

*McCoy v Hino Motors Ltd Anor*

**SUPREME COURT OF VICTORIA**

**S ECI 2023 01521**

**SETTLEMENT DISTRIBUTION SCHEME**

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## 1. OVERVIEW AND SUMMARY

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- A. On 14 February 2025, the parties to the proceeding S ECI 2023 01521 (the **Proceeding**) in the Supreme Court of Victoria (**the Court**) executed a Deed of Settlement (the **Deed**).
- B. The Deed sets out the terms of a proposed settlement of the Proceeding subject to Court approval. The Deed provides the Defendants to pay a resolution sum of A\$87,000,000, inclusive of costs and interest (the **Settlement Sum**).
- C. On 12 March 2025, the Court made orders setting 2 May 2025 as the date by which group members were required to opt out of the proceeding and/or register their claims in order to be eligible to participate in the proposed settlement of the Proceeding (**Class Deadline**).
- D. On 18 July 2025 the Court approved the settlement of the Proceeding on the terms set out in the Deed and the Settlement Distribution Scheme.
- E. The Settlement Distribution Scheme sets out the procedure for distributing the Settlement Sum and is operative from the date of the Approval Orders.
- F. The Settlement Distribution Scheme has the following key stages:

Stage	Clause	Stage
Determination of Eligibility	Clause 6	The Scheme Administrator will issue each Registered Group Member a notice containing its determination of their eligibility to receive a Distribution pursuant to this Settlement Scheme and, the Claim Data to be used to assess their claim.
Reviews	Clause 7	Registered Group Members who have been determined that they have or have previously had one or more Ineligible Affected Vehicles, will be afforded the opportunity to seek an Eligibility Review of that determination. Registered Group Members will also be permitted to seek a review of their Claim Data at this stage.

Stage	Clause	Stage
Calculation of Provisional Vehicle Amounts and Estimated Distribution Amounts	Clause 8	Eligible Group Members will have their Provisional Vehicle Amounts determined by the Scheme Administrator in accordance with the Confidential Loss Assessment Methodology. Based on the Provisional Vehicle Amounts, the Scheme Administrator will determine the Estimated Distribution Amount for each Eligible Group Member. The Scheme Administrator will notify each person of their Provisional Vehicle Amounts and Estimated Distribution Amount, which is final and binding.
Collection of Bank Account Details	Clause 9	Eligible Group Members whose Estimated Distribution Amount is more than the Minimum Distribution Amount will be required to provide their bank details. Eligible Group Members that do not provide their bank details by the required time will have their payment forfeited and redistributed to all other Eligible Group Members.
Calculation of Distribution Amounts	Clause 10	The Scheme Administrator will calculate each Eligible Group Member's Distribution Amount, based on the quantum of the Distribution Settlement Sum. The calculations will be final and binding.
Payment of Distribution Amounts	Clause 11	The Scheme Administrator will pay Eligible Group Members' Distribution Amounts into their nominated bank account. The Scheme Administrator will provide Remittance Notices to those that receive a payment.
Residual Settlement Sum	Clause 12	After all Distribution Amounts are paid, the Scheme Administrator will calculate the quantum of the Residual Settlement Sum and determine how that sum is to be distributed.

Stage	Clause	Stage
Conclusion of Scheme	Clause 13	Once all payments are made, the Scheme Administrator will attend to finalisation of the Settlement Distribution Scheme.

## 2. DEFINITIONS AND INTERPRETATIONS

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### Definitions

In the Scheme, the following terms have the meanings defined below, unless the context otherwise requires:

Term	Meaning
<b>Act</b>	<i>Supreme Court Act 1986 (Vic).</i>
<b>Administration Costs</b>	the costs and disbursements incurred by the Scheme Administrator and approved by the Court in implementing, facilitating and giving effect to the Scheme and/or the settlement distribution generally and including any taxes, levies, duties, charges, fees or other imposts or obligations arising in connection with the administration of the Scheme.
<b>Affected Vehicle</b>	a Hino branded vehicle fitted with a diesel engine that was manufactured during the period from 1 January 2003 to 22 August 2022.
<b>Approval Date</b>	the meaning given in clause 7.7 of the Deed.
<b>Approval Orders</b>	the meaning given in clause 7.5 of the Deed.
<b>Assessment</b>	an assessment conducted by the Scheme Administrator in accordance with clause 8.
<b>Australian Sanctions Laws</b>	the <i>Autonomous Sanctions Act 2011</i> (Cth) and the <i>Autonomous Sanctions Regulations 2011</i> (Cth) as amended or replaced from time to time.
<b>Claim Data</b>	the meaning given in clause 5.1.

<b>Term</b>	<b>Meaning</b>
<b><i>Claims Database</i></b>	a database constructed by or on behalf of the Scheme Administrator to contain the Claim Data and Contact Details for each Eligible Group Member.
<b><i>Class Deadline</i></b>	means, as provided by order 1 of the Court's orders of 12 March 2025, the date by which Group Members were required to register to participate in the Proposed Settlement of the Proceeding or opt out of the Proceeding, being 4:00pm on 2 May 2025 (AEST).
<b><i>Clayton Utz</i></b>	the solicitors on record for the Defendants in the Proceeding.
<b><i>Confidential Loss Assessment Methodology</i></b>	the methodology by which Eligible Group Members' claims are calculated as contained in Confidential Schedule B to the Scheme.
<b><i>Consolidated List</i></b>	the list maintained by the Department of Foreign Affairs and Trades of all persons and entities listed under Australian Sanctions Laws.
<b><i>Contact Details</i></b>	an Eligible Group Member's (or their agent or representative's) postal address, email address and mobile phone number and/or other telephone number.
<b><i>Court</i></b>	Supreme Court of Victoria.
<b><i>Deed</i></b>	the Deed of Settlement between the Parties dated 14 February 2025.
<b><i>Defendants</i></b>	the First Defendant and the Second Defendant.
<b><i>Designated Person or Entity</i></b>	a person or organisation who or which is a sanctions target or appears on the Consolidated List as at the date searched by the Scheme Administrator.
<b><i>Distribution Amount</i></b>	an amount calculated in accordance with clause 10.6 and which exceeds the Minimum Distribution Amount.
<b><i>Distribution Date</i></b>	the date determined by the Scheme Administrator on which payments to Eligible Group Members will commence, being a date after the Approval Date.

<b>Term</b>	<b>Meaning</b>
<b><i>Distribution Settlement Sum</i></b>	the meaning given in clause 10.3.
<b><i>Eligibility Criteria</i></b>	the meaning given in clause 6.1.
<b><i>Eligibility Review</i></b>	the meaning given in clause 7.1.
<b><i>Eligible Affected Vehicle</i></b>	an Affected Vehicle in which, in respect of an individual Registered Group Member, that Registered Group Member holds or has held an Eligible Interest.
<b><i>Eligible Group Member</i></b>	a Registered Group Member that meets the Eligibility Criteria.
<b><i>Eligible Interest</i></b>	an Ownership Interest or a Lease Interest.
<b><i>Estimated Distribution Amount</i></b>	the amount calculated in accordance with clause 8.5.
<b><i>Final Dismissal Orders</i></b>	the date on which the final distribution under the Scheme is confirmed to the Court by the Scheme Administrator.
<b><i>Finance Lease</i></b>	a lease that transfers substantially all the risks and rewards incidental to ownership of an underlying asset (as defined in Appendix A to Australian Accounting Standards Board standard AASB 16).
<b><i>First Defendant</i></b>	Hino Motors Ltd.
<b><i>Group Costs Order</i></b>	the orders as made by the Court pursuant to section 33ZDA of the Act, permitting that the legal costs payable to the Solicitors be calculated as a percentage of the Settlement Sum as set out in orders 2 and 3 of the Court's orders in the Proceeding dated 15 December 2023 or as determined by the Court.
<b><i>Group Member</i></b>	those persons who meet the description of "Group Members" in the SOC, other than any persons who have validly opted out of, or ceased to be group members in, the Proceeding pursuant to sections 33J or 33KA of the Act (which will be deemed to include any person in respect of whom the Court has made an order permitting them to opt out of, or cease to be a group member in, the Proceeding prior to or after the Class Deadline).

<b>Term</b>	<b>Meaning</b>
<b><i>Hino List</i></b>	the list of VINs and information for all Affected Vehicles provided by the Defendants in accordance with order 4 of the Court's orders of 12 March 2025.
<b><i>Ineligible Affected Vehicle</i></b>	an Affected Vehicle in which, in respect of an individual Registered Group Member, that Registered Group Member does not hold or has not held an Eligible Interest.
<b><i>Interest</i></b>	interest earned on the monies held in the Settlement Distribution Fund and any other interest-bearing account established by the Scheme Administrator in accordance with the Scheme.
<b><i>Lease Interest</i></b>	One of the following types of interest in respect of an Affected Vehicle: (a) Lessee Interest (Finance Lease); (b) Lessee Interest (Operating Lease); or (c) Lessor Interest (Operating Lease).
<b><i>Lessee Interest (Finance Lease)</i></b>	where an Affected Vehicle was subject to a Finance Lease, novated lease or hire purchase agreement and the Registered Group Member was the lessee or hirer (however described).
<b><i>Lessee Interest (Operating Lease)</i></b>	where an Affected Vehicle was subject to an Operating Lease and the Group Member was the lessee.
<b><i>Lessor Interest (Operating Lease)</i></b>	where an Affected Vehicle was subject to an Operating Lease and the Registered Group Member was the lessor.
<b><i>Maurice Blackburn</i></b>	Maurice Blackburn Lawyers, the Plaintiffs' solicitors in the Proceeding.
<b><i>Minimum Distribution Amount</i></b>	is \$30.00.
<b><i>Non-Responsive Group Member</i></b>	means a Registered Group Member or Eligible Group Member: (a) who has failed to adequately respond to a notice from the Scheme Administrator requesting that they take a certain step or steps by a date specified by the Scheme Administrator, provided that any such date or required time specified by the Scheme Administrator must not be less than 14 days from the date of any such notice; or

<b>Term</b>	<b>Meaning</b>
	(b) who the Scheme Administrator determines has received a notice or communication under clauses 19.3(b) and 19.4.
<b><i>Notice of Eligibility</i></b>	a notice sent by the Scheme Administrator to a Registered Group Member containing its determination of their eligibility to receive a Distribution pursuant to this Settlement Scheme and the Claim Data to be used to assess their claim.
<b><i>Notice of Eligibility Review</i></b>	the meaning given in clause 7.4(a).
<b><i>Notice of Estimated Distribution</i></b>	the notice to be sent by the Scheme Administrator to each Eligible Group Member in accordance with clause 8.9
<b><i>Notice of Review Assessment</i></b>	the meaning given in clause 7.5(d).
<b><i>Operating Lease</i></b>	a lease that does not transfer substantially all the risks and rewards incidental to ownership of an underlying asset (as defined in Appendix A to Australian Accounting Standards Board standard AASB 16).
<b><i>Ownership Interest</i></b>	<p>an interest held by a Group Member in respect of an Affected Vehicle in which the Group member held legal title to the vehicle:</p> <ul style="list-style-type: none"> <li>(a) if the Affected Vehicle was acquired new or second hand</li> <li>(b) regardless of whether the Affected Vehicle was acquired by the Group Member wholly or partly by means of a loan (however described)</li> <li>(c) including in circumstances where the Group Member acquired ownership after making a “balloon payment”, residual value payment or final payment (however described) under the terms of lease, hire purchase agreement or other similar arrangement.</li> <li>(d) excluding in circumstances where the Group Member held a Lessor Interest (Operating Lease) as defined above.</li> </ul>
<b><i>Plaintiff</i></b>	the plaintiff in the Proceeding.
<b><i>Plaintiff Reimbursement Payment</i></b>	an amount approved by the Court on 18 July 2025, in the amount of \$20,000.



<b>Term</b>	<b>Meaning</b>
<b><i>Proceeding</i></b>	the proceeding numbered S ECI 2023 01521 in the Supreme Court of Victoria.
<b><i>Proposed Settlement</i></b>	the proposed settlement on the terms set out in the Deed.
<b><i>Provisional Vehicle Amount</i></b>	the per vehicle estimate of loss calculated in accordance with clause 8.1.
<b><i>Registered Group Member</i></b>	<p>a Group Member who:</p> <ul style="list-style-type: none"> <li>(a) meets the definition of a Group Member in paragraph 1 of the SOC;</li> <li>(b) registered in accordance with orders 2 and 15 to 18 of the Supreme Court of Victoria's orders dated 12 March 2025; and</li> <li>(c) did not submit an opt-out notice with the Court in accordance with orders 1 and 11 to 14 of the Court's orders of 12 March 2025.</li> </ul>
<b><i>Regulatory Bodies</i></b>	<p>any one, or combination, of the following regulatory entities responsible for the registration of the Affected Vehicles:</p> <ul style="list-style-type: none"> <li>(a) Access Canberra, Road Transport Authority</li> <li>(b) AustRoads</li> <li>(c) Northern Territory Motor Vehicle Registry</li> <li>(d) Queensland Department of Transport and Main Roads</li> <li>(e) South Australian Department of Infrastructure and Transport</li> <li>(f) Tasmanian Department of State Growth</li> <li>(g) Transport for New South Wales</li> <li>(h) Victorian Department of Transport</li> <li>(i) West Australian Department of Transport</li> </ul>
<b><i>Remittance Notice</i></b>	the notice to be sent by the Scheme Administrator to each Eligible Group Member confirming the payment of their Distribution Amount or Residual Distribution Amount.
<b><i>Residual Distribution Amount</i></b>	the meaning given in clause 12.5.
<b><i>Residual Settlement Sum</i></b>	the meaning given in clause 12.2

<b>Term</b>	<b>Meaning</b>
<b><i>Review Material</i></b>	any documentation or other information to be provided by a Registered Group Member which they consider relevant to their Eligibility Review.
<b><i>Scaled Loss Assessment</i></b>	the per claim estimate of loss calculated in accordance with clause 8.3.
<b><i>Scheme Administrator</i></b>	Maurice Blackburn, or such other person as appointed by the Court, administrator of the Scheme. Prior to the appointment, Maurice Blackburn will execute the functions of the Scheme Administrator under the Scheme in accordance with the Scheme and subject to Court approval.
<b><i>Second Defendant</i></b>	Hino Motor Sales Australia Pty Ltd (ACN 064 989 724).
<b><i>Settlement Distribution Fund</i></b>	the meaning in clause 4.3 and, where the context admits, will include any account, fund or trust established for the purposes of this Scheme as a separate fund from the original Settlement Distribution Fund, and holding funds drawn from the original Settlement Distribution Fund.
<b><i>Settlement Distribution Scheme or Scheme</i></b>	the terms of this settlement distribution scheme as approved by the Court on 18 July 2025 including Schedules.
<b><i>Settlement Reserve Fund</i></b>	the interest-bearing account opened by Clayton Utz in accordance with clause 2(a) of the Deed, in which the Settlement Sum is to be held until the Approval Date.
<b><i>Settlement Sum</i></b>	the sum of A\$87,000,000.
<b><i>SOC</i></b>	the statement of claim filed on 29 May 2023 in the Proceeding.
<b><i>Verification Materials</i></b>	the data produced by the Regulatory Bodies in response to the subpoenas filed by the Plaintiff in the Proceeding and the Hino List.
<b><i>Withdrawn Group Member</i></b>	any Registered Group Member or Eligible Group Member who notifies the Scheme Administrator that they wish to withdraw their claim.

## **Interpretation**

### **2.1. In the Scheme:**

- (a) headings are for convenience only and do not affect interpretation;

- (b) where the context permits, the singular includes the plural, and the plural includes the singular;
- (c) a gender includes all genders;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether it comprises a separate legal entity;
- (f) a reference to any thing done by any person includes a reference to the thing as done by a director, officer, servant, agent, personal representative or legal representative if permitted to be so done by law or by any provision of the Deed or Scheme;
- (g) a reference to money (including 'dollars', 'AUD', and '\$') is to Australian currency;
- (h) specifying anything in the Scheme after the words "include", "including" or "for example" or similar expressions, does not limit what else might be included;
- (i) unless otherwise specified, a reference to a clause is a reference to a clause of the Scheme;
- (j) a reference to an agreement or document (including a reference to the Scheme) is to the agreement or document as amended, supplemented, novated or replaced;
- (k) a reference to a day is to a calendar day and not to a business day, unless the context requires otherwise.

### **3. SCHEME ADMINISTRATOR**

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#### **Appointment of Scheme Administrator**

- 3.1. The Scheme will be administered and applied by the Scheme Administrator.
- 3.2. In acting as Scheme Administrator, including discharging any function or exercising any discretion conferred by the Scheme, the Scheme Administrator:
  - (a) must not act as the solicitor for the Plaintiffs or any individual Group Member in relation to the Scheme;
  - (b) will administer the Scheme fairly and according to its terms and in doing so will;
    - i. act in accordance with a duty owed to the Court in priority to any obligation owed to the Plaintiffs or any individual Group Member;

- ii. balance the interest of any individual Group Member against the interests of Group Members as a whole; and
- iii. at all times and when exercising the discretion conferred upon it under the Scheme, ensure that the Scheme is administered in a practical, proportionate and cost-effective manner. This includes, but is not limited to the following:
  - 1. seeking expert advice as it considers necessary;
  - 2. correcting any error, slip or omission necessary to facilitate the administration of the Scheme;
  - 3. applying to the Court to amend the Scheme if it considers it desirable or appropriate to do so; and
  - 4. extending time for compliance with any deadline fixed by the Scheme or by the Scheme Administrator while administering the Scheme.
- (c) together with its employees and agents;
  - i. subject to the approval of the Court, will be indemnified from the Settlement Sum against all liabilities (including any Administration Costs) arising from or in connection with the administration of the Scheme; and
  - ii. will have the same immunities from suit as those attaching to an expert appointed by the Court pursuant to section 65M of the *Civil Procedure Act 2010* (Vic).

### **Immunity from claims**

- 3.3. The Scheme Administrator, together with its employees and agents, in discharging any function or exercising any power or discretion conferred by the Scheme, will not be liable for any loss to any Group Member arising by reason of any mistake or omission made in good faith or of any other matter or thing except wilful and individual fraud and wrongdoing on the part of the Scheme Administrator, its employees or agents who are sought to be made liable.
- 3.4. The Scheme Administrator will have no liability to any Group Member who is not paid a Distribution Amount or is paid an incorrect Distribution Amount arising from:
  - (a) the provision of incorrect or otherwise insufficient information contained in the Verification Materials;
  - (b) incorrect or otherwise insufficient bank account information provided by an Eligible Group Member or persons acting on their behalf;

- (c) fraudulent conduct of a party other than the Scheme Administrator;
- (d) an electronic funds transfer using the bank account information provided by the Eligible Group Member, or persons acting on their behalf;
- (e) an Eligible Group Member's or Registered Group Member's failure to receive a communication described in the Scheme or who, for any other reason, failed to submit documentation to the Scheme Administrator or the Court within a time limit set under the Scheme; and/or
- (f) any error or omission by the Scheme Administrator.

#### **4. FINANCIAL MANAGEMENT**

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##### **Settlement Distribution Fund**

- 4.1. Pursuant to clause 6(a) of the Deed, the Defendants paid the Settlement Sum into the Settlement Reserve Fund on 9 January 2025.
- 4.2. In accordance with clause 6(d) of the Deed, within 10 Business Days of the Approval Date, Clayton Utz will transfer the Settlement Sum (inclusive of interest) to the Settlement Distribution Fund opened by the Scheme Administrator.
- 4.3. The Scheme Administrator will be responsible for the management of the Settlement Distribution Fund, and all moneys in the Settlement Distribution Fund, in accordance with the Scheme.

##### **Management of the Settlement Distribution Fund**

- 4.4. The Scheme Administrator will, subject to and in accordance with the terms of the Deed, the Scheme and any applicable statutory requirements, hold the money standing from time to time in the Settlement Distribution Fund on trust for:
  - (a) the Plaintiff and Eligible Group Members; and
  - (b) the Scheme Administrator, to the extent of its entitlement to receive Administration Costs in accordance with the terms of the Scheme.
- 4.5. The Scheme Administrator may:
  - (a) pay all or a portion of the funds in the Settlement Distribution Fund into one or more interest-bearing, fixed term deposit account(s) for varying terms; and
  - (b) at any time, convert the Settlement Distribution Fund to a non-interest earning account if it determines that the cost of administering the taxation implications of further interest being

earned on the funds in Settlement Distribution Fund will be disproportionate to the further interest expected to be earned.

- 4.6. The Scheme Administrator is required to comply with the taxation obligations of any trust created for the benefit of Eligible Group Members during the settlement administration and may seek expert advice to enable this. Any tax that the Scheme Administrator may be required to pay in respect of an individual Eligible Group Member may be deducted from that Eligible Group Member's Distribution Amount.
- 4.7. Any taxes payable in respect of any trust(s) created for the purposes of the Scheme will be deducted from the Settlement Sum.

### **Application of Interest**

- 4.8. Interest may be applied, in the first instance, to payment of Administration Costs.
- 4.9. Any Interest which is not otherwise required for the payment of Administration Costs will form part of the Settlement Sum and be available for distribution to Eligible Group Members if determined appropriate to do so by the Scheme Administrator.

## **5. CLAIM DATA**

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### **Claim Data**

- 5.1. Claim Data means the following information for each Registered Group Member:
  - (a) the identity of the Registered Group Member;
  - (b) details of the Registered Group Member's claim in the Proceeding, such as the VIN of the Affected Vehicle/s for which their claim relates, along with details regarding the interest held by the Registered Group Member in respect of the Affected Vehicle/s; and
  - (c) any other information required by the Scheme Administrator to assess the claim of a Registered Group Member.
- 5.2. In compiling the Claim Data for each Registered Group Member, the Scheme Administrator may treat the information contained in the Hino List and/or the Verification Materials and/or such other sources of information as determined to be reasonable and appropriate by the Scheme Administrator as final and binding, including in calculating Provisional Vehicle Amounts and Scaled Loss Assessments.

## **Obligations and powers of the Scheme Administrator regarding Claim Data**

- 5.3. At all times, the Scheme Administrator must use reasonable endeavours to ensure the accuracy of the Claims Database, including, to the extent necessary, updating the Claims Database for any amended or corrected Claim Data provided under this clause, requesting further information or documents from a Registered Group Member or Eligible Group Member or requesting further information or documents from third parties.
- 5.4. Notwithstanding any other clause in this Settlement Distribution Scheme, if in the opinion of the Scheme Administrator, at any stage a Registered Group Member or Eligible Group Member's Claim Data contains insufficient information or does not otherwise substantiate a Registered Group Member's or Eligible Group Member's claim, the Scheme Administrator may, by written notice, require the Registered Group Member or Eligible Group Member to provide and verify by a statutory declaration or other means that the Scheme Administrator deems appropriate and within a time that the Scheme Administrator deems reasonable, such further information as the Scheme Administrator may require.

## **6. DETERMINATION OF ELIGIBILITY**

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### **Eligibility Criteria**

- 6.1. A Registered Group Member becomes an Eligible Group Member and is eligible to participate in the Scheme if the Registered Group Member:
- (a) holds or has held an Eligible Interest in at least one Affected Vehicle:
  - (b) acquired the Eligible Interest in the Affected Vehicle on or before 17 April 2023 as specified in the definition of Group Member in paragraph 1 of the SOC; and
  - (c) the Registered Group Member has not become a Withdrawn Group Member or Non-Responsive Group Member before the assessment of Provisional Vehicle Amounts.
- together, the Eligibility Criteria.
- 6.2. For the avoidance of doubt, where a Registered Group Member holds, or has held, an interest in more than one Affected Vehicle, a determination that the Registered Group Member:
- (a) holds an Eligible Interest in one or more Affected Vehicle(s) does not preclude a determination that they do not hold an Eligible Interest in one or more other Affected Vehicle(s); and

- (b) does not hold or has not held an Eligible Interest in one or more Affected Vehicles does not preclude a determination that a Registered Group Member holds an Eligible Interest in one or more other Affected Vehicles.

### **Process for determining eligibility**

- 6.3. The Scheme Administrator will determine whether a Registered Group Member meets the Eligibility Criteria using, as appropriate, the Verification Materials, the Hino List and the Claim Data.
- 6.4. In making the determination in clause 6.3, the Scheme Administrator may treat the information contained in the Hino List and/or the Verification Materials and/or such other sources of information as determined by the Scheme Administrator as final and binding, including in resolving any Eligibility Reviews in accordance with clause 7.

### **Notices of Eligibility**

- 6.5. The Scheme Administrator will send a Notice of Eligibility to each Registered Group Member, which will:
  - (a) advise them whether they have met or have not met the Eligibility Criteria;
  - (b) identify the Eligible Affected Vehicles and/or Ineligible Affected Vehicles; and
  - (c) notify them of the Claim Data used in the Eligibility Determination and to be used to assess their claim; and
  - (d) inform them of their right to seek an Eligibility Review.
- 6.6. Where the Scheme Administrator determines that a Registered Group Member has or has previously had an Ineligible Affected Vehicle, the Registered Group Member may seek an Eligibility Review pursuant to clause 7.

## **7. REVIEWS**

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### **Rights to seek a review**

- 7.1. A Registered Group Member may seek a review of a determination that they have or have previously had one or more Ineligible Affected Vehicles and/or the Claim Data included in their Notice of Eligibility (**Eligibility Review**).
- 7.2. A Withdrawn Group Member or a Non-Responsive Group Member does not have a right to review any notice issued by the Scheme Administrator. The Scheme Administrator may, however, in its absolute discretion, correct or withdraw any such notice if it considers that such a correction or



withdrawal is unlikely to cause delay to the settlement administration and the correction or withdrawal is made prior to the calculation of Distribution Amounts.

- 7.3. Where there are two or more Registered Group Members whose claims relate to the same Ineligible Affected Vehicle(s) in which substantively identical interests were held in the vehicle at overlapping points in time, if one Registered Group Member seeks an Eligibility Review, then the other Registered Group Members may be given the opportunity to participate in that Review (subject to compliance with the requirements of clause 7).

#### **Process for seeking an Eligibility Review**

- 7.4. A Registered Group Member that wishes to seek an Eligibility Review must:

- (a) give written notice to the Scheme Administrator (**Notice of Eligibility Review**) no later than 28 days after the Scheme Administrator has sent a Notice of Eligibility to the Registered Group Member; and
- (b) ensure that the Notice of Eligibility Review:
  - i. is in the format prescribed by the Scheme Administrator;
  - ii. is submitted to the Scheme Administrator in accordance with the means and methodology prescribed by the Scheme Administrator;
  - iii. identifies the components of the determination with respect to the Ineligible Affected Vehicle(s) and/or the Claim Data which the Registered Group Member disputes;
  - iv. contains the reasons why the Registered Group Member disputes those components and documentary evidence to support the dispute; and
  - v. attaches Review Materials required by the Scheme Administrator to support the Eligibility Review.

- 7.5. Upon receipt of the Notice of Eligibility Review, the Scheme Administrator must:

- (a) consider the information contained in the Notice of Eligibility Review;
- (b) determine whether, on the basis of the information in 7.4(b), the Eligibility Review is upheld or refused;
- (c) prepare a brief statement of reasons for the Scheme Administrator's decision; and
- (d) provide the Registered Group Member with a **Notice of Review Assessment**, which will include:

- i. whether the Eligibility Review is upheld or refused;
  - ii. the impact of that decision on the Registered Group Member's entitlements (if any) under this Settlement Distribution Scheme; and
  - iii. a brief statement of reasons for the Scheme Administrator's decision.
- 7.6. The Scheme Administrator's decision on the outcome of an Eligibility Review is final and binding on all relevant Registered Group Members. Relevant Group Members are not entitled to seek a review of the decision or appeal to the Court or any other court or tribunal in relation to any asserted error of jurisdiction, fact or law arising from the Scheme Administrator's decision.

#### **No reimbursement**

- 7.7. For the avoidance of doubt, Registered Group Members will not be entitled to reimbursement for any costs independently incurred by the Registered Group Member in respect of an Eligibility Review.

### **8. PROVISIONAL VEHICLE AMOUNT, SCALED LOSS ASSESSMENT, AND ESTIMATED DISTRIBUTION AMOUNT**

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#### **Calculation of Provisional Vehicle Amounts**

- 8.1. Provisional Vehicle Amounts will be calculated by applying the Confidential Loss Assessment Methodology to each Affected Vehicle contained in the Claim Data for Eligible Group Members.
- 8.2. The Scheme Administrator is not obliged to but may, in exceptional circumstances and in its absolute discretion having regard to the principles set out in clause 3.2, make corrections or amendments to the calculation of the Provisional Vehicle Amount for an Eligible Group Member if the Scheme Administrator considers it fair and appropriate to do so.

#### **Calculation of per claim Scaled Loss Assessments**

- 8.3. Scaled Loss Assessments will be calculated by applying the Confidential Loss Assessment Methodology to the claim or claims of Eligible Group Members in accordance with the scale set out in the Confidential Loss Assessment Methodology and based on the Claim Data.

#### **Calculation of Estimated Distribution Amounts**

- 8.4. The Scheme Administrator will estimate the portion of the Settlement Sum that will be available for distribution to Eligible Group Members, taking into account the deductions in clause 10.1 and the quantum of any pre-approved Administration Costs or estimated Administration Costs if any such costs are not pre-approved. This amount is the **Estimated Distribution Settlement Sum**.

- 8.5. Provisional estimates of distributions from the Estimated Distribution Settlement Sum will be calculated as follows:
- (a) in the proportion which the Scaled Loss Assessment of each claim for all Eligible Group Member bears to the aggregate of the Scaled Loss Assessments for all Eligible Group Members; and
  - (b) where the proportional assessment in 8.5(a) is less than the Minimum Distribution Amount, nothing will be allocated to the Eligible Group Member and the amount will be included in the Estimated Distribution Sum for allocation.
- 8.6. The amount calculated in accordance with 8.5 is the **Estimated Distribution Amount** for each Eligible Group Member.

#### **Binding calculations**

- 8.7. The Scheme Administrator may, in exceptional circumstances and in its absolute discretion having regard to the principles set out in clause 3.2(b) make corrections or amendments to the calculation of the Provisional Vehicle Amounts and/or Estimated Distribution Amounts for that Eligible Group Member based on information provided to them by an Eligible Group Member.
- 8.8. Subject to the discretion in clause 8.7, the calculation of Provisional Vehicle Amount and Estimated Distribution Amount by the Scheme Administrator is final and binding. Eligible Group Members are not entitled to seek a review of the decision or appeal to the Court or any other court or tribunal in relation to any asserted error of jurisdiction, fact or law arising from the Scheme Administrator's decision.

#### **Notice of Estimated Distribution**

- 8.9. The Scheme Administrator will send to each Eligible Group Member a **Notice of Estimated Distribution** which must include, but is not limited to:
- (a) the Claim Data for the Eligible Group Member; and
  - (b) the Eligible Group Member's Estimated Distribution Amount along with the Provisional Vehicle Amount and Scaled Loss Assessment in respect of their claim/s, and the basis on which those amounts were calculated, including the Assigned Vehicle Value and the scale contained at clause 3.8 of the Confidential Loss Assessment Methodology.

### **9. PROVISION OF BANK ACCOUNT INFORMATION**

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- 9.1. Eligible Group Members whose Estimated Distribution Amounts exceed the Minimum Distribution Amount must, by the deadline set out in the Notice of Estimated Distribution, provide sufficient bank

account details for a single Australian bank account to enable the Scheme Administrator to process payments of Distribution Amounts. For the avoidance of doubt, the deadline shall be no less than 28 days from the date of the Notice of Estimated Distribution.

9.2. Upon request from an Eligible Group Member, the Scheme Administrator may in its absolute discretion having regard to the principles in clause 3.2(b), agree to make payments to more than one nominated bank account or to an overseas bank account. The Scheme Administrator will deduct from the Distribution Amount the costs outlined in Schedule A unless, in its absolute discretion, it determines to waive those costs.

9.3. If an Eligible Group Member does not provide sufficient bank details by the specified deadline, they will be considered a Non-Responsive Group Member and:

(a) the Scheme Administrator may, in its absolute discretion:

- i. make further attempts to obtain the necessary details or information, the acceptance of which will be subject to the administrator's exercise of the discretion in clause 11.3; and
- ii. if it does so, may deduct from the Settlement Sum as additional Administration Costs any additional costs incurred in making such further attempts; but

(b) unless clause 9.3(a) applies:

- i. the Eligible Group Member's Estimated Distribution Amount will be forfeited, and the Eligible Group Member will have no claim against the Scheme Administrator or the Settlement Sum; and
- ii. all forfeited Estimated Distribution Amounts will be included in the calculation of the Distribution Settlement Sum in accordance with clause 10.2.

## **10. CALCULATION OF DISTRIBUTION AMOUNTS**

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### **Deductions from the Settlement Sum**

10.1. As soon as practicable after the Approval Date, the Scheme Administrator will pay the following amounts from the Settlement Sum, as approved by the Court:

- (a) to the Plaintiff, the Plaintiff Reimbursement Payment; and
- (b) to Maurice Blackburn the amount that is specified in the Group Costs Order.

## **Calculation of the Distribution Settlement Sum**

10.2. The Scheme Administrator will:

- (a) pay any pre-approved Administration Costs as and when they are incurred from the Settlement Sum; and
- (b) calculate and set aside from the Settlement Sum:
  - i. any remaining pre-approved Administration Costs yet to be paid;
  - ii. any further amounts to be deducted from the Settlement Sum (subject to Court approval), including, without limitation, the Scheme Administrator's reasonable estimate of any additional Administration Costs to be sought; and
  - iii. any amount payable to any tax authority for any tax obligation and/or tax related expense.

10.3. The remaining Settlement Sum will be the **Distribution Settlement Sum**.

## **Calculation of Distribution Amounts**

10.4. As soon as reasonably practicable after the expiration for the provision of bank details by Eligible Group Members, the Scheme Administrator will calculate the Distribution Amount for each Eligible Group Member whose Estimated Distribution Amount exceeds the Minimum Distribution Amount.

10.5. The Distribution Settlement Sum will be allocated among the Eligible Group Members as follows:

- (a) in the proportion which their per claim Scaled Loss Assessment bears to the aggregate Scaled Loss Assessments for all Eligible Group Members; and
- (b) where the proportional assessment in clause 10.5(a) is less than the Minimum Distribution Amount, nothing will be allocated to the Eligible Group Member, and the amount will be included in the Distribution Settlement Sum.

10.6. The amount calculated in accordance with clause 10.5 is the **Distribution Amount** for each Eligible Group Member.

## **Binding calculations**

10.7. Subject to the discretion in clause 8.7, the calculations of Provisional Vehicle Amounts, Estimated Distribution Amounts and Distribution Amounts by the Scheme Administrator are final and binding on Eligible Group Members, and Eligible Group Members are not entitled to seek a review of the

decision or appeal to the Court or any other court or tribunal in relation to any asserted error of jurisdiction, fact or law arising from the Scheme Administrator's decision.

## **11. PAYMENTS TO ELIGIBLE GROUP MEMBERS**

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11.1. Subject to clause 11.3, the Scheme Administrator will as soon as practicable after the Distribution Date:

- (a) pay the Distribution Amounts to Eligible Group Members by electronic funds transfer to Eligible Group Members' nominated bank details provided in accordance with clause 9.1; and
- (b) send to each Eligible Group Member being paid a Distribution Amount a Remittance Notice.

11.2. The Scheme Administrator will commence processing payments on the Distribution Date. Payments will be processed in tranches over a period of time to be determined by the Scheme Administrator.

11.3. The Scheme Administrator may process the payment of Distribution Amounts to Eligible Group Members by alternative means if the Scheme Administrator, in its absolute discretion having regard to the principles in clause 3.2(b), considers that:

- (a) an Eligible Group Member has demonstrated to the Scheme Administrator's satisfaction that payment by electronic funds transfer is impracticable for that Eligible Group Member; or
- (b) the Scheme Administrator, in its absolute discretion, considers that another method would effect a timelier payment to any Eligible Group Member or group of Eligible Group Members.

11.4. If the Scheme Administrator is unable to attempt payment of a Distribution Amount to an Eligible Group Member, or a payment to an Eligible Group Member is rejected, due to:

- (a) incorrect bank account details provided by the Eligible Group Member; or
- (b) any other action or inaction by the Eligible Group Member,

the Scheme Administrator will not make further inquiries with those Eligible Group Members to obtain additional bank account details or reattempt the payment of the Distribution Amount unless the Scheme Administrator, in its absolute discretion and consistent with the principles in clause 3.2(b), determines it is reasonable to so.

11.5. If the Scheme Administrator exercises its discretion under clause 11.3 above, the Scheme Administrator will deduct from the Distribution Amount any additional costs incurred in so doing including the costs of the settlement administrator and any additional fees or charges unless, in its absolute discretion, it determines to waive those costs. If the deduction of these costs reduces the

Distribution Amount to below the Minimum Distribution Amount, the Distribution Amount will be forfeited, and the forfeited Distribution(s) will form part of the Residual Settlement Sum to be distributed or donated in accordance with clause 12.

11.6. If, after 60 days from the Distribution Date, the Scheme Administrator is unable to transfer payments of Distribution Amounts to Eligible Group Members or any payment to an Eligible Group Member is rejected due to the reasons outlined in clause 9.3(a) or 9.3(b):

- (a) the Eligible Group Member's Distribution Amount will be forfeited, and the Eligible Group Member will have no claim against the Scheme Administrator or the Settlement Sum; and
- (b) the forfeited Distribution Amount(s) will form part of the Residual Settlement Sum to be distributed in accordance with clause 12.

11.7. Notwithstanding any other provisions in this Settlement Distribution Scheme, no payment from the Settlement Distribution Fund will be made to any Registered Group Member who is identified by the Scheme Administrator as a Designated Person or Entity.

## **12. CALCULATION AND DISTRIBUTION OF RESIDUAL SETTLEMENT SUM**

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12.1. As soon as practicable after completing the payment of Distribution Amounts to Eligible Group Members, the Scheme Administrator will calculate the remaining Distribution Settlement Sum as follows:

- (a) paying any remaining pre-approved Administration Costs as incurred; and
- (b) calculate and set aside any further amounts approved to be deducted from the remaining Distribution Sum, and, if appropriate, the Scheme Administrator's reasonable estimate of any additional Administration Costs to be sought for any further distribution to Eligible Group Members that were successfully paid a Distribution Amount.

12.2. The remaining Distribution Settlement Sum will be the **Residual Settlement Sum**.

12.3. The Scheme Administrator will determine, having regard to the principles in clause 3.2(b), whether the Residual Settlement Sum will be distributed to Eligible Group Members.

12.4. If the Scheme Administrator determines that it is uneconomical for the Residual Settlement Sum to be distributed, the Residual Settlement Sum will be donated to a suitable organisation approved by the Court.

12.5. If the Scheme Administrator determines that it is economical for the Residual Settlement Sum to be distributed, the Scheme Administrator will:

- (a) pay any remaining pre-approved Administration Costs which have been incurred; and
- (b) calculate and set aside from the Settlement Sum final amounts approved to be deducted from the Settlement Sum or the Residual Settlement Sum by the Court, including, without any limitation, any additional Administrative Costs to be sought relating to the distribution of the Residual Settlement Sum; and
- (c) calculate the distribution of the Residual Settlement Sum:
  - i. on a pro-rata basis to Eligible Group Members in the proportion which their Scaled Loss Assessment bears to the aggregate Scaled Loss Assessments for all Eligible Group Members or;
  - ii. as an ex-gratia payment as determined by the Scheme Administrator,

being the **Residual Distribution Amount** for each Eligible Group Member.

12.6. If an Eligible Group Member's Residual Distribution Amount is less than the Minimum Distribution Amount, nothing will be distributed to the Eligible Group Member and this amount will be included in the Residual Settlement Sum for distribution.

12.7. Without limiting the application of clause 12.5, the Scheme Administrator, may in its absolute discretion:

- (a) consider alternative solutions as to how the Residual Settlement Sum should be allocated and paid; or
- (b) apply to the Court for approval of how to allocate part or all the Residual Settlement Sum.

12.8. The Scheme Administrator will process the Residual Distribution Amount payments in accordance with clause 12. Any payments that are rejected, unsuccessful or otherwise returned to the Settlement Distribution Fund will be paid to a suitable organisation approved by the Court.

### **Binding calculations**

12.9. Subject to the discretion in clause 8.2, the calculation of Residual Distribution Amounts by the Scheme Administrator is final and binding on Eligible Group Members, and Eligible Group Members are not entitled to seek a review of the decision or appeal to the Court or any other court or tribunal in relation to any asserted error of jurisdiction, fact or law arising from the Scheme Administrator's decision.



### **13. COMPLETION OF SETTLEMENT DISTRIBUTION**

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- 13.1. The payment of all Distribution Amounts and Residual Distribution Amounts in accordance with this Scheme will satisfy any and all rights, claims or entitlements of all Group Members in or arising out of the Proceeding.

### **14. TAXATION**

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- 14.1. Eligible Group Members are responsible for obtaining their own taxation advice.
- 14.2. The Scheme Administrator is not responsible for, and will not be required to, provide or obtain any taxation advice or rulings in relation to any tax potentially payable by Eligible Group Members in relation to payment of Distribution Amounts and/or Residual Distribution Amounts.

### **15. CLAIMS MADE ON BEHALF OF OTHER PERSONS AND/OR THIRD PARTIES**

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

- 15.1. The following provisions apply in circumstances where:

- (a) A Registered Group Member or Eligible Group Member is a corporate entity; and/or
- (b) a person participates in the Scheme on behalf of another person who is a Registered Group Member or Eligible Group Member,

whether in respect to all or part of their claim.

#### **Authorised representative**

- 15.2. The Scheme Administrator may rely on information, instructions and/or declarations from, and steps taken pursuant to the Scheme by, a person who:

- (a) is authorised by law to represent a corporate entity or individual, including, without limitation, authorised company officers, partners, trustees or executors or administrators; or
- (b) declares to the Scheme Administrator that they are authorised to act on behalf of the Registered Group Member or Eligible Group Member and the Scheme Administrator accepts that declared authority.

- 15.3. The Scheme Administrator reserves the right, in its absolute discretion, to request evidence of any authority referred to in clause 15.2.

- 15.4. The Scheme Administrator will implement processes for the payment of Distribution Amounts and Residual Distribution Amounts to Eligible Group Member authorised representatives, having regard

to the principles in clause 3.2(b) of the Scheme and the quantum of the payment(s) to these Eligible Group Members.

### **Deregistered entities**

15.5. If an Eligible Group Member is a corporate entity that:

- (a) was deregistered at the time of registering in the Proceeding; or
- (b) went into external administration or voluntary liquidation after registration in the Proceeding,

that Eligible Group Member's Distribution Amount and Residual Distribution Amount will be payable to the Australian Securities and Investments Commission, the administrator or liquidator as applicable.

15.6. The Scheme Administrator will implement processes for the payment of Distribution Amounts and Residual Distribution Amounts to Eligible Group Members that are deregistered entities that:

- (a) were not deregistered at the time of registering in the Proceeding; and
- (b) are not in external administration or voluntary liquidation at the time of paying the Distribution Amounts,

having regard to the principles in clause 3.2(b) of the Scheme and the quantum of the payment(s) to these Eligible Group Members.

## **16. RIGHTS AND OBLIGATIONS OF ELIGIBLE GROUP MEMBERS**

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### **Cooperation of Registered Group Members and Eligible Group Members**

16.1. Each Registered Group Member and Eligible Group Member must cooperate with the Scheme Administrator and take all steps that they are required to take pursuant to the Scheme and/or that are reasonably requested or directed by the Scheme Administrator, including:

- (a) providing instructions, information, documents or other materials;
- (b) providing authorities or permissions or executing documents;
- (c) attending and participating in meetings or telephone conferences with the Scheme Administrator or any other person;
- (d) promptly informing the Scheme Administrator of any change in their Contact Details and Claim Data;

- (e) providing bank account details.

16.2. Each Registered Group Member and Eligible Group Member must meet the requirements of clause 16.1:

- (a) to the best of their ability with the substance and not merely the form of the requirement, request or direction; and
- (b) by any date or within any required time specified in the requirement, request or direction by the Scheme Administrator.

### **Obligation regarding honesty**

16.3. In fulfilling the obligations in clause 16.1, each Eligible Group Member must act honestly and must take all reasonable steps to ensure that any of their agents or representatives likewise act honestly.

### **Failure to comply**

16.4. Non-Responsive Group Members will have their claims assessed as \$0 by the Scheme Administrator. Where an Eligible Group Member becomes a Non-Responsive Group Member after the Scheme Administrator has issued a Notice of Estimated Distribution, the Scheme Administrator may, but is not obliged to, issue a new Notice of Estimated Distribution assessing the claims as \$0.

16.5. For the avoidance of doubt, a Registered Group Member or Eligible Group Member will not be entitled to recover any amount they might have received pursuant to the Scheme, but for a failure to comply with the requirements under the Scheme, in any future payment of moneys under the Scheme.

### **Forfeiture of Distribution**

16.6. An Eligible Group Member may notify the Scheme Administrator in writing that they wish to forfeit their Distribution Amount or Residual Distribution Amount. Any Distribution Amount forfeited by an Eligible Group Member will form part of the Distribution Sum or Residual Settlement Sum to be distributed in accordance with clause 11 and clause 12 respectively.

16.7. An Eligible Group Member's decision to forfeit their Distribution Amount or Residual Distribution Amount is final and the Eligible Group Member will not be entitled to recover any amount they might have received pursuant to the Scheme, but for their decision to forfeit, in any future payment of moneys under the Scheme.

## **Eligible Group Members indemnify the Scheme Administrator**

16.8. If an Eligible Group Member has a legal obligation by reason of receiving a Distribution Amount or Residual Distribution Amount pursuant to the Scheme, whether under statute or contract or otherwise to any government department, agency, or authority to pay or repay a sum from their Distribution Amount or Residual Distribution Amount and they do not notify the Scheme Administrator of such obligation prior to payment of the Distribution Amount or Residual Distribution Amount pursuant to the Scheme, the Eligible Group Member indemnifies and holds harmless the Scheme Administrator from and against any claim associated with that legal obligation.

## **17. COSTS**

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### **Administration Costs**

17.1. Subject to other provisions of the Scheme, Administration Costs are to be paid:

- (a) to the Scheme Administrator on a “solicitor and own client” basis if the Scheme Administrator is a legal practice, or on such other reasonable basis as the Court considers appropriate if the Scheme Administrator is not a legal practice;
- (b) in the first instance, from any Interest earned on the Settlement Sum, Distribution Settlement Sum and Residual Settlement Sum while held in the Settlement Distribution Fund;
- (c) in such amounts as are approved by the Court from time to time during the implementation of the Scheme; and
- (d) at the hourly rates set out in Schedule A or at such other rates that are approved by the Court from time to time, and if the Scheme Administrator is not a legal practice on such other basis as the Court may approve.

### **Costs of lawyers other than the Scheme Administrator**

17.2. Nothing in the Scheme prevents a Group Member from retaining or seeking advice in respect of this settlement from a lawyer who is not performing the role of Scheme Administrator, provided that:

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

## **18. SUPERVISION BY THE COURT**

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- 18.1. The Scheme Administrator may refer any issues arising in relation to the Scheme or the administration of the Scheme to the Court for determination.
- 18.2. The Scheme Administrator will report to the Court every six months from the date of the Approval Orders, or at such other interval ordered by the Court, to advise the Court of the performance of the settlement (including any steps in the Scheme), including the costs incurred and the distributions made.
- 18.3. On the application of the Scheme Administrator, or of its own motion, the Court may vary or amend the terms of the Scheme.
- 18.4. Any costs incurred by the Scheme Administrator in any such reference to the Court, or in any application made by the Scheme Administrator, will be deemed to be Administration Costs, unless the Court otherwise orders.
- 18.5. At the hearing of the application for the Approval Order the Plaintiffs and the Defendants will jointly request the Court to make the Final Dismissal Orders:
- (a) dismissing the Proceeding with no order as to costs as between the parties; and
  - (b) vacating all orders as to costs previously made in the Proceeding,
- with such orders to take effect from the date on which the final distribution under the Scheme is confirmed to the Court by the Scheme Administrator.
- 18.6. Within 28 days of the final distribution, the Scheme Administrator will file a final report to the Court and will provide a copy to the Defendants for the purposes of the Final Dismissal Orders taking effect.

## **19. NOTICES**

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- 19.1. Any notice or communication to be given pursuant to the Scheme, sent by the Scheme Administrator, will be deemed given and received for all purposes associated with the Scheme if it is:
- (a) addressed to the person to whom it is given; and
  - (b) either:
    - i. sent by email to that person's email address recorded on the Claims Database;

ii. sent by SMS to that person's mobile number recorded on the Claims Database; or

iii. sent by pre-paid mail, to that person's postal address recorded on the Claims Database.

19.2. Any notice or communication that complies with this clause will be deemed to be given and received:

(a) if it was sent by email or SMS, at the time it was sent;

(b) if it was sent by mail to an addressee in Australia, three clear business days after being sent;  
or

(c) if it was sent by mail to an addressee overseas, five clear business days after being sent.

19.3. If a notice or communication is undelivered by email, SMS or post in accordance with clause 19.2, and a Registered Group Member or Eligible Group Member has not informed the Scheme Administrator of any change in their Contact Details in accordance with clause 16.1(d), the Scheme Administrator will determine, in its absolute discretion, whether:

(a) the notice or communication will be sent via alternative means; or

(b) the notice or communication is deemed to have been given in accordance with clauses 19.1 and 19.2.

19.4. If the Scheme Administrator deems a notice or communication to be given in accordance with clause 19.1, that Registered Group Member or Eligible Group Member will be a Non-Responsive Group Member unless they otherwise contact the Scheme Administrator in relation to the matters in the notice or communication.

19.5. Where a Registered Group Member or Eligible Group Member is not a natural person and one person has been nominated as the designated contact in respect of multiple Registered Group Members or Eligible Group Members, it is sufficient for the purpose of giving notice or communications that any of the provisions of clauses 19.1 and 19.2 are complied with in relation to that nominated person.

19.6. The Scheme Administrator's contact details are as follows unless and until the Scheme Administrator notifies the sender otherwise:

By mail: Hino Class Action (Settlement Administration Team)  
Maurice Blackburn Lawyers  
Level 21, 380 La Trobe Street  
MELBOURNE VIC 3000

By email: [hino@mauriceblackburn.com.au](mailto:hino@mauriceblackburn.com.au)

## **20. TIME**

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20.1. The time for doing any act or thing under the Scheme may be extended by the Scheme Administrator in its absolute discretion or by order of the Court.

## SCHEDULE A – APPLICABLE FEE RATES AND COSTS

### Item 1 - Applicable hourly rates – Clause 17.1

Position	Hourly rate (ex GST)
Principal / Special Counsel / Settlement Claims Manager > 15 years	\$ 940.00
Principal / Special Counsel / Settlement Claims Manager < 15 years	\$ 860.00
Senior Associate	\$ 695.00
Associate	\$ 640.00
Solicitor	\$ 520.00
Trainee Lawyer / Law Graduate	\$ 415.00
Law Clerk / Paralegal	\$ 295.00
Litigation Technology Consult / Senior Data Analyst / Product Manager	\$ 285.00
Client Services Officer / Data Analyst / Business Analyst	\$ 215.00

### Item 2 - Deductions from Distribution Amounts (clause 11.5)

#### Individual Registered Group Members

Nominating an international bank account - \$125 per account

Nominating more than one bank account:

- International bank account - \$125 per account
- Domestic bank account - \$75 per account

#### Fleet or Registered Group Members that are corporate or trading entities

Fleet or Registered Group Members that are corporate or trading entities that do not nominate a single Australian bank account for payment of the Distribution Amount will be charged at the applicable hourly rates in Item 1 of this Schedule for time spent by the Scheme Administrator to collect:

- A single international bank account; or
- Additional or multiple bank account details (domestic or international),

including any costs associated with verifying and confirming the accuracy of those bank details, including, without limitation, costs of communicating with that Registered Group Member.



## **CONFIDENTIAL SCHEDULE B – LOSS ASSESSMENT METHODOLOGY**

The Confidential Loss Assessment Methodology is confidential and will only be provided:

1. On written request to Registered Group Members in the Hino Class Action; and
2. In accordance with the terms of the Group Membership and Confidentiality Undertaking that Registered Group Members who wish to access the Confidential Loss Assessment Methodology will be required to complete and return to Maurice Blackburn.

The Confidential Loss Assessment Methodology must be read in conjunction with the Settlement Distribution Scheme to understand how it is applied.

At this stage, it is not possible to estimate each Eligible Group Member's Distribution Amount because the number of group members participating in the settlement and the details of their claim data has not been finalised.

If you wish to request a copy of the Confidential Loss Assessment Methodology, please email:

[hino@mauriceblackburn.com.au](mailto:hino@mauriceblackburn.com.au)

Please ensure that the subject of your email includes "Request for Confidential Loss Assessment Methodology".