

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/06/2018 10:01:08 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
File Number:	NSD213/2011
File Title:	Tammy Maree Stanford & Anor v DePuy International Limited & Anor
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 20/06/2018 1:16:28 PM AEST

A handwritten signature in blue ink, which appears to read "Warwick Soden".

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59

Rule 29.02(1)

**Affidavit**

No. NSD 213 of 2011  
Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Tammy Stanford** and Another

Applicants

**DePuy International Limited** and Another

Respondents

Affidavit of: **Julian Klaus Schimmel**  
Address: Level 32, 201 Elizabeth Street, Sydney NSW 2000  
Occupation: Solicitor  
Date: 20 June 2018

**Contents**

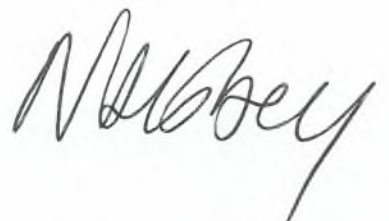
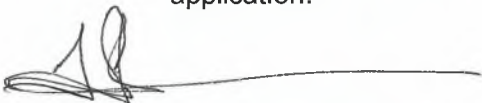
Document number	Details	Paragraph	Page
1.	Affidavit of <b>Julian Klaus Schimmel</b> in support of the Administrators' application for orders approving payment of Administration Costs, amending the Settlement Scheme, and other matters, affirmed on 20 June 2018	1-113	1-34
2.	Annexure <b>JKS-147</b> , being the 2018 MB Administration Report	27	35-81
3.	Annexure <b>JKS-148</b> , being a copy of a draft of a further amended Settlement Scheme	78	78-120

Filed on behalf of (name & role of party) Maurice Blackburn Pty Limited and Shine Lawyers Pty Limited as Joint Scheme Administrators  
Prepared by (name of person/lawyer) Julian Schimmel  
Law firm (if applicable) Maurice Blackburn Pty Limited  
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[Form approved 01/08/2011]

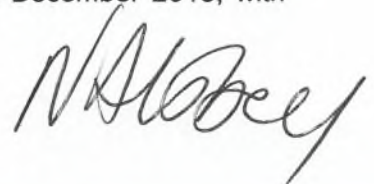
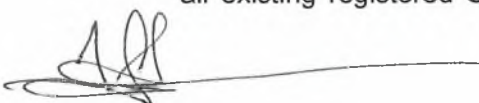
I, Julian Klaus Schimmel, solicitor, of Level 32, 201 Elizabeth Street, Sydney, in the State of New South Wales, affirm:

1. I am a Principal Lawyer of Maurice Blackburn Pty Limited (**Maurice Blackburn**).
2. Maurice Blackburn acted for the first applicant and a number of Group Members in this proceeding. On 29 June 2016, the Court made orders appointing Maurice Blackburn and Shine Lawyers as the joint administrators (**Administrators**) of the Settlement Scheme (**Scheme**) in this proceeding. On 14 June 2017, the Court ordered that Maurice Blackburn and Shine be joined as parties to the proceeding for the limited purpose of exercising the liberty granted by the Court in order 2(c) made on 29 June 2016. I am responsible for Maurice Blackburn's conduct of the settlement administration.
3. The Administrators consider that it is timely to provide another report to the Court in accordance with clause 14.6 of the Federal Court of Australia's *Class Actions Practice Note (GPN-CA)*, including as to progress of the settlement administration in the last 12 months since the Administrators provided their most recent report to the Court in June 2017, and in relation to the remaining work to be done in administering the settlement.
4. In addition, I make this affidavit in support of an application for orders:
  - (a) approving payment of Administration Costs;
  - (b) in accordance with clause 12 of the Scheme, approving the finalisation of claims by two Group Members who are under a legal incapacity; and
  - (c) approving additional amendments to the Scheme.
5. I am authorised to make this affidavit on behalf of the Administrators. Except where otherwise indicated I make this affidavit from my own knowledge. Where I give evidence based on information provided to me by other people or on my review of documents, that evidence is true to the best of my knowledge, information and belief. In this affidavit I use terms that are defined in the Scheme and in the Settlement Deed.
6. I have also reviewed a draft affidavit of Rebecca Jancauskas of Shine Lawyers that is proposed to be filed on behalf of the Administrators in support of the current application.



## OVERVIEW

7. Since the Administrators' appearance before the Court in June 2017, significant progress has been made in terms of the determination, finalisation and payment of Group Members' claims:
- (a) eligibility determinations have been completed for all but a small number of Group Members;
  - (b) Fast Track Resolution payments have been made to 92.4% of Group Members who have elected to take up that payment option, with payments of almost \$70 million having been made to these Group Members;
  - (c) assessments have been completed for 131 individually assessed claims, thereby enabling the Administrators to obtain actuarial advice under clause 10.4 of the Scheme to facilitate making the first payment by instalment to Group Members who elected to have their claims individually assessed – payments totalling more than \$22.6 million will be made to these 131 Group Members between now and the end of August 2018 on a rolling basis once all preconditions for payment have been met (Review periods expired; Group Members' liens have been resolved; if necessary Centrelink clearances have been obtained); and
  - (d) actuarial advice from Geoff Atkins and Adam Payne of Finity Consulting (**Finity**) indicates that there is a reasonable possibility that individually assessed claims will be able to be paid at 100 cents in the dollar, although for the sake of caution they recommend an initial payment instalment of 90 cents in the dollar, pending finalisation of additional claims and therefore increased certainty in their actuarial modelling. This already exceeds the estimated amount of around 69 cents in the dollar that the Administrators had assumed would be able to be paid to Group Members who sought individual assessment at the time that approval of the Settlement Scheme was sought (as discussed at [133] of the Court's judgment in [2016] FCA 1452);
  - (e) once the 131 individually assessed Group Members are paid a first instalment payment as outlined above, more than \$92.6 million will have been paid by way of compensation to Group Members.
8. The Administrators estimate that the assessment and payment of claims for almost all existing registered Group Members will be completed by December 2018, with



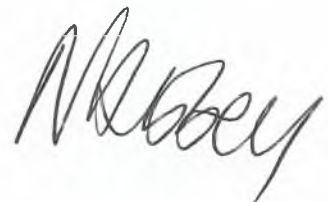
the result that ongoing administration work from January 2019 will relate to the claims of new registrants and any Group Members who may register towards the end of 2018. The Administrators are of the view that, as a result, in the bulk of Administration Costs will be incurred prior to January 2019 and thereafter will be of a significantly lesser magnitude than has been the case to date.

9. The remainder of this affidavit is structured as follows.
10. In **Section A**, I set out the progress of the administration.
11. In **Section B**, I set out the work performed in relation to the administration for which costs approval is sought. This application for approval of Administration Costs is again supported by evidence from an independent costs expert, Mr Ross Nicholas. Mr Nicholas previously prepared reports dated 15 June 2016 (in support of settlement approval) and 8 June and 23 June 2017 (in relation to the approval of an earlier tranche of Administration Costs).
12. The costs that have been incurred in the administration in the 12 months up to March 2018 have been significant. This has been the result of the processing of a large number of claims to finality or near finality. However, the Administrators maintain their expectation that the total Administration Costs (at the conclusion of the settlement administration in circa 2023) will be less than the assumed amount of \$26 million that was incorporated in the actuarial modelling set out in Mr Atkins' expert report for the purpose of settlement approval.
13. The Scheme provides for two species of Administration Costs. *First*, there are general Administration Costs under clause 13.1, which are calculated on the basis of hourly rates for work done by the Administrators and their delegates. *Secondly*, there are Administration Costs that relate to specific steps taken in the course of claims preparation, which are calculated on the basis of a fixed fee scale set out in clause 13.2. The total amounts for which approval are sought by the four firms involved in the administration of the settlement are as follows (all amounts are inclusive of GST):



	<b>Professional fees (clause 13.1)</b>	<b>Disbursements</b>	<b>Claim preparation (clause 13.2)</b>
Maurice Blackburn	\$3,001,683	\$312,935	\$1,333,750
Shine	\$1,600,867	\$110,374	\$1,018,050
DBH	-	\$12,262	\$264,000
LAM	-	\$2,511	\$261,250
<b>Total</b>	<b>\$4,602,550</b>	<b>\$438,082</b>	<b>\$2,877,050</b>

14. For reasons that I explain in more detail below, the amount of Maurice Blackburn's professional fees under clause 13.1 of costs has not entirely met my expectations set out in my affidavit dated 23 June 2017. Some areas of work conformed to my expectations in terms of reductions in fees, however these were offset by increases in other areas that required an investment in work in order to achieve the progress and milestones that are outlined below. Maurice Blackburn's fees under clause 13.1 of the Scheme are higher than Shine's because Maurice Blackburn has taken on a comparatively greater level of responsibility for certain areas of the administration (as is acknowledged by Mr Nicholas in his report).
15. In **Section C**, I set out the work done by the Administrators in engaging and instructing Finity and the advice received.
16. In **Section D**, I outline the basis on which the Administrators seek approval of the resolution of claims by two Group Members who are under a legal incapacity, in accordance with clause 12 of the Scheme and rules 7.11 or 9.70 of the *Federal Court Rules 2011*.
17. In **Section E**, I discuss the proposed amendments to the Scheme. These amendments are sought on the basis of issues that have arisen during the administration of the settlement over the last 12 months, and the Administrators consider that the amendments will make the administration of the settlement more efficient.
18. In **Section F**, I discuss the remaining work that will need to be done in order complete the settlement administration, including timelines and general expectations as to costs.



**SECTION A – PROGRESS OF THE SETTLEMENT ADMINISTRATION**

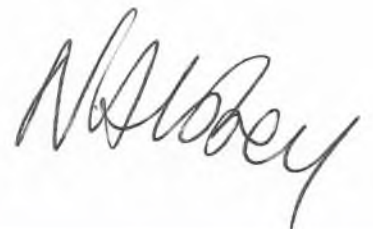
19. I provide the following report on the progress of the settlement administration by reference to the various stages of the process by which Group Members' claims are determined pursuant to the Scheme. These data are current as at 18 June 2018, and encompass the claims being handled by all four firms involved in the administration:

- (a) **Registrations**: a total of 1,748 potential Group Members have registered claims in accordance with clause 4 of the Scheme (**Registrants**), excluding claims that were withdrawn.
- (b) **Claim Allocations**: claims of Registrants have been allocated as follows, excluding one potential Group Member whose claim has not yet been allocated because they only registered very recently:
  - (i) 747 (42.7%) to Maurice Blackburn;
  - (ii) 718 (41.1%) to Shine Lawyers;
  - (iii) 144 (8.2%) to Duncan Basheer Hannon;
  - (iv) 139 (8%) to Lempriere Abbot McLeod.
- (c) **Eligibility determinations**: a total of 1,652 eligibility determinations have been completed in accordance with clause 5 of the Scheme, representing 94.5% of Registrants. Notices of Eligibility have been sent to 1,647 Registrants – this is less than the number of eligibility determinations completed due to outstanding incapacity and estate issues that are currently being resolved.
- (d) **Outcome of eligibility determinations**: of the 1,647 Registrants to whom a Notice of Eligibility has been sent:
  - (i) 1,548 (94%) were found to be eligible to receive compensation (**Eligible Group Members**); and
  - (ii) 99 (6%) were found to not satisfy the criteria for eligibility to receive compensation (**Ineligible Registrants**). To date, four Ineligible Registrants have requested an Eligibility Review pursuant to sub-clause 9.1(a) of the Scheme. Maurice Blackburn has had responsibility for two



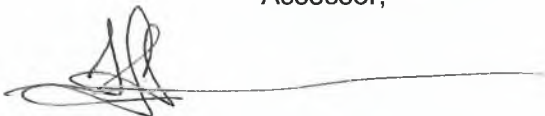
Eligibility Reviews, one of which was withdrawn and one is being processed, and Shine has responsibility for two Eligibility Reviews which are being processed.

- (e) **Elections**: of the 1,548 Eligible Group Members to whom a Notice of Eligibility has been sent:
- (i) 1,259 (81.3%) Group Members have elected the Fast Track Resolution pursuant to clause 6 of the Scheme;
  - (ii) 277 (17.9%) Group Members have elected (or been deemed to have elected in accordance with clause 6.4 of the Scheme) to have their claim assessed under clause 7 of the Scheme (**Individual Assessment**); and
  - (iii) 12 (0.7%) have not yet made an election and are within the 42 day period provided for election by clause 6.3 of the Scheme.
- (f) **Individual Assessment**: of the 277 Eligible Group Members who have elected Individual Assessments, 153 Claim Books have been prepared and allocated to an Assessor, of which 131 have been finally assessed by Assessors in accordance with clause 7.3 of the Scheme.
- (g) **Liens**: of the 1,259 Eligible Group Members who elected the Fast Track Resolution:
- (i) 1,182 (93.9%) have had their Liens resolved in accordance with clause 8 of the Scheme;
  - (ii) 77 (6.1%) have Liens that are still in the process of being resolved;
  - (iii) a total of \$2,136,789.34 has been paid by the Administrators to lienholders for Residual Liens in accordance with clause 8.3 of the Scheme (noting that the Respondents are responsible for the payment of Assumed Liens in accordance with clause 8.2 of the Scheme).
- (h) **Final Compensation Payments**: of the 1,182 Eligible Group Members who have had their Liens resolved, all of whom elected the Fast Track Resolution, final payments totalling \$69,945,000.00 have been made to 1,163 Eligible Group Members, representing 66.5% of Registrants (or 70.5% of Eligible Group Members).





- (i) **Status of claims that have not yet been paid:** taking into account the number of Registrants (1,748) and the number who have been paid (1,163), and excluding Ineligible Group Members (99), there are 486 Registrants who have not yet been paid. These Registrants are at the following different stages:
- (i) 96 Registrants have not yet had their eligibility determined, though 25 of these have been invited to withdraw their claims;
  - (ii) 5 Group Members have been found eligible but have not yet been sent a Notice of Eligibility due to outstanding incapacity and estate issues that are currently being resolved;
  - (iii) 12 Group Members have been found eligible but have not yet made an election for the Fast Track Resolution or individual assessment;
  - (iv) 77 Group Members elected the Fast Track Resolution and are in the process of having their Liens resolved, and with payment to most of these Group Members therefore likely to be made within the next month or two;
  - (v) 19 Group Members have been found eligible, elected the Fast Track Resolution, have had their Liens resolved and are awaiting payment – for some of these Group Members, the delay in making payment is due to the need to obtain approval for the resolution of claims by Group Members who are under a legal incapacity;
  - (vi) 131 Group Members elected Individual Assessment and have had their claims determined by an Assessor. Based on the actuarial advice from Finity as discussed further in section C below, these Group Members will be paid their first instalment at 90 cents in the dollar – as I mentioned above, these Group Members will be paid on a rolling basis by the end of August once preconditions for payment have been met (that is, once Review periods expire, Liens are resolved and if necessary Centrelink clearances obtained);
  - (vii) 22 additional Group Members elected Individual Assessment and have had their Claim Books prepared, and are awaiting assessment by an Assessor;



(viii) 124 additional Group Members elected Individual Assessment and are awaiting preparation or finalisation of their Claim Books.

(j) **Interim Payment Applications:** interim payments were made to 66 Eligible Group Members in accordance with clause 10.8 of the Scheme and two applications for interim payments were refused.

20. Pursuant to clauses 10.2 and 10.3 of the Scheme, the Administrators are responsible for the investment and management of the Settlement Sum. Since the Settlement Sum was transferred by the Respondents into the Settlement Account on 18 August 2016, the Administrators have maintained a number of different bank accounts, including a low interest transaction account as well as various term deposit accounts that attract higher interest rates.

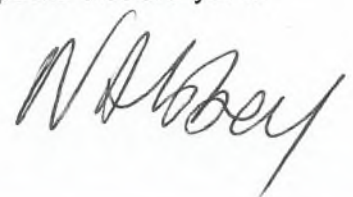
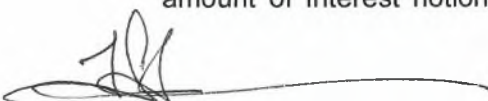
21. From time to time throughout the course of the settlement administration, various amounts have been transferred between those accounts in order to strike a balance between:

- (a) immediate availability of funds in a transaction account for the purpose of making ongoing payments to Group Members, lienholders and other third parties (for example, experts advising the Administrators as well as hospitals and doctors from whom medical records were sought); and
- (b) maximising the interest earned on the Settlement Sum by means of investment in term deposit accounts of varying durations.

22. As at 15 June 2018, the total amount remaining in the various bank accounts is \$143,954,149.60, taking into account all payments made to Group Members, lienholders and for the Applicants' Costs (as approved on 29 June 2016) and Administrations Costs, and taking into account the interest earned to date. This total amount is presently distributed among the following accounts:

- (a) \$23,348,999.30 in the transaction account;
- (b) \$40,429,871.40 in a term deposit maturing on 1 July 2018;
- (c) \$80,175,278.90 in a term deposit maturing on 1 December 2018.

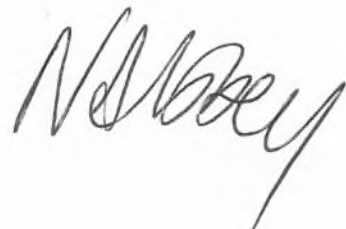
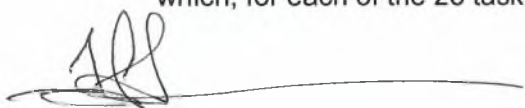
23. As at 15 June 2018, the total interest earned on the Settlement Sum since the settlement accounts were opened is \$8,069,316.94. This includes the pro rata amount of interest notionally earned to date on the term deposits that are yet to



mature (with the result that interest has not yet accrued on those accounts). I note that in his report for the purpose of settlement approval, Mr Atkins estimated that a total of \$10.5 million would be earned by way of interest over the life of the settlement administration. However, without waiving any legal professional privilege, and as alluded to in paragraph 56(c) of my 23 June 2017 affidavit, I also note that the Administrators are receiving ongoing advice from PricewaterhouseCoopers about tax issues arising from the interest earned; in particular, whether the interest earned on the Settlement Sum is assessable income, and if so whether Administration Costs are deductible expenses. In his settlement approval report, Mr Atkins did not take into account any possible tax implications, and there is uncertainty about whether all of the interest or only some of the interest will flow back into the pool of funds that are available for distribution to Group Members. In light of this uncertainty, Finity were instructed to make a conservative assumption about interest for the purpose of their current report.

#### **SECTION B – WORK PERFORMED AND ADMINISTRATION COSTS**

24. Following the June 2017 hearing, I considered that it was appropriate to implement a series of “task codes” so that work done (and time recorded) in administering the settlement could be stratified by reference to various areas of work and functions under the Scheme. In July 2017, I therefore developed 26 task codes reflecting discrete areas of work under the Scheme. Since that time, all work done by Maurice Blackburn under clause 13.1 of the Scheme is assigned one of these task codes. In addition, Maurice Blackburn re-reviewed the monthly invoices that were not subject to an application for approval of Administration Costs at the June 2017 hearing (that is, the monthly invoices from February 2017 to June 2017) and retrospectively allocated a task code to each time entry. I understand that Shine similarly commenced using these task codes and that it also retrospectively re-reviewed its unapproved invoices (from April 2017 to June 2017) in order to allocate task codes.
25. This means that all of Maurice Blackburn’s and Shine’s invoices for which approval is now sought are able to be analysed and categorised by reference to the 26 task codes, thereby providing an insight into the level of work and amount of costs associated with different areas of the settlement administration over time.
26. For the purpose of reporting to the Court, I also prepared (with input and assistance from Elizabeth Mukherji, Senior Associate and Megan Greaves, Associate) a report which, for each of the 26 task codes:



- (a) sets out the monthly amount of professional fees, the proportion of those fees to the total monthly fees, and the proportion of work done by lawyers and non-lawyers in each month;
- (b) provides a narrative summary of the nature of the work involved, and a discussion of any patterns or changes in the monthly amount of fees; for example, the reasons for any increases or decreases, or spikes at particular points in time.
27. A copy of this report, which I will refer to as the “**2018 MB Administration Report**”, is in annexure **JKS-147** to this affidavit. For the purpose of future reports to the Court in relation to the settlement administration, I propose to adopt a similar format of reporting, unless the Court considers that it would not be helpful to do so.

### Section B.1 – Administration Costs under clause 13.1 of the Scheme

28. In addition to the discussion regarding specific task codes in the 2018 MB Administration Report, I make the following general comments about Administration Costs and the work involved in the administration of the settlement since the first half of 2017.
29. The monthly Administration Costs incurred by Maurice Blackburn under clause 13.1 of the Scheme are incorporated into the following graph:



30. While the graph depicts the monthly Administration Costs incurred by Maurice Blackburn, I have given further consideration to the monthly Administration Costs by reference to whether the costs incurred are part of the “core” administration work.

*[Signature]*

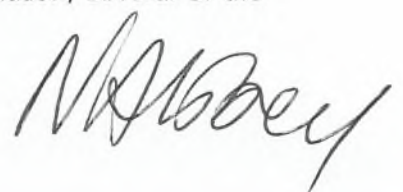
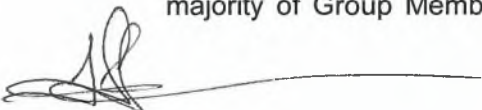
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By reference to the task codes that have now been implemented, I regard the "core" administration work as work directly related to the progression of claims through the Scheme, including:

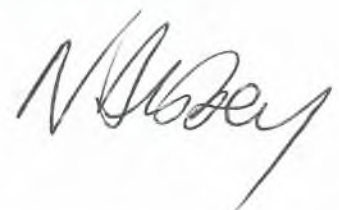
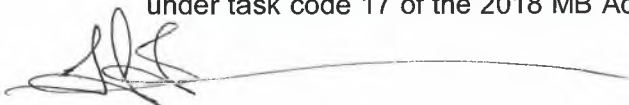
- (a) eligibility determinations (task code 02);
- (b) preparing Notices of Eligibility (task code 04);
- (c) deemed revisions (task code 07);
- (d) processing Individual Assessments (task code 08); and
- (e) payments (task code 19).

31. This core administration work has varied from month to month and there was also a change in the mix of these areas of work over time. I make the following observations regarding patterns in Administration Costs incurred by Maurice Blackburn, and I note that Ms Jancauskas has separately set out in her draft affidavit her observations regarding patterns in Shine's fees.
32. During the middle of 2017 (July to September) there was a spike in fees associated with eligibility determinations as we made a concerted push to finalise the eligibility determinations for the initial cohort of Group Members (ie Group Members other than those who underwent revision more recently and who have registered in relatively small numbers on a monthly basis more recently). This spike in work and fees associated with eligibility determinations is reflected in a corresponding but slightly later spike in work and fees associated with sending Notices of Eligibility to Group Members, in particular as to the outcome of their eligibility determinations. For the high proportion of Group Members who elected the Fast Track Resolution, the Administrators then resolved many of their liens (the fees for which are incurred under clause 13.2 of the Scheme), and after finalising their liens the Administrators took steps to effect payments to these Group Members. This is reflected in a spike in work and fees associated with payments starting in late 2017 and continuing during January and February 2018, reflecting the fact that it takes approximately two to three months to resolve a Group Member's liens. In this way, the progression of claims through the Scheme is reflected in the overall pattern of Administration Costs, when regard is had to the task codes.
33. Having completed the eligibility determinations and made payment to a significant majority of Group Members who chose the Fast Track Resolution, several of the



core areas of administration work will continue to taper off or continue at a relatively low level as the Administrators are only processing claims for newly registered Group Members.

34. By contrast, work and costs associated with processing Individual Assessments began in late 2017 when the Administrators were ready to commence this area of work under the Scheme (and I note that this was slightly later than I had anticipated, as outlined in paragraph 51 of my 23 June 2017 affidavit). Preceding the increased activity in processing Individual Assessments, there was an increase in work and costs involved in other (non-core) administration work that was necessary to support the processing of Individual Assessments. This included the implementation of the "blind test" audit process for the Assessors (as described in paragraph 61 below), which gave rise to work and costs during the final quarter of 2017 in relation to workflow and process development (task code 10), IT systems development (task code 17) and dealing with Assessors (task code 03). This blind testing process was also one of the main reasons why the Individual Assessment process commenced slightly later than I had anticipated, and why the Administrators needed to work intensively in order to complete the first 100 Individual Assessments in time for actuarial advice to be finalised before an anticipated court hearing in June 2018.
35. While the Administrators have now completed the first 131 Individual Assessments, this area of work is expected to continue until the end of 2018. Insofar as Maurice Blackburn's work and costs are concerned, 75 of the first 104 individually assessed claims that were analysed by Finity were in Maurice Blackburn's cohort, and an additional 19 Claim Books have already been prepared, with three of those claims having been finally assessed by an Assessor. Further work will be needed to finalise Maurice Blackburn's 23 remaining assessments, as will related areas of work that are necessary in order to finalise and make payments to Group Members who are under a legal incapacity or to the estates of deceased Group Members (task codes 23 and 24).
36. The 2018 MB Administration Report shows that not all areas of administration work have remained steady or tapered off as quickly as predicted at the time of the June 2017 hearing, and as discussed in paragraph 53 of my 23 June 2017 affidavit. In particular, the work associated with IT systems development and maintenance has proven to be particularly complex and more time consuming than anticipated. The main complexity was the development of the Online Database (as also discussed under task code 17 of the 2018 MB Administration Report) in such a way that it can





store and track assessment data in circumstances where payments to Individual Assessment Group Members are to be made in tranches, where the recovery percentage may potentially change from tranche to tranche, and deductions such as Centrelink repayments are taken out at different points in time. This development required senior administration staff at Maurice Blackburn to work closely with the business analysts and monitor and test the development. This development was essential to the accuracy and efficiency of the administration and to enable Finity to carry out their work in a reliable manner, and is reflected in increased IT development costs between January and March 2018, which was the time during which we commenced working more closely with Finity, as described below in section C of this affidavit.

37. The other areas of work that I expected to taper off, as described in paragraph 53 of my 23 June 2017 affidavit, did in fact stabilise at a lower level or taper off:

- (a) Workflow / process development (task code 10), which encompasses the development of templates and precedents as well as internal processes and workflows as described in subparagraphs 53(b) and 53(c) of my 23 June 2017 affidavit – work under this task code continued at a relatively intense level until around the time of the June 2017 hearing, and then reduced in the second half of 2017 as I had expected, with even greater reductions in this area of work from December 2017 after the Administrators completed the “blind test” process with the Assessors;
- (b) Registrations / allocations (task code 01), which correlates with subparagraph 53(e) of my 23 June 2017 affidavit;
- (c) Managing group member data (task code 13), which includes the work described in subparagraph 53(d) of my 23 June 2017 affidavit.

38. I also note that in paragraph 45 of my 23 June 2017 affidavit I set out my expectations as to future administration work and overall future Administration Costs by reference to specific timeframes:

- (a) **February 2017 to June 2017** – in my 23 June 2017 affidavit I said that I expected Maurice Blackburn’s fees to be broadly similar to the fees incurred on a monthly basis from June 2016 to January 2017. Monthly fees during this period were overall higher than I had anticipated, but were also somewhat inconsistent, including as a result of the significant work involved

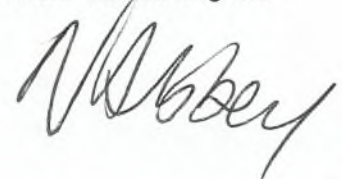
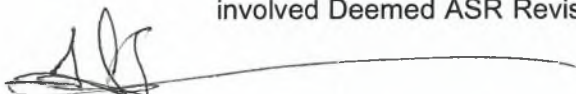


in preparing for the hearing in June 2017 (which I anticipated as outlined in subparagraph 45(a)(ii) of my affidavit, and which generated a significant amount of additional fees during May and June 2017). The monthly average for fees from June 2016 to January 2017 was approximately \$209,000, and from February 2017 to June 2017 it was approximately \$243,000 (or \$211,000 if the fees for preparing for the court application (task code 16) for May and June 2017 are excluded);

- (b) **July 2017 to March 2018** – in my 23 June 2017 affidavit I said that I expected Maurice Blackburn's fees to reduce to some extent compared to the fees incurred on a monthly basis from June 2016 to January 2017. The monthly average from July 2017 to March 2018 was approximately \$198,500, representing a reduction of around five per cent compared to the average for the months from June 2016 to January 2017, and a reduction of around 18 per cent compared to the immediately preceding period from February 2017 to June 2017.

39. Overall the amounts of fees incurred between February 2017 and March 2018 are higher in absolute terms than the fees that I hoped and expected would be incurred. While some aspects of administration work tapered off as expected (as outlined in paragraph 37 above), these reductions were offset by increases in other areas of administration work. In making my 23 June 2017 affidavit, I had not anticipated these increases or the extent of the increases. Three of the areas where I did not anticipate the extent of fees or increase in fees are as follows:

- (a) fees associated with processing Individual Assessments, which increased significantly in February and March 2018 as we made a concerted and intensive effort to finalise the first 100 Individual Assessments – while fees were therefore higher than expected, this intensive effort meant that the Administrators were able to reach the milestone that they had set out to achieve, and I note that 75 of the first 104 Individual Assessments provided to Finity for their analysis were from Maurice Blackburn's cohort;
- (b) fees associated with ongoing eligibility determinations, particularly from July to September 2017 – as described above, Maurice Blackburn made a concerted effort to work through the remaining eligibility determinations during that time, and many of these remaining eligibility determinations were relatively complex and therefore time consuming, particularly insofar as they involved Deemed ASR Revision claims. In this regard I note that among the



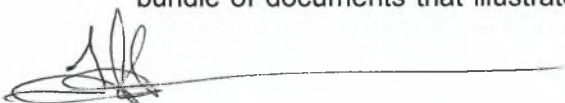
Maurice Blackburn and DBH cohorts (totalling 891 Registrants), there are only 23 outstanding eligibility determinations among the total of 71 who are awaiting eligibility determinations as discussed above (in each case excluding Registrants who have been invited to withdraw their claims). Eight of these determinations have been done and are awaiting audit, and in addition two Registrants are awaiting revision surgery and their claims therefore cannot be progressed at the present time. For the balance of 13 Registrants, we are awaiting receipt of medical records, authorities or questionnaire responses;

- (c) fees associated with processing payments to Group Members – at the time of affirming my 23 June 2018 affidavit, the Administrators had not yet introduced task codes and I therefore did not have a clear insight into the consistently high fees associated with this area of administration work, which has generated the third highest amount of fees (a total of almost \$253,000) among all of the 26 task coded areas of work from February 2017 to March 2018. These fees reflect the number of steps involved in effecting payment as described under task code 19 of the 2018 MB Administration Report. I also note that Maurice Blackburn's fees are higher than Shine's in relation to the processing of payments, which I attribute to the fact that the settlement accounts are maintained and controlled by Maurice Blackburn, which means that we carry out administration work in this area that relates to all Group Members and not merely those in Maurice Blackburn's cohort;
- (d) fees associated with IT systems development, as discussed in paragraphs 34 and 36 above.

40. In my 23 June 2017 affidavit I also set out my expectations for fees for additional future periods – from March 2018 (which should have been April 2018) to December 2018, and from January 2019 onwards. I address these expectations in Section F below, where I discuss future work and ongoing Administration Costs.

#### **Section B.2 – Administration Costs under clause 13.2 of the Scheme**

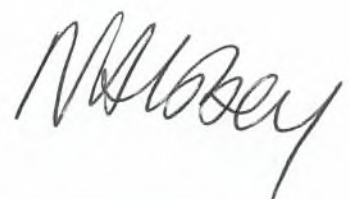
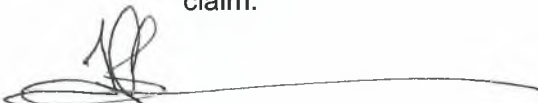
41. Over the last 12 months, the primary focus of administration work under clause 13.2 of the Scheme was the preparation of Eligibility Books, Claim Books and the resolution of liens. In this sub-section of my affidavit I describe the work involved in preparing Claim Books and resolution of liens. I also caused to be prepared a bundle of documents that illustrate some of these areas of work, using one Group



Member's claim as an example – this bundle will be made available to the Court at the hearing.

Preparation of Individual Assessment Claim Books

42. Shine and Maurice Blackburn worked collaboratively to establish an agreed process for preparation of Claim Books to ensure consistency in the outcomes of the Individual Assessments. There are however some differences in process between Shine and Maurice Blackburn in the steps taken to prepare the Claim Books due to differences in the firms' operating practices.
43. The amount that is claimable under clause 13.2 for the preparation of a Claim Book is \$5,000. The following paragraphs set out the process followed by Maurice Blackburn's administration team in order to prepare a Claim Book.
44. Once a Group Member elects Individual Assessment, they are identified through the Online Database and contacted by the administration team to arrange a telephone conference with a paralegal or lawyer. The purpose of the telephone conference is to complete the Individual Assessment questionnaire (**the IAQ**) which captures detailed information from the Group Members such as their personal details and contact information, the ASR implant and revision surgery, current and future treatment, other health conditions or injuries, treating medical practitioners, mediation regime, mobility aids and home modification, gratuitous and paid care needs, out of pocket expenses, employment history, symptoms and pain and impact on activities of daily living. On average it takes between 1 to 1.5 hours to complete the IAQ. The IAQ was developed in consultation with the Assessors and is integral to the assessment process.
45. Upon completion of the IAQ, a copy of the Group Member's instructions is generated from the Online Database. These instructions are emailed or posted to the Group Member for review and verification. If the Group Member wishes to make any amendments, those amended instructions are returned to the paralegal or lawyer, who then enters the amended instructions into the Online Database.
46. Following receipt of the Group Member's verified final instructions, the paralegal or lawyer drafts a memorandum to Assessor. The memorandum collates all the Group Member's instructions into the relevant heads of damage and indexes the documents presently on the Group Member's file to be provided in support of the claim.

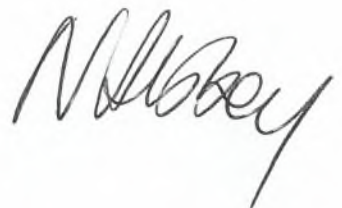




47. The paralegal or lawyer who drafted the memorandum would also identify any further documents or materials that are required to support the Group Member's claim. These recommendations for further material are indicated in the memorandum. The memorandum to the Assessor would take on average a further 1 to 1.5 hours to prepare. The memorandum and IAQ are then reviewed by a senior lawyer to ensure that all relevant instructions and documents have been obtained. If further material is required, requests for those records are then made.
48. The materials that are commonly obtained for Claim Books includes additional statements from the Group Member, their family and / or friends, clinical records from treating general practitioners, surgeons and / or hospitals, taxation records, evidence of out of pocket expenses, such as receipts, and Crawford & Company Reimbursement Program records. When all material requested is obtained, a finalised memorandum and IAQ is provided to the senior lawyer to confirm that the Claim Book is ready for allocation to an Assessor and is allocated accordingly for the Assessor to complete their assessment.

#### Resolution of liens

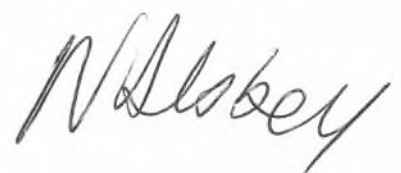
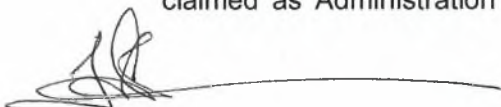
49. Resolution of liens is another major aspect of work performed by the Administrators, who are to be paid \$1,000 for each Group Member's resolution of liens under clause 13.2 of the Scheme.
50. There are some differences in process between Shine and Maurice Blackburn in the steps taken to resolve liens due to difference in the firms' operating practices. The process followed by Maurice Blackburn is as follows.
51. Using the Online Database, Group Members who have been found eligible are identified. A paralegal then makes a request to the identified lien holders for a statement of benefits paid for a period of 6 months post the ASR Implant through to the time of the request. Once the statement of benefits is received, the paralegal will undertake a detailed review of the Group Member's medical reports and draft a memorandum outlining the various procedures the Group Member has undergone. This process can take between 30 minutes and 1.5 hours to complete and is necessary in order to identify treatment related to the ASR Implant and whether the benefits paid on the statement of benefits fall within the definitions of an Assumed Lien (which is payable by the Respondents) or a Residual Lien (payable from the Settlement Sum) under clause 8 of the Scheme.



52. Where a charge is identified as a Residual Lien and is more than \$1,000, Committee approval is required to confirm the amount is properly characterised as a Residual Lien before being paid from the Settlement Fund.
53. The annotated statement of benefits is then sent to the Group Member for review. The Group Member may raise additional benefits that they believe are related to the failure and revision their ASR Implant. If this occurs, the paralegal will verify with the Group Member if it is repayable under the Scheme. Once the Group Member agrees with the contents of the annotated statement of benefits, the paralegal will send it to the lien holder and request a notice of charge.
54. Each month, schedules are compiled containing Group Members who have completed lien reviews and have received notices of charge. These schedules are then sent to Norton Rose Fulbright Australia (**NRFA**) to review and confirm whether the Respondent agrees to make repayment of those charges which are identified as Assumed Liens. NRFA often request further information or medical material to substantiate the charges. Once NRFA agree to the repayment of the Assumed Liens, these Group Members are referred to the payments team.

**Section B.3 – Administration work performed where no costs are sought by Maurice Blackburn**

55. From February 2017 until March 2018, there were 733.3 hours of work completed by Maurice Blackburn's administration team that are not being claimed as Administration Costs. Time entries for this "no charge" work is recorded in Maurice Blackburn's monthly invoices and consist of narratives that have the notation "no charge" at the end of each entry, with details of the amount of time recorded for each entry, and the amount of professional fees being \$0.00.
56. This "no charge" work includes all work associated with instructing and engaging Mr Nicholas for the June 2017 hearing and during the early stages of his engagement for this year's hearing, work associated with reviewing and approving the payment of disbursement invoices and work associated with reviewing and approving invoices for Administration Costs (although in relation to the latter, I note that Maurice Blackburn does charge for administrative work in processing of invoices, but not for reviewing and approving payment of the invoices).
57. In addition, any work performed by the Administration team in rectifying errors is not claimed as Administration Costs. For example, there was an error in a payment



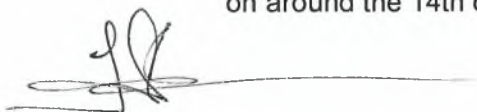


letter sent to a small cohort of Group Members. This error resulted in the need for subsequent telephone calls to these Group Members to explain this error and for the correct correspondence to be sent to these Group Members. In these sorts of circumstances, any time spent is recorded as no charge.

58. At times, the decision as to whether certain work is recorded as no charge is made on a case by case basis depending on the specific circumstances or context. For example, some work by junior members of the team is not claimed, such as attendance at conferences with counsel or Shine for the purposes of training or background information.
59. In addition, as noted in the discussion of task code 17 in the 2018 MB Administration Report, Maurice Blackburn does not seek payment for a substantial amount of work by technology staff in developing bespoke IT infrastructure for the administration. This is consistent with the approach that I took in seeking approval of costs at the hearing in June 2017 (as outlined at paragraphs 21 to 26 of my 23 June 2017 affidavit).

#### **Section B.4 - Process for finalising Maurice Blackburn's monthly invoices**

60. The following process is undertaken in order to prepare and finalise each month's invoice for Administration Costs:
- (a) throughout the month, time is finalised and submitted by the administration team, with staff instructed to enter their time contemporaneously;
  - (b) at the start of the month, Kelly Turan, Senior Legal Assistant collates the draft invoice including disbursements for the previous month;
  - (c) the first draft of the invoice is provided to a senior member of the administration team, usually Megan Greaves (Associate), for an initial review;
  - (d) I then carry out a final review of the draft invoice. The main purpose of my review is to consider whether I thought that time spent by the administration team on a particular task is reasonable (if not, I would apply "no charge" to individual time entries) and that the task codes have been applied correctly;
  - (e) the invoice will then go back to Ms Turan for final amendments before being provided to Shine on a monthly basis, which usually (but not always) occurred on around the 14th of each month.



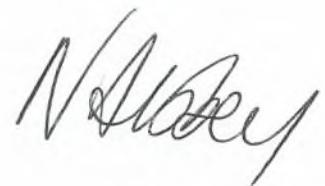
**SECTION C – ACTUARIAL ADVICE**

61. On 6 September 2017, Ms Mukherji and I met with Mr Atkins and Mr Payne in order to initiate the early stages of planning for an anticipated court hearing during June 2018. Ms Mukherji and I gave an overview of progress with the settlement administration, which included a discussion of the Administrators' preparations to commence the determination of individually assessed claims. In the course of discussing our concerns about ensuring consistency of assessments by the different Assessors, Mr Atkins recommended that it would be useful for the Administrators to undertake a "blind test" which would enable us to audit the Assessors' work. This involved the Administrators providing the same five initial assessments to each Assessor – in other words, the Assessors would each assess the same five Group Members' claims. This enabled the Administrators to compare outcomes and identify areas of discrepancy where the Assessors took different approaches, and therefore to provide guidance and feedback to the Assessors in order to promote consistency in future assessments.
62. In addition, I asked Mr Atkins and Mr Payne to prepare an updated estimate of the number of eligible Group Members; in other words, an update to the estimate contained in section 3 of Mr Atkins' expert report dated 17 June 2016, which was tendered on the application for settlement approval.
63. Mr Atkins' 2016 estimate of 2,018 claimants was based on data published by the Australian Orthopaedic Association National Joint Replacement Registry (**AOANJRR**) in October 2015, which contained data regarding ASR revisions up to 31 December 2014. Since the AOANJRR's report published in October 2015, additional annual reports were published by the AOANJRR in October 2016 and October 2017, the most recent of which contained data regarding ASR revisions up to 31 December 2016. On the basis of these more recent data, we instructed Mr Atkins to prepare an updated estimate of the number of Group Members.
64. On 19 January 2018, Finity provided advice to the Administrators that the updated estimate of the number of eligible claimants is 1,881, which is 137 fewer than their initial estimate. That advice has now been incorporated in Mr Atkins' report which the Administrators have filed as described below. As discussed above, to date there are 1,748 Registrants, 99 of whom were found to be ineligible. On this basis, approximately 233 additional Group Members are expected to register by 30 June 2023, as provided by clauses 4.3 and 4.6 of the Scheme. This is consistent with estimate in section 3.4 of Mr Atkins' report, although Mr Atkins also says that in his

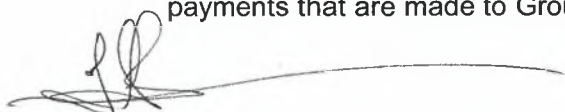


opinion the number will turn out to be less than the estimate of 233. One of the reasons why Mr Atkins says the actual number of new registrations will be less than 233 is that not all potentially eligible Group Members will register their claims. Based on my observations of new registrations in the settlement, I agree with Mr Atkins' prediction. For example, Mr Atkins' projection (as summarised in Table 3.1 of his report) was that 103 new claims would be registered in 2017, however by contrast only 71 new claims were in fact registered between January and December 2017. Similarly, Mr Atkins projected that 85 new claims will be registered in 2018, whereas between January and May 2018 only 19 new claims have so far been registered.

65. In February 2018, Ms Mukherji and I met with Mr Atkins and Mr Payne in order to discuss further the advice to be obtained for the purpose of clause 10.4 of the Scheme. At this meeting I explained the progress of the administration to date, and Ms Mukherji explained the way in which the Group Member data was being captured via the Online Database and how the data could be made available following the completion of the first 100 Individual Assessments.
66. Following this February 2018 meeting there was regular communication between Finity and the Administrators regarding progress of the administration and Finity's feedback and advice regarding their data requirements.
67. As discussed in paragraph 36 above, throughout the development of the Online Database my team was conscious of the information that might be needed by Finity and the way in which to capture this information, and we sought to engage with Finity from an early stage in order to ensure that they would have the data that they needed. Following the completion of the first 100 Individual Assessments in May 2018, all of the necessary data was exported from the Online Database and provided to Finity.
68. The Administrators have now received and will file a report from Mr Atkins which contains his recommendations as to the first instalment payment to individually assessed Group Members, based on Mr Atkins' consideration of relevant settlement data, including the outcomes for the first 104 individually assessed claims. In summary:
  - (a) Mr Atkins recommends an instalment payment of 90 cents in the dollar to Group Members whose claims are individually assessed;



- (b) if his estimates are reasonably accurate, he considers that individually assessed Group Members could receive an additional payment that will result in them receiving 100 cents in the dollar;
- (c) if this occurs, there will be a surplus of approximately \$7 million.
69. If Mr Atkins' estimates ultimately do prove to be accurate, the surplus may in fact be higher than \$7 million because he was instructed to make a conservative assumption that Administration Costs will be \$26 million. As I said above in paragraph 12 and as discussed further in paragraphs 89 and 91 below, actual Administration Costs are likely to be less than \$26 million, which will increase the surplus that is available and able to be distributed to all Group Members in accordance with clause 10.7(b) of the Scheme. I also note that Finity have made a number of other conservative assumptions, including that the future election rate for the Fast Track Resolution will be 50 per cent rather than the current level of 81 per cent, and that interest earned on the settlement funds is liable to be taxed at 45%.
70. After the hearing on 21 June 2018 and subject to any directions or orders from the Court, the Administrators will process the first instalment payment to all those individually assessed Group Members whose assessments have been finalised and are not within the Review period or subject to Review. The development of the Online Database allows these instalment payments to be automatically calculated and processed in bulk by electronic funds transfer (unless the Group Member has requested payment by cheque). Following that payment of the initial cohort of Group Members, the Administrators will make an assessment as to the best way to process ongoing payments, for example this could occur on a fortnightly cycle or once a certain number of payments are ready to be made. The most efficient approach will need to be assessed once the Administrators determine the ongoing rate at which the assessments are being finalised.
71. When the payments are processed, each Group Member will receive written communication from the Administrators. This communication will set out the Total Assessed Compensation Amount, the size of the tranche payment being made, the remaining compensation to be paid based on current actuarial advice and important information such as the need to seek independent financial advice and reporting obligations to Centrelink.
72. Clause 10.4 of the Scheme does not require the Court to approve instalment payments that are made to Group Members. However, the engagement of actuarial





experts to provide this type of advice in a class action settlement is novel and has not, as far as I am aware, be done in any previous class action settlement. For this reason, I considered that the Court would be interested to have an insight into and understand the process. On a later occasion once an additional number of Individual Assessments has been completed and updated actuarial advice is obtained on that basis, the Court will be asked to approve final payments to Group Members under clause 10.6 of the Scheme. At this stage the Administrators consider that this is likely to occur in late 2018 or early 2019.

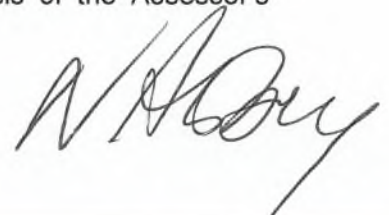
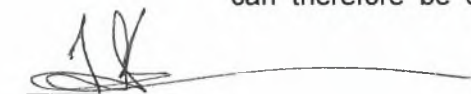
#### **SECTION D – APPROVAL OF CLAIMS FOR GROUP MEMBERS UNDER A LEGAL INCAPACITY**

73. Clause 12 of the Scheme requires the Administrators to seek the Court's approval pursuant to rules 7.11 or 9.70 of the *Federal Court Rules 2011* where a Group Member is under a legal incapacity. This needs to occur before a payment can be made to the Group Member.

74. The Administrators have considered the procedure that might be adopted for the purpose of the Court considering whether approve the resolution of claims by Group Members with a legal incapacity under the Scheme. The Administrators consider that different approaches might be adopted depending on whether the Group Member's litigation representative elects the Fast Track Resolution or Individual Assessment. These differences relate primarily to the materials that address the issue of whether the resolution of the claim is reasonable in the circumstances:

(a) In the case of Group Members whose litigation representative elected the Fast Track Resolution, the Administrators consider that in order to enable the Court to consider whether the resolution of the Group Member's claim for \$55,000 is reasonable, it is necessary to obtain a report from an independent lawyer; and

(b) In the case of Group Members whose litigation representative elected Individual Assessment, the Administrators consider that it is not necessary to obtain a report from an independent lawyer because the Group Member's claim will have already been the subject of consideration and assessment by an independent Assessor. The Assessors are members of the Bar, or solicitors with more than seven years' experience, and in either case with substantial experience in personal injury litigation. The issue of whether the resolution of the Group Member's claim is reasonable in the circumstances can therefore be considered by the Court on the basis of the Assessor's



statement of reasons prepared in accordance with clause 7.3(f) of the Scheme.

75. At the present time, two Group Members are in a position for the reasonableness of their claims to be considered. These Group Members are:
- (a) Joshua Kearney, whose representative elected Individual Assessment; and
  - (b) Eva Manning, whose representative elected Fast Track Resolution.
76. Applications and supporting materials will be filed separately in relation to both of these Group Members.
77. Approvals for additional Group Members under a legal incapacity will be sought by the Administrators in the coming months. There may be as many as 19 such applications. If the Court is content with the approach described above and the manner in which Mr Kearney's and Mrs Manning's applications have been prepared, the Administrators propose that in the interests of expedition and cost, the additional applications be dealt with by the Court on the papers in chambers.

#### **SECTION E – AMENDMENTS TO THE SCHEME**

78. The Administrators seek an order approving further amendments to the Scheme in relation to two areas that are discussed below. The proposed amended version of the Scheme is annexed to this affidavit and marked **JKS-148**.

##### **Interim Payments**

79. Clause 10.8 of the Scheme provides that the Administrators may in their absolute discretion make an interim payment to an eligible Group Member. This discretion is subject to the following:
- (a) the payment must not exceed \$20,000; and
  - (b) the payment may only be made after the Group Member has been assessed as eligible to receive compensation and either:
    - (i) the Group Member is suffering financial hardship pending finalisation of their claim; or
    - (ii) more than 12 months have passed since a Notice of Eligibility (as defined in the Scheme) was sent to the Group Member.





80. As the Court may recall, the Administrators sought a direction on 12 March 2018 permitting a second interim payment to a Group Member. The Group Member who was the subject of this application was experiencing extreme financial hardship and was unlikely to receive any compensation from her Individual Assessment until after June 2018.
81. In order to increase the efficiency in administering the Scheme and to avoid the expense of making further similar applications to this Court, the Administrators propose amendments to clause 10.8 of the Scheme to allow a further interim payment to be made to a Group Member in limited circumstances.
82. In order to safeguard against over-paying a Group Member by means of multiple interim payments, the proposed amendment of clause 10.8 will require the Administrators to be satisfied that the sum of all interim payments to the Group Member will be less than the total compensation that is or will be payable to the Group Member.
83. In any event, the Administrators consider that the need for further interim payments will decrease once payments begin to be made to Group Members who elected the Individual Assessment option.

### **Registrations**

84. As the settlement administration has progressed, Maurice Blackburn's administration team noticed an increase in registrations that fell outside of the registration deadline, including the period during which the Administrators have discretion to accept a late registration. As a result, the online registration facility was updated to prevent registration by anyone who has missed the registration deadlines as set out in 4.3 and 4.6 of the Scheme.
85. Following the implementation of this change to the online registration facility, Maurice Blackburn's administration team noticed an increase in telephone enquiries from people who were prevented from registering online as a result of the change in the online facility mentioned above. As a result of these telephone inquiries, it emerged that many of the people who were seeking to register did not in fact have an ASR Implant. This emerged either because the person believed this to be the case, or because the date on which their implant was surgically implanted was inconsistent with the period during which the ASR Implant was available for use in Australia.



86. The Administrators therefore propose an amendment to clause 4 of the Scheme in relation to ostensibly unmeritorious claims. The amendment would allow the Administrators to reject a registration or registration enquiry without needing to process the claim through the registration and eligibility processes under clauses 4 and 5 of the Scheme.
87. The amendment would prevent registrations where the registrant informs the Administrators that:
- (a) their implant was surgically implanted before 1 July 2003 or on or after 1 September 2010; or
  - (b) they were not implanted with an ASR Implant.
88. The Administrators previously amended the online registration facility to prevent registrations by people who indicated on the registration form that they did not have an ASR Implant (as outlined at paragraph 105 of my affidavit dated 8 June 2017), however this was merely a practical step relating to the registration process. The rationale for the proposed amendment is to reduce the time and expense of processing unmeritorious claims through the Scheme; for example, undertaking registration and allocation related work and, more significantly, preparing an Eligibility Book and undertaking an eligibility determination, and then sending a Notice of Eligibility to the person. In this regard I note that among the eligibility determinations carried out by Maurice Blackburn, 25 people were found to be ineligible on the basis that they did not have an ASR Implant, which resulted in costs under both clauses 13.1 and 13.2 of the Scheme. So too, I am informed by Melissa Obrist of Shine that among the eligibility determinations carried out by Shine, 45 people were found to be ineligible on the basis that they did not have an ASR Implant.

#### **SECTION F – FURTHER WORK AND ADMINISTRATION COSTS**

89. As I said in paragraph 12 above, the Administrators expect that overall Administration Costs following the conclusion of the settlement administration in 2023 will be less than the amount of \$26 million that Mr Atkins assumed for the purpose of his actuarial modelling for the settlement approval application in 2016. I had the same view in June 2017 (as stated in paragraph 29 of my 23 June 2017 affidavit). To some extent this is due to the unexpectedly high rate of election of the Fast Track Resolution, resulting in significantly lower Administration Costs under



clause 13.2 of the Scheme and overall lower fees to be paid to Assessors. The Administration Costs to date (excluding the amounts that related to the application for settlement approval) are approximately \$10.9 million, which includes:

- (a) the amounts that were approved by the Court on 28 June 2017; and
- (b) the amount for which approval is sought in the current application.

90. Based on my consideration of administration work done to date and the further work involved in administering the settlement and finalising and paying Group Members, the remaining administration work can be divided into two discrete periods:

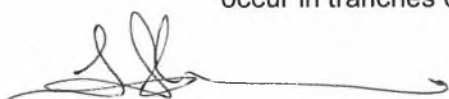
- (a) administration work until December 2018, by which time the claims of approximately 1,600 eligible Group Members will have been finally paid or be ready for payment; and
- (b) administration work from January 2019 until the conclusion of the administration in late 2023, during which time the claims of approximately 300 additional Group Members will be processed. During the early months of this second period, it is also likely that the Administrators will need to undertake some residual work that is necessary in order to finalise payments to the 1,600 Group Members whose claims will have been assessed during the second half of 2018.

91. While I am confident that overall Administration Costs will be less than \$26 million, at this stage I am not able to provide a reliable estimate of overall Administration Costs. I hope to be able to provide such an estimate on the next occasion when the Administrators report to the Court, which I expect will be in late 2018 or early 2019.

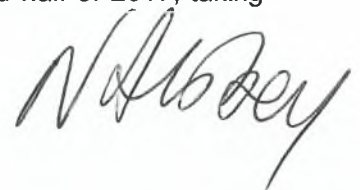
**Administration work until December 2018**

92. During this period, I expect that for all currently registered Group Members:

- (a) in accordance with Mr Atkins' recommendations, the first instalment payment will be made to the 131 individually assessed Group Members whose claims have been assessed;
- (b) all outstanding Individual Assessments will be completed – these Group Members will then promptly be able to be paid their instalment payment at the level recommended by Finity (90 cents in the dollar) and I expect that this will occur in tranches during the second half of 2018;



- (c) all existing Compensation Reviews will be completed and, depending on the timeframes by which Individual Assessments are completed and any future Compensation Reviews are lodged, the Administrators hope to complete many if not all future Compensation Reviews;
  - (d) the small number of outstanding Fast Track Resolution claims will be paid; and
  - (e) all outstanding eligibility determinations will be paid.
93. The Administrators will continue to work with Finity in order to seek updated actuarial advice in relation to the final payment level for all individually assessed Group Members – this will be done in preparation for the application for the Court's approval under clause 10.6(b) of the Scheme.
94. In preparation for a final payment, the Administrators will need to conduct an internal audit on all relevant data. This is to ensure the accuracy of data and therefore the reliability of Mr Atkins' advice on the payment level for final payments to individually assessed Group Members. The Administrators will then engage an external auditor to audit relevant data before final payment is made.
95. The Administrators will continue to seek advice from PricewaterhouseCoopers in relation to taxation implications of interest earned on the Settlement Sum, although to some extent this advice will depend on the outcome of an unrelated proceeding before the Court (proceeding VID335 of 2018) and the timeframe for resolution of that proceeding is presently unclear to me.
96. The Administrators hope to seek approval from the Court in respect of all Group Members with a legal incapacity, as foreshadowed above.
97. Other miscellaneous areas of work include the ongoing management of the settlement accounts and steps taken to dispose of Group Members' explants that were retained for evidentiary purposes.
98. After considering the scope of administration work and potential Administration Costs from March 2018 to December 2018, I have the following expectations.
99. *First*, in relation to professional fees under clause 13.1 for this period:
- (a) **March to June 2018** – at this stage I expect that professional fees under clause 13.1 will be broadly similar to those in the second half of 2017, taking



(b) **July to December 2018** – I expect that professional fees under clause 13.1 will stabilise and reduce to some extent in comparison to the Administration Costs from March to June 2018.

(a) To date, none of the four firms involved in the settlement administration have sought payment for fees under clause 13.2 for Eligible Group Members whose claims are individually assessed. Taking into account that 277 Eligible Group Members have made an election for individual assessment and on the basis that these claims are finalised (as expected) before the end of 2018, this would result in total fees of approximately \$2,285,000 under clause 13.2 for these Group Members;

101. *Finally*, in relation to disbursements from March 2018 to December 2018, I expect that the largest single contributor to disbursements (by a significant margin) will be Assessor fees, which I predict will be approximately \$1,059,000. I explain this amount as follows:

(a) the Administrators have agreed to a two tiered payment structure for the Assessors – for relatively straightforward assessments involving less than four hours' work, the Administrators agreed to pay \$2,750 (including GST), and for more complicated assessments involving more than four hours' work, the Administrators agreed to pay \$4,400 (including GST). Initially all of the

12

N. Stacey



Assessors had agreed to be paid at a flat rate of \$2,750, however after completing a number of assessments the Assessors raised concerns about the amount of time that many of the assessments were taking – often as much as a whole day or longer. For this reason, the Administrators agreed to a two tiered payment structure;

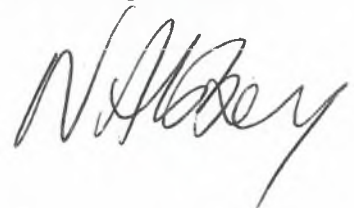
- (b) in Maurice Blackburn's February and March 2018 invoices, there are disbursements reflecting 25 payments to Assessors for straightforward assessments;
- (c) this means that from March 2018 to December 2018 I expect that there will be Assessor fees payable for an additional 252 assessments (bearing in mind that 277 Group Members have to date elected individual assessment);
- (d) taking into account Maurice Blackburn's experience during April and May 2018 (for which payment is not sought as part of the current application), I expect that 80 per cent of further Assessor fees will be calculated on the basis of the higher payment amount;
- (e) this would result in further Assessor fees totalling \$1,059,000 for the further 252 assessments.

102. In summary, between March 2018 and December 2018 I expect that:

- (a) professional fees under clause 13.1 will remain at a consistent level until July 2018 and then begin to reduce for the reasons described above;
- (b) professional fees under clause 13.2 can be reasonably reliably estimated as totalling \$2.9 million across the four firms involved in the settlement administration;
- (c) disbursements for Assessor fees can be reasonably reliably estimated as slightly more than \$1 million.

**January 2019 until the conclusion of the administration in 2023**

103. By the end of 2018 the Administrators hope to have made final payments or be ready to make final payments (subject to Court approval under clause 10.6(b) of the Scheme) to a total of approximately 1,600 currently registered and eligible Group Members.



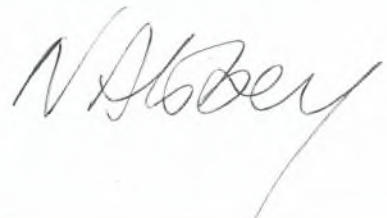


104. Once the Administrators have achieved this milestone, the main area of work will involve processing the relatively small number of new claims that are registered by Group Members. As I said in paragraph 64, the number of new registrations each month is modest, and the total number of new registrations until the end of the operation of the Scheme in 2023 will be approximately 230, taking into account Mr Atkins' revised estimate of the total number of Group Members.
105. This change in the complexion and scope of administration work will have a major effect on the Administration Costs that are likely to be incurred from 2019 onwards, although I note that it is unclear when exactly the Administrators will seek approval for payment of the estimated amount of \$3.9 million which I describe in paragraphs 100 to 101 above in relation to additional fees under clause 13.2 and Assessor fees.
106. It is possible, however, that during the first half of 2019 there may be some ongoing residual work that may result in a slightly higher amount of Administration Costs (particularly for professional fees under clause 13.1) during the first half of 2019 compared to the second half of 2019 and onwards. These residual areas of work might include:
- (a) completion of any Compensation Reviews that are not able to be completed before the end of 2018 (as flagged in paragraph 92(c) above);
  - (b) depending on the timeframes for completion of the remaining Individual Assessments, it is unclear to me whether the Administrators will be ready to seek a listing for the purpose of seeking approval under clause 10.6(b) before the end of 2018, or whether this may need to occur in the first few months of 2019;
  - (c) relatedly to paragraph (b), work with Mr Atkins and his team may continue to some extent during the first few months of 2019, and the associated process of auditing data as described above;
  - (d) work associated with finalising claims of Group Members who are in the cohorts of DBH and LAM – it is likely to be necessary for Maurice Blackburn and Shine to work with DBH and LAM in order to manage and assist them in this;
  - (e) final payments will need to be made to individual assessment Group Members and lienholders.



**General comment as to overall Administration Costs**

107. As I have said above, it remains my opinion that the total Administration Costs are likely to be less than \$26 million, although at this stage the Administrators are not able to provide a reliable estimate of total Administration Costs by the conclusion of the Scheme.
108. I acknowledge that significant Administration Costs have been incurred to date and will continue to be incurred until the end of 2018 and perhaps in the early months of 2019 as outlined above. While these costs are significant, they relate to the design of the operation of all aspects of the Scheme, being a unique Scheme that has been built from scratch, and its subsequent implementation in order to process a large number of claims each of which has required a degree of individual consideration (for example, from as early as the time of making an eligibility determination).
109. Having given consideration to other settlement schemes that I have been involved in, or am aware of, and my knowledge of the costs associated with proving personal damages in cases analogous to that brought against the respondents in this proceeding, I am of the opinion that the overall amount of costs referable to each individual Group Member's claim is reasonably modest, and one of the main reasons why overall Administration Costs are significant is simply the large number of claims that need to be processed, assessed and paid. I give the following evidence in order to illustrate this point.
110. I have given consideration to the costs of this administration on a pro rated basis. Even assuming Administration Costs to be \$26 million (that is, using the figure adopted at the time of approval of the settlement and ignoring, for argument's sake, the Administrators' view that Administration Costs will ultimately be less than that amount), the average cost for determining and awarding compensation in respect of each of the estimated 1,881 claims brought by Group Members would be \$13,800.
111. In order to contextualise this average cost per compensation claim, I am aware that Maurice Blackburn recently commissioned a report from an independent legal costing expert as to the range of reasonable solicitor-client costs that have been chargeable for uncontested damages assessments in personal injury claims in the Supreme Court and County Court of Victoria. An uncontested personal injury damages assessment is in certain respects conceptually analogous to the assessment of compensation that is payable to claimants pursuant to a class action settlement scheme relating to personal injury claims, such as the settlements in the



Black Saturday bushfires class actions and Bonsoy class actions in the Supreme Court of Victoria, and in the present case. That is because in an uncontested damages claim, and in the Bushfires, Bonsoy and ASR settlement schemes, there is no contested liability claim, and the objective of the exercise is an assessment of personal injury damages.

112. While the legal costing expert's report is yet to be published, I am aware of the following findings:

- (a) the range of reasonable solicitor-client costs for an uncontested damages assessment in a Victorian common law claim in the Supreme Court is from \$29,800 to \$73,400 (with professional fees ranging from \$22,000 to \$33,000);
- (b) the range of reasonable solicitor-client costs for an uncontested damages assessment in a Victorian common law claim in the County Court is from \$24,600 to \$58,800 (with professional fees ranging from \$17,600 to \$26,400).

113. By contrast, the average cost per claim under this Scheme will be less than \$13,800. I understand that the independent legal costing expert's report will be published in the near future, and following its publication it can be made available to the Court in due course. But I raise this matter for consideration now because this is one measure by which I have been able personally to satisfy myself, as the lawyer within Maurice Blackburn who is responsible for this settlement administration, that the Administration Costs sought to be approved are within the range of costs that are reasonable having regard to the interests of Group Members taken as a whole. This is an issue I have been sensitive to in light of the Court's comments in this proceeding and more generally in relation to the costs of administering settlement schemes, which has been a topic of both judicial consideration and public commentary. I will be available on the hearing of this application to answer, as best I am able, any further queries that the Court may have in that regard.

Affirmed by the deponent  
at Sydney  
in New South Wales  
on 20 June 2018  
Before me:



Signature of witness  
**Nina Ingrid Abbey**

Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (NSW)

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Signature of deponent

**Certificate Identifying Annexure JKS-147**

No. NSD 213 of 2011

Federal Court of Australia

District Registry: New South Wales

Division: General

**Tammy Stanford** and Another

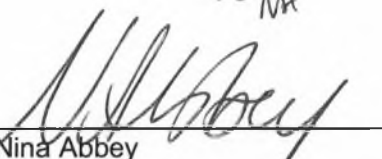
Applicants

**DePuy International Limited** and Another

Respondents

This is the annexure identified as **JKS-147** referred to in the affidavit of **JULIAN KLAUS SCHIMMEL** affirmed at Sydney on 18 June 2018.

Before me

20 NR  
  
Nina Abbey  
Lawyer with a current practising certificate

## 2018 MB ADMINISTRATION REPORT

This report was prepared by Julian Schimmel (Principal), Elizabeth Mukherji (Senior Associate) and Megan Greaves (Associate) of Maurice Blackburn in June 2018.

Reference to Maurice Blackburn means the Maurice Blackburn settlement administration team. Reference to Administrators means Maurice Blackburn and Shine jointly.

Following the case management conferences of 14 and 28 June 2017 (**June 2017 hearing**), the Administrators considered that it was appropriate to implement a series of "task codes" so that work done (and time recorded) in administering the settlement could be stratified by reference to various areas of work and functions under the Amended Settlement Scheme dated 14 June 2017 (**Scheme**). In July 2017 the Administrators therefore developed 26 task codes reflecting discrete areas of work under the Scheme. Since that time, all work done by Maurice Blackburn under clause 13.1 of the Scheme is assigned one of these task codes. In addition, Maurice Blackburn re-reviewed its monthly invoices from February 2017 until June 2017 and retrospectively allocated a task code to each time entry.

The report sets out the monthly amounts of Maurice Blackburn's professional fees for each task code for the period 1 February 2017 to 31 March 2018 (**Relevant Period**), along with the percentage of total monthly fees that are constituted by that task code. For each task code the report then describes the nature of the work done, with reference to key features and provisions of the Scheme, and provides comments on any patterns or trends in costs from month to month; for example if there are increases in monthly costs at any time and if so the reason for those increases, or if costs are trending downwards the reason for that trend.

The table below provides an overview of Maurice Blackburn's fees associated with the task codes over the Relevant Period.

<b>TASK CODE</b>	<b>Total Professional Fees (inc GST)</b>	<b>% of Total Costs</b>
<b>1. Registration/Allocation</b>	\$80,808.20	2.69%
<b>2. Eligibility Determinations</b>	\$255,326.50	8.51%
<b>3. Dealing with Assessors</b>	\$49,511.00	1.65%
<b>4. Preparing/sending notices to Group Members</b>	\$201,382.50	6.71%
<b>5. Committee functions</b>	\$109,731.60	3.66%
<b>6. Interim Payments</b>	\$63,822.00	2.13%
<b>7. Deemed Revision</b>	\$54,045.20	1.80%
<b>8. Processing Individual Assessments</b>	\$114,582.60	3.82%
<b>9. Reviews</b>	\$7,088.40	0.24%
<b>10. Workflow/process development</b>	\$373,973.60	12.46%
<b>11. Group Member enquiries</b>	\$53,788.90	1.79%
<b>12. Bulk updates to Group Members</b>	\$30,404.00	1.01%
<b>13. Managing Group Member data</b>	\$68,912.80	2.30%
<b>14. Engagement of experts</b>	\$75,453.40	2.51%
<b>15. Engagement of costs expert (no charge)</b>	\$0.00	0.00%
<b>16. Preparing for court application</b>	\$193,506.50	6.45%
<b>17. IT systems development</b>	\$238,399.70	7.94%
<b>18. Financial/accounting</b>	\$81,787.20	2.72%
<b>19. Payments</b>	\$252,874.60	8.42%



<b>TASK CODE</b>	<b>Total Professional Fees (inc GST)</b>	<b>% of Total Costs</b>
<b>20. DBH/LAM</b>	\$47,969.90	1.60%
<b>21. Shine general</b>	\$54,414.80	1.81%
<b>22. Explants</b>	\$31,563.40	1.05%
<b>23. Estates</b>	\$125,516.60	4.18%
<b>24. Legal incapacity</b>	\$134,224.20	4.47%
<b>25. Other third party dealings</b>	\$77,702.90	2.59%
<b>26. Other</b>	\$224,892.80	7.49%
<b>TOTAL</b>	<b>\$3,001,683.30</b>	<b>100%</b>

**01.00 Processing registrations and allocation of registrations**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$4,075.50	2.68%	12.38%	87.62%
<b>Mar-17</b>	\$7,097.20	2.45%	28.57%	71.43%
<b>Apr-17</b>	\$3,023.90	1.65%	14.29%	85.71%
<b>May-17</b>	\$5,665.00	1.84%	13.82%	86.18%
<b>Jun-17</b>	\$3,119.60	1.11%	8.14%	91.86%
<b>Jul-17</b>	\$10,219.00	4.40%	16.09%	83.91%
<b>Aug-17</b>	\$6,835.40	2.97%	22.02%	77.98%
<b>Sep-17</b>	\$4,758.60	2.07%	12.10%	87.90%
<b>Oct-17</b>	\$3,799.40	1.65%	16.49%	83.51%
<b>Nov-17</b>	\$2,819.30	1.39%	12.16%	87.84%
<b>Dec-17</b>	\$3,499.10	2.45%	19.32%	80.68%
<b>Jan-18</b>	\$5,989.50	3.97%	22.45%	77.55%
<b>Feb-18</b>	\$9,010.10	4.63%	22.97%	77.03%
<b>Mar-18</b>	\$10,896.60	6.27%	32.81%	67.19%
<b>Total</b>	<b>\$80,808.20</b>	<b>-</b>	<b>19.90%</b>	<b>80.10%</b>
<b>% of Total Costs</b>	<b>2.69%</b>	<b>-</b>	<b>-</b>	<b>-</b>

Maurice Blackburn continues to be responsible for updating and maintaining the online registration facility in accordance with clause 4 of the Scheme and clause 6 of the Settlement Protocol (version 2) dated 19 May 2017 (**Settlement Protocol**) and allocating claims to one of the four law firms involved in the administration. A significant proportion of this work was done by paralegal staff rather than by lawyers.

Costs associated with registrations and allocations fluctuates depending on the number of new registrations received each month and the nature of those registrations. Between December 2017 and January 2018, there was a reduction in the time spent on registrations and allocations due to staff being on leave during the festive season. This resulted in an increase in work associated with registrations in February 2018 when those new registrations and enquiries received during December 2017 and January 2018 were processed.

In March 2018 there was a slightly higher than normal number of enquiries from individuals who had missed the registration deadlines or who had been implanted with a non-ASR device. In March 2018 there was also a particularly complex and time sensitive enquiry from an individual with a potential Deemed ARS Revision claim. Maurice Blackburn needed to manage this particular registration quickly to ensure the individual's rights were not impacted and this resulted in an increase in time spent on registrations for this month.

As the administration has progressed, Maurice Blackburn noticed an increase in registrations that fell outside of the registration deadline, including the period during which the Administrators have discretion to accept a late registration. In response to this the online registration facility was updated to prevent registration by anyone who had missed the registration deadline as set out in clauses 4.3, 4.5 and 4.6 of the Scheme.

Following the implementation of this change to the online registration facility, Maurice Blackburn noticed a slight increase in telephone enquiries from people who were prevented from registering

online as a result of the change in the online facility mentioned above. Overall the time taken to manage this increase in enquiries is less than the time taken to manage these registrations through the process had they submitted a registration through the online facility.

As a result of an increase in enquiries from non-ASR patients, the Administrators propose an amendment to the Scheme, as described in the affidavit of Julian Schimmel dated 19 June 2018.

During the Relevant Period, there were:

- a) 71 new registrations, representing an average of approximately 5 per month

New registrations for the Relevant Period have been allocated across the four firms as follows:

- a) 34 Maurice Blackburn
- b) 27 Shine
- c) 7 DBH
- d) 3 LAM

The Administrators expect that approximately 230 new claims will be registered between now until the conclusion of the administration in 2023, which equates to an average of 4 new registrations per month.

**02.00 Eligibility Determinations**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$29,279.80	19.22%	92.01%	7.99%
<b>Mar-17</b>	\$32,216.80	11.11%	54.92%	45.08%
<b>Apr-17</b>	\$22,259.60	12.13%	63.23%	36.77%
<b>May-17</b>	\$13,879.80	4.50%	70.08%	29.92%
<b>Jun-17</b>	\$11,862.40	4.23%	81.94%	18.06%
<b>Jul-17</b>	\$32,564.40	14.01%	92.64%	7.36%
<b>Aug-17</b>	\$28,460.30	12.36%	95.58%	4.42%
<b>Sep-17</b>	\$18,807.80	8.20%	93.02%	6.98%
<b>Oct-17</b>	\$16,154.60	7.00%	82.81%	17.19%
<b>Nov-17</b>	\$13,191.20	6.51%	81.33%	18.67%
<b>Dec-17</b>	\$9,039.80	6.33%	95.80%	4.20%
<b>Jan-18</b>	\$12,790.80	8.48%	99.49%	0.51%
<b>Feb-18</b>	\$9,716.30	5.00%	73.99%	26.01%
<b>Mar-18</b>	\$5,102.90	2.94%	97.53%	2.47%
<b>Total</b>	<b>\$255,326.50</b>	<b>-</b>	<b>81.78%</b>	<b>18.22%</b>
<b>% of Total Costs</b>	<b>8.51%</b>	<b>-</b>	<b>-</b>	<b>-</b>

Eligibility determinations continue to be carried out by the Administrators in accordance with clause 5 of the Scheme and clause 7 of the Settlement Protocol and as set out at [40] of the 8 June 2017 Affidavit of Julian Schimmel (**8 June 2017 Affidavit**).

Maurice Blackburn has completed a total of 860 eligibility determinations for Maurice Blackburn and DBH Group Members. Of these, 19 were determinations of Deemed ASR Revision claims.

As with Deemed ASR Revision claims discussed below under task code 07, there can be ancillary tasks associated with the eligibility determination process such as communications between team members and a senior lawyer regarding the complexities of a claim involving, for example, if there is potential trauma or infection, correspondence with the Group Member and drafting letters to the Group Member to obtain further information. Work associated with obtaining any further material to be added to the Eligibility Book is included in the fixed claim preparation costs under clause 13.2 of the Scheme.

Work associated with eligibility determinations also includes work done by the Administrators auditing eligibility determinations in accordance with clause 7.4 of the Settlement Protocol and corresponding with DBH and LAM regarding eligibility determinations for their allocated Group Members.

In February 2018 the Administrators agreed to alter the process for auditing eligibility determinations under clause 7.4 of the Settlement Protocol. As the number of eligibility determinations was tapering off and no longer occurring at a consistently high volume, the Administrators agreed it was appropriate for every 10<sup>th</sup> eligibility determination be audited rather than the Administrators waiting until there was a complete list of 20 from which 2 would be randomly selected for audit.

As the administration has progressed over the Relevant Period and Maurice Blackburn has become more experienced, it was decided that it was appropriate for eligibility determinations to be undertaken by two senior lawyers (in accordance with sub-clause 5.6(f) of the Scheme) rather than a senior lawyer and a Principal. This change to the composition of senior lawyers performing the eligibility determinations was approved by the Committee.

Between February 2017 and September 2017 there was a relatively high amount of costs in comparison to the period from October 2017 until March 2018. Between February 2017 and September 2017 Maurice Blackburn worked intensively in order to finalise eligibility determinations for the initial cohort of registrants, most of which were completed by September 2017. From October 2017, Maurice Blackburn continued to undertake eligibility determinations in accordance with the Scheme, however there was a lower volume of determinations in that period. At the same time, during that latter period many of the eligibility determinations were more complex, particularly to the extent that they involved consideration of Deemed ASR Revision claims.

As 94.5% of all eligibility determinations have now been completed, most of the ongoing work will relate to the recently registered claims, and therefore the time spent on this aspect of the administration is expected to stabilise at a relatively low level for the remainder of the administration.



**03.00 Dealing with Assessors**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>Mar-17</b>	\$998.80	0.34%	100.00%	0.00%
<b>Apr-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>May-17</b>	\$4,015.00	1.30%	100.00%	0.00%
<b>Jun-17</b>	\$2,479.40	0.88%	52.94%	47.06%
<b>Jul-17</b>	\$178.20	0.08%	100.00%	0.00%
<b>Aug-17</b>	\$2,367.20	1.03%	100.00%	0.00%
<b>Sep-17</b>	\$676.50	0.29%	100.00%	0.00%
<b>Oct-17</b>	\$1,535.60	0.67%	96.15%	3.85%
<b>Nov-17</b>	\$534.60	0.26%	100.00%	0.00%
<b>Dec-17</b>	\$15,613.40	10.94%	96.89%	3.11%
<b>Jan-18</b>	\$8,081.70	5.35%	100.00%	0.00%
<b>Feb-18</b>	\$9,663.50	4.97%	98.03%	1.97%
<b>Mar-18</b>	\$3,367.10	1.94%	100.00%	0.00%
<b>Total</b>	<b>\$49,511.00</b>	<b>-</b>	<b>95.63%</b>	<b>4.37%</b>
<b>% of Total Costs</b>	<b>1.65%</b>	<b>-</b>	<b>-</b>	<b>-</b>

In accordance with sub-clause 7.3(a) of the Scheme, the Administrators worked collaboratively to appoint a panel of independent Assessors to undertake the assessment of claims in accordance with clause 7 of the Scheme. This work involved identifying and vetting potential Assessors based on their personal injury experience, in particular their background in assessment of damages. The Administrators then had discussions with those individuals selected to explain the assessment requirements under the Scheme, the anticipated time commitment to complete the assessments, fees and general expectations of the Administrators.

In June 2017 the Administrators appointed the following lawyers as independent Assessors:

Marietta Bylhouwer	- member of the Victorian Bar with 23 years' experience
Simon Martin	- member of the Victorian Bar with 12 years' experience
Matthew Baker	- partner at Holman Webb solicitors with 22 years' experience
Debbie Bridges	- special counsel Shine lawyers with 17 years' experience

Following the appointment of these Assessors, the Administrators undertook comprehensive training both as a group and individually. This training involved the preparation of a brief of material, conferences to discuss the Scheme as well as training on the use of the Online Database, which is described in more detail under task code 17 below. This training was conducted jointly by the Administrators and its purpose was to ensure that the Assessors adopted a consistent approach in their assessments.

On 11 April 2018, Debbie Bridges resigned from Shine and it was decided by the Administrators that she should therefore be removed from the Assessor panel. In order to increase the rate at which the assessments were being completed, two additional Assessors were appointed in May 2018.

Nikki Wolski	- member of the Victorian Bar with 24 years' experience
Mark Victorsen	- partner at Holman Webb solicitors with 20 years' experience

Maurice Blackburn was responsible for the training of Nikki Wolski and Shine was responsible for the training of Mark Victorsen.

In addition to the preliminary training, there continues to be communication between the Assessors and the Administrators in relation to the assessment process and individual Group Member assessments. If an issue arises on a particular assessment that has broader application to the group or requires clarification, this is communicated to the Assessors or the Assessors are consulted for their views and a position reached. This collaboration and guidance is necessary for the consistency and accuracy of all assessments.

Given the complexities of the Individual Assessment process, work associated with managing the independent Assessors is largely done by legal staff rather than non-legal staff.

The spike in costs in the month of December 2017 was due to increased time being spent by the Administrators undertaking a "blind test" audit of the Assessors' work. On the recommendation of the actuarial experts, Mr Atkins and Mr Payne, the Administrators decided that an effective way to promote consistency and quality of assessments across all Assessors was to have each Assessor complete the same five initial assessments. This gave a clear point of comparison which enabled the Administrators to identify areas where the Assessors were taking different approaches and where guidance was required. As part of this audit the Administrators had to review all 25 assessments completed, being five by each Assessor and prepare feedback. This feedback was given by the Administrators both as a group and individually.

The reduction in costs associated with Maurice Blackburn's dealing with Assessors in the month of March 2018, reflects the fact the number of Claim Books being allocated had reduced following the initial surge when the assessment process began and the Assessors have become more familiar with the assessment process and the expectations of the Administrators. It is expected that costs associated with Assessors will continue at this reduced rate for the remainder of 2018 and then taper off for the remainder of the administration. Once the Individual Assessments for the initial cohort of registrants is completed towards the end of 2018, the number of ongoing Individual Assessments is expected to be very low, consistently with the small number of new registrations each month and the consistently high level of uptake of the Fast Track Resolution.

**04.00 Preparing / sending notices to Group Members and processing elections**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$3,330.80	2.19%	58.06%	41.94%
<b>Mar-17</b>	\$15,353.80	5.30%	38.95%	61.05%
<b>Apr-17</b>	\$9,260.90	5.05%	13.28%	86.72%
<b>May-17</b>	\$20,006.80	6.48%	40.70%	59.30%
<b>Jun-17</b>	\$11,327.80	4.04%	47.71%	52.29%
<b>Jul-17</b>	\$16,830.00	7.24%	44.72%	55.28%
<b>Aug-17</b>	\$28,957.50	12.58%	17.21%	82.79%
<b>Sep-17</b>	\$29,826.50	13.01%	14.94%	85.06%
<b>Oct-17</b>	\$21,362.00	9.26%	18.75%	81.25%
<b>Nov-17</b>	\$14,889.60	7.35%	12.89%	87.11%
<b>Dec-17</b>	\$5,996.10	4.20%	13.46%	86.54%
<b>Jan-18</b>	\$7,401.90	4.90%	21.98%	78.02%
<b>Feb-18</b>	\$10,530.30	5.41%	22.22%	77.78%
<b>Mar-18</b>	\$6,308.50	3.63%	38.00%	62.00%
<b>Total</b>	<b>\$201,382.50</b>	<b>-</b>	<b>25.44%</b>	<b>74.56%</b>
<b>% of Total Costs</b>	<b>6.71%</b>	<b>-</b>	<b>-</b>	<b>-</b>

Clause 5.8 of the Scheme requires that after a determination is made as to whether or not a Group Member is eligible to receive compensation, the Administrators will promptly send to the Group Member a 'Notice of Eligibility'. This 'Notice of Eligibility' and accompanying cover letter or email is prepared by a paralegal. In the course of preparing this correspondence the paralegal also reviews a spreadsheet to determine whether the Group Member's explanted (i.e. surgically removed) ASR implant was retained by Maurice Blackburn or the Respondents. A number of these 'explants' were retained between 2011 and the settlement of the proceeding in 2016 in the event that they were needed for evidentiary purposes and the Administrators considered that it was appropriate to continue to retain these explants until after the determination of a Group Member's eligibility. Further discussion of the process for managing explants is discussed below under task code 22.

If the Group Member is determined eligible, an 'Instructions to Elect' form is also prepared to be sent to the Group Member at this time. The 'Instructions to Elect' form requires the Group Member to complete and return the form advising of their election, which must be done within 42 days of receiving the Notice. The purpose of this form is to ensure that we have clear instructions from the Group Member regarding their election (i.e. Fast Track Resolution or Individual Assessment).

Once the valid 'Instructions to Elect' form is received, depending on the Group Member's election a paralegal then sends a 'Notice of Fast Track Resolution' or 'Notice of Individual Assessment' to formally acknowledge the Group Member's election and to provide information regarding the next steps of the process.

The Online Database is updated throughout this process to track the status of the Group Member's claim. This allows data reports to be run to determine what stage of the process a Group Member is at and to ensure all the relevant steps as required by the Scheme have been undertaken.

To date, Maurice Blackburn has sent out the following numbers of notices to Maurice Blackburn and DBH Group Members:

- a) 817 Notices of Eligibility – Eligible
- b) 38 Notices of Eligibility – Ineligible
- c) 681 Notices of Fast Track Resolution
- d) 133 Notices of Assessment.

From February 2017 to September 2017 there was a steady increase in the amount of time spent on preparing and sending notices to Group Members. This increase coincided with the effort made by Maurice Blackburn to complete the eligibility determination for the initial cohort of registered Group Members. From October 2017 to March 2018 the time spent on preparing and sending notices has tapered off in line with the reduction in the number of eligibility determinations made. There was a slight increase in time spent in February 2018 due to notices being prepared for ineligible determinations, especially for Group Members who made a claim on the basis of a Deemed ASR Revision. The reason for this is that due to the individual reasons a Group Member is found ineligible, the standard notice was not suitable for Deemed ASR Revision claims and a tailored Notice addressing the Group Member's particular circumstances was therefore necessary.

As with Eligibility Determinations discussed under task code 02 above, it is expected that the time spent by Maurice Blackburn in preparing and sending notices to Group Members will also stabilise at a relatively low level for the remainder of the administration.

**05.00 Committee Functions**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$4,007.30	2.63%	100.00%	0.00%
<b>Mar-17</b>	\$14,454.00	4.99%	100.00%	0.00%
<b>Apr-17</b>	\$5,454.90	2.97%	54.63%	45.37%
<b>May-17</b>	\$15,143.70	4.91%	68.75%	31.25%
<b>Jun-17</b>	\$6,387.70	2.28%	63.93%	36.07%
<b>Jul-17</b>	\$7,904.60	3.40%	95.97%	4.03%
<b>Aug-17</b>	\$9,529.30	4.14%	83.44%	16.56%
<b>Sep-17</b>	\$9,858.20	4.30%	53.16%	46.84%
<b>Oct-17</b>	\$6,528.50	2.83%	64.96%	35.04%
<b>Nov-17</b>	\$5,770.60	2.85%	47.71%	52.29%
<b>Dec-17</b>	\$4,439.60	3.11%	65.00%	35.00%
<b>Jan-18</b>	\$7,107.10	4.71%	74.62%	25.38%
<b>Feb-18</b>	\$6,943.20	3.57%	91.35%	8.65%
<b>Mar-18</b>	\$6,202.90	3.57%	100.00%	0.00%
<b>Total</b>	<b>\$109,731.60</b>	<b>-</b>	<b>74.58%</b>	<b>25.42%</b>
<b>% of Total Costs</b>	<b>3.66%</b>	<b>-</b>	<b>-</b>	<b>-</b>

The Administrators continue to perform committee functions in accordance with clause 3.1 of the Settlement Protocol. The Committee provides a mechanism for Shine and Maurice Blackburn to jointly make decisions and exercise functions under the Scheme and to have joint oversight of the administration.

As other aspects of the administration have become more streamlined and procedures have been implemented, the amount of time spent by the Committee on those more general administration matters has likewise continued to reduce. From October 2017 onwards, the Committee's time has been spent predominantly on considering the need for further material in relation to Deemed ASR Revision claims, considering late registrations, considering interim payment applications and approval of residual liens.

Maurice Blackburn has been responsible for the collation and circulation of the monthly committee meeting agenda, ensuring that all documents related to agenda items are uploaded to Collaborate, the secure document sharing platform prior to the meetings as well as preparation and circulation of minutes following each meeting.

Time spent on committee related matters in the month of March 2017, were higher than average because the Administrators agreed to hold two committee meetings in that month. The Committee spent significant time in this month on the development of procedures and practical applications related to Deemed ASR Revisions, ineligible revisions and liens in addition to the ordinary matters the Committee is required to consider.

In May 2017 there were again two committee meetings held. A significant amount of the Committee's time was spent dealing with procedures related to the Individual Assessment process and the preparation of Claim Books in addition to the ordinary business of the Committee such as Deemed ASR Revision claims, residual liens and legal incapacity. It is anticipated that for the remainder of the administration, the Committee will spend less time on procedural matters and the meetings will continue to become more straightforward.



**06.00 Interim Payments**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$1,028.50	0.68%	21.74%	78.26%
<b>Mar-17</b>	\$1,994.30	0.69%	69.23%	30.77%
<b>Apr-17</b>	\$812.90	0.44%	70.59%	29.41%
<b>May-17</b>	\$8,723.00	2.83%	23.35%	76.65%
<b>Jun-17</b>	\$4,579.30	1.63%	11.29%	88.71%
<b>Jul-17</b>	\$1,457.50	0.63%	40.63%	59.38%
<b>Aug-17</b>	\$3,496.90	1.52%	24.71%	75.29%
<b>Sep-17</b>	\$9,663.50	4.21%	18.52%	81.48%
<b>Oct-17</b>	\$8,096.00	3.51%	14.83%	85.17%
<b>Nov-17</b>	\$4,609.00	2.28%	21.05%	78.95%
<b>Dec-17</b>	\$1,909.60	1.34%	43.90%	56.10%
<b>Jan-18</b>	\$4,865.30	3.22%	12.60%	87.40%
<b>Feb-18</b>	\$6,045.60	3.11%	20.55%	79.45%
<b>Mar-18</b>	\$6,540.60	3.77%	46.38%	53.62%
<b>Total</b>	<b>\$63,822.00</b>	<b>-</b>	<b>23.83%</b>	<b>76.17%</b>
<b>% of Total Costs</b>	<b>2.13%</b>	<b>-</b>	<b>-</b>	<b>-</b>

The Administrators have continued to process interim payments in accordance with clause 10.8 of the Scheme. The time spent on interim payments recorded under this task code relate to the work associated with managing and preparing the interim payment application for consideration by the Committee. Time spent by the Committee considering and determining an interim payment application is recorded under task code 05 above.

The work undertaken by the Administrators in managing and preparing interim payment applications involves correspondence with the Group Member seeking an interim payment, providing necessary documents to Group Members and assistance with how the application documents are to be completed, in particular the nature of the supporting material to be provided with the application, consideration of the application and supporting material, further correspondence with the Group Members relating to inadequacies in the supporting documents provided or further clarification needed and preparation of the file note to be considered by the Committee. Depending on the instructions and documents provided by the Group Members, it can take staff a significant amount of time to collate the material and ensure that the supporting material substantiates the Group Member's claim of financial hardship.

Over the Relevant Period Maurice Blackburn has received and processed 35 interim payment applications. Of these, 26 were approved by the Committee on first review, 3 required further material following first review by the Committee and were subsequently approved, and 6 were rejected.

In the months of May 2017, September 2017 and October 2017, the time spent by Maurice Blackburn on interim payment applications was more than other months due to a higher number of applications received and prepared in those months as well as some more complicated applications by Group Members which involved consideration of medical expenses claimed to be needed and the reason for the financial hardship experiences.

As 92.4% of all Group Members who have elected Fast Track Resolution have now been paid and the Administrators expect to commence the first tranche payment to Group Members who have elected Individual Assessment in the second half of 2018, it is expected that the number of applications for interim payments will reduce and in turn the costs associated with this aspect of the administration will also reduce. In other words as more and more Group Members receive their actual compensation payments, the likelihood of Group Members needing to make requests for interim payments will diminish.

**07.00 Deemed ASR Revision**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$3,040.40	2.00%	81.63%	18.37%
<b>Mar-17</b>	\$2,288.00	0.79%	78.57%	21.43%
<b>Apr-17</b>	\$1,292.50	0.70%	50.00%	50.00%
<b>May-17</b>	\$4,900.50	1.59%	22.40%	77.60%
<b>Jun-17</b>	\$1,518.00	0.54%	7.14%	92.86%
<b>Jul-17</b>	\$8,863.80	3.81%	54.92%	45.08%
<b>Aug-17</b>	\$6,922.30	3.01%	75.36%	24.64%
<b>Sep-17</b>	\$7,587.80	3.31%	40.24%	59.76%
<b>Oct-17</b>	\$2,325.40	1.01%	35.85%	64.15%
<b>Nov-17</b>	\$817.30	0.40%	73.33%	26.67%
<b>Dec-17</b>	\$4,066.70	2.85%	98.51%	1.49%
<b>Jan-18</b>	\$6,264.50	4.15%	74.11%	25.89%
<b>Feb-18</b>	\$2,008.60	1.03%	24.49%	75.51%
<b>Mar-18</b>	\$2,149.40	1.24%	65.00%	35.00%
<b>Total</b>	<b>\$54,045.20</b>	<b>-</b>	<b>54.71%</b>	<b>45.29%</b>
<b>% of Total Costs</b>	<b>1.80%</b>	<b>-</b>	<b>-</b>	<b>-</b>

Deemed ASR Revision Group Members form a small percentage of the overall cohort of registrants (2%), however their claims are complex and involve detailed consideration of medical evidence and whether the evidence satisfies the two limbs of the definition of a Deemed ASR Revision.

Of the registered Maurice Blackburn and DBH Deemed ASR Revision claims:

- a) 10 have been found eligible
- b) 9 have been found ineligible
- c) 7 are awaiting audit
- d) 4 are awaiting further material for a determination to be made.

If a Group Member makes a claim on the basis of a Deemed ASR Revision, the Administrators are required to screen the claim to determine whether the Administrators or the Group Member should obtain the relevant contemporaneous medical records or whether a bond should be paid by the Group Member. This screening process is carried out pursuant to clause 5.7 of the Scheme, which safeguards against the unmeritorious claims being made and the Administrators needing to spend significant time dealing with such claims. The process of screening the Deemed ASR Revision claims is detailed at [108]-[111] of the 8 June 2017 Affidavit.

Once a Group Member has progressed through the screening process, the claim then proceeds in the same way as all other claims, and the next step is the preparation of an Eligibility Book. The costs of the work undertaken in preparing an Eligibility Book (and other claim preparation) are payable under the fixed claim preparation costs in clause 13.2 of the Scheme, rather than clause 13.1 of the Scheme.

When an Eligibility Book for a Deemed ASR Revision claim is allocated to a senior lawyer for determination, it is common that the senior lawyer will request further information. As a result,

Maurice Blackburn has had to request a short report or letter from a surgeon and / or general practitioner for the majority of Deemed ASR Revision claims, which was not earlier anticipated.

Any additional tasks associated with the requirement for further material such as the initial review by the senior lawyer, communications between the administration staff and senior lawyer regarding the complexities of the claim, correspondence with the Group Member, drafting letters to the Group Member to obtain further information, and preparing additional information for the Committee to determine when seeking approval to request further material such as surgeon reports are recorded under task code 07. Work associated with obtaining that further material to be added to the Eligibility Book is included in the fixed claim preparation costs under clause 13.2 of the Scheme.

In addition to the Deemed ASR Revision Group Members that have had a formal determination made, there have been a number of Group Members who have registered a Deemed ASR Revision claim but subsequently withdrawn their claim. The reason this has occurred, is that on occasions the senior lawyer has reviewed all material on file and based on this review, the Group Member would be found ineligible. Therefore, before an ineligible determination is made, the Group Member has been given the opportunity to withdraw their claim in order to preserve their rights to re-register in the future should their situation change, or they undergo an actual revision operation before the 13 year deadline of the date of their ASR implant, thereby enabling the Group Member to make a claim on the basis of an Actual ASR Revision.

Overall, the costs have remained fairly steady over the Relevant Period, with slight variations related to the number of new Deemed ASR Revision registrants for the period as well as additional work done following the initial review of a Deemed ASR Revision claim by a senior lawyer.

**08.00 Processing Individual Assessments**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$607.20	0.40%	80.00%	20.00%
<b>Mar-17</b>	\$67.10	0.02%	100.00%	0.00%
<b>Apr-17</b>	\$1,219.90	0.66%	73.91%	26.09%
<b>May-17</b>	\$1,056.00	0.34%	100.00%	0.00%
<b>Jun-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>Jul-17</b>	\$2,305.60	0.99%	93.02%	6.98%
<b>Aug-17</b>	\$2,728.00	1.18%	67.80%	32.20%
<b>Sep-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>Oct-17</b>	\$5,725.50	2.48%	80.58%	19.42%
<b>Nov-17</b>	\$5,287.70	2.61%	77.66%	22.34%
<b>Dec-17</b>	\$18,041.10	12.64%	87.10%	12.90%
<b>Jan-18</b>	\$11,708.40	7.76%	98.43%	1.57%
<b>Feb-18</b>	\$31,431.40	16.16%	88.91%	11.09%
<b>Mar-18</b>	\$34,404.70	19.81%	99.47%	0.53%
<b>Total</b>	<b>\$114,582.60</b>	<b>-</b>	<b>90.90%</b>	<b>9.10%</b>
<b>% of Total Costs</b>	<b>3.82%</b>	<b>-</b>	<b>-</b>	<b>-</b>

As anticipated at the time of the June 2017 hearing, the Administrators have undertaken a significant amount of work in relation to the processing of Individual Assessment claims in accordance with clause 7 of the Scheme. In particular, this is reflected in the costs incurred from December 2017 to March 2018. This work has been done collaboratively between Maurice Blackburn and Shine to ensure consistency of outcomes for all Group Members.

In broad terms, this area of the administration encompasses the processing of Individual Assessment claims from the allocation of the Claim Books to the independent Assessors through to the final review and completion of the assessments.

After a Claim Book has been prepared by a paralegal (the costs of which are incurred under clause 13.2 of the Scheme), the Claim Book is reviewed by a senior lawyer to ensure it complies with the agreed format and contains all required material. This process can involve the paralegal needing to go back to the Group Member for further instructions or request further documents and then be re-reviewed by the senior lawyer. Once the Claim Book is completed, it is allocated to an Assessor using the Online Database. Maurice Blackburn tracks all stages of the Individual Assessment process through the Individual Assessment progress page in the Online Database.

The Claim Book is then randomly allocated to one of the panel of independent Assessors as is required under clause 7.3(c) of the Scheme.

The Assessor is notified by automatic email that the Claim Book has been allocated to them and the Claim Book is made available to the Assessor via Collaborate, the secure online document sharing facility.

Once the Assessor receives and reviews a Claim Book, he or she may decide that additional materials are needed in order to complete the assessments; this involves communications with the Administrators and the Group Member. Examples of the types of further materials that have been requested are; medical records and reports, business taxation records, receipts to



substantiate claimed out of pocket expenses and clarification of instructions from Group Members.

The Administrators are responsible for obtaining any further documents or instructions requested by the Assessors. This work can involve internal meetings or communications for the purpose of delegating or allocating work to staff. The Administrators also communicate with Group Members in order to inform them that the Assessor has requested further materials.

Once the Assessor has all the material needed to undertake the assessment, they have 14 days to complete the assessment which is done directly into the Online Database.

In order to complete their assessment, the Assessor enters the assessment values and their reasoning directly into the Online Database. Once the Assessor has finalised their assessment via the Online Database, the firm that was responsible for the preparation of the Claim Book can view the assessment documents via the Online Database. The assessment documents include the Notice of Assessment which is the letter providing important information to the Group Member about their assessment and enclosing the Statement of Reasons and Determination.

After the assessment is completed by the Assessor the Administrators undertake a detailed review of the assessment. This review is essential to ensuring the assessment criteria have been applied consistently and accurately across the whole group. This review is done by senior lawyers with personal injury experience and depending on how complex the assessment is can take approximately 1 – 2 hours. The Administrators worked together to develop the assessment review checklist to ensure that all assessments are reviewed efficiently and accurately and there is consistency across the entire group. Following the internal assessment review, any issues, errors or points of clarification needed with the assessments that have been identified by the senior lawyer are documented and sent back to the Assessor for their consideration. This often involves further communication with the Assessor and the Group Member.

Once this assessment review process has been completed and any necessary amendments made, the assessment is marked as “complete” and the assessment documents are generated and sent to the Group Member via registered post and email.

Other work involved in processing Individual Assessments includes monitoring the progress of the Individual Assessment process including reviewing data reports and communicating with Assessors to ensure they are completing assessments within the timeframes that were agreed, or if they have outstanding assessments in order to ensure that assessments are completed in a timely manner. This requires collaboration between the Administrators to ensure all assessments are progressing.

Other than the modest amounts of costs incurred between February 2017 and November 2017, the main costs of processing Individual Assessments commenced in December 2017 when the allocation of Claim Books to the Assessors began. There was also some time spent in processing the Individual Assessments related to the Assessor audit discussed under task code 03 above.

At this stage it is expected that the work undertaken by Maurice Blackburn in processing Individual Assessments will continue at the rate seen in the months of February 2018 and March 2018 until approximately August 2018, after which time all assessments will have been completed for Maurice Blackburn's Group Members who are currently registered and awaiting assessment. From August 2018, it is expected that costs will stabilise at a lower rate until the conclusion of the administration.

**09.00 Reviews**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>Mar-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>Apr-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>May-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>Jun-17</b>	\$574.20	0.20%	46.15%	53.85%
<b>Jul-17</b>	\$3,131.70	1.35%	37.14%	62.86%
<b>Aug-17</b>	\$969.10	0.42%	88.24%	11.76%
<b>Sep-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>Oct-17</b>	\$67.10	0.03%	100.00%	0.00%
<b>Nov-17</b>	\$176.00	0.09%	0.00%	100.00%
<b>Dec-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>Jan-18</b>	\$297.00	0.20%	100.00%	0.00%
<b>Feb-18</b>	\$671.00	0.34%	100.00%	0.00%
<b>Mar-18</b>	\$1,202.30	0.69%	56.00%	44.00%
<b>Total</b>	<b>\$7,088.40</b>	<b>-</b>	<b>52.74%</b>	<b>47.26%</b>
<b>% of Total Costs</b>	<b>0.24%</b>	<b>-</b>	<b>-</b>	<b>-</b>

The work undertaken by the Administrators in relation to Reviews has included the establishment of processes and precedent documents to ensure Reviews are conducted in accordance with clause 9 of the Scheme. As part of this process it was necessary to consider how any change in assessment values in the case of Individual Assessments would be tracked in the Online Database and how Review costs provided for in clause 13.4 of the Scheme would be reimbursed to the Group Member in the case of a successful Review or recovered in the case of an unsuccessful Review.

Clause 9 of the Scheme enables a Group Member to seek an "Eligibility Review" or a "Compensation Review".

The Administrators appointed Michael Wilson QC, a member of the Victorian Bar with 38 years' experience as the Review Assessor for Compensation Reviews. The Administrators considered that it was appropriate for Senior Counsel to be engaged as Review Assessor for Compensation Reviews.

In order to avoid incurring the costs of engaging Senior Counsel for Eligibility Reviews, which are likely to be more straightforward than Compensation Reviews, the Administrators appointed Simon Martin and Marietta Bylhouwer, members of the Victorian Bar as Review Assessors for Eligibility Reviews. Both Mr Martin and Ms Bylhouwer were also appointed as Assessors under sub-clause 7.3(a) of the Scheme for the purpose of Individual Assessments.

To date, Maurice Blackburn has received two requests for Eligibility Reviews and seven requests for Compensation Reviews. Two of these requests for Review have subsequently been withdrawn, leaving one request for an Eligibility Review and six requests for a Compensation Review.

These Reviews are currently being processed in accordance with the established procedure. This work includes considering the request for Review, correspondence with the Group Members

regarding the request, explaining the Review process, obtaining further material necessary to undertake the Review and briefing the Review Assessor.

In the month of July 2017 Maurice Blackburn spent an increased amount of time managing one of the Eligibility Review requests. The particular claimant had engaged independent lawyers and the work done in relation to this Review included communicating with the claimant and his lawyer, reviewing the Eligibility Book material and preparing correspondence. Ultimately this request for Review was withdrawn after the Administrators exercised their discretion to seek a bond of \$1,000 under clause 9.4 on the basis that the request for an Eligibility Review was lacking in merit because the Group Member had not been implanted with an ASR implant.

Although it is difficult to predict, it is possible that the costs associated with Reviews will increase until the end of 2018 – this is because the number of completed Individual Assessments will increase during that time. Given 94.5% of eligibility determinations have now been made and the review period for almost all of these has now passed, the Administrators do not expect any significant costs associated with Eligibility Reviews.

**10.00 Workflow / Process development**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$48,708.55	31.98%	77.38%	22.62%
<b>Mar-17</b>	\$79,906.75	27.57%	76.45%	23.55%
<b>Apr-17</b>	\$42,139.90	22.97%	76.99%	23.01%
<b>May-17</b>	\$59,736.60	19.36%	78.19%	21.81%
<b>Jun-17</b>	\$30,076.20	10.72%	91.28%	8.72%
<b>Jul-17</b>	\$28,691.30	12.35%	74.76%	25.24%
<b>Aug-17</b>	\$16,133.70	7.01%	45.15%	54.85%
<b>Sep-17</b>	\$18,195.10	7.93%	79.94%	20.06%
<b>Oct-17</b>	\$16,105.10	6.98%	81.52%	18.48%
<b>Nov-17</b>	\$21,742.60	10.73%	95.78%	4.22%
<b>Dec-17</b>	\$5,469.20	3.83%	65.09%	34.91%
<b>Jan-18</b>	\$3,380.30	2.24%	74.19%	25.81%
<b>Feb-18</b>	\$3,428.70	1.76%	44.23%	55.77%
<b>Mar-18</b>	\$259.60	0.15%	15.38%	84.62%
<b>Total</b>	<b>\$373,973.60</b>	<b>-</b>	<b>77.11%</b>	<b>22.89%</b>
<b>% of Total Costs</b>	<b>12.46%</b>	<b>-</b>	<b>-</b>	<b>-</b>

The Administrators have continued to focus on developing and refining a number of significant administration work flows and processes. In broad terms this work involves consideration of the various stages of the administration and requirements of the Scheme and Settlement Protocol, documenting how particular work flows or processes will be implemented, how these work flows and processes fit within the existing Online Database and what additional IT development is required or justified and developing precedent documents related to the work flow or process. This work is done collaboratively between the Administrators.

In the months February 2017 to May 2017, the Administrators spent significant time on work flow and process development related to eligibility determinations and elections, medical record requests, management of documents, resolution of liens and payments to Group Members.

From May 2017 through to December 2017, the Administrators worked together closely to develop the work flow and process required for the Individual Assessment of claims. This involved careful consideration of the most efficient way to implement each step in the process from obtaining instructions from Group Members by way of detailed questionnaire, consultation with Assessors and independent experts about the information needed, processes for requesting supporting documents, collating information and documents, allocation of Claim Books to independent Assessors, completion of assessments and review of assessments. Careful consideration was given to work flows and process that would ensure consistency across the four firms while taking account of the different internal practices of each firm.

There continues to be ongoing work associated with refining and updating existing workflows and processes as the administration progresses and priorities change. As was estimated at [53] of the 8 June 2017 Affidavit, work involved in workflow and process development began to reduce in July 2017 relative to the levels that had been seen in the preceding months, and since December 2017 this area of work reduced even further once the workflows and processes for the Individual Assessment process had been largely settled. Costs involved in this area of work are expected to remain at this lower level until the end of 2018, and are likely to taper off even more from the

beginning of 2019 until the conclusion of the administration.



**11.00 Group Member inquiries**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$2,411.20	1.58%	34.62%	65.38%
<b>Mar-17</b>	\$2,509.10	0.87%	63.04%	36.96%
<b>Apr-17</b>	\$6,498.80	3.54%	32.68%	67.32%
<b>May-17</b>	\$7,264.40	2.35%	59.18%	40.82%
<b>Jun-17</b>	\$3,286.80	1.17%	57.69%	42.31%
<b>Jul-17</b>	\$7,730.80	3.33%	59.74%	40.26%
<b>Aug-17</b>	\$4,658.50	2.02%	38.32%	61.68%
<b>Sep-17</b>	\$3,931.40	1.71%	24.22%	75.78%
<b>Oct-17</b>	\$7,651.60	3.32%	75.20%	24.80%
<b>Nov-17</b>	\$3,580.50	1.77%	74.19%	25.81%
<b>Dec-17</b>	\$1,413.50	0.99%	46.43%	53.57%
<b>Jan-18</b>	\$622.60	0.41%	52.38%	47.62%
<b>Feb-18</b>	\$783.20	0.40%	41.18%	58.82%
<b>Mar-18</b>	\$1,446.50	0.83%	29.41%	70.59%
<b>Total</b>	<b>\$53,788.90</b>	<b>-</b>	<b>49.49%</b>	<b>50.51%</b>
<b>% of Total Costs</b>	<b>1.79%</b>	<b>-</b>	<b>-</b>	<b>-</b>

In broad terms, this area of the administration encompasses all enquiries that do not fit under the fixed fee claim preparation costs or relate to a specific task code category.

The volume of enquiries received by Maurice Blackburn has varied over time. On any particular day, the volume of email and telephone enquiries ranges from 5 to 20 enquiries. The nature of enquiries that fall under this category, include but are not limited to:

- a) Enquiries relating to the various processes and procedures of the administration;
- b) Enquiries relating to the overall progress and statistics of the administration;
- c) Enquiries relating to the costs of the administration;
- d) Enquiries relating to taxation implications;
- e) Enquiries regarding timeframes for next steps;
- f) Enquiries from Group Members from DBH, LAM and Shine;
- g) Enquiries relating to bilateral revisions;
- h) Enquiries relating to future revisions;
- i) Enquiries relating to third party reporting obligations;
- j) Enquiries from Group Members following registration regarding non-ASR implants;
- k) Provision of updated contact details from Group Members; and
- l) Enquiries from potential Group Members regarding the eligibility criteria and registration.

In the first instance these enquiries are dealt with by a legal assistant (the costs of which are not claimable under clause 13.2 of the Scheme) and by paralegals, and are then escalated to lawyers when it is necessary to do so.

It is expected that time spent by the Administrators dealing with general Group Member enquiries will continue to vary and may increase at times, such as when an update is provided to Group Members following a case management conference or revised advice from actuarial experts on the expected recovery percentage and final tranche payments. Despite this it is expected that these costs will gradually taper off for the remainder of the administration for the simple reason

that as more and more claims are finalised and paid, there will be an increasingly smaller pool of Group Members who have extant claims that may give rise to inquiries.

#### **12.00 Bulk updates to Group Members**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$246.40	0.16%	0.00%	100.00%
<b>Mar-17</b>	\$9,170.70	3.16%	94.67%	5.33%
<b>Apr-17</b>	\$1,562.00	0.85%	52.78%	47.22%
<b>May-17</b>	\$290.40	0.09%	100.00%	0.00%
<b>Jun-17</b>	\$8,662.50	3.09%	56.08%	43.92%
<b>Jul-17</b>	\$2,383.70	1.03%	64.15%	35.85%
<b>Aug-17</b>	\$589.60	0.26%	6.56%	93.44%
<b>Sep-17</b>	\$556.60	0.24%	10.14%	89.86%
<b>Oct-17</b>	\$1,794.10	0.78%	39.34%	60.66%
<b>Nov-17</b>	\$4,954.40	2.45%	58.62%	41.38%
<b>Dec-17</b>	\$0.00	0.00%	0.00%	100.00%
<b>Jan-18</b>	\$193.60	0.13%	25.00%	75.00%
<b>Feb-18</b>	\$0.00	0.00%	0.00%	0.00%
<b>Mar-18</b>	\$0.00	0.00%	0.00%	0.00%
<b>Total</b>	<b>\$30,404.00</b>	<b>-</b>	<b>54.42%</b>	<b>45.58%</b>
<b>% of Total Costs</b>	<b>1.01%</b>	<b>-</b>	<b>-</b>	<b>-</b>

This area of the administration deals with any correspondence to Group Members that is sent in bulk, such as a general update following a case management conference.

The majority of Group Members registered in the class action can receive correspondence via email and therefore where possible correspondence is sent to Group Members by this method rather than by ordinary mail. Sending correspondence by email is cost efficient and ensures the correspondence is received in a timely manner.

Since February 2017, the Administrators have completed various bulk communications to Group Members, including:

- In March 2017 all registered Group Members were sent an update on the status of their claim.
- In April and May 2017 an information package was sent to all Group Members who had elected Individual Assessment.
- In June 2017 and July 2017 an update letter was sent to all registered Group Members regarding the outcome of the June 2017 hearing.
- In November 2017 an update letter was sent to all registered Group Members regarding the progress of the administration.

The Administrators send these bulk updates on behalf of DBH and LAM.

Maurice Blackburn has also continued to have responsibility for updating and maintaining the website referred to at [39] of the 8 June 2017 Affidavit. Again, as more and more claims are

finalised and paid, there will be an increasingly smaller pool of Group Members who have extant claims and the need for bulk updates to Group Members will reduce commensurately.

**13.00 Managing Group Member data / updating admin portal**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$10,030.90	6.59%	65.95%	34.05%
<b>Mar-17</b>	\$10,499.50	3.62%	62.12%	37.88%
<b>Apr-17</b>	\$4,134.90	2.25%	61.90%	38.10%
<b>May-17</b>	\$2,723.60	0.88%	40.91%	59.09%
<b>Jun-17</b>	\$3,826.90	1.36%	95.71%	4.29%
<b>Jul-17</b>	\$10,400.50	4.48%	64.22%	35.78%
<b>Aug-17</b>	\$9,714.10	4.22%	64.59%	35.41%
<b>Sep-17</b>	\$8,287.40	3.61%	90.44%	9.56%
<b>Oct-17</b>	\$1,089.00	0.47%	59.09%	40.91%
<b>Nov-17</b>	\$2,611.40	1.29%	43.86%	56.14%
<b>Dec-17</b>	\$926.20	0.65%	93.75%	6.25%
<b>Jan-18</b>	\$2,833.60	1.88%	75.47%	24.53%
<b>Feb-18</b>	\$1,054.90	0.54%	78.95%	21.05%
<b>Mar-18</b>	\$779.90	0.45%	100.00%	0.00%
<b>Total</b>	<b>\$68,912.80</b>	<b>-</b>	<b>67.64%</b>	<b>32.36%</b>
<b>% of Total Costs</b>	<b>2.30%</b>	<b>-</b>	<b>-</b>	<b>-</b>

This area of the administration encompasses all aspects of managing, reviewing and internally auditing overall Group Member data to ensure the integrity of that data for accuracy in progressing the administration. In order to do this, senior members of Maurice Blackburn run data reports on specific aspects of the administration. The reports are analysed and interrogated as to the status of each claim relating to the specific aspect.

The importance of undertaking this task is that it allows any data discrepancies to be identified and corrected, as well as to identify any outliers or roadblocks, progress any claims that have been delayed and identify and follow up on any other issues.

Other work involved in managing and analysing the overall progress of Group Member data is enabling key milestone targets to be set and monitored to ensure the administration is progressing through the various key stages.

Between February 2017 and September 2017 there was a relatively high amount of costs in comparison to the period from October 2017 until March 2018. During the initial period of the administration Maurice Blackburn was creating the Online Database and inputting, amending and auditing data to ensure it was captured accurately and reflected the progress of the individual claims. From October 2017, Maurice Blackburn managed all its data through the Online Database which, by reference to the time spent is an efficient way of managing the claim data.

It is expected that as the administration concludes the time spent on managing Group Member data will fluctuate. This data management is crucial for the actuarial experts to provide their advice and to manage payments to Group Members in accordance with clause 10.4 of the Scheme. Over the remainder of 2018, it is expected that the time spent on Group Member data will increase, then following the first tranche payment to Individual Assessment Group Members is it likely to taper off and then remain steady for the remainder of the administration.

**14.00 Engagement of Experts**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$1,631.30	1.07%	100.00%	0.00%
<b>Mar-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>Apr-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>May-17</b>	\$67.10	0.02%	100.00%	0.00%
<b>Jun-17</b>	\$2,781.90	0.99%	100.00%	0.00%
<b>Jul-17</b>	\$5,926.80	2.55%	100.00%	0.00%
<b>Aug-17</b>	\$2,328.70	1.01%	100.00%	0.00%
<b>Sep-17</b>	\$13,484.90	5.88%	100.00%	0.00%
<b>Oct-17</b>	\$16,615.50	7.20%	92.34%	7.66%
<b>Nov-17</b>	\$6,652.80	3.28%	60.94%	39.06%
<b>Dec-17</b>	\$8,269.80	5.80%	83.10%	16.90%
<b>Jan-18</b>	\$1,978.90	1.31%	100.00%	0.00%
<b>Feb-18</b>	\$13,263.80	6.82%	100.00%	0.00%
<b>Mar-18</b>	\$2,451.90	1.41%	100.00%	0.00%
<b>Total</b>	<b>\$75,453.40</b>	<b>-</b>	<b>91.85%</b>	<b>8.15%</b>
<b>% of Total Costs</b>	<b>\$2.51%</b>	<b>-</b>	<b>-</b>	<b>-</b>

The work associated with experts has included drafting letters of instructions, preparation of materials to be briefed to the experts, correspondence between Maurice Blackburn and experts, preparation for conferences and attendances at conferences. The Administrators have collaborated when required and in relation to key decisions.

In the months of September 2017 and October 2017, Maurice Blackburn undertook work on behalf of the Administrators in seeking updated taxation advice from PricewaterhouseCoopers, updated actuarial advice from Finity as well as advice from Integrate Rehab, occupational therapists, on the Individual Assessment process in particular the assessment of future care needs.

In February 2018, Maurice Blackburn engaged Finity to provide updated advice on the estimated number of claimants, which involved providing updated instructions, correspondence between Finity and Maurice Blackburn and attendances at conferences.

Since February 2017, the time spent by the Administrators dealing with experts has varied from month to month. It is expected that this pattern will continue for the remainder of the administration and may increase toward the end of 2019 when actuarial and taxation advice will become an integral aspect of the Administrators' decisions about final payments and the size of contingency funds to be held to account for new registrations for the remainder of the administration.



**15.00 – Engagement of Costs Expert (no charge)**

	Total Hours	Work by lawyers (hours (%))	Work by non- lawyers (hours (%))
Feb-17	0	0.00%	0.00%
Mar-17	2.5	100.00%	0.00%
Apr-17	19.5	98.97%	1.03%
May-17	19.9	88.44%	11.56%
Jun-17	90.8	68.83%	31.17%
Jul-17	0.6	100.00%	0.00%
Aug-17	0	0.00%	0.00%
Sep-17	0	0.00%	0.00%
Oct-17	0.2	100.00%	0.00%
Nov-17	0	0.00%	0.00%
Dec-17	0	0.00%	0.00%
Jan-18	0.1	100.00%	0.00%
Feb-18	0.4	100.00%	0.00%
Mar-18	11.4	96.49%	3.51%
<b>Total</b>	<b>145.4</b>	<b>114.2</b>	<b>31.2</b>

This area of the administration encompasses all aspects of engaging with the independent costs expert, Ross Nicholas, in preparation for seeking approval of Administration Costs at hearings. Maurice Blackburn has elected not to seek payment for any work undertaken in engaging with Mr Nicholas. In total, during this period, there were 145.4 hours worked.

In March 2017, Mr Nicholas was engaged to prepare a report on Administration Costs for the June 2017 hearing. In April 2017, Maurice Blackburn liaised with Mr Nicholas in relation to his engagement and drafted a letter of instruction, which was provided to Mr Nicholas in May 2017. In May 2017, a brief was prepared and provided to Mr Nicholas. Mr Nicholas was also provided with access to the Online Database.

In June 2017, there was a significant increase in work undertaken by Maurice Blackburn to assist in providing information requested by Mr Nicholas for his report. This included numerous meetings and telephone conferences with Mr Nicholas to provide him with both high level and detailed information regarding the steps required to process an individual claim, the management of the Online Database, the management of files and information in relation to our billing procedures and practices. Additionally, the Administrators prepared various tables and summaries of the costs data for Mr Nicholas to analyse and as required would provide further material and direction when requested by Mr Nicholas.

In March 2018, the Administrators contacted Mr Nicholas to instruct him to commence work preparing a further costs report in preparation for the anticipated June 2018 hearing. This included senior lawyers at Maurice Blackburn spending two days with Mr Nicholas in Melbourne providing an update on administration work and progress during the Relevant Period.

**16.00 Preparing for and/or appearing in a Court Application**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$1,042.80	0.68%	100.00%	0.00%
<b>Mar-17</b>	\$15,324.10	5.29%	35.20%	64.80%
<b>Apr-17</b>	\$10,598.50	5.78%	40.45%	59.55%
<b>May-17</b>	\$59,121.70	19.16%	98.11%	1.89%
<b>Jun-17</b>	\$99,580.80	35.51%	92.27%	7.73%
<b>Jul-17</b>	\$292.60	0.13%	100.00%	0.00%
<b>Aug-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>Sep-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>Oct-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>Nov-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>Dec-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>Jan-18</b>	\$0.00	0.00%	0.00%	0.00%
<b>Feb-18</b>	\$0.00	0.00%	0.00%	0.00%
<b>Mar-18</b>	\$7,546.00	4.34%	100.00%	0.00%
<b>Total</b>	<b>\$193,506.50</b>	<b>-</b>	<b>85.60%</b>	<b>14.40%</b>
<b>% of Total Costs</b>	<b>6.45%</b>	<b>-</b>	<b>-</b>	<b>-</b>

This area of the administration relates to the preparation for and appearance at Court Applications. The Relevant Period covers the time spent by the Administrators in preparing for the June 2017 hearing. The June 2017 hearing was heard over two days, 14 June and 28 June 2017 and Maurice Blackburn filed two substantial affidavits in support of the Application.

Preparation of the affidavit material filed on behalf of the Administrators in advance of the Court Applications is the most significant aspect of time recorded under this task code. Any time spent on instructing and dealing with the independent costs expert is recorded under task code 15 and is not charged to the Scheme.

The Administrators made the decision to brief counsel, Zoe Hillman to appear at the June 2017 hearing as well as this current Application. Ms Hillman was briefed by Tammy Stanford and Jamie Dunsmore (the Applicants) to appear at the hearing of the proceeding from March to June 2015 as well as the application for settlement approval in June 2016, and she therefore has a detailed understanding of the background of the proceeding itself and the administration. Because of Ms Hillman's background in the matter there has been less time spent by the Administrators than there may otherwise have been had entirely new counsel been briefed. To the extent that involvement of counsel is needed, the Administrators intend to continue to brief Ms Hillman.

The time spent by the Administrators in preparing for and appearing at Court Applications will continue to spike in the periods leading up to any such application. However, the Administrators expect that as the administration progresses, the amount of work involved in these applications will taper off and the applications will become more straightforward.

**17.00 IT systems development and maintenance**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$7,760.50	5.10%	85.53%	14.47%
<b>Mar-17</b>	\$27,934.50	9.64%	95.96%	4.04%
<b>Apr-17</b>	\$20,213.60	11.02%	98.08%	1.92%
<b>May-17</b>	\$18,388.70	5.96%	97.68%	2.32%
<b>Jun-17</b>	\$2,559.70	0.91%	91.04%	8.96%
<b>Jul-17</b>	\$12,614.80	5.43%	90.87%	9.13%
<b>Aug-17</b>	\$21,960.40	9.54%	90.05%	9.95%
<b>Sep-17</b>	\$18,714.30	8.16%	77.88%	22.12%
<b>Oct-17</b>	\$28,766.10	12.47%	81.23%	18.77%
<b>Nov-17</b>	\$9,280.70	4.58%	83.63%	16.37%
<b>Dec-17</b>	\$12,258.40	8.59%	99.01%	0.99%
<b>Jan-18</b>	\$15,176.70	10.06%	98.80%	1.20%
<b>Feb-18</b>	\$15,965.40	8.21%	99.28%	0.72%
<b>Mar-18</b>	\$26,805.90	15.43%	100.00%	0.00%
<b>Total</b>	<b>\$238,399.70</b>	<b>-</b>	<b>92.24%</b>	<b>7.76%</b>
<b>% of Total Costs</b>	<b>7.94%</b>	<b>-</b>	<b>-</b>	<b>-</b>

Pursuant to clause 6 of the Settlement Protocol Maurice Blackburn has responsibility for developing and maintaining the Online Database. This Online Database holds all Group Member data across the four firms. This data ranges from contact details, doctors and surgery details, eligibility details, election details, liens details, interests of third parties such as Centrelink, employment status, Individual Assessment progress and payment details.

In developing and maintaining the Online Database Maurice Blackburn works closely with its own internal business analysts and developers. The time and costs associated with task code 17 relate to Maurice Blackburn working with and instructing the business analysts and developers.

Although clause 13.1 of the Scheme provides for the costs of litigation technology consultants to be paid at a rate of \$240 per hour, no time spent by Maurice Blackburn's technology staff have been claimed as Administration Costs. Since February 2017, Maurice Blackburn's technology staff have worked a total of 1,500 – 2,000 hours in developing the bespoke IT systems that support the administration of the settlement, in addition to the significant amounts of time that they had spent before February 2017 (as described at [21]-[22] of the 8 June 2017 Affidavit).

The role of the business analyst is to work with Maurice Blackburn to define and document the needs and requirements of the administration, in order to facilitate the development of a solution. The business analyst is then responsible for taking the defined requirements and translating these into more detailed technical requirements, which are then communicated to the developer. Throughout the development process and subsequent testing of a solution, it is the role of the business analyst to ensure that the requirements continue to be met so that the solution remains in line with the expectations of Maurice Blackburn.

The developer is then tasked to design, build, and subsequently maintain technical applications and solutions communicated to them by the business analyst. The technical aspects of the role include writing code, testing and modifying systems, fault diagnosis, bug fixes, and general support, as well as advice on any technical limitations that a solution may encounter.

The reason both of these roles are necessary is that the developer is required as their technical skills and expertise are necessary for the design, build and implementation of any solution involving systems and applications. On the other hand, the business analyst is required as an intermediary between the developer and Maurice Blackburn, as their knowledge and understanding of processes ensures the requirements are met by the solution designed. Without the work of a business analyst, the risk arises that business requirements are inadequately defined or ineffectively translated in technical requirements, and the solution delivered by the developer will not meet expectations.

In order to implement a development or amendment to the Online Database, the steps are as follows:

1. Maurice Blackburn communicate the need to the business analyst, including information regarding the requirements;
2. The business analyst discusses this briefly with the developer, including estimate of time involved in the development;
3. The business analyst then communicates the scope and development of work involved to Maurice Blackburn;
4. Maurice Blackburn undertakes a costs benefit analysis as to whether the need for the development is such that the time is justified;
5. If it is decided to proceed with the development Maurice Blackburn communicates this to the business analyst;
6. The business analyst then drafts a 'mock up' of these changes and provides this to Maurice Blackburn to review and provide feedback, and to ensure the needs and expectations are understood;
7. Once Maurice Blackburn has provided confirmation to the business analyst, they document these requirements in more detail and communicate this to the developer;
8. The developer then designs and builds the requirement into the 'test environment' of the Online Database;
9. Interactions will continue between the business analyst and the developer as the business analyst tests the new solutions and identifies any issues;
10. Once any identified issues are resolved, the business analysts liaise with Maurice Blackburn to update them on the progress of the development;
11. Maurice Blackburn spends time reviewing and testing the solutions and provides any necessary feedback; and
12. Once all feedback issues are resolved, the developer deploys the changes into the 'live' Online Database.

Since February 2017, significant time has been spent by Maurice Blackburn on the development of the ability within the Online Database to manage the Individual Assessment data to allow for the change in the estimated recovery percentage and the payment of compensation to Group Members in tranches. This was an extremely complex task and involved consideration of various deductions such as interim payments, repayments to Centrelink and the point at which the recovery percentage pro rata would be applied. During the consultation and development phase of this aspect of the Online Database, Maurice Blackburn consulted with the actuarial expert in order to ensure that the data being captured and the way this data was captured would allow them to develop their modelling and analysis for the purpose of clause 10.4 of the Scheme. The failure to capture and maintain accurate Group Member data presents a significant risk to the administration, so although the time spent on this aspect of the administration is significant, it is considered to be essential to ensure the efficient and accurate management of all Group Member data and therefore the administration of the Scheme as a whole. The benefit of this development has been evident when Maurice Blackburn was recently required to provide a complete data set

to the actuarial experts. This was able to be done quickly and accurately without the need for any manual handling or manipulating of data which involves risk of error.

Other major aspects of this area work have included:

- a) Developing the ability for the Assessors to securely access the Online Database and complete their assessments directly into it;
- b) Developing the ability to track the progress of the Individual Assessments by Group Member; and
- c) Allowing secure access to all features of the Online Database to the four firms.

There were spikes in this area of work in October 2017 as the Administrators worked to finalise the Individual Assessment process and associated IT infrastructure, and in March 2018 as the Administrators made a concerted effort to complete the first 100 Individual Assessments in order to obtain actuarial advice.

The major aspects of the Online Database development and management have now been completed. It is expected that the time spent on this aspect of the administration will taper off for the remainder of the administration. There will be ongoing work associated with payments to Group Members and general support and troubleshooting but this is not expected to be at the same level as the time spent over the Relevant Period.



**18.00 Financial / accounting**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$2,436.50	1.60%	77.78%	22.22%
<b>Mar-17</b>	\$4,546.30	1.57%	49.25%	50.75%
<b>Apr-17</b>	\$4,478.10	2.44%	31.70%	68.30%
<b>May-17</b>	\$8,574.50	2.78%	18.70%	81.30%
<b>Jun-17</b>	\$11,944.90	4.26%	30.54%	69.46%
<b>Jul-17</b>	\$3,397.90	1.46%	23.08%	76.92%
<b>Aug-17</b>	\$7,658.20	3.33%	39.83%	60.17%
<b>Sep-17</b>	\$5,602.30	2.44%	23.08%	76.92%
<b>Oct-17</b>	\$5,284.40	2.29%	40.00%	60.00%
<b>Nov-17</b>	\$13,449.70	6.64%	73.81%	26.19%
<b>Dec-17</b>	\$2,877.60	2.02%	52.14%	47.86%
<b>Jan-18</b>	\$5,281.10	3.50%	60.89%	39.11%
<b>Feb-18</b>	\$4,296.60	2.21%	28.70%	71.30%
<b>Mar-18</b>	\$1,959.10	1.13%	29.63%	70.37%
<b>Total</b>	<b>\$81,787.20</b>	<b>-</b>	<b>39.92%</b>	<b>60.08%</b>
<b>% of Total Costs</b>	<b>2.72%</b>	<b>-</b>	<b>-</b>	<b>-</b>

This area of the administration encompasses the processing of disbursement invoices and the overall management of the administration funds in accordance with clauses 10.2 and 10.3 of the Scheme.

In relation to processing disbursement invoices, once an invoice is received from a provider, a search is undertaken on Maurice Blackburn's database to ensure the invoice has not previously been received and paid. The invoice is saved on Maurice Blackburn's internal database and then sent to the Finance department for processing. The Finance department sends the invoice to a senior lawyer of Maurice Blackburn for approval. In some instances the senior member seeks further information before approving an invoice. Once the senior member approves the invoice, our Finance department process the payment. These steps undertaken by our senior lawyer are billed as 'no charge' or are not recorded against the file.

The second element of this area of work involves the overall management of the administration funds in accordance with clauses 10.2 and 10.3 of the Scheme. This includes working closely with Maurice Blackburn's Finance team to ensure the accounts are reconciled on a monthly basis.

Overall, these costs have remained fairly consistent over the Relevant Period especially in relation to the processing of disbursement invoices, however, there have been some spikes in these costs. In May 2017 there was an increase in the processing of disbursement invoices, reflected in the increased volume of medical records that were being requested and received for the purpose of eligibility determinations at that time. In June 2017 there was an increase in time spent on the file as a result of the initial reconciliation of the settlement transaction account and setting up a Tax File Number.

There was also an increase in November 2017 because a number of term deposits holding the settlement funds were expiring in December 2017. As such a proposal regarding the ongoing management of the settlement funds was prepared by senior members of Maurice Blackburn in

collaboration with Shine, which included a forecast of the overall progress of the administration and a projection of when various amounts of money were likely to be needed in order to ensure the settlement sums were re-invested correctly and in such a way that the Administrators struck a balance between availability of funds and maximising interest earned on the settlement funds.

Time spent on managing financial and account matters will taper off due to the minimal number of disbursement invoices that will need processing on an ongoing basis, but the time spent may fluctuate as a result of managing the investment of the settlement funds.

**19.00 Payments**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$298.10	0.20%	100.00%	0.00%
<b>Mar-17</b>	\$13,013.00	4.49%	86.35%	13.65%
<b>Apr-17</b>	\$18,461.30	10.06%	78.86%	21.14%
<b>May-17</b>	\$23,329.90	7.56%	71.18%	28.82%
<b>Jun-17</b>	\$23,108.80	8.24%	37.10%	62.90%
<b>Jul-17</b>	\$18,401.90	7.92%	46.51%	53.49%
<b>Aug-17</b>	\$17,818.90	7.74%	33.99%	66.01%
<b>Sep-17</b>	\$15,858.70	6.92%	25.20%	74.80%
<b>Oct-17</b>	\$19,460.10	8.44%	21.08%	78.92%
<b>Nov-17</b>	\$17,960.80	8.87%	19.15%	80.85%
<b>Dec-17</b>	\$20,570.00	14.41%	26.26%	73.74%
<b>Jan-18</b>	\$27,772.80	18.40%	23.38%	76.62%
<b>Feb-18</b>	\$25,369.30	13.04%	22.94%	77.06%
<b>Mar-18</b>	\$11,451.00	6.59%	58.01%	41.99%
<b>Total</b>	<b>\$252,874.60</b>	<b>-</b>	<b>38.28%</b>	<b>61.72%</b>
<b>% of Total Costs</b>	<b>8.42%</b>	<b>-</b>	<b>-</b>	<b>-</b>

As per clause 8.7 of the Scheme, once a Fast Track Resolution claim has been finalised and all liens have been resolved, payment can be made to Group Members. Fast Track Resolution payments are made to Group Members on a monthly basis.

The work done in relation to preparing for these payments is that once the Respondents' solicitors, Norton Rose Fulbright Australia (NRFA) confirm the resolution of the liens (which is ordinarily done in batches on a monthly basis), the Group Members are added to a payment tracking spreadsheet and payment details are entered into the Online Database. Correspondence is then sent to Group Members requesting their bank account details, excluding estate claims that are paid by cheque.

Once all the payment details have been provided, a payment schedule is created which includes all Group Members to be paid for the month as well as details of residual liens to be paid. The schedule is reviewed to ensure all details are correct and any anomalies in the bank account details are identified and corrected.

Maurice Blackburn and Shine then exchange schedules so that each firm can review the other firm's schedule. Maurice Blackburn then adds the payment details for Shine's Group Members into the Online Database. Once the schedules are finalised they are sent to the Administrators for approval in accordance with clause 8.5 of the Settlement Protocol. Following approval, a final letter is sent to Group Members advising them of the resolution of their claim and their pending payment. The schedules are then processed by Maurice Blackburn's Finance team in order to effect payment, which in most instances occurs by means of electronic funds transfer.

Following the processing of the payments, if any payments fail due to a Group Member providing incorrect bank details, the errors are corrected so that payment can be made in the next monthly payment cycle. For successful payments, the Online Database is updated to reflect that payment was made and letters are sent to lienholders to advise them of the residual lien payment.

Finally, a consolidated monthly payment schedule is updated with all completed payments which is then provided to NRFA for confirmation.

In addition to the monthly payment cycles, at times there have been individual or smaller batch payments. For example, following the approval of interim payments at monthly committee meetings, interim payments are paid to Group Members as soon as possible given their current financial position. In addition to this, due to the delay in making payment to Group Members with residual liens payable to Medicare as a result of delays in reaching agreement with Medicare as to a resolution process, the Administrators agreed that these Group Members could be paid outside the normal monthly payment cycle.

As can be seen from the above table, costs are generally steady over the Relevant Period, but do slightly fluctuate. Generally the amount of work (and therefore costs) involved in processing payments is directly correlated with the number of payments to be processed in any given month, due to the additional work in relation to obtaining bank details, corresponding with Group Members, and reviewing schedules. Additionally, if there is any individual or smaller batch payments this will add to an increase in work undertaken.

In March 2018 there was a significant decrease in costs associated with payments. The reason for this is that the vast majority of Group Members who have elected Fast Track Resolution have now been paid.

Once the Administrators commence making payments to Group Members who have undergone Individual Assessment, the volume of work required may increase to some extent, especially in relation to the first batch of 100 Individual Assessment payments to be made and continuing until the end of 2018. Over time the work required for processing Individual Assessment payments is expected to decrease and remain steady.

**20.00 DBH / LAM**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$2,712.60	1.78%	100.00%	0.00%
<b>Mar-17</b>	\$1,851.30	0.64%	96.43%	3.57%
<b>Apr-17</b>	\$5,791.50	3.16%	80.21%	19.79%
<b>May-17</b>	\$4,156.90	1.35%	43.62%	56.38%
<b>Jun-17</b>	\$2,492.60	0.89%	70.18%	29.82%
<b>Jul-17</b>	\$3,250.50	1.40%	57.58%	42.42%
<b>Aug-17</b>	\$1,844.70	0.80%	65.79%	34.21%
<b>Sep-17</b>	\$1,790.80	0.78%	81.58%	18.42%
<b>Oct-17</b>	\$2,391.40	1.04%	95.45%	4.55%
<b>Nov-17</b>	\$12,134.10	5.99%	74.54%	25.46%
<b>Dec-17</b>	\$3,356.10	2.35%	96.61%	3.39%
<b>Jan-18</b>	\$2,332.00	1.55%	100.00%	0.00%
<b>Feb-18</b>	\$2,521.20	1.30%	80.36%	19.64%
<b>Mar-18</b>	\$1,344.20	0.77%	90.91%	9.09%
<b>Total</b>	<b>\$ 47,969.90</b>	<b>-</b>	<b>76.48%</b>	<b>23.52%</b>
<b>% of Total Costs</b>	<b>1.60%</b>	<b>-</b>	<b>-</b>	<b>-</b>

This area of the administration encompasses Maurice Blackburn's role in overseeing and liaising with Duncan Basheer Hannon (DBH) and to a lesser extent liaising with Lempriere Abbott McLeod (LAM). The work undertaken in this area relates to tasks that do not fall within another specific category, for example, if DBH contacted Maurice Blackburn regarding a payment enquiry, this would generally fall under task code 19, above.

In relation to DBH, the main tasks undertaken by Maurice Blackburn have been training and providing guidance to DBH in relation to the various stages involved in processing claims under the Scheme, this has included providing training in person and via telephone conference, providing procedure manuals, responding to enquiries from DBH regarding specific aspects of the settlement, and reviewing work undertaken by DBH and providing feedback, for example, the preparation of an Eligibility Coversheet or an Individual Assessment questionnaire. Maurice Blackburn have also liaised with DBH in relation to monitoring the overall progress of claims to ensure all claims are progressing and general DBH Group Member enquiries.

At times, Maurice Blackburn has also communicated with LAM regarding various aspects of the administration, including the Individual Assessment processes, the provision of procedure manuals, general LAM Group Member enquiries, and accessing the Online Database.

Overall, the costs have remained fairly steady over the Relevant Period. From April 2017 to May 2017 there was an increase in the work performed. At this time, Maurice Blackburn was liaising with DBH to provide information and guidance in relation to various administration processes and procedures, including the eligibility and liens processes. There was another increase in November 2017 when Maurice Blackburn and Shine conducted training sessions with DBH and LAM in respect of the Individual Assessment process. During this period, senior members of Maurice Blackburn and Shine attended the offices of DBH and LAM to provide training on the Individual Assessment process, specifically in relation to the preparation of Claim Books and undertaking the questionnaire for Individual Assessment Group Members.



**21.00 Shine General**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$1,993.20	1.31%	90.00%	10.00%
<b>Mar-17</b>	\$1,783.10	0.62%	100.00%	0.00%
<b>Apr-17</b>	\$1,623.60	0.88%	79.31%	20.69%
<b>May-17</b>	\$2,454.10	0.80%	100.00%	0.00%
<b>Jun-17</b>	\$2,647.70	0.94%	90.00%	10.00%
<b>Jul-17</b>	\$3,521.10	1.52%	90.32%	9.68%
<b>Aug-17</b>	\$1,241.90	0.54%	86.96%	13.04%
<b>Sep-17</b>	\$3,384.70	1.48%	100.00%	0.00%
<b>Oct-17</b>	\$14,422.10	6.25%	100.00%	0.00%
<b>Nov-17</b>	\$9,807.60	4.84%	100.00%	0.00%
<b>Dec-17</b>	\$2,336.40	1.64%	91.43%	8.57%
<b>Jan-18</b>	\$1,713.80	1.14%	96.43%	3.57%
<b>Feb-18</b>	\$2,742.30	1.41%	100.00%	0.00%
<b>Mar-18</b>	\$4,743.20	2.73%	100.00%	0.00%
<b>Total</b>	<b>\$ 54,414.80</b>	<b>-</b>	<b>96.89%</b>	<b>3.11%</b>
<b>% of Total Costs</b>	<b>1.81%</b>	<b>-</b>	<b>-</b>	<b>-</b>

The work recorded by the Administrators under this task code relates to dealings between Maurice Blackburn and Shine of a general nature that do not fall specifically within another task code. Alternatively, if for example there was a conference between the Administrators dealing with a multiple different issues, that time would be recorded under task code 21 rather than split among multiple task codes.

Over the Relevant Period Maurice Blackburn and Shine have worked closely together to ensure the efficiency and consistency of the administration. During the months of October 2017 and November 2017 there were weekly meetings between Maurice Blackburn and Shine to deal with the processes and precedents related to the Individual Assessments, dealings with third parties, estates and legal incapacity and work to be done by DBH and LAM.

In preparation for these meeting, either Maurice Blackburn or Shine would be responsible for preparing an agenda and then following the meeting, action items would be circulated identifying the work each member of Maurice Blackburn or Shine is responsible for.

Since January 2018 these meetings have been held on an ad hoc basis as required. It is expected that the time recoded under this task code will continue to vary from month to month depending on the stage of the administration and may spike at times for example towards the end of 2018 when the Administrators hope to be considering final payments to all Group Members who's claims have been assessed to that point.

From 2019 onwards it is expected that time recoded under this task code will taper off and then stabilise until the completion of the administration.

**22.00 Explants**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$86.90	0.06%	0.28%	0.00%
<b>Mar-17</b>	\$963.60	0.33%	3.05%	0.00%
<b>Apr-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>May-17</b>	\$0.00	0.00%	0.00%	0.00%
<b>Jun-17</b>	\$2,730.20	0.97%	8.65%	14.29%
<b>Jul-17</b>	\$6,450.40	2.78%	20.44%	41.78%
<b>Aug-17</b>	\$1,734.70	0.75%	5.50%	5.88%
<b>Sep-17</b>	\$1,446.50	0.63%	4.58%	20.69%
<b>Oct-17</b>	\$4,191.00	1.82%	13.28%	46.94%
<b>Nov-17</b>	\$6,644.00	3.28%	21.05%	55.41%
<b>Dec-17</b>	\$840.40	0.59%	2.66%	22.22%
<b>Jan-18</b>	\$3,449.60	2.29%	10.93%	3.08%
<b>Feb-18</b>	\$1,729.20	0.89%	5.48%	21.62%
<b>Mar-18</b>	\$1,296.90	0.75%	4.11%	41.38%
<b>Total</b>	<b>\$31,563.40</b>	<b>-</b>	<b>65.40%</b>	<b>34.60%</b>
<b>% of Total Costs</b>	<b>1.05%</b>	<b>-</b>	<b>-</b>	<b>-</b>

During the preparation for trial phase of the Proceeding, a number of explants were collected for the purpose of evidence. Since this time Maurice Blackburn has continued to store 92 explants and the Respondents have also retained 197 explants, of which 89 are from Maurice Blackburn's former clients or registrants and DBH continue to store 73 explants.

As was noted above in task code 04 of this report, during the course of the proceeding before settlement, both Maurice Blackburn and Shine each took steps to obtain some Group Members' explants because it was thought that the explants may be needed as evidence in an individual Group Member's claim in the class action (for example, in the settlement of the Casey v DePuy International Ltd class action (Federal Court of Australia proceeding ACD 10 of 2010) relating to a knee implant, the Group Member's explant constitutes important evidence in determining whether the Group Member is eligible to receive compensation). Following the settlement of the ASR Class Action, the Administrators decided that the explants should be retained until after eligibility had been determined for individual Group Members because it was possible (albeit unlikely) that the explant could be needed as evidence for eligibility determinations under clause 5 of the Scheme; for example, an analysis of the explant by a metrology or other expert could provide evidence about whether a revision would have been needed regardless of an infection under clause 5.3 of the Scheme.

The time spent by the Administrators associated with explants includes determining the process for managing the destruction or retention of explants, correspondence with Group Members and other individuals relating to their explants, communication with NRFA including an agreement on a process to destroy explants or return the explants to Group Members. Maurice Blackburn also reached an agreement with Professor William Walsh at UNSW for the destruction of explants or if necessary the sterilisation of explants, bearing in mind that the explants are often stored in hazardous chemicals and may contain biological matter such as bone or human tissue.

Once the Group Member's claim has been resolved and/or payment finalised, the Administrators arrange for the explant to be destroyed or delivered to those Group Members who wish to retain their explant.

It is expected that costs associated with explants will remain steady for the remainder of 2018 and then taper off significantly from 2019 until the conclusion of the administration.

**23.00 Estates**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$7,805.60	5.12%	80.38%	19.62%
<b>Mar-17</b>	\$5,797.00	2.00%	98.20%	1.80%
<b>Apr-17</b>	\$1,928.30	1.05%	69.77%	30.23%
<b>May-17</b>	\$11,866.80	3.85%	42.27%	57.73%
<b>Jun-17</b>	\$14,867.60	5.30%	87.22%	12.78%
<b>Jul-17</b>	\$8,300.60	3.57%	94.71%	5.29%
<b>Aug-17</b>	\$17,156.70	7.45%	95.31%	4.69%
<b>Sep-17</b>	\$19,003.60	8.29%	86.33%	13.67%
<b>Oct-17</b>	\$14,232.90	6.17%	89.82%	10.18%
<b>Nov-17</b>	\$11,327.80	5.59%	85.65%	14.35%
<b>Dec-17</b>	\$5,417.50	3.80%	95.50%	4.50%
<b>Jan-18</b>	\$1,815.00	1.20%	79.49%	20.51%
<b>Feb-18</b>	\$3,341.80	1.72%	73.17%	26.83%
<b>Mar-18</b>	\$2,655.40	1.53%	94.55%	5.45%
<b>Total</b>	<b>\$125,516.60</b>	<b>-</b>	<b>83.50%</b>	<b>16.50%</b>
<b>% of Total Costs</b>	<b>4.18%</b>	<b>-</b>	<b>-</b>	<b>-</b>

Maurice Blackburn and DBH currently have 56 registered claims made on behalf of deceased estates. In view of the clarification provided by Mr Sheahan QC at the settlement approval hearing on 24 June 2016 (see T53.7-16), these claims are classified as either deceased *pre*-registration or deceased *post*-registration.

The work undertaken by the Administrators in relation to managing estate claims is complex and time consuming and this is compounded by the fact that the representative of the estate is often elderly and/or dealing with the loss of a loved one.

Broadly, the work undertaken by the Administrators in relation to estate claims has involved communicating with the individual who is representing the claim on behalf of the estate, obtaining certified documents such as the death certificate, Will and Grant of Probate. Certified copies of these documents are required to manage the risk associated with the Administrators inadvertently dealing with someone who does not have authority to act on behalf of the estate or in circumstances where there may be a disputed will.

A significant amount of time has been taken up with managing those estate claims where a grant of probate had not yet been made. The Administrators made the decision that no claim should be resolved and paid in the absence of a Grant of Probate due to the risks to the Scheme associated with a challenge to the estate. The Administrators have noticed a general lack of understanding on behalf of those representing estates of the need for the Grant of Probate to be obtained before the claim could be processed and finalised. This resulted in significant time having to be spent by Maurice Blackburn explaining and assisting these individuals to progress the claims and obtain and provide the required documents.

In the months of August 2017 to November 2017 there was an increase in the time spent by Maurice Blackburn due in part to time spent in determining the processes and precedents and in part due to particularly difficult and time consuming dealings with the representatives of certain estates. In particular the Committee had to determine whether a claim on behalf of an estate

should be classified as pre- or post-registration in circumstances where the individual had tried unsuccessfully to register their claim before their death but ultimately the claim was not in fact registered until after they had passed away.

It is expected that the time spent by the Administrators will continue to stabilise as it has in the months of February and March 2018 and will continue to taper off for the remainder of the administration.



**24.00 Legal Incapacity**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$751.30	0.49%	93.33%	6.67%
<b>Mar-17</b>	\$3,590.40	1.24%	80.56%	19.44%
<b>Apr-17</b>	\$594.00	0.32%	33.33%	66.67%
<b>May-17</b>	\$8,627.30	2.80%	83.24%	16.76%
<b>Jun-17</b>	\$15,030.40	5.36%	91.46%	8.54%
<b>Jul-17</b>	\$10,863.60	4.68%	94.64%	5.36%
<b>Aug-17</b>	\$11,316.80	4.92%	95.22%	4.78%
<b>Sep-17</b>	\$17,391.00	7.58%	93.75%	6.25%
<b>Oct-17</b>	\$17,391.00	7.54%	92.90%	7.10%
<b>Nov-17</b>	\$19,716.40	9.73%	91.12%	8.88%
<b>Dec-17</b>	\$7,400.80	5.19%	87.18%	12.82%
<b>Jan-18</b>	\$2,220.90	1.47%	79.17%	20.83%
<b>Feb-18</b>	\$7,731.90	3.98%	96.69%	3.31%
<b>Mar-18</b>	\$11,598.40	6.68%	98.63%	1.37%
<b>Total</b>	<b>\$134,224.20</b>	<b>-</b>	<b>91.74%</b>	<b>8.26%</b>
<b>% of Total Costs</b>	<b>4.47%</b>	<b>-</b>	<b>-</b>	<b>-</b>

Maurice Blackburn and DBH currently have 24 claims by Group Members who are under a legal incapacity. Clause 12 of the Scheme requires the resolution of claims for those Group Members under a legal incapacity be approved by the Court, pursuant to rules 7.11 or 9.70 of the *Federal Court Rules 2011*.

The Administrators have worked together to develop the processes for managing these claims. The process and precedent documents developed are lengthy due to the multiple steps to be taken and the supporting documents required. It was determined by the Committee that approval by the Court would be required for both Fast Track Resolution elections and claims being individually assessed.

As with claims made on behalf of estates, the management of claims registered on behalf of Group Members under a legal incapacity can be complex and time consuming. The Administrators are required to take steps to firstly ensure there is medical evidence that confirms the Group Member (in)capacity and secondly that it is established who has authority to instruct the Administrators on behalf of the Group Member. This work includes communication with the Group Member and their contact person and their doctors, obtaining supporting documents such as medical reports, Enduring Power of Attorney documents or Orders appointing a financial administrator or providing information and instructions as to the steps to be taken and documents to be provided to the Administrators. Each of these steps can include multiple conversations between the Administrators and the contact person or doctor and multiple pieces of correspondence confirming the requirements and following up. Maurice Blackburn has four Group Members who lack capacity but do not have an Enduring Power of Attorney in place or Orders appointing a financial administrator. Managing these claims has involved assisting the contact person to undertake the necessary steps to obtain an Administration Order from the relevant State tribunal.

Once the issues of capacity and authority to act have been resolved, the Administrators take the necessary steps to process the Group Member's claim in accordance with the Scheme and Settlement Protocol.

In the months of June 2017 to November 2017 the Administrators spent a significant amount of time managing the initial stages of claims on behalf of Group Members under a legal incapacity as outlined above. Other than new registrations on behalf of Group Members with a legal incapacity, the Administrators have undertaken the bulk of this work.

Time spent by the Administrators in the month of March 2018 related to instructing Mr Baker on the process and expectations of providing independent advice for the approval process and developing the approval precedent documents.

Until the end of 2018, the Administrators expect that there will continue to be significant work involved in preparing claims for approval. These costs will then taper off from 2019 until the end of the administration.

The Administrators had hoped that approval would be able to be sought for these Group Members at the upcoming case management conference, however the Administrators were not able to obtain the supporting evidence needed for these approvals by the Court. The Administrators propose to seek these approvals at a separate time within the coming months.

**25.00 Other third party dealings [NRFA, Medicare etc.]**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$6,606.60	4.34%	98.86%	1.14%
<b>Mar-17</b>	\$8,433.70	2.91%	99.23%	0.77%
<b>Apr-17</b>	\$1,509.20	0.82%	91.67%	8.33%
<b>May-17</b>	\$3,383.60	1.10%	100.00%	0.00%
<b>Jun-17</b>	\$3,320.90	1.18%	97.96%	2.04%
<b>Jul-17</b>	\$10,005.60	4.31%	89.19%	10.81%
<b>Aug-17</b>	\$7,940.90	3.45%	95.87%	4.13%
<b>Sep-17</b>	\$4,635.40	2.02%	80.77%	19.23%
<b>Oct-17</b>	\$3,702.60	1.60%	69.70%	30.30%
<b>Nov-17</b>	\$3,892.90	1.92%	50.63%	49.37%
<b>Dec-17</b>	\$2,305.60	1.62%	89.74%	10.26%
<b>Jan-18</b>	\$6,305.20	4.18%	95.00%	5.00%
<b>Feb-18</b>	\$6,455.90	3.32%	98.10%	1.90%
<b>Mar-18</b>	\$9,204.80	5.30%	95.10%	4.90%
<b>Total</b>	<b>\$77,702.90</b>	<b>-</b>	<b>90.38%</b>	<b>9.62%</b>
<b>% of Total Costs</b>	<b>2.59%</b>	<b>-</b>	<b>-</b>	<b>-</b>

Since February 2017, the Administrators have liaised with multiple third parties to assist in the processing of claims. These third parties include Centrelink, Medicare, NRFA, various private health insurers, the Australian Taxation Office, the Department of Human Services and high-volume medical practices.

The work and costs involved in liaising with third parties has varied over time. In February and March 2017, Maurice Blackburn began engaging with Medibank Private regarding the process for reimbursements of liens and member referrals. During this period Maurice Blackburn also liaised with the Australian Taxation Office in relation to the process of obtaining taxation records for Individual Assessment Group Members as well as Centrelink in relation to reporting obligations regarding Group Members who have received an interim payment.

There was another increase in dealings with third parties in July and August 2017. During this period, there was an increase in correspondence with Medibank Private in relation to the process of Medibank referring members with ASR implants to the Administrators, as well as Maurice Blackburn managing and processing the referrals. During this period there was also an increase in communication with the Department of Human Services regarding repayments to Veteran Affairs Group Members and high-volume medical practices regarding processes for making high volume medical record requests.

Negotiations also began with Medicare in relation to a bulk payment agreement for reimbursement of liens for Group Members with residual liens (that fell outside the existing bulk payment agreement) during this period and continued to February 2018.

In January to March 2018, as well as the bulk payment agreement negotiations with Medicare, including liaising with NRFA, there were communications with Centrelink regarding Individual Assessment reporting obligations and obtaining Centrelink interest notices for Individual Assessment Group Members. Maurice Blackburn also engaged with various private health insurers regarding member entitlements to coverage of future medical expenses.

**26. Other**

	<b>Total Professional Fees (inc GST)</b>	<b>% of total monthly costs</b>	<b>Work by lawyers (hours (%))</b>	<b>Work by non-lawyers (hours (%))</b>
<b>Feb-17</b>	\$12,421.20	8.16%	63.36%	36.64%
<b>Mar-17</b>	\$30,070.70	10.37%	72.24%	27.76%
<b>Apr-17</b>	\$20,617.30	11.24%	71.31%	28.69%
<b>May-17</b>	\$25,231.80	8.18%	53.52%	46.48%
<b>Jun-17</b>	\$11,674.30	4.16%	41.03%	58.97%
<b>Jul-17</b>	\$16,684.80	7.18%	66.10%	33.90%
<b>Aug-17</b>	\$17,848.60	7.75%	67.89%	32.11%
<b>Sep-17</b>	\$15,868.60	6.92%	79.97%	20.03%
<b>Oct-17</b>	\$12,012.00	5.21%	76.22%	23.78%
<b>Nov-17</b>	\$10,689.80	5.28%	36.56%	63.44%
<b>Dec-17</b>	\$6,653.90	4.66%	30.04%	69.96%
<b>Jan-18</b>	\$11,337.70	7.51%	94.15%	5.85%
<b>Feb-18</b>	\$19,807.70	10.18%	73.12%	26.88%
<b>Mar-18</b>	\$13,974.40	8.05%	77.84%	22.16%
<b>Total</b>	<b>\$224,892.80</b>	<b>-</b>	<b>63.27%</b>	<b>36.73%</b>
<b>% of Total Costs</b>	<b>7.49%</b>	<b>-</b>	<b>-</b>	<b>-</b>

In broad terms, this area of the administration covers work performed that does not fall within one of the other categories or incorporates a number of different tasks into the one category so that it cannot be attributed to one task.

The nature of the administration requires that Maurice Blackburn manage and regularly update a master task list to monitor and track the progress of the various stages of the administration. This also includes a weekly meeting within Maurice Blackburn to discuss the progress of the settlement as a whole, implement key milestone targets, identify any hurdles, set priorities and discuss various issues in relation to the administration.

To this extent, there are also regular internal meetings with senior members of Maurice Blackburn to discuss various aspects of the administration, including interpreting aspects of the Scheme, seeking guidance regarding complex matters, discussing workflow and priorities, analysing statistics, discussing issues arising in the processing of claims and amendments to existing procedures.

Additional work undertaken in this category related to time spent establishing key milestones and projection targets, reviewing and actioning emails in relation to the overall administration progress and issues, and reviewing and analysing key administration documents.

There has also been work undertaken in relation to researching complex matters of the Scheme to determine the implications on Group Members claims, including cross-over claims with Workers Compensation and the National Disability Insurance Scheme.

Almost half (47.2%) of the work done under this category is not claimed as Administration Costs; in other words, no charge is applied to the time recorded. This "no charge" work included reviewing and amending Maurice Blackburn's monthly invoices for Administration Costs, providing feedback to team members regarding billing and amending invoices to add task codes, reviewing Shine and DBH invoices for Administration Costs, drafting and continually updating the billing protocol, internal conferences regarding the overall Scheme, paralegal training for specific aspects of the settlement, resourcing and task allocation, creating, managing, auditing and storage of files.

In February 2017 to May 2017 there was an increase in the amount of costs incurred, whereas there was a decline from June 2017 to January 2018, with a slight peak in February 2018 before another decline in March 2018. During the initial period, Maurice Blackburn worked intensively in order to ensure the administration was progressing as initially anticipated and processes were established accordingly which required regular internal meetings regarding these aspects of the settlement. Due to the initial work done, from June 2017 to January 2018, there was a lower volume of work required regarding establishment of procedures and instead during this period the majority of work related to monitoring the progress of the settlement. In February 2018 there was a slight peak which relates to the research undertaking in relation to the implications of the Workers Compensation cross-over issues as well as an increase in internal conferences in relation to analysing statistics and the overall progress of the administration.



**Certificate Identifying Annexure JKS-148**

No. NSD 213 of 2011

Federal Court of Australia

District Registry: New South Wales

Division: General

**Tammy Stanford** and Another

Applicants

**DePuy International Limited** and Another

Respondents

This is the annexure identified as **JKS-148** referred to in the affidavit of **JULIAN KLAUS SCHIMMEL** affirmed at Sydney on 1<sup>st</sup> June 2018.

Before me

A handwritten signature in dark ink, appearing to read 'Nina Abbey', written over a horizontal line.

Nina Abbey

Lawyer with a current practising certificate

## **Amended Settlement Scheme – ASR Class Action**

Version 4  
Dated XX June 2018

*Stanford and Dunsmore v DePuy International Ltd and Johnson & Johnson Medical Pty Ltd*  
Federal Court of Australia, Proceeding NSD 213 of 2011

## Overview and summary

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- A. This Settlement Scheme has been prepared in accordance with clause 6.3(a) of the Settlement Deed dated 31 March 2016.
- B. The Settlement Scheme creates the procedures and substantive requirements for the distribution of the Settlement Sum, including the payment of compensation to Group Members who are assessed as eligible to receive compensation.
- C. The Settlement Scheme will not be operative unless and until the Court makes the Approval Order.
- D. The Settlement Scheme has the following major elements:

Stage	Clause	Procedure
Registration	Clause 4	A Group Member who wishes to make a claim must register his or her intention to do so within prescribed timeframes
Eligibility determination	Clause 5	The Administrators will assess and determine the eligibility of Group Members to receive compensation under the Settlement Scheme
Fast Track Resolution	Clause 6	Eligible Group Members may elect to receive a Fast Track Resolution
Assessment of compensation	Clause 7	Where eligible Group Members do not elect to receive a Fast Track Resolution, the Administrators will assess and determine the amount of compensation to be paid to the Group Member
Liens	Clause 8	After Group Members are found to be eligible to receive compensation, the Administrators will take steps to resolve any Liens
Review rights	Clause 9	A Review may be sought by a Group Member who is dissatisfied with a determination that they are not eligible to receive compensation, or by an eligible Group Member who is dissatisfied with a determination regarding the amount of compensation that has been assessed

## **1. Definitions and interpretation**

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### **1.1 Definitions**

In this Settlement Scheme, the terms in the Dictionary in the Schedule to this Settlement Scheme have the meanings defined in that Dictionary.

### **1.2 Interpretation**

In this Settlement Scheme:

- (a) Headings may be used in interpreting the meaning of provisions of this Settlement Scheme.
- (b) Where the context permits, the singular includes the plural, and the plural includes the singular.
- (c) If a word or phrase is defined in this Settlement Scheme, its other grammatical forms have a corresponding meaning.
- (d) Specifying anything in this Scheme after the words “include”, “including” or “for example” or similar expressions, does not limit what else might be included.
- (e) A reference to a clause is a reference to a clause of this Settlement Scheme.
- (f) A reference to an agreement or document (including a reference to this Settlement Scheme) is to the agreement or document as amended, supplemented, novated or replaced.

## **2. Appointment and functions of the Administrators**

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### **2.1 Appointment of Maurice Blackburn and Shine as Administrators**

Subject to the Court’s approval, Maurice Blackburn and Shine will jointly perform the role of Administrators and, in doing so, Maurice Blackburn and Shine will each:

- (a) administer and implement the Settlement Scheme fairly and reasonably according to its terms, and with Maurice Blackburn’s and Shine’s duties to the Court to take priority over any obligations to individual Group Members;
- (b) cease to act for any individual Group Members who had retained either Maurice Blackburn or Shine before the Approval Order was made;
- (c) have the same immunities from suit as attach to the office of a judge of the Supreme Court of NSW.

### **2.2 Arrangements between the Administrators**

If appointed by the Court to perform the role of Administrators, Maurice Blackburn and Shine will:

- (a) work together cooperatively in order to jointly perform the role of Administrators; and
- (b) establish the procedures, arrangements, work practices and financial controls and approvals that are reasonably necessary in order to implement and administer the Settlement in accordance with this Settlement Scheme, and to do so as efficiently and inexpensively as is practicable.

### **2.3 Delegation of functions to DBH and LAM**

Subject to clause 2.4, the Administrators may in their absolute discretion delegate the following functions to DBH or LAM in respect of a subset of Group Members who were formerly clients of those firms:

- (a) preparation of Eligibility Books pursuant to clause 5.6;
- (b) preparation of Claim Books pursuant to clause 7.4;
- (c) resolution of Liens pursuant to clause 8; and
- (ca) subject to (d) – (h) below, any other functions that the Administrators determine may be delegated in order to promote the efficient administration of this Settlement Scheme

and for the avoidance of doubt, the following functions must not be delegated by the Administrators:

- (d) exercising any of the discretions in clauses 2.4(e), 4.6, 6.5, 9.4, 10.8 or 11.4;
- (e) making a determination regarding eligibility pursuant to clause 5.6(f);
- (f) sending a Notice of Eligibility to a Group Member pursuant to clause 5.8;
- (g) sending a Notice of Fast Track Assessment to a Group Member pursuant to clause 6.7(a); and
- (h) sending a Notice of Assessment to a Group Member pursuant to clause 7.3(g).

### **2.4 Responsibilities of DBH and LAM in their delegated functions**

If the Administrators delegate any functions pursuant to clause 2.3, DBH and LAM:

- (a) are subject to the same obligations, requirements and limitations that would apply pursuant to this Settlement Scheme to the Administrators if the relevant functions had not been delegated, including:
  - (i) the obligations in clauses 2.1(a) and 2.1(b);
  - (ii) any requirements arising from the implementation of clause 2.2(b); and
  - (iii) the restrictions in clauses 5.6(c), 7.5 and 7.6;
- (b) must work cooperatively with the Administrators in the performance of their delegated functions;



- (c) must promptly notify the Administrators if a Group Member purports to give DBH or LAM notice of:
  - (i) an election to receive a Fast Track Resolution pursuant to clause 6.3; or
  - (ii) a request for a Review pursuant to clause 9.2;
- (d) are to be paid for professional fees in accordance with clauses 13.1 or 13.2, as applicable, and (subject to clauses 2.4(e)-(g)) are to be paid their reasonable disbursements, with such costs to be treated as Administration Costs for the purpose of clause 13.1; and
- (e) must consult with and seek approval from the Administrators before invoking or relying on clauses 5.6(d)(ii), 5.6(d)(iii) or 7.5, and if DBH or LAM fail to do so the Administrators may in their absolute discretion decline to reimburse DBH or LAM for the costs of any report obtained pursuant to those clauses;
- (f) must consult with and seek approval from the Administrators before incurring a disbursement that is more than \$1,500, and if DBH or LAM fail to do so the Administrators may in their absolute discretion decline to reimburse DBH or LAM for such disbursements;
- (g) must take steps to minimise disbursements wherever possible.

## **2.5 Correction of errors**

The Administrators may at any time correct any error, slip or omission that occurred in the administration or implementation of the Settlement Scheme.

## **3. Implementation of the Settlement**

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### **3.1 Payment of the Reimbursement Payments and Applicants' Costs**

As soon as practicable after the Approval Order is made and the Respondents have paid the Settlement Sum into the Settlement Account pursuant to clause 3.1 of the Deed, the Administrators will:

- (a) pay to Stanford, Dunsmore, Webb and Beentjes the respective Reimbursement Payments that are approved by the Court in the Approval Order;
- (b) pay to Maurice Blackburn its share of the Applicants' Costs that are approved by the Court in the Approval Order;
- (c) pay to Shine its share of the Applicants' Costs that are approved by the Court in the Approval Order;
- (d) pay to DBH its share of the Applicants' Costs that are approved by the Court in the Approval Order;
- (e) pay to LAM its share of the Applicants' Costs that are approved by the Court in the Approval Order.

### 3.2 Application of the balance of the Settlement Sum

The balance of the Settlement Sum (including any interest earned on the Settlement Sum after it is paid by the Respondents pursuant to clause 3.1 of the Deed) will be applied and distributed as follows:

- (a) to Group Members in accordance with the remaining provisions of this Settlement Scheme; and
- (b) to the payment of Administration Costs in accordance with clause 13.

## 4. Registration of Group Members

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### 4.1 Registration of claims

If a Group Member wishes to make a claim for compensation under this Settlement Scheme, the Group Member must register her or his claim by completing an online registration form at the following website: [www.depuyclassaction.com.au](http://www.depuyclassaction.com.au).

### 4.2 Alternative methods of registration

If a Group Member does not have internet access or does not have the technological nous to complete an online registration form, the Administrators may permit the Group Member's registration to be effected by means other than online registration.

### 4.3 Deadlines for registration of claims

Depending on the date on which a Group Member underwent ASR Revision, the Group Member must register his or her claim in accordance with the applicable deadline:

<u>Timing of ASR Revision</u>	<u>Deadline</u>
30 April 2016 or earlier	31 October 2016
1 May 2016 or later	No later than six (6) months after the ASR Revision

### 4.4 Timing of Deemed ASR Revisions

For the purpose of clause 4.3:

- (a) Group Members who had a Deemed ASR Revision (as defined in clause 5.2(b)) will be taken to have undergone the ASR Revision at the time when the Required Revision (as defined in clause 5.2(b)(i)) was identified; and
- (b) in the event of uncertainty or confusion about the applicable registration date, the Administrators may exercise the discretion in clause 4.6, provided that the Group Member registered within a reasonable period of time after the circumstances of the Deemed ASR Revision were identified.

#### 4.5 Failure to register by the relevant deadline

Subject to clause 4.6, if a Group Member registers his or her claim after the applicable deadline in clause 4.3, the Group Member is not entitled to receive compensation pursuant to the Settlement.

#### 4.6 Discretion to waive late registrations

In their discretion the Administrators may accept a late registration (that is, a registration effected after the deadline in clause 4.3) if the Group Member has a reasonable excuse, including for the following reasons:

- (a) illness or incapacity; or
  - (b) a prolonged absence from their usual place of residence,
- except that the Administrators must not accept a late registration:
- (c) if it is received by the Administrators more than 12 months after the date on which it was required to be effected pursuant to clause 4.3; and
  - (d) regardless of clause (c), if it is received by the Administrators after 30 June 2023.

#### 4.7 Discretion to reject registration of claims relating to other types of hip implant

In their discretion the Administrators may reject a registration if there is a reasonable basis for the Administrators to conclude that the registrant was not implanted with an ASR Implant, and for the purpose of this clause the Administrators are deemed to have a reasonable basis to reach such a conclusion if the registrant informs the Administrators that:

- (a) their implant was surgically implanted on or after 1 September 2010 or before 1 July 2003; or
- (b) they were not implanted with an ASR Implant.

#### 4.8 Procedure where the Administrators exercise their discretion in clause 4.7

If the Administrators exercise the discretion in clause 4.7:

- (a) the Administrators will inform the registrant in writing that their registration has been rejected and in doing so the Administrators will set out the reasons why the registration was rejected;
- (b) subject to sub-clause (c) below, the Administrators are not required to take any further steps in order to assess or determine the registrant's claim and, in particular, the Administrators are not required to assess and determine the registrant's eligibility pursuant to clause 5 of this Settlement Scheme;
- (c) if a registration is rejected by the Administrators and the registrant subsequently provides medical records that satisfy the Administrators that an ASR Implant was implanted, the Administrators will reinstate the registration of the claim, and the Administrators will then proceed to assess the registrant's claim in accordance with the remaining provisions of this Settlement Scheme;

- (d) if sub-clause (c) is applies, for the purpose of clauses 4.3 and 4.6 the claim will be deemed to have been registered on the date when the registrant first registered their claim.

## 5. Assessment and determination of eligibility

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### 5.1 Eligibility Criteria

A Group Member is eligible to receive compensation pursuant to this Settlement Scheme if she or he satisfies the following “**Eligibility Criteria**”:

- (a) the Group Member was implanted with one or more ASR Implants in Australia; and
- (b) the Group Member underwent ASR Revision as defined in clause 5.2; and
- (c) the ASR Revision was carried out earlier than thirteen (13) years after the Group Member was implanted with the ASR Implant that was the subject of the ASR Revision; and
- (d) the ASR Revision was not an Ineligible Revision as defined in clause 5.3; and
- (e) the Group Member has not:
  - (i) opted out of the ASR Class Action; and/or
  - (ii) entered into a deed of release with the Respondents or any of their related entities in respect of an ASR Claim (whether in Australia or elsewhere).

### 5.2 ASR Revision

An “**ASR Revision**” means either:

- (a) an “**Actual ASR Revision**” in which one or more components of an ASR Implant were surgically removed; or
- (b) a “**Deemed ASR Revision**” in which ASR Revision is deemed to have occurred in the following circumstances, despite the fact that no components of an ASR Implant were surgically removed:
  - (i) the surgical removal of one or more components of an ASR Implant is reasonably necessary in order to alleviate the Group Member’s symptoms and/or reasonably necessary due to abnormal diagnostic test results (**Required Revision**); and
  - (ii) the Group Member is suffering medical comorbidities and:
    - A. as a result of those comorbidities, the performance of the Required Revision poses an unacceptable risk of death or an unacceptable risk of a substantial deterioration of the Group Member’s health; and

- B. in the absence of that risk, it is highly likely that the Required Revision would have been performed;
- (iii) the circumstances in sub-clause 5.2(b)(ii) are unlikely to change before the thirteenth (13<sup>th</sup>) anniversary of the Group Member being implanted with their ASR Implant,

and the following additional provisions apply if a Group Member had a Deemed ASR Revision:

- (c) for the purpose of clauses 5.1(c), a Deemed ASR Revision will be treated as having been carried out earlier than thirteen (13) years after the Group Member was implanted with their ASR Implant if:
  - (i) the Required Revision was identified as a result of medical investigations and/or examinations; and
  - (ii) those investigations and/or examinations were initiated by the Group Member's surgeon earlier than thirteen (13) years after the Group Member was implanted with their ASR Implant;
- (d) for the purpose of clauses 5.1(d) and 5.3, the provisions regarding Ineligible Revisions apply to the circumstances that gave rise to the Required Revision; in other words, a Deemed ASR Revision will be an Ineligible Revision if the surgical removal of one or more components of an ASR Implant was necessary (albeit not in fact carried out) as a result of:
  - (i) Fracture of the femoral neck; or
  - (ii) Post-Operative Infection; or
  - (iii) Unrelated Trauma.

### 5.3 Ineligible Revisions

An ASR Revision is an "**Ineligible Revision**" if it was performed in any of the following circumstances:

#### Fracture of the femoral neck

The ASR Revision:

- (a) was performed in respect of an ASR Resurfacing; and
- (b) occurred earlier than six months after the ASR Implant was implanted; and
- (c) was carried out as a result of a fracture of the Group Member's natural femoral neck, unless there is evidence that the fracture was caused by an adverse reaction to metal debris.

#### Post-Operative Infection

The ASR Revision:

- (a) occurred earlier than 547 days after the ASR Implant was implanted; and



- (b) was necessitated by Infection, unless the Group Member would have required ASR Revision in the near term regardless of the periprosthetic joint infection.

#### Unrelated Trauma

The ASR Revision:

- (a) was carried out as a result of a change in the alignment or fixation of one or more components of the ASR Implant due to the application of a high velocity external force in a sudden or unexpected manner; and
- (b) the Group Member otherwise would not have needed to undergo ASR Revision in the near term.

For the purpose of this clause, Unrelated Trauma is deemed to have occurred if:

- (c) radiological studies verify that there was a change in the position of any component or ancillary parts of the ASR Implant, or in its alignment or fixation; and
- (d) the Group Member's treating surgeon attributes the immediate cause of revision to a traumatic event which resulted in that change in position, alignment or fixation,

unless the Group Member would have required revision in the near term regardless of the traumatic event.

#### **5.4 Clarification regarding future ASR Revisions**

For the avoidance of doubt:

- (a) the Settlement is intended to compensate Group Members who undergo ASR Revision in the future, provided that those Group Members satisfy the Eligibility Criteria; and
- (b) in clauses 5.1 and 5.3, the use of the present or past tense (in words such as "is eligible", "underwent" or "was carried out") applies equally to ASR Revisions that occur in the future.

#### **5.5 Clarification regarding bilateral ASR Implants**

If a Group Member was implanted with bilateral ASR Implants (that is, an ASR Implant was implanted in both the left hip and the right hip):

- (a) the Group Member is eligible to receive compensation if she or he underwent ASR Revision in respect of either or both of the ASR Implants, provided that the Eligibility Criteria are satisfied in relation to at least one of the ASR Implants;
- (b) if a Group Member has undergone bilateral ASR Revision:
  - (i) the Group Member may elect to receive two Fast Track Resolutions; that is, one Fast Track Resolution for each of his or her hips; or
  - (ii) the Group Member may proceed to an assessment under clause 7 in relation to both hips, in which case the fact of bilateral ASR Revision

must be taken into account for the purpose of assessing the Group Member's compensation;

- (iii) unless clause 5.5(c)(ii) applies, the Group Member may not elect to receive a Fast Track Resolution in relation to one of his or her hips, and proceed to an assessment under clause 7 in relation to the other hip;
- (c) if a Group Member with bilateral ASR Implants has undergone unilateral ASR Revision and is determined to be eligible to receive compensation in respect of that ASR Revision:
  - (i) the Group Member in consultation with the Administrators may elect to defer the assessment of their compensation pursuant to clauses 6 or 7 for a reasonable period of time in order to assess whether ASR Revision may be needed in respect of his or her other hip, and clause 5.5(b) will apply if the Group Member undergoes a second ASR Revision before his or her compensation is assessed; and
  - (ii) if the Group Member:
    - A. does not defer their compensation assessment for his or her first ASR Revision; and
    - B. after having been paid compensation for the first ASR Revision, undergoes a second ASR Revision in respect of his or her other hip; and
    - C. is later found to be eligible in respect of the second ASR Revision; then:
      - D. in relation to the second ASR Revision, the Group Member may either elect to receive a Fast Track Resolution or proceed to an assessment of compensation under clause 7, regardless of how the Group Member's compensation was assessed for the first ASR Revision; and
      - E. if the Group Member proceeds to an assessment of compensation under clause 7 for the second ASR Revision, the Group Member's compensation for the second ASR Revision must take into account the compensation already paid to the Group Member for the first ASR Revision.

## **5.6 Process for determining eligibility**

The Administrators will assess and determine the eligibility of a Group Member pursuant to clause 5.1 in accordance with the following provisions:

- (a) the Administrators will check whether or not the Group Member has filed an opt out notice and, if so, will obtain a copy of the opt out notice;
- (b) the Administrators will provide to the Respondents an authority signed by the Group Member and the Respondents will within 14 days provide confirmation as to whether or not clause 5.1(e)(ii) applies to the Group Member;

- (c) the Administrators will obtain copies of the Group Member's contemporaneous medical records that are relevant to an assessment of the Eligibility Criteria;
- (d) in order to minimise Administration Costs associated with the requirements of this clause, the Administrators:
  - (i) will seek to rely only on contemporaneous medical records for the purpose of assessing the Eligibility Criteria that relate to a Group Member's medical history; and
  - (ii) may only seek clarification from the Group Member's treating doctor/s if the contemporaneous medical records are ambiguous as to the applicability of any of the Eligibility Criteria; for example it is unclear whether or not a Group Member would have needed ASR Revision in the near term regardless of Unrelated Trauma or Post-Operative Infection;
  - (iii) must not obtain a report or other evidence from a doctor who is not a Group Member's treating doctor, unless the Group Member's treating doctor is deceased or unwilling to provide clarification in accordance with clause (ii);
- (e) the Administrators will prepare an "**Eligibility Book**" which consists of the materials and information obtained pursuant to this clause for the purpose of assessing whether or not the Group Member satisfies the Eligibility Criteria;
- (f) a Senior Lawyer employed by one of the Administrators will review the Group Member's Eligibility Book and will make a determination as to whether or not the Group Member satisfies the Eligibility Criteria.

#### 5.7 **Additional provisions regarding the process for determining eligibility of Deemed ASR Revisions**

If a Group Member claims to have had a Deemed ASR Revision, the Administrators may do either or both of the following at any time before assessing and determining the eligibility of the Group Member:

- (a) request the Group Member, at her or his own expense, to provide copies of relevant contemporaneous medical records to the Administrators so that they can ascertain whether there are reasonable prospects that the Group Member will satisfy the Eligibility Criteria for the definition of a Deemed ASR Revision; and/or
- (b) request the Group Member to pay to the Administrators a bond for the costs of the Administrators obtaining contemporaneous medical records and/or a report from a doctor or doctors, with such bond to be returned to the Group Member if she or he is assessed as eligible to receive compensation,

and where the Administrators make a request pursuant to this clause:

- (c) if the Group Member fails to comply with the request, the Administrators may decline to assess and determine the eligibility of the Group Member until such time as the Group Member complies with the Administrators' request; or

- (d) if the Group Member fails to comply with repeated requests by the Administrators, the Administrators may exercise their discretion in clause 11.4(b).

#### **5.8 Notification of Group Members regarding their eligibility or otherwise**

After a determination is made as to whether or not a Group Member is eligible to receive compensation, the Administrators will promptly send to the Group Member a **"Notice of Eligibility"** in which the Administrators:

- (a) state whether or not the Group Member has been assessed as eligible to receive compensation under the Settlement Scheme;
- (b) if the Group Member was assessed as eligible to receive compensation, provide information to the Group Member in relation to their rights to receive a Fast Track Resolution under clause 6 or alternatively proceed to an assessment of compensation under clause 7, including information that will assist the Group Member to make a decision as to whether or not to accept the Fast Track Resolution; and
- (c) if the Group Member was assessed as ineligible to receive compensation, provide information to the Group Member in relation to their rights to seek a Review under clause 9 below.

#### **5.9 Clarification regarding steps required to be taken where a Group Member opted out or has otherwise resolved their claim**

For the avoidance of doubt, if and when the Administrators obtain information pursuant to clauses 5.6(a) and/or 5.6(b) which demonstrates that a Group Member is not eligible on the basis of clause 5.1(e), the Administrators:

- (a) are not obligated to obtain any further information or materials for the purpose of assessing and determining whether the Group Member satisfies the other Eligibility Criteria; and
- (b) may proceed to make a determination pursuant to clause 5.6(f) on the basis of the limited information obtained pursuant to clauses 5.6(a) and/or 5.6(b).

## **6. Fast Track Resolution**

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### **6.1 Application of this clause**

This clause 6 applies only to those Group Members who have been assessed as eligible pursuant to clause 5.

### **6.2 Fast Track Resolution**

A **"Fast Track Resolution"** is a single, standardised, lump sum payment of \$55,000.

The payment of the Fast Track Resolution does not affect the Group Member's rights to have their Residual Liens paid from the Settlement Sum in accordance with clause 8, in addition to the Fast Track Resolution. Otherwise, the Fast Track Resolution is paid in full and final satisfaction of the Group Member's claim.

*Note:* The intent of the Fast Track Resolution is that the standardised sum is available on an expedited basis. It includes no allowance for economic loss. It may not be suitable for Group Members whose ASR Revision caused a serious permanent disability or any significant loss of wages or income.

### **6.3 Election to receive a Fast Track Resolution**

Within 42 days after the Administrator sends a Notice of Eligibility to a Group Member, an eligible Group Member may elect to receive a Fast Track Resolution by giving written notice to the Administrators.

### **6.4 Failure to make an election to receive a Fast Track Resolution**

If a Group Member does not give written notice to the Administrators within 42 days as required by clause 6.3, the Group Member will be deemed to have declined the Fast Track Resolution.

### **6.5 Discretion to accept late notification of an election to receive a Fast Track Resolution**

The Administrators may in their absolute discretion accept late notification of an election by a Group Member to receive a Fast Track Resolution, subject to the following:

- (a) a late election must not be accepted by the Administrators after a Group Member's Claim Book has been referred to an Assessor; and
- (b) if a late election is accepted by the Administrators after they (or their delegates) have commenced preparing a Group Member's Claim Book, the Administrators may in their absolute discretion reduce the Group Member's Fast Track Resolution in order to take into account any Administration Costs that have been incurred in preparing the Claim Book, including:
  - (i) professional fees in an amount no more than \$5,000; and
  - (ii) disbursements.

### **6.6 Claims by the estates of deceased Group Members**

The following provisions apply to claims by the estates of deceased Group Members:

- (a) a claim may be made by the estate of a deceased Group Member;
- (b) the estate must elect to receive a Fast Track Resolution, discounted to \$40,000 in full and final satisfaction of the estate's claim for all heads of damages (subject to the resolution of Liens pursuant to clause 8); and
- (c) the estate is not entitled to proceed to an assessment under clause 7;

### **6.7 Consequences of electing to receive a Fast Track Resolution**

If a Group Member elects to receive a Fast Track Resolution:

- (a) as soon as practicable after receiving notice from the Group Member, the Administrators will:



- (i) send to the Group Member a “**Notice of Fast Track Assessment**” confirming the Group Member’s entitlement to receive the Fast Track Resolution;
  - (ii) take steps to determine and resolve the Group Member’s Liens in accordance with clause 8;
- (b) the Group Member will be paid as soon as possible after the resolution of his or her Liens pursuant to clause 8;
- (c) the Group Member will be:
  - (i) entitled to the benefit of their claim being proportionately grossed up in the event that there are surplus funds, as described in clause 10.7(a); and
  - (ii) immune from any proportionate reduction of their claim, as described in clause 10.7(b).

#### **6.8 Consequences of declining to receive a Fast Track Resolution**

If a Group Member declines to receive a Fast Track Resolution:

- (a) the Group Member’s compensation entitlements will be assessed and determined in accordance with clause 7;
- (b) subject to clause 7.2(c), the Group Member faces a risk of receiving less compensation than the Fast Track Resolution;
- (c) the Group Member faces a risk of a proportionate reduction of their Assessed Compensation Amount pursuant to clause 10.7(b); and
- (d) payment is likely to take longer than if the Group Member elected to receive a Fast Track Resolution.

#### **6.9 Discretion to accept late notification to withdraw election to receive a Fast Track Resolution**

If a Group Member:

- (a) has elected to receive a Fast Track Resolution pursuant to clause 6.3; and
- (b) subsequently notifies the Administrators that they wish to withdraw the election to receive a Fast Track Resolution,

the Administrators may in their absolute discretion accept this late notification to withdraw the election to receive a Fast Track Resolution, subject to clause 6.10.

#### **6.10 Circumstances where late notification to withdraw election to receive a Fast Track Resolution must not be accepted**

If the Administrators have:

- (a) resolved all Liens in relation to the Group Member’s claim; or
- (b) paid the Group Member the Fast Track Resolution,

the Administrators must not accept the late notification to withdraw the election to receive the Fast Track Resolution pursuant to clause 6.9.

## **7. Assessment of compensation**

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### **7.1 Application of this clause**

This clause 7 applies only to those Group Members who:

- (a) have been assessed as eligible pursuant to clause 5; and
- (b) declined to receive a Fast Track Resolution pursuant to clause 6.

### **7.2 Legal principles for the assessment of claims**

Group Members' claims will be assessed and determined:

- (a) according to the provisions and principles in Part VIB of the CAC Act, as in force at 1 May 2016; and
- (b) on the basis that the Group Member is only entitled to compensation for loss or damage that was caused by their ASR Revision or the circumstances requiring ASR Revision,

except that:

- (c) subject to the overriding operation of clause 10.7(b), a Group Member's non-economic loss must be assessed as no less than \$40,000.

### **7.3 Process for determining Group Members' claims**

The Administrators will assess and determine Group Members' claims according to the following procedure:

- (a) the Administrators will appoint a number of Assessors to a "**Panel**" for the purpose of assessing and determining Group Members' claims;
- (b) the Administrators will prepare "**Claim Books**" in accordance with clause 7.4;
- (c) the Administrators will allocate a Group Member's Claim Book to an Assessor who is randomly selected from the Panel;
- (d) if, after reviewing the Group Member's Claim Book, the Assessor considers that additional information or materials are needed in order to complete the assessment, the Assessor will inform the Administrators, who will:
  - (i) work cooperatively with the Assessor in order to address the issues raised by the Assessor; and
  - (ii) to the extent that it is necessary, supplement the Group Member's Claim Book;
- (e) the Assessor may also choose to confer with the Group Member or their personal or other representative;
- (f) the Assessor will then:

- (i) make a determination as to the amount of compensation that the Group Member is assessed as being entitled to receive pursuant to this Settlement Scheme; and
  - (ii) prepare and provide to the Administrators a brief statement of reasons for the Assessor's determination, including details of the amounts assessed under all heads of damages;
- (g) after receiving an Assessor's determination and statement of reasons, the Administrators will promptly send to the Group Member a **"Notice of Assessment"** in which the Administrators:
- (i) provide information to the Group Member about the determination of their entitlements under this Settlement Scheme;
  - (ii) enclose a copy of the Assessor's statement of reasons; and
  - (iii) provide information to the Group Member in relation to their right to seek a Review under clause 9.

#### 7.4 Preparation of Claim Book

For each eligible Group Member, the Administrators will prepare a **"Claim Book"** comprising information and materials that will enable an assessment of the Group Member's compensable loss or damage, and for the purpose of preparing the Claim Book the Administrators will obtain the following insofar as it is relevant and applicable to the Group Member's losses:

- (a) instructions and information from the Group Member;
- (b) information from any other person such as a family member or friend of the Group Member;
- (c) contemporaneous medical records, to the extent that those records have not already been obtained pursuant to clause 5.6(c);
- (d) tax returns and other tax, accounting or financial documents;
- (e) employment records or other information from the Group Member's employer/s;
- (f) invoices regarding any treatment or other expenses incurred by the Group Member;
- (g) subject to clause 7.7, information or records held by the Respondents as to the details of any payments made to the Group Member pursuant to the ASR Reimbursement Programme;
- (h) subject to clauses 7.5 and 7.6, reports from:
  - (i) a treating doctor;
  - (ii) an **"Independent Expert"**, being a medical expert (such as an orthopaedic surgeon or rehabilitation physician) or allied health expert (such as an occupational therapist or physiotherapist); or

- (iii) a forensic accounting expert.

#### **7.5 Restrictions on reports to be obtained for a Group Member's Claim Book**

In order to minimise Administration Costs associated with the requirements of this clause:

- (a) the Administrators must only obtain a report from a treating doctor or Independent Expert if it would otherwise be impossible to reliably assess the Group Member's losses under any particular head of damages;
- (b) where possible, the Administrators must seek to obtain a report from a treating doctor rather than an Independent Expert; for example, a report may be obtained from an Independent Expert if the Group Member's treating doctor is deceased or unwilling to provide a report, or the treating doctor does not have the relevant expertise to provide a report that addresses the issues raised by the Administrators;
- (c) unless it is required in exceptional circumstances, the Administrators must not obtain more than one medical report (whether from a treating doctor or Independent Expert) in relation to a Group Member;
- (d) the Administrators will only obtain a report from a forensic accounting expert if it would otherwise be impossible to reliably assess the Group Member's economic loss,

however the restrictions in this clause do not apply to the Applicants to the extent that reports or other evidence from treating doctors, Independent Experts or forensic accountants have already been prepared for the purpose of the ASR Class Action.

#### **7.6 Engagement of Independent Experts and forensic accounting experts**

For the purpose of clauses 7.4(h) and to the extent that it is necessary and appropriate to obtain a report from an Independent Expert or a forensic accounting expert:

- (a) the Administrators may establish a list of one or more approved experts in one or more areas of expertise;
- (b) to the extent that the Administrators have established such a list of approved experts, those approved experts must be engaged in preference to other experts, except in exceptional circumstances.

#### **7.7 Cooperation of the Respondents**

In order to enable the Administrators to give effect to clause 7.4(g), upon receipt of an authority signed by a Group Member the Respondents will provide (or will instruct Crawford to provide) details held by the Respondents or Crawford of any payments made to the Group Member pursuant to the ASR Reimbursement Programme.

#### **7.8 Constitution of the Panel**

For the purpose of ensuring the efficient and expeditious processing and resolution of claims, the Administrators may at any time:

- (a) appoint additional Assessors to the Panel for the purpose of clause 7.3(a); or

- (b) remove an Assessor from the Panel if he or she becomes unavailable or otherwise fails to carry out assessments pursuant to clause 7.3(f) in a reasonably timely manner.

## **7.9 Role of Assessors**

Assessors appointed to the Panel:

- (a) will act as independent arbitrators and not as counsel briefed to act for any individual Group Members or the Administrators;
- (b) have the same immunities from suit as attach to the office of a judge of the Supreme Court of NSW.

## **8. Liens**

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### **8.1 Application of this clause**

This clause 8 applies only to those Group Members who have been assessed as eligible pursuant to clause 5.

### **8.2 Responsibility for and resolution of Assumed Liens**

The Respondents will be responsible for the negotiation and resolution of Assumed Liens asserted by Qualified Lienholders that are identified by the Group Member in accordance with clause 8.4, and in doing so the Respondents will take all reasonable steps to ensure that there is no reasonably avoidable delay and that Assumed Liens are resolved expeditiously.

### **8.3 Responsibility for and resolution of Residual Liens**

All Residual Liens which are not the responsibility of the Respondents under clause 8.2 will be the responsibility of the respective Group Members affected by any such Residual Liens and (subject to the other requirements of this clause 8) will be paid from the Settlement Sum.

### **8.4 Identification and notification of Liens and cooperation of Group Members**

As soon as is practicable and appropriate after a Group Member has elected to receive a Fast Track Resolution or the time specified in clause 6.3 for making such an election has lapsed, the Administrators will assist the Group Member:

- (a) to identify all Qualified Lienholders that have paid for or asserted an Assumed Lien and the Administrator and Group Member will:
  - (i) provide to the Respondents as soon as reasonably practicable relevant documents and/or information concerning Assumed Liens, including but not limited to any documents required for the Respondents to consider their position on payment of a Lien relating to the Group Member;
  - (ii) provide all reasonable co-operation to the Respondents in resolving Assumed Liens;



- (iii) notify the Respondents of proposed payments to a Group Member which may trigger payment of a Lien; and
- (b) to identify:
  - (i) all Other Lienholders that have paid for or asserted a Residual Lien; and/or
  - (ii) whether any repayment may need to be made to Centrelink pursuant to the *Social Security Act 1991* (Cth).

#### **8.5 Application of the BPA**

If a Lien is asserted by Medicare:

- (a) the BPA will be applicable to the payment to each Group Member under the Settlement Scheme;
- (b) the Administrators and Respondents will cooperate in relation to any necessary amendments or transition of the BPA for the BPA to apply to the Settlement Scheme.

#### **8.6 Cooperation of the Respondents**

The Respondents will provide all reasonable co-operation to Group Members and/or the Administrators where the Respondents' negotiation and resolution of Assumed Liens is likely to:

- (a) impact on a Group Member's ongoing rights or entitlements under a statutory or other scheme;
- (b) give rise to Residual Liens which a Group Member is obligated to pay.

#### **8.7 Final payment to Group Members**

No final payment is to be made to a Group Member under the Settlement Scheme until the earlier of the following:

- (a) 28 days after the amount of the Group Member's Assumed Liens have been determined and notified to the Respondents; or
- (b) the Group Member's Assumed Liens have been resolved,

and further, no final payment is to be made to a Group Member under the Settlement Scheme until after the following:

- (c) any necessary statutory clearances (for example under the *Social Security Act 1991* (Cth)) have been obtained; and
- (d) to the extent that it is required by statute or contract, Residual Liens have been resolved

#### **8.8 Other provisions regarding Assumed Liens**

For the purpose of this clause 8:

- (a) nothing in this Settlement Scheme is intended to create a right of reimbursement where none would otherwise exist under applicable law;
- (b) the amount of compensation payable to a Group Member is not controlling on the amount to be paid for any Assumed Lien for which the Respondents are responsible under this Settlement Scheme.

## **8.9 Lien Disputes**

If:

- (a) the Respondents and a Group Member (or the Administrators on behalf of a Group Member) are unable to resolve a Lien Dispute relating to that Group Member; or
- (b) the Administrators, the Applicants, a Group Member or the Respondents unreasonably delay the resolution of an Assumed Lien,

then:

- (c) within ten (10) Business Days of an impasse being reached or there being unreasonable delay, the Administrators or the Respondents will refer the Lien Dispute for determination by an independent barrister who is appointed by agreement between the Respondents and the Administrators;
- (d) a determination by an independent barrister is final and binding on the Respondents, the Group Member and the Administrators except as to an error of law;
- (e) the independent barrister's costs will be paid by either the Respondents or the Administrators, depending on whether the determination is, on balance, against the interests of the Respondents or the Group Member.

## **8.10 Group Members indemnify the Respondents for Residual Liens**

Each Group Member indemnifies and holds harmless the Released Parties (as defined in clause 1.1 of the Deed) from and against any and all damages, losses, costs (including, but not limited to, court costs), expenses (including legal fees and expenses), fines, penalties or liabilities incurred or suffered by, or imposed on, any Released Party in connection with, arising out of or resulting from:

- (a) any claim made or asserted at any time against the Respondents, or any other Released Party with respect to any payment made to such Group Member (or the right to receive any such payment under the Settlement Scheme) by any person at any time holding or asserting any Residual Liens, and/or
- (b) the failure to properly provide notifications or information in relation to Liens as required by this Deed.

## **8.11 Group Members indemnify the Administrators**

If a Group Member has a legal obligation by reason of receiving compensation pursuant to this Settlement Scheme, whether under statute or contract or otherwise to any agency, compensation payer or insurer, to pay or repay a sum from their compensation payment, the Group Member indemnifies and holds harmless the

Administrators (and/or their delegates) from and against any claim associated with that legal obligation.

## **9. Review of determinations**

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### **9.1 Right to seek a Review**

A Group Member has the right to seek a “**Review**” of any of the following determinations:

- (a) a determination under clause 5 that the Group Member is not eligible to receive compensation (**Eligibility Review**);
- (b) a determination under clause 7 regarding the amount of compensation (**Compensation Review**).

### **9.2 Process for seeking a Review**

If a Group Member wishes to seek a Review, she or he must do so:

- (a) by giving written notice to the Administrators no later than 28 days after the Administrators sent a Notice of Eligibility or Notice of Assessment (as applicable) to the Group Member; and
- (b) such notice must state with precision the components of the assessment which the Group Member disputes and the reasons why the Group Member disputes those components of the assessment.

### **9.3 Failure to seek a Review**

If a Group Member does not give written notice to the Administrators within 28 days as required by clause 9.2, the Group Member will be deemed to have accepted their Notice of Eligibility or Notice of Assessment (as the case may be).

### **9.4 Payment of a bond for Reviews**

Subject to clause 13.3, where a Group Member seeks a Review, the Administrators may, in their absolute discretion:

- (a) require that the Group Member pay to the Administrators a bond not exceeding \$1,000 for the costs of the Review; and
- (b) if the Group Member fails to pay the bond within 14 days of receiving such a request from the Administrators, treat the Group Member's request for a Review as void and as having no effect.

### **9.5 Process for Reviews**

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

- (a) the Administrators will engage a Review Assessor;

- (b) the Administrators will provide the following materials to the Review Assessor:
  - (i) the Group Member's written notice by which he or she requested the Review; and
  - (ii) either of the following, depending on the nature of the Review that is sought by a Group Member:
    - A. Eligibility Book and Notice of Eligibility; or
    - B. Claim Book and Notice of Assessment (including the Reviewer's statement of reasons);
- (c) save in exceptional circumstances, the Review Assessors must not consider any new evidence or additional materials that are not already included in the materials referred to in clause 9.5(b);
- (d) the Review Assessor will then:
  - (i) in an Eligibility Review, make a determination as to whether the Administrators made an error in applying the Eligibility Criteria;
  - (ii) in a Compensation Review, make a determination as to the amount of compensation that the Group Member is assessed as being entitled receive pursuant to this Settlement Scheme, and in doing so the Review Assessor must only:
    - A. consider the issues in relation to which the Group Member seeks a Review; and
    - B. determine whether the Assessor made an error in applying the principles in clause 7.2; and
  - (iii) in relation to either type of Review, prepare and provide to the Administrators a brief statement of reasons for the Review Assessor's determination and, if relevant, include details of the amounts assessed under all relevant heads of damages;
- (e) in carrying out a Compensation Review, a Review Assessor may determine that:
  - (i) the Group Member is entitled to more compensation than was initially assessed; or
  - (ii) the Group Member is entitled to less compensation than was initially assessed (subject to clause 7.2(c));
- (f) after receiving a Review Assessor's determination and statement of reasons, the Administrators will promptly send to the Group Member a "**Notice of Review**" in which the Administrators:
  - (i) provide information to the Group Member about the determination of their Review and the impact of that determination on the Group Member's entitlements under this Settlement Scheme; and
  - (ii) enclose a copy of the Review Assessor's statement of reasons.

## **9.6 Determinations of Review Assessors are final and binding**

A determination of a Review Assessor is final and binding on the Administrators and the Group Member who sought the Review, and neither the Administrators nor the Group Member is entitled to appeal to the Court or any other court or tribunal in relation to any asserted error of jurisdiction, fact or law arising from the Review Assessor's determination.

## **9.7 Role of Review Assessors**

Review Assessors engaged by the Administrators:

- (a) will act as independent arbitrators and not as counsel briefed to act for any individual Group Members or the Administrators;
- (b) have the same immunities from suit as attach to the office of a judge of the Supreme Court of NSW.

# **10. Management of the Settlement Sum and payments to Group Members**

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## **10.1 Settlement Sum is held by the Administrators on trust**

Upon the Approval Order being made and the Respondents paying the Settlement Sum into the Settlement Account pursuant to clause 3.1 of the Deed, and subject to the terms of the Deed and any applicable statutory requirements, the Administrator will hold the money standing from time to time in the Settlement Account on trust for Group Members.

## **10.2 Investment of the Settlement Sum**

Pending the distribution of the Settlement Sum, the Administrators are to hold the Settlement Sum in one or more interest bearing bank accounts or term deposit accounts unless:

- (a) it would be in the interests of Group Members to hold some or all the extant balance of the Settlement Sum in one or more non-interest bearing bank accounts; or
- (b) for the purpose of facilitating and implementing this Settlement Scheme, it is otherwise appropriate to hold some or all the extant balance of the Settlement Sum in one or more non-interest bearing bank accounts.

## **10.3 Management of the Settlement Sum**

Subject to clauses 10.4 and 10.7, the Administrators will take all reasonable steps to ensure that the Settlement Sum and payments to Group Members are managed in such a way that:

- (a) there are sufficient funds to make compensation payments to all Group Members who are assessed as being eligible to receive compensation;



- (b) other than Group Members who elect to receive the Fast Track Resolution, all Group Members receive approximately the same proportion or percentage of their Assessed Compensation Amounts.

#### **10.4 Payments to Group Members**

In order enable compliance with clause 10.3, the Administrators may:

- (a) make payments of Fast Track Resolutions at any time, subject to clause 8;
- (b) subject to clause 8, make payments to individual Group Members in instalments, with a portion of Assessed Compensation Amounts to be withheld pending the assessment of additional Group Members, and those Assessed Compensation Amounts liable to be adjusted in light of such additional assessments; and
- (c) make payments to tranches of Group Members over time, provided that at least 100 Group Members have had their compensation assessed before the first tranche may be paid,

and for the purpose of this clause the Administrators will take advice from actuarial experts in determining the appropriate level of compensation to be paid to Group Members at various times during the administration of the Settlement Scheme, taking into account:

- (d) the number of Fast Track Resolutions that have been paid as at the relevant time;
- (e) the number of Group Members for whom assessments have been completed as at the relevant time and the aggregate of Assessed Compensation Amounts for those Group Members; and
- (f) any other matters that the actuarial experts consider to be relevant.

#### **10.5 Payments to the Applicants**

Clause 10.4(c) does not apply to the Applicants, to whom the Administrators may pay an initial instalment not exceeding one third of their Assessed Compensation Amounts as soon as is practicable after their claims have been assessed, subject to clause 8.

*Note:* The intent of this clause is to enable expeditious partial payment to the Applicants. The rationale for this clause is that the Applicants' Claim Books may, as a result of the preparation of evidence for trial, be finalised earlier than the Claim Books of any Group Members and, as a result, there is no utility in deferring partial payment to the Applicants until at least 100 Group Members have had their compensation assessed.

#### **10.6 Final compensation payments**

The Administrators may make final compensation payments to one or more tranches of Group Members even if not all Group Members' claims have been finally determined, provided that the Administrators:

- (a) take advice from actuarial experts regarding the following:

- (i) whether a sufficient number of Group Members' claims has been assessed so as to enable a reasonably reliable final payment percentage to be determined;
  - (ii) the final payment percentage that is reasonable and appropriate in the circumstances;
  - (iii) the amount of funds that should be retained in the Settlement Account so that sufficient funds are available to pay compensation to Group Members whose claims have not yet been finalised; and
- (b) obtain the Court's approval of the proposed final payments to the tranche of Group Members.

#### 10.7 Adjustments to compensation payments

The following adjustments may be made by the Administrators to the Assessed Compensation Amounts and Fast Track Resolutions:

- (a) if the aggregate of Assessed Compensation Amounts and Fast Track Payments is (or is anticipated to be) less than the net amount available for distribution to Group Members, the Assessed Compensation Amounts and Fast Track Payments may be proportionately grossed up and if necessary additional payments may be made to Group Members;
- (b) if the aggregate of Assessed Compensation Amounts is (or is anticipated to be) greater than the net amount available for distribution to Group Members (after excluding the aggregate of Fast Track Payments), the Assessed Compensation Amounts (but not Fast Track Resolutions) may be proportionately reduced.

#### 10.8 Interim payments

The Administrators may in their absolute discretion make an interim payment to a Group Member, provided that the payment:

- (a) must not exceed \$20,000;
- (b) may only be made after the Group Member has been assessed as eligible to receive compensation and either:
  - (i) the Group Member is suffering financial hardship pending finalisation of their claim; or
  - (ii) more than 12 months have passed since a Notice of Eligibility was sent to the Group Member.

#### 10.9 Interim payments where an interim payment has already been paid

If a Group Member is suffering extreme financial hardship, the Administrators may in their absolute discretion make a further interim payment to the Group Member, provided that:

- (a) the payment must not exceed \$20,000;

- (b) the Administrators are satisfied that the sum of all interim payments to the Group Member will be less than the total compensation that is or will be payable to the Group Member pursuant to this Settlement Scheme.

## **11. Rights and obligations of Group Members**

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### **11.1 Election not to recover**

Within 21 days after receiving a Notice of Assessment or a Notice of Review Assessment, a Group Member may by written notice inform the Administrators that he or she elects not to receive compensation under one or more heads of damages, and if the Group Member makes such an election their Assessed Compensation Amount will be reduced accordingly.

### **11.2 Cooperation of Group Members**

Each Group Member must cooperate with the Administrators and take all steps that she or he is required to take pursuant to this Settlement Scheme and/or that are reasonably requested or directed by the Administrators, including:

- (a) providing instructions, information, documents or other materials;
- (b) providing authorities or permissions;
- (c) attending and participating in meetings or telephone conferences with the Administrators or any other person (such as an Independent Expert, Assessor or Review Assessor);
- (d) promptly informing the Administrators of any change in their contact details;
- (e) executing documents,

and each Group Member must do so:

- (f) complying to the best of the Group Member's ability with the substance and not merely the form of the requirement, request or direction; and
- (g) by the date or within the timeframe specified in the requirement, request or direction.

### **11.3 Obligation regarding honesty**

In fulfilling the obligation in clause 11.2, each Group Member must act honestly and must take all reasonable steps to ensure that any of her or his agents or representatives likewise act honestly.

### **11.4 Failure to comply**

If a Group Member fails to comply with their obligations in clauses 11.2 or 11.3, the Administrators may, in their absolute discretion:

- (a) decline to accept the Group Member's registration or claim;

- (b) determine that the Group Member is not eligible to receive compensation pursuant to this Settlement Scheme;
- (c) apply a discount to the amount of compensation that the Group Member would otherwise be entitled to receive; or
- (d) determine that the Group Member's compensation is nil (\$0),

and if the Administrators exercise their discretion pursuant to this clause, the Administrators will promptly notify the Group Member.

#### **11.5 Application to the Court**

If the Administrators exercise their discretion in clause 11.4 adversely to the interests of a Group Member, the Group Member may (at their own cost) apply to the Court for relief.

#### **11.6 Disclosure to agencies and other organisations**

Group Members acknowledge and agree that the Administrators may, if required by statute or contract, disclose their personal information, details of their claim or other documents and materials to an agency or other organisation including Centrelink, Medicare, a private health insurer, a worker's compensation authority or the Australian Taxation Office.

## **12. Persons under a disability**

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### **12.1 Application of this clause**

This clause applies if a Group Member is a "person under a legal incapacity" within the meaning of the *Federal Court Rules 2011*.

### **12.2 Process for claims requiring approval by the Court**

The following procedure applies where a Group Member's claim requires approval by the Court:

- (a) if any entitlement to compensation is subject to approval by the Court pursuant to rules 7.11 or 9.70 of the *Federal Court Rules 2011*, the Administrators will at the earliest opportunity join in supporting the Group Member's "litigation representative" or "interested person" to seek appropriate orders for approval of the relevant compensation payment;
- (b) if the Court does not approve the payment to the Group Member, the claim will be referred back to the Administrators for further assessment and determination, and the Administrators will again join in seeking appropriate

orders for approval at the earliest opportunity after the claim has been reassessed.

### **13. Costs**

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#### **13.1 Payment of Administration Costs**

Subject to the other provisions of this clause 13, Administration Costs are to be paid:

- (a) to the Administrators on a "solicitor and own client" basis;
- (b) from the Settlement Sum, including any interest earned on the Settlement Sum after it is paid by the Respondents pursuant to clause 3.1 of the Deed;
- (c) in such amounts as are approved by the Court from time to time during the implementation of this Settlement Scheme; and
- (d) at the following rates or at such other rates as are approved by the Court from time to time:

<u>Role</u>	<u>Hourly rate (excluding GST)</u>
Principal or Partner	\$790
Special Counsel	\$720
Senior Associate	\$610
Associate	\$540
Lawyer	\$440
Graduate Lawyer / Trainee Lawyer / Articled Clerk	\$350
Paralegal / Legal Clerk / Law Clerk	\$320
Litigation Technology Consultant	\$240

#### **13.2 Costs of preparing Eligibility Books and Claim Books**

The following work by the Administrators (or their delegates) must only be paid at the following fixed amounts for professional fees (not including disbursements), regardless of the amount of work that was actually done, or at such other fixed amounts as are approved by the Court from time to time during the implementation of this Settlement Scheme:

<u>Work</u>	<u>Amount (excluding GST)</u>
Preparation of an Eligibility Book for a Group Member pursuant to clause 5.6	\$1,000
If a Group Member elects to accept a Fast Track Resolution, consulting with	\$500



the Group Member regarding their decision whether to accept the Fast Track Resolution

Preparation of a Claim Book for a Group Member pursuant to clause 7.4 \$5,000

Resolution of Liens pursuant to clause 8 \$1,000

### **13.3 Fees charged by Assessors and Review Assessors**

Subject to clause 13.4 in the case of a Review Assessor, the reasonable fees that are negotiated or agreed between the Administrators and an Assessor or Review Assessor are Administration Costs.

### **13.4 Costs of Reviews**

The following provisions apply in relation to the costs of a Review:

#### Eligibility Review

- (a) if a Group Member succeeds in an Eligibility Review:
  - (i) the costs of the Review will be Administration Costs; and
  - (ii) any bond paid by the Group Member will be returned to the Group Member;
- (b) if a Group Member fails in an Eligibility Review:
  - (i) the Group Member is liable to pay costs up to \$1,500 and the balance (if any) of the costs of the Review will be Administration Costs; and
  - (ii) the Administrators will apply any bond paid by the Group Member to the part-payment of the Review costs payable by the Group Member.

#### Compensation Review

- (c) if a Group Member succeeds in a Compensation Review and the amount assessed by the Review Assessor is greater than 110% of the amount initially assessed by the Assessor:
  - (i) the costs of the Review will be Administration Costs; and
  - (ii) any bond paid by the Group Member will be returned to the Group Member;
- (d) if a Group Member fails in a Compensation Review or the Group Member succeeds in circumstances where the amount assessed by the Review Assessor is less than 110% of the amount initially assessed by the Assessor:
  - (i) the Group Member is liable to pay costs up to \$3,000 and the balance (if any) of the costs of the Review will be Administration Costs; and
  - (ii) the Administrators will first apply any bond paid by the Group Member to the part-payment of the Review costs payable by the Group Member,

and will then deduct the balance from the compensation payable to the Group Member.

**13.5 Costs of lawyers other than the Administrators (or their delegates)**

Nothing in this Settlement Scheme prevents a Group Member from retaining or seeking advice from a lawyer who is not performing the role of Administrators (which for the purpose of this clause includes DBH and LAM), except that:

- (a) the Group Member does so at his or her own cost; and
- (b) the Group Member's lawyer is not entitled to recover any legal costs from the Administrators and any such legal costs must not be treated as Administration Costs unless the Administrators made a written request that the Group Member's lawyer carry out the legal work in question.

**14. Supervision by the Court**

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**14.1 Supervision by the Court**

Where the Administrators consider that:

- (a) the procedures to be followed in implementing this Settlement Scheme are in doubt or uncertain; or
- (b) it is appropriate for the Court to give directions regarding an issue concerning the implementation or administration of this Settlement Scheme,

the Administrators may approach the Court for directions, and in doing so the Administrators are not obligated to notify any of the Group Members.

## Schedule – Dictionary

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<u>Term</u>	<u>Meaning</u>
<b>Act</b>	The <i>Federal Court of Australia Act 1976</i> (Cth)
<b>Administration Costs</b>	The legal costs and disbursements incurred by the Applicants, Maurice Blackburn and/or Shine (or their delegates or agents) in drafting, preparing, negotiating, implementing, facilitating, giving effect to, or applying for the Approval Order, this Deed, the Settlement Scheme or the Settlement generally, and calculated on a “solicitor and own client” basis
<b>Administrators</b>	The administrators of this Settlement Scheme appointed pursuant to clause 2.1
<b>Applicants</b>	Stanford and Dunsmore, together and severally as the context permits
<b>Approval Order</b>	An order by the Court approving the Settlement pursuant to section 33V of the Act, as described in clause 6.2(b) of the Deed
<b>ASR Claim</b>	Any claim, demand, action, suit, proceeding or liability of any kind for damages, debt, restitution, account, equitable compensation, injunctive relief, specific performance, costs, interest or any other remedy in connection with, arising from or related to the ASR Class Action or the matters, circumstances or allegations which are or were the subject of the ASR Class Action
<b>ASR Class Action</b>	Proceeding NSD 213 of 2011 in the Court ( <i>Tammy Maree Stanford and Jamie Dunsmore v DePuy International Ltd and Johnson &amp; Johnson Medical Pty Ltd</i> )
<b>ASR Compensation Programme</b>	A program established by DePuy, on a “without admissions” basis, for claims brought by eligible Australian patients for compensation, administered by Crawford
<b>ASR Implants</b>	The ASR Hip Resurfacing System ( <b>ASR Resurfacing</b> ) and the ASR XL Acetabular System ( <b>ASR XL</b> ) (and any and all component and ancillary parts) which were designed and manufactured to be used in hip replacement surgery
<b>ASR Reimbursement Programme</b>	The program established by DePuy on a “without admissions” basis to reimburse patients for reasonable and customary costs resulting from the product recall of the ASR Implants, administered in Australia by Crawford
<b>ASR Revision</b>	ASR Revision has the meaning given in clause 5.2

<b><u>Term</u></b>	<b><u>Meaning</u></b>
<b>Assessed Compensation Amount</b>	<p>The amount of compensation that was determined for a Group Member under clause 7.3 or, if applicable, clause 9.5, subject to any election made by the Group Member pursuant to clause 11.1</p> <p>For the avoidance of doubt, Assessed Compensation Amount does not encompass or refer to a Fast Track Resolution</p>
<b>Assessor</b>	A member of the Bar or a Senior Lawyer with substantial experience in personal injury litigation, and may include one or more Senior Lawyers who are employed by the Administrators or either of them
<b>Assumed Liens</b>	<p>Liens asserted by a Qualified Lienholder with respect to an Eligible Claimant's payment under the Settlement Scheme established by this Deed for the reimbursement or payment of:</p> <ul style="list-style-type: none"> <li>(a) medical expenses associated with Covered Revisions and Covered Re-Revisions, provided: <ul style="list-style-type: none"> <li>(i) the Covered Revision or Covered Re-Revision was performed as a result of advice or a recommendation of an orthopaedic surgeon; and</li> <li>(ii) the medical expenses relate to either: <ul style="list-style-type: none"> <li>A. radiological investigations (including x-rays, ultrasound scans, MRI scans or other radiological investigations), pathology tests (including metal ion testing) or consultations with an orthopaedic surgeon in order to determine whether revision surgery was advisable; or</li> <li>B. treatment (for the avoidance of doubt including removal of an antibiotic spacer or open reduction of a dislocation) that was provided no later than one hundred and eighty (180) days after the Covered Revision; and</li> </ul> </li> </ul> </li> <li>(b) medical expenses directly associated with an ASR Implant that were incurred between 24 August 2010 and the date of a Covered Revision.</li> </ul>

Assumed Liens are deemed to include any amounts payable to Medicare pursuant to the BPA.

Assumed Liens do not include Liens arising from medical care provided to an Eligible Claimant after any determination that payment will be made to the Eligible Claimant under the Settlement Scheme.

<b><u>Term</u></b>	<b><u>Meaning</u></b>
<b>BPA</b>	The “Bulk Payment Agreement” which commenced on 30 March 2014 between the Commonwealth of Australia (as represented by the Chief Executive Medicare of the Department of Human Services) and JJM and DePuy, and includes any transition of the agreement in accordance with clauses 1.2(g), 4.6(a) and 4.6(b) of the Deed
<b>Business Day</b>	A day on which banks are open for business in Sydney, excluding a Saturday, Sunday or public holiday
<b>CAC Act</b>	The <i>Competition and Consumer Act 2010</i> (Cth)
<b>Claim Book</b>	Claim Book has the meaning given in clause 7.4
<b>Compensation Review</b>	Compensation Review has the meaning given in clause 9.1
<b>Court</b>	The Federal Court of Australia
<b>Covered Revision</b>	<p>A surgery subsequent to the Index Surgery to remove the cup of an ASR XL or ASR Resurfacing and in which the following criteria are met:</p> <ul style="list-style-type: none"> <li>(a) the revision surgery must have occurred more than 180 days following the Index Surgery but less than ten (10) years after the Index Surgery; and</li> <li>(b) the revision surgery is not an Excluded Revision.</li> </ul>
<b>Covered Re-Revision</b>	<p>A surgery involving removal of the cup of a hip implant that was implanted during either:</p> <ul style="list-style-type: none"> <li>(a) a Covered Revision; or</li> <li>(b) an earlier Covered Re-Revision that was performed after a Covered Revision,</li> </ul> <p>provided that the surgery:</p> <ul style="list-style-type: none"> <li>(c) was not caused by Trauma;</li> <li>(d) was directly associated with an ASR Implant; and.</li> <li>(e) occurred: <ul style="list-style-type: none"> <li>(i) within 547 days of a Covered Revision or an earlier Covered Re-Revision; and</li> <li>(ii) prior to the date of the Approval Order.</li> </ul> </li> </ul>
<b>Crawford</b>	Crawford & Company (Australia) Pty Ltd
<b>DBH</b>	Duncan Basheer Hannon



<b><u>Term</u></b>	<b><u>Meaning</u></b>
<b>Deed</b>	The settlement deed dated 31 March 2016 and executed by the Applicants, Respondents, Maurice Blackburn, Shine, Duncan Basheer Hannon and Lempriere Abbott McLeod
<b>DePuy</b>	DePuy International Ltd
<b>Eligibility Book</b>	Eligibility Book has the meaning given in clause 5.6(e)
<b>Eligibility Criteria</b>	Eligibility Criteria has the meaning given in clause 5.1
<b>Eligibility Review</b>	Eligibility Review has the meaning given in clause 9.1
<b>Excluded Revision</b>	<p>A revision of an ASR Implant in any of the following circumstances:</p> <ul style="list-style-type: none"> <li>(a) a surgery on the femoral side without revision of the cup of the ASR XL or ASR Resurfacing;</li> <li>(b) a revision that was caused by Trauma;</li> <li>(c) a revision that: <ul style="list-style-type: none"> <li>(i) was necessitated by Infection; and</li> <li>(ii) involved removal of the cup of an ASR Implant; and</li> <li>(iii) took place between 181 and 547 days after an ASR Index Surgery.</li> </ul> </li> </ul>
<b>Fast Track Resolution</b>	Fast Track Resolution has the meaning given in clause 6.1
<b>Group Members</b>	<p>Persons who had surgery performed on them in Australia in order to implant one or both of the ASR Implants and, where the context permits, includes Stanford and Dunsmore, but does not include any Group Member who has opted out of the ASR Class Action or is given leave to opt out of the ASR Class Action</p> <p>For the avoidance of doubt, Group Members include the Sub-Group Members as defined in the Third Further Amended Statement of Claim</p>
<b>Independent Expert</b>	Independent Expert has the meaning given in clause 7.4(h)(ii)
<b>Index Surgery</b>	The surgical implantation of the ASR XL or ASR Resurfacing.
<b>Ineligible Revisions</b>	Ineligible Revisions has the meaning given in clause 5.3

**Term****Meaning****Infection**

A periprosthetic joint infection evidenced by the contemporaneous medical records reflecting either:

- (a) a sinus tract communicating with the prosthesis; or
- (b) a pathogen is isolated by culture from two or more separate tissue or fluid samples obtained from the affected prosthetic joint prior to or during the Covered Revision hospitalisation.

**JJM**

Johnson & Johnson Medical Pty Ltd

**LAM**

Lempriere Abbott McLeod

**Lien Disputes**

A dispute as to any of the following:

- (a) whether a Lien is an Assumed Lien;
- (b) the amount of an Assumed Lien; or
- (c) whether a person or entity is a Qualified Lienholder.

**Liens**

Any lien, charge, security interest, subrogation right, third-party interest or adverse claim of any nature whatsoever, in each case whether statutory or otherwise

**Maurice Blackburn**

Maurice Blackburn Pty Ltd

**Notice of Eligibility**

Notice of Eligibility has the meaning given in clause 5.8

**Notice of Fast Track Assessment**

Notice of Fast Track Assessment has the meaning given in clause 6.7(a)(i)

**Notice of Assessment**

Notice of Assessment has the meaning given in clause 7.3(g)

**Notice of Review**

Notice of Review Assessment has the meaning given in clause 9.5(f)

**Other Lienholders**

Any person or entity asserting a Residual Lien

**Panel**

Panel has the meaning given in clause 7.3(a)

<b><u>Term</u></b>	<b><u>Meaning</u></b>
<b>Qualified Lienholders</b>	<p>Any of the following:</p> <ul style="list-style-type: none"> <li>(a) a private health insurer (as defined in the <i>Private Health Insurance Act 1987</i> (Cth)) in respect of amounts claimed pursuant to an insurance policy or the rules of a health fund;</li> <li>(b) Medicare Australia in respect of amounts claimed under the <i>Health and Other Services (Compensation) Act 1995</i> (Cth); and/or</li> <li>(c) the Department of Veteran's Affairs in respect of amounts claimed under the <i>Veteran's Entitlements Act 1986</i> (Cth).</li> </ul> <p>For the avoidance of doubt, "Qualified Lienholders" does not include:</p> <ul style="list-style-type: none"> <li>(d) any person or entity holding a Lien because of the purchase or acquisition of debt, receivables, or the right to collect accounts from a health care provider; or</li> <li>(e) healthcare providers, workers compensation authorities or insurers, or any other third party not specified in the definition.</li> </ul>
<b>Reimbursement Payments</b>	Proposed payments to Stanford and Dunsmore for reimbursement of time and expenses that were expended by them in prosecuting the ASR Class Action
<b>Released Parties</b>	Released Parties has the meaning given in clause 1.1 of the Deed
<b>Residual Liens</b>	In relation to any individual Eligible Claimant, the amount of Liens asserted by Qualified Lienholders or other lienholders, less the amount of Assumed Liens, if any.
<b>Respondents</b>	DePuy and JJM (respectively the first and second respondents in the ASR Class Action), together and severally as the context permits
<b>Review</b>	Review has the meaning given in clause 9.1
<b>Review Assessor</b>	A member of the Bar with more than 7 years' experience as a barrister in personal injury litigation who is appointed by the Administrators pursuant to clause 9.5(a)
<b>Senior Lawyer</b>	A solicitor with more than seven (7) years post-admission experience
<b>Settlement</b>	Settlement of the ASR Class Action in accordance with the terms of this Deed, the Settlement Scheme and subject to any Approval Order

<b><u>Term</u></b>	<b><u>Meaning</u></b>
<b>Settlement Account</b>	A bank account established by Maurice Blackburn for the purpose of holding the Settlement Sum (or part of it) pending or during the implementation of the Settlement Scheme and the Approval Order
<b>Settlement Scheme</b>	This settlement scheme, including the rights and obligations created by this scheme
<b>Settlement Sum</b>	Two hundred and fifty million dollars (\$250,000,000.00) plus the Settlement Sum Interest
<b>Settlement Sum Interest</b>	An amount representing simple interest that would have accrued at an interest rate of 2.3% per annum on a sum of one hundred million dollars (\$100,000,000.00) for the period from the date of execution of this Deed until the day before the Settlement Sum is paid into the Settlement Account in accordance with clause 3.1 of this Deed, but in any event for no longer than a period of 150 days from the date of execution of this Deed
<b>Shine</b>	Shine Lawyers Pty Ltd
<b>Trauma</b>	<p>A change in the alignment or fixation of an ASR Implant caused by the application of an external force in a sudden or unexpected manner.</p> <p>Trauma affecting an ASR Implant will be deemed to have occurred if the contemporaneous medical records describe or refer to the following:</p> <ul style="list-style-type: none"> <li>(a) a change in the position of any component and ancillary parts of the ASR Implant, or in its alignment or fixation, is verified by radiological studies; and</li> <li>(b) such change is described by the treating physician who attributes the immediate medical cause for revision to be due to that traumatic event,</li> </ul> <p>unless preoperative medical records show that it is more likely than not that the Eligible Claimant would have required revision in the near term regardless of the Trauma.</p>
<b>\$ or dollar</b>	The lawful currency of the Commonwealth of Australia
<b>[End]</b>	