

# Settlement Scheme

## VW, Audi and Skoda Class Actions in the Federal Court of Australia

Date 11 November 2020

Version 3

*Dalton v Volkswagen AG & Ors* (proceeding NSD1459/2015)

*Richardson v Audi AG & Ors* (proceeding NSD1472/2015)

*Roe v Skoda Auto as & Ors* (proceeding NSD1473/2015)

*Cantor v Audi Australia Pty Ltd* (proceeding NSD1307/2015)

*Tolentino v Volkswagen Group Australia Pty Ltd* (proceeding NSD1308/2015)

## Overview

---

In accordance with the Deed of release and settlement that has been agreed between the parties in the Class Action Proceedings, this Settlement Scheme creates the procedures and substantive requirements for the determination of the Aggregate Settlement Sum and its distribution among Participating Group Members who are assessed as eligible to receive a Settlement Payment.

The Settlement Scheme sets out the Eligibility Criteria that need to be met in order for a Group Member to receive a Settlement Payment (see clause 4). Those Eligibility Criteria provide that Group Members are eligible to receive a Settlement Payment if they held one of a number of different interests in an Affected Vehicle at the time of either of the Qualifying Dates. These interests include ownership of a vehicle as well as some circumstances in which an Affected Vehicle was subject to a lease.

Group Members who wish to make a claim for a Settlement Payment are required to register by completing an online registration form and also by providing certain Claim Materials in support of their claim (see clause 5).

The Settlement Scheme provides for the Administrator of the settlement to undertake a review and assessment of all registered claims and make Eligibility Determinations (see clause 6). A "Notice of Assessment" will then be sent to individual Group Members who had registered claims. Group Members who disagree with the assessment and determination of their claim can request a Review of the decision made by the Administrator (see clause 8).

After all claims have been assessed and determined, the final Aggregate Settlement Sum will be worked out and then paid by the Respondents in light of the number of unique Registered Affected Vehicles in relation to which Participating Group Members satisfy the Eligibility Criteria (see clause 9).

After the Aggregate Settlement Sum has been determined, the Administrators are to calculate the final Settlement Payments that are payable to all Participating Group Members who had registered claims and satisfied the Eligibility Criteria (see clause 10).

The Applicants' Solicitors will determine how individual settlement payments are calculated, subject to Court approval. This will broadly reflect the way the Applicants' cases were put. The Respondents did not admit liability and denied that Group Members suffered any loss or that the value of their vehicles was affected by the diesel issue. This settlement represents a pragmatic negotiated commercial outcome.

If the Court authorises the Funder in the Bannister Law Proceedings to deduct amounts from the Settlement Payments of any Group Members in the Bannister Law Proceeding, those amounts will also be calculated, and the Settlement Payments of other Participating Group Members will be adjusted in light of any funding equalisation order that is made by the Court (see clause 10). A "Notice of Settlement Payment" is to be sent to Participating Group Members with information about the Settlement Payment that is due to be paid to them, and after providing their agreement to release the Respondents and keep their Settlement Payment confidential, Settlement Payments can then be released to Participating Group Members (see clause 11).

Group Members who participate in the settlement are required to cooperate with the Administrator in relation to their claim and to act honestly (see clause 12). Reasonable Administration Costs will be paid separately by the Respondents in addition to the Aggregate Settlement Sum (see clause 13).

## 1. Definitions and Interpretation

---

### 1.1 Dictionary

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

### 1.2 Interpretation

In this Settlement Scheme:

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

### 1.3 Terminology relating to Finance Arrangements

In this Settlement Scheme:

- (a) **balloon payment** means the large fixed payment due at the end of the term of a loan or a hire/purchase arrangement;
- (b) **final payment** means the last scheduled payment due under a lease, hire/purchase or loan contract. For finance contracts with a balloon payment, it is the balloon payment;
- (c) **finance lease** means a lease of property under which the risk in relation to the value of the asset rests with the lessee.
- (d) **hire/purchase arrangement** means an agreement for hire of an asset under which at the end of term or on payout, the hirer, by having made the required payments under the agreement, obtains title to the asset. Title to the asset does not pass until the final payment is made.

- (e) **novated lease** means an arrangement entered into between an employee, employer and a financier whereby the employee and the financier enter into a lease of an asset, such lease which is then novated from the employee to the employer and this novation remains in force while the employee remains employed by the employer. During that period, the employer is liable to make the lease payments under the lease (generally as part of salary sacrifice arrangements with the employee). If the employee ceases to be employed by the employer, the obligations under the lease revert to the employee.
- (f) **operating lease** means a lease which does not transfer substantially the risks of ownership to the lessee. An operating lease will generally run for less than the full economic life of the asset and the lessor would expect the asset to have a resale value at the end of the lease period.

The following terms are to be interpreted in accordance with their ordinary and usual meaning:

- (g) mortgage;
- (h) loan;
- (i) lessee;
- (j) lessor.

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

---

### **2.1 Appointment of Administrator**

This Settlement Scheme will be administered by an Administrator appointed by the Court and the Administrator will:

- (a) administer and implement the Settlement Scheme fairly and reasonably according to its terms, and with the Administrator's duty to the Court to take priority over any obligations or duties to individual Group Members, including duties that arise from any existing solicitor-client relationship between the Administrator and their clients;
- (b) in discharging any function or exercising any power or discretion conferred by this Settlement Scheme, not be liable for any loss to Group Members 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 Administrator or its staff who are sought to be made liable.

### **2.2 Correction of Errors**

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

### **3. Affected Vehicle Database**

---

#### **3.1 The Affected Vehicle Database**

The Affected Vehicle Database is a confidential database:

- (a) prepared by Maurice Blackburn in consultation with Bannister Law; and
- (b) that is to be used by the Administrator in order to administer this settlement in accordance with the provisions of this Settlement Scheme.

#### **3.2 Contents of Affected Vehicle Database**

The Affected Vehicle Database contains the following information:

- (a) the VIN and other related identifying information for each Affected Vehicle including any Excluded Vehicle;
- (b) the Provisional Vehicle Amount for each Affected Vehicle;
- (c) any other information or data (including the NEVDIS Data or Audi Data, if it is available) that the Administrator considers to be relevant and useful in order to administer this Settlement Scheme efficiently and expeditiously,

and as set out in this Settlement Scheme, certain determinations that are made and actions that are taken by the Administrator in the course of administering this Settlement Scheme are to be recorded in the Affected Vehicle Database.

#### **3.3 Provisional Vehicle Amounts**

The “**Provisional Vehicle Amounts**” are the monetary amounts that are provisionally (that is, subject to the operation of clauses 10 and 11 of this Settlement Scheme) determined in respect of each Affected Vehicle, and have been determined by Maurice Blackburn and Bannister Law pursuant to their methodology in light of data analysed by an independent accounting expert having regard to:

- (a) the price of the model of Affected Vehicle when purchased as a new vehicle; and
- (b) an estimated value of the model of Affected Vehicle immediately before the Qualifying Date.

In the case of Excluded Vehicles, the Provisional Vehicle Amount is \$0.

#### **3.4 Excluded Vehicles**

Group Members who make claims in relation to the following categories of Affected Vehicles that are “**Excluded Vehicles**” are not entitled to receive a Settlement Payment pursuant to this Settlement Scheme:

- (a) Affected Vehicles that were written off before 18 September 2015;
- (b) Affected Vehicles that were not sold to a group member (including dealer stock) in Australia before 3 October 2015.

## 4. Eligibility Criteria

---

### 4.1 Eligibility Criteria

Subject to the provisions of this Settlement Scheme, a Group Member is eligible to receive a Settlement Payment pursuant to this Settlement Scheme if the Group Member satisfies the following “**Eligibility Criteria**”:

- (a) the Group Member has not opted out of both the BL Proceedings and the MB Proceedings;
- (b) the Group Member acquired an Interest in an Affected Vehicle; and
- (c) the Interest was held by the Group Member at the time of either of the Qualifying Dates.

### 4.2 Interest in an Affected Vehicle

When a person holds an Interest in an Affected Vehicle is determined in accordance with this clause.

An “**Interest**” means any of the following circumstances in which the Group Member held a legal or equitable interest in an Affected Vehicle:

**Ownership Interest** A Group Member held an Ownership Interest in an Affected Vehicle if they held legal title to the vehicle:

- (a) if the Affected Vehicle was acquired new or second hand
- (b) regardless of whether the Affected Vehicle was acquired by the Group Member wholly or partly by means of a loan (however described)
- (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
- (d) including in circumstances where the Group Member repossessed an Affected Vehicle following a borrower’s default on a loan used to finance the acquisition of the Affected Vehicle and, in such case, excluding any interest held by the borrower;
- (e) excluding in circumstances where the Group Member held a Lessor Interest (Operating Lease) as defined below.

**Lease Interest** Subject to Clause 4.3, a Group Member held a Lease Interest in an Affected Vehicle if they held one of the following types of interest in the vehicle:

### **Lessee Interest (Finance Lease)**

An Affected Vehicle was subject to a finance lease, novated lease or hire purchase agreement and the Group Member was the lessee or hirer (however described)

### **Lessee Interest (Operating Lease)**

An Affected Vehicle was subject to an operating lease and the Group Member was the lessee

### **Lessor Interest (Operating Lease)**

An Affected Vehicle was subject to an operating lease and the Group Member was the lessor

## **4.3 Excluded Interests**

For avoidance of doubt, the following “**Excluded Interests**” are not Interests for the purpose of this Settlement Scheme, and a Group Member who held an Excluded Interest in an Affected Vehicle is not entitled to receive any Settlement Payment (but is otherwise bound by the settlement):

- (a) any legal or equitable interest that the Group Member held as the lessor of an Affected Vehicle that was subject to a finance lease or novated lease;
- (b) any legal or equitable interest that the Group Member held as the seller or vendor or holder of legal title (however described) of an Affected Vehicle that was subject to a hire purchase agreement;
- (c) excepting the circumstances described in sub-paragraph (d) of the definition of an Ownership Interest in clause 4.2, any legal or equitable interest that the Group Member held as the credit provider, lender or mortgagor (however described) in relation to any loan that was used by another person to finance the acquisition of an Affected Vehicle;
- (d) any legal or equitable interest in an Affected Vehicle that was held by:
  - (i) an Authorised Dealer; or
  - (ii) the Respondents or their Related Bodies Corporate;
  - (iii) an employee, contractor, officer, brand ambassador or staff member of the Respondents or their Related Bodies Corporate where that interest is limited to the right to use, including by way of lease from the Respondents, an assigned car or staff car owned by the Respondents.
- (e) any other interest in an Affected Vehicle that is not an Ownership Interest or a Lease Interest as defined above;
- (f) any legal or equitable interest in an Excluded Vehicle.

#### 4.4 Qualifying Dates

The “**Qualifying Date**” is either of the following dates, being the dates identified in the definition of Group Members in (respectively) the BL Proceedings and the MB Proceedings as the dates on which a person must have held an interest in an Affected Vehicle in order to be a Group Member:

- (a) 18 September 2015; or
- (b) 3 October 2015.

#### 4.5 Interest Conflict Due to Qualifying Dates

- (a) In the event that the Participating Group Members for any Affected Vehicle are different for each of the two Qualifying Dates (**Conflicted Vehicles**):for the purpose of calculating the Aggregate Settlement Sum, the Affected Vehicle will only be counted as one vehicle;
- (b) each Participating Group Member will be entitled to a Settlement Payment; and
- (c) there is no obligation on the Respondents to make an additional payment to the Aggregate Settlement Sum to enable Settlement Payments to Conflicted Vehicles.

### 5. Registration and provision of Claim Materials

---

#### 5.1 Registration of claims

Subject to clause 5.2, if a Group Member wishes to make a claim for a Settlement Payment under this Settlement Scheme, the Group Member must register their claim by:

- (a) completing an online registration form at the Registration Portal at the following website:

[www.vwsettlement.com.au](http://www.vwsettlement.com.au)

- (b) and at the time of doing so, providing to the best of their ability the Registration Information that is sought in the online registration form and declaring that all Registration Information supplied by the Group Member is true and correct.

#### 5.1A Inability to complete online registration

If a Group Member is unable to complete an online registration form at the Registration Portal, the Administrator may permit the Group Member to provide the Registration Information by alternative means in writing and the Administrator may then enter the Registration Information into the Registration Portal on the Group Member's behalf.

#### 5.2 Registration of claims relating to ten or more Affected Vehicles

If a Group Member wishes to make claims for Settlement Payments in relation to ten or more Affected Vehicles, the Group Member will be a “**Fleet Operator**” and must register their claim by contacting the Administrator in writing in order to notify their intention to make a claim for Settlement Payments.

### **5.3 Deadline for the registration of claims**

A Group Member must register their claim on or before 10 March 2020 Sydney time (**Registration Deadline**).

### **5.4 Failure to register by the Registration Deadline**

If a Group Member does not register their claim by the Registration Deadline, the Group Member is bound by the settlement but is not entitled to receive a Settlement Payment pursuant to the Settlement Scheme.

### **5.5 Registration of former clients of the Solicitors for the Applicants**

To the extent that adequate VIN information is available to enable them to do so, the Solicitors for the Applicants may effect the preliminary registration of any Group Members who were clients of the Solicitors for the Applicants on or before 3 September 2019, and any such preliminary registration is to be treated as a valid registration for the purpose of clauses 5.1, 5.2 and 5.3.

### **5.6 Claim Materials – vehicle information**

If NEVDIS Data or Audi Data is available to be used for the purpose of administering this Settlement Scheme and the NEVDIS Data or Audi Data contains information at a date that is reasonably proximate to the Qualifying Dates, the Registration Portal will at the time of registration identify whether there is a reasonable match (**Vehicle Match**) between:

- (a) the Registration Information provided by a Registrant in relation to an Affected Vehicle; and
- (b) information in the NEVDIS Data or Audi Data for the Affected Vehicle that is registered by the Registrant.

#### **If there is a Vehicle Match**

If there is a Vehicle Match for a Registrant's Affected Vehicle, the Registrant does not need to provide any additional materials in support of their claim, unless either:

- (a) at the time of either of the Qualifying Dates the Registrant was the lessee or hirer in a lease or hire purchase agreement in relation to their Affected Vehicle, in which case clause 5.7 applies; or
- (b) the Administrator is or becomes aware of other information that provides a reasonable basis for the Administrator to suspect that the Registrant may not have held an Interest in an Affected Vehicle at the time of either of the Qualifying Dates, in which case clause 6.1(e) applies.

#### **If there is no Vehicle Match**

If there is no Vehicle Match for a Registrant's Affected Vehicle or if NEVDIS Data or Audi Data is not available to be used for the purpose of administering this Settlement Scheme, the Registration Portal will prompt the Registrant to upload "**Claim Materials**" onto the Registration Portal.

If the Registration Portal prompts a Registrant to provide Claim Materials, the Registrant must do so no later than 9 April 2020.

A Registrant's Claim Materials are to include documents that will enable the Administrator to assess whether the Registrant held an Interest in an Affected Vehicle at either of the Qualifying Dates. For example, a Registrant may provide the following Claim Materials:

- (a) **vehicle registration certificates or similar documents from a state or territory motor vehicle registry** such as one certificate before the Qualifying Dates and one certificate after the Qualifying Dates; or
- (b) **one or more certificates of insurance** such as one certificate before the Qualifying Dates and one certificate after the Qualifying Dates, or alternatively one certificate where the period of the insurance includes the Qualifying Dates, provided that the insurance certificate identifies the VIN of the Affected Vehicle or otherwise enables the Administrator to identify the Registrant's Affected Vehicle reliably; or
- (c) **other documents** that demonstrate that the Registrant held an Interest in the Affected Vehicle at either of the Qualifying Dates, provided that those other documents identify the VIN of the Affected Vehicle or otherwise enable the Administrator to identify the Registrant's Affected Vehicle reliably.

#### **5.7 Claim Materials – lease information to be provided by lessees**

Regardless of whether there is a Vehicle Match, if a Registrant was at the time of either of the Qualifying Dates the lessee or hirer in any type of lease or hire purchase agreement relating to their Affected Vehicle, the Registrant must also provide either:

- (a) a copy of the lease or hire purchase agreement; or
- (b) written confirmation from the lessor in relation to the following aspects of the lease or hire purchase agreement:
  - (i) name of the lessee or hirer;
  - (ii) VIN of the Affected Vehicle;
  - (iii) the type of lease or agreement (ie finance, novated or operating lease);
  - (iv) duration of the lease including the commencement date and the end date of the lease or hire purchase agreement

#### **(Lease Claim Materials).**

If a Registrant is required to provide Lease Claim Materials, the Registrant must do so no later than 9 April 2020.

#### **5.8 Claim Materials – Fleet Operators**

Instead of providing Claim Materials in accordance with clause 5.6, Group Members who are Fleet Operators are to provide Claim Materials consisting of an extract or export of a database or other record keeping system used by the Fleet Operator in the ordinary course of their business in order to provide to the Administrator information in an aggregated format that:

- (a) identifies the VIN of each Affected Vehicle for which a claim is made;
- (b) identifies the type of Interest asserted by the Fleet Operator in respect of each Affected Vehicle;
- (c) provides evidence that enables the Administrator to assess whether the Interest in each Affected Vehicle was held at the Qualifying Date, for example by supplying information to the effect that the Affected Vehicle was sold after the Qualifying Date,

and:

- (d) the Fleet Operator must also provide a statutory declaration from an employee of the Fleet Operator who is authorised to attest to the veracity of the information extracted or exported from the database or record keeping system and supplied to the Administrator; and
- (e) depending on the nature of the Fleet Operator's record keeping systems and the format and contents of the materials provided pursuant to this clause, the Administrator may require the Fleet Operator to provide additional records or documents that the Administrator may rely upon in conjunction with the extract or export of any database or record keeping system.

## **5.9 Failure to provide Claim Materials or Lease Claim Materials**

If a Registrant does not provide Claim Materials or Lease Claim Materials by 9 April 2020:

- (a) the Registrant's claim will be treated as having not been registered for the purposes of clause 5.1 and order 13(b) made on 12 December 2019;
- (b) the Registrant will not be entitled to receive a Settlement Payment pursuant to the Settlement Scheme; and
- (c) the Administrator will notify the Registrant that their claim was not validly registered due to their failure to provide Claim Materials or Lease Claim Materials and accordingly that the Registrant is not entitled to receive a Settlement Payment.

## **6. Assessment Process**

---

### **6.1 Process for determining eligibility**

Having regard to the Eligibility Criteria the Administrator will undertake an assessment and determination of the eligibility or otherwise of each Registrant (**Eligibility Determination**) in accordance with the following provisions:

- (a) the Administrator will check whether or not the Registrant has filed an opt out notice;
- (b) subject to clause 6.1(c), the Administrator will review the Registration Information and Claim Materials provided by the Registrant in order to determine:

- (i) whether the VIN provided for the Affected Vehicle is recorded in the Affected Vehicle Database or otherwise determined to be an Affected Vehicle pursuant to clause 7;
  - (ii) whether it is reasonable to conclude that the Registrant held an Interest in an Affected Vehicle and if so the type of Interest; and
  - (iii) whether it is reasonable to conclude that the Registrant held that Interest as at the Qualifying Date;
- (c) for the purposes of determining whether it is reasonable to conclude that a Registrant held an Interest as at the Qualifying Date, the Administrator may:
  - (i) rely on any Vehicle Match in relation to the Registrant's Affected Vehicle;
  - (ii) rely on other information or documents held by the Settlement Administrator or provided by another person;
  - (iii) obtain information from the Respondents in respect of a particular VIN;
  - (iv) if the Administrator forms the view, acting reasonably, that it is not otherwise possible to determine whether a Registrant held an interest as at the Qualifying Date, seek to obtain information or documents from a third party, and accordingly may seek orders from the Court or alternatively request that the Registrant provide an authority to release any such information or documents;
- (d) in assessing claims where the Registrant appears to have had a Lease Interest, the Administrator is to:
  - (i) use its discretion and judgment in determining the type of lease that had been entered into, and to this end the Administrator may consult with an appropriately qualified vehicle industry or finance expert (which may include the Respondents or related financial services companies);
  - (ii) determine which of the different types of Lease Interests or Excluded Interests most aptly applies to the features of the Registrant's contractual arrangements;
- (e) in the event that:
  - (i) the Administrator determines that Registration Information and/or Claim Materials provided by a Registrant are insufficient in order to make an Eligibility Determination; and/or
  - (ii) the Administrator is aware of other information that provides a reasonable basis for the Administrator to suspect that the Registrant may not have held an Interest in an Affected Vehicle at the time of either of the Qualifying Dates and/or that any Vehicle Match is unreliable,

the Administrator may request that the Registrant provide additional information or documents, in which case:

- (iii) the Registrant must provide those additional materials within the timeframe specified by the Administrator; and

- (iv) those additional materials will then constitute or form part of the Registrant's Claim Materials;
- (f) following the review of the Registration Information, Claim Materials and any other information available to the Administrators including any NEVDIS Data, Audi Data or Vehicle Match, the Administrator will complete the Eligibility Determination for each Registrant and:
  - (i) each Registrant who is assessed and determined by the Administrator as satisfying the Eligibility Criteria is a "**Participating Group Member**";
  - (ii) each Affected Vehicle in relation to which a Participating Group Member is determined by the Administrator as satisfying the Eligibility Criteria is a "**Registered Affected Vehicle**".
- (g) the Administrator will make a record of each Eligibility Determination in the Affected Vehicle Database and in doing so will identify:
  - (i) each Participating Group Member;
  - (ii) the Registered Affected Vehicle in which each Participating Group Member held an Interest; and
  - (iii) the type of Interest held by each Participating Group Member.

#### **6.1A Claim Corrections**

If in the process of assessing claims under clause 6.1, the Administrator becomes aware that a claim in relation to an Affected Vehicle has been registered by a Registrant who is related to a Group Member, the Administrator will:

- (a) contact the Registrant in order to inform the Registrant of the error;
- (b) where possible, contact the Group Member in order to request that they submit a **Claim Correction** through the Registration Portal within a reasonable timeframe specified by the Administrator; and
- (c) assess the corrected claim pursuant to process set out in clause 6.1.

For the avoidance of doubt, a Group Member may not add any additional Affected Vehicles as a result of the Claim Correction process.

For the purposes of this clause a Registrant will be treated as being related to a Group Member if:

- (a) the Group Member and Registrant are family members; or
- (b) the Group Member is one of the types of Group Members referred to in clause 13.5, and the Registrant has a legal relationship to the Group Member as contemplated in clause 13.5, or vice versa.

#### **6.1B Failure to Complete a Claim Correction**

In circumstances where:

- (a) the Administrator is unable to contact the Group Member; or

- (b) a Group Member has been asked to submit a Claim Correction and fails to do so within the timeframe specified by the Administrator,

the Registrant and Group Member will both be ineligible to receive a Settlement Payment and the Administrator will issue a Notice of Assessment pursuant to clause 6.2(c).

## **6.2 Notification of Registrants regarding their eligibility or otherwise**

After an Eligibility Determination is made in relation to a Registrant's claim, the Administrator will promptly send to the Registrant a "**Notice of Assessment**" in which the Administrator will:

- (a) state whether or not the Registrant has been assessed to be a Participating Group Member who is eligible to receive a Settlement Payment in relation to one or more Affected Vehicles;
- (b) if the Registrant was assessed to be Participating Group Member:
  - (i) state the details (including the VIN) of each Registered Affected Vehicle which is the subject of the Group Member's claim;
  - (ii) state the Administrator's assessment of the type of Interest/s held by the Group Member in relation to each Registered Affected Vehicle which is the subject of the Group Member's claim;
  - (iii) provide information to the Group Member to the effect that payment of any Settlement Payment/s is subject to the Group Member agreeing to release the Respondents and keep their Settlement Payment confidential;
  - (iv) provide information to the Group Member in relation to their rights to seek an Interest Review under clause 8.
- (c) if the Registrant is assessed as ineligible to receive a Settlement Payment:
  - (i) state the reason why the Registrant was assessed as ineligible to receive a Settlement Payment; and
  - (ii) provide information to the Registrant in relation to their rights to seek an Eligibility Review under clause 8.

## **6.3 Subsequent information that is relevant to an Eligibility Determination**

If, after sending a Notice of Assessment to a Registrant and at any time up to the date on which the Administrator provides notification to the Respondents pursuant to clause 9.1, the Administrator becomes aware of information that is inconsistent with the Eligibility Determination that was made in relation to the Registrant, the Administrator is to revisit and if necessary adjust the Eligibility Determination and will notify the Registrant by sending a revised Notice of Assessment.

## **6.4 Failure to Provide Additional Materials Requested By Administrator**

Where a Registrant fails to provide additional materials within the timeframe specified by the Administrator pursuant to clause 6.1(e)(iii), the Registrant will be ineligible to receive a Settlement Payment and the Administrator may issue a Notice of Assessment pursuant to clause 6.2(c).

## **7. Affected Vehicles not recorded in the Affected Vehicle Database**

---

### **7.1 Process for inclusion of additional Affected Vehicles**

Where a person notifies the Administrator of their intention to lodge a claim for a vehicle in circumstances where:

- (a) the VIN for the vehicle in question does not appear on the Affected Vehicle Database; and
- (b) on the basis of available information, the Administrator reasonably suspects that the vehicle may be an EA189 Vehicle; for example because the vehicle is a diesel vehicle of the same model and model year as an EA189 Vehicle;

the following process will apply:

- (c) the Administrator will provide the VIN for the vehicle to the Respondents; and
- (d) the Respondents will on the basis of their records investigate and use their best endeavours to determine whether the vehicle is an EA189 Vehicle, and the Respondents will then notify the Administrator accordingly;
- (e) the Respondents' determination will be final and binding on the Administrator and the person and is not able to be reviewed;
- (f) if the vehicle is determined not to be an EA189 Vehicle, the Administrator will send a Notice of Assessment to the person in accordance with clause 6.2(c) as if they were a Registrant (and that person shall be treated as a Registrant for the purposes of clause 8).

### **7.2 Inclusion of Affected Vehicles in the Affected Vehicle Database**

If a vehicle is determined to be an EA189 Vehicle pursuant to the process set out in clause 7.1:

- (a) the EA189 Vehicle will be added to the Affected Vehicle Database and will be treated as an Affected Vehicle; and
- (b) the Group Member's claim will proceed to be processed and assessed in accordance with this Settlement Scheme.

## **8. Review of Eligibility and Interest Determinations**

---

### **8.1 Right to seek a Review**

A Registrant has the right to seek a "**Review**" of any of the following determinations:

- (a) a determination under clause 6.1 of the type of Interest held by the Participating Group Member as at the Qualifying Date (**Interest Review**); and
- (b) a determination under clause 6.1 that the Registrant is not eligible to receive a Settlement Payment (**Eligibility Review**).

## **8.2 Determinations which cannot be reviewed**

A Group Member is not entitled to seek a Review of:

- (a) the amount of a Settlement Payment calculated in accordance with clause 10.1 or the antecedent determination of the Provisional Vehicle Amount as described in clause 3.3; or
- (b) their ineligibility as a consequence of the operation of clause 6.1B, clause 6.4 or clause 13.5B.

## **8.3 Process for seeking a Review**

If a Registrant wishes to seek a Review, they must do so:

- (a) by giving written notice to the Administrator no later than 14 days after the Administrator sent the Notice of Assessment to the Registrant; and
- (b) such notice must state the reason/s why the Registrant disputes the Administrator's determination.

## **8.4 Failure to seek a review**

If a Registrant does not give written notice to the Administrator within 14 days of the Administrator sending a Notice of Assessment to the Registrant, the Notice of Assessment will be deemed to have been accepted by the Registrant and no Review will then be able to be sought.

## **8.5 Payment of a bond for Eligibility Review**

Where a Registrant seeks an Eligibility Review and the Administrator has reasonable grounds to suspect that the Eligibility Review is unlikely to succeed, the Administrator will:

- (a) require that the Registrant pay the Administrator a bond not exceeding \$1,000 for the costs of the Review; and
- (b) if the Registrant fails to pay the bond within 14 days of receiving such a request from the Administrator, treat the Registrant's request for a Review as void and having no effect; and
- (c) the amount of any such bond is to be forfeited in the event that the Eligibility Review is unsuccessful, and is to be returned to the Registrant in the event that the Eligibility Review succeeds.

## **8.6 Process for Reviews**

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

- (a) in the first instance the Administrator will consider whether it made an error in determining the Registrant's claim and, if the Administrator forms the view that it made an error, the Administrator will correct its original determination and continue with the processing of the Registrant's claim in accordance with this Settlement Scheme;

- (b) if the Administrator does not correct its original determination, the Administrator will engage a Review Assessor;
- (c) the Administrator will provide the following materials to the Review Assessor:
  - (i) a copy of the Registrant's Notice of Assessment;
  - (ii) the Registrant's written notice by which they requested the Review;
  - (iii) access to aspects of the Affected Vehicle Database that are relevant to the Registrant's claim;
  - (iv) the Registrant's Registration Information and Claim Materials;
  - (v) such other information and documents that were relied upon by the Administrator in order to determine the Registrant's claim;
- (d) save in any exceptional circumstances to be determined by the Administrator in its sole discretion, the Review Assessor must not consider any new evidence or additional materials that are not already included in the materials referred to in clause 8.6(c);
- (e) within 14 days, the Review Assessor will then:
  - (i) in an Interest Review, make a determination as to the type of Interest held by the Group Member as at the Qualifying Date;
  - (ii) in an Eligibility Review, make a determination as to whether the Registrant satisfies the Eligibility Criteria;
  - (iii) in relation to either type of Review, provide to the Administrator a brief statement of reasons for the Review Assessor's determination;
- (f) after the Administrator either:
  - (i) corrects its original determination; or
  - (ii) receives the Review Assessor's determination and statement of reasons,
 

the Administrator will promptly send to the Registrant a **"Notice of Review"** in which the Administrator will provide information to the Registrant about the determination of their Review including the reasons for the outcome of the Review; and
- (g) the Administrator will update the Affected Vehicle Database in order to record the outcome of the Review.

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

A determination of a Review Assessor is final and binding on the Administrator and the Registrant who sought the Review.

## **8.8 Role of Review Assessors**

The following provisions apply to Review Assessors engaged by the Administrator:

- (a) Review Assessors will act as independent arbitrators and not as counsel briefed to act for any individual Registrant or the Administrator;
- (b) in view of their familiarity with the subject matter of the Class Action Proceedings and in the interests of efficiency in the administration of this Settlement Scheme, junior counsel who had been briefed to act for the Applicants may be appointed by the Administrator as a Review Assessor;
- (c) Review Assessors have the same immunities from suit as attach to the office of a judge of the Supreme Court of New South Wales.

## **9. Payment of Aggregate Settlement Sum**

---

### **9.1 Total Registered Affected Vehicles**

Upon the completion of the assessment process under clause 6 for all claims that were registered by the Registration Deadline, and the completion of all Reviews pursuant to clause 8, the Administrator will notify the Respondents of:

- (a) the total number of Registered Affected Vehicles; and
- (b) the VIN for each Registered Affected Vehicle.

### **9.2 Payment of Aggregate Settlement Sum by the Respondents**

The Respondents will pay the Aggregate Settlement Sum into the Settlement Account in accordance with clause 7.1 of the Deed.

### **9.3 Aggregate Settlement Sum is held by the Administrator on trust**

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

- (a) Group Members; and
- (b) the Administrator, to the extent of its entitlement to receive Administration Costs in accordance with the terms of the Deed and this Settlement Scheme.

### **9.4 Settlement Sum Interest**

Settlement Sum Interest will be retained by the Administrator and, after the discharge of any tax liability relating to the Settlement Sum Interest, applied to pay the Administrator's costs as approved by the Court and any such payment will reduce the Respondents' liability to pay these costs accordingly with supporting documentation to be made available by the Administrator to the Respondents.

## **10. Calculation of Settlement Payments**

---

### **10.1 Calculation of Settlement Payments**

Subject to clause 10.5(d), the Administrator will calculate the Settlement Payments of all Participating Group Members according to the following two step procedure:

## First step

The Administrator will calculate each Participating Group Member's "**Unadjusted Settlement Payment**" taking into account the Provisional Vehicle Amount for the Registered Affected Vehicle and the following allocations depending on the type of Interest held by the Group Member:

Ownership Interest:	100% of the Provisional Vehicle Amount
Lessee Interest (Finance Lease):	100% of the Provisional Vehicle Amount
Lessee Interest (Operating Lease):	50% of the Provisional Vehicle Amount
Lessor Interest (Operating Lease):	50% of the Provisional Vehicle Amount

*Note: a Participating Group Member with a Lessee Interest (Operating Lease) is to be allocated 50% of the Provisional Vehicle Amount regardless of whether or not a claim is also made by a Participating Group Member who held a Lessor Interest (Operating Lease) in respect of the same Affected Vehicle. Conversely, a Participating Group Member with a Lessor Interest (Operating Lease) is to be allocated 50% of the Provisional Vehicle Amount regardless of whether or not a claim is also made by a Participating Group Member who held a Lessee Interest (Operating Lease) in respect of the same Affected Vehicle.*

*Note: In the event that the Participating Group Members for any Affected Vehicle are different for each of the two Qualifying Dates, the calculation of Unadjusted Settlement Payments will be made separately for the Participating Group Members as at 18 September 2015 and 3 October 2015.*

## Second step

The Administrator will calculate each Group Member's final Settlement Payment by adjusting each Participating Group Member's Unadjusted Settlement Payment to reflect the difference between the Aggregate Settlement Sum and the sum of all Unadjusted Settlement Payments.

### 10.2 Funding Order payments

In the event that the Court makes a Funding Order, then, within 7 days of the Aggregate Settlement Sum being paid by the Respondents in accordance with clause 9.2 above or within such other timeframe that is agreed between the Administrator and the Funder, the Administrator will determine the aggregate amount payable to the Funder, pursuant to the Funding Order, having regard to:

- (a) the Aggregate Settlement Sum; and
- (b) the total number of Participating Group Members subject to the Funding Order and the amounts of the Settlement Payments of those Participating Group Members,

and the Administrator will then pay the amount determined pursuant to this clause to the Funder within 7 days of that determination.

### 10.3 Funding Payments

In the event that the Funder is entitled to receive a proportion of any Participating Group Member's Settlement Payment by reason of the Funder's contractual entitlements pursuant to a litigation funding agreement between the Funder and a Participating Group Member (**Funding Payment**) then, prior to the notification of Settlement Payments to Participating Group Members as set out in clause 10.5, the Administrator will, in consultation with the Funder:

- (a) identify those Participating Group Members who are the subject of a Funding Payment obligation,
- (b) calculate the amount to be deducted from the Settlement Payments of those Participating Group Members and paid to the Funder by reason of any Funding Payment obligation, and
- (c) pay those amounts to the Funder at the time Settlement Payment is made to a Participating Group Member in accordance with clause 11, or as soon as practicable thereafter, and for the purpose of this requirement the Administrator may make payments to the Funder in tranches in which the Funding Payments of several Participating Group Members are aggregated.

To assist the Administrator to undertake those steps, if the Funder is (or may be) entitled to a Funding Payment(s) then, within 14 days of the Approval Order being made, the Funder will provide to the Administrator a "**Notice of Funding Arrangements**" containing:

- (d) the names of all Group Members with whom the Funder has an operative litigation funding agreement pursuant to which the Funder is entitled (subject to any order of the Court) to receive a Funding Payment (**Funded Group Members**); and
- (e) (to the extent that it is available to the Funder or Bannister Law) the VINs of the Affected Vehicles of Funded Group Members.

### 10.4 Funding Equalisation adjustment

In the event that the Court makes a Funding Equalisation Order pursuant to the Funding Equalisation Application or Alternative Funding Equalisation Application then, prior to the notification of Settlement Payments to Participating Group Members as set out in clause 10.5, the Administrator will adjust the Settlement Payments to be paid to the Participating Group Members in accordance with the Funding Equalisation Order.

### 10.5 Notice of Settlement Payment

After the Administrator has calculated the Settlement Payments in accordance with clause 10.1 and applied any deductions or adjustments in accordance with clauses 10.2, 10.3 and/or 10.4, then the Administrator will promptly send each Participating Group Member a "**Notice of Settlement Payment**" in which the Administrator:

- (a) notifies the final amount of the Settlement Payment which the Participating Group Member is entitled to receive;

- (b) states details of any payments made to the Funder from the Settlement Payment, in accordance with clause 10.2 and/or 10.3; and/or
- (c) if a Funding Equalisation Order is made, provides information to the effect that a Funding Equalisation adjustment was made to the Settlement Payment; and
- (d) provides information to the effect that payment of any Settlement Payment is contingent upon the Participating Group Member agreeing (in the form set out in Annexure A to the Settlement Scheme) to release the Respondents and keep the terms of their Settlement Payment confidential, and notifies the Participating Group Member how they are able to indicate their agreement via the Registration Portal.

## **11. Payment to Participating Group Members**

---

### **11.1 Operation of this clause 11**

For the avoidance of any doubt, this clause 11 must not be implemented by the Administrator until after the Approval Order becomes final.

### **11.2 Release of the Respondents and confidentiality of Settlement Payments**

A Settlement Payment must not be made to a Participating Group Member unless the Participating Group Member has confirmed their agreement (in the form set out in Annexure A to the Settlement Scheme) to release the Respondents and keep their Settlement Payment confidential, such agreement to be provided via the Registration Portal.

### **11.3 Distribution of Settlement Payments**

Once the Administrator is satisfied that a Participating Group Member has provided the release and confidentiality agreement in accordance with clause 11.2, the Administrator will promptly pay the Settlement Payment by electronic funds transfer to the bank account nominated by the Participating Group Member.

### **11.4 Unpaid Settlement Payments**

In the event that the Administrator is not able to pay a Settlement Payment to a Participating Group Member, for example because the Participating Group Member:

- (a) failed within a reasonable time or otherwise refused to provide the release and confidentiality agreement in accordance with clause 11.2; or
- (b) provided incorrect bank account details or failed within a reasonable time to provide their bank account details,

any remaining unpaid amount will be retained by the Administrator and be used to pay down the Administrator's costs approved by the Court and the Respondents' liability will be reduced accordingly.

## **12. Reporting by the Administrator to other parties**

---

### **12.1 Reporting by the Administrator to the Parties**

After the commencement of the registration process in clause 5 of this Settlement Scheme, the Administrator will provide fortnightly updates to the Respondents, the Applicants and the Funder (collectively the **Parties**) in which the Administrator will provide:

- (a) a report on the number of Group Members who have registered and whose claims have been assessed including a summary of the outcome of the claims that have been assessed; and
- (b) when the Administrator is in a position to do so, a summary of the results of the implementation of clause 10.

### **12.2 Review of the Administrators' records**

- (a) The Respondents' rights to obtain and audit the Administrator's records are set out in clause 7 of the Deed.
- (b) Provided that it does not interfere with the orderly or efficient administration of this Settlement Scheme, Parties other than the Respondents may (at their own cost) make a reasonable request that the Administrator provides information concerning the implementation of the Settlement Scheme.

### **12.3 Rectification of errors**

If any of the Parties identifies an error in the administration of the Settlement Scheme, they will notify the Administrator and the Administrator may take any steps that are reasonably necessary pursuant to clause 2.2.

## **13. Rights and Obligations of Group Members**

---

### **13.1 Cooperation of Group Members**

Each Group Member who intends to lodge a claim for a Settlement Payment must cooperate with the Administrator and with reasonable diligence take all steps that they are required to take pursuant to this Settlement Scheme and/or that are reasonably requested by the Administrator, including:

- (a) providing information, documents or other materials;
- (b) promptly informing the Administrator of any change in their contact details;
- (c) executing documents,

and each Group Member must do so:

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

### 13.2 Obligation regarding honesty

In fulfilling the obligation in clause 13.1, each Group Member must act honestly and must take all reasonable steps to ensure that any of her or his agents or representatives likewise act honestly.

### 13.3 Failure to Comply

- (a) If a Group Member fails to comply with any of the obligations in clauses 13.1 or 13.2, the Administrator may, in their absolute discretion:
  - (i) decline to accept the Group Member's claim;
  - (ii) determine that the Group Member is not eligible to receive a Settlement Payment pursuant to this Settlement Scheme;

and if the Administrator exercises its discretion pursuant to this clause, the Administrator will promptly notify the Group Member and make a record on the Affected Vehicle Database (**Declined Group Member**).

- (b) If a Declined Group Member is the sole registered group member who has an Interest in an Affected Vehicle, the Affected Vehicle will be deducted from the number of Affected Vehicles used to calculate the Aggregate Settlement Sum.
- (c) If Group Member becomes a Declined Group Member after the payment of the Aggregate Settlement Sum to the Administrator (for example because of the application of clause 11.4) and (b) applies, the portion of the Aggregated Settlement Sum paid attributable to the Declined Group Member's Affected Vehicle will be retained by the Administrator and be used to pay down the Administrator's costs approved by the Court and the Respondents' liability will be reduced accordingly.

### 13.4 Application to the Court

If the Administrator exercises its discretion in clause 13.3 adversely to the interests of a Group Member, the Group Member may (at their own cost) apply to the Court for relief.

### 13.5 Claims made on behalf of other person

The following provisions apply in circumstances where a person registers a claim on behalf of another person who is a Group Member:

- (a) **bodies corporate or other bodies that hold property:** the Administrator may rely on information from and steps taken pursuant to this Settlement Scheme by a person who declares to the Administrator that they are authorised to act on behalf of the body;
- (b) **deceased estates:** the Administrator may rely on information from and steps taken pursuant to this Settlement Scheme by:
  - (i) a person who is named in any will as the executor of a deceased Group Member's estate, provided that the person provides a copy of the Group Member's will and death certificate; or

- (ii) if the Group Member died intestate, a person who represents the deceased Group Member's estate, provided that the person provides a copy of the Group Member's death certificate and a statutory declaration confirming that they will act in accordance with the laws of intestacy in relation to the Settlement Payment and deceased Group Member's estate.
- (c) **Group Members under a legal incapacity:**
- (i) the Administrator may rely on information from and steps taken pursuant to this Settlement Scheme by a person who appears authorised to manage the legal or financial affairs of the Group Member, for example as a result of an enduring power of attorney or an order of an appropriate tribunal or court; and
- (ii) pursuant to rule 1.34 of the *Federal Court Rules* the Administrator may act on the basis that there is dispensation with the requirements of rule 7.11 and Division 9.6 of the *Federal Court Rules*, and instead the Group Member's claim will be taken to have been approved by the Court if Administrator assesses and determines the Group Member's claim in accordance with the provisions of this Settlement Scheme;
- (d) **partnerships:** the Administrator may rely on information from and steps taken pursuant to this Settlement Scheme by a person who declares to the Administrator that they are a partner in or agent of the partnership;
- (e) **trusts:** the Administrator may rely on information from and steps taken pursuant to this Settlement Scheme by:
- (i) a person who declares to the Administrator that they are a trustee or agent of the trust; or
- (ii) if the trust has dissolved or a trustee or agent of the trust is unwilling or unable to act, a beneficiary of the trust.

### 13.5A Application and intent of clauses 13.5B and 13.5C

Clauses 13.5B and 13.5C apply where a person registers a claim on behalf of a body corporate or another body capable of holding property that was registered with ASIC as at the Qualifying Dates, but has since been deregistered by ASIC (**Deregistered Body**).

*Note: the intent of clauses 13.5B and 13.5C is to:*

- *provide an expedient procedure for the assessment and determination of claims made on behalf of Deregistered Bodies that held an Interest in an Affected Vehicle as at the Qualifying Dates but are no longer registered with ASIC;*
- *subject to the operation of this Settlement Scheme including Eligibility Determinations being made in favour of Deregistered Bodies, provide for Deregistered Bodies to receive a Settlement Payment without the need for those bodies to reinstate their registration with ASIC pursuant to section 601AH of the Corporations Act 2001 (Cth);*

*and at the same time avoid the Administrator being involved in dispute concerning different persons' interests in any Settlement Payment that might be made to a Deregistered Body.*

### **13.5B Claims by Deregistered Bodies**

Subject to the operation of other provisions of the Settlement Scheme including this clause 13.5B, the Administrator may in its discretion treat a Deregistered Body as a Registrant and as a Participating Group Member for the purpose of this Settlement Scheme without the registration of the Deregistered Body being reinstated by ASIC:

- (a) the Administrator must not exercise the discretion in this clause if the Deregistered Body was in external administration immediately prior to its deregistration or was wound up due to insolvency;
- (b) the Administrator may (among other reasons) decline to exercise the discretion in this clause if the Administrator considers that the payment of a Settlement Payment to the Deregistered Body's Representative may give rise to a risk of dispute between former directors, members and/or shareholders of the Deregistered Body in relation to the distribution or allocation of the Settlement Payment between or among them or to other persons;
- (c) for the purpose of this clause and otherwise determining the Deregistered Body's claim pursuant to this Settlement Scheme, the Administrator may rely on information from and steps taken pursuant to this Settlement Scheme by a person who was a member or shareholder of the Deregistered Body immediately prior to its deregistration (**Deregistered Body's Representative**);
- (d) in exercising the discretion in this clause the Administrator must not assess a Deregistered Body to be a Participating Group Member unless the Deregistered Body's Representative provides:
  - (i) an undertaking to the Court or a statutory declaration to the effect that the Deregistered Body's Representative will receive any Settlement Payment subject to any liabilities of the Deregistered Body and any claims or interests in money of the Deregistered Body which existed immediately prior to its deregistration; and
  - (ii) an indemnity to the Administrator (including as to legal costs and Administration Costs) in relation to any disputes or claims arising from or relating to the distribution of any Settlement Payment to persons who may have an interest in the liabilities or money of the Deregistered Body,

and:

- (iii) the Deregistered Body's Representative must comply with this sub-clause before the date on which the Administrator provides notification of the total number of Registered Affected Vehicles to the Respondents pursuant to clause 9.1;
- (iv) if a Deregistered Body's Representative complies with this sub-clause and the Administrator assesses the Deregistered Body to be a Participating Group Member, the Administrator is to send to the Deregistered Body's Representative a Notice of Assessment stating the Deregistered Body is eligible to receive a Settlement Payment in accordance with clause 6.2(b); and

- (v) if a Deregistered Body's Representative does not comply with this sub-clause, the Deregistered Body will not be eligible to receive any Settlement Payment and the Administrator is to send to the Deregistered Body's Representative a Notice of Assessment stating that the Deregistered Body is ineligible to receive a Settlement Payment in accordance with clause 6.2(c).
- (e) subject to sub-clause (d), the Administrator is authorised to make a Settlement Payment to a Deregistered Body's Representative on behalf of the Deregistered Body.

### **13.5C Reinstatement of Deregistered Bodies**

If the Administrator declines to exercise its discretion pursuant to clause 13.5B, the Deregistered Body is not eligible to receive a Settlement Payment unless its registration is reinstated by ASIC before the date on which the Administrator provides notification of the total number of Registered Affected Vehicles to the Respondents pursuant to clause 9.1.

## **14. Administration Costs**

---

### **14.1 Payment of Administration Costs**

Subject to the other provisions of this clause and to clause 9.3 of the Deed, Administration Costs are to be paid:

- (a) to the Administrator on a "solicitor and own client" basis in the event that the Administrator is a legal practice, or on such other reasonable basis as the Court considers appropriate if the Administrator is not a legal practice;
- (b) by the Respondents in addition to the amount payable as the Aggregate Settlement Sum;
- (c) in such amounts as are approved by the Court as reasonable from time to time during the implementation of this Settlement Scheme;
- (d) within 45 days of approval by the Court;
- (e) in the event the Administrator is a legal practice, at the hourly rates set out below or at such other rates that are approved by the Court from time to time, and in the event that the Administrator is not a legal practice on such other basis as the Court may approve:

<b><u>Role</u></b>	<b><u>Hourly Rate (ex. GST)</u></b>
Principal Lawyer / Special Counsel > 15 years' experience	\$790
Principal Lawyer / Special Counsel < 15 years' experience	\$720
Senior Associate	\$610
Associate	\$540

<u>Role</u>	<u>Hourly Rate (ex. GST)</u>
Solicitor (Lawyer)	\$440
Graduate Lawyer / Trainee Lawyer	\$350
Paralegal / Law Clerk	\$250
Technology Consultant / Data Administrator	\$240
Customer Service Officer	\$180

## **14.2 Costs of Reviews**

For the avoidance of any doubt and subject to clause 14.1, the costs associated with a Review (including the reasonable fees of a Review Assessor, if engaged by the Administrator) are Administration Costs.

## **15. Supervision by the Court**

---

### **15.1 Supervision by the Court**

Where the Administrator considers that:

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

the Administrator has liberty to relist the Proceedings, upon 3 days' notice to the Respondents, MB, BL and the Funder and in doing so the Administrator is not obliged to notify any of the Group Members.

## Schedule – Dictionary

---

<b>Administrator</b>	means the administrator of this Settlement Scheme appointed by the Court, and where the context requires it includes any person authorised and directed to carry out certain functions under this Settlement Scheme before the making of the Approval Order
<b>Administration Costs</b>	means the professional fees and disbursements incurred in giving effect to the Deed, this Settlement Scheme, the Approval Order and/or the Settlement generally, to be paid by the Respondents in addition to the Aggregate Settlement Sum and determined in accordance with clause 14
<b>Affected Vehicle</b>	means each VW, Audi and Skoda branded vehicle subject to the Class Action Proceedings, being those with a VIN listed in Annexure 10 of the Deed as well as any vehicles determined to be an Affected Vehicle pursuant to clause 7
<b>Alternative Funding Equalisation Application</b>	<p>means any alternative application made by the BL Applicants seeking a funding equalisation order, being an order which will result in the difference in final payments, by reason of any litigation funding agreements, to:</p> <ul style="list-style-type: none"><li>(a) Participating Group Members who have executed a litigation funding agreement with the Funder in relation to the BL Proceedings; and</li><li>(b) other Participating Group Members, excluding Participating Group Members who had executed a retainer agreement with MB on or before 3 September 2019 or Participating Group Members who opted out of the BL Proceedings but did not opt out of the MB Proceedings</li></ul> <p>being equalised and redistributed amongst themselves.</p>
<b>Affected Vehicle Database</b>	has the meaning given in clause 3.2
<b>Aggregate Settlement Sum</b>	means the amount payable by the Respondents determined in accordance with Annexure 2 of the Deed and clause 6 of the Settlement Scheme
<b>Approval Order</b>	means orders made by the Court approving the Settlement pursuant to section 33V of the <i>Federal Court of Australia Act 1976</i> (Cth) and in relation to other ancillary matters, such orders to be sought in accordance with clause 8 of the Deed

<b>ASIC</b>	means the Australian Securities and Investments Commission
<b>Audi Data</b>	means any mailing list data relating to the EA189 recall produced or prepared by Audi Australia Pty Ltd in October 2015 and described in the letter from Clayton Utz to Maurice Blackburn dated 27 November 2019
<b>Authorised Dealer</b>	means any dealer of vehicles who was authorised or appointed by any of the Respondents pursuant to a dealer agreement (however described) to promote or sell vehicles manufactured by the Respondents and undertake related activities
<b>Claim Correction</b>	has the meaning given in clause 6.1A
<b>Claim Materials</b>	has the meaning given in clause 5.6
<b>Class Action Proceedings</b>	collectively means Federal Court of Australia proceedings with the file numbers NSD1459/2015, NSD1472/2015, NSD1473/2015, NSD1307/2015 and NSD1308/2015
<b>Court</b>	means the Federal Court of Australia
<b>Deed</b>	means the Deed of release and settlement deed agreed between the parties, Maurice Blackburn, Bannister Law and the Funder for the purpose of the settlement of the Class Action Proceedings
<b>Deregistered Body</b>	has the meaning given in clause 13.5A
<b>Deregistered Body's Representative</b>	has the meaning given in clause 13.5B
<b>EA189 Vehicle</b>	means the VW, Audi and Skoda branded vehicles with the "EA189" diesel engine that are the subject of the Class Action Proceedings
<b>Eligibility Criteria</b>	has the meaning given in clause 4.1
<b>Eligibility Determination</b>	has the meaning given in clause 6.1
<b>Excluded Interest</b>	has the meaning given in clause 4.3
<b>Excluded Vehicle</b>	has the meaning given in clause 3.4
<b>Funded Group Members</b>	has the meaning given in clause 10.3
<b>Funder</b>	means Grosvenor Litigation Services Pty Ltd (ACN 609 112 996) of Suite 10.02, Level 10, 66 Hunter Street, Sydney NSW 2000 in its own capacity and in its capacity as trustee for the Grosvenor Litigation Services Unit Trust (ABN 40 616 418 169)

**Funding Application**

means any application made by the BL Applicants and/or the Funder seeking an order that the Funder be paid up to 10% of the settlement payments for Affected Vehicles to Participating Group Members other than:

- (a) Participating Group Members in the MB Proceedings who had executed a retainer agreement with MB on or before 3 September 2019; or
- (b) Participating Group Members who opted out of the BL Proceedings but did not opt out of the MB Proceedings.

**Funding Equalisation Application**

means any application made by the BL Applicants seeking a funding equalisation order, being an order which will result in the difference in final payments, by reason of any Funding Order, to:

- (a) Participating Group Members who had executed a retainer agreement with MB on or before 3 September 2019 or who opted out of the BL Proceedings but did not opt out of the MB Proceedings; and
- (b) other Participating Group Members,

being equalised and redistributed among Participating Group Members only.

**Funding Equalisation Order**

means an order made pursuant to the Funding Equalisation Application or the Alternative Funding Equalisation Application

**Funding Order**

means any order for payment to the Funder in the nature of the order made pursuant to a Funding Application

**Funding Payment**

has the meaning given in clause 10.3

**Group Member**

means persons who fall within the group definitions in the Class Action Proceedings and, for the avoidance of any doubt:

- (a) does not include any persons who have opted out of both the MB Proceedings and BL Proceedings as set out in the orders made by Foster J on 6 May 2019 or who are granted leave to opt out at any subsequent time; and
- (b) does include any persons who have opted out of one of the MB Proceedings or the BL Proceedings but not the other proceedings

<b>Interest</b>	has the meaning given in clause 4.2
<b>Lease Claim Materials</b>	has the meaning given in clause 5.7
<b>Lease Interest</b>	means any of the following: <ul style="list-style-type: none"> <li>(a) Lessee Interest (Finance Lease)</li> <li>(b) Lessee Interest (Operating Lease)</li> <li>(c) Lessor Interest (Operating Lease)</li> </ul>
<b>Lessee Interest (Finance Lease)</b>	has the meaning given in clause 4.2
<b>Lessee Interest (Operating Lease)</b>	has the meaning given in clause 4.2
<b>Lessor Interest (Operating Lease)</b>	has the meaning given in clause 4.2
<b>NEVDIS Data</b>	means any vehicle registration data and associated data relating to the EA189 Vehicles produced or prepared by Austroads Limited (ACN 136 812 390), to the extent that the parties are legally entitled or authorised to use such data for the purpose of the Deed and/or this Settlement Scheme
<b>Notice of Assessment</b>	has the meaning given in clause 0
<b>Notice of Funding Arrangements</b>	has the meaning given in clause 10.3
<b>Notice of Settlement Payment</b>	has the meaning given in clause 10.5
<b>Ownership Interest</b>	has the meaning given in clause 4.2
<b>Participating Group Member</b>	has the meaning given in clause 6.1(f)
<b>Provisional Vehicle Amount</b>	has the meaning given in clause 3.3
<b>Registered Affected Vehicle</b>	has the meaning given in clause 6.1(f)
<b>Registrant</b>	Means a person who registers for the Settlement pursuant to clause 5.
<b>Registration Information</b>	means the information supplied by a Group Member at the time of registering their claim in accordance with clause 5.1 including the Group Member's name and contact details, VIN of any Affected Vehicle/s being registered, and whether the claim is being registered on behalf of a Group Member

<b>Registration Portal</b>	means the online portal available to be used by Group Members for the purpose of registering a claim in accordance with clause 5.1, providing Claim Materials in accordance with clause 5.6, confirming the agreement required by clause 11.2 and other communications between the Administrator and Group Members for the purpose of this Settlement Scheme
<b>Related Body Corporate</b>	has the meaning given in section 50 of the <i>Corporations Act 2001</i> (Cth)
<b>Respondents</b>	means Volkswagen AG, Audi AG, Skoda Auto a.s., Volkswagen Group Australia Pty Ltd and Audi Australia Pty Ltd together and severally as the context permits
<b>Review Assessor</b>	means a member of the NSW Bar with more than five years' experience who is not a senior counsel and who is appointed by the Administrator pursuant to clause 8.6(b)
<b>Settlement</b>	means the settlement of the Class Action Proceedings in accordance with the terms of the Deed and this Settlement Scheme and subject to any order of the Court
<b>Settlement Account</b>	means the interest bearing bank account established by the Administrator for the purpose of holding the Aggregate Settlement Sum (or part of it) pending or during the implementation of this Settlement Scheme and the Approval Order
<b>Settlement Scheme</b>	means this settlement scheme, including the rights and obligations created by this scheme
<b>Settlement Sum Interest</b>	means any interest earned on any monies held in the Settlement Account
<b>Settlement Payment</b>	means the amount payable to a Participating Group Member, such amount calculated and determined in accordance with clause 10
<b>Solicitors for the Applicants</b>	means the solicitors for the applicants in the Class Action Proceedings
<b>Unadjusted Settlement Payment</b>	has the meaning given in clause 10.1
<b>Vehicle Match</b>	has the meaning given in clause 5.6
<b>VIN</b>	means Vehicle Identification Number

## ANNEXURE A

### Summary

As stated in your Notice of Settlement Payment, you must agree to two conditions before you are able to receive your Settlement Payment. These conditions are that you agree to:

1. release the VW Group from any past or future claims relating to the issues in the class actions; and
2. keep your Settlement Payment confidential except in specified circumstances.

### **Release and Undertaking**

This is a binding document that I agree to, for the benefit of the Volkswagen Group companies, in exchange for me receiving a Settlement Payment in the Australian diesel emissions class actions.

1. In consideration for the Volkswagen Group Parties authorising the Settlement Administrator to pay me my Settlement Payment, I:
  - a. **(Release)**: release the Volkswagen Group from any and all claims of any kind whatsoever (present or future) that I had, have or may have in any way related to or arising out of the Class Action Proceedings or in any way connected or related to the Class Action Proceedings. This includes for the avoidance of doubt any claims in relation to matters referred to in or arising from the evidence served in one or more of the Class Action Proceedings in relation to the alleged effect of the technical measures.
  - b. **(Confidentiality)**: Agree to keep all documents received from the Settlement Administrator and my Settlement Payment confidential. However, if necessary, I may disclose it:
    - i. to a professional adviser, financial adviser, banker, financier or auditor if that other person is obliged to keep the information confidential;
    - ii. to comply with any applicable law, or requirement of any regulatory body; and
    - iii. to any of my employees to whom it is necessary to disclose the information if that other person agrees in writing to keep the information confidential.
  - c. **(Tax)**: Acknowledge that I am responsible for obtaining any necessary tax advice about the Settlement Payment and this Release and that I am responsible for any tax consequences arising from them.

I acknowledge that:

2. A Volkswagen Group company may plead this Release as a bar to any Claim commenced or continued by me or on my behalf.
3. This Release is binding on my successors.
4. This Release is governed by the laws of New South Wales.
5. If any part of this Release is for any reason unenforceable, that part must be read down to the extent necessary to preserve its operation. If it cannot be read down, it must be severed.

In this Release:

**Volkswagen Group** means the Volkswagen Group Parties, their subsidiaries and related bodies corporate, including Volkswagen Financial Services Australia Pty Ltd (ABN 20 097 071 460) and their suppliers. It includes present and former directors, officers, board members, servants, contractors and agents.

**Volkswagen Group Parties** means Volkswagen AG (Germany), Audi AG (Germany), Skoda Auto a.s. (Czech Republic), Volkswagen Group Australia Pty Ltd and Audi Australia.