

**DANIEL O'BRIEN v AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN  
005 357 522) & ANOR**

**SUPREME COURT OF VICTORIA  
S ECI 2020 03365**

**SETTLEMENT DISTRIBUTION SCHEME**

## Contents

1. OVERVIEW AND SUMMARY .....	3
2. DEFINITIONS AND INTERPRETATIONS.....	5
3. SCHEME ADMINISTRATOR.....	10
4. FINANCIAL MANAGEMENT.....	12
5. ELIGIBILITY ASSESSMENT .....	13
6. CLAIM DATA.....	15
7. ASSESSED LOSSES AND ESTIMATED DISTRIBUTION AMOUNT .....	15
8. PROVISION OF BANK ACCOUNT INFORMATION.....	16
9. CALCULATION OF DISTRIBUTION AMOUNTS .....	17
10. PAYMENTS TO ELIGIBLE GROUP MEMBERS.....	19
11. CALCULATION AND DISTRIBUTION OF RESIDUAL SETTLEMENT SUM .....	20
12. COMPLETION OF SETTLEMENT DISTRIBUTION.....	21
13. TAXATION.....	22
14. CLAIMS MADE ON BEHALF OF OTHER PERSONS AND/OR THIRD PARTIES .....	22
15. RIGHTS AND OBLIGATIONS OF REGISTERED GROUP MEMBERS.....	23
16. COSTS.....	24
17. SUPERVISION BY THE COURT .....	25
18. NOTICES.....	26
19. TIME.....	27

## 1. OVERVIEW AND SUMMARY

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- A. On 2 December 2024, the parties to the Supreme Court of Victoria (the **Court**) Proceedings S ECI 2020 03365 (the **Proceeding**) 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 that the First Defendant will pay a total resolution sum of \$85,000,000 inclusive of costs, interest and any applicable tax, including GST (the **Settlement Sum**).
- C. On 3 July 2025, the Court approved the settlement of the Proceeding on the terms set out in the Deed and this Settlement Distribution Scheme (the **Scheme**).
- D. The Scheme establishes a procedure for distributing the Settlement Sum and is operative from the date of the Approval Orders.
- E. The Scheme has the following key stages:

Stage	Clause	Procedure
Eligibility Assessment	Clause 5	The Scheme Administrator may request Registered Group Members who have not had their registration details matched through the ANZ Matching Process to provide additional information to the Scheme Administrator to enable it to determine whether they are Eligible Group Members. The Scheme Administrator will notify each Registered Group Member whether they are an Eligible Group Member. Registered Group Members who do not provide additional information to the Scheme Administrator when requested to do so will become Non-Responsive Group Members and will not be eligible to participate in the Settlement Scheme.
Calculation of	Clause 7	Eligible Group Members will have their

Estimated Distribution Amounts		Assessed Losses determined by the Scheme Administrator according to clause 7.1. Based on the Assessed Losses, the Scheme Administrator will determine the Estimated Distribution Amount for each Eligible Group Member. The Scheme Administrator will notify each Eligible Group Member of their Estimated Distribution Amount, which is final and binding.
Collection of Bank Account Details	Clause 8	Eligible Group Members whose Estimated Distribution Amount is more than the Minimum Distribution Amount will be required to provide their bank details to the Scheme Administrator if they wish to receive payment of their Distribution Amount. 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 9	The Scheme Administrator will calculate each Eligible Group Member's Distribution Amount, based on the quantum of the Distribution Sum. The calculations will be final and binding.
Payment of Distribution Amounts	Clause 10	The Scheme Administrator will pay each Eligible Group Member's Distribution Amount into their nominated Australian bank account. The Scheme Administrator will provide Remittance Notices to those that receive a payment.
Residual Settlement Sum	Clause 11	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.
Conclusion of Scheme	Clause 12	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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### 2.1. Definitions

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

**2FASOC** means the Second Further Amended Statement of Claim filed on 28 August 2024.

**Act** means the *Supreme Court Act 1986* (Vic).

**ANZ Matching Process** means the process described in paragraphs 2(a) and 3 of the orders made on 1 July 2024 by the Honourable Justice Dixon and paragraph 12 of the orders made on 20 December 2024 by the Honourable Justice Harris by which the Defendants, or one of them, matched information provided by Group Members during registration to information recorded in the Defendants' lending systems.

**Administration Costs** mean the costs and disbursements incurred by the Scheme Administrator 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.

**Approval Orders** mean orders of the Court to the following effect:

- a) approving the Proposed Settlement pursuant to section 33V of the Act;
- b) approving payment to Maurice Blackburn for the Plaintiff's legal costs, being the amount payable pursuant to the Group Costs Order;
- c) approving the Scheme;
- d) approving the Settlement Administrator's Costs;
- e) approving payment of \$30,000 to the Plaintiff for his time and effort spent fulfilling the role of Plaintiff; and

- f) such further or other orders as may be agreed, or the Court may deem appropriate in connection with the approval of the Proposed Settlement.

**Assessed Losses** means the value of an Eligible Group Member's claim calculated in accordance with clause 7.1 and, where applicable, clause 7.2.

**Claim Data** means the following information for Registered Group Members as provided to the Scheme Administrator by the Defendants, or one of them, pursuant to the ANZ Matching Process:

- (a) amount financed under their car loan contract;
- (b) interest rate in their car loan contract;
- (c) term of their car loan contract;
- (d) amount of interest payable under their car loan contract;
- (e) amount and frequency of their repayments under their car loan contract;
- (f) amount of interest paid under their car loan contract;
- (g) end of their car loan contract;
- (h) the status of their car loan contract; and
- (i) the base rate applicable to their car loan contract.

**Court** means the Supreme Court of Victoria.

**Deed** means the Deed of Settlement executed on 2 December 2024.

**Defendants** mean:

- (a) Australia and New Zealand Banking Group Limited ACN 005 357 522 (**First Defendant**);  
and
- (b) Macquarie Bank Limited ACN 008 583 542 (**Second Defendant**).

**Distribution Amount** means an amount calculated in accordance with clause 9.5 and which exceeds the Minimum Distribution Amount.

**Distribution Date** means the date determined by the Scheme Administrator on which payments to Eligible Group Members will commence, being a date after the Approval Orders are Upheld.

**Distribution Sum** has the meaning given in clause 9.3.

**Eligibility Criteria** has the meaning given in clause 5.1.

**Eligibility Notice** means the notice to be sent to a Registered Group Member advising whether they meet the Eligibility Criteria.

**Eligibility Request** means the communication sent from the Settlement Administrator to a Registered Group Member who has not had their registration details matched through the ANZ Matching Process requesting them to provide additional information to the Scheme Administrator by a time and in the format specified by the Scheme Administrator.

**Eligible Group Member** is a Group Member that meets the Eligibility Criteria.

**Estimated Distribution Amount** means the amount calculated in accordance with clause 7.4.

**Final Dismissal Orders** has the meaning given in clause 17.5.

**Group Costs Order** means order 1 made by the Honourable Nichols J on 9 March 2023 in the Proceeding.

**Group Members** mean those persons who meet the description of “Group Members” in the 2FASOC, 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 deadline for opting out).

**Holding Account** an interest-bearing account with an Australian banking institution opened by Maurice Blackburn to hold monies on trust in accordance with the Deed, and where the context admits, includes reference to all monies in the account, for disposition in accordance with the Deed and the Scheme.

**List of Borrowers** means the list of group member information provided by the First Defendant to Maurice Blackburn on 6 December 2024 pursuant to order 1 made by the Honourable Justice Harris on 6 December 2024.

**Loss Assessment Formula** means the formula set out in Schedule B to the Scheme.

**Maurice Blackburn** means Maurice Blackburn Lawyers, the Plaintiff’s solicitors in the Proceeding.

**Minimum Distribution Amount** is \$20.

**Nominal Assessed Loss** is 10% of the average Assessed Loss for Eligible Group Members who entered their car loan contract on or after 21 August 2014.

**Non-Responsive Group Member** means a Registered Group Member or Eligible Group Member:

- (a) who has failed to adequately respond to an Eligibility Notice, Eligibility Request or Notice of Estimated Distribution from the Scheme Administrator requiring the Group Member to take a certain step or steps by a date or within a required time specified by the Scheme Administrator, provided that any such date or time specified by the Scheme Administrator is not less than 14 days from the date of any such notice or communication; or
- (b) who the Scheme Administrator determines has received a notice or communication under clause 5.2 or clause 18.3(b).

**Notice of Estimated Distribution** means the notice to be sent by the Scheme Administrator to each Eligible Group Member in accordance with clause 7.7.

**Plaintiff** means Daniel Christian O'Brien.

**Proceeding** means the proceeding numbered S ECI 2020 03365 in the Supreme Court of Victoria.

**Proposed Settlement** means the proposed settlement on the terms set out in the Deed.

**Registered Group Member** means a Group Member who registered their claim with Maurice Blackburn on or before 14 March 2025 (AEST), 11 April 2025 (AEST) or is subject to Court orders permitting late registration.

**Registration Data** means the information provided by or on behalf of Registered Group Members when registering their claims with Maurice Blackburn or as required by the Scheme (e.g., in response to an Eligibility Request).

**Remittance Notice** means the notice to be sent by the Scheme Administrator to an Eligible Group Member regarding the payment of any Distribution Amount or Residual Distribution Amount.

**Residual Distribution Amount** has the meaning given in clause 11.5.

**Residual Settlement Sum** has the meaning given in clause 11.2.



**Scheme Administrator** means Maurice Blackburn, or such other person as appointed by the Court, as the Court-appointed administrator responsible for implementing the Scheme. Prior to the appointment of the Scheme Administrator, Maurice Blackburn will execute the functions of the Scheme Administrator under the Scheme.

**Settlement Distribution Account** has the meaning in clause 4.3.

**Settlement Distribution Scheme or Scheme** means the terms of the settlement distribution scheme as approved by the Court.

**Settlement Sum** means \$85,000,000 including interest, costs and any applicable tax, including GST.

**Upheld** means, in respect of a court order, the earlier of the:

- (a) expiration of the applicable appeal period for that order without the lodgment of any appeal or application for leave to appeal from that order; or
- (b) ultimate determination of any appeal or appeals from that order without the order being overturned.

## 2.2. Interpretation

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 or not it comprises a separate legal entity;
- (f) a reference to anything 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; and
- (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 Plaintiff 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 Plaintiff or any individual Group Member;
    - ii. balance the interests of any individual Group Member against the interests of all 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:
      - I. implementing processes and procedures necessary to ensure the efficient and effective operation of the Settlement Scheme;
      - II. seeking expert advice as it considers necessary;
      - III. correcting any error, slip or omission necessary to facilitate the

administration of the Scheme;

- IV. applying to the Court to amend the Scheme if it considers it desirable or appropriate to do so; and
- V. 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 attach 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:

- (l) the provision of incorrect or otherwise insufficient information in the List of Borrowers or derived through the ANZ Matching Process;
- (m) incorrect or otherwise insufficient bank account information provided by an Eligible Group Member or persons acting on their behalf;
- (n) fraudulent conduct of a party other than the Scheme Administrator;
- (o) an electronic funds transfer using the bank account information provided by the Eligible Group Member or persons acting on their behalf;

- (p) an Eligible Group Member's or Registered Group Member's failure to adequately respond to a communication or notice from the Scheme Administrator within the time specified by the Scheme Administrator; and/or
- (q) any error or omission by the Scheme Administrator.

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

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##### **Holding Account**

- 4.1. Maurice Blackburn opened the Holding Account on 9 December 2024. The First Defendant paid the Settlement Sum into the Holding Account on 31 January 2025.
- 4.2. The Scheme Administrator will, subject to and in accordance with the terms of the Deed, the Scheme and any applicable statutory requirements, hold the funds standing from time to time in the Holding Account on trust for the First Defendant until the Approval Orders are Upheld.

##### **Settlement Distribution Account**

- 4.3. After the Approval Orders are Upheld, the Holding Account will become the Settlement Distribution Account.
- 4.4. The Scheme Administrator will be responsible for the management of the Settlement Distribution Account, and all moneys in the Settlement Distribution Account, in accordance with the Scheme.

##### **Management of the Settlement Distribution Account**

- 4.5. 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 Account on trust for the:
  - (a) Plaintiff and Eligible Group Members; and
  - (b) Scheme Administrator, to the extent of its entitlement to receive Administration Costs in accordance with the terms of the Scheme.
- 4.6. The Scheme Administrator may:
  - (a) pay all or a portion of the funds in the Settlement Distribution Account into one or more interest-bearing, fixed term deposit account(s) for varying terms; and/or

- (b) at any time, convert the Settlement Distribution Account 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 the Settlement Distribution Account will be disproportionate to the further interest expected to be earned.

4.7. The Scheme Administrator will pay from the Settlement Distribution Account (or any account, fund or trust established for the purposes of this Scheme and using funds from the Settlement Distribution Account) any taxes, duties or other imposts and:

- (a) may at its discretion obtain expert advice and assistance as to the payability or quantum of the impost, or as to any dispute regarding the same;
- (b) will be indemnified from any fund to which the impost attaches for any payment of the impost and for the costs of any advice or assistance referred to in subclause 4.7(a) above, and if the said fund:
  - i. has been established as a separate fund from the Settlement Distribution Account; and
  - ii. is insufficient to indemnify the Scheme Administrator as set out in this subclause 4.7(b);

will be indemnified from the Settlement Distribution Account.

### **Application of interest**

4.8. Interest accruing on the Holding Account or Settlement Distribution Account 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. ELIGIBILITY CONFIRMATION PROCESS**

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### **Eligibility criteria**

5.1. A person becomes an Eligible Group Member and is eligible to participate in the Scheme if they satisfy the following Eligibility Criteria:

- (a) they are a Registered Group Member who has had their registration details matched through the ANZ Matching Process; or

- (b) they are a Registered Group Member whose additional information provided in accordance with clause 5.2 has been matched by the Scheme Administrator to information in the List of Borrowers; and
- (c) they have not become a Non-Responsive Group Member before the assessment of Assessed Losses.

### **Eligibility process**

- 5.2. The Scheme Administrator may require Registered Group Members who have not had their registration details matched through the ANZ Matching Process to provide additional information to the Scheme Administrator by the time, and in the format specified by the Scheme Administrator in an Eligibility Request.
- 5.3. A Registered Group Member who does not respond by the required time to a request made by the Scheme Administrator under clause 5.2 may be deemed to be a Non-Responsive Group Member.
- 5.4. The Scheme Administrator will use any additional information provided by a Registered Group Member in response to a request under clause 5.2 to try to match that information to information contained in the List of Borrowers.
- 5.5. If information provided by a Registered Group Member in response to a request by the Scheme Administrator pursuant to clause 5.2 is, in the judgment of the Scheme Administrator, insufficient to enable the Scheme Administrator to determine whether that person meets the Eligibility Criteria, that person will forfeit any right to participate in the Scheme.
- 5.6. Registered Group Members whose additional information, provided in response to a request under clause 5.2, can be matched to information in the List of Borrowers will meet the Eligibility Criteria in clause 5.1(b).
- 5.7. Registered Group Members whose additional information, provided in response to a request by the Scheme Administrator pursuant to clause 5.2, cannot be matched to information in the List of Borrowers will not meet the Eligibility Criteria in clause 5.1(b).
- 5.8. The Scheme Administrator will send an Eligibility Notice to each Registered Group Member advising them whether they have met or have not met the Eligibility Criteria.
- 5.9. Decisions of the Scheme Administrator pursuant to clause 5 are final and binding on Registered Group Members. A Registered Group Member is not entitled to seek a review

of a decision made by the Scheme Administrator pursuant to clause 5.5 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.

## **6. CLAIM DATA**

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- 6.1. Subject to any exercise of discretion by the Scheme Administrator pursuant to clause 6.3, the Claim Data will be treated as final and binding in calculating the Assessed Losses of Eligible Group Members.
- 6.2. The Scheme Administrator is not required to make any inquiry of an Eligible Group Member as to whether they fulfil the requirements of paragraph 1 of the 2FASOC.
- 6.3. 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 Claim Data or the calculation of the Assessed Losses for an Eligible Group Member based on information provided to it by the Eligible Group Member if the Scheme Administrator considers it fair and appropriate to do so; but it is not obliged to do so.

## **7. ASSESSED LOSSES AND ESTIMATED DISTRIBUTION AMOUNT**

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### **Calculation of Assessed Losses**

- 7.1. If an Eligible Group Member entered their car loan contract, the subject of their claim:
  - (a) before 21 August 2014, their Assessed Losses associated with that contract will equal the Nominal Assessed Loss; or
  - (b) on or after 21 August 2014, their Assessed Losses associated with that contract will be calculated using the Loss Assessment Formula.
- 7.2. If an Eligible Group Member entered their car loan contract, the subject of their claim, jointly with one or more other Group Members, the Scheme Administrator will apportion the Assessed Losses associated with that contract in equal proportions between any Eligible Group Members who entered that contract.

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

- 7.3. Following the calculation of Assessed Losses, 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 9.1 and the quantum of any other Administration Costs which the Settlement Administrator estimates will be reasonably incurred and for which Court approval will be sought.

- 7.4. This estimated portion of the Settlement Sum calculated in accordance with clause 7.3 is the Estimated Distribution Sum.
- 7.5. The Scheme Administrator will calculate the distribution of the Estimated Distribution Sum among the Eligible Group Members as follows:
- (a) in the proportion which the Assessed Losses of each Eligible Group Member bear to the aggregate of the Assessed Losses for all Eligible Group Members;
  - (b) where the proportional assessment in 7.5(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 to other Eligible Group Members; and
  - (c) the said allocation to an individual Eligible Group Member is the Estimated Distribution Amount for that Eligible Group Member.

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

- 7.6. The Scheme Administrator will send to each Eligible Group Member a Notice of Estimated Distribution which must include, but is not limited to:
- (a) whether the Eligible Group Member entered into the relevant car loan contract before 21 August 2014;
  - (b) the car loan contract number for the car loan contract the subject of the Eligible Group Member's claim;
  - (c) if applicable, whether the Eligible Group Member's Estimated Distribution Amount has been apportioned in accordance with clause 7.2; and
  - (d) the Eligible Group Member's Estimated Distribution Amount.

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

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- 8.1. Eligible Group Members whose Estimated Distribution Amounts exceed the Minimum Distribution Amount must, by the deadline in the Notice of Estimated Distribution, provide



to the Scheme Administrator sufficient bank account details to enable the Scheme Administrator to process payments of Distribution Amounts.

- 8.2. Eligible Group Members will nominate a single Australian bank account to process their Distribution Payment. Upon request from an Eligible Group Member, if the Scheme Administrator, in its absolute discretion and having regard to the principles in clause 3.2(b), considers that there will be no detrimental impact on effecting a timely distribution to Eligible Group Members, the Scheme Administrator may agree to make payments to more than one nominated bank account or an overseas bank account. In these circumstances, the Scheme Administrator reserves the right to deduct the costs outlined in Schedule A from the Eligible Group Member's Distribution Amount. 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 Amount will form part of the Residual Settlement Sum to be distributed in accordance with clause 11.
- 8.3. If an Eligible Group Member does not by the deadline in the Notice of Estimated Distribution provide sufficient bank details, then:
- (a) the Scheme Administrator may, in its absolute discretion, make further attempts to contact the Eligible Group Member to obtain their nominated bank account details or information from the Eligible Group Member regarding the means of processing their payment, the acceptance of which will be subject to the exercise of the Scheme Administrator's discretion in clause 10.3; and, if it does so, may deduct from the Settlement Sum as additional Administration Costs any additional costs incurred in making such further attempts; and
  - (b) unless clause 8.3(a) applies, 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 all forfeited Estimated Distribution Amounts will be included in the calculation of the Settlement Distribution Sum in accordance with clause 9.2.

## **9. CALCULATION OF DISTRIBUTION AMOUNTS**

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

- 9.1. As soon as practicable after the date on which the Approval Orders are Upheld, the Scheme Administrator will pay the following amounts from the Settlement Sum, as approved by the Court:

- (a) an amount to the Plaintiff for his time and effort spent fulfilling the role of Plaintiff;
- (b) an amount to Maurice Blackburn for the Plaintiff's legal costs, being the amount payable pursuant to the Group Costs Order; and
- (c) Administration Costs to the extent they have been incurred and approved by the Court.

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

9.2. Following the deductions described in clause 9.1, the Scheme Administrator will:

- (a) pay any further Court approved Administration Costs to the Settlement Administrator as they are incurred from the Settlement Sum; and
- (b) calculate and set aside from the Settlement Sum any:
  - i. remaining Court approved Administration Costs yet to be paid;
  - ii. other Administration Costs which the Settlement Administrator estimates will be reasonably incurred and for which Court approval will be sought; and
  - iii. further Court approved amounts to be deducted from the Settlement Sum by the Court.

9.3. The remaining Settlement Sum will be the Distribution Sum.

### **Calculation of Distribution Amounts**

9.4. As soon as reasonably practicable after the expiration of the deadline 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 exceeded the Minimum Distribution Amount.

9.5. The Scheme Administrator will calculate the distribution of the Distribution Sum on a pro-rata basis to Eligible Group Members, whose Estimated Distribution Amount exceeded the Minimum Distribution Amount, in the proportion which their Assessed Losses bear to the aggregate Assessed Losses for all Eligible Group Members, whose Estimated Distribution Amount exceeded the Minimum Distribution Amount, being the Distribution Amount for each Eligible Group Member.

- 9.6. If an Eligible Group Member's Distribution Amount is less than the Minimum Distribution Amount, nothing will be distributed to the Eligible Group Member and the amount will be included in the Distribution Sum for distribution to other Eligible Group Members whose Distribution Amounts are more than the Minimum Distribution Amount.

### **Binding calculations**

- 9.7. Subject to the discretion in clause 6.3, the calculation of Assessed Losses, 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.

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

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- 10.1. Subject to clause 10.3 the Scheme Administrator will as soon as practical after the Distribution Date:

- (a) pay the Distribution Amounts to Eligible Group Members by electronic funds transfer in accordance with the Eligible Group Members' nominated bank account details provided in accordance with clause 8.2; and
- (b) send to each Eligible Group Member being paid a Distribution Amount a Remittance Notice.

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

- 10.3. 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) another method would be more conducive to affecting a timely payment to any Eligible Group Member or group of Eligible Group Members.

10.4. 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 or on behalf of 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 considering the principles in clause 3.2(b), determines it is reasonable to do so.

10.5. If the Scheme Administrator exercises its discretion under clauses 3.2(b), 10.3 or 10.4 above, the Scheme Administrator may deduct the costs outlined in Schedule A from the Eligible Group Member's Distribution Amount. 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 Amount will form part of the Residual Settlement Sum to be distributed in accordance with clause 11.

10.6. 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 10.4(a) or (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 11.

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

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11.1. As soon as practicable after completing the payment of Distribution Amounts to Eligible Group Members, the Scheme Administrator will calculate and set aside from the remaining funds in the Settlement Distribution Account any further amounts to be calculated in accordance with clause 9.2(b).

11.2. After setting aside the amounts described in clause 11.1, the remaining funds in the Settlement Distribution Account will be the Residual Settlement Sum.

- 11.3. 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.
- 11.4. If the Scheme Administrator determines that it is uneconomical for the Residual Settlement Sum to be distributed to Eligible Group Members, the Residual Settlement Sum will be paid to ANZ.
- 11.5. If the Scheme Administrator determines that it is economical for the Residual Settlement Sum to be distributed to Eligible Group Members, the Scheme Administrator may calculate the distribution of the Residual Settlement Sum on a pro-rata basis to Eligible Group Members who were successfully paid a Distribution Amount in the proportion which their Assessed Losses bear to the aggregate Assessed Losses for all Eligible Group Members who were successfully paid a Distribution Amount, or such other amount as the Scheme Administrator determines in its discretion, being the Residual Distribution Amount for each of those Eligible Group Members.
- 11.6. If an Eligible Group Member's Residual Distribution Amount is less than the Minimum Distribution Amount, no Residual Distribution Amount will be distributed to the Eligible Group Member and the amount will be included in the Residual Settlement Sum for distribution to other Eligible Group Members whose Residual Distribution Amounts are more than the Minimum Distribution Amount.
- 11.7. The Scheme Administrator will process the payments of the Residual Distribution Amounts in accordance with clause 10. Any payments that are rejected, unsuccessful or otherwise returned to the Settlement Distribution Account will be paid to ANZ.

### **Binding calculations**

- 11.8. Subject to the discretion in clause 6.3, 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.

## **12. COMPLETION OF SETTLEMENT DISTRIBUTION**

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

## **13. TAXATION**

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13.1. Eligible Group Members are responsible for obtaining their own taxation advice.

13.2. 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.

## **14. CLAIMS MADE BY OTHER PERSONS AND/OR THIRD PARTIES**

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### **Application of this clause**

14.1. The following clause applies in circumstances where a person participates in the Scheme on behalf of another person who is a Registered Group Member or an Eligible Group Member, whether in respect to all or part of a claim.

### **Authorised representative**

14.2. 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 an individual, including, without limitation, executors or administrators; or
- (b) declares to the Scheme Administrator that they are authorised to act on behalf of a Registered Group Member or Eligible Group Member, and the Scheme Administrator accepts that declared authority.

14.3. The Scheme Administrator reserves the right, in its absolute discretion, to request evidence of any authority referred to in clause 14.2.

14.4. The Scheme Administrator will implement processes for the payment of Distribution Amounts and Residual Distribution Amounts to Eligible Group Members' authorised representatives, having regard to the principles in clause 3.2(b) and the quantum of the payment(s) to those Eligible Group Members.

## **15. RIGHTS AND OBLIGATIONS OF REGISTERED GROUP MEMBERS**

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

15.1. Each Registered Group Member and/or 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 Registration Data;
- (e) providing bank account details,

and each Registered Group Member and/or Eligible Group Member must do so:

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

### **Obligation regarding honesty**

15.2. In fulfilling the obligations in clause 15.1, each Registered Group Member and/or 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**

15.3. 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 claim as \$0.

15.4. For the avoidance of doubt, a Registered Group Member and/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**

15.5. 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 or Residual 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 clauses 9 to 11.

15.6. 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**

15.7. 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.

### **16. COSTS**

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#### **Administration Costs**

16.1. 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 Holding Account or Settlement Distribution Account;



- (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 has approved.

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

16.2. Nothing in the Scheme prevents a Group Member from retaining or seeking advice in respect of the Proposed Settlement and/or implementation of the Scheme from a lawyer who is not performing the role of Scheme Administrator, provided that the Group Member:

- (a) does so at their own cost; and
- (b) 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.

## **17. SUPERVISION BY THE COURT**

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17.1. The Scheme Administrator may refer any issues arising in relation to the Scheme or the administration of the Scheme to the Court for determination.

17.2. The Scheme Administrator will report to the Court every six months, or as otherwise determined 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.

17.3. On the application of the Scheme Administrator, or of its own motion, the Court may vary or amend the terms of the Scheme.

17.4. 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.

17.5. At the hearing of the application for the Approval Orders the Plaintiff and the Defendants will jointly request the Court to make Final Dismissal Orders being orders to:

- (a) dismiss the Proceeding with no order as to costs as between the parties; and

- (b) vacate all orders as to costs previously made in the Proceeding, except for the Group Costs Order;

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.

17.6. Within 28 days of the final distribution under the Scheme, the Scheme Administrator will file a final report to the Court and provide a copy to the Defendants for the purposes of the Final Dismissal Orders taking effect.

## **18. NOTICES**

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18.1. Any notice or communication to be given pursuant to the Scheme, sent by or on behalf of 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 in the Registration Data;
  - ii. sent by SMS to that person's mobile number in the Registration Data; and/or
  - iii. sent by pre-paid mail, to that person's postal address in the Registration Data.

18.2. Any notice or communication that complies with this clause will be deemed to be given and received if it was sent:

- (a) by email or SMS, at the time it was sent;
- (b) by mail to an addressee in Australia, three clear business days after being sent; or
- (c) by mail to an addressee overseas, five clear business days after being sent.

18.3. If a notice or communication made in accordance with clause 18.1 is undelivered by email, SMS or post, and a Registered Group Member or Eligible Group Member has not informed the Scheme Administrator of a change in their Registration Data in accordance with clause 15.1(d), the Scheme Administrator will determine, in its absolute discretion, whether the notice or communication:

- (a) will be sent via alternative means; or

(b) is deemed to have been given in accordance with clauses 18.1 and 18.2.

18.4. If the Scheme Administrator deems a notice or communication to be given in accordance with clause 18.3(b), and the Registered Group Member or Eligible Group Member has not responded to any request or requirement set out in that notice or communication, the Registered Group Member or Eligible Group Member will be a Non-Responsive Group Member.

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

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

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

## **19. TIME**

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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

### Applicable hourly rates – Clause 16.1(d)

Position	Hourly rate (100%) (ex GST)
Principal / Special Counsel / Settlement Claims Manager > 15 years	\$ 905.00
Principal / Special Counsel / Settlement Claims Manager < 15 years	\$ 825.00
Senior Associate	\$ 670.00
Associate	\$ 615.00
Solicitor	\$ 500.00
Trainee Lawyer / Law Graduate	\$ 400.00
Law Clerk / Paralegal	\$ 285.00
Lit Tech Consult / Data Analyst / Legal Engineer / Business Analyst	\$ 275.00
Client Services Officer / Business Analyst	\$ 205.00

### Deductions from Distribution Amounts – clauses 8.2, 10.3 and 10.4

#### Payment to multiple bank accounts (clause 8.2)

- International bank account - \$125 (ex. GST) per additional account
- Domestic bank account - \$75 (ex. GST) per additional account

#### Payment to international account

- International bank account - \$125 (ex. GST) per additional account

#### Payment via means other than EFT (clause 10.3)

- Charged at the hourly rates above

#### Obtaining updated bank details (clause 10.4)

- International bank account - \$125 (ex. GST)
- Domestic bank account - \$75 (ex. GST)

#### Reprocessing payment (clause 10.4)

- International bank account - \$125 (ex. GST)
- Domestic bank account - \$75 (ex. GST)

## SCHEDULE B – LOSS ASSESSMENT FORMULA

An Eligible Group Member who entered a car loan contract on or after 21 August 2014 will have their Assessed Losses associated with that contract calculated using this Loss Assessment Formula.

**Method 1:** Where an Eligible Group Member's Claim Data has been provided to the Scheme Administrator pursuant to the ANZ Matching Process and is sufficient to calculate the Eligible Group Member's Assessed Losses, their Assessed Losses will be calculated using the following formula:

$$\text{Loss} = (\text{Contract Rate} - \text{Base Rate}) + \text{Pre-judgment Interest}$$

Term	Meaning
Contract Rate	The total amount of interest paid by the Eligible Group Member under their car loan contract as set out in the Claim Data.
Base Rate	The total amount of interest that the Eligible Group Member would have paid under their car loan contract if: (a) the applicable rate of interest under their car loan contract was the base rate as set out in the Claim Data; and (b) all other terms of the loan contract were the same.
Pre-judgment Interest	The simple interest which has accrued on the Eligible Group Member's loss (i.e., Contract Rate – Base Rate) since the midpoint of their loan term calculated at the statutory rate.

**Method 2:** If the Eligible Group Member's Claim Data has not been provided to the Scheme Administrator pursuant to the ANZ Matching Process or is insufficient to calculate the Eligible Group Member's Assessed Losses, their Assessed Losses will equal the average Assessed Losses of all Eligible Group Members who entered their loans on or after 21 August 2014.