



Federal Court of Australia  
District Registry: Western Australia Registry  
Division: General

No: WAD237/2020

**MERVYN STREET**  
Applicant

**STATE OF WESTERN AUSTRALIA**  
Respondent

## **ORDER**

**JUDGE:** Justice Murphy  
**DATE OF ORDER:** 12 December 2024  
**WHERE MADE:** Melbourne

### **THE COURT ORDERS THAT:**

#### **Approval of the Proposed Settlement of the Proceeding**

1. Pursuant to s 33V of the *Federal Court of Australia Act 1976* (Cth) (**Act**), the settlement of this proceeding be approved on the terms set out in:
  - (a) the Deed of Settlement (**Deed**) dated 17 October 2023 executed by the Applicant and the Respondent, as annexed at “SJT-01” to the affidavit of Sarah Jayne Thomson affirmed on 30 October 2023 (**First Thomson Affidavit**); and
  - (b) the Settlement Distribution Scheme (**Scheme**) appearing as **Annexure A** to these orders,  
  
(together, **Settlement Documents**).
2. Pursuant to s 33ZF of the Act, the Applicant be authorised *nunc pro tunc* to execute the Deed on behalf of the Group Members.
3. Pursuant to s 33ZB of the Act, the persons to be affected and bound by the settlement approval orders are the:
  - (a) Applicant;
  - (b) Respondent;



- (c) Group Members (which, for the avoidance of doubt, does not include persons who were previously Group Members but who have opted out of this proceeding);
  - (d) Public Trustee of the State of Western Australia to the extent any estate is vested in it pursuant to s 9 of the *Public Trustee Act 1941* (WA);
  - (e) any executor or administrator on behalf of the deceased estates of any Group Member;
  - (f) Shine Lawyers Pty Ltd (**Shine**); and
  - (g) LLS Fund Services Pty Ltd (ABN 51 627 975 213) as trustee for LLS Fund 1 (**Funder**).
4. Pursuant to ss 33ZF and/or 33ZB of the Act, order that upon the Exhaustion of Appeal Date as defined in the Settlement Documents, Group Members be barred from making any claim against the Respondent in respect of or relating to the subject matter of this Proceeding, which order is binding on:
- (a) all Group Members; and
  - (b) the Public Trustee or any executor or administrator on behalf of the deceased estates of any Group Member.

#### **Administration of the Scheme**

5. Pursuant to ss 33V and/or 33ZF of the Act, David Hodgson and Tony Jonsson of Grant Thornton be appointed as Scheme Administrator of the Scheme, to act in accordance with the Deed and the Scheme, and to have the powers and immunities conferred by the Settlement Documents on the Scheme Administrator, at all times subject to any direction of the Court.

#### **Approved deductions**

6. Pursuant to s 33V of the Act, the payment of the Agreed Costs Component from the Settlement Sum (as defined under the Settlement Documents) is approved, and the Respondent is to pay \$15,400,000 (\$15.4 million) within seven days after the Exhaustion of Appeal Date (as defined), in satisfaction of its obligation to pay the Agreed Cost Component under the Deed, to be disbursed as follows:



- (a) to the Funder in the amount of \$13,358,868 in reimbursement for its Project Costs under the litigation funding agreement with the Applicant in respect of legal costs which it has paid to Shine; and
  - (b) the remainder (\$2,041,132):
    - (i) \$1,045,000 (\$1.045 million) to the Funder in reimbursement for its Project Costs under the litigation funding agreement in respect of after-the-event insurance premiums it has paid;  
and
    - (ii) \$996,132 to Shine in part-payment of the Applicant's Actual Costs.
7. Pursuant to s 33V of the Act, the following payments from the Settlement Fund Account (as defined under the Settlement Documents) are approved:
- (a) Reimbursement Payments in the following amounts:
    - (i) \$45,000 to the Applicant; and
    - (ii) \$5,000 each to Sheila Humphries, Valerie Albert, John Ross, Nellie Skinner, John Watson, Eric Cox and Christopher Coomer;
  - (b) Administration Costs up to the Authorised Amount, being \$3,000,000 (including GST) (\$3 million);
  - (c) the reasonable costs (if any) of the Independent Counsel;
  - (d) the Costs Assessor's Costs up to the amount of \$250,000 (including GST) being:
    - (i) up to \$150,000 (including GST) in respect of past Costs Assessor Costs; and
    - (ii) up to \$100,000 (including GST) in respect of future Costs Assessor Costs incurred in respect of assessments of Administrator's Costs (which amount is to be treated as Administration Costs and part of the Authorised Amount and is not to be available beyond 12 months after the making of these orders);
  - (e) the amount of \$13,146,618 (including GST) which is to be paid to Shine in payment of the balance of the Applicant's Actual Costs. This represents



approval of the applicant's costs of the proceeding in the amount of \$27,501,618 (including GST). The amount owing to Shine after the payments made to it by the Funder is \$14,142,750 (including GST), of which it will receive \$996,132 from the Agreed Costs Component under order 6(b)(ii) above.

- (f) any Transitional Allowance (as defined in the reasons), in an amount approved by the Court; and
  - (g) an amount equal to 16% of the Settlement Sum (as defined under the Settlement Documents) (including of monies that enter the Settlement Fund Account following approval) as commission (**Funder Commission**).
8. The payments approved pursuant to order 7 be made by the Administrator in the sequence and amounts, and at times specified in order 9 of these orders and **Annexure B** to these orders, and any subsequent order of the Court.
9. The Court orders that until such time as the Applicant's Actual Costs (as defined in the Settlement Documents) and any Transitional Allowance are paid in full:
- (a) the Applicant's Actual Costs be paid to Shine; and
  - (b) the Funder Commission be paid to the Funder;
- in equal amounts and at the same time, by the Administrator in tranches under section 7 of **Annexure B** to these orders.

#### **Other orders relating to the Scheme**

10. (**Late Registrants**) Pursuant to clause 23 of the Scheme, class members who have submitted Application for Registration Forms to Shine up to and including the date of this order that comply with order 2 of the orders of 20 November 2023, including Application for Registration Forms that have been rectified as at the date of this order and the persons identified in paragraph 58 and Exhibit VA-25: Tab 4 of the Affidavit of Vicky Antzoulatos sworn 25 October 2024, are taken to have registered under the Registration Process.
11. (**Unrectified Deficient Registrations**) In respect of Application for Registration Forms received by Shine prior to the hearing of the Approval Application that do not meet the minimum requirements of clause 8 and/or 9 of the Scheme and have not yet been rectified, being the **Deficient Registrations** referred to in paragraphs 49 to 51 of the Affidavit of Vicky Antzoulatos sworn 25 October 2024:



- (a) until 29 November 2024, Shine is to continue to undertake reasonable attempts to contact the person who lodged the Deficient Registration and attempt to rectify the deficiency and inform the Administrator of the outcome of those attempts on 29 November 2024; and
- (b) the Administrator is to undertake reasonable attempts to contact the person who lodged the Deficient Registration and attempt to rectify the deficiency from 30 November 2024 until 24 December 2024, and

the Administrator is to provide a report to the Court and the Respondent identifying the results and status of that process, identifying which Deficient Registrations were and which were not able to be rectified, by 31 January 2025. Subject to any further order of the Court, Deficient Registrations which have been rectified will be taken to be registered under the Registration Process.

12. **(Independent Counsel for SDS)** Pursuant to clause 2.1.17 of the Scheme, Tessa Herrmann and Justin Edwards are appointed as Independent Counsel for the purposes of cll 67 to 69 of the Scheme.
13. **(Legal Advisor to SDS)** Within 14 days of the Administrator being appointed, the Administrator is to provide to the Court a list of proposed lawyers to be appointed as Legal Advisor to the Administrator pursuant to clause 2.1.18 of the Scheme, for the purposes of cll 29 to 30 of the Scheme.
14. **(Confidentiality of documents provided to Administrator)** If any documents are supplied to the Administrator by Shine pursuant to clause 52 of the Scheme that were discovered to the Applicant by the Respondent in this matter (as identified by a discovery reference ID number on those documents commencing with “DIA”), the Confidentiality Regime contained in Annexure A to the orders made on 22 February 2021 applies to those documents as if they were Confidential Documents and the Administrator was the “Representative”.
15. In accordance with order 2 and Annexures A and B of the orders dated 22 February 2021 (as amended on 30 March 2022) the Representative (as defined in Annexure A of those orders) and the Representative's Agent (as defined in Annexure B to those orders) shall by 31 January 2025:



- (a) delete or destroy all Confidential Documents (as defined in Annexure A to those orders) (including all copies) in the Representative's / Representative's Agent's possession or control; and
- (b) delete or destroy all Confidential Personal Information (as defined in Annexure A to those orders) held in any medium.

**Orders consequential upon Settlement Approval**

16. Each party pay their own costs of Shine's interlocutory application filed 22 October 2024.
17. All previous costs orders entered in this proceeding are vacated.
18. There be no further orders as to the costs of this proceeding.

**AND THE COURT NOTES THAT:**

19. Any releases, or covenants not to sue given by Group Members are restricted to the claims the subject of this proceeding, and similar or related claims that could have been the subject of this proceeding, insofar as such releases and covenants not to sue are consistent with Part IVA of the *Federal Court of Australia Act*.

Date orders authenticated: 12 December 2024

  
Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



## **ANNEXURE A – SETTLEMENT DISTRIBUTION SCHEME**

### **SETTLEMENT DISTRIBUTION SCHEME**



## SUMMARY OF THE SETTLEMENT DISTRIBUTION SCHEME (“THE SCHEME”)

- A. The Scheme provides for Shine Lawyers to obtain registrations from Original Potential Claimants and Descendant Potential Claimants during the Registration Process.
- B. Original Potential Claimants are people that worked during the Claim Period.
- C. Descendant Potential Claimants are the spouses and children of Original Potential Claimants that are deceased.
- D. There is then a process for an Administrator to apply eligibility criteria to determine the validity of these claims. If these criteria are met:
  - a. The Original Potential Claimant becomes an Original Eligible Claimant.
  - b. The Descendant Potential Claimant becomes a Descendant Eligible Claimant.
- E. The State is paying one amount of \$16,500 per Original Eligible Claimant to the Administrator, up to 10,000 Original Eligible Claimants thereby determining the Settlement Fund.
- F. The Administrator will then pay out from that Settlement Fund (after deductions approved by the Court) an amount (which might be in multiple separate payments) in accordance with Court approved Distribution Criteria (which may provide for some Original Eligible Claimants to get more than others) to:
  - a. each Original Eligible Claimant that is alive; or
  - b. if an Original Eligible Claimant is deceased, to that Original Eligible Claimant’s Descendant Eligible Claimants (i.e., to their Spouse or Children).

## OPERATIVE PART

### A. DEFINED TERMS

- 1. This Scheme adopts the definitions as used in the Settlement Deed which will not be repeated in this document. To the extent the Settlement Deed utilises terms defined below those terms are to have the meanings defined below.
- 2. The following terms have the meanings defined below:
  - 2.1.2. **Administration** means the administration process carried out by the Administrator in accordance with this Settlement Distribution Scheme.
  - 2.1.3. **Administration Finalisation Date** means 31 December 2025.





- 2.1.4. **Administration Costs** means the expenses of and incidental to the administration of the Scheme incurred by the Administrator and includes the costs of the Legal Advisor or any other advisor to the Administrator, in an amount approved by the Court.
- 2.1.5. **Reimbursement Payment** has the meaning in the Deed of Settlement.
- 2.1.6. **Child or Children** means a person who was alive on the Effective Date and who is a natural child of a person as well as any child who was legally adopted or was adopted pursuant to Aboriginal laws and customs.
- 2.1.7. **Claimant** means a person in respect of whom the Administrator is determining whether that person should be accepted as an Original Eligible Claimant or Descendant Eligible Claimant.
- 2.1.8. **Costs Assessor's Costs** means the reasonable costs of the Cost Assessor in carrying out the costs assessments and preparing the Reports referred to in the Deed.
- 2.1.9. **Defacto Spouse** means a living spouse in a relationship where the persons were not legally married to each other, were not related by family and were living together as a couple on a domestic basis for a period of at least two years.
- 2.1.10. **Descendant Eligible Claimant** means a person who the Administrator is independently reasonably satisfied meets each of the criteria set out in clause 51 of this Scheme.
- 2.1.11. **Descendant Potential Claimants** means the most recent living spouse (including Defacto Spouse) that an Original Potential Claimant had before their death, or the living Children of an Original Potential Claimant, who is or are registered in accordance with this Scheme.
- 2.1.12. **Distribution** means an amount distributed to an Original Eligible Claimant or Descendant Eligible Claimant from the Settlement Fund Account in accordance with this Scheme.
- 2.1.13. **Distribution Criteria** means the criteria set out in **Annexure A** of this Scheme approved by the Court to be used by the Administrator to determine each Original Eligible Claimant Payment.
- 2.1.14. **Distribution Statement** means a notice provided in accordance with clauses 63 to 65 of this Scheme.



- 2.1.15. **Effective Date** means the date upon which this Scheme is approved by the Court.
- 2.1.16. **Final Settlement Entitlement** means:
- (a) a Settlement Entitlement contained in a Distribution Notice or an amended Distribution Notice which is taken to have been accepted by an Original Eligible Claimant or Descendant Eligible Claimant.
  - (b) a revised Settlement Entitlement, contained in, or consequential on, a Review Determination under clauses 67 to 71 of this Scheme.
- 2.1.16A **Fixed Trust** means a trust fund established, or to be established, by the Administrator:
- (a) which trust is to be administered in accordance with this Scheme. If the Administrator requires a separate trust deed setting out the terms of the Fixed Trust, they will provide a proposed deed to the Court and the Respondent within seven days after the approval orders are made, along with an explanation for the need for a separate trust deed. The Court may approve such a trust deed consistent with the Deed and this SDS by further order;
  - (b) the trustees of the Fixed Trust are David Hodgson and Tony Jonsson of Grant Thornton joint and severally; and
  - (c) all of the funds and trust assets in which are held by the Administrator as Administrator of this Scheme.
- 2.1.17. **Independent Counsel** means two senior junior counsel as approved by the Court.
- 2.1.18. **Legal Advisor** means the person appointed as legal advisor to the Administrator as provided for in clauses 29 to 30 of this Scheme.
- 2.1.19. **Original Eligible Claimant** means a person who the Administrator is independently reasonably satisfied meets the criteria set out in clause 50 of this Scheme.
- 2.1.20. **Original Eligible Claimant Payment** means the amount determined in accordance with the Distribution Criteria to be allocated to, or in respect of, each Original Eligible Claimant.
- 2.1.21. **Original Potential Claimant** means a person registered during the Registration Process as an Original Potential Claimant.



- 2.1.22. **Payment Report** means the report referred to in clause 55 of this Scheme.
- 2.1.23. **Registration Date** means 30 June 2024 or such later date as approved by the Court.
- 2.1.24. **Rejection Notice** means a notice referred to in clause 66.
- 2.1.25. **Review** means a review of a decision of the Administrator to issue a Rejection Notice or a Distribution Statement.
- 2.1.26. **Settlement Entitlement/s** means the amount determined by the Administrator to be paid to each Original Eligible Claimant and each Descendant Eligible Claimant consistently with the Original Eligible Claimant Payment.
- 2.1.26A. **Sign** or **Signed** means:
- (a) an oral statement made by a person to Shine Lawyers or the Administrator by telephone or otherwise; or
  - (b) an electronic declaration made by a person; or
  - (c) the affixation of a mark to a document by a person,
- to the effect that they promise that the information provided by them in their Application for Registration Form is true and correct.
- 2.1.27. **Spouse** means a person who is alive on the Effective Date and who was the most recent party to a marriage or Defacto Spouse of an Original Potential Claimant before the death of the Original Potential Claimant, unless the relationship had ceased before the Effective Date.
- 2.1.28. **State** means the State of Western Australia.
- 2.1.29. **Tax** means a tax, levy, duty, charge, deduction or withholding or an imposition, however it is described, that is imposed by law of a Government of Australia or elsewhere, together with any related interest, penalty, fine or other charge.
- 2.1.30. **Uncollected Accounts** means any Distribution that is not successfully processed, and in relation to which the Administrator cannot confirm proper Bank Account details with the Original Eligible Claimant or the Descendent Eligible Claimant within 120 days of the first attempt at payment.



## **B. THE REGISTRATION PROCESS**

3. The Applicant by Shine Lawyers is:
  - 3.1. to use reasonable endeavours during the Registration Period to seek registrations from Original Potential Claimants and Descendant Potential Claimants and to register people who complete and sign the Application for Registration Forms.
  - 3.2. to make determinations as to whether registrants qualify as Original Potential Claimants or a Descendant Potential Claimant by reference to the criteria for Original Eligible Claimants and Descendant Eligible Claimants set out in this Scheme.
  - 3.3. to keep a register of Original Eligible Claimants and Descendant Eligible Claimants.
  - 3.4. to notify the Respondent fortnightly of the details of those registrants determined to be Original Potential Claimants or Descendant Potential Claimants and will upon such notification provide to the Respondent all information relied upon in making the determination that each person is an Original Potential Claimant or a Descendant Potential Claimant.
  - 3.5. to keep and not destroy all documents relied upon in making the determination that each person is an Original Potential Claimant or a Descendant Potential Claimant.
4. The following people can register during the Registration Process:
  - 4.1. An Original Potential Claimant who is alive.
  - 4.2. The living Spouse (including Defacto Spouse) or living Child or Children of an Original Potential Claimant who is deceased (the spouse or children being **Descendant Potential Claimants**).
5. Only a living Spouse or living Child of an Original Potential Claimant can register as a Descendant Potential Claimant.
6. A Descendant Potential Claimant must register at least one Original Potential Claimant for that Descendant Potential Claimant during the Registration Period.
7. A person who registers during the Registration Process is required to provide an Application for Registration Form with the information referred to in paragraph 9 below (**Application for Registration Form**) as applicable.



8. The Application for Registration Form will be signed by the Descendant Potential Claimant or Original Potential Claimant.
9. The Application for Registration Form must, as a minimum:
  - 9.1. Attach identification for the living Original Potential Claimant or Descendant Potential Claimant (as required by Point 1 of the criteria table for Original Eligible Claimant and Descendant Eligible Claimant at clauses 50 and 51 below).
  - 9.2. State that the Original Potential Claimant is (or if deceased, was) an Aboriginal or Torres Strait Islander Person.
  - 9.3. Provide the date of birth of the Original Potential Claimant to the best of their knowledge.
  - 9.4. If the claim is by a Descendant Potential Claimant, identify at least the name of the Original Potential Claimant and the relationship between the Descendant Potential Claimant and the Original Potential Claimant. If the relationship nominated by the Claimant with the asserted Original Potential Claimant is not one of spouse or child, the asserted Original Potential Claimant will not be registered as an Original Potential Claimant.
  - 9.5. Must include information in the person's own words about:
    - (a) a work place (for example, station name or institution name) in Western Australia where the Original Potential Claimant worked for no or nominal wages during the Claim Period.
    - (b) The approximate time period in which this work occurred.
  - 9.6. Contains a statement by the person signing the Application for Registration Form:
    - (a) If they are a living Original Potential Claimant, that they were paid no or nominal wages in respect of the work.
    - (b) If they are a Descendant Potential Claimant, that the deceased Original Potential Claimant was paid no or nominal wages in respect of the work and describing how the Descendant Potential Claimant knows this.
10. The Application for Registration Form will also invite the claimant to give the information set out in the criteria tables for Original Eligible Claimant and Descendant Eligible Claimant at paragraph 50 and 51 below.



11. The Administrator can during the Administration Process, in the Administrator's absolute discretion seek more information than that provided in the Application for Registration Form from the Original Potential Claimant or Descendant Potential Claimant, or, including if no more information is provided in a reasonable time, determine eligibility on the basis of the information provided in the Application for Registration Form.

#### Applicants may request Work History information from the State

12. Group Members (or persons acting on their behalf) may, from the date of this Deed until the Administration Finalisation Date request information from the Respondent about themselves or their parents or Spouses by submission of a pro forma request and authority in a form to be approved by the Respondent.
13. The Respondent will upon receipt of a valid request and authority form review files of the former Department of Native Welfare and use its best endeavours to confirm within a reasonable timeframe, to the extent possible, in the pro forma letter, the Name; Work position/s; Name of employer/s or location/s; Approximate date/s; What was paid if anything, for the person the subject of the request.
14. The above information would not be exhaustive and once one entry is located corresponding to each eligibility criteria, the search would stop.

#### Collating the Registrations

15. Shine Lawyers will be responsible for receiving the Application for Registration Forms and putting the information therein into a spreadsheet and providing the State with the spreadsheet and the Application for Registration Forms.

#### **C. STATE TO CONFIRM CRITERIA WHERE POSSIBLE DURING REGISTRATION PERIOD**

16. Subject to 19 below, the Application for Registration Forms and any information received from Original Potential Claimants and Descendant Potential Claimants will be provided to the State, and the State will use its best endeavours to determine, if possible, during the Registration Process:
  - (a) if it can confirm that any Original Potential Claimants satisfy all or any criteria of an Original Eligible Claimant;
  - (b) if it can confirm that any Descendant Potential Claimants satisfy all or any criteria of a Descendant Eligible Claimant.
17. If the State confirms any matters in paragraph 16 above:



- 17.1. The State will advise the Administrator of those matters within a reasonable time after the Administrator is appointed; and
- 17.2. the Administrator does not have to confirm those matters that are confirmed by the Respondent.
18. The absence of confirmation shall not be able to be relied on by the Administrator or stand in lieu of the Administrator's decision.
19. The Application for Registration Form will permit Original Potential Claimants and Descendant Potential Claimants to elect not to provide their information to the Respondent and if that election is made paragraph 16 will not apply.
20. The State undertakes not to use the information if the settlement does not proceed to Court approval after the Registration Date, the settlement is not approved, or the settlement is for any other reason terminated.

**D. REGISTRATION DEADLINE**

21. Any Original Potential Claimant must be registered by the Registration Date.

**E. LATE REGISTRATION**

22. An Application for Registration Form must be received on behalf of each Original Potential Claimant, and subject to Part F below each Descendant Potential Claimant by the Registration Date.
23. From the Registration Date up to the date of the Settlement Approval Order, the Applicant by his lawyers Shine Lawyers can accept an Application for Registration Form for an unregistered Original Potential Claimant or Descendant Potential Claimant if approved by the Court.
24. Subject to order of the Court, after the Settlement Approval Order, no further Application for Registration Forms will be accepted for registration, subject to paragraph 25 below.

**F. ACCEPTANCE OF APPLICATION BY ADDITIONAL DESCENDENT POTENTIAL CLAIMANTS AFTER REGISTRATION DATE**

25. If an Original Potential Claimant is registered by the Registration Date, or with the approval of the Court after the Registration Date and before the date of the Settlement Approval Order, a Group Member who is a Child or Spouse of that Original Potential Claimant who did not register during the Registration Process may lodge an Application for Registration Form with the Administrator in respect of the registered Original Potential Claimant.



26. The Administrator may at their discretion, at any time prior to a Distribution Statement being issued, accept that registration and the Child or Spouse would then become an additional Descendant Potential Claimant in respect of that Original Potential Claimant.

**Example**

*Frank was a station worker that died in 2000. His children are Valerie and Sheila. Sheila registered as a Descendant Potential Claimant, and in that process also registered Frank as an Original Potential Claimant. The Administrator assessed those registrations and found that Frank met all the criteria of an Original Eligible Claimant and Sheila met all the criteria of a Descendant Eligible Claimant in relation to Frank.*

*Valerie then submitted a late application form to the Administrator. Because Frank was registered as an Original Potential Claimant (by Sheila) before the Registration Date, the Administrator decides to accept Valerie as a Descendant Potential Claimant in relation to Frank.*

**G. ADMINISTRATOR**

27. The Scheme will be administered by the Administrator approved by the Court.

**H. Fixed Trust**

28. The Administrator:
- (a) will establish a Fixed Trust under the Settlement Distribution Scheme; and
  - (b) acknowledges that all the funds in the Fixed Trust are owned by it in its capacity as Administrator and as trustee and the monies are an asset of the Settlement Distribution Scheme and are trust assets;
  - (c) must:
    - (i) obtain the prior approval of the Court for any change to any trust deed of the Fixed Trust, or appointing any new trustee to the Fixed Trust;
    - (ii) do all things necessary as the trustee of the Fixed Trust to approve and facilitate the winding up of the Fixed Trust once the terms of this Scheme have been completed as approved by the Court.

**I. Legal Advisor**

29. A lawyer or lawyers approved by the Court (other than the Applicant's lawyers) will act as Legal Advisor to the Administrator in respect of:
- (a) any of the matters in relation to which the Administrator requires legal services;





- (b) any other matter in relation to which the Administrator considers it is appropriate to consult with the Legal Advisor, in the Administrator's sole discretion.

30. The Legal Advisor does not act as solicitor for any Original Potential Claimant, Descendant Potential Claimant, Original Eligible Claimant or any Descendant Eligible Claimant in connection with its role as Legal Advisor under this Scheme.

#### **J. The Settlement Fund**

31. Following payment/s into the Settlement Fund Account pursuant to the Deed, the monies in the Settlement Fund Account shall comprise the Settlement Fund. The Settlement Fund Account is to be an interest bearing account.

32. The Administrator shall:

- (a) hold the monies in the Settlement Fund Account in trust until it is to be distributed; and
- (b) distribute the monies in the Settlement Fund Account (plus any interest accrued) as expeditiously as possible.

in accordance with this Scheme.

#### **K. Powers and duties of Administrator**

33. The Administrator:

- (a) is responsible for administering and distributing the monies in the Settlement Fund Account;
- (b) may act by delegates appointed by the Administrator and as approved by the Court subject to the Administrator first obtaining from any such delegate an acknowledgement in writing that such person is to be bound to the obligations and duties set out herein as if that person was the Administrator;
- (c) will act fairly in the interests of all Claimants;
- (d) must act independently;
- (e) must perform obligations conscientiously;
- (f) may obtain legal advice from the Legal Advisor;
- (g) may obtain advice in respect of tax matters or matters affecting Commonwealth entitlements arising from the administration of and making payments from the Settlement Fund Account and may seek a ruling from the Federal



Commissioner of Taxation and any of the Commissioners of State Revenue, or other applicable body, if the Administrator determines that obtaining such a ruling would be in the best interests of the Claimants;

(h) will determine the Settlement Entitlements.

34. Notwithstanding anything elsewhere in this Scheme, the Administrator may at any time correct any error, slip or omission occurring during the course of the administration of this Scheme.

#### **L. Retirement of Administrator**

35. If an Administrator retires or is unable to act at a given time so as to leave the Scheme without an Administrator (Retired Administrator), the Retired Administrator must refer the matter of appointing a replacement Administrator to the Court.

36. A Retired Administrator must do all things necessary to promptly transfer legal title to:

(a) the Settlement Fund and Settlement Fund Account; and

(b) any other property held on trust subject to the terms of this Scheme,

to the person or persons who are appointed as the replacement Administrator by the Court.

#### **M. ADMINISTRATION COSTS**

37. The Administrator must obtain approval from the Court to deduct up to a stated amount from the Settlement Fund Account (**the Authorised Amount**).

38. The Administrator may apply to vary the Authorised Amount.

39. The Administration Costs, up to the Authorised Amount, will be paid out of the Settlement Fund Account.

40. The Administrator is to provide accounts no more frequently than each month to the Costs Assessor for assessment as to whether such costs are reasonable or whether such costs in a different amount are reasonable.

41. The Costs Assessor is to make the assessment of each account from the Administrator within seven days of receipt of that account.

42. In the event the costs are determined reasonable the Administrator may make payment of those costs from the Settlement Fund Account having first recourse to any interest component of that account.



43. The Costs Assessor need only provide a written report to the Administrator if the Assessor has determined a different amount than that claimed by the Administrator and the Administrator has advised the Assessor that it does not accept that assessment.
44. Any Report by the Costs Assessor is to be provided within seven days to the Administrator and the parties.
45. Upon receipt of the Report the Administrator is to bring an application to the Court seeking the Court's determination and approval of the appropriate amount to be paid to the Administrator taking into account the Report and any matter put before the Court by the Administrator.
46. Upon determination and approval by the Court of the Administration Costs the Administrator may take payment of that amount from the Settlement Fund Account having first recourse to any interest component of that account.

#### **N. APPLICATION OF INTEREST**

47. Interest on the Settlement Fund Account shall be applied in the first instance to the payment of Administration Costs.
48. Any interest which is not otherwise required for the payment of Administration Costs, will form part of the Settlement Fund and be available for distribution to Original Eligible Claimants and Deceased Eligible Claimants in accordance with the Distribution Criteria.

#### **O. DETERMINATION OF ELIGIBILITY**

49. In order to receive payment a Group Member must be either:
  - (a) A living Original Eligible Claimant.
  - (b) A Descendant Eligible Claimant claiming in respect of a deceased Original Eligible Claimant.
50. An **Original Eligible Claimant** is a Group Member:
  - (a) That was registered during the Registration Process as an Original Potential Claimant; and
  - (b) Who is alive or, where deceased, at least one Descendant Eligible Claimant exists who will receive payment;
  - (c) Who the Administrator is independently reasonably satisfied meets the criteria in column A below. The Administrator must be satisfied of these matters on



the basis of credible and cogent evidence. The type of evidence required and the process for determining the criteria is set out in column B. For the purposes of these criteria, the Administrator will determine in its absolute discretion what is “credible and cogent evidence” taking into account the characteristics of Group Members:

	A Criteria	B Evidence required and process
1.	Identification	<p>A. If Original Potential Claimant is alive, current photo identification or if no photo identification, two points of identification.</p> <p>B. If Original Potential Claimant is deceased:</p> <p>(i) Documentary records, or in the absence of such, particulars to assist confirmation of the identity of the Original Potential Claimant, being First name(s), Surname, Maiden name (if applicable), name of parents, any other names known by, Date of birth, Place of birth, brothers' and sisters' names; and</p> <p>(ii) The Administrator will provide the information in B(i) above to the State and the State will use its best endeavours to undertake reasonable searches to confirm the parts of this criteria that it is able to provide from searches of the records of the former Department of Native Welfare and the Department of Births, Deaths and Marriages.</p> <p><b>AND IF NO CONFIRMATION UNDER B(ii):</b></p> <p>(iii) The Administrator will need to obtain cogent and credible evidence confirming the identity of the deceased Original Potential Claimant (which will be the best available evidence having regard to the nature of such evidence as is likely to exist for Original Eligible Claimants of different generations).</p> <p><i>Example 1 (not intended to limit what may be cogent or credible evidence) for a person who passed away more recently</i></p> <ul style="list-style-type: none"> <li>• Copies of two forms of identification; or</li> <li>• Signed<sup>1</sup> statements from two people who knew the Original Potential</li> </ul>

<sup>1</sup> Any reference to “signing” or “signed” in this Settlement Distribution Scheme shall include the affixation of a mark to a document by a person who is unable to read English.



	A Criteria	B Evidence required and process
		<p>Claimant for at least 12 months, declaring the Original Potential Claimant to be the person described by the Descendant Potential Claimant.</p> <p><i>Example 2 (not intended to limit what may be cogent or credible evidence) for a person who passed away a long time ago</i></p> <ul style="list-style-type: none"> <li>• Genealogical material prepared by a Native Title Representative Body for Native Title claims; and</li> <li>• Signed statements from a person or persons who knew the Original Potential Claimant and their relationship to the Descendant Potential Claimant, declaring the Original Potential Claimant to be the person described by the Descendant Potential Claimant.</li> </ul>
2.	<p>Aboriginal or Torres Strait Islander: Specifically, satisfying the definition of “Native” in the Acts.</p>	<p>A. The State will at the request of the Administrator (which request will be made where the Original Potential Claimant is deceased) use its best endeavours to undertake reasonable searches and provide confirmation of such details as it is able to locate in the records of the former Department of Native Welfare.</p> <p><b>AND IF NO CONFIRMATION UNDER A;</b></p> <p>B. Documentary evidence from a relevant authority or body establishing that the Original Potential Claimant was or is an Aboriginal or Torres Strait Islander who experienced control by the Department of Native Welfare or Department of Native Affairs.</p> <p>C. If there is no available documentary evidence, the Administrator will need to obtain cogent and credible evidence confirming the Original Potential Claimant was or is an Aboriginal or Torres Strait Islander who experienced control by the Department of Native Welfare or Department of Native Affairs (which will be the best available evidence having regard to the nature of such evidence as is likely to exist for Original Eligible Claimants of different generations).</p> <p><i>Example 1 (not intended to limit what may be cogent or credible evidence) for a</i></p>



	A Criteria	B Evidence required and process
		<p><i>person who passed away more recently</i></p> <ul style="list-style-type: none"> <li>• Signed statements from two people who knew the Original Potential Claimant for at least 12 months providing information to the satisfaction of the Administrator that the person was or is an Aboriginal or Torres Strait Islander who experienced control by the Department of Native Welfare or Department of Native Affairs.</li> </ul> <p><i>Example 2 (not intended to limit what may be cogent or credible evidence) for a person who passed away a long time ago</i></p> <ul style="list-style-type: none"> <li>• Genealogical material prepared by a Native Title Representative Body for Native Title claims; and</li> <li>• Signed statements from one or more persons who knew the Original Potential Claimant for at least 12 months providing information to the satisfaction of the Administrator that the person was or is an Aboriginal or Torres Strait Islander who experienced control by the Department of Native Welfare or Department of Native Affairs.</li> </ul>
3.	Age at least 10 years old in the Claim Period (born before 9 June 1962)	<p>A. On the request of the Administrator (which request will be made if the Original Potential Claimant is deceased), Date of Birth of Original Potential Claimant to be confirmed by the State if possible by use of its best endeavours to undertake reasonable searches of the records of the former Department of Native Welfare and the Department of Births, Deaths and Marriages.</p> <p><b>AND IF NO CONFIRMATION UNDER A;</b></p> <p>B. Photo identification or birth, death or marriage certificate; or</p> <p>C. If there is no available documentary evidence, the Administrator will need to obtain cogent and credible evidence confirming the age of the Original Potential Claimant (which will be the best available evidence having regard to the nature of such evidence as is likely to exist for Original Eligible Claimants of different generations).</p>



	A Criteria	B Evidence required and process
		<p><i>Example 1 (not intended to limit what may be cogent or credible evidence) for a person who passed away more recently</i></p> <ul style="list-style-type: none"> <li>• Signed statements from two people who knew the Original Potential Claimant for at least 12 months providing information to the satisfaction of the Administrator that the person was born before 9 June 1962.</li> </ul> <p><i>Example 2 (not intended to limit what may be cogent or credible evidence) for a person who passed away a long time ago</i></p> <ul style="list-style-type: none"> <li>• Genealogical material prepared by a Native Title Representative Body for Native Title claims; and</li> <li>• Signed statements from one or more persons who knew the Original Potential Claimant for at least 12 months providing information to the satisfaction of the Administrator that the person was born on or before 9 June 1962.</li> </ul>
4.	Statement that they were paid no or nominal wages in the Claim Period at one or more specific nominated workplaces in WA	<p>A. For living Original Potential Claimants, the signed Application for Registration Form declaring that they were paid no or nominal wages at specific nominated workplace/s.</p> <p>B. For a Descendant Potential Claimant – the signed Application for Registration Form says the deceased Original Potential Claimant was paid no or nominal wages at specific nominated workplace/s and says how they know this.</p>
5.	Worked in WA during the Claim Period at a workplace referred to in 4 above that existed at the relevant time.	<p>A. A signed statement, which may be the Application for Registration Form, providing the following information (in their own words and to the best of their ability) in relation to the workplaces nominated for item 4 (i.e. the workplaces where the Original Potential Claimant worked for no or nominal wages):</p> <ul style="list-style-type: none"> <li>○ What type of work was it: <ul style="list-style-type: none"> <li>○ Station.</li> <li>○ Institution.</li> <li>○ Other (if so, describing it).</li> </ul> </li> <li>○ Name of the station / institution / other employer.</li> <li>○ Approximately when they worked there.</li> </ul>



A Criteria	B Evidence required and process
	<ul style="list-style-type: none"><li>○ What was the nature of the work.</li></ul> <p><b>(Work Information)</b></p> <p>B. The Statement should attach any relevant documentation that the Original Potential Claimant or Descendant Potential Claimant wants to submit that is relevant to the Work Information. The Original Potential Claimant or Descendant Potential Claimant does not have to submit any such documentation. Any documents that are available may assist the Administrator.</p> <p>C. The State at the request of the Administrator may at its discretion confirm that particular Original Potential Claimants meet this criteria, or parts of this criteria.</p> <p>To the extent that confirmation is given, the Administrator does not need to undertake any further analysis in relation to the criteria or the part of the criteria that is confirmed.</p> <p>To the extent the State does not provide this confirmation for any particular Original Potential Claimant, the following apply for any matter not confirmed under C and it is the Administrator's duty to independently assess this.</p> <p><b>AND FOR ANY MATTER NOT CONFIRMED UNDER C, THE ADMINISTRATOR WILL ASSESS THIS CRITERIA AS FOLLOWS;</b></p> <p>D. The Administrator must satisfy themselves that the claimant worked in WA during the Claim Period at a workplace referred to in 4 above that existed at the relevant time in the following way.</p> <p>E. In relation to the requirement to establish that the workplace existed at the time there must be at least one contemporaneous historical record indicating that the workplace existed at the relevant time.</p> <p>F. In relation to the requirement that the Original Potential Claimant worked at that workplace during the Claim Period:</p> <ul style="list-style-type: none"><li>(i) If living, a signed statement (which may be the Application for Registration Form) of the Original Potential Claimant, or a signed statement of a person who knows</li></ul>



	A Criteria	B Evidence required and process
		<p>the Original Potential Claimant's work history, setting out the Work Information and saying the Original Potential Claimant worked at the workplace/s during the Claim Period for no or nominal wages.</p> <p>(ii) If deceased, a signed statement from a person who knew the Original Potential Claimant and the work history of the Original Potential Claimant setting out the Work History to the best of their belief.</p>
6.	Bank Account details	Bank Account details received for the payees or if a bank account does not exist, such other information allowing payment to be made.

## P. DETERMINATION OF DESCENDANT ELIGIBLE CLAIMANTS

51. A **Descendant Eligible Claimant** is a Descendant Potential Claimant who the Administrator is independently reasonably satisfied meets the criteria in column A below. The Administrator must be satisfied of these matters on the basis of credible and cogent evidence. The type of evidence required and the process for determining the criteria is set out in column B. For the purposes of these criteria, the Administrator will determine in its absolute discretion what is “credible and cogent evidence” taking into account the characteristics of Group Members.

	A Criteria	B Evidence required and process
1.	Identification	Current photo identification or if no photo identification, two points of identification.
2.	Claims in respect of an Original Eligible Claimant	Administrator to be satisfied of matters in paragraph immediately above in respect of the Original Eligible Claimant in respect of whom the Descendant Potential Claimant claims.
3.	Living spouse (including Defacto Spouse) <sup>2</sup> or living child of that Original Eligible Claimant	<p>A. Documentary records (if available) and particulars to assist confirmation of the relationship of Descendant Potential Claimant to the Original Eligible Claimant, being:</p> <p>(i) for children:</p> <ul style="list-style-type: none"> <li>• First name(s),</li> <li>• Surname,</li> <li>• Maiden name (if applicable) of Potential Original Eligible Claimant.</li> <li>• Any other names known by,</li> <li>• Date of birth,</li> <li>• Place of birth,</li> <li>• Brothers' and sisters' names; and</li> </ul> <p>(ii) for spouses:</p>

<sup>2</sup> Only the most recent spouse of an Original Eligible Claimant prior to the death of the Original Eligible Claimant is eligible.



	A Criteria	B Evidence required and process
		<ul style="list-style-type: none"> <li>• date of marriage,</li> <li>• First name(s),</li> <li>• Surname,</li> <li>• Maiden name (if applicable) of Potential Original Claimant.</li> <li>• Any other names known by,</li> <li>• Date of birth,</li> <li>• Place of birth,</li> <li>• children and names</li> </ul> <p>B. The State will at the request of the Administrator and at its discretion provide confirmation of such details as it is able to locate in its records.</p> <p><b>AND IF NO CONFIRMATION UNDER B;</b></p> <p>C. The Administrator may request supporting documents from the Descendant Potential Claimant such as birth or marriage certificates, and</p> <p>D. If no documents are provided that satisfy the Administrator, a signed statement from a person who knew the relevant relationship (spouse/child) between the Descendant Potential Claimant and the Potential Original Claimant.</p>
4.	Alive as at date of Application to Scheme Administrator	<p>As above.</p> <p>If a Descendant Eligible Claimant is alive and provides an Application for Registration Form and meets all criteria above, the payment will still be made even if the Descendant Eligible Claimant dies before distribution, provided a continuing registration form is filed by a spouse or child of the Descendant Eligible Claimant before a date to be fixed prior to distribution.</p>
5.	Bank Account details	Bank Account details received for the payees or if a bank account does not exist, such other information allowing payment to be made.

**Q. SHINE LAWYERS CAN GIVE INFORMATION OBTAINED IN MATTER TO ADMINISTRATOR**

52. The Applicant by Shine Lawyers may provide the Administrator information relating to Claimants received by Shine Lawyers during this matter.

**R. FAST TRACKING**

53. Where in this Settlement Distribution Scheme the State may confirm eligibility or a criteria thereof:

- 53.1. The State is not required to provide reasons for either making or not making the concession or providing or not providing the requested confirmation.



- 53.2. If the State does not confirm eligibility or a criteria thereof then this will not be a relevant factor to be taken into account by the Administrator when determining eligibility.

## **S. REPORTING**

54. The Administrator must provide a report to the Court and the parties before the Respondent pays the Settlement Fund or any part thereof:

- 54.1. That outlines the progress of the administration of the Settlement Distribution Scheme;
- 54.2. Sets out the manner in which the verification process has been carried out;
- 54.3. States the number of individuals who have been verified as Original Eligible Claimants;
- 54.4. States the number of individuals the Administrator has notified as being ineligible to participate in the Scheme, and the reason;

### **(Court Report).**

55. The Administrator will also provide the State at the same time as it provides the Court Report/s, with details of the people that have been determined to be Original Eligible Claimants and Descendant Eligible Claimants (the **Payment Report**) including:

- 55.1. The name and date of birth of each Original Eligible Claimant;
- 55.2. Whether the Original Eligible Claimant is deceased or alive;
- 55.3. If deceased, the names and dates of birth of Descendant Eligible Claimant/s that have been determined to be eligible to receive the **Original Eligible Claimant Payment**

(together with the Court Report – the **Reports**).

56. The Administrator will provide reports to the Court and the parties on a regular basis during the Administration to ensure that the administration is undertaken in a transparent and accountable way and in accordance with this Scheme and the Deed.

## **T. DETERMINATION OF THE AMOUNTS TO BE DISTRIBUTED TO ORIGINAL ELIGIBLE CLAIMANTS AND DESCENDANT ELIGIBLE CLAIMANTS**

57. Subject to this Scheme the Administrator is to determine pursuant to the Distribution Criteria approved by the Court the amount to be distributed to each Original Eligible Claimant and each Descendant Eligible Claimant.
58. All payments are to be made by bank transfer, and only if bank transfer is not possible can payments be made by an alternative means in the discretion of the Administrator.



59. The Distribution Criteria will be used to determine the amount to be paid by the Administrator to or in relation to each Original Eligible Claimant (the **Original Eligible Claimant Payment**).
60. If the Original Eligible Claimant is alive, the entirety of their Original Eligible Claimant Payment will be paid to the Original Eligible Claimant.
61. If an Original Eligible Claimant is deceased:
  - 61.1. If a living Spouse, who is a Descendant Eligible Claimant, claims for an Original Eligible Claimant, no Children are eligible and the entire Original Eligible Claimant Payment will go to the Spouse.
  - 61.2. If no living Spouse claims, the Original Eligible Claimant Payment will be divided equally amongst the Descendant Eligible Claimants that are living Children of that Original Eligible Claimant.
  - 61.3. If more than one Spouse registers, the Administrator will determine the most recent Spouse of a deceased Original Eligible Claimant prior to their death and that person will be deemed to be the only Spouse of the Original Eligible Claimant.

**Example**

*Frank was a station worker that died in 2000. His children are Valerie and Sheila. Sheila registered as a Descendant Potential Claimant, and in that process also registered Frank as an Original Potential Claimant. The Administrator assessed those registrations and found that Frank met all the criteria of an Original Eligible Claimant and Sheila met all the criteria of a Descendant Eligible Claimant in relation to Frank.*

*Valerie then submitted a late application form to the Administrator. Because Frank was registered as an Original Potential Claimant (by Sheila) before the Registration Date, the Administrator decides to accept Valerie as a Descendant Potential Claimant, and because Valerie meets the criteria of a Descendant Eligible Claimant, the Administrator also decides that Valerie is a Descendant Eligible Claimant in relation to Frank. There are now two Descendant Eligible Claimants in relation to Frank.*

*Applying the Distribution Criteria, the Administrator determined on an amount to pay in relation to Frank, but because Frank is deceased, he pays that amount equally to Valerie and Sheila.*

**U. INTERIM PAYMENTS**

62. The Administrator may, subject to this Scheme, pay part of an Original Eligible Claimant Share Payment on an interim basis in the manner set out in this Scheme, provided these payments are less than the minimum Original Eligible Claimant Share Payment that can reasonably be anticipated by the Administrator having regard to the number, or likely number of Original Eligible Claimants and the likely maximum amount of the Net Settlement Fund Amount after any potential deductions.

**V. DISTRIBUTION STATEMENTS**



63. The Administrator will send a Distribution Statement to each Original Eligible Claimant and each Descendant Eligible Claimant that is to receive a payment under this Scheme.
64. Each Distribution Statement will include, without limitation, the following information:
- (a) the relevant information used to ascertain the Original Eligible Claimant or Descendant Eligible Claimant's eligibility and Settlement Entitlement; and
  - (b) the estimated amount of the Settlement Entitlement in respect of that Original Eligible Claimant or Descendant Eligible Claimant.
65. The accuracy of a Distribution Statement shall be deemed to be accepted by each Claimant, within 21 days of the date of sending the Distribution Statement, unless he or she delivers to the Administrator a written request for a Review together with copies of all documents on which that Claimant relies for the purposes of the Review, including any statement of reasons for seeking the Review.

#### **W. REJECTION**

66. If the claim of a Claimant is rejected, the Administrator will send the Claimant a notice advising them of the rejection and the reasons for it (**Rejection Notice**).

#### **X. REVIEWS**

67. If a Claimant requests a Review, the Administrator shall consider the request and copies of documents on which the Claimant relies for the purposes of the review and:
- (a) if satisfied that the request discloses an error, slip or omission by the Administrator or any other administrative or clerical error, correct the notice to which the request relates; or
  - (b) in all other cases, refer the request to one of the Independent Counsel.
68. If a Review is referred to an Independent Counsel, the Independent Counsel may by written notice direct the Claimant to submit such further documentation or information in support of the Review as the Independent Counsel may consider appropriate. Such documentation or information must be submitted within 21 days of the date of any such written notice, failing which the request for Review shall be deemed never to have been made and the accuracy of the Distribution Statement shall be deemed to be accepted by the Claimant.
69. The Independent Counsel shall, within 21 days after either the receipt by the Administrator of the request for the Review or receipt by the Independent Counsel of documentation provided in response to a written direction, whichever is the later, review the information provided by the Claimant and give written notice of the result of the Review to the Claimant and the Administrator (**Review Determination**).



70. A Review Determination is final and binding.
71. The costs of the review application will be deducted by the Administrator from the Net Settlement Fund Amount.

**Y. DISTRIBUTION**

72. The Administrator shall, as expeditiously as possible following the day which is 21 days after Distribution Statements are mailed or the expiration of the 21 day period referred to in clause 69 in respect of a Review Determination (whichever is the last to occur), distribute from the Net Settlement Fund Amount the Net Claimant Distribution Sum to the Original Eligible Claimants and the Descendant Eligible Claimants, such that they receive the Final Settlement Entitlement.
73. The completion of Distributions will satisfy any and all rights, claims or entitlements of all Claimants in connexion with this Scheme and in or arising out of the Proceeding.

**Z. WITHHOLDING AMOUNTS**

74. The Administrator may at the time of Distribution:

74.1. withhold from the Settlement Fund Account and retain an amount for Administration Costs;

74.2. withhold any Tax:

- (a) payable (or reasonably assessed by the Administrator as likely to become payable) by them as trustees and relating to or resulting from its role as Administrator of the Scheme; and
- (b) required to be withheld by them as trustees from any Distributions made from the Settlement Fund Account,

and in each case the withheld sums must be paid to the relevant revenue authority imposing such a Tax whether or not pursuant to an assessment or notice issued by the relevant revenue authority.

**AA. MODE OF PAYMENT**

75. Each of the Distributions will be made to the Claimants by Electronic Funds Transfer.

**BB. UNCOLLECTED AMOUNTS AND RESIDUES**

76. Any Uncollected Amount will form part of the Net Settlement Fund Amount.

77. Where:

- (a) the residue in the Settlement Fund Account (including the aggregate amount of all Uncollected Claims) is less than \$100,000; or



- (b) the Administrator determines that the costs associated with making a further Distribution are excessive, inefficient or disproportionate to the additional return achieved for Claimants,

the Administrator may in its absolute discretion, following consultation with the parties, apply some or all of the residue in the Settlement Fund Account to an independent charity associated with Aboriginal people, as approved by the Court.

## **CC. REIMBURSEMENT PAYMENT**

78. The Administrator will pay to the Applicant and the Sample Group Members who are alive and attended to give evidence in the Preservation of Evidence Hearings in this matter, from the Settlement Fund Account at a time to be determined by the Administrator the Reimbursement Payment/s approved by the Court as recognition and by way of compensation for their role in this Proceeding.

79. This payment to the Applicant and/or Sample Group Members is to be in addition to any Distribution to the Applicant or Sample Group Members.

## **DD. GENERAL MATTERS**

### **I Court referral**

80. The Administrator may at any time refer any issues arising in relation to the administration of the Scheme to the Court for directions.

### **II Priority of payments**

81. The funds standing from time to time in the Settlement Fund Account will be held by the Administrator upon trust for the persons entitled to payments from the Settlement Fund Account, and all taxes, duties, levies, charges and other imposts payable in respect of the funds in the Settlement Fund Account will be paid from the Settlement Fund Account in priority to any distribution to the persons beneficially entitled to the funds.

### **III Immunity of Administrator**

82. The Administrator is immune from any demand, claim or suit, at law or in equity made, by any person in respect of any loss or damage arising as a result of any payment made by the Administrator in accordance with the terms of this Scheme including without limitation, any payment made by the Administrator under the Scheme.

### **IV Claimant personal taxation issues**

83. Each Original Eligible Claimant and Descendant Eligible Claimant is responsible for obtaining his or her own taxation or government entitlements advice in respect of the Distribution he or she receives.



84. The Administrator is not obliged to obtain any taxation advice or taxation rulings (class, public or private) concerning any tax potentially payable by a Claimant in respect of Distributions they receive.

## **V Time**

85. Where the time for doing any act or thing under this Scheme is contingent upon any other act or thing under this Scheme, an extension of time for performance of the prior step will result in a commensurate extension of time for performance of the contingent step (in the exercise of the absolute discretion of the Administrator or by order of the Court).

## **VI Notices**

86. Any notice to be given pursuant to this Scheme will be deemed given and received for all purposes associated with this Scheme if it is:
- (a) addressed to the person to whom it is to be given; and
  - (b) either:
    - (i) delivered, or sent by pre-paid mail, to that person's postal address;
    - (iii) sent by email to that person's email address and a server through which it is transmitted produces a report that states that the email has been delivered to the inbox of the person.
87. A notice will be deemed to have been given and received:
- (a) if it was sent by mail to an addressee in Australia, five clear business days after being sent;
  - (b) if it is sent by mail to an addressee overseas, five clear business days after being sent; and
  - (d) if it is sent by email, at the time it is sent.
88. The Administrator's address and email address will be as set out below unless and until the Administrator notifies the sender otherwise:





## **Annexure A – Distribution Criteria**

1. Original Eligible Claimants born on or before 1 January 1930, are placed in “Category 1”;
2. Original Eligible Claimants born after 1 January 1930 are placed in “Category 2”;
3. Original Eligible Claimants in both Category 1 and Category 2 are to receive the Minimum Payment of \$10,000 (directly or to the relevant Descendant Eligible Claimant/s as provided for in the SDS); and
4. Original Eligible Claimants in Category 1 are to receive an additional payment (directly or to the relevant Descendant Eligible Claimant/s as provided for in the SDS) being a pro-rata distribution of the Top-Up Payment Reserve Account amongst all of Category 1 at the conclusion of the Scheme, assessment of all Potential Claimants, and when all Minimum Payments and approved deductions have been completed or provisioned.



## ANNEXURE B – SEQUENCE OF PAYMENTS

1. The following directions to the Administrator determine how monies received into the Settlement Fund Account pursuant to cll 7.3 and 7.5 are to be dealt with.
2. If for any reason substantial but not complete compliance is possible, the Administrators are to proceed at their reasonable discretion. If substantial compliance is not possible, the Administrators are to apply to the Court for further directions.
3. The Administrators are to maintain accounts for the purposes of complying with these directions, which are for bookkeeping purposes and may be comprised of mingled funds held in the single Settlement Fund Account. These accounts comprise funds held for:
  - (a) First, the minimum payment to be made in respect of each Original Eligible Claimant, which may be drawn down by the Administrators in making payments (including interim payments), under the Scheme (**Minimum Payment Reserve Account**);
  - (b) Second, approved deductions (**Deductions Reserve Account**), which may be drawn down by the Administrators to make payment under the Scheme in respect of:
    - (i) the Reimbursement Payments;
    - (ii) Administration Costs;
    - (iii) any reasonable costs of Independent Counsel;
    - (iv) the Costs Assessor's Costs; and
    - (v) any other deduction approved by the Court on account of:
      - A. the amount of the Applicant's Actual Costs and any Transitional Allowance;
      - B. the Funder Commission payable to the Funder.
  - (c) Third, additional payments to be made in accordance with the Distribution Criteria, which may be drawn by the Administrators for that purpose or as directed by the Court (**Top-up Payment Reserve Account**).

### **Minimum Payment Reserve Account**

4. Upon receipt of any monies into the Settlement Fund Account, the Administrator must allocate and accrue to the Minimum Payment Reserve Account a sum which



enables a Minimum Payment of \$10,000 to be made in respect of each Original Eligible Claimant.

5. Amounts allocated to the Minimum Payment Reserve Account on account of the State making a payment into the Settlement Fund Account with respect to the claim of one or more Original Eligible Claimants are to be distributed progressively to those claims on an ongoing basis as follows:
  - (a) Each Original Eligible Claimant is to receive \$10,000, to be paid within 14 days of money being allocated to the Minimum Payment Reserve Account;
  - (b) In respect of deceased Original Eligible Claimants, Descendant Eligible Claimant/s are to receive \$10,000 if there is one Descendant Eligible Claimant and if there are more than one equal shares of \$10,000, to be paid within 14 days of the Administrator determining that there are no other or further Descendant Eligible Claimants making a claim in respect of the deceased Original Eligible Claimant.

#### **Deduction Reserve Account**

6. Upon receipt of any monies into the Settlement Fund Account, the Administrator must allocate and accrue to the Deduction Reserve Account:
  - (a) the difference between the amount paid into the Settlement Fund Account and the total amount paid into the Minimum Payment Reserve Account, provided that the sum in the Deduction Reserve Account from time to time does not exceed the deductions approved by the Court; and
  - (b) all interest earned on the Settlement Fund Account from time to time until all deductions approved by the Court have been paid out of the Deduction Reserve Account (after which time the interest is paid to the Top-Up Payment Reserve Account).
7. Amounts allocated to the Deductions Reserve Account are to be distributed in the following manner, to the extent that the deductions are approved by the Court, and within 14 days of amounts being allocated to the Deduction Reserve Account:
  - (a) First, the Reimbursement Payments may be drawn by the Administrator immediately, and must be paid to the recipients within 14 days of there being at least \$60,000 in the Deductions Reserve Account.



- (b) Second, Administration Costs up to the Authorised Amount of \$3,000,000 must be reserved to a separate sub-account, and held for progressive draw-down by the Administrator pursuant to and in accordance with cll 37 to 46 of the Scheme.

50% of the Authorised Amount must be reserved within 14 days of there being at least \$1,500,000 in the Deductions Reserve Account (i.e. after payment is received for the first 240 Original Eligible Claimants).

The balance may be reserved progressively after that date in instalments of \$500,000 for each subsequent 500 assessed Original Eligible Claimants up to the Authorised Amount following the assessment of 2,000 Original Eligible Claimants.

For the avoidance of doubt, the Administrators are not obliged to make application to the Court under cll 45 to 46 of the Scheme unless they wish to dispute the Costs Assessor's Report in respect of such Administration Costs or if the Costs Assessor allows an amount higher than the Authorised Amount.

Costs Assessor Costs may be drawn by the Administrators and are to be treated as Administration Costs which may be drawn pursuant to and in accordance with cll 37 to 40 of the Scheme upon presentation of an invoice from the Costs Assessor, provided that the Costs Assessor's costs are not greater than \$25,000 (including GST) in respect of the assessment of costs for any 3-month period.

- (c) Third, the balance of the Deductions Reserve Account from time to time may be drawn on by the Administrators for the payment of the Applicant's Actual Costs and any Transitional Allowance, and the Funder Commission, in tranches per each 1,000 Original Eligible Claimants assessed by the Administrator to be eligible as ordered in Order 9 of these orders.

8. Interest accruing in the Deductions Reserve Account shall accrue in the first instance towards the payment of Administration Costs, in accordance with the Scheme cll 47-48.



### **Top-up Payment Reserve Account**

9. The Administrator must allocate and accrue to the Top-Up Payment Reserve Account all amounts over and above the amounts standing to the Minimum Payment Reserve Account and the Deductions Reserve Account from time to time.
10. The Top-Up Payment Reserve Account is to be distributed equally in respect of the claims of each Original Eligible Claimant born on or before 1 January 1930 (and in equal shares in respect of Descendant Eligible Claimant/s claiming on behalf of such an Original Eligible Claimant). The Top-Up Payment is to be made at the conclusion of the Scheme, after assessment of all Potential Claimants, and when all Minimum Payments and approved deductions have been completed. Such payment is in addition to the payment made from the Minimum Payment Reserve Account. Before making this payment the Administrator will transfer any unspent money from the Deductions Reserve Account to the Top- Up Payment Reserve Account, if it is in the opinion of the Administrator unlikely to be payable under these orders (for example if less than \$3m is payable in Administration Costs, or interest payments result in excess money in the Top-Up Payment Reserve Account).
11. If the Administrator reasonably believes that the Top-Up Payment Reserve will be insufficient to enable top-up payments to be made of at least \$1,500 per Original Eligible Claimant at the conclusion of the Scheme, the Administrator shall approach the Court for directions in relation to 10 above.



## Schedule

No: WAD237/2020

Federal Court of Australia

District Registry: Western Australia Registry

Division: General

Applicant                      MERVYN STREET

Respondent                    STATE OF WESTERN AUSTRALIA