

17 April 2025

CIRCULAR TO CREDITORS AND SHAREHOLDERS

Dear Sir/Madam

Global Capital Property Fund Pty Ltd (In Liquidation) ACN 635 565 070 (“Company” or “GCPF”)
RE: Update on the Deed of Settlement with Kooyongkoot Project Pty Ltd (“Kooyongkoot”)

I refer to:

- the appointment of Kelly Trenfield and I, Ross Blakeley, as Joint and Several Liquidators (“**Liquidators**”) of the Company by Order of the Federal Court of Australia on 3 October 2024; and
- the latest FAQ update sent to investors on 12 March 2025.

By way of background:

1. Before the appointment of the Liquidators, GCPF applied the funding it raised from shareholders into various property development projects, one of which is a development project located at 148-152 Riversdale Road, Hawthorn VIC 3122 (“**Kooyongkoot Project**”).
2. As at the date of the Liquidators’ appointment, GCPF had loaned the developer, Kooyongkoot Project Pty Ltd (“**Kooyongkoot**”), approximately \$9.2 million to develop the Kooyongkoot Project. GCPF is now owed approximately \$13.4 million (including interest accrued and establishment fees owing). The loan is secured by an unregistered mortgage and a caveat on title on the properties comprising the Kooyongkoot Project (“**Kooyongkoot Properties**”).
3. Kooyongkoot borrowed additional funds from other parties such that three (3) secured lenders now rank ahead of GCPF. The Liquidators understand that the senior ranking lenders are collectively owed more than \$9.2 million. The senior secured lender, Latrobe Financial, has appointed a controller and entered into possession of the Kooyongkoot Properties to enforce its security by selling the Kooyongkoot Properties. The Liquidators have obtained an independent assessment of the valuations obtained by Kooyongkoot, which indicated that if the Kooyongkoot Properties are sold “as is”, in the current market, the Kooyongkoot Properties are unlikely to achieve a sale price which would be enough to pay out the other secured lenders who rank ahead of GCPF and provide any return to GCPF.
4. Given that GCPF is unlikely to receive any money if Latrobe Financial enforces its security by selling the Kooyongkoot Properties, the Liquidators have negotiated with Kooyongkoot over an extended period between October 2024 and January 2025 to reach an in principal

agreement to compromise the \$13.4 million debt owed to GCPF. During that period, the Liquidators obtained necessary information from Kooyongkoot and its associated parties and entities to ensure the Liquidators had sufficient grounds to justify making a court application to enter into a compromise with Kooyongkoot.

5. On 28 March 2025, GCPF entered into a deed of settlement with Kooyongkoot its director Filip Gacesa, the second secured lender Possability Group Ltd and the purchaser of the Kooyongkoot Properties, Pomeroy Pacific Pty Ltd ("**Deed of Settlement**"). Under the Deed of Settlement, GCPF has agreed to compromise its claims against Kooyongkoot and its director Mr Gacesa for a fixed sum of \$1 million plus a \$25,000 deposit (excluding GST). The Deed of Settlement is subject to GCPF obtaining court approval.

The Liquidators have formed a view that this settlement provides a better commercial outcome for GCPF and its stakeholders than alternative options such as continued litigation and will provide a return on its investment in the Kooyongkoot Project.

The Liquidators are required pursuant to sections 477(2A) and (2B) of the Corporations Act 2001 (Cth) to seek the approval of the Court to compromise any debts owed to GCPF in excess of \$50,000 and which have obligations which endure for more than three (3) months.

The Liquidators hereby give notice that on 10 April 2025, an originating process was filed with the Federal Court of Australia seeking the Court's approval of the Deed of Settlement. The originating application and the Liquidators' affidavit are **enclosed** for your reference. The court approval application hearing has been listed for 23 April 2025 at 2:15pm.

As and when the Liquidators reach commercial positions in relation to the balance of the investments held by GCPF, information in relation to each of these investments will be shared with investors. However, at present, the Liquidators are working to reach a position in relation to a number of these investments and as such they remain commercially sensitive.

Should you have any queries, or wish to be heard in relation to the application, you may contact this office by email at gcpf.investors@fticonsulting.com.

Yours faithfully



Ross Blakeley

Joint and Several Liquidator

Encl.

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	10/04/2025 2:24:51 PM AEST
Date Accepted for Filing:	15/04/2025 5:22:12 PM AEST
File Number:	VID474/2025
File Title:	IN THE MATTER OF GLOBAL CAPITAL PROPERTY FUND LTD (ACN 635 565 070) (IN LIQUIDATION)
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



ORIGINATING PROCESS

No. of 2025

Federal Court of Australia
District Registry: Victoria
Division: Corporations List

IN THE MATTER OF GLOBAL CAPITAL PROPERTY FUND LTD (ACN 635 565 070) (IN LIQUIDATION)

ROSS ANDREW BLAKELEY AND KELLY-ANNE LAVINA TRENFIELD IN THEIR CAPACITY AS JOINT AND SEVERAL LIQUIDATORS OF GLOBAL CAPITAL PROPERTY FUND LTD (IN LIQUIDATION) (ACN 635 565 070)

First Plaintiffs

GLOBAL CAPITAL PROPERTY FUND LTD (IN LIQUIDATION) (ACN 635 565 070)

Second Plaintiff

A. DETAILS OF APPLICATION

This application is made under sections 477(2A) and (2B) and 1322 of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the Insolvency Practice Schedule (Corporations) (**IPSC**) being schedule 2 to the Corporations Act.

On the facts stated in the supporting affidavit of Ross Andrew Blakeley dated 10 April 2025, the Plaintiffs seek the following relief:

- 1 An order pursuant to section 477(2A) of the Corporations Act that the First Plaintiffs, as the liquidators of the Second Plaintiff, Global Capital Property Fund Ltd (in liquidation) (**GCPF**), be authorised *nunc pro tunc* to cause GCPF to enter into the “Deed of Settlement & Release” executed on 28 March 2025 between GCPF, Kooyongkoot Project Pty Ltd, Pomeroy Pacific Pty Ltd, Filip Gacesa and Possability Group Ltd (**Deed of Settlement**).
- 2 An order pursuant to section 477(2B) of the Corporations Act that the First Plaintiffs be authorised *nunc pro tunc* to cause GCPF to enter into the Deed of Settlement.
- 3 A direction pursuant to section 90-15 of the IPSC that the First Plaintiffs were justified in causing GCPF to enter into, and are justified in giving effect to, the Deed of Settlement.

Filed on behalf of: the Plaintiffs

Prepared by: Justin Vaatstra Ref: 011928463

Law firm: **ARNOLD BLOCH LEIBLER**

Tel: 9229 9999 Fax: 9229 9900

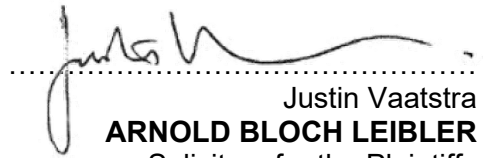
Email: jvaatstra@abl.com.au

Address for service: Level 21, 333 Collins Street, Melbourne, VIC 3000



- 4 A declaration pursuant to section 1322(4)(a) of the Corporations Act that the Deed of Settlement is not invalid by reason if it having been entered into without the Court's prior approval.
- 5 An order that the costs of and incidental to this application be costs and expenses in the liquidation of the Second Plaintiff and paid out of the assets of the Second Plaintiff.
- 6 Such further or other orders as the Court deems fit.

DATE: 10 April 2025


 Justin Vaatstra
ARNOLD BLOCH LEIBLER
 Solicitors for the Plaintiffs

This application will be heard by the Federal Court of Australia, 305 William Street, Melbourne, at on

B. NOTICE TO DEFENDANT

Not applicable.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable.

D. FILING

Date of filing: 10 April 2025

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REGISTRAR

This originating process is filed by Arnold Bloch Leibler Level 21, 333 Collins Street, Melbourne, VIC, 3000, for the plaintiffs.

E. SERVICE

The plaintiffs' address for service is C/- Arnold Bloch Leibler, Level 21, 333 Collins Street, Melbourne, VIC, 3000.

Email: jvaatstra@abl.com.au



It is intended to serve a copy of this originating process the persons listed below:

- The Australian Securities and Investments Commission;
- The shareholders and creditors of the Plaintiff;
- Pomeroy Pacific Pty Ltd;
- Kooyongkoot Project Pty Ltd
- Filip Gacesa
- Possability Group Ltd

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	10/04/2025 2:24:51 PM AEST
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Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

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The date of the filing of the document is determined pursuant to the Court's Rules.

AFFIDAVIT

No. of 20

Federal Court of Australia
District Registry: Victoria
Division: Corporations List

IN THE MATTER OF GLOBAL CAPITAL PROPERTY FUND (IN LIQUIDATION) (ACN 635 565 070)

ROSS ANDREW BLAKELEY AND KELLY-ANNE LAVINA TRENFIELD (IN THEIR CAPACITY AS JOINT AND SEVERAL LIQUIDATORS OF GLOBAL CAPITAL PROPERTY FUND)
First Plaintiff

AND

GLOBAL CAPITAL PROPERTY FUND (IN LIQUIDATION) (ACN 635 565 070)
Second Plaintiff

Affidavit of: **ROSS ANDREW BLAKELEY**
Address: Bourke Place, Level 50/600 Bourke St, Melbourne, VIC 3000
Occupation: Senior Managing Director
Date: 10 April 2025

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Ross Andrew Blakeley support of an application for court approval pursuant to s 447(2A) and (2B) of the <i>Corporations Act 2001</i> (Cth) affirmed on 10 April 2025	1 - 77	1 - 22
2	Annexure RAB-1 being a bundle of documents referred to in this affidavit	4	21 - 1063

I ROSS ANDREW BLAKELEY of Bourke Place, Level 50/600 Bourke St, Melbourne, VIC 3000 **AFFIRM:**

1 I am, together with Kelly-Anne Trenfield, an appointed liquidator of the Plaintiff, being Global Capital Property Fund Limited (in Liquidation) (ACN 635 565 070) (**GCPF**).

Filed on behalf of: Plaintiff
Prepared by: Justin Vaatstra Ref: 011928463
Law firm: **ARNOLD BLOCH LEIBLER**
Tel: 9229 9999 Fax: 9229 9900
Email: jvaatstra@abl.com.au
Address for service: Level 21, 333 Collins Street, Melbourne, VIC 3000



- 2 I make this affidavit on behalf of myself and Kelly-Anne Trenfield (the **Liquidators**). References in this affidavit to “we”, “us”, “our” are references to the Liquidators.
- 3 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information and belief, I believe those matters to be true.
- 4 Annexed and shown to me at the time of swearing this affidavit is a bundle of documents to which I refer in this affidavit that are paginated and marked **Annexure RAB-1**. Where I refer to a document within Annexure RAB-1, I do so by referring to the page number within the bundle.
- 5 I make this affidavit in support of the Plaintiff’s application to the Court for orders:
- (a) pursuant to section 477(2A) of the **Corporations Act 2001** (Cth) that the First Plaintiffs, as the Liquidators GCPF, be authorised *nunc pro tunc* to cause GCPF to enter into the “Deed of Settlement & Release” executed on 28 March 2025 between GCPF, Kooyongkoot Project Pty Ltd (**Kooyongkoot**), Pomeroy Pacific Pty Ltd (**Pomeroy**), Filip **Gacesa** and **Possability** Group Ltd (**Deed of Settlement**).
 - (b) pursuant to section 477(2B) of the Corporations Act that the First Plaintiffs be authorised *nunc pro tunc* to cause GCPF to enter into the Deed of Settlement.
 - (c) directing pursuant to section 90-15 of the Insolvency Practice Schedule (Corporations) that the First Plaintiffs were justified in causing GCPF to enter into, and are justified in giving effect to, the Deed of Settlement; and
 - (d) declaring pursuant to section 1322(4)(a) of the Corporations Act that the Deed of Settlement is not invalid by reason if it having been entered into without the Court’s prior approval.

A INTRODUCTION

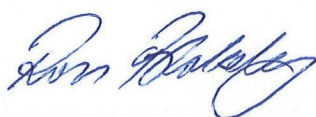
- 6 I make this affidavit in support of the orders sought by the Liquidators in the Originating Process. I briefly summarise the issues raised by this application below.
- 7 GCPF is an unlisted public company which was placed into liquidation by order of the Federal Court of Australia made on 3 October 2024. GCPF has around 538 shareholders. The majority of those shareholders came to invest in the GCPF through the “UGC Advice Model”, whereby GCPF paid a related company, United Global



- Capital Pty Ltd (**UGC**) and its representatives to find potential investors and recommend that they convert their (mostly low to medium-sized) superannuation savings into GCPF shares, via self-managed superannuation funds. GCPF raised approximately \$85 million in share capital from investors in that way.
- 8 GCPF applied the funding it raised to invest in 15 property development projects on land owned, or proposed to be purchased by, Special Purpose Vehicles (**SPVs**) including SPVs associated with the then directors of GCPF, Mr Joel **Hewish**, Mr Brett **Dickinson** and Mr Chris **Pappas**. Of those 14 property development projects, five involved related parties. Kooyongkoot is one of those related-party SPVs.
 - 9 GCPF invested circa \$9.2 million in the purchase and development of land situated at 148 to 152 Riversdale Road, Hawthorn (**Kooyongkoot Project**) pursuant to a loan agreement secured by guarantees and a second ranking mortgage. Prior to the appointment of the Liquidators, GCPF did not register its mortgage in respect of its loan, despite being entitled to do so under the loan agreement.
 - 10 Prior to the appointment of the Liquidators, Kooyongkoot borrowed additional funds from other parties such that other secured creditors with claims totalling approximately \$8.715 million plus interest now rank in priority to GCPF.
 - 11 On 25 October 2024, **Latrobe Financial** via Perpetual Corporate Trust Limited appointed controllers to Kooyongkoot and entered possession of the properties the subject of the Kooyongkoot Project and has indicated it intends to exercise its mortgagee's power of sale.
 - 12 Given the amount outstanding to creditors ranking in priority to GCPF, the interest accruing on those monies, and having regard to the valuations of the properties, the Liquidators believe that, if the land was sold by Latrobe Financial, GCPF would receive little, if any, return on its investment.
 - 13 The Liquidators therefore believe that it is in the best interests of GCPF and its stakeholders that GCPF entered into the Deed of Settlement to compromise its claim against Kooyongkoot and Gacesa in exchange for an agreed settlement sum of \$1 million.

Personal background and experience

- 14 I am an ASIC Registered Liquidator and Chartered Accountant. I hold a Bachelor of Business from Monash University and I am a member of Chartered Accountants

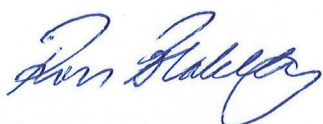



Australia and New Zealand, the Australian Restructuring Insolvency and Turnaround Association (ARITA) and the Australian Institute of Company Directors Turnaround Management Association (TMA). I have over 30 years' experience in corporate restructuring, insolvency and complex turn-around situations across a range of industries including property, construction, manufacturing, engineering, technology, wholesale trade, retail, hospitality, food processing and professional services. I also have experience in leading complex forensic investigations and recovery actions on behalf of stakeholders.

B BACKGROUND

Court ordered liquidation of GCPF

- 15 On 20 June 2024, the Australian Securities and Investments Commission (**ASIC**) commenced proceedings in the Victorian Registry of the Federal Court of Australia against UGC and GCPF, proceeding No. VID558/2024 (**ASIC Proceeding**).
- 16 On 20 June 2024, Justice O'Callaghan of the Federal Court made orders against UGC and GCPF including freezing orders pursuant to section 1323 of the Corporations Act. A copy of the Federal Court's orders dated 20 June 2024 are at **pages 22-29 of Annexure RAB-1**.
- 17 On 9 September 2024, ASIC filed an Amended Originating Process in the ASIC Proceeding that sought, among other things, that GCPF be wound up on the just and equitable ground pursuant to section 461(1)(k) of the Corporations Act.
- 18 On 3 October 2024, Neskovic J of the Federal Court made further orders in the ASIC Proceeding including that:
 - (a) pursuant to section 461(1)(k) of the Corporations Act, GCPF be wound up; and
 - (b) Ms Trenfield and I be appointed as joint and several liquidators of GCPF.A copy of the Federal Court's order dated 3 October 2024 are at **pages 30-32 of Annexure RAB-1** and Reasons for Judgment are at **pages 33-47 of Annexure RAB-1**.
- 19 Justice Neskovic's orders of 3 October 2024 varied the freezing orders made on 20 June 2024 to the following effect:



Paragraph 13 of the orders made on 20 June 2024 (commencing with the words 'The order in paragraph 12 above shall not prevent') is varied to add the following subparagraph:

(a) Ross Andrew Blakeley and Kelly-Anne Lavina Trenfield of FTI Consulting in their capacity as joint and several liquidators of the second defendant, or anyone authorised by them, from taking any action in relation to the Property of the Second Defendant.

- 20 The freezing orders dated 20 June 2024 otherwise remain in effect with respect to GCPF.

GCPF

- 21 GCPF is an unlisted public company which was incorporated on 15 August 2019. A company search for GCPF is at **pages 48-54 of Annexure RAB-1**.
- 22 The current directors of GCPF are Pappas and Dickinson. Hewish was a director of GCPF from its incorporation until he resigned on 12 August 2024, following an order made by ASIC on 31 May 2024 banning him from participating in the financial services industry.
- 23 GCPF is a property investment company. Most of its shareholders came to acquire their shares in GCPF through referrals from UGC.
- 24 Hewish is the sole director of UGC. He and his wife are its shareholders. A company search for UGC is at **pages 55-62 of Annexure RAB-1**.
- 25 The money raised by GCPF from investors was used to fund 15 property development projects. GCPF invested those funds by loaning or advancing monies, or taking an equity interest in, SPVs which own or acquire development land. Of these, 5 involved related parties to the directors of GCPF. Kooyongkoot is one such related party SPV.

Kooyongkoot

- 26 Gacesa is the sole director and company secretary of Kooyongkoot. A company search for Kooyongkoot is at **pages 63-69 of Annexure RAB-1**. The ordinary share capital of Kooyongkoot is held in equal shares by:



- (a) Gacesa Holdings Pty Ltd (**Gacesa Holdings**). Gacesa Holdings is wholly owned and controlled by Gacesa. A company search for Gacesa Holdings is at **pages 70-72 of Annexure RAB-1**;
- (b) Bird Rock Investments Pty Ltd (**Bird Rock**). Dickinson, one of GCPF's directors, is the sole director of Bird Rock. Dickinson and Donna Rowse are equal shareholders of Bird Rock. A company search for Bird Rock is at **pages 73-77 of Annexure RAB-1**. It appears from the company search that Dickinson and Ms Rowse reside at the same address; and
- (c) Hewish Capital No. 2 Pty Ltd. (**Hewish Capital**). Hewish is the sole director of Hewish Capital, and was previously a director of GCPF before the ASIC banning order (see paragraph 22 above). Hewish's wife, Stephanie Hewish, is the sole shareholder of Hewish Capital. A company search for Hewish Capital is at **pages 78-81 of Annexure RAB-1**.

Kooyongkoot Project

27 The Deed of Settlement relates to the Kooyongkoot Development at 148-152 Riversdale Road, Hawthorn. The existing site comprised of two single dwellings and one medical centre on approximately 1,812 sqm of land with an extensive frontage onto Riversdale Road and Kooyongkoot Road. In November 2020, Kooyongkoot purchased the land at 148-152 Riversdale Road, Hawthorn comprising the following titles:

- (a) Certificate of Title Volume 11013 Folio 563 (being residential address 148 Riversdale Road, Hawthorn VIC 3122).
- (b) Certificate of Title Volume 09338 Folio 915 (being residential address 150 Riversdale Road, Hawthorn VIC 3122); and
- (c) Certificate of Title Volume 05124 Folio 615 (being residential address 152 Riversdale Road, Hawthorn VIC 3122);

(Kooyongkoot Properties).

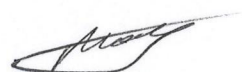
Copies of the certificates of title for the Kooyongkoot Properties are at **pages 82-87 of Annexure RAB-1**.




- 28 Based on my review of GCPF's records, I believe that the purchase price for the Kooyongkoot Properties was \$9.85 million.
- 29 The Kooyongkoot Development proposes the construction of 19 apartments with two basement levels. Based on our investigations to date, the Liquidators understand that:
- (a) Kooyongkoot has obtained a town planning permit, a copy which is at **pages 88-98 of Annexure RAB-1**;
 - (b) a builder is yet to be engaged; and
 - (c) demolition works have recently been carried out to demolish the houses located on the Kooyongkoot Properties.

Financing of the Kooyongkoot Project

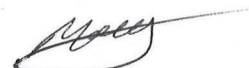
- 30 On or around 15 December 2020, Kooyongkoot (as borrower) and GCPF (as lender) entered into a loan agreement pursuant to which GCPF agreed to make available to Kooyongkoot a sum of \$9.5 million (**Loan Agreement**). The terms of the Loan Agreement include:
- (a) GCPF would make available the sum of \$9.5 million to Kooyongkoot (Facility);
 - (b) Kooyongkoot acknowledges and warrants to GCPF that the Facility is borrowed wholly or predominantly for business or investment purposes and specifically for the project (Clause 2.2);
 - (c) Kooyongkoot pays to GCPF interest of 20% compounding annually, or a higher rate of 25% compounding daily in the event of default (Clause 3.2.1 and the Schedule, item 3);
 - (d) termination of the Loan Agreement is to occur on the earlier of the completion of the project, 60 months after the first advance date or such other date as agreed in writing (Schedule, item 5);
 - (e) the security in respect of the Facility is expressed to be:
 - (i) guarantees and indemnities from each of Filip Gacesa, Gacesa Holdings, Bird Rock and Hewish Capital (**Guarantors**) (Clause 4.1), which guarantees are purported to be limited to the extent of the Guarantor's interest in the Kooyongkoot Properties and profit entitlements to the Kooyongkoot Project;

- (ii) a charge of all Kooyongkoot and the Guarantors' present and future right, title and interest in the Kooyongkoot Properties (Clause 5.1.1);
 - (iii) a second ranking registerable mortgage (Clause 5.1.5);
 - (iv) a caveat (5.1.8);
 - (v) resignation of Filip Gacesa as director of Kooyongkoot in the event of default (Clause 5.1.9); and
- (b) Kooyongkoot and the Guarantors undertake that no assets of, or under the control of, Kooyongkoot are transferred or otherwise alienated to any person otherwise than in the ordinary course of business for proper market value for money or money's worth (Clause 8.2.8).

A copy of the Loan Agreement is at **pages 99-127 of Annexure RAB-1**.

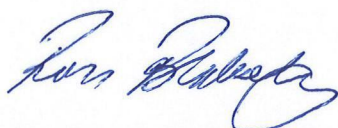
- 31 On or around 17 December 2020, Gacesa as director and secretary on behalf of Kooyongkoot executed a mortgage in favour of GCPF in respect of the Kooyongkoot Properties. A copy of the mortgage is at **pages 128-129 of Annexure RAB-1**.
- 32 From our investigations to date:
- (a) as at the date of our appointment as Liquidators, and notwithstanding Clause 5.1.5 of the Loan Agreement, GCPF's second ranking mortgage had not been registered on the title of the Kooyongkoot Properties;
 - (b) Kooyongkoot has drawn down \$9,194,750 under the Loan Agreement; and
 - (c) the total amount outstanding under the Loan Agreement as at the date of the Liquidators' appointment was circa \$13.42 million (which represents the amount drawn down plus establishment fees and interest accrued).
- 33 Based upon our investigations to date, Kooyongkoot has obtained funding of approximately \$17.5 million (principal only) from the following parties:
- (a) GCPF – \$9,194,750;
 - (b) Latrobe Financial – \$7.175 million pursuant to a Letter of Offer dated 3 November 2022 secured by a first ranking mortgage (**First Mortgage**). A copy of the letter of offer is at **pages 130-144 of Annexure RAB-1**;

- (c) Possability Group Pty Ltd (**Possability**) – \$1.3 million pursuant to a Loan Offer and Business Loan and Line of Credit dated 3 August 2023 between Kooyongkoot and Possability (**Possability Loan**) secured by a first registered caveat as an interest as unregistered mortgagee (**Second Mortgage**). Based on discussions I have had with Gacesa, I understand that circa \$570,000 of the \$1.3 million was used to paydown the loan facility with Specialist Property Group. A copy of the loan offer is at **pages 145-162 of Annexure RAB-1**; and
 - (d) Specialist Property Group (**Specialist**) – \$400,000 pursuant to a Business Loan and Line of Credit dated 4 July 2023 secured by a second registered caveat as an interest as unregistered mortgage (**Third Mortgage**). A copy of the loan offer is at **pages 163-180 of Annexure RAB-1**.
- 34 Prior to the Liquidators' appointment, on 3 August 2023 GCPF, Possability and Kooyongkoot entered into a deed of Priority and Subordination pursuant to which GCPF agreed that its loan would be subordinated to the Possability Loan. A copy of the Deed of Priority and Subordination is at **pages 181-211 of Annexure RAB-1**.
- 35 Accordingly, GCPF's security interest ranks behind the First Mortgage, Second Mortgage and Third Mortgage.
- 36 Based on my enquiries with the lenders, on or around 18 December 2024, I believe that the total amount outstanding including interest pursuant to the First Mortgage, Second Mortgage and Third Mortgage is approximately \$9,483,087.
- 37 On 25 October 2024, Latrobe appointed a controller to Kooyongkoot and entered into possession and took control of the Kooyongkoot Properties for the purpose of enforcing its mortgage. A copy of the notification of appointment of a controller form 505 lodged with ASIC is at **pages 212-216 of Annexure RAB-1**.

Caveat

- 38 On 8 November 2024, the Liquidators, on behalf of GCPF, registered caveat AY579000P (**Caveat**) over the Kooyongkoot Properties, in respect of GCPF's interest as mortgagee. A copy of a screenshot from PEXA displaying the Caveat as registered is at **page 217 of Annexure RAB-1**.
- 39 Between 28 October 2024 and 11 November 2024, Kooyongkoot and the Liquidators had discussions and exchanged correspondence, marked "without prejudice", with a




view to reaching a commercial agreement in relation to the refinancing of the Kooyongkoot Development.

- 40 On 28 November 2024, Moray & Agnew, solicitors acting for Kooyongkoot sent a letter to the Liquidators advising that the Kooyongkoot Properties were in the process of being sold and that Latrobe Financial had afforded to Kooyongkoot an opportunity to sell the Kooyongkoot Properties in the first instance, failing which Latrobe Financial would take steps to sell the Kooyongkoot Properties. Moray & Agnew requested that the Liquidators remove the Caveat, on the basis that:

"...the registration of the Caveat over the Properties poses a hindrance to the upcoming sale. We understand that the sale will be at or above market value, obtained by way of a sworn valuation. Notwithstanding this, given the rules of priority, GCPF will obtain no financial benefit from the sale of the Properties".

A copy of the correspondence from Moray & Agnew is at **pages 218-219 of Annexure RAB-1.**

Caveat Proceeding

- 41 On 13 December 2024, Kooyongkoot commenced an urgent proceeding in the Supreme Court of Victoria seeking an order pursuant to s 90(3) of the *Transfer of Land Act 1958* (Vic), requiring the First Defendant to remove caveat AY579000P on Certificate of Title Volume 09338 Folio 915, Certificate of Title Volume 05124 Folio 615 and Certificate of Title Volume 11013 Folio 563 (**Caveat Proceeding**). A copy of the summons and originating motion are at **pages 220-225 of Annexure RAB-1.**
- 42 Gacesa filed an affidavit in support of the Caveat Proceeding dated 13 December 2024 (**Gacesa Affidavit**), in which he deposed, among other things, that:
- (a) Kooyongkoot sought the removal of the Caveat to permit the sale of the Kooyongkoot Properties to a company named Sophi Hawthorn Pty Ltd (**Sophi Hawthorn**) for a purchase price of \$9 million;
 - (b) Sophi Hawthorn intended to fund the acquisition of the Kooyongkoot Properties with a secured loan from Australian Unity Funds Management Limited (**Australian Unity**);
 - (c) Latrobe Financial and Possability were willing to accept a reduced settlement sum to enable completion of the project;




- (d) Australian Unity was unwilling to finance Kooyongkoot to complete the project but was willing to finance Sophi Hawthorn to allow the project to proceed; and
- (e) If Kooyongkoot was unable to complete a sale of the Kooyongkoot Properties, Latrobe Financial as first ranking mortgagee intended to exercise its power of sale.

A copy of the Gacesa Affidavit (without exhibits) is at **pages 226-232 of Annexure RAB-1.**

- 43 Sophi Hawthorn was incorporated on 29 November 2024. Its sole director and secretary is Gacesa. The shareholders are Gacesa Holdings Pty Ltd (a company in which Gacesa owns all the shares and is the sole director) and Simraw Developments Pty Ltd in equal shares. The director of Simraw Developments is Simon Rawadi and the shareholders are Simon Rawadi and Yetta Rawadi in equal shares. ASIC searches for Sophi Hawthorn and Simraw Developments Pty Ltd are at **pages 233-241 of Annexure RAB-1.**
- 44 On 17 December 2024, the Liquidators filed an application to transfer the Caveat Proceeding to the Victorian Registry of the Federal Court and otherwise opposed the orders sought by Kooyongkoot. I swore an affidavit in support of the transfer in which I deposed, among other things, that:
 - (a) the Gacesa Affidavit contained material omissions, including that it did not disclose that Sophi Hawthorn was a related party of Gacesa, it did not exhibit any correspondence between Kooyongkoot and Australian Unity to explain why Australian Unity was willing to fund Sophi Hawthorn but unwilling to fund Kooyongkoot, and it did not refer to or exhibit several other valuations which had been obtained in relation to the Kooyongkoot Properties which ascribed an 'as is' value higher than \$9 million.
 - (b) removing the Caveat to facilitate completion of the sale of the Kooyongkoot Properties to Sophi Hawthorn for a price of \$9 million would cause prejudice to GCPF because, based on the Liquidators' understanding of the financial position of Kooyongkoot, no monies would be available to repay the Facility under the Loan Agreement once the First Mortgage and Second Mortgage, ranking in priority to GCPF's mortgage, were repaid; and




- (c) by virtue of clause 8.6 of the Special Conditions to the Loan Agreement, if the Kooyongkoot Properties were sold to Sophi Hawthorn, GCPF may lose its guarantee rights as against Bird Rock and Hewish Capital, as those entities would no longer have a profit entitlement or interest in the Kooyongkoot Properties.

A copy of my affidavit is at **pages 242-256 of Annexure RAB-1.**

- 45 The parties appeared before Justice Harris of the Supreme Court on 17 December 2024. Her Honour made orders permitting the parties to file any further affidavits by 18 December 2024 and listed the matter on 19 December 2024. A copy of the orders are at **page 257 of Annexure RAB-1.**
- 46 On 19 December 2024, Moray & Agnew sent an email to ABL informing ABL that due to circumstances outside the control of Kooyongkoot, it was no longer in a position to proceed with the Caveat Proceeding. The email attached a proposed form of orders dismissing the Caveat Proceeding. A copy of the email from Moray & Agnew to ABL is at **pages 258-271 of Annexure RAB-1.**
- 47 On 19 December 2024, ABL sent an email to Moray & Agnew attaching an amended form of order dismissing the proceeding and providing that the director of Kooyongkoot, Mr Gacesa, pay GCPF's costs of the proceeding in the event that Kooyongkoot failed to do so. A copy of the email from ABL to Moray & Agnew is at **pages 272-287 of Annexure RAB-1.**
- 48 On 20 December 2024, Justice Harris made orders dismissing the Caveat Proceeding and providing that Kooyongkoot was to pay GCPF's costs on a standard basis with the question of any further special costs order reserved. A copy of the orders made on 20 December 2024 are at **pages 294-295 of Annexure RAB-1.**

Value of the Kooyongkoot Properties

- 49 On around 17 October 2024, Gacesa provided the Liquidators with a copy of an unsworn market appraisal of the of the Kooyongkoot Properties prepared by Jones Lang LaSalle (VIC) Pty Limited (JLL) dated 15 July 2024 which indicated that the likely value of the Kooyongkoot Properties was between \$11.5 million and \$12 million. A copy of the valuation by JLL is at **pages 296-300 of Annexure RAB-1.**



50 On 21 October 2024, the Liquidators sent a letter to Kooyongkoot requesting information about the Kooyongkoot Development. A copy of the letter from FTI Consulting to Kooyongkoot is at **pages 301-302 of Annexure RAB-1**.

51 On 21 October 2024, Mr Gacesa sent the Liquidators an email which attached various documents in relation to the Kooyongkoot Development, including:

- (a) valuation conducted by PJM & Co. on 23 June 2023 (**PJM Valuation**);
- (b) valuation conducted by M3 Property dated 4 August 2023 (**M3 Valuation**);
- (c) draft Urbis valuation report dated 8 September 2024 (**Draft Urbis Valuation**); and
- (d) valuation conducted by Savills Valuations dated 15 May 2024 (**Savills Valuation**).

A copy of the email from Mr Gacesa dated 21 October 2024 is at **pages 303-308 of Annexure RAB-2** and the valuations referred to therein are at **pages 309-807 of Annexure RAB-1**.

52 I have read the valuations in paragraph [51] above. The findings of those valuations are summarised below:

Valuation	"As Is" valuation	Development Costs	Gross realisation
PJM Valuation	\$10.15 million	Not provided	Not provided
M3 Valuation	\$10 million	\$30,011,892	\$56.5 million
Draft Urbis Valuation	\$8.6 million	\$37,253,602	\$60.05 million
Savills Valuation	\$10.750 million	\$26,149,964	\$57.77 million

53 The Gacesa Affidavit exhibited a further valuation from Urbis dated 24 November 2024 ascribing the 'as is' market value of the Kooyongkoot Properties for first mortgage security purposes at \$8.6 million (**Urbis Valuation**). A copy of the Urbis valuation is at **pages 808-888 of Annexure RAB-1**.

54 In around November 2024, I provided copies of the valuations referred to at paragraph [52] to Sutherland Farrelly for the purpose of estimating the likely value of the Kooyongkoot Properties. Sutherland Farrelly provided their report on 21 November

2024 which estimated that the M3 Valuation appeared, on face value, to be in the ballpark, whereas the Savills Valuation appeared to be above what could be achievable in the current market. A copy of the report from Sutherland Farrelly is at **pages 888-893 of Annexure RAB-1**.

- 55 In a further affidavit I swore for the purposes of the Caveat Proceeding on 18 December 2024, I addressed, among other things, the Liquidators' concerns with the Urbis Valuation. A copy of the affidavit is at **pages 894-901 of Annexure RAB-1**.
- 56 Based on the above valuations, if the Kooyongkoot Properties are sold, they may realise a value between \$8.6 million to \$10.750 million. Having regard to the total amount of \$9,483,087 outstanding under the First Mortgage, Second Mortgage and Third Mortgage as at or around 18 December 2024, after accounting for outstanding outgoings, interest accrued since 18 December 2024 and an estimated further accrual of interest over a six month sale and settlement period, I estimate that the Kooyongkoot Properties would need to achieve a sale price of at least \$10.8 million before any monies are available to repay the Facility under the Loan Agreement, once the First Mortgage, Second Mortgage and Third Mortgage, ranking in priority to GCPF's mortgage, are repaid. The amount of \$10.8 million is above the value of recent valuations in paragraph [52].

C SETTLEMENT

- 57 Between 6 January 2025 and 28 February 2025, the Liquidators and Gacesa exchanged extensive correspondence, some of which is marked "without prejudice", with a view to reaching a commercial agreement in relation to the refinancing of the Kooyongkoot Development. Copies of the correspondence, except that which is marked "without prejudice" is at **pages 902-1014 of Annexure RAB-1**.
- 58 During those negotiations, Gacesa made offers to settle GCPF's claims in exchange for a payment upon the completion of the Kooyongkoot Project. Those offers were not acceptable to the Liquidators.
- 59 The Liquidators ultimately agreed to compromise GCPF's claim in exchange for a payment of \$1 million following approval of the settlement agreement by a Court. I explain my reasons for agreeing to compromise GCPF's claim on those terms further below. The negotiations culminated in a signed Deed of Settlement dated 28 February 2025 between Gacesa, GCPF, Sophi Hawthorn and Possability (**First Deed of Settlement**). The First Deed of Settlement was premised on the understanding that



the Kooyongkoot Properties would be sold to Sophi Hawthorn. A copy of the First Deed of Settlement is at **pages 1015-1029 of Annexure RAB-1**.

- 60 Shortly after the First Deed of Settlement was executed, Gacesa advised the Liquidators that Sophi Hawthorn would no longer proceed with the settlement and instead a revised arrangement had been reached with Pomeroy. For a period of four weeks in March 2025, the Liquidators, Pomeroy, Possability and Gacesa negotiated a new deed of settlement substantially on the same terms as the First Deed of Settlement. The new deed of settlement is the subject of this application.
- 61 On 28 March 2025, the parties executed the Deed of Settlement. A copy of the Deed of Settlement is at **pages 1030-1046 of Annexure RAB-1**. The terms of the Deed of Settlement provide, inter alia:
- (a) **Deposit:** settlement is conditional upon Kooyongkoot paying, or directing Pomeroy to pay a deposit of \$25,000 (excl. GST) to GCPF in respect of its costs in connection with the application for court approval (Clauses 1.1 and 1.5);
 - (b) **Settlement sum:** Pomeroy must pay a **GCPF Settlement Sum** of \$1 million to GCPF and the **Possability Group Settlement Sum** of \$1.165 million on the **Settlement Date**, being 14 days after Court Approval (Clauses 1.1 and 2.1(a));
 - (c) **Discharge and release:** on the Settlement Date, GCPF and Possability must provide to Kooyongkoot and Pomeroy a discharge and release of the **GCPF Securities** and the **Possability Group Securities**, respectively (Clauses 1.1 and 2.1(b));
 - (d) **Releases:** on and from the date on which Possability and GCPF receive their respective settlement sums:
 - (i) GCPF releases Gacesa and Gacesa Holdings from the **Gacesa Claims**, being any claim which GCPF may have against Gacesa or Gacesa Holdings arising from the Loan Deed, the Kooyongkoot Properties, the Project or the Caveat Proceeding (Clause 3.1);
 - (ii) GCPF agrees not to bring or pursue any proceedings or claim against Gacesa or Gacesa Holdings in respect of the Gacesa Claims (Clause 3.2);




- (iii) GCPF releases Kooyongkoot from all **Kooyongkoot Loan Claims**, being any claim GCPF may have against Kooyongkoot for repayment of the debt owing by Kooyongkoot to GCPF under the Loan Deed, and will forgive and compromise the balance of the Kooyongkoot Loan Claim loan balance (Clause 3.3);
 - (iv) GCPF agrees not to bring or pursue any proceedings or claim against Kooyongkoot in respect of the Kooyongkoot Loan Claims (Clause 3.4);
 - (v) Kooyongkoot, Gacesa and Possability release each other in relation to the Possability securities (Clause 4.1);
 - (vi) Kooyongkoot, Gacesa, Pomeroy and Possability absolutely and irrevocably releases and forever discharges GCPF and the Liquidators from all **GCPF Claims**, being any claim Kooyongkoot, Gacesa, Possability and Pomeroy may have against GCPF in connection with the Loan Deed, the Kooyongkoot Properties or the Project (Clause 7.1);
 - (vii) Kooyongkoot, Gacesa and Pomeroy and Possability agree they will not bring or pursue and proceedings or claim of any nature against GCPF or the Liquidators in respect of the GCPF claims (Clause 7.2);
- (e) **Court Approval:** the Deed is conditional upon Court Approval. Within 3 days of the execution of the Deed, Pomeroy must provide GCPF with evidence, to the reasonable satisfaction of GCPF, that it has sufficient funding to pay the GCPF Settlement Sum. If not so satisfied, the Deed is void. GCPF must commence an application for court approval within 14 days of receipt of the Deposit. GCPF must use its best endeavours to obtain Court Approval by the Final Court Approval Date, being 45 days from the execution of the Deed (Clauses 8.1, 8.2, 8.3, 8.4 and 8.5);
- (f) **Void if no Court Approval:** unless there is agreement to extend the Final Approval Date, the Deed is void if the Court declines to make approval orders, or the Liquidators are unable to obtain Court Approval, or have not obtained Court Approval by the Final Approval Date (Clause 8.9);
- (g) **Liquidators' limitation of liability:** the Liquidators do not incur any personal liability to any party and no claims may be brought against the Liquidators personally in relation to the deed (Clause 9);



- (h) **Representations and warranties:** Each party (other than GCPF and Possability Group) represents and warrants that neither Brett Dickinson nor Joel Hewish have any financial interest in Pomeroy or (following the Settlement Date) the Kooyongkoot Properties (Clause 10).

62 I am informed by Mark Pomeroy, Chief Executive Officer of Pomeroy, and believe that on or around 31 March 2025, Pomeroy paid to GCPF the amount of \$27,500, being the Deposit plus GST. A copy of an email from Mr Pomeroy to my colleague, Mr Harlond, attaching a "Domestic Payment Report" from the National Australia Bank (**NAB**) displaying an amount of \$27,500 being paid from an NAB bank account is at **pages 1047-1050 of Annexure RAB-1**. A copy of an extract of the transaction history of GCPF's NAB bank account displaying the receipt of \$27,500 from Pomeroy is at **page 1051 of Annexure RAB-1**.

63 I am further informed by Mr Pomeroy and believe that as at 31 March 2025, Pomeroy had in an NAB bank account funds of \$3,493,372.44. On that basis, I am satisfied that Pomeroy has sufficient funding to pay the GCPF Settlement Sum. The email referred to above in paragraph 62 includes a screenshot from an NAB bank account.

Reasons for entering into the Deed of Settlement

64 Based on my experience as a Liquidator and my discussions with Gacesa and the financiers, I believe the settlement as recorded in the Deed of Settlement is in the best interests of the GCPF and its stakeholders for the following reasons.

Counterfactual to settlement

65 GCPF presently claims:

- (a) As at the Liquidators' appointment, \$13,432,611 (which represents the amount drawn down plus establishment fees owing and interest accrued); and
- (b) approximately \$117,000 in respect of its legal costs of defending the Caveat Proceeding, subject to those costs being taxed.

66 I am informed by Gacesa and believe that Latrobe Financial has appointed a sales agent to sell the Kooyongkoot Properties and will exercise its mortgagee power of sale if its debt is not discharged pursuant to the Deed of Settlement. I have also seen an email from Joshua Lydford, Manager at Latrobe Financial dated 4 March 2025 confirming that Latrobe Financial is not able to delay its enforcement and realisation

action and will proceed in that regard, a copy of which is at **pages 1052-1057 of Annexure RAB-1**.

- 67 As I explain in paragraph [56] above, the Kooyongkoot Properties would need to be sold for at least \$10.8 million for GCPF to be paid anything in respect of the Facility owing under the Loan Agreement. For GCPF to receive more than the \$1 million payment contemplated in the Deed of Settlement, the Kooyongkoot Properties would need to be sold for \$11.8 million. Based on the sworn valuations set out in paragraph [52] above, I believe it is highly unlikely that the Kooyongkoot Properties could be sold for that price.
- 68 The Liquidators have also considered the value of any claims against Kooyongkoot and or Gacesa, in the event the Kooyongkoot Properties are sold and GCPF suffers loss.
- 69 On around 29 November 2024, I caused property searches to be conducted in respect of Gacesa and Gacesa Holdings, copies of which are at **pages 1058-1063 of Annexure RAB-1**. The searches show that:
- (a) Gacesa does not own any real property in Australia;
 - (b) no security interests are registered in respect of Gacesa on the PPSR;
 - (c) Gacesa Holdings does not own any real property in Australia;
 - (d) the following security interests are registered in respect of Gacesa Holdings on the PPSR:
 - (i) AllPAAP no exceptions registered on 7 November 2024 by GCPF;
 - (ii) AllPAAP no exceptions registered on 27 November 2024 by Real Estate Advance Pty Ltd; and
 - (iii) Commissions pursuant to the Commission Assignment Agreement between the parties, registered 27 November 2024 by Real Estate Advance Pty Ltd.
- 70 Kooyongkoot appears to only own the Kooyongkoot Properties and does not hold any registered interests in any other property. A copy of a property search for Kooyongkoot is at **pages 288-293 of Annexure RAB-1**.



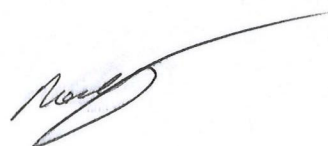
- 71 I am informed by my solicitor, Justin Vaatstra, partner of Arnold Bloch Leibler, that enforcing GCPF's rights under the Loan Agreement would likely involve commencing court proceedings against Kooyongkoot and/or Gacesa. Depending on whether Gacesa and/or Kooyongkoot defend the proceedings or brought a counterclaim, the cost of such proceedings up to and including final judgement could be hundreds of thousands of dollars. It is also possible that (without the benefit of the releases under Clause 7 of the Deed of Settlement), Kooyongkoot and/or Gacesa could bring a counterclaim against GCPF for an alleged failure to fund the Project. I am further informed by Mr Vaatstra that any court proceeding could take at least 6 months or more to finally resolve.
- 72 Based on my experience as a liquidator, and having regard to the matters set out above at paragraphs 65 to 71, I consider that any claim brought against Kooyongkoot and/or Gacesa would involve a considerable risk that a significant proportion of any judgment would not be recoverable given the creditors with mortgages ranking ahead of GCPF.

Certain outcome

- 73 The outcome under the Deed of Settlement, as opposed to the counterfactuals set out above at paragraphs 65 to 71, will provide a certainty for GCPF and its stakeholders. The ultimate beneficiaries of the GCPF Settlement Sum are GCPF's creditors and shareholders, many of whom are small investors who have invested their retirement savings in GCPF. Early settlement in the form of the Deed of Settlement, as opposed to waiting for a court resolution provides certainty of recovery at relatively modest cost for the stakeholders of GCPF.

Releases

- 74 Under the Deed of Settlement, GCPF and the Liquidators are released from any claims which Kooyongkoot, Gacesa, Possability and Pomeroy may have against GCPF in connection with the Loan Deed, the Kooyongkoot Properties and the Kooyongkoot Project.
- 75 Without admitting any liability to Kooyongkoot, Gacesa, Possability or Pomeroy, it is possible that, in the event the Court does not approve entry into the Deed of Settlement, any of Kooyongkoot, Gacesa, Possability or Pomeroy could bring claims against GCPF. This could include another application to the Court to remove the Caveat, or a proceeding against GCPF for an alleged failure to fund the Kooyongkoot Project.



- 76 If Kooyongkoot, Gacesa, Possability or Pomeroy were to commence proceedings against GCPF or apply for the removal of the Caveat, I am informed by Mr Vaatstra and believe that the costs of any such court proceedings could run into hundreds of thousands of dollars.

Arms-length settlement negotiations

- 77 The Liquidators engaged in extensive settlement negotiations with Gacesa and Kooyongkoot, represented by Moray & Agnew, and, by January 2025, Sophi Hawthorn, for a two-month period. The Liquidators subsequently engaged in negotiations with Pomeroy, represented by Rigby Cooke and Possability Group, represented by Piper Alderman. The negotiations were at arms-length between legally represented parties. In light of the financial position of Gacesa, Kooyongkoot and Gacesa Holdings, believe that the Liquidators negotiated the best outcome for GCPF and its stakeholders.

AFFIRMED by the deponent
at Melbourne
in Victoria
on 10 April 2025
Before me:

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)
)
)


Signature of deponent


Signature of witness

Molly Alexandra Scott
Arnold Bloch Leibler
Level 21, 333 Collins Street, Melbourne 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

A person authorised under section 19(1) of the *Oaths and Affirmations Act 2018* (Vic) to take an affidavit.