

## ANNEXURE A

### Terang / Cobden Bushfire Class Action Anthony Lenehan v Powercor Australia Ltd S CI 2018 01290

#### SETTLEMENT DISTRIBUTION SCHEME

Approved by the Honourable Justice Nichols by orders made on 6 April 2020

#### BACKGROUND and SUMMARY

This part of the Scheme does not have legal effect but is provided to assist group members to understand how the Scheme will operate.

- A. By an agreement executed on 29 October 2019, the plaintiff and the defendant agreed to settle Supreme Court of Victoria Proceeding No. S CI 2018 01290, subject to the approval of the Court. The Court approved the settlement on 20 December 2019.
- B. This Scheme establishes a procedure for distributing between group members the settlement sum to be paid by the defendant.
- C. This Scheme is to be read with reference to the settlement agreement between the parties.
- D. This Scheme provides for:
  - (a) the procedure for assessing the individual loss of Group Members;
  - (b) the pro rata calculation of the entitlement of each Group Member to a distribution from the Compensation Pool.
- E. Ms Kathryn Emeny, a principal in the Class Actions Department of Maddens Lawyers (**Maddens**) will act as Administrator of the Scheme.
- F. To assist the Administrator manage this Scheme:
  - (a) loss assessments prepared by Independent Loss Assessors and loss information and supporting documentation provided to Maddens by Group Members, their insurers and/or Registered Insurers to date will provide the basis of assessments under this Scheme;
  - (b) the Administrator, at her discretion, may request additional information in relation to losses suffered by each Group Member;
  - (c) if the Administrator does not receive a Group Member's response to any request for further information within 14 days, she will assess that Group Member's entitlements in accordance with the information in her possession.



- G. Any loss relating to a personal injury arising from the Terang / Cobden Bushfire will be considered by a barrister experienced in personal injury law. An assessment of the Group Member's loss for personal injury will be made by the Administrator after this process.
- H. The Administrator will be assisted by Maddens and will be entitled to recover the reasonable administration costs of this Scheme including reasonable costs related to the assessment of Group Members' loss and damage. Such costs are to be assessed by an independent costs consultant and are subject to approval by the Court.
- I. Group Members who seek specific legal advice, or require other work beyond the routine information-gathering and assessment tasks undertaken by the Administrator, will be entitled to retain other solicitors as they wish but at their individual cost.
- J. The Court will have ongoing supervision over the implementation of this Scheme.
- K. The operative provisions of this Scheme are set out below.

## OPERATIVE CLAUSES

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### 1. Interpretation

- 1.1 In this Scheme, the following terms have the meanings defined (clause references are references to the clauses of this document unless otherwise specified):

**Administration Costs** means the disbursements (including the costs of any expert advisers and barristers) and costs incurred by the Administrator in connection with the administration of this Scheme, including assessing Group Member claims and administering the Scheme (but not including Medico-Legal Assessment Costs as outlined in clause 5.8), which costs have been assessed by an independent costs consultant and approved by the Court.

**Administrator** means Ms Kathryn Emeny a principal in the Class Actions Department of Maddens or another person appointed by the Court as Administrator of the Scheme.

**Agreement** means the settlement agreement executed by the plaintiff and his legal representatives and Powercor Australia Ltd (ACN 064 651 109) and its legal representatives dated 29 October 2019.

**Assessment Entitlement** means the amount of the proportionate entitlement of a Group Member and/or Registered Insurer to compensation from the Compensation Pool calculated in accordance with clause 6 of this Scheme.



**Assessed Loss** means the loss assessed by the Administrator based on the information available as at the Settlement Date (including any assessment by an Independent Loss Assessor) and provided by Group Members and/or Registered Insurers in relation to the quantum of the Group Member's loss and damage calculated in accordance with clause 5 of this Scheme.

**Claimant Records** means a database or other records constructed by or on behalf of Maddens to contain the information for each Group Member and any information required to identify the Group Member, including names, addresses and telephone numbers and all insurance claims notified to Maddens.

**Claims** means all manner of actions, suits, causes of action, arbitrations, debts, dues, costs, claims, demands, verdicts and judgements either at law or in equity or arising under statute and whether or not the facts, matters or circumstances giving rise to those Claims are known to any Group Member at the date of the conclusion of the Scheme.

**Common Benefit Legal Costs** means professional fees and disbursements incurred by Maddens in relation to the proceeding and the assessment of Group Member claims for the purposes of mediation and preparation for trial, and in connection with obtaining Court Approval of the settlement of the proceeding, and which have been assessed by an independent costs consultant and approved by the Court.

**Compensation Pool** means the Settlement Sum less Common Benefit Legal Costs, less Administration Costs and less the Reimbursement Payment.

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

**ELPD Claim/s** means economic loss and property damage claims of Group Members.

**Funds in Court** means the office of the Senior Master.

**Terang / Cobden Bushfire** means the fire that started on 17 March 2018 near the intersection of the Princes Highway and Peterborough Road, Terang in the State of Victoria.

**Group Member** means a person defined as a Group Member in the Amended Statement of Claim filed in the Proceeding on 21 June 2019 who has registered with Maddens and is identified in the List of Registered Group Members set out at Appendix 1 of the Agreement and where the context admits, includes a reference to an insurer of the Group Member who is a Registered Insurer in respect of that Group Member.

**Independent Loss Assessors** means independent experts engaged by Maddens for the purposes of undertaking assessments of the sample Group Members' ELPD Claims for the purpose of this Proceeding including Vincents, Agribusiness Valuations Australia, Technical Assessing, OMS Consulting, Gurnett Ryan Property Valuers and XUrban.



**Insurer Assessed Entitlement** means the component of the total Assessment Entitlement of a Group Member that is payable to the Group Member's Registered Insurer pursuant to the Group Member's obligation to account to the said insurer.

**Maddens** means Maddens Lawyers ABN 94 831 504 106.

**Order 15 Group Member** means a person who is a person under a disability within the meaning of order 15 of the Rules.

**PEL Claim/s** means pure economic loss claim/s of Group Members.

**PI Claim/s** means personal injury claim/s of Group Members as defined in paragraph 5(a) of the Amended Statement of Claim filed in the Proceeding on 21 June 2019.

**Plaintiff** means Anthony James Lenehan.

**Proceeding** means *Lenehan v Powercor Australia Ltd*, Supreme Court of Victoria, Proceeding No (S CI 2018 01290).

**Registered Insurer** means any insurer which has registered subrogated losses caused by the Terang / Cobden Bushfire with Maddens.

**Reimbursement Payment** means the payment made to the plaintiff in the sum of \$30,000, as approved by the Court.

**Rules** means *Supreme Court (General Civil Procedure) Rules 2015*.

**Scheme** means the terms of this Settlement Distribution Scheme as approved by the Court.

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

**Settlement Approval** means the making of orders granting approval of the terms of settlement of the Proceeding and the Scheme by the Court pursuant to section 33ZF of the *Supreme Court Act 1986 (Vic)* including provisional approval by the Court (subject to determination of any objections to the Scheme).

**Settlement Date** means 29 October 2019.

**Settlement Distribution Fund** means a controlled moneys account as defined in the *Legal Profession Act 2004* to be established by Maddens with Westpac Banking Corporation to hold moneys for the purpose of the Scheme, and where the context admits, will include a reference to all moneys in the account.

**Settlement Sum** means the amount of AUD\$17,500,000.00, plus any interest accruing on that Sum in the Settlement Distribution Fund.

1.2 Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural, and the converse also applies;



- (b) a gender includes all genders;
  - (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
  - (d) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
  - (e) a reference to dollars and \$ is to Australian currency;
  - (f) a reference to anything done by any person includes a reference to the thing as done by a director, officer, servant, agent, personal representative or legal representative if permitted to be so done by law or by any provision of the Agreement or this Scheme.
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## **2. Scheme Administrator**

- 2.1 The Settlement Distribution Fund shall be administered and applied by the Administrator. The Administrator, at her discretion, may utilise the services of and may in administering the Settlement Distribution Fund or Scheme as applicable delegate any power under this Scheme to any persons employed or engaged by her including barristers, accounting or other experts and rely upon their work, information and opinions.
- 2.2 In acting as Administrator (including any incidental functions) the Administrator's obligation is to do so properly on behalf of the Group Members and Registered Insurers as a whole.
- 2.3 Neither Maddens, the Administrator nor any person employed by Maddens will act as the lawyer for any individual Group Member or Registered Insurer in relation to his, her or its claim under the Scheme in relation to that Group Member's individual claim for compensation or Insurer Assessed Entitlement under the Scheme.
- 2.4 Following Settlement Approval and payment of the Settlement Sum in accordance with the Agreement, the Administrator shall hold the moneys in the Settlement Distribution Fund subject to and in accordance with the terms of this Scheme.
- 2.5 The Administrator may rely on any information or declarations provided by the Registered Insurer of any Group Member as if such information has been provided by the Group Member.
- 2.6 Notwithstanding anything elsewhere contained in this Scheme, the Administrator may at any time correct any error, slip or omission occurring in the course of her administration of the Scheme.



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### **3. Group Member Information**

- 3.1 The Administrator shall maintain the Claimant Records and use reasonable endeavours to ensure the accuracy of the information they contain.
- 3.2 The Claimant Records shall contain the information for each Group Member provided by the Group Member or obtained by the Administrator or Maddens including any information provided by a Group Member's insurer or a Registered Insurer or otherwise.
- 3.3 The Claimant Records shall include:
- (a) assessments of ELPD Claims undertaken by Independent Loss Assessors for the purpose of the Proceeding;
  - (b) assessments of PI Claims conducted in accordance with this Scheme; and
  - (c) assessments of each Group Member's claim in accordance with the provisions of this Scheme.
- 3.4 The accuracy of the information in the Claimant Records shall be deemed to be accepted by each Group Member. The Administrator shall use reasonable endeavours to ensure the accuracy of the information recorded in the Claimant Records.
- 3.5 Subject to clause 3.6, a Group Member shall not be entitled to amend the information contained on the Claimant Records after the Settlement Date.
- 3.6 The Administrator may, in the Administrator's absolute discretion, request and take into account additional documentation or information in relation to a Group Member's claim.

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### **4. Information Held by Administrator and Basis of Assessment**

- 4.1 Subject to clause 4.2:
- (a) for the purpose of the administration of this Scheme, information provided by Group Members or held by the Administrator may be relied upon as accurate by the Administrator, in her absolute discretion, when administering the Scheme; and
  - (b) each Group Member's distribution from the Compensation Pool will proceed on the basis of the information contained in the Claimant Records.
- 4.2 If in the Administrator's opinion, the information held in the Claimant Records



or provided by any Group Member or otherwise:

- (a) insufficiently substantiates the claim or part of a claim made by a Group Member, the Administrator, in her absolute discretion, may by written notice require the Group Member to provide and verify by a further declaration or otherwise such further information as the Administrator may require. If the Group Member does not provide the further information in the form requested, within 14 days of such a request being made, the Administrator may determine that the claim or part of the claim as the case may be is not eligible for any distribution from the Compensation Pool;
- (b) is sufficient notwithstanding that some information may not be included, the Administrator, in her absolute discretion, may accept it as complete.

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## 5. Assessment of Individual Entitlements

- 5.1 Within 14 days after Settlement Approval, the Administrator shall determine the Assessed Loss and Assessment Entitlement for each Group Member, save in respect of group members under a disability, for whom special provision is made under clause 13.
- 5.2 For the purpose of the application of this formula and the Scheme more generally, the joint interests of Group Members will be treated as a single interest where appropriate — for example, claims by spouses who jointly own a property.
- 5.3 The Administrator will create and maintain a database in the form of an Excel Spreadsheet recording each Group Member's Assessed Loss and Assessment Entitlement.
- 5.4 Each Group Member's Assessed Loss will be determined by the Administrator based upon the information held by Maddens in relation to that Group Member's loss, including assessment reports prepared by Independent Loss Assessors, and:
  - (a) any adjustment to ELPD claims in accordance with clause 5.6 below; and/or
  - (b) any adjustment to PEL Claims in accordance with clause 5.7 below.



***Economic Loss and Property Damage (ELPD) Claims***

5.5 In respect of ELPD Claims each Group Member's information contained in the Claimant Records will be the basis of the assessment of the ELPD claim for each Group Member.

5.6 For the purposes of the Compensation Pool, Group Member's ELPD claims will be assessed on the following bases:

- (a) for the Plaintiff, in accordance with the agreement reached with the defendant with respect to quantum;
- (b) for Group Members:
  - (i) on the basis of the assessments conducted by Independent Loss Assessors and/or the Administrator subject to any reductions or increases considered necessary by the Administrator to ensure that the assessment reflects a reasonable assessment of the Group Member's loss that is as accurate as possible having regard to the available information; then
  - (ii) reduced by 20% on account of the difficulties in proving losses claimed by Group Members.

5.7 For the purposes of the Compensation Pool, Group Member's PEL Claims will be assessed on the following basis:

- (a) on the basis of the assessments conducted by Independent Loss Assessors and/or the Administrator subject to any reductions or increases considered necessary by the Administrator to ensure that the assessment reflects a reasonable assessment of the Group Member's loss, that is as accurate as possible having regard to the available information; then;
- (b) reduced by 70% on account of the particular difficulties in establishing and proving PEL losses claimed by Group Members.

***Personal Injury (PI) Claims***

5.8 In respect of PI Claims:

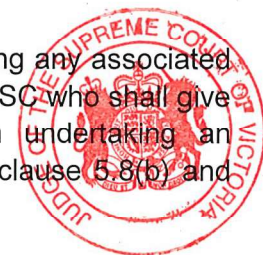
- (a) Each Group Member's information contained in the Claimant Records and any supporting documentation has been or will be provided to Mr Timothy Tobin SC who is experienced in personal injury law.
- (b) Once Mr Tobin SC receives the information, he will consider whether a Group Member has suffered a compensable injury and if in his opinion there is such injury, deliver an assessment valuing the PI Claim within 21 days or such longer period as the Administrator considers in her absolute discretion to be warranted for any individual Group Member





including any extension of time required to allow for a referral to a medico-legal assessment (as provided by clause 5.8(e)) (**PI Assessment**).

- (c) Mr Tobin SC, in considering the value of the PI Claim, may at his sole discretion confer with the Group Member.
- (d) The assessment of Mr Tobin SC referred to in 5.8(b) above will be limited to:
  - (i) an assessment of whether the magnitude of the Group Member's injury is likely to satisfy the threshold level under the *Wrongs Act 1958* (Vic) as defined in section 28LB;
  - (ii) whether a Group Member has suffered any loss of earnings or loss of capacity for employment; and
  - (iii) a desk top assessment of the Group Member's PI Claim undertaken on the basis of the information contained in the Claimant Records and any other available supporting documentation provided to Mr Tobin SC pursuant to clause 5.8(a).
- (e) The Administrator may advise a Group Member that they will be referred for a medico-legal assessment if:
  - (i) she considers that such an assessment is necessary in order to determine whether that Group Member is likely to satisfy the threshold level under the *Wrongs Act 1958* (Vic) as defined in section 28LB, or in order to otherwise assess the Group Member's claim; or
  - (ii) she is advised by Mr Tobin SC that a referral is necessary for the reasons in sub-paragraph (i).
- (f) In the event of referral to a medico-legal assessment:
  - (i) the Administrator shall notify the Group Member of the referral, including details of the assessment time, place and location with a request the Group Member attend;
  - (ii) the Group member may elect not to attend the assessment;
  - (iii) should the Group Member decline or fail to attend the assessment, Mr Tobin SC shall proceed to undertake an assessment of the PI Claim on the basis of the information and materials available to him in accordance with clause 5.8(b) and (d) above;
  - (iv) the outcome of medico-legal assessment, including any associated assessment report, shall be provided to Mr Tobin SC who shall give consideration to the assessment report when undertaking an assessment of the PI Claim in accordance with clause 5.8(b) and (d) above;



- (v) the legal costs associated with referral to the medico-legal assessment, if it proceeds, shall be borne by the Group Member and shall not exceed \$5,000 (**Medico-Legal Assessment Costs**).
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## 6. Calculation of Aggregate Losses and Proportionate Entitlements to the Compensation Pool

- 6.1 Because the Compensation Pool is less than the total amount claimed by the Group Members, each Group Member's Assessed Loss must be adjusted to reflect their entitlement to a proportion of the Compensation Pool. The intent of the formula for calculation of that Assessment Entitlement is that each individual Group Member will be compensated for an equal proportion of their total loss.
- 6.2 The aggregate loss is the Assessed Loss for all Group Members added together (**group quantum**).
- 6.3 Each Group Member's proportion of the Compensation Pool for distribution will be calculated using the following pro rata distribution formula:  
*(Group Member Assessed Loss / group quantum) x 100 = Assessment Entitlement %*
- then*
- Compensation Pool x Assessment Entitlement % = Assessment Entitlement*
- 6.4 Where a Group Member's claim is for loss that was wholly or partly insured, the Assessed Loss will not include any allowance for loss adjuster fees or other administration fees incurred by the insurer.
- 6.5 Where a Group Member's Assessed Loss includes insured loss, the insurer will be entitled to recover a component of the Group Member's Assessment Entitlement (**Insurance Payment**).
- 6.6 The Assessment Entitlement will be payable to the Group Member (minus any applicable Insurance Payment). Any Insurance Payment will be payable to the Group Member's insurer.
- 6.7 The basis for the calculation of Insurance Payments has not yet been approved by the Court. Upon the Court determining that matter, the Administrator is to calculate the Insurance Payments and make distributions to Group Members and their Registered Insurers (as applicable) in accordance with clause 9.
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## 7. Assessment Entitlement Notices

- 7.1 A Group Member together with his, her or its Registered Insurer (where applicable) will be advised in writing of their respective Assessment Entitlements prior to distribution.
- 7.2 A Group Member and Registered Insurer (where applicable) will have 10 days, from the date of issue of their Assessment Entitlement, to notify the



Administrator of any administrative error, slip or omission in the Assessment Entitlement.

- 7.3 In the event of a notification under clause 7.2, the Administrator shall:
- (a) undertake a review of the Assessment Entitlement for the purposes of identifying or considering any administrative error, slip or omission;
  - (b) at her sole discretion make a determination as to whether an administrative error, slip or omission has occurred; and
  - (c) within 10 days issue a further Assessment Entitlement either correcting the administrative error, slip or omission or confirming the original Assessment Entitlement.
- 7.4 The accuracy of an Assessment Entitlement shall be deemed to be accepted by a Group Member or Registered Insurer and shall be final under the Scheme if the Group Member has not notified the Administrator of any administrative error, slip or omission in the Assessment Entitlement within 10 days of the date of issue.
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## **8. Group Member's Obligations, Indemnities and Reimbursement of Statutory Benefit Receipts**

- 8.1 Each Group Member shall act honestly, and do all things necessary to ensure that any agent or representative of the Group Member acts honestly, in anything done in or for the purposes of participating in this Scheme and any person discharging any function or office created by this Scheme shall be entitled to rely upon the honesty of the thing done.
- 8.2 Payment of compensation pursuant to this Scheme may be subject to obligations under statutes and regulations. Accordingly, each Group Member indemnifies the Administrator in respect of all such obligations, including but not limited to payments or repayments relating to the Australian Taxation Office, Social Security, Medicare, Worker Compensation or any other statutory benefits paid to or for the benefit of the Group Member under this Scheme.
- 8.3 If a Group Member has a legal obligation, whether by reason of statute, contract or otherwise, to an agency, compensation payer or insurer to pay or repay a sum from the amount payable to the Group Member under this Scheme, the Group Member shall, as a condition of its entitlement to receive payment, indemnify the Administrator in respect of any and all such obligations.
- 8.4 Without limiting any other obligation or discretion of the Administrator under this Scheme, for the avoidance of doubt the Administrator may make such adjustments or withholdings from any payment otherwise due to a Group Member pursuant to this Scheme as may be necessary to:



- (a) comply with any statutory or regulatory obligation to pay or refund any amount to a statutory or other agency; or
- (b) effect any indemnity given or equitable or contractual obligation owing by a Group Member under this Scheme.

8.5 Where the agency administering any State or Federal scheme notifies the Administrator in writing that any amount is payable to the agency from any payment payable to a Group Member under this Scheme, the Administrator:

- (a) shall pay the said amount to the agency prior to any final distribution of the balance of the Group Member's entitlements pursuant to this Scheme;
- (b) shall notify the Group Member of the payment to the agency; and
- (c) without affecting any other privilege or immunity under this Scheme, shall have no further obligation to the Group Member in respect of the said amount;

but nothing in this section shall affect any right the Group Member or the agency might have against each other in respect of the said amount.

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## 9. Distribution of Compensation Pool

- 9.1 The Compensation Pool shall be allocated between Group Members on a pro-rata basis according to the relative values of their Assessment Entitlement.
- 9.2 The Administrator may make interim distributions of the Compensation Pool, prior to the final distribution of the Compensation Pool.
- 9.3 The Administrator shall make an interim distribution of the Compensation Pool within 14 days of determining the Assessment Entitlement for each Group Member in accordance with clause 6.3 (**First Interim Distribution**).
- 9.4 In making the First Interim Distribution:
  - (a) the Administrator must ensure that sufficient funds remain in the Settlement Distribution Fund to meet each of the following:
    - (i) Insurance Payments; and in any case the allowance for the purposes of this clause is to be not less than the gross sum of the insurance payments made to all registered group members in respect of their claimed losses arising out of the Terang/Cobden bushfire;
    - (ii) the Assessment Loss of any Order 15 Group Members plus an allowance of 100% of those assessments, to account for the fact that the Assessed Entitlements must be approved by the court and those amounts may be more (or less) than the amounts assessed by the Administrator; and



- (iii) Common Benefit Legal Costs, Administration Costs and the Reimbursement Payment (whether approved by the Court as at the date of the First Interim Distribution or yet to be approved; whether incurred or anticipated)  
**(the Clause 9.3 Reserve);**
  - (b) subject to being satisfied that the funds remaining in the Settlement Distribution Fund are sufficient for the purposes of the Clause 9.3 Reserve, the Administrator may distribute the whole of the Compensation Pool less the Clause 9.3 Reserve, in the First Interim Distribution;
  - (c) The assessment of the amount of funds required for the purposes of the Clause 9.3 Reserve is to be made in the Administrator's absolute discretion.
- 9.5 Prior to any final distribution from the Settlement Distribution Fund, the Administrator will cause:
- (a) Common Benefit Legal Costs as approved by the Court to be paid to Maddens;
  - (b) Administration Costs as approved by the Court to be paid to Maddens;
  - (c) the Reimbursement Payment as approved by the Court to be paid to the Plaintiff.
- 9.6 If after the final distribution of the Compensation Pool to Group Members:
- (a) any amount remains or is held in the Compensation Pool; or
  - (b) any cheque remains un-presented for a period of 90 days or such further period that the Administrator otherwise deems appropriate;
- the amount shall be distributed to Group Members, subject to clause 9.7.
- 9.7 At the Administrator's absolute discretion, the following amounts required to be distributed under clause 9.6 may instead be paid to BlazeAid (a volunteer-based organisation that works with families and individuals in rural Australia after natural disasters):
- (a) if the total amount to be distributed is less than \$5,000 the total amount; or
  - (b) if the amount to be distributed to any individual Group Member is less than \$100, that amount.

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## 10. Immunity from Claims

- 10.1 The completion of distributions made pursuant to clause 9 (including distributions made by cheques that remain un-presented for 90 days) shall satisfy:



- (a) all Claims made by Group Members (including the Plaintiff) in the Proceeding; and
- (b) any Claims made by Group Members (including the Plaintiff) arising out of or relating in any way to the facts matters or circumstances set out in the pleadings in the Proceeding or any matter that is the subject of the Proceeding or has been the subject of the Proceeding.

10.2 Upon final distribution of the Settlement Distribution Fund in accordance with this Scheme, the Administrator shall have no further liability in respect of the Settlement Sum, the Compensation Pool or the implementation of this Scheme.

10.3 Without limiting any other provision for immunity in this Scheme, the Administrator in relation to this Scheme shall have the same immunities from suit as attach to the office of a judicial officer of the Court.

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## **11. Disclosures to Agencies and Insurers**

11.1 Where necessary or reasonable for the purposes of this Scheme or compliance with any statutory or contractual obligation owed by, or in respect of any compensation payable to any Group Member, the Administrator may release to:

- (a) a statutory or other agency;
- (b) an insurer; or
- (c) the Australian Taxation Office;

details of a Group Member's name, address, identifying particulars, tax file number and any Assessment Entitlement relating to the claim.

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## **12. Supervision by the Court**

12.1. The Administrator may refer any issues arising in relation to the Scheme to the Court for determination or advice.

12.2. Any costs incurred in any such referral to the Court made by the Administrator shall be deemed to be a part of the Administration Costs.



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### **13. Persons Under Disability**

#### ***Litigation Guardian***

13.1. Where the Administrator believes that a Group Member is or may be an Order 15 Group Member:

- (a) the Administrator shall give written notice of that belief to:
  - (i) the Group Member;
  - (ii) the person who the Administrator proposes to appoint as the litigation guardian for the Group Member; and
- (b) unless the Group Member satisfies the Administrator that they are not a person to whom Order 15 of the Rules applies, the person nominated as litigation guardian shall, subject to giving their consent and the approval of the Court, be appointed by the Court as the litigation guardian of that Group Member.

13.2. The Administrator shall notify Funds in Court of each Order 15 Group Member identifying the contact details of the litigation guardian of each Order 15 and any other relevant details.

13.3. Where a Group Member is an Order 15 Group Member the operation of this Scheme shall be modified as follows:

- (a) any notices, correspondence or information required by this Scheme to be given to a Group Member shall be given to the litigation guardian of the Group Member;
- (b) except where otherwise provided by this Scheme or by the Administrator, anything that is required by the Scheme or the Administrator to be done by a Group Member shall be done by their litigation guardian; and
- (c) any notice pursuant to clause 7 which may be given by a Group Member pursuant to this Scheme will be given by the litigation guardian of the Group Member.

#### ***Procedure Facilitating Order 15 Approval***

13.4. Where a Group Member is an Order 15 Group Member, the Administrator shall deliver to Funds in Court:

- (a) the Assessed Loss in relation to each such Group member;
- (b) a report by Maddens detailing such background or other matters as the Senior Master may require;
- (c) confirmation that:



- (i) the litigation guardian of the Order 15 Group Member was given notice of the Assessed Loss and any review rights in accordance with this Scheme;
  - (ii) the time for making any request for review has expired; and
  - (iii) any review of an Assessed Loss by the litigation guardian of the Order 15 Group Member has been completed in accordance with this Scheme;
- (d) a proposed form of order for each Order 15 Group Member including orders to the effect that:
- (i) pursuant to Order 15 of the Rules, approval be granted for a compromise of the Group Member's claim for the amount of the Assessment Entitlement; and
  - (ii) any distribution in respect of the Group Member pursuant to this Scheme be paid to the Senior Master by payment into Court.

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#### **14. Administration Costs**

- 14.1 Fees payable in respect of work performed by or on behalf of the Administrator pursuant to this Scheme shall be assessed by an independent costs consultant and payment of those costs to the Administrator will be subject to approval of the Court.
- 14.2 Notwithstanding any other provision of this Scheme, and without reducing any other rights which the Administrator might have, any costs, expenses, taxies, levies, duties, charges, fees or other imposts or obligations arising in connection with the administration of this Scheme (including without limitation the creation, retention, investment or disbursement of any part of the Settlement Distribution Fund) incurred by the Administrator over and above the Administration Costs will be borne by the Administrator.

#### ***Approval of Administration Costs***

- 14.3 All fees and disbursements payable to any person in relation to the administration of this Scheme shall:
- (a) form part of the Administration Costs of the Scheme;
  - (b) be identified in a report to the Court prior to any disbursement from the Settlement Distribution Fund to the person claiming the costs or disbursements; and
  - (c) be disbursed from the Settlement Distribution Fund upon and to the extent of approval by the Court.
- 14.4 Nothing in this Section shall affect any rights or obligations as between a





solicitor and client of that solicitor in respect of costs incurred pursuant to any retainer or costs agreement between the solicitor and that client.

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## 15. Notice

15.1 Any notice or document to be given (or delivered) pursuant to this Scheme shall be deemed to be given (or delivered) 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 (being, in respect of any Group Member, the postal address recorded in the Claimant Records, as obtained from or directly from the Group Member);
  - (ii) sent by fax to that person's fax number (being, in respect of any Group Member, the fax number provided by the Group Member) and the machine from which it is sent produces a report that states that it was sent in full; or
  - (iii) sent by email to that person's email address (being, in respect of a Group Member, the email address provided by the Group Member), and a server through which it is transmitted produces a report that states that the email has been sent to the inbox of the specified email address.

15.2 A notice or document that complies with clause 15.1 will be deemed to have been given (or delivered) and received:

- (a) if it was sent by mail to an addressee in Australia, three (3) clear business days after being sent;
- (b) if it is sent by mail to an addressee overseas, five (5) clear business days after being sent;
- (c) if it is delivered or sent by fax, at the time stated on the report that is produced by the machine from which it is sent; and
- (d) if it is sent by email, at the time it is sent.

15.3 Where a Group Member is not a natural person and where one person has been nominated as the contact in respect of several Group Members, it is sufficient for the purpose of giving notice that any of the provisions of clause 15.1 are complied with in relation to that nominated person.

15.4 The Administrator's address, fax number and email address shall be as set out below unless and until the Administrator notifies the Group Members



otherwise:

Attention: Kathryn Emeny

Terang / Cobden Bushfire Class Action  
Proceeding

Maddens Lawyers  
219 Koroit Street  
Warrnambool VIC 3280  
Fax: (03) 5560 2000  
Email:  
[blm@maddenslawyers.com.au](mailto:blm@maddenslawyers.com.au)

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## **16. Time**

16.1 The time for doing any act or thing under this Scheme may be extended by order of the Court.

**END OF SETTLEMENT DISTRIBUTION SCHEME**

