

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

VID of 2011

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

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(LIQUIDATORS APPOINTED)
ACN 063 263 650

IN ITS PERSONAL CAPACITY AND IN ITS CAPACITY AS RESPONSIBLE ENTITY OF
EACH OF THE MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1 AND IN
ITS CAPACITY AS MANAGER OF THE UNREGISTERED MANAGED INVESTMENT
SCHEMES LISTED IN SCHEDULE 2
First Plaintiff


CRAIG DAVID CROSBIE
Second Plaintiff

IAN MENZIES CARSON
Third Plaintiff

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "CDC-17" now produced and shown to **Craig David Crosbie** at
the time of swearing his affidavit on 11 May 2011.

Before me:


MEAGAN LOUISE GROSE
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Filed on behalf of the Plaintiffs
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
Melbourne 3000

DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 01-1565015
(Leon Zwier)



Willmott Growers Group Inc (Vic) ABN 34 287 512 211
Level 17 Rialto North Tower, 525 Collins Street MELBOURNE VIC 3000
www.willmottgrowersgroup.com.au

16 December 2010

Mr C Crosbie
PPB
Level 21, 181 William Street
Melbourne VIC 3000

Dear Sirs

Re: Expression of interest

Further to our prior discussions we confirm that Willmott Growers Group Inc (Vic) (WGG) is interested in facilitating the restructuring of the Willmott projects.

Interested parties

WGG is acting on behalf of growers and is working in conjunction with Redisland Australia Limited (RLA), a company associated with the principals of Grimseys accounting practice which initiated the formation of WGG.

RLA currently operates two managed investment schemes and was involved in commercial negotiations for several of the assets included in the restructuring of the Timbercorp projects. RLA is working with a number of parties who are interested in providing Responsible Entity (RE) services and contract forestry services. These parties include Primary Securities Limited and HVP.

WGG and Redisland have engaged Clarendons Lawyers and Leadenhall VRG Pty Ltd to assist them with this process.

Proposal

The proposal comprises:

- The replacement of Willmott Forests Limited (WFL) as RE of the schemes with one nominated by WGG and agreed to by growers at a growers meeting.
- The amendment of project constitutions and agreements (as agreed by growers at a meeting) to amend the schemes to contributory schemes which will provide the cash flow to fund the schemes through to harvest.
- The appointment of an investment manager responsible for growers' commercial interests.
- The appointment of an experienced forestry manager to provide forestry management services.

The proposal is largely dependent upon the timing of the calling of meetings and the support of growers at those meetings.

It is anticipated that this proposal will be applicable to all schemes and will be offered to all schemes as appropriate. These arrangements will be on a scheme by scheme basis.



Willmott Growers Group Inc (Vic) ABN 34 287 512 211
Level 17 Rialto North Tower, 525 Collins Street MELBOURNE VIC 3000
www.willmottgrowersgroup.com.au

Access to Information

We are in the process of completing legal due diligence. Should we require addition documents from yourselves, we will request them.

We will require access to the properties for site visits to allow finalisation of the management agreements.

Assistance in calling meetings would be considered, however, the current intention is for growers to convene their own meetings on a scheme by scheme basis.

Should you wish to discuss this matter further, please do not hesitate to contact the undersigned on 03 8587 1409 or 0417 001 446.

Yours faithfully,

Paul Challis
Public Officer
Willmott Growers Group Inc (Vic)



Level 17 Rialto North Tower
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Victoria 3000 Australia

T 03 8681 4400 F 03 8681 4499
www.clarendonlawyers.com.au
ABN 43 704 593 249

Our Ref: MAB:PAC:1000479

18 February 2011

Jane Sheridan
Arnold Bloch Leibler
Level 21
333 Collins Street
MELBOURNE VIC 3000

Dear Jane

Willmott Forests Limited (Administrators appointed) (Receivers and Managers Appointed) (WFL)

We write on behalf of the Willmott Growers Group Inc. A00055077L (**WGG**).

We understand that in recent discussions between our respective clients, Les Cullen of PPB advised our client that the secured debts of WFL would novate to a new responsible entity under the provisions of 601 FS of the *Corporations Act 2001*.

We have reviewed the information relating to the charges granted by WFL available in the ASIC register and have also reviewed constitutions of the registered schemes. We do not agree with Mr Cullen's statement.

The WGG is further developing its proposal in relation to both registered and unregistered schemes. Accordingly we seek your advice as to whether the view expressed by Les Cullen is the considered view of your client.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Bland'.

Mark Bland
Director

Direct Tel: 03 8681 4415
Email: mark.bland@clarendonlawyers.com.au

1 March 2011

Our Ref: MAB:PAC:1000479

Jane Sheridan
Arnold Bloch Leibler
Level 21
333 Collins Street
MELBOURNE VIC 3000

Dear Jane

Willmott Forests Limited (Receivers and Managers Appointed) (Administrators Appointed) (WFL)

We refer to our letter of 18 February 2011 seeking confirmation of the view of your client, the Administrators of WFL, in relation to the extent to which any liabilities of WFL would novate to a new responsible entity.

As you are aware from our letter, the Willmott Growers Group Inc. A0055077L (**WGG Inc**) is further developing its proposal in relation to restructuring the WFL registered and unregistered managed investment schemes (**Projects**). Accordingly, we request a response to our 18 February letter and make the following further request for information that is critical to our client finalising its proposal. Your responses will also inform our client's preparation of an explanatory memorandum, so please indicate matters in respect of which your client would be sensitive as to how they are disclosed to Growers.

On 24 November 2010, your client provided a portion of information our client requested by letter dated 19 October 2010. It refused to provide certain other information on the basis of confidentiality. In this regard, we note the statements in the affidavits of Craig Crosbie dated 25 November 2010 and 4 February 2011 about your client's expression of interest campaign and the online data room containing information regarding the Willmott Schemes.

Our client considers that the following information should have been available in the online data room and is critical to the finalisation of its proposal. Growers of the Schemes could enforce their rights to inspect such information under s247A of the Corporations Act (as it relates to registered schemes). However we believe the refusal of your client to provide our client access to the information it seeks would seriously limit the capacity of your client to state in future proceedings that it has facilitated the development of proposals as an alternative to a global sale.

1 Project related documents

We request that your client provides our client a copy of the following documents:

- (a) The document which purports to novate to WFL the rights and obligations of A.S. Calendar Nominees Pty Ltd in respect of loans to the Growers (occurring in relation to Projects constituted prior to WFL's float in 2000).
- (b) The head leases to WFL from Hancock Victorian Plantation Pty Ltd and from Forests NSW in respect of the Projects.
- (c) The documents changing the trustee in the private partnership projects (1993 McKenzie and Partners Partnership No. 1, 1994 Grimsey & Associates Partnerships No.1, No.2 and No. 3, and 1994 McKenzie and Partners Partnership No. 1) in consequence of the deregistration of the original trustee W.M.W. Financial Services Pty Ltd in 2000.

If your client does not intend to provide us with any of the above documents, please advise us whether it would consent to orders for the production of them to named Grower members of the WGG Inc. under s247A of the *Corporations Act*.



2 Application to court for directions

We request that you confirm whether your client intends to apply to the court for directions in sanctioning its proposed exercise of its power of sale over the plantation land comprised in the Projects. We also request that your client give our client reasonable notice of any such application and all associated court dates.

3 Valuation of voting rights 1995-1999 Projects

We request that your client confirms how it intends to value the interests of members for the purposes of voting at any general meeting of Growers in the 1995-1999 Scheme pursuant to the statutory discretion that WFL, as responsible entity, is obliged to discharge under s253F of the Corporations Act.

4 Future Maintenance Fund

We refer to the Future Maintenance Funds (alternatively, the Future Maintenance Accounts) established and administered, in accordance with the Information Memorandums (alternatively, the Prospectuses) of the unregistered projects and registered schemes, by the partnership trustee (alternatively, the Manager) by annual contributions to an insurance bond. We note that in all cases these funds and accounts were held on trust for the Growers.

We request that your client notify us of the outcome of its enquiries into the funds and accounts and the approximate value of the funds and accounts to the relevant Growers.

5 1998 Sharp - Reed Project

We request that your client provide a copy of the Deed establishing the 1998 Sharp – Reed Project referred to on page 10 (last paragraph) of the Information Memorandum of the Sharp Reed Project.

We ask that you respond as soon as possible to each of the above matters but in any event to all within 7 days of the date of this letter.

If there are any aspects of the letter you wish to discuss please contact me or Catherine Curtain on 8681 4442.

Yours sincerely

Mark Bland
Director

Direct Tel: 03 8681 4415
Email: mark.bland@clarendonlawyers.com.au

cc: Clint Hinchey, Allens Arthur Robinson



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1 March 2011

Our Ref: MAB:PXC:1000479

Clint Hinchey
Partner
Allens Arthur Robinson
Level 27
530 Collins Street
MELBOURNE VIC 3000

Dear Sir

Willmott Forests Limited (Receivers and Managers Appointed) (Administrators appointed) (WFL)

As you are aware, the Willmott Growers Inc. A0055077L (**WGG Inc**) is developing proposals to restructure and continue a number of the WFL registered and unregistered managed investment schemes (**Projects**). On behalf of our client we make the following requests.

1 Grower loans from AS Calendar Nominees Pty Ltd

We refer to the various loan documents in the Projects between A.S. Calendar Nominees (Vic) Pty Ltd and Growers which were subsequently assigned to WFL.

We request that you inform us as to the intentions of your clients, the Receivers of WFL, in the event the Projects are wound up and, alternatively, in the event that they continue, with respect to the enforcement and recovery of these loans advanced to Growers which are now assigned to WFL.

2 Future Maintenance Funds and Accounts

We refer to the Future Maintenance Fund (alternatively, the Future Maintenance Account) established and administered in the unregistered and registered schemes by the partnership trustee (alternatively, the Manager) by annual contributions to an insurance bond. We note that in all cases these funds and accounts were held on trust for the Growers.

We request that your client notify us of the outcome of your client's enquiries into the funds and accounts and the approximate value of the funds and accounts to the relevant Growers.

Your responses will also inform our client's preparation of an explanatory memorandum, so please indicate matters in respect of which your client would be sensitive as to how they are disclosed to Growers.

We request a response within 7 days of the date of this letter.

If there are any aspects of this letter you wish to discuss please contact me or Catherine Curtain on 8681 4442.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Bland', written over a white rectangular area.

Mark Bland
Director

Direct Tel: 03 8681 4415
Email: mark.bland@clarendonlawyers.com.au

cc: Jane Sheridan, Arnold Bloch Leibler

17 March 2011

Our Ref: MAB:CMC:1000479

Clint Hinchin
Partner
Allens Arthur Robinson
Level 27
530 Collins Street
MELBOURNE VIC 3000

WITHOUT PREJUDICE

Dear Clint

Willmott Forests Limited (Receivers and Managers Appointed) (Administrators appointed) ACN 063 263 650 (WFL)

We refer to your letter dated 15 March 2011 and provide the following information in response to your requests. This letter reflects the current intention of our client but we note that our client reserves its rights to amend its proposal and is prepared to consider proposals put to it by your client or the Administrator.

1 Projects included in Willmott Growers Group (WGG) proposal for restructure

At present, our client's intention is to propose a change of responsible entity/manager (**Manager**) and a restructure in relation to the following registered and unregistered managed investment schemes (**Schemes**):

- Willmott Forests 1995-1999 Project (ARSN 089 598 612);
- 1993 McKenzie & Partners Private Partnership No. 1;
- 1994 McKenzie & Partners Private Partnership No. 1 (together, **the McKenzie Partnerships**);
- 1994 Grimsey & Associates Private Partnerships Nos. 1, 2 and 3 (together, **the Grimsey Partnerships**); and
- 1998 Sharp – Reed Private Project.

2 Details of the structure of the proposal

- (a) The proposal is that a new Manager take over the responsibility for managing the Schemes.
- (b) For the registered Schemes, this would be achieved pursuant to the constitution and Part 5C.2 of the *Corporations Act 2001*.
- (c) For the unregistered Schemes, this would be achieved pursuant to the process outlined in each Scheme's foundation documents, or, in the absence of cooperation from the Administrator of the Schemes, by way of application to the court.
- (d) The proposal that will be put to Growers in the explanatory memoranda circulated prior to Growers' meetings is to amend the relevant constitutions and foundation documents to provide:
 - (i) for Growers to make annual contributions¹;

¹ The amount of the annual contribution will be calculated based on the yearly budget prepared by the Forest Manager and invoiced to Growers each year. The initial estimate is \$200 per annum per woodlot to pay for both the costs of maintaining the forests and the remuneration of the new responsible entity;



- (ii) for a fee² to accrue to the Grower's account, if those contributions are not received in a particular year;
- (iii) for the fees that accrue against a Grower's account to be a fee payable to the scheme out of harvest proceeds but never exceeding the value of a Grower's harvest proceeds³;
- (iv) in relation to the shortfall which arises in respect of those Growers who do not pay the requisite contribution, for the Manager to source additional funds required for the management of the scheme either:
 - (A) from an underwriter willing to pay the contribution on behalf of the Grower to replace the defaulting Grower's contribution in the cashflow of the scheme in return for consideration such as the payment of annual interest or a fee payable out of harvest proceeds; or
 - (B) from the contributing Growers, by issuing further invoices to make up the shortfall; and
- (v) after harvest either:
 - (A) if the Manager has sourced the additional funding for the cashflow shortfall from an underwriter, for the underwriter to be paid a fee out of harvest proceeds, such fee to be calculated based on factors including fees accrued against Growers' accounts (see 2(d)(ii)), in satisfaction of amounts paid into the scheme under (iv)(A); or
 - (B) if the Manager has sourced the additional funding for the cashflow shortfall from the contributing Growers, for those contributing Growers to be paid a fee out of the scheme, in the same way as the underwriter would be in (A).

Once the fees accrued to the Grower's account reach the value of the harvest proceeds which would have accrued to them at harvest, the Grower's interest in the scheme will be of zero value and the Grower may be removed from the register.

3 Estimates for present value of harvest proceeds

Our client has proceeded to develop its proposal for restructure based on the figures for the present value of the harvest proceeds published in the Poyry Report. Therefore, the relevant assumptions are the same as were made by Poyry Management Consulting (Australia) Pty Ltd in the preparation of that report.

4 Determination of annual contributions

- (a) The initial estimate of the amount of the annual contribution to be invoiced to Growers is \$200 per hectare. This estimate is based on the figures in the Poyry Report about the costs of maintaining the forests plus the cost of remuneration payable to the new Manager in accordance with quotations provided to our clients for the provision of this service.

² A quantitative method will be used to develop a reasonable pre-estimate of the cost to the scheme of a Grower's failure to pay (comprising the value of the contributions invoiced and not received plus an administration fee plus an interest component) and that will be converted to a percentage interest (the current estimate is 20% per annum) that will be lost in the event of a Grower not paying the requisite contribution in any year.

³ The accrued fee may only be to the extent of the value of the Grower's net harvest proceeds (only determined at harvest). The Grower would be assured that they will not end up owing an amount to the scheme at the completion of harvest.



- (b) Based on initial indications from Growers, our client expects in excess of 90% of Growers (excluding those interests held directly by Willmott Forests Limited) to make the annual contribution. This estimate will vary with each Project year.
- (c) As outlined above, where there is a shortfall in contributions, the Manager will either look to contributing Growers to make up this shortfall or look to an underwriter. Our client is in the process of negotiating with potential underwriters but, given the high percentage of Growers willing to make additional contributions, self-underwriting may be preferred.
- (d) Where a Grower does not make the requisite contributions, fees will accumulate to that Grower's account and the value of their interest will gradually dissipate, probably over the course of five years.

5 Responses to letter of 1 March 2011

As we mentioned in our letter to you dated 1 March 2011, our client is in the process of preparing its first explanatory memorandum, in relation to the change of responsible entity for the Willmott Forests 1995 – 1999 Project, and would appreciate a response to the questions posed:

- (a) What are the intentions of your clients, the Receivers of WFL, in the event the Schemes are wound up and, alternatively, in the event that they continue, with respect to the enforcement and recovery of the loans advanced to Growers which are now assigned to WFL?
- (b) What is the outcome of your clients' enquiries with respect to the funds, which were called either Future Maintenance Funds or Future Maintenance Accounts, and which were established and administered in the unregistered and registered schemes by the partnership trustee (alternatively, the Manager or responsible entity), by annual contributions to an insurance bond, and held on trust for Growers?

We reiterate our request that this information be provided to our clients as soon as possible and by no later than Friday 18 March 2011.

If there are any aspects of this letter you wish to discuss please contact me or Catherine Curtain on 8681 4442.

Yours sincerely

Mark Bland
Director

Direct Tel: 03 8681 4415
Email: mark.bland@clarendonlawyers.com.au

cc: Jane Sheridan, Arnold Bloch Leibler

15 March 2011

Mark Bland
Clarendon Lawyers
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Dear Mark

**Willmott Forests Limited (Receivers and Managers
Appointed) (Administrators Appointed) ACN 063 263 650
(WFL)**

We refer to your letter dated 1 March 2011 requesting information from our clients in connection with your client's development of proposals to restructure and continue a number of WFL registered and unregistered managed investment schemes (*Projects*).

In order for our clients to understand the context of your requests and provide a meaningful response, our clients require information regarding the nature of your client's proposals, including details of the Projects affected by the proposals and the structure of the proposals. We note, in this regard, that our clients have not received any further information from your client regarding its earlier proposal in respect of the 1995 – 1999 Project (ARSN 089 589 612).

In providing further information about the proposals, our clients request that you address the following specific matters:

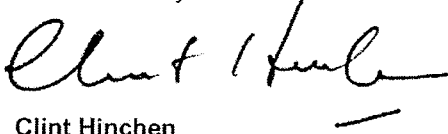
- details of your client's estimates of the present value of the harvest proceeds for each relevant Project, and any relevant assumptions made in determining the estimates; and
- assuming your client's proposals require annual contributions to be made by growers:
 - details of how the annual contributions are to be determined, including any relevant assumptions to be made in determining those amounts, and any sensitivity analysis conducted on the viability of the Projects in the event that growers fail or refuse to make the required annual payments (including WFL, who holds a significant interest in its own right in a number of the Projects and is not in a position to make ongoing contributions); and
 - details of what happens to the interests held by growers (including WFL) who fail or refuse to make the required annual payments.

Our Ref EVBM:120090098

evbm A0116836007v2 120090098 15.3.2011

We look forward to receiving your response. In the meantime, please do not hesitate to contact either of us if you have any questions.

Yours sincerely



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Matthew Whittle
Senior Associate
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Copy To Jane Sheridan, Arnold Bloch Leibler

Arnold Bloch Leibler

Lawyers and Advisers

21 March 2011

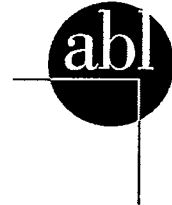
By E-mail

Mr Mark Bland
Director
Clarendon Lawyers
Level 17
Rialto North Tower
525 Collins Street
Melbourne VIC 3000

Your Ref MAB:PAC 1000479
Our Ref JCS
File No. 011565015

Contact
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Dear Mark

Willmott Forests Limited (Receivers and Managers appointed) (Administrators appointed) ("WFL")

We refer to your letter of 1 March 2011.

Your understanding of the discussion between your client and Les Cullen of PPB Advisory (referred to in your letter of 18 February 2011) does not accord with Mr Cullen's recollection. Mr Cullen did have a discussion with Mr Kirby shortly prior to the closing date for the expression of interest campaign. We are instructed that Mr Cullen told Mr Kirby that Mr Kirby needed to get legal advice as to what debts would be assumed by a new responsible entity and that Mr Cullen could not advise Mr Kirby regarding that issue.

In relation to the further requests by your clients, we respond as follows (adopting your numbering):

1 Project related documents

- (a) Our client has not located or been provided with a copy of this document.
- (b) We understand that you no longer seek access to these leases.
- (c) Our client has not located or been provided with a copy of this document.

2 Application to court for directions

Our client intends to apply to the Court prior to exercising any power of sale over the plantation land used in the Projects. Our client also intends to continue with its current practice of providing notice to the grower groups (including your client) of any relevant Court applications.

MELBOURNE

SYDNEY

Partners
Mark M Leibler AC
Henry D Lanzer
Joseph Borenszlajn
Leon Zwier
Philip Chester
Ross A Paterson
Stephen L Sharp
Kenneth A Gray
Kevin F Frawley
Michael N Dodge
Jane C Sheridan
Steven Klein
Leonie R Thompson
Zaven Mardirossian
Jonathan M Wenig
Paul Sokolowski
Paul Rubenstein
Peter M Seidel
Alex King
John Mitchell
Nicole Gordon
Ben Mahoney
Sam Dollard
Lily Tell
Henry Skene
Andrew Silberberg
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Teresa Ward
Jason Blankfield
Kate O'Brien
Christine Fleer
Shaun Cartoon
Nancy Collins
Susanna Ford
Kimberley MacKay
Amanda Hutchings
Clint Harding

Consultants
Allan Fels AO
Steven M Skala AO

3 Valuation of voting rights 1995 -1999 Projects

As no meeting of members has been convened for any of the registered managed investment schemes, our client has not yet addressed the question of the valuation of the interests of members for the purposes of voting at any future meetings. Our client will address this if and when a meeting is convened. In the interim, our client will consider any submissions you, or any other interested party, wishes to make in relation to the manner in which that valuation should occur.

4 Future Maintenance Fund

Our client's investigations to date have not identified any "Future Maintenance Funds" or "Future Maintenance Accounts" of the kind to which you refer.

5 1998 Sharp - Reed Project

Our client has not located or been provided with a copy of this document.

Yours sincerely



Jane Sheridan
Partner

cc Clint Hinchey, Allens Arthur Robinson

Our Ref: MAB:RXH:1000479

6 May 2011

Jane Sheridan
Arnold Bloch Leibler
Level 21
333 Collins Street
MELBOURNE VIC 3000

Dear Jane

Unregistered schemes

We confirm that the Willmott Growers Group (**WGG**) proposes to take the necessary steps to continue the following unregistered schemes:

- a) 1994 Grimsey & Associates Pty Ltd – Forestry Partnership No.1, No.2, No.3
- b) 1993 McKenzie Private Partnership No.11994, McKenzie Private Partnership No.2
- c) Sharp - Reed Plantation Project - 1998

WGG is also likely to do the same in respect of the "1995 No Project". There are a number of uncertainties that arise from our analysis of the documents in respect of which we seek clarification.

- 1 W.M.W. Financial Services Pty Ltd ACN 005 116 138 (**WMW**) is named as the trustee of the McKenzie and Grimsey Partnerships. We note that it was deregistered in 2000 but that a number of documents have been lodged, presumably by your client, in March 2011. We request that you:
 - (a) confirm whether W.M.W. remains the trustee of the Grimsey and McKenzie Partnerships;
 - (b) if not, provide documents evidencing a change of trustee; and
 - (c) advise us of any recent changes that effect the partnerships and any associated documents.
- 2 A landowner and lessor in respect of the leases of the partnerships and the 1995 No Project was H.J. Selected Properties Pty Ltd, which was deregistered in 2001. We understand that the land was assigned to Willmott Forests Limited. Please provide us with a copy of the documents effecting the assignment.
- 3 It is our opinion that WMW is incapable of acting as trustee of the schemes within the meaning of section 41(1) of the *Trustee Act 1958* (Vic). Please advise us of whether you disagree with this view providing reasons.

In light of the surrounding events and in particular the application your client proposes to make in relation to these schemes we request that you respond by Friday 13 May 2011.

Yours sincerely


Mark Bland
Director

Direct Tel: 03 8681 4415
Email: mark.bland@clarendonlawyers.com.au