
SETTLEMENT DISTRIBUTION SCHEME

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Background

- A The Plaintiffs and the Defendant have executed the Settlement Deed.
- B This Settlement Distribution Scheme establishes the procedure for allocating and distributing the Settlement Sum to be paid pursuant to the Settlement Deed and as approved by the Court.
- C This Settlement Distribution Scheme does not become operative until the Court has made the Approval Orders.
- D This Settlement Distribution Scheme provides, among other things, for the following steps to occur:

The Secretary of the Department of Health, Professor Euan Wallace AM is appointed as Administrator of the Settlement Distribution Scheme.

The Administrator creates the Register of Group Members, listing the Eligible Group Members.

The Administrator issues the Initial Notice to the Group Members, requesting they register to participate in the distribution of the Settlement Sum.

The Administrator pays the Reimbursement Amounts from the Settlement Sum to the Plaintiffs.

The Administrator calculates the Settlement Payments for each Eligible Group Member.

The Administrator sends a Notice of Assessment to each Eligible Group Member in respect of their claims.

The Administrator distributes the Settlement Payments to each Eligible Group Member from the Settlement Sum after making the deductions for the Reimbursement Amounts.

Operative part

1 Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise:

Act	Means the <i>Supreme Court Act 1986</i> (Vic).
Administrator	Means the Secretary of the Department of Health, Professor Euan Wallace AM.
Adult	Means a person over the age of 16 as at 4 July 2020.
ASOC	Means the Amended Statement of Claim dated 24 September 2021.

Approval Orders Date	Means the latter of the date on which: <ul style="list-style-type: none"> (a) the appeal period with respect to the Approval Orders made by the Court has expired without any appeal or application for leave to appeal being filed; and (b) if the Court makes the Approval Orders and an appeal or application for leave to appeal from the Approval Orders is commenced, then three Business Days after the date the ultimate determination of the matters the subject of the appeal (including any subsequent appeal or application to appeal) is made
Approval Orders	Means orders of the Court under s 33V of the Act approving the settlement of the Claims, and on the terms set out in the Settlement Deed, and approving this Settlement Distribution Scheme (or this Settlement Distribution Scheme incorporating any amendments made by the Court).
Business Day	Means a day on which banks are open for business in the city of Melbourne and excluding a Saturday, Sunday or public holiday.
Child	Means a person under the age of 16 at as 4 July 2020.
Claims	Means the Plaintiffs' and Group Members' claims, as set out in their ASOC and Reply dated 27 January 2022, and all claims that are in connection with or arise out of or in relation to the subject matter of the Proceeding or the same or similar circumstances.
Court	Means the Supreme Court of Victoria.
Defendant	Means the State of Victoria.
Eligible Group Member	Means a Group Member who is eligible to receive a distribution from the Settlement Sum as calculated by the Administrator pursuant to this Settlement Distribution Scheme.
Estate Towers	Means the following addresses: <ul style="list-style-type: none"> • 12 Holland Court, Flemington 3031; • 120 Racecourse Road, Flemington 3031; • 126 Racecourse Road, Flemington 3031; • 130 Racecourse Road, Flemington 3031; • 9 Pampas Street, North Melbourne 3051; • 12 Sutton Street, North Melbourne 3051; • 33 Alfred Street, North Melbourne 3051;

- 76 Canning Street, North Melbourne 3051; and
- 159 Melrose Street, North Melbourne 3051.

First Period	Means from about 4.00PM or 4.30PM on 4 July 2020 until 5.00PM on 9 July 2020 (in the case of 9 Pampas Street, North Melbourne and 159 Melrose Street, North Melbourne) and about 4.00 PM or 4.30PM on 4 July 2020 (or shortly thereafter) until 11:59PM on 9 July 2020 in the case of all other Estate Towers
Group Member	Means a person falling within the definition of a group member in the ASOC, who has not opted-out of the Proceeding and has not opted back in to the Proceeding, in accordance with section 33J of the Act, and includes the Plaintiffs.
Group Member Payment	Means the amount calculated by the Administrator pursuant to 8 and to be distributed to Eligible Group Members.
Initial Notice	Means a notice described in clause 5.
Minor	Means a Group Member who is a minor within the meaning of order 15 of the Rules
Notice of Assessment	Means a notice described in clause 11.
Notice of Settlement Payment	Means a notice as described in clause 11.
Person Under Disability	Means a person who is a “person under disability” within the meaning of section 33A of the Act and order 15 of the Rules.
Plaintiffs’ Legal Costs	Means the Plaintiffs’ reasonable legal costs and disbursements incurred on their own behalf and/or on behalf of all Group Members and includes the Plaintiffs’ costs incurred in respect of the Settlement Approval Application as approved by the Court
Proceeding	Means Hassan v State of Victoria S ECI 2021 00826.
Reimbursement Amount	Means any amount the Plaintiffs may seek to be awarded and approved by the Court in recognition of their position as lead Plaintiffs to be paid from the Settlement Sum.
Register of Group Members	Means the register prepared by the Administrator comprising of those Group Members who have registered to participate in the settlement distribution by the Registration Date.

Registration Date	Means 27 June 2023 by which the Group Members are required to register their intention to participate in the settlement distribution.
Relevant Period	Means the First and Second Periods.
Rules	Means <i>Supreme Court (General Civil Procedure) Rules 2015</i> (Vic)
Scheme Objective	Means the objective of administering this Settlement Distribution Scheme having regard to the best interests of the Group Members as a whole and, in particular, with a view to striking a balance between: <ul style="list-style-type: none"> (a) providing a reasonable time and opportunity for as many Eligible Group Members as possible to receive a Settlement Payment under this Settlement Distribution Scheme; (b) ensuring that the Administration Costs incurred in implementing this Settlement Distribution Scheme are reasonable and the methods employed in implementing this Settlement Distribution Scheme are practical, proportionate and cost effective having regard to the interests of the Group Members as a whole; and (c) providing for the payment of Settlement Payments to the Eligible Group Members within a reasonable period of time.
Settlement Distribution Scheme	Means the terms of this Settlement Distribution Scheme as approved by the Court, including any Schedules and Annexures.
Second Period	Means from 11.59 pm on 9 July 2020 until 11:59 pm on 18 July 2020.
Settlement Deed	Means the Settlement Deed executed by the Parties dated 3 March 2023.
Settlement Sum	Means AUD \$5,000,000.00, including any amounts for interest and Reimbursement Amount and excluding legal costs and disbursements.
Unit	The portion of the Settlement Sum an Eligible Group Member is entitled to receive in accordance with clause 8.

2 Distribution of the Settlement Sum

2.1 Administration of the Settlement Distribution Scheme

The Secretary of the Department of Health, Professor Euan Wallace. AM is the Administrator of the distribution of the Settlement Sum.

2.2 Commencement of the Settlement Distribution Scheme

The Settlement Distribution Scheme commences on the date when the Court makes the Approval Orders.

2.3 Duties, Obligations and Role of the Administrator

- (a) Without limiting the duties, obligations and role of the Administrator otherwise specified in this Settlement Distribution Scheme, the Administrator:
 - (i) must administer and distribute the Settlement Sum in accordance with this Settlement Distribution Scheme and the Scheme Objective;
 - (ii) must act as expeditiously as possible in accordance with this Settlement Distribution Scheme, the Scheme Objective and any orders made by the Court;
 - (iii) must perform its obligations conscientiously, in good faith, with due care and skill, and fairly in the best interests of Group Members as a whole and not as the representative for any individual Group Member;
 - (iv) may engage third party service providers including, lawyers, tax advisors, registry service providers and mailing houses;

2.4 Corrections

The Administrator may at any time in their discretion correct any error, slip or omission occurring in the course of its administration of the Settlement Distribution Scheme.

2.5 Administrator's Costs

The Administrator's costs are not to be deducted from the Settlement Sum and will be paid by the Defendant.

3 Verification and Register of Group Members

3.1 Verification

- (a) The Administrator must take all reasonable steps to verify the identity and eligibility and age of each Group Member to participate in the distribution of the Settlement Sum, by;
 - (i) confirming the identity of each Group Member who has registered to participate in the distribution of the Settlement Sum (such as name, gender, date of birth and address) matches the information otherwise available to the Administrator;
 - (ii) contacting Group Members by telephone, email, social media or otherwise to verify their identity;
 - (iii) requiring Group Members to provide a declaration to verify their identity and that they resided or stayed at the Estate Towers during the Relevant Period (or, in the case of a Person Under Disability, asking their legal guardians or personal representatives to provide such verification), and/or any other information or documents to verify their identity and their eligibility to participate in the distribution of the Settlement Sum; and
 - (iv) making any other reasonable enquiries to verify the identity and eligibility to participate in the distribution of the Settlement Sum of a Group Member including inviting Group Members or other persons to attend an interview for the purpose of obtaining relevant information.

- (b) The Administrator may in their discretion decide what steps are appropriate to verify the identity and eligibility of a Group Member.
- (c) If the Administrator considers that the Group Member's identity or eligibility to participate in the distribution of the Settlement Sum cannot be verified, the Administrator may decide that a Group Member's registration to participate in the distribution of the Settlement Sum is void and of no effect.

3.2 Register of Group Members

- (a) As soon as practicable after the Court makes the Approval Orders, the Administrator must prepare the Register of Group Members.
- (b) The Administrator must:
 - (i) maintain the Register of Group Members;
 - (ii) cause notices to be sent to the Group Members;
 - (iii) evaluate each Group Member's claim to participate in the distribution of the Settlement Sum;
 - (iv) cause the Group Member Payments to be paid to the Eligible Group Members; and
 - (v) on completion of the distribution of the Settlement Sum, provide the Court with a report outlining the Group Member Payments made and confirming that the entire Settlement Sum has been exhausted.
- (c) The Parties, to the extent they hold the following information, must within 5 Business Days of the Court making the Approval Orders, provide to the Administrator:
 - (i) copies of the opt-out notices that have been filed in the Proceedings; and
 - (ii) the last known residential addresses for the potential Group Members.
- (d) The Administrator must not include those individuals who, as at the date of the Approval Orders, have filed an Opt-out Notice and who have not opted back in to the Proceedings in the Register of Group Members.
- (e) The Register of Group Members is to contain information in relation to each Eligible Group Member including:
 - (i) name;
 - (ii) contact details, including:
 - (A) current residential address;
 - (B) phone number; and
 - (C) email address.
 - (iii) date of birth;
 - (iv) address within the Estate Towers that the Group Member resided at, or was visitor to, during the Relevant Period;
 - (v) whether the Group Member was a resident of or visitor to the Estate Towers during the Relevant Period;
 - (vi) evidence provided to identify and substantiate the Group Member's claim to participate in the distribution of the Settlement Sum, which may include a copy of, but is not limited to:

- (A) residential lease(s) covering the Relevant Period;
- (B) telephone, electricity, internet, gas invoices or bank statements from the Relevant Period;
- (C) Medicare correspondence or documents dated during the Relevant Period;
- (D) Centrelink correspondence and notices;
- (E) driver's licences or copies of the driver's licence or learner's permits;
- (F) the records used to check the eligibility of the Group Member and verify their identity, age and address within the Estate Towers; and/or
- (G) a statutory declaration by the relevant Group Member attesting to being a resident of, or a visitor to, the Estate Towers during all or some of the Relevant Period.

3.3 Minors and Persons Under Disability

- (a) Where the Administrator reasonably believes a Group Member is or may be a Person Under Disability (a term which includes a minor):
 - (i) the Administrator may give written notice to the Group Member confirming that belief;
 - (ii) the Group Member may nominate a person to be appointed their personal representative, and, subject to clause 3.3(b), the Administrator must appoint that person as the Group Member's personal representative in relation to the operation of the Settlement Distribution Scheme; and
 - (iii) in the absence of any nomination in accordance with subclause 3.1(a)(ii), the Administrator must appoint a personal representative for that Group Member in relation to the operation of the Settlement Distribution Scheme.
- (b) Where the interests of a Person Under Disability Group Member requires, the Administrator, may:
 - (i) appoint or remove a personal representative of that Group Member; or
 - (ii) substitute another person as personal representative of that Group Member.
- (c) At the request of a Group Member, the Administrator may appoint a personal representative for that Group Member, even though the Group Member is not, nor does the Administrator reasonably understand them to be, a Person Under Disability. The Administrator must inform the person in writing of their appointment as a personal representative of the Group Member under this clause.
- (d) Where a personal representative is appointed in accordance with clauses 3.3(a), 3.3(b) and 3.3(c), the operation of this Settlement Distribution Scheme will be modified as follows:
 - (i) except where otherwise provided by the Settlement Distribution Scheme or by the Administrator, anything that is required by the Settlement Distribution Scheme or the Administrator requires to be done by a Group

Member (including making any applying for a Review), will be done by the personal representative; and

- (ii) any notices, correspondence or information issued after the date of appointment must be given to the personal representative of that Group Member.
- (e) Where a personal representative is appointed in accordance with clauses 3.3(a) and 3.3(b), the operation of this Settlement Distribution Scheme must be modified such that, subject to any further order of the Court, any payment made to that Group Member will be paid to the personal representative on behalf of the Group Member.
- (f) A parent or guardian of a Person Under Disability who is a minor, or a personal representative of a Person Under Disability may complete and return the Notice of Claim and any other document required for the purposes of this Settlement Distribution Scheme on behalf of the Person Under Disability for whom they are a parent, guardian or personal representative.

4 Group Members' Obligations

- (a) Nothing in this Settlement Distribution Scheme prevents any Group Member from retaining legal representation, at their own cost, provided that no legal costs or like expenses may be claimed from the Administrator or the Settlement Sum.
- (b) Each Group Member must do all things stipulated in this Settlement Distribution Scheme or as reasonably requested or directed by the Administrator, including:
 - (i) providing instructions, information or documents, including bank details;
 - (ii) providing authorities or permissions considered reasonably necessary by the Administrator to give effect to the Settlement Distribution Scheme; and
 - (iii) complying with any deadline set by the Administrator or Court.
- (c) If a Group Member does not do the things stipulated in this Settlement Distribution Scheme or as reasonably requested or directed by the Administrator or the Court, including complying with any reasonable deadlines as set by the Administrator or Court, the Administrator may deem the Group Member as ineligible to participate in the distribution of the Settlement Sum.
- (d) Each Group Member must notify the Administrator of any change in their contact details or bank account details within five Business Days after any such change.

5 Initial Notice to Group Members

- (a) As soon as practicable, the Administrator must send an Initial Notice to Group Members with that Initial Notice to include, at a minimum, the following:
 - (i) the Administrator's determination as to whether an individual who has submitted a Notice of Claim is deemed as an Eligible Group Member; and;
 - (ii) If deemed an Eligible Group Member:

- (A) whether they are classified as an Adult or Child for the purposes of clause 8;
- (B) where not already provided in the Notice of Claim, a request to provide bank account details for the purposes of making the Eligible Group Member Payment; and
- (iii) if further information is required, a request to provide such proof, evidence or information as the Administrator considers necessary to assist with the verification of a Group Members' identity, age and eligibility to participate in the distribution of the Settlement Sum;
- (iv) an explanation regarding the Group Member's right to review the Administrator's determination in the Initial Notice pursuant to clause 6;
- (v) a means for the Group Member to exercise his or her right of review; and
- (vi) should a review of the Administrator's determination be made, a request for the Group Member's consent that the material relied on by the Administrator for its determination be provided to the Independent Reviewer.

6 Review

6.1 Right to seek a review

- (a) Subject to clause 6.2 a Group Member may seek a review of a decision by the Administrator as to whether that Group Member is:
 - (i) an Eligible Group Member entitled to participate in the distribution of the Settlement Sum; or
 - (ii) classified as an Adult or Child pursuant to clause 8(a)(ii).

(Review).
- (b) A Group Member is not entitled to seek a review of any other determination made by the Administrator pursuant to this Settlement Distribution Scheme.

6.2 Process for seeking a review

If a Group Member wishes to seek a Review, they must:

- (a) give written notice to the Administrator no later than 10 Business Days after the date of the Initial Notice sent to the Group Member;
- (b) state the reason(s) why the Group Member disputes the Administrator's decision and provide supporting documentation; and
- (c) consent to the Administrator providing the Independent Reviewer with the materials referred to in clause 6.4(c).

6.3 Failure to seek a review

If a Group Member does not give written notice to the Administrator seeking a Review of their Group Member Payment within 10 Business Days of the Administrator sending an Initial Notice to the Group Member, the Administrator's determination in the Notice of Assessment is final and no Review can be sought.

6.4 Process for reviews

The Administrator will assess and determine Reviews according to the following procedure:

- (a) in the first instance the Administrator will consider the Review submitted pursuant to clauses 6.2 any may amend their determination in the Initial Notice.
- (b) if the Administrator does not amend their determination in the Initial Notice, the Administrator must refer any Review to a junior barrister of at least three years' experience at the Victorian Bar, who was not involved in the Administrator's original determination of that Group Member's eligibility to participate in the distribution of the Settlement Sum (**Independent Reviewer**). The appointment of the Independent Reviewer must be by agreement between the Parties and failing agreement, the Administrator will provide the Plaintiffs with a shortlist of three barristers of at least three years' experience at the Victorian Bar. The Plaintiffs will then select one of those shortlisted barristers to be appointed as the Independent Reviewer.
- (c) the Administrator must provide the following materials to the Independent Reviewer within 5 Business days referring the matter to the Independent Reviewer:
 - (i) the Group Member's Notice of Claim;
 - (ii) the Group Member's Initial Notice;
 - (iii) the Group Member's request for Review and any reasons and supporting documentation provided by the Group Member; and
 - (iv) documents provided by the Group Member to the Administrator;
 - (v) documents held by and/or relied upon by the Administrator in order to determine whether the Group Member is eligible to participate in the distribution of the Settlement Sum or the age of the Group Member.
- (d) within 10 Business Days of receiving the materials from the Administrator, the Independent Reviewer must decide whether to affirm or amend the Administrator's decision under Review (**Independent Reviewer Determination**) and provide to the Administrator a brief statement of reasons for the Independent Reviewer Determination;
- (e) after the Administrator either:
 - (i) amends the original determination in the Initial Notice; or
 - (ii) receives the Independent Reviewer Determination,
 the Administrator will within 10 Business Days send to the Group Member a "**Notice of Review**" in which the Administrator informs the Group Member of the result of the Review; and
- (f) the Administrator must update the Register of Group Members to reflect the outcome of the Review.

6.5 Independent Reviewer Determination is final and binding

The Independent Reviewer Determination is final and binding on the Administrator and the Group Member who sought the Review.

7 Bar to Claims

If a Group Member does not provide the required information to the Administrator in response to clause 5(a)(iii) the notices referred to in clause 6.2 and/or clause 6.4 above within the periods prescribed in those clauses a Group Member is barred from making any further claim in respect of the Claims.

8 Calculation of each Eligible Group Member Payments

As soon as practicable after the Review process at clause 6 has been completed, the Administrator must:

- (a) calculate each Eligible Group Member Payment using the following method:
 - (i) The Reimbursement Amounts will be deducted from the Settlement Sum;
 - (ii) The Administrator will allocate Units to each Eligible Group Member who has registered to participate in the distribution of the Settlement Sum in the following way:
 - (A) each Adult Eligible Group Member - 2 Units
 - (B) each Child Eligible Group Member - 1 Unit
 - (iii) The Administrator will calculate the total number of Group Member Units; and
 - (iv) The Administrator will calculate each Eligible Group Member Payment using the following formulas:

$$\text{Adult Eligible Group Member Payment} = 2x \frac{(\text{Settlement Sum} - \text{Reimbursement Amounts})}{\text{Total Number of Units}}$$
$$\text{Child Eligible Group Member Payment} = 1x \frac{(\text{Settlement Sum} - \text{Reimbursement Amounts})}{\text{Total Number of Units}}$$

9 Notice of Assessment

Once the Administrator has calculated all Eligible Group Member Payments pursuant to clause 8 above, the Administrator will promptly send to each Eligible Group Member a Notice of Assessment that provides their Group Member's Payment Payments from the Settlement Sum.

10 Payments from the Settlement Sum

10.1 Plaintiffs' Reimbursement

Within 20 Business Days of the Approval Orders Date, the Administrator must pay the Reimbursement Amounts to each Plaintiff from the Settlement Sum.

10.2 Group Member Payments

Within 60 Business Days of the date:

- (a) the final Independent Reviewer Determination has been issued; or
- (b) the last Initial Notice is issued, if no Group Member seeks a Review;

the Administrator must distribute the Group Member Payments.

11 Notice of Settlement Payment

Once the Review process is complete and the Administrator has calculated all Eligible Group Member Payments pursuant to clause 8 above, the Administrator will promptly send to each Eligible Group Member a Notice of Settlement Payment which must include, the following information:

- (a) the Group Member Payment amount;
- (b) details of the Administrator's calculation of the Eligible Group Member's Settlement Amount; and

- (c) the bank details of the Eligible Group Member's bank account into which the Settlement Payment was deposited.

12 Notices

- (a) Any notice or communication to be given pursuant to this Settlement Distribution Scheme, will be deemed given and received for all purposes associated with this Settlement Distribution Scheme if it is:
 - (i) addressed to the person to whom it is given;
 - (ii) either:
 - (A) sent by email to that person's email address as recorded on the Register of Group Members and no email "undelivered" reply is received by the sender; or
 - (B) sent by pre-paid mail, to that person's postal address where no email address is available on the Register of Group Members.
- (b) Any notice or communication that complies with this clause will be deemed to be given and received:
 - (i) if it was sent by email, at the time it was sent;
 - (ii) if it was sent by mail to an addressee in Australia, three clear business days after being sent; or
 - (iii) if it was sent by mail to an addressee overseas, five clear business days after being sent.
- (c) The Administrator's contact details are as follows unless and until the Administrator notifies the sender otherwise:

By mail: 50 Lonsdale St, Melbourne Victoria 3000

By email: COVID-19-Towers@health.vic.gov.au

13 Timing

- (a) The Administrator must endeavour to complete the administration of this Settlement Distribution Scheme within 180 days of the Approval Orders Date.
- (b) Except where otherwise provided, the Administrator may determine the time or time periods for taking the necessary steps under this Settlement Distribution Scheme, having regard to the Scheme Objective.
- (c) Subject to any order of the Court, the time for doing any act or thing under the Settlement Distribution Scheme may be extended by the Administrator in their absolute discretion.
- (d) The time for doing any act or thing under the Settlement Distribution Scheme may be extended or abridged by order of the Court.

14 Finalising of Administration

14.1 Distribution Report

- (a) Within 20 Business Days following the date on which the final Group Member Payment is distributed from the Settlement Sum, the Administrator must provide a brief report to the Court on:

- (i) the total amounts paid to each Eligible Group Members; and
 - (ii) the number of Group Members who have received a distribution from the Settlement Sum.
- (b) As soon as practicable after providing the report described in clause 14.1(a) to the Court, the Administrator must inform the Plaintiffs' and Defendant's legal representatives that all monies in the Distribution Account have been distributed in accordance with the Settlement Distribution Scheme, the Scheme Objective and any orders made by the Court.

14.2 End of Administration

Unless the Court orders otherwise, the Administrator must cease to be Administrator upon the later of the following:

- (a) the distribution of all Settlement Payments to the Eligible Group Members has been made;
- (b) all amounts payable in accordance with clauses 10 0 are paid;
- (c) the Settlement Sum has been exhausted; or
- (d) the provision of a report under clause 14.1 above.

15 Interpretation

The following rules apply unless the context requires otherwise:

- (a) headings and nomenclature are for convenience only and do not affect interpretation.
- (b) the singular includes the plural, and the converse also applies.
- (c) a gender includes all genders.
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (e) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (f) a reference to dollars and \$ is to Australian currency.
- (g) a reference to anything done by any person includes a reference to the thing as done by a director, officer, servant, agent, personal representative or legal representative is permitted to be so done by law or by any provision of the Settlement Deed or this Settlement Distribution Scheme.