

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL AND EQUITY DIVISION  
COMMERCIAL COURT

CORPORATIONS LIST  
S CI 2011 6816

**IN THE MATTER OF WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 063 263 650)**

**WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 063 263 650) IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 2 AND IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULES 3 AND 4 AND ORS ACCORDING TO SCHEDULE 1**

Plaintiffs

### **WGG's OUTLINE OF SUBMISSIONS**

#### **Willmott Forests 1995-1999 Project**

1. In the Federal Court proceeding before Justice Dodds-Streeton WGG represented the Willmott Forests 1995-1999 Project and seven unregistered managed investment schemes.
2. A meeting of the members of the Willmott Forests 1995-1999 Project was held on 21 December 2011 and the members voted to replace Willmott Forests Limited (Receivers and Managers Appointed)(in Liquidation) (“**WFL**”) as Responsible Entity with Primary Securities Limited. Accordingly, WFL is no longer the Responsible Entity for the Willmott Forests 1995-1999 Project and it is understood that that scheme no longer forms part of this application.
3. WGG's legal advisers have been provided with a copy of the Bombala regional Sale Contract (“**the Sale Contract**”). Clause 71.1 of the Sale Contract provides for the exclusion of the land the subject of the Willmott Forests 1995-1999 Project from the sale.

#### **WGG unregistered schemes**

4. Pursuant to the Originating Process the plaintiffs seek the Court's consent to the disclaimer of the Project Documents of the Contractual and Partnership

Schemes listed in Schedule 4 pursuant to s 586(1) of the *Corporations Act* (“**the Act**”), including the WGG unregistered schemes.

5. WGG has developed proposals for the following unregistered schemes:
  - (a) McKenzie & Partners – Forestry Partnership No. 1 (1993);
  - (b) Grimsey & Associates Pty Ltd – Forestry Partnership No. 1 (1994);
  - (c) Grimsey & Associates Pty Ltd – Forestry Partnership No. 2 (1994);
  - (d) Grimsey & Associates Pty Ltd – Forestry Partnership No. 3 (1994),  
which are Partnership Schemes numbered 12 to 15 in Schedule 4 of the Originating Process and,
  - (e) Sharp-Reed Plantation Project – 1998,  
which is a Contractual Scheme, number 9 in Schedule 4.  
(“**the WGG unregistered schemes**”).
  
6. The constituent documents for the Partnership Schemes are:
  - (a) a Partnership Agreement between growers of the scheme;
  - (b) a Deed of Trust executed by the growers in the partnership, a Manager and a Trustee;
  - (c) a Deed of Covenant executed by the growers in the partnership, a Manager and the Trustee, to engage the Manager;
  - (d) a Lease Agreement;
  - (e) a Plantation Development Agreement between the growers and Willmott Forest Management Ltd (“**WFML**”);
  - (f) an Establishment and Maintenance Agreement between the growers in the partnership and WFML.
  
7. The constituent documents for the Sharp-Reed contractual scheme are:
  - (a) a Lease Agreement between each grower in the project and Timber Capital Ltd (now WFL);
  - (b) a Preparation and Planting Agreement between each grower and WFML;
  - (c) a Maintenance Agreement between each grower and WFML.

8. The trustee that was appointed to the four Partnership Schemes that form part of the WGG unregistered schemes, W.M.W. Financial Services Pty Ltd, was deregistered on 10 May 2000. WGG is not aware of any replacement trustee.
9. WFML was deregistered on 4 November 2001. To the extent the Plantation Development Agreements and Establishment and Maintenance Agreements relating to the WGG unregistered schemes were not already discharged, these agreements effectively terminated on 4 November 2001. WGG is not aware of any novation of the obligations of WFML.
10. The Managers of the four Partnership Schemes are:
  - (a) Grimsey & Associates Pty Ltd, in relation to the Grimsey & Associates Pty Ltd – Forestry Partnerships No’s 1-3; and
  - (b) McKenzie & Partners in relation to the McKenzie & Partners – Forestry Partnership No. 1.
11. WFL is the landlord, being the owner of the land leased by the growers in the WGG unregistered schemes.
12. The WGG has developed a proposal for the continuation of the WGG unregistered schemes, by appointing a new trustee to the four Partnership Schemes and appointing a new forest manager to all the WGG unregistered schemes. The proposal relies on WGG’s claim that the growers are entitled to maintain their lease. Accordingly, the WGG unregistered schemes should not be included in the sale process and winding up of the schemes, the subject of this application.

**Proceeding before Justice Dodds-Streeton**

13. By order of Justice Dodds-Streeton dated 29 June 2011 the Court ordered at order 3:

*“The Second and Third Plaintiffs are justified in disclaiming the Project Documents (referred to in paragraph 4(a) of the affidavit of Craig David Crosbie sworn 11 May 2011 (Affidavit)) of the Contractual and Partnership Schemes listed in Schedule 3 as onerous, pursuant to section*

*568(1) of the Corporations Act, on the condition that the Plaintiffs will seek the Court's consent before disclaiming the Project Documents."*

(emphasis added)

14. There was a good deal of submission by WGG and discussion before Justice Dodds-Streton about the ability to disclaim leases and the possible perception of order 3. WGG did not see the necessity of order 3 given the liquidator's assurance it would seek the court's consent before it disclaimed and that the substantive dispute regarding the ability to disclaim all the project documents would be dealt with at that time.

15. At [109] and [110] of Justice Dodds-Streton's judgment, handed down on 23 December 2011, her Honour states in respect of WGG's submissions:

*"The position of the WGG was that both the liquidators and receivers underestimated the potential viability of the 95-99 scheme and certain other schemes for which it had proposed a restructure and a replacement responsible entity, and underestimated the value of the growers' assets under those and/or other schemes. The liquidator's proposed global marketing of the assets, freed from the encumbrance of growers' assets (which the directions were intended to facilitate), insufficiently considered the very different position of individual schemes, would sacrifice the interests of the more potentially viable schemes to the overall interests of all schemes collectively and other parties, would result in the members of the schemes with better potential receiving almost nothing for their assets (which currently had a high value), and **would impede the salvaging of schemes with potential by means of a restructure.***

***In that context, the WGG submitted that a landlord could not disclaim its interest under a lease** (without in any event surrendering the entire freehold interest), so such a purported disclaimer would not, in any event, achieve the liquidators' stated goal of freeing land of encumbrances **and should not be implicitly authorised by the court's directions.**"*

(emphasis added)

16. Her Honour went on to conclude, in respect of the proposed orders, as follows at [118] and [119]:

*“...The only immediate effect of making the directions would be, however, the making of the amendment, rather than the exercise of any powers thereunder, unless and until the plaintiffs again approach the courts. That would be upon the basis stated and with the compensation set out. **I was not persuaded that the directions would impede any restructure or replacement of a responsible entity which was otherwise validly open for any scheme, including the 1995 to '99 scheme.** The intervener’s arguments were, in my view, premature and anticipatory, being directed at apprehended developments or outcomes which, if they arose at all, would be in the future.*

***The existence of unresolved questions, such as whether the Bombala land was scheme property or the effect of a landlord’s disclaimer of leases as onerous property, did not preclude the directions.** Their determination was unnecessary in the context of the application given its essentially preliminary and facultative nature and the safeguards, protocols and requisite consideration it incorporated. At worst, **the resolution of those outstanding issues may ultimately limit the liquidators’ ability to achieve a total unencumbered sale, if a new responsible entity were introduced and parts of the Bombala land vested in it, or if some or all of the growers’ interests under leases could survive disclaimer and were not susceptible of termination under a constitutional amendment.**”*

(emphasis added)

17. Her Honour’s conclusions can be seen in the context of the following extract from page 150 of the Transcript:

*“HER HONOUR: And, Mr Elliott, should there be any other scheme for which a proposal emerges in like way, there’s nothing in these directions, you would say, which would impede persons going ahead with the lawful substitution or replacement of a new RE.*

*MR ELLIOTT: That's our clear position, your Honour...."*

### **Disclaiming the Project Documents**

18. The reason the liquidators seek approval to disclaim the project documents of the Partnership and Contractual schemes was noted in Justice Dodds-Streton's decision at [71]:

*"The liquidators identified an impediment to their proposed approach in that some schemes (contractual and partnership) did not have a constitution and the liquidators were not empowered to sell WFL assets related to the schemes. In order to sell those assets, the liquidators would need to disclaim at the appropriate time."*

19. As WGG submitted in the proceeding before Justice Dodds-Streton, leases held by the growers, including growers in the WGG unregistered schemes, are not able to be disclaimed by the landlord, WFL.

20. Section 568(1) of the Act provides:

*"Subject to this section, a liquidator of a company may at any time, on the company's behalf, by signed writing **disclaim property of the company** that consists of:*

- (a) land burdened with onerous covenants; or*
  - (b) shares;*
  - (c) property that is unsalable or is not readily saleable; or*
  - (d) property that may give rise to a liability to pay money or some other onerous obligation; or*
  - (e) property where it is reasonable to expect that the costs, charges and expenses that would be incurred in realizing the property would exceed the proceeds of realizing the property; or*
  - (f) a contract;*
- whether or not:*
- (g) except in the case of a contract – the liquidator has tried to sell the property, has taken possession of it or exercised an act of ownership in relation to it; or*

- (h) *in the case of a contract – the company or the liquidator has tried to assign, or has exercised rights in relation to, the contract or any property to which it relates.”*

(emphasis added)

*Landlord cannot disclaim a tenant’s interest in land*

21. It clear that the liquidator can only disclaim “property of the company”, not the growers property. A lease held by a grower/tenant is not property of the company, it is property of the grower. The reversionary right/freehold is the property of the company, and may be disclaimed by the liquidator.
22. In *National Australia Bank v Victoria* [2010] FCA 1230, Bennett J says at [13]:  
*“As a matter of logic, a trustee in bankruptcy can only disclaim a bankrupt’s interest in mortgaged properties. Such a disclaimer would not extend to the interests of a mortgagee. As applied to the present case, the vesting of the Properties occurred subject to the Bank’s mortgages.”*
23. The liquidator cannot disclaim a grower’s leasehold. A lease is not a mere contract but creates rights *in rem*, that is, an estate or interest in the land. The liquidator can disclaim WFL’s *in rem* rights, but cannot disclaim the lessee’s *in rem* rights. The growers’ estate or interest in the land survives.
24. The liquidators refer to a passage from *Hindcastle Ltd v Barbara Attenborough Ltd* [1997] AC 70 at 87E-F, which, if the first sentence from the passage is not omitted, being *“The simplest case is of a landlord and an insolvent tenant”*, clearly concerns the disclaimer of a lease by a lessee. There is no revelation in the fact that a tenant can disclaim the tenant’s own lease, being its own interest in land, and that such a disclaimer will result in the leasehold estate ceasing to exist. A tenant can disclaim the tenant’s own *in rem* rights as well as its contractual rights and obligations. It is also understandable that if a tenant disclaims its interest in a leasehold, that such a disclaimer will affect, as far as necessary, the landlord’s rights against the tenant: see s 568D of the Act.

25. It is a completely separate matter to assert that a landlord can disclaim a tenant's lease, that is a tenant's property, causing the leasehold estate to cease to exist. The landlord does not have leasehold, it has freehold. It is the freehold that it can disclaim. The liquidators' submission at paragraph 90 that the passage from *Hindcastle Ltd* is equally applicable to disclaimer on behalf of a landlord is incorrect and (aside from *Re Jandowae Estates Pty Ltd* [1989] 7 ACLC 179, which is discussed below) without authority.
26. *Re Jandowae Estates Pty Ltd* [1989] 7 ACLC 179, is a decision of a Master of the Supreme Court of Queensland where it was found that the lessor company could disclaim a lease on the basis it was an unprofitable contract and that such disclaimer would have the effect of terminating the rights interests and liabilities of the lessee. WGG submits that the decision in *Re Jandowae* is incorrect as the lease was property of the lessee, not property of the lessor, and that the provision for disclaiming unprofitable contracts cannot have the effect of disclaiming a lessee's *in rem* rights. This decision may partly be explained by the absence of a contradictor to the application and the fact, made clear in the decision, that the lease was only entered into for the purpose of granting subleases to investors and that when the subleases were surrendered "(t)hereafter there was no point in the continued existence of the lease": see *Re Jandowae* at 180.
27. WGG is not aware of any other authority or commentary to support the view lessors can disclaim leases.
28. That there is no commentary in legal texts on whether a lessor can disclaim a lease is not surprising if considered in light of the well known passage of Fullagar J in *In Re K L Tractors Ltd (in Liq)* (1961) 106 CLR 318 at 338:

*"It may seem curious that there is so little in the books bearing directly on the argument now raised. But a not uncommon reason for dearth of direct authority on point is that there has been a general consensus of opinion that the point is not tenable."*

29. In *Re Bastable; Ex parte The Trustee* [1901] 2 KB 518 a trustee in bankruptcy sought to disclaim a contract for the purchase of land from the bankrupt, who had a 99 year lease, which would have the effect of taking away the purchaser's equitable interest in the land. Romer LJ says at p 525:

*“It is in substance contended on behalf of the trustee that if a vendor of real estate, by contract entered into with a purchaser, becomes bankrupt, the trustee in the bankruptcy of the vendor, without disclaiming the land or the interest in the land which was the subject of the contract, can, by disclaiming the contract alone, put himself in the position of owner of the estate freed altogether from the purchaser's interest in the estate, leaving the purchaser only the remedy of proving in the bankruptcy for any loss he may have suffered by having his contract destroyed. That would indeed be a serious contention if it could be maintained...*

....

*It cannot, I think, be that such a result was ever intended by the Act. And indeed, when s. 55 is examined, it has, in my view, no such operation or effect. The fallacy of the argument for the appellant lies, I think, in ignoring the nature of the interest of the purchaser of real estate after a contract for its sale has been made between him and the owner of the estate. The purchaser has, then, something more than a pecuniary interest under his contract. He has an equitable interest in the land itself.”*

30. *Re Bastable* was applied in *Dekala Pty Ltd (in liq) v Perth Land & Leisure Ltd* (1987) 17 NSWLR 664 per Young J at 666.

*Landlord can disclaim own interest in the land*

31. The liquidators, if they wish, can disclaim their estate or interest in the land, that is, their reversionary rights as lessor or freehold. In that case s 139 of the *Property Law Act 1958* (Vic) and the similar provisions in other States would apply and the title would escheat to the Crown: see *National Australia Bank v New South Wales* (2009) 182 FCR 52. This would leave WFL with nothing to sell. The grower's rights as lessees would survive and the Crown would become the grower's landlord.

32. When the land is disclaimed by a land owner, title escheats to the Crown subject to mortgages and charges: see *Re Middle Harbour Investments Ltd* (No. 2) [1977] 2 NSWLR 652 per Bowen CJ in Eq at 644; *National Australia Bank v Victoria* [2010] FCA 1230, per Bennett J at [15]. There can be no relevant difference in this respect between a charge and a lease.

*Section 568D of the Act*

33. If a lessor disclaimed its freehold, or was permitted to disclaim the lease contract, it is unclear what power the Court would have to extinguish the growers' *in rem* rights. Section 568D of the *Corporations Act* provides:

*“A disclaimer is taken to have terminated, as from the day on which it is taken because of subsection 568C(3) to take effect, the company’s rights, interests, liabilities and property in or in respect of the disclaimer property, but does not affect any other person’s rights or liabilities except so far as necessary in order to release the company and its property from liability.”*

34. In *Sims and Anor (as liqs of Enron Australia Pty Ltd) v TXU Electricity Ltd* (2005) 53 ACSR 295, Spigelman CJ, when considering section 568D, said at [23] – [24]:

*“[23] Austin J accepted the force of s 568D(1) in the following passage (at Simms (as liq of Enron Australia Finance Pty Ltd (in liq)) v TXU Electricity Ltd (2003) 204 ALR 658 ; 48 ACSR 266 at [57]–[60]):*

*[57] There is, however, a provision which provides a context for s 568(1B) and an indication that the section was not intended to authorise the variation of contractual rights and obligations in the manner contended for by the plaintiffs. Under s 568D(1) a disclaimer terminates the company’s rights and liabilities in respect of the disclaimed contract, while not affecting the counterparty’s rights and liabilities except so far as necessary to release the company from liability. I agree with the defendants that under s 568D(1), in its application to an unperformed contract:*

- *disclaimer deprives **the company** of its right to future performance of the contract by the counterparty: see Hindcastle Ltd v Barbara Attenborough Ltd [1997] AC 70 at 87 per Lord Nicholls; Sandtara Pty Ltd v Abigroup Ltd (1996) 42 NSWLR 491 at 500–501 per Cole JA; and*
- ***the counterparty’s existing, vested contractual rights and benefits are, generally speaking, unaffected by the disclaimer:** Capital Prime Properties Plc v Worthgate Ltd (in liq) [2000] 1 BCLC 647 at 654 per Neuberger J; Re Tulloch Ltd (in liq) (1977) 3 ACLR 808 at 813 per Needham J; Rothwells Ltd (in liq) v Spedley Securities Ltd (in liq) (1990) 20 NSWLR 417 at 422 per Hodgson J.*

...

*[24] I generally agree with his Honour’s reasoning.”*

(emphasis added)

35. In response to the paragraph 92 of the liquidators’ submissions, WGG notes that the first dot point in the above passage refers to depriving the insolvent company of the right to future performance, not the counterparty.
36. And at [26]:
 

*“It would, in my opinion, be anomalous if an order could be made by the court, in the context of an application for leave to disclaim, which could have an effect on the other party to the contract of a character broader than the effect which the statute itself provides the actual act of disclaimer may have upon the other party. The parliament has expressly considered the extent to which third parties are to be affected by the exercise of the statutory right of disclaimer. The power to make orders under s 568(1B)(b) should be read down to be subject to a similar restriction. Any effect on another person’s rights or liabilities should go no further than what is necessary to release the company or its property from liability. The broad language of s 568(1B)(b) should be read down accordingly.”*

37. It would be unusual if vested contractual rights survived, but vested property rights did not survive.
38. WGG submits that the rule of interpretation that legislation is presumed not to alienate vested proprietary interests without adequate compensation is also relevant: see Pearce and Geddes, *Statutory Interpretation in Australia*, 6<sup>th</sup> ed., section 5.17 page 178.

*The liquidators' submissions*

39. In respect of the liquidators' submissions at paragraphs 91 to 94, there is no absurdity in strangers to an insolvency continuing to enjoy their rights: see 568D of the Act. Paragraph 94 also appears to misconstrue WGG's "construction". WGG does not say a landlord can disclaim a lease, rather WGG submits a landlord cannot disclaim a lease.
40. Paragraph 93 of the liquidators' submissions confuses two separate propositions. First, the inability of a landlord to disclaim a lessee's lease and, second, the landlord's ability to disclaim its own freehold. WGG only raises the prospect that land escheat to the Crown in respect of the option the landlord has of disclaiming its freehold.
41. If any Forestry Management Agreements continue with WFL, those contracts may be disclaimed by the liquidator.
42. In respect of paragraphs 96 and 97 of the liquidators' submissions, the matters relating to s 568B of the Act do not arise as WFL cannot disclaim the tenant's leasehold under s 568.

*Section 568(1A) of the Act*

43. Section 568(1A) of the Act provides:

*"A liquidator cannot disclaim a contract (other than an unprofitable contract or a lease of land) except with the leave of the Court."*

44. The reference to “lease of land’ in s 568(1A) is a reference to a leasehold, of a lessee. It should not be misconstrued as including the obligations of a lessor under a lease. The lessor does not hold a lease of land, but rather holds land burdened with onerous covenants. The reference to a lease in s. 568(1A) can only sensibly be to a lessee’s interest under a lease.
45. Section 568(1A) can be better understood by looking at the commentary introducing the precursor provision in the *Bankruptcy Act* and then carried through to the *Corporations Act*. The Explanatory Memorandum for the Bankruptcy Amendment Bill 1979 states at paragraph 152, in respect of clause 64 “disclaimer of onerous property”:

*“Amendments: The provisions relating to the disclaimer of onerous property will be amended...*

*(b) A notice to a lessor (and any sub-lessee or mortgagee) of intention to disclaim a lease must be given by prescribed form...”*

(emphasis added)

46. Further, in Harmer’s “General Insolvency Inquiry” Report No. 45 1988, in Chapter 13 “Insolvency administration” disclaimer of leases is dealt with at paragraph 619 on page 261, where it states:

*“Special provision is made in both individual and corporate insolvency for disclaimer of a lease...*

*Although it is essential that persons affected by the disclaimer of a lease, such as a lessor, a sub-lessee or a mortgagee of a lease be entitled to notice that the lease is being disclaimed, it does not appear justifiable to permit such persons alone to be able to require the insolvency administrator to seek leave of the court before disclaiming.”*

(emphasis added)

47. The Explanatory Memorandum of the Corporate Law Reform Bill 1992, indicates s. 568(1A) was introduced following the Harmer Report’s consideration of the individual and corporate insolvency provisions, referred to in the preceding paragraph.

48. It is plain from reading the above extracts that there is no contemplation of disclaimer of the lessor's interest or disclaimer of a lease by a lessor. Otherwise reference would have been made to notice to be given to a lessee.
49. See also the analysis of the reference to "lease" in s 454 of the Companies (Queensland) Code in *Re Jandowae Estates Pty Ltd* [1989] 7 ACLC 179 at 181.

**Carve out for land the subject of a required disclaimer**

50. The Sale Contract has as a condition precedent for completion of the sale, orders authorising the liquidators to disclaim the project documents of the Contractual and Partnership Schemes, including the WGG unregistered schemes. However, the Sale Contract at clause 67 provides for a separate process in respect of any land the subject of a required disclaimer.
51. Clause 67 provides that the vendor cannot complete the sale of the disclaimed land unless and until the disclaimer takes effect pursuant to s 568C(1) of the Act.
52. The clause appears to provide an ability for the Contractual and Partnership Scheme land that would otherwise be subject to a necessary disclaimer to be excluded from the sale. Clause 67.2 provides, in part:
- “(a) The Vendor must promptly notify the Purchaser in writing of:*
- (i) the titles of which the Disclaimer takes effect pursuant to section 568C(1) of the Corporations Act; and*
- (ii) the titles which the Vendor is unable to, or the Vendor is not satisfied that it can, transfer to the Purchaser (“Disclaimer Titles”)*
- (b) The Purchaser must, in respect of each Forestry Plantation containing one or more Disclaimer Titles, elect to either:*
- (i) complete the sale of the Forestry Plantation (excluding the Disclaimer Titles in that Forestry Plantation); or*
- (ii) not complete the sale of the Forestry Plantation containing one or more Disclaimer Titles if the Purchaser (acting*

*reasonably) decides that it cannot sufficiently access the Forestry Plantation.*

....

- (d) The parties will not complete the sale of the Disclaimer Titles and any Forestry Plantation which the Purchaser has elected not to complete under clause 67.2(b)(ii) (collectively the “Excluded Disclaimer Land”) on the Disclaimer Land Completion Date referred to in clause 67.2(e).*

....”

### **Scheme property**

53. Paragraph 59 of the liquidators’ submissions states that the question of whether any of the land owned by WFL is scheme property must now be determined. WGG submits that the issue of whether land is scheme property should not be determined in this application in respect of the Willmott Forests 1995-1999 Project. The assets of the Willmott Forests 1995-1999 Project is being excluded from the proposed sale and no orders are being sought in this application in relation to that scheme.
54. Further, the question of whether the land used for the purpose of the Willmott Forests 1995-1999 Project is scheme property requires the nature and structure of the scheme and constituent documents and terms of that scheme to be considered. This has not been performed. The Willmott Forests Project (ARSN 089 379 975) is used as an exemplar for the Willmott registered schemes, as set out at paragraphs 17 to 19 of the liquidators’ submissions. The exemplar is then relied upon for the purpose of a very limited analysis of whether land is scheme property, at paragraphs 70 and 71 of the liquidators’ submissions.

### **Valuable property**

55. Paragraph 36 of the Receivers’ submissions asserts that the growers’ leases have no value. WGG does not concede that the leases have no value. Further, WGG maintains that the leases are the property of the growers and that the growers are entitled to continue to keep their leases, whether they have a commercial value or not.

**Conclusion**

56. Given the liquidators are not able to disclaim the growers leases, the growers in the WGG unregistered schemes are entitled to continue their schemes and be excluded from the proposed sale and the plaintiffs' application.

**GARRY BIGMORE QC**

**MATTHEW KENNEDY**  
of Counsel

**CLARENDON LAYWERS**  
Solicitors for the Willmott Growers Group Inc

20 JANUARY 2012