
Maurice Blackburn Lawyers

Kilmore East - Kinglake & Murrindindi - Marysville Black Saturday Class Action Settlement Administrations: Final report

2018



The purpose of this report is to provide group members and the Court with information about the final outcome for the assessment of claims and the distribution of compensation in the Kilmore East - Kinglake & Murrindindi - Marysville Black Saturday Class Actions.

An administration of class action settlements of this size had never before been undertaken in Australia. Many of the processes and systems were designed from the ground up to cater for the uniqueness of these settlement administrations.

This report contains important information about the outcome of the settlement administrations, detailing and analysing final review rates, payment and recovery rates and settlement administration costs.

At the time of publication of this report, distribution of compensation for personal injury and dependency claims and ELPD claims was substantially complete, with the primary outstanding issue to be resolved being the taxation dispute between the Scheme Administrator and the Australian Tax Office ('ATO'). This dispute remains ongoing and we are working closely with our taxation advisors and the ATO to resolve this issue.

A Glossary of Key Terms is provided on page 76 of this report.

The costs associated with the preparation of this report, the Deloitte report and the ALCG report regarding comparative costs have been borne by Maurice Blackburn.



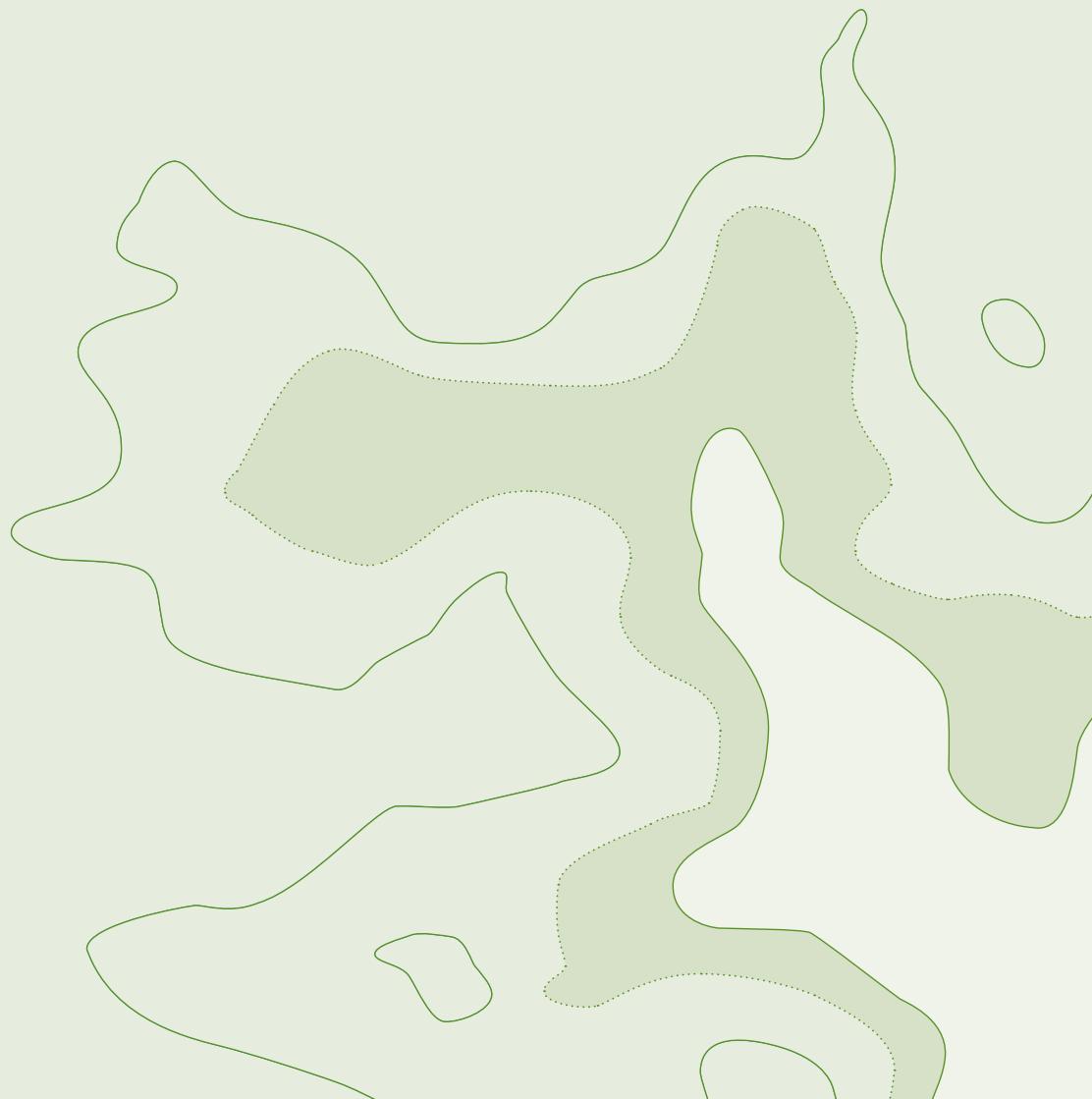
Contents

SECTION A - Overview	6	SECTION F - Communication with Group Members	68
The Kilmore East - Kinglake Bushfire Class Action	7	Individual communication	69
The Murrindindi - Marysville Bushfire Class Action	8	Group correspondence	70
The Settlement Distribution Schemes	8	Reporting affidavits	71
Registered claims	9		
SECTION B - Oversight of the Settlement Administrations	10	SECTION G - Taxation	72
The role of the Supreme Court of Victoria	11	Background to the issue	73
The Scheme Administrator & the SDS Team	16	Effect on distribution	73
KPMG	17	Progress of the issue	73
Independent assessors & review assessors	18		
The Settlement Distribution Coordinator	19		
The Special Referee for Costs	20		
SECTION C - Personal Injury & Dependency Claims	22	SECTION H - Summary	74
Overview	23		
The assessment process	23		
Interim payments	32		
Review rate	32		
The settlement distribution	33		
Analysis of the compensation paid	34		
Costs	39		
SECTION D - Economic Loss & Property Damage Claims	42	GLOSSARY - Glossary of Key Terms	76
Overview	43		
The assessment process	44		
Interim payments	50		
Review rate	50		
The settlement distribution	51		
Analysis of the compensation paid	52		
Costs	62		
SECTION E - Economic Impact of Compensation on Selected Bushfire-affected Communities	64		

Section A

Overview

This section provides an overview of the claims made in the Kilmore East - Kinglake & Murrindindi - Marysville Black Saturday Class Actions, as well as the court approved settlements of each of these actions.



The Kilmore East - Kinglake Bushfire Class Action

The claim

In the Kilmore East - Kinglake Bushfire Class Action (**Kilmore Class Action**), the Lead Plaintiff, Carol Matthews, brought a claim for compensation on behalf of herself and more than 5,000 registered group members, for the loss and damages they suffered as a result of the Black Saturday Kilmore East - Kinglake bushfire.

The Defendants in this action were Ausnet Electricity Services Pty Ltd (formerly SPI Electricity), Utility Asset Management (UAM), and the **State Parties**: the Secretary to the Department of Environment and Primary Industries, the Country Fire Authority and the State of Victoria.

A 16-month trial began in March 2013 and concluded in June 2014. It remains the largest civil trial ever conducted in the Supreme Court of Victoria to date.

The court-approved settlement

After the conclusion of evidence and submissions in the trial, but before any decision was handed down by the Court, the plaintiff and the defendants agreed on terms for a settlement of the class action for the sum of \$494,666,667.00.

At the time that the settlement agreement was reached, the settlement amount was estimated to be lower than the value of the total losses suffered by the claimants in this class action. At the time of settlement it was estimated, based on statistical modelling, that claimants stood to recover approximately 70% of assessed losses for personal injury and dependency claims and approximately 30% of assessed losses for ELPD. These percentages are referred to as 'recovery rates'. Final recovery rates could only be calculated once the claims of all claimants had been assessed.

The decision to settle for less than the full value of the total losses suffered by the claimants was based on the plaintiff's lawyers' opinions that the settlement amount offered by the defendants was fair, just and reasonable and that it was in the interests of the claimant group as a whole for the settlement to be reached rather than to risk waiting for judgment on the trial which could have resulted in an all or nothing outcome for claimants.

Claimants in the class action were able to object to the proposed settlement and several pursued objections to the proposed settlement amount. Ultimately, Justice Osborn of the Supreme Court of Victoria rejected those objections and held the settlement amount to be fair, just and reasonable for the claimant group as a whole, in light of the risk that the claim against the defendants could wholly fail and group members could receive nothing.

The settlement was approved by Justice Osborn of the Supreme Court of Victoria on 23 December 2014. Under the terms of the settlement, the settlement sum was split into two funds:

- 1) The personal injuries fund; and
- 2) The property damage fund.

The personal injuries fund was only to be shared among registered personal injury and dependency claimants, whilst the property damage fund was only to be shared among registered ELPD claimants. Individual losses for each claimant thus had to be assessed and compensation was awarded by reference to the sum '*total losses x recovery rate*'.

As part of the settlement approval process, Justice Osborn also approved the Settlement Distribution Scheme (**the SDS**). The SDS is discussed below.

The Murrindindi - Marysville Bushfire Class Action

The claim

In the Murrindindi - Marysville Bushfire Class Action (**Murrindindi Class Action**), the lead Plaintiff, Dr Katherine Rowe, brought a claim for compensation on behalf of herself and more than 2,000 group members, for the loss and damages they suffered as a result of the Black Saturday Murrindindi - Marysville bushfire.

The Defendants in this action were AusNet Electricity Services (formerly SPI Electricity), UAM, and the State Parties and a trial was scheduled to begin on 4 February 2015.

The court-approved settlement

Prior to commencement of the trial, the plaintiff and the defendants agreed on terms for a settlement of the class action for the sum of \$300,000,000.00.

At the time of settlement it was estimated, based on statistical modelling, that claimants stood to recover approximately 70% of assessed losses for personal injury and dependency claims and approximately 60% of assessed losses for ELPD claims.

The decision to settle for less than the full value of the total losses suffered by the claimants was based on the plaintiff's lawyers' opinions that the settlement amount offered by the defendants was fair, just and reasonable and that it was in the interests of the claimant group as a whole for the settlement to be reached rather than to risk pursuing a trial all the way until judgment which could have involved the incurring of significant legal costs and resulted in an all or nothing outcome for claimants.

Claimants to the class action were able to object to the proposed settlement and several pursued objections to the proposed settlement amount. Ultimately, Justice Emerton of the Supreme Court of Victoria rejected those objections and held the settlement amount to be fair, just and reasonable for the claimant group as a whole, in light of the risk that the claim against the defendants could wholly fail and group members could receive nothing.

The settlement was approved by Justice Emerton of the Supreme Court of Victoria on 27 May 2015. Under the terms of the settlement, the settlement sum was split into two funds:

- 1) The personal injuries fund; and
- 2) The property damage fund.

The personal injuries fund was only to be shared among registered personal injury and dependency claimants, whilst the property damage fund was only to be shared among registered ELPD claimants. Individual losses by each claimant thus had to be assessed and compensation was awarded by reference to the sum '*total losses x recovery rate*'.

The Settlement Distribution Schemes

Court approval of the Settlement Distribution Schemes

As part of the settlement approval process in each of the Kilmore East - Kinglake and the Murrindindi - Marysville Bushfire Class Actions, the Court also specifically considered and approved a proposed Settlement Distribution Scheme (**the SDS**).

The SDS established the assessment process by which all group member claims were required to be individually assessed. The assessment process established by the SDS in each of the Kilmore and Murrindindi Class Actions were substantially identical. This allowed the two settlement administrations to be conducted simultaneously, permitting economies of scale and efficiencies to be built into the assessment process.

The settlement sums under the SDS

In accordance with the SDS, the settlement sum in each action was invested for the duration of the assessment process, with the interest earned being used to offset assessment costs. Following the completion of the assessment process, the settlement sum was split into two funds; the personal injury and dependency settlement fund and the ELPD settlement fund.

The personal injury and dependency settlement fund was required to be divided amongst registered personal injury and dependency group members, by reference to the assessed value of each individual group member claim for personal injury and dependency losses and the final rate of recovery for personal injury and dependency claimants.

The ELPD settlement fund was required to be divided amongst registered ELPD group members, by reference to the assessed value of each individual group member claim for ELPD losses and the final rate of recovery for ELPD claimants.

At the time that the settlement was approved, claimants' losses had not been assessed. However, prior to the settlements being reached, it was estimated that the total claimant losses would be greater than the settlement amounts. As a result, all claims had to be assessed prior to distributing compensation, because how much compensation each claimant received turned on the 'recovery rate', which could not be established until all claims had been assessed and each claimant's pro-rata entitlement had been calculated.

Registered Claims

Kilmore Class Action

In the Kilmore Class Action the total number of claims were:

- a) **1,905** personal injury and dependency claims; and
- b) **9,174** economic loss and property damage claims.

Murrindindi Class Action

In the Murrindindi Class Action the total number of claims were:

- a) **425** personal injury and dependency claims; and
- b) **2,479** economic loss and property damage claims.

Combined Total

Across both class actions the total number of claims were 13,983 claims comprising:

- a) **2,330** personal injury and dependency claims; and
- b) **11,653** economic loss and property damage claims.

By way of comparison, it is worth considering the statistical reporting of civil claims in the County Court of Victoria and the Supreme Court of Victoria.

The County Court published a note on its website showing the number of civil claims commenced from 1997 until 2012.¹ That note confirms that the number of civil claims commenced in the County Court in the decade up to 2012 was approximately 6,143 per year.

The Supreme Court tabled its Annual Report for 2014 - 2015² in Parliament on 8 December 2016 which details that during the 12 month period of the report, there were 2,619 cases commenced in the Common Law Trial Division.

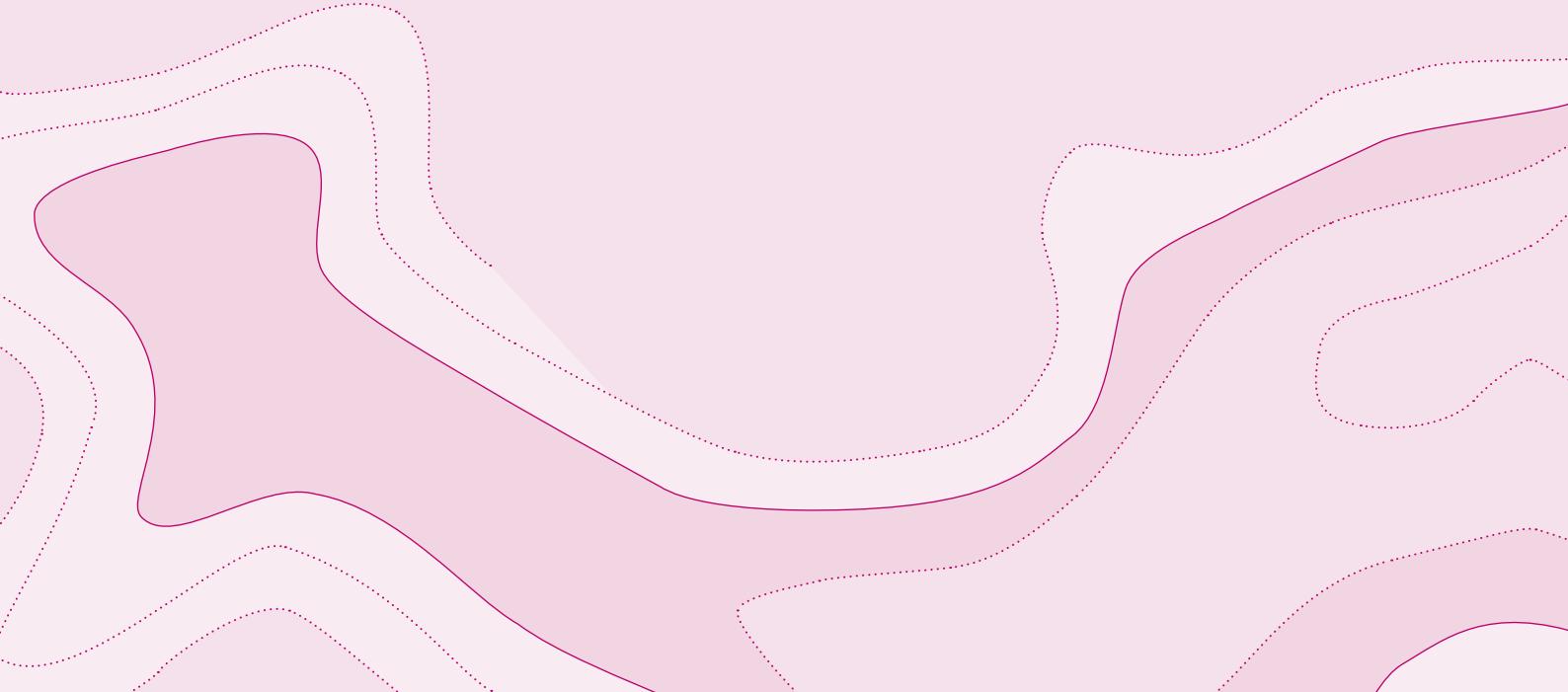
Hence, the combined total number of claims across both Kilmore and Murrindindi represented more than double the number of claims usually commenced in the County Court in a given year, and approximately five times the number of cases commenced in the Common Law Trial Division of the Supreme Court of Victoria in the financial year 1 July 2014 to 30 June 2015.

1 <https://www.countycourt.vic.gov.au/court-performance>

2 <https://www.supremecourt.vic.gov.au/about-the-court/annual-reports/supreme-court-of-victoria-2014-15-annual-report>

Section B

Oversight of the Settlement Administrations



The role of the Supreme Court of Victoria

Under the court-approved SDS, the Supreme Court of Victoria retained responsibility for supervising the settlement administration process in both the Kilmore and Murrindindi Class Actions. Specifically:

- a) Under section I of the SDS, the Supreme Court of Victoria was responsible for the approval of all costs and disbursements incurred by the Scheme Administrator.
- b) Under section J of the SDS, the Supreme Court of Victoria had the power to make directions where the implementation of the Scheme was wanting or an issue arose in connection with the administration of the Scheme.
- c) Under section H of the SDS the Senior Masters Office (now called 'Funds in Court') of the Supreme Court of Victoria was responsible for the supervision and approval of all claims for persons under a legal disability.

Pursuant to Section 33V of the Supreme Court of Victoria Act, following settlement approval the Court was also vested with the power to make such orders as it deemed fit with respect to the distribution of any money, including interest, paid under the settlement.

The Kilmore and Murrindindi Class Action settlement administrations were overseen by Justice Forrest and Justice Dixon of the Supreme Court of Victoria respectively, who had been the judges responsible for the actions prior to settlement. Justice Dixon will oversee both the Kilmore and Murrindindi Class Action settlement administrations after Justice Forrest's retirement in March 2018.

After settlement approval, the Court held a series of case management conferences (CMCs) to facilitate its oversight and supervision of both the Kilmore and Murrindindi Class Action settlement administrations. In advance of each of these CMCs, the Scheme Administrator filed detailed affidavits:

- a) Updating the Court on the progress of the personal injury and dependency and the ELPD settlement administrations, including advising the Court of the number of assessments completed and/or underway and providing estimations on the pro-rata recovery rate of personal injury and dependency and ELPD claims;
- b) Detailing the work performed by the Scheme Administrator and the SDS team including the establishment of processes and mechanisms to deal with issues that arose;
- c) Providing the Court with updates in relation to group member communications;
- d) Providing the Court with information about the costs of the settlement administration and seeking approval for the costs of the Scheme Administrator, including disbursements;
- e) Providing the Court with an update in relation to taxation issues affecting the settlement administration;
- f) Applying to the Court for directions in relation to the conduct of the SDS and amendments to the SDS, as the need arose.

The Scheme Administrator also attended the CMCs with members of the SDS team to provide an oral update to the Court and respond to the Court's questions regarding issues raised in the affidavit or any other issue about the progress of the settlement administration that concerned or was of interest to the Court. The dates of the CMCs and the material submitted in preparation of them are detailed on the next page.

Kilmore Class Action

The Court held CMCs to facilitate its oversight of the Kilmore Class Action settlement distribution process on the following dates:

- a) 15 April 2015; h) 30 November 2016;
- b) 19 June 2015; i) 30 January 2017;
- c) 20 October 2015; j) 21 February 2017;
- d) 31 March 2016; k) 30 March 2017;
- e) 21 June 2016; l) 9 June 2017; and
- f) 19 September 2016; m) 20 March 2018.
- g) 14 November 2016;

Reporting affidavits

The affidavits that were filed in advance of these CMCs include:

- a) Affidavit of Andrew John Watson dated 13 April 2015;
- b) Affidavit of Rory John Walsh dated 17 June 2015;
- c) Affidavit of Andrew John Watson dated 9 October 2015;
- d) Affidavit of Andrew John Watson dated 25 February 2016;
- e) Affidavit of Andrew John Watson dated 18 March 2016;
- f) Affidavit of Andrew John Watson dated 17 June 2016;
- g) Affidavit of Andrew John Watson dated 7 September 2016;
- h) Affidavit of Andrew John Watson dated 31 October 2016;
- i) Affidavit of Andrew John Watson dated 29 November 2016;
- j) Affidavit of Brooke Wendy Dellavedova dated 23 January 2017;
- k) Affidavit of Andrew John Watson dated 28 February 2017;
- l) Affidavit of Andrew John Watson dated 25 May 2017;
- m) 1 September 2017;
- n) 1 March 2018; and
- o) 9 March 2018.

Copies of these affidavits were published on the Supreme Court of Victoria website.³

Murrindindi Class Action

The Court held CMCs to facilitate its oversight of the Murrindindi Class Action settlement distribution process on the following dates:

- a) 25 June 2015; g) 30 January 2017;
- b) 23 March 2016; h) 21 February 2017;
- c) 21 June 2016; i) 6 March 2017; and
- d) 19 September 2016; j) 20 March 2018.
- e) 14 November 2016;
- f) 30 November 2016;

Reporting affidavits

The affidavits that were filed in advance of these CMCs include:

- a) Affidavit of Brooke Wendy Dellavedova dated 25 June 2015;
- b) Affidavit of Andrew John Watson dated 16 March 2016;
- c) Affidavit of Andrew John Watson dated 16 June 2016;
- d) Affidavit of Andrew John Watson sworn on 12 September 2016;
- e) Affidavit of Andrew Watson dated 31 October 2016;
- f) Affidavit of Andrew John Watson dated 11 November 2016;
- g) Affidavit of Andrew John Watson dated 29 November 2016;
- h) Affidavit of Brooke Wendy Dellavedova dated 24 January 2017;
- i) Affidavit of Andrew John Watson dated 28 February 2017;
- j) Affidavit of Andrew John Watson dated 6 June 2017; and
- k) Affidavit of Andrew John Watson dated 1 March 2018.

Copies of these affidavits were published on the Supreme Court of Victoria website.

Contact with group members

Over the course of the settlement administrations the Court also undertook an informal role of receiving and responding to group member correspondence and submissions.

3 The Supreme Court of Victoria's website includes a Class Action portal which publishes relevant material on current class actions. Throughout the Settlement Administration for both the Kilmore and Murrindindi class actions, the Court published various relevant documentation, such that it could be accessed by group members and interested parties. As at the time of publication of this document, the portal can be located at the following link: <https://www.supremecourt.vic.gov.au/law-and-practice/class-actions>.

Rulings and orders delivered by the Court

The Court delivered a number of rulings and orders in relation to the settlement administrations following the CMCs and in response to such correspondence and submissions. These are described in the box opposite.

Rulings in Kilmore Class Action Settlement Administration

The following rulings were delivered in relation to the Kilmore class action settlement administration:

- 1) On 4 May 2015, the Court handed down a ruling outlining the assessment process, the role of the Court and the role of the Scheme Administrator under the SDS. The ruling also canvassed the progress which had been made as at that time in advancing the settlement administration and approved settlement administration costs.
- 2) On 19 April 2016, the Court handed down a ruling documenting the progress of the settlement administration and appointing Mr Wilson QC as Settlement Distribution Scheme Co-Ordinator to monitor the progress of the settlement administration. Prior to Mr Wilson's appointment, this role was informally undertaken by Mr Keogh SC (as he then was). Mr Wilson's appointment was necessary following Mr Keogh's appointment as a Justice of the Supreme Court of Victoria. The ruling also amended the SDS to allow the appointment of experienced personal injury solicitors as independent assessors under the SDS.
- 3) On 15 July 2016, the Court handed down a ruling in which the Court documented the progress of the settlement administration and articulated its satisfaction that the settlement administration was being conducted in a manner which sought to minimise delay whilst ensuring that the assessment process was fair. The Court also declined to ask the Scheme Administrator to consider making a widespread interim distribution.
- 4) On 29 September 2016, the Court handed down a ruling documenting the progress of the settlement administration, endorsing the appointment of KPMG as an independent expert, declining to interfere in the assessment of a particular group member's claim and allowing the SDS to be amended to allow assessments to be corrected.
- 5) On 7 December 2016, the Court handed down a ruling documenting the progress of the settlement administration, approving settlement administration

costs, adopting the Special Referee for Costs' report and allowing the Scheme Administrator to withhold the full amount of the potential taxation liability on the settlement sum. The ruling also noted that the Court was satisfied that the settlement administration had been conducted both reasonably and efficiently in terms of both time and cost.

- 6) On 11 April 2017, the Court handed down a ruling documenting the progress of the settlement administration, approving settlement administration costs, adopting the Special Referee for Costs' report and expressing the view that the Scheme Administrator had acted appropriately in respect of the taxation issues affecting the settlement administration. The Court also endorsed as prudent the quarantining of an amount of \$750,000 from the ELPD settlement distribution as a contingency fund to deal with potential errors in the settlement distribution.
- 7) On 22 June 2017, the Court handed down a ruling documenting the progress of the settlement administration, approving settlement administration costs and allowing for the KPMG expert witness for another KPMG employee subsequent to a staffing change at KPMG.

These rulings were published on the Supreme Court of Victoria website.

The Court also issued a number of orders approving settlement administration costs following receipt of Mr White's reports and formally adopting Mr White's reports. The role of Mr White is discussed further below. These orders were published on the Supreme Court of Victoria website.

Rulings in Murrindindi Class Action Settlement Administration

The following rulings were delivered in relation to the Murrindindi class action settlement administration:

- 1) On 19 April 2016, the Court handed down a ruling documenting the progress of the settlement administration, allowing for the appointment of Senior Counsel to monitor the progress of the settlement administration and amending the SDS to allow the appointment of experienced personal injury solicitors as independent assessors under the SDS.
- 2) On 26 July 2016, the Court handed down a ruling in which it expressed its satisfaction with the Scheme Administrator's efforts to ensure that the settlement administration was being conducted so as to minimise expense and delay and ensure that the SDS was fairly administered. The ruling also noted its appointment of the Special Referee for Costs, accepting the methodology of the Special Referee and accepting his evidence that settlement administration costs incurred to 30 April 2016 were reasonable.
- 3) On 29 September 2016, the Court handed down a ruling documenting the progress of the settlement administration, allowing the SDS to be amended to permit assessments to be corrected and endorsing the appointment KPMG as an independent expert to examine and audit the assessment data.
- 4) On 7 December 2016, the Court handed down a ruling documenting the progress of the settlement administration, documenting the evidence of the Special Referee for Costs and adopting his reports in full. The ruling also approved the transfer of funds from the Murrindindi settlement administration to the Kilmore settlement administration to fairly distribute overhead expenses as between the two settlement administrations.

These rulings were published on the Supreme Court of Victoria website.

The Court also issued a number of Orders approving the costs of administering the SDS following receipt of Mr White's reports. The role of Mr White is discussed further below. These Orders were published on the Supreme Court of Victoria website.

Supreme Court Media Release

On 7 December 2016, the Supreme Court of Victoria issued a media release in anticipation of the Kilmore and Murrindindi personal injury and dependency settlement distributions occurring. In this media release, the Supreme Court noted that the Kilmore and Murrindindi settlement administrations had been highly complex and multi-faceted and that the Court had endeavoured to ensure that the process was as practical, efficient and accessible as possible. The media release included the following comments about the settlement administrations:

"This demonstrates that the class action process works," Justice Forrest said. "It shows that when it is properly managed, many substantially disadvantaged and affected people can recover compensation that they would otherwise not have been able to obtain."

"This has been an unprecedented settlement administration in tort class action," Justice Forrest said. Each claim for damages in these cases had to be individually assessed.

Justice Forrest also said that if these two major class actions had not settled, the Court would have needed to hear and determine thousands of claims - a process that may have lasted years.

The Scheme Administrator & the Settlement Distribution Scheme Team

As part of the orders approving the Kilmore and Murrindindi Class Action settlements, on 23 December 2014 and 27 May 2015, Andrew Watson, Maurice Blackburn Principal, was appointed as the Scheme Administrator in each of the Kilmore and Murrindindi settlement administrations respectively.

The Scheme Administrator was vested with the following powers under the court-approved SDS:

- 1) The discretion to allow late registrants to participate in the Scheme (Section A7.1);
- 2) The discretion to extend time for compliance with any deadline under the Scheme (Section A7.4);
- 3) The discretion to waive any costs associated with a personal injury review (Section C8);
- 4) The discretion to make interim distributions to personal injury claimants (Section D);
- 5) The discretion to waive any costs associated with an ELPD review (Section E7); and
- 6) The discretion to make interim distributions to ELPD claimants (Section F1).

The Scheme Administrator was also charged with a general responsibility to administer the SDS fairly and in accordance with its terms. In so doing, the SDS allowed the Scheme Administrator to delegate the functions necessary to perform the efficient implementation of the SDS to Maurice Blackburn staff members (**the SDS team**).

In order to reduce settlement administration costs, the SDS team was composed of a large number of paralegals who were supervised by a much smaller team of solicitors. The vast majority of communication with claimants was able to be handled and responded to by paralegals in the SDS team, with enquiries escalated to lawyers in the SDS team where necessary.

KPMG

In recognition of the complexity of the assessment process and in the process of capturing the assessment data, in late 2016 the Scheme Administrator retained KPMG to act as an independent expert in both the Kilmore and Murrindindi Class Actions settlement administrations. Pursuant to the terms of this retainer, KPMG were asked to:

- 1) Review and confirm that the assessment data recorded in Maurice Blackburn's database accurately reflected the assessment amount in each registered group member's assessment as contained in his or her Notice of Assessment or Review Assessment (where applicable);
- 2) Review all deductions applicable to registered group members and confirm that they had been accurately recorded in Maurice Blackburn's database;
- 3) Review all additions (interest earned) and deductions (approved costs and tax liability) to the settlement funds and confirm that they had been accurately recorded against the settlement funds; and
- 4) Review and confirm the accuracy of the pro rata calculation and the calculation of each registered group member's entitlement to compensation and in-hand payment.

The Scheme Administrator reported KPMG's appointment and the reasons for such appointment to the Court, with Justices Forrest and Dixon both endorsing such appointment. Following the settlement distribution, KPMG prepared an expert report on the personal injury and dependency settlement administration and an expert report on the ELPD settlement administration. These reports have been filed with the Supreme Court of Victoria and subsequently published on the class actions portal.

As discussed in more detail below KPMG found that the Schemes had been administered such that claimants received the appropriate pro rata amount by reference to their assessed losses together with appropriate deductions and additions.

Independent assessors & review assessors

Independent assessors of personal injury and dependency claims

Under the SDS, personal injury and dependency claims were required to be assessed by independent assessors appointed under the SDS. The SDS initially required that such assessors be independent barristers specialising in the personal injury jurisdiction. In early 2016, in order to increase the volume and speed of personal injury and dependency assessments being conducted, the SDS was amended to allow the appointment of experienced personal injury solicitors as independent assessors. Under section C4 of the SDS the independent assessors were required to review relevant materials, confer with personal injury and dependency claimants and evaluate claims according to the laws of Victoria.

Personal Injury Review Assessors

The SDS provided two mechanisms for claimants to request a review of their personal injury or dependency assessment.

a) Threshold Personal Injury Review Assessors:

Where a personal injury or dependency claimant sought a threshold review of the assessment of his or her claim within the prescribed timeframe under the SDS, the request for review was required to be referred for medico-legal assessment by a Medico-Legal Assessor. The SDS required that after receipt of any medico-legal assessment, where the medico-legal assessment confirmed the original Assessor's determination that a Statutory Impairment Damages Threshold had not been reached, written notice was to be given to the Claimant that the original Assessment is confirmed. However, where the Medico-Legal Assessor determined that the Threshold had been met, the medico-legal assessment was to be provided to the original Assessor for re-assessment. The re-assessment was then to be treated as the original Assessment.

b) Other Personal Injury Review Assessors:

Where a personal injury or dependency claimant sought a review of the assessment of his or her claim (other than a Threshold review) within the prescribed timeframe under the SDS, the request for review was required to be referred to an independent personal injury and dependency review assessor for determination. The SDS required that these assessors be Senior Counsel at the Victorian Bar. Under section C7 of the SDS the review assessor was required to review relevant materials including the original Notice of Assessment and could confer with the claimant and/or refer the claimant to a medico-legal specialist for assessment. Under the SDS, the decision of the review assessor was final and binding upon the claimant and Scheme Administrator.

ELPD Independent Assessors

Under the SDS, ELPD claims were required to be assessed by independent assessors appointed under the SDS. The ELPD Assessors appointed under the SDS were independent experienced insurance loss adjusters, barristers and solicitor firms experienced at assessing property damage and economic loss claims. Under sections E3 and E4 of the SDS the ELPD assessors were required to review relevant materials and evaluate the claims in accordance with Schedule A of the SDS and otherwise in accordance with the laws of Victoria.

ELPD Review Assessors

The SDS provided a mechanism for claimants to request a review of their ELPD assessment. Where a claimant sought review of their claim within the prescribed timeframe under the SDS, the request for review was required to be referred to an independent ELPD review assessor. The SDS required that these assessors be a member of the Victorian Bar. Under section E6 of the SDS, the ELPD Review Assessor could require the claimant to attend an interview, submit further material or verify any matter by way of statutory declaration. The SDS also allowed the ELPD Review Assessor to consult with a senior ELPD valuer regarding the review assessment if necessary. Under the SDS, the decision of the ELPD Review Assessor was final and binding upon the claimant and Scheme Administrator.

The Settlement Distribution Coordinator

On 19 April 2016 by order of the Court in both the Kilmore and Murrindindi settlement administrations, Mr Michael Wilson QC was appointed as the Settlement Distribution Scheme Coordinator. The Settlement Distribution Coordinator was vested by the Court with responsibility to supervise the assessment process, liaise with the Court and the Scheme Administrator in relation to any issues, coordinate the tasks of the assessors and ensure that there was a consistency of approach as between assessors.

Prior to Mr Wilson's appointment, this role was informally undertaken by Mr Keogh SC (as he then was). Mr Wilson's appointment was necessary following Mr Keogh's appointment as a justice of the Supreme Court of Victoria.

The Special Referee for Costs

In total, there were 13,983 claims which required assessment under the SDS. The average costs incurred in the assessment of each claim was \$3,816.22.

By Court Order made on 5 November 2015 in the Kilmore settlement administration and 6 May 2016 in the Murrindindi settlement administration, Mr John White was appointed by the Court as the independent Special Referee for Costs in each of the settlement administrations.

Pursuant to the Court Orders appointing him to this role, Mr White was required to review the costs incurred by the Scheme Administrator in administering the Scheme and to prepare written reports addressing the following questions:

- 1) Are the costs sought in relation to the administration of the Settlement Distribution Scheme reasonable?
- 2) If not, in what amount should the costs be disallowed?

In order to enable Mr White to undertake his functions for the Court, the Scheme Administrator and SDS team provided Mr White with the following materials:

- 1) Settlement Distribution Scheme;
- 2) Affidavits of the Scheme Administrator;
- 3) Orders and Rulings of the Court;
- 4) Itemised invoices of the Scheme Administrator; and
- 5) Other information regarding the conduct of the settlement administration and the settlement administration costs as requested from time to time by Mr White.

Mr White also conferred with the SDS team on numerous occasions and was provided with full access to Maurice Blackburn's electronic databases so as to be able to review and verify work pertaining to costs as noted in the settlement administration invoices.

Kilmore Class Action settlement administration

As at the time of writing this report, Mr White has discharged his function as the Court-appointed independent Special Referee for Costs through the provision of four expert reports in the Kilmore settlement administration. It is anticipated that further expert reports will be delivered by Mr White once the taxation issues in the settlement administrations have been resolved and the settlement administrations can be finally disposed of.

Mr White's first report dated 30 June 2016 concerned the costs and disbursements incurred for the period 14 July 2015 to 30 April 2016.

Mr White's second report dated 21 November 2016 concerned the costs and disbursements incurred for the period 1 May 2016 to 30 September 2016.

Mr White's third report dated 1 March 2017 concerned the costs and disbursements incurred for the period 1 October 2016 to 31 December 2016.

Mr White's fourth report dated 2 March 2018 concerned the costs and disbursements incurred for the period 1 January 2017 to 30 November 2017.

In each of the cost reports, Mr White found that costs and disbursements over the relevant period were reasonable. Copies of each report were published on the Supreme Court of Victoria website.

Murrindindi Class Action settlement administration

As at the time of writing this report, Mr White has discharged his function under these orders through the provision of four expert reports in the Murrindindi settlement administration. It is anticipated that a final expert report will be delivered by Mr White once the taxation issues in the settlement administrations have been resolved and the settlement administrations can be finally disposed of.

Mr White's first report dated 30 June 2016 concerned the costs and disbursements incurred for the period 13 February 2015 to 30 April 2016.

Mr White's second report dated 21 November 2016 concerned the costs and disbursements incurred for the period 1 May 2016 to 30 September 2016.

Mr White's third report dated 1 March 2017 concerned the costs and disbursements incurred for the period 1 October 2016 to 31 December 2016.

Mr White's fourth report dated 2 March 2018 concerned the costs and disbursements incurred for the period 1 January 2017 to 30 November 2017.

In each of the cost reports, Mr White found that costs and disbursements over the relevant period were reasonable. Copies of each report were published on the Supreme Court of Victoria website.

Oral evidence in the Kilmore and Murrindindi settlement administrations

In addition to his written reports, at the Court's request, on 14 November 2016 and 30 March 2017, Mr White attended Court and gave sworn evidence regarding the Kilmore and Murrindindi settlement administration costs and his conclusions as to their reasonableness. On these occasions, Mr White was questioned by Justice Forrest, Justice Dixon and registered group members in attendance at court.

On both occasions, Mr White gave evidence consistent with his written reports that in his opinion the settlement administration costs incurred in the conduct of both the Kilmore and Murrindindi settlement administrations were reasonable. In his oral evidence of 30 November 2016, Mr White further expressed his opinion that:

*"the Scheme was thoughtfully considered in the first place, implemented properly and accurately and efficiently; that as problems arose, they were expeditiously dealt with and there are not problems that I can see generally that would have been foreseen. I think they were problems that could only become evident in the course of the administration process. The other thing I will say too is I have been mightily impressed with the dedication of the file operators that I have met - and I have met a few of them [and] discussed matters with a few of them - and in those circumstances, as I have said, I am not certain that the whole of the process could have been tackled in any more of an efficient manner than it has been."*⁴

Analysis of costs incurred

The table below provides data regarding the average cost per claim in the settlement administrations:⁵

Average costs per claim

All Claims	\$3,248.71
Personal Injury and Dependency Claims	\$9,317.98
Economic Loss and Property Damage Claims	\$2,035.17

The costs associated with assessing Personal Injury and Dependency Claims are discussed in greater detail in Section C below. The costs associated with assessing Economic Loss and Property Damage Claims are discussed in greater detail in Section D below. However, key points to note regarding the assessment costs are:

- 1) The personal injury and dependency claim costs appear to be substantially lower than other comparable assessment costs;
- 2) The economic loss and property damage claim costs appear to be very low and substantially lower than the Horsham bushfire class action;⁶
- 3) The settlement administration costs (excluding tax) were wholly covered by the interest earned on settlement funds in the Kilmore Class Action and 97% covered by the interest earned on settlement funds in the Murrindindi Class Action;⁷ and
- 4) The Special Referee has to date approved as reasonable all costs of the Settlement Administrator which he has been asked to review, meaning that he has not disallowed any amount.

⁴ Matthews v Ausnet Electricity Services Pty Ltd and Rowe v Ausnet Electricity Services Pty Ltd (Supreme Court of Victoria, Forrest And Dixon JJ, S CI 2009 4788 and S CI 2012 4538, 29 November 2016) T43/30 -T44/25

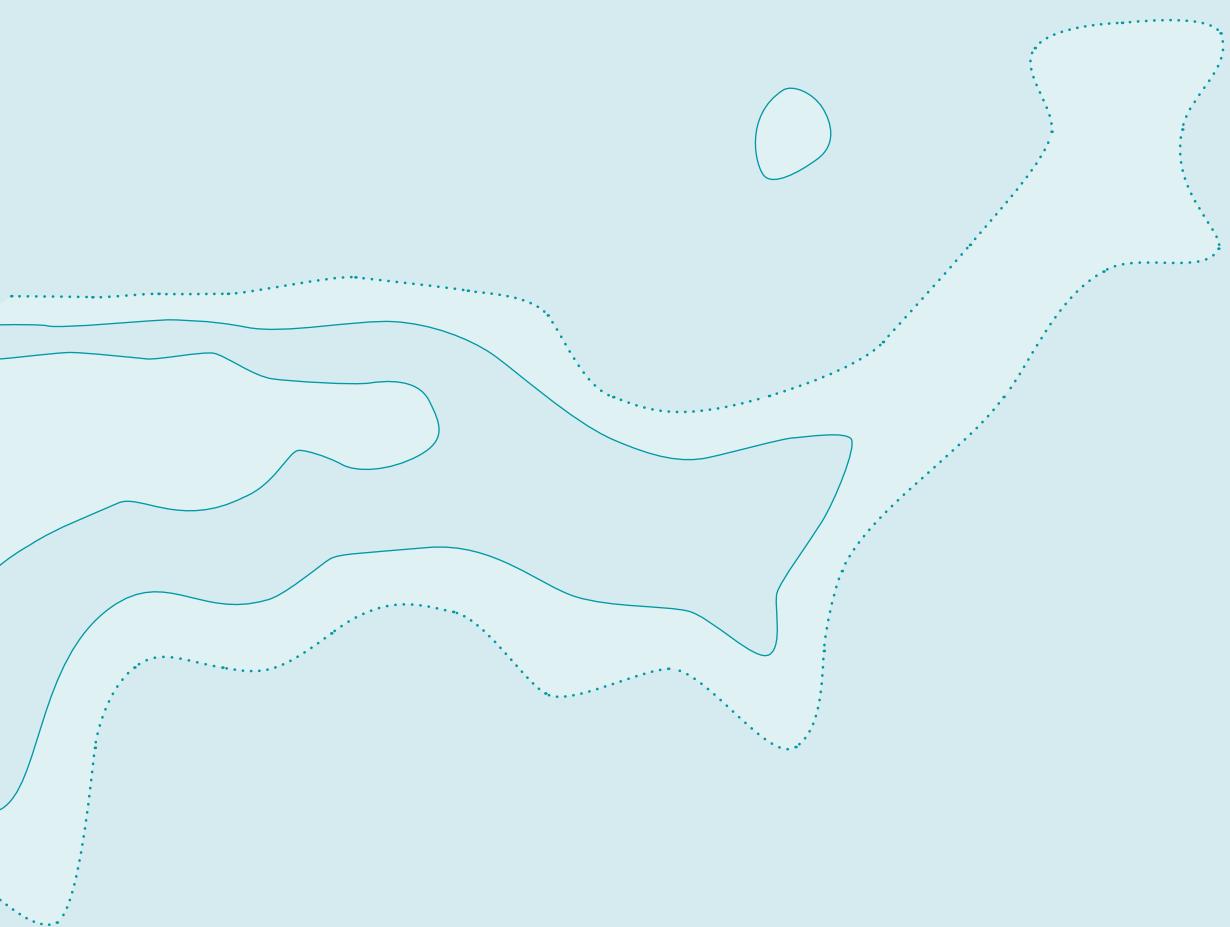
⁵ The figures included in the below table are accurate as at 28 February 2018. Note that work is still being undertaken in relation to the tax dispute and a small number of administrative matters, and thus modest costs continue to be incurred by the Scheme.

⁶ See page 62 of this Report for further information about this comparison.

⁷ The outcome of the tax litigation will likely impact upon the ratio of costs to interest. These figures are prepared exclusive of any amount which may be required to be paid in tax.

Section C

Personal Injury & Dependency Claims



Overview

This section provides an overview of the assessment process and settlement administration of the personal injury and dependency claims in the Kilmore East - Kinglake Black Saturday Class Action and the Murrindindi - Marysville Black Saturday Class Action.

The key facts of the personal injury & dependency settlement administrations are as follows:

- **2,330** claims were assessed;
- On average personal injury and dependency assessments were processed at a rate of **3.2** assessments per day;
- Almost **\$4 million** in interim payments were paid to over **130** personal injury and dependency claimants;
- The aggregate review rate of personal injury and dependency claims was **2.1%**; and
- The average cost per claim, including amounts paid to third parties to complete assessments was **\$9,317.98**.

Summary analysis of total compensation paid to personal injury and dependency claimants

	Kilmore Class Action	Murrindindi Class Action
Total paid out:	\$159,646,747.33	\$33,374,942.00
Recovery rate:	64.5%	63.6%
Number of claims paid:	1,482	314
Average payment per claim:	\$107,724.00	\$106,289.62
Payment range:	\$0.00 - \$2.9 million	\$0.00 - \$855,946.75

Claims assessment principles

Under the SDS, personal injury and dependency claims were required to be assessed in accordance with the laws of the State of Victoria.

The assessment process

Total number of claims assessed under the SDS

In total, there were 2,330 personal injury and dependency claims which required assessment under the SDS. This was comprised of:

- 1) 1905 claims registered in the Kilmore Class Action; and
 - 2) 425 claims registered in the Murrindindi Class Action.
- Of these 2,330 personal injury and dependency claimants:
- 1) 175 claimants were admitted as late registrants in the Kilmore Class Action, representing 9% of the final number of personal injury and dependency claims assessed in this action; and
 - 2) 35 claimants were admitted as late registrants in the Murrindindi Class Action, representing 8% of the final number of personal injury and dependency claims assessed in this action.

The vast majority of the personal injury and dependency claimants were making claims in respect of psychological injury or trauma associated with the bushfires. Many of these group members were suffering from post-traumatic stress disorder, with a significant number expressing suicidal and/or difficult behaviours such as aggression or communication difficulties as a result of their bushfire-related trauma. This posed unique challenges in the settlement administration, requiring specialised training and processes for supervising the SDS team and for appropriately responding to agitated or distressed claimants.

Claims assessment process

The court-approved claims assessment process for personal injury and dependency claims was set out in Section C of the SDS.

In summary, the SDS required that the following steps be undertaken in relation to each personal injury and dependency claim:

Step 1

Maurice Blackburn obtained information from personal injury and dependency claimants in relation to their claims. This included taking statements from claimants through a detailed telephone questionnaire and by compiling important materials relating to claimants' claims such as medical and taxation materials. These were then compiled into a **claim book** for each claimant and provided to the independent assessors appointed under the SDS.

Step 2

Independent assessors appointed under the SDS reviewed the claim books and met with each claimant to conduct an **assessment interview**.

Step 3

Following these interviews, the independent assessors produced a **formal assessment** in the form of a Notice of Assessment and Statement of Reasons in relation to each individual claimant.

Step 4

Maurice Blackburn **sent the assessments** to claimants together with **notice of their right to review the assessment** within 28 days of the date of the assessment.

Where a claimant lodged a **review** of his or her assessment within the 28 day period, the SDS required that:

- a) If the review related to a claimant who the independent assessor had determined did not meet the injury **threshold** to claim compensation for pain and suffering damages, the claimant was sent to a medico-legal specialist to have his or her injury assessed. If the medico-legal determined that the claimant met the relevant threshold, the claim was then sent back to the independent assessor so that their claim could be reassessed.
- b) If the review related to a claimant who was dissatisfied with the **quantum** or amount of compensation awarded by the independent assessor, the claimant was sent to a review assessment meeting with Senior Counsel who issued a review assessment.

The personal injury and dependency claims assessment process was detailed in full in the Personal Injury Information booklets sent to personal injury and dependency group members by Maurice Blackburn at the beginning of the settlement administration process.

Processes & systems adopted to reduce cost, increase assessment speed and maximise the compensation payable to claimants

An administration of a class action settlement scheme of this size had never been undertaken in Australia. Many of the processes and systems were designed from the ground up to cater for the uniqueness of this administration.

These processes and systems sought to balance:

- 1) the need to examine and assess each claim individually as required by the Court-approved SDS; with
- 2) a recognition of the very personal nature of the losses and the ongoing psychological trauma suffered by many of the claimants; and
- 3) the need for the assessment process to be completed efficiently and quickly so as to minimise settlement administration costs and ensure that claimants received compensation as soon as possible.

The SDS team sought to achieve this balance through the design and implementation of the following and other processes and systems:

Step 1

The assessment process commenced by claimants being required to complete an electronic survey which was directed towards obtaining their personal details, information regarding their injuries and medical treatment, interactions with statutory bodies and lost earnings. The survey then directed group members to sign and return relevant authorities to the SDS team. The use of an electronic survey process allowed this material to be gathered in a quick and efficient way.

Step 2

Claimants were then randomly selected in tranches of one hundred to undertake a detailed telephone questionnaire about their experience of Black Saturday, the injuries they suffered and the ongoing effects of such injuries. These questionnaires were used to identify what records and documents were required and to draft a detailed memorandum for inclusion in the claim book. The vast bulk of these questionnaires were conducted by a paralegal via telephone in order to minimise disruption to the claimants' lives and settlement administration costs.

Step 3

The SDS team then requested records and documents identified through the questionnaire process from various third parties, including the ATO, treating medical practitioners and third parties. In order to minimise the time and cost associated with making these requests (both from the SDS team's perspective and the receiving parties' perspectives), the majority of these requests were made in bulk and where appropriate electronically after consulting with the receiving party about the most efficient way for these requests to be processed.

Over the course of the administration, the following records and documents were requested by the SDS team for inclusion in claim books:

- 1,280 records from the ATO;
- 2,428 sets of clinical records from general practitioners;
- 1,117 sets of clinical records from psychiatrists, psychologists or counsellors;
- 191 sets of clinical records from hospitals; and
- 255 records from third parties, including the Transport Accident Commission (TAC), the Victorian WorkCover Authority (VWA) and the Country Fire Authority (CFA)

Step 4

Once supporting material was received for each claimant, it was collated with the memorandum prepared following the telephone questionnaire into an electronic claim book. Claim books were collated and provided to the independent assessors electronically via an online platform established by the SDS team so as to reduce the costs and time associated with hard copy claim books.

Step 5

Whenever possible, the independent assessors then met claimants in-person for an assessment interview. Claimants were offered the opportunity to attend these interviews at Maurice Blackburn's Greensborough office. The manner in which these interviews were conducted (i.e. in person and closer to claimants' residences) sought to provide claimants with an opportunity to tell their story face to face whilst attempting to minimise the stress and inconvenience associated with attending an interview in independent assessors' chambers in Melbourne CBD.

Step 6

The Notices of Assessment and Statement of Reasons prepared by the independent assessors were in turn returned to the SDS team electronically through the online platform in order to reduce costs and increase the assessment speed.

Step 7

The assessment data contained in the Notices of Assessment was uploaded into the SDS team's database by an upload tool rather than manually. This reduced the time and costs associated with manual handling and ensured the accuracy of the assessment data recorded in the database.

Arrangements with third parties

The SDS team also successfully adopted processes or negotiated arrangements with the following third parties which reduced costs, increased assessment speed and maximised the compensation payable to claimants:

- a) Independent assessors;
- b) Medico-legal assessors;
- c) Medicare;
- d) Centrelink;
- e) Private Health Insurers; and
- f) TAC, VWA, DVA and CFA.

Independent assessors

In order to minimise the costs of the assessment process, fixed-rate assessment fees were negotiated with the independent assessors.

From 1 April 2016, in order to increase assessment speed and independent assessor availability for assessments, the standard assessment fee was increased and a financial incentive system was introduced whereby an additional fee would be paid if the independent assessor returned an assessment within 2 weeks of an assessment interview or the date on which additional materials requested by the independent assessor following the assessment interview were provided to the assessor (whichever was the latter).

These measures resulted in a significant increase in assessor availability and the speed of assessment return, with the average number of weekly assessment appointments scheduled with assessors more than doubling between April and June 2016, from 28 to 61. The average number of weekly assessments submitted over this period also significantly increased, from 29 to 67. The significant increase in the number of assessment conferences available each week across the Kilmore and Murrindindi settlement administrations is graphically depicted below:

Kilmore & Murrindindi: Assessments Scheduled With Assessors

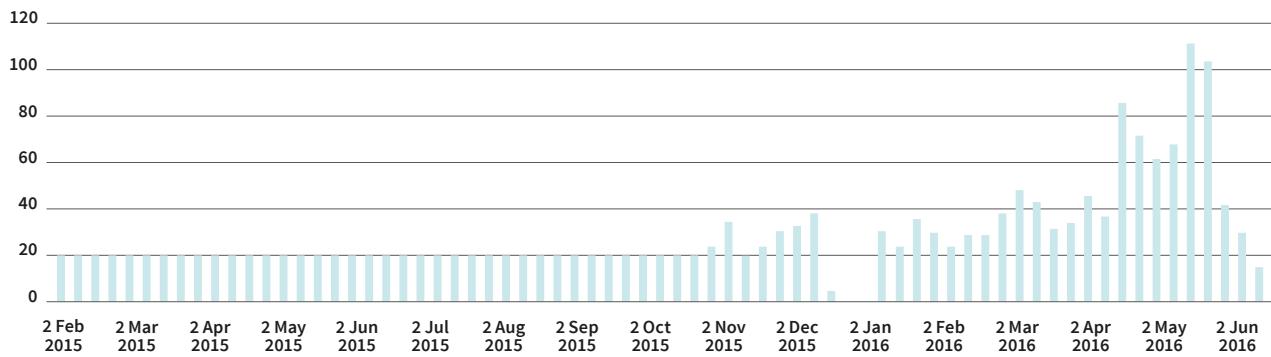


Figure 1: 793 appointments were booked for Kilmore and Murrindindi group members between 1 February and 1 November 2015, an average of 20.3 assessor appointments per week. This average weekly figure has been adopted for the purposes of preparing this graph.

On 8 June 2016, in order to ensure that the personal injury and dependency settlement distribution could occur by the end of 2016, an additional incentive program was introduced to encourage independent assessors to return outstanding assessments before 28 June 2016. This incentive program also proved to be highly effective, with the vast majority of outstanding assessments returned by this date.

Referral to medico-legal assessors

In an ordinary personal injury claim pursued on behalf of a single individual, it is usual for a claimant to be assessed by one or more specialist medico-legal assessors in order to ascertain whether or not the claimant is entitled to compensation for the pain and suffering caused by the relevant injury. The process of obtaining such medico-legal assessments is both costly and time-consuming, with each medico-legal report costing over a thousand dollars and appointments with medico-legal assessors scarce and often requiring to be scheduled months in advance.

In contrast, rather than requiring that all claimants be referred for medico-legal assessment in all instances regardless of need, under the SDS claimants were only referred to specialist medico-legal assessors where the SDS team or the independent assessor determined that such an assessment was needed to determine whether or not the claimant met the pain and suffering threshold.

In total, the adoption of this practice resulted in the SDS team and the independent assessors referring only 56 or approximately 2% of all claimants for medico-legal assessment. This saved considerable expense and potential delays to the assessment process. It also avoided claimants having to attend unnecessary appointments with medico-legal specialists, saving considerable claimant time and potential distress.

Medicare

In normal circumstances, the actual costs billed through Medicare by an individual personal injury claimant would be calculated through a rather complicated process that requires individuals to identify, from the list of all treatment expenses billed through Medicare since the date of the injury, those services which relate to the injury. This process then produces a calculated payback figure which is deemed valid for 6 months. This process then has to be repeated every 6 months throughout the course of the litigation to ensure a valid charge is available at the time of receipt of settlement funds. If a valid charge is not available at the time of distribution of settlement monies, 10% of the money is held on trust until a valid notice of charge is produced, a process that can in some instances take months.

Given the logistics and cost of repeatedly undertaking such a process for more than 2,000 personal injury claimants in these settlement administrations, and the significant delays that would be involved, the SDS team reached a Bulk Payment Agreement with Medicare. Under this agreement Medicare received a deemed payback figure of \$420 for every claimant who received more than \$5,000 in compensation.

The Bulk Payment Agreement saved considerable administrative expenses and avoided the delay and complications that would otherwise have arisen if we were required to obtain multiple individual notices of charges for each claimant over the course of the settlement administration.

Centrelink

Under social security law, where a claimant's final assessment included an amount for loss of earnings or lost earning capacity, then that claimant

- a) Would be precluded from receiving certain Centrelink benefits for a defined period (**the preclusion period**); and
- b) If the preclusion period was in the past and relevant Centrelink benefits were received during that period, the benefits were required to be **repaid**.

In normal circumstances, the calculation of Centrelink preclusion periods and repayment obligations is done on an individual basis after the compensation payable to a claimant is known and can take some time.

In order to ensure that the process of calculating Centrelink preclusion periods and repayment obligations was done as cost effectively and quickly as possible and so as to avoid potential delays to the distribution of compensation, the SDS team engaged with Centrelink early on and continuously throughout the assessment process about:

- a) the number of claimants involved;
- b) the timing of the compensation payments which would likely be made;
- c) the most efficient manner in which to provide and receive information about relevant claims; and
- d) the need for additional Centrelink staff to be rostered on during the period during which the SDS team anticipated that the compensation payable to claimants would be known with certainty in order to ensure that no delays were encountered.

As a result of this early and continued engagement with Centrelink, communications about and calculations of claimants' compensation payments, preclusion periods and repayments were made with Centrelink electronically and in bulk very swiftly after the final recovery rate was calculated. These measures enabled the SDS team to avoid potential delays.

Private Health Insurers

The SDS team also took steps to engage with claimants' private health insurers with a view to negotiating lower repayments for claimants with private health insurer repayment obligations. All private health insurers were asked to accept the same recovery rate on the amounts they had paid for medical treatment for claimants as claimants would recover. This would prevent the group members from being 'out of pocket' for those medical expenses. This was highly successful with all major health insurers agreeing to a reduced repayment rate.

As a result of these negotiations, an additional \$271,509.83 was paid to personal injury claimants in the settlement distribution. In the absence of the negotiations undertaken by the SDS team, these funds would have been owed and paid to claimants' private health insurers.

TAC, VWA, DVA and CFA

A number of claimants in these actions had or were receiving benefits from the TAC, the VWA, the DVA and/or the CFA as a result of their bushfire-related injuries. In normal circumstances, some of these benefits would be repayable.

The calculation of these repayments would have been a time-consuming process, as it involves corresponding with the relevant authority about the benefits paid, calculation of what, if any, repayment obligation exists and then the deduction of such repayment from an individual claimant's compensation.

In order to minimise the cost and time associated with such claims, unique agreements were reached with each of the VWA, the TAC and the CFA. These agreements were beneficial to the group members, as the various authorities agreed to offset benefits already received by claimants.

Assessment speed

Throughout the preparation, assessment and distribution processes, time remained a key issue for claimants, with some claimants expressing that they felt that the settlement administration process took too long. Maurice Blackburn had initially estimated that the distribution process would take up to 18 months. As the distribution process developed, it became clear this time frame would not be met. In the end the personal injury and dependency claims distribution was completed in just under two years. In this context, it is appropriate to examine the speed of the personal injury and dependency assessment process.

Analysis of processing speed

The assessment of the 2,330 personal injury and dependency claims for the Kilmore and Murrindindi Class Actions was undertaken in the 722 days between 23 December 2014, when the Kilmore Class Action settlement and SDS was approved by Justice Osborn and 14 December 2016, when the personal injury settlement distribution was effected to personal injury and dependency claimants in both class actions. An analysis of these figures evidences that on average personal injury and dependency assessments were processed at a rate of **3.2 assessments per day** over the period of the personal injury settlement administration.

The average speed with which claims were processed and the high number of average claims processed per day was made possible by the engagement of a large number of independent assessors, the SDS team and the adoption of the systems and processes discussed above. Together, these measures enabled claims to be assessed and processed more quickly, cost effectively and efficiently than traditional methods.

Supreme Court of Victoria statistics and commentary regarding assessment speed

In preparing this report, the SDS team reviewed publicly available information regarding the finalisation of personal injury claims by the Supreme Court of Victoria. This review evidenced that in the financial year 2014/2015, the Personal Injury list of the Supreme Court of Victoria finalised 528 claims.⁷ This figure highlights the relative speed of the settlement administrations in processing personal injury and dependency claims.

The relative speed and efficiency of the settlement administration process was acknowledged by Justice Forrest on 7 December 2016 when he commented that if the Kilmore and Murrindindi Bushfire Class Actions had

not settled, the Court would have needed to hear and determine thousands of claims and that this was a process that may have lasted years.⁹ In earlier comments made in a court ruling, Justice Forrest had similarly remarked that:

I think it worthwhile to ponder for a moment whether a scheme for distribution of settlement funds could have operated in any more expeditious a fashion. One option would have been for individual assessments of damages to be carried out by judges or associate judges of this Court. Simply put, the Court does not have the resources (either in personnel or courtroom facilities) to accommodate such a process. It would also have been overly legalistic, cumbersome and traumatic for many of the Group Members who would have been required to travel to Melbourne CBD, perhaps for several days. The alternative would have been to engage a scheme administrator other than a lawyer from Maurice Blackburn. Essentially, this would have meant reinventing the wheel in terms of communications with Group Members and knowledge of the facts of the case and the circumstances of thousands of Group Members. It would have significantly delayed the processing of the claims and provided no discernible benefit. For my part, I do not see how this could have been a viable option.

Finally, comparisons with other class action schemes in this State indicate that a delay of a couple of years between settlement and final distribution is relatively common. On settlement or verdict, parties generally put to the Court a scheme which best suits the needs of the case. What is common in mass tort claims is the need for individual assessments of losses sustained by Group Members (whether injury, death or property). In other Black Saturday bushfire class actions - comprising much smaller numbers than here, individual compensation payments have been made over several years, with a number still outstanding. I also note recent media reports that in New Zealand the processing of claims arising out of the disastrous 2011 Canterbury earthquake will not be completed until, at the earliest, 2020.

The end result is that it is unfortunate and regrettable that there has to be any delay from the date of settlement to date of distribution, but for there to be an equitable and cost efficient distribution amongst the group members, the SDS must be complied with. What is important is endeavouring to minimise the delay, but at the same time ensuring that the assessment process is carried out fairly. For my part, I am satisfied that has occurred here.

⁷ Supreme Court of Victoria, Annual Report 2014-2015, page 35.

⁹ Supreme Court of Victoria, Media Release, 7 December 2016.

Interim payments

Notwithstanding the relative speed and efficiency of the personal injury and dependency assessment process, there were a number of claimants who faced difficult financial circumstances during the assessment process and required urgent financial relief prior to the final settlement distribution occurring. It is for this reason that Section D of the SDS allowed for interim payments to be awarded to personal injury and dependency claimants who were in a position of extraordinary need relative to other claimants or on compassionate grounds.

A standard process for applying for these interim hardship payments was designed and implemented by the SDS team. Once an interim payment application was received, it was considered by the Scheme Administrator pursuant to the terms of the SDS.

In total, almost \$4 million was paid to over 130 personal injury and dependency claimants across the two claims, comprised of:

- a) \$3,277,554.50 paid to 116 claimants, with each claimant receiving an average of approximately \$28,000 in the Kilmore Class Action. These 116 claimants constituted almost 8% of all personal injury and dependency claimants who were ultimately assessed as being entitled to compensation in this action; and
- b) \$718,000 paid to 22 claimants, with each claimant receiving an average of approximately \$33,000 in the Murrindindi Class Action. These 22 claimants constituted over 7% of all personal injury and dependency claimants who were ultimately assessed as being entitled to compensation in this action.

The amount of money paid out, the average amounts awarded and the large number of claimants who accessed these payments evidences the success of the interim payment process in providing early access to funds to individual claimants in acute financial need.

In section D of the SDS the Scheme Administrator was also vested with a discretion to make a more widespread interim distribution once a minimum of 30% of personal injury and dependency claims had been finalised. That threshold was not met until March 2016 for the Kilmore administration and later in the Murrindindi administration. The Scheme Administrator determined not to make a widespread interim distribution at those times as to do so would have distracted the SDS team from the focus of increasing the completion rate of assessments and likely created considerable increased expense and a delay in the ultimate distribution. In a ruling published on 15 July 2016 Justice Forrest stated that he agreed with that course.

Review rate

One measure of the success of the assessment process is the extremely low number of reviews pursued in these settlement administrations.

In the Kilmore and Murrindindi Class Action settlement administrations, 39 and 11 applications for review of a personal injury or dependency assessment were pursued, respectively.

This represents a review rate of **2.0%** for the Kilmore Class Action settlement administration and a review rate of **2.6%** in the Murrindindi Class Action settlement administration, and an aggregate review rate of **2.1%**.

The Settlement Distribution

Preparation for settlement distribution

In late 2016, following the final assessment of all personal injury and dependency claims, the SDS team prepared for settlement distribution by:

- a) Internally reviewing the assessment data recorded in relation to each personal injury and dependency claim to ensure its accuracy.
- b) Providing KPMG with access to the assessment documents and documents relating to deductions applicable to individual claims and requesting that they verify the accuracy of the assessment data recorded in relation to each personal injury and dependency claim.
- c) Calculating the amount of compensation available to be distributed to personal injury and dependency claimants in each case (the Personal Injury Distribution Sum).
- d) Requesting that KPMG review and verify the calculations of the Personal Injury Distribution Sum in each case. This involved providing KPMG with access to information such as court orders, bank balances and bank interest forecasts.
- e) Calculating the amount of compensation each claimant would be able to recover, as a percentage of his or her assessment amount (the recovery rate) by dividing the total assessed losses for personal injury and dependency claims by the Personal Injury Distribution Sum in each case.
- f) Requesting that KPMG review and verify the calculation of the recovery rate in each case.
- g) Calculating the "in hand" amount payable to each individual personal injury and dependency claimant by multiplying claimants' total assessed losses by the applicable recovery rate and making any deductions applicable to each claimant (such as repayments to Medicare, Centrelink and private health insurers).
- h) Requesting that KPMG review and verify the calculation of the "in hand" amount payable to each personal injury and dependency claimant.

As discussed above a copy of the KPMG report verifying the accuracy of the calculation of the Personal Injury Distribution Sums, the recovery rates and the "in hand" amounts paid to each individual claimant in the settlement distribution will be published on the Supreme Court of Victoria website.

As a result of the completion of each of the above steps, in late November 2016 the final Personal Injury Distribution Sum and personal injury and dependency

recovery rate for each case was calculated as follows:¹⁰

- a) Kilmore Class Action:
 - II) Personal Injury Distribution Sum:
\$159,646,747.33
 - III) Personal injury and dependency recovery rate:
64.5%
- d) Murrindindi Class Action:
 - I) Personal Injury Distribution Sum:
\$33,374,942.00
 - II) Personal injury and dependency recovery rate:
63.6%

¹⁰ Quoted to one decimal place.

The settlement distribution

The personal injury and dependency settlement distribution occurred on 14 December 2016.

Compensation payments were sent out by cheques payable to the registered claimant via post in order to reduce the potential for fraud. By 31 December 2016, the vast bulk of personal injury and dependency claimants had been paid, with payments only being withheld in relation to claimants who had issues outstanding with their claims such as family law or other issues or disputes which affected where the compensation payments should be directed.

As a result of the internal and external audits which took place in late 2016, the personal injury and dependency settlement distribution was highly accurate. As at the time of writing this report, only two personal injury and dependency claimants in the Kilmore Class Action settlement distribution have been identified as having been paid an inaccurate amount (in one instance) or not assessed (in the other instance) in error. After identifying these errors, payment was swiftly made to the affected claimants by Maurice Blackburn from the firm's office account. The Scheme Administrator notified the Supreme Court of Victoria of these errors and that in the event that residual funds are available for a second personal injury distribution, an application will be made for the firm to be reimbursed for the payments made to these claimants from such residual funds. No errors have been identified in relation to the Murrindindi Class Action settlement distribution.

The error rates in the Kilmore and Murrindindi personal injury settlement administrations were 1% and 0% respectively and less than 1% in aggregate. Given the complexity of the settlement administrations this is remarkably low. However, it highlighted to the SDS team and KPMG the need to leave some margin for error in the ELPD settlement distribution process. As a result, a contingency of \$750,000.00 was set aside from each of the ELPD settlement distributions to account for similar potential in the ELPD settlement distribution.

Analysis of the compensation paid

Kilmore Class Action

Analysis of compensation paid out

The total compensation paid to personal injury and dependency claimants in the Kilmore Class Action was \$159,646,747.33¹¹, with compensation awards ranging from \$0 (for those who were found not eligible or to have suffered no compensable losses) to \$2,912,528.17.

Of the 1905 personal injury and dependency claimants registered in this action, 1,482 received payments as part of the final settlement distribution. For those who received compensation the average compensation was \$107,724.

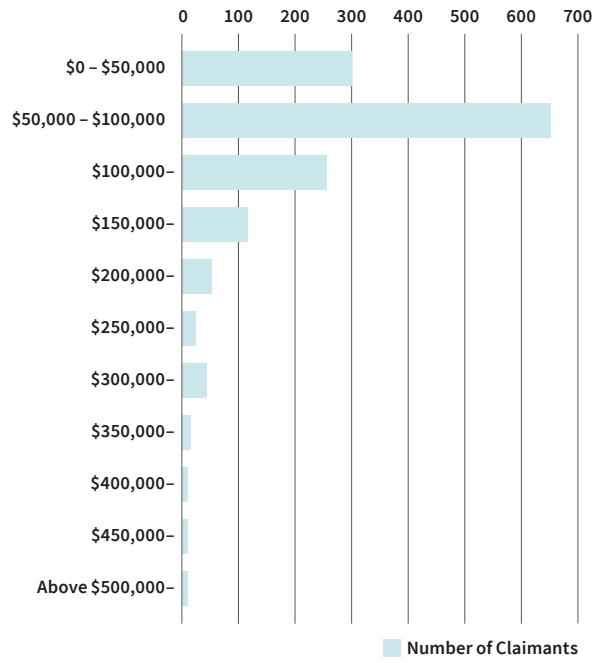
The table and graph below analyse payment ranges and the number of claimants who received compensation within these ranges in this class action:

Compensation paid	Number of claimants
\$0 - \$50,000	305
\$50,000 - \$100,000	661
\$100,000 - \$150,000	253
\$150,000 - \$200,000	125
\$200,000 - \$250,000	49
\$250,000 - \$300,000	19
\$300,000 - \$350,000	27
\$350,000 - \$400,000	15
\$400,000 - \$450,000	11
\$450,000 - \$500,000	7
Above \$500,000	10
Total	1,482

¹¹ The initial amount set aside for the Kilmore personal injury and dependency settlement distribution was \$159,082,127. However, following the settlement distribution, it was discovered that two personal injury and dependency claimants had not been paid. As such, payments totalling \$570,952.91 were made to these claimants by Maurice Blackburn directly from its office account. The Scheme Administrator notified the Supreme Court of Victoria of these errors and that in the event that

residual funds are available for a second personal injury distribution, an application will be made for the firm to be reimbursed for the payments made to these claimants from such residual funds. Two claimants who had received payments also chose to elect at a late stage not to receive compensation for lost earnings, resulting in a refund to the personal injury distribution fund of \$6,332.33.

**Kilmore East - Kinglake Bushfire Class Action:
Analysis of compensation paid to personal
injury and dependency claimants**



This payment distribution can be further analysed by looking at the number of claimants who received above a certain compensation amount as follows:

Compensation paid	Number of claimants
Over \$50k	1,177
Over \$100k	516
Over \$200k	138
Over \$300k	70
Over \$400k	28
Over \$500k	10

The above analyses evidence that personal injury and dependency claimants who received payments in this class action received substantial amounts of compensation. This is shown both in relation to the average compensation paid to claimants and when broken down into payment ranges and payments exceeding certain amounts.

Who was compensation paid to?

The table below analyses payments to claimants by claimant type. As is evident from this table, the vast bulk of compensation was paid to individual claimants under no legal disability, with over 90% of compensation being paid to claimants in this category. Over 6% of personal injury and dependency compensation or approximately \$9.7 million was paid to the Senior Masters' Office in respect of 130 claimants who were minors or under a legal disability. Approximately 1% of payments were made in respect of personal injury and dependency claims brought on behalf of deceased estates.

Claimant type	% of compensation paid	Number of Claimants
Deceased estate	0.9%	28
Minor/person under a disability	6.1%	130
Individual claimant (claimant under no legal disability)	93.0%	1,324
Total	100.0%	1,482

What was compensation paid for?

The following table examines the proportion of compensation paid out to personal injury and dependency claimants for the heads of damage compensated for in this settlement administration.

As is evident from this table, almost 70% of compensation paid to personal injury and dependency claimants was for the pain and suffering caused by bushfire-related injuries. Approximately a further 25% was for lost earnings caused by the injuries, with the remaining approximately 5% distributed for medical and like expenses, other expenses and dependency claims.

The table evidences that just above 2% of the compensation paid to personal injury and dependency claimants was for dependency losses. With only 37 of the 1482 personal injury and dependency claimants who received compensation in this settlement administration receiving compensation for dependency claims.

Head of Damage	% of compensation paid
Pain and Suffering	69.5%
Loss of Earnings	24.8%
Medical and Like	2.1%
Other	1.3%
Dependency	2.2%
Total	100.0%

Where did the payments go?

Compensation payments for the personal injury and dependency settlement distribution in this class action were sent to claimants living in 303 suburbs within Australia and 8 different overseas locations. This suggests that many people left the bushfire-affected area in the aftermath of the fire.

Notwithstanding the widespread geographical dispersion of claimants who received compensation from this action, the majority of payments were made to claimants who remain in the bushfire-affected area or its surrounds, with 748 of the 1482 payments and over 48% of the in-hand compensation paid in this class action being sent to the following locations:

- | | |
|-------------------|-----------------|
| 1) Kinglake West | 8) Healesville |
| 2) Whittlesea | 9) Flowerdale |
| 3) Yarra Glen | 10) Doreen |
| 4) Wandong | 11) Hurstbridge |
| 5) Pheasant Creek | 12) Kilmore |
| 6) Clonbinane | 13) Mernda |
| 7) St Andrews | |

Murrindindi Class Action

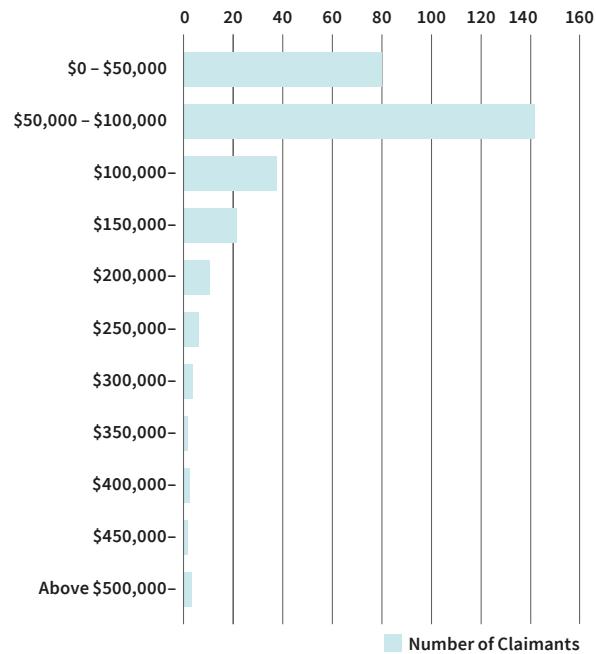
The total compensation paid to personal injury and dependency claimants in the Murrindindi Class Action was \$33,374,942.00, with compensation awards ranging from \$0 (for those who were found not eligible or to have suffered no compensable losses) to \$855,946.75.

Of the 425 personal injury and dependency claimants registered in this action, **314** received payments as part of the final settlement distribution. For those who received compensation the average compensation was **\$106,289.62**.

The table and graph below analyse payment ranges and the number of claimants who received compensation within these ranges in this class action:

Compensation paid	Number of claimants
\$0 - \$50,000	79
\$50,000 - \$100,000	142
\$100,000 - \$150,000	37
\$150,000 - \$200,000	22
\$200,000 - \$250,000	11
\$250,000 - \$300,000	8
\$300,000 - \$350,000	5
\$350,000 - \$400,000	1
\$400,000 - \$450,000	3
\$450,000 - \$500,000	2
Above \$500,000	4
Total	314

Murrindindi - Marysville Bushfire Class Action: Analysis of compensation paid to personal injury and dependency claimants



This payment distribution can be further analysed by looking at the number of claimants who received **above** a certain compensation amount as follows:

Compensation amount	Number of claimants
Over \$50k	235
Over \$100k	93
Over \$200k	34
Over \$300k	15
Over \$400k	9
Over \$500k	4

The above analyses evidence that personal injury and dependency claimants who received payments in this class action received substantial amounts of compensation. This is shown both in relation to the average compensation paid to claimants and when broken down into payment ranges and payments exceeding certain amounts.

Who was compensation paid to?

The table below analyses payments to claimants by claimant type. As is evident from this table, the vast bulk of compensation was paid to individual claimants under no legal disability, with over 90% of compensation being paid to claimants in this category. Approximately 6% of personal injury and dependency compensation or approximately \$2 million was paid to the Senior Masters' Office in respect of 18 claimants who were minors or under a legal disability. Approximately 2% of payments were made in respect of personal injury and dependency claims brought on behalf of deceased estates.

Claimant type	% of compensation paid	Number of Claimants
Deceased estate	1.7%	13
Minor/person under a disability	5.9%	18
Individual claimant (claimant under no legal disability)	92.4%	283
Total	100.0%	314

What was compensation paid for?

The following table examines the proportion of compensation paid out to personal injury and dependency claimants for the heads of damage compensated for in this settlement administration.

As is evident from this table, over 70% of compensation paid to personal injury and dependency claimants was for the pain and suffering caused by bushfire-related injuries. Approximately a further 23% was for lost earnings caused by the injuries, with the remaining approximately 7% distributed for medical and like expenses, other expenses and dependency claims.

The table evidences that 3.6% of the compensation paid to personal injury and dependency claimants was for dependency losses, with only 20 of the 314 personal injury and dependency claimants who received compensation in this settlement administration receiving compensation for dependency claims.

Head of Damage	% of compensation paid
Pain and Suffering	70.4%
Loss of Earnings	22.9%
Medical and Like	3.1%
Other	0.0%
Dependency	3.6%
Total	100.0%

Where did the payments go?

Compensation payments for the personal injury and dependency settlement distribution in this class action were sent to claimants living in 116 suburbs within Australia and 3 different overseas locations. This suggests that many people left the bushfire-affected area in the aftermath of the fire and/or were non-permanent residents of the bushfire-affected area at the time of the fire.

Notwithstanding the widespread geographical dispersion of claimants who received compensation from this action, close to half of the payments were made to claimants who remain in the bushfire-affected area or its surrounds, with 148 of the 314 payments and over 44% of the in-hand compensation paid in this class action being sent to the following locations:

- | | |
|---------------|----------------|
| 1) Marysville | 4) Healesville |
| 2) Buxton | 5) Narbethong |
| 3) Alexandra | 6) Taggerty |

Economic impact

The economic impact of the compensation paid in the Kilmore and Murrindindi settlement administrations to selected bushfire-affected communities is examined in Section E below.

Costs

The costs of the settlement administration have been examined and reported on extensively by the Court and the Court-appointed independent Special Referee for Costs and are the subject of discussion in Section B of this report. However, given the high level of interest in settlement administration costs displayed by claimants and media commentators during the settlement administration, the costs associated with the personal injury and dependency settlement administration warrant examination in further detail in this section of the report.

Total costs & costs per claim

The total costs¹² associated with the personal injury and dependency settlement administrations in the Kilmore and Murrindindi Class Actions were **\$21,710,902.21**.

There were 2,330 personal injury and dependency claims assessed as part of these settlement administrations, resulting in an average cost per claim of **\$9,317.98**.

The total costs and cost per claim figures noted above include amounts required to be paid to third parties to complete assessments such as independent assessors, medico-legal assessors and medical practitioners. It also includes those costs associated with running and reporting on the settlement administration which are attributable to personal injury and dependency claimants. It is important to note that no costs were separately allowed to be recovered from the defendants to either Bushfire Class Actions in relation to the assessment of individual claims under the SDS.

Personal injury and dependency claims - assessment cost comparison

Following the settlement distribution, Maurice Blackburn commissioned Australian Legal Costing Group to write an independent expert report ("ALCG report")¹³ addressing the following question:

"What is the range of reasonable fees chargeable on a solicitor-client basis for an uncontested damages assessment in a Victorian common law claim? For the purposes of responding to this question, please assume that the work was undertaken in 2015 and 2016."

The purpose of the request for this expert report was to gain an understanding of whether the average personal injury and dependency assessment fees in these settlement administrations were reasonable, when compared with the closest comparator available – that of uncontested individual personal injury damages assessments conducted in Victoria.

The ALCG report was authored by Catherine Dealehr and Fiona Mullen, two independent costs assessors with significant experience and expertise in assessing personal injury costs. A copy of the ALCG expert report will be published on the Supreme Court of Victoria website.

¹² The total costs provided here include the proportion of general settlement administration costs which are referable to personal injury group members. The figures are accurate as at 28 February 2018. Note that work is still being undertaken in relation to the tax dispute and a small number of administrative matters, and thus modest costs continue to be incurred by the Scheme.

¹³ The costs of the ALCG report were borne by Maurice Blackburn rather than the settlement administrations.

Conclusions as to reasonable legal costs and disbursements in Victorian common law claims

The ALCG report found that:

- a) Uncontested personal injury damages assessments in Victoria could be issued in the County Court of Victoria (for more simple claims) or the Supreme Court of Victoria (for more complex claims) and the range of reasonable costs varied across these two jurisdictions.
- b) The total amount of reasonable legal costs and disbursements chargeable on a solicitor-client basis for an uncontested damages assessment in a Victorian common law claim issued in the Supreme Court ranges from \$29,887.20 to \$73,447.00.
- c) The total amount of reasonable legal costs and disbursements chargeable on a solicitor-client basis for an uncontested damages assessment in a Victorian common law claim issued in the County Court ranges from \$24,604.50 to \$58,798.50.

Inter partes costs in TAC and VWA claims

The ALCG report also reviewed the sorts of costs payable on an inter partes or party-party basis by the TAC and the VWA matters which settle prior to court proceedings being issued for transport accident and workers' compensation common law claims respectively. The ALCG report explained that inter partes costs are typically only a **part payment** or contribution towards solicitor-client costs.

The ALCG report found that:

- a) The TAC pays **\$10,440.00 to \$18,550.00** for inter partes costs for eligible uncontested transport accident common law claims which settle prior to court proceedings being issued. This payment **excludes** disbursements, with fees for disbursements able to be claimed on top of these amounts from the TAC.
- b) The VWA pays **\$8,034.00 to \$13,500.00** for inter partes costs for eligible uncontested workers' compensation common law claims which settle prior to court proceedings being issued. This payment is **inclusive** of counsels' fees but **exclusive** of other disbursements, with other reasonable disbursements able to be claimed on top of these amounts from the VWA.

Conclusion as to reasonableness of assessment fees

The ALCG report highlights that:

- a) The average per claim personal injury and dependency assessment fees charged in these settlement administrations are significantly lower than the closest comparator available – that of uncontested individual personal injury damages assessments conducted in Victoria.
- b) Once taking into account the additional claimable fees for disbursements from TAC and VWA on top of the amounts cited in the ALCG report, the average per claim personal injury and dependency assessment fees charged in these settlement administrations are substantially lower than even the part contribution to legal costs made by the TAC and VWA for uncontested transport accidents and workers' compensation common law claims which settle prior to court proceedings being issued.

The ALCG report thus serves to highlight the cost efficiency of the personal injury and dependency settlement administration process.

Personal injury settlement administrations in the United States

In the course of the settlement administrations, the issue of the carriage and conduct of settlement administrations in the United States was raised. The suggestion was that U.S. settlement administrations are generally conducted by third party non-lawyer settlement administrators and that such processes are cheaper or more efficient than the processes adopted in this settlement administration.

Following the completion of the settlement administration, the SDS team has made enquiries of an expert on class actions in the United States with a view to ascertaining if there is publicly available information as to the cost and conduct of personal injury class action settlement administrations in the United States. The SDS team also conducted a literature review and made enquiries of solicitors connected with U.S. personal injury mass litigation.

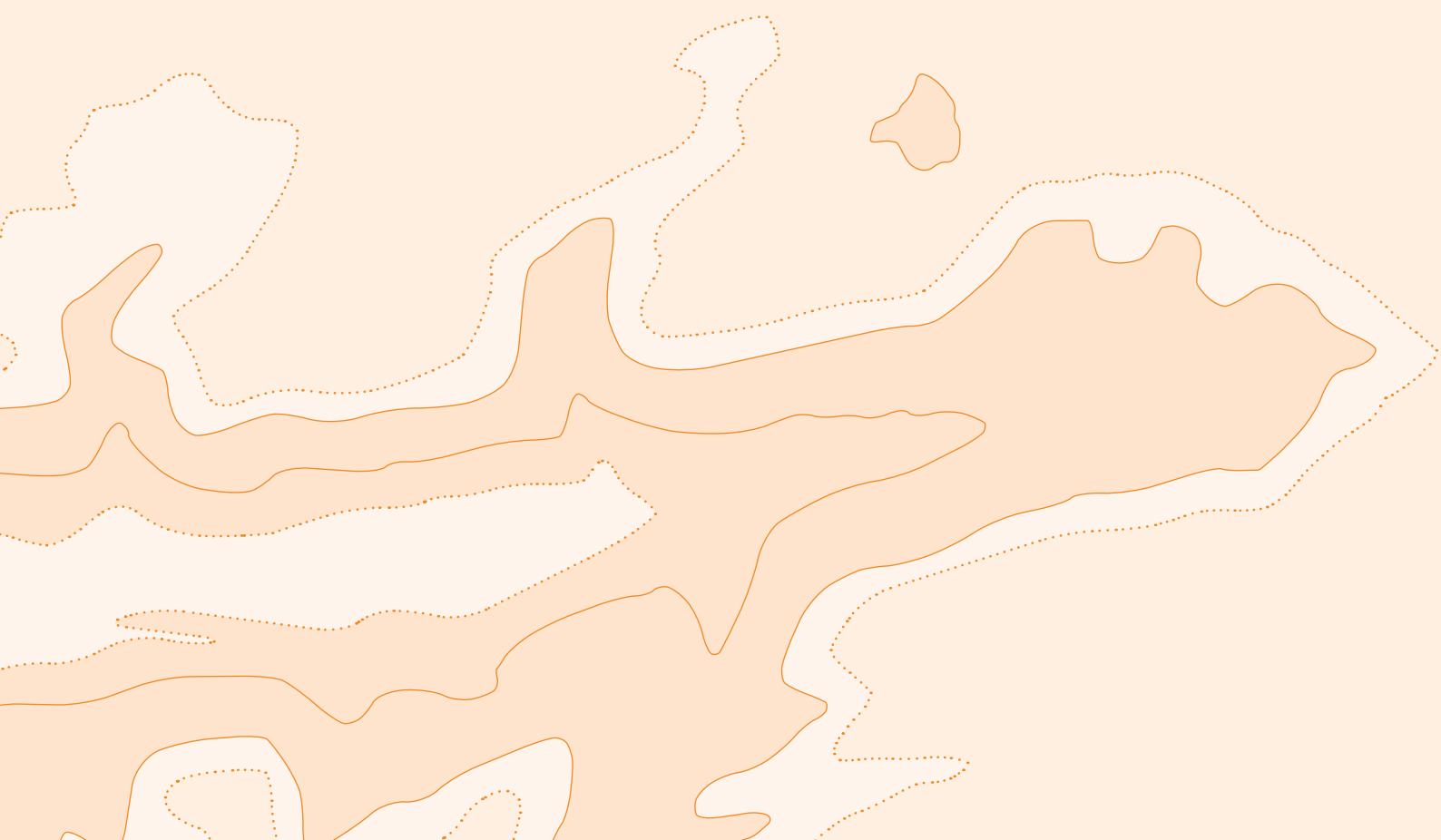
As a result of such enquiries, the SDS team understands the position to be as follows:

- a) That mass personal injury litigation in the U.S. is typically not undertaken through class action processes but instead as multi-district litigations ('MDLs').
- b) That typically multiple firms will act in MDLs, with attorneys in different districts representing claimants in such districts pursuant to individual retainers with such claimants.
- c) That when an MDL settles, an independent third party administrator is usually appointed to assess all claims upon receipt of information about the claimants' claims. The administrator is able to charge fees for these assessments.
- d) That responsibility for compiling the information for submission to the independent administrator lies with the attorneys acting for the claimants they represent.
- e) That it is probable that the attorneys compiling these claim books would be charging claimants a proportion of their compensation (i.e. on a contingency fee basis) as this is the standard way in which fees in personal injury claims are charged in the U.S.
- f) There is very little public information regarding the overall costs to claimants in U.S. mass personal injury litigation and this is an area for potential law reform.

As a result of such enquiries, and in circumstances where U.S. firms acting in individual personal injury claims typically charge a contingency fee of one third, it appears highly unlikely that the total costs to claimants for personal injury settlement administrations in the United States are cheaper than the total costs to claimants incurred in these settlement administrations.

Section D

Economic Loss & Property Damage Claims



Overview

This section provides an overview of the assessment process and settlement administration of the economic loss and property damage (ELPD) claims in the Kilmore East - Kinglake Black Saturday Class Action and the Murrindindi - Marysville Black Saturday Class Action.

The key facts of the ELPD settlement administrations are as follows:

- **11,653** claims were assessed:
 - In the Kilmore Class Action **9,174** claims were registered by **3,772** above insurance (AI) claimants and **25** insurers, many claimants made multiple claims;
 - In the Murrindindi Class Action **2,479** claims were registered by **1,039** above insurance claimants and **19** insurers, many claimants made multiple claims.
- On average ELPD assessments were processed at a rate of **14.1** assessments per day.
- Almost **\$4 million** in interim payments were paid to over **110** ELPD claimants.
- The aggregate review rate of ELPD claims was **0.3%**.
- The average cost per claim, including amounts paid to third parties to complete assessments, was **\$2,035.17**.

Summary analysis of total compensation paid to ELPD claimants

	Kilmore Class Action	Murrindindi Class Action
Total paid out:	\$259,432,177.99	\$236,633,197.74
Recovery rate:	28.5%	64.9%
Number of claims paid:	8,174	2,188
Average payment per claim:	\$31,738.71	\$108,150.46
Average payment per AI claimant:	\$37,356.71	\$106,449.30
Payment range:	\$0.00 - \$2.1 million	\$0.00 - \$14.7 million

Claims assessment principles

Under the SDS, ELPD claims were required to be assessed in accordance with the ELPD Assessment Principles set out in Schedule A to the SDS, and otherwise in accordance with the laws of the State of Victoria. The court-approved ELPD Assessment Principles set out in Schedule A contained a series of caps and multipliers which consciously weighted assessments towards compensating certain sorts of losses such as home and contents losses and other domestic losses.

The assessment process

Total number of claims assessed under the SDS

In total, there were 11,653 ELPD claims which required assessment under the SDS. This was comprised of:

- a) 9,174 claims registered in the Kilmore Class Action. These 9,174 claims were made by 3,772 above insurance claimants¹⁴ and 25 insurer claimants, with many claimants making multiple claims (for example for losses sustained at multiple properties); and
- b) 2,479 claims registered in the Murrindindi Class Action. These 2,479 claims were made by 1,039 above insurance claimants and 19 insurer claimants, with many claimants making multiple claims (for example for losses sustained at multiple properties).

Of these 11,653 ELPD claims:

- a) 183 claims were made by claimants admitted as late registrants in the Kilmore Class Action, representing 2% of the final number of ELPD claims assessed in this action; and
- b) 73 claims were made by claimants admitted as late registrants in the Murrindindi Class Action, representing 3% of the final number of ELPD claims assessed in this action.

A high proportion of ELPD claimants suffered from bushfire-related trauma, with a significant number expressing suicidal and/or difficult behaviours such as aggression or communication difficulties as a result of such trauma. This posed unique challenges in the settlement administration, requiring specialised training and processes for supervising the SDS team and for appropriately responding to agitated or distressed claimants.

Claims assessment process

The court-approved claims assessment process for ELPD claims was set out in Section E of the SDS.

In summary, the SDS and the procedures adopted to give effect to the SDS required that the following steps be undertaken in relation to each ELPD claim:

Step 1

The SDS team obtained information in relation to each ELPD claim. This involved requesting that individual claimants complete a Fire-Loss workbook where none was held on file in relation to their ELPD losses and requesting the insurance file for those losses from relevant insurers wherever possible. This information, together with any other information provided to the SDS team by the ELPD claimant was collated into a claim book for each claimant.

Step 5

Following the expiry of this 14 day period, the independent assessor then finalised the assessment, taking into account any materials received from claimants regarding any perceived error or omission in the assessment. The independent assessor then sent the finalised assessment to the SDS team as a Final Notice of Assessment ('FNOA') including the reasons for the assessment.

¹⁴ An above insurance claimant is any claimant that is not an insurer and includes, for example, individuals, companies, deceased estates and trusts.

Step 2

The SDS team then allocated the claim to one of the independent assessors appointed under the SDS for assessment. Claims were allocated on a loss-address basis to maximise the efficiency and speed of the assessment process.

Step 3

The independent assessor then contacted claimants to request and obtain whatever further information or material was required for the proper assessment of the claim.

Step 4

The independent assessors then assessed the claim under the SDS and issued a Provisional Notice of ELPD Assessment ('PNOA') to each claimant, together with a letter informing claimants that they had 14 days within which to raise any perceived error or omission with the assessment with the independent assessor.

Step 6

The SDS Team then sent the Final Notice of Assessment to each claimant, together with a letter explaining the claimant's right to seek a review of the assessment within 42 days of the date of the assessment.

Step 7

Where a claimant lodged a review of their assessment within the 42 day period, the assessment was referred to a Victorian barrister appointed as an independent review assessor under the SDS. The independent review assessor then issued a review notice of assessment which was sent to the claimant by the SDS team.

The ELPD claims assessment process was detailed in full in the Property Damage Information booklets sent to ELPD claimants by the SDS Team at the beginning of the settlement administration process.

Processes & systems adopted to reduce cost, increase assessment speed and maximise the compensation payable to claimants

As with the administration of the personal injury and dependency claims, many of the processes and systems used for the ELPD administration were designed from the ground up to cater for the uniqueness of this administration.

These processes and systems sought to balance:

- a) the need to examine and assess each claim individually as required by the court-approved assessment process; with
- b) a recognition of the personal nature of many of the losses and the psychological trauma suffered by many of the claimants;
- c) the lack of records to substantiate many of the economic and property losses suffered by claimants as a result of such records having been destroyed in the bushfires;
- d) the elapse of time since the bushfires, creating difficulties for many claimants in recalling and recording their economic and property losses accurately;
- e) the need to ensure that only registered claims were assessed; and
- f) the need for the assessment process to be completed efficiently and quickly so as to minimise settlement administration costs and ensure that claimants received compensation as soon as possible.

The SDS team sought to achieve this balance through the design and implementation of the following and other processes and systems:

- 1) At the beginning of the assessment process, independent assessors who were experienced in assessing bushfire claims were appointed to assess the ELPD claims. The previous experience of these assessors ensured that they understood the context in which these losses were sustained, enabling them to deal with claimants in a sensitive manner.
- 2) After their appointment, the independent assessors were provided with a standard information package from the SDS team. This included a template PNOA and FNOA which corresponded to the SDS assessment principles, instructions regarding how to complete the template and standard form correspondence to send to claimants with the PNOA. This ensured consistency in the assessments and in the information provided to claimants, enabling the capture and processing of assessment data by the SDS team to be automated thus reducing the time and costs associated with processing of assessments.
- 3) Claim books were prepared electronically and managed via an online platform, preventing the costs and time delays associated with the preparation of hard copy files. In preparing these claim books, the SDS team requested insurance files electronically and in bulk. Insurers were provided with access to the online platform and required to upload the insurance file to the relevant folder directly rather than providing the file to the SDS team. This prevented double handling of insurance files, reducing costs and increasing the speed with which claims could be allocated for assessment.
- 4) Once ready for assessment, claims were allocated to the independent assessors for assessment electronically in bulk and on a unique property basis.
- 5) The allocation of claims for assessment on a unique property basis ensured that claims which were interrelated such as claims made by multiple members in the same family unit could be assessed at the same time, reducing the distress and costs associated with multiple assessments occurring in respect of interrelated or joint losses. The cost savings associated with assessment of claims on this basis was substantial, reducing the number of assessments to be allocated to assessors by over 60%, from 11,653 (the number of claims registered) to 4,463 (the number of unique property addresses requiring assessment). This resulted in a substantial reduction in the number of assessment fees payable.
- 6) In order to ensure that the independent assessors could concentrate their efforts and resources on the assessment of claims rather than on contacting claimants, where an assessor had been unable to contact a claimant repeatedly they referred the matter on to the SDS team. The SDS team then designed and implemented a standardised and centrally coordinated process for attempting to contact these claimants. This allowed the independent assessors to focus on assessing claims, thus increasing assessment speed.
- 7) Once an assessment was complete, the independent assessors provided the assessments to the SDS team in bulk and electronically. This reduced manual handling, increasing assessment speed and facilitating the cost efficient capture of assessment data through the use of the technological tools outlined below.
- 8) Once assessments were returned to the SDS team, the SDS team undertook a process of review to ensure that losses sustained by non-registered claimants had not been assessed as part of an assessment. For example, the SDS team reviewed assessments to ensure that where an individual had

registered his or her claim any losses suffered by a company at the same loss address were not assessed as part of the individual claim unless a company claim had separately been registered. This review process was of particular use in relation to the independent assessors who were professional loss adjusting or insurance firms rather than the assessors who were independent law firms, as the law firms proved more adept at ascertaining and exploring property ownership issues with claimants. This review process ensured assessment consistency and that compensation was not paid out in respect of non-registered claims.

- 9) As part of the review process, the SDS team introduced a streamlined process in relation to the assessment of claims made by certain types of entities in order to ensure that the claims of such entities had been assessed appropriately. This included, for example, ensuring that those with legal rights to make and pursue such claims had been contacted and that settlement cheques were appropriately directed. This saved the costs and time associated with the settlement administration team having to respond to potential disputes from and between people associated with such entities. As is evident from the below, the number of claims made by such entities was significant across the two class actions:

Number of companies:	300
Number of deregistered companies:	8
Number of estates:	208
Number of business partnerships:	138
Number of dissolved partnerships:	9
Number of minors:	150
Number of trusts:	62
Number of dissolved trusts:	1
Total	876

- 10) The FNOAs were then processed and sent out in bulk by the SDS team to claimants to maximise the efficient use of SDS team time which in turn increased the speed of processing of the assessments and reduced settlement administration costs.

Technological tools

In addition to the above measures, the SDS team designed and implemented a number of processes which relied on technology to reduce costs and increase the accuracy and speed of the assessment process, including:

- 1) The assessment data contained in the FNOAs was uploaded into the SDS team's database via an upload tool rather than manually. This data capture process was necessary in order to enable the SDS team to distribute ELPD compensation on a pro rata basis to claimants. The upload tool avoided manual processing which ensured data integrity, increased the speed of processing of assessments and reduced settlement administration costs.
- 2) As part of the process of capturing the information contained in the FNOAs in the SDS team's database, a data verification tool was developed. The tool ensured that all claims at a loss address had been assessed by automatically cross-checking the information about which claims had been assessed with the claims as marked as allocated to that assessor for that loss address on the SDS team's database. This tool saved the significant time and costs which would otherwise have been incurred if the SDS team had to manually review the FNOAs to ensure that all claims at a loss address had been assessed.

Assessment methodology

As few property damage claims are litigated to judgment in Australian courts, there was little court precedent in respect of how certain sorts of ELPD losses should be assessed. As a result, the following measures were introduced in the ELPD settlement administration in order to ensure consistency of assessment approach, increase assessment speed and reduce the costs of assessing claims:

- a) The assessment of losses by the independent assessors was undertaken in accordance with the assessment principles set out in Schedule A to the SDS and Victorian law. Schedule A prescribed the manner in which the valuation of certain losses should be undertaken. This ensured consistency in the assessment approach for such losses and reduced the time and costs which otherwise would have been incurred in determining a consistent valuation methodology for such losses.
- b) The SDS team implemented quality assurance processes to ensure consistency between assessors and assessments. This included a peer-audit process whereby assessors reviewed a sample of each other's assessments and moderating a formal feedback session between assessors to discuss valuation methodology in relation to the assessment of certain types of losses. The adoption of these processes enabled a standard assessment methodology to be developed in relation to certain types of losses, ensuring consistency of approach and enabling the independent assessors to increase their assessment speed.
- c) Following a sampling exercise undertaken by one of the independent assessors, a guideline to assess contents losses was developed whereby, in the absence of detailed lists of contents or other information, contents losses were assessed as being a percentage of the overall property value. This avoided the need for claimants to individually itemise and substantiate contents losses, a process which was often extremely difficult given the elapse of time since the fires and where many of the records regarding such losses had been destroyed by the fire. This saved time, cost and considerable distress amongst claimants.

Assessment fees payable to independent assessors

In order to minimise the costs of the assessment process, fixed-rate assessment fees were negotiated with the independent assessors at the beginning of the ELPD settlement administration.

In early 2016, the SDS team identified that based on assessment completion rates as at that time, measures needed to be implemented to increase the assessment rate and avoid delays in distribution. In response to this, the SDS team implemented the following measures to increase assessment speed and independent assessor availability for assessments:

- a) Appointed four new assessor firms to assist with outstanding assessments not yet allocated;
- b) Reviewed the assessment completion rate of each independent assessor, and warned assessors that if their completion rate did not improve, the SDS team would be required to allocate any additional assessments not yet allocated to another firm; and
- c) Designed a financial incentive scheme to incentivise the independent assessors to complete a higher volume of assessments in a shorter period of time.

The measures implemented above increased the volume of and speed at which assessments were completed. While no financial incentive payments were paid out, the financial incentive scheme was successful in that it encouraged the assessors to adopt more efficient internal processes for completing assessments early. These measures also ensured that all ELPD assessments were completed in time to enable the ELPD settlement distribution to occur by the revised estimated distribution timeframe of early 2017.

Assessment speed

Throughout the preparation, assessment and distribution process, time remained a key issue for claimants, with some claimants expressing that they felt that the settlement administration process took too long. Maurice Blackburn had initially estimated that the distribution process would take up to 18 months. As the distribution process developed it became clear this time frame would not be met. In the end the ELPD claims distribution was completed in just over two years. In this context, it is appropriate to examine the speed of the ELPD assessment process.

The assessment of the 11,653 ELPD claims for the Kilmore and Murrindindi Class Actions was undertaken in the 825 days between 23 December 2014, when the Kilmore Class Action settlement and SDS was approved by Justice Osborn, and 27 March 2017, when the ELPD distribution was effected to economic loss and property damage claimants in both class actions. An analysis of these figures evidences that on average ELPD assessments were processed at a rate of 14.1 assessments per day over the period of the ELPD settlement administration.

The average speed with which claims were processed and the high number of average claims processed per day was made possible by the engagement of a large number of independent assessors, the SDS team and the adoption of the systems and processes discussed above. Together, these measures enabled claims to be assessed and processed quickly, cost effectively and efficiently.

Supreme Court of Victoria commentary regarding assessment speed

The speed and efficiency of the settlement administration process was acknowledged by the Court on multiple occasions. Please refer to the judicial commentary set out on page 31 of this report.

Interim payments

Notwithstanding the relative speed and efficiency of the ELPD assessment process, there were a number of claimants who faced difficult financial circumstances during the assessment process and required urgent financial relief prior to the final settlement distribution occurring. It is for this reason that Section F of the SDS allowed for interim payments to be awarded to ELPD claimants who were in a position of extraordinary need relative to other claimants or on compassionate grounds.

A standard process for applying for these interim hardship payments was designed and implemented by the SDS team. Once an interim payment application was received, it was considered by the Scheme Administrator pursuant to the terms of the SDS.

In total, almost \$4 million was paid to over 110 ELPD claimants across the two claims, comprised of:

- a) \$1,982,877.30 paid to 82 claimants, with each claimant receiving an average of approximately \$24,000, in the Kilmore Class Action; and
- b) \$1,708,200.00 paid to 33 claimants, with each claimant receiving an average of approximately \$51,000.00, in the Murrindindi Class Action.

The difference in the average payment amounts awarded to claimants as between the different class actions reflects the higher ELPD recovery rate anticipated and ultimately calculated in the Murrindindi - Marysville class action.

The significant amount of money paid out, the average amounts awarded and the large number of claimants who accessed these payments evidences the success of the interim payment process in providing early access to funds to individual claimants in acute financial need.

Review rate

One measure of the success of the ELPD assessment process is the extremely low number of reviews pursued in these settlement administrations.

In the Kilmore and Murrindindi Class Action settlement administrations, 9 and 8 applications for review of an economic loss and property damage assessment in respect of 18 and 13 claims were pursued respectively. On a per claim basis, this represents a review rate of 0.2% for the Kilmore Class Action ELPD settlement administration and a review rate of 0.5% in the Murrindindi Class Action ELPD settlement administration, providing an aggregate review rate of 0.3%.

The Settlement Distribution

Preparation for settlement distribution

In late 2016 and early 2017, following the assessment of all ELPD claims, the SDS team prepared for the settlement distribution by:

- a) Internally reviewing the assessment data recorded in relation to each ELPD claim to ensure its accuracy.
- b) Providing KPMG with access to the assessment documents and documents relating to deductions applicable to individual claims and requesting that they verify the accuracy of the assessment data recorded in relation to ELPD claims.
- c) Calculating the amount of compensation available to be distributed to ELPD claimants in each case (**the ELPD Distribution Sum**).
- d) Requesting that KPMG review and verify the calculations of the ELPD Distribution Sum in each case. This involved providing KPMG with access to information such as court orders, bank balances and bank interest forecasts.
- e) Calculating the amount of compensation each claimant would be able to recover, as a percentage of his or her assessment amount (**the recovery rate**) by dividing the total assessed losses for ELPD claims by the ELPD Distribution Sum in each case.
- f) Requesting that KPMG review and verify the calculation of the recovery rate in each case.
- g) Calculating the “in hand” amount payable to each ELPD claimant by multiplying claimants’ total assessed losses by the applicable recovery rate and making any deductions applicable to each claimant (such as interim payments and outstanding review costs).
- h) Requesting that KPMG review and verify the calculation of the “in hand” amount payable to each ELPD claimant.

As discussed above a copy of the KPMG report verifying the accuracy of the calculation of the ELPD Distribution Sums, the recovery rates and the “in hand” amounts paid to each individual claimant in the settlement distribution has been published on the Supreme Court of Victoria website.

As a result of the completion of the above steps, in March 2017 the final ELPD Distribution Sum and ELPD recovery rate for each case was calculated as follows:¹⁵

- a) Kilmore Class Action:
 - ELPD Distribution Sum:
\$259,432,177.99
 - ELPD recovery rate:
28.5%
- b) Murrindindi Class Action:
 - ELPD Distribution Sum:
\$236,633,197.74
 - ELPD recovery rate:
64.9%

¹⁵ Quoted to one decimal place.

The settlement distribution

The ELPD settlement distribution occurred on 27 March 2017. Compensation payments were sent out by cheques payable to the registered claimant in order to reduce the potential for fraud. By Easter (16 April 2017), the vast bulk of ELPD claimants had been paid, with payments only being withheld in relation to claimants who had issues outstanding with their claims such as family law or estate claim issues or where there was a dispute as to how the compensation should be divided between claimants with shared or joint property losses.

Prior to the settlement distribution occurring, a contingency of \$750,000 was set aside from each of the ELPD settlement distributions to account for any potential errors in the ELPD settlement distribution. Prior to the ELPD settlement distribution, the Scheme Administrator notified the Supreme Court of Victoria that this contingency had been set aside and the reasons for such contingency amounts.

As a result of the internal and external audits which took place in late 2016 and early 2017, the ELPD settlement distribution was highly accurate. As at the time of writing this report, no errors having been detected in relation to either the Kilmore or Murrindindi ELPD settlement distributions. Given the complexity of the ELPD settlement administration and distribution process, this error rate of 0% is remarkable.

Analysis of the compensation paid

Kilmore Class Action

Analyses of compensation paid out

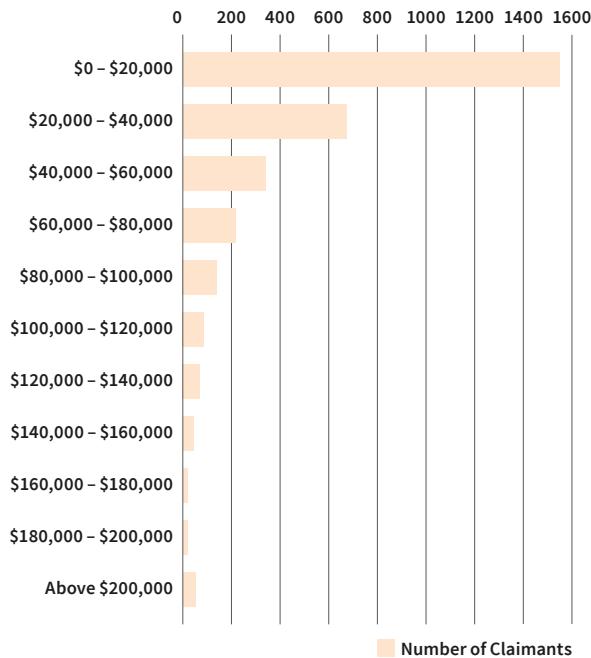
The total compensation paid to ELPD claimants in the Kilmore Class Action was \$259,432,177.99, with compensation awards paid to above insurance claimants ranging from \$0 (for those who allocated their compensation to another claimant (i.e. a spouse), who were found not eligible or who were found to have suffered no compensable losses) and \$2,074,809.78.

Of the 3772 above insurance claimants registered in this action, 3092 received payments as part of the final ELPD settlement distribution. For those above insurance claimants who received compensation, the **average compensation was \$37,356.71**. This compensation was **additional to** any amounts that above insurance claimants had received from their insurers, and no repayment obligations arose in respect of these amounts to their insurers.

The table and graph below analyse payment ranges and the number of above insurance claimants who received compensation within these ranges in this class action.

Compensation paid	Number of claimants
\$0 - \$20,000	1,526
\$20,000 - \$40,000	663
\$40,000 - \$60,000	336
\$60,000 - \$80,000	215
\$80,000 - \$100,000	129
\$100,000 - \$120,000	60
\$120,000 - \$140,000	45
\$140,000 - \$160,000	27
\$160,000 - \$180,000	22
\$180,000 - \$200,000	13
Above \$200,000	56

**Kilmore East - Kinglake Bushfire Class Action:
Analysis of compensation paid to ELPD claimants**



The payment distribution can be further analysed by looking at the number of **above** insurance claimants who received above a certain compensation amount as follows:

Compensation amount	Number of claimants
Over \$10,000	2,196
Over \$20,000	1,566
Over \$30,000	1,141
Over \$40,000	903
Over \$50,000	732
Over \$60,000	567
Over \$70,000	454
Over \$80,000	352
Over \$90,000	279
Over \$100,000	223
Over \$150,000	103
Over \$200,000	56

The above analyses evidence that a significant number of above insurance claimants who received payments in this class action received very substantial amounts of compensation. This is particularly in light of such compensation being **additional** to any insurance money already received and the fact that claimants had no repayment obligations to their insurers in respect of these amounts.

Rates of insurance and implications for total recovery of ELPD claimants

In this proceeding approximately 55% of the assessed ELPD losses were insured, with the remaining 45% of assessed ELPD losses being uninsured. This suggests that, once taking into account insurance monies received, on average ELPD claimants who had insurance ultimately recovered an estimated 68% of the value of their property damage and economic losses sustained as a result of this fire.¹⁶

Whilst this analysis does not apply to those ELPD claimants who were not insured, of the properties assessed in this proceeding, only 13% were properties where only above insurance claims were made (i.e. where no insurers filed a claim). This suggests that:

- a) Less than 13% of those affected by this fire were entirely uninsured for their property and economic losses (as some such addresses will have had insurance with insurers who elected not to make claims in the proceeding); and
- b) At least 87% of those affected by this fire had recovered insurance monies in relation to the property and economic losses.

¹⁶ This figure is arrived at by multiplying the 44.53% non-insured component by the ELPD recovery rate of 28.53% in this proceeding, this figure is then added to the 55.47% average insurance rate to arrive at an estimate of total recovery of 68%.

What was compensation paid for?

In this proceeding, ELPD losses were required to be assessed in accordance with the categories set out in the court-approved SDS. The following table analyses the final compensation paid out to above-insurance group members by these categories, evidencing that approximately 50% of the ELPD compensation paid to above-insurance group members was in respect of home and contents losses and that in total over 70% of such compensation was paid out for domestic losses. The table below also evidences that a far lower proportion of compensation was paid to claimants in this action for business or farm losses when compared to the Murrindindi proceeding:

Kilmore East - Kinglake Bushfire Class Action - above insurance economic loss and property damage recovery

Head of loss	% of total compensation paid*
House	25.5%
Contents	23.9%
Fences and yards	2.5%
Farm items (pasture, livestock, agistment, fodder, other)	3.1%
Infrastructure (sheds and other structures)	5.9%
Vehicles	5.1%
Garden	3.0%
Garden trees	1.0%
Other trees	1.4%
Outgoings - Rent	1.0%
Own/Volunteer Labour/Materials	2.1%
Domestic inconvenience	7.3%
Sub-total - Domestic	81.9%
Farm fences and yards	1.7%
Infrastructure (dwellings, sheds and other structures)	2.4%
Other business assets (pasture, livestock, agistment, fodder, income producing trees)	7.7%
Income and economic loss	3.3%
Sub-total - Business or Farm	15.0%
Other items (GST incl.)	0.7%
Total Assessed Loss (GST incl. + GST excl.)	100.0%

*rounded to one decimal place

Who was compensation paid to?

The table below analyses above-insurance ELPD compensation payments by entity types, evidencing that over 85% of the above-insurance ELPD compensation in this settlement administration was paid to individuals and close to 10% of above insurance ELPD compensation was paid to companies, with the remaining approximately 15% being paid across the remaining entity types.

Kilmore above insurance ELPD compensation by entity type	% Above insurance compensation paid*
Individual	85.5%
Business Partnership	1.5%
Dissolved Partnership	0.4%
Company	8.8%
Deregistered Company	0.0%
Deceased Estate	2.9%
Minors/Under Disability	0.2%
Sole Trader	0.0%
Trust	0.7%
Dissolved Trust	0.0%
Total	100.0%

*rounded to one decimal place

Where did the payments go?

Compensation payments for the ELPD settlement distribution in this class action were sent to claimants living in 531 suburbs in Australia and seven overseas locations. This suggests that many people left the bushfire-affected area in the aftermath of the fire.

Notwithstanding the widespread geographical dispersion of above-insurance claimants who received compensation in this action, the majority of payments were made to claimants who remain in the bushfire-affected area or its surrounds, with 1,809 of the 3,092 above insurance claimants and 57% of the compensation paid to above insurance claimants being sent to the following locations:

- | | |
|-------------------|----------------------|
| 1) Kinglake | 14) Hurstbridge |
| 2) Kinglake West | 15) Broadford |
| 3) Yarra Glen | 16) Glenburn |
| 4) Wandong | 17) Dixons Creek |
| 5) Whittlesea | 18) Strathewen |
| 6) Flowerdale | 19) Chum Creek |
| 7) Healesville | 20) Kinglake Central |
| 8) Pheasant Creek | 21) Mernda |
| 9) Clonbinane | 22) Kilmore |
| 10) St Andrews | 23) Wallan |
| 11) Hazeldene | 24) Yea |
| 12) Steels Creek | |
| 13) Doreen | |

Murrindindi - Marysville Bushfire Class Action

Analyses of compensation paid out

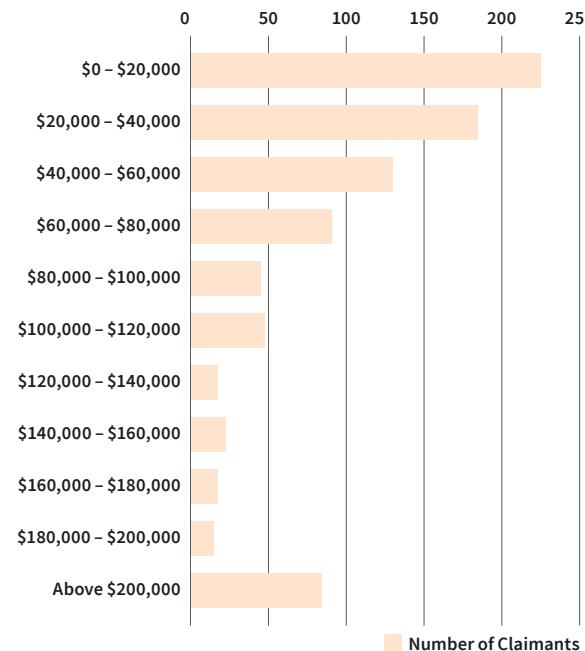
The total compensation paid to ELPD claimants in the Murrindindi Class Action was **\$236,633,197.74**, with compensation awards paid to above insurance claimants ranging from \$0 (for those who allocated their compensation to another claimant (i.e. a spouse), who were found not eligible or who were found to have suffered no compensable losses) to **\$14,739,935.17**.

Of the 1,039 above insurance claimants registered in this action, **872** received payments as part of the final ELPD settlement distribution. For those above insurance claimants who received compensation, the average compensation was **\$106,449.30**. This compensation was **additional to** any amounts that above insurance claimants had received from their insurers, and no repayment obligations arose in respect of these amounts to their insurers.

The table and graph below analyse payment ranges and the number of above insurance claimants who received compensation within these ranges in this class action.

Compensation paid	Number of claimants
\$0 - \$20,000	224
\$20,000 - \$40,000	188
\$40,000 - \$60,000	127
\$60,000 - \$80,000	90
\$80,000 - \$100,000	47
\$100,000 - \$120,000	48
\$120,000 - \$140,000	18
\$140,000 - \$160,000	20
\$160,000 - \$180,000	19
\$180,000 - \$200,000	12
Above \$200,000	79

**Murrindindi - Marysville Bushfire Class Action:
Analysis of compensation paid to ELPD claimants**



The payment distribution can be further analysed by looking at the number of above insurance claimants who received **above** a certain compensation amount as follows:

Compensation amount	Number of claimants
Over \$50,000	386
Over \$100,000	196
Over \$150,000	120
Over \$200,000	79
Over \$250,000	62
Over \$300,000	52
Over \$350,000	48
Over \$400,000	39
Over \$450,000	32
Over \$500,000	25
Over \$600,000	19
Over \$700,000	13
Over \$800,000	11
Over \$900,000	7
Over \$1,000,000	6

The above analyses evidence that above insurance ELPD claimants who received payments in this class action received substantial amounts of compensation. This is shown both in relation to the average compensation paid to above insurance claimants and when broken down into payment ranges and payments exceeding certain amounts. This is particularly so in light of such compensation being **additional to any** insurance money already received by claimants and the fact that claimants had no repayment obligations to insurers in respect of these amounts.

Rates of insurance and implications for total recovery of ELPD claimants

In this proceeding approximately 61% of the assessed ELPD losses were insured, with the remaining 39% of assessed ELPD losses being uninsured. This suggests that, once taking into account insurance monies received, on average ELPD claimants who had insurance ultimately recovered an estimated 86% of the value of their property damage and economic losses sustained as a result of this fire.¹⁷

Whilst this analysis does not apply to those ELPD claimants who were not insured, of the properties assessed in this proceeding, only 11% were properties where only above insurance claims were made (i.e. where no insurers filed a claim). This suggests that:

- a) Less than 11% of those affected by this fire were entirely uninsured for their property and economic losses (as some such addresses will have had insurance with insurers who elected not to make claims in the proceeding); and
- b) At least 89% of those affected by this fire had recovered insurance monies in relation to the property and economic losses.

¹⁷ This figure is arrived at by multiplying the 39.23% non-insured component by the ELPD recovery rate of 64.86% in this proceeding, this figure is then added to the 60.77% average insurance rate to arrive at an estimate of total recovery of 86.22%.

What was compensation paid for?

In this proceeding, ELPD losses were required to be assessed in accordance with the categories set out in the court-approved SDS. The following table analyses the final compensation paid out to above-insurance group members by these categories, evidencing that approximately 36% of the ELPD compensation paid to above-insurance group members was in respect of home and contents losses and that in total over 45% of such compensation was paid out for domestic losses. The table below also evidences that a significantly higher proportion of compensation (more than double) was paid to claimants in this action for business or farm losses when compared to the Kilmore proceeding.

**Murrindindi-Marysville Bushfire Class Action -
above insurance economic loss and property damage recovery**

Head of loss	% of total compensation paid*
House	19.1%
Contents	16.6%
Fences and yards	1.1%
Farm items (pasture, livestock, agistment, fodder, other)	1.2%
Infrastructure (sheds and other structures)	2.5%
Vehicles	1.6%
Garden	2.1%
Garden trees	0.6%
Other trees	0.7%
Outgoings - Rent	0.5%
Own/Volunteer Labour/Materials	1.1%
Domestic inconvenience	4.5%
Sub-total - Domestic	51.7%
Farm fences and yards	1.7%
Infrastructure (dwellings, sheds and other structures)	14.2%
Other business assets (pasture, livestock, agistment, fodder, income producing trees)	11.8%
Income and economic loss	3.6%
Sub-total - Business or Farm^	31.3%
Plantations	16.3%
Other items (GST incl.)	0.7%
Total Assessed Loss (GST incl. + GST excl.)	100.0%

*rounded to one decimal place

^excluding plantations

Who was compensation paid to?

The table below analyses above-insurance ELPD compensation payments by entity types, evidencing that close to 55% of the above insurance ELPD compensation in this settlement administration was paid to individuals and over a third of above insurance ELPD compensation was paid to companies, with the remaining approximately 12% being paid across the remaining entity types.

The table below also evidences that a significantly higher proportion of compensation (more than three times the figure in the Kilmore class action) was paid to companies in this action:

Kilmore above insurance elpd compensation by entity type	% Above insurance compensation paid*
Individual	54.2%
Business Partnership	4.3%
Dissolved Partnership	0.3%
Company	33.5%
Deregistered Company	0.1%
Deceased Estate	1.4%
Minors/Under Disability	0.4%
Sole Trader	0.1%
Trust	5.5%
Dissolved Trust	0.3%
TOTAL	100.0%

*rounded to one decimal place

Where did the payments go?

Compensation payments for the ELPD settlement distribution in this class action were sent to claimants living in 245 suburbs in Australia and four overseas locations. This suggests that many people left the bushfire-affected area in the aftermath of the fire and/or were non-permanent residents of the bushfire-affected area at the time of the fire.

Notwithstanding the widespread geographical dispersion of above-insurance claimants who received compensation in this action, a large proportion of payments were made to claimants who remain in the bushfire-affected area or its surrounds, with 387 of the 872 above insurance claimants and 39% of the compensation paid to above insurance claimants being sent to the following locations:

- 1) Marysville
- 2) Buxton
- 3) Narbethong
- 4) Alexandra
- 5) Healesville
- 6) Taggerty
- 7) Murrindindi

Economic impact

The economic impact of the compensation paid in the Kilmore and Murrindindi settlement administrations to selected bushfire-affected communities is examined in Section E below.

Costs

The costs of the settlement administration have been examined and reported on extensively by the Court and the court-appointed independent Special Referee for Costs and are the subject of discussion in Section B of this report. However, given the high level of interest in settlement administration costs displayed by claimants and media commentators during the settlement administration, the costs associated with the economic loss and property damage settlement administration warrant examination in further detail in this section of the report.

Total costs & costs per claim

The total costs¹⁸ associated with the ELPD settlement administrations in the Kilmore and Murrindindi Class Actions were **\$23,715,804.98**.

There were 11,653 ELPD claims assessed as part of these settlement administrations, resulting in an average cost per claim of **\$2,035.17**.

The total costs and cost per claim figures noted above include amounts required to be paid to third parties to complete assessments such as independent assessors and expert valuation reports. It also includes those costs associated with running and reporting on the settlement administration which are attributable to ELPD claimants. It is important to note that no costs were separately allowed to be recovered from the defendants to either Kilmore or Murrindindi Class Actions in relation to the assessment of individual claims under the SDS.

Whilst on its face, the average cost per ELPD assessment in these settlement administrations appears extremely low; the following analysis of the costs allowed for ELPD assessments in the Horsham bushfire class action by the Supreme Court of Victoria establishes this to be so.

Comparison of ELPD settlement administration costs with costs as allowed in the Horsham bushfire class action settlement administration

In the aftermath of the 2009 Black Saturday bushfires, a class action was initiated by another firm in relation to property and economic losses sustained in the Horsham bushfire which affected over 100 landowners. This class action settled on favourable terms to claimants in late 2011, with settlement approval occurring on 5 December 2011.

The court-approved settlement allowed for the plaintiff's solicitors to be paid for the assessment of the economic loss and property damage claims of the registered claimants. Unlike in these settlement administrations, the settlement provided that such costs would be paid in part by the defendants to that action and in part by the claimants in that action.

Over 4 years after the approval of the Horsham settlement, Horsham claimants remained unpaid due to ongoing disputes regarding the payment of such costs.¹⁹ In June 2016, in an effort to resolve the costs issues so as to allow claimants to be paid, the Supreme Court of Victoria examined the issue of what costs the firm in question could charge claimants. After hearing the application, the Court allowed the firm to charge the following fees for above insurance assessments:²⁰

Compensation of \$50,000 or less:	\$3,200
Compensation between \$50,000 and \$100,000:	\$5,500
Compensation between \$100,000 and \$200,000:	\$14,000
Compensation over \$200,000:	Costs as assessed

The Court made it clear that these costs were in addition to:

- a pool of funds which the Court allowed to be deducted from claimants' funds on account of disbursements incurred in assessing the claims;²¹ and
- any costs recovered from the defendants by way of party-party costs in relation to the assessment of the individual claimants' claims.²²

In relation to insurance-only assessments, the court allowed the firm to charge \$850.

The costs allowed by the Supreme Court of Victoria for ELPD claims assessments in the Horsham bushfire class action support the view that the costs of the ELPD assessments in these settlement administrations were extremely modest.

Cost comparison as between different assessors

At the beginning of the ELPD settlement administrations, four assessor firms were appointed as independent assessors and standard fixed rates were negotiated with each assessment firm. Of these assessment firms:

- a) Two were firms of solicitors, with one of these firms only undertaking assessments of insurance-only claims; and
- b) Two were professional insurance assessment/loss adjustment firms.

Although an additional four independent assessors were appointed during the course of the settlement administrations, the original four assessment firms remained the main assessment firms and completed the vast bulk of the assessments in these settlement administrations.

Throughout the course of the settlement administrations, additional payments were considered and made to the four main assessor firms from time to time for costs associated with training of the assessors and auditing performed of each other's assessments, as well as for particularly complex or time consuming assessments.

Following the final ELPD settlement distribution, the SDS team analysed the payments made to the three assessor firms that undertook assessments of both insurance and above-insurance claims with a view to ascertaining which firm proved to be the most cost-efficient on an average fee per assessment basis. This analysis indicated that the firm of solicitors that undertook these assessments was the cheapest assessor, with average assessment fees of 85.6% of the overall average assessment fee of the three main assessor firms.

The SDS team's experience was that this independent assessment firm was also the least resource-intensive (and thus cost-intensive) of these three assessment firms in terms of the level of requests and assistance required of the SDS team. It appears that this was because, being a law firm, issues such as claimant identity and ownership issues were identified early and processes for dealing with such issues streamlined internally by the assessment firm in question. Another potential explanation for this experience is that the process of assessing the ELPD claims under the SDS necessarily involved the application of legal principles to the loss assessment process. As such, the firm of solicitors was better equipped to deal with such issues than the professional insurance loss adjustment firms who were more used to assessing losses pursuant to insurance contracts, which in important respects differs from the assessment of losses caused by a negligent act.

On the other hand, many of the more complex property assessments were allocated to the professional loss adjustment assessor firms because of their expertise in assessing particular sorts of losses and complex claims. In some instances, this resulted in the payment of additional fees to these assessors in recognition of the complexity of such assessments and this may explain some of the difference in the average assessment fee.

Overall, each of the main assessor firms proved to be extremely efficient and cost-effective at assessing ELPD claims and their cooperation and dedication to the assessment process ensured that ELPD claimants were assessed in time to enable settlement distribution to occur in early 2017.

¹⁸ The total costs provided here include the proportion of general settlement administration costs which are referable to ELPD group members. The figures are accurate as at 28 February 2018. Note that work is still being undertaken in relation to the tax dispute and a small number of administrative matters, and thus modest costs continue to be incurred by the Scheme.

¹⁹ <http://www.abc.net.au/news/2016-04-14/compo-for-horshams-black-saturday-victims-still-pending/7325836>

²⁰ Thomas v Powercor, Supreme Court of Victoria orders dated 6 June 2016, Order 3.

²¹ Thomas v Powercor, Supreme Court of Victoria orders dated 6 June 2016, Order 7.

²² Thomas v Powercor, Supreme Court of Victoria orders dated 6 June 2016, other matters.

Section E

Economic Impact of Compensation on Selected Bushfire-affected Communities



Following the settlement distribution, Maurice Blackburn commissioned Deloitte Access Economics to write a report on the likely economic impact of the compensation paid in the Kilmore and Murrindindi settlement distributions on selected bushfire-affected communities ('the Deloitte report').²³

Necessarily the Deloitte report understates the overall economic impact of the compensation paid in the distributions because of the very substantial proportion of compensation which was paid to group members who now reside outside the bushfire affected communities. That broader economic benefit is obviously more diffuse and harder to measure.

The Deloitte report found that the distribution of compensation within the community has the potential to generate long-term economic benefits for the fire-affected communities over and above what could be expected without the payments. In order to quantify this long-term economic benefit, Deloitte was provided with anonymised settlement distribution data including the amount of money distributed by suburb and by compensation type.

Deloitte used this data to model two scenarios, with the report noting that the actual economic impact on the study area will likely be in between these two scenarios. Each of the two scenarios assesses the economic impact of the compensation paid in these settlement distributions on the five Victorian Local Government Areas affected by the Kilmore and Murrindindi Black Saturday bushfires, being the Yarra Ranges, Whittlesea, Murrindindi, Nillumbik and Mitchell ('the study region').

²³ The costs of obtaining this report were borne by Maurice Blackburn the firm rather than the settlement administrations.

Scenario 1

This scenario assumes that the personal injury and dependency and ELPD compensation paid to recipients in the study region of \$300 million is spent entirely on discretionary household consumption items in the study region. The Deloitte report forecasts that this will:

- 1) Increase the size of the study region's economy by \$117 million and the rest of Victoria's economy by \$108 million (\$2015-\$2016 and 7% nominal discount rate) in net present value terms over the period 2016-17 to 2024-25.
- 2) Increase employment in the region by an annual average of 36 full time equivalent jobs (FTEs) over the period from 2016-17 to 2024-25, and by an average of 99 FTEs over the period from 2016-17 to 2018-19, which aligns with the period over which the compensation payouts are assumed to be spent. The report notes that once the payments have been spent, employment begins to return to its original levels and indeed, by 2024-25 the incremental employment generated by the payouts is effectively zero. Employment in the rest of Victoria is forecast to increase by an average of 44 FTEs over the period from 2016-17 to 2024-2025. As businesses employ workers, their employees continue to inject money into the economy as they spend their incomes, which sustains and creates further jobs in the region.

Scenario 2

This scenario assumes that personal injury and dependency compensation paid to recipients in the study region is spent entirely on household consumption items in the study region and that all ELPD compensation paid to above insurance claimants is spent within the study region on rebuilding homes and local business that were lost and damaged in the fires. This scenario thus models the effect of \$350 million of compensation payments on the study region. The Deloitte report forecasts that this will:

- 1) Increase the size of the study region's economy by \$183 million and the rest of Victoria's economy by \$23 million in net present value terms (\$2015-16 and 7% discount rate) over the period from 2016-17 to 2024-25.
- 2) Increase employment in the study region annually by an average of 72 FTEs and in the rest of Victoria by 15 FTEs over the period from 2016-17 to 2024-25. This ongoing increase in FTEs results from the investment in businesses. The report notes that like in scenario one, as businesses employ workers, their employees continue to inject money into the economy as they spend their incomes, which sustains and creates further jobs in the region.

In relation to both scenarios, the Deloitte report notes that some of the money is assumed to "leak" to other regions due to taxes, to pay a producer outside the study region, or when recipients spend money outside the study region such as on holidays. The report explains that leakages are an assumed component of any regional economic analysis and that although the benefit of this spending is not captured in monetary terms within the study region, individuals experience higher levels of welfare as they spend the money in a way that is desirable to them.

The Deloitte report highlights the likely positive ongoing and enduring economic effects of the compensation paid to claimants through these settlement administrations in the areas affected by the Kilmore and Murrindindi bushfires, and beyond.

Section F

Communication with Group Members



During the course of the settlement administration, the issue of the frequency of communication between the SDS team and claimants was the subject of some commentary. As such, this section outlines the communication that the SDS team had with claimants throughout the course of the settlement administration process, covering:

- a) Correspondence in relation to their individual claims;
- b) Group updates regarding the progress of the settlement administration; and
- c) The reporting affidavits which were made publicly available for claimants to access on the Supreme Court of Victoria's website.

As there were 2,330 registered personal injury and dependency claimants in these settlement administrations, the SDS Team estimates that in excess of 18,640 standard individual communications listed above occurred between the SDS team and personal injury and dependency claimants throughout the assessment process.

In addition to these standard communications, certain types of claims required further communication with group members. For example, letters appointing personal representatives for claimants under a legal disability, or letters to communicate the Scheme Administrator's requirements in regards to claims made on behalf of deceased estates. Further correspondence was also required in circumstances where a review of a determination was sought by a claimant.

It was also frequently necessary for the SDS team to contact group members through email, letters and telephone calls to remind them to complete the electronic survey, return signed authorities, participate in the personal injury questionnaire and respond to questions specific to the status of individual assessments.

There was also a large volume of correspondence with individual personal injury and dependency claimants in respect of interim payment applications, review requests, requests for bond waivers, and late registration applications.

At all stages of the assessment process, claimants were invited to contact the SDS team with any questions specific to the assessment of their individual claims or the operation of the SDS more generally. The vast majority of that communication was able to be handled and responded to by assistants or paralegals in the SDS team, with enquiries escalated to lawyers in the SDS team where necessary. The volume of those communications fluctuated throughout the administration of the SDS but the likely number of individual communications resulting from these enquiries is estimated to be in the high thousands to in excess of ten thousand.

Individual communication

Communication with group members in relation to personal injury and dependency claims

In the course of the assessment of a personal injury and dependency claim, claimants received the following individualised communications from the SDS Team:

- a) A letter or email requesting they complete an electronic survey regarding their personal injury and dependency claim. Upon completion of this survey, each claimant was required to complete and return relevant authorities to the SDS Team;
- b) A letter or email advising the group member regarding the personal injury questionnaire process;
- c) A telephone call from a paralegal scheduling a time to complete the personal injury questionnaire;
- d) A telephone call from a paralegal or solicitor to complete the personal injury questionnaire, which typically took between one and three hours to complete;
- e) A telephone call from a paralegal or legal assistant to schedule an appointment with an independent assessor;
- f) A letter confirming the details of the appointment with the assessor;
- g) An SMS or phone call confirming the details of the appointment with the assessor 24 hours prior to the scheduled appointment; and
- h) A letter enclosing their Notice of Assessment and Statement of Reasons.

Communication with group members in relation to ELPD claims

In the course of the assessment of an ELPD claim, ELPD claimants received the following individualised communications from the SDS team:

- a) Letter confirming the allocation of their claim to an ELPD Assessor for assessment; and
- b) Letter enclosing the Final Notice of Assessment.

In addition to these letters, those claimants who had not been allocated for assessment to an independent assessor as of March 2016 were sent ELPD workbooks by the SDS team to expedite the management of their claims. There was subsequently a large volume of communication with individual group members in relation to the completion and return of this workbook.

There was also a large volume of correspondence with individual ELPD claimants in respect of interim payment applications, review requests, requests for bond waivers, and late registration applications.

At all stages of the assessment process, claimants were invited to contact the SDS team with any questions specific to the assessment of their individual claims or the operation of the SDS more generally. The vast majority of that communication was able to be handled and responded to by assistants or paralegals in the SDS team, with enquiries escalated to lawyers in the SDS team where necessary. The volume of those communications fluctuated throughout the administration of the SDS but the likely number of individual communications resulting from these enquiries is estimated to be in the thousands to tens of thousands.

Communications with independent assessors

In addition to direct communication with the SDS team, every above-insurance ELPD claimant was also contacted by the independent ELPD assessor allocated to assess their claim via letter, email and/or telephone, in relation to their individual claim.

Each group member was also issued by their allocated independent assessor with:

- a) A Provisional Notice of Assessment in the standard form template provided to the independent assessors by the SDS team;
- b) A pro forma letter enclosing the Provisional Notice of Assessment provided to the independent assessors by the SDS team;
- c) A pro forma dispute notice and an information guide to interpreting the Provisional Notice of Assessment provided to the independent assessors by the SDS team.

Group correspondence

In addition to the considerable volume of individual correspondence that was required to be distributed and responded to by the SDS team to individual ELPD claimants throughout the assessment process, the SDS team sent regular periodic updates to claimants to advise on the progress of the settlement administration.

Kilmore Class Action

In the Kilmore Class Action settlement administration, claimants were sent the following group correspondences since the settlement approval of 23 December 2014:

- a) Update letter sent via email or post on 20 January 2015;
- b) "Personal injury compensation in the Kilmore-East - Kinglake Bushfire Class Action" brochure and enclosing letter sent to personal injury and dependency claimants on 19 March 2015;
- c) "Property damage compensation in the Kilmore-East - Kinglake Bushfire Class Action" brochure and enclosing letter sent to ELPD claimants on 10 June 2015;
- d) Update letter sent via email or post on 9 February 2016;
- e) Update letter sent via email or post on 29 February 2016;
- f) Update letter sent via email or post on 10 May 2016;
- g) Update letter sent via email or post on 7 July 2016;
- h) Update letter sent via email or post on 25 July 2016;
- i) Revised Personal Injury Brochure (Section D and Attachment D) sent to personal injury and dependency claimants via email or post on 8 August 2016;
- j) Update letter sent via email or post on 6 September 2016;
- k) Update letter sent via email or post on 12 August 2016;
- l) Update letter sent via email or post on 14 November 2016;
- m) Update letter sent via email or post on 1 December 2016;
- n) Update letter sent via email or post on 3 February 2017;
- o) Update letter sent via email or post on 8 August 2017;
- p) Update letter sent via email or post on 19 December 2017; and

- q) Update letter sent via email or post on 13 April 2018.

The SDS team will continue to update claimants regarding to the outstanding taxation matters affecting these settlement administrations until these matters are concluded.

Murrindindi Class Action

In the Murrindindi Class Action settlement administration, claimants were sent the following group correspondences since the settlement approval of 27 May 2015:

- a) "Personal injury compensation in the Murrindindi - Marysville Class Action" brochure and enclosing letter sent to personal injury and dependency claimants on 25 June 2015;
- b) "Property damage compensation in the Murrindindi - Marysville Bushfire Class Action" brochure and enclosing letter sent to ELPD claimants on 23 July 2015;
- c) Update letter sent via post or email on 10 February 2016;
- d) Update letter sent via post or email on 4 March 2016;
- e) Update letter sent via post or email on 17 May 2016;
- f) Update letter sent via email or post on 8 July 2016;
- g) Update letter sent via email or post on 8 August 2016;
- h) Revised Personal Injury Brochure (Section D and Attachment D) sent to personal injury and dependency claimants via email or post on 12 August 2016;
- i) Update letter sent via email or post on 12 August 2016;
- j) Update letter sent via email or post on 6 September 2016;
- k) Update letter sent via email or post on 14 November 2016;
- l) Update letter sent via email or post on 1 December 2016;
- m) Update letter sent via email or post on 3 February 2017;
- n) Update letter sent via email or post on 8 August 2017;
- o) Update letter sent via email or post on 19 December 2017; and
- p) Update letter sent via email or post on 13 April 2018.

The SDS team will continue to update claimants regarding to the outstanding taxation matters affecting these settlement administrations until these matters are concluded.

Reporting affidavits

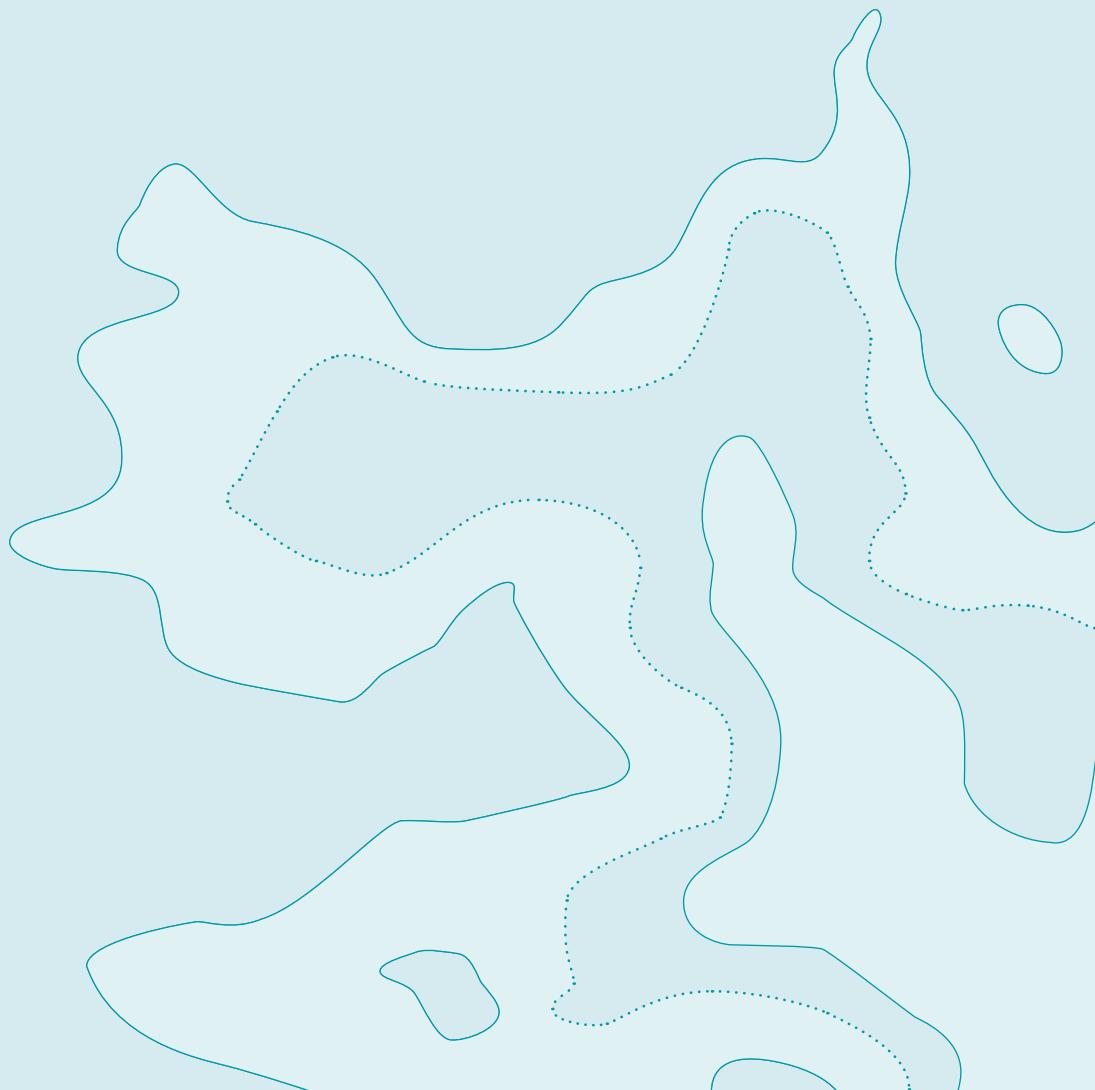
In addition to the communications above, the detailed reporting affidavits filed by the Scheme Administrator in advance of CMCs and the Special Referee for Costs reports discussed in Section B of this report were made available to claimants throughout the settlement administrations by way of publication on the Supreme Court of Victoria website.

Section G

Taxation

Under the SDS, the Scheme Administrator was responsible for all elements of administering the settlement money, including all aspects of the assessment of claimants' entitlement to compensation and the distribution of settlement money.

During the course of administering the Scheme, a dispute arose between the Scheme Administrator and the ATO. As of the time of publication of this report, the dispute remains ongoing.



Background to the issue

The SDS in each of the Kilmore and Murrindindi settlement administrations requires that the Distribution Sum in each action be invested in an interest-bearing account. Each SDS also provides that settlement administration costs are to be paid from the interest earned before reducing the principal Distribution Sum payable to claimants.

The SDS in each action specified that all taxes arising in connection with the administration of the Scheme are to be paid from the Distribution Sum (SDS section A4.1(a)). This means that any tax payable on the interest earned is to be paid from the Distribution Sum.

The Scheme Administrator retained specialist advisors to assist with matters relating to taxation on the Distribution Sum and, from February 2015, the Scheme Administrator instructed the taxation advisors to engage with the ATO on issues relating to the taxation liability arising from interest earned on the Distribution Sum.

A dispute arose between the Scheme Administrator and the ATO as to the taxation treatment of the interest earned on the Distribution Sum and the deductibility of administration expenses for both the Kilmore and Murrindindi Class Actions.

The resolution of that dispute has a significant impact on how much tax might need to be paid on the interest earned on the Distribution Sum. The Scheme Administrator has a responsibility to seek the best possible outcome for claimants and has engaged with the ATO in an attempt to resolve the dispute.

Scheme Administrator's best efforts and ongoing dialogue with the ATO, the taxation liability issues had not been resolved.

This left the Scheme Administrator with the choice of either delaying the distribution of compensation money to group members until the issues were resolved or, alternatively, distributing the settlement money but withholding an amount which represented the largest possible taxation liability plus associated costs, subject to the outcome of the resolution of the taxation dispute. It was decided that it was important for claimants to get their compensation as quickly as possible, so distribution was executed and an amount retained to cover the potential taxation liability and any associated costs.

The personal injury compensation money was distributed from 14 December 2016, and the ELPD compensation money was distributed from 27 March 2017, but amounts had to be withheld in respect of the potential taxation liability and associated costs on each of the Kilmore and the Murrindindi Distribution Sums.

An amount of \$16,274,567.00 was withheld from distribution to claimants in the Kilmore Class Action and an amount of \$8,149,035.00 was withheld from distribution to claimants in the Murrindindi Class Action.

Progress of the issue

Since the initial distribution of compensation money in respect of the personal injury and ELPD claims, the Scheme Administrator and his taxation advisors PwC have continued to liaise with the ATO as a matter of priority in an attempt to resolve the dispute.

If the taxation dispute is resolved on terms that are more favourable than the largest possible taxation liability and it is economic to do so, the SDS team will distribute any remaining sum to group members as per their pro-rata entitlement to compensation.

On 27 March 2018, the Scheme Administrator filed proceedings in the Federal Court of Australia against the ATO. The Federal Court proceedings use one tax year in the Murrindindi Bushfire Class Action as a test case to resolve and clarify the issues in dispute.

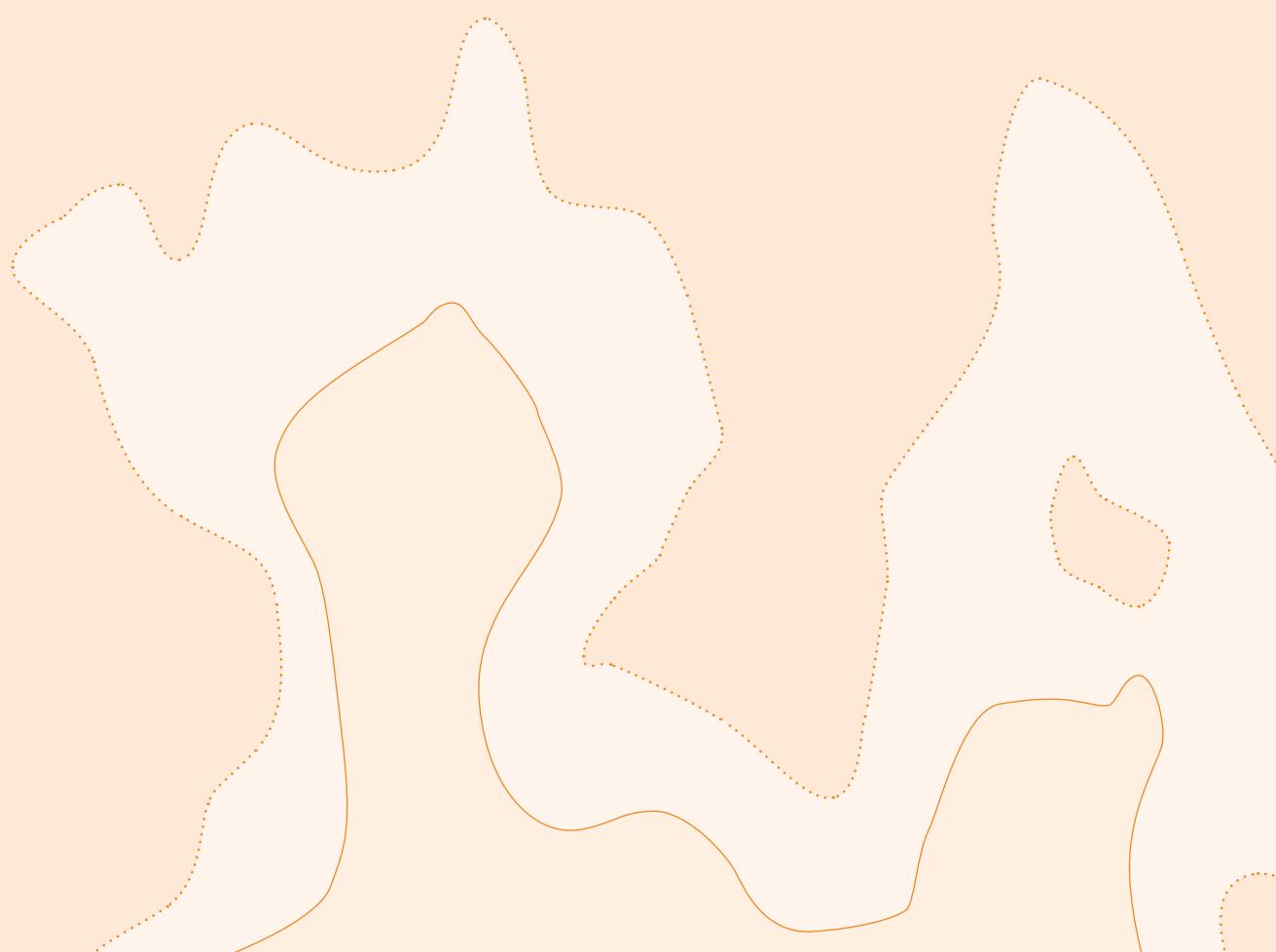
Effect on distribution

In approximately November 2016, it became apparent that the taxation issues affecting the settlement administrations would not be resolved prior to the completion of the assessment of personal injury and dependency claims or the assessment of ELPD claims.

The result of that circumstance was that, by the time individual loss was assessed and compensation money was ready to be distributed, and despite the

Section H

Summary



The Kilmore and Murrindindi Class Actions were claims brought on behalf of those who suffered loss and damage as a result of the Black Saturday bushfires. The Kilmore and Murrindindi Class Actions settled for \$494,666,667.00 and \$300,000,000.00, respectively, inclusive of costs.

As part of the settlement approval process the Court appointed Andrew Watson, Maurice Blackburn Principal, as the Scheme Administrator and approved the Settlement Distribution Schemes which established the assessment processes under which all group member claims were required to be assessed. The assessment processes in the SDSs were substantially identical which allowed for the settlement administrations to be conducted simultaneously.

The settlement administrations were supervised by the Supreme Court of Victoria. The Court held a series of CMCs to facilitate its oversight and supervision of both the Kilmore and Murrindindi Class Action settlement administrations. In advance of the CMCs the Court required the Scheme Administrator to file detailed affidavits updating the Court on the progress of the settlement administrations.

The settlement administrations involved the participation of a number of third parties including but not limited to KPMG, PwC, independent assessors, review assessors for personal injury and dependency claims, ELPD assessors, ELPD review assessors, the Settlement Distribution Coordinator and the independent Special Referee for Costs.

In accordance with the SDS, the settlement sum in each action was invested for the duration of the assessment process, with the interest earned being used to offset the settlement administration costs. The costs of administering the settlements were routinely reviewed and audited by the independent Special Referee for Costs who would prepare written reports for the Court as to the reasonableness of the costs incurred. All costs incurred by the Scheme Administrator required Court approval before they could be paid.

Across both class actions the final total number of claims which required assessment was 13,983 claims comprising:

- a) 2,330 personal injury and dependency claims; and
- b) 11,653 economic loss and property damage claims.

The assessment of the 2,330 personal injury and dependency claims for the Kilmore and Murrindindi Class Actions was undertaken in just under two years between 23 December 2014, when the Kilmore Class Action settlement was approved by the Court and 14 December 2016, when the personal injury settlement distribution was effected to personal injury and dependency claimants in both class actions.

The assessment of the 11,653 ELPD claims for the Kilmore and Murrindindi Class Actions was undertaken in just over two years between 23 December 2014, when the Kilmore Class Action settlement was approved by the Court and 27 March 2017, when the ELPD distribution was effected to economic loss and property damage claimants in both class actions

Across both class actions the final compensation paid to claimants was \$689,087,065.06 comprising:

- a) \$193,021,689.33 for personal injury and dependency claims; and
- b) \$496,065,375.73 for economic loss and property damage claims.

At the time of distribution an amount of \$16,274,567.00 was withheld from distribution to claimants in the Kilmore Class Action and an amount of \$8,149,035.00 was withheld from distribution to claimants in the Murrindindi Class Action. These amounts were withheld due to the ongoing dispute between the Scheme Administrator and the ATO as to the taxation treatment of the interest earned on the Distribution Sum and the deductibility of administration expenses for both class actions. If the taxation dispute is resolved favourably and it is economic to do so, the Scheme Administrator will distribute any remaining sum to group members as per their pro-rata entitlement to compensation.

Glossary



Glossary of key terms

AI - Above insurance

ALCG report - Australian Legal Costing Group report on personal injury costs

ATO - Australian Tax Office

CFA - Country Fire Authority

CMC - Case management conference

Deloitte report - Report by Deloitte Access Economics on the likely economic impact of the compensation paid in the Kilmore and Murrindindi settlement distributions on selected bushfire-affected communities

DVA - Department of Veterans' Affairs

ELPD - Economic loss and property damage

FNOA -Final Notice of Assessment

Kilmore Class Action - Kilmore East - Kinglake Bushfire Class Action

MDL - Multi-district litigation

Murrindindi Class Action - Murrindindi - Marysville Bushfire Class Action

PNOA - Provisional Notice of Assessment

PwC - PricewaterhouseCoopers

Recovery rate - the percentage of each group member's total assessed losses which was awarded as compensation

SDS - Settlement Distribution Scheme

SDS team - Solicitors and administration staff of Maurice Blackburn

Study region - The local government areas studied by the Deloitte report, being the Yarra Ranges, Whittlesea, Murrindindi, Nillumbik and Mitchell

TAC - Transport Accident Commission

VWA - Victorian WorkCover Authority

