

SUPREME COURT OF NEW SOUTH WALES
ASSOCIATE'S RECORD OF PROCEEDINGS

Reference:

FILE NO: 2018/322648

PARTIES: Philip Dwyer v Volkswagen Group Australia Pty Ltd
trading as Volkswagen Australia

DATE: 19 July 2019

CORAM: SACKAR J

APPEARANCES: In Chambers

MATTER LISTED FOR MOTION | DIRECTIONS – 25 JULY 2019
MATTER LISTED FOR HEARING – 2 MARCH 2020 [EST 12 WEEKS]

VERDICT/ORDER/DIRECTION

Consent short minutes of order which Sackar J signs, dates and places with the papers. Order that:

1. In these orders the words “Confidential Document” or “Confidential Documents” means, respectively, a document or documents which is or are the subject of a claim of confidentiality by a party to the proceeding (**Nominating Party**). For the avoidance of doubt, such a document may include but is not limited to:
 - a) a document discovered by the Nominating Party;
 - b) a part of the evidence (including affidavit evidence, and annexures and/or exhibits to affidavit evidence) filed or served on behalf of the Nominating Party.
2. These orders relate to the inspection, copying and use by a party to the proceeding (**Inspecting Party**) of a copy of a Confidential Document and, subject to further order of the Court, do not:
 - a) derogate from the obligations an Inspecting Party owes with respect to all documents discovered by a Nominating Party in the proceedings (including but not limited to the obligations arising under rule 21.7 of the Uniform Civil Procedure Rules 2005 (NSW)); or
 - b) relieve an Inspecting Party from the implied undertaking that attaches to discovered documents.

3 An Inspecting Party must not use or disclose Confidential Documents other than in accordance with these orders.

4 On behalf of an Inspecting Party, only:

- a) its or his legal representatives (including counsel, and partners and employees whether solicitors or otherwise of the firm representing the Inspecting Party, including administrative or support staff) retained for the purposes of this proceeding; and
- b) third party litigation support personnel retained by the Inspecting Party for the purpose of this proceeding,

are at liberty to inspect, copy and use Confidential Documents for the purposes of this proceeding only.

5 On behalf of an Inspecting Party, only:

- a) where the Defendant is the Inspecting Party, in-house legal practitioners;
- b) where the Plaintiff is the Inspecting Party, the Plaintiff himself;
- c) any officer, agent or legal representative of Regency Funding Pty Limited (Regency) who is directly concerned in the conduct of these proceedings;
- d) third party experts retained for the purposes of this proceeding;
- e) any other person nominated by the Inspecting Party,

are at liberty to inspect, copy and use Confidential Documents for the purposes of this proceeding only, provided that:

1. they have executed a confidentiality undertaking consistent with these orders; and
2. the Inspecting Party has complied with order 11 below.

6 Except with the written consent of the Nominating Party or its solicitors (which consent will not be unreasonably withheld) or failing agreement thereafter with the leave of the Court, Confidential Documents and their contents or any part thereof must not be divulged to any person (including, for the avoidance of doubt, the parties to Supreme Court of New South Wales proceeding numbers 2017/00340824, 2018/00009565, 2018/00042244, 2017/00378526, 2018/00009555, 2017/00353017 and 2018/00322648), other than those persons referred to in orders 4 and 5 above, except as compelled by law. For the avoidance of doubt, this obligation applies both during and after the conclusion of this proceeding.

7 Any Confidential Documents which are intended to be filed with the Court are to be identified as confidential and, in the case of hard copy documents, shall be

filed with the court in an envelope marked "Confidential Document". Any such documents will not be available for inspection by any party or person except with the leave of the Court. No affidavit filed in the proceeding by or on behalf of the Inspecting Party after the date of these orders may contain any Confidential Documents save in an Annexure or Exhibit marked 'Confidential'.

- 8 If a Confidential Document is to be referred to in oral evidence or oral or written submissions in the Proceedings, the legal representatives for the Inspecting Party will take all reasonable steps to maintain its confidentiality.
- 9 Confidential Documents and their contents or any part thereof must not be used for any purpose other than the purpose of this proceeding.
- 10 At the conclusion of this proceeding (subject to the final determination of any appeals) and upon receipt of a written request by the Nominating Party, each Inspecting Party (or its solicitors) must, unless otherwise required by law, take reasonable steps to:
 - a) recall or procure the return of hard copies of the Confidential Documents from third parties to whom the Confidential Documents have been provided under orders 4(b) and 5 above;
 - b) ensure the deletion of any electronic copies of the Confidential Documents maintained by third parties to whom the Confidential Documents have been provided under order 4(b) and 5 above;
 - c) ensure the deletion of all electronic copies of the Confidential Documents from the document management systems and document management databases of the Inspecting Party's legal representatives;
 - d) delete all electronic copies of the Confidential Documents from the document management systems and document management databases of the Inspecting Party;
 - e) either destroy all hard copies of the Confidential Documents, or deliver those hard copies to the Nominating Party's legal representatives as soon as practicable; and
 - f) provide written confirmation to the Nominating Party's legal representatives of compliance with orders 10(a) to 10(e) above.

For the avoidance of doubt:

1. a reference to 'Confidential Documents' in this order includes a reference to all hard copies and electronic copies of documents recording or containing information contained in the Confidential Documents; and
2. the solicitors for the Inspecting Party are entitled to retain a copy of any Confidential Document as part of their client file regarding the conduct of the Proceedings solely for internal document retention purposes. This copy will be kept secure and otherwise subject to these orders.

- 11 Before any inspection of Confidential Documents takes place by an individual for the purposes of order 5, the solicitors for the Inspecting Party shall:
 - a) in respect of the individuals referred to by orders 5(a) to (c) and (e), serve on the Nominating Party a signed undertaking from the individual in terms consistent with these orders;
 - b) in respect of the individuals referred to by order 5(d), obtain a signed undertaking from the individual in terms consistent with these orders. For the avoidance of doubt, such undertaking is not required to be served on the Nominating Party until the individual's expert report is served in the Proceedings, or otherwise at the conclusion of this proceeding (subject to the final determination of any appeals).

- 12 If, having inspected the Confidential Documents, the Inspecting Party concludes that one or more of those documents is not confidential, then the following provisions apply:
 - a) the Inspecting Party must notify the solicitors for the Nominating Party in writing:
 - (i) of their view that one or more of the documents is not confidential;
 - (ii) the basis for that view;
 - (iii) identifying by reference to a document identification number (or numbers) which document (or documents) the Inspecting Party has concluded is (or are) not confidential,

(the **Non-Confidentiality Claim**);
 - b) within 7 days from the date of receiving written notice of the Non-Confidentiality Claim from the Inspecting Party, the Nominating Party must consult with the Inspecting Party with a view to agreeing on the confidential or non-confidential status of the document or documents the subject of the Non-Confidentiality Claim;
 - c) if, at the expiration of the 7 day period referred to in paragraph 12(b), the Inspecting Party and the Nominating Party are unable to agree as to the confidential status of any of the documents the subject of the Non-Confidentiality Claim (the **Challenged Documents**), then the Inspecting Party after 3 business days' notice to the Nominating Party has liberty to apply to the Court for orders determining the confidential status of the Challenged Documents (noting that the Nominating Party bears the onus of establishing that there is a proper basis for asserting the confidentiality of the document).

- 13 If a person referred to in Orders 4 and 5 above has complied with Order 11 and, having then inspected the Confidential Documents:

- a) the Inspecting Party concludes that one or more of those documents is confidential but disclosure is required to a person other than those referred to in Orders 4 and 5 above, or the Confidential Document (or Confidential Documents) is (or are) to be used otherwise than in accordance with Order 6 above; and
- b) the Nominating Party has refused its written consent to such disclosure,

then the following provisions apply:

- a) the Inspecting Party must notify the solicitors for the Nominating Party in writing:
 - (i) of their view that further disclosure is required;
 - (ii) the reason or reasons why such further disclosure is required;
 - (iii) to whom such further disclosure is required; and
 - (iv) the purpose of such further disclosure,(the **Further Disclosure Claim**);
 - b) within 7 days of the date of receiving written notice of the Further Disclosure Claim the solicitors for the Nominating Party must consult with the Inspecting Party with a view to agreeing on the requested disclosure of the Confidential Documents the subject of the Further Disclosure Claim;
 - c) if, at the expiration of the 7 day period referred to in paragraph 13(b), the Inspecting Party and the Nominating Party are unable to agree as to the permitted disclosure of any of the Confidential Documents the subject of the Further Disclosure Claim, then, after providing 3 business days' notice to the Nominating Party, the Inspecting Party has liberty to apply to the Court for orders allowing the requested disclosure of those Confidential Documents (noting that the Inspecting Party bears the onus of establishing that the further disclosure is required for the proper conduct of the proceedings).
- 14 These orders shall not apply, or shall cease to apply as the case may be, to Confidential Documents that the parties to the Proceedings agree, or the Court determines, are no longer to be treated as Confidential Documents.
- 15 Liberty to apply on 3 days' notice.

CONSENT ORDER

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	General (Class Action)
Registry	Sydney
Case number	2018/00322648

TITLE OF PROCEEDINGS

Plaintiff	Philip Dwyer
Defendant	Volkswagen Group Australia Pty Ltd

PREPARATION DETAILS

Prepared for	Philip Dwyer, plaintiff
Legal representative	Damian Scattini
Contact name and telephone	Damian Scattini, 9146 3500
Contact email	damiandscattini@quinnemanuel.com

TERMS OF ORDER MADE BY THE COURT BY CONSENT

- 1 In these orders the words "Confidential Document" or "Confidential Documents" means, respectively, a document or documents which is or are the subject of a claim of confidentiality by a party to the proceeding (**Nominating Party**). For the avoidance of doubt, such a document may include but is not limited to:
 - a) a document discovered by the Nominating Party;
 - b) a part of the evidence (including affidavit evidence, and annexures and/or exhibits to affidavit evidence) filed or served on behalf of the Nominating Party.
- 2 These orders relate to the inspection, copying and use by a party to the proceeding (**Inspecting Party**) of a copy of a Confidential Document and, subject to further order of the Court, do not:
 - a) derogate from the obligations an Inspecting Party owes with respect to all documents discovered by a Nominating Party in the proceedings (including but not limited to the obligations arising under rule 21.7 of the Uniform Civil Procedure Rules 2005 (NSW)); or

- b) relieve an Inspecting Party from the implied undertaking that attaches to discovered documents.

3 An Inspecting Party must not use or disclose Confidential Documents other than in accordance with these orders.

4 On behalf of an Inspecting Party, only:

- a) its or his legal representatives (including counsel, and partners and employees whether solicitors or otherwise of the firm representing the Inspecting Party, including administrative or support staff) retained for the purposes of this proceeding; and
- b) third party litigation support personnel retained by the Inspecting Party for the purpose of this proceeding,

are at liberty to inspect, copy and use Confidential Documents for the purposes of this proceeding only.

5 On behalf of an Inspecting Party, only:

- a) where the Defendant is the Inspecting Party, in-house legal practitioners;
- b) where the Plaintiff is the Inspecting Party, the Plaintiff himself;
- c) any officer, agent or legal representative of Regency Funding Pty Limited (**Regency**) who is directly concerned in the conduct of these proceedings;
- d) third party experts retained for the purposes of this proceeding;
- e) any other person nominated by the Inspecting Party,

are at liberty to inspect, copy and use Confidential Documents for the purposes of this proceeding only, provided that:

1. they have executed a confidentiality undertaking consistent with these orders; and
2. the Inspecting Party has complied with order 11 below.

6 Except with the written consent of the Nominating Party or its solicitors (which consent will not be unreasonably withheld) or failing agreement thereafter with the leave of the Court, Confidential Documents and their contents or any part thereof must not be divulged to any person (including, for the avoidance of doubt, the parties to Supreme Court of New South Wales proceeding numbers 2017/00340824, 2018/00009565, 2018/00042244, 2017/00378526, 2018/00009555, 2017/00353017 and 2018/00322648), other than those persons

referred to in orders 4 and 5 above, except as compelled by law. For the avoidance of doubt, this obligation applies both during and after the conclusion of this proceeding.

- 7 Any Confidential Documents which are intended to be filed with the Court are to be identified as confidential and, in the case of hard copy documents, shall be filed with the court in an envelope marked "Confidential Document". Any such documents will not be available for inspection by any party or person except with the leave of the Court. No affidavit filed in the proceeding by or on behalf of the Inspecting Party after the date of these orders may contain any Confidential Documents save in an Annexure or Exhibit marked 'Confidential'.
- 8 If a Confidential Document is to be referred to in oral evidence or oral or written submissions in the Proceedings, the legal representatives for the Inspecting Party will take all reasonable steps to maintain its confidentiality.
- 9 Confidential Documents and their contents or any part thereof must not be used for any purpose other than the purpose of this proceeding.
- 10 At the conclusion of this proceeding (subject to the final determination of any appeals) and upon receipt of a written request by the Nominating Party, each Inspecting Party (or its solicitors) must, unless otherwise required by law, take reasonable steps to:
 - a) recall or procure the return of hard copies of the Confidential Documents from third parties to whom the Confidential Documents have been provided under orders 4(b) and 5 above;
 - b) ensure the deletion of any electronic copies of the Confidential Documents maintained by third parties to whom the Confidential Documents have been provided under order 4(b) and 5 above;
 - c) ensure the deletion of all electronic copies of the Confidential Documents from the document management systems and document management databases of the Inspecting Party's legal representatives;
 - d) delete all electronic copies of the Confidential Documents from the document management systems and document management databases of the Inspecting Party;
 - e) either destroy all hard copies of the Confidential Documents, or deliver those hard copies to the Nominating Party's legal representatives as soon as practicable; and

- f) provide written confirmation to the Nominating Party's legal representatives of compliance with orders 10(a) to 10(e) above.

For the avoidance of doubt:

1. a reference to 'Confidential Documents' in this order includes a reference to all hard copies and electronic copies of documents recording or containing information contained in the Confidential Documents; and
2. the solicitors for the Inspecting Party are entitled to retain a copy of any Confidential Document as part of their client file regarding the conduct of the Proceedings solely for internal document retention purposes. This copy will be kept secure and otherwise subject to these orders.

11 Before any inspection of Confidential Documents takes place by an individual for the purposes of order 5, the solicitors for the Inspecting Party shall:

- a) in respect of the individuals referred to by orders 5(a) to (c) and (e), serve on the Nominating Party a signed undertaking from the individual in terms consistent with these orders;
- b) in respect of the individuals referred to by order 5(d), obtain a signed undertaking from the individual in terms consistent with these orders. For the avoidance of doubt, such undertaking is not required to be served on the Nominating Party until the individual's expert report is served in the Proceedings, or otherwise at the conclusion of this proceeding (subject to the final determination of any appeals).

12 If, having inspected the Confidential Documents, the Inspecting Party concludes that one or more of those documents is not confidential, then the following provisions apply:

- a) the Inspecting Party must notify the solicitors for the Nominating Party in writing:
 - (i) of their view that one or more of the documents is not confidential;
 - (ii) the basis for that view;
 - (iii) identifying by reference to a document identification number (or numbers) which document (or documents) the Inspecting Party has concluded is (or are) not confidential,

(the **Non-Confidentiality Claim**);

- b) within 7 days from the date of receiving written notice of the Non-Confidentiality Claim from the Inspecting Party, the Nominating Party must consult with the Inspecting Party with a view to agreeing on the confidential or non-confidential status of the document or documents the subject of the Non-Confidentiality Claim;
- c) if, at the expiration of the 7 day period referred to in paragraph 12b), the Inspecting Party and the Nominating Party are unable to agree as to the confidential status of any of the documents the subject of the Non-Confidentiality Claim (the **Challenged Documents**), then the Inspecting Party after 3 business days' notice to the Nominating Party has liberty to apply to the Court for orders determining the confidential status of the Challenged Documents (noting that the Nominating Party bears the onus of establishing that there is a proper basis for asserting the confidentiality of the document).

13 If a person referred to in Orders 4 and 5 above has complied with Order 11 and, having then inspected the Confidential Documents:

- a) the Inspecting Party concludes that one or more of those documents is confidential but disclosure is required to a person other than those referred to in Orders 4 and 5 above, or the Confidential Document (or Confidential Documents) is (or are) to be used otherwise than in accordance with Order 6 above; and
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then the following provisions apply:

- a) the Inspecting Party must notify the solicitors for the Nominating Party in writing:
 - (i) of their view that further disclosure is required;
 - (ii) the reason or reasons why such further disclosure is required;
 - (iii) to whom such further disclosure is required; and
 - (iv) the purpose of such further disclosure,
 (the **Further Disclosure Claim**);
- b) within 7 days of the date of receiving written notice of the Further Disclosure Claim the solicitors for the Nominating Party must consult with the Inspecting Party with a view to agreeing on the requested disclosure of the Confidential Documents the subject of the Further Disclosure Claim;

c) if, at the expiration of the 7 day period referred to in paragraph 13b), the Inspecting Party and the Nominating Party are unable to agree as to the permitted disclosure of any of the Confidential Documents the subject of the Further Disclosure Claim, then, after providing 3 business days' notice to the Nominating Party, the Inspecting Party has liberty to apply to the Court for orders allowing the requested disclosure of those Confidential Documents (noting that the Inspecting Party bears the onus of establishing that the further disclosure is required for the proper conduct of the proceedings).

14 These orders shall not apply, or shall cease to apply as the case may be, to Confidential Documents that the parties to the Proceedings agree, or the Court determines, are no longer to be treated as Confidential Documents.

15 Liberty to apply on 3 days' notice.

SIGNATURES

Plaintiff

Philip Dwyer, Plaintiff consents.
Signature of legal representative

Defendant

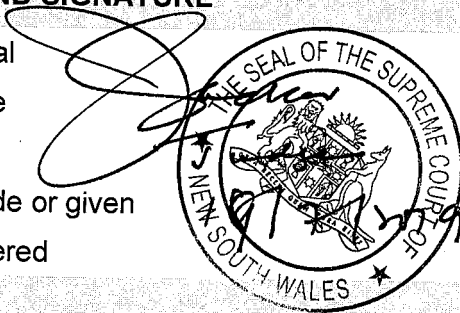
Volkswagen Group Australia Pty Ltd,
Defendant consents.
Signature of legal representative

Capacity: Solicitor
Date of signature

Capacity: Solicitor
Date of signature

SEAL AND SIGNATURE

Court seal
Signature
Capacity
Date made or given
Date entered



NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

UNDERTAKING

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	General (Class Action)
Registry	Sydney
Case number	2018/00322648

TITLE OF PROCEEDINGS

Plaintiff	Philip Dwyer
Defendant	Volkswagen Group Australia Pty Ltd

PREPARATION DETAILS

Prepared for	Philip Dwyer, plaintiff
Legal representative	Damian Scattini
Contact name and telephone	Damian Scattini, 9146 3500
Contact email	<u>damianscattini@quinnemanuel.com</u>

UNDERTAKING

UNDERTAKING IN RELATION TO CONFIDENTIAL DOCUMENTS

TO: The Court and to the Nominating Party.

I, of [insert company name and address], undertake to act in accordance with the attached Orders of

Justice Sackar made on 2019

Name:	
Signed:	
Position:	
Company:	
Date:	



ANNEXURE B

Protocol for electronic exchange of documents and court documents

In the Supreme Court of NSW

Equity Division

Proceeding No. 2018/00322648

BETWEEN

Philip Dwyer, *Plaintiff*

AND

Volkswagen Group Australia Pty Ltd
trading as Volkswagen Australia ABN 14 093 117 876, *Defendant*



Protocol for electronic exchange of documents and court documents

1	Introduction	4
2	Documents to be Included	4
3	List of Documents and Document descriptions	5
4	Format of Court Documents to be exchanged	6
5	Electronic Exchange of Documents	6
6	Page Numbers	7
7	Electronic Exchange Media	8
8	Data security	8
9	Errors and updates to the electronic exchange	8
10	Redaction for privileged Documents	8
11	De-Duplication of Documents	9
12	Privilege Clawback	9
13	Costs	10
14	Subpoenas	10
15	Schedules	12
	Schedule 1 - Document IDs	12
	Schedule 2 – Describing People	13
	Schedule 3 – Document Hosts and Attachments	14
	Schedule 4 – Exchange format	15
	Schedule 5 – Document Type List	20
	Schedule 6 – Concordance.dat / Relativity Load file Format	22



Summary

Date

Agreement

It has been agreed between the parties that discovery is to be made electronically and that service will be accepted by email.

Scope

This protocol sets out the document standards for use by all parties in making discovery and exchanging documents by way of service.



I Introduction

- 1.1 The purpose of this document is to record the parties' agreement as to the electronic exchange of data and images for both hardcopy and electronic documents in the abovementioned proceedings. This will ensure that all parties are able to view exchanged documents and data with their own software, or acquire software that allows them to view exchanged documents.
- 1.2 This protocol attempts to simplify and reduce the cost and risk associated with the disclosure of documents by establishing standards with specific reference to and in accordance with Practice Note SC Gen 7 and relevant state practice directives.
- 1.3 Documents produced and/or disclosed by the parties will be exchanged electronically in accordance with this protocol. Each party will retain the right to view the original documents if required.

2 Documents to be Included

This protocol encompasses the document management aspects of both hardcopy and electronic documents. This may include but is not limited to:

2.1 Electronic Documents:

- (a) Emails
- (b) Word Documents
- (c) Powerpoint Presentations
- (d) GANTT Charts
- (e) Spreadsheets and financial information
- (f) Photographs
- (g) Audio / visual media
- (h) Internal databases
- (i) CAD files

2.2 Hardcopy Documents

- (a) Letters
- (b) Contracts
- (c) Agreements
- (d) Printed emails
- (e) Plans
- (f) Facsimiles
- (g) Invoices
- (h) Minutes of meetings
- (i) Agendas
- (j) Bank statements



3 List of Documents and Document descriptions

- 3.1 All Documents to be exchanged between the parties and delivered to the Court will be described in a List of Documents containing the following information for each Document:
- (a) Document ID (refer Schedule 1 for details)
 - (b) Document Title;
 - (c) Document Type (refer Schedule 5 for details in respect of hard copy documents);
 - (d) Document Date;
 - (e) Author (From) (refer Schedule 2 for details);
 - (f) Recipient (To/From/CC/BCC) (refer Schedule 2 for details);
 - (g) Host Document ID (refer Schedule 3 for details);
 - (h) Privilege value (Yes/No/Part);
 - (i) Basis of Privilege ("LPP", "WPP" or "PII");
 - (j) Confidential value (Yes/No/Part);
 - (k) Redacted (Yes/null);
 - (l) Reason for redaction ("LPP", "WPP" or "PII");
- 3.2 The List of Documents is in addition to any list of Documents required by the rules of the Court.
- 3.3 The Party Codes used within the Document ID will be determined in accordance with Schedule 1.3.
- 3.4 In the case of Ringtail format productions, the directory structure will be in accordance with the Document ID hierarchy, for example:

The document produced as a searchable image named ABC.001.004.0392.pdf would be located in the folder path ABC\001\004\. So, it will appear in the directory listing as ABC\001\004\ABC.001.004.0392.pdf.

Where a document is produced as a native file and named ABC.001.004.0392.xls, it would have the directory listing of ABC\001\004\ABC.001.004.0392.xls

In the case of Concordance format productions, the directory structure will be preceded by Native/ or PDF/ as appropriate. For example:

The document produced as a searchable image named ABC.001.004.0392.pdf would be located in the folder path PDF\ABC\001\004\. So, it will appear in the directory listing as ABC\001\004\ABC.001.004.0392.pdf.

Where a document is produced as a native file and named ABC.001.004.0392.xls, it would have the directory listing of Native\ABC\001\004\ABC.001.004.0392.xls



4 Format of Court Documents to be exchanged

- 4.1 All court documents are to be served in electronic form.
- 4.2 Where a court document makes reference to a document that has been discovered in these proceedings, reference should be made to the Document ID. Subject to the court's requirements, the document need not otherwise be formally annexed or exhibited to the statement.

Court documents with a court stamp or signature are to be exchanged in Portable Document Format (PDF) showing the stamp and signature. All documents are to be exchanged in the format of multi-page PDF. Parties may also elect to exchange court documents in Microsoft Word format.

5 Electronic Exchange of Documents

- 5.1 The Documents will be exchanged in accordance with this section.
- 5.2 Data and images will be provided as follows:

ITEM	PROTOCOL
Data Format	Indexed data will be exchanged in an Access MDB file named export.mdb in a four table structure: <ul style="list-style-type: none">• Export table – contains core field information for each document;• Export_Extras table – contains additional fields to the core fields;• Parties table – contains people & may contain organisation information for each document;• Pages table – contains file name information for images that make up each document, or otherwise provided in Relativity / Concordance.dat file format as detailed in Schedule 6.
Image Format	OCR PDF in the directory structure outlined in paragraph 3.4
Native Document Format	1) Native files will be renamed according to its Document ID and the relevant file extension and will be provided in their native format. 2) The original native file name will be captured as a metadata field document title.
Disk Medium	USB or Portable hard drive or other media as agreed between the Parties.
Disk Contents	One file named export.mdb and all image and native files in the directory structure set out in paragraph 3.4, or otherwise provided in Relativity / Concordance.dat file format as detailed in Schedule 6.

- 5.3 If requested by the Court, the Documents are to be delivered to the Court in accordance with this section and protocol.



- 5.4 Parties will avoid converting Native Electronic Document to paper for exchange purposes and will exchange searchable PDF where possible, or otherwise native electronic documents.
- 5.5 Where Documents are to be provided or exchanged as Searchable Images, Native Electronic Documents should be rendered directly to PDF to create Searchable Images. They should not be printed to paper and scanned or rendered to Tagged Image File Format (TIFF) format and then converted to PDF.
- 5.6 Where Documents are to be provided or exchanged as Searchable PDF, the parties may agree or the Court may order that the Documents also be exchanged or delivered as Native Electronic Documents.
- 5.7 Parties will also exchange the extracted text as a .TXT files for searchable documents.
- 5.8 Native Electronic Documents that do not lend themselves to conversion to PDF (for example, complex spreadsheets, databases, etc.) may be exchanged or delivered to the Court as Native Electronic Documents or in another format agreed by the parties and the Court.
- 5.9 Native Electronic Documents that are imaged files in their native form will be rendered with OCR to improve their searchability where this is technically possible and practical. Paper Documents should be exchanged as Searchable Images wherever practicable. Colour versions of Documents will only be created if it will be of evidential significance to see the colour in a Document.
- 5.10 Subject to this section, all Documents to be included in an Electronic Court Book will be delivered to the Court as Searchable PDF.

6 Page Numbers

- 6.1 Subject to this section, a unique Page Number Label in the format described in Schedule 1 will be placed on each page of every Document.
- 6.2 The Page Number assigned to the first page of a Document will also be assigned as the Document ID for that Document.
- 6.3 Native Electronic Documents will be assigned a single Document ID and individual Page Number Labels are not required.
- 6.4 Wherever possible, a Page Number Label is to be placed at the top or bottom right hand corner of each page (at least (3) millimetres from both edges of the page).
- 6.5 If there is insufficient space for a Page Number Label, on a Searchable Image or an Unsearchable Image the electronic image of the page will, if possible, be reduced in size to make room for the Page Number Label.
- 6.6 Page Number Labels may also include machine readable barcodes.
- 6.7 Where feasible, landscape pages of Searchable Images, Unsearchable Images and Paper Documents should be positioned so that the title is on the left side of the page and



the Label is orientated to the text, preferably at the bottom right corner of the original page so it appears down the top right side edge of the rotated page.

- 6.8 The parties may apply Page Number Labels to the following hard copy Documents where they contain relevant content:
- (a) folder covers, spines, separator sheets and dividers;
 - (b) hanging file labels; and
 - (c) the reverse pages of any Document.
- 6.9 Adhesive notes should not normally be labelled but should be scanned in place on the page to which they were attached. If this cannot be done without obscuring text, the adhesive note should be numbered as the page after the page to which it was attached and the page should be scanned twice – first with and then without the adhesive note.

7 Electronic Exchange Media

7.1 Exchange Medium

Data will be exchanged via USB, HDD, or via secure FTP link.

7.2 USB/HDD Label

Each USB or HDD will be labelled with the name of the proceedings, the discovery tranche name and part number, and the date of provision.

8 Data security

- 8.1 The producing party must take reasonable steps to ensure that data is useable and not infected by Malicious Software.
- 8.2 Notwithstanding paragraph 8.1, the onus is on the receiving party to test the contents of any exchange media prior to its use to ensure it does not contain Malicious Software.
- 8.3 If data is found to be corrupted, infected by Malicious Software or is otherwise unusable, the producing party will provide a sound copy of the data within two business days of receipt of a written request from a receiving party.

9 Errors and updates to the electronic exchange

- 9.1 If an error is found in the exchanged Documents, the producing party will reissue the erroneous Documents.
- 9.2 However, if errors are found in more than 25% of the exchanged Documents, the receiving party may request that all Documents are re-issued.
- 9.3 If an error is found in any Document produced, the producing party must, if requested by the receiving party in writing, provide the receiving party with a written explanation of the reason/s for the errors in the Documents.

10 Redaction for privileged Documents

- 10.1 Subject to paragraphs 10.2 and 10.4 the producing party may redact any part of a document which that party claims is privileged.



- 10.2 The producing party must retain each produced or discovered document that it has redacted in accordance with paragraph 10.1 in un-redacted form. This will facilitate production of the original unmasked file if required.
- 10.3 Document copies that are exchanged or delivered to the Court may be permanently Redacted if the Court makes an order that part or the whole of a Document is subject to privilege.
- 10.4 Any party who disputes the entitlement of a producing party to redact any of its produced or discovered documents shall notify the producing party of the particular redactions to which it objects. Unless the parties resolve such dispute, the entitlement of the producing party to redact its documents and of the other parties to inspect documents shall be determined in accordance with the applicable law and this paragraph 10 is not intended to affect the parties' respective rights and obligations concerning the discovery and inspection of documents. For the avoidance of doubt, any party is at liberty to make an application to the Court for orders in respect of the redaction or inspection of discovered or produced documents, at any time.
- 10.5 A privileged document attached to a discoverable Host Document will simply be identified as an Attached Document. For example, it might have a single Placeholder Page allocated to it with the words "Privileged Document" stamped under the Document ID. It will be allocated a Document ID and will also receive a Document Description in the List of Documents although the Document Description need not be as complete as is required for a Discoverable Document in order to ensure that privileged information is preserved.
- 10.6 Images for wholly privileged documents will not be exchanged except where they are the Host Document or Attached Document to one or more non-privileged discoverable document(s) In such cases, the image will be a single Placeholder Page with the words "*Privileged Document*" stamped above the Document ID.
- 10.7 For wholly privileged documents, only the following information will be exchanged in the List of Documents: the Document ID, Document Type, Document Date, To, From, CC and BCC. In such cases, the Document Title will be "*Privileged Document*" as appropriate.

11 De-Duplication of Documents

- 11.1 Parties will take reasonable steps to ensure that duplicated Documents are removed from the exchanged material wherever practicable ("De-duplication"). It is acknowledged that there may be circumstances where duplicates need to be identified, retained and exchanged for evidential purposes.
- 11.2 De-duplication will be considered at a Document Family level. That is, Host Documents and their attachments will be treated as Duplicates if the entire Document Family is duplicated elsewhere within the collection. A Document Attachment from within the Document Family will not be treated as a duplicate if it is merely duplicated elsewhere as an individual, stand-alone Document and is not associated with a Document Family.

12 Privilege Clawback



- 12.1 The parties agree that any inadvertent disclosure of privileged material shall not result in the waiver of any associated privilege nor result in a subject matter waiver of any kind.
- 12.2 The parties agree that the disclosure of privileged material, unless explicitly waived, shall be deemed to be inadvertent and paragraph 12.3 will apply.
- 12.3 If, when reviewing another party's disclosure material, it becomes apparent to the receiving party that some of the disclosed material may be privileged, the receiving party:
- (a) Will immediately suspend review of the apparently privileged materials;
 - (b) Will not make copies of the apparently privileged material;
 - (c) Will, as soon as is reasonably practicable and in any event within three business days, notify the producing party of the disclosure of the apparently privileged material.
 - (d) Upon receipt of a notification made pursuant to paragraph 12.3(c), the producing party will, as soon as is reasonably practicable and in any event within three business days, either request the return of the apparently privileged material, or confirm that the disclosure of the apparently privileged material was intended.
 - (e) Upon receipt of a request made pursuant to paragraph 12.3(d) for the return of the apparently privileged material, the receiving party will, as soon as is reasonably practicable and in any event within three business days, provide to the producing party a written confirmation that all copies of the privileged material have been destroyed.
 - (f) The parties agree that if the producing party does not provide any response in accordance with paragraph 12.3(d), the disclosure of the apparently privileged material shall be deemed intended.

13 Costs

- 13.1 The parties agree that the reasonable costs of complying with the requirements of this protocol are properly incurred in the proceeding. The parties waive the right to object, in any costs assessment or taxation of costs, that the work needed to comply with this protocol was not of a type necessary for the proper preparation of the case.

14 Subpoenas

- 14.1 The parties agree that the party who has issued a subpoena will ensure that documents that have been produced pursuant to the subpoena, and over which there is no objection as to production or inspection, are processed in accordance with this protocol and distributed to each other party as soon as practicable.
- 14.2 Documents produced pursuant to subpoena shall be assigned a Document ID consisting of four levels, in accordance with the following format:



Document Type	Starting Document ID	Description
Subpoena (Plaintiff)	SUP.XXX.001.0001	SUP – Subpoena XXX – entity producing the document 001 – document 0001 – page
Subpoena (Defendant)	POE.XXX.001.0001	POE – Subpoena XXX – entity producing the document 001 – document 0001 – page



15 Schedules

Schedule 1 - Document IDs

1. A Document ID must be unique because it is the sole means by which each Document will be referenced.
2. A Document ID will be in the following format:

SSS.BBB.FFF.NNNN

The elements of the Document ID are set out in the following table:

Level	Description
SSS	The Party Code (also, often referred to as 'Source') identifies a party to the proceedings. It should comprise three alpha digits. The determination of the Party Codes to be used for a particular case will take place prior to the commencement of discovery in order to ensure that all Document IDs will be unique (i.e. To ensure that no two Documents have the same Document ID so that each Document can be uniquely referenced). See Schedule 1.3 for the list of available Party Codes.
BBB	The Box Number identifies a specific physical archive box or email mailbox or any other Container or physical or virtual classification that is appropriate for the party to use. Use of the Box Number is optional. The box number should comprise 3 digits.
FFF	The Folder Number identifies a unique folder number allocated by each party in their own Document collection. The Folder Number is padded with zeros to consistently result in a 3 digit structure. The Folder Number may, where appropriate, correspond to the Box Number of any Container in which the Document is contained.
NNNN	This refers to each individual page within each Folder for Paper Documents and Unsearchable Images or Searchable Images. For Native Electronic Documents, this number applies to the whole Document. This number is padded with zeros to consistently result in a 4 digit structure.
_XXXX	Where a page is missed or a document is subsequently rendered and pages must be inserted into the document, a four digit 'suffix' will be added to the document beginning from _0001: <i>A party using a native review platform reserves the right to paginate all documents with a four digit suffix.</i>

3. Party Prefix Codes for the Document ID

Party Code	Party	
PDY	Philip Dwyer	
VAT	Volkswagen Group Australia	



Schedule 2 – Describing People

1. For hardcopy documents, people names may be referenced using:
 - (a) surname [space] Initial (for example, Citizen J); or
 - (b) email addresses (for example, jcitizen@abc.com.au); or
 - (c) by reference to a position (for example, Marketing Manager) where email addresses and Surname, Initial is not available; or
 - (d) by reference to an organisation associated with the person where email address, Surname, Initial and Position are not available.
2. For electronic documents the people and organisation names will be left as extracted by the electronic document processing application. If nothing was extracted it will be left blank.
3. Hardcopy documents that have not actually been sent from an author to one or more recipients and have rather been distributed or tabled at a meeting will have the meeting attendees recorded as “Recipients” or “Attendees” for the Document. The author/from field for such documents may remain blank.
4. Hardcopy documents that represent agreements or contracts between multiple parties will have the parties to the agreement or contract recorded as “Recipients” or “Between” for the Document. The author/from field for such Documents may remain blank.



Schedule 3 – Document Hosts and Attachments¹

1. Each document that is attached to or embedded within another document will be called an Attached Document. Embedded items such as 'logo' files should not be listed as an attachment and do not need to be included in the List of Documents or exchanged between the parties.
2. Attached Documents will have the Document ID of their Host Document in the field called 'Host Document ID'.
3. Host Documents and Attached Documents are jointly referred to as a 'Document Group'.
4. A Host Document will be immediately followed by one or more Attached Documents in the Document ID numbering sequence.
5. An Attached Document must follow its Host Document or another Attached Document related to the same Host Document in the Document ID numbering sequence.
6. All Host Documents must be included in the exchanged data and Documents if their Attached Documents are discoverable. This ensures that there are no "orphan" Documents exchanged or delivered to the Court. Privileged Host Documents may be treated in accordance with paragraph 10.6.
7. If a Document is an attachment to an Attached Document (for example, a single ZIP file that is attached to an email) then the email should be treated as the Host Document (e.g. the email rather than the ZIP file).
8. Paper Documents will be delimited by reviewing each page to logically determine if pages belong together.
9. Annexures, Attachments and Schedules that are attached to an Agreement, Report, Legal Document or Minutes of a Meeting may be described as separate Attached Documents associated with the relevant Host Document.

¹ May be referred to as Document Delimiting.



Schedule 4 – Exchange format

Documents will be exchanged in an Export.mdb format as listed below, or otherwise provided in Relativity / Concordance.dat file format as detailed in Schedule 6.

Table Name	Table Description
Export	Main Document information
Parties	People and organisation information for each Document
Pages	Listing of electronic image filenames for each Document
Export_Extras	Additional data fields for each Document

The below document metadata may alternatively be provided in Concordance format if preferred.

EXPORT TABLE

FIELD NAME	DATA TYPE & MAXIMUM LENGTH	EXPLANATION
Document ID	Text, 21	Document ID in accordance with Schedule 1.
Host Reference	Text, 21	If the Document is an Attachment, this field contains the Document ID of its Host Document. Please refer to Schedule 3.
Document Date	Date, 11	The date of the document as it appears on the document in the following format: DD-MMM-YYYY (e.g. 01-JAN-2011) Hardcopy Documents <ul style="list-style-type: none"> Undated documents will have this field left blank. If an accurate document date cannot be determined, an estimated date should be given and the Estimated field should be "Yes". Date ranges cannot be used. The earliest date should be used, and the Estimated field should be "Yes". If day is unknown, enter 01-MMM-YYYY, Estimated field should be "Yes". If day and month are not known, enter 01-Jan-YYYY, and the Estimated field should be "Yes". If the year is unknown, this field will be left blank, unless estimated date can be determined. E-Mails: where there are multiple e-mails on one page, the date is the date of the first email that appears at the top of the first page.



FIELD NAME	DATA TYPE & MAXIMUM LENGTH	EXPLANATION
		<ul style="list-style-type: none"> Minutes of Meeting: Use the date of the meeting. <p>Electronic Documents</p> <ul style="list-style-type: none"> The date will be determined from the metadata of the document (either the Sent date for emails or Modified date, where available).
Estimated	Text, 3	To be left blank if a date is clearly evident on the document. A value of "Yes" will be used for estimated or partially dated documents.
Document Type	Text, 255	<p>Hardcopy Documents</p> <ul style="list-style-type: none"> See Schedule 5 for list of suggested not exhaustive document types. Document types not listed in Schedule 5 can be added if appropriate. <p>Electronic Documents</p> <ul style="list-style-type: none"> Native file extension; or As extracted by the Electronic processing application
Title	Text, 255	<ul style="list-style-type: none"> Determined on the basis of the title appearing on the face of the Document This will be the subject line in emails and original file name for electronic files. Documents with no discernible title will be coded as "Untitled".
Level_1		The Party level of the Document ID (see Schedule 1)
Level_2		The Box level of the Document ID (see Schedule 1)
Level_3		The Folder level of the Document ID (see Schedule 1) under which the Searchable Images or Native Electronic Documents are stored.

PARTIES TABLE

FIELD NAME	DATA TYPE & MAXIMUM LENGTH	EXPLANATION
Document ID	Text, 21	Document ID in accordance with Schedule 1.

FIELD NAME	DATA TYPE & MAXIMUM LENGTH	EXPLANATION
Correspondence Type	Text, 9	<p>One or more of the following 5 options identifying the type of person must be used:</p> <ul style="list-style-type: none"> • To - for addressees • From - for authors • Between - for Parties to an agreement or other legal document (not correspondence) • CC - for additional people to which documents are addresses or authored • Attendees - for persons/organisations who attended a meeting
Persons	Text, 255	<p>Please refer to Schedule 2.</p> <ul style="list-style-type: none"> • For hardcopy documents, to be determined on the basis of the face of the Document. • For electronic emails the email address and display name must be used as extracted by the processing software. • For other electronic documents it may be possible to record the author from the associated metadata. • If a field is blank, no record will be generated.
Organisation	Text, 255	<ul style="list-style-type: none"> • Organisations are to be entered as they appear on the face of document. Abbreviations should not be used. • For hardcopy documents the organisation to which the document relates to. Where there are multiple persons and organisations involved, the organisations are to be listed in correspondence with a relevant person. • For electronic documents, unless otherwise extracted by the processing software this field will be left blank. • If there is a person but no discernible organisation, this field should be left blank

PAGES TABLE

FIELD NAME	DATA TYPE & MAXIMUM LENGTH	EXPLANATION
Document ID	Text, 21	Document ID in accordance with Schedule 1.



Image File Name	Text, 11	<ul style="list-style-type: none"> Where PDF files are created for each hardcopy document, or converted native file the full name of the PDF file, including the file extension e.g. SSS.BBB.FFF.NNNN.pdf Where native files are exchanged, the full name of the native file, including the file extension e.g. SSS.BBB.FFF.NNNN.xls. Where there is a conflict in the naming of the native file with the PDF or the TXT version the document extension will be prefixed with ".Native" e.g. the file will be named SSS.BBB.FFF.NNNN.Native.TXT Text file which contains the extracted text will be SSS.BBB.FFF.NNNN.txt and will be provided for each file.
Page Label	Text, 8	<ul style="list-style-type: none"> This will 'Native' for documents extracted in Native format (e.g. Excel) or 'PDF' for documents rendered to PDF. For the extracted text file this will be "Text". If a placeholder is provided it will be "PDF" and the native file be 'Native'.
Page Number	Number	This is a sequencing number.
Num_pages	Number	This is the number of pages in the document

EXPORT EXTRAS TABLE

FIELD NAME	DATA TYPE & MAXIMUM LENGTH	EXPLANATION
Document ID	Text, 21	Document ID in accordance with Schedule 1.
The Category	Text, 50	BOOL, DATE, NUMB, TEXT, MEMO or PICK
The Label	Text, 255	The name of the field
The Value	Text, 255	Field value for that document
*memoValue	Memo	Data not mandatory, the actual data in memo form

An entry must be made in the Export_Extras table for the following fields for each document where they contain data:



LABEL	DATA TYPE & MAXIMUM LENGTH	CATEGORY
Redacted	This field identifies whether document has been redacted or not. The permissible entries in this field are "Yes" or NULL	BOOL
Reason for Redaction	This field identifies the reason a Redacted document has been redacted. Permissible entries are "LPP", "WPP" or "PII".	PICK
Privileged	This field identifies whether a claim of privilege is made over the document. The permissible entries in this field are "Yes", "No" or "Part" (for partly privileged documents).	PICK
Basis of Privilege	Description of the basis on which privilege is claimed: <ul style="list-style-type: none"> • Legal Professional Privilege • Privilege, Without Prejudice • Privilege, Public Interest Immunity Permissible entries are "LPP", "WPP", and "PII".	PICK
Confidential	This field identifies whether a claim of confidentiality is made over the document. The permissible entries in this field are "Yes", "No" or "Part" (for claims for part of a document).	PICK
Document Date and Time	Required for Emails only. This field provides the time alongside the date in the format dd-MMM-yyyy HH:mm:ss(bias) e.g. 23-OCT-2015 13:54:23 +1000	TEXT



Schedule 5 – Document Type List

Document Type List
As applicable to Hard Copy documents only

Document Type	Description
Advice	Counsel's Opinion, Memorandum of Advice
Agreement/contract	All Documents that have been entered into with two or more parties, i.e. agreements, contracts, deeds, draft term sheets, final term sheets, guarantees, licences, draft agreements/ deeds or proposals, trust deed, deeds of variation, deeds of covenant and mortgages.
Annual Report	A comprehensive report on a company's activities throughout the preceding year and should have "Annual Report" in the title.
Article	Journal article, internet article
'As Built'	'As Built' plans of power infrastructure
Board Papers	An internal Document which facilitates communication between management and the Board. May include agenda item, minutes of previous meeting, major correspondence, CEO's reports, financial Documents, operational updates, executive summary/overview, background, Issues, recommendations etc.
Court Document	Any Document filed in this Proceeding, or prepared by the court, including transcripts.
Diagram/drawing/plan	Includes architectural plans, sketches or drawings, maps, charts, graphs, organisational charts, flow charts, and schematic diagrams.
Email	Electronic mail which may have attachments.
File Note	Usually contains 'File Note' in the title but can also apply to internal Documents that are hand written or typed notes, post-it notes and compliment slips.
Financial Record	A financial report, including draft reports and trial balances, cheques statements, invoices, accounts, cheque vouchers, cheque requisitions, receipts, purchase orders, quotations, general ledgers, bank statements, trial balances, balance sheets and profit and loss statements.
Form	A document that requires another party to fill in certain fields e.g. survey, questionnaires, application forms and timesheets and that do not fall under any other category.
Invoice – Statement	Tax Invoices, Invoice of Account, Bank Statements etc.



Document Type	Description
Letter	A letter or facsimile (including fax coversheet and facsimile transmission report) which may have attachments.
List	Checklists, list of names, addresses, indexes etc.
Manual	Includes any manuals, guides, rules, regulations or protocols.
Map	A hand drawn or electronically produced map.
Memorandum	Typed or handwritten memorandum, diary note or note.
Minutes /Agendas	Includes all minutes of meetings and/or agendas, i.e. board meetings, committee meetings and council meetings.
Other	Documents which do not fall in to any other category. Classification only to be used after the parties have endeavoured to agree on a new Document type.
Policy/Procedure/Standard/Workflow	Policy and procedure documents
Photograph	Includes screen shots.
Position Description	Position Descriptions of inspectors and persons who undertook tree clearance work
Report	Document reporting on the outcome of an investigation or a summary/consolidation of data. Includes expert reports. Includes Annual Vegetation Reports and Customer Vegetation Reports. Does not include Annual (Company) Reports.
Spreadsheet	Tables, computer printouts. Any table/spreadsheets containing financial information should be classified as 'Financial Documents'.
Statement	Statutory declarations, Witness Statements (from prior proceedings and for the purposes of discovery.
Training Manuals	Training Manuals related to the work of the inspectors and persons who undertook tree clearance work.



Schedule 6 – Concordance.dat / Relativity Load file Format

The following fields should be included in the Relativity/Concordance.dat load file:

- Document ID
- Parent ID
- Group ID / BEGIN FAMILY
- Page Count
- Document Type
- Document Date
- Document Date with Time
- Title / Filename
- To [parties delimited by a semicolon, organisations to be listed within ‘[]’ brackets]
- From [parties delimited by a semicolon, organisations to be listed within ‘[]’ brackets]
- CC [parties delimited by a semicolon, organisations to be listed within ‘[]’ brackets]
- BCC [parties delimited by a semicolon, organisations to be listed within ‘[]’ brackets]
- Privileged
- Privilege Basis
- Confidential
- Redacted
- Redaction Reason
- Native Path [relative path to the native file, including filename and extension]
- Image Path [required only if images are provided in PDF format. Relative path to the PDF file, including filename and extension]
- Text Path [relative path to the text file, including filename and extension]