



APPLICANT'S SETTLEMENT DISTRIBUTION SCHEME

Gregory Lenthall & Ors v Westpac Banking Corporation Limited & Anor
Federal Court of Australia NSD1812/2017

TABLE OF CONTENTS

APPLICANTS' SETTLEMENT DISTRIBUTION SCHEME	1
A. DEFINED TERMS & INTERPRETATION	7
B. ADMINISTRATOR	12
I. Appointment.....	12
II. Powers and duties of Administrator	12
III. Immunities of Administrator	13
IV. Retirement	13
C. THE SETTLEMENT DISTRIBUTION FUND	13
I. Establishment of the Settlement Distribution Fund.....	13
II. Application of interest	14
D. GROUP MEMBER REGISTRATION	14
E. SETTLEMENT DISTRIBUTION	15
F. GENERAL MATTERS	21
I. Court Referral.....	21
II. Priority of Payments.....	21
III. Eligible Group Members' personal taxation issues	21
IV. Time.....	21
V. Notices.....	21
VI. Administrator to report at conclusion of Scheme	23
Schedule 1.....	24

A. DEFINED TERMS & INTERPRETATION

1. The following definitions apply unless a clause provides otherwise:

Administration Costs means the costs and expenses of and incidental to the Administrator exercising the functions, powers and duties conferred on the Administrator by this Scheme (including for the avoidance of doubt any costs incurred by a Referee if appointed pursuant to clause 5.3 of the Settlement Deed), in an amount approved by the Court.

Administration Costs Sub-Fund means the amount of \$1,500,000 comprising the amount referred to in sub-paragraph (b) of the definition of "Settlement Sum First Instalment" in the Settlement Deed.

Administrator means the person or persons that will administer this Scheme as provided for in clause 4.

Applicants means Gregory John Lenthall, Sharmila Lenthall, Shane Thomas Lye, Kylie Lee Lye.

Applicants' Legal Costs and Disbursements means the legal costs and disbursements incurred by the Applicants in conducting the Proceeding, in an amount approved by the Court.

Applicants' Reimbursement Payment means the sum of \$20,000.00 payable to the First Applicant, and the sums of \$7,500.00 payable each to the Second, Third and Fourth Applicants in recognition of time and inconvenience in acting as representatives in the Proceedings, in each case as approved by the Court.

Approval Costs means the outstanding legal costs and disbursements (not being part of the Applicants' Legal Costs and Disbursements) incurred by the Applicants after the date of the Deed in finalising documentation of the settlement, preparing this Scheme and obtaining Court approval of the settlement including the cost of defending any appeals from the approval, as approved by the Court.

Assessment Methodology Schedule means the Schedule to this Scheme entitled "Assessment Methodology Schedule".

Claimant means a Group Member (or purported Group Member) who is either a Prior Registrant, or registers by the Registration Deadline (and, for the avoidance of doubt, includes the Applicants).

Claimant Database has the meaning in clause 14 of the Scheme.

Claimant Distribution Sub-Fund means the balance of monies in the Settlement Fund Account following the deduction of the Legal Costs Sub-Fund and the Administration Costs Sub-Fund.

Claim Data has the meaning in clause 15 of the Scheme.

Claim Value Assessment Formula means the formula by which each Eligible Group Member's Maximum Claim Value is assessed, in accordance with the Assessment Methodology Schedule.

Court means the Federal Court of Australia.



Deed means the Settlement Deed dated 27 April 2021 between the Applicants, Westpac, Shine Lawyers and the Funder.

Distribution means an amount distributed to an Eligible Claimant from the Settlement Distribution Fund in accordance with this Scheme.

Distribution Deficit Amount means the difference between the Eligible Group Member's Maximum Claim Value Aggregate and the Net Distribution Sum, in accordance with clause 19 of the Assessment Methodology Schedule.

Distribution Statement means a notice provided in accordance with clause 34 of the Scheme.

Effective Date means the date upon which this Scheme is approved by the Court.

Eligibility Determination means the process by which it is determined if a Participating Group Member has an Excluded Claim, in accordance with the Assessment Methodology Schedule.

Eligible Claim means a claim by an Eligible Claimant the value of which is assessed in accordance with the Assessment Methodology Schedule.

Eligible Claimant means a Claimant who does not have an Excluded Claim.

Eligible Claimant Maximum Claim Value means the maximum sum (expressed in dollar terms) that an Eligible Claimant may receive as a Distribution under this Scheme.

Eligible Claimant Maximum Claim Value – Aggregate means the sum of all Eligible Group Members' Maximum Claim Values.

Eligible Claimant Maximum Claim Value Determination means the process by which the maximum sum (expressed in dollar terms) that an Eligible Claimant may receive as a Distribution under this Scheme, is calculated in accordance with Part 1, Step 2 in the Assessment Methodology Schedule.

Excluded Claim means a claim by a Participating Group Member:

- a. who had premium loadings of 50% or more shaved on one or more of their policies;
- b. who received a 20% staff discount on their premium;
- c. whose premium was subject to a channel factor of 0.95 or less (or who paid a premium equivalent to such a channel factor being applied);
- d. who received an 'ad hoc' or commission sacrifice discount on their premium of equal to or greater than 5% of premiums; and/or
- e. who does not in fact satisfy the definition of a Group Member.

Final Approval Date means the business day following the date on which all appeals from the orders of the Court approving the settlement pursuant to section 33V of the *Federal Court of Australia Act 1976* expire.

Final Settlement Entitlement means:

- a. a Settlement Entitlement contained in a Distribution Statement which is taken to have been accepted by a Claimant or Eligible Claimant; and
- b. a revised Settlement Entitlement, contained in, or consequential on, a Review Determination under clause 36 of this Scheme.



Final Settlement Entitlement Determination means the process by which the Final Settlement Entitlement of each Eligible Claimant is determined, in accordance with the Assessment Methodology Schedule.

Funder means:

- a. JustKapital Litigation Pty Ltd (ABN 76 168 872 606) of Suite 2, Level 16, 56 Pitt Street, Sydney NSW 2000; and
- b. LawFinance Limited (ABN 72 088 749 008) of Level 16, 56 Pitt Street, Sydney NSW 2000.

Group Member(s) means the persons on whose behalf the Applicants commenced the Proceeding as described in paragraph 9 of the Fifth Further Amended Statement of Claim filed on 5 November 2020 (including the Applicants) and who have not opted out of the Proceeding.

Independent Counsel means a junior counsel with not less than 7 years' experience, being a person who has not had any previous involvement in the Proceeding, including by having previously been retained by the parties (or Funder).

Insurance Costs means costs incurred by the Funder in relation to obtaining insurance covering the risk of adverse costs in the Proceeding (including paid or contingent premiums payable in respect of such insurance) or in reimbursing adverse costs orders paid on the Applicants behalf], as approved by the Court.

Legal Costs Sub-Fund means the amount of \$7,500,000 comprising the amount referred to in sub-paragraph (a) of the definition of "Settlement Sum First Instalment" in the Settlement Deed.

Net Distribution Sum means the amount of the Settlement Distribution Fund available for distribution to Claimants after the deduction of all amounts permitted to be deducted or withheld by this Scheme.

Other Costs means costs other than the Applicants' Legal Costs and Disbursements incurred by the Funder in funding the Proceeding, as approved by the Court.

Participating Group Member(s) means a Group Member who comes forward to participate in the settlement by the Registration Deadline.

Post-Approval Notice means the notice that appears as Annexure "A" to this Scheme.

Post-Approval Notice Distribution Plan means the plan that appears as Annexure "B" to this Scheme

Prior Registrants means those Group Members who have already registered with Shine Lawyers by having already (i) entered into a funding and retainer agreement with Shine Lawyers, or (ii) previously registered their claim details with Shine Lawyers, prior to the settlement.

Proceeding means the proceeding commenced by the Applicants (each on their own behalf and on behalf of all Group Members) against Westpac in the Federal Court of Australia, proceeding number NSD1812 of 2017 being a representative proceeding within the meaning of Part IVA of the *Federal Court of Australia Act 1976* (Cth).



Referee means a Senior Counsel appointed by the Court (a) following the submission by the Applicants and Westpac of an agreed minute of order, or (b), if agreement cannot be reached within 3 business days, from a list of 2 nominees submitted by the Applicants and Westpac respectively.

Registration Deadline means the date by which a Group Member can come forward to participate in the settlement, fixed by the Court in accordance with its orders for the approval of this Scheme (but which shall be no later than 4 months from the Effective Date), and which is 30 November 2021.

Registration Notice means a notice by which Group Members are invited to register as a Claimant.

Residue Amount means the difference between the Net Distribution Sum and the Eligible Claimants' Maximum Claim Value Aggregate, in accordance with the Assessment Methodology Schedule.

Retainer means the costs agreement entered into between the Applicants and Shine Lawyers in respect of the Proceedings.

Review means a request for a review of a Distribution Statement made in accordance with Section E, Part V of this Scheme.

Review Determination has the meaning given in Section E, Part V of the Scheme.

Scheme means this Settlement Distribution Scheme.

Settlement Distribution Fund means the Settlement Sum (plus any accrued interest on that sum less any bank fees or tax) paid into the Settlement Fund Account in accordance with clauses 4.2 and 4.3(a) of the Deed.

Settlement Entitlement means the individual entitlement of an Eligible Claimant calculated in accordance with the Assessment Methodology Schedule or as varied by Review.

Settlement Fund Account means the account established under clause 4.1 of the Deed.

Settlement Sum means the Settlement Sum as defined in the Deed.

Shine Lawyers means Shine Lawyers Pty Ltd (ACN 134 702 757) (and its related company Shine Justice Ltd).

Shine Lawyers database means the record of Prior Registrants maintained by Shine Lawyers.

Tax means a tax, levy, duty, charge, deduction or withholding or an imposition, however it is described, that is imposed by law of a Government of Australia or elsewhere, together with any related interest, penalty, fine or other charge.

Uncollected Amounts means any Distribution by cheque which remains unpresented within 120 days of the date on which the cheque was sent to the Eligible Claimant.

Westpac means:

- (a) Westpac Banking Corporation (ABN 33 007 457 141) of Level 20, 275 Kent Street Sydney NSW 2000; and

(b) Westpac Life Insurance Services Limited (ABN 31 003 149 157) of Level 20, 275 Kent Street Sydney NSW 2000.

Westpac Group Member List means the list of potential group members identified by Westpac and produced to the Court pursuant to the orders dated 17 May 2021, including any update to that list consequential upon the orders made by the Court approving this Scheme.

2. Terms defined in the Deed have the meaning set out in the Deed, unless this Scheme otherwise provides, or the context otherwise provides.
3. The following rules apply unless the context requires otherwise:
 - a. Headings are for convenience only and do not affect interpretation.
 - b. Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
 - c. Nothing in this document is to be interpreted against a party solely on the ground that the party put forward this document or a relevant part of it.
 - d. The singular includes the plural, and the converse also applies.
 - e. If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - f. A reference to a clause is a reference to a clause of this document unless stated otherwise.
 - g. A reference to an agreement, deed or document (including a reference to this document) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this document or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
 - h. A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
 - i. A reference to a party to a deed, agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
 - j. A reference to legislation or to a provision of legislation includes an amendment or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
 - k. A reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).



- I. All references to time are to Australian Eastern Standard time.
- m. A reference to dollars or \$ is to Australian currency.

B. ADMINISTRATOR

I. Appointment

- 4. The Scheme will be administered by Janice Saddler and Tristan Gaven of Shine Lawyers as Administrator.

II. Powers and duties of Administrator

- 5. The Administrator:
 - a. is responsible for administering and distributing the monies in the Settlement Distribution Fund, and doing so at a cost which is reasonable and proportionate;
 - b. may act by delegates appointed by the Administrator, subject to the Administrator first obtaining from any such delegate an acknowledgement in writing that such person is to be bound to the obligations and duties set out in the Scheme as if that person was the Administrator;
 - c. will act fairly in the interests of all Participating Group Members;
 - d. must act independently;
 - e. must perform obligations conscientiously;
 - f. may obtain legal advice;
 - g. may engage third party service providers including, but not limited to, accountants, lawyers, tax advisers, registry service providers and mailing houses;
 - h. may obtain advice in respect of tax matters arising from the administration of, and making payments from, the Settlement Distribution Fund and may seek a ruling from the Federal Commissioner of Taxation and any of the Commissioners of State Revenue if the Administrator determines that obtaining such a ruling would be in the best interests of the Claimants;
 - i. has liberty to approach the Court for any order or direction, which in the opinion of the Administrator is necessary or appropriate to enable the Administrator to perform any duty, or exercise any power conferred on the Administrator; and
 - j. in so far as is consistent with this Scheme, is authorised to make decisions that, in the Administrator's sole discretion, ultimately benefit the body of Claimants as a whole.



6. Notwithstanding anything elsewhere in this Scheme, the Administrator may at any time correct any error, slip or omission occurring during the course of the administration of this Scheme.

III. Immunities of Administrator

7. The Administrator has the same immunities from suit as attach to a referee appointed by the Federal Court.

IV. Retirement

8. If the Administrator retires or is unable to act at a given time so as to leave the Scheme without an Administrator (**Retired Administrator**), the Retired Administrator must refer the matter of appointing a replacement Administrator to the Court pursuant to clause 48 of this Scheme.
9. A Retired Administrator must do all things necessary to promptly transfer legal title to:
 - a. the Settlement Distribution Fund; and
 - b. any other property held on trust subject to the terms of this Scheme,to the person or persons who are appointed as the replacement Administrator by the Court.

C. THE SETTLEMENT DISTRIBUTION FUND

I. Establishment of the Settlement Distribution Fund

10. Following the payment by Westpac into the Settlement Fund Account pursuant to clauses 4.2 and 4.3 of the Deed, the monies in the Settlement Fund Account shall comprise the Settlement Distribution Fund, but shall comprise three sub-funds, namely:
 - a. the Legal Costs Sub-Fund, being the amount of \$7,500,000 comprising the amount referred to in sub-paragraph (a) of the definition of "Settlement Sum First Instalment" in the Deed;
 - b. the Administration Costs Sub-Fund, being the amount of \$1,500,000 comprising the amount referred to in sub-paragraph (b) of the definition of "Settlement Sum First Instalment" in the Deed; and
 - c. the Claimant Distribution Sub-Fund, being the balance of monies in the Settlement Fund Account.
11. The Administrator shall:
 - a. hold the monies in the Settlement Distribution Fund in trust until it is to be distributed; and
 - b. distribute the Settlement Distribution Fund (plus any interest accrued) as expeditiously as possible,



in accordance with this Scheme.

II. Application of interest

12. Interest earned on the Settlement Distribution Fund may be applied in the first instance to the payment of Administration Costs.
13. Any interest which is not applied to the payment of Administration Costs will remain part of the Settlement Distribution Fund, but shall be applied to and form part of the Claimant Distribution Sub-Fund, and be available for distribution to Eligible Claimants.

D. GROUP MEMBER REGISTRATION

I. Claimant Database

14. As soon as practicable after the Effective Date, the Administrator shall create and maintain a Claimant Database, which shall contain the Claim Data for each Claimant.
15. The Claim Data for each Claimant shall include:
 - a. personal information (name (including any previous names) and date of birth);
 - b. contact details (postal address, email address and contact telephone, as applicable);
 - c. details of any life insurance policies issued by Westpac including their policy number, policy type and relevant dates of coverage, and the premiums paid in respect of these policies), and any other information considered by the Administrator to be relevant to determining whether the Claimant has an Eligible Claim; and
 - d. details of a bank account for the Claimant into which the amount of any Distribution may be transferred, and any other information considered by the Administrator to be relevant to facilitating payment of any Distribution.
16. The Administrator must take reasonable steps to ensure the accuracy of the Claimant Database, including, to the extent necessary, by obtaining further information or documents from Claimants, or by requesting or obtaining other information or documents necessary for the Administrator to perform any duty, or exercise any power conferred on the Administrator.

II. Prior Registrants

17. The Administrator may rely upon Shine Lawyers' Database to enter the Claim Data of the Prior Registrants in the Claimant Database.

III. Further Registrants



18. To bring the Scheme to the attention of Group Members who are not Prior Registrants and to facilitate their registration as Claimants, the Administrator must:
 - a. issue the notices outlined in the Post-Approval Notice Distribution Plan contained in Annexure B of the Scheme; and
 - b. ensure that any further or additional steps to those referred to in the Post-Approval Notice Distribution Plan, including the distribution of any other notices, are first subject to Court approval (following 7 days' notice to Westpac).
19. For the avoidance of doubt, the Administrator may apply to the Court to vary or extend the Registration Deadline if, in the Administrator's absolute discretion, the Administrator considers that to be necessary to facilitate the registration of Claimants.
20. If a Group Member:
 - a. does not provide their Registration Notice to the Administrator on or before the Registration Deadline; or
 - b. does not provide the further information or documents requested by the Administrator referred to in clause 15 above within 28 days of that request being made,the Group Member is bound by the settlement but is not entitled to receive a Distribution pursuant to the Scheme.

E. SETTLEMENT DISTRIBUTION

I. Payment of deductions from the Settlement Distribution Fund

21. Subject to clauses 22 to 26, and prior to making any Distribution from the Settlement Distribution Fund to Eligible Claimants, the Administrator will make the following payments from it, as approved by the Court:
 - a. From the Legal Costs Sub-Fund only, the following payments in the following order (with each payment being made only after higher priority payments have been made in full):
 - i. *First*, a payment to:
 - A. Shine Lawyers of the Approval Costs and the Applicants' Legal Costs and Disbursements to the extent that they are costs incurred by Shine Lawyers which the Funder has not paid (other than any uplift or costs of Preliminary Work as defined in the Retainer (which is "Legal Work undertaken by [Shine] Lawyers in investigating and developing the Claims that [are] of common benefit to the Applicant and Group Members, prior to Date of Commencement of this Agreement, the Retainer of the Terms of Engagement"), to the extent those costs have been approved by the Court; and
 - B. the Funder (or at its direction) in respect of Insurance Costs,



any such payment being made pro rata and pari passu,

- ii. *Secondly*, a payment to Shine Lawyers of the Applicants' Legal Costs and Disbursements to the extent that they are other costs incurred by Shine Lawyers and payable upon Settlement, which the Funder has not paid (including any uplift and costs of Preliminary Work as defined in the Retainer), to the extent those costs have been approved by the Court; and
- iii. *Thirdly*, a payment to the Funder (or at its direction) of (A) the balance of the Applicants' Legal Costs and Disbursements, paid by the Funder, to the extent those costs have been approved by the Court, and (B) the Other Costs, to the extent those costs have been approved by the Court,

to the extent that the sum of these amounts do not exceed the balance of the Legal Costs Sub-Fund; and

- b. From the Administration Costs Sub-Fund, the Administration Costs, subject to and in accordance with clause 25, to the extent that they do not exceed the balance of the Administration Costs Sub-Fund;
- c. From the Claimant Distribution Sub-Fund:
 - i. *First*, to the Applicants, the Applicants' Reimbursement Payment;
 - ii. *Secondly*, any further Administration Costs, approved by the Court in accordance with clause 25(c); and
 - iii. any other part of the Applicants' Legal Costs and Disbursements or the Other Costs approved by the Court, which have not been paid from the Legal Costs Sub-Fund, provided that the Net Distribution Sum following such deduction would not be less than 50% of the Settlement Sum, unless the Court otherwise orders.

22. The Administrator will, immediately after the Final Approval Date:

- a. make the payments from the Legal Costs Sub-Fund referred to in paragraph 21(a) above (in the order there set out), up to an amount not exceeding 50% of the total ascertained Settlement Sum at that time, namely [\$4,500,000]; and
- b. make the payment from the Claimant Distribution Sub-Fund referred to in paragraph 21(c)(i) above, namely the Applicants' Reimbursement Payment;

23. If the Administrator is reasonably satisfied that the Net Distribution Sum will exceed double the balance of the Legal Costs Sub-Fund (plus a buffer of 10%) after the Settlement Sum has been finally determined under clauses 5.1 to 5.3 of the Deed, the Administrator may:

- a. make payments from the Legal Costs Sub-Fund referred to in clause 21(a) above to the extent they have not already been made (and in the order there set out), up to the balance remaining in the Legal Costs Sub-Fund; and



- b. once the Legal Costs Sub-Fund is exhausted, treat the Legal Costs Sub-Fund as closed.
- 24. After the Settlement Sum has been finally determined under clauses 5.1 to 5.3 of the Deed, the Administrator must:
 - a. make any payments from the Legal Costs Sub-Fund referred to in clause 21(a) above to the extent they have not already been made (and in the order there set out), up to the balance remaining in the Legal Costs Sub-Fund;
 - b. make the payments from the Claimant Distribution Sub-Fund referred to in paragraph 21(c)(ii) and (iii) above.
- 25. The Administrator:
 - a. may withhold from the Administration Costs Sub-Fund and retain, the Administration Costs up to an amount equal to the balance of the Administration Costs Sub-Fund but must not do so until after those Administration Costs have been incurred by the Administrator; and
 - b. must apply to the Court in the event the Administrator seeks approval of Administration Costs above the balance from time to time in the Administration Costs Sub-Fund; and
 - c. must treat any surplus in the Administration Costs Sub-Fund following the completion of the administration as part of the Legal Costs Sub-Fund (and be applied to any unpaid Applicants' Legal Costs and Disbursements or Other Costs as have been approved by the Court), or, if the Applicants' Legal Costs and Disbursements and Other Costs have been fully paid, the Claimant Distribution Sub-Fund.
- 26. If there remains a surplus in the Legal Costs Sub-Fund or the Administration Costs Sub-Fund after the Administrator complies with clauses 22 to 25, then that surplus shall form part of the Claimant Distribution Sub-Fund, subject to any order of the Court.

II. Determination of Claimant Eligibility and Final Settlement Entitlement

- 27. As soon as practicable following the Final Approval Date, the Administrator shall commence to make Eligibility Determinations in respect of Claimants in accordance with the Assessment Methodology Schedule.
- 28. Once the Administrator has made an Eligibility Determination in respect of a Claimant, the Administrator shall apply the Assessment Methodology Schedule by reference to the Claim Data of that Claimant in order to determine the Claimant's Final Settlement Entitlement.
- 29. Without limitation, the Administrator may at any time request information and/or documents from Westpac in order to assist the Administrator make any determination required by the Assessment Methodology Schedule, including but not limited to an



Eligibility Determination or determining an Eligible Claimants Final Settlement Entitlement.

III. Distribution of Final Settlement Entitlements

30. The Net Distribution Sum shall be distributed to Eligible Claimants according to the Assessment Methodology Schedule, applied by reference to the Claim Data of each Eligible Group Member.
31. Each Eligible Group Member shall receive his or her Final Settlement Entitlement by Distribution.
32. Each Distribution will be made to the Eligible Claimant, either by:
 - a. electronic funds transfer, where bank details are available; or
 - b. by cheque.

IV. Distribution Statements

33. The Administrator will send (or cause to be sent) a Distribution Statement to each Claimant.
34. Each Distribution Statement will include, without limitation, the following information:
 - a. the relevant Claim data used to ascertain the particular Claimant's eligibility; and
 - b. if the Claimant is an Eligible Claimant, the estimated Final Settlement Entitlement (expressed in dollar terms);
35. The accuracy of a Distribution Statement (including the calculation of the Final Settlement Entitlement described therein) shall be deemed to be accepted by each Claimant unless, within 30 days of the date of sending the Distribution Statement, he or she delivers to the Administrator a written request for a Review together with copies of all documents on which the Claimant relies for the purposes of the Review, including any statement of reasons for seeking the Review. For the avoidance of doubt, a Claimant may only seek a Review of their own proposed Distribution.

V. Reviews

36. If a Claimant requests a Review, the Administrator shall consider the request and copies of documents on which the Participating Group Member or Eligible Group Member relies for the purposes of the Review and:
 - a. if satisfied that the request discloses an error, slip or omission by the Administrator or any other administrative or clerical error, correct the notice to which the request relates; or
 - b. in all other cases, affirm the original Distribution Statement unless the Administrator determines in its absolute discretion that a further process of review is necessary, in which case the Administrator shall refer the review



request to the Independent Counsel for consideration (and Independent Counsel's determination of the Review request shall be binding, subject to clause 38),

such decision being a **Review Determination**.

37. If a Review Determination does not result in a material (greater than 20%) variance to the proposed Distribution notified in the Distribution Statement, the costs of the Review shall be borne by the Claimant and withheld from the Claimant's Distribution, and in all other cases the costs of the Review shall be Administration Costs.
38. In the event that the Claimant is dissatisfied with the outcome of the Review, the Claimant has liberty to apply to the Court (at the Claimant's cost) only on a question of law arising from the Review Determination.

VI. Distributions

39. The Administrator shall, as expeditiously as possible following the day which is three months after Distribution Statements are mailed or the expiration of the conclusion of all Reviews (whichever is the last to occur), distribute from the Settlement Distribution Fund the Net Distribution Sum to the Eligible Claimant, such that they receive the Final Settlement Entitlement. For the avoidance of doubt, no Distribution is to be made to any Eligible Claimant who has applied to the Court on a question of law as referred to in clause 37 until such time as the Court has decided that question, in which case any Distribution is to be made within 30 days of the date of the Court's decision.
40. The completion of Distributions pursuant to clause 39 will satisfy any and all rights, claims or entitlements of all Group Members in connection with this Scheme and in or arising out of the Proceeding.

VII. Withholding Amounts (Other)

41. The Administrator may withhold from the Settlement Distribution Fund any Tax:
 - a. payable (or reasonably assessed by the Administrator as likely to become payable) by them as trustees and relating to or resulting from its role as Administrator of the Scheme; and
 - b. required to be withheld by them as trustees from any Distributions made from the Settlement Distribution Fund,and in each case the withheld sums must be paid to the relevant revenue authority imposing such a Tax whether or not pursuant to an assessment or notice issued by the relevant revenue authority.

VIII. Preliminary Distributions



42. The Administrator may in its absolute discretion make preliminary payments to Eligible Claimants in accordance with this clause, in circumstances where the only matters preventing finalisation of the Final Settlement Entitlements are:
- a. Court approval of Administration Costs;
 - b. finalisation of Reviews in accordance with the procedure contemplated by clauses 36 to 38 of this Scheme, provided that the highest reasonable estimate of the value of the Settlement Entitlements still awaiting the determination of Final Settlement Entitlements will not result in the creation of a Distribution Deficit Amount or increase an existing Distribution Deficit Amount; or
 - c. finalisation of the amount of Tax (if any) required to be withheld;
43. The Administrator may calculate and withhold the following amounts from the Settlement Distribution Fund so as to work out the Net Distribution Sum for the purposes of making a preliminary payment to Eligible Claimants:
- a. first, an amount equal to the Administrator's highest reasonable estimate of Administration Costs likely to be incurred prior to the final distribution of the Settlement Distribution Fund, notwithstanding that such Administration Costs have not yet been approved by the Court;
 - b. secondly, in circumstances where reviews have been requested and the procedure contemplated by clauses 36 to 38 of this Scheme are not yet complete, an amount not less than double the highest reasonable estimate of the Settlement Entitlements still awaiting the determination of Final Settlement Entitlements;
 - c. thirdly, any Tax payable (or reasonably assessed by the Administrator as likely to become payable) by them as trustees and relating to or resulting from its role as Administrator of the Scheme, and required to be withheld by them as trustees from any Distributions made from the Settlement Distribution Fund.
44. If a preliminary payment is made under clause 42 of this Scheme, any Administration Costs shall be paid to the Administrator prior to the final distribution of the remaining amount in the Settlement Distribution Fund.

IX. Uncollected Amounts and Residues

45. Subject to clause 46 below, any Uncollected Amount will be applied within 30 days, or as otherwise ordered by the Court, between the other Eligible Group Members in accordance with the Assessment Methodology Schedule.
46. The Administrator is not required to make any payment in accordance with clause 45 above if the Administrator determines that the costs associated with making a further Distribution in accordance with the Assessment Methodology Schedule (including payment in accordance with clause 45 above) are excessive, inefficient or disproportionate to the additional return achieved for Eligible Claimants. If the Administrator makes a decision pursuant to this clause, the Uncollected Amount returns to be part of the Net Distribution Sum.



47. If the Eligible Claimant Maximum Claim Value – Aggregate is less than \$10,000,000, the Administrator must return the Residue Amount to Westpac in accordance with clause 4.3(b) of the Deed.

F. GENERAL MATTERS

I. Court Referral

48. The Administrator may at any time refer any issues arising in relation to the administration of the Scheme to the Court for directions.

II. Priority of Payments

49. The funds standing from time to time in the Settlement Distribution Fund will be held by the Administrator upon trust for the persons entitled to payments from the Settlement Distribution Fund, and all taxes, duties, levies, charges and other imposts payable in respect of the funds in the Settlement Distribution Fund will be paid from the Settlement Distribution Fund in priority to any distribution to the persons beneficially entitled to the funds.

III. Eligible Group Members' personal taxation issues

50. Each Eligible Claimant is responsible for obtaining his or her own taxation or government entitlements advice in respect of the Distribution he or she receives.
51. The Administrator is not obliged to obtain any taxation advice or taxation rulings (class, public or private) concerning any tax potentially payable by an Eligible Claimant in respect of Distributions they receive.

IV. Time

52. The time for doing any act or thing under this Scheme may be extended by the Administrator in its absolute discretion, or by order of the Court, provided that, subject to clause 53, the Administrator should not extend any time period beyond 45 days after the period specified in this Scheme except by order of the Court.
53. Where the time for doing any act or thing under this Scheme is contingent upon any other act or thing under this Scheme, an extension of time for performance of the prior step will result in a commensurate extension of time for performance of the contingent step (in the exercise of the absolute discretion of the Administrator or by order of the Court).

V. Notices

54. Any notice to be given pursuant to this Scheme will be deemed given and received for all purposes associated with this Scheme if it is:



- a. addressed to the person to whom it is to be given; and
 - b. either:
 - i. delivered, or sent by pre-paid mail, to that person's postal address (being, in respect of any Claimant, the postal address with which the person registered as a Claimant);
 - ii. sent by fax to that person's fax number (being, in respect of any Claimant or, the fax number address with which the person registered as a Claimant) and the machine from which it is sent produces a report that states that it was sent in full;
 - iii. sent by email to that person's email address (being, in respect of any Claimant, the email address last provided by the Claimant to the Administrator) unless a server through which it is transmitted produces a report that states that the email has not been sent to the inbox of the specified email address; or
 - iv. delivered personally to the person by leaving the document with the person.
55. A notice that complies with clause 54, will be deemed to have been given and received:
- a. if it was sent by mail to an addressee in Australia, five clear business days after being sent;
 - b. if it is sent by mail to an addressee overseas, five clear business days after being sent;
 - c. if it is delivered or sent by fax, at the time stated on the report that is produced by the machine from which it is sent;
 - d. if it is sent by email, at the time it is sent; and
 - e. if delivered personally, at the time it is delivered.
56. The Administrator's address and email address will be as set out below unless and until the Administrator notifies the sender otherwise:

Shine Lawyers
Att: Janice Saddler
Level 13/160 Ann St
BRISBANE QLD 4000

OR

Shine Lawyers
Att: Janice Saddler
PO Box 12011, George St
BRISBANE QLD 4003

OR

wpacsettlement@shine.com.au



VI. Administrator to report at conclusion of Scheme

57. Upon the conclusion of the Scheme the Administrator is to prepare a report for the Court of no more than five pages, with a copy to be provided to the Applicants and Westpac and such report to give consideration to the following matters:

- a. the amount distributed under the Scheme to Eligible Claimants;
- b. the amount of the Administration Costs, including a breakdown of the constituent components of those costs;
- c. whether any time periods specified in the Scheme were missed;
- d. the total of any Uncollected Amounts; and
- e. the total of any Residue Amount.



Schedule 1

Assessment Methodology Schedule

OUTLINE

1. The intention of the Scheme and this Assessment Methodology Schedule is to provide for a fair and just apportionment of the Settlement Sum between Eligible Claimants.
2. The amount of the Legal Costs Sub-Fund shall be paid in accordance with this Scheme to discharge the Applicants' obligations to pay legal costs, and shall be notionally allocated to the Applicants for such purpose.
3. The amount of the Administration Costs Sub-Fund shall be paid in accordance with this Scheme to discharge the costs incurred by the Administrator in administering this Scheme, and shall be allocated to all Eligible Claimants, and treated as a cost unless there is a surplus and clause 25(c) applies.
4. The amount of the Claimant Distribution Sub-Fund shall be divided between Eligible Claimants in accordance with this Scheme, and the Net Distribution Sum shall be divided in accordance with this Assessment Methodology Schedule.
5. In outline, this Assessment Methodology Schedule:
 - a. provides for the assessment of the eligibility of Claimants;
 - b. provides the mechanism under which the maximum value of each Eligible Claimants' claim ("**Eligible Claimant Maximum Claim Value**") is calculated; and
 - c. provides for the calculation of the Final Settlement Entitlement of each Eligible Claimant by reference to their proportionate share of the Net Distribution Sum and their individual Eligible Claimant Maximum Claim Value.
6. The operative part of this Assessment Methodology Schedule is set out below and is split into the following sections:
 - A – Step 1 – Eligibility Determination;
 - B – Step 2 – Final Settlement Entitlement Calculation;
 - Part 1 – Eligible Claimant Maximum Claim Value Determination
 - Part 2 – Final Settlement Entitlement Determination

Step 1 – Eligibility Determination

7. Once the Administrator has a final list of Participating Group Members, the Administrator is to provide that list to Westpac (**List of Participating Group Members**) in the form of spreadsheet entitled "*Annexure A – Format proposed for provision of claimant data by Shine Lawyers*" attached to the email from Allens to Shine Lawyers dated 18 June 2021.
8. Westpac will then undertake the process of trying to identify Participating Group Members from the List of Participating Group Member against their own database of Protection Plans issued during the relevant period. Westpac will undertake this



exercise in accordance with the "*Administration Process*" attached to the email from Allens to Shine Lawyers dated 18 June 2021.

9. Within a reasonable period of time (which will depend on the number of Participating Group Members), Westpac will provide to the Administrator a spreadsheet which provides policy level data for Eligible Group Members identified through the process described in clause 8 above (**Westpac Data**).
10. If a Claimant **does not** have an Excluded Claim, the Administrator will treat them as an Eligible Claimant.
11. If a Claimant **does** have an Excluded Claim, the Administrator will not treat them as an Eligible Claimant.
12. The Administrator will update the Claimant Database to include any Eligibility Determination made in respect of a Claimant.

Step 2 - Final Settlement Entitlement Calculation

13. The Administrator will calculate the Final Settlement Entitlements of Eligible Claimants according to the following two part procedure:

Part 1 – Eligible Group Member Maximum Claim Value Determination

14. Eligible Claimants have claims against the Respondents for:

(a) *the difference between:*

- (i) *The premiums actually paid to Westpac for the Eligible Claimant's insurance policy up to 31 March 2021 (less any compensation already paid by Westpac in relation to those premiums, outside of the class action); and*
- (ii) *The premiums that would have been paid by the Eligible Claimant up to 31 March 2021 if their insurance policy had been obtained through an independent financial adviser,*

plus

(b) *interest on the amount calculated in accordance with (a) from the date the premium was paid;*

Plus

(c) *in the case of the Applicants only, the costs and expenses incurred by the Applicants in bringing the Proceedings on their own behalf and on behalf of Group Members*

15. The Administrator will apply the following formula to each Eligible Claimant to calculate each **Eligible Claimants' Maximum Claim Value**:

(a) *50% of the difference between:*

- (i) *The premiums actually paid to Westpac for the Eligible Claimant's*



insurance policy up to 31 March 2021 (less any compensation already paid by Westpac in relation to those premiums, outside of the class action); and

- (ii) *The premiums that would have been paid by the Eligible Claimant up to 31 March 2021 if their insurance policy had been obtained through an independent financial adviser,*

plus

(b) interest on the amount calculated in accordance with (a) from the date the premium was paid until 31 March 2021

(the “**Claim Value Assessment Formula**”).

16. For the avoidance of doubt, the Administrator’s calculation of the Claim Value Assessment Formula may be performed by reference to further information or documents requested by the Administrator pursuant to clauses 16 and 29 of the Scheme.
17. The Administrator will update the Claimant Database to include:
- a. for each Eligible Claimant, the Eligible Claimant’s Maximum Claim Value; and
 - b. an aggregate figure of all Eligible Claimants’ Maximum Claim Values (“**Eligible Claimants’ Maximum Claim Value Aggregate**”)
18. Within 5 business days of the Administrator calculating the Eligible Claimants’ Maximum Claim Value Aggregate, the Administrator will provide the Claimant Database to Westpac (to the extent required by clause 5.1 of the Deed).

Part 2 – Final Settlement Entitlement Determination

19. Following the conclusion of the process set out in clause 5.1 of the Deed, the Administrator will calculate each Eligible Claimant’s Final Settlement Entitlement as follows:
- a. Where the Eligible Claimants’ Maximum Claim Value Aggregate exceeds the Net Distribution Sum:
 - i. calculate the difference between the Eligible Claimants’ Maximum Claim Value Aggregate and the Net Distribution Sum (“**Distribution Deficit Amount**”); and
 - ii. proportionately reduce, by reference to the below formula, each Eligible Claimant’s Maximum Claim Value, by reference to the number of Eligible Claimants and the Distribution Deficit Amount:

Eligible Claimants’ Final Settlement Entitlement Adjustment Formula



Step 1:

Eligible Claimants' Maximum Claim Value Aggregate – Net Distribution Sum = Distribution Deficit Amount

Step 2:

Distribution Deficit Amount / Eligible Claimants' Maximum Claim Value Aggregate = % reduction of the Maximum Claim Value Aggregate to be applied to each individual Eligible Claimant ("% of Maximum Claim Entitlement").

Step 3:

Eligible Claimant's Maximum Claim Value - % of Maximum Claim Entitlement = Final Settlement Entitlement for each Eligible Claimant,

- b. Where the Net Distribution Sum exceeds the Eligible Claimants' Maximum Claim Value Aggregate, each Eligible Claimant's Final Settlement Entitlement will be equal to each Eligible Claimant's Maximum Claim Value, calculated in accordance with the Claim Value Assessment Formula.

Note: The Applicants' Entitlements

20. For the avoidance of doubt, for the sole purpose of determining the Applicants' Settlement Entitlements, the Applicants' Eligible Claimant's Maximum Claim Values shall be net of the amount of the Legal Costs Sub-Fund and all other amounts which by this Scheme are authorised to be deducted and applied to discharge the Applicants' obligations to Shine Lawyers or the Funder in respect of the Applicants' Legal Costs and Disbursements, Insurance Costs and Other Costs, notwithstanding that those amounts are assigned and allocated to the Applicants collectively and deducted pursuant to this Scheme prior to determination of the Net Distribution Sum.