the substantive trial limitation motion would

1 be very similar.

2

3 Q. Would you regard it as being an unusual thing for the  
4 question of the limitation defence to be determined at the  
5 ultimate trial as opposed to before it?

6 A. No.

7

8 Q. Does that happen routinely, in your experience?

9 A. Occasionally.

10

11 Q. Is there a standard approach or policy, to your  
12 knowledge, in acting in cases where there are allegations  
13 of child sexual abuse, to the question of whether the  
14 limitation question is determined before a trial or at the  
15 trial?

16 A. No, there's no policy.

17

18 Q. There's?

19 A. No policy.

20

21 Q. There's no reason that you're aware of why the  
22 limitation question can't be determined at the final trial  
23 rather than ahead of it?

24 A. No. It would be something that would be considered on  
25 a case-by-case basis.

26

27 Q. Could I take you to the next paragraph and the final  
28 sentence in it. You're aware that there is a potential  
29 defendant's witness list of over 70?

30 A. Yes, I can see that.

31

32 Q. Do you know who it was that the Crown Solicitor's  
33 Office had in mind to call, who were the people on that  
34 list?

35 A. No, certainly not at that time.

36

37 Q. Could I ask you to scroll down to the final paragraph,  
38 please. Do you see the first sentence:

39

40 *I had a thought which I briefly discussed*  
41 *with counsel, in relation to undertaking*  
42 *some surveillance of the plaintiffs, or at*  
43 *least some of them. The plaintiffs allege*  
44 *only psychiatric injury.*

45

46 Dealing first with that proposition, is it commonplace in  
47 cases where plaintiffs allege only psychiatric injury for

1 the question of surveillance to be recommended by the Crown  
2 Solicitor's Office?

3 A. Surveillance I think is not often recommended.  
4

5 Q. In a case where the only allegation is psychiatric  
6 injury, what to your understanding would be the ultimate  
7 purpose of the State or the Crown Solicitor's Office  
8 arranging for surveillance? What would it prove?

9 A. I can't tell you any more than what it says in that  
10 paragraph.

11  
12 THE CHAIR: Q. The substance of the paragraph is that  
13 Mr Manollaras speculates and, on the basis of that  
14 speculation, is suggesting surveillance; isn't that right?

15 A. Yes, your Honour.  
16

17 Q. Is it usual for your solicitors to reason in that way?

18 A. They can certainly reason that way. I mean, I don't  
19 believe surveillance was undertaken.  
20

21 MR LLOYD: Q. No, but you see in the final two sentences  
22 the suggestion is made that there be an initial budget of  
23 \$20,000 to \$30,000 to undertake some surveillance, and that  
24 could prove of benefit.

25 A. Yes, I see that.  
26

27 Q. My question is: in circumstances where  
28 a recommendation appears to be given by Mr Manollaras to  
29 spend \$20,000 to \$30,000 on investigators who might follow  
30 these plaintiffs around and record film of what they're  
31 doing, do you have an understanding of what that might  
32 ultimately have been able to establish or prove at a trial?

33 A. Only what he says there. I don't have anything to add  
34 to that.  
35

36 Q. Could tab 71 of volume 1 of the tender bundle please  
37 be brought up on the screen. This is a statement of  
38 Kathryn Fishburn that the Crown Solicitor's Office obtained  
39 in around June 2010; correct?

40 A. Apparently.  
41

42 Q. Kathryn Fishburn was one of the officers employed by  
43 the department in around 1983?

44 A. Possibly. Probably.  
45

46 Q. Yesterday, when I was asking you some questions about  
47 the claim brought by Kathleen Biles, you made reference -

1 and these are my words, not yours - to a lack of knowledge  
2 on the part of the department about problems with Mr Gordon  
3 as opposed to knowledge about problems with Mr Gibson.  
4 A. No, I don't think that's accurate. You put  
5 a statement to me from Mr Madden, and I said that related  
6 to Mr Gibson, as I understand it.

7  
8 Q. Can I just take you, please, to page 3 of this  
9 statement, the line there:

10  
11 *The March, 1983 allegations contained*  
12 *nothing in relation to [REDACTED] and my*  
13 *concerns regarding this child were*  
14 *heightened as I was aware of the*  
15 *allegations directed by Leonie Knight about*  
16 *Burt Gordon.*

17  
18 Do you see that?  
19 A. Yes, I do see that.

20  
21 Q. And do you see that Ms Fishburn in this statement also  
22 records a second concern about sleeping arrangements of  
23 [AII]?

24 A. Yes, I see that.

25  
26 Q. And that Ms Fishburn in this statement says:

27  
28 *Whilst I have real recollections that all*  
29 *the children at Bethcar particularly*  
30 *[REDACTED] & [AII] were at risk, I cannot*  
31 *now remember my exact actions on departing*  
32 *Bethcar.*

33  
34 Do you see that?  
35 A. Sorry, no, I don't see where you're referring to.

36  
37 Q. About the fifth line from the bottom of the paragraph:

38  
39 *... I cannot now remember my exact actions*  
40 *upon departing Bethcar. I do know that my*  
41 *concerns were such that I have little doubt*  
42 *but that immediately upon returning to my*  
43 *office, I would have recorded the report on*  
44 *dictaphone for typing.*

45  
46 Ms Fishburn then refers to a telephone conversation with  
47 Bruce Foat, another employee of the department, about the

1 observations?

2 A. Yes.

3

4 Q. Are you aware from your review of the file of any  
5 evidence of the department taking any action after this  
6 notice in about March 1983 involving allegations that  
7 Mr Bert Gordon was involved in certainly suspicious  
8 behaviour or misconduct?

9 A. I do know there was police involvement in 1983 in  
10 relation to the Leonie Knight incident.

11

12 Q. Anything other than that?

13 A. I don't know what was done. I know there were  
14 discussions. I don't know the detail at this stage.

15

16 Q. Any departmental investigation that you're aware of?

17 A. That would have awaited, as I understand it, the  
18 outcome of the police investigations. I think certain  
19 things were done, certainly in terms of trying to speak to  
20 Ms Knight and her parents.

21

22 Q. Could tab 72 of volume 1 of the tender bundle please  
23 be brought up on the screen. Ms Allison, this is an email  
24 from Mr Manollaras to Mr Saidi of 6 July 2010. Could  
25 I just draw your attention to paragraphs 2 and 3, where  
26 reference is made to allegations that Leonie Knight had  
27 made about Mr Gordon. Do you see in about the third or  
28 fourth line of that second paragraph one of the allegations  
29 was that Mr Gordon had "comforted her by hugging her,  
30 kissing her and fondling her breasts". Do you see that?

31 A. Yes, I see that.

32

33 Q. Are you aware that at the time of this incident,  
34 Ms Knight was 14 years of age?

35 A. Certainly I didn't know her exact age, no.

36

37 Q. Accept from me that the evidence shows that she  
38 was 14.

39 A. Yes, I accept that.

40

41 Q. Could I just read to you what Mr Manollaras says in  
42 the following paragraph:

43

44 *For example, a distressed child could be*  
45 *comforted in the normal manner by a hug and*  
46 *a kiss. Granted I am having a problem with*  
47 *fondling of breasts, but I still think it*

1 *is a quantum leap, even if there was some*  
2 *fondling of breasts, to conclude sexual*  
3 *interference.*  
4

5 Before I ask you a question about that paragraph, I should  
6 acknowledge this is not your document and it's not written  
7 at a time when you were supervising Mr Manollaras. But as  
8 a senior solicitor from the Crown, do you have a response  
9 to that?

10 A. Look, I don't accept what's said there at all.

11  
12 Q. Does it reflect, in your view, a serious  
13 misunderstanding of what sexual interference of a minor  
14 might involve?

15 A. Yes.

16  
17 Q. If there had been some oversight of the correspondence  
18 that Mr Manollaras was issuing at this stage, including  
19 email correspondence, by someone more senior at the Crown  
20 Solicitor's Office, would you expect that if that  
21 observation had been noted, something might have been done  
22 by way of telling Mr Manollaras that he was getting it  
23 wrong?

24 A. Yes.

25  
26 Q. Could I ask for tab 73 of volume 1 of the tender  
27 bundle please to be shown. This document is a file note of  
28 a conference between Mr Manollaras, Mr Saidi and  
29 Mr Arblaster, two of the barristers retained by the Crown,  
30 on 25 August 2010. Do you see that?

31 A. Yes.

32  
33 Q. Before I take you to an aspect of the document, I take  
34 it from your evidence yesterday that in the way that this  
35 file was run, there was, at times, a fairly significant  
36 reliance on the advice of counsel?

37 A. Yes.

38  
39 Q. Could I ask page 2 to be shown, and particularly the  
40 second paragraph, and read to you this record of what was  
41 discussed:

42  
43 *At the conference, we also discussed the*  
44 *defendant's prospects on liability. It was*  
45 *generally felt by Counsel that the best bet*  
46 *for the defendant was to knock off as many*  
47 *plaintiffs as possible on the limitation*

1           *question. Our investigation to date*  
2           *suggested some succour in this regard at*  
3           *least in relation to several of the*  
4           *plaintiffs.*

5

6           And can I take you also, before asking you a question, to  
7           the final paragraph of that page:

8

9           *There was, however, unanimous agreement*  
10           *that the Department's best bet was to try*  
11           *and knock out as many as possible of the*  
12           *plaintiffs at the limitation hurdle.*

13

14           That indicates to you, does it not, that by 25 August 2010  
15           the view held on the liability question, apart from the  
16           time bar issue, was fairly pessimistic - the view held by  
17           counsel, at least?

18

19

20           Q.    Could I ask you to go back up on page 2 and read this  
21           to you:

22

23           *Counsel was of the view that this aspect*  
24           *should have been investigated by the*  
25           *Department. They were on notice about*  
26           *something occurring which should have been*  
27           *investigated.*

28

29           And that is by reference to the notice in respect of  
30           irregularities with [AIA]. Do you see that?

31

32

33           A.    Yes, I see what you're referring to.  
34           Q.    Does that help you to form a view as to whether it  
35           appears, by this time, that counsel was of the view that  
36           there might be liability problems for the department?

37

38

39           A.    In certain aspects, yes.  
40           Q.    If it's right that by August 2010 the best bet was  
41           the time bar defence and that there were liability  
42           problems, wasn't that the time, or at least one of them,  
43           when it was absolutely necessary for the Crown Solicitor's  
44           Office to be giving advice about the merits of trying to  
45           settle these cases?

46

47

48

49

50

51

52

53

54

55

56

57

58

1 aspect of liability in that you might succeed on it and the  
2 plaintiffs might succeed on it; there was no certainty one  
3 way or the other - right?

4 A. No, there never is.

5  
6 Q. So there was a risk factor for both sides on that  
7 question.

8 A. Yes.

9  
10 Q. Viewed in that way, it's no different to any other  
11 liability issue, in that there are risk factors both ways?

12 A. Correct.

13  
14 Q. So there's no need, I suggest to you, to have the  
15 limitation question determined before coming to a view  
16 about whether you should settle the cases; correct?

17 A. Not necessarily. This seems to be a strategy that  
18 they have determined.

19  
20 Q. There is no doubt about that. I'm asking you, though,  
21 about whether it was an appropriate strategy and, in  
22 particular, whether a more appropriate strategy at this  
23 time was to go off and try to mediate these cases?

24 A. No, I don't agree with you on the basis of what you've  
25 told me. I was not there. There was discussion. If they  
26 felt that they had reasonable prospects of success on the  
27 limitation motions, they were entitled to take that  
28 strategy.

29  
30 Q. And not try to sit down with the plaintiffs, accept  
31 that both sides face some risks, and see if the case could  
32 be settled and for what amount? Is that really your view?

33 A. They're entitled to do that. They're entitled to go  
34 either way.

35  
36 Q. Are you aware from your review of the file that, at  
37 the directions hearing on 21 June 2010 that I asked you  
38 some questions about a moment ago, the judicial registrar  
39 asked about whether the matter might be resolved at  
40 mediation? Do you remember that?

41 A. No, I don't.

42  
43 Q. Just take it from me, if you would, to avoid having to  
44 go back to the document, that Mr Manollaras' note records  
45 that the judicial registrar raised the prospect that the  
46 matter might be resolved at mediation on 21 June and that  
47 Mr Manollaras' response was to instruct counsel appearing

1 that whilst there was a limitation issue, the State might  
2 not be interested in a mediation, particularly where the  
3 defendant could not see that it could be held liable for  
4 the plaintiffs' injuries, even leaving the limitation  
5 question aside.  
6

7 So you know that by the time of this August conference  
8 the court had, a short period of time before, raised the  
9 question of whether the parties should go to mediation, and  
10 the State's position was that that shouldn't occur?

11 A. From what you've said, yes.  
12

13 Q. Do you think that that was an appropriate approach at  
14 court on 21 June - to avoid the court's suggestion that the  
15 parties might benefit from a mediation?

16 A. I can't answer that question.  
17

18 Q. Why?

19 A. Because I don't know what was in Mr Manollaras' mind  
20 when he instructed counsel.  
21

22 Q. Accept from me that it appears what is in his mind is  
23 that there is a time bar issue and he doesn't think there  
24 is going to be liability on the part of the State. My  
25 question is do you think it was appropriate to resist the  
26 court's overtures toward mediation on 21 June 2010?

27 A. It may be appropriate.  
28

29 Q. You recall your counsel, Mr Menzies, asked Ms Loughman  
30 yesterday about whether she had ever taken steps to ask the  
31 court to refer the matter to mediation in a compulsory way;  
32 do you remember that?

33 A. Yes, I do.  
34

35 Q. In your experience in litigation, a pretty good reason  
36 why a party might not ask the court to make a compulsory  
37 mediation order is if the other side says they have no  
38 interest in attending?

39 A. Plaintiffs frequently request compulsory mediation  
40 orders.  
41

42 Q. But it would be legitimate, wouldn't it, to think:  
43 Well, what's the point, if the other side doesn't want to  
44 go?

45 A. That's a matter for the plaintiff.  
46

47 THE CHAIR: Q. It's the common experience of judges,

1 even if one side resists mediation, that when it's ordered  
2 it brings results. Are you aware of that?  
3 A. Absolutely.

4  
5 Q. Yes. There's often a lot of point in a mediation when  
6 one party tells the judge they don't want to do it, isn't  
7 there?  
8 A. It's a very common occurrence, your Honour.

9  
10 THE CHAIR: While I've interrupted you, Mr Lloyd, that  
11 document that is behind tab 73 from Mr Manollaras speaks of  
12 a draft of the instructions being attached. Do we know  
13 where that document is?

14  
15 MR LLOYD: I'll make inquiries, your Honour.

16  
17 THE CHAIR: Thank you.

18  
19 MR LLOYD: Q. Could I take you forward, please, to the  
20 events of 12 May 2011 and ask for tab 86 in volume 1 of the  
21 tender bundle to be brought up. Could we scroll down to  
22 the third paragraph. This is an email from Mr Manollaras  
23 to Ms Vella. Ms Vella at that time was the person  
24 responsible for giving instructions?  
25 A. No, she was a paralegal.

26  
27 Q. I withdraw that. It's an email from Mr Manollaras to  
28 Mr Cashion SC.  
29 A. I can't see the top, I'm sorry.

30  
31 Q. Accept from me that that's what it is, and it's an  
32 email of 12 May 2011. In the third paragraph, there's  
33 reference made to a conversation that Mr Saidi had had with  
34 Mr Catsanos about a possible settlement. The understanding  
35 was expressed that there would be nothing to be done by the  
36 State about it, but that all that the plaintiffs had done  
37 was indicated that they wanted an acknowledgment and  
38 a modest amount of money. Mr Saidi thought that the  
39 defendant wouldn't have a problem with the non-pecuniary  
40 side of things. But evidently Mr Manollaras wasn't of the  
41 same view.

42  
43 Then do you see Mr Manollaras observes in the  
44 following paragraph that he doesn't recall the State  
45 apologising for anything and that his view was that the  
46 plaintiffs were going to have a difficult time establishing  
47 liability.

1  
2 By May 2011, knowing what you know from the questions  
3 that you've been asked appearing at this Commission and  
4 from your review of the file, having regard to the fact  
5 that it was communicated from the other side, it appears,  
6 that all the plaintiffs want is an acknowledgment and  
7 a modest amount of money, what do you say about whether  
8 this was an appropriate time for the State to agree to sit  
9 down and have a mediation?  
10 A. Well, I think it's a matter for instructions at this  
11 point. Mr Manollaras should have, and it looks like he  
12 did, tell the department, but I don't know what happened  
13 after that.  
14  
15 Q. Putting to one side the department's approach and just  
16 focusing on what would be appropriate advice from the Crown  
17 Solicitor's Office by this time, just let me see if I have  
18 this right in terms of the general situation that we had  
19 reached by 12 May 2011: you had 15 cases brought by  
20 plaintiffs alleging child sexual abuse. That much is  
21 obvious?  
22 A. Yes.  
23  
24 Q. The costs involved on both sides by this time were  
25 starting to become enormous; that's right, isn't it?  
26 A. I accept that, probably.  
27  
28 Q. There are references in the material that no doubt you  
29 would have seen in your review to estimates being given for  
30 the hearing of the trial of three months, and the like?  
31 A. Yes.  
32  
33 Q. The costs were likely to be horrific; correct?  
34 A. Yes.  
35  
36 Q. You had a situation where - I think you agreed with me  
37 yesterday - it was obvious that each of the plaintiffs was  
38 impecunious.  
39 A. Yes.  
40  
41 Q. That is to say, every cent that the State continued to  
42 spend defending these cases was likely to be wasted in the  
43 sense that you were never going to get a costs recovery,  
44 even if you won.  
45 A. That's not necessarily meaning it's wasted, however.  
46  
47 Q. Not wasted in the sense of, what, trying to make an

1 example of a plaintiff who loses a case; is that what you  
2 mean?

3 A. It's not a question of making an example - trying to  
4 make an example of a plaintiff. It's a question of, in  
5 certain circumstances where a case is being run on the  
6 basis of a - on a legal basis that's not sustainable, it is  
7 sometimes important to run that matter.

8  
9 Q. But what was the issue of principle here? I've taken  
10 you to a number of documents which clearly show that, at  
11 the very least, on the question of liability there were  
12 risks for the State at trial?

13 A. Yes, certainly after the notification, I would agree  
14 there were risks.

15  
16 Q. The notification of?

17 A. The abuse.

18  
19 Q. And that notification, I think we went through  
20 yesterday, occurred in relation to Mr Gibson as early as  
21 March 1980.

22 A. 1980, 1981, somewhere around there, yes.

23  
24 Q. And in relation to Mr Gordon, by about March 1983.

25 A. That's correct.

26  
27 Q. In addition, you also knew that a number of these  
28 plaintiffs had had their allegations tested in front of  
29 a jury, at least in relation to Mr Gibson.

30 A. Yes.

31  
32 Q. And a jury had, it would appear, I suggest to you,  
33 accepted that they were witnesses of credit, in that  
34 Mr Gibson was convicted twice.

35 A. Yes.

36  
37 Q. And I suggest to you that the documents available to  
38 the Crown Solicitor's Office at this time revealed that  
39 Kathleen Biles was one of those witnesses who gave tendency  
40 and coincidence evidence?

41 A. I can't recall that. Maybe. I accept it, but I don't  
42 recall it.

43  
44 Q. So in terms of the best guess the State might make  
45 about whether these plaintiffs, or at least some of them,  
46 were going to present as credible witnesses at any trial is  
47 looking pretty grim for the State, based on what I've just

1 put to you, isn't it?

2 A. I don't think there's any suggestion that the  
3 plaintiffs wouldn't present as credible witnesses.

4  
5 Q. Well, there's a number of documents in here,  
6 Ms Allison, authored by Mr Manollaras which suggest to the  
7 contrary. Have you seen those?

8 A. I don't recall. I certainly didn't form that view.

9  
10 Q. Well, if you assume that the plaintiffs were going to  
11 present as credible witnesses, returning to my question  
12 about the risks at least that were faced by the State and  
13 known by the Crown Solicitor's Office at this time, if  
14 you're going to be faced with a situation of credible  
15 plaintiffs coming along and complaining of the most heinous  
16 and disgraceful sexual abuse essentially that one could  
17 imagine occurring, in some circumstances, where they're as  
18 young as 3 years old, a reasonable view would be, would it  
19 not, that there was a very good chance that a judge in the  
20 District Court might believe them; isn't that obvious?

21 A. I don't have any - in no way suggest that anybody  
22 would not be believed in what they were saying.

23  
24 Q. But if you accept that there were serious risks on  
25 liability, that left you with the time bar defence.

26 A. Not entirely. I believe you've read my advice in  
27 relation to this. There were a couple of issues. The  
28 plaintiffs' claim essentially was from the time the  
29 children were put at Bethcar, there was a duty of care owed  
30 to them and everything that happened to the children was -  
31 the children were entitled to be compensated for. That was  
32 a serious issue in terms of when the duty of care arose,  
33 and I think we - I certainly would accept that a duty of  
34 care arose when notifications occurred, and that's what  
35 Mr Saidi I think was referring to in that conversation.

36  
37 THE CHAIR: Q. Why is it that there's only a duty when  
38 there's a notification? The notification might have  
39 triggered the necessity to act in accordance with the duty,  
40 but why wasn't there always a duty?

41 A. Because the children weren't in the direct care of the  
42 department. The department had merely a funding and  
43 licensing role.

44  
45 Q. Licensing carries with it responsibility for who you  
46 licence and whether or not it is appropriate for that  
47 person to sustain the licence, doesn't it?

1 A. But that is not something that would necessarily mean  
2 that there would be compensation arising from that.

3  
4 Q. No, but it triggers a duty of care, doesn't it?

5 A. Not a duty of care. As I understand it - and I don't  
6 want to argue with your Honour, but my understanding is  
7 that it does not trigger a duty of care such that breach  
8 would entitle the plaintiffs to compensation.

9  
10 Q. Well, we'll analyse it, but the difficulty I think  
11 you're facing is that if you look at the pleading, there  
12 are a number of elements of the alleged duty, which include  
13 proper checking of the people who might run the  
14 institution, proper regular supervision of those who run  
15 the institution, and so on, in other words, how it's run  
16 pursuant to the licence which was granted by the State --

17 A. Yes, your Honour, and I analysed that in some detail.

18  
19 Q. And the duty of care arises because of the  
20 relationship between the State and the licensing of the  
21 premises. Thereafter, whether there's a breach is  
22 a different matter.

23 A. That's not my understanding of the law, your Honour.

24  
25 MR LLOYD: Q. Even quite apart from his Honour's point,  
26 Ms Allison, you know, don't you, from the statements that  
27 each of the Bethcar girls has given to this Commission that  
28 five of the six of them detail sexual abuse after the  
29 period of the notification to the department, which you've  
30 agreed occurred in 1980 in respect of Mr Gibson and 1983 in  
31 respect of Mr Gordon, and so at the very least in respect  
32 of the abuse which occurred after the department was on  
33 actual notice of the problems and did nothing, that was  
34 a liability risk of the highest order; correct?

35 A. Correct.

36  
37 Q. So to return to the proposition I put to you a little  
38 while ago, what that left you with was a time bar defence  
39 in terms of an ability for the State to obtain a verdict in  
40 its favour.

41 A. For those plaintiffs, that's correct.

42  
43 Q. What is your experience in terms of the State's  
44 success rate in running time bar defences where the  
45 plaintiffs allege child sexual abuse?

46 A. I only know of one, and that was successful.

47

1 Q. One where the State was successful?

2 A. I only know of one limitation - to put it in context,  
3 claims in relation to child sexual abuse are not an  
4 everyday matter, and I personally don't deal with very  
5 many. In fact, this I think is the only one. So I don't  
6 think I can comment on the success rate in the office,  
7 because I don't know the answer.

8

9 Q. Just applying your experience in your lengthy period  
10 as a practitioner, and now a senior practitioner, of the  
11 Supreme Court, what's your view about the attitude that  
12 a judge of the District Court is likely to take when faced  
13 with the question of whether to shut plaintiffs making  
14 these allegations out of court on a technical defence as  
15 opposed to letting them have their day in court?

16 A. It would depend on the matter.

17

18 Q. You would have to have a very strong case in the  
19 ordinary assessment of things as a defendant to think you  
20 were likely to get up on the limitation defence, wouldn't  
21 you?

22 A. Well, the only child sexual assault case that I know  
23 of was successful on the limitation point.

24

25 Q. Even accepting for one moment the proposition that  
26 there was a real possibility that the State might have  
27 succeeded on the limitation defence, if that was the only  
28 matter left in issue, knowing what is known on 12 May  
29 2011 - namely, that all the plaintiffs wanted was an  
30 acknowledgment and a modest amount of money - why is it  
31 that the Crown Solicitor's Office wouldn't be giving strong  
32 advice that it is in the interests of the State, both  
33 financially and ethically or morally, to sit down with  
34 these people immediately and work out if the cases could be  
35 settled?

36 A. I don't know why that wasn't done at that time.

37

38 Q. In your review of the file, there's no explanation  
39 that has come out at you, is there?

40 A. Look, I don't know, but I - this is one email, not in  
41 context. I don't know what happened after it, so I just  
42 can't help you on that, I don't think.

43

44 Q. We'll move on. Could the document at tab 16 of the  
45 annexures to Mr Coutts-Trotter's statement please be shown.  
46 Do you see this is the affidavit of Mr Maxwell, the  
47 investigator, sworn 17 May 2011?

1 A. Yes.

2

3 Q. Again, in fairness, Ms Allison, this is in a period  
4 when you weren't involved in the conduct of the case.

5 A. Yes.

6

7 Q. Could I ask to scroll down to page 7, to the heading  
8 above paragraph 27. Mr Maxwell, it would appear to  
9 a reader, I suggest, in this section that follows the  
10 heading "Part B", purports to deal with the availability  
11 and location of persons identified in documents relevant to  
12 the allegation that at all material times DoCS funded  
13 Bethcar and allowed it to operate as a facility providing  
14 foster and other live-in care for children. It's obvious,  
15 isn't it?

16 A. Yes, that's what it says.

17

18 Q. Sitting there today, would that tell you, as a reader,  
19 that what is being done after that heading is evidence  
20 being given about all of the persons and their availability  
21 and location who fall into that category?

22

23 MR MENZIES: I object to that question, for several  
24 reasons. First, it involves a document which the witness  
25 was not supervising, but more importantly --

26

27 THE CHAIR: No, but she can read the document.

28

29 MR MENZIES: Of course she can, your Honour. The document  
30 speaks for itself. The conclusion as to what one draws  
31 from the document is a matter for argument, and it's  
32 a matter for submission, and it's a matter ultimately for  
33 the Commission's decision.

34

35 MR LLOYD: I'll withdraw the question, your Honour, and  
36 move on, if that's convenient.

37

38 Q. Can I ask you to look at some of the things that  
39 Mr Maxwell says under that heading that I have just read  
40 out to you, and I don't want to take you to every  
41 reference, but do you see he sets out there a number of  
42 witnesses, and in respect of each of those witnesses -  
43 take, for example, Mr Quinn on (b) at the top of page 8, he  
44 has Alzheimer's-type dementia. Going to Mr Reddie, he is  
45 deceased. Mr Densley is deceased. Mr Faggotter is unable  
46 to be located. Without taking you to every one of these  
47 entries, they are all people who are either deceased or

1 might otherwise be unavailable to give evidence at a trial;  
2 correct?

3 A. Yes.

4  
5 Q. Then part C, if we can go to page 10, the heading  
6 there again is similar in that he purports to deal with the  
7 availability and locations of persons identified in  
8 documents when the child was committed to the Gordons'  
9 care; correct?

10 A. Correct.

11  
12 Q. Again, it's the same thing: he sets out a number of  
13 people who are either deceased or otherwise unavailable;  
14 right?

15 A. Correct.

16  
17 Q. Then if we go to page 12, part D, the same thing in  
18 terms of the heading, or a similar thing?

19 A. Yes.

20  
21 Q. And a similar thing in terms of who he sets out  
22 underneath it. And finally, if you can answer these two  
23 questions together - if that's a problem, let me know -  
24 part E on page 13, the heading is similar and the  
25 information underneath there is similar.

26 A. Correct.

27  
28 Q. Just accept from me, if you would, there's a part F  
29 and it's in the same category. What we have here is an  
30 affidavit from Mr Maxwell which doesn't refer to a single  
31 person who he has been able to locate.

32 A. Yes, I accept that.

33  
34 Q. You know, don't you, that later there was  
35 a supplementary affidavit from Mr Maxwell of 3 August 2011?

36 A. Yes.

37  
38 Q. And from your review of the file, are you able to say  
39 that the same approach is adopted essentially in that  
40 affidavit?

41 A. Yes.

42  
43 Q. We'll come back to that issue, but before we deal with  
44 it, can I ask you to turn to tab 48 of the annexures to  
45 your statement in volume 2 of the bundle. Could we scroll  
46 down to the fourth-last paragraph. This relates to events  
47 at court on 9 June 2011. Do you see there:

1  
2 *There was also some discussions following*  
3 *the mention before her Honour. The*  
4 *plaintiffs would like to mediate/they have*  
5 *made noises that they might settle for an*  
6 *apology, some cash and costs.*

7  
8 They had been asked to formulate an offer. And in the  
9 following paragraph, Mr Manollaras says he is not in  
10 a position to recommend an apology and that there's a big  
11 question mark over whether anything really happened  
12 meriting an apology.

13  
14 Now, just dealing with that last aspect, I take it  
15 from what you told the Commission earlier that the question  
16 marks that he was raising about whether anything happened  
17 weren't questions in your review of the file that arise in  
18 your mind, at least by this time?

19 A. Well, the first time I'd actually sat down and thought  
20 carefully about this was at the time of drafting the  
21 advice. I didn't form that opinion when I did that.

22  
23 Q. As to the mediation point, again I suggest to you this  
24 was a time when the Crown should have been telling the  
25 department they should be going to a mediation. What do  
26 you say about that?

27 A. Well, I think in my advice I also suggested that the  
28 matter be defended, so it would be very unfair for me to  
29 say that and then suggest that Mr Manollaras should have  
30 taken a different view.

31  
32 Q. So that your position, even with the benefit of  
33 hindsight sitting there today, that the approach that was  
34 adopted in June 2011 of not going to a mediation was an  
35 appropriate one, can you comment on that?

36 A. Certainly in hindsight, we should have gone to  
37 mediation.

38  
39 Q. So to the extent that you and Mr Manollaras were  
40 expressing views to the contrary, certainly around this  
41 time or later in your advice, do you accept that you got  
42 that wrong?

43 A. Yes, and the department certainly thought I got it  
44 wrong, because, on getting my advice, they said they wanted  
45 to mediate.

46  
47 Q. We'll come to that. You will recall - I don't need to

1 take you to a document, but just by way of reminding you of  
2 the chronology - that on 5 August 2011 the court ordered  
3 the limitation motion to be fixed for hearing on  
4 20 February 2012. Do you remember that?

5 A. Yes.

6  
7 Q. By this time, just to remind you of the chronology,  
8 there's no motion at all on by the State for a permanent  
9 stay.

10 A. Sorry? Could you repeat that?

11  
12 Q. By the time that the limitation question was fixed for  
13 hearing, which occurred on 5 August 2011, the State hadn't  
14 filed its motion seeking a permanent stay.

15 A. Correct.

16  
17 Q. Could tab 52 of Ms Allison's statement please be  
18 brought up. It's in volume 2 of the witness bundle. This  
19 is an email from Ms Vella from the Crown to Mr Arblaster of  
20 counsel on 27 September 2011. Do you see that?

21 A. Yes.

22  
23 Q. In this email, Ms Vella raises something that Mr Woods  
24 of counsel had raised about whether the State would put on  
25 its own motion essentially seeking a permanent stay; right?

26 A. Yes.

27  
28 Q. Do you see Ms Vella, in the second paragraph of that  
29 email, says in about the third-last line, or identifies the  
30 relevant question on that permanent stay as being whether  
31 the proceedings should be stayed because essentially the  
32 lapse of time has "precluded a fair trial, even where the  
33 plaintiff was under a disability and there was no  
34 oppressive conduct on the part of the plaintiff"? Is that  
35 what you understand to be the issue on the permanent stay  
36 application, that is to say, whether, because of the lapse  
37 of time, a fair trial wasn't possible?

38 A. That's my understanding.

39  
40 Q. Just as a general proposition - and tell me if you  
41 can't answer this stated at this level of generality - for  
42 the State to succeed in demonstrating that a fair trial  
43 wasn't possible, it was absolutely fundamental for the  
44 State to be in a position to adduce evidence about all of  
45 the evidence which was available, not just the evidence  
46 which was unavailable?

47 A. I think we dealt with this yesterday. I don't know,

1 is the answer, the answer I gave yesterday, and it remains  
2 that.

3

4 Q. Have you reflected on that overnight?

5 A. I have reflected on that overnight and I have had  
6 a look at Mr Cashion's submissions. What he seems to be  
7 saying in his submissions is that the prejudice, if you  
8 like, if that's the right word, was only in relation to the  
9 Gordons, and this is in relation to Ms Biles.

10

11 Q. I should take you, because you've referred to it  
12 a number of times, to Mr Cashion's and Mr Arblaster's  
13 advice of 1 February 2012. It's at tab 54 of your  
14 statement in volume 2. Do you see that's a memorandum of  
15 advice about the application to stay or dismiss the  
16 proceedings?

17

A. Yes.

18

19 Q. If we scroll down, reference is made at paragraph 4 to  
20 the affidavits of Mr Maxwell?

21

A. Yes.

22

23 Q. Paragraph 5 refers to Mr Maxwell's evidence about the  
24 death, incapacity or unknown whereabouts of numerous  
25 witnesses, and he also identifies a number of pertinent  
26 documents that Mr Maxwell has been unable to locate and the  
27 loss of the evidence seems - over the page - to be  
28 principally due to the significant delay in the  
29 commencement of the proceedings.

30

31 Then in paragraph 6, the effluxion of time - in line 4  
32 and following - since the events giving rise to the claims  
33 has resulted in the deterioration of evidence upon which  
34 the State would otherwise have relied in its defence, with  
35 the consequence that a fair hearing is no longer possible.

36

37 Having the benefit of looking at Mr Cashion's and  
38 Mr Arblaster's advice of 1 February 2012, can you comment  
39 on whether your view that the State's approach to this stay  
40 application, at least at this time, wasn't merely to rely  
41 upon the death of Mr Gordon?

42

A. That seems to be the case, yes.

43

44 Q. The approach plainly, I suggest, Ms Allison, was that  
45 what the State was going to be relying upon was the loss of  
46 the evidence referred to in Mr Maxwell's affidavits;  
47 correct?

1 A. Yes.

2

3 Q. You know, don't you, that the motion seeking the  
4 permanent stay came to be filed, and that occurred on  
5 6 February 2012? You know that, don't you?

6 A. I accept it, yes.

7

8 Q. Accept from me that there's a motion that bears that  
9 date, and what happened was that the plaintiffs had the  
10 matter relisted before Judge Truss on 14 February 2012.

11 A. Yes. Sorry, 14 March, I think.

12

13 Q. I have an advantage, Ms Allison, because I have  
14 a document that says 14 February, but I'll just take you to  
15 it.

16 A. Oh, sorry, yes, you're quite right. I was looking at  
17 the next directions hearing.

18

19 Q. So on 14 February 2012 the matter was listed before  
20 Judge Truss. Could tab 59 of Ms Allison's statement please  
21 be shown. It's in volume 2. If we could scroll down to  
22 page 8. Do you see at line 21 Mr Cashion tells her Honour  
23 in relation to whether the hearing on 20 February should be  
24 vacated that:

25

26 *... when one actually analyses the*  
27 *position, as I have said too many times*  
28 *now, the issue is the same and therefore*  
29 *the scope of the evidence is the same.*

30

31 Do you see that?

32 A. Yes.

33

34 Q. You know, don't you, that the debate that happened on  
35 this day between the plaintiffs and the State was that the  
36 State was saying that the hearing fixed for six days' time  
37 could proceed on the evidence that was disclosed at that  
38 time; that was the State's position?

39 A. When you say "disclosed at that time", I'm not sure  
40 what you mean by that.

41

42 Q. Let me make it clearer. The State's position was that  
43 the two affidavits of Mr Maxwell that I've taken you to  
44 setting out the unavailability of witnesses was the  
45 evidence that the State was going to rely upon on the  
46 question of the permanent stay application.

47 A. Yes.

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Q. And the State's position, further, was that there was no need for any adjournment to allow the plaintiffs to put on any evidence in reply.

A. Well, I believe they did have Mr Maxwell's affidavit for some time, so if they did want to get evidence in reply, they had plenty of time to get that.

Q. But, with respect, doesn't that ignore the difference between the issues arising on the permanent stay application and the limitation question?

A. It's all essentially prejudice.

Q. I thought you agreed with me earlier, Ms Allison, that the issue raised on the stay application was the question of whether a fair trial was possible and that was a question on which the State bore the onus of proof.

A. I accept that.

Q. So isn't the position here that on 14 February what the State was saying was that, "We are ready to run an application where we bear the onus of proving a fair trial is not possible, on the evidence served", and that evidence said nothing about all the evidence which was available?

A. That seems to be the position.

Q. And, further, the State's position was that not only did it not want to put on any more evidence on the question of whether a fair trial was possible but that the plaintiffs wouldn't need to address that question in evidence, either?

A. That appears to be Mr Cashion's position.

Q. When you say "Mr Cashion's position", are you suggesting that somehow he was acting other than on instructions?

A. No.

Q. Well, sitting here today, and again in fairness noting that you were not supervising Mr Manollaras at the time, do you have pause to reflect on what occurred at court on this day in terms of the State's approach?

A. I know you don't think it's satisfactory, but if Mr Cashion was of the view that he was able to make that submission, then that would have been accepted.

Q. Can I ask you one or two questions about the reliance

1 on counsel evidence. One of the differences between those  
2 at the Crown Solicitor's Office and those at the Bar is  
3 that the Crown Solicitor's Office routinely gives,  
4 I suggest to you, specialist advice to departments such as  
5 the department in question in this case; correct?

6 A. Correct.

7

8 Q. The Crown Solicitor's Office is, and necessarily so,  
9 much closer in terms of the obligations that are cast upon  
10 its client by the model litigant provisions; correct?

11 A. I agree with that.

12

13 Q. That is primarily a question for the Crown Solicitor's  
14 Office, not for counsel, isn't it?

15 A. No. I think it's a question for everybody.

16

17 Q. That may be so, but it certainly is a question for the  
18 Crown Solicitor's Office; correct?

19 A. Yes.

20

21 Q. Taking an extreme example and making it plain that no  
22 allegation of this sort is made in this case, if you  
23 retained a barrister who said something that you knew to be  
24 false in court, obviously the Crown Solicitor's Office  
25 would have an obligation to do something about it,  
26 independent of what the barrister is doing.

27 A. Yes.

28

29 Q. So it's right, isn't it, that it was necessary for the  
30 Crown Solicitor's Office at this time to exercise its own  
31 mind about the propriety of what was happening?

32 A. Yes.

33

34 Q. And accepting that that may not have been done here,  
35 with the benefit of hindsight and sitting there today  
36 knowing what you know from your review and the questions  
37 I've asked you and that you've been asked by the Bench and  
38 the documents you've seen, do you have a view on the  
39 propriety of what occurred at court on behalf of the Crown  
40 Solicitor's Office on 14 December 2012?

41 A. The difficulty I'm having is that you took me earlier  
42 to the advice that I think Mr Cashion and Mr Arblaster did  
43 in which they put out their position. It was quite clear  
44 what they intended to do, and it may be - I mean, again, in  
45 matters of what is put to a court, it is usual to accept  
46 what counsel says. I mean not - obviously not to the  
47 extent of allowing obviously false evidence to be provided.

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Q. Of course Judge Truss vacated the hearing date to allow the plaintiffs to put on evidence in reply?

A. Yes.

Q. And made an order that the State pay the costs thrown away?

A. Yes.

Q. You know that the plaintiffs ultimately did put on some evidence in reply?

A. Yes, I believe so.

Q. That evidence disclosed that the plaintiffs, through I think Ms Loughman, said about three months of exhaustive searching had found about 18 witnesses who could give relevant evidence.

A. I'll accept that. I don't know.

Q. Take it from me that those witnesses that the plaintiffs referred to in their evidence in reply included Terry Madden. Now, just dealing with him, he was a witness who could give centrally relevant evidence about these matters; correct?

A. I think we discussed yesterday - I'm not sure how central it was to Ms Biles' claim.

Q. Putting aside Ms Biles, and just dealing with all of the girls who alleged abuse by Mr Gordon - Gibson, I'm sorry.

A. This is only dealing with the application in relation to Ms Biles.

Q. Wasn't the agreement by the parties that this would be run as a test case, essentially, the Ms Biles application?

A. I'm not sure what they mean by "test case" in this event, because it wasn't binding.

Q. Okay. Accepting your point about Mr Madden's evidence not bearing, on one view, on this application, what about Ms Fishburn, who I asked you about before? Just to remind you, Ms Fishburn in 1983 had identified concerns she had about Mr Gordon.

A. Yes.

Q. Her evidence would be centrally relevant?

A. Yes.

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Q. She was one of the people that the plaintiffs turned up; correct?

A. Yes - well, so you say.

Q. And Ms Anne Dimech - again, accept from me - she was someone who gave evidence around the 1983/1984 period that bore on the allegations involving Mr Gordon. She was centrally relevant, making those assumptions?

A. On those assumptions, yes.

Q. And also Mr Foat, he was the person who Ms Fishburn says she had the conversation with about her concerns. He was another witness who was critical, wasn't he?

A. Yes, and - but ultimately Mr Cashion I think came to the view that the difficulty lay in the absence of the Gordons.

Q. And there was another witness, Mr Robinson. His evidence was relevant to the Mr Gordon allegations, wasn't it?

A. I don't know what he said.

Q. Have you not seen his statement in the files?

A. I can't recall.

THE CHAIR: Q. His Honour records that Mr Maxwell gave evidence that he had located 150 other persons who were alive and able to give evidence in the matter?

A. Yes, I understand that, your Honour.

MR LLOYD: Q. Just to take up his Honour's question, those people --

MR MENZIES: I think, your Honour, it was 150 people altogether, so it included those he identified and those he didn't.

THE CHAIR: No. The words he uses are that, "Mr Maxwell did not disclose in this affidavit that he located 150 other persons who are alive and able to give evidence."

MR MENZIES: I think that's an error, your Honour.

THE CHAIR: That's what the judgment says, Mr Menzies.

MR MENZIES: That may be so, your Honour, but the evidence