IN THE SUPREME COURT OF VICTORIA
COMMERCIAL COURT
GROUP PROCEEDINGS LIST

Not Restricted

S ECI 2021 04738

Paul Leighton Mumford	First Plaintiff
Gayle Mumford	Second Plaintiff
v	
EML Payments Ltd	Defendant

JUDGE:	Nichols J
WHERE HELD:	Melbourne
DATES OF HEARING:	30 October and 19 December 2025
DATE OF JUDGMENT:	25 March 2026
CASE MAY BE CITED AS:	Mumford v EML Payments Ltd
MEDIUM NEUTRAL CITATION:	[2026] VSC 143

REPRESENTATIVE PROCEEDINGS — Part 4A Group proceeding — Application for approval of settlement — Whether settlement is fair and reasonable as between the parties and as between group members — Shareholder class action — Alleged breach of continuous disclosure obligations — Settlement approved — *Supreme Court Act 1986* (Vic) Part 4A, ss 33V, 33ZF — *Botsman v Bolitho (No 1)* [2018] 57 VR 68, *Darwalla Milling Co Pty Ltd v F Hoffman-La Roche Ltd (No 2)* (2006) 236 ALR 322, *Kelly v Willmott Forests Ltd (in liq) (No 4)* (2016) 335 ALR 439, applied.

PRACTICE AND PROCEDURE — Part 4A group proceeding — Application for approval of settlement — Soft class closure order — Proceeding settled at mediation — Applications for late registration to permit participation in the settlement — Applications for late claims from already registered group members to be included in the settlement — Some applications approved — *Lendlease Corporation Limited v Pallas* (2025) 99 ALJR 834, discussed.

PRACTICE AND PROCEDURE — Part 4A group proceeding — Approval for payment of legal costs from settlement sum — No reason to vary group costs order — *Supreme Court Act 1986* (Vic) Part 4A, s 33ZDA — *Fox v Westpac Banking Corporation* (2021) 69 VR 487, *Allen & Anor v G8 Education Ltd (No 4)* [2024] VSC 487, applied — *Fuller & Anor v Allianz Australia*

Insurance Ltd & Anor (Settlement Approval) [2025] VSC 160, *McCoy v Hino Motors Ltd (No 2)* [2025] VSC 553, discussed.

PRACTICE AND PROCEDURE — Part 4A group proceeding — Appointment of Scheme Administrator — Approval for payment of costs of administering settlement distribution scheme.

APPEARANCES:	Counsel	Solicitors
For the Plaintiffs	W AD Edwards KC O Nanlohy	Shine Lawyers
For the Defendant	T Spencer Bruce SC K Raghavan	HSF Kramer

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HER HONOUR:

A. Introduction

1 This proceeding is a securities class action issued under Part 4A of the *Supreme Court Act 1986* (Vic) (**Act**) on behalf of persons who acquired an interest in the defendant, EML Payments Ltd (**EML**), during the periods between 19 December 2020 to 19 May 2021 (**first relevant period**) and 18 August 2021 to 25 July 2022 (**second relevant period**) (together, the **relevant periods**). The plaintiffs, Paul Mumford and Gayle Mumford, and the defendant have reached an in-principle settlement subject to the Court's approval which may be given under s 33V of the Act.

2 Under the proposed settlement, the defendant is to pay the sum of $37,356,125 in settlement of the claims of the plaintiffs and group members (**settlement sum**).

3 The plaintiffs now seek approval of the settlement, a proposed scheme for the distribution of the settlement sum between group members (**SDS**) and for the deduction from the settlement sum of legal and other costs.

4 For the reasons that follow:

(a) I consider that the proposed settlement is fair and reasonable;

(b) I consider that the proposed scheme for the distribution of funds between group members is appropriate;

(c) There are no grounds to revise the group costs order made by this Court on 6 December 2022;

(d) I will approve settlement administration costs of up to $385,000 (including GST) subject to the Settlement Administrator submitting a report to the Court certifying the amount of costs actually incurred in the settlement administration; and

(e) I will approve the sum of $30,000 as the plaintiffs' reimbursement payment, being $15,000 for the first plaintiff and $15,000 for the second plaintiff.

5 By orders made on 5 December 2024 (**class closure orders**), I fixed **24 February 2025** as the date by which group members could opt out of the proceeding or alternatively register their claims for the purposes of any settlement that occurred before trial (the **class deadline**). As of the class deadline 3,338 group members had registered their claims as registered group members. After the parties agreed to settle the proceeding, notice of the settlement was given to group members. The notice (reflecting relevant orders) informed group members who had not registered in accordance with the 5 December 2024 orders (**unregistered group members**) of the process they were required to follow if they wished to apply to the Court for leave to participate in the settlement notwithstanding their failure to register. Some unregistered group members sought to participate in the settlement by applying to do so under the process established by the Court's orders. Others contacted the plaintiff's solicitors (**Shine Lawyers**) expressing an interest in participating but did not make an application in accordance with the orders. The position of unregistered group members is addressed in part F of these reasons.

6 Separately, after notice of the settlement was given, Shine Lawyers commenced a data verification exercise in anticipation of the settlement being approved and in preparation for settlement administration. They did so by inviting registered group members by email to verify their share trading data through a portal which contained, for each registered group member, personalised pre-populated data that group members had provided to Shine Lawyers when registering. The data provided upon registration was used by the plaintiff's representatives to assess the aggregate quantum of registered group members' claims for the purposes of negotiating with the defendants (including at mediation) with a view to reaching a settlement. In the verification process some group members added to their personalised data new transactions (i.e. share trades), of which they had not given notice when registering their claims in accordance with the class closure orders (i.e. by 24 February 2025). A question arises as to whether those transactions may be included for the purposes of those group members' participation in the settlement distribution. A question of this kind would ordinarily arise in the course of the settlement administrators distributing

a settlement fund, if it arose at all. It has arisen in this case at this point because the data-verification exercised occurred when it did. That issue (**late-registered claims**) is addressed in part G of these reasons.

7 As set out in parts F and G, I will make orders permitting some unregistered group members to participate. I will make orders permitting the registration of some late-registered claims. The admission of those group members and claims does not in my opinion affect the overall fairness and reasonableness of the settlement sum.

8 The plaintiffs relied on the evidence of Jonathan Wertheim, Practice Leader – Class Actions at Shine Lawyers, who had ultimate responsibility for the conduct of the proceeding for the plaintiffs and who has practiced in commercial litigation and group proceedings since 2007, and on the evidence of Craig Allsopp, Joint Head of Class Actions at Shine Lawyers, who has practiced in group proceedings since 2003.

9 In applications of this kind it is customary for the Court to receive the written opinions and evidence of the plaintiff's legal advisers which disclose the basis of the settlement and how they evaluated the compromise by reference to their assessment of the value of the claims and the risks of proceeding to trial. Such material, when carefully prepared and reasoned and candidly expressed, is of real assistance to the Court in discharging its duty to assess the reasonableness of the proposed settlement. In providing an opinion of that kind counsel for the plaintiff will be cognisant of the plaintiff's obligations to represent the class. Where counsel proffer an opinion of this kind, opining that the settlement is appropriate, they are doing so in support of the plaintiff's application for settlement approval, which application the plaintiff makes in its representative capacity. Counsel will also be conscious of their duty of candour to the Court. In this case I was much assisted by the confidential opinions of the plaintiff's counsel, Mr Edwards KC and Mr Nanlohy. The opinions were very detailed and evidently, very carefully considered. They included counsel's explanation of their advice given to the plaintiffs and to Shine Lawyers for the purpose of negotiating a settlement of the proceedings. Among other things, they explained counsel's view of the appropriateness of the settlement sum.

10 Such material is provided to the Court confidentially, and it is in the interests of justice that its confidentiality be maintained. Neither the defendant nor any other person beyond the plaintiffs and their legal advisers would in other circumstances have access to that material. Similarly, evidence going to the appropriateness of the plaintiff's claim for legal costs includes material that is properly considered confidential. Orders will be made protecting the confidentiality of that material and material of the same character. It is necessary that I refer in these reasons to some matters that were the subject of claims to confidentiality, in order to cogently and publicly record the court's reasons for decision. It is important to record that as far as possible, counsel also addressed the matters the subject of their opinion openly in their written and oral submissions.

11 The defendant supported the plaintiff's application for approval of the settlement. The defendant produced to the Court a copy of the confidential opinion of the defendant's senior and junior counsel which had been submitted to the defendant's board shortly before mediation. The opinion set out counsel's views about the plaintiff's prospects of success, the value of the claims and the correlative risks to the defendant of proceeding to trial. It included numerical estimates of the defendant's potential exposure and risk-weighted exposure, and a recommended settlement range. The defendant also produced a letter from its solicitors to the defendant's board of directors, enclosing counsel's advice and expressing the solicitor's views about a reasonable settlement range. The defendant's lawyers' opinions were contemporaneous with the relevant events in the proceeding. I accept, as the defendant submitted, that those documents reflected the genuinely held and considered views of the defendant's legal representatives. That material was privileged and was provided to assist the Court in the discharge of its responsibilities in considering the present application. Orders will be made protecting the confidentiality of the opinions.

B. Background and steps taken in the proceeding

12 Broadly speaking, this case concerns alleged material non-disclosures and misleading or deceptive conduct by EML regarding its corporate governance and regulatory

compliance. EML provides a payment solutions platform globally and is listed on the Australian Stock Exchange (**ASX**). On 13 May 2021 the Central Bank of Ireland wrote to EML's subsidiary PFS Card Services (Ireland) Limited (**PCSIL**) in respect of its concerns regarding PCSIL's governance and its control frameworks for anti-money laundering and counter-terrorism financing (**AML/CTF**) obligations. On 17 May 2021, EML securities were placed in a trading halt. On 19 May 2021, EML made an ASX announcement disclosing the investigation by the Central Bank of Ireland. Immediately following the announcement, EML's share price fell from $5.15 to $2.80, a 45% reduction.

13 The plaintiffs alleged that during the relevant periods EML failed to disclose material information required to be disclosed by the ASX Listing Rules and *Corporations Act 2001* (Cth). They also alleged that EML engaged in misleading or deceptive conduct in contravention of the *Corporations Act 2001* (Cth), *ASIC Act 2010* (Cth) and the Australian Consumer Law. These contraventions were alleged to have caused the group members' loss.

14 This proceeding, commenced on 16 December 2021, was initially commenced on behalf of group members with claims arising from the first relevant period. On 16 February 2023, the plaintiffs filed an Amended Statement of Claim that expanded the relevant period to between 19 December 2020 and 25 July 2022. On 16 April 2025 this Court (Delany J) found that the expansion of the class in the Amended Statement of Claim filed 16 February 2023 was not effective because an amended writ had not been filed. Subsequent orders granted leave to the plaintiffs to amend the writ dated 16 December 2021 to expand the group member definition to include the first relevant period and second relevant period, as reflected in the Further Amended Statement of Claim. As a result, 398 persons who had registered as group members in accordance with my orders of 5 December 2024, were not in fact and had never been group members. A notice to this effect was sent to the relevant persons following Delany J's ruling.

15 The parties filed lay and expert evidence, as ordered.

16 The parties attended a mediation on 29 May 2025.

17 On 25 June 2025, the parties reached an in-principle settlement following the exchange of several offers. The parties entered into a deed of settlement on 9 July 2025.

18 The trial of the proceeding had been fixed to commence on 11 August 2025 on an estimate of three weeks.

19 As set out in part F, group members were notified of the proposed settlement.

20 No group member objected to the proposed settlement.

C. Approval of Settlement – Governing Principles

21 Section 33V of the Act provides as follows:

> **Settlement and discontinuance**
>
> (1) A group proceeding may not be settled or discontinued without the approval of the Court.
>
> (2) If the Court gives such approval, it may make such orders as it thinks fit with respect to the distribution of any money, including interest, paid under a settlement or paid into court.

22 Section 33V confers two distinct but related powers upon the Court. The first, in s 33V(1), confers power to approve a settlement; the second, in s 33V(2) confers power to approve the distribution of payments.[1]

23 The principles that guide the Court's discretion on an application for approval under s 33V are well established. The task requires consideration of whether the settlement is in the interests of all group members and whether it is fair and reasonable having regard to the claims of all group members who will be bound by it if it is approved.[2] That involves consideration of whether the overall settlement sum as well as the distribution of that sum between group members is fair and reasonable. What is

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1 *Botsman v Bolitho (No 1)* [2018] 57 VR 68, 111 [200] (***Botsman***).

2 *Lynden Iddles & Anor v Fonterra Aust Pty Ltd & Ors* [2023] VSC 566, [27], citing *Williams v FAI Home Security Pty Ltd [No 4]* (2000) 180 ALR 459, 465–6 [19]. See also *Darwalla Milling Co Pty Ltd v F Hoffman-La Roche Ltd (No 2)* (2006) 236 ALR 322, 332–6 [30]–[40] (***Darwalla***); *Blairgowrie Trading Ltd v Allco Finance Group Ltd (recs and mgrs apptd) (in liq) (No 3)* (2017) 343 ALR 476, 499–500 [81]–[85]; *Lenehan v Powercor Australia Ltd (No 2)* [2020] VSC 159, [20].

'reasonable' falls to be considered within a range, the question being whether the settlement is within that range and whether there are any features that are obviously unfair or unreasonable.[3]

24 As the Court of Appeal said in *Botsman v Bolitho*,

> The Court is being asked to approve a compromise of litigation. Inevitably, that will require an assessment of whether the plaintiff is likely to succeed in the action, the measure of damages that a successful judgment would yield, the prospects of recovery, and the expenditure in costs, time and effort that would be required to bring the proceedings to a conclusion.
>
> That assessment does not involve a simple calculus but calls for matters of judgment based on imperfect knowledge and is influenced by the appetite for risk. It will be informed by the complexity and duration of the litigation and the stage at which the settlement occurs. It is important to acknowledge that it is the state of imperfect knowledge and the existence of risks that will have likely induced the settlement. It follows that those matters should be accorded a degree of prominence in any assessment of the reasonableness of the settlement.
>
> Those considerations mean that there will rarely, or ever, be a single correct settlement. Strategic decisions must be factored into account but it is not the role of the Court to second guess those decisions.[4]

25 It follows that in evaluating the proposed settlement, what is reasonable is to be judged by reference to 'the circumstances which could reasonably be expected to be knowable to the applicant and the applicant's lawyers'.[5]

26 The task of persuading the Court of the appropriateness of a settlement is one that is assumed primarily by the plaintiff and its advisers. The task will be discharged in part by the plaintiff's lawyers providing to the Court their candid opinions as to the value of the claims advanced in the proceeding and the discounts that they consider were rationally and reasonably applied to the claims, taking into account the risks of proceeding to trial. As I have said, the Court will be very much assisted by a carefully prepared opinion from the plaintiff's lawyers.

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3 *Murillo v SKM Services Pty Ltd* [2019] VSC 663, [31], quoting *Darwalla,* [40], [50]. See also *Murillo v SKM Services Pty Ltd* [2019] VSC 663 [32], quoting *Darwalla* [39].

4 *Botsman* 112, [205]–[207] (citations omitted).

5 *Kelly v Willmott Forests Ltd (in liq) (No 4)* (2016) 335 ALR 439, 457 [77] (***Kelly***). See also *Blairgowrie Trading Ltd v Allco Finance Group Ltd (recs and mgrs apptd) (in liq) (No 3)* (2017) 343 ALR 476, 500 [83].

27 While the question whether the compromise reached is fair and reasonable is to be made without applying hindsight bias, the evaluation of the compromise remains one for the Court; the Court does not just adopt the opinions of the parties' lawyers.

28 In this case I have been assisted by the opinions of the plaintiff's lawyers but also by evidence of the defendant's contemporaneous views of its prospects and of the range within which the defendants' advisers considered that a settlement would reasonably reflect the defendant's risks of proceeding to trial. This material was volunteered by the defendant in aid of its support of the application for settlement approval. It is one input to my evaluation of the compromise reached by the parties.

29 The reasonableness of a settlement must necessarily involve consideration of the amount to be allowed for legal and related costs because such deductions will directly affect the return to group members from the settlement sum and are the price that group member pay for obtaining the settlement sum.

30 The factors commonly taken into account when evaluating a proposed settlement are listed in the Court's *Practice Note SC GEN 10 Conduct of Group Proceedings (Class Actions) (second revision)*.

31 It is important for the Court to consider whether group members received timely notice of the proposed settlement's critical elements, so they could take steps to protect their positions if desired.

32 An absence of objections from group members subsequent to the giving of notice can be a relevant consideration for the Court in favour of approval,[6] but group members' silence does not equal assent.[7]

D. Does the settlement sum represent a fair and reasonable compromise of group members' claims?

33 The basic paradigm for evaluating the reasonableness of a settlement sum is to commence with the estimated aggregate value of the undiscounted claims of group

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6 *Rod Investments (Vic) Pty Ltd v Abeyratne* [2010] VSC 457, [22]; *Thomas v Powercor Australia Ltd* [2011] VSC 614, [15]; *Camilleri v The Trust Company (Nominees) Limited* [2015] FCA 1468 [5(f)].

7 *Kelly*, 453 [56].

members and then to take into account what could be reasonably known at the time of settlement about the risks to the plaintiffs of establishing liability, causation of loss and damage, and, in cases where it is shown to be relevant, the ability of the defendant to withstand a greater judgment than the amount of the agreed settlement sum.

34 The opinions of the plaintiff's counsel and solicitor considered in granular detail the likelihood of success of each element of the claims advanced in each relevant period.

35 That material calculated the undiscounted value of the claims in aggregate, disclosing the basis for the calculations and the assumptions made. Counsel's written opinions in particular explained counsel's assessments of prospects in respect of each claim advanced and each claim period. The opinions described the approach taken to settlement negotiations and how and why the plaintiff's advisers determined what they considered to be an appropriate settlement range going into negotiations.

36 The opinions also assessed the defendant's public disclosures to the ASX regarding its financial position at the time of the mediation and its ability to withstand a judgment greater than the settlement sum.

37 As discussed, the opinions were properly confidential. Although I have considered them carefully I will not describe their content with any specificity.

38 Counsel described the advice they had given to the plaintiffs and their solicitors (before and at the time of settlement), which identified the numerical range within which they would consider a settlement sum to be adequate. They enumerated and explained the factors accounted for in their discounting of the face value of the plaintiff and group members' claims in order to reach a settlement range. Having done so, for the purposes of assisting the Court to assess the settlement sum, counsel allowed a notional numerical 'buffer' of sorts which they said would allow for their having been wrong in their assessment. Adopting counsel's logic, on the face of things a settlement would be acceptable if it fell within or close to counsel's range or within the notional buffer, noting that counsel expressed various reservations about the concept of a buffer or allowance for being wrong.

39 Whilst I have been much assisted by the opinion, I observe that once they had proffered an opinion about prospects and reflected that opinion in a numerical range for an appropriate settlement (and with an allowance that that assessment might be wrong), counsel were rationally committed to defend their opinion. I do not criticise the rationality of that position or the robustness of their carefully reasoned opinion, but note that in this area of the law there is much that is complex. Some significant questions have been determined at intermediate appellate court level, but the High Court's consideration of questions of causation and loss in cases of this kind, in *Zonia Holdings v Commonwealth Bank of Australi*a, will be consequential.[8] For the purposes of the Court's present task (which is not the same as counsel's task) I consider it appropriate to take a less granular view of the risks and prospects of the plaintiff's and group members' claims than that taken by counsel. It is appropriate in my view to allow for a reasonable margin around opinions proffered before trial about the true value of claims, taking into account assessable risks. Risks of course, apply both ways – to both plaintiffs and defendants.

40 The settlement sum was supported by the plaintiff's counsel, although they expressed concern about the dilutionary effect of the unregistered group member and late claims. Although the admission of group members beyond the registered cohort and the acceptance of 'late' claims would not reduce the settlement sum, they would reduce the pro-rata return to group members, because the settlement sum would be shared between a greater number of group members, and the pro-rata entitlement of group members with late-registered claims would be relatively increased, if those group members and claims were admitted.

41 For the reasons discussed in parts F and G I have determined to admit some unregistered group members and some late-registered claims. The discounted value of those adjustments represent 1.615% of the settlement sum. Even with those adjustments I consider that the settlement sum represents a fair and reasonable compromise of the claims advanced for the plaintiffs and group members in this

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8 See *Zonia Holdings v Commonwealth Bank of Australi*a [2025] FCAFC 63 (2025) 174; special leave to appeal granted: Transcript of Proceedings, *Zonia Holdings v Commonwealth Bank of Australia* [2026] HCATrans 8.

proceeding, taking into account the nature of the claims made and the analysis of the issues by the plaintiff's counsel and solicitors. The material provided by the defendant has provided an additional perspective, which confirms the view that the settlement is within the range for a fair and reasonable compromise of the proceedings.

42 The settlement sum is to be advanced in return for releases in favour of the defendant.

43 Under clause 6 of the settlement deed, the plaintiffs and group members give releases and covenants not to sue in favour of EML Payments and its 'related persons'. In summary, the releases extend to:

(a) all Claims made (directly or indirectly) by the plaintiffs in the proceeding;

(b) all Claims made (directly or indirectly) by the plaintiffs or group members arising out of the same or related circumstances to those raised in the proceeding;

(c) all Claims that the plaintiffs or any group member has or may have, and which were at any time raised or could have been raised in the proceeding and is in respect of, or arising out of, the same or related circumstances to those raised in the proceeding.

44 'Claim' is defined in clause 1.2 broadly. 'Group Members' is defined to exclude persons who opted out of the proceeding.

45 I consider that those releases are fair and reasonable and within the authority of the plaintiffs in their capacity as the representative of group members, in that they do not purport to settle claims other than those that arise from the same or related circumstances as those that were raised or could have been raised in the proceedings. The releases bind unregistered group members subject to any order of the Court allowing any individual unregistered group members to participate in the settlement. The settlement in this proceeding was reached on the basis that the class of group members was closed in accordance with the class closure orders. It is appropriate to give effect to those orders to approve a settlement incorporating releases of that kind.

E. Is the settlement reasonable as between group members?

46 The settlement distribution scheme has the following features:

(a) The scheme provides that distributions to group members[9] of the settlement sum shall be made in the proportion that each group member's notional loss bears to the aggregate notional loss of all group members,[10] and pro-rated according to the amount available in the settlement fund after deductions for legal costs, administration costs and the plaintiff's reimbursement payments.

(b) Group member and aggregate notional loss is to be assessed by a 'loss assessment formula' - a mathematical formula to be applied to determine distribution entitlements as between group members. The formula applies an inflation series for each day that EML shares were traded during the two relevant periods based on the plaintiff's expert opinion obtained for the purposes of the proceeding, applying discounts to the percentages to reflect the risk profile determined by the plaintiff's lawyers, associate with corresponding allegations made in the proceeding. Notional loss is calculated to include inflated related loss (as just described) and pre-judgment interest. The loss assessment formula describes rules to be applied in this calculation and for the distribution of the settlement fund, in tranches according to the terms of the SDS.

(c) The scheme contemplates the appointment of Shine as scheme administrator. Shine has a dedicated administration team which is experienced in administering settlements of this kind. I accept that Shine is an appropriate appointment to the role of scheme administrator.

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9 Meaning registered group members, or those otherwise admitted by court order, to participate in the settlement.

10 Meaning registered group members, or those otherwise admitted by court order, to participate in the settlement.

(d) The scheme makes appropriate arrangements for the receipt and holding of moneys and the accumulation of interest, together with the payment of taxes, duties and other imposts.

(e) The scheme provides that interest accruing on the settlement administration fund may be applied in the first instance to the payment of administration costs. Any interest which is not otherwise required for the payment of those costs will form part of the Settlement Sum and be available for distribution.

(f) The scheme provides for registered group members to verify and if necessary amend their share trading data, subject to the requirements to have registered their claims by an initial deadline. It provides that the administrator allow a reasonable period (of not less than 21 days) for the provision of further information by group members in response to any request by the Administrator.

(g) The scheme provides for the timely distribution of funds, after settlement approval.

47 I consider that the loss assessment formula appropriately distinguishes between the differing values of respective claims among class members in a reasoned fashion, reflecting the plaintiff's lawyers' assessments which are in turn based on the evidence they have obtained for the purpose of the proceeding. The features of the SDS described in sub-paragraphs (a) and (b) of the preceding paragraph mean that the settlement sum will be distributed between group members fairly. I consider that the mechanics embodied in the scheme have a rational basis and are appropriately designed to distribute large sums of money to a large cohort of people. In summary, the provision of the SDS allow for a fair and efficient distribution of moneys between group members.

48 The above-mentioned conclusion is subject to one caveat. There is good reason, based on the material before me, to discount claims based on trades made in the period 7 October to 25 November 2021, for the reasons discussed in counsel's confidential

opinion.[11] The loss assessment formula does not presently apply any discount to those claims. It is fair and reasonable, based on the evidence and having regard to the substance of the opinion, to apply a 50% the discount to those claims. The loss adjustments formula is to be adjusted accordingly.

49 I add that the scheme as proposed provided for a minimum distribution amount of $50 with lesser sums not being distributed to group members but paid, after the final distribution, as a charitable donation to the Smith Family. The stated rationale for the reservation of a 'de minimis' distribution amount was that the cost of distributing small amounts would be disproportionate to the return, i.e. the benefit to group members, from that distribution. The proposition that small residual amounts should be treated in that way is commonly accepted in settlement approvals. The difficulty with this proposal in this case was that the proposed residual sum was not addressed in evidence. In the circumstances I will allow only a nominal 'de minimis' sum of $10 (not $50).

F. Unregistered group members

Governing framework

50 The Court's power to approve settlements of representative proceedings is found in s 33V of the Act, which provides as follows:

> **Settlement and discontinuance**
>
> (1) A group proceeding may not be settled or discontinued without the approval of the Court.
>
> (2) If the Court gives such approval, it may make such orders as it thinks fit with respect to the distribution of any money, including interest, paid under a settlement or paid into court.

51 It is accepted that s 33V(1) confers power to approve a settlement, while s 33V(2) confers power to approve the distribution of moneys paid under a settlement.[12] A

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11 Confidential opinion dated 19 September 2025, [370]-[373], [402], [439]; confidential opinion dated 6 November 2025, [31]-[32].

12 *Botsman*, 111 [200].

determination of whether certain group members will be permitted to participate in a settlement is an aspect of the distribution of moneys paid under a settlement.

52 The just distribution of moneys in this case must occur within the context of the requirement, by orders made under s 33G of the Act, that group members who wished to claim any benefit from any settlement of the proceeding reached before trial, were required to register the claims (i.e. class closure orders). The proper approach to the distribution of moneys is informed by the objectives served by class closure orders.

53 Although Part 4A of the Act creates a regime for the representation of group members by plaintiffs who initiate group proceedings on an 'opt out' basis, the Act also expressly contemplates that the Court may require group members to take positive steps in order to obtain any relief or benefit from the proceedings in which they are represented. Under s 33G a Court may specify a date after which, if such a step (as specified in an order) has not been taken by a group member, the group member is not entitled to any relief, payment or benefit. That provision is unique to Victoria; it does not appear in cognate legislative regimes in the Federal or other state jurisdictions. Orders of that kind, as have been made in this case, are colloquially know as 'soft class closure' orders.

54 In *Lendlease Corporation Ltd v Pallas*,[13] the High Court recently considered the power of the New South Wales Supreme Court under s 175(5) of the *Civil Procedure Act 2005* (NSW) to issue a notice advising group members of the defendant's intention to seek an order, if the proceeding settled, that group members who had neither opted out nor registered to participate in the proceeding would remain group members but would not, without leave, be permitted to seek any benefit pursuant to any settlement occurring before final judgment. The NSW provisions governing representative proceedings do not contain an express power like s 33G, and parties seeking class closure orders in that jurisdiction must rely on a more general statutory power.

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13 *Lendlease Corporation Ltd v Pallas* (2025) 99 ALJR 834 (***Lendlease***).

Despite that contextual difference, the observations of Gageler CJ, Gleeson and Jagot JJ in *Lendlease* describe the practical utility of class closure orders:

> [18] … The statutory process of a group member opting out of group membership means that the representative plaintiff and the representative plaintiff's lawyers will know the number of people who are not group members but, without something more, will not know the number of group members. In some cases, estimating the number of group members with a reasonable degree of accuracy may be simple. In other cases, estimating the number of group members with a reasonable degree of accuracy may be impossible. The representative plaintiff and the representative plaintiff's lawyers have an interest in being able to estimate the number of group members with a reasonable degree of accuracy for several purposes, including: negotiating an appropriate settlement (for example, to ensure that the settlement negotiated involves an amount appropriate for distribution between all participating group members); facilitating the Court approving the settlement; facilitating the Court making such orders as are just with respect to the distribution of any money paid under the settlement; and, if the case does not settle, facilitating the Court working out the award of damages and making orders for the payment or distribution of the money to the group members entitled (including the establishment of such entitlement by group members and providing for the constitution and administration of a fund consisting of the money to be distributed to group members who are so entitled).
>
> [19] The defendant and the defendant's lawyers also have an interest in being able to estimate the number of group members with a reasonable degree of accuracy for the same reasons as the representative plaintiff and the representative plaintiff's lawyers, and for the additional reason of taking maximum advantage of the effect of s 179(b) of the CPA.[14] From the perspective of the defendant and the defendant's lawyers, facilitating registration of group members' participation in the representative proceeding enables the defendant and the defendant's lawyers, in particular, to: (a) better estimate the defendant's total potential liability to those who are group members (and its potential liability to those who opt out of the representative proceeding in order to preserve their own cause of action against the defendant); (b) negotiate a settlement with the representative plaintiff with greater confidence as to that total potential liability, including by minimising the risk of group members who have neither registered their participation in nor opted out of the representative proceeding, after settlement, seeking to benefit from the terms of the settlement; and (c) by maximising the number of group members known to the defendant and the defendant's lawyers before a settlement is negotiated, ensuring the settlement can be tailored accordingly and ensuring that the maximum number of group members are bound by any approved settlement in accordance with s 179(b) of the CPA. From the perspective of the defendant and the defendant's lawyers, for example, it would be undesirable: to negotiate a settlement with a relatively small proportion of the potential group members; and after negotiating such a settlement and seeking approval for it, to become aware of numerous other group members who either want to share in or increase the settlement amount

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14 The equivalent of s 33ZB(b) of the *Supreme Court Act 1986* (Vic): A judgment given in a group proceeding must describe or otherwise identify the group members who will be affected by it and subject to s 33KA, binds all persons who are such group members at the time the judgment is given.

or want to be permitted to opt out of the proceeding in order to preserve their own cause of action against the defendant.[15]

55 Among other things, the registration scheme provided for by soft class closure facilitates a rational foundation for the mediation of the proceeding and the making of credible settlement offers. Considered broadly and prospectively, achieving those things is in the interests of group members.

56 Once class closure orders are made, those group members who register in accordance with the Court's orders are permitted to seek a benefit from the class action. To be clear, there is no starting proposition that registered group members will receive a distribution under the settlement; what if anything they will receive will be governed by the terms of the settlement distribution scheme which provides for the assessment of each participating group member's claim. As to unregistered group members, the starting point is that the existing orders that permit only registered group members to participate in the settlement apply, unless the Court makes a further order.

57 In deciding whether it is just to admit an unregistered group member to participate in a settlement distribution, a number of considerations are relevant.

58 First, where a class is closed the plaintiff's representatives (and indeed both parties) are empowered to negotiate on the basis of relative certainty about the quantum of claims in issue. They are so empowered because registered group members have complied with the orders requiring registration, thereby helping to produce a benefit for the class by way of a settlement. Applications by unregistered group members for participation in a settlement call for scrutiny, including because admitting late registrants can undermine a settlement that has been negotiated and agreed on the assumption that it will be distributed between the cohort of registered group members and on the assessment of the plaintiff's advisers that it will provide compensation to those group members that reflects a reasonable compromise of their claims.[16] This is no mere technicality. In some cases the proposed admission of unregistered group members after settlement may matter in practical sense, more than in other cases. The

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15 *Lendlease,* 842 [18]-[19].

16 *Lieberman v Crown Resorts* [2025] VSC 596, [39].

issue may become acute where a plaintiff accepts a settlement whose quantum is close to the line between sufficient and insufficient, on the plaintiff's assessment of the quantum of the registered group members' claims.

59 Second, it must be accepted that by operation of the class closure orders unregistered group members will suffer prejudice if they are bound by the settlement but cannot obtain a share of the settlement sum. That prejudice alone is not a sufficient basis upon which to make an order undoing the operation of a class closure order. Instead, unregistered group members seeking to be permitted to participate in the proposed settlement must sufficiently demonstrate *unfair* prejudice to them in the operation of the class closure order.[17] On the face of things, it would be unfair to preclude unregistered group members from participating where there is persuasive evidence that they did not receive notice of the class closure and requirement to register. More broadly, where group members have failed to register the cogency of their evidence going to their reasons for having failed to register will be relevant.

60 The benefits of class closure regimes must be tempered by recognition of the fact that there may be cogent reasons why some group members have not registered. When settling claims, parties acting prudently ought be mindful of the possibility that the Court might grant leave for some unregistered group members to participate in the settlement.

61 Third, the requirement of group members to comply with court orders and deadlines must be accepted as a necessary feature of the supervision by the Court of settlements and the administration of settlements after they are approved. Even where group members are registered to participate, a settlement distribution scheme will inevitably require group members to take steps to have their claims assessed, in which compliance with timeframes is mandatory, and failure to comply is likely to lead to claims being excluded. Settlement approval and administration cannot be effectuated

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17 *Andrianakis v Uber Technologies Inc and Others (Settlement Approval)* [2024] VSC 733, [63]; *Money Max Int Pty Ltd (Trustee) v QBE Insurance Group Ltd* (2018) 358 ALR 382, 392 [44]; *Andrianakis v Uber Technologies & Ors; Salem v Uber Technologies & Ors* [2023] VSC 415, [30]; *Lieberman v Crown Resorts Ltd* [2025] VSC 596, [38].

unless group members take steps and assume responsibility for protecting their own interests.

62 The orders in this case required that unregistered group members seeking leave to participate in the settlement explain why they should be admitted, by affidavit or statutory declaration. Evidence, not mere assertion, was required. Separately, it may be accepted that while it is not determinative, the length of time that elapsed before a group member took action to seek admission once they became aware of the requirement to do so, may be relevant. Depending upon the circumstances, failing to take steps in a timely way might demonstrate, among other things, a failure to take care of one's own affairs.

63 The plaintiffs submitted that significant inadvertence, a failure to properly attend to affairs and unconvincing or contradictory explanations are bases upon which the Court may exercise its discretion to decline leave. I agree.

Notice given to Group Members

64 For context, the following notices were given to group members about the requirements to register their interests in the proceeding.

65 As noted earlier, 24 February 2025 was fixed as the class deadline. A notice (the **opt out and registration notice**) sent to all group members relevantly said, under the heading, 'what are your options':

> **Option 1: Register by 4pm AEDT on 24 February 2025.**
>
> **Group members who wish to receive compensation from any settlement that may be reached before the first day of trial must register their claim by 4pm AEDT on 24 February 2025** with Shine Lawyers. To register, group members must complete the Group Member Registration Form online via the Shine Lawyers website …
>
> **Option 2: Do Nothing**
>
> If you do nothing, you will remain a group member and remain bound by any order, judgment or settlement in the EML Class Action.
>
> **However, if you do not register by [the Class Deadline], you will not be entitled to share in any settlement money that may be achieved before the first day of trial. If the class action is settled, you may lose your right to seek**

> **compensation from EML in relation to the same (or similar) claims alleged in any class action …**
>
> **Option 3: Opt Out**
>
> **If you do not wish to be a group member** you can remove yourself by opting out of the class action by [the Class Deadline] …

66 Under 'option 1', the notice directed group members to visit Shine's website to complete the group member registration form there. Under 'Holding and Transaction Details', the form stated:

> You can provide details of your transactions in EML shares in the period from 19 December 2020 to 25 July 2022 by completing the details below (click on the 'Add a transaction' button to add additional transaction lines if you had more than one purchase or sale). If you had multiple transactions you can provide your transaction details using the spreadsheet available here or upload your own transaction listing using the upload box below.

For each transaction, group members could input information under certain headings: 'transaction date', 'transaction type', 'exchange', 'no. of shares', 'price per share' and 'brokerage'. Under 'Exchange', a drop-down menu offered the options 'ASX', 'Cboe Australia (formerly Chi-X)' and 'Other'.

67 On 13 January 2025 that notice was sent to 11,680 email addresses recorded on the share register provided by the defendant, sent via prepaid ordinary post to 13,987 domestic and 189 overseas postal addresses. By 22 January, the notice had also been sent via prepaid ordinary post to 72 domestic and two overseas addresses belonging to recipients who had not received the email. Between 13 and 15 January 2025, Shine sent the notice to each existing registered group member and published the notice on its website.

68 The parties reached a settlement in this proceeding on 25 June 2025 and signed a settlement deed on 9 July 2025. The date of the settlement approval application was fixed for 30 October 2025. By orders made on 29 July 2025, a short notice of proposed settlement was sent to group members informing them of this development. Those orders relevantly provided:

Unregistered Group Member Applications

16. Any Group Member who did not register their claim by the Class Deadline in accordance with the Court's orders of 5 December 2024 (**Unregistered Group Member**) and who now wishes to seek leave to participate in the proposed settlement:

    a. By **4:00pm** on **29 August 2025** must send an email to [Shine Lawyers] identifying the basis on which the Unregistered Group Member considers the Court should grant them leave to participate and must attach evidence in support (in the form of an affidavit or statutory declaration) and any written submissions of no more than two (2) pages; and

    b. Unless the Court otherwise orders, may attend, or send a legal representative to attend, in person or by remote audio-visual link, the Supreme Court of Victoria **30 October 2025** when the Settlement Approval Application is to be heard.

The short notice directed those group members who were unregistered to read the full notice that was published on the Shine and Supreme Court of Victoria websites, regarding the steps they were required to take to seek lave of the Court to participate in the proposed settlement. That full notice relevantly said:

> If you are an Unregistered Group Member and wish to seek permission from the Court to participate in the proposed settlement, you must apply by sending an email to Shine Lawyers email address by **4:00pm on 29 August 2025.** For more information, see "Option 3" described … below.
>
> …
>
> ***Option 3: Unregistered Group Members who wish to seek permission to participate in the proposed settlement***
>
> If you are an Unregistered Group Member and wish to seek permission from the Court to participate in the proposed settlement, you must:
>
> (a) By **4:00pm on 29 August 2025** send an email to [Shine Lawyers] identifying the basis on which you consider the Court should grant you leave to participate and must attach evidence in support (in the form of an affidavit or statutory declaration) and any written submissions of no more than two (2) pages; and
>
> (b) may attend, or send a legal representative to attend, the Supreme Court of Victoria on 30 October 2025 when the Settlement Approval Application is to be heard.

69 The short notice was emailed to each group member who had retained Shine or registered an interest in participating in the proceeding with Shine, and the longer

notice was published on the Court's website and Shine's website (together, **the July 2025 settlement notice**).

70 Although Shine was not required to do so by Court order, on 14 August 2025 Shine sent registered group members an email inviting them to verify their share trade data by 4 September 2025, through the 'EML Class Action Share Trading Data Verification' portal (**portal)**. As noted earlier, that was done in anticipation of the plaintiffs obtaining Court approval of the proposed settlement, and in preparation for the administration of the settlement. The email relevantly said:

> **Action Required: Verify your Share Trading Data by 4 September 2025**
>
> As a Registered Group Member in the EML Payments Shareholder Class Action, you previously provided us with the following Share Trade Data:
>
> - the number of EML shares you held as at 18 December 2020;
> - any EML shares you purchased between 19 December 2020 and 25 July 2022;
> - any EML shares you sold between 19 December 2020 and 25 July 2022; and
> - supporting documentation relating to the purchase and sale of those EML shares.
>
> We are now contacting you because, if the Court approves the Proposed Settlement, the Share Trading Data you provided will be used to calculate any monetary compensation you may be entitled to receive.
>
> **Verify your Share Trading Data**
>
> Before we can calculate any monetary compensation, we need you to review the Share Trading Data that you submitted. This can be done via the secure portal which can be accessed using the button below.
>
> **If any information is incorrect or incomplete, you must make corrections by 4.00PM AEST on 4 September 2025 (Corrections Deadline).**

71 The portal was linked to registered group members' personal information and contained personalised pre-populated data fields based on the data that they had already provided. On the 'Holding and Transaction details' page, registered group members were told to verify or correct their data. The page also said:

> You **cannot** add an additional Holding. Any Holdings that do not appear in this form (i.e. an 'account name' that you may hold that is not listed on the

form) are not considered to have been Registered in this Class Action by the Class Deadline of 24 February 2025. Information on how to register a late Holding is located at section 37 in Notice of Proposed of Settlement available on Shine Lawyer's website).

72 Section 37 of the notice of proposed settlement (to which group members were directed) set out the steps that unregistered group members were required to take in order to seek leave from the Court to participate in the settlement (see earlier in these reasons).

73 Despite that note, the portal included a button enabling registered group members to add transactions. Sixty-three registered group members used the portal to correct their data, with minimal impact on the gross value of the registered transactions. However, 74 registered group members added new transactions through the portal.

74 On 17 October 2025, Shine emailed all unregistered group members (meaning those group members who had contacted it in one way or another about seeking to participate in the settlement but who were not registered group members) about the position the plaintiffs would take at the upcoming settlement approval hearing. The email was headed, 'Update on Your Late Registration' and set out the plaintiffs' intention to oppose all applications from unregistered group members to participate in the settlement. The email also relevantly said:

> **What you need to do if you disagree with the position**
>
> If you do not agree with this position and wish to argue for inclusion of your claims in the settlement, you:
>
> - **should consider applying to the Court individually;**
> - **consider attending the Settlement Approval Hearing on 30 October 2025** in person or via a legal representative; and
> - if you seek to either apply to the Court or appear at the Settlement Approval Hearing, you should notify the Court of your intention;
>
> You should contact the Court or Shine Lawyers **as soon as possible if you wish to be heard in relation to the plaintiffs' position.**

75 The same day, Shine sent out a similar email to registered group members with late claims, which similarly said that the plaintiffs would oppose the inclusion of

attempted late registered claims in the settlement distribution and directed group members who disagreed with the plaintiffs' position to take steps accordingly.[18]

76 Shine did not inform the Court of its intention to communicate with group members in the fashion that it did on 17 October 2025, and nor did Shine bring to the Court's attention the problem of attempted late registered claims that had been caused by the data verification exercise. It ought to have done so. It also ought to have taken greater care in setting up its registration portal. When the issue became clear at the hearing of the settlement approval application on 30 October 2025 I was concerned that group members with attempted late registered claims had not been directed by a Court-ordered notice to give evidence explaining their delays in attempting to register these claims. To ensure that those group members were given procedural fairness, I made orders on 5 and 7 November 2025 for the publication of a further notice and for a requirement that group members to apply to the Court for leave include late-registered claims. The settlement approval application was adjourned part-heard, to 19 December 2025.

77 Orders made on 7 November 2025 required that group members who sought to add late claims, apply to do so. The procedure was described in a notice that was distributed to registered group members and displayed on Shine's website. The noticed relevantly said:

> **A. <u>Why have you received this Third Further Notice?</u>**
>
> 1. The Supreme Court of Victoria (**Court**) has ordered that you receive this notice because you are a Registered Group Member, meaning you registered your claim[s] with Shine Lawyers before the Class Deadline of 24 February 2025 (**Class Deadline**), <u>and also did not notify Shine Lawyers by the Class Deadline of all the claims you had against EML in the proceeding. Between 14 August 2025 and 4 September 2025, you provided *additional* Share Trading Data which raised new claims in the Proceeding (**Late Registered Claims**).</u>
>
> 2. The Court has ordered that this notice be published to inform you that the plaintiffs intend to seek orders excluding your Late Registered Claims from being reflected in the distributions made by the

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[18] I.e. to consider applying directly to the Court, attending the settlement approval hearing and/or contacting Shine or the Court if they wished to be heard.

Administrator under the Settlement Distribution Scheme (the **Scheme**). This notice outlines your rights in relation to that process.

B. **What is this Third Further Notice of Proposed Settlement?**

3. On 5 December 2024, the Court made Opt Out and Registration Orders requiring Group Members wishing to participate in any settlement of the Proceeding to register their claims with Shine Lawyers by the Class Deadline (4:00pm on 24 February 2025). A requirement of registering their claim was that the group member provide all acquisitions and disposals of EML Securities between 19 December 2020 and 25 July 2022 (**Share Trading Data**).

4. On 14 August 2025, Shine Lawyers sent all Registered Group Members a verification form so that Registered Group Members could review the Share Trading Data provided to Shine Lawyers, and provide any corrections to the Share Trading Data by 4 September 2025.

5. The Third Further Notice of Proposed Settlement is directed to you as you have raised a Late Registered Claim and the plaintiffs' position is that your Late Registered Claim should be excluded from being reflected in the distributions made by the Administrator under the Scheme.

C. **What is the plaintiff's position?**

6. The Plaintiffs' position is that Late Registered Claims be excluded from being reflected in the distributions made by the Administrator under the Scheme.

7. The Plaintiffs have opposed the inclusion of the Late Registered Claims on the basis that it would adversely impact all other Registered Group Members under the proposed settlement. The Plaintiffs consider it necessary to take this step because all Registered Group Members were required to provide ***all*** of their trade data for the Relevant Period to Shine Lawyers by the Class Deadline (4pm on 24 February 2025). This trade data was relied upon by the Plaintiffs and their legal representatives as the totality of a Registered Group Members loss and was used in calculating the total losses of Registered Group Members for the purpose of mediating and ultimately settling the claims of Registered Group Members with the defendant, EML.

8. On 30 October 2025, the Court adjourned the Plaintiffs' application for approval of the proposed settlement in this matter so that Registered Group Members with Late Registered Claims could be given a formal opportunity to explain the reasons for not raising the Late Registered Claims by the Class Deadline, by sworn evidence, such that the Court could determine whether the Late Registered Claims should be reflected in the distributions from the settlement made by the Administrator under the Scheme.

D. **<u>What do I need to do?</u>**

9. The Court has ordered that **by 4:00pm on 28 November 2025** you are to send an email to the Commercial Court Registry (emlclassaction@supcourt.vic.gov.au) providing any:

   (a) evidence, by way of affidavit or statutory declaration, setting out the reasons why the Late Registered Claim[s] should be reflected in distributions made by the Administrator under the Settlement Distribution Scheme;

   (b) written submissions not exceeding 3 pages,

   being a **Late Registered Claim Application**.

10. If you complete a Late Registered Claim Application, you have the option to attend and appear at the Settlement Approval Application at the Supreme Court of Victoria on 19 December 2025. If you choose to exercise this option, you <u>must</u> have legal representation, or otherwise seek leave of the Court to be heard.

11. If you wish to be heard in accordance with paragraph 10 above, you must inform the Commercial Court Registry and/or Shine Lawyers of your intention to appear by 4:00pm on 28 November 2025, by emailing the following information to emlclassaction@supcourt.vic.gov.au:

    (a) if you are legally represented; and

    (b) the name and contact details of your legal representative[s]; or

    (c) that you otherwise intend to seek the Court's leave to appear without legal representation.

78 Four registered group members made late registered claim applications in accordance with this notice. The orders of 5 November 2025 required that any group member who had filed evidence and also sought to be heard at the 19 December hearing, appear by a legal practitioner or otherwise seek the Court's leave to be heard. No group member appeared or sought to appear.

79 I am satisfied that appropriate procedures were adopted to give adequate notice to group members of the right to opt out of the proceeding and of the requirement to register their claims in order to participate in any settlement reached before trial. That is so, notwithstanding the fact that some group members gave evidence that they did not receive the original notice of the requirement to opt out or register their interest in the proceeding. I am also satisfied that adequate notice was given of the requirement

to apply to register 'late claims' sought to be added in the data verification exercise described earlier.

Unregistered Group Members – consideration

80 Sixty-nine group members who did not register their claims prior to the class deadline sought to participate in the settlement either by applying in accordance with the procedure stipulated in the Court's orders and July 2025 settlement notice, or by making contact with Shine Lawyers informally, indicating that they wished to participate. In the materials submitted for the settlement approval application Shine Lawyers provided (in collated form) the information that was submitted by those group members who contacted it informally, and the material submitted by group members who had applied to participate in the settlement in accordance with my orders.

81 I have considered every application with a view to applying broadly consistent criteria. I have taken into account group members' stated reasons for admitting them, including their explanations for not registering their claims within time; the length of time elapsed before they took steps to register, whether they have submitted evidence in support of their applications, and the cogency of that evidence.

82 I consider that the requirement that group members explain their position by evidence on affidavit or by statutory declaration is both fair and reasonable.

83 I have taken into account the effect of the late admission of group members on the return to group members who did register within time, within the context of the overall adequacy of the settlement sum. As I have said earlier, those group members who registered on time materially assisted the group by putting their representatives in a position to negotiate in an informed way with a view to achieving a settlement. It is to be accepted that where an unregistered group member is admitted, the proportion of the settlement sum to be distributed to registered group members diminishes. The failure of unregistered group members to comply with Court orders and the consequences of their doing so, is a relevant consideration in the present circumstances. However, I do not consider it appropriate to draw a bright line

between registered and unregistered group members without taking into account the circumstances of unregistered group members going to their reasons for failing to register, provided their reasons are sufficiently supported by evidence.

84 I have only referred to the substance of group members' application or circumstances where it is necessary to explain the outcome for each group member, and have expressed these reasons only briefly. Group members are referred to by number, and will be advised individually of the Court's orders.

85 The plaintiffs made submissions about whether certain unregistered group members should be admitted or refused. I have taken those submissions into account. As the plaintiffs accepted, the question is one for the Court. The plaintiffs divided group members into four temporal categories reflecting the relationship between the date on which the group member applied or contacted Shine about participation in the settlement, and relevant events concerning the settlement of the proceeding. I accept that the elapse of time is broadly relevant but I have not adopted all of the temporal categories proposed. Some of the categories were predicated on events that were known to the plaintiffs or their lawyers at the time, but not to group members. Three dates in particular are relevant: mid-January 2025, when the opt-out and registration notice was sent to group members; the class deadline of 24 February 2025, and the announcement of the settlement on 25 June 2025. My reference to 'groups' of group members below, is for convenience only. I have treated all those group members in group 1 in the same way, allowing a small margin around the class closure date. Groups 2 and 3 are divided only by reference to whether they sought to register before or after the settlement was announced.

86 I would add that Shine has assessed some unregistered group members as not having suffered loss, by application of the loss assessment formula and terms of the SDS. That information was provided to assist the Court to determine the impact of late registration. Whether or not the settlement administrator determines that a group member has suffered loss is properly a matter for the administration of the settlement. I have not decided group member applications for late admissions on the basis of

whether Shine submits that that they have or have not suffered loss. I have referred below, to the quantum of some claims.

Group 1

87 I have accepted the plaintiffs' submission that an allowance should be made for the receipt of registrations very close to the class deadline, including to allow for delays in postage, of which there was some evidence. Accordingly, group 1 comprises unregistered group members who sought to register their participation in the proceeding within seven business days of the Class Deadline. I accept that the seven day allowance is to an extent arbitrary. Nevertheless, it is sufficiently wide to cover postal delays and in my view a rule-based approach to this issue is appropriate and preferable to the expenditure of the resources of the Court and the parties in investigating the factual circumstances of each group member in this cohort.

88 Unregistered group members 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 contacted Shine within seven business days of the class deadline. They will be admitted to participate in the settlement.

Group 2

89 Group 2 comprises unregistered group members who sought to register their participation in the proceeding before 25 June 2025, being the date that the parties' in principle settlement was signed and the settlement was announced to the ASX.

90 Unregistered group member (**UGM**) 30 was overseas caring for an ageing relative and only returned recently when he found the relevant correspondence in his mailbox. He sought to register within 10 days of the class deadline. This group member will be admitted to participate in the settlement.

91 UGM 31 did not submit any evidence (i.e. a statutory declaration or affidavit) in support of an application for late admission but said in an email that he was away. Given the absence of evidence, this group member will not be admitted.

92 UGM 32 sought to register within 10 days of the class deadline. He received notice after the deadline by way of a photograph of his mail which was collected by his

flatmate and sent to him while he was overseas. This group member will be admitted to participate in the settlement.

93 UGM 33 did not submit any evidence in support of an application for late admission but said in an email that they were overseas at the relevant time. Given the absence of evidence, this group member will not be admitted.

94 UGM 34 submitted a registration form but not an affidavit or statutory declaration, and without giving any reasons for the delay in registering. Given the absence of evidence, this group member will not be admitted.

95 UGM 35 submitted a registration form but not an affidavit or statutory declaration, and without giving any reasons for the delay in registering. Given the absence of evidence, this group member will not be admitted.

96 UGM 36 did not submit any evidence but said in an email that they had unspecified mail issues. Given the absence of evidence, this group member will not be admitted.

97 UGM 39 did not submit any evidence and said in an email that they moved and did not receive forwarded mail until March 2025. Given the absence of evidence, this group member will not be admitted.

98 UGM 40 did not submit any evidence and said in an email that they were travelling and had only recently seen the letter. Given the absence of evidence, this group member will not be admitted.

99 UGM 41 said in an email that they did not register by the deadline because the notice of the requirement to do so was buried in their email inbox. The group member later submitted a statutory declaration stating that they did not register by the deadline due to 'oversight'. That reason is uncompelling. This group member will not be admitted.

100 UGM 42 did not submit any evidence but said in an email that they could not register on time due to poor health and an inability to gather all the required information on time. Given the absence of evidence, this group member will not be admitted

101 Group members 37 and 38 can be considered together. They are individuals (who, I infer on the evidence, live together) who act as trustees for their investment entities. Each of UGM 37 and 38 submitted evidence by statutory declaration of their circumstances. They reside overseas for six months of each year. Their evidence was that they did not receive an emailed copy of the January 2025 notice. They returned to Australia in January 2025. I infer that they received notice by hard copy mail when they collected it some time after January 2025 from their post box which is not located at their home. They first contacted Shine Lawyers seeking to participate in the proceeding, on 21 March 2025. I will admit each of group members UGM 37 and 38.

102 UGM 43 made a statutory declaration that he was living on a sailing boat for an extended period, received notice of mail periodically while away from a relative who collected it, advising of matters requiring attention. The group member returned to Australia on 12 January 2025 and collected his mail which did not include the opt out and registration notice (which I note, were distributed on and after 13 January 2025). On 23 May 2025 the group member's relative told him about the proceeding. He contacted Shine by email the following day (24 May). This group member will be admitted to participate in the settlement.

103 UGM 44 explained by statutory declaration that because she had been caring for her terminally ill father, including by relocating with her children in order to assist her mother care for her father, she put in place a temporary mail management arrangement. After she had returned home, in late May 2025, she came across a bundle of mail that had been put aside while she was away. Her usual practices for managing mail were not in place while she assisted her mother after her father had died. She contacted Shine Lawyers a short time after becoming aware of the January 2025 notice. This group member will be admitted to participate in the settlement.

104 UGM 45 did not submit any evidence. She said by email that she had moved and had missed the mail. Given the absence of evidence, this group member will not be admitted.

Group 3

105 On 25 June 2025 EML announced to the ASX that the settlement had been reached. The remaining group members sought to register an interest after that date.

106 UGM 46 emailed Shine on 25 June 2025 to say he had just become aware of the matter. He submitted a statutory declaration attesting that he had been overseas continuously since September 2024, initially to provide care for his seriously ill father and then to support his spouse and family after the death of his mother-in-law. Those circumstances limited his ability to manage or monitor his legal or administrative obligations. This group member will be admitted to participate in the settlement.

107 UGM 47 submitted evidence establishing that he was in hospital and remained an in-patient at the time of the class deadline. This group member will be admitted to participate in the settlement.

108 UGM 48 submitted evidence that she did not receive any notice of the proceeding, and contacted Shine as soon as she was aware. This group member will be admitted to participate in the settlement.

109 UGM 49 did not submit any evidence but said that they commenced an application to register online, during which time the screen 'turned blue', indicating the application was processed. They did not contact Shine until 25 June 2025. Given the absence of evidence this group member will not be admitted.

110 UGM 50 first contacted Shine Lawyers on 25 June 2025 (the date of the announcement) and subsequently submitted a statutory declaration dated 28 August 2025 in which she stated she missed the original deadline because she was preoccupied with providing support to an ill family member and failed to promptly attend to the communication that was sent to her. This explanation was given in extremely general terms and is insufficient to support the conclusion that she had a reasonable excuse for not attending to the communication that she accepts she did receive. This group member will not be admitted.

111 UGM 51 did not submit any evidence but stated that they missed the communication regarding the class action. Given the absence of evidence this group member will not be admitted.

112 UGM 52 submitted a statutory declaration in which he said he only became aware of the class action following the settlement announcement to the ASX. He said he believed he never received correspondence inviting him to register for the class action, although it was possible that he missed it due to circumstances which I accept provide a reasonable excuse. This group member will be admitted to participate in the settlement.

113 UGM 53 submitted a statutory declaration saying that they did not open or read the email communication due to an oversight and administrative error and that the late registration arose 'solely due to' the group member's failure to read the email. This group member has not demonstrated unfair prejudice in being excluded from the settlement and will not be permitted to participate.

114 UGM 54 did not submit any evidence and stated by email that they inadvertently failed to register for the class action. Given the absence of evidence this group member will not be admitted.

115 UGM 55 did not submit any evidence but said by email that they had been busy since receiving the notice. Given the absence of evidence this group member will not be admitted.

116 UGM 56 submitted evidence that they did not receive the class action registration documents. This group member will be admitted to participate in the settlement.

117 UGM 57 did not submit any evidence but said by email that they were travelling overseas and missed the email. Given the absence of evidence this group member will not be admitted

118 UGM 58 did not submit any evidence but said by email that they had not received any information about the proceeding. Given the absence of evidence this group member will not be admitted.

119 UGM 59 submitted a statutory declaration stating that he did not receive the notice whilst he was overseas between November 2025 and June 2025. He contacted Shine in July 2025. This group member will be admitted to participate in the settlement.

120 UGM 60 submitted evidence that they overlooked the email advising of the proceedings at the time, and was reminded to do so after news coverage. This group member has not demonstrated unfair prejudice in being excluded from the settlement and will not be permitted to participate.

121 UGM 61 gave no reasons for the delay in his email to Shine and did not file any evidence. Given the absence of evidence this group member will not be admitted.

122 UGM 62 submitted evidence that he dd not receive notification of the class action and only learned of the proceedings in mid-August 2025, when reading the notice to ASX concerning the settlement. This group member will be admitted to participate in the settlement.

123 UGM 63 contacted the Court's civil registry by email on 17 October 2025 after receiving Shine's email to unregistered group members notifying them of its opposition to applications from unregistered group members. The group member's email attached two documents labelled 'affidavit' and 'appeal for late registration'. Neither document met the formal requirements of an affidavit or statutory declaration. He also attached documentation of his EML transactions in the relevant period. One document stated (without elaboration) that the group member was not previously aware of the existence of proceedings and when he became aware, he acted without delay. The other document stated that the delay in registering was 'due to misunderstanding the registration deadline'. Given the absence of evidence and the failure to provide a consistent plausible explanation, this group member will not be admitted.

124 UGM 64 submitted evidence that she did not receive notice of the proceedings. The evidence explained how her mail was ordinarily received and reasons why it might not have reached her. This group member will be admitted to participate.

125 UGM 65 submitted a statutory declaration setting out her share purchases. She did not give any reason in her statutory declaration for having missed the class deadline. In an earlier email to Shine she said that she 'did not previously apply' because she was 'unsure of the dates' and 'thought it was for large shareholders only'. Given the absence of supporting reasons in the evidence submitted, the group member will not be admitted. For completeness I add that the terms of the January 2025 notice were sufficiently clear, in my view. UGM 65 did not say in her statutory declaration that she did not receive the notice.

126 UGM 66 contacted Shine after receiving Shine's email to unregistered group members that it was intending to oppose their claims. Shine responded that he needed to submit a statutory declaration or affidavit. The group member submitted several documents by email which, if read together, could arguably be construed as a statutory declaration. The documents stated that the group member contacted Shine Lawyers on 28 August 2025, received a response, submitted information and waited for the Court's decision. The material did not address the reasons for his failure to register on time. This group member will not be admitted.

127 UGM 67 first contacted Shine on 11 September 2025 saying that he was not aware of the existence of the class action until after the class deadline, without saying when he learned of the class action. On 12 September 2025, he submitted a handwritten document described as an 'affidavit', stating that he was overseas when he discovered the class action. The unwitnessed statement was neither an affidavit nor a statutory declaration. Given the absence of evidence, this group member will not be admitted.

128 UGM 68 contacted Shine on 26 June 2025 asking if he was eligible for a payout on the Class Action. Shine responded stating they could not locate his registration and requesting his registration number. There is no evidence that he replied. The group

member provided no reason for his late application, nor any evidence. Given the absence of evidence this group member will not be admitted.

129 UGM 69 contacted Shine on 25 June 2025 enquiring whether he was entitled to participate in the settlement given he did had not registered. He subsequently submitted a statutory declaration dated 10 September 2025 which said that he 'somehow overlooked to tag the relevant email as an item requiring a response'. This group member has not demonstrated unfair prejudice in being excluded from the settlement and will not be permitted to participate.

G. Late-Registered Claims

130 As noted earlier, after notice of the settlement was given, Shine Lawyers commenced a data verification exercise inviting registered group members to verify their share trading data through a portal. The data provided upon registration was used by the plaintiffs' representatives to assess the aggregate quantum of registered group members' claims. Mr Wertheim's evidence was that:

> [A]ll offers made at the mediation on behalf of the plaintiffs and in subsequent settlement discussions were based on, and calibrated by reference to the Mediation Share Trading Data. Offers (including the initial offer) would have been different if the plaintiffs had known about those Late Registered Group Member claims, being the 200 new transactions and particularly the transactions by Group Member 1.

131 Some group members added new transactions (i.e. share trades) to their personalised data, of which they had not given notice when registering their claims in accordance with the 5 December 2024 orders. Some of these new transactions reduced the discounted value of the recorded transactions but for 200 transactions by 38 registered group members, that figure increased. By value and in total, if they were all admitted, the late-registered claims would increase the aggregate group member's discounted loss (which is the basis upon which the settlement sum is pro-rated), by $4,493,537.23 or 12.54%. Admission of late claims accordingly has potential to materially dilute the return to participating group members.

132 The question is not whether group members who sought to add late-registered claims should participate in the settlement at all, but whether those late-registered

transactions should be included for the purpose of calculating their pro-rated share of the settlement sum. An issue of this kind would ordinarily arise during the settlement administration, as a question for the settlement administrator who would be at liberty to seek directions from the Court. It arises at this point in this case because Shine accelerated the data verification exercise before the settlement had been approved.

133 As noted earlier, in November 2025 notice was given to affected group members of the requirement to apply to register their late claims. The notice was explicit. Group members were plainly told that they were to submit evidence by way of affidavit or statutory declaration, setting out the reasons why their late-registered claims should be reflected in distributions made by the Settlement Administrator under the settlement distribution scheme. They were told that they may provide written submissions and, if they wished, attend the settlement approval hearing by a legal representative or seek leave to appear in person.

134 Only four group members applied pursuant to the 7 November 2025 orders. No group members appeared at the hearing.

135 Group Member 35 (**GM35**) made a late-registered claim application in accordance with the 7 November 2025 orders, supported by a statutory declaration. By that declaration GM35 said that he did not enter all of his claims initially because his computer froze up before he could complete the exercise. He said that the portal made available for registration only gave him one opportunity to enter his claims without providing a way to return to finish all entries. Once the portal was activated for the data verification exercise it enabled him to 'complete' his application. I find this explanation cogent (noting it was not contradicted by any evidence from Shine Lawyers) and would admit these late claims to the registration for group member 35.

136 Group member 46 (**GM46**) made an application to admit his late-registered trades. By a statutory declaration he deposed to receiving three items of correspondence: a letter by post enclosing a court notice and emails from Shine on 9 April 2025 and 14 August 2025. The letter by post enclosing a court notice was the opt out and registration notice,

which specified that group members were those who acquired an interest in ordinary shares in EML between 19 December 2020 and 25 July 2022.

137 On 21 February 2025, after receiving that opt out and registration notice, GM46 registered, recording a share purchase transaction dated 6 September 2021. An extract of the online registration form is set out earlier in these reasons. It instructed group members to upload details of transactions for the period 19 December 2020 to 25 July 2022.

138 On 9 April 2025, Shine sent an email to registered group members asking that they review and if necessary update their *initial* holdings information. The email relevantly said:

> **Urgent action required: Confirm your initial holdings by 13 April 2025**
>
> … To assist our preparation for the mediation and our analysis of shareholders' losses, we require you to urgently confirm or update your initial holdings of EML Payments shares by Sunday, 13 April 2025.
>
> Your initial holdings refer to the total number of EML Payments shares you held at the close of trade on 18 December 2020.
>
> You may have provided information previously, however, we ask that you review your current records and confirm or update the initial holdings. We require this information for each fund/account you have registered.

139 GM46 updated his initial holdings data, as requested.

140 On 14 April 2025 Shine emailed registered group members inviting them to verify their share trade data through Shine's portal, which was distributed on that date. That communication and details on the portal are set out earlier in these reasons. On 15 August 2025, GM46 accessed the portal and added a sale transaction dated 12 April 2021. That transaction is in issue because it was not included in the original registration.

141 GM46 said that it was only after he looked back on the emails and notices that he saw that the very first notice sent by post enclosed paperwork requesting detailed share trading information. The subsequent email in April only requested initial holdings, hence he only sent that information. Upon reading the email from Shine on 14 August

2025 he added additional information.

142 The instructions to group members in the opt out and registration notice and the online registration form made clear that group members were to provide details of their shareholdings for the relevant period. The 9 April letter requested a specific confirmation for initial holdings (after the class deadline) and did not contradict the earlier instruction. GM46 has not demonstrated that any lack of clear communication or any absence of notice caused a failure to register all relevant trades within time. Group Member 46 has not sufficiently shown a risk of unfair prejudice in not being allowed to add the late-notified sale transaction to his claim. That claim will not be admitted. I note that Shine has assessed the late-registered claims as in fact reducing the inflation-based loss calculation for GM46.

143 Group Member 49 made a late-registered claim application in accordance with the 7 November 2025 orders, supported by a statutory declaration and written submissions. By statutory declaration the group member explained that during Shine Lawyers' verification process, she reviewed her records and located additional broker confirmations stored in a different email account. Once located, she promptly updated her share trading data. The group member explained that she was dealing with major health issues following category one brain surgery. Although her surgery was some time before the verification process, I accept the explanation as adequate and would admit these late claims to the registration for group member 49.

144 The accountant and agent for group member 74 (**GM74**) made application to admit late-registered trades, supported by a statutory declaration.

145 GM74 registered only on-market trades before the class deadline, in the belief that only such trades would be considered. Subsequently GM74's accountant contacted Shine to enquire about late-registered trades and they advised that all trades, regardless of whether on or off market, should be reported. GM74 then added off-market trades.

146 As set out earlier, Shine's online registration form, under 'Holding and Transactions

Details', directed group members to add details of their holdings in relevant spaces. Underneath this, it said:

> You can provide details of your transactions in EML shares in the period from 19 December 2020 to 25 July 2022 by completing the details below (click on the 'Add transaction' button to add additional transaction lines if you had more than one purchase or sale). If you had multiple transactions you can provide your transaction details using the spreadsheet available here or upload your own transactions using the upload box below.

The information in the opt-out and registration notice did not confine group membership to those who acquired EML shares on-market. The issue was not expressly addressed. However, as noted earlier, the online registration form provided for group members to nominated an 'exchange' with a drop-down menu offering the options 'ASX', 'Cboe Australia (formerly Chi-X)' and 'Other'. There was no option of 'not applicable' or similar. While it is finely balanced, I consider that the design of the form created ambiguity in this respect, arguably implying the necessary existence of a register. I would admit the late-registered claims for GM74.

147 The remaining group members did not apply pursuant to the 7 November 2025 orders. I will not admit their late-registered claims. Those group members have not, despite notice, taken the required steps to protect their own interests.

148 I will specifically refer to the circumstances of group member 1 (**GM1**). It had a late-registered claim of significant undiscounted value which accounted for approximately 98.7% of the value of late-registered claims. GM1 is a publicly listed institutional investor. Despite having the opportunity to do so, GM1 did not make an application to the Court for its late-registered claims to be added to its registration.

149 The evidence of Mr Wertheim of Shine Lawyers established the following:

(a) Shine Lawyers made available a registration form to interested group members, via its website. It may be inferred that GM1 obtained information about the claim from the website.

(b) The claim period changed over the course of the proceeding. When proceedings were commenced the claim period was 19 December 2021 to 18 May 2021. At the time of commencing proceedings the registration form available on Shine's website requested share trade data for 19 December 2021 to 21 May 2021. On 16 February 2023, the plaintiffs filed an Amended Statement of Claim which amended the Relevant Period to between 19 December 2020 to 25 July 2022.

(c) By my orders of 5 December 2024, registered group members received an opt out notice stating that a person was a group member if they acquired an interest in ordinary shares in EML during the period between 19 December 2020 to 25 July 2022. The opt out notice was sent to group members during the period 13 to 22 January 2025.

(d) On 15 January 2025 the legal officer for GM1 emailed Shine to inform Shine that GM1 had uploaded its trade data. Later that day, Shine responded that it had received the data but did not receive any supporting documentation. The legal officer responded by email, saying, '[w]e enter many class actions and being an institutional investor we do not normally need to provide this additional information'. On 21 January 2025, the legal officer provided the 'trade notes, as requested'. On 22 January 2025 Shine confirmed its receipt of the data and asked whether the group member had an HIN or SRN. The legal officer forwarded a screenshot of the SRN later that day. As at the class deadline, GM1 had accordingly registered to participate in the proceeding.

(e) Shine could not affirmatively say that GM1 received a copy of the opt out and registration notice, because the relevant orders required the defendant to instruct its share registry provider to create a confidential list of group members, and Shine does not and has never held a copy of that list. However, Mr Wertheim said that he believed it likely that GM1 received the notice. That opinion was an inference from the timing of the legal officer's initial interaction with Shine during the period when the notice was sent out to group members.

The inference that GM1 received the opt and registration notice is reasonably open for the reasons Mr Wertheim advanced. It was not countered by any evidence from GM1. I draw that inference.

(f) Subsequently, and after Shine had emailed to registered group members a link to verify their share trading data on 18 August 2025, GM1 completed the verification form. In so doing, GM1 added 32 new share purchases to the 13 already registered, which concerned 14,611,766 additional securities.

(g) On 18 August 2025, GM1 telephoned Shine and spoke to a member of its client services team. According to Shine's file note of the conversation GM1's officer telephoned wanting to clarify that the dates on the letter from Shine were correct, saying that the officer was unaware that the period extended to July 2022 and that GM1 had many more transactions to upload. Shine confirmed that the period was as stated in the letter (i.e. the letter that Shine emailed to group members seeking verification of their trading data).

(h) When submitting its additional transactions to the verification portal GM wrote, 'class action period changed 19/12/2020-25/7/2022' in text added via the portal for each new transaction.

(i) After the distribution of the notice facilitated by my orders of 7 November 2025, which told registered group members how to apply to the Court to have late-registered claims admitted to the settlement, the legal officer for GM1 contacted Shine via email on 11 November 2025, asking whether any further action was required by GM1 in relation to that notice, stating that GM1 was 'certainly not later than the deadline submitting our trade data'. Shine did not respond to that email, saying on this present application that it considered it was inappropriate to correspond individually with group members. Mr Wertheim's evidence was that he considered that GM1, an institutional investor, would be expected to have read the opt out notice and provided all

relevant trading data prior to the class deadline relating to then pleaded relevant period.

(j) GM1 did not make an application to the Court to have its late-registered claims admitted to the settlement.

150 The plaintiff submitted that GM1 1 had had ample opportunity to identify its error in not entering its share trading data and there was adequate and clear notice of the relevant period. This is especially so considering GM1 is an institutional investor who says that it has participated in many class actions. This group member's inattention to its own affairs, the fact that it did not seek leave include its additional claims in the proceeding and the significant dilution that admitting its claims would cause, are all persuasive of the conclusion that GM1 should not be permitted to participate in the settlement.

151 I agree. It is true that the claim period changed before the opt-out and registration notice was published. However, GM1 likely received the opt-out and registration notice. That notice made the claim period explicit. It relevantly stated,

> 5. You are a group member in the EML Class Action if:
>
> > a. you acquired an interest in ordinary shares in the defendant (**EML Shares**) during the period between 19 December 2020 to 25 July 2022…

152 GM1 is an experienced institutional litigant who engages a legal officer to attend to its affairs. It is possible that GM1 had relied upon its initial registration and assumed that the claim period had remained the same. Whether and why it did so was not explained, because GM1 did not put any evidence before the Court. By failing to properly attend to the Court-authorised notice regarding registration and further, failing to take the clearly explained and mandatory step of applying to the Court in respect of its late-registered claims, GM1 has failed to take care of its own interests. If there are extenuating circumstances relevant to GM1, including any that undermine the inferences I have drawn, GM1 did not seek to establish such circumstances. It was not reasonable in the face of the Court's notice published pursuant to my orders of 7 November 2025, for GM1 to rely on Shine to tell it whether it was required to take a

further step. Although as a matter of simple professional courtesy Shine might have responded saying that the group member needed to take its own legal advice, the fact is that Shine did not respond. There is no evidence that GM1 made further contact with Shine, chasing a response. The terms of the Court's notice (set out earlier in these reasons) were clear. Admission of GM1's late-registered claims would prejudice other group members whose entitlements would be diluted. That prejudice should not be visited upon other group members in circumstances where GM1 has failed to put arrangements in place to properly manage its affairs, where it may be reasonably inferred that GM1 was in a position to do so.

153 For the guidance of the administrator I note that the material submitted by Shine recorded that group members 66 and 67 registered claims for $1,257.52 and $766.47 that Shine said it inadvertently omitted the date upon which it relied in mediating and negotiating the settlement of the proceeding. Those claims must be included in the calculation of the entitlement of group members 66 and 67.

154 For clarity, I note that group members 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 68, 69, 70, 71, 72 and 73 sought to register late claims during the data verification exercise but did not apply for registration pursuant to the orders of 7 November 2025. Those claims will not be admitted.

H. Legal Costs

155 On 6 December 2022, this Court (Delany J) made a group costs order (**GCO**) under s 33ZDA of the Act in relation to the plaintiff's costs of this proceeding.[19] The GCO was set at 24.5% of any settlement sum, with liability for payment of those costs to be shared among the plaintiffs and all group members. Unless varied, the 24.5% percentage rate applies in this case, resulting in a costs award of $9,152,250.60, to be paid from the settlement sum.

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19 *Mumford v EML Payments Ltd* [2022] VSC 750.

156 Shine Lawyers, supported by the plaintiffs, seek costs on the basis of the 6 December 2022 Group Costs Order. The tenor of their application is that there is no occasion to vary that order, noting that the Court has power to do so under s 33ZDA(3). The plaintiff's counsel stated in their opinion that they were not aware of any circumstances giving rise to the need to vary the order, giving comprehensive reasons in support of their position.

157 In my view, for the reasons that follow and taking into account the result that has transpired, there is no need to vary the GCO made in December 2022.

158 I described the principles to be applied on a settlement approval in considering an award of costs calculated under a group costs order in *Lieberman v Crown Resorts Pty Ltd,*[20] adopting the reasoning of Watson J in *Allen v G8 Education Ltd (No 4).*[21] I need not set them out again here.

159 The group costs order made in December 2022 was fixed at 24.5%. The Court's reasons for fixing that rate were, in summary, that:

(a) a GCO would fairly distribute the burden of legal costs incurred in pursuit of common questions among all Group Members;

(b) a GCO would make funding arrangements for the proceeding certain and transparent;

(c) a GCO would not expose the plaintiffs to significant and disproportionate exposure to financial risks as a result of assuming that role;

(d) a GCO would ensure that the costs of prosecuting the proceeding are fairly distributed among all group members, while giving certainty to the percentage net return to group members;

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20 *Lieberman v Crown Resorts Ltd* [2025] VSC 596, [50]-[52].
21 *Allen v G8 Education Ltd (No 4)* [2024] VSC 487.

(e) a GCO would put the proceeding on a stable base of funding, and avoid the risk of the proceeding either being discontinued, abandoned, delayed or made uncertain;[22]

(f) having regard to the expected rate of return to group members under a third-party litigation funding agreement with the proposed percentage of the GCO, a GCO at 24.5% would result in a greater return to group members than the return if third-party litigation funding were required to be obtained;

(g) Shine had sought at GCO at 30%. Delany J observed that the Court should be cautious in approving a higher percentage rate than GCO percentages approved in like cases.[23] His Honour took into account Shine's evidence in support of a GCO fixed at 30% by reference to the firm's costs and incurred risks,[24] a comparison with third-party litigation funding arrangements[25] and a 'No Win No Fee' model,[26] and also analysed GCO percentages ordered in other proceedings.[27] Delany J also compared the GCO sought with other relevant GCOs. His Honour observed that in *Beach Energy*[28] the lead plaintiff in one competing class action was represented by Shine, which was prepared to continue acting if a GCO fixed the rate at 24.5%.[29] In *Gehrke v Noumi Ltd*,[30] the GCO percentage rate was fixed at 22% in the context of competition between two class action firms, reflecting a broadly acceptable rate of return in the marketplace for these kinds of actions.[31] Further, it was relevant that Shine Lawyers was obliged to continue conducting the proceeding for the benefit of the lead plaintiffs and group members no matter what the percentage of the GCO fixed by the Court.[32]

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22 *Mumford v EML Payments Ltd* [2022] VSC 750, [71].
23 *Mumford v EML Payments Ltd* [2022] VSC 750, [80].
24 *Mumford v EML Payments Ltd* [2022] VSC 750, [81].
25 *Mumford v EML Payments Ltd* [2022] VSC 750, [83]-[85].
26 *Mumford v EML Payments Ltd* [2022] VSC 750, [86].
27 *Mumford v EML Payments Ltd* [2022] VSC 750, [87]-[92].
28 *Nelson v Beach Energy; Sanders v Beach Energy* [2022] VSC 424.
29 *Mumford v EML Payments Ltd* [2022] VSC 750, [89].
30 *Gehrke v Noumi Ltd* [2022] VSC 672.
31 *Mumford v EML Payments Ltd* [2022] VSC 750 [92].
32 *Mumford v EML Payments Ltd* [2022] VSC 750 [74].

160 There was no application to vary the GCO percentage until after the settlement had been reached and the process had begun for notification to group members and the seeking of court approval of the settlement. Shine Lawyers filed a summons seeking to vary the GCO percentage to 30%, seeking orders including for notice to group members. The application was subsequently withdrawn, after the Court had made orders including for the appointment of a contradictor in relation to the application to vary the GCO.

161 There no occasion in view to vary the GCO made in December 2022. For the following reasons, an award of costs calculated in accordance with that order will not be unreasonable or disproportionate:

(a) First, the outcome (the settlement sum) is within the contemplated range of outcomes considered by the Court, the plaintiffs and Shine Lawyers at the time at which the GCO was applied for and made. So much was established in the plaintiff's solicitors' evidence on this application. That necessarily means the amount of legal costs payable to the solicitors on that settlement outcome was within the express contemplation of the Court, the plaintiffs and the solicitors at that time, and as it happens, at the lower end of the outcomes contemplated. That means that there is no occasion to consider whether an award of costs under the group costs order would give rise to a return that was well outside what was regarded as prima facie reasonable at the time the GCO was made.

(b) I am satisfied that the solicitors have undertaken a considerable amount of legal work, commensurate with the complexity of the proceeding and the stage it had reached before settlement. The extent of that work was described in the confidential material including by reference to the firm's costs incurred and disbursements expended. Mr Aylward of Shine Lawyers, on whose evidence the plaintiffs relied when seeking the GCO in December 2022, gave evidence about the plaintiff's estimated legal costs and disbursements in support of the GCO application. The actual professional fees incurred in this case were generally consistent with Mr Aylward's estimate, but the actual disbursements

exceeded that estimate. This was primarily attributed to the costs of procuring expert evidence, which increased for reasons including the number of expert reports submitted. The reasons for the difference between the estimated costs and those actually incurred were explained in detail, in the affidavit of Craig Allsopp, relevant parts of which were properly confidential. I am satisfied on the basis of that evidence that where the costs exceeded the estimate, the increase was driven by the solicitors' evolving and not-unreasonable forensic assessments of the extent of evidence required.

(c) The evidence of Mr Allsopp compares the return to Shine Lawyers under the present GCO and the payment it would have received on a standard hourly rate cost basis with an uplift (i.e. a 'no win no fee' arrangement). I am satisfied on the basis of that evidence that the costs charged to group members under the GCO fixed at 24.5% are fair, reasonable and proportionate. On no view do those costs entail a windfall gain to the solicitors. The corollary is that in this case group members received a more than fair and reasonable return.

(d) On the basis of Mr Allsopp's evidence and the published data to which he refers, I am satisfied that it is likely that had the proceeding been funded by a third party- funding arrangement the cost to group members would have been higher than the costs to be calculated by reference to the group costs order.

(e) Although each case must be judged on its merits, it may be observed that the rate of 24.5% is below the median GCO rate in shareholder class actions.[33]

(f) I note that there were no objections to the 24.5% GCO by registered group members.

I. Administration Costs

162 The plaintiffs seek prospective approval of the expected costs of the settlement administration in the sum of $385,000 including GST.

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[33] V Morabito, 'Group Costs Orders, Funding Commissions, Volume of Class Action Litigation, Reimbursement Payments and Biggest Settlements' (Report, 4 February 2025).

163 On the question of the quantum of the costs, Shine relied upon the evidence of Mr Wertheim, which addressed the estimated costs accounting for the steps involved in managing the scheme, which set out in the evidence, with comparisons with administration costs for other shareholder class actions in this Court.

164 The estimated costs of the settlement administration amounts to approximately $115.33 per registered group member. I consider that cost to be reasonable, on the evidence. I will order that the costs of the settlement administration up to, but not exceeding, the amount of $385,000 including GST be approved, subject to the Settlement Administrator submitting a report to the Court certifying the amount of costs actually incurred in the settlement administration. I intend that costs for the settlement administration may only be deducted from the settlement sum once work to that value has been incurred, so that if the value of the work undertaken falls short of that sum, any saving will remain in the fund for the benefit of group members. I also intend that the costs of the settlement administration be capped at that amount.

165 On the question of the appointment of Shine to administer the scheme, Mr Wertheim's evidence was that it would be efficient for Shine to conduct the settlement administration, engaging employees who have been involved in the day-to-day conduct of the claim, Shine has a range of support in client services, technology and marketing, and its existing processes can assist in administration. Much of the work already conducted by Shine has reduced the amount of work otherwise required upon settlement administration. All group members to date have communicated with Shine, so there would be no change to the point of contact for group members. Mr Wertheim's evidence was that he is unaware of Shine being subject to any conflict of interest preventing it acting as the proposed administrator. In this proceeding, in which the settlement administration is of confined scope, there is no call for a wider inquiry (for example, by tender) into whether a different process would be more efficient.

J. Plaintiffs' reimbursement payment

166 The plaintiffs seek the sum of $15,000 each, being $30,000 in total, as a reimbursement payment in recognition of their assuming responsibility for instructing their solicitors in the conduct of the proceedings. The authorities accept that it is appropriate to acknowledge, by the payment of a modest sum, the fact that the burden assumed by a representative plaintiff can involve the discharge of a not insignificant responsibility in achieving a benefit for the group member cohort. The evidence of Mr Wertheim established that Mrs and Mr Mumford performed their roles diligently and conscientiously. I will allow the payment sought, which is in keeping with the sums awarded in comparable cases.

CERTIFICATE

I certify that this and the 49 preceding pages are a true copy of the reasons for ruling of Nichols J of the Supreme Court of Victoria delivered on 25 March 2026.

DATED this twenty-fifth day of March 2026.

....
Associate