

# SETTLEMENT DISTRIBUTION SCHEME

Peter Anthony Basil v Bellamy's Australia Limited ACN 124 272 108

Federal Court of Australia proceeding VID 213/2017

(Basil Class Action)

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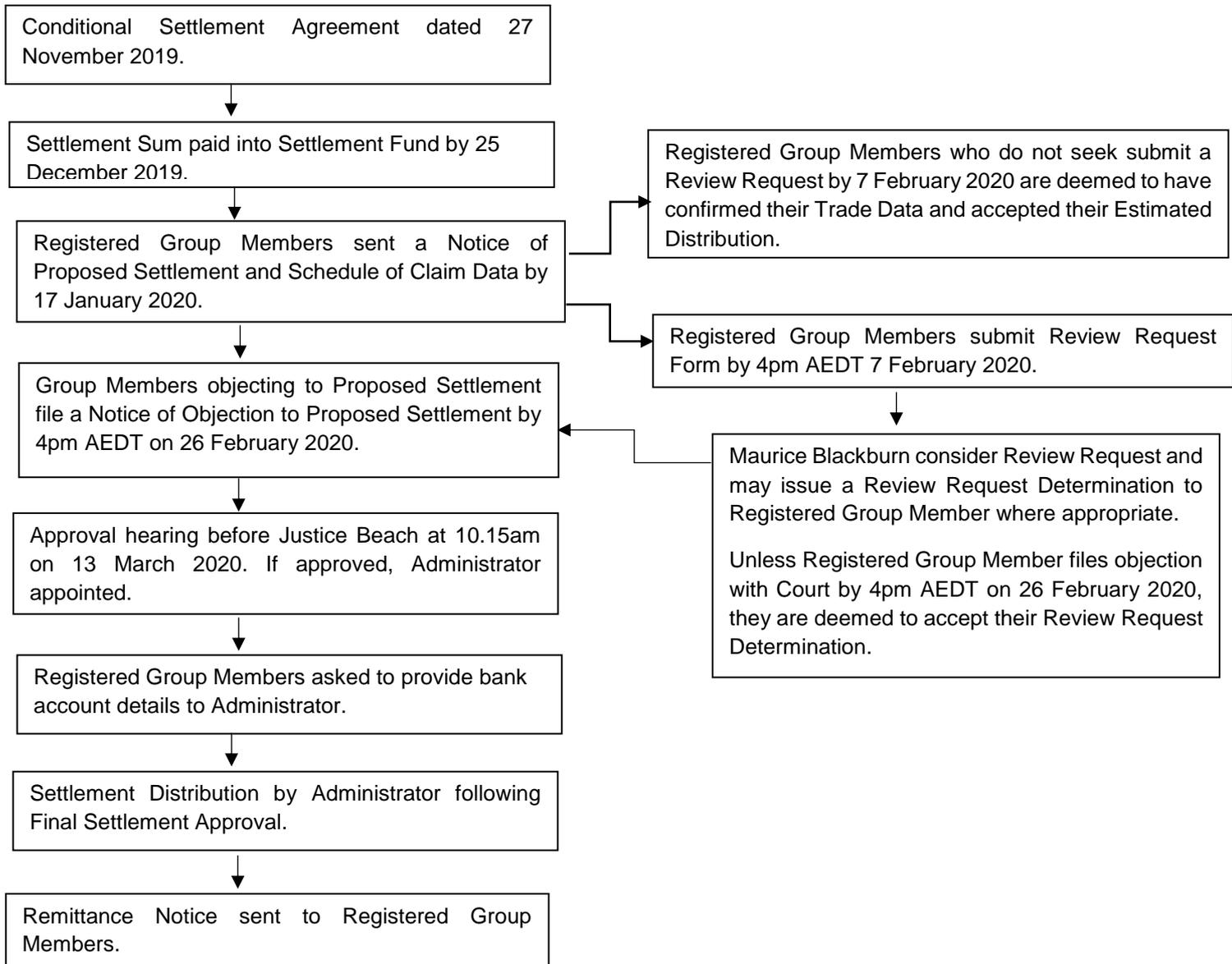
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## BACKGROUND

- A. On 27 November 2019, the Applicant in the Basil Class Action entered into an in-principle settlement (**Proposed Settlement**) to resolve the claims of the Applicants and Group Members against Bellamy's Australia Limited (**Bellamy's**). The Proposed Settlement provides for Bellamy's Australia Limited to pay the total settlement sum of AUD \$19.7 million, inclusive of costs and interest (**Settlement Sum**), and is subject to approval by the Court.
- B. The Settlement Distribution Scheme establishes a procedure for distributing the Settlement Sum to be paid or procured to be paid by Bellamy's Australia Limited, pursuant to the Proposed Settlement of the Basil Class Action as approved by the Federal Court of Australia (**Court**).
- C. The Settlement Distribution Scheme is operative from the date of the Final Settlement Approval.
- D. Only those persons who are Registered Group Members are eligible to participate in the Settlement Distribution Scheme.
- E. The following steps were undertaken by Maurice Blackburn and ICP to support the implementation of the Settlement Distribution Scheme:
  - (a) On 17 January 2020, ICP, on instruction from Maurice Blackburn, arranged for the Notice of Proposed Settlement to be sent to all Group Members. For Registered Group Members, the Notice of Proposed Settlement was accompanied by a Schedule of Claim Data. The Notice of Proposed Settlement and an example of a Schedule of Claim Data are contained in Schedules A to B to the Settlement Distribution Scheme.
  - (b) Between 17 January 2020 and 7 February 2020, Registered Group Members were afforded the opportunity to notify Maurice Blackburn or ICP of any error, slip or omission in, or correction to, the Schedule of Claim Data following which Maurice Blackburn could issue the Registered Group Members with a Review Request Determination.

## PROPOSED TIMELINE

- A. The aim of the Settlement Distribution Scheme is to efficiently and accurately administer the distribution of the Settlement Sum to Registered Group Members in accordance with the terms set out herein.
- B. The proposed timeline for the major events associated with the Proposed Settlement and Settlement Distribution Scheme are as follows.



## **1. SETTLEMENT ADMINISTRATOR**

- 1.1. The Settlement Distribution Scheme shall be administered and applied by the Administrator with the assistance of the Administrator Delegates. Prior to appointment of the Administrator, Maurice Blackburn will execute the functions of the Administrator under this Settlement Distribution Scheme in accordance with this Settlement Distribution Scheme and subject to Court approval.
- 1.2. The Administrator will, subject to and in accordance with the Settlement Distribution Scheme:
  - (a) hold the Settlement Fund on trust for Bellamy's until Final Settlement Approval;
  - (b) thereafter hold the Settlement Fund on trust for the Applicant, Group Members and the parties to whom distribution is to be made pursuant to clause 4 below until the Residual Settlement Sum is distributed; and
  - (c) distribute the Residual Settlement Sum as expeditiously as possible.
- 1.3. The Administrator or Administrator Delegates, in discharging any function or exercising any discretion conferred by the Settlement Distribution Scheme, shall administer the Settlement Distribution Scheme fairly according to its terms, as a duty owed to the Court in priority to any obligation owed to the Applicant or any individual Registered Group Member.
- 1.4. Notwithstanding anything elsewhere contained in this Settlement Distribution Scheme, the Administrator may at any time and in its sole discretion correct any error, slip or omission occurring during their administration of the Settlement Distribution Scheme.
- 1.5. Where a Registered Group Member is a Registered Group Member by virtue of a trustee, investment manager, custodian, responsible entity or agent acting on their behalf having:
  - (d) executed a funding agreement with ICP and a retainer with Maurice Blackburn; and/or
  - (e) registered to participate in any distribution of any amount agreed in a settlement before the deadline on 24 April 2018,the Administrator and Administrator Delegates may rely on any information, instruction or declaration provided by that trustee, investment manager, responsible entity or agent as if it had been provided by the Registered Group Member themselves.
- 1.6. Maurice Blackburn, the Administrator and the Administrator Delegates, in discharging any function or exercising any power or discretion conferred by the Settlement Distribution Scheme, shall 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 willful and individual fraud and wrongdoing on the part of the Administrator or the Administrator Delegates.

## **2. COMMUNICATIONS WITH GROUP MEMBERS**

2.1. To assist with the timely and efficient implementation of the Settlement Distribution Scheme, Maurice Blackburn and ICP caused the Notice of Proposed Settlement and the Schedule of Claim Data (as approved by the Court on 18 December 2019) to be sent to all Registered Group Members on 17 January 2020.

### *Notice of Proposed Settlement*

2.2. The Notice of Proposed Settlement provided Group Members with information about the Proposed Settlement, their right to object to the Proposed Settlement and the steps they would be required to take to raise an objection.

2.3. The Notice of Proposed Settlement is annexed at Schedule A to this Settlement Distribution Scheme.

### *Schedule of Claim Data*

2.4. The Notice of Proposed Settlement was accompanied by a Schedule of Claim Data which was unique to each Registered Group Member.

2.5. The Schedule of Claim Data contained:

- (a) a Schedule of the Trade Data. The Schedule of Trade Data provided Registered Group Members with a record of their Trade Data as instructed to Maurice Blackburn or ICP by the Registered Group Member and stored on the Claims Database;
- (b) a Schedule of Estimated Distribution. The Schedule of Estimated Distribution provided Registered Group Members with an individualised estimate of the amount of the Settlement Sum to be distributed to the Registered Group Member based on the Settlement Distribution scheme. The Estimated Distribution was calculated by applying the Loss Assessment Formula to the Registered Group Member's Trade Data in the manner described in Confidential Schedule C to this Settlement Distribution Scheme to a notional Residual Settlement Sum that was 5% lower than the expected Residual Settlement Sum at that date. This was done to include provision for adjustments that may be required as a result of successful formal reviews initiated by Registered Group Members; and
- (c) a Review Request Form. The Review Request Form was to be completed by a Registered Group Member and submitted to ICP by the Correction Deadline if the Schedule of Claim Data was considered to contain an error, slip or omission.

2.6. An example of the Schedule of Claim Data is annexed at Schedule B to the Settlement Distribution Scheme.

2.7. Unless a Registered Group Member notified Maurice Blackburn and/or ICP of any error, slip or omission in the Schedule of Claim Data by submitting a Review Request Form by the Correction Deadline, the Registered Group Member is deemed to have confirmed that the Trade Data in their Schedule of Claim Data was correct and to have accepted their Estimated Distribution.

- 2.8. In the event that a Registered Group Member submitted a Review Request by the Correction Deadline, Maurice Blackburn, together with ICP, considered whether any error, slip or omission had occurred or whether amendment to the Trade Data contained within the Claims Database was required and, where appropriate, issued the Registered Group Member with a Review Determination.
- 2.9. Unless the Registered Group Member filed a notice of objection with the Court by the Objection Deadline, the Registered Group Member is deemed to have accepted their Review Determination.

*Reliance by the Administrator*

- 2.10. Where a Registered Group Member is deemed to have confirmed their Trade Data as correct under clause 2.7 or deemed to have accepted their Review Request Determination under clause 2.8, the Administrator may rely on that information as true and correct for the purposes of the Settlement Distribution Scheme.
- 2.11. Notwithstanding any other clause in the Settlement Distribution Scheme, if, in the opinion of the Administrator, at any stage a Registered Group Member's Trade Data cannot be verified, contains insufficient information or does not otherwise substantiate a Registered Group Member's claim, the Administrator may, by written notice, require the Registered Group Member to provide and verify by a statutory declaration or other means that the Administrator determines appropriate and within a time determined by the Administrator, such further information as the Administrator may require.
- 2.12. Where a Registered Group Member is required by the Administrator to verify their claim under clause 2.11 and the Registered Group Member fails to do so within the time determined by the Administrator, the Administrator may determine that the Registered Group Member's assessed entitlement to receive a Distribution under this Settlement Distribution Scheme be reduced in whole or in part, as is appropriate taking into account the part of the claim that remains to be verified.
- 2.13. After the Correction Deadline, no amendments to a Registered Group Member's Trade Data may be made unless necessary as a result of.
- (a) an error, slip or omission on the part of the Administrator or ICP; or
  - (b) a Review Determination; or
  - (c) the Approval Orders.
- 2.14. The Administrator and Administrator Delegates shall, at all times, use reasonable endeavours to ensure the accuracy of the Claims Database, including, to the extent necessary, requesting further information or documents from the Registered Group Member or third parties.

### **3. DISPUTE RESOLUTION**

- 3.1. In the event of a dispute between the Administrator and a Registered Group Member relating to a matter under this Settlement Distribution Scheme, the Registered Group Member may, subject to clause 3.2, request in writing, a Counsel Determination by the Independent Counsel prior to the Distribution.
- 3.2. For the avoidance of doubt and consistent with the procedure described in clause 2.7 to 2.8, a Registered Group Member is unable to request a Counsel Determination in relation to any error, slip or omission contained within their Schedule of Claim Data or the outcome of any Review Determination.
- 3.3. Upon receipt of a request for Counsel Determination from a Registered Group Member, the Administrator shall refer the request to the Independent Counsel.
- 3.4. If a request for Counsel Determination is referred to Independent Counsel, the Independent Counsel may by written notice direct the Registered Group Member to submit such further documentation in support of the Counsel Determination as the Independent Counsel may consider appropriate. Such documentation must be submitted with 14 days of the date of any such written notice, failing which the request for Counsel Determination shall be deemed never to have been made.
- 3.5. The Independent Counsel shall, within 14 days after the:
  - (a) receipt of the request for the Counsel Determination; or
  - (b) receipt by the Independent Counsel of documentation provided in response to a request under clause 3.4,whichever is the later:
  - (c) make a Counsel Determination of the issue in dispute; and
  - (d) give a Notice of Counsel Determination to the Registered Group Member and the Administrator.
- 3.6. A Counsel Determination is final and binding, save that, prior to the expiry of 7 days after the Notice of Counsel Determination is given in accordance with clause 3.5, the Registered Group Member has liberty to apply to the Court only on a question of law arising from the Counsel Determination.
- 3.7. A Registered Group Member requesting a Counsel Determination shall pay the costs of the Determination calculated at \$800 exclusive of GST for the first two hours' attendance by the Independent Counsel (or any part thereof) and \$450 per hour exclusive of GST for each subsequent hour (or any part thereof).
- 3.8. The Independent Counsel may, by written notice, require a Registered Group Member to pay to the Administrator an amount the Independent Counsel reasonably estimates will represent the cost of the Counsel Determination, which amount will be held by the Administration on trust for

the purposes of paying the costs of the Counsel Determination upon presentation by the Independent Counsel of a tax invoice. If this amount is not provided as required within 10 days of the date that the written notice was sent to the Registered Group Member, the Independent Counsel shall give written notice of the Counsel Determination in favour of the Administrator, noting that no payment has been into trust as required.

- 3.9. If no further documentation is requested by the Independent Counsel under clause 3.4 in respect of a Registered Group Member's request for Counsel Determination, and that Registered Group Member's request results in a Successful Counsel Determination, the Registered Group Member will be reimbursed from the Settlement Fund for any costs of the Successful Counsel Determination paid by the Registered Group Member in accordance with clause 3.7. The reimbursed costs of the Successful Counsel Determination will be deemed to be Administration Costs.
- 3.10. If any costs of a Counsel Determination (other than a Successful Counsel Determination for which the Registered Group Member is entitled to reimbursement under clause 3.6) have not been paid by a Registered Group Member before any distribution to that Registered Group Member, the Administrator shall deduct those costs from any sum which otherwise would be distributed to the Registered Group Member who sought the Counsel Determination in priority to all other entitlements. That Registered Group Member shall remain liable for any costs not recovered by a deduction pursuant to this clause and the Administrator, in administering the Settlement Distribution Scheme, may apply to the Court for an order requiring the Registered Group Member to pay those costs.
- 3.11. Independent Counsel in discharging any function under the Settlement Distribution Scheme shall enjoy the same privileges and immunities, in respect of claims made by Registered Group Members, as the Administrator.
- 3.12. In the event of any disagreement between ICP and the Administrator regarding any matters relating to the Settlement Distribution Scheme, the decision of the Administrator will prevail.

#### **4. DISTRIBUTION**

- 4.1. Prior to Distribution from the Settlement Fund, the following payments shall be made from the Settlement Fund in the strict order of priority set out below:
  - (a) an amount to the Funder, ICP, for the Funding Costs;
  - (b) an amount to Maurice Blackburn for the Applicant's Remaining Costs;
  - (c) an amount to the Applicant for the Applicant's Reimbursement Payment; and
  - (d) an amount to the Administrator for Administration Costs incurred by the Administrator.
- 4.2. Once the payments referred to in clause 4.1 are made, and once the Funder, Maurice Blackburn, and the Applicant have each confirmed receipt of payment to the Administrator, or once the Administrator has received confirmation from the bank with which the Settlement Fund is

deposited that the payments have each been deposited into each recipient's nominated bank account (whichever is the earlier), the balance of the amount in the Settlement Fund, referred to as the Residual Settlement Sum, shall be distributed in accordance with this Settlement Distribution Scheme.

- 4.3. The Residual Settlement Sum shall be distributed to individual Registered Group Members in the proportion which the final Notional Loss Amount bears to the aggregate Notional Loss Amount of all Registered Group Members (being a pro rata distribution). Each individual Registered Group Member's distribution calculated in accordance with this clause constitutes the Registered Group Member's Final Distribution Amount.
- 4.4. As soon as practicable after Final Settlement Approval, the Administrator shall write to each Registered Group Member requesting them to provide banking details to allow the Administrator to distribute Final Distribution Amounts via electronic funds transfer in accordance with clause 4.5.
- 4.5. The Distribution of Final Distribution Amounts to Registered Group Members will be attempted by electronic funds transfer, except where:
  - (a) a Registered Group Member demonstrates that distribution by electronic funds transfer is impracticable for that Registered Group Member; or
  - (b) the Administrator, in its absolute discretion, considers that another method would be more conducive to effecting a timely distribution to any Registered Group Member or group of Registered Group Members.
- 4.6. Following the first attempted distribution of Final Distribution Amounts by electronic funds transfer, any further distributions may, at the discretion of the Administrator, be made by issuing cheques.
- 4.7. As soon as practicable after Distribution to Registered Group Members, the Administrator shall send to each Registered Group Member who has received a Distribution, a Remittance Notice.
- 4.8. For the avoidance of doubt, the Administrator is not obliged to (but may, in its absolute discretion) make further inquiries, after payment of the Final Distribution Amount to each Registered Group Member, of:
  - (a) those Registered Group Members whose electronic funds transfer payment under clause 4.5 above was unable to be processed due to incorrect account information provided by the Registered Group Member; and/or
  - (b) those Registered Group Members who were sent a cheque for their Distribution Amount but have not presented that cheque for payment.
- 4.9. If, after distribution of the Final Distribution Amounts referred to in clauses 4.4 to 4.6, there remain any payments or cheques that have been rejected or remain un-presented for a period of 60 days, then:
  - (a) the distribution shall be deemed to have been made, such that Registered Group Members shall have no claim against the Administrator or the Settlement Fund; and

- (b) the Administrator shall cancel the payment or the cheque and distribute any Remaining Balance in the Settlement Fund as follows:
- i) by paying an amount to the Administrator for any additional Administration Costs incurred by the Administrator since the payment made in clause 4.1(d); and
  - ii) if the Remaining Balance results in an individual pro rata distribution payment to all eligible Registered Group Members of less than or equal to \$50.00 – by paying the residual funds to the Public Interest Advocacy Centre); or
  - iii) if the Remaining Balance results in an individual pro rata distribution payment to all eligible Registered Group Members exceeding \$50.00 – by distributing the residual pro rata amount to Registered Group Members whose Final Distribution Amounts were successfully paid or processed, provided however that any further individual distributions that would be less than \$50.00 shall instead be aggregated and paid to the Public Interest Advocacy Centre);
  - iv) any payments or cheques issued to eligible Registered Group Members under this clause that are then rejected or remain unrepresented for a further 60 days shall be cancelled and paid to to the Public Interest Advocacy Centre.

## **5. INTEREST**

- 5.1. Interest on the Settlement Fund may be applied, in the first instance, to payment of Administration Costs.
- 5.2. Any interest which is not required for payment of the Administration Costs, will form part of the Settlement Fund and be available for distribution to Registered Group Members or otherwise be treated in accordance with clause 4.9 above.
- 5.3. The Administrator may at any time convert the Settlement Fund to a non-interest earning account if it determines that the cost of administering the taxation implications of further interest being earned on the Settlement Fund will be disproportionate to the further interest expected to be earned.

## **6. TAXATION**

- 6.1. The Administrator is required to comply with the taxation obligations of any trust created for the benefit of Registered Group Members in the course of the administration of the Settlement Scheme and may seek expert advice to enable this. Any tax that the Administrator may be required to pay in respect of an individual Registered Group Member may be deducted from that Registered Group Member's entitlement to the Settlement Fund. Any taxation obligations payable by any trust(s) created by the establishment of the Settlement Distribution Scheme will be deducted from the Settlement Distribution Fund.

## **7. IMMUNITY FROM CLAIMS**

- 7.1. The completion of distributions made pursuant to clause 4 shall satisfy any and all rights, claims or entitlements of all Group Members in or arising out of the Basil Class Action.
- 7.2. The Administrator and Administrator Delegates will have no liability to any Registered Group Member who does not receive a Distribution or receives a Distribution in an incorrect amount arising from:
- (a) the provision of incorrect or otherwise insufficient Trade Data by the Registered Group Member or persons acting on their behalf prior to the Correction Deadline;
  - (b) a failure of the Registered Group Member, or persons acting on their behalf, to correct their Trade Data recorded on the Claims Database prior to the Correction Deadline;
  - (c) incorrect or otherwise insufficient bank account information being provided by a Registered Group Member or persons acting on their behalf;
  - (d) fraudulent conduct of a party other than the Administrator or Administrator Delegates;
  - (e) an electronic funds transfer using the bank account information provided by the Registered Group Member or persons acting on their behalf;
  - (f) a Registered Group Member's failure to receive communications described in this Settlement Distribution Scheme or who, for any other reason, fails to submit documentation to the Administrator, the Administrator Delegates or the Court within a time limit set under this Scheme.

## **8. SUPERVISION BY COURT**

- 8.1. The Administrator may refer any issues relating to this Settlement Distribution Scheme to the Court for direction or determination.
- 8.2. On the application of the Administrator, or of its own motion, the Court may vary or amend the terms of the Settlement Distribution Scheme.
- 8.3. Any costs reasonably incurred by the Administrator in relation to any application to the Court in connection with the Settlement Distribution Scheme shall be deemed to be Administration Costs unless the Court otherwise orders.
- 8.4. At the hearing of the application for Approval Orders, the Applicant will request for the Court to make final orders:
- (a) dismissing the Basil Class Action with no order as to costs as between the parties; and
  - (b) vacating all orders as to costs previously made in the Basil Class Action,
- with such orders to take effect on the date on which the final Distribution from the Settlement Fund is confirmed by the Administrator to the Court.

8.5. Within 30 days after the completion of any further distribution referred to in 4.9, the Administrator will request the Court make the orders referred to in clause 8.4 by emailing the Court. Subject to the convenience to the Court, the orders shall be made in chambers.

## 9. NOTICES

9.1. Any notice or communication to be given pursuant to the Settlement Distribution Scheme, whether sent by the Administrator or Administrator Delegates, shall be deemed given and received for all purposes associated with this Settlement Distribution Scheme if it is:

- (a) addressed to the person to whom it is given; and
- (b) either:
  - i. sent by email to that person's email address as nominated by or on behalf of the Registered Group Member and recorded on the Claims Database and no email "undelivered" reply is received by the sender; or
  - ii. sent by pre-paid mail, to that person's postal address as nominated by or on behalf of the Registered Group Member and recorded on the Claims Database and the notice is not returned to sender.

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

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

9.3. Where a Group Member is not a natural person and one person has been nominated as the designated contact in respect of multiple Group Members, it is sufficient for the purpose of giving notice or communications that any of the provisions of clause 9.1 are complied with in relation to that nominated person.

9.4. The Administrator and the Administrator Delegates are required to accept changes to address details provided and verified by Registered Group Members up until the point of Distribution.

9.5. The address and email address shall be as set out below unless and until the Administrator or ICP notifies the sender otherwise:

By mail:           Bellamy's Class Action  
                      ICP  
                      Level 13, 115 Pitt Street  
                      SYDNEY, NSW 2000

By email:         [BellamyClassAction@icp.net.au](mailto:BellamyClassAction@icp.net.au)

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

By mail:           Bellamy's Class Action  
                      Maurice Blackburn Pty Ltd  
                      Level 21, 380 LaTrobe Street  
                      MELBOURNE VIC 3000

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

## 10. TIME

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

## 11. DEFINITIONS

**Administrator** means Maurice Blackburn, or such other person as appointed by the Court, as the Court-appointed administrator responsible for implementing the Settlement Distribution Scheme. Prior to the appointment of the Administrator, Maurice Blackburn will execute the functions of the Administrator under this Settlement Distribution Scheme in accordance with this Settlement Distribution Scheme and subject to Court approval.

**Administrator Delegates** means the persons delegated by the Administrator to perform the functions necessary or convenient for the efficient and cost-effective implementation of the Settlement Distribution Scheme and includes Maurice Blackburn, the Funder and the Funder's personnel.

**Administration Costs** means the Court-approved actual or estimated legal costs and disbursements incurred by the Administrator and Administrator Delegates, calculated in accordance with the rates set out in Schedule F and approved by the Court in connection with the administration of the Settlement Distribution Scheme.

**Applicant** means Peter Anthony Basil.

**Applicant's Legal Costs** means the Applicant's reasonable legal costs and disbursements on a solicitor and own client basis (calculated in accordance with the legal costs agreement entered into by the Applicant and Maurice Blackburn dated 24 February 2017 and approved by the Court) incurred on his behalf and on behalf of all Group Members in the Basil Class Action, including the costs associated with seeking the Approval Order and administration of the Settlement Distribution Scheme up until and including Final Settlement Approval.

**Applicant's Reimbursement Payment** means an amount by way of compensation for time and expenditure reasonably incurred by the Applicant in the interests of prosecuting the Basil Class Action on its own behalf and on behalf of all Group Members in the Basil Class Action.

**Approval Order** means the Court orders made approving the Settlement Agreement and the Settlement Distribution Scheme in the Basil Class Action.

**Basil Class Action** means Federal Court of Australia proceeding VID 213 of 2017.

**Bellamy's** means Bellamy's Australia Limited ACN 124 272 108.

**Claim Period** means the period between 14 April 2016 and 12 December 2016 (inclusive but before the trading halt on 12 December 2016) being the claim period specified in the Second Further Amended Statement of Claim.

**Claim Data** means the following information for each Registered Group Member: name, address, email address, telephone number, HIN or SRN, and Trade Data.

**Claims Database** means a database constructed by or on behalf of ICP to contain the Claim Data for each Registered Group Member.

**Correction Deadline** means 4pm AEDT on 7 February 2020.

**Counsel Determination** means the procedure outlined in clause 3 to resolve a dispute between the Administrator and a Registered Group Member.

**Court** means the Federal Court of Australia.

**Distribution** means a payment made to a Registered Group Member in accordance with clause 4.

**Estimated Distribution** means a preliminary estimate of the Notional Loss Amount contained in the Schedule of Estimated Distribution within the Schedule of Claim Data.

**Final Distribution Amounts** means an amount calculated in accordance with clause 4.3 and 4.5.

**Final Settlement Approval** means the Approval Order after:

- (a) the Appeal Period has expired without appeal or application for leave to appeal being filed in the Court; or
- (b) all appeals in respect of the Approval Orders have been determined in such a manner that the Approval Order stands.

**Funder** means ICP.

**Funding Agreement** means the ICP Agreement in respect of the action against Bellamy's Securities Class Action between the Funder and each Group Member.

**Funding Costs** means the amount payable to the Funder in accordance with the Funding Agreement and the Approval Order.

**Group Member** means all persons who:

- (a) acquired an interest in shares in Bellamy's Australia Limited during the Claim Period;
- (b) are alleged to have suffered loss or damage by reason of the conduct alleged against Bellamy's in the Second Further Amended Statement of Claim;
- (c) as at 13 September 2017, have signed a funding agreement with ICP Capital Pty Ltd and Investor Claim Partner Pty Ltd; and
- (d) did not opt out of the proceeding either before 29 January 2018 or at other times pursuant to leave being granted by the Court; and
- (e) are not McKay Super Solutions Pty Limited (ACN 110 853 024) (as trustee for the McKay Super Solutions Fund) or any person who, as at 13 September 2017, has in respect of claims against Bellamy's:
  - (i) signed a funding agreement with IMF Bentham Limited (and with no other funder); or
  - (ii) signed a retainer with Slater & Gordon Limited (and with no other solicitor).

**ICP** means Investor Claim Partner Pty Ltd (ACN 611 462 027) and ICP Capital Pty Ltd (ACN 616 534 911)

**Independent Counsel** means a barrister of the Victorian Bar having at least 5 years' post admission experience nominated by the Administrator, who is empowered by the Settlement Distribution Scheme to make a Counsel Determination.

**Interest** means interest earned on the monies held in the Settlement Fund, including any interest which accrues on the Settlement Sum while held in the Settlement Fund prior to the Approval Orders being made.

**Maurice Blackburn** means Maurice Blackburn Pty Ltd (ACN 105 6507 949), the Applicant's solicitors in the Basil Class Action.

**Loss Assessment Formula** means the formula by which losses are calculated as contained in Confidential Schedule C to the Settlement Distribution Scheme.

**Notice of Counsel Determination** means a written determination of the Independent Counsel providing notice to the Registered Group Member and Administrator of the outcome of the Review.

**Notice of Proposed Settlement** means the notice outlined in clause 2.2, and contained in Schedule A.

**Notional Loss Amount** means the value of a Registered Group Member's claim calculated in accordance with the Loss Assessment Formula.

**Objection Deadline** means 4pm AEDT on 26 February 2020.

**Project Costs** has the same meaning as the defined term in the Funding Agreement.

**Registered Group Member** means a Group Member who registered before the deadline on 24 April 2018 or were otherwise deemed to have registered before that deadline by reason of:

- (a) having been a group member in the proceeding; and
- (b) having provided ICP with the information set out in order 5 of the orders dated 3 April 2018.

**Remaining Balance** means the amount remaining in the Settlement Fund, following the cancellation by the Administrator of part or all of the Final Distribution Amounts for those Registered Group Members whose payments have been rejected or cheques remain un-presented for a period of 60 days.

**Remaining Costs** means those costs incurred by Maurice Blackburn in accordance with the Maurice Blackburn Lawyers Retainer/Costs Agreement not forming part of the Project Costs.

**Remittance Notice** means, the notice, in a form to be determined by the Administrator, to be sent to each Registered Group Member who has received a Distribution, setting out the following information:

- (a) the component of a Registered Group Member's Distribution, which for Australian income taxation purposes, represents a Distribution from the Settlement Sum; and
- (b) the component of a Registered Group Member's Distribution, which for Australian income taxation purposes, represents a distribution from the interest earned on the Settlement Sum; and
- (c) for Registered Group Members who are located outside of Australia, or who have provided banking details for a bank account located outside of Australia, details of any amounts withheld from the interest component noted at (b) above.

**Residual Settlement Sum** means the amount of the Settlement Sum, together with interest, remaining after the deduction of the Applicant's Legal Costs, the Funding Costs, the Applicant's Reimbursement Payment and any Administration Costs.

**Review Request** means the procedure outlined in clause 2.5(c) and 2.9.

**Review Determination** means the procedure outlined in clause 2.8.

**Review Request Form** means the form outlined in clause 2.5(c), and contained in the Schedule of Claim Data at Schedule B.

**Schedule of Estimated Distribution** means the notice outlined in clause 2.5(b), an example of which is contained in the Schedule of Claim Data at Schedule B.

**Settlement Agreement** means the settlement agreement between the Applicant, Bellamy's Australia Limited, Maurice Blackburn and ICP dated 27 November 2019.

**Settlement Distribution Scheme** means the terms of this settlement distribution scheme as approved by the Court, including Schedules.

**Settlement Fund** means the amount of the Settlement Sum, together with any interest, held in an interest-bearing account opened by Maurice Blackburn with Macquarie Bank Limited and designated 'Maurice Blackburn Pty Ltd ITF Bellamy's Settlement Administration (Basil)'.

**Settlement Sum** means the sum of AUD\$19,700,000 (\$19.7 million).

**Successful Counsel Determination** means a Counsel Determination conducted in accordance with cl 3 that results in Counsel Determination in favour of the Registered Group Member's request.

**Trade Data** means:

- (a) the name of the Registered Group Member;
- (b) the number of Bellamy's securities held by each Group Member as at close of trade on 13 April 2016;
- (c) for each acquisition, the date of acquisition, quantity of securities acquired and price per security regarding Bellamy's securities acquired during the Claim Period; and
- (d) for each sale, the date of sale, quantity of securities sold and price per security during the Claim Period.

**Unregistered Group Member** means a Group Member who did not register their Trade Data before the deadline on 24 April 2018 or were not otherwise deemed to have registered to participate in any distribution of any amount agreed in a settlement before that deadline.

## SCHEDULE A – NOTICE OF PROPOSED SETTLEMENT

### BASIL CLASS ACTION

**Peter Anthony Basil v Bellamy's Australia Limited ACN 124 272 108**

**Proceeding No. VID 213/2017**

### NOTICE OF PROPOSED SETTLEMENT

This Notice has been sent in accordance with orders made by the Federal Court of Australia on 18 December 2019.

**This Notice is an important legal document and you should read it carefully as it concerns your legal rights.**

#### WHY YOU ARE RECEIVING THIS NOTICE

On 18 December 2019, the Federal Court of Australia (**Court**) ordered that this Notice be distributed to group members in the class action commenced by Peter Anthony Basil (**Applicant**) against Bellamy's Australia Limited (**Bellamy's**) in the Federal Court of Australia (the **Basil Class Action**). You have been identified as a potential group member in the Basil Class Action and should read this notice carefully.

The purpose of this Notice is to inform you that an in-principle settlement of the Basil Class Action has been reached, subject to Court approval, for the sum of \$19.7 million, inclusive of legal costs, interest and funding commission (the **Proposed Settlement**). The Proposed Settlement is without admission of liability by Bellamy's.

This Notice explains your rights in relation to the Proposed Settlement.

The Proposed Settlement requires Court approval. This must be granted before compensation can be distributed to eligible Group Members. The Court has been asked to approve the settlement at a hearing to be held at **9.30am on 13 March 2020**.

This Notice contains the following information:

**Section A:** Background to the Basil Class Action;

**Section B:** Definition of a Group Member;

**Section C:** Details of the Proposed Settlement;

**Section D:** Details of steps you are required to take;

**Section E:** Details of how you can obtain further information; and

For Registered Group Members, an accompanying Schedule of Claim Data.

Group Members should be aware of the following deadlines:

	<b>DEADLINE</b>	<b>MORE INFORMATION</b>
Correct the Schedule of Claim Data	7 February 2020	Section D of this Notice, paragraph 23 and 26
Oppose the settlement	26 February 2020	Section D of this Notice, paragraph 27 to 29

The Applicant (who brought the Basil Class Action on behalf of group members) is represented by solicitors Maurice Blackburn. The Basil Class Action has been funded by ICP Capital Pty Ltd and Investor Claim Partner Pty Ltd (collectively, **ICP**).

**Any questions you have concerning the matters contained in this Notice should not be directed to the Federal Court.** If there is any matter in this Notice that you do not understand you should contact ICP on 1800 26 26 00 or by email to [BellamyClassAction@icp.net.au](mailto:BellamyClassAction@icp.net.au)

## **A. BACKGROUND TO THE BASIL CLASS ACTION**

1. The Basil Class Action was commenced on 7 March 2017 in the Federal Court of Australia and alleges that:
  - (a) Bellamy's engaged in misleading and/or deceptive conduct, and breached its obligations of continuous disclosure, in contravention of sections 1041H(1) and 674(2) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and the ASX Listing Rules between 14 April 2016 to 12 December 2016 (inclusive but before the trading halt on 12 December 2016) (the **Claim Period**); and consequently
  - (b) persons who purchased Bellamy's shares within the Claim Period have suffered compensable loss.
2. The detailed allegations are set out in the Applicant's Second Further Amended Statement of Claim. A copy of the Second Further Amended Statement of Claim is available to download from Maurice Blackburn's website at: <https://www.mauriceblackburn.com.au/bellamys>
3. The trial of the proceeding had been scheduled to commence in August 2020.
4. Bellamy's defended the class action and the Proposed Settlement acknowledges that Bellamy's makes no admissions as to liability.

## **B. GROUP MEMBER DEFINITION**

5. You are a Group Member in the Basil Class Action if you:
  - (a) acquired shares in Bellamy's during the Claim Period;
  - (b) are alleged to have suffered loss and damage by reason of the conduct alleged against Bellamy's in the Second Further Amended Statement of Claim;
  - (c) signed a Funding Agreement with ICP on or before 13 September 2017;
  - (d) did not sign a Funding Agreement with IMF Bentham Limited or a retainer with Slater & Gordon Limited on or before 13 September 2017 in respect of another class action that has been filed against Bellamy's (the **McKay Class Action**); and
  - (e) did not opt-out of the proceeding before 29 January 2018.
6. However, you are only entitled to participate in the Proposed Settlement if you are a Group Member and you validly registered your share trade data in Bellamy's by 24 April 2018 (**Registered Group Member**). This share trade data is set out in the Schedule of Claim Data accompanying this Notice.

### *Rights of Unregistered Group Members*

7. If you did not register your claim on or before 24 April 2018, you may still be a Group Member but are not entitled to participate in the Proposed Settlement and you are not entitled to receive any compensation from it (**Unregistered Group Member**). Unregistered Group Members are also barred from making any claim against Bellamy's and its related entities in respect of the subject

matter of the Proceeding. If you are an Unregistered Group Member, you will not receive a Schedule of Claim Data with this Notice.

8. If you are unsure as to whether or not you are a Registered Group Member in the Basil Class Action, please contact ICP on 1800 26 26 00 or by email to [BellamyClassAction@icp.net.au](mailto:BellamyClassAction@icp.net.au).

### C. PROPOSED SETTLEMENT

#### *Application for settlement approval*

9. The Proposed Settlement must be approved by the Court under section 33V of the *Federal Court of Australia Act 1976* (Cth). Before approving the settlement, the Court must be satisfied that the Proposed Settlement is fair and reasonable and in the interests of all Group Members. The Court will also determine at this time whether the legal costs in the proceeding have been reasonably incurred.
10. The approval hearing will take place **at 9.30am on 13 March 2020** in the Victoria Registry of the Federal Court of Australia located at **Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne Victoria 3000**. You are entitled to attend the hearing if you wish to.
11. Under the Proposed Settlement:
  - (a) Bellamy's will pay \$19.7 million (**Settlement Sum**) to settle the Basil Class Action inclusive of legal costs, expenses, disbursements, interest and funding commission;
  - (b) the Applicant intends to ask the Court to make orders that:
    - i. approximately \$4 million of the Settlement Sum be used to pay the legal costs incurred in conducting the proceeding;
    - ii. approximately \$6 million be paid in funding fees to ICP in accordance with the funding agreements between Group Members and ICP; and
    - iii. the Applicant (Peter Basil) be paid an amount as reimbursement for the time and expense incurred in representing the class.
12. The costs of administering the settlement will be payable to the Settlement Administrator from the Settlement Sum. This amount is also subject to the approval of the Court.
13. The Proposed Settlement includes covenants and releases that are commonly agreed in class action settlements. If the Proposed Settlement is approved by the Court, all Group Members will be bound by the settlement and will not be permitted to make any further claims against Bellamy's or its related parties in relation to the circumstances or allegations advanced in the proceeding or any matters arising out of, relating to or in any way connected with or incidental to the subject of the proceeding, or any part of the proceeding.
14. If the Proposed Settlement is not approved by the Court, the Basil Class Action will continue and there will be no distribution of monies to Registered Group Members unless and until the Applicant is successful in the proceeding, or a further settlement is reached. The Proposed Settlement is without admission of liability by Bellamy's.
15. Bellamy's has also reached an in-principle agreement to settle the McKay Class Action which makes the same allegations as are made in the Basil Class Action, for the sum of \$30 million, inclusive of legal costs, expenses, disbursements, interest and funding commission. The difference in the settlement figures as between the two class actions is attributable to the McKay Class Action involving a higher number of registered group members than in the Basil Class Action. The approval hearing for the McKay Class Action proposed settlement will take place at the same time as the approval hearing for the Basil Class Action.

### *Settlement Distribution Scheme*

16. The process by which the Settlement Sum is proposed to be distributed will be outlined in a “Settlement Distribution Scheme”. The Settlement Distribution Scheme will include a confidential schedule containing a “Loss Assessment Formula” which details how each Registered Group Member’s entitlement to a share of the Settlement Sum will be calculated. The Settlement Distribution Scheme and the Loss Assessment Formula must also be approved by the Court.
17. Group Members can obtain access to the proposed Settlement Distribution Scheme from 17 January 2020, by:
  - (a) contacting ICP at [BellamyClassAction@icp.net.au](mailto:BellamyClassAction@icp.net.au) and requesting a copy; and
  - (b) signing and returning a confidentiality undertaking to obtain a copy of the confidential Loss Assessment Formula.
18. The amount of compensation to be paid to each Registered Group Member under the Proposed Settlement will depend on factors such as the number of shares purchased by that Registered Group Member, the date of purchase, whether any of those shares were sold, and the overall losses of all Registered Group Members who chose to participate in the Proposed Settlement.
19. If the Court approves the Proposed Settlement, a Settlement Administrator will be appointed in order to distribute the Settlement Sum to Registered Group Members and administer the settlement in accordance with the Settlement Distribution Scheme under the directions of the Court.
20. In applying for approval of the Proposed Settlement, the Applicant intends to ask the Court to make an order that Maurice Blackburn be appointed as Settlement Administrator. The decision as to who is appointed to administer the settlement is a decision for the Court.

### *ICP’s Funding Fees*

21. Throughout the course of the proceeding ICP provided litigation funding to the Applicant and Group Members on the terms set out in the funding agreement. Under this arrangement ICP:
  - (a) indemnified the Applicant against any adverse costs orders;
  - (b) obtained deeds of indemnity as security for such adverse costs orders; and
  - (c) paid legal costs incurred in prosecuting the proceeding, including the cost of solicitors, barristers and experts.
22. In accordance with the funding agreement that you entered into with ICP, and subject to Court approval, ICP are entitled to receive, out of the Settlement Sum, reimbursement of the costs they have paid or are liable to pay in respect of the Basil Class Action and a commission, as consideration for funding the Basil Class Action, being a percentage of the Settlement Sum.

## **D. NEXT STEPS**

### *Review the Schedule of Claim Data*

23. If you are a Registered Group Member you must review the Schedule of Claim Data that accompanies this Notice and:
  - (a) If the Schedule of Claim Data is accurate, there is nothing further you need to do at this stage. You will be deemed to have accepted the accuracy of the Schedule of Claim Data if you do not take any further steps by 4pm AEDT on 7 February 2020; or
  - (b) If the Schedule of Claim Data is not accurate, you must contact ICP no later than 4pm AEDT on 7 February 2020 and provide any relevant documentation. Further information about this process is set out in the Schedule of Claim Data.

24. The Schedule of Claim Data includes a preliminary estimate of the amount of the Settlement Sum to be distributed to you in accordance with the proposed Settlement Distribution Scheme. This preliminary estimate has been provided to assist you to understand how the proposed Settlement Distribution Scheme will affect you personally.
25. The preliminary estimate is not final, and may be subject to change, depending on a number of factors, including the amounts the Court may approve to be deducted from the Settlement Sum, and whether any Registered Group Members seek to amend their trade data contained in a Schedule of Claim Data.
26. If you are a Registered Group Member and the Proposed Settlement is approved by the Court, you will receive further correspondence about your entitlement to receive compensation from the Settlement Sum. At that stage, you will be asked to provide your banking details via a secure online payment portal to enable the Settlement Administrator to pay you any compensation that you may be entitled to. Payment details will **not** be accepted before this time.

*You May Oppose the Settlement*

27. You are entitled to ask the Court not to approve the settlement. If you wish to take that step, you must:
  - (a) By **4:00pm AEDT on 26 February 2020** send a written notice to Maurice Blackburn at PO Box A266 Sydney South NSW 1235 or [BellamyClassAction@mauriceblackburn.com.au](mailto:BellamyClassAction@mauriceblackburn.com.au) stating that you wish to oppose the settlement and providing reasons why; and
  - (b) By **4.00 pm AEDT on 26 February 2020** file with the Court written submissions stating that you wish to oppose the settlement and providing reasons why and any evidence upon which you may wish to rely in support of your objection; and
  - (c) Attend (or send a representative to) the hearing at **9:30am on 13 March 2020**, when the Federal Court will consider whether to approve the settlement and you or your representative may make oral submissions in support of your objection. The hearing will take place at:

Federal Court of Australia (Victoria Registry)  
Owen Dixon Commonwealth Law Courts Building  
305 William Street  
Melbourne VIC 3000

28. You or your representative will need to be in a position on 9:30am on 13 March 2020 to explain to the Court why you consider that the settlement should not be approved. You should also be in a position to inform the Court whether you are willing to become the 'representative applicant' and take over the conduct of the Basil Class Action.
29. If you think you might wish to oppose the Proposed Settlement of the class action, you should obtain independent legal advice immediately.

**E. RELEVANT FURTHER INFORMATION**

30. Copies of relevant Court documents, including the Amended Originating Application, Second Further Amended Statement of Claim and the Defence to the Second Further Amended Statement of Claim can be obtained by downloading them from Maurice Blackburn's website at <https://www.mauriceblackburn.com.au/bellamys>
31. If you have any questions about the matters contained in this Notice please contact ICP on 1800 26 26 00 or by email to [BellamyClassAction@icp.net.au](mailto:BellamyClassAction@icp.net.au).

## SCHEDULE B – SCHEDULE OF CLAIM DATA

### SCHEDULE OF CLAIM DATA

Peter Anthony Basil v Bellamy's Australia Limited ACN 124 272 108

Proceeding No. VID 213/2017

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This Schedule has been sent to you as a Registered Group Member, or as the authorised contact person for a Registered Group Member, in the Basil Class Action. You must read it carefully and take any necessary steps based on the individual circumstances of your claim.

This Schedule includes a:

- (a) **Schedule of Estimated Distribution** – This Schedule contains a preliminary estimate of the amount that may be distributed to you under the Proposed Settlement of the Basil Class Action. The estimated distribution is an indicative assessment only. If the Proposed Settlement is approved, it is likely the amount ultimately paid will differ.
- (b) **Schedule of Trade Data** – This Schedule details the holding/s that you have registered to participate in the Basil Class Action and trade data upon which your estimated distribution under the Proposed Settlement will be calculated.
- (c) **Review Request Procedure** – The Review Request Process outlines what steps you should take if you believe that the Schedule of Trade Data is not correct or you believe an error has been made in your Schedule of Estimate Distribution.

#### WHAT DO I DO NEXT?

You **must** consider the information contained in the Schedule of Estimated Distribution and Schedule of Trade Data. Once you have reviewed this information you have two options:

##### Option 1 – NO FURTHER STEPS REQUIRED

If the Schedule of Trade Data is a true and correct record of your claim there is **nothing further that you need to do at this stage**. In the event that the Proposed Settlement is approved by the Court, your compensation payment will be calculated using the data contained in the Schedule of Trade Data.

##### Option 2 – CORRECTION REQUIRED

If the Schedule of Trade Data is not a true and correct record or you believe that an error has been made in calculating the distribution amount contained in the Schedule of Estimated Distribution you must, by **4pm AEDT on 7 February 2020** take steps in accordance with the Review Request Procedure. Any requests for Review received after this deadline will be rejected.

## Schedule of Estimated Distribution

This Schedule contains a preliminary estimate of the amount that will be distributed to you under the Proposed Settlement, if the settlement and the proposed Settlement Distribution Scheme are approved by the Court.

The estimated distribution is an indicative assessment only. If the Proposed Settlement is approved, it is likely the amount ultimately paid will differ, depending on a number of factors, including the amounts the Court may approve to be deducted from the Settlement Sum, and whether any group members seek to amend their trade data contained in a Schedule of Claim Data.

The estimated distribution has been calculated in accordance with the terms of the proposed Settlement Distribution Scheme. If you need further information about the Proposed Settlement, or wish to obtain a copy of the proposed Settlement Distribution Scheme, you can contact ICP using the details set out in paragraph 31 of the Notice of Proposed Settlement.

### Summary of Holding(s) and Estimated Distribution

Holding ID	Registered Group Member	Holding Name	Estimated Distribution
<b>TOTAL</b>			



## Review Request Procedure

If the Schedule of Trade Data is not a true and correct record or you believe that an error has been made in calculating the distribution amount contained in the Schedule of Estimated Distribution you must take steps in accordance with this Review Request Procedure by **4pm AEDT on 7 February 2020**.

Complete the Review Request Form below and attach any relevant documentation upon which you will rely for the purposes of the Review and a statement of reasons for seeking the Review. You must submit the Review Request Form to ICP by 4pm AEDT on 7 February 2020.

Maurice Blackburn will consider the Review request and any documents provided and:

- (a) where Maurice Blackburn is satisfied that the Review Request Form discloses an error, slip or omission or any other administrative, mathematical or clerical error, you will be issued with an Amended Schedule of Claim Data.
- (b) where Maurice Blackburn is not satisfied that the Review Request Form discloses an error, slip or omission or any other administrative, mathematical or clerical error, you will be notified of the outcome of the Review.

Maurice Blackburn may direct you to submit further documentation in support of the Review. If you receive a request for further information or documentation, you must provide the information or documents within 3 days of the date of any such written notice. If you do not provide the information or documents within 3 days, the request for Review shall be deemed never to have been made, and the accuracy of the Schedule of Claim Data shall be deemed to be accepted by you.

**Basil Class Action  
Review Request Form**

Complete this form for each Registered Group Member for whom you intend to request a Review.

<b>Client ID</b>	
<b>Client Name</b>	
<b>Holding ID</b>	
<b>Holding Name</b>	

Reasons for seeking a Review: (tick all applicable boxes)

- Error or omission in the trade data  
(Mark all required changes on details of transactions in the Schedule of Trade Data and enclose it with this form)
- Other error, slip, or omission

Please describe your reasons for requesting a Review:

Supporting documentation enclosed: (tick all applicable boxes)

- Schedule of Trade Data
- Schedule of Estimated Distribution
- Statutory declaration
- Buy/Sell confirmations
- Contract notes
- Broker statements
- CHESSE statements
- Computershare print-outs
- Other (please specify)

This form must be completed by 4pm AEDT on 7 February 2020 and returned to ICP with supporting documentation:

**By email:** [BellamyClassAction@icp.net.au](mailto:BellamyClassAction@icp.net.au)

**CERTIFICATION**

I am the Registered Group Member or authorised representative of the Registered Group Member identified above and I declare the information provided in, attached to or otherwise provided in support of, this Review Request Form is true and correct.

SIGNED.....

NAME:.....

DATE.....

**CONFIDENTIAL SCHEDULE C – LOSS ASSESSMENT FORMULA**

**CONFIDENTIAL SCHEDULE D –IPS: Ordinary shares**

**CONFIDENTIAL SCHEDULE E – IPS: Short Sales**

**SCHEDULE F – RATES OF THE ADMINISTRATOR**

<b>POSITION</b>	<b>HOURLY RATE (ex GST)</b>
Principal / SC (>15 yrs)	\$ 790
Special Counsel	\$ 720
Senior Associate	\$ 610
Associate	\$ 540
Lawyer	\$ 440
Trainee Lawyer / Law Graduate	\$ 350
Paralegal / Law Clerk	\$ 250
Customer Service Officer	\$ 180
LTS Consultant/Data Administrator	\$ 240