

Northern Territory Stolen Generations Class Action

Natalie Ellis as representative of the estate of Marita Parnell v. Commonwealth of Australia

Supreme Court of New South Wales No.2021/00117924

SETTLEMENT DISTRIBUTION SCHEME

BACKGROUND:

- A. This Settlement Distribution Scheme (**Scheme**) establishes a procedure for distributing the Settlement Sum to be paid by the Commonwealth pursuant to a settlement of the Proceedings, as approved by the Court.
- B. The Court has approved terms for the settlement of the Proceedings requiring the Commonwealth to pay an amount (the **Settlement Sum**) in full and final settlement of the Claims of:
- (i) Kinship Group Members as defined in the Statement of Claim (**SOC**); or
 - (ii) Removed Children as defined in the SOC who are deceased prior to 5 August 2021;
- (together, **Claimants**).
- C. In overview, this Scheme provides for the following major steps:
- (i) two lawyers from Shine Lawyers will be appointed as Administrators of the Scheme (Section 3);
 - (ii) the Commonwealth will pay the Settlement Sum into a Settlement Distribution Fund to be managed by the Administrators;
 - (iii) the Administrators will deduct from the Settlement Distribution Fund various amounts if and to the extent they are approved as reasonable by the Supreme Court (the amounts being defined as the Funding Costs, the Plaintiff's Legal Costs and Disbursements, and the Original Plaintiff's and Plaintiff's Reimbursement Payment) (Section 6);
 - (iv) Claimants who wish to claim a compensation Payment pursuant to the Scheme will submit a Proof to the Administrators (Section 7);
 - (v) Deceased Claimants may participate in the Scheme through their spouse or, if no spouse survives, their children, who will submit Proofs as the Registered Representatives of the Deceased Claimant (Section 8);
 - (vi) the Administrators will review the Proofs, provide reasonable assistance to enable Claimants to establish their entitlements, and use the Proofs to verify the entitlement of each Claimant to a Payment from the Settlement Distribution Fund (Section 9);
 - (vii) where a Proof is rejected by the Administrators, the Administrators will notify the Claimant of the rejection and of the Claimant's rights to seek a review of the rejection, and will facilitate the review process (Section 9);

- (viii) following determination of Claimants' entitlements to Payments, the Administrators will:
- (a) seek Court approval of their Administration Costs;
 - (b) deduct the approved Administration Costs from the Settlement Distribution Fund (Section 10); and
 - (c) distribute the amount then remaining in the Settlement Distribution Fund (being the Net Distribution Sum) among the eligible Claimants, in the proportions which their individual entitlements bear to the individual entitlements of the other Claimants (Section 11).

OPERATIVE PROVISIONS:

1. DEFINITIONS

- 1.1. Terms defined in the Deed shall carry the same meaning when used in this Scheme.
- 1.2. In this Scheme, the following additional terms have the meanings defined (clause references are references to the clauses of this document unless otherwise specified):

Defined Term	Meaning
<i>Administration Costs</i>	Means costs of and incidental to the administration of the Scheme incurred by the Administrators, in an amount approved by the Court.
<i>Administration Staff</i>	Means employees of Shine Lawyers tasked by the Administrators to assist the Administrators in the implementation of the Scheme.
<i>Approval Date</i>	Means the date upon which this Scheme is approved by the Court pursuant to Part 10 of the <i>Civil Procedure Act 2005 (NSW)</i> .
<i>Cost Assessor</i>	Means Ms. Kerrie Rosati of DGT Costs Lawyers or such alternate as may be appointed by the Court
<i>Dispute Notice</i>	Means a notice provided in accordance with clause 9.6
<i>Distribution Statement</i>	Means a notice provided in accordance with clause 9.4.
<i>Final Approval Date</i>	Means the business day following the Appeal Expiry Date.
<i>Funding Costs</i>	Means the amount to be paid to LLS by way of funding commission in the amount of five million five hundred thousand dollars (\$5,500,000) or such other amount as may be approved by the Court.
<i>Net Distribution Sum</i>	Means the amount of the Settlement Distribution Fund available for distribution to Claimants after the deduction of:

- (a) the Plaintiff's Legal Costs and Disbursements;
- (b) the Funding Costs;
- (c) the Original Plaintiff's Reimbursement Payment;
- (d) the Plaintiff's Reimbursement Payment;
- (e) the Administration Costs; and
- (f) any other amount required or permitted to be withheld by the Administrators pursuant to this Scheme.

<i>Original Plaintiff's Reimbursement Payment</i>	Means the amount payable to Eileen Cummings in recognition of time and inconvenience in acting as representative in the Proceedings, in the amount of ten thousand dollars (\$10,000) or such other amount as may be approved by the Court.
<i>Payment</i>	Means the individual entitlement of a Participating Claimant calculated in accordance with the Loss Assessment Formula or as varied by review.
<i>Participating Claimants</i>	Means Claimants who have submitted a Proof in accordance with clause 7 or on whose behalf a Registered Representative has submitted a Proof in accordance with clause 8.
<i>Participating Claimants Database</i>	Means a database maintained by the Administrators to record the identification, contact and banking details of Participating Claimants.
<i>Plaintiff's Legal Costs and Disbursements</i>	Means the legal costs and disbursements incurred by or on behalf of the Plaintiff in conducting the Proceeding, obtaining Court approval of the settlement, including the costs of defending any appeals from the approval, on a solicitor/client basis, as approved by the Court, shall be capped at two million nine hundred thousand dollars (\$2,900,000.00 (which for the avoidance of doubt includes legal costs and disbursements paid by LLS and unbilled costs payable to Shine to the sum of \$1,900,000.00 (including GST), plus after-the-event insurance premium in the amount of \$1,000,000.00 (including GST)).
<i>Plaintiff's Reimbursement Payment</i>	Means the amount payable to the Plaintiff in recognition of time and inconvenience in acting as representative in the Proceedings, in the amount of five thousand dollars (\$5,000) or such other amount as may be approved by the Court.
<i>Proof</i>	Means a claim for a Payment made in accordance, or substantially in accordance, with the form provided in the Registration Notice.

<i>Registration Notice</i>	Means a notice by which Claimants register as Participating Claimants, such notice to be in a form and to be advertised and sent in a manner approved by the Court.
<i>Registered Representative</i>	Means, in respect of a Deceased Claimant, the person or persons ascertained to be a Registered Representative of a Deceased Claimant in accordance with clause 8.
<i>Registration Date</i>	Means the date specified in the Notice as being the date by which the Proofs of Claimants must be received by the Administrators.
<i>Review Counsel</i>	Means Joshua Creamer of the Queensland Bar, or such other member of the Bar as the Court may appoint.
<i>Will</i>	Means a validly executed will.

2. INTERPRETATION

- 2.1. Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:
- (a) terms defined in the Deed have their defined meaning in this Scheme;
 - (b) the singular includes the plural, and the converse also applies;
 - (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 Deed or this Scheme.
- 2.2. This Scheme is intended to operate subject to and in accordance with the Deed, and in the event of any inconsistency between the terms of the Deed and this Scheme, the Deed shall prevail.

3. ADMINISTRATORS

- 3.1. The Administrators shall be Vicky Antzoulatos and Sarah Thomson of Shine Lawyers, jointly and severally.
- 3.2. In acting as Administrators, the Administrators:
- (a) shall conduct themselves as lawyers discharging an office appointed by the Court and obligated to implement this Scheme for the benefit of the Claimants considered as a whole; and

- (b) shall not act as the lawyer for any individual Claimant (or subgroup of Claimants) in relation to the Claim of that Claimant (or subgroup).

3.3. The Administrators:

- (a) are responsible for administering, and distributing the monies in, the Settlement Distribution Fund efficiently and at a cost which is reasonable and proportionate;
- (b) may act jointly or severally, and if severally then the act or omission of either shall stand as the act or omission of both;
- (c) may act by delegates appointed by the Administrators, subject to the Administrators first obtaining from any such delegate an acknowledgement in writing that such person agrees to be bound to the obligations and duties set out herein as if that person was the Administrator and:
 - (i) references in this Scheme to the Administrators shall hereafter include reference to such delegates;
 - (ii) for the avoidance of doubt the Administrators are and remain responsible for all acts or omissions of any such delegate;
- (d) may be assisted by Administration Staff;
- (e) must act independently of any person other than each other;
- (f) may obtain legal advice, including from other principals or servants of Shine Lawyers;
- (g) may engage third party service providers including, but not limited to, accountants, lawyers, tax advisors, registry service providers and mailing houses;
- (h) may obtain advice in respect of tax matters arising from the administration or application of the Settlement Distribution Fund and may seek a ruling from the Federal Commissioner of Taxation, any relevant Commissioners of State Revenue, or other necessary State or Federal offices if the Administrators determine that obtaining such a ruling would be in the best interests of the Participating Claimants considered as a whole;
- (i) so far as is consistent with this Scheme, are authorised to make decisions that, in the Administrators' sole discretion, ultimately benefit the body of Participating Claimants as a whole;
- (j) shall be indemnified from the Settlement Distribution Fund for any and all taxes, charges, duties, imposts or other levies arising in respect of the settlement of the Proceedings or the Settlement Distribution Fund, and for any costs incurred in good faith by or on behalf of the Administrators; and
- (k) in the discharge of their functions (by themselves, their delegates or Administration Staff) under this Scheme shall have the same immunities from suit as attach to the office of a judge of the Supreme Court of New South Wales.

3.4. Notwithstanding anything elsewhere contained in this Scheme, the Administrators may at any time:

- (a) correct any error, slip or omission occurring in the course of their administration of the Scheme; or
- (b) apply to the Court for guidance and orders in respect of any matter arising in or incidental to the administration of the Scheme or the resolution of the Proceeding.

4. RETIREMENT OF ADMINISTRATORS

- 4.1. If either of the Administrators resign or become unable to perform the duties of Administrator and thereafter the remaining Administrator resigns or becomes unable to perform their duties:
- (a) the last-mentioned Administrator (or if that person is unable to act, the Managing Director of Shine Lawyers) shall as soon as practicable:
 - (i) apply to the Court for the appointment of so many replacement Administrators as the Court may deem appropriate; and
 - (ii) do all such things (including executing any document) as may be necessary to enable or assist the appointees in (i) to assume their offices; and
 - (b) any Administrator appointed pursuant to (a) shall be an Administrator as defined in, and for all purposes of, this Scheme.

5. SETTLEMENT DISTRIBUTION FUND

- 5.1. The Administrators:
- (a) shall be joint and several signatories to the Settlement Distribution Fund; and
 - (b) shall hold the amounts standing in the Settlement Distribution Fund from time to time upon trust for the Claimants (subject to the payment of any and all taxes, charges, duties, imposts or other levies arising in connection with the establishment or administration of this Scheme) pursuant and subject to the Deed, this Scheme and any further order of the Court.

6. INITIAL DEDUCTIONS

- 6.1. The Administrators shall, on or as soon as practicable after the Final Approval Date, pay from the Settlement Distribution Fund:
- (a) the Funding Costs to LLS or as LLS may direct;
 - (b) the Plaintiff's Reimbursement Payment to the Plaintiff;
 - (c) the Original Plaintiff's Reimbursement Payment to Eileen Cummings; and
 - (d) the Plaintiff's Legal Costs and Disbursements to LLS or as LLS may direct.

7. PROOFS OF CLAIMS

- 7.1. Any Claimant wishing to participate in this Scheme must before the Registration Date submit a Proof to the Administrators or as the Registration Notice may direct (and persons who submit Proofs as aforesaid are Participating Claimants).

- 7.2. The Administrators by themselves, any delegate or by Administration Staff, shall provide to Claimants or their representatives such assistance in relation to the preparation of a Proof as the Administrators in their absolute discretion consider reasonable.
- 7.3. For the avoidance of doubt, the assistance referred to in clause 7.2 may be provided:
- (a) before a Proof or purported Proof is first submitted to the Administrators; or
 - (b) for the purpose of correcting or supplementing a Proof or purported Proof earlier submitted to the Administrators; and
- without limiting the foregoing, may include the Administrators preparing in the form of a Proof, and treating as a submitted Proof, any instructions that had been received by Shine Lawyers from a Claimant prior to Settlement Approval (and references to "Proofs" in this Scheme shall, where the context admits, be references to the Proofs completed as described in this subclause).
- 7.4. The Administrators shall collate the identification, contact and bank transfer details of Participating Claimants, and such other data as the Administrators consider appropriate, in the Participating Claimants Database.
- 7.5. No Proofs will be accepted by the Administrators after the Registration Date.

8. DECEASED CLAIMANTS

- 8.1. A Deceased Claimant shall only be entitled to participate in this Scheme if one or more persons have registered to be that Deceased Claimant's Registered Representative/s by submitting a Proof in accordance with this Scheme.
- 8.2. Subject to clause 8.3, a person shall only be eligible to be the Registered Representative of a Deceased Claimant in the following circumstances:
- (a) where the Deceased Claimant is survived by a spouse – the Registered Representative shall be the Deceased Claimant's spouse; or
 - (b) where the Deceased Claimant is survived by children but not by a spouse – the Registered Representative shall be any one or more of the said children as representing all of them, provided further that:
 - (i) any Payment in respect of the Deceased Claimant shall be paid by the Administrators in equal shares to such children as are registered as children of the Deceased Claimant for the purposes of the Scheme; and
 - (ii) 'children' for the purposes of this clause includes children who were legally adopted or adopted pursuant to the customary laws of the First Nations community of the Deceased Claimant and stood in the relationship of child to the Deceased Claimant; and
 - (iii) children as described herein shall be eligible to be the Registered Representative of one or both of their biological parents, or one adoptive parent, but not of both a biological parent and an adoptive parent.

- 8.3. Where there is an executed Will for a Deceased Claimant, or prior to the Administrators making any Payment a Claimant dies having executed a Will, then notwithstanding clause 8.2:
- (a) each executor of the Will is to be treated for the purposes of this Scheme as if they were a Registered Representative of the said testator or testatrix;
 - (b) no person other than the executor (or executors as the case may be) shall be entitled to be a Registered Representative of that said testator or testatrix;
 - (c) the executor or executors shall declare their holding of that office by way of a statutory declaration acceptable to the Administrators accompanied by a Proof; and
 - (d) any Payment in respect of the said testator or testatrix is to be made to the executor(s) and to no other person.
- 8.4. Subject to clause 8.3, the Administrators shall treat as the Registered Representative the person (or persons) who submitted a Proof for the claim of a Deceased Claimant, provided the Administrators in their absolute discretion are satisfied that the person(s) is eligible to be the Registered Representative in accordance with clause 8.2.
- 8.5. In determining claims in respect of Deceased Claimants, the Administrators shall have regard to the Participating Claimants Database and all completed Proofs, and where it appears to the Administrators in their absolute discretion that:
- (a) multiple claims have been lodged in respect of the one Deceased Claimant; or
 - (b) multiple persons are seeking to be Registered Representatives in relation the same Deceased Claimant,
- the Administrators must consolidate such claims, and shall determine the Registered Representative in respect of the Deceased Claimant according to the following priorities:
- (i) first, any person or persons satisfying clause 8.3;
 - (ii) second, any person or persons satisfying clause 8.2(a);
 - (iii) third, the person or persons satisfying clause 8.2(b).
- 8.6. Where no person is eligible to be the Registered Representative of a Deceased Claimant, that Deceased Claimant remains a Group Member but is not entitled to a Payment under this Scheme.

9. DETERMINATION OF PAYMENTS AND REVIEWS

Determination of Payment

- 9.1. The Payment due to each Participating Claimant shall be determined by the Administrators according to the Loss Assessment Formula, applied by reference to the Proof of each Participating Claimant.
- 9.2. In making the assessment in clause 9.1 the Administrators:
- (a) shall apply the Assessment Methodology Schedule; and

- (b) may take into account such further or other matters as the Administrators in their absolute discretion may deem appropriate, having regard to the objective of this Scheme to provide Payments to Claimants and not to other persons.

9.3. Where there is more than one Registered Representative in respect of a Deceased Claimant, each Registered Representative shall be entitled to an equal share of the Payment for that Deceased Claimant.

Distribution Statements and Claimants' rights to seek review

9.4. Within 30 days after the Registration Date or such later date as the Court on application by the Administrators may permit, the Administrators will send to each Participating Claimant (including, in the case of Deceased Claimants, the Registered Representative/s in respect of the Deceased Claimant) a Distribution Statement.

9.5. Each Distribution Statement will include, without limitation, the following information:

- (a) the relevant Proof or other information used to ascertain the particular Participating Claimant's eligibility and Payment; and
- (b) the estimated amount of the Payment in respect of that Participating Claimant, having regard to the Administrators' then-current estimate of the Administration Costs;
- (c) a statement as to the composition or characterisation of the Payment, so as to permit the Participating Claimant or Registered Representative to obtain taxation advice; and
- (d) an explanation of the Participating Claimant's rights to seek a review of the Distribution Statement.

9.6. The recipient of a Distribution Statement shall be deemed to accept the accuracy of the Distribution Statement for all purposes of or incidental to this Scheme unless the recipient within 21 days after the date of the Distribution Statement delivers to the Administrators a written notice (being a Dispute Notice):

- (a) identifying itself as a notice disputing the accuracy of the information underpinning the Distribution Statement;
- (b) setting out the recipient's reasons for seeking the review; and
- (c) attaching any and all further information that the recipient relies on in support of their application for review of the assessment of the amount of Payment due to the said recipient.

9.7. The Administrators may, in their absolute discretion, extend (before or after its expiry) any deadline set pursuant to clause 9.6, but that discretion shall be exercised sparingly having regard to the consideration that it is in the interests of all Claimants that the Scheme be administered efficiently to minimise the Administration Costs.

9.8. Where a Participating Claimant submits a Dispute Notice within the time allowed by the Administrators:

- (a) the Administrators shall conduct a review and consider the further material, and such further or other material as the Administrators in their absolute discretion see fit to obtain, and may revise the Participating Claimant's Distribution Statement;

- (b) if the Administrators decline to adjust the assessment reflected in the original Distribution Statement:
- (i) the Administrators shall refer their decision to Review Counsel;
 - (ii) Review Counsel may inform themselves in relation to the claim as Review Counsel in his or her absolute discretion may consider appropriate, having regard *inter alia* to the need to maintain proportionality between the costs of the review and the quantum of the disputed amount of the Payment;
 - (iii) Review Counsel shall advise the Administrators whether to revise the Distribution Statement or to affirm it;
 - (iv) Review Counsel shall provide a short statement of reasons for any rejection of a Dispute Notice, which statement shall be delivered by the Administrators to the Participating Claimant; and
 - (v) the decision of Review Counsel shall be final and no further appeal shall lie to any court, tribunal, body or office.

10. ADMINISTRATION COSTS

- 10.1. The Administrators shall be remunerated from the Settlement Distribution Fund for work done by them (including any delegates and Administration Staff) at the rates set out in Annexure B, and reimbursed for any disbursements reasonably incurred by them in connection with this Scheme, in accordance with this clause 10 (the remuneration and reimbursement being together the Administration Costs).
- 10.2. The Administrators shall keep good and accurate records of the Administration Costs.
- 10.3. The Administrators shall within 21 days after the completion of all reviews requested under clause 9.6, or the expiry of the time to request such reviews if none are requested, submit to the Costs Assessor their claim for payment of Administration Costs.
- 10.4. The Costs Assessor shall within 21 days after receipt of the claim for Administration Costs pursuant to clause 10.3 deliver to the Administrators a written assessment whether and to what extent the claimed Administration Costs are allowable as costs reasonably and necessarily incurred in or in connection with the Scheme.
- 10.5. The Administrators shall:
- (a) upon receipt of a costs assessment pursuant to clause 10.4 be authorised to draw from the Settlement Distribution Fund such portion of their claimed Administration Costs as the Costs Assessor has certified as reasonably and necessarily incurred in or in connection with the Scheme; but
 - (b) shall not be paid any further amount in respect of the claim for Administration Costs without order of the Court.

11. MAKING OF PAYMENTS

Preliminary Distributions

- 11.1. Where in the Administrators' reasonable assessment the only matters preventing distribution of payments in accordance with clause 11.4 are:

- (a) Court approval of Administration Costs;
- (b) finalisation of reviews in accordance with the procedure provided by clauses 9.6 to 9.8, and the highest reasonable estimate of the value of the Payments awaiting determination is less than 20% of the amount available for distribution to Participating Claimants and Registered Representatives; or
- (c) finalisation of the amount of tax (if any) required to be withheld;

then the Administrators may in their absolute discretion pay to Participating Claimants who have not submitted Dispute Notices some or all of the Payments due to those Claimants.

11.2. Prior to making any preliminary payments as described in clause 11.1 the Administrators shall estimate:

- (a) *first*, an amount equal to the Administrator's highest reasonable estimate of Administration Costs likely to be incurred prior to the final distribution of the Settlement Distribution Fund, notwithstanding that such Administration Costs have not yet been approved by the Court;
- (b) *secondly*, if reviews have been requested and the procedure provided by clauses 9.6 to 9.8 is not yet complete – the highest reasonable estimate of the Payments still awaiting determination, calculated on the assumption that the disputed amounts are resolved in each Claimant's favour; and
- (c) *thirdly*, any tax 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 required to be withheld by them as trustees from any Payments made from the Settlement Distribution Fund;

and shall make any preliminary payments in such amounts as to ensure, to the Administrators' satisfaction, that sufficient funds remain in the Settlement Distribution Fund to pay all amounts that might in future become payable from the said Fund.

11.3. If a preliminary payment is made under clause 11.1, any Administration Costs shall be paid to the Administrator prior to the final distribution of the remaining amount in the Settlement Distribution Fund in accordance with clause 11.4.

Final distributions and mode of payment

11.4. Within 14 days after the resolution of all Dispute Notices the Administrators shall:

- (a) seek Court approval of any remaining unpaid Administration Costs; and
- (b) within seven (7) days after deduction from the Settlement Distribution Fund and payment to the Administrators of any amounts in (a) hereof, pay:
 - (i) the Payments due to Claimants who had not formerly received their Payments; and
 - (ii) pay the balance of any Payments due to Claimants who formerly received a partial preliminary payment;

so as to disburse to each Participating Claimant the whole of the Payment due to that Claimant under this Scheme.

- 11.5. Each Payment under clauses 11.1 or 11.4 will be made to Participating Claimants either by:
- (a) Electronic Funds Transfer where bank details are available; or
 - (b) cheque.

12. RESIDUE AMOUNTS

- 12.1. If upon the distribution of all Payments to Participating Claimants there is an amount remaining in the Settlement Distribution Fund then the Administrators shall:
- (a) if the amount of the residue is, in the Administrators' absolute discretion, sufficient (having regard to distribution costs) to justify its distribution among the Participating Claimants – distribute the residue *pro rata* among the Participating Claimants; and
 - (b) if (a) does not apply – pay the residue to the Northern Territory Stolen Generations Aboriginal Corporation (ABN 627 997 54727; ICN 3173).
- 12.2. In the event that any cheque, electronic funds transfer or other attempt at payment by the Administrators to any person pursuant to this Scheme is or appears to the Administrators to have been unsuccessful:
- (a) the Administrators shall use reasonable endeavours to effect the payment by other means; but
 - (b) if the Payment has not been delivered (or cheque presented) within 120 days after the distribution of all Payments to Participating Claimants, the Payment shall be deemed forfeit and dealt with in accordance with clause 12.1.

13. OBLIGATIONS OF CLAIMANTS AND REGISTERED REPRESENTATIVES

- 13.1. Each Claimant or Registered Representative wishing to claim a Payment must act honestly with respect to the Scheme and must take all reasonable steps to ensure that any of her or his agents or representatives likewise act honestly.
- 13.2. Each Claimant or Registered Representative wishing to claim a Payment must cooperate with the Administrators and take all steps that this Scheme or the Administrators may require the Claimant or Registered Representative to take, including:
- (a) providing any required or requested instructions, affidavits, declarations, statements, information, documents or other materials, and any authorisations or permissions;
 - (b) attending and participating in meetings or conferences (in person or by electronic means) with the Administrators, their delegates, Administration Staff, Review Counsel or other persons;
 - (c) promptly informing the Administrators of any change in the Claimant's or Registered Representative's contact details;
- and each such Claimant or Registered Representative must do so:
- (d) complying to the best of his or her ability with the substance and not merely the form of the requirement, request or direction; and
 - (e) by the date or within the timeframe specified in the requirement, request or direction.

14. SUPERVISION BY THE COURT

- 14.1. The Administrators may refer to the Court any issues arising in relation to the Scheme or the administration of the Scheme, for determination or directions as the Court may deem appropriate.
- 14.2. Upon the conclusion of the Scheme, the Administrators are to prepare a report for the Court, with a copy to be provided to the Plaintiff and Commonwealth, such report to give consideration to the following matters:
- (a) the total number of Claimants who applied to participate in the Scheme including the names of Deceased Claimants;
 - (b) the number of people the Administrators notified were ineligible to participate in the Scheme, and the reason;
 - (c) the amount distributed under the Scheme to Claimants and Registered Representatives;
 - (d) the amount distributed under the Scheme by reference to the categories of persons specified in the Assessment Methodology Schedule;
 - (e) the amount of the Administration Costs, including a breakdown of the constituent components of those costs;
 - (f) whether any time periods specified in the Scheme were missed; and
 - (g) the amount of any residue in the Settlement Distribution Fund and the manner of any application of that residue.

15. NOTICES

- 15.1. Any notice to be given pursuant to the Scheme shall 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 recorded in the Participating Claimants Database; or
 - (ii) sent by email to that person's email address recorded in the Participating Claimants Database 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.
- 15.2. A notice that complies with this will be deemed to have been given and received:
- (a) if it was sent by mail to an addressee in Australia, two 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
 - (c) if it is sent by email, at the time it is sent.

- 15.3. The Administrators' address, fax number and email address shall be as set out below unless and until the Administrators notify the sender otherwise:

Northern Territory Stolen Generations Class Action
Shine Pty Ltd
Attn: Vicky Antzoulatos / Sarah Thomson
PO Box 12011, George Street
BRISBANE QLD 4003

Fax: (07) 3229 1999
Email: stolengenerationsclassaction@shine.com.au

16. PRIORITY OF PAYMENTS

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

17. TAXATION ISSUES

- 17.1. Each Claimant under this Scheme is responsible for obtaining his or her own taxation or government entitlements advice in respect of the Claimant's participation in this Scheme.
- 17.2. The Administrators is not obliged to obtain any taxation advice or taxation rulings (whether class, public or private) concerning any tax liability of the Claimants or any of them.

18. TIME

- 18.1. The time for doing any act or thing under the Scheme may be extended by the Administrators, by direction of Review Counsel or by order of the Court.

Annexure A – Assessment Methodology Schedule

A. Outline

1. The intention of the Scheme and this Assessment Methodology Schedule is to provide for a fair apportionment of the Net Distribution Sum between Participating Claimants, having regard to the views formed by the Plaintiff, having taken advice, as to the differences in the claims between certain groups of Participating Claimants.
2. In outline, this Assessment Methodology Schedule:
 - (a). applies a primary weighting between Participating Claimants who are deceased Removed Children, Kinship Group Members, and deceased Kinship Group Members (**Section B**);
 - (b). calculates the Payment of each Participating Claimant by reference to their proportionate share of the final category to which they are allocated by reason of their Proofs (**Section C**).
3. The operative part of this Assessment Methodology Schedule is set out below.

B. Category Pools

4. The Net Distribution Sum is to be divided into three pools amongst the following categories of Participating Claimants (**Category**) in accordance with the pro-rated entitlement of each Participating Claimant to the Net Distribution Sum:
 - (a). Participating Claimants who are deceased Removed Children (**DRC Pool**);
 - (b). Participating Claimants who are Kinship Group Members (**KGM Pool**);
 - (c). Participating Claimants who are deceased Kinship Group Members (**DKGM Pool**);
 (together, **Category Pools**).
5. The calculation of the Category Pools may be represented by the following formula:

$[DRC/KGM/DKGM] \text{ Category Pool} = \text{Net Distribution Sum} * \frac{\text{Participating Claimants in Category}}{\text{Total Participating Claimants}}$
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6. The proportion each of the Category Pools bears to the Net Distribution Sum is to be adjusted by the application of the following uplifts (**Category Uplift**):
 - (a). the RC Pool, an uplift of 300% (**Adjusted DRC Pool**);
 - (b). the KGM Pool, an uplift of 200% (**Adjusted KGM Pool**);
 - (c). the DKGM Pool, no adjustment (**Adjusted DKGM Pool**),
 (together, **Adjusted Category Pools**).

7. The calculation of the Adjusted Category Pools may be represented by the following formula:

$$\text{[DRC/KGM/DKGM] Adjusted Category Pool} = \text{Net Distribution Sum} * \text{[DRC/KGM/DKGM] Pool} * \text{Category Uplift} / \text{Sum of Adjusted Category Pools}$$

C. Payments

8. Following identification of the Adjusted Category Pools, the Net Distribution Sum is to be distributed to the Participating Claimants in accordance with their proportionate entitlement to the amount in the particular Adjusted Pool to which they are allocated by the information held in the Participating Claimants Database.
9. The calculation of the Payment of Participating Claimants may be represented by the following formula:

$$\text{Payment} = \text{Relevant Adjusted Category Pool} / \text{Participating Claimants in relevant Adjusted Category Pool}$$

Annexure B – Rates for Administration Costs

Role	Standard Hourly Rates (GST exclusive)	Plus GST	Hourly Rates (inclusive of GST)
National Special Counsel / Special Counsel	\$750	\$75	\$825
Senior Associate	\$590	\$59	\$649
Senior Lawyer	\$560	\$56	\$616
Junior Lawyer / Solicitor	\$400	\$40	\$440
Law Clerk	\$325	\$32.50	\$357.50
Paralegal	\$256.29	\$25.62	\$281.91