

**In the Supreme Court of Victoria**

*Rowe v. AusNet Electricity Services Pty Ltd & Ors* (SCI 4538 of 2012)

**“Murrindindi Bushfire Class Action”**

**SETTLEMENT DISTRIBUTION SCHEME**

**Overview**

- A. This Settlement Distribution Scheme establishes a procedure for distributing the sums to be paid by the defendants to the Murrindindi Bushfire Class Action pursuant to a settlement of the class action approved by the Supreme Court of Victoria.
- B. This Settlement Distribution Scheme will not become operative unless and until the Court has granted approval for the settlement of the class action upon the terms set out in the Settlement Deed and in this Scheme.
- C. This Settlement Distribution Scheme provides for the following major elements:
- (i) the procedure for assessing the individual claims of group members (**Claimants**) will be administered by a senior partner (principal) of Maurice Blackburn, appointed as Scheme Administrator and not as the solicitor for any particular client;
  - (ii) the assessment procedure will vary depending on whether the particular claim relates to personal injury and dependency (**I-D Claims**), or economic loss and property damage (**ELPD Claims**);
  - (iii) that is, the total sum paid by the defendants (after deduction of the plaintiffs' costs incurred in prosecution of the claims the subject of the Proceeding) will be split:
    - (a) thirty four million for an I-D Claims Fund, for payment of I-D Claims; and
    - (b) the balance for an ELPD Claims Fund, for payment of ELPD Claims;
  - (iv) for I-D Claims:
    - (a) the claim information will be delivered to a barrister specialising in the personal injury jurisdiction, who may then confer with the Claimant (and may refer the Claimant to a medico-legal assessment by a medical practitioner) and deliver an initial assessment valuing the Claimant's I-D Claims;

- (b) any Claimant dissatisfied with the initial assessment will have an opportunity to seek a review of that assessment;
  - (c) the initial assessment, as modified by any review assessment, will determine a claim value, and each I-D Claimant will share in the I-D Claims Fund in the proportion which his or her claim bears to the total value of all claims against that Fund;
  - (d) the rate at which I-D Claims made against the I-D Claims Fund will be compensated will be capped at 80% of the value of each claim;
  - (e) any balance then remaining in the I-D Claims Fund will be transferred into the ELPD Claims Fund, to reduce the difference in compensation rates which will nevertheless exist as between I-D and ELPD Claims;
- (v) for Economic Loss & Property Damage Claims:
- (a) each Claimant's information will be collated either by the Scheme Administrator's staff or by the ELPD Assessor appointed by the Scheme Administrator to value each Claimant's ELPD Claims;
  - (b) the ELPD Assessor will give a written report as to their assessment of each ELPD Claim;
  - (c) any Claimant dissatisfied with the initial assessment will have an opportunity to seek a review of that assessment, to be conducted by a Senior ELPD Assessor;
  - (d) all ELPD assessments will be done in accordance with certain "Assessment Principles" set out in this Scheme;
  - (e) the components of the initial assessment, as modified by any review assessment, will be subject to certain "ELPD multipliers" the purposes of which are to prioritise certain losses over others, and to reflect uncertainties in aspects of the law relating to loss valuation;
  - (f) the adjusted assessments will form the basis on which ELPD Claimants will share pro rata in the ELPD Claims Fund;
- (vi) special provisions are made in respect of Claimants who are minors, or persons under a disability within the meaning of Order 15 of the Rules of Court, and therefore subject to the supervisory jurisdiction of the Senior Master's Office;

- (vii) costs incurred by the Scheme Administrator in connection with the assessment of Claimants' claims will not be charged to individual Claimants, but instead paid out of the overall compensation fund;
- (viii) Claimants who seek specific legal advice, or require other work beyond the routine information-gathering tasks undertaken by the Administrator Staff, will be entitled to retain other solicitors, or other personnel of Maurice Blackburn, as they wish but at their individual cost; and
- (ix) the Court is to have ongoing supervision over the implementation of this Scheme.

D. The operative provisions of this Scheme are set out below.

## A. GENERAL

### A1 Definitions

A1.1 The following terms when used in this Settlement Distribution Scheme (including the Overview above) shall have the meanings set out below, unless the context otherwise requires:

- (a) terms defined in the Statement of Claim or the Settlement Deed shall have the same meaning in this Scheme;
- (b) **Administration Costs** means:
  - (i) any obligation described in clause A4.1;
  - (ii) all professional costs, and disbursements, incurred by the Scheme Administrator and Administrator Staff in the preparation, testing, implementation or administration of this Scheme;
  - (iii) all fees and reasonable disbursements incurred by any person appointed by the Scheme Administrator to perform any function in connection with the preparation, testing, implementation or administration of this Scheme (including reasonable preparation or training in anticipation of involvement in this Scheme), which fees and disbursements shall be invoiced to the Scheme Administrator and paid by him or her as a disbursement;
- (c) **Administrator Staff** means the persons delegated by the Scheme Administrator to perform the functions necessary or convenient for the efficient implementation of this Scheme, and includes Maurice Blackburn in respect of those Administrator Staff;
- (d) **Assessment Report** means the notices, any reasons and any certifications given by an assessor or review assessor pursuant to this Scheme;
- (e) **Claimants** means the plaintiffs and:

- (i) for I-D Claims – the group members registered as Personal Injury Claimants pursuant to the Class Closure Orders; and
- (ii) for ELPD Claims – the group member claims registered:
  - A. as Above-insurance Loss Claimants, or
  - B. in Insurer Recovery Registration Forms, in accordance with the Class Closure Orders;
- (f) **Class Closure Orders** means the Orders made 4 March 2014 (as amended by further orders made 4 April 2014, 30 May 2014, 8 December 2014, 22 January 2015 and 6 February 2015) in the Proceeding;
- (g) **Deed** and **Settlement Deed** mean the Deed of Settlement recording the terms of the settlement of the Proceeding as approved by the Court, and includes any schedules, attachments, annexures, supplements or modifications to the Deed;
- (h) **Distribution Sum** includes the sums standing from time to time in the I-D Claims Fund and the ELPD Claims Fund, and any reference to a payment from the Distribution Sum shall unless the context otherwise requires be a reference to a payment taken *pro rata* from the I-D Claims Fund and the ELPD Claims Fund in the proportions which each Fund bears to the total then standing in both Funds;
- (i) ELPD definitions:
  - (i) **ELPD Assessment Principles** means the principles set out in (Confidential) Schedule A;
  - (ii) **ELPD Assessor** means a solicitor, member of the Victorian Bar or professional loss assessor or adjuster appointed by the Scheme Administrator to undertake ELPD Assessments;
  - (iii) **ELPD Claimant** means a group member claim:
    - A. registered as an Above-insurance Loss Claim; or
    - B. registered in an Insurer Recovery Registration Form; in accordance with the Class Closure Orders;
  - (iv) **ELPD Claims Fund** means the funds standing from time to time in an interest-bearing account held by the Scheme Administrator with an Australian deposit-taking institution, for the payment of Claimants' ELPD Claims;
  - (v) **ELPD Review Assessment** means the outcome of an ELPD Assessment conducted pursuant to Section E6 below;
  - (vi) **ELPD Valuation Book** means the book of documentary materials supporting an ELPD Claim, prepared for the purposes of Section E below;
  - (vii) **Final Assessed ELPD Value** means the final value of an ELPD Claim as assessed following an ELPD Assessment as modified by any ELPD Review Assessment;

- (viii) **Final ELPD Distribution Value** means the Final Assessed ELPD Value multiplied by the ELPD Multipliers;
  - (ix) **Register of ELPD Claim Distributions** means the list of ELPD Claimants and final distributed amounts referred to in Section F2;
  - (x) **Senior ELPD Assessor** means a solicitor, member of the Victorian Bar or professional loss assessor or adjuster appointed by the Scheme Administrator to undertake ELPD Review Assessments;
- (j) I-D definitions:
- (i) **I-D Assessor** means a member of the Victorian Bar appointed by the Scheme Administrator to undertake I-D Assessments and I-D Review Assessments;
  - (ii) **I-D Claim** means a claim for personal injury or dependency made by or on behalf of an I-D Claimant;
  - (iii) **I-D Claimant** means a group member registered as a Personal Injury Claimant pursuant to the Class Closure Orders (which for the avoidance of doubt includes group members making dependency but not personal injury claims);
  - (iv) **I-D Claim Book** means the documents, instructions, statements, medico-legal reports or other material submitted to the I-D Assessor in accordance with this Scheme;
  - (v) **I-D Claims Cap** means compensation of I-D Claims at a rate of 80% of the Final Assessed I-D Value, plus interest on the capped amount, but less any Review Costs deductions;
  - (vi) **I-D Claims Fund** means the funds standing from time to time in an interest-bearing account held by the Scheme Administrator with an Australian deposit-taking institution, for the payment of I-D Claims;
  - (vii) **I-D Review Assessment** means the outcome of an I-D Review Assessment conducted pursuant to Section C5 below;
  - (viii) **Final Assessed I-D Value** means the final value of an I-D Claim as assessed following an I-D Assessment as modified by any I-D Review Assessment;
  - (ix) **Register of I-D Claim Distributions** means the list of I-D Claimants and final distributed amounts referred to in Section D2;
  - (x) **Senior I-D Assessor** means a Senior Counsel who is a member of the Victorian Bar and who specialises in the personal injury jurisdiction and who is appointed by the Scheme Administrator to undertake I-D Review Assessments;

- (k) **Insurance Recovery Claim** means a claim identified in an Insurer Recovery Registration Form filed in accordance with the Class Closure Orders;
- (l) **Interest** means the interest accruing from time to time on funds in the accounts established pursuant to the Deed and this Scheme;
- (m) **Medico-Legal Assessor** means an approved medical practitioner as defined in Part VBA of the *Wrongs Act 1958*;
- (n) **Order 15 Claimant** means a Claimant who is a minor or other person under a disability, within the meaning of Order 15 of the Rules of Court;
- (o) **Proceeding** means *Katherine Rowe v. Ausnet Electricity Services Pty Ltd (ACN 064 651 118) (formerly SPI Electricity Pty Ltd) & Ors* (Supreme Court of Victoria SCI 4538 of 2012);
- (p) **Reimbursement Payments** means the payments referred to in Schedule C;
- (q) **Review Costs** means, for any individual Claimant, any amount payable by the Claimant to the Scheme Administrator in connection with the consideration or prosecution of any review of an Assessment Report, or other challenge to or appeal against anything arising from or in connection with the implementation of this Scheme;
- (r) **Rowe's Costs and Disbursements** means Liesfield's and Rowe's legal costs and disbursements of and incidental to the investigation or prosecution of the claims the subject of the Proceeding calculated in accordance with their retainer of Maurice Blackburn;
- (s) **Rules of Court** means the *Supreme Court (General Civil Procedure) Rules 2005*;
- (t) **Scheme** means this Settlement Distribution Scheme and includes schedules or annexures to this Scheme, and such modifications or supplements as may be approved by the Court;
- (u) **Scheme Administrator** has the meaning given in clause A3.1.
- (v) **Statutory Impairment Damages Threshold** means an impairment threshold assessment for significant injury:
  - (i) as required pursuant to Part VBA of the *Wrongs Act 1958*; or
  - (ii) as is relevant to a determination of serious injury pursuant to Division 8A of Part IV of the *Accident Compensation Act 1985* or Division 1 of Part 6 of the *Transport Accident Act 1986*; or
  - (iii) pursuant to any other legislative requirement relevant to an I-D Claimant.
- (w) **Statutory Narrative Damages Threshold** means a narrative serious injury test pursuant to:
  - (i) Division 8A of Part IV of the *Accident Compensation Act 1985*; or
  - (ii) Division 1 of Part 6 of the *Transport Accident Act 1968*; or
  - (iii) any other legislative requirement relevant to an I-D Claimant.

**A2 Interpretation**

- A2.1 Headings are for convenience only and do not affect interpretation.
- A2.2 The following rules apply unless the context requires otherwise:
- (a) the singular includes the plural, and the converse also applies;
  - (b) a gender includes all genders;
  - (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
  - (d) a reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
  - (e) a reference to *dollars* and \$ is to Australian currency;
  - (f) a reference to any thing done by any person includes a reference to the thing as done by a director, officer, servant, agent, personal representative or legal representative if permitted to be so done by law or by any provision of the Deed or this Scheme.
- A2.3 Any reference to costs incurred by the Scheme Administrator in the implementation of this Scheme shall mean costs calculated in accordance with Schedule B.

**A3 Scheme Administrator**

- A3.1 The Scheme Administrator will be the principal in charge of the Class Actions Department of Maurice Blackburn, or another principal nominated by him.
- A3.2 The Scheme Administrator and the Administrator Staff in discharging any function or exercising any discretion conferred by this Scheme:
- (a) shall do so as lawyers required by the Court to administer this Scheme fairly according to its terms, as a duty owed to the Court in priority to any obligation to any individual Claimant; and
  - (b) shall have the same immunities from suit as attach to the office of a judge of the Supreme Court of Victoria.

**A4 Scheme Costs**

- A4.1 Notwithstanding any other provision of this Scheme, and without reducing any other rights which the Scheme Administrator might have:
- (a) all costs, expenses, taxes, levies, duties, charges, fees or other imposts or obligations arising in connection with the administration of this Distribution Scheme (including without limitation the creation, retention, investment or disbursement of any part of the Distribution Sum) shall be paid from the Distribution Sum held by the Scheme Administrator from time to time; and

- (b) the Scheme Administrator and the Administrator Staff shall be indemnified from the Distribution Sum against all liabilities (including without limitation any liabilities described in (a) above) arising from or in connection with the administration of this Scheme.
- A4.2 Administration Costs of and incidental to this Scheme shall be paid from the Distribution Sum, and shall be paid from Interest before reducing the principal compensation sums payable to the Claimants. Where the Interest (including from any of the Settlement Reserve Funds and the Settlement Distribution Fund) in either of the I-D Claims Fund or ELPD Claims Fund is insufficient to meet any payment of the Administration Costs in accordance with this clause and clause A4.1, the Interest from the other fund may be applied.
- A4.3 Administration Costs payable pursuant to this Section:
- (a) may be paid by the Scheme Administrator as the costs and disbursements are invoiced to the Scheme Administrator; and
  - (b) shall be fully paid prior to any final distribution from any Fund pursuant to this Scheme.

#### **A5 Administrator Staff and other solicitors**

- A5.1 The role of the Administrator Staff is to:
- (a) inform Claimants about the requirements of this Scheme; and
  - (b) perform routine information-gathering functions associated with the implementation of this Scheme;
- to be paid out of the funds under administration, but not to provide non-standard assistance or any specific legal advice to any Claimant or otherwise to act as the solicitors retained by any Claimant.
- A5.2 Where Maurice Blackburn was retained as the solicitor for a group member prior to Court Approval of this Scheme, the Scheme Administrator shall in writing specifically notify the group member of the effect of Sections A3 and A5.
- A5.3 Nothing in this Scheme prevents any Claimant from, at any time and at their own cost, retaining:
- (a) solicitors other than Maurice Blackburn; or
  - (b) Maurice Blackburn (being, for this purpose, any principal or employee solicitor who is not part of the Administrator Staff);
- to advise the Claimant or perform any task which this Scheme requires the Claimant to perform (and which does not mandate personal performance by the Claimant).



**A6 Indemnities to other persons**

A6.1 The Scheme Administrator indemnifies:

- (a) Dr Katherine Rowe in respect of all liabilities she might have under clause 4.2 of the Deed and in performing functions under this Scheme shall at all times ensure that sufficient funds are available to satisfy any obligations arising under clause 4.2 of the Deed and clause D3 below;
- (b) Maurice Blackburn in respect of all liabilities it might have under or in respect of the Deed, including without limitation:
  - (i) clause 2(s) of the Deed; and
  - (ii) clause 10 of Schedule 2 of the Deed.

A6.2 Any amounts payable or which the Scheme Administrator expects may be payable pursuant to this Section A6 are to be:

- (a) paid, where certain; or
- (b) retained by the Scheme Administrator, where the obligation is not yet certain; from the Distribution Sum prior to any final distribution.

**A7 Administrator's discretions**

A7.1 If during the administration of this Scheme the Scheme Administrator:

- (a) receives written notice of a claim which but for the Class Closure Orders would be an I-D Claim or an ELPD Claim; and
- (b) within 21 days after any request from the Scheme Administrator, receives from or on behalf of the person seeking to make the claim a statutory declaration which:
  - (i) explains the failure to register the claim in accordance with the Class Closure Orders; and
  - (ii) discloses circumstances which in the Scheme Administrator's opinion constitute a basis for inclusion of the claim within this Scheme, on compassionate grounds;

then the Scheme Administrator may, in his or her absolute discretion, file with the Court a notice stating that the Claimant's claim has now been registered pursuant to the Scheme.

A7.2 If during the administration of this Scheme the Scheme Administrator receives written notice of a claim which but for any slip or omission by Maurice Blackburn or the Court would have been registered in accordance with the Class Closure Orders the Scheme Administrator shall file with the Court a notice stating that the Claimant's claim has now been registered pursuant to the Scheme.

A7.3 Where a notice is filed and served pursuant to clause A7.1 or A7.2 each claim notified in the notice shall be and be treated for all purposes associated with the Settlement Deed or this Scheme as a claim registered in accordance with the Class Closure Orders.

- A7.4 Notwithstanding any other provision of this Scheme, the Scheme Administrator may in his or her absolute discretion extend time for compliance with any deadline fixed by this Scheme or by the Scheme Administrator in the course of administering this Scheme, but:
- (a) the Scheme Administrator shall have no obligation to extend any such deadline;
  - (b) any extension shall apply to one, some or all of the Claimants, as the Scheme Administrator may stipulate;
  - (c) an extension limited to one or some Claimants shall not entitle any other Claimant to expect or receive any like or other extension;
  - (d) a failure by any Claimant to meet any deadline shall have such adverse consequence for the Claimant as the Settlement Deed, this Scheme or the Scheme Administrator may stipulate, and the Scheme Administrator shall not have any liability to any Claimant for any such consequence; and
  - (e) without limiting (d) above, where a deadline described in (d) relates to the delivery of any information, document or authority to the Scheme Administrator or any other person exercising a function pursuant to this Scheme, a conference with an I-D Assessor or and attendance for medico legal assessment, a failure to meet the deadline or to attend the conference or the assessment shall entitle the Administrator or person:
    - (i) to proceed on the basis of information received before the deadline; and
    - (ii) where appropriate – enter a “nil” assessment for the claims to which the deadline related.

- A7.5 Notwithstanding any other provision of this Scheme, the Scheme Administrator may in his or her absolute discretion:
- (a) at any time prior to the final distribution of the I-D Claims Fund or the ELPD Claims Fund require a Claimant to deliver information or further information to the Scheme Administrator, or as he or she may direct, in relation to any claim made by the Claimant under this Scheme;
  - (b) issue more than one direction pursuant to (a) to any individual Claimant; and
  - (c) if any information is not provided in substantially complete compliance with the direction, proceed with the assessment of the claim on the basis set out in clause A7.4(e) above.

## **A8 Disclosures to agencies and insurers**

- A8.1 Where necessary or reasonable for the purposes of this Scheme or compliance with any statutory or contractual obligation owed by, or in respect of any compensation payable to, any Claimant, the Scheme Administrator may release to:
- (a) an agency compensation payer;

- (b) an insurer, including the Transport Accident Commission, Victorian WorkCover Authority, CFA, Comcare, Centrelink, Health Insurance Commission or a private health insurer;
  - (c) the Australian Taxation Office; or
  - (d) the Senior Master's Office;
- a Claimant's name, address, identifying particulars, and any Notice of Assessment relating to the claim.

## **B. DISTRIBUTION SUM – SPLIT AND INTEREST**

### **B1 Sum split and allocation rules**

B1.1 After receipt into the Settlement Distribution Fund of the:

- (a) AusNet Services Settlement Sum together with interest (net of deduction for HSF costs, withholding tax, bank and government charges, if any) which has accrued on that sum in the AusNet Services Settlement Reserve Fund as at the date of closure of that fund;
- (b) UAM Settlement Sum together with interest (net of deduction for HFW costs, withholding tax, bank and government charges, if any) which has accrued on that sum in the UAM Settlement Reserve Fund as at the date of closure of that fund; and
- (c) State Parties Settlement Sum together with interest (net of deduction for NRFA costs, withholding tax, bank and government charges, if any) which has accrued on that sum in the State Parties Settlement Reserve Fund as at the date of closure of that fund;

the Scheme Administrator will cause:

- (i) Rowe's Costs and Disbursements as approved by the Court to be paid to Maurice Blackburn; and
- (ii) the Reimbursement Payments identified in Schedule C, as approved by the Court, to be paid to the persons identified in the schedule.

B1.2 After making the payments pursuant to (i) and (ii) in clause B1.1, the Scheme Administrator will cause the balance contained in the Settlement Distribution Fund (exclusive of interest which has accrued) to be applied as follows:

- (a) thirty four million shall be paid into the I-D Claims Fund; and
- (b) the balance shall be paid into the ELPD Claims Fund.

B1.3 Interest which has accrued on the;

- (a) AusNet Services Settlement Sum in the AusNet Settlement Reserve Fund (net of deduction for HSF costs, withholding tax, bank and government charges, if any);

- (b) UAM Settlement Reserve Sum in the UAM Settlement Reserve Fund (net of deduction for HFW costs, withholding tax, bank and government charges, if any);
- (c) State Parties Settlement Sum in the State Parties Settlement Reserve Fund (net of deduction for NRFA costs, withholding tax, bank and government charges, if any); and
- (d) Settlement Distribution Fund;

shall be allocated between and paid in the I-D Claims Fund and ELPD Claims Fund in the same proportion as the amounts referred to in B1.2 above.

B1.4 Each I-D Claim shall be compensated out of the I-D Claims Fund in the proportion which the Final Assessed I-D Value of that claim bears to the aggregate Final Assessed I-D Value of all such claims, less any Review Costs deductions.

B1.5 Each ELPD Claim shall be compensated out of the ELPD Claims Fund in the proportion which the Final Distribution Value of that claim bears to the aggregate Final Distribution Value of all such claims, less any Review Costs deductions.

## **B2 Interest adjustments**

B2.1 Where interest accrued in the I-D Claims Fund or the ELPD Claims Fund is available for distribution to Claimants after deductions pursuant to this Scheme, the amount of distributable interest allocated to any individual claim shall be calculated by:

- (a) applying *pro rata* the daily interest accruals since the establishment of the Fund, to each claim in the proportion which the Final Assessed I-D Value (for I-D Claims) or the Final ELPD Distribution Value (for ELPD Claims) of each claim bears to the total of such values in each Fund; and
- (b) for each day following the commencement of interim distributions, applying *pro rata* subsequent accruals of interest in the proportions which the undistributed amounts of individual values referred to in "a" bear to the total of such values then undistributed in the relevant Fund;

such that recipients of interim distributions do not receive interest accruals in respect of sums already distributed to (and available for separate use or investment by) them.

## **B3 I-D Claims Cap – rollover**

B3.1 In the event that the amount finally accruing in the I-D Claims Fund exceeds the amount necessary to achieve the I-D Claims Cap, the excess (including Interest not applied to Administration Cost or payment of I-D Claims up to the I-D Claims Cap) shall as soon as practicable be transferred by the Scheme Administrator to the ELPD Claims Fund and shall thereafter form (and be deemed always to have formed) part of the ELPD Claims Fund.

**B4 No obligations after final distribution**

B4.1 Upon the final distribution of the Distribution Sum in accordance with this Scheme the Scheme Administrator shall have no further liability in respect of the Distribution Sum or the implementation or administration of this Scheme.

**C. PERSONAL INJURY & DEPENDENCY CLAIMS****C1 I-D Claims**

C1.1 After Settlement Approval the Scheme Administrator shall:

- (a) nominate tranches of I-D Claimants, with the objective of sequencing the tranches to achieve an orderly flow of claims through the I-D Claims assessment procedure;
- (b) for the first tranche, and then at later dates for subsequent tranches, set deadlines for I-D Claimants within the tranche to provide:
  - (i) such authorities, information, instructions or documents as the Scheme Administrator may require; and
  - (ii) any other material upon which the I-D Claimant proposes to rely in support of the I-D Claim; and
- (c) after the deadline in (b) is set for each tranche, notify claimants within that tranche of the deadline and their obligations pursuant to (b) above.

**C2 I-D Claim information**

C2.1 The authorities, documents, instructions, statements or other material submitted to or obtained by the Scheme Administrator:

- (a) in accordance with the procedure described in clause C1.1(b) above; or
- (b) pursuant to any further direction given by the Scheme Administrator pursuant to Section A7.5;

shall together comprise the claimant's I-D Claim Book.

C2.2 Where the Scheme Administrator upon receipt of an I-D Claim Book anticipates a high likelihood that any I-D Assessor will require a medico-legal assessment of the I-D Claimant:

- (a) the Scheme Administrator may initiate the referral of the claimant for medico-legal assessment, prior to the procedure described in Section C4; and
- (b) the medico-legal assessment once obtained shall form part of the I-D Claim Book for the claimant.

C2.3 After receipt of the material described in clause C2.1 or any medico-legal assessment pursuant to clause C2.2, whichever is later, the Scheme Administrator shall compile a batch of I-D Claim Books for delivery to an I-D Assessor for assessment.

- C2.4 In the event that an I-D Assessor tasked to assess an I-D Claim is unable to complete the assessment in a timely manner the Scheme Administrator may reallocate the assessment to a different I-D Assessor, and this provision shall also apply (with necessary changes) to:
- (a) Medico-Legal Assessors; and
  - (b) Review Assessors.

**C3 I-D Assessment – immunities**

- C3.1 The I-D Assessors, the Medico-Legal Assessors, and the Senior I-D Assessors:
- (a) shall act as independent arbitrators and not as counsel briefed on behalf of any Claimant;
  - (b) in the discharge of any office under this Scheme shall have the same immunities from suit as attach to the office of a judge of the Supreme Court of Victoria.

- C3.2 A determination in respect of any relevant Statutory Impairment Damages Threshold, made by a Medico-Legal Assessor pursuant to this Scheme, shall be final and binding for all purposes of this Scheme, and no further right of review or appeal shall lie.

**C4 I-D Assessments – procedure**

- C4.1 After receipt of an I-D Claim Book, the I-D Assessor may:
- (a) confer with the I-D Claimant, and/or such personal or other representative(s) of the claimant as the assessor considers appropriate, for the purpose of evaluating the I-D Claim of the Claimant according to the laws of Victoria; and
  - (b) where the I-D Assessor is uncertain whether the Claimant has met a relevant Statutory Impairment Damages Threshold – refer the I-D Claimant for a medico-legal assessment.
- C4.2 After completion of the conference or any medico-legal assessment pursuant to clause C4.1, whichever is later, the I-D Assessor shall deliver to the Scheme Administrator:
- (a) a Notice of I-D Assessment in a form prescribed by the Scheme Administrator; and
  - (b) a brief statement of reasons disclosing, as appropriate:
    - (i) what Statutory Impairment Damages Threshold and/or Statutory Narrative Damages Threshold apply to the I-D Claimant;
    - (ii) whether or not the Threshold/s have been satisfied; and
    - (iii) the bases (including any calculations) for the assessments reflected in the Notice of I-D Assessment.
- C4.3 After receipt of the Notice of I-D Assessment required by clause C4.2, the Scheme Administrator shall give to the I-D Claimant:
- (a) the Notice;

- (b) a notice explaining the I-D Claimant's rights to seek a review pursuant to Section C5 below; and
- (c) a notice alerting the I-D Claimant to Statutory Compensation Scheme, Centrelink and insurance issues which might arise as a consequence of payments to an I-D Claimant from the I-D Claims Fund.

## **C5 Review of I-D Assessments**

C5.1 An I-D Claimant who wishes to obtain a review of any part of a Notice of I-D Assessment may request the review by delivering a Request for Review, in the form prescribed by the Scheme Administrator, to the Scheme Administrator within 28 days after the date shown on the Notice of I-D Assessment, failing which:

- (a) the I-D Claimant shall be deemed to have accepted the Notice of I-D Assessment; and
- (b) the amount shown in the Notice of I-D Assessment shall stand as the Final Assessed I-D Value for that claimant.

C5.2 An I-D Claimant must in any Request for Review state with precision the grounds for seeking the review.

C5.3 Where the Request for Review seeks a review of both:

- (a) an I-D Assessor's assessment (without having obtained a medico-legal assessment) that the Claimant has not met a Statutory Impairment Damages Threshold (a **Statutory Threshold Refusal**); and
- (b) other parts of the Notice of I-D Assessment;

the two aspects to the Request for Review shall be treated as two separate reviews including for the purposes of Section C8.

### *No speculative review requests*

C5.4 The Scheme Administrator may, in his or her absolute discretion:

- (a) require any I-D Claimant seeking an I-D Review to pay to the Scheme Administrator, within 14 days, a bond not exceeding \$800 for the costs of the Review Assessment; and
- (b) treat as void and of no effect any request for review where the required bond has not been paid within 14 days.

## **C6 I-D Reviews – Reviews of Statutory Threshold Refusal**

C6.1 Where:

- (a) an I-D Assessor has made a Statutory Threshold Refusal without having referred the I-D Claimant for a medico-legal assessment; and

(b) the I-D Claimant seeks a review of the Statutory Threshold Refusal;  
then clause C6.2 shall apply.

C6.2 Where clause C6.1 applies, the Scheme Administrator shall:

- (a) after receipt of the Request for Review:
  - (i) refer the I-D Claimant for medico-legal assessment by a Medico-Legal Assessor; and
  - (ii) give written notice to the I-D Claimant seeking the Review that:
    - A. the Request for Review has been referred to the Medico-Legal Assessor; and
    - B. the provisions set out in Section C8 below will apply to the Claimant in respect of the Review; and
- (b) after receipt of any medico-legal assessment of the Claimant:
  - (i) where the medico-legal assessment confirms the I-D Assessor's determination that a Statutory Impairment Damages Threshold has not been reached – give written notice to the I-D Claimant that the original I-D Assessment is confirmed; but
  - (ii) where the Medico-Legal Assessor determines that the Statutory Impairment Damages Threshold has been met – deliver the medico-legal assessment to the original I-D Assessor for re-assessment of the I-D Claim (and the re-assessment shall for all other purposes of this Scheme be treated as the original I-D Assessment).

## **C7 I-D Reviews – other reviews**

C7.1 Where an I-D Claimant makes a request for review in respect of a part of a Notice of I-D Assessment other than a Statutory Threshold Refusal, the Scheme Administrator shall after receipt of the Request for Review:

- (a) refer the Request to a Review Assessor, being a Senior I-D Assessor; and
- (b) give written notice to the I-D Claimant seeking the Review that:
  - (i) the Request for Review has been referred to the Review Assessor; and
  - (ii) the provisions set out in Section C8 below will apply to the Claimant in respect of the Review.

C7.2 The Scheme Administrator will after completion of the steps set out in Section C7.1 deliver to the Review Assessor:

- (a) the Claimant's I-D Claim Book;
- (b) the Notice of I-D Assessment;
- (c) the Claimant's Request for Review; and
- (d) where applicable – any medico-legal assessment made pursuant to this Scheme.



C7.3 The Review Assessor:

- (a) may after receipt of the papers referred to in clause C7.2 confer with the I-D Claimant (together with any representative of the Claimant);
- (b) where the Review Assessor considers it necessary for the purpose of evaluating the I-D Claim – refer the I-D Claimant for a medico-legal assessment;
- (c) shall conduct the Review Assessment:
  - (i) by reference to the papers provided pursuant to clause C7.2; and
  - (ii) as at the date of the original I-D Assessment;
- (d) may stipulate a deadline for compliance with any direction given by the Review Assessor, and failing compliance with the deadline shall proceed to make a determination on the basis of evidence and submissions already received.

C7.4 The Review Assessor shall after receipt of the last of the papers referred to in clause C7.2 deliver to the Scheme Administrator a Notice of I-D Review Assessment including a Statement of Reasons disclosing the bases (including any calculations) for the conclusions reached by the Review Assessor.

C7.5 The decision of the Review Assessor shall be final and binding upon the Scheme Administrator and the I-D Claimant in respect of the matters the subject of the Notice of I-D Review Assessment, and no appeal shall lie to any court or tribunal in respect of any error or alleged error of jurisdiction, fact or law attaching to the Review Assessor's decision.

C7.6 Where an I-D Review Assessment has been made, the Notice of I-D Assessment as modified by the Notice of I-D Review Assessment shall stand as the Final Assessed Value (net of interest) of the I-D Claims of the Claimant.

**C8 Costs of I-D Review Assessment**

C8.1 Where an I-D Claim review has been undertaken and:

- (a) in the case of a review of a Statutory Impairment Damages Threshold Refusal – the medico-legal assessment confirms the I-D Assessor's original determination; or
- (b) the assessment reported in the Notice of I-D Review Assessment is less than 110% of the assessment reported in the Notice of I-D Assessment;

the claimant shall pay the Scheme Administrator's costs of engaging in the Review Assessment, such costs to be fixed in the sum of \$3000 in respect of each review assessment.

C8.2 The Scheme Administrator may in his or her absolute discretion waive the requirement in clause C8.1 where the Scheme Administrator considers that, even compared to the typical circumstances of I-D Claimants, the circumstances of the claimant disclose special compassionate grounds for the waiver.

- C8.3 Any costs payable to the Scheme Administrator pursuant to clause C8.1 shall be deducted from any bond paid pursuant to clause C5.4(a) and thereafter from any amount otherwise payable to the Claimant pursuant to this Scheme.
- C8.4 Where the total assessed value of an I-D Claim following a Review Assessment is not less than 110% of the total value of the assessment under review, any bond paid pursuant to clause C5.4 shall be refunded to the I-D Claimant.

**C9 Statutory Benefit PI Claimants – elections not to recover**

- C9.1 Within 28 days after the date shown on a Notice of I-D Assessment or Notice of I-D Review Assessment an I-D Claimant may by written notice delivered to the Scheme Administrator elect not to receive compensation under one or more heads of damage addressed in the assessment.
- C9.2 After receipt of any notice pursuant to clause C9.1, the Scheme Administrator will obtain from the I-D Assessor or Senior I-D Assessor, as the case may be, an amended Notice of I-D Assessment reflecting the election made by the I-D Claimant, and the amended Notice shall thereafter irrevocably stand as the final Assessment Report, and Final Assessed I-D Value, for the I-D Claimant.
- C9.3 For the avoidance of doubt, the Scheme Administrator shall include, in any calculation of distributions from the I-D Fund to an I-D Claimant:
- (a) only the losses allowed in the final Assessment Report for the Claimant; and
  - (b) no amount in respect of a loss, item or claim identified in a notice given pursuant to clause C9.1.

**D. PERSONAL INJURY & DEPENDENCY CLAIMS – DISTRIBUTIONS**

**D1 Interim Distributions**

- D1.1 Upon resolution of the Final Assessed Values of at least 30% (by number) of I-D Claims, the Scheme Administrator may at his or her absolute discretion commence to make interim distributions from the I-D Fund to resolved I-D Claims.
- D1.2 The Scheme Administrator:
- (a) may make interim distributions progressively as claims are resolved, or in tranches; and
  - (b) may vary the proportions at which interim distributions are paid, for all claimants or for particular groups of claimants;
- as the Scheme Administrator deems appropriate.
- D1.3 Notwithstanding anything in clause D1.2, the proportion at which interim distributions pursuant to Section D1 are paid:

- (a) shall be determined by the Scheme Administrator having regard to the imperative to retain sufficient funds to pay pending I-D Claims, Administration Costs and indemnities; but
- (b) save where clause D1.4 applies – shall not exceed 60% of the Final Assessed Values of resolved claims unless the Court permits, upon application by the Scheme Administrator.

D1.4 The Scheme Administrator may, at his or her absolute discretion, make a payment to a particular I-D Claimant at any time and in excess of the rate stipulated in clause D1.3(b) where he or she is satisfied upon reasonable grounds that, even compared to the typical circumstances of I-D Claimants:

- (a) the particular claimant is in a position of extraordinary need; and
- (b) the payment is appropriate on special compassionate grounds.

## **D2 Final Distribution**

D2.1 As soon as practicable upon resolution of the Final Assessed Values of all I-D Claims, the Scheme Administrator shall:

- (a) calculate and disburse any outstanding costs and disbursements payable from the I-D Claims Fund pursuant to this Scheme or any prior Order of a court;
- (b) calculate and disburse or retain any amounts attributable to indemnities given under the Deed or this Scheme;
- (c) compile a Register of I-D Claim Distributions, identifying for each I-D Claimant the Final Assessed Value of the I-D Claim;
- (d) calculate the balances to be distributed to each I-D Claimant in accordance with the Register of I-D Claim Distributions and clause B1.4 above, after adjusting for:
  - (i) the I-D Claims Cap;
  - (ii) interim distributions previously made to any I-D Claimant; and
  - (iii) interest differentials reflecting interim distributions; and
- (e) subject to Part H below (regarding Order 15 Claimants) – distribute the amounts calculated in “d” to or in respect of the I-D Claimants.

D2.2 Where, in respect of any part of the compensation due to an I-D Claimant:

- (a) the identity of the proper recipient of the part is unclear;
- (b) the proper recipient cannot be located for the purpose of transferring payment; or
- (c) the payment is otherwise impeded or delayed;

the Scheme Administrator shall:

- (i) make the final distribution by paying the part into the Maurice Blackburn trust account, or otherwise as the Court may direct;
- (ii) report the payment in the Register of I-D Claim Distributions; and

(iii) thereafter have no further liability in respect of the payment.

D2.3 The Scheme Administrator shall file with the Prothonotary, as a confidential exhibit, a copy of the Register of I-D Claim Distributions including the calculations referred to in clause D2.1(d).

**D3 Reimbursement of statutory benefit receipts**

D3.1 Where the agency administering any State or Federal scheme (including without limitation Centrelink, the Health Insurance Commission and Comcare) notifies the Scheme Administrator in writing that any amount is payable to the agency from any compensation payable to an I-D Claimant pursuant to this Scheme, the Scheme Administrator:

- (a) shall pay the said amount to the agency prior to any final distribution of the balance of the Claimant's entitlements pursuant to this Scheme;
- (b) shall notify the I-D Claimant of the payment to the agency; and
- (c) without affecting any other privilege or immunity under this Scheme, shall have no further obligation to the Claimant in respect of the said amount;

but nothing in this Section shall affect any right the Claimant or the agency might have against each other in respect of the said amount.

D3.2 Where the insurer of any I-D Claimant notifies the Scheme Administrator in writing that any amount is payable to the insurer from compensation payable to the Claimant pursuant to this Scheme, the Scheme Administrator shall in default of agreement between the Claimant and the insurer:

- (a) pay the portion of the compensation payment in dispute:
  - (i) into the trust account of Maurice Blackburn, on behalf of the Claimant; or
  - (ii) as the Court may direct;
 pending resolution of the rights and obligations between the Claimant and the insurer; and thereafter
- (b) shall have no further obligation to the Claimant or the insurer in respect of the said amount.

D3.3 For the avoidance of doubt, where the Scheme Administrator has made any distribution to an I-D Claimant prior to receipt of a notice described in this clause D3:

- (a) the notice shall operate only so far as the Scheme Administrator has retained any part of the compensation due to the I-D Claimant; and
- (b) to the extent that the retained funds are less than the amount stipulated in the notice, the Scheme Administrator and the I-D Fund shall have no further liability in respect of the notice;

but nothing in this clause affects any other rights the agency or insurer on the one hand, and the Claimant on the other hand, might have in respect of the said amount.

**E. ELPD CLAIM ASSESSMENTS****E1 Pre-assessed ELPD Claims**

E1.1 Where the ELPD Claims of an ELPD Claimant have been assessed prior to the execution of the Settlement Deed and upon a basis consistent with the ELPD Assessment Principles, the Scheme Administrator shall after Court Approval deliver to the registered address of the ELPD Claimant:

- (a) a Notice of ELPD Assessment in a form prescribed by the Scheme Administrator; and
- (b) a notice informing the ELPD Claimant of the claimant's rights in respect of an ELPD Review Assessment pursuant to this Scheme.

**E2 ELPD Claims requiring assessment – ELPD Claim Books**

E2.1 After Settlement Approval the Scheme Administrator shall:

- (a) nominate tranches of ELPD Claimants, with the objective of sequencing the tranches to achieve an orderly flow of claims through the ELPD Claims assessment procedure;
- (b) for the first tranche, and then at later dates for subsequent tranches, set deadlines for ELPD Claimants within the tranche to:
  - (i) provide to the Scheme Administrator or the Administrator Staff such authorities, instructions, statements or documents as the Scheme Administrator may stipulate; further or alternatively
  - (ii) make available to the ELPD Assessor such instructions, statements or documents as the ELPD Assessor may require;(the material provided or obtained in response to those directions being the "**ELPD Claim Book**"); and
- (c) after the deadline in (b) is set for each tranche, notify claimants within that tranche of the deadline, and their obligations pursuant to (b) above.

E2.2 For the avoidance of doubt, the Scheme Administrator and the Administrator Staff shall not have any obligation to verify the completeness or accuracy of the contents of any ELPD Claimant's ELPD Claim Book.

E2.3 After the expiry of a deadline set for any ELPD Claim pursuant to this Section, the Scheme Administrator shall refer the ELPD Claim to an ELPD Assessor for assessment.

E2.4 In the event that an ELPD Assessor tasked to assess an ELPD Claim is unable to complete the assessment in a timely manner the Scheme Administrator may reallocate the assessment to a different ELPD Assessor, and this provision shall also apply (with necessary changes) to:

- (a) ELPD Assessors; and
- (b) Senior ELPD Assessors.

### **E3 ELPD assessments – immunities and Assessment Principles**

E3.1 The ELPD Assessors and Senior ELPD Assessors exercising functions pursuant to this Scheme:

- (a) shall act as independent arbitrators and not as representatives of any claimant;
- (b) in the discharge of any office under this Scheme shall have the same immunities from suit as attach to the office of a judge of the Supreme Court of Victoria.

E3.2 All ELPD Claims assessed pursuant to this Scheme shall be assessed in accordance with the ELPD Assessment Principles set out in (Confidential) Schedule A, and otherwise in accordance with the laws of the State of Victoria.

E3.3 The Final Assessed ELPD Values determined in accordance with the Assessment Principles shall be multiplied by the ELPD Multipliers set out in (Confidential) Schedule A, to determine the ELPD Distribution Values.

### **E4 ELPD Claims requiring assessment – procedure**

E4.1 In conducting an ELPD Assessment the ELPD Assessor:

- (a) shall retain all materials collected or prepared by him or her in connection with the ELPD Assessment (which materials in the event of a Review Assessment shall be added to the ELPD Claim Book);
- (b) shall observe any procedure stipulated by the Scheme Administrator; and
- (c) subject to (b) – shall proceed as the Assessor considers appropriate having regard to the Assessor's obligations under this Scheme.

#### *Provisional Notice of ELPD Assessment*

E4.2 After referral of an ELPD Claim for ELPD Assessment, the ELPD Assessor shall deliver to the ELPD Claimant:

- (a) a Provisional Notice of ELPD Assessment;
- (b) a Provisional Statement of Reasons disclosing the bases (including any calculations) for the assessments reflected in the Provisional Notice of ELPD Assessment; and
- (c) a notice in a form prescribed by the Scheme Administrator to the effect that if the ELPD Claimant considers that the Provisional Notice of ELPD Assessment reflects some error or omission by the ELPD Assessor then the ELPD Claimant must within 14 days deliver to the ELPD Assessor a statement, not exceeding two (2) pages, specifically explaining the perceived error or omission, failing which the

Provisional Notice will be re-issued as the (non provisional) Notice of ELPD Assessment.

- E4.3 In the event that an ELPD Assessor receives a statement pursuant to clause E4.2(c), the ELPD Assessor shall take further steps (if any) to investigate the alleged error or omission before issuing the (non provisional) Notice of ELPD Assessment.

*(Non provisional) Notice of ELPD Assessment*

- E4.4 After completion of the steps required by clause E4.2(c) or E4.3, whichever is later, the ELPD Assessor shall deliver to the Scheme Administrator:

- (a) a Notice of ELPD Assessment; and
- (b) a Statement of Reasons disclosing the bases (including any calculations) for the assessments reflected in the Notice of ELPD Assessment.

- E4.5 After receipt of the Notice and Reasons required by clause E4.1, the Scheme Administrator shall give to the ELPD Claimant:

- (a) the Notice and Reasons; and
- (b) a notice explaining the claimant's rights to seek an ELPD Review Assessment.

**E5 Review of ELPD Assessments**

- E5.1 An ELPD Claimant who wishes to obtain a review of a Notice of ELPD Assessment (which for the avoidance of doubt includes a notice given pursuant to Section E1), or any part of a Notice of ELPD Assessment, may request the review by delivering a Request for ELPD Review to the Scheme Administrator within 42 days after the date shown on the Notice of ELPD Assessment, failing which:

- (a) the ELPD Claimant shall be deemed to have accepted the Notice of ELPD Assessment; and
- (b) the amount shown in the Notice of ELPD Assessment shall stand as the Final Assessed ELPD Value for that claimant.

- E5.2 The Scheme Administrator may, in his or her absolute discretion require an ELPD Claimant to pay to the Scheme Administrator, within 14 days, a bond not exceeding \$1200 for the costs of any ELPD Review Assessment.

- E5.3 Where a Request for ELPD Review has been received by the Scheme Administrator, the Scheme Administrator shall as soon as practicable (subject to compliance with any requirement imposed pursuant to clause E5.2):

- (a) refer the Request to a Senior ELPD Assessor; and
- (b) give written notice to the ELPD Claimant seeking the Review that:
  - (i) the Request for ELPD Review has been referred to the Senior ELPD Assessor;

- (ii) the ELPD Claimant has 21 days from the date of the notice to deliver to the Scheme Administrator, for delivery to the Senior ELPD Assessor, any written contentions, not exceeding five (5) pages in length, in support of the review application; and
- (iii) the provisions set out in Section E7 below will apply to the Claimant in respect of the Review.

## **E6 ELPD Review Assessment**

E6.1 After completion of the steps set out in Section E5 the Scheme Administrator will deliver to the Senior ELPD Assessor:

- (a) the Claimant's ELPD Claim Book;
- (b) the Notice of ELPD Assessment and the Statement of Reasons issued with the notice;
- (c) the Claimant's Request for ELPD Review; and
- (d) any further material delivered by the Claimant to the Scheme Administrator in accordance with Section E5.

E6.2 The Senior ELPD Assessor:

- (a) may inform himself or herself as he or she considers appropriate in relation to the Review, including without limitation by requiring the Claimant to:
  - (i) attend an interview with the Senior ELPD Assessor;
  - (ii) submit further material relating to the ELPD Claim;
  - (iii) deliver further written or oral submissions; or
  - (iv) verify any matter by a statutory declaration;
- (b) may make such further enquiries and consultations as the Senior ELPD Assessor considers appropriate; and
- (c) shall within 60 days after receipt of the last of the papers referred to in clause E6.1 deliver to the Scheme Administrator:
  - (i) a Notice of ELPD Review Assessment; and
  - (ii) a Statement of Reasons disclosing the bases (including any calculations) for the conclusions reached by the Senior ELPD Assessor;
- (d) shall conduct the Review:
  - (i) by reference to the papers provided pursuant to clause E2.1; and
  - (ii) as at the date of the original ELPD Assessment; and
- (e) may stipulate a deadline for compliance with any direction given by the Senior ELPD Assessor, and failing compliance with the deadline shall proceed to make a determination on the basis of evidence and submissions already received.



- E6.3 The Scheme Administrator shall upon receipt of the papers listed in clause E6.2(c) cause the same to be sent to the registered address of the ELPD Claimant.
- E6.4 The decision of the Senior ELPD Assessor shall be final and binding upon the Scheme Administrator and the ELPD Claimant in respect of the matters the subject of the Notice of ELPD Review Assessment, and no appeal shall lie to any court or tribunal in respect of any error or alleged error of jurisdiction, fact or law attaching to the ELPD Review Assessment.
- E6.5 Where an ELPD Review Assessment has been made, the Notice of ELPD Assessment as modified by the Notice of ELPD Review Assessment shall stand as the Final Assessed Value (net of interest) of the ELPD Claims of the claimant.

#### **E7 Costs of ELPD Review Assessments**

- E7.1 Where the total assessed value of an ELPD Claim following publication of a Notice of ELPD Review Assessment is less than 110% of the total value assessed in the ELPD Assessment, the claimant shall pay the Scheme Administrator's costs of the Review Assessment, fixed at \$5000.
- E7.2 The Scheme Administrator may in his or her absolute discretion waive the requirement in clause E7.1 where the Scheme Administrator considers that, even compared to the typical circumstances of ELPD Claimants, the circumstances of the claimant disclose special compassionate grounds for the waiver.
- E7.3 Any costs payable to the Scheme Administrator pursuant to clause E7.1 shall be deducted from any bond paid pursuant to clause E5.2 and thereafter from any amount otherwise payable to the claimant pursuant to this Scheme.
- E7.4 Where the total assessed value of an ELPD Claim following publication of a Notice of ELPD Review Assessment is not less than 110% of the total value assessed in the ELPD Assessment, any bond paid pursuant to clause E5.2 shall be refunded to the ELPD Claimant.

#### **F. ELPD CLAIMS – DISTRIBUTIONS**

##### **F1 Interim Distributions**

- F1.1 Upon resolution of the Final Assessed Values of at least 40% (by number) of ELPD Claims, the Scheme Administrator may in his or her absolute discretion commence to make interim distributions from the ELPD Fund to resolved ELPD Claims.
- F1.2 The Scheme Administrator:

- (a) may make interim distributions progressively as claims are resolved, or in tranches;
  - (b) may vary the proportions at which interim distributions are paid, for all claimants or for particular groups of claimants;
- as the Scheme Administrator deems appropriate.

F1.3 Notwithstanding anything in clause F1.2, the proportion in which interim distributions pursuant to Section F1 are paid:

- (a) shall be determined by the Scheme Administrator having regard to the imperative to retain sufficient funds to pay pending ELPD Claims and Scheme Costs; but
- (b) shall not exceed 60% of the Final Distribution Values of resolved claims unless the Court permits upon application by the Scheme Administrator.

F1.4 The Scheme Administrator may, at his or her absolute discretion, at any time make a payment to a particular ELPD Claimant in excess of the rate stipulated in clause F1.3(b) where he or she is satisfied upon reasonable grounds that, even compared to the typical circumstances of ELPD Claimants:

- (a) the particular claimant is in a position of extraordinary need; and
- (b) the payment is appropriate on special compassionate grounds.

## **F2 Final Distribution**

F2.1 As soon as practicable upon resolution of the Final Assessed Values of all ELPD Claims, the Scheme Administrator shall:

- (a) disburse any outstanding costs and disbursements payable from the ELPD Claims Fund pursuant to this Scheme or any prior Order of a court;
- (b) compile a Register of ELPD Claim Distributions, identifying for each ELPD Claimant the Final Distribution Value of the ELPD Claims;
- (c) calculate the balances to be distributed to each ELPD Claimant in accordance with the Register of ELPD Claim Distributions and clause B1.5 above, after adjusting for:
  - (i) interim distributions previously made to any ELPD Claimant; and
  - (ii) interest differentials reflecting interim distributions; and
- (d) subject to Part H below (regarding Order 15 Claimants) – distribute the amounts calculated in "c" to or in respect of the ELPD Claimants (which for the avoidance of doubt includes the Insurer in respect of an Insurance Recovery Claim).

F2.2 The Scheme Administrator shall file with the Prothonotary, as a confidential exhibit, a copy of the Register of ELPD Claim Distributions including the calculations referred to in clause F2.1(c).

**F3 Incidental matters**

F3.1 Where, in respect of any part of the compensation due to an ELPD Claimant:

- (a) the identity of the proper recipient of the part is unclear;
- (b) the proper recipient cannot be located for the purpose of transferring payment; or
- (c) the payment is otherwise impeded or delayed;

the Scheme Administrator shall:

- (i) make the final distribution by paying the part into the Maurice Blackburn trust account, or otherwise as the Court may direct;
- (ii) report the payment in the Register of ELPD Claim Distributions; and
- (iii) thereafter have no further liability in respect of the payment.

**G. CLAIMANTS' OBLIGATIONS AND INDEMNITIES****G1 Claimants' Obligations**

G1.1 Each Claimant shall do all things stipulated in this Scheme or requested or directed by a person discharging any office under this Scheme, including without limitation:

- (a) providing instructions, information or documents;
- (b) providing authorities or permissions;
- (c) attending and participating in conferences or meetings with:
  - (i) Administrator Staff;
  - (ii) Medico-Legal Assessors;
  - (iii) Assessors or Review Assessors;

and shall do so:

- (iv) complying to the best of the Claimant's ability with the substance and not merely the form of the direction or request; and
- (v) by any date stipulated in the request or direction.

G1.2 Each Claimant shall act honestly, and do all things necessary to ensure that any agent or representative of the Claimant acts honestly, in any thing done in or for the purposes of participating in this Scheme and any person discharging any function or office created by this Scheme shall be entitled to rely upon the honesty of the thing done.

**G2 I-D Claimants indemnify Scheme Administrator**

G2.1 Payment of compensation in respect of an I-D Claim is or may be subject to:

- (a) the *Social Security Act 1947* and/or the *Social Security Act 1991*;
- (b) the *Health and Other Services (Compensation Act) Act 1995*; or
- (c) other statutes or regulations;

and each I-D Claimant indemnifies the Scheme Administrator in respect of all Social Security, Medicare or other statutory benefits paid to or for the benefit of the Claimant

between 7 February 2009 and the date of Final Distribution to the Claimant under this Scheme.

- G2.2 If an I-D Claimant by reason of his or her entitlement to share in the I-D Claims Fund or by reason of payment to him or her from the Fund has a legal obligation, whether by reason of statute, contract or otherwise, to an agency, compensation payer or insurer to pay or re-pay a sum from the compensation payable to the Claimant in respect of the I-D Claim the I-D Claimant shall, as a condition of his or her entitlement to receive payment from the I-D Claims Fund, be deemed to indemnify the Scheme Administrator in respect of any and all such obligations.
- G2.3 Without limiting any other obligation or discretion of the Scheme Administrator under this Scheme, for the avoidance of doubt the Scheme Administrator may make such adjustments or withholdings from any payment otherwise due to an I-D Claimant pursuant to this Scheme as may be necessary to:
- (a) comply with any statutory or regulatory obligation to pay or refund any amount to a statutory agency; or
  - (b) effect any indemnity given by an I-D Claimant under this Scheme.

## **H. PERSONS UNDER DISABILITY**

### **H1 Personal Representative**

- H1.1 Where the Scheme Administrator believes that a Claimant is or may be a person to whom Order 15 of the Rules of Court applies:
- (a) the Scheme Administrator shall give written notice to:
    - (i) the Claimant;
    - (ii) the person who the Scheme Administrator proposes to appoint as the personal representative for the Claimant; and
    - (iii) the Senior Master; and
  - (b) the person nominated as personal representative shall stand appointed accordingly.
- H1.2 Where a Claimant is an Order 15 Claimant the operation of this Scheme shall be modified as follows:
- (a) any notices, correspondence or information required by this Scheme to be given to a Claimant shall be given to the personal representative of the Claimant; and
  - (b) except where otherwise provided by this Scheme or by the Scheme Administrator, anything that is required by the Scheme or the Scheme Administrator to be done by a Claimant shall be done by his or her personal representative;

- (c) any request for review of an assessment which may be given by a Claimant pursuant to this Scheme will be given by the personal representative of the Claimant.

## **H2 Senior Master's Office**

H2.1 The Scheme Administrator shall maintain with the Senior Master's Office a current register identifying:

- (a) each Order 15 Claimant; and
- (b) the contact details of the personal representative of each Order 15 Claimant.

## **H3 Procedure facilitating Order 15 approval**

H3.1 Where a Claimant is an Order 15 Claimant, the Scheme Administrator upon receipt of all final I-D Assessments and final ELPD Assessments required for the Claimant's claims shall deliver to the Senior Master's Office:

- (a) the Assessments, including the applicable Statements of Reasons;
- (b) a report by Maurice Blackburn detailing such background or other matters as the Senior Master may require;
- (c) confirmation that:
  - (i) the personal representative of the Order 15 Claimant was given notice of the assessments and any review rights in respect of the assessments in accordance with this Scheme;
  - (ii) the time for making any request for review has expired; and
  - (iii) any review of an assessment requested by the personal representative of the Order 15 Claimant has been completed in accordance with this Scheme;
- (d) a proposed form of order including orders to the effect that:
  - (i) pursuant to Order 15 of the Rules, approval be granted for a compromise of the Claimant's claims, to be effected by the Final Assessed Value(s) of the claims being included for *pro rata* distributions pursuant to this Scheme; and
  - (ii) any distribution in respect of the Claimant pursuant to this Scheme be paid to the Senior Master by payment into Court.

H3.2 Upon the making by the Senior Master or an Associate Justice of orders to the effect of clause H3.1(d) above, the claim values approved by the Senior Master shall be included in the Register of I-D Claim Distributions or the Register of ELPD Claim Distributions, as the case may be.

## **I. SCHEME COSTS**

### **I1 Approval of Scheme costs**

- I1.1 Fees payable in respect of work performed by the Administrator Staff pursuant to this Scheme shall be paid at rates set out in Schedule B.
- I1.2 All fees and disbursements payable to any person pursuant to this Scheme shall be:
- (a) identified in a report to the Court prior to any disbursement from the Distribution Sum to the person claiming the costs or disbursements; and
  - (b) disbursed from the Distribution Sum upon and to the extent of approval by the Court.
- I1.3 Nothing in this Section I1 shall affect any rights or obligations as between a solicitor and a client of that solicitor in respect of costs incurred pursuant to any retainer or costs agreement between the solicitor and that client.

## **J. COURT SUPERVISION & OTHER MATTERS**

### **J1 Supervision by the Court**

- J1.1 Where the Scheme Administrator considers that:
- (a) the procedures to be followed in the implementation of this Scheme are wanting or in doubt; or
  - (b) an issue has arisen in connection with the administration of this Scheme which are appropriate for directions by the Court;
- the Scheme Administrator may, by correspondence addressed to the Associate to the Judge or Associate Judge supervising the administration of this Scheme, apply to the Judge or Associate Judge for directions.
- J1.2 Save where the Court upon an application pursuant to clause J1.1 requires otherwise, the Scheme Administrator need not give notice of the application to Claimants.

### **J2 Notices**

- J2.1 Any notices, correspondence or information required by this Scheme to be given shall be deemed given and received for all purposes associated with this Scheme if:
- (a) addressed to the person to whom it is to be given; and
  - (b) either:
    - (i) delivered, or sent by pre-paid mail, to that person's postal address (being, for Claimants, the last postal address notified by the Claimant to Maurice Blackburn); or

- (ii) sent by fax to that person's fax number (being, for Claimants, the last fax number notified by the Claimant to Maurice Blackburn) and the machine from which it is sent reports that it was sent in full; or
- (iii) sent by email to that person's email address (being, for Claimants, the last email address notified by the Claimant to Maurice Blackburn).

J2.2 Where a Claimant is an Order 15 Claimant the operation of J2.1 shall be modified as set out in H1.2.

### **J3 Notice to Scheme Administrator**

J3.1 The details for service of notices or correspondence addressed to the Scheme Administrator are:

Title	Scheme Administrator – Murrindindi Bushfire Class Action
Postal	PO Box 523 MELBOURNE VIC 3001
DX	466 Melbourne
Telephone	1800 182 645
Email	<a href="mailto:murrindindica@mauriceblackburn.com.au">murrindindica@mauriceblackburn.com.au</a>

**Dated: 6 May 2015**