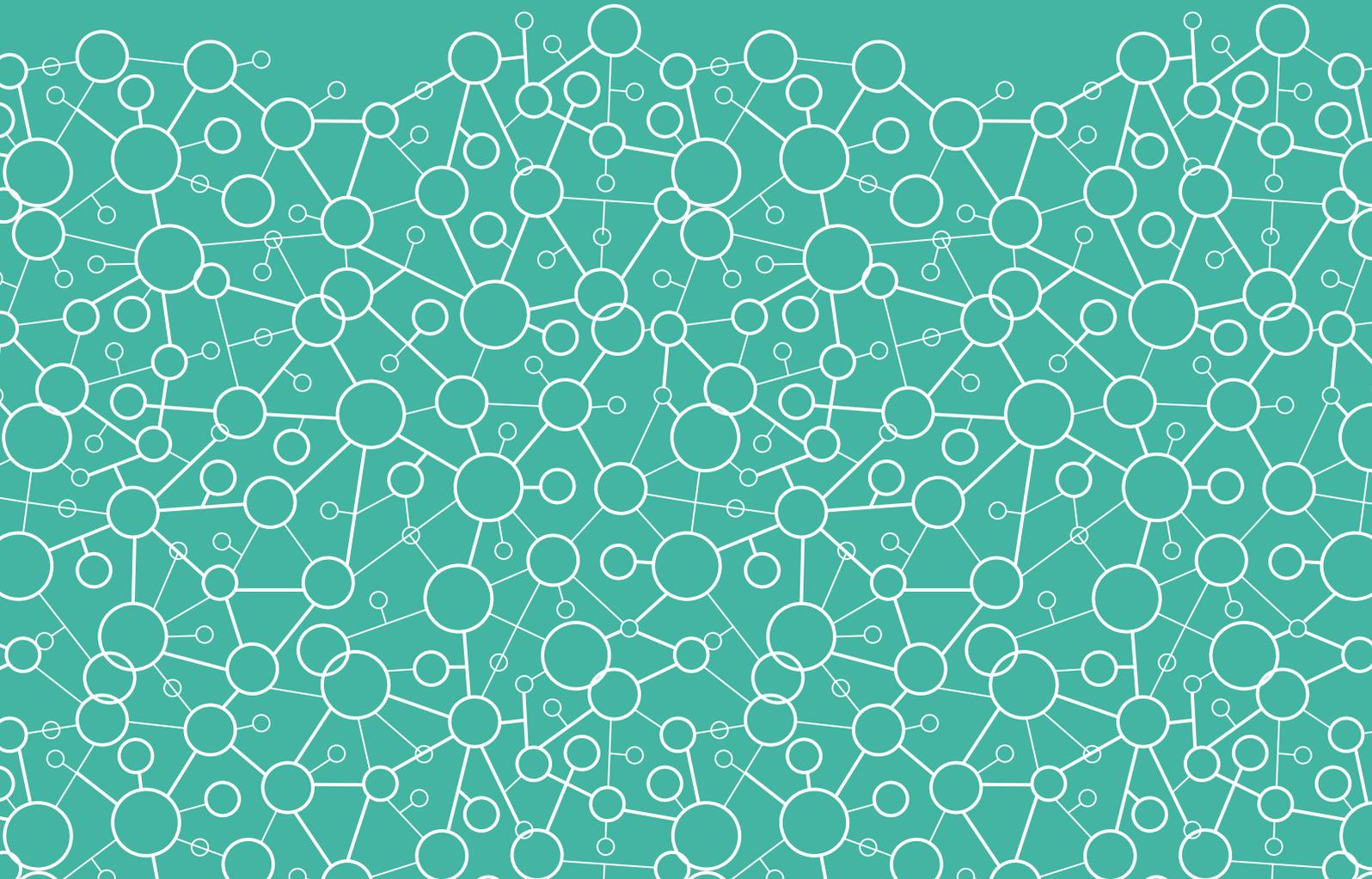




Deputy Hip Implants Class Action

Individual Assessment



Purpose of this brochure

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

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

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

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

Contact details

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General information

Maurice Blackburn and Shine as joint Administrators

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

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

Who is in the team of Administrators?

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

Independent legal advice

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

How long will the Individual Assessment of claims take?

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

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

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

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

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

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

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

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

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

Individual assessment process

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

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

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

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

When will your Individual Claim be assessed?

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

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

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

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

- (iii) employment records;
 - (iv) invoices regarding any treatment or other expenses; and
 - (v) any records about payments you received under Crawford's Reimbursement Programme.
- (d) The Administrators may obtain a report from either a treating doctor, Independent Expert and/or a forensic accounting expert. If such a report is required, you will need to attend an appointment with the relevant doctor or expert so they can prepare the report.

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

Compensation

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

What type of compensation can be recovered?

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

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

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

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

What is the effect of Crawford’s Reimbursement Programme?

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

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

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

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

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

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

Liens

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

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

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

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

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

What do you need to do?

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

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

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

Payment

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

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

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

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

Obligations under the scheme

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

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

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

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

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

The consequences of not complying with your obligations

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

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

Overview of compensation payable under the settlement scheme

Annexure A

Assessing damages for personal injury

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

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

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

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

Recoverable loss and connection with the ASR Implant

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

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

Pain and suffering

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

How does the sliding scale work?

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

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

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

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

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

Column A	Column B	Column C
% of a most extreme case	% of the maximum amount	Calculated damages (\$)
Less than 15%	0%	\$0
15%	1%	\$3,381
16%	1.5%	\$5,071
17%	2%	\$6,762
18%	2.5%	\$8,452
19%	3%	\$10,142
20%	3.5%	\$11,833
21%	4%	\$13,523
22%	4.5%	\$15,214
23%	5%	\$16,904
24%	5.5%	\$18,594
25%	6.5%	\$21,975
26%	8%	\$27,046
27%	10%	\$33,808
27.5%	12%	\$40,000
28%	14%	\$47,331
29%	18%	\$60,854
30%	23%	\$77,758
31%	26%	\$87,901
32%	30%	\$101,424
Greater or equal to 33%	Equals % of a most extreme case	Multiply % of a most extreme case by \$338,080

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

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

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

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

Loss of earnings or earning capacity

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

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

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

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

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

Medical and treatment expenses

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

Care and assistance**Gratuitous care**

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

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

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

Commercial care

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

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

Other expenses, including aids, equipment and travel

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

Future loss

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

Assessment value and ultimate damages

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

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

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