

## NOTICE OF FILING

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### 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



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Dated: 8/06/2017 4:09:30 PM AEST

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: Australian Legal Practitioner

Date: 8 June 2017

**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 and amendments to the Amended Settlement Scheme, affirmed on 8 June 2017	1 - 217	1 - 47
2.	Annexure "JKS-137", being the Settlement Protocol – Version 2 dated 19 May 2017	32	48 - 63
3.	Annexure "JKS-138", being a letter from Centrelink dated 11 May 2017	90	64 - 65

A handwritten signature in black ink, appearing to read "Julian Klaus Schimmel".


A handwritten signature in black ink, consisting of stylized initials.

4.	Annexure "JKS-139", being the Notice of Eligibility for Eligible Group Members	142	66 - 70
5.	Annexure "JKS-140", being the Notice of Eligibility for Ineligible Group Members	142	71 - 73
6.	Annexure "JKS-141", being the Notice of Fast Track Assessment	148	74 - 76
7.	Annexure "JKS-142", being the Notice of Individual Assessment	149	77 - 78
8.	Annexure "JKS-143", being the brochure providing information about Individual Assessment	149	79 - 91
9.	Annexure "JKS-144", being the draft Further Amended Settlement Scheme	187	92-130

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

1. I am a Principal employed by Maurice Blackburn Pty Limited (**Maurice Blackburn**). Maurice Blackburn acted for the first applicant and a number of Group Members in this proceeding.
2. I was admitted to practice as a solicitor in February 2002 and have been employed in Maurice Blackburn's class actions practice since 2007.
3. I make this affidavit in support of an application for orders:
  - (a) Amending the scheme by which settlement of these proceedings is effected; and
  - (b) Permitting payment of fees for work performed to date in implementing the settlement.

as set out in more detail below.
4. 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.

#### **Background to this application**


5. On 29 June 2016 the Court made orders pursuant to sections 33V and 33ZF of the *Federal Court of Australia Act 1976* (Cth) approving the settlement of this proceeding (**Settlement Orders**). By order 1 of the Settlement Orders, the settlement of this proceeding was approved on the terms set out in:
  - (a) the settlement deed dated 31 March 2016 (**Settlement Deed**), which is Annexure **JKS-92** to an affidavit I affirmed on 17 June 2016; and
  - (b) an amended settlement scheme dated 17 June 2016 (**Amended Settlement Scheme**), which is Annexure **JKS-93** to my affidavit of 17 June 2016.
6. By order 3(c) of the Settlement Orders, Maurice Blackburn and Shine Lawyers Limited (**Shine**) were jointly appointed as Administrators of the Amended Settlement Scheme. Together with Ben Slade, Principal of Maurice Blackburn, I have had conduct of the administration of the Amended Settlement Scheme on behalf of Maurice Blackburn and have supervised Maurice Blackburn's staff in doing so.
7. Before Maurice Blackburn's appointment as joint Administrator, I had conduct of this proceeding on behalf of the First Applicant, together with and under the supervision of Mr Slade. I was involved in all aspects of the proceeding on behalf of the First Applicant, including the preparation of extensive evidence and the conduct of the 17 week trial that commenced on 2 March 2015 before Justice Robertson. I was personally involved in all aspects of the settlement negotiations. I also had conduct of the proceedings at the time that the application for Court approval of the proposed settlement of these proceedings was made to Justice Wigney which resulted in the making of the Settlement Orders.
8. By order 2(c) of the Settlement Orders this proceeding was dismissed without prejudice to the parties' ability to relist the matter for the purpose of seeking orders consequential to the Deed or Amended Settlement Scheme. This application is now brought by the Administrators (assuming that leave is granted to them to make the application) for the purpose of seeking orders that are consequential to:




- (a) aspects of the operation of the Amended Settlement Scheme, which the Administrators believe will be improved for the benefit of Group Members by reason of the proposed amendments to the scheme document; and
  - (b) clauses 13.1(c) and 13.2 of the Amended Settlement Scheme.
- 9. In this affidavit I use terms that are defined in the Settlement Deed and Amended Settlement Scheme.
- 10. As a Principal of Maurice Blackburn, and with the agreement of Jan Saddler, a Principal of Shine Lawyers, I am authorised to make this affidavit on behalf of the Administrators.
- 11. In order to explain properly both the nature of the proposed amendments to the Amended Settlement Scheme and the application for approval of certain Administration Costs, it is necessary to set out in some detail the work that has been performed by, and at the request of, the Administrators in order to implement the Amended Settlement Scheme to date. In addition, as the first anniversary of the Settlement Orders is imminent, the Administrators considered that it was appropriate and an opportune time to provide a detailed report to the Court for the purpose of clause 14.6 of the Federal Court of Australia's *Class Actions Practice Note (GPN-CA)*, so as to enable the Court to exercise its supervisory function.
- 12. Much of the work undertaken to date has focussed on the need to ensure that large volumes of data relating to Group Members' claims is accurately collated by the solicitor firms handling those claims in a manner that enables the data to be accessed efficiently and dealt with consistently. This is because, unlike, for example, a settlement scheme arising out of a shareholders class action, it is of the essence to this settlement scheme that:
  - (a) Each Group Member's claim be assessed individually, not just in terms of eligibility and, in the case of those who elect Individual Assessment, for quantum, but also to ensure that each claimant's liens with public and private health insurers and other third parties is factored into the claim;
  - (b) Some claims, such as those relying upon the Deemed ASR Revision provisions of the Amended Settlement Scheme, require particular care in assessing whether the criteria of a Deemed ASR Revision is met; and

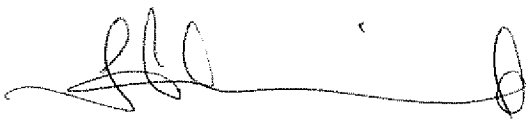



- (c) The Amended Settlement Scheme provides Group Members with the autonomy to elect (subject to demonstrating eligibility) whether to proceed with a Fast Track Resolution Claim or to proceed to Individual Assessment. In order to provide the benefit of that election to Group Members, it is necessary to provide Group Members with detailed information.
13. It is my opinion, having regard to the factors set out at paragraph 12 above, that the Amended Settlement Scheme is therefore a uniquely complex scheme to administer relative to the general body of class action settlements that have been achieved in recent years.
14. I set out below key aspects of the work that has been performed to administer the Amended Settlement Scheme by reference to the following topics:
- (a) **Section A – Compliance with the Settlement Orders:** I report on the Administrators' and parties' compliance with the Settlement Orders since they were made on 29 June 2016;
  - (b) **Section B – Progress of the Administration:** I report on the progress of claim processing;
  - (c) **Section C – Establishment of the settlement administration systems and process:** I set out key systems and processes that have been established by the Administrators to facilitate an efficient and consistent administration of the Amended Settlement Scheme;
  - (d) **Section D – Implementation of the Amended Settlement Scheme:** I set out the steps taken by the Administrators to process each Group Member's claim;
  - (e) **Section E – Amendments to the Amended Settlement Scheme:** I explain further proposed amendments to the Amended Settlement Scheme identified as necessary to improve the efficiency and cost-effectiveness of the settlement administration; and
  - (f) **Section F – Administration Costs to date** I set out the Administration Costs in respect of which the Administrators seek the approval of the Court.

## SECTION A: COMPLIANCE WITH THE SETTLEMENT ORDERS

15. In compliance with orders 4 and 5 of the Settlement Orders, the Administrators caused the Further Notice to Group Members to be sent to Group Members in the form of Annexure JKS-136 to my affidavit affirmed on 23 June 2016 with the date "29 June 2016" inserted in the first sentence of the second paragraph.
16. On 18 August 2016, the Respondents transferred the Settlement Sum of \$250,879,781.42 to a bank account nominated by Maurice Blackburn in accordance with clause 3.1 of the Settlement Deed.
17. Since that time, pursuant to clauses 10.1, 10.2 and 10.3 of the Amended Settlement Scheme, the Settlement Sum has been held in the Settlement Account and on term deposits, as described below, pending compensation payments to Eligible Group Members in accordance with the Amended Settlement Scheme.
18. The Settlement Sum was initially deposited across a number of accounts to maximise interest while ensuring that funds were available to make compensation payments in a timely manner. After paying the Applicants' Costs and Reimbursement Payments as described in paragraphs 21 and 22, the Settlement Sum was distributed into the following accounts (together the **Settlement Accounts**):
  - (a) \$1,000,000.00 in a transaction account from which funds could be withdrawn immediately;
  - (b) \$40,000,000.00 in a single term deposit maturing on 1 March 2017; and
  - (c) the balance of approximately \$171,000,000.00 was equally divided between three further term deposits, each maturing on 1 December 2017.
19. The term deposit referred to in paragraph 18(b) above has progressively been transferred into the transaction account for compensation payments, with the balance being rolled into further term deposits for short periods of time. Payments have been made to Group Members at various times from the transaction account, the balance of which has therefore been depleted. As at 2 June 2017 the amounts in the those accounts were:
  - (a) \$23,653,239.63 in the transaction account; and




- (b) \$10,167,392.92 in a term deposit for two further months.
20. As at 2 June 2017, interest earned on the Settlement Sum is \$790,261.17. The amount of approximately \$171,000,000.00 continues to be held in three term deposits which each mature on 1 December 2017. Interest has not yet been earned on those term deposits because they are yet to mature, however the pro rata amount of interest that has notionally been earned to date is approximately \$2.4 million, with total interest at maturity expected to be approximately \$4.7 million.
21. The following payments were effected by the Administrators from the Settlement Sum on 2 September 2016 pursuant to order 3(a) of the Settlement Orders:
- (a) Maurice Blackburn: \$26,168,879.07;
  - (b) Shine: \$8,772,592.00;
  - (c) Duncan Basheer Hannon: \$828,706.91; and
  - (d) Lempriere Abbott McLeod: \$1,086,065.97.
22. The following Reimbursement Payments were made on 2 September 2016 from the Settlement Sum pursuant to order 3(b) of the Settlement Orders:
- (a) First Applicant, Tammy Stanford: \$40,000;
  - (b) Second Applicant, Jamie Dunsmore: \$40,000;
  - (c) Sub-group representative, Mary Bentjees: \$10,000; and
  - (d) Sub-group representative, Robert Webb: \$10,000.

## SECTION B: PROGRESS OF THE ADMINISTRATION

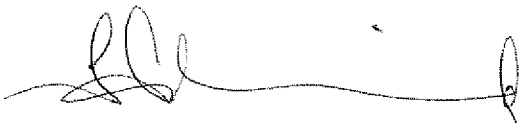
23. Since the Settlement Orders were made on 29 June 2016, significant work has been undertaken and progress made in processing Group Members' claims. As at 2 June 2017:
- (a) *Registrations:* A total of 1,722 Group Members have registered claims in accordance with clause 4 of the Amended Settlement Scheme (**Registered Group Members**).






- (b) *Claim allocation:* Claims of Registered Group Members have been allocated for preparation as follows, in accordance with clauses 2.3 and 2.4 of the Amended Settlement Scheme and Clause 5 of the Settlement Protocol:<sup>1</sup>
- (i) 735 (42.68%) to Maurice Blackburn;
  - (ii) 711 (41.30%) to Shine Lawyers;
  - (iii) 137 (7.96%) to Duncan Basheer Hannon;
  - (iv) 138 (8.04%) to Lempriere Abbot McLeod; and
  - (v) There is one unallocated claim that has not been allocated due to recent registration.
- (c) *Notices of Eligibility:* A total of 964 eligibility determinations have been completed in accordance with clause 5 of the Amended Settlement Scheme, representing 55.98% of registered claims. Notices of Eligibility have been sent to 955 Registered Group Members – this is less than the number of eligibility determinations completed due to outstanding incapacity and estate issues that are currently being resolved.
- (d) *Eligibility determinations:* Of the 955 Registered Group Members who have been sent a Notice of Eligibility:
- (i) 920 (96.34%) were found to be eligible to receive compensation (**Eligible Group Members**); and
  - (ii) 35 (3.66%) were found to not satisfy the criteria for eligibility to receive compensation (**Ineligible Group Members**). To date, no Ineligible Group Members have requested an Eligibility Review pursuant to sub-clause 9.1(a) of the Amended Settlement Scheme.
- (e) *Elections:* Of the 920 Eligible Group Members who have been sent a Notice of Eligibility:
- (i) 651 (70.76%) Group Members have elected the Fast Track Resolution pursuant to clause 6 of the Amended Settlement Scheme;

<sup>1</sup> Please refer to paragraphs 30 to 32 for information about the Settlement Protocol.




- (ii) 175 (19.02%) Group Members have elected (or been deemed to have elected in accordance with clause 6.4 of the Amended Settlement Scheme) to have their claim assessed under clause 7 of the Amended Settlement Scheme (**Individual Assessment**). Further information is provided in paragraphs 156 to 159 below; and
  - (iii) 94 (10.22%) have not yet made an election and are within the 42 day period provided for election by clause 6.3 of the Amended Settlement Scheme.
- (f) *Liens:* Of the 651 Eligible Group Members who elected the Fast Track Resolution:
- (i) 232 (35.64%) have had their Liens resolved in accordance with Clause 8 of the Amended Settlement Scheme; and
  - (ii) 419 (64.36%) have Liens that are still in the process of being resolved.
- (g) *Interim payment applications:* 18 Eligible Group Members have submitted an application for interim payment in accordance with clause 10.8 of the Amended Settlement Scheme. In respect of those applications:
- (i) 16 interim payment claims have been granted; and
  - (ii) Two interim payment claims have been denied.
- (h) *Final compensation payments:* Of the 232 Eligible Group Members who have had their Liens resolved, all of whom elected the Fast Track Resolution:
- (i) final payments totalling \$7,420,000.00 have been made to 129 Eligible Group Members, representing 7.49% of Registered Group Members; and
  - (ii) final payments are in the process of being effected for a further 103 Eligible Group Members, totalling \$6,130,000.00, with an expected payment date within 7 days of the date of this affidavit.

24. At present, it is not possible for the Administrators to estimate with any certainty how the Settlement Sum will be finally distributed amongst Group Members. However,




as noted in paragraph 23(e)(i) above, as at the date of this affidavit, 70.75% of Eligible Group Members have elected the Fast Track Resolution, a far higher proportion than the 20% that I assumed would make such an election at the time that the Settlement Orders were sought. The actuarial modelling that was prepared in support of the Settlement Orders (Expert Report of Geoff Atkins filed on 17 June 2016) adopted the assumption that 20% of Group Members would elect the Fast Track Resolution.

25. To date, the Administrators have spent considerable time:
- (a) setting up the processes required to distribute the Settlement Sum in accordance with the Amended Settlement Scheme; and
  - (b) resolving issues identified through processing claims for the initial cohort of Registered Group Members.
26. The settlement administration processes are outlined in Section C below. Now that many of those processes are established, I anticipate the rate at which claims are finalised and paid will increase over time and Administration Costs ought to reduce as the systems that have been developed in the 'start up' phase of the administration can be implemented.
27. The steps taken to administer each Group Member's claim are discussed in detail below in Section D.

#### **SECTION C: ESTABLISHMENT OF THE SETTLEMENT ADMINISTRATION SYSTEMS AND PROCESSES**

28. The administration of the Amended Settlement Scheme presents special challenges in that it is being jointly conducted by Maurice Blackburn and Shine. In addition, the firms Duncan Basheer Hannon (DBH) and Lempriere Abbot McLeod (LAM) have settlement administration responsibilities in relation to Group Members who were formerly clients of or registrants with those firms for the purpose of the Class Action.
29. Significant time has been spent designing and establishing settlement administration processes that are efficient and cost-effective and that ensure consistency across Group Members as a whole.

### The Settlement Protocol

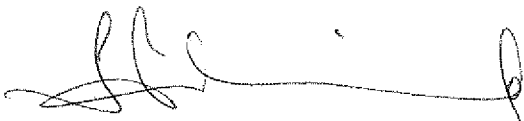
30. Following the settlement approval, Maurice Blackburn and Shine worked together to develop a protocol directed at ensuring the Amended Settlement Scheme is administered cooperatively, consistently and as efficiently as practicable, consistently with the requirements of clause 2.2 of the Amended Settlement Scheme (**Settlement Protocol**).
31. The Settlement Protocol established:
- (a) a committee for the purpose of the Administrators cooperatively making decisions and exercising functions under the Amended Settlement Scheme, in particular in respect of "Significant Decisions", as defined in the Settlement Protocol (clauses 3 and 4) – further information on this committee and its functions is provided in Section D of this affidavit;
  - (b) arrangements for the allocation of work preparing claims for assessment of eligibility and compensation, and managing claims allocated to DBH and LAM for particular administration functions pursuant to paragraph 5.2 of the Settlement Protocol (clause 5);
  - (c) settlement administration arrangements, processes and responsibilities, including in relation to:
    - (i) using and maintaining the online registration facility and claims management database (clause 6);
    - (ii) determining eligibility, including circumstances in which eligibility determinations are referred to the Committee (clause 7); and
  - (d) controls on the operation of the Settlement Account and payment of administration costs (clauses 8 and 10). Maurice Blackburn is the signatory to the accounts and has responsibility for managing the funds on behalf of Maurice Blackburn and Shine as Administrators. Any payment from the Settlement Accounts requires written authorisation from a partner at Shine.
32. Maurice Blackburn and Shine agreed as Administrators to be bound by the requirements of the Settlement Protocol dated 5 September 2016. An amended version of the Settlement Protocol is dated 19 May 2017, with minor amendments to the provisions in clause 7.4 dealing with the authority of Senior Lawyers who are not




committee members to carry out audit functions under the protocol. The amended version of the Settlement Protocol is annexed to this affidavit and marked "JKS-137".

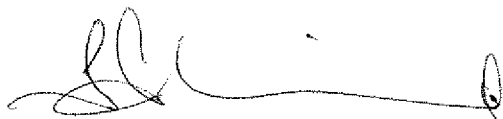
**Composition, operation and functions of the Committee**

33. The Committee consists of one senior solicitor from Maurice Blackburn and one senior solicitor from Shine. At the time of this affidavit, the committee consists of Jan Saddler, a Principal of Shine, and me.
34. The Committee meets approximately once per month, generally by telephone conference. Committee meetings are attended by additional solicitors from each of Maurice Blackburn and Shine with day to day carriage of the settlement administration. An agenda is prepared for each meeting and decisions made by the Committee are recorded. Generally speaking, Committee meetings are conducted as follows.
35. Firstly, the Committee makes a variety of "Significant Decisions" as defined in clause 4.2 of the Settlement Protocol. Typically, these include particularly important decisions relating to compensation assessments and reviews. Any determination that a Group Member is ineligible for compensation is referred to the Committee for verification and such verification is treated as a "Significant Decision".
36. Secondly, the Committee exercises the Administrators' discretions when required by a clause of the Amended Settlement Scheme. The discretions that may be exercised by the Committee are listed in clause 4.3 of the Settlement Protocol.
37. Thirdly, the Committee deals with general issues regarding the establishment and direction of the settlement administration, such as settling precedents and templates, establishing processes and allocating settlement administration work.
38. While the Committee has been responsible for a large volume of work in these early stages of the administration, I anticipate that Committee meetings will become more straightforward now that many of the processes and precedents to be utilised in the administration are established. It is my expectation that Committee meetings will deal with more straightforward and routine matters going forward than has been the case to date.



**Online registration facility and website**

39. A website was launched in April 2016 to facilitate aspects of the settlement administration (**Settlement Website**). The Settlement Website is accessible at [depuyclassaction.com.au](http://depuyclassaction.com.au). It is directed to Group Members who wish to participate in the Amended Settlement Scheme. The Settlement Website serves as an initial point of contact and source of information for many of those Group Members. The Settlement Website provides publicly available updates on the settlement as well as access to the Court-approved Settlement notices, Amended Settlement Scheme and the Court's reasons for approving the Settlement, *Stanford v DePuy International Ltd (No 6)* [2016] FCA 1452. It includes a set of Frequently Asked Questions, intended to assist Group Members to understand the basics of the Amended Settlement Scheme.
40. Clause 6 of the Settlement Protocol requires that an online registration facility is created and maintained for Group Members by Maurice Blackburn for the settlement administration. The rationale for this requirement is to reduce administration costs by minimising the need for data entry, document preparation and postal expenses.
41. As discussed in paragraphs 121 to 123 of my affidavit affirmed on 17 June 2016, an initial online registration facility was created by Maurice Blackburn to be accessible by Group Members at the time orders were made approving distribution of the settlement notice, on 26 April 2016. The initial registration facility allowed Group Members to enter data directly into an online database through an electronic form (**Online Registration Form**). The Online Registration Form was made available on the Settlement Website on 29 April 2016.
42. The Online Registration Form was designed to capture a Group Member's data including:
- (a) contact details;
  - (b) date of birth;
  - (c) alternative name(s);
  - (d) authorised contact person's details (if applicable);
  - (e) estate details (if applicable);



- (f) whether the Group Member has previously retained or registered with one of the four law firms involved in the settlement administration;
  - (g) a declaration that the Group Member has been implanted with an ASR Implant; and
  - (h) a declaration that the Group Member has had revision surgery of their ASR Implant.
43. After the Settlement was approved, the Online Registration Form was updated to identify claims involving a Deemed ASR Revision as defined in sub-clause 5.2(b) of the Amended Settlement Scheme. Additionally, Group Members who complete the Online Registration Form and indicate that they have not had revision surgery of their ASR implant are given the opportunity to make a declaration that they have been told by their surgeon that revision of their ASR implant is required, but there are unacceptable medical risks associated with undergoing the revision surgery (an amendment designed to start the process of administering Deemed Revision claims).
44. The Settlement Website has been and will be updated from time to time as appropriate to assist Group Members making claims.

#### **Creation of the Database**

45. The Online Registration Form was designed to capture information directly into an online central administration database (**Online Database**). The Online Database was designed to facilitate the Administrators' oversight and management of claim progress, given the large number of Registered Group Members.
46. The Online Database is hosted by Maurice Blackburn and made accessible to Shine via an online portal. Both firms are able to amend a Registered Group Member's records. Maurice Blackburn has responsibility for updating the records of Registered Group Members who have been allocated to Maurice Blackburn and DBH. Shine has responsibility for updating the records of Registered Group Members who have been allocated to Shine and LAM.
47. Initially, the Online Database only captured and recorded registration data, but it has been expanded as required to include further data recording the progress of Registered Group Members' claims. Accordingly, the database now tracks claims

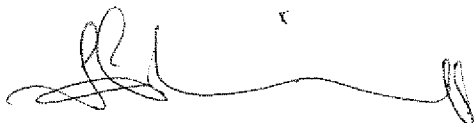



through the claim administration process and records the outcomes of milestones for each claim.

48. The Online Database is also able to generate reports on claims at each stage of the claim administration process, including registration, eligibility assessment, and compensation elections. These reports are used to facilitate data checks by the Administrators which are designed to:
  - (a) ensure the accuracy of information entered by Group Members onto the Online Database through the Online Registration Form and to enable other quality assurance measures to be implemented, and
  - (b) allow the Administrators to track the progress of each Group Member's claim to ensure issues are resolved in a timely manner and the claims are progressing appropriately.
49. Maurice Blackburn is in the process of further upgrading the Online Database to track payments made to Eligible Group Members, including interim payments.
50. The Online Database is also used for Maurice Blackburn's internal claim administration work, including recording responses to the online questionnaire discussed in further detail in paragraphs 68 to 77 below.

#### **Allocation of claims for administration**

51. Before the Settlement Orders were made, many Group Members had retained or registered with Maurice Blackburn, Shine, LAM or DBH (together, the **Four Firms**). Despite the fact that the Four Firms no longer act as solicitors for the Group Members in accordance with sub-clauses 2.1(b) and 2.4(a)(i) of the Amended Settlement Scheme, it is expedient and efficient for claim preparation work to be allocated to each firm for those Group Members who had formerly retained or registered with them in relation to the class action.
52. Part 5 of the Settlement Protocol sets out the criteria and procedure by which administration work is allocated between the Four Firms, to ensure that:
  - (a) any material that was obtained prior to the Settlement Orders can be used for claim preparation work;
  - (b) there is no duplication of claim preparation work between the Four Firms; and,






- (c) where possible, Group Members' pre-existing relationships with the relevant firm are maintained to facilitate efficient dealings in administering their claims.
53. A consolidated list of Group Members was prepared by Maurice Blackburn in September 2016 (**Consolidated List**), by collating the lists of Group Members to whom the Four Firms had each sent the Notice of Proposed Settlement. In cases where a Group Member was sent the notice by more than one firm, conflicts were resolved by correspondence between the firms.
54. The Consolidated List was then cross-matched with Registered Group Members, including the firm that registrants nominated on the Online Registration Form. Conflicts were resolved for cases in which Registered Group Members had nominated a particular firm on the Online Registration Form that did not match with their allocated firm on the Consolidated List.
55. When all conflicts were resolved, the Consolidated List allocated each Group Member to one firm only. Allocation of newly registered Group Members in accordance with the Consolidated List is now a routine part of the settlement administration.

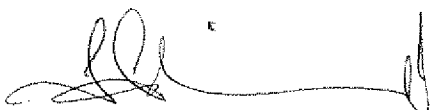
#### **Precedents for Assessment**

56. The Administrators developed a suite of precedent documents to facilitate efficient, consistent and high quality work by the firms involved in the administration. These include documents used for gathering information that can be utilised in key administration processes as well as to enable clear and consistent correspondence by, or on behalf of, the Administrators, with Group Members.
57. The precedents that have been created include:
- (a) Late Registration Verification Form – collates information required for the Committee to decide whether to accept a late registration;
  - (b) Deemed ASR Revision Verification Form – collates information required for the Committee to decide whether a Group Member has prospects of satisfying the criteria for a Deemed ASR Revision and in order to consider the potential application of clause 5.7 of the Amended Settlement Scheme, under which the Administrators may take steps to acquire further evidence to inform its eligibility determination;

- (c) Eligibility Book Coversheet – collates information required for a senior lawyer and, if required, the Committee, to determine if a Group Member satisfies the Eligibility Criteria;
  - (d) Notice of Eligibility – formal notification to Registered Group Members of the outcome of their eligibility assessment; a special precedent has also been created for Group Members who have had bilateral ASR Implants;
  - (e) Notice of Fast Track Assessment – regarding an Eligible Group Member's election for Fast Track Assessment and the next steps in that process;
  - (f) Notice of Individual Assessment - regarding an Eligible Group Member's election for Individual Assessment, provided together with a brochure detailing the next steps in that process;
  - (g) Interim Payment Verification Form – collates information required for the Committee to decide whether to grant an application for interim payment; and
  - (h) Numerous items of correspondence to Group Members and third parties.
58. Each of these precedents and templates were approved by the Committee. In that way, the Committee was able to ensure that uniform, relevant information is presented to it for decision making purposes, thereby enabling Committee decisions to be made in a consistent and efficient manner.

#### **Auditing of the work performed across the firms and document sharing**

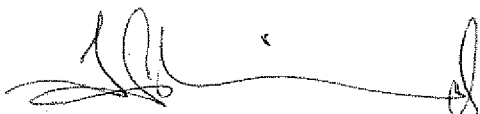
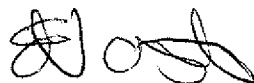
59. Paragraph 7.4 of the Settlement Protocol requires that eligibility determinations are audited on a sample basis to ensure consistency of approach and fairness between Group Members. One in every ten eligibility determinations by Maurice Blackburn or Shine is provided to the other firm to verify the determination of the Senior Lawyer.
60. In accordance with sub-clause 2.3(e) of the Amended Settlement Scheme and sub-clause 7.2(c) of the Settlement Protocol:
- (a) Eligibility Books prepared by DBH are provided to Maurice Blackburn to complete the eligibility determination; and
  - (b) Eligibility Books prepared by LAM are provided to Shine to complete the eligibility determination.




61. A website was developed by Maurice Blackburn to facilitate these processes and eligibility determination audits (**Document Sharing Facility**). The Document Sharing Facility:
- (a) allows quick and secure transfer of large electronic files between the Four Firms;
  - (b) provides for access, review, editing and re-upload of relevant documents and materials; and
  - (c) avoids the need for large volumes of paper to be exchanged between the Four Firms.
62. The Document Sharing Facility is also used to share materials to be considered by the Committee including Deemed ASR Revision Verification Forms, Late Registration Verification Forms, Interim Payment Verification Forms, and supporting materials for each. The Document Sharing Facility is a secure facility that is only accessible to members of the Four Firms who are granted access by means of login credentials.

**Supervision of Claim Preparation work by Duncan Basheer Hannon**


63. Clause 2.3 of the Amended Settlement Scheme sets out those functions the Administrators may delegate to DBH and LAM, being the preparation of Eligibility Books, the preparation of Claim Books and the resolution of Liens, pursuant to clauses 5.6, 7.4 and 8 of the Amended Settlement Scheme.
64. In order to prevent duplication of claim administration work, Maurice Blackburn has assumed responsibility to act as Administrator for claims allocated to DBH, and Shine has assumed responsibility to act as administrator for claims allocated to LAM. This arrangement is formalised in clauses 7.2(c) and 7.5 of the Settlement Protocol.
65. In the interests of fairness and consistency between Group Members, I have sought to ensure that Maurice Blackburn and DBH have worked together, in the manner described below, so that claims allocated to DBH are prepared in accordance with the Amended Settlement Scheme and uniform with those prepared by the Administrators. Ms Saddler has informed me that Shine has done likewise with LAM.

66. On 28 October 2016, I travelled to DBH's offices in Adelaide to meet with the DBH team that assists the Administrators. I discussed with them the work that they are to perform in the administration of the Amended Settlement Scheme and provided the DBH team with guidance on procedures, the use of various precedents and the expectations of the Administrators in the settlement administration. In addition, members of the Maurice Blackburn settlement administration team and I correspond regularly with members of the DBH team by email and telephone about matters pertaining to the settlement administration.
67. The claim administration work undertaken by DBH has been performed consistently with the guidance I provided to them during the course of the meeting held at their offices. Of the 137 claims allocated to DBH, 117 (85.40%) have now proceeded to the eligibility determination stage.

#### **Development of an Online Questionnaire**

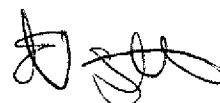

68. Maurice Blackburn has developed a questionnaire to assist with our internal processing of Eligibility Books, Claim Books and the resolution of Liens (Questionnaire).
69. Group Members who have been allocated to Maurice Blackburn are sent an online Questionnaire to gather information to facilitate medical record requests and the preparation of Eligibility Books. The Questionnaire was designed to gather all of the information relevant to a Group Member's eligibility and resolution of Liens, and in order to make any necessary requests for documents and materials from third parties.
70. The Questionnaire was developed by legal staff who were involved in the conduct of these proceedings, being Anna Williams (Senior Associate), Mallory Tuckey (Lawyer) and Claire Mainsbridge (Paralegal), in collaboration with the firm's IT development team. I also worked with Occupational Therapists, Therapy Solutions and Integrated Rehab, to develop a screening tool that was used as a basis for sections of the Questionnaire in which we gather information on Group Members' use of mobility aids and medication, and their home modifications.
71. The Questionnaire was developed to be used primarily online in order to minimise the time and cost spent on administrative processes, and to make the administration processes more efficient. Each Group Member is emailed a personalised link to the Questionnaire, and data is directly captured by the Online Database.

72. For many Group Members who were clients or had registered with Maurice Blackburn prior to Settlement Approval, the Questionnaire was pre-populated with any information gathered through previous contact. Those Group Members only need to review that information to ensure it is correct, and provide any outstanding information.
73. Once completed, the Questionnaire prompts Group Members to download a bundle of authority documents that are relevant to their claim. Group Members are asked to complete and return: a General Authority, a Medical Authority, a Medicare Authority, and an ATO Personal Authority. If relevant to their claim, Group Members are also asked to return: an ATO Business Authority, a Centrelink Authority, a Private Health Insurer Authority, and Department of Veterans' Affairs Authority and/or an Other Compensation Authority.
74. If a claim is being made on behalf of the estate of a Group Member, the executor, administrator or next-of-kin completing the Questionnaire is also prompted to provide a certified copy of their identification and a certified copy of the deceased Group Member's death certificate. Executors are also prompted to provide a certified copy of the will and grant of probate (if the grant has been made). Administrators are prompted to provide a certified copy of the letters of administration.
75. If a claim is being made on behalf of a Group Member with a legal incapacity and an Enduring Power of Attorney is in place, the attorney is prompted to provide a certified copy of the Enduring Power of Attorney.
76. On 7 October 2016, a link to the Questionnaire was emailed to 497 Group Members. Most Group Members completed the Questionnaire and authorities in a matter of weeks. Following this, Questionnaires were sent to Group Members on a regular basis upon registration and allocation to Maurice Blackburn.
77. Group Members who do not have access to the internet are sent the Questionnaire and authority documents in hard copy form and asked to either:
- (a) enter their responses online if they are able to get access to the internet; or
  - (b) call Maurice Blackburn for a telephone conference, during which a member of the settlement administration team enters their responses into the Questionnaire online.

**Administration of claims allocated to Maurice Blackburn**

78. The Questionnaire data is captured directly in the Online Database. This allows Maurice Blackburn to perform and track its internal claim administration work efficiently. Functions of the Online Database relating to Maurice Blackburn's internal claim administration work (**MB Online Database**) are only accessible by members of the Maurice Blackburn settlement administration team, thereby maintaining confidentiality.
79. The MB Online Database is used to:
- (a) track claim progress, including whether a Group Member has completed the Questionnaire and returned the authorities, whether medical records have been requested and received on behalf of a Registered Group Member, and progress in resolving Liens; and
  - (b) record payments made to Eligible Group Members, including interim payments.
80. The MB Online Database is also used to produce reports directed at managing claims administration efficiently and cost-effectively, including:
- (a) reports on aspects of information specific to individual Group Members, for example all Group Members who are members of a particular health fund, or had surgery by a particular surgeon. This enables Maurice Blackburn to manage relationships with third parties and achieve economies of scale by liaising with them on behalf of more than one Group Member at a time; and
  - (b) reports on specific categories of Group Members, for example estates, Group Members with a legal incapacity or Group Members who are making a claim for a Deemed ASR Revision. This allows Maurice Blackburn to track the claims of categories of Group Members to ensure they are progressing appropriately.
81. Summaries of all correspondence with Group Members allocated to Maurice Blackburn are also recorded in the MB Online Database. These summaries allow Maurice Blackburn to track Group Members' claims in depth, and facilitate more efficient responses to Group Members' enquiries as the team member corresponding with the Group Member has ready access to a snapshot of previous dealings with the Group Member.

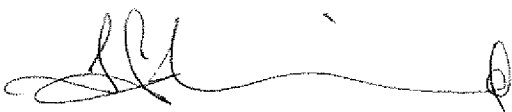


### **Internal Process Manual**

82. An internal process manual has been developed for use by Maurice Blackburn staff in dealing with all aspects of claim preparation work (**Internal Process Manual**). As the settlement administration will continue for several years and involves a relatively large team of staff, the manual will ensure that processes withstand changes in staffing and that administration work is performed consistently, efficiently and to the same standards over time and by all team members.
83. The Internal Process Manual was initially developed by Ms Tuckey and Ms Mainsbridge, but has since been added to by various members of the settlement administration team as processes have been implemented and refined. When new processes have arisen as part of the settlement administration, a process document has been created outlining the necessary steps in each process and added to the Internal Process Manual.

### **Relationships with third parties**

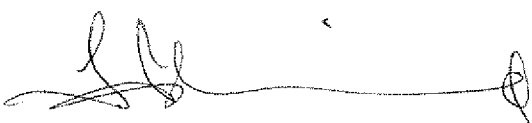
84. The Amended Settlement Scheme requires that the Administrators obtain copies of Group Members' contemporaneous medical records for the purpose of preparing Eligibility and Claim Books. In addition, the Administrators may, in some circumstances, be required to request a report from a treating surgeon for the purpose of preparing a Claim Book.
85. Several surgeons and hospitals have implanted and revised large volumes of ASR Implants (**High Volume Healthcare Providers**). As there is a significant administrative burden on these healthcare providers to comply with medical record and report requests, Ms Williams spent a significant amount of time liaising with them to discuss the requirements of the Amended Settlement Scheme and develop processes that meet the scheme's objectives while minimising the administrative burden. These discussions have also established a rapport and opened lines of communication, contributing to timely responses from many High Volume Healthcare Providers.
86. In many cases this process facilitated the making of requests on behalf of more than one Group Member at a time (**Bulk Requests**), producing economies of scale. In some other cases, High Volume Healthcare Providers agreed to review the Group Member's medical records and provide only relevant documents, which has reduced the costs of both acquiring and processing the records.




87. A similar process was undertaken with lienholders, including some of the major private health insurers and the Department of Veterans' Affairs.
88. In some cases, lienholders streamlined their claims processes to assist with efficient resolution of Liens. For example, some funds now take steps to identify any hip related expense before providing a statement of benefits for the Group Member.
89. Contact was also made with the compensation team at Centrelink regarding their potential recovery of benefits from Group Members' compensation, and to explain the difference between the Fast Track Resolution and Individual Assessment compensation payments.
90. As a result of this communication Centrelink has confirmed:
  - (a) it will not seek to recover past allowances paid for Group Members who have elected to receive Fast Track Resolution; and
  - (b) individual Group Members are required to report any compensation received directly to Centrelink consistent with their ongoing income and asset reporting obligations.

A copy of a letter to this effect is from Centrelink dated 11 May 2017 is annexed to this affidavit and marked "JKS-138". This has eliminated a large portion of claims administration work.

91. The Administrators also maintain a professional and cooperative relationship with the lawyers for Johnson & Johnson, Norton Rose Fulbright Australia (NRFA). Regular email and telephone correspondence is maintained in order to fulfil respective obligations under the Amended Settlement Scheme, including checks required for eligibility and resolution of Liens on behalf of Eligible Group Members.
92. Johnson & Johnson had entered into a Bulk Payment Agreement with Medicare prior to settlement of these proceedings, in which a standard amount is paid by Johnson & Johnson to Medicare in respect of each Group Member, rather than engage in an individual process to resolve Medicare Liens on a case by case basis. NRFA also facilitated contact with the Department of Human Services, which enabled me to confirm with that department that the Bulk Payment Agreement with Medicare applied to claims resolved in settlement. I am aware from my work on the Administration that the Bulk Payment Agreement remains in effect. As a result, the process for resolving a Group Member's Medicare Liens has been streamlined.



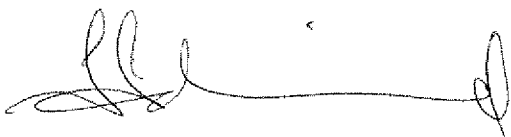



**SECTION D: IMPLEMENTATION OF THE AMENDED SETTLEMENT SCHEME**

93. A large number of claims to participate in the Amended Settlement Scheme have been registered since April 2016. They have been progressed as follows.
94. The following table sets out registrations over time:

Month	Number of Registrations
<b>2016</b>	
April	31
May	937
June	226
July	221
August	116
September	58
October	100
November	7
December	4
<b>2017</b>	
January	6
February	8
March	6
April	1
May	1
<b>TOTAL</b>	<b>1722</b>

95. Having regard to the number of claims registered over time, I anticipate that monthly Administration Costs will taper off significantly as the settlement administration progresses, because:
- (a) registrations have dramatically reduced in volume since October 2016;




- (b) a substantial proportion of claims are well progressed, as set out in paragraph 23 above; and
- (c) the costs involved in establishing various administration processes, systems and templates were "front loaded" in the administration, in the expectation that those processes, systems and templates would ensure the integrity of and provide efficiencies in the future administration of the Amended Settlement Scheme.

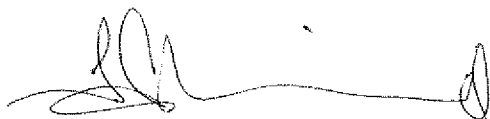
96. The process of administering claims is as follows.

#### **Registration**

97. Group Members have been prompted by the Notice of Proposed Settlement and Further Notice to Group Members to register using the Online Registration Form on the Settlement Website. Once Group Members have submitted the form, they receive an automated email confirming their registration and providing a unique Settlement Identification Number (SID).
98. Some Group Members do not have internet access or are unable to use the online facilities. These Group Members are encouraged to contact the Administrators and request a hard copy version of the Online Registration Form.

#### **Quality Assurance of Registration Data**

99. The use of the Online Registration Form has meant that the Administrators must perform work to ensure the integrity of the data supplied by Group Members. Errors are rectified by ensuring that registrations are checked for quality assurance on a monthly basis by a paralegal. This process was particularly time consuming during high volume registration periods, but is now a small and routine part of settlement administration work given that registrations have slowed to a maximum of 8 per month since November 2016.
100. The quality assurance process for registrations consists of the following steps:
- (a) data is reviewed for any identifiable errors which are in the Online Database;
  - (b) profiles of newly registered Group Members are merged with information previously provided to Maurice Blackburn to ensure historical data is available for use in the settlement administration;



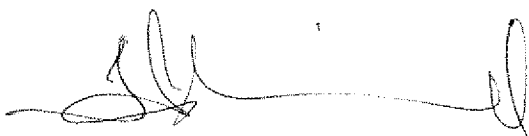

- (c) instances of multiple registrations for a given Group Member are rectified;
- (d) registrations are reviewed against a list of Opt Out Notices lodged with the Court (copies of which are held by Maurice Blackburn) to identify any registrant who has previously opted out of the class action – to date, no registrant allocated to Maurice Blackburn has previously opted out, however the process that is in place to be followed in that event is that registrants who have opted out are sent a letter of withdrawal at this time to avoid the time and costs of processing their claim; and
- (e) registrations are checked for an email address – if none has been given, the Group Member is sent a letter confirming his or her registration and providing his or her SID.

#### **Allocation to one of the Four Firms**

101. Each newly registered Group Member is allocated to one of the Four Firms for administration. On a monthly basis, a paralegal updates the Consolidated List with information concerning any new registrants, taking into account any factors that indicate which firm a Group Member should be allocated to. The list is then circulated between the Four Firms and any issue that arises is resolved.

#### **Initial Steps Post Allocation**

102. When monthly registration allocations between the Four Firms have been finalised, a paralegal updates the Online Database with the outcomes of the allocation process.
103. A paralegal then reviews the list of registrants allocated to Maurice Blackburn and completes a series of checks designed to minimise any claim administration work in respect of registrants who cannot be found eligible to receive compensation (for example, due to clause 5.1(e) of the Amended Settlement Scheme).
104. In the early stages of online registration being open, Maurice Blackburn identified registrants who were likely to be ineligible for compensation because either:
- (a) they had not been implanted with ASR (sub-clause 5.1(a) of the Amended Settlement Scheme); or




- (b) their ASR implant had not been revised (sub-clause 5.1(b) of the Amended Settlement Scheme).
105. As a result, the Online Registration Form was amended to:
- (a) prevent registration of people who indicated they had not had an ASR implant; and
  - (b) ask registrants who indicate they have not had their ASR implant revised whether they consider themselves to be eligible due to a Deemed ASR Revision, as defined in sub-clause 5.2(b) – if the registrant answers “no”, he or she is prevented from registering.
106. Prior to these amendments to the Online Registration Form, registrants were contacted by a paralegal if they indicated on the Online Registration Form that they:
- (a) had not had an ASR implant – those who confirmed they had not had an ASR implant were advised of the eligibility criteria and sent a letter inviting them to withdraw their registration; or
  - (b) had not undergone revision of their ASR hip implant – instructions were taken to identify whether they may have had a Deemed ASR Revision. If there was no possibility of a Deemed ASR Revision, the registrant was sent a letter inviting them to withdraw their registration and suggesting that they re-register if their circumstances change in the future.
107. If a registrant is unsure whether he or she has had an ASR implant, a paralegal recommends they get confirmation from their healthcare provider before proceeding with the registration process.

#### **Deemed ASR Revision**

108. Registrants who indicate in the Online Registration Form that they may have had a Deemed ASR Revision are contacted by telephone by a paralegal to confirm that they understand the scope of Deemed ASR Revision. The paralegal undertakes basic checks to ensure that the registrant is not clearly ineligible to make a claim in this category. If the Group Member appears to be potentially eligible to make such a claim, instructions are sought about their medical circumstances including:
- (a) the opinion of their orthopedic surgeon regarding the need for ASR Revision;




- (b) symptoms indicating a need for revision;
  - (c) test results indicating a need for revision; and
  - (d) the nature, likelihood and severity of risk if revision surgery were to be undertaken.
109. The paralegal records this information in a Deemed Revision Verification Form. The form is provided to the Committee as a basis for it considering the Group Member's prospects of meeting the criteria for Deemed ASR Revision according to sub-clause 5.2(b) of the Amended Settlement Scheme. If the Committee determines that a Group Member has no prospect of meeting the criteria, he or she is invited to withdraw their claim and register in the future if their circumstances change. This is done to avoid a formal finding that the Group Member is ineligible for compensation and preserve his or her right to register again in the event they become eligible and to minimise costs.
110. If the Committee determines that a Group Member has unclear prospects of meeting the Deemed ASR Revision criteria, it considers whether to exercise the discretion in clause 5.7 of the Amended Settlement Scheme by requesting the Group Member to obtain relevant medical records and provide them to the Administrators or pay a bond for the costs of the Administrators obtaining those records.
111. If the Committee determines that a Group Member has reasonable prospects of meeting the Deemed ASR Revision criteria, his or her claim is allowed to progress in the usual way. The firm that was allocated the claim is responsible for its preparation and can take steps to obtain the medical records necessary for Eligibility Assessment.
112. To date in the settlement administration, 79 Registered Group Members allocated to Maurice Blackburn have not had revision surgery and fall within the following criteria:
- (a) 22 were found to have reasonable prospects;
  - (b) 5 were found to have unclear prospects;
  - (c) 16 are in the process of withdrawing;
  - (d) 12 are yet to be screened; and

(e) 24 have withdrawn.

113. The issue of Deemed ASR Revision has arisen infrequently after the initial cohort of registrants, and I expect that it will continue to be a part of settlement administration work going forward, albeit a smaller part than has been the case to date.

#### **Late Registration Check**

114. According to clause 4.3 of the Amended Settlement Scheme:
- (a) Group Members who underwent an ASR Revision before 30 April 2016, must register by 31 October 2016 (**Initial Registration Deadline**); and
  - (b) Group Members who underwent ASR Revision after 1 May 2016 must register within 6 months of the date of their revision (**Individual Registration Deadline**).
115. Prior to the Initial Registration Deadline, the Administrators contacted all Group Members who had previously reported having had an ASR Revision before 30 April 2016, but had not registered. A total of 41 Group Members were contacted, of those 32 Group Members went on to register prior to the Initial Registration Deadline.
116. Now that Individual Registration Deadlines apply, each registration is checked to ensure that it was made before the applicable deadline. A file check is conducted for Group Members who previously engaged with Maurice Blackburn to identify their revision date. If there is no information on file regarding the registrant's revision date, a paralegal contacts him or her by telephone to receive instructions.
117. Group Members who register after the deadline applicable to their claim are contacted by a paralegal to obtain instructions on:
- (a) the Group Member's age;
  - (b) the dates of their ASR Implant and ASR Revision surgeries;
  - (c) whether or not the Group Member had been in previous contact with one of the Four Firms;
  - (d) whether the Group Member received the Notice of Proposed Settlement and Further Notice to Group Members;



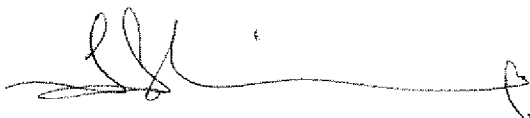

- (e) why the Group Member did not register before the relevant registration deadline; and
  - (f) any other factors that may be relevant to the Administrators' exercise of discretion to accept late registrations pursuant to clause 4.6 of the Amended Settlement Scheme.
118. A paralegal compiles this information in a Late Registration Verification Form, which is referred to the Committee as a basis for its decision on whether to accept the late registration.
119. If the Committee determines to accept a late registration the Group Member is notified and his or her claim proceeds through the usual processes.
120. As at the date of this affidavit, six late registrations have been made, of which all have been accepted by the Administrators.

#### **Released claims**

121. In 2012, the respondents implemented a program in which they offered lump sum compensation to Group Members, on the condition that they opted out of the class action and signed a deed of release (**ASR Compensation Programme**).
122. Group Members who have entered into a deed of release with the Respondents or any of their related entities in respect of an ASR Claim are ineligible for compensation in the Class Action pursuant to sub-clause 5.1(e)(ii) of the Amended Settlement Scheme. Although those Group Members are likely to have opted out of the Class Action and therefore to have been identified in the course of earlier checks being performed, a further review is conducted pursuant to sub-clause 5.6(b) of the Amended Settlement Scheme to identify affected registrants who did not opt out. Maurice Blackburn periodically provides NRFA a list of the Group Members it has been allocated, including their name and date of birth. NRFA then confirms whether or not those Group Members have entered into a deed of release. This information is incorporated into Group Members' Eligibility Books.

#### **Online Questionnaire**

123. Once all initial claim checks have been made, a paralegal sends an email to the Group Member including a personalised link to the online Questionnaire and instructions on how to complete it.




124. Maurice Blackburn is able to check the completion status of each Questionnaire through the Online Database and ensures all claims are progressing by periodically contacting Group Members whose Questionnaires are outstanding.
125. In January 2017, Maurice Blackburn followed-up outstanding Questionnaires and authorities for the initial cohort of Group Members. Over 50 Group Members were contacted to confirm they had received and understood the instructions. Follow-up is now conducted on an ongoing basis.
126. To date, 659 (89.66%) of Group Members allocated to Maurice Blackburn have completed the online Questionnaire.

#### **Authorities**

127. When a Group Member's authorities are received, a paralegal checks them to ensure that all relevant authorities have been returned and are completed correctly. Where relevant, a paralegal also checks that estate-related or power of attorney documents are returned.
128. If the authorities or documents are considered to be deficient, the paralegal contacts the Group Member to resolve any issues.
129. To date, 637 (86.66%) of Registered Group Members allocated to Maurice Blackburn have returned completed authorities.

#### **Medical Record Requests**

130. Using the information gathered from the Questionnaire, medical records are requested (**Record Request**) from the Group Member's orthopaedic surgeon(s) and the hospital(s) where their ASR Implant and ASR Revision surgeries took place (**Healthcare Providers**). Record Requests are prepared by a paralegal.
131. Healthcare Providers vary in the time they take to respond to Record Requests. While they are asked to provide records within one month of the request, they generally take one to four months to do so. In situations where records have not been received within the one month timeframe, a paralegal calls the Healthcare Provider on an ongoing fortnightly basis to follow up on the request and attempt to resolve any issues causing the delay.






132. As at the date of this affidavit, medical records have been requested on behalf of 613 (83.40%) Registered Group Members allocated to Maurice Blackburn. For most Group Members, requests are made to multiple Healthcare Providers. At the date of this affidavit, Maurice Blackburn has received sufficient medical records for 493 Group Members to enable their claims to be progressed.

**Preparing Eligibility Books**

133. Once medical records have been obtained, claims are allocated to a paralegal to prepare an Eligibility Book.
134. In order to prepare the Eligibility Book, the paralegal processes the medical records including scanning the records into the Group Member's electronic file, and preparing a folder of hard copy medical records in order to store records because they are ordinarily received by Maurice Blackburn in hard copy format. This is also sometimes done by an administrative assistant where there is capacity to do so.
135. The paralegal then prepares and completes the Eligibility Coversheet. The Eligibility Coversheet sets out information relevant to each of the eligibility criteria according to clause 5 of the Amended Settlement Scheme.
136. The paralegal reviews all the obtained medical records and the supporting materials including the Federal Court List and any correspondence received from the Respondents regarding any settlement deed of release signed by the Group Member.
137. The paralegal then pinpoint references the relevant page numbers of the medical records and supporting materials on the Eligibility Coversheet to substantiate whether a Group Member does or does not meet each individual eligibility criteria in clause 5 of the Amended Settlement Scheme.
138. When relevant, the paralegal also provides detailed references on the Eligibility Coversheet of any issues and/or supporting evidence in the materials obtained that may give rise to potential ineligibility, such as fracture of the femoral neck, post-operative infection and unrelated trauma.
139. Once the paralegal has completed the Eligibility Coversheet, the Coversheet and associated materials forming the Eligibility Book are provided to a Senior Lawyer.



140. The Senior Lawyer then reviews the Coversheet prepared by the paralegal for each criterion and reviews the pinpoint references in the medical records as well as any other relevant parts of the medical records to make a formal determination on the eligibility of the Group Member (**Eligibility Determination**). The Senior Lawyer records the determination on the Eligibility Coversheet.
141. Once a tranche of Eligibility Determinations are made, Shine is notified and selects one in ten determinations for audit in accordance with clause 7.4 of the Settlement Protocol. Maurice Blackburn audits Eligibility Determinations prepared by Shine in the same way. Materials are exchanged using the Document Sharing Facility.

#### **Notice of Eligibility**

142. When a Group Member's Eligibility Determination has been made, he or she is sent formal notice of the outcome by email, or by post if the Group Member does not use email. There are different forms of the notice depending on whether the Group Member has been assessed as eligible or ineligible. The templates of the Notice of Eligibility for Eligible Group Members and Ineligible Group Members are annexed to this affidavit and marked "JKS-139" and "JKS-140" respectively.
143. The Notice of Eligibility for Eligible Group Members includes information about the two compensation options (the Fast Track Resolution and Individual Assessment) and next steps.
144. The notice that is sent to Ineligible Group Members contains reasons for the determination and information about the Group Member's right to request a review of that determination in accordance with clause 9 of the Amended Settlement Scheme.
145. At the time of this affidavit no registrant who has been determined to be ineligible to participate in the Amended Settlement Scheme has requested a review of their eligibility determination.

#### **Elections**

146. Clause 6.3 of the Amended Settlement Scheme allows Eligible Group Members 42 days from the date the Administrators send their Notice of Eligibility to elect the Fast Track Resolution, otherwise their claim defaults to Individual Assessment.

147. When Eligible Group Members notify the Administrator of their election, they are sent an informal acknowledgement of their election advising them that they will receive a formal notice in due course. For efficiency and cost-control purposes, formal notices regarding elections as described in paragraphs 57(e) and 57(f) are prepared and distributed periodically in batches.
148. Group Members who have elected to receive a Fast Track Resolution are then sent a formal Notice of Fast Track Assessment regarding their election. This notice also contains information regarding the next steps including the need to resolve liens. A copy of the Notice of Fast Track Assessment is annexed to this affidavit and marked "JKS-141".
149. Group Members who have elected an Individual Assessment are sent a formal Notice of Individual Assessment as well as a brochure detailing the next steps in that process. Further information about the brochure is provided in paragraph 156 below. Copies of the Notice of Individual Assessment and brochure are annexed to this affidavit and marked "JKS-142" and "JKS-143" respectively.

#### **Interim payments**

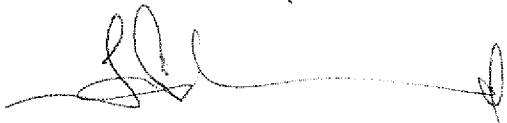
150. An Eligible Group Member is able to make an application for interim payment if, in accordance with sub-clause 10.8(b) of the Amended Settlement Scheme:
- (a) he or she is suffering financial hardship pending finalisation of a claim; or
  - (b) more than 12 months have passed since a Notice of Eligibility was sent to the Group Member.
151. Group Members who indicate they intend to claim an interim payment are contacted by telephone by a paralegal to take instructions on:
- (a) their income, including any household income;
  - (b) their outgoings including any outstanding debts;
  - (c) the imminent consequences of their financial situation; and
  - (d) the circumstances surrounding their financial hardship.
152. The Group Members are then asked to provide documentary evidence of the factors outlined above in support of the application.




153. An Interim Payment Verification Form is prepared by a paralegal outlining the instructions taken and attaching supporting material provided by the Group Member. These documents are then referred to the Committee as a basis for its decision on whether to grant or reject the application for interim payment.
154. Group Members are informed of the outcome of their application and if the application is approved the payment is processed shortly thereafter.
155. As at the date of this affidavit 7 applications have been made for interim payments by Group Members allocated to Maurice Blackburn, of which five have been granted and two have been rejected.

#### **Individual Assessment**

156. Maurice Blackburn and Shine drafted and finalised an information brochure for Group Members who elect to proceed with an Individual Assessment. The brochure provides Group Members with information regarding the heads of damage available, example assessments, and their obligations with respect to the assessment process.
157. We continue to work with Shine in the creation of processes and precedents for Individual Assessments, including:
- (a) a questionnaire administered to Group Members to confirm their current instructions and to assess what, if any, further materials are required for the Claim Book;
  - (b) guidelines for requesting further material for the Claim Book;
  - (c) an explanatory guide for Assessors undertaking Individual Assessments;
  - (d) precedent documents for Assessors such as:
    - (i) the Notice of Assessment, to provide information to the Group Member about the Assessor's determination of their entitlements, and
    - (ii) a Statement of Reasons for the Assessor's determination.



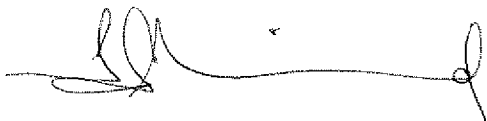
158. The Administrators have now identified and selected Assessors. A joint training session for Assessors will take place shortly, directed at ensuring Individual Assessments are conducted in a consistent and efficient manner.
159. In order to track and capture relevant data on Individual Assessments as they progress, additions to the Online Database have been developed and prepared for integration with the existing system.

#### **Resolution of Liens**

160. Once a Group Member has elected to receive the Fast Track Resolution, or their Individual Assessment has been finalised, the Administrators begin resolving Liens. Liens are defined in the Amended Settlement Scheme as: *"Any lien, charge, security interest, subrogation right, third-party interest or adverse claim of any nature whatsoever, in each case whether statutory or otherwise."*
161. Responsibility for Liens is as follows pursuant to clauses 4.3 and 4.4 of the Settlement Deed:
- (a) the Respondents are responsible for negotiation and resolution of **Assumed Liens** as defined in clause 4.1 of the Settlement Deed - in essence Liens held by Medicare, private health insurers and the Department of Veteran Affairs relating to relevant treatment expenses incurred in specified circumstances; and
  - (b) all other Liens (**Residual Liens**) are the responsibility of the Group Member and are paid from the Settlement Sum, as described in paragraphs 173 to 177 below.
162. Maurice Blackburn has established a process for identifying and resolving all relevant Liens as follows.
163. In the Questionnaire, registering Group Members are asked questions to identify potential lienholders.

#### **Private health insurance and Department of Veterans' Affairs Liens**

164. If a Group Member has indicated that he or she has or had private health insurance, a request is sent to their private health insurer(s) to provide a statement of past benefits paid (**Health Benefits Statement**).



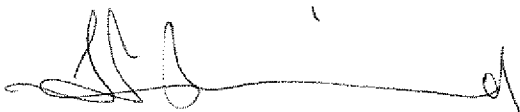
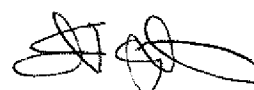

165. A paralegal cross-checks Health Benefits Statements with the relevant Group Member's Questionnaire and medical records to identify any treatment expenses that may be related to the ASR Implant failure and revision surgery. The paralegal then:
- (a) prepares a filenote of this review, referencing evidence where available;
  - (b) annotates the statement to mark relevant treatment expenses; and
  - (c) categorises relevant treatment expenses as Assumed Liens or as Residual Liens.
166. The Health Benefits Statement is then provided to the Group Member to identify any other expenses that may be related to his or her injury, or otherwise to confirm the annotations on the statement. If the Group Member identifies any related expenses, the Health Benefits Statement is amended. Once completed, the statement is confirmed by the Group Member and returned to Maurice Blackburn. Maurice Blackburn forwards the annotated Health Benefits Statement to the private health insurer attached to an email requesting a Notice of Charge.
167. If the Group Member has indicated in his or her Questionnaire that he or she receives benefits from the Department of Veterans' Affairs, a corresponding process occurs with that department.

#### **Medicare**

168. Pursuant to clause 8.5 of the Amended Settlement Scheme, and as discussed in paragraph 92 above, NRFA's Bulk Payment Agreement applies to any Lien asserted by Medicare in relation to compensation paid to Eligible Group Members under both the Fast Track Resolution and Individual Assessment.
169. In order to give effect to the Bulk Payment Agreement and thereby resolve Medicare Liens, a schedule is periodically sent to NRFA (at least monthly) requesting NRFA to pay Medicare in accordance with the Bulk Payment Agreement and providing the details required to do so.

#### **Other compensation**

170. If Group Members indicate they have received other compensation related to revision of their ASR Implant, the relevant information is requested from the

compensation authority or organisation and processed according to its status as an Assumed Lien or Residual Lien.

#### **Resolution of Assumed Liens**

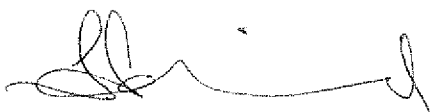
171. Liens are asserted by a Notice of Charge from the lienholder (**Notice of Charge**). Maurice Blackburn forwards all Notices of Charge for Assumed Liens together with supporting material to NRFA on a monthly basis. NRFA reviews the Notices of Charge and identifies items it does not accept as Assumed Liens. If Maurice Blackburn disagrees with NRFA on the status of a Lien, one of our lawyers negotiates with a NRFA lawyer until agreement is reached. NRFA is then responsible for resolving Assumed Liens.
172. Clause 8.9 of the Amended Settlement Scheme provides a process for resolving Lien Disputes, including over whether an item is an Assumed Lien and the amount of an Assumed Lien. To date, there has been no need to use that process.

#### **Resolution of Residual Liens**

173. Consistent with clause 8.4(b) of the Amended Settlement Scheme, Maurice Blackburn assists Group Members to identify and resolve Residual Liens, as follows:
- (a) the Questionnaire includes questions directed at identifying all Liens arising from a Group Member's compensation entitlement;
  - (b) Maurice Blackburn verifies Residual Liens identified based on Notices of Charge; and
  - (c) Maurice Blackburn then compiles details of verified Residual Liens in a schedule for approval and payment at the same time as the Eligible Group Member's compensation, as described below.

#### **Final Payment and payment of Residual Liens**

174. When all Assumed Liens in respect of an Eligible Group Member are agreed, NRFA notifies Maurice Blackburn and the Group Member's claim proceeds to the compensation payment process.
175. The Group Member is sent an email containing a link to an online payment portal in order to provide banking details for an electronic funds transfer of his or her final




compensation payment. When received, Maurice Blackburn vets the banking details to ensure:

- (a) the account is in the name of the relevant Group Member or a person duly authorised to act on the Group Member's behalf, or on behalf of his or her estate in the case of deceased Group Members; and
  - (b) there are no obvious errors in the account details provided, for example where letters are included in the account number or an insufficient number of digits are provided.
176. Details of payments to be made are compiled into a schedule (**Payment Schedule**), including:
- (a) compensation payments to Group Members;
  - (b) Residual Liens; and
  - (c) interim payments.
177. The Payment Schedule is sent to me and a partner of Shine (currently Jan Saddler) for approval. Maurice Blackburn does not make payments until written approval is received from both me and Shine, pursuant to clause 8.6 of the Settlement Protocol.
178. Payments Schedules are processed and paid periodically, at least once a month, to minimise administrative time and costs whilst paying compensation in a timely manner.

### Enquiries

179. The Administrators have received a significant volume of enquires since the announcement of the Settlement.
180. The volume of enquiries has varied over time. Enquiries have surged when correspondence has been sent, including the Notice of Proposed Settlement and the Further Notice to Group Members.
181. The volume of telephone enquiries received by Maurice Blackburn on any particular day has generally ranged from approximately 5 to 30 enquiries.
182. The nature of enquiries that are regularly received include requests for:






- (a) an update on the progress and timeframe of a Group Members' claim;
  - (b) further instruction on providing information and documents;
  - (c) clarification of correspondence they have received from the Administrators;
  - (d) a Hard Copy Questionnaire; and
  - (e) interim payment.
183. Group Members also call to:
- (a) discuss election following receipt of a Notice of Eligibility; and
  - (b) provide instructions regarding the resolution of liens.
184. We have also received enquiries from potential Group Members regarding the eligibility criteria and registration.
185. These enquiries have been dealt with by Paralegals at first instance who have provided such Group Members with general information. Enquiries regarding more complex issues are referred to Senior Lawyers in the team.
186. Our preference has been to send all correspondence by email when possible to minimise administration costs. All formal notices are sent to Group Members via email when possible.

## **SECTION E: AMENDMENTS TO THE AMENDED SETTLEMENT SCHEME**

187. The Administrators are seeking an order approving the following amendments. The amended version of the Amended Settlement Scheme is annexed to this affidavit and marked "JKS-144".

### **Functions delegable by the Administrators**

188. Clause 2.3 of the Amended Settlement Scheme prescribes the functions that the Administrators may delegate to DBH and LAM in respect of Group Members who were formerly clients of those firms. It also prescribes the functions that must not be delegated.
189. As the Administrators progressed an increasing number of claims through the various stages of the settlement administration process, I became aware that it was

more efficient and expedient for DBH and LAM to perform certain functions in respect of Group Members who were formerly the clients or registrants of those firms, in addition to those functions specified in clauses 2.3(a) to 2.3(c) of the Amended Settlement Scheme.

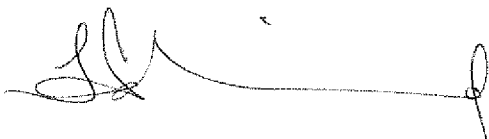
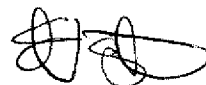
190. These further functions included, but were not limited to:
- (a) assisting the Administrators in resolving conflicts in relation to the allocation of Registered Group Members;
  - (b) contacting Group Members by telephone in order to determine whether a Group Member potentially satisfies the criteria for a Deemed ASR Revision; and
  - (c) sending Group Members correspondence and information in relation to the progress of the settlement administration, such as Group Member Update letters.
191. Accordingly, the Administrators propose amendments to clause 2.3 of the Amended Settlement Scheme expanding the scope of functions the Administrators may delegate to DBH and LAM (**Clause 2.3 Amendments**). Under the Clause 2.3 Amendments the Administrators may, in addition to the functions prescribed in sub-clauses 2.3(a) to 2.3(c) of the Amended Settlement Scheme, delegate any other functions to DBH and LAM in order to promote the efficient administration of the Settlement Scheme. The proposed amendments do not affect the prohibition on Administrators delegating functions listed in sub-clauses 2.3(d) to 2.3(h) and those functions remain the non-delegable responsibilities of the Administrators.
192. The effect of the Clause 2.3 Amendments is that the scope of functions that may be delegated to DBH and LAM is broad and non-prescriptive, subject only to the non-delegable responsibilities listed in sub-clauses 2.3(d) to 2.3(h) and the prerequisite that functions may only be delegated in order to enhance the efficiency of the settlement administration. The rationale for this Amendment is to allow the Administrators to delegate further administration work to DBH and LAM in the future so that the administration of the settlement continues to be as efficient and inexpensive as practicable.
193. The Administrators are also proposing an amendment to sub-clause 2.4(d) of the Amended Settlement Scheme in relation to the payment to DBH and LAM for any

further administration work delegated to these firms pursuant to the Clause 2.3 Amendments (**Sub-Clause 2.4(d) Amendment**).

194. Under sub-clauses 2.3(a) to 2.3(c) of the Amended Settlement Scheme, the administrative work that may be delegated to DBH and LAM is work that is paid in accordance with the fixed amounts specified in clause 13.2 of the Amended Settlement Scheme. Accordingly, sub-clause 2.4(d) of the Amended Settlement Scheme provides that DBH and LAM are to be paid professional fees in accordance with clause 13.2.
195. However, the Clause 2.3 Amendments are likely to result in the Administrators delegating administrative work to DBH and LAM that falls outside the scope of work specified in clause 13.2. Accordingly, the Administrators propose the Sub-Clause 2.4(d) Amendment, which allows DBH and LAM to be paid professional fees in accordance with the hourly rates specified in clause 13.1 for such administrative work that falls outside the scope of clause 13.2.
196. The rationale for this Amendment is that it provides for DBH and LAM to be paid in the appropriate manner as established by the Amended Settlement Scheme for administrative work they perform.

#### **Change of election from Fast Track Resolution to Individual Assessment**

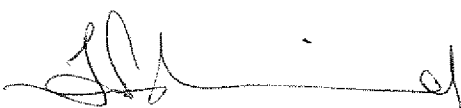
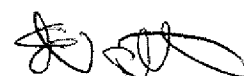
197. The Amended Settlement Scheme does not provide for the circumstance in which a Group Member who has elected to receive a Fast Track Resolution subsequently notifies the Administrators that he or she wishes to withdraw this election and thereby proceed to Individual Assessment. I am aware of one such request and the Administrators have agreed that the settlement scheme should provide Group Members with this right in certain circumstances.
198. The Administrators propose to insert clauses 6.9 and 6.10 into the Amended Settlement Scheme (**Clause 6.9 and 6.10 Amendments**).
199. Under the proposed clause 6.9, if a Group Member who has elected to receive a Fast Track Resolution subsequently notifies the Administrators that he or she wishes to withdraw that election, the Administrators may accept this notification. The Group Member's claims would then proceed to Individual Assessment.

200. However, the proposed clause 6.10 restricts the circumstances in which the Administrators may accept a notification to withdraw a Fast Track Resolution election, by prohibiting them from accepting such notifications if they have either:
- (a) resolved all Liens in relation to the Group Member's claim; or
  - (b) paid the Group Member the Fast Track Resolution.
201. This amendment has the effect of preventing a change of election where it would render previous settlement administration work on a Group Member's claim futile or redundant, and ultimately result in unnecessary Administration Costs.
202. The Clause 6.9 and 6.10 Amendments are reasonable on the basis that:
- (a) they expand the rights of Group Members to choose the form in which they receive compensation entitlements; and
  - (b) at the same time, they do not adversely affect the overall efficiency or costs of the settlement administration process.

#### **Final payment after resolution of Liens**

203. Clause 8.7 of the Amended Settlement Scheme provides that no final payment is to be made to a Group Member until the earlier of the events described in sub-clauses 8.7(a) or 8.7(b) occurs. The event described in sub-clause 8.7(b) is that the Group Member's Assumed Liens have been "resolved".
204. Clause 8.7 further provides that no final payment is to be made to a Group Member until the events described in sub-clauses 8.7(c) or 8.7(d) occur. The event described in sub-clause 8.7(d) is that the Group Member's Residual Liens have been "resolved and paid".
205. The Administrators propose to delete the words "and paid" from sub-clause 8.7(d) (**Sub-Clause 8.7(d) Amendment**).
206. The rationale for the Sub-Clause 8.7(d) Amendment is to enhance the consistency and clarity of prerequisites to payment of a Group Member's compensation. Prior to proposing this Amendment, the Administrators considered the differences in practice between the requirements that Assumed Liens be "resolved" and Residual Liens be "resolved and paid" before final payments may be made. The Sub-Clause 8.7(d) Amendment ensures that these requirements are consistent, and the amended

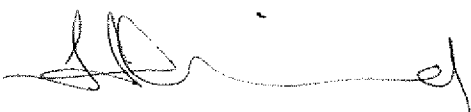




clause remains consistent with the requirements of clause 4.6 of the Settlement Deed.

207. The Sub-Clause 8.7(d) Amendment also clarifies that the Administrators may process a Group Member's final compensation payment at the same time as processing his or her Residual Liens. This is consistent with the existing practice as described in paragraphs 174 to 178 above, which facilitates payment of compensation to Group Members in an efficient and timely manner.

**First tranche of individually assessed compensation payments**

208. Sub-clause 10.4(c) of the Amended Settlement Scheme states that the Administrators may make payments to tranches of Group Members who have elected to undergo Individual Assessment, provided that at least 300 Group Members have had their compensation assessed before the first tranche may be paid. The rationale for this provision was that a sufficiently large proportion of Group Members' claims would have been finally assessed so as to allow a measure of confidence in determining the "appropriate level of compensation to be paid" for the purpose of clause 10.4 of the Amended Settlement Scheme.
209. As discussed at paragraph 24 above, I initially expected and assumed that 80% of Eligible Group Members would elect Individual Assessment. Based on that expectation as well as the evidence that approximately 2,000 Group Members would make a claim, 300 Group Members would have represented approximately 18% of individually assessed claims. However, to date, the proportion of Group Members who have elected Individual Assessment has been significantly lower than expected, at 30% for those Eligible Group Members to date. If the proportion of Group Members who elect Individual Assessment continues at its current level, and I have no reason to think that it will change, 300 Group Members will represent approximately 50% of individually assessed claims.
210. On this basis, in my opinion it is reasonable to reduce the size of the tranche of Group Members in sub-clause 10.4(c) of the Amended Settlement Scheme from 300 Group Members to 100 Group Members (**Sub-Clause 10.4(c) Amendment**). Otherwise, Group Members who elect Individual Assessment may need to wait an unreasonable amount of time before the process in clause 10.4 will be able to be carried out. In other words, the Sub-Clause 10.4(c) Amendment will allow the first tranche of Group Members who elected Individual Assessment to be paid compensation in a more expeditious manner. The Administrators have not obtained

actuarial advice as to the impact this may have on the size of the fund ultimately available to Group Members. However, I am of the opinion that the proposed amendment will not adversely affect Group Members because:

- (a) the exercise of extrapolating the aggregate of 100 Group Members' individually assessed compensation amounts to the total compensation for individually assessed claims (600 Group Members, based on the current rate of election for the Fast Track Resolution) will be able to be done with a reasonable measure of confidence;
- (b) in this regard, the figure of 300 was based on an *assumption* that 80% of Group Members (that is, 1,600 Group Members) would undergo individual assessment, and 100 Group Members represents approximately the same proportion of Group Members who (based on the *current* 30% rate of election for individual assessment) are ultimately expected to undergo individual assessment (that is, approximately 600 Group Members);
- (c) the process in clause 10.4 contemplates an initial part-payment being made to the first tranche of 100 Group Members, with the balance of their compensation being reserved and held by the Administrators until additional claims are assessed and the level of confidence in the extrapolation process thereby increases over time, and with further payments and later also final payments then made at a later time;
- (d) the actuarial experts will be engaged to provide advice in relation to a "safe" level (for example, 50 cents in the dollar, or 60 cents in the dollar) at which any initial part-payment should be made so as to ensure that sufficient funds remain in the Settlement Account/s in order to pay all individually assessed Group Members at the same level over time; and
- (e) the Court also retains an ultimate supervisory function as set out in clause 10.6 of the Amended Settlement Scheme in order to ensure that payments to Group Members are fair and reasonable.


211. The note to clause 10.5 of the Amended Settlement Scheme also refers to the tranche of 300 Group Members as per sub-clause 10.4(c). For the purposes of consistency, the Administrators also propose to amend that reference from "300 Group Members" to "100 Group Members".


**SECTION G: ADMINISTRATION COSTS TO DATE**

212. The Administrators seek orders approving the payment of:
- (a) certain general Administration Costs incurred by Maurice Blackburn and Shine on a solicitor and own client basis pursuant to clause 13.1(c) of the Amended Settlement Scheme; and
  - (b) certain claim preparation costs incurred by Shine pursuant to clause 13.2 of the Amended Settlement Scheme.
213. In light of the amendments to the Amended Settlement Scheme that are discussed above in relation to the role of DBH and LAM, at the present time the Administrators do not seek approval of general Administration Costs incurred by DBH or LAM, however the Administrators propose to do so in the future.
214. For Administration Costs incurred under clause 13.1, Maurice Blackburn has kept a time based record of the work its staff has performed in connection with the Administration of the Amended Settlement Scheme. Each fee earner's time has been recorded at the hourly rates specified in clause 13.1(d) of the Amended Settlement Scheme.
215. Maurice Blackburn's invoices from 1 June 2016 until 31 January 2017 have been submitted to Ross Nicholas in order for an independent costs expert's report to be prepared for the Court in respect of those costs. I note that Mr Nicholas prepared a report regarding the "Applicants' Costs" for the purpose of the application for the Settlement Orders, and I decided to retain Mr Nicholas in order to provide an opinion regarding the reasonableness of Administration Costs given his familiarity with the proceeding as well as the internal systems and work practices of both Maurice Blackburn and Shine.
216. The Administrators seek approval of Administration Costs in the amounts recommended by Mr Nicholas for approval. Further applications for approval of Administration Costs will be made at a later time, and for that purpose the Administrators will again propose to retain Mr Nicholas in order to provide an expert opinion.
217. The fee charged by Mr Nicholas for preparing his report is \$21,780 including GST. The Administrators seek to have payment of that disbursement approved as part of

the Administration Costs and will include Mr Nicholas' invoice in an application for further approval of Administration Costs at a later time.

Affirmed by the deponent  
at Sydney  
in New South Wales  
on 8 June 2017  
Before me:

)  
)  
)   
) Signature of deponent  
)  
)

  
Signature of witness

**ELIZABETH JEANNE VASTA**  
of Level 32, 201 Elizabeth Street, Sydney  
an Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (NSW)

An Australian legal practitioner within the meaning  
of the *Legal Profession Uniform Law* (NSW)

Name of witness: Elizabeth Vasta  
Address of witness: Level 32, 201 Elizabeth Street Sydney NSW 2000



**Certificate Identifying Annexure JKS-137**

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-137** referred to in the affidavit of **JULIAN KLAUS SCHIMMEL** affirmed at Sydney on 8 June 2017.

Before me



Elizabeth Vasta  
Lawyer with a current practising certificate

## **Settlement Administration Protocol – ASR Class Action**

Version 2  
Dated 19 May 2017

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

## **Background**

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- A. On 29 June 2016, the Court made the Approval Order and in doing so approved the Settlement of the ASR Class Action pursuant to section 33V of the Act.
- B. In making the Approval Order, the Court approved the Settlement on the terms set out in the Amended Settlement Scheme dated 17 June 2016 and the Deed.<sup>1</sup>
- C. In addition, Maurice Blackburn and Shine were jointly appointed as Administrators of the Amended Settlement Scheme.<sup>2</sup>
- D. Clause 2.2(a) of the Amended Settlement Scheme requires that Maurice Blackburn and Shine work together cooperatively in order to jointly perform the role of Administrators.
- E. Clause 2.2(b) of the Amended Settlement Scheme requires that Maurice Blackburn and Shine 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 the Amended Settlement Scheme, and to do so as efficiently and inexpensively as is practicable.
- F. This Settlement Administration Protocol (**Protocol**) has been prepared in accordance with clause 2.2(b) of the Amended Settlement Scheme and is intended to establish the procedures, arrangements, work practices and financial controls and approvals that are referred to in clause 2.2(b).

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<sup>1</sup> Order 1 made on 29 June 2016.

<sup>2</sup> Order 3(c) made on 29 June 2016.

## 1. Interpretation

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### 1.1 Definitions

Terms that are defined in the Deed or the Amended Settlement Scheme have the same meaning when used in this Protocol, and the following additional terms are defined as follows:

<u>Term</u>	<u>Meaning</u>
<b>Administration</b>	The administration of the Settlement in accordance with the Approval Order
<b>Administration Work</b>	The legal, administrative and other work by the Administrators and their delegates during and for the purpose of the Administration
<b>Claim Preparation Work</b>	The preparation of an Eligibility Book, preparation of a Claim Book and resolution of Liens for an individual Group Member
<b>Committee</b>	Committee has the meaning given in clause 3.1
<b>Consolidated List</b>	Consolidated List has the meaning given in clause 5.2
<b>General Administration Work</b>	Administration Work other than Claim Preparation Work
<b>Invoice</b>	Invoice has the meaning given in clause 10.3(a)
<b>Significant Decision</b>	Significant Decision has the meaning given in clause 4.2

### 1.2 Interpretation

In this Protocol:

- (a) if a word or phrase is defined in this Protocol, its other grammatical forms have a corresponding meaning;
- (b) specifying anything in this Protocol after the words "include", "including", "such as" or "for example" or similar expressions, does not limit what else might be included;
- (c) unless otherwise specified, a reference to a clause is a reference to a clause of this Protocol; and
- (d) a reference to a document (such as the Amended Settlement Scheme) is to the document as amended, supplemented, novated or replaced.

## **2. Operation of this Protocol**

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### **2.1 Commencement of this Protocol**

This Protocol commences on the date agreed between Maurice Blackburn and Shine, and the agreed date is to be noted on the cover page of the Protocol.

### **2.2 The Protocol is binding on the Administrators**

In their capacity as Administrators, Maurice Blackburn and Shine each adopt and agree to be bound by and adhere to the requirements of this Protocol.

### **2.3 Amendment of this Protocol**

This Protocol may be amended by agreement between Maurice Blackburn and Shine.

### **2.4 Duration of this Protocol**

Unless it is amended and replaced by a revised version, this Protocol will continue until the Administration has been completed and all funds in the Settlement Account have been finally distributed and paid in accordance with the Amended Settlement Scheme.

## **3. Committee**

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### **3.1 Establishment of the Committee**

Maurice Blackburn and Shine will establish a "**Committee**" for the purpose of:

- (a) making decisions and exercising functions under the Amended Settlement Scheme; and
  - (b) managing and having oversight of the Administration,
- as set out in this Protocol.

### **3.2 Composition of the Committee**

The Committee will be constituted by one senior solicitor from each of Maurice Blackburn and Shine, and in the first instance the solicitors will be:

- (a) Julian Schimmel, Principal of Maurice Blackburn; and
- (b) Rebecca Jancauskas, Partner of Shine.

### **3.3 Committee meetings and processes**

The Committee:

- (a) will confer periodically as required and as arranged between its members; and

- (b) where appropriate or expedient to do so, may also make decisions or exercise functions by email between its members.

### **3.4 Record keeping**

The Administrators will maintain adequate records of Committee decisions, determinations and functions and for this purpose the Committee members may arrange for additional staff of Maurice Blackburn and/or Shine to be present at Committee meetings.

### **3.5 Substitution of members of the Committee**

In view of the likely duration of the Administration:

- (a) Maurice Blackburn may at any stage substitute another senior solicitor in place of Mr Schimmel; and
- (b) Shine may at any stage substitute another senior solicitor in place of Ms Jancauskas,

and where such a substitution is intended to be made:

- (c) it is to be notified to the other firm; and
- (d) in order to ensure an orderly and efficient transition, the new solicitor may initially participate in Committee meetings as an observer.

### **3.6 Resolution of disputes between members of the Committee**

In the unlikely event that the Committee members are not able to reach agreement in relation to an issue:

- (a) the dispute will be referred to counsel for resolution;
- (b) in the first instance, counsel will be Zoe Hillman;
- (c) if Ms Hillman is not available or is unable to resolve the dispute, the Committee will refer the dispute to Nicholas Bender of counsel;
- (d) if Mr Bender is not available or is unable to resolve the dispute, the Committee will refer the dispute to alternative counsel selected by agreement between the Committee members;
- (e) the decision of counsel will be final and binding on the Committee members.

## **4. Decision making by the Administrators**

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### **4.1 Only the Committee can make Significant Decisions or exercise discretions**

Where the Amended Settlement Scheme requires, enables or empowers the Administrators to:

- (a) make a "Significant Decision" as defined in clause 4.2; or

(b) exercise one of the discretions mentioned in clause 4.3,  
it must be done by the Committee.

#### 4.2 Meaning of Significant Decision

A Significant Decision is a decision or determination as to any of the following under the Amended Settlement Scheme:

<u>Clause</u>	<u>Decision</u>
5.6(d)	Whether additional materials are needed in order to assess the eligibility of those Group Members who claim to have had a Deemed ASR Revision or where there is any suggestion that a Group Member might have had an Ineligible Revision
5.7	Whether to request that a Group Member obtain materials or pay a bond in relation to a claim for a Deemed ASR Revision
7.3(a)	Whether to appoint a barrister or Senior Lawyer to the Panel of Assessors
7.5	Whether to obtain one or more medical reports (whether from a treating surgeon and/or an Independent Expert) for a Group Member's Claim Book
7.5(d)	Whether to obtain a report from a forensic accounting expert
7.6	Whether to add one or more experts to a list of approved experts
7.8(a)	Whether to appoint an additional barrister or Senior Lawyer to the Panel of Assessors
7.8(b)	Whether to remove a barrister or Senior Lawyer from the Panel of Assessors
8.9	Whether and when to refer a Lien Dispute to an independent barrister
9.5(a)	Whether to engage a barrister as a Review Assessor
10.2	In which bank account/s the Settlement Sum is to be held
10.4	Whether to make instalment payments to a tranche of Group Members
10.4	Whether and when to take advice from an actuarial expert
10.4	When to make payments to Group Members who elected to receive Fast Track Resolutions
10.6	Whether to seek Court approval to make final payments to some Group Members
12.2	When to seek orders for a person under a legal incapacity
13.1(c)	When to seek approval of Administration Costs
13.5(b)	Whether to request another lawyer to carry out legal work

14.1 Whether to seek directions from the Court

#### 4.3 Discretions that may be exercised

The Amended Settlement Scheme includes the following discretions that may be exercised by the Administrators:

Clause	Discretion
2.3	Delegate functions to DBH or LAM
2.4(e)	Decline to reimburse certain costs to DBH or LAM
4.6	Waive late registrations
6.5	Accept a late election to receive a Fast Track Resolution
9.4	Require that a Group Member pay a bond for a Review
10.8	Make an interim payment to a Group Member
11.4	Take steps where a Group Member fails to cooperate

## 5. Allocation of Administration Work

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### 5.1 Pre-existing relationships with Group Members

Maurice Blackburn and Shine note that:

- (a) before the Approval Order was made, many Group Members had retained or registered with Maurice Blackburn, Shine, DBH or LAM;
- (b) upon the Approval Order being made, clauses 2.1(b) and 2.4(a)(i) of the Amended Settlement Scheme require each of Maurice Blackburn, Shine, DBH or LAM to cease acting for any individual Group Members.

### 5.2 Allocation of Claim Preparation Work

Despite ceasing to act as solicitors for individual Group Members, it is expedient and efficient for Claim Preparation Work to be done by Maurice Blackburn, Shine, DBH and LAM for those Group Members who were formerly their clients or registrants, and for this purpose:

- (a) Maurice Blackburn will create a "Consolidated List" containing the names of the Group Members to whom Maurice Blackburn, Shine, DBH and LAM each sent the Settlement Notice (as defined in clause 1.1 of the Deed);
- (b) the Consolidated List is to contain a notation as to which of the four firms sent the Settlement Notice to each Group Member on the Consolidated List;
- (c) the Administrators will use the Consolidated List in order to allocate Claim Preparation Work to the four firms.



**5.3 Finalisation of the Consolidated List**

If a Group Member was sent the Settlement Notice by more than one firm, the Committee will agree on the firm to whom the Group Member's Claim Preparation Work should be allocated, and Maurice Blackburn will amend the Consolidated List accordingly.

**5.4 Claim Preparation Work for Group Members who are not on the Consolidated List**

Where a Group Member's name does not appear on the Consolidated List, the Committee will allocate the Claim Preparation Work for that Group Member to Maurice Blackburn, Shine, DBH or LAM based on:

- (a) the Group Member's preference (if any);
- (b) the capacity of Maurice Blackburn, Shine, DBH or LAM to carry out the Claim Preparation Work at the time that the allocation is being considered, and the extent of any backlog of existing Claim Preparation Work being carried out by Maurice Blackburn, Shine, DBH or LAM; and
- (c) other considerations that may be relevant.

and to the extent that it is appropriate and feasible in light of the above, the Committee will seek to allocate an approximately equal number of such Group Members to Maurice Blackburn and Shine.

**5.5 Reallocation of Claim Preparation Work**

Despite the provisions above, the Committee may at any time agree to reallocate Claim Preparation Work for Group Members.

**5.6 General Administration Work**

General Administration Work will be carried out by Maurice Blackburn and Shine:

- (a) as necessary and appropriate;
- (b) subject to general oversight by the Committee; and
- (c) in such a manner that avoids duplication of work and minimises Administration Costs where reasonably possible.

**6. Registration facility and maintenance of a database**

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**6.1 Online registration facility**

Maurice Blackburn:

- (a) created an online registration facility in April 2016 for the purpose of giving effect to clause 4.1 of the Amended Settlement Scheme; and

- (b) will maintain the registration facility as long as it is required for the purpose of the Administration.

## **6.2 Hard copy registration forms**

If a Group Member submits a hard copy registration form, its details are to be promptly entered on the online registration facility:

- (a) by Maurice Blackburn in respect of registration forms submitted to Maurice Blackburn or DBH; and

- (b) by Shine in respect of registration forms submitted to Shine or LAM,

and:

- (c) for the purpose of sub-clause (a), Maurice Blackburn and Shine are to make arrangements for hard copy registration forms received by DBH or LAM to be provided promptly to Maurice Blackburn or Shine respectively; and

- (d) Maurice Blackburn and Shine are to:

- (i) ensure that any such hard copy registration form contains a notation of the date on which the hard copy form was received; and

- (ii) maintain a register of hard copy registration forms received by each firm.

## **6.3 Creation of a database**

Maurice Blackburn:

- (a) created a database in April 2016 for the purpose of capturing registrations effected by means of the online registration facility or by submission of hard copy registration forms; and

- (b) during the Administration and in consultation with Shine, will develop the database in order to manage the Administration (for example, by adding additional fields so as to enable the progress of individual claims to be tracked, and so as to record Assessed Compensation Amounts as well as the amounts of any instalment, interim and final payments to Group Members).

## **6.4 Access to the database**

Maurice Blackburn has provided and will continue to provide access to the database to Shine by means of an online portal at the following URL (or such other URL as may be notified by Maurice Blackburn to Shine), and Shine is able to amend or add to a Group Member's database record by means of this portal:

<https://business.mauriceblackburn.com.au/DepuyHipsDataShare/>

## **6.5 Responsibility for updating the database**

Maurice Blackburn and Shine will be responsible for updating Group Members' database records as follows:

- (a) Maurice Blackburn will be responsible for updating the database for Group Members whose Claim Preparation Work is allocated to Maurice Blackburn or DBH;
- (b) Shine will be responsible for updating the database for Group Members whose Claim Preparation Work is allocated to Shine or LAM,

and each firm will ensure that the database is updated in a timely manner.

## **7. Eligibility determinations**

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### **7.1 Senior Lawyers who may make eligibility determinations**

For the purpose of clause 5.6(f) of the Amended Settlement Scheme, the Senior Lawyer must be a member of the Committee or a person nominated by the Committee, provided that at any given time there are to be no more than four people carrying out eligibility determinations.

### **7.2 Process for determining eligibility**

Subject to clause 7.3, the following process will apply to eligibility determinations:

- (a) Eligibility Books will be prepared by Maurice Blackburn, Shine, DBH or LAM in accordance with the allocations described in clause 4;
- (b) in each case the Eligibility Books will include a standardised coversheet that will be developed by the Administrators and is intended to function as a checklist addressing each of the Eligibility Criteria in clauses 5.1 to 5.3 of the Amended Settlement Scheme, with supporting documentation contained in the Eligibility Books;
- (c) a determination will be made and noted on the coversheet for the Group Member's Eligibility Book:
  - (i) by Maurice Blackburn in respect of Eligibility Books prepared by Maurice Blackburn in their capacity as Administrators;
  - (ii) by Shine in respect of Eligibility Books prepared by Shine in their capacity as Administrators;
  - (iii) by Maurice Blackburn in respect of Eligibility Books prepared by DBH in their capacity as delegates of the Administrators;
  - (iv) by Shine in respect of Eligibility Books prepared by LAM in their capacity as delegates of the Administrators.

### **7.3 Referral of eligibility determinations to the Committee**

If:

- (a) a Group Member claims to have had a Deemed ASR Revision as defined in clause 5.2(b); or

- (b) there is any suggestion arising from a Group Member's medical records that their ASR Revision may be an Ineligible Revision as defined in clause 5.3; or
  - (c) a Senior Lawyer for any other reason considers that it is appropriate to do so,
- the Group Member's eligibility determination (made pursuant to clause 7.2(c)) will be referred to the Committee, in which case:
- (d) the Committee will either verify the Senior Lawyer's determination or substitute its own determination;
  - (e) for the purpose of clause 5.6(f) of the Amended Settlement Scheme, a determination of eligibility will be taken to have been made on the date the Committee verifies the Senior Lawyer's determination or substitutes its own determination.

#### **7.4 Audit of eligibility determinations**

In order to ensure consistency of approach and fairness among all Group Members:

- (a) the Committee or a Senior Lawyer will audit one in every ten eligibility determinations made by each of Maurice Blackburn and Shine (not including the eligibility determinations that are dealt with pursuant to clause 7.3);
- (b) any such audit must be done before a Notice of Eligibility is sent to a Group Member whose eligibility determination is being audited;
- (c) the Committee or a Senior Lawyer will either verify the initial Senior Lawyer's determination or substitute its own determination and, for the purpose of clause 5.6(f) of the Amended Settlement Scheme, a determination of eligibility will be taken to have been made on the date the Committee or Senior Lawyer verifies the initial Senior Lawyer's determination or substitutes its own determination;
- (d) if the audit process reveals any errors in an individual case and/or consistent discrepancies in approach between Maurice Blackburn and Shine, the Committee will take such steps as are necessary to resolve the issue that was identified as a result of the audit process.

#### **7.5 Sending of Notices of Eligibility**

Notices of Eligibility will be sent in accordance with clause 5.8 of the Amended Settlement Scheme:

- (a) by Maurice Blackburn in respect of Group Members whose Eligibility Books were prepared by Maurice Blackburn or DBH;
- (b) by Shine in respect of Group Members whose Eligibility Books were prepared by Shine or LAM.

#### **7.6 Additional provisions for Deemed ASR Revisions**

The Administrators or their delegates must not commence preparation of an Eligibility Book for a Group Member who claims to have had a Deemed ASR Revision unless and until the Committee has considered whether to issue a request to the Group Member pursuant to clause 5.7 of the Amended Settlement Scheme.

## **8. Settlement Account**

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### **8.1 Interpretation of this clause**

For the avoidance of doubt, in this clause 8 a reference to the Settlement Account includes any interest bearing bank account, term deposit account or other bank account in which some or all of the extant balance of the Settlement Sum is held in accordance with clause 10.2 of the Amended Settlement Scheme.

### **8.2 Establishment of the Settlement Account**

In accordance with clause 6.3(b) of the Deed, Maurice Blackburn established the initial Settlement Account and provided its details to HSF and NRFA in advance of the application for the Approval Order.

### **8.3 Signatories to the Settlement Account**

In light of the requirements of legal profession laws and regulations, only one firm's personnel can be signatories to the Settlement Account and in this case the signatories are principals of Maurice Blackburn.

### **8.4 Operation of the Settlement Account**

The Settlement Account will be operated by Maurice Blackburn on behalf of Shine and Maurice Blackburn in their joint capacity as Administrators of the Settlement.

### **8.5 Authority to make payments**

Any payments from the Settlement Account must first be authorised in writing by a partner of Shine and a principal of Maurice Blackburn.

### **8.6 Undertaking by Maurice Blackburn**

Maurice Blackburn undertakes that it will not make or effect any payment from the Settlement Account without first obtaining written authorisation from a partner of Shine.

## **9. General provisions**

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### **9.1 Consistency of approach**

To the extent that it is practicable, Maurice Blackburn and Shine will adopt consistent procedures, systems and practices for Claim Preparation Work, subject to supervision and oversight by the Committee.

## **10. Administration Costs**

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### **10.1 Administration Costs for Claim Preparation Work**

In relation to Administration Costs for Claim Preparation Work, Maurice Blackburn and Shine will:

- (a) charge for professional fees in accordance with the fixed amounts in clause 13.2 of the Amended Settlement Scheme, with such fees to include legal or other work done by Maurice Blackburn or Shine in relation to:
  - (i) conferences or telephone conferences with a Group Member for the purpose of providing or receiving information in relation to preparation of the Group Member's Eligibility Book or Claim Book;
  - (ii) requesting or reviewing medical or other evidence or materials in relation to a Group Member's claim;
  - (iii) preparing materials for and finalising a Group Member's Eligibility Book or Claim Book, including:
    - A. preparing a statement of the Group Member or other person;
    - B. obtaining expert reports relating to the Group Member;
    - C. obtaining documents, including in relation to economic loss;
    - D. preparing loss schedules or other overview documents;
  - (iv) corresponding with a Group Member in relation to their claim;
  - (v) dealings with third parties (including Lienholders and the Respondents' solicitors) and any other work for the purpose of resolving and paying a Group Member's Liens;
  - (vi) preparing standard form documents (such as coversheets) that are developed and used by the Administrators for the purpose of preparing Group Members' claims;
  - (vii) administrative tasks including processing (such as scanning or filing) a Group Member's authorities, medical records, financial documents or other documents relating to a Group Member's claim;
- (b) each be responsible for the payment of disbursements associated with Claim Preparation Work being done by the respective firms, and seek recovery of those disbursements at cost.

## **10.2 Administration Costs for General Administration Work**

In relation to Administration Costs for General Administration Work, Maurice Blackburn and Shine will:

- (a) charge for professional fees in accordance with the rates in clause 13.1(d) of the Amended Settlement Scheme, with such fees to cover legal or other work done in relation to:
  - (i) functions of the Committee;

- (ii) establishment of information technology or other systems for use in the Administration, including the creation and maintenance of the database referred to in clause 6;
  - (iii) preparation of precedents or templates for use in the Administration;
  - (iv) eligibility determinations (including the initial determination by a Senior Lawyer and the verification by the Committee, but not including the preparation of the Group Member's Eligibility Book);
  - (v) sending notices to Group Members as required by clauses 5.8, 6.7, 7.3(g), 9.5(f) or 11.4 of the Amended Settlement Scheme;
  - (vi) Reviews sought by Group Members;
  - (vii) management of the Settlement Account;
  - (viii) determination of amounts that should be paid to Group Members at different times in accordance with clause 10 of the Amended Settlement Scheme;
  - (ix) liaising with DBH or LAM in relation to their functions as delegates of the Administrators;
  - (x) other General Administration Work,
- (b) each be responsible for the payment of disbursements associated with General Administration Work being done by the respective firms, and seek recovery of those disbursements at cost,

and for the avoidance of doubt, Administration Costs for General Administration Work as described in this clause 10.2 must not include any legal or other costs associated with Claim Preparation Work.

### 10.3 Review of Administration Costs

The following provisions apply in relation to General Administration Work:

- (a) by the fourteenth (14<sup>th</sup>) day of each month, Maurice Blackburn and Shine will each provide to the other firm a draft itemised tax invoice (**Invoice**) for Administration Costs incurred in relation to General Administration Work (but not Claim Preparation Work) done during the previous calendar month, and with the first such Invoice or Invoices to include all General Administration Work that was done:
  - (i) in the case of Maurice Blackburn, from 1 June 2016;<sup>3</sup>
  - (ii) in the case of Shine, from 10 May 2016;<sup>4</sup>

<sup>3</sup> The rationale for this date is that the expert report of Ross Nicholas dated 15 June 2016 assessed the reasonableness of Maurice Blackburn's costs as reflected in tax invoices covering the period up to 31 May 2016.

<sup>4</sup> The rationale for this date is that the expert report of Ross Nicholas dated 15 June 2016 assessed the reasonableness of Shine's costs as reflected in tax invoices covering the period up to 9 May 2016.

- (b) if one firm (the **first firm**) has any concerns in relation to an Invoice of the other firm (the **second firm**), the first firm must raise those concerns within 14 days of receiving the second firm's Invoice;
- (c) if the second firm is not willing to amend its Invoice:
  - (i) the issue will be drawn to the attention of an independent costs expert (who in the first instance will be Ross Nicholas);
  - (ii) the Administrators will request the independent costs expert to make a recommendation in the next report prepared by the expert for the purpose of the Administrators seeking approval of Administration Costs.

#### **10.4 Approval of Administration Costs**

At such times that are determined by the Committee, Maurice Blackburn and Shine will make an application to the Court for approval of Administration Costs, subject to the following:

- (a) approval of Administration Costs for Claim Preparation Work for any individual Group Member will only be sought after the later of the following:
  - (i) the Group Member's Liens have been resolved in accordance with clause 8 of the Amended Settlement Scheme;
  - (ii) in the case of a Group Member who elected to receive a Fast Track Resolution: the Fast Track Resolution has been paid to the Group Member;
  - (iii) in the case of a Group Member who did not elect to receive a Fast Track Resolution: the Group Member's Assessed Compensation Amount has been determined;
- (b) approval of Administration Costs will be sought for all General Administration Work done since the most recent Invoices that were the subject of any previous application for approval of Administration Costs;
- (c) this protocol is to be provided to the independent costs expert for the purpose of preparing any report for approval of Administration Costs;
- (d) Maurice Blackburn will liaise with DBH and LAM with a view to their Administration Costs being approved consistently with the principles and approach set out in this clause and in the Amended Settlement Scheme.

Note: the intent of sub-clause (a) is that Administration Costs for Claim Preparation Work relating to an individual Group Member's claims are only to be paid to Maurice Blackburn and Shine (and DBH and LAM) once all aspects of the claim have been finalised (except payment of compensation in accordance with clause 10.4 of the Amended Settlement Scheme for Group Members who decline to receive the Fast Track Resolution).

[End]



**Certificate Identifying Annexure JKS-138**

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-138** referred to in the affidavit of **JULIAN KLAUS SCHIMMEL** affirmed at Sydney on 8 June 2017.

Before me



Elizabeth Vasta

Lawyer with a current practising certificate



11 May 2017

Attention: Shine Lawyers  
Level 13, 160 Ann Street  
BRISBANE QLD 4000.

&

Maurice Blackburn Lawyers  
Level 10, 456 Lonsdale st  
MELBOURNE VIC 3000.

**Stanford & Anor v DePuy International Limited & Anor ("DePuy ASR class action")  
Federal Court of Australia No: NSD 213 of 2011**

I understand you are the Court appointed Administrators of the Settlement Scheme arising from a claim for compensation/damages in relation to the DePuy ASR class action.

Under Part 3.14 of the *Social Security Act 1991*, some or all Centrelink payments made to Group Members may be recovered by the Department of Human Services from Group Member's lump sum compensation payments, which contain money for lost earnings or lost capacity to earn.

In addition, a compensation payment that does not compensate for economic loss such as the Fast Track Resolution, may affect any current or future payment from Centrelink. It is the obligation of the **compensation recipient** to notify the Department within **7 days** of receipt of any compensation lump sum payment received, for income and asset test purposes.

As Administrators of the Settlement Scheme you have agreed to notify Group Members who elect to resolve their compensation claim by way of Fast Track Resolution of the statutory reporting obligations. By your office providing Group Members with a copy of this letter it serves as sufficient notice of their obligations.

Yours sincerely,

Mitch Surawski  
A/g Assistant Director  
Debt Management Branch  
Department of Human Services

**Certificate Identifying Annexure JKS-139**

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-139** referred to in the affidavit of **JULIAN KLAUS SCHIMMEL** affirmed at Sydney on 8 June 2017.

Before me



Elizabeth Vasta

Lawyer with a current practising certificate

**DEPUY ASR CLASS ACTION – SETTLEMENT ADMINISTRATION**  
Federal Court of Australia, Proceeding NSD 213 of 2011

**NOTICE OF ELIGIBILITY**

<b>Name:</b>	
<b>Settlement ID:</b>	
<b>Address:</b>	

This Notice of Eligibility is sent to you in accordance with clause 5.8 of the Settlement Scheme in the DePuy ASR Class Action.

The Administrators of the settlement have assessed whether you are eligible to receive compensation and have made a determination as follows:

<b>Determination:</b>	<b>Eligible to receive compensation</b>
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**YOUR OPTIONS**

The Administrators have determined that **you satisfy all of the Eligibility Criteria** in clauses 5.1 to 5.3 of the Settlement Scheme, which means that you are now eligible to receive compensation.

Under the Settlement Scheme you now have two options regarding the assessment of your compensation entitlements. You must **choose one of these options**.

**Option 1 – Individual assessment of your compensation**

If you choose this option, your entitlements will be individually assessed according to the *Competition and Consumer Act 2010* (Cth) and on the basis that you are entitled to compensation for loss and damage caused by your ASR Revision or the circumstances requiring ASR Revision.

Under this option you will be entitled to a minimum of \$40,000 for general damages / non-economic loss (pain and suffering), subject to the pro rata adjustment process described below.

The Administrators will arrange for an Assessor to determine your entitlements to receive compensation for past and future loss of income, past and future care requirements, and past and future treatment and other expenses. You will not receive compensation for any expenses or other costs that have already been paid by Crawford & Co through the Reimbursement Programme.

In order to enable the assessment of your compensation, the Administrators will need to obtain information and documents that are relevant to your individual circumstances and losses including additional medical records, as well as tax returns and other financial documents, employment records and evidence of out of pocket expenses.

If you choose this option it may be necessary for the Administration to obtain a report from your treating surgeon or another specialist, which may mean that you will need to attend one or more medical examinations.

If you choose Option 1, your entitlements under the Settlement Scheme will be paid in several instalment payments over time. This will enable the Administrators to proportionately adjust the final amount of your entitlements in accordance with the Settlement Scheme. Such

**DEPUY ASR CLASS ACTION – SETTLEMENT ADMINISTRATION**  
Federal Court of Australia, Proceeding NSD 213 of 2011

an adjustment will be necessary if the total amount of all Group Members' compensation entitlements exceeds the total amount available for distribution to Group Members. This means that once all Group Members' claims have been assessed, if there are insufficient funds available for distribution to Group Members, then your entitlements may be reduced. Conversely, if there are excess funds available for distribution to Group Members, your entitlements may be proportionately increased. Whether there are insufficient funds or excess funds will not be known until a large proportion of all Group Members' claims have been assessed. This may take some time, particularly during the early stages of the settlement administration, and as a result the Settlement Scheme provides for Group Members to be paid an instalment payment pending finalisation of the adjustment process.

If you choose this option, payment of your compensation entitlements will take longer than if you choose Option 2.

**Option 2 – Fast Track Resolution**

If you choose this option, you will receive a single, standardised lump sum payment of \$55,000.

The intent of this option is to make compensation available to Group Members on an expedited basis.

The Fast Track Resolution does not involve an assessment of a Group Member's actual losses and does not include a component for loss of income or wages.

The option of a Fast Track Resolution may be suitable if you have mild or moderate ongoing symptoms after your ASR revision, and/or you do not have substantial unreimbursed financial losses as a result of your ASR revision.

You can also decide to choose the Fast Track Resolution if faster payment of your entitlements is important to you, or if you do not wish to go through the process of having your individual entitlements assessed by the Administrators (which will involve ongoing interaction with the Administrators, provision of information and documents to the Administrators, and might also involve you attending an appointment with a surgeon or other specialist for the purpose of preparing a report).

Option 2 may not be suitable for you if:

- your ASR revision/s have caused a serious permanent disability – for example if you need to use a walking aid or wheelchair as a result of your ASR revision;
- you have suffered substantial unreimbursed loss of wages or income, particularly if the loss of wages or income will continue into the future;
- you have incurred significant medical expenses for which you have not been reimbursed or you will incur significant medical expenses in the future;
- you have received or will receive in the future a significant amount of domestic care and assistance as a result of your ASR revision/s.

If you choose Option 2 your entitlements may be proportionately increased in accordance with the Settlement Scheme if the total amount of all Group Members' compensation entitlements is less than the total amount available for distribution to Group Members. This means that once all Group Members' claims have been assessed, if there are excess funds available for distribution to Group Members then you may receive an additional payment. Unlike Option 1, your entitlements will not be proportionately reduced if the total amount of all Group Members' compensation entitlements exceeds the total amount available for distribution.

**DEPUY ASR CLASS ACTION – SETTLEMENT ADMINISTRATION**  
Federal Court of Australia, Proceeding NSD 213 of 2011

**Independent legal advice**

The Administrators' role is to administer and implement the Settlement Scheme fairly and reasonably according to the terms of the Scheme. Maurice Blackburn's and Shine's primary duties are owed to the Court.

Maurice Blackburn and Shine can provide you with general information as to your options under the Amended Settlement Scheme. However, the Settlement Scheme requires that the Administrators (and DBH and LAM) do not act as the solicitors for individual Group Members. As a result, the Administrators (and DBH and LAM) cannot provide legal advice involving a detailed assessment of your individual circumstances and losses. If you are uncertain which option you should choose or if you require advice that takes into account your individual circumstances, you may choose to seek independent legal advice from a lawyer outside of Maurice Blackburn, Shine, DBH or LAM. Please note, however, that you will be responsible for the costs of obtaining independent legal advice and you will not receive reimbursement of those costs.

**Bilateral ASR Implants**

The Settlement Scheme contains additional provisions for Group Members who had bilateral ASR Implants; that is, an ASR Implant in both the left hip and right hip.

If you have bilateral ASR Implants and you have had revision of both of your ASR Implants, you have the following options:

- You can elect to receive Fast Track Resolutions for both hips; that is, a total payment of \$110,000; or
- You can undergo individual assessment of both hips; that is, you can proceed with Option 1 above for both hips.

If you have had revision of both of your bilateral ASR Implants, you cannot receive a Fast Track Resolution for one hip, and then undergo individual assessment under Option 1 for the other hip.

If you have bilateral ASR Implants but you have only had revision of one of your ASR Implants, you can choose either Option 1 or Option 2 above. If you then have revision of your other ASR Implant in the future, you can choose either Option 1 or Option 2 for that hip. In consultation with the Administrators, you may also decide to defer the assessment of your compensation for a reasonable period of time in order to assess whether you need to have revision of your second ASR Implant.

**NEXT STEPS**

If you want to choose Option 2 (Fast Track Resolution), you must give written notice to the Administrators within 42 days of the date of this notice. There is no prescribed format for giving notice of your decision to take the Fast Track Resolution – you can simply send a **letter or email** to the law firm issuing this notice (details of which are set out below). In your notice, please make sure that you quote your Settlement ID (details of which are set out above).

If you do not give notice within 42 days, the Administrators will assume that you have chosen Option 1 (Individual assessment of your compensation). The law firm that is handling your claim (Maurice Blackburn, Shine, DBH or LAM) will then commence preparation of your claim in order to individually assess your compensation entitlements. This will involve preparation

**DEPUY ASR CLASS ACTION – SETTLEMENT ADMINISTRATION**  
Federal Court of Australia, Proceeding NSD 213 of 2011

of a "Claim Book" containing evidence that will enable your compensation entitlements to be assessed by an "Assessor", who will be a senior lawyer with substantial experience in personal injury litigation.

If you have any questions regarding your options or the next steps, please contact the law firm that is handling your claim.

<b>Law firm issuing this notice:</b>	Maurice Blackburn Lawyers Level 10, 456 Lonsdale Street Melbourne VIC 3000 <a href="mailto:depuypassclassaction@mauriceblackburn.com.au">depuypassclassaction@mauriceblackburn.com.au</a>
<b>Date of this notice:</b>	

**Certificate Identifying Annexure JKS-140**

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-140** referred to in the affidavit of **JULIAN KLAUS SCHIMMEL** affirmed at Sydney on 8 June 2017.

Before me



Elizabeth Vasta

Lawyer with a current practising certificate



**DEPUY ASR CLASS ACTION – SETTLEMENT ADMINISTRATION**  
Federal Court of Australia, Proceeding NSD 213 of 2011

**NOTICE OF ELIGIBILITY**

<b>Name:</b>	
<b>Settlement ID:</b>	
<b>Address:</b>	

This Notice of Eligibility is sent to you in accordance with clause 5.8 of the Settlement Scheme in the DePuy ASR Class Action.

The Administrators of the settlement have assessed whether you are eligible to receive compensation and have made a determination as follows:

<b>Determination:</b>	<b>Not Eligible to receive compensation</b>
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**REASON WHY YOU ARE NOT ELIGIBLE**

Clauses 5.1 to 5.3 of the Settlement Scheme prescribe a number of “**Eligibility Criteria**” that must be satisfied before a Group Member becomes eligible to receive compensation. Each Group Member’s claim is assessed by the Administrators, who are required to determine whether or not the Group Member satisfies all of the Eligibility Criteria. In doing so, the Administrators review medical and other evidence that is relevant to each Group Member’s claim.

The **reason** why you have been found **not eligible** to receive compensation is as follows:

**[Option 1]** You were not implanted with an ASR Implant in Australia (see clause 5.1(a) of the Settlement Scheme).

**[Option 2]** You have not undergone an “ASR Revision” (see clauses 5.1(b) and 5.2 of the Settlement Scheme).

**[Option 3]** Your ASR Revision occurred later than 13 years after you were implanted with your ASR Implant (see clause 5.1(c) of the Settlement Scheme).

**[Option 4A]** Your ASR Revision was an “Ineligible Revision”. In particular, your ASR Revision was performed due to a fracture of the femoral neck (see clauses 5.1(d) and 5.3 of the Settlement Scheme).

**[Option 4B]** Your ASR Revision was an “Ineligible Revision”. In particular, your ASR Revision was performed due to a post-operative infection (see clauses 5.1(d) and 5.3 of the Settlement Scheme).

**[Option 4C]** Your ASR Revision was an “Ineligible Revision”. In particular, your ASR Revision was performed due to unrelated trauma (see clauses 5.1(d) and 5.3 of the Settlement Scheme).

**[Option 5A]** You have opted out of the DePuy ASR Class Action. Group Members who opted out of the class action are not able to participate in the settlement.

**[Option 5B]** You previously entered into a deed of release with Johnson & Johnson Medical and DePuy after settling your claim through the “Compensation Programme” being administered by Crawford & Company on behalf of Johnson & Johnson Medical and DePuy.

**DEPUY ASR CLASS ACTION – SETTLEMENT ADMINISTRATION**  
Federal Court of Australia, Proceeding NSD 213 of 2011

**YOUR RIGHT TO SEEK A REVIEW**

You are entitled to **seek a review** of the Administrators' determination that you are not eligible to receive compensation. If you seek a review, your claim will be referred to a barrister with substantial experience in personal injuries litigation who will decide whether the Administrators made an error in their determination that you are not eligible to receive compensation.

If you want to seek a review, you must give **written notice to the Administrators within 28 days** of the date of this notice. There is no prescribed format for giving notice of your request for a review – you can simply send a **letter or email** to the law firm issuing this notice (details of which are set out below). Your notice must state the **reasons** why you seek a review. In your notice, please make sure that you quote your Settlement ID (details of which are set out above).

Depending on the circumstances of your claim, the Administrators may require you to pay a **bond not exceeding \$1,000**. The Administrators will contact you if they require you to pay a bond.

If your review is unsuccessful and your ineligibility is confirmed, you may be liable to **pay up to \$1,500 for the costs of the review**, in which case the amount of any bond that you paid will be forfeited and used for part-payment of the costs of the review.

<b>Law firm issuing this notice:</b>	Maurice Blackburn Lawyers Level 10, 456 Lonsdale Street Melbourne VIC 3000 <a href="mailto:depuhypsclassaction@mauriceblackburn.com.au">depuhypsclassaction@mauriceblackburn.com.au</a>
<b>Date of this notice:</b>	

**Certificate Identifying Annexure JKS-141**

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-141** referred to in the affidavit of **JULIAN KLAUS SCHIMMEL** affirmed at Sydney on 8 June 2017.

Before me



Elizabeth Vasta  
Lawyer with a current practising certificate

**DEPUY ASR CLASS ACTION – SETTLEMENT ADMINISTRATION**  
Federal Court of Australia, Proceeding NSD 213 of 2011

**NOTICE OF FAST TRACK ASSESSMENT**

<b>Name:</b>	
<b>Settlement ID:</b>	
<b>Address:</b>	

This Notice of Fast Track Assessment is sent to you in accordance with clause 6.7 of the Settlement Scheme in the DePuy ASR Class Action.

The Administrators previously determined that you satisfy the Eligibility Criteria in clause 5.1 of the Settlement Scheme and therefore assessed you as being eligible to receive compensation in respect of your ASR hip implant pursuant to the Settlement Scheme.

You have since notified the Administrators that you elect to receive a Fast Track Resolution. In accordance with clause 6.2 of the Settlement Scheme, the Fast Track Resolution of \$55,000 will therefore be paid to you in full and final satisfaction of your compensation claim.

**NEXT STEPS**

**Liens**

When any claim for compensation is made, third parties (for example, Medicare, Centrelink, Veteran's Affairs or private health insurers) may claim an entitlement to payment or reimbursement arising under a statute or contract for expenses they have paid in connection with your ASR Revision[s] and related medical treatment. These claims for payment or reimbursement by third parties are referred to as "**liens**". It is a routine part of any personal injury claim for liens to be identified and paid to third parties.

The Settlement Scheme provides for some categories of liens to be paid by the Respondents (DePuy and Johnson & Johnson) and for other categories of liens to be paid from the Settlement Sum.

The Administrators are now required to assist you in identifying all parties who may claim an entitlement to payment or reimbursement (**Lienholders**).

Once all Lienholders have been identified, the Administrators, in co-operation with the Respondents, are required to resolve all Liens before making any payment to Group Members.

Please note that payments to Lienholders will not be deducted from your Fast Track Resolution.

The Administrators may require additional information from you in order to ensure all Liens are accurately identified.

You should be aware that clauses 8.10 and 8.11 of the Settlement Scheme provide that Group Members indemnify the Respondents and the Administrators against any claims made by Lienholders arising from liens that they may assert.

**DEPUY ASR CLASS ACTION – SETTLEMENT ADMINISTRATION**  
Federal Court of Australia, Proceeding NSD 213 of 2011

<b>Law firm issuing this notice:</b>	Maurice Blackburn Lawyers Level 10, 456 Lonsdale Street Melbourne VIC 3000 <a href="mailto:depuypassclassaction@mauriceblackburn.com.au">depuypassclassaction@mauriceblackburn.com.au</a>
<b>Date of this notice:</b>	

**Certificate Identifying Annexure JKS-142**

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-142** referred to in the affidavit of **JULIAN KLAUS SCHIMMEL** affirmed at Sydney on 8 June 2017.

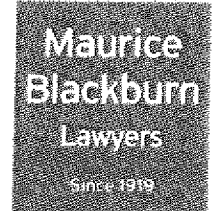
Before me



Elizabeth Vasta

Lawyer with a current practising certificate

T: 1800 625 669  
 F: (03) 9258 9610  
 E: [depuhipsclassaction@mauriceblackburn.com.au](mailto:depuhipsclassaction@mauriceblackburn.com.au)



Maurice Blackburn Pty Limited  
 ABN 21 105 657 949  
 Level 10  
 456 Lonsdale Street  
 Melbourne VIC 3000  
 PO Box 523  
 Melbourne VIC 3001  
 DX 466 Melbourne  
 T (03) 9605 2700  
 F (03) 9258 9600

DATE

«Salutation» «First\_Name» «Last\_Name»  
 «Address\_Combined»  
 «SuburbTown» «State» «Postcode»

**PRIVILEGED AND CONFIDENTIAL**

**By email only:**

Dear «First\_Name»

**NOTICE OF INDIVIDUAL ASSESSMENT ELECTION**

**Claim of «Claimant\_FirstName» «Claimant\_LastName»**

The Administrators previously determined that you satisfy the Eligibility Criteria in clause 5.1 of the Settlement Scheme and therefore assessed you as being eligible to receive compensation pursuant to the Settlement Scheme in respect of your [INSERT SIDE] ASR hip implant **on both your left and right ASR hip implants.**

You have since notified the Administrators that you elect to undergo the Individual Assessment process. Further information about the Individual Assessment is contained in the enclosed brochure.

If you wish to choose the Fast Track Resolution you can still contact us to discuss this option.

If you have any questions, please contact our DePuy Hips Class Action team on **1800 625 669** or [depuhipsclassaction@MauriceBlackburn.com.au](mailto:depuhipsclassaction@MauriceBlackburn.com.au).

Yours faithfully

**Julian Schimmel  
 MAURICE BLACKBURN**

**Certificate Identifying Annexure JKS-143**

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-143** referred to in the affidavit of **JULIAN KLAUS SCHIMMEL** affirmed at Sydney on 8 June 2017.

Before me



Elizabeth Vasta  
Lawyer with a current practising certificate

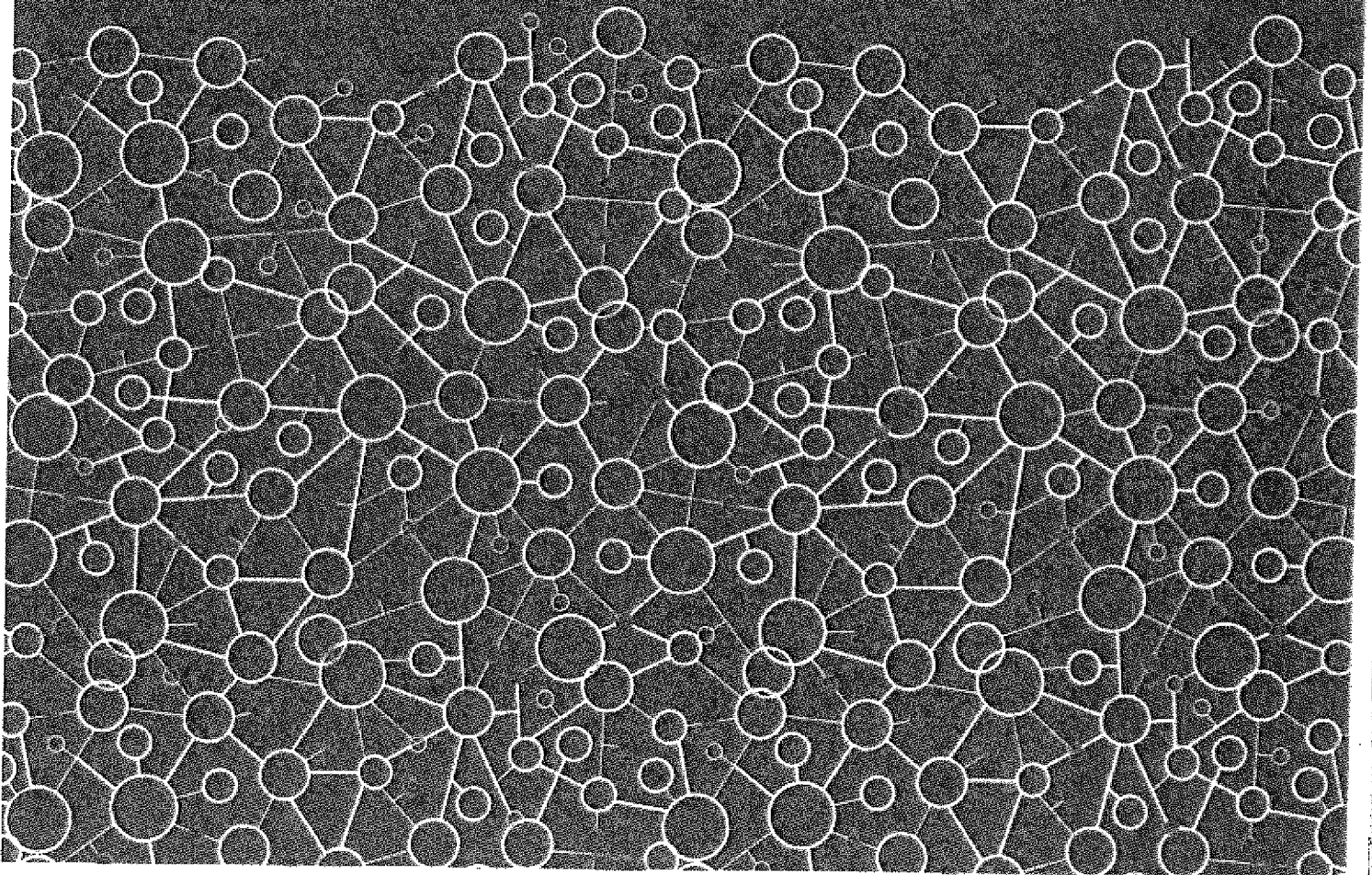




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## Depuy Hip Implants Class Action

# Individual Assessment



## Purpose of this brochure

You have been assessed as eligible to receive compensation under the Settlement Scheme approved by the Court on 17 June 2016 (**the Scheme**) and you have chosen to undergo individual assessment in order to determine the amount of compensation you will receive.




The purpose of this Brochure is to provide you with information about the individual assessment process.

In order to ensure the assessment process is conducted as efficiently as possible, please refer to the section below titled 'Obligations Under the Scheme' which sets out your obligations.



If you have any questions about the individual assessment process, please first check whether the answer is found in this Brochure. Otherwise if you have any further questions, please do not hesitate to contact the law firm that is handling your individual claims.

### Contact details

#### **Maurice Blackburn**



 [www.depuyclassaction.com.au](http://www.depuyclassaction.com.au)  
 1800 625 669  
 [depuyhipclassaction@mauriceblackburn.com.au](mailto:depuyhipclassaction@mauriceblackburn.com.au)

#### **Shine Lawyers**



 General: 1311 99  
 [depuyhipclassaction@shine.com.au](mailto:depuyhipclassaction@shine.com.au)

#### **Duncan Basheer Hannon**


##### **Brett Allen (Partner)**


 08 8216 3351  
 [ballen@dbh.com.au](mailto:ballen@dbh.com.au)

##### **Erin Brenner (Assistant)**

 08 8216 3359  
 [ebrenner@dbh.com.au](mailto:ebrenner@dbh.com.au)

#### **Lempriere Abbott McLeod**

 **Catherine Holden:** [chokin@lam.com.au](mailto:chokin@lam.com.au), or  
**Christine Crossman:** [ckc@lam.com.au](mailto:ckc@lam.com.au)

 08 8223 3999

## General information

### Maurice Blackburn and Shine as joint Administrators

Maurice Blackburn and Shine have been appointed by the Court to act jointly as Administrators of the Scheme.

The Administrators' role is to implement the Scheme, which will involve preparing group members' claims for eligibility and compensation assessment. The Administrators have a duty to the Court to implement the Scheme fairly and reasonably according to its terms. The Court will continue to supervise and monitor the progress of the assessment process.

### Who is in the team of Administrators?

The team of Administrators consist of lawyers, paralegals and other support staff from Maurice Blackburn and Shine. The Administrators may also delegate some of the administration work to Duncan Basheer Hannon (DBH) and Lemptiere Abbott McLeod (LAM), who will also have a team of lawyers and support staff.

### Independent legal advice

Group members are entitled to retain their own lawyer (outside of Maurice Blackburn, Shine, DBH or LAM) to assist them in preparing their claim. However, any legal fees associated with personal representation will be the responsibility of the group member and will not be paid from the class action settlement fund.

### How long will the Individual Assessment of claims take?

At this early stage we are unable to predict how long it will take to assess all individual claims. To date, 1,800 group members have registered to make a claim under the Scheme and the timeframes for individual assessment will depend on a number of factors, including:

- 1 how many group members are assessed as eligible under the Scheme;
- 2 how many eligible group members choose the Fast Track Resolution; and
- 3 for group members who undergo individual assessment, how quickly the Administrators receive documents, reports and materials requested from third parties, such as medical records, employment records or tax documents.

While the Administrators are committed to distributing compensation entitlements to group members as quickly as possible, many of these factors are outside of our control. Our priority is to ensure that the process of assessing claims is done properly and fairly.

### What percentage of assessed losses are claimants expected to recover under the settlement?

The settlement sum is a fixed amount of \$250 million plus interest which needs to be divided amongst all group members who are eligible to receive compensation under the Scheme.

Group members who choose the Fast Track Resolution will receive an expedited, standard payment of \$55,000, plus repayment of any health care liens.

For those group members who choose to undergo individual assessment of their compensation entitlements, that individual compensation may need to be proportionately reduced depending on whether the total value of all group members' compensation entitlements is greater than the total funds available to be distributed to group members.

On the other hand, all group members may have their compensation entitlements proportionately increased if the total value of all group members' compensation entitlements is less than the total funds available for distribution to group members.

At this stage, we do not know how many group members will ultimately choose the option of a Fast Track Resolution and we do not know the amounts to be paid to group members whose compensation is individually assessed, nor do we know the overall amount of liens that will need to be paid from the settlement fund. This means that, at this stage, we do not know whether there will be a surplus or a shortfall in the settlement funds and we, therefore, do not know whether compensation entitlements will be proportionately increased or reduced as part of this "shrink to fit" process. The final payment level will only be known after a sizeable number of claims have been assessed. The Administrators will receive ongoing advice from actuarial experts throughout the assessment process and will update group members accordingly.

## Individual assessment process

You have been assessed as eligible to receive compensation under the Scheme and have elected not to receive the fixed, lump sum payment of \$55,000 through the Fast Track Resolution.

This means that you will now undergo individual assessment in accordance with clause 7 of the Scheme.

At any time prior to your Claim Book (referred to below) being allocated to an Assessor, you can change your mind and elect to receive a Fast Track payment in resolution of your claim.

The process for making a late election for a Fast Track Resolution is set out in clause 6.5 of the Scheme, which is available for download from the ASR Class Action website or you can request a copy from the law firm that is handling your claim.

### When will your Individual Claim be assessed?

All documents and records relating to your claim must first be obtained before any assessment can be conducted. The Administrators will notify you when it is time for your claim to be assessed.

Please do not send any documents and records to the Administrators until we notify you that we are ready to assess your claim.

When your claim is ready to be assessed, the following steps will occur:

- 1 The Administrators will **prepare a Claim Book**, containing information and evidence relevant to assessing your compensation entitlements. The following steps may occur during the process of preparing your Claim Book:
  - (a) the Administrators may contact you to obtain further instructions or information about your claim;
  - (b) with your consent the Administrators may contact another person (such as a family member or friend) to obtain further information about your claim;
  - (c) The Administrators, with the Assessors, will determine what documents are required to enable the proper assessment of each claim, these may include:
    - (i) any additional medical records, which were not obtained during the eligibility assessment process;
    - (ii) tax returns, or other tax, accounting or financial documents;
    - (iii) employment records;
    - (iv) invoices regarding any treatment or other expenses; and
    - (v) any records about payments you received under Crawford's Reimbursement Programme.

- (d) The Administrators may obtain a report from either a treating doctor, Independent Expert and/or a forensic accounting expert. If such a report is required, you will need to attend an appointment with the relevant doctor or expert so they can prepare the report.

- 2 When the above material is received, the Administrators will allocate your Claim Book to an Assessor who is selected from the Panel of Assessors;
- 3 The Assessor will review your Claim Book and if necessary, seek further information, being either documents or instructions from you;
- 4 Once the Assessor has all the necessary information, they will determine the amount of compensation you are entitled to receive. This assessment will be done in accordance with the legal principles for assessing personal injury damages under the *Competition and Consumer Act 2010* (Cth), which are summarised in **Attachment A**;
- 5 The Assessor will prepare a brief **statement of reasons** outlining how they determined the amount of your compensation, which is referred to as your "Assessed Compensation Amount";
- 6 The Administrators will then send you:
  - (a) A **Notice of Assessment** that sets out your compensation entitlements;
  - (b) The Assessor's **statement of reasons** for your assessment; and
  - (c) Information about your right to seek a review of the Assessor's decision.
- 7 You must carefully read your **Notice of Assessment**, **statement of reasons** and review rights;
- 8 Pursuant to the Scheme, the Assessors act as independent arbitrators and not as a lawyer who is briefed to advocate the interests of any individual group member or the Administrators.

## Compensation

The Scheme is designed to ensure that the assessment process is applied consistently to all group members.

### What type of compensation can be recovered?

Group members who undergo individual assessment are entitled to compensation for loss or damage caused by their ASR Revision or the circumstances requiring ASR Revision.

The purpose of the individual assessment process is to determine your entitlement to compensation for a range of personal injury losses, including:

- 1 Pain and suffering damages, which are referred to as "non-economic loss" or "general damages";
- 2 Past and future economic loss such as loss of income or loss of earning capacity; and
- 3 Past and future domestic assistance and care.

Group members may also claim for reimbursement for any medical and other expenses, and for the cost of any future medical needs or other expenses.

### What is the effect of Crawford's Reimbursement Programme?

DePuy established a Reimbursement Programme shortly after the worldwide recall of the ASR Implants in August 2010. This programme has been administered in Australia by Crawford & Company (Australia) Pty Ltd (**Crawford**).

The Reimbursement Programme has been available to most group members who have undergone revision surgery since August 2010. It ordinarily paid for or reimbursed group members for:

- 1 the cost of the revision surgery, including hospital fees, surgical fees, anaesthetists' fees and the cost of the revision prosthesis; and/or
- 2 three months of medical expenses (such as follow up consultations with surgeons) as well as allied health expenses including rehabilitation services (such as physiotherapy) and/or other treatment expenses (such as medication).

If Crawford paid any of the above types of costs under the Reimbursement Programme, you can still have your claim individually assessed and you will not be prevented from claiming compensation in the settlement.

However, you will not be entitled receive "double compensation". This means that you will not be able to receive compensation twice for the same loss or expense.

Any treatment expenses not paid through the Reimbursement Programme can be assessed as part of your individual assessment.

## Liens

In the context of a personal injury claim, a "lien" is a demand to repay monies spent by a healthcare provider (for example, Medicare or a private health insurer) or other third party as a result of an injury which has been compensated.

The obligations and process for paying liens is set out in the Scheme.

The Respondents are responsible for paying several categories of liens in addition to the \$250 million settlement sum. These are defined in the Scheme as "Assumed Liens", and they include various expenses that have been paid by Medicare, private health insurers or the Department of Veterans Affairs.

The remaining categories of liens will need to be paid out of the settlement sum. These are defined in the Scheme as "Residual Liens", and they include any other types of expenses that need to be repaid to third parties.

It is important to understand that if any Residual Liens need to be paid on your behalf, these Residual Liens will not be deducted from your individual compensation assessment - rather, these Residual Liens will be determined and paid in addition to your individual compensation amount.

### What do you need to do?

The Administrators will notify you when it is time to consider what liens might be owing and to whom. You may be asked to assist the Administrators in the process of identifying potential liens, for example, by providing details of your private health insurance arrangements.

Generally, the process for resolving liens will occur as one of the final steps in resolving group members' claims. If you elect to take the Fast Track Resolution, liens will be resolved after you have notified the Administrators that you would like to accept the Fast Track Resolution.

The Administrators will only be able to make your final payment of damages when all liens have been resolved on your behalf.

### Payment

The process for ensuring consistency in payment of Assessed Compensation Amounts to group members who have undergone individual assessment is complex:

- Group members will undergo individual assessment at different times throughout the settlement administration process, which means that different group members' Assessed Compensation Amounts will become known at different times.
- Group members will need to be paid progressively given the number of eligible claims will not be known until at least December 2022, which is the latest date for an eligible revision under the Scheme; and
- The time it takes to assess each claim is dependent on a number of factors, many of which are outside of the Administrators' control. These factors include the complexity of the claim, whether there are delays in receiving medical records and/or reports, how long it takes to resolve any lien disputes and the speed at which the Assessors are able to make a decision about the claim.

In order to balance these numerous and competing considerations, the Administrators will pay Assessed Compensation Amounts to group members in tranches. In addition, each individual group member may be paid their Assessed Compensation Amount in instalments.

This means that group members will not need to wait until 2023 to receive compensation and this will ensure consistency in payments to all group members, however it does mean that the Administrators may withhold a proportion of your Assessed Compensation Amount as a contingency so that the adjustment process described above can be done fairly and equally. The Administrators will take ongoing advice from actuarial experts in undertaking this payment process.

## Obligations under the scheme

The Scheme imposes obligations on Group Members in order to ensure an efficient, effective and fair administration of the settlement. It is important that you comply with these obligations.

As a group member, your obligations under the Scheme are to:

- 1 cooperate with the Administrators and take all steps that you are required to take under the Scheme and/or that are reasonably requested by the Administrators;
- 2 act honestly when communicating or cooperating with the Administrators and ensure that anyone representing or helping you, such as a family member, also acts honestly;
- 3 comply with all requirements of the Scheme and the requests of the Administrators to the best of your ability; and
- 4 comply with all requirements of the Scheme and the requests of the Administrators within the timeframe specified by the Administrators.

The actions or steps which the Administrators may require you to take in order to process your claim include:

- 1 responding to requests for instructions on certain aspects of your claim, such as medical expenses, employment history and future plans;
- 2 responding to requests for documents or other materials to investigate or support aspects of your claim, such as pay slips, tax returns, invoices and receipts;
- 3 providing signed authorities or permissions to access documentation or information to support your claim;
- 4 attending and participating in meetings or telephone conferences with the Administrators or any other person (such as an Independent Expert, Assessor or Review Assessor);
- 5 promptly informing the Administrators of any change in your contact details; and
- 6 checking, executing and returning documents provided to you by the Administrators.

### The consequences of not complying with your obligations

If you do not comply with any of your obligations under the Scheme, the Administrators may:

- reject your registration or claim;
- determine that you are not eligible to receive compensation under the Scheme;
- reduce the amount of compensation that you are entitled to receive; or
- determine that your compensation is nil (\$0).



## Overview of compensation payable under the settlement scheme

### Annexure A

#### Assessing damages for personal injury

Damages for personal injury in Australia are not designed to punish or make an example of the wrongdoer, or to compensate someone for the risk of injury or loss. Damages may only compensate the actual injury and actual losses sustained.

Your damages will be assessed under Commonwealth law, in particular the *Competition and Consumer Act 2010* (Cth) (**CAC Act**), which was previously known as the *Trade Practices Act 1974* (Cth) (**Trade Practices Act**).

The types of loss for which you may be compensated include:

- 1 damages for pain and suffering;
- 2 past and future loss of earnings or loss of earning capacity;
- 3 past and future medical and treatment expenses;
- 4 past and future care and assistance; and
- 5 other, such as aids, equipment and travel.

#### Recoverable loss and connection with the ASR Implant

The requirement for recoverable compensation to be causally connected to a wrongful act is a fundamental principle in our legal system.

This principle is reflected in the Scheme, which states that you will only be entitled to compensation for loss or injury which was caused by the revision of your ASR Implant or the circumstances requiring revision. It is part of the Administrators' and the Assessor's job to determine, in all of the circumstances, what aspects of your loss and damage can legally be compensated. For example, if you suffered economic loss as a result of an unrelated medical condition, you will not be compensated for that loss under the Scheme.

#### Pain and suffering

Damages for pain and suffering provide compensation to an injured person for a range of disabilities and other consequences related to their injury.

The Assessors will assess your pain and suffering, having regard to your personal circumstances based upon information and materials set out in your Claim Book.

The Assessors will also have regard to the principles in previous Court decisions, including the factors which the Courts consider to be relevant when assessing a person's pain and suffering. Some relevant factors include:

- 1 the person's age;
- 2 the duration of the injury (ie. how long the person has experienced the pain and suffering associated with the injury);
- 3 the severity of the injury;
- 4 the intensity of the associated symptoms;
- 5 the ability to control the symptoms with medication;
- 6 the presence of any pre-existing medical conditions;
- 7 the severity of any scarring or body disfigurement; and
- 8 the extent of any reduction of life expectancy.

The maximum amount of damages that can be awarded for pain and suffering under the CAC Act is \$338,080. The law states that the maximum amount of damages must only be awarded where the injured person suffers pain and suffering of the "gravest conceivable kind". An example of an injury of the "gravest conceivable kind" is given in the list of Example case studies below.

The percentage of a *most extreme case* attributed to your injury will be determined by the Assessors with regard to all of your personal circumstances and in accordance with the principles in previous court decisions.



**Example 1:** Pain and suffering which might be deemed a most extreme case

Wanita, aged 21, was injured in a road accident. She suffered a high spinal cord injury and a brain injury. Wanita is now paralysed and relies upon a ventilator to breathe for her. She will never work, walk or communicate properly again but she will regain consciousness and have an awareness of her injury. She has no prospect of any substantial recovery and her life expectancy has been dramatically reduced. Wanita's injury could be assessed as a most extreme case and attract the maximum damages.

**Example 2:** Age impacting on the assessment of damages for pain and suffering

Chung, aged 79, has undergone one revision of his ASR Implant. He has mild to moderate pain and walks with a slight limp. Prior to the revision surgery, Chung had retired and spent most of his time at home.

Paul, aged 43, has also undergone one revision of his ASR Implant. He experiences mild to moderate pain and walks with a slight limp. Prior to the revision surgery, Paul was an active man. He worked full-time as a builder, and enjoyed playing sports with his friends and young children.

Even though Paul and Chung have the same injury, Paul's injury is likely to be assessed as a higher percentage of a most extreme case because he has a longer life expectancy and will therefore endure his pain and suffering for a longer period. Paul's injury may also have a broader impact on his enjoyment of life as his ability to work and engage in leisure activities with his family and friends may be restricted by his injury.

**Example 3:** Pre-existing medical conditions impacting on the assessment of damages for loss of pain and suffering

Ralph, aged 55, had his ASR Implant revised last year and has ongoing pain and restricted movement. He used to enjoy long distance running but underwent surgery for a severe back injury sustained at work 4 years ago and has been advised that he should no longer run. The fact that his ASR-related injury would prevent him from running marathons would not be taken into consideration in assessing his pain and suffering because his back condition had already prevented him from participating in that activity.

**Example 4:** Pre-existing medical conditions impacting on the assessment of damages for pain and suffering

Josephine, aged 72, recently had her right-sided ASR Implant revised. She used to be very independent, lived alone and was able to care for herself. She was an active member of her local community, chaired the Horticultural Society and regularly organised group hiking holidays. Josephine now suffers with pain and weakness in her right hip and leg which prevents her hiking and has given rise to some care needs at home. She now stays in the house more than she used to.

Josephine's friend Amita, aged 71, underwent revision of her left-sided ASR Implant around the same time. She has peripheral vascular disease and ischaemic heart disease such that she has required domestic assistance for many years and does not get out much. Amita continues to suffer with pain and weakness in her left lower limbs such that she mobilises with a walking stick at home.

Although Josephine and Amita have had a similar outcome from their revision procedures, Josephine is likely to be eligible for higher damages for pain and suffering than Amita because Amita's mobility was already dramatically reduced by her pre-existing medical conditions.

**Example 5:** Severity of injury affecting the assessment of damages for pain and suffering

Xuan and Leo are school teachers of a similar age. They both experienced approximately 6 months of intense pain and suffering in the lead up to their revision surgeries. Post-revision surgery, Xuan has some ongoing pain which she controls fairly well with medication and she is working without restriction. Leo, however, has greater pain and restriction, requires lifting and carrying assistance in the classroom and uses a walking stick for long distances.

Leo's injury is more severe than Xuan's injury and it is likely to be assessed as a higher percentage of a most extreme case.

## How does the sliding scale work?

As was stated above, the maximum damages for pain and suffering under the CAC Act is \$338,080, however this can only be paid in a 'most extreme case', which is an injury of the 'gravest conceivable kind'. In cases where the injury was less than the 'gravest conceivable kind', the CAC Act states that the **first step** in working out compensation for pain and suffering is to assess the percentage of the 'most extreme case'.

In order to ensure that group members are awarded fair and reasonable compensation for the revision of their ASR Implants, the Settlement Scheme states that group members are entitled to at least \$40,000 for pain and suffering, although this is subject to the overriding pro rata adjustment process that was discussed above. Pain and suffering compensation of \$40,000 equates to 27.5% of a most extreme case.

While it is not possible to be prescriptive, we expect that most group members will be assessed as having an injury that is between 27.5% and 35% of a most extreme case, with especially severe or catastrophic post-revision outcomes

potentially being assessed as high as 40% to 45% of a most extreme case. It is important to remember that the benchmark for a 'most extreme case' is not limited to hip related injuries; rather, the 'most extreme case' includes any type of personal injury, so group members' hip injuries need to be considered by reference to other types of more serious personal injury, such as the injury described in Example 1 above.

Under the CAC Act, the **second step** in assessing compensation for pain and suffering is to work out the applicable percentage of the maximum amount of damages. In the table below, the percentage of a most extreme case (Column A) translates into the applicable percentage of the maximum amount of damages (Column B), which is then used to calculate the dollar amount of compensation for pain and suffering (Column C). For cases up to 32% of a most extreme case, under the CAC Act there is a sliding scale where the applicable percentage of maximum damages is less than the percentage of a most extreme case. These requirements of the CAC Act are illustrated in Example 6 and Example 7 below.

Column A	Column B	Column C
% of a most extreme case	% of the maximum amount	Calculated damages (\$)
Less than 15%	0%	\$0
15%	1%	\$3,381
16%	15%	\$5,071
17%	2%	\$6,762
18%	25%	\$8,452
19%	3%	\$10,142
20%	35%	\$11,833
21%	4%	\$13,523
22%	45%	\$15,214
23%	5%	\$16,904
24%	55%	\$18,594
25%	65%	\$21,975
26%	8%	\$27,046
27%	10%	\$33,808
27.5%	12%	\$40,000
28%	14%	\$47,331
29%	18%	\$60,854
30%	23%	\$77,758
31%	26%	\$87,901
32%	30%	\$101,424
Greater or equal to 33%	Equals % of a most extreme case	Multiply % of a most extreme case by \$338,080

**Example 6:** Pain and suffering to which the sliding scale applies

Federico's injuries are assessed as equivalent to 29% of a most extreme case. Federico's damages are calculated by finding 29% in Column A of the table and then applying the corresponding percentage in Column B (18%) to the maximum amount of \$338,080. In other words, Federico's compensation for pain and suffering is calculated as  $18\% \times \$338,080 = \$60,854$ .

**Example 7:** Pain and suffering in excess of 33% of a most extreme case

Luigi's injuries are assessed as equivalent to 35% of a most extreme case. His damages equate to 35% of the maximum amount:  $35\% \times \$338,080 = \$118,080$ .

### Loss of earnings or earning capacity

Damages may be available for past and future loss of earnings and superannuation to the extent that those losses are due to the revision of your ASR implant or the circumstances requiring the revision.

In order to make a claim for loss of earning capacity, it is necessary to identify the capacity which has been lost. Some loss of earnings will be too speculative to be compensable.

The evidence (including tax and employment records) will need to demonstrate what you would have earned if you had not required a revision of your ASR implant and compare that to what you are now capable of earning. Cash income that is not reflected in a tax return will not be taken into account.

The future carries inherent uncertainties and therefore, the loss of earnings calculation will be discounted to reflect the possibility that the loss or at least some part of it may have occurred in any event. This discounting is part of the methodology for determining loss of earnings in all personal injury matters and is not unique to this assessment process.

The CAC Act limits the loss of earnings recoverable at twice the average weekly earnings. This will only apply to you if you were ordinarily earning more than twice the average weekly earnings. We will discuss this with you in more detail if you are affected by the provision.

### Medical and treatment expenses

You may make a claim for past and future medical and treatment expenses which have or will be reasonably required due to the revision of your ASR implant or the circumstances necessitating the revision. The Assessors will determine whether an expense is reasonable in the circumstances. The Assessors may weigh the cost of the treatment expense against its intended purpose or use. For example, treatment at great cost of which the benefits are only speculative would be less likely to be a reasonable expense than treatment which is a more affordable option and has a known benefit.

### Care and assistance

#### **Gratuitous care**

Gratuitous care is care and assistance which has or will be provided to you by a friend or family member without charge. The CAC Act limits the circumstances in which damages can be awarded in respect of gratuitous care and limits the level of compensation.

In order for damages to be payable, it must be established that there was (or will be) a reasonable need for the services as a result of the injuries caused by the need for revision surgery or the revision surgery itself, that the services would not be provided but for the injury and that they were (or will be) provided for at least 6 hours per week for at least 6 months.

The statutory regime limits the hourly rate recoverable to the hourly equivalent of the average weekly earnings and effectively caps any claim at 40 hours per week.

#### **Commercial care**

The cost of past and future domestic care provided on a commercial basis may be recoverable if it was or will be a cost reasonably incurred as the result of your injury. As is the case with medical and treatment expenses, it will be the job of the Administrators to gather relevant evidence and it will be the job of the Assessors to carefully consider your reasonable requirements.

Please note that care that you might have provided to another person, such as children, that you are now required to pay for is not recoverable.

### Other expenses, including aids, equipment and travel

You may be able to recover the cost of other items such as aids, equipment, housing adaptations or travel. These costs will also be subject to a test of reasonableness and the item must be required due to the revision of your ASR implant, or the need for that revision rather than any other reason.

### Future loss

Any claim for future losses, such as future loss of earnings or treatment, will be discounted to reflect the fact that the loss has not yet been incurred. Consistently with standard practice in personal injury claims, a multiplier will be applied to your weekly loss on the basis of a 5% discount rate prescribed and the period for which you will suffer the loss, in order to properly account for you receiving the money now. The reason for this is that you can invest the damages and so gain interest.

### Assessment value and ultimate damages

It is likely that you will receive your compensation in instalments. A portion of your damages will be paid out to you when your claim has been assessed and there are a number of other Group Members who are also ready to receive their first instalment.

As was described above in the main section of this brochure, towards the end of the assessment and payment process, when all or nearly all Group Members have had their compensation assessed, it may be necessary to make adjustments to individual compensation amounts.

The need for any adjustment will depend on whether there is either a surplus of money or deficit in the settlement account. This is a normal method of assessment and distribution in a class action of this size and you should be aware that your damages may ultimately increase or decrease.

**Certificate Identifying Annexure JKS-144**

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-144** referred to in the affidavit of **JULIAN KLAUS SCHIMMEL** affirmed at Sydney on 8 June 2017.

Before me



Elizabeth Vasta

Lawyer with a current practising certificate

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

Version 3  
Dated XX June 2017

*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.

### 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**

### **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 ~~and paid~~.

**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~~ 300 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 100 300 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.

### **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

<u>Role</u>	<u>Hourly rate (excluding GST)</u>
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 the Group Member regarding their decision whether to accept the Fast Track Resolution	\$500
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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<b><u>Term</u></b>	<b><u>Meaning</u></b>
<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



<b><u>Term</u></b>	<b><u>Meaning</u></b>
<b>Infection</b>	A periprosthetic joint infection evidenced by the contemporaneous medical records reflecting either: <ul style="list-style-type: none"> <li>(a) a sinus tract communicating with the prosthesis; or</li> <li>(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.</li> </ul>
<b>JJM</b>	Johnson & Johnson Medical Pty Ltd
<b>LAM</b>	Lempriere Abbott McLeod
<b>Lien Disputes</b>	A dispute as to any of the following: <ul style="list-style-type: none"> <li>(a) whether a Lien is an Assumed Lien;</li> <li>(b) the amount of an Assumed Lien; or</li> <li>(c) whether a person or entity is a Qualified Lienholder.</li> </ul>
<b>Liens</b>	Any lien, charge, security interest, subrogation right, third-party interest or adverse claim of any nature whatsoever, in each case whether statutory or otherwise
<b>Maurice Blackburn</b>	Maurice Blackburn Pty Ltd
<b>Notice of Eligibility</b>	Notice of Eligibility has the meaning given in clause 5.8
<b>Notice of Fast Track Assessment</b>	Notice of Fast Track Assessment has the meaning given in clause 6.7(a)(i)
<b>Notice of Assessment</b>	Notice of Assessment has the meaning given in clause 7.3(g)
<b>Notice of Review</b>	Notice of Review Assessment has the meaning given in clause 9.5(f)
<b>Other Lienholders</b>	Any person or entity asserting a Residual Lien
<b>Panel</b>	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>	