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Deed of release and settlement

Alister David Dalton
A Dalton

Joanna Kathryn Dalton
J Dalton

Robyn Tanya Richardson
Richardson

William John McIntyre
McIntyre

Steven John Roe
Roe

Richard Cantor
Cantor

Josefina Tolentino
Tolentino

Maurice Blackburn Pty Ltd (ACN 105 657 949)
MB

Charles J Bannister t/as Bannister Law
BL

Grosvenor Litigation Services Pty Ltd (ACN 609 112 996)
Funder

Volkswagen Aktiengesellschaft
First Respondent

Audi Aktiengesellschaft
Second Respondent

Skoda Auto a.s.
Third Respondent

Volkswagen Group Australia Pty Ltd (ACN 093 117 876)
Fourth Respondent

Audi Australia Pty Ltd (ACN 077 092 776)
Fifth Respondent

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Deed of release and settlement

Date 2019

Parties

Alister David Dalton of 29 June Street, Merewether NSW (**A Dalton**)

Joanna Dalton of 20 Bulkara Street, Adamstown Heights NSW (**J Dalton**)

Robyn Tanya Richardson of 6/227 Great Northern Road, Five Dock NSW (**Richardson**)

William John McIntyre of 60 Albany Street, Point Frederick NSW (**McIntyre**)

Steven John Roe of 303/169 Philip Street, Waterloo NSW (**Roe**)

Josefina Tolentino of 3/120 Randwick Road Morea, Lower Hutt, Wellington New Zealand 5010 (**Tolentino**)

Richard Cantor of 51/185 Campbell Street, Surry Hills NSW 2010 (**Cantor**)

Maurice Blackburn Pty Ltd (ACN 105 657 949) of Level 21, 380 La Trobe St, Melbourne VIC (**MB**)

Charles J Bannister t/as Bannister Law of Level 1, 107 Pitt St, Sydney NSW (**BL**)

Grosvenor Litigation Services Pty Ltd (ACN 609 112 996) of Level 10, 66 Hunter Street, Sydney NSW, in its own capacity and in its capacity as trustee for the Grosvenor Litigation Services Unit Trust (ABN 40 616 418 169) (**Funder**)

Volkswagen Aktiengesellschaft of 38436 Wolfsburg, GERMANY (**First Respondent**)

Audi Aktiengesellschaft of D-85045 Ingolstadt, GERMANY (**Second Respondent**)

Skoda Auto a.s. of 293 01 Mlada Boleslav, CZECH REPUBLIC (**Third Respondent**)

Volkswagen Group Australia Pty Ltd (ACN 093 117 876) of 24 Muir Rd, Chullora, NSW (**Fourth Respondent**)

Audi Australia Pty Ltd (ACN 077 092 776) of 895 South Dowling St, Zetland, NSW (**Fifth Respondent**)

Background

- A. A Dalton and J Dalton are the lead applicants in a proceeding under Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**Act**), which is designated as Federal Court of Australia proceeding number NSD 1459/2015 (**Dalton Proceedings**). The First and Fourth Respondents are the respondents to the Dalton Proceedings.
- B. Richardson and McIntyre are the lead applicant and sub-group representative respectively in a proceeding under Part IVA of the Act which proceeding is designated as Federal Court

of Australia proceeding number NSD 1472/ 2015 (**Richardson Proceedings**). The First, Second and Fifth Respondents are the respondents to the Richardson Proceedings.

- C. Roe is the lead applicant in a proceeding under Part IVA of the Act which is designated as Federal Court of Australia proceeding number NSD 1473/2015 (**Roe Proceedings**). The First, Third and Fourth Respondents are the respondents to the Roe Proceedings.
- D. The Solicitor for the Applicants in each of the Dalton, Richardson and Roe Proceedings (together, the **MB Proceedings**) is Julian Schimmel of MB, who has carriage of the MB Proceedings.
- E. In the MB Proceedings, the Applicants on their own behalf and on behalf of each of the Group Members, claim compensation, damages and declaratory and other relief on the facts and causes stated in the Further Amended Originating Applications filed in each proceeding on 1 August 2017, the Second Further Amended Statements of Claim filed in each proceeding on 15 September 2017 and the Amended Replies filed on 20 October 2017.
- F. Tolentino is the lead applicant in a proceeding under Part IVA of the Act which is designated as Federal Court of Australia proceeding number NSD 1308/2015 (**Tolentino Proceedings**). The Fourth Respondent is the respondent to the Tolentino Proceedings.
- G. Cantor is the lead applicant in a proceeding under Part IVA of the Act which is designated as Federal Court of Australia proceeding number NSD 1307/2015 (**Cantor Proceedings**). The Fifth Respondent is the respondent to the Cantor Proceedings.
- H. The Solicitor for the Applicants in each of Tolentino and Cantor Proceedings (together, the **BL Proceedings**) is Charles Bannister of BL, who has carriage of the BL Proceedings. The BL Proceedings are funded by the Funder.
- I. In the BL Proceedings, the Applicants on their own behalf and on behalf of each of the Group Members, claim compensation, damages and declaratory and other relief on the facts and causes stated in the Third Further Amended Originating Applications filed in each proceeding on 18 September 2017, the Third Further Amended Statements of Claim filed in each proceeding on 18 September 2017 and the Amended Replies filed on 20 October 2017.
- J. Without prejudice to the respective legal and factual positions of the parties, without admission of liability or loss on the part of Group Members and to avoid the cost and inconvenience of litigation by way of a commercial resolution, the parties agree to resolve the MB Proceedings and the BL Proceedings (together, the **Class Action Proceedings**) on the basis set out in this deed.
- K. The Applicants will seek approval of the settlement of the Class Action Proceedings by the Federal Court of Australia pursuant to section 33V of the Act on the terms and conditions set out in this deed. The Respondents will support such application for approval of the settlement.
- L. The Funder and/or Applicants in the BL Proceedings wish to obtain an order that the Funder be paid up to 10% of certain settlement proceeds and a funding equalisation order in respect of the proceeds of settlement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

Act means the *Federal Court of Australia Act 1976* (Cth).

ACCC Proceedings means Federal Court of Australia proceedings numbers NSD1462/2016 and NSD322/2017.

Administrator means the administrator of the Settlement Scheme.

Affected Vehicles means vehicles subject to the Class Action Proceedings, being those with a Vehicle Identification Number listed in 0.

Aggregate Settlement Sum means the total amount payable by the Respondents having regard to the number of Registered Affected Vehicles, determined in accordance with Annexure 2 and clauses 6, 7, 8 and 9.1 of the Settlement Scheme.

Alternative Funding Equalisation Application means any alternative application made by the BL Applicants seeking a funding equalisation order, being an order which will result in the difference in final payments, by reason of any litigation funding agreements, to:

- (a) Participating Group Members who have executed a litigation funding agreement with the Funder in relation to the BL Proceedings; and
- (b) other Participating Group Members, excluding Participating Group Members who had executed a retainer agreement with MB on or before 3 September 2019 or Participating Group Members who opted out of the BL Proceedings but did not opt out of the MB Proceedings

being equalised and redistributed amongst themselves.

Applicants means:

- (a) the lead applicants in each of the Class Action Proceedings; and
- (b) McIntyre.

Applicants' Reasonable Costs means the Applicants' costs of the proceedings approved by the Court in accordance with clause 5 of this Deed.

Approval Application has the meaning given to it by clause 8.4.

Approval Date has the meaning given to it by clause 8.6.

Approval Hearing means the hearing of the Approval Application.

Approval Orders has the meaning given to it by clause 8.4.

Australian Respondents means the Fourth and Fifth Respondents.

BL Applicants means Tolentino and Cantor.

BL Insurance Premium means the Bannister Law Applicants' ATE insurance premiums of \$752,844 (or such lesser amount as may be approved by the Court).

BL Proceedings means Federal Court of Australia proceedings numbers NSD1307/2015 and NSD1308/2015.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks in Sydney are open for business generally.

Claim means any and all claims, demands, actions, causes of action, suits, proceeding, complaints (whether in a court, tribunal, industry body, external dispute resolution scheme or other forum dealing with complaints or disputes), pleadings, defences, expenses, costs (including legal costs on a full indemnity basis), losses, obligations or liabilities (including taxation) whatsoever (present or future) that the Applicants or Group Members:

- (a) now have;
- (b) at any time had;
- (c) may have; or
- (d) but for this Deed, could or might have had,

in any way related to the Class Action Proceedings or the circumstances recited in this Deed or anything in any way related to them or allegations or circumstances arising out of or in any way connected or related to the Class Action Proceedings, including, for avoidance of doubt, any claims in relation to matters referred to, in or arising from the evidence filed in one or more of the Class Action Proceedings in relation to the alleged effect of the technical measures on the Affected Vehicles.

Class Action Proceedings means the MB Proceedings and BL Proceedings.

Costs Report has the meaning given to it in clause 5.1(b).

Court means the Federal Court of Australia.

Effective Date means the date on which this Deed takes effect, as set out in clause 15.

European Respondents means the First, Second and Third Respondents.

Funding Application means any application made by the BL Applicants and/or the Funder seeking an order that the Funder be paid up to 10% of the settlement payments for Affected Vehicles to Participating Group Members other than:

- (a) Participating Group Members in the MB Proceedings who had executed a retainer and costs agreement with MB on or before 3 September 2019; or
- (b) Participating Group Members who opted out of the BL Proceedings but did not opt out of the MB Proceedings.

Funding Equalisation Application means any application made by the BL Applicants seeking a funding equalisation order, being an order which will result in the difference in final payments, by reason of any funding order, to:

- (a) Participating Group Members who had executed a retainer agreement with MB on or before 3 September 2019 or who opted out of the BL Proceedings but did not opt out of the MB Proceedings; and

(b) other Participating Group Members,

being equalised and redistributed among Participating Group Members only.

Group Members means persons who fall within the group definitions in the Class Action Proceedings and, for the avoidance of any doubt:

- (a) does not include any persons who have opted out of both the MB Proceedings and BL Proceedings as set out in the orders made by Foster J on 6 May 2019 or who are granted leave to opt out at any subsequent time; and
- (b) does include any persons who have opted out of one of the MB Proceedings or the BL Proceedings but not the other proceedings.

Independent Contradictor means:

- (a) Mr Nicholas Owens SC together with junior counsel of his choosing;
- (b) if (a) is not available, an alternative person or persons to be determined by agreement between the parties;
- (c) if (a) is not available and agreement between the parties cannot be reached within 5 days, an alternative person or persons to be determined by Ms Paddy Bergin SC in her sole discretion.

Lead Applicant Reimbursement Payment means:

- (a) a payment of no more than \$20,000 (or such lesser amount as may be approved by the Court) by way of reimbursement to an Applicant for their role as an Applicant in the Class Action Proceedings;
- (b) in the case of J Dalton, the second applicant in proceedings NSD1459/2015, a payment of no more than \$10,000 (or such lesser amount as may be approved by the Court) by way of reimbursement for her role as an Applicant in those proceedings .

Losses means damages, liabilities, expenses and costs (including legal costs on a full indemnity basis (whether incurred by or awarded against a party)) including loss arising out of any third party claims, fines imposed and taxes and duties levied by any government body.

MB Applicants means Dalton, Richardson, McIntyre and Roe

MB Proceedings means Federal Court of Australia proceedings numbers NSD1459/2015, NSD1472/2015 and NSD1473/2015.

Participating Group Members has the meaning given to it by clause 6.1(a).

Post-Approval Application means any application or report by the Administrator to the Court relating to or arising from the administration of the Settlement.

Preliminary Application has the meaning given to it by clause 8.2.

Preliminary Orders has the meaning given to it by clause 8.2.

Qualifying Date means:

- (a) 3 October 2015; or
- (b) 18 September 2015.

Registered Affected Vehicle means an Affected Vehicle in relation to which a Participating Group Member is determined by the Administrator as satisfying the Eligibility Criteria in the Settlement Scheme. For the avoidance of doubt, if more than one Participating Group Member has an interest in any particular Affected Vehicle, that vehicle will be counted as one Affected Vehicle.

Registration has the meaning given to it by clause 6.1(a)

Registration Period is the period as ordered by the Court in respect of the publication of the Settlement Notice.

Related Body Corporate has the meaning given in section 50 of the *Corporations Act 2001* (Cth).

Settlement means the settlement of the class action subject to the terms of this Deed and any order of the Court.

Settlement Notice means notice of the proposed settlement and the Approval Application that is given or to be given to Group Members pursuant to section 33X(4) of the Act, the draft of which is in Schedule 1 of the Preliminary Orders in Annexure 5.

Settlement Scheme means the scheme for the determination, application and distribution of the Aggregate Settlement Sum and ancillary matters as set out in Annexure 3 and updated from time to time in accordance with clause 17.6.

Settlement Payment means the amount payable to a Participating Group Member as set out in clause 7.2 and determined in accordance with the Settlement Scheme.

Solicitors for the Applicants means MB and BL.

Unregistered Group Member has the meaning given to it by clause 6.2.

Volkswagen Group means the Respondents, together with any of their subsidiaries and related bodies corporate, including Volkswagen Financial Services Australia Pty Ltd (ABN 20 097 071 460).

1.2 Interpretation

In this deed, unless the context indicates a contrary intention:

- (a) headings are for convenience only and do not affect interpretation;
- (b) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assignees, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee and further includes any person claiming on behalf of, under, or through a party to this deed;

- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute or statutory provision includes a statutory modification or re-enactment of it or a statutory provision substituted for it, and each ordinance, by-law, regulation, rule and statutory instrument (however described) issued under it;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to this deed;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **includes** in any form is not a word of limitation; and
- (k) a reference to **\$** or **dollar** is to Australian currency.

2. Release

From the Approval Date, the Applicants, on their own behalf and on behalf of each Group Member:

- (a) release the Respondents, all Volkswagen Group companies and suppliers and their present and former directors, officers, board members, servants, contractors and agents from any and all Claims which they or any Group Member may have against any Respondent; and
- (b) agree that a Respondent and any Volkswagen Group company or supplier may plead this deed to bar any action (including any claim for costs) brought by the Applicants or by any Group Member against it relating to any Claim.

3. No admission

The Respondents make no admission of liability in respect of any Claim and nothing done by the Respondents in:

- (a) entering into this deed or;
- (b) taking any step in relation to the settlement of the Class Action Proceedings,

may be construed, or represented, as an admission of liability by any Respondent.

4. Without prejudice

Clauses 2, 3, 5, 6, 7, 9.3 and the matters set out in the definitions of "Funding Application" and "Funding Equalisation Application" of this Deed are without prejudice to the rights of the Applicants, Group Members, Funder and the Respondents unless and until Court approval of the settlement of the Class Action Proceedings is obtained in accordance with clause 8.

5. Costs and other payments

5.1 Applicants' costs

- (a) The Respondents will pay the Applicants' legal costs being professional fees and disbursements:
- (i) on a solicitor and client basis, including GST;
 - (ii) calculated in accordance with the Applicants' retainers with MB or BL, as applicable;
 - (iii) including any legal costs incurred in connection with the mediation and in obtaining the Preliminary Orders and Approval Orders, including orders for registration, class closure and distribution of the Settlement Notice as set out in the Settlement;

which are verified as reasonable by a costs expert and approved by the Court (**Applicants' Reasonable Costs**).

- (b) The Applicants will retain an independent costs expert (**Costs Expert**) who will prepare a report quantifying the Applicants' Reasonable Costs in the BL Proceedings and MB Proceedings in accordance with clause (a) above, and opining on the reasonableness thereof (**Costs Report**).
- (c) The identity of the Costs Expert must be notified to the Respondents prior to his or her appointment. If the Respondents do not agree that the Costs Expert is suitably independent and qualified, the parties will use their best endeavours to agree on an alternative person and failing agreement, the identity of the person is to be determined by the Court.
- (d) In preparing the Costs Report and in order to give effect to clause 15.4 of the Federal Court of Australia's Class Actions Practice Note (GPN-CA), the Costs Expert may request that the Respondents disclose the total legal costs incurred in Australia by the Respondents in their defence of the Class Action Proceedings and the ACCC Proceedings (**Respondents' Costs Information**), and if such a request is made the Respondents will disclose the Respondents' Costs Information to the Costs Expert subject to the following:
- (i) the Respondents' obligation to disclose the Respondents' Costs Information is conditional upon the Costs Expert providing an undertaking not to disclose, publicly reveal or otherwise use the Respondents' Costs Information except as permitted by this clause;
 - (ii) the Respondents' Costs Information is to be disclosed to the Costs Expert solely in order for her or him to evaluate the reasonableness of the Applicants' legal costs and may be relied upon by the Costs Expert in verifying the amount of the Applicants' Reasonable Costs;
 - (i) the Respondents' Costs Information is not to be disclosed by the Costs Expert to anyone, including the Applicants' or their legal representatives;
 - (ii) the Respondents' Costs Information is to be provided as an estimated range only, and not in itemised form;

- (iii) without disclosing the amount of the Respondents' Costs Information, the Costs Reports may refer to the fact that the Respondents' Costs Information had been disclosed to and was taken into account by the Costs Expert in verifying the amount of the Applicants' Reasonable Costs; and
 - (iv) the Applicants' Solicitors are permitted to draw the terms of this clause to the attention of the Costs Expert.
- (e) The Applicants will seek approval for the payment of their Costs by the Court at the same time as the Approval Application is heard.
 - (f) The Costs Report must be filed with the Court by the Applicants in support of the Approval Application and served on the Respondents.
 - (g) The Respondents will pay the Applicants' Reasonable Costs within 60 days of their approval by the Court by paying them into the trust account of MB in the case of the MB Applicants and the trust account of BL in the case of the BL Applicants. Acknowledgment of receipt by MB and BL respectively shall be conclusive evidence of payment of these amounts.
 - (h) If any Applicant, Group Member or the Funder appeals the Court's decision to approve the Applicants' costs or any part of them, the Respondents' obligation to pay the Applicants' Reasonable Costs will be suspended until all appeal rights in relation to the Court's approval are exhausted and thereafter the Respondents' obligation will then resume in accordance with any order made on appeal.

5.2 Other payments

- (a) The BL Applicants may, at the same time as the Approval Application is heard, seek an order that the Respondents pay the BL Insurance Premiums.
- (b) The Respondents will pay the BL Applicants such amount in respect of the BL Insurance Premiums as is approved by the Court within 60 days of the Court so ordering by paying the amount approved by the Court into the trust account of BL. Acknowledgment of receipt by BL shall be conclusive evidence of payment of this amount.
- (c) The Approval Application may seek an order that the Respondents pay the Lead Applicant Reimbursement Payments.
- (d) The Respondents will pay any Lead Applicant Reimbursement Payment ordered by the Court within 60 days of the Court so ordering by paying the Lead Applicant Reimbursement Payment into the trust account of MB in the case of the MB Applicants and Joanna Dalton and the trust account of BL in the case of the BL Applicants. Acknowledgment of receipt by MB and BL respectively shall be conclusive evidence of payment of these amounts.

5.3 Respondents' costs

The Respondents will pay their own costs of the Class Action Proceedings, including their costs of and in relation to this Deed.

5.4 Applicants' costs relating to this deed

For the avoidance of doubt and to the extent verified by the Costs Expert as reasonable, the Applicants' costs of and in relation to this Deed will form part of the Applicants' Reasonable Costs.

6. Group Members

6.1 Participating Group Members

- (a) Participating Group Members are Group Members who:
 - (i) register in accordance with the Settlement Scheme (**Registration**); and
 - (ii) are verified by the Administrator as being Group Members in accordance with the verification process set out in the Settlement Scheme.
- (b) A Registration will only be valid if it is received by the Administrator on or before the last day of the Registration Period.
- (c) All Participating Group Members are bound by the terms of this Deed (including in respect of the release of any Claims they may have against the Respondents).

6.2 Other Group Members

All Group Members other than Participating Group Members will also be bound by the terms of this deed (including in respect of the release of any Claims they may have against the Respondents) save that they will not be entitled to receive any payment pursuant to the terms of this deed or the Settlement.

7. Aggregate Settlement Sum and Settlement Payments

7.1 Payment of Aggregate Settlement Sum

- (a) The Respondents will pay the Aggregate Settlement Sum to the Administrator within 60 days of the later of:
 - (i) the Approval Date; and
 - (ii) the date on which the Administrator gives notice to the legal representatives of the Respondents of the number of Registered Affected Vehicles determined in accordance with the Settlement Scheme.
- (b) The Respondents will pay the Aggregate Settlement Sum into a bank account established by the Administrator for the purposes of the Settlement Scheme and notified to the Respondents' legal representatives in writing. The Administrator's acknowledgment of receipt of the Aggregate Settlement Sum shall be conclusive evidence of such payment.

7.2 Settlement Payments for Participating Group Members

The Administrator will determine a Settlement Payment for each Participating Group Member.

- (a) Subject to clause 10, the Settlement Payment for each Participating Group Member is the amount applicable to that Participating Group Member's claim determined in accordance with the Settlement Scheme.

- (b) Following the determination of the Settlement Payments for Participating Group Members, the Administrator will notify each Participating Group Member of their Settlement Payment in accordance with the notification process set out in the Settlement Scheme.

7.3 Payment to Participating Group Members

- (a) Subject to clauses (b) and (d), the Administrator will pay Participating Group Members their Settlement Payments in accordance with the Settlement Scheme.
- (b) If after hearing the Funding Application, the Funding Equalisation Application, and/or the Alternative Funding Equalisation Application, the Court makes orders authorising payments by some Participating Group Members to the Funder as a result of an order as sought in the those applications, the Administrator will pay the Funder and adjust the Settlement Payments of Participating Group Members in accordance with clause 10 of the Settlement Scheme and any order of the Court.
- (c) If, as a result of the Funder's contractual entitlements pursuant to litigation funding agreements between the Funder and some Participating Group Members in the BL Proceedings, and in accordance with the Settlement Scheme the Funder gives a Notice of Funding Arrangements to the Administrator, the Administrator will pay the Funder and adjust the Settlement Payments of Participating Group Members in accordance with clause 10 of the Settlement Scheme and any order of the Court.
- (d) Payment of a Settlement Payment (if necessary as adjusted in accordance with clause 7.3(b) above) to a Participating Group Member will be conditional upon that Participating Group Member agreeing to release the Respondents and keep the terms of their settlement payment confidential, such agreement to be provided in the form set out in Annexure 4.

7.4 Payment to Participating Group Members

- (a) The Administrator will keep copies of the releases and confidentiality undertakings referred to in clause 7.3(d) and any supporting data, and will provide a copy of any such agreement and data to the Respondents' legal representatives upon request. The Respondents' legal representatives may provide this information to the Respondents.
- (b) The Administrator will:
 - (i) retain the Affected Vehicle Database and all data and information supplied or provided by Group Members to the Administrator (**Settlement Data**) for a period of not less than 10 years from the date of this Deed;
 - (ii) to the extent that the Administrator has used or relied on information that ceases to be available to the Administrator, retain a record of the source of that information for a period of not less than 10 years from the date of this Deed;
 - (iii) provide to the Respondents' lawyers (both within and outside of Australia) any Settlement Data that is reasonably required by the Respondents. The Respondents' legal representatives may provide this information to the Respondents

7.5 Audit Right

The First Respondent and its legal representations shall have the right to audit the Administrator's administration of the Settlement and the Administrator will provide such information about the administration of the Settlement as is reasonably requested.

8. Court Approval

8.1 Parties' participation

Each party must use its best endeavours to obtain the Preliminary Orders and the Approval Orders.

8.2 Preliminary application for approval of the Settlement Notice and related matters

- (a) On a date to be fixed as soon as practicable after the Effective Date, the Applicants will seek orders (the **Preliminary Orders**) in the form, or substantially in the form, set out in Annexure 5 to this Deed (the **Preliminary Application**).
- (b) The parties acknowledge that to the extent that the Preliminary Orders require the use of data provided to the Australian Respondents by Austroads Ltd:
 - (i) they will require either the consent of Austroads Ltd or an order of the Court; and
 - (ii) the Respondents cannot consent to such orders being made unless Austroads Ltd consents to them.

8.3 Publication of Settlement Notice

The parties will disseminate, publish and/or display the Settlement Notice in accordance with the Preliminary Orders that are made by the Court.

8.4 Application for approval

As soon as practicable after the end of the Registration Period, the Applicants will file an application (**Approval Application**) with the Court seeking orders:

- (a) approving the Settlement pursuant to section 33V of the Act, including approving the Settlement Scheme;
- (b) subject to clause 5.1, vacating all costs orders in the Class Action Proceedings;
- (c) approving:
 - (i) the Applicants' Reasonable Costs;
 - (ii) the Lead Applicant Reimbursement Payments;
 - (iii) the BL Insurance Premium;
- (d) that the Applicants be authorised *nunc pro tunc*, under section 33ZF of the Act, to enter into and give effect to this Deed on behalf of all Group Members;
- (e) appointing the Administrator; and

- (f) that the Class Action Proceedings otherwise be dismissed against the Respondents:
- (i) with no order as to costs; and
 - (ii) without prejudice to the parties' or the Administrator's liberty to relist the Class Action Proceedings for the purpose of seeking orders consequential to this Deed and/or the Settlement Scheme, and to this end pursuant to rule 9.05 of the *Federal Court Rules 2011* (Cth) the Administrator is to be joined as a party to the Class Action Proceedings for the limited purpose of exercising such liberty
- (the **Approval Orders**).

8.5 Evidence in support of applications

- (a) Without prejudice to the Respondents' rights to tender evidence in support of the Preliminary Application and the Approval Application, the Applicants will be responsible for preparing and tendering such evidence (including expert or other evidence) to the Court as may be required in support of the Preliminary Application and the Approval Application, and the Respondents will do all things that are reasonably necessary, including in relation to the preparation and tender of evidence, in order to support the Preliminary Application Approval Application.
- (b) Subject to clause 11.4 below and its obligations to the Court, the Respondents will consent to orders sought in the Approval Application in accordance with clause 8.4 above.

8.6 The Approval Date

The Approval Date is the later of:

- (a) the expiration of any appeal period from the date on which the Approval Orders are made; or
- (b) if an appeal or an application for leave to appeal is made against the making of any of the Approval Orders, the date which is 10 days after the date of the ultimate determination of that appeal or application (including any subsequent appeal or application for leave to appeal) unless that determination results in the Court declining to approve the Settlement (in which case clause 11.3 will apply).

9. Settlement Administration

9.1 Appointment of Administrator

- (a) At the hearing of the Preliminary Application, the parties will ask the Court to make an order that a person be authorised and directed to carry out the functions in clauses 3 to 8 and 9.1 and 10.1 of the Settlement Scheme pending the making of the Approval Orders.
- (b) At the hearing of the Approval Application, the parties will ask the Court to appoint the Administrator in order to administer all remaining aspects of the Settlement Scheme.

- (c) The Administrator will administer the Settlement in good faith and with due care and skill in accordance with:
 - (i) the terms of this Deed, including the Settlement Scheme in the final form that is approved by the Court;
 - (ii) any order or direction of the Court.
- (d) If the Administrator is a person who is not party to this Deed, the parties will procure the Administrator to enter into an agreement to administer the Settlement in accordance with clause 9.1(c).

9.2 Solicitors for the Applicants

- (a) At the hearing of the Preliminary Application, the MB Applicants will make an application to the Court that MB be authorised and directed, from the date on which the Preliminary Orders are made, to commence carrying out the functions in clauses 3 to 8 and 9.1 and 10.1 of the Settlement Scheme pending the making of the Approval Orders.
- (b) At the hearing of the Approval Application, the MB Applicants will make an application that MB be appointed as the Administrator.
- (c) BL agrees that:
 - (i) it will not make any application to the Court that it be the Administrator;
 - (ii) it will not oppose the appointment of MB as the Administrator; and
 - (iii) it will not make any application or otherwise submit that a third party ought be appointed as the Administrator.

9.3 Costs of Administration

Subject to any KPIs agreed between the Administrator and the Respondents, approval of and supervision by the Court, the Respondents will pay the reasonable costs of the Administrator incurred in the administration of the settlement, and for the avoidance of doubt the Respondents' obligation pursuant to this clause includes payment of the reasonable costs incurred by the person appointed pursuant to clause 9.1(a) even if the Approval Orders are not (after the exhaustion of all appeal rights) finally made.

10. Litigation Funding

10.1 Funding Application

- (a) The BL Applicants and/or the Funder may make the Funding Application.
- (b) It is intended that the Funding Application will be made prior to or at the time of the Preliminary Application and, subject to the orders of the Court, is to be heard in conjunction with the Approval Application.
- (c) If the BL Applicants make the Funding Application, the Funder may seek leave to intervene and the other parties will consent to leave being granted.

10.2 Funding Equalisation Application

- (a) The BL Applicants may make the Funding Equalisation Application.
- (b) The BL Applicants may seek leave to intervene in the MB Proceedings for the purpose of making the Funding Equalisation Application, and the other parties will not object to leave being granted.
- (c) It is intended that the Funding Equalisation Application will be made prior to or at the time of the Preliminary Application and, subject to the orders of the Court, is to be heard in conjunction with the Approval Application.
- (d) The Funder may seek leave to intervene in the Funding Equalisation Application, and the other parties will consent to leave being granted.

10.3 Alternative Funding Equalisation Order

- (a) In the alternative to the Funding Equalisation Application, in the event that the Funding Application is not made, or is refused, the BL Applicants may make the Alternative Funding Equalisation Application.
- (b) It is intended that the Alternative Funding Equalisation Application will be made prior to or at the time of the Preliminary Application and, subject to the orders of the Court, is to be heard in conjunction with the Approval Application.
- (c) The Funder may seek leave to intervene in the Alternative Funding Equalisation Application, and the other parties will consent to leave being granted.

10.4 Parties to Not Oppose

Subject to the appointment of an Independent Contradictor in accordance with clause 10.5, the Respondents and the MB Applicants will not oppose the:

- (a) Funding Application; or
- (b) Funding Equalisation Application.

10.5 Independent Contradictor

- (a) If a Funding Application (with or without a Funding Equalisation Application) is made, then the parties will seek orders from the Court no later than at the hearing of the Preliminary Application that the Independent Contradictor be appointed to represent the interests of Group Members in all Class Action Proceedings in respect of the Funding Application and any Funding Equalisation Application.
- (b) For the avoidance of doubt, in the event that the Alternative Funding Equalisation Application is made in the absence of a Funding Application and a Funding Equalisation Application, the parties will not require the appointment of an Independent Contradictor.

10.6 Brief to Independent Contradictor

- (a) BL and MB will:
- (i) seek to agree on a brief of materials for the Independent Contradictor;
 - (ii) provide such agreed materials to the Independent Contradictor by 7 February 2020; and
 - (iii) provide any further material and assistance that the Independent Contradictor may reasonably require.
- (b) If one or more of the parties wishes to brief the Independent Contradictor with evidence of “without prejudice” communications and/or settlement negotiations, the parties will, in good faith, seek to agree on the inclusion of that material in the brief to the Independent Contradictor, provided that (unless otherwise agreed) the confidentiality of those materials is protected. The parties agree that the privilege in any such materials will not be waived by reason of them being briefed to the Independent Contradictor. In the event that agreement cannot be reached as to the inclusion of such material in the Independent Contradictor’s brief, no such material may be included in the brief.

10.7 Costs

The reasonable costs of the Independent Contradictor, if appointed pursuant to this clause 10, are to be paid by the Funder, and the Respondents will not be responsible for the payment of any of the Independent Contradictor’s costs.

11. Termination

11.1 Interpretation of this clause 11

In this clause 11, the words “finally declined” will be interpreted as follows:

- (a) Subject to clause (b) below, the Court will not be taken to have finally declined to make the Preliminary Orders or the Approval Orders if:
- (i) during the course of hearing the Preliminary Application or the Approval Application (as the case may be) the Court directs or encourages the parties (or any of them) to reconsider an aspect of the Settlement and/or to obtain additional evidence, and the hearing of the application is adjourned in order to enable either or both of those things to occur;
 - (ii) after hearing the Preliminary Application or the Approval Application (as the case may be) the Court makes the orders sought without material modification (including making additional orders which are reasonably consistent with the terms of the Deed and the Settlement Scheme);
 - (iii) after hearing the Preliminary Application or the Approval Application the Court materially modifies the orders sought and each of the parties agree that the Court’s modifications are acceptable;

- (b) subject to clause (a) above, the Court will be taken to have finally declined to make the Preliminary Orders or the Approval Orders in circumstances including:
- (i) the Court at first instance finally dismisses the Preliminary Application or the Approval Application (as the case may be) and no appeal is filed within the period provided under the relevant Court rules for an appeal from that decision; or
 - (ii) the Court at first instance finally dismisses the Preliminary Application or the Approval Application (as the case may be) and an appeal is filed and that appeal (including any subsequent appeal or application for leave to appeal) is ultimately unsuccessful; or
 - (iii) the Court at first instance makes the Preliminary Orders or the Approval Orders (as the case may be) but an appeal from that decision is filed and that appeal (including any subsequent appeal or application for leave to appeal) is ultimately successful.

11.2 Termination due to failure of Preliminary Application

In the event that the Court finally declines to make the Preliminary Orders this deed will terminate, unless this deed is varied in writing by the parties and agreed to continue within 14 days after the day that the Court finally declines to make the Preliminary Orders (or such other time as the parties agree in writing).

11.3 Termination due to failure of Approval Application

In the event that the Court finally declines to make the Approval Orders this deed will terminate, unless this deed is varied in writing by the parties and agreed to continue within 28 days after the day that the Court finally declines to make the Approval Orders (or such other time as the parties agree in writing).

11.4 Termination by the Respondents

The Respondents may terminate this deed by notice in writing to the Solicitors for the Applicants at any time prior to the Approval Date if, without the prior written consent of the Respondents (such consent not to be unreasonably withheld):

- (a) any of the Applicants cease to be a representative party in the Class Action Proceedings or make such an application to remove, or be removed as, a representative party;
- (b) any person other than the Applicants is appointed as a representative party or as a sub-group representative party in the Class Action Proceedings or such an application is made; or
- (c) any of the Applicants, the Funder or the Solicitors for the Applicants breach clause 12 below.

11.5 Termination by the Applicants

The Applicants may terminate this deed by notice in writing to the Respondents at any time prior to the Approval Date if any of the Respondents breach clause 12 below.

11.6 Effect of termination

The obligations in clause 12 below survive termination of this deed on any ground.

12. Confidentiality

12.1 Confidentiality

Subject to clauses 12.2 and 12.3 and subject to any order of the Court, each party must:

- (a) keep the clauses 2, 3, 5, 6, 7, 9.3 of this Deed confidential unless and until the Approval Order is made;
- (b) keep Annexure 3 to this Deed confidential and otherwise keep the Settlement Scheme confidential until items marked as requiring agreement have been resolved between the parties to this Deed; and
- (c) otherwise keep confidential:
 - (i) Annexures 1 and 2 to this Deed
 - (ii) the Affected Vehicle Database, the NEVDIS Data and the Audi Data (as those terms are defined in the Settlement Scheme),

and not themselves nor through their servants, agents or employees directly or indirectly disclose its terms.

12.2 Public Announcements

- (a) Subject to clause 12.3 and except as required by applicable law or the requirements of any regulatory body (including any relevant stock exchange), all press releases and advertisements in relation to this deed made by any of the Applicants, the Funder or the Solicitors for the Applicants or his employees, representatives or agents must be in terms agreed by the Respondents, such consent not to be unreasonably withheld or delayed (recognising that the European Respondents are based in Germany and the Czech Republic). For the purpose of this clause a “**press release**” is a media release or backgrounding document, website copy, press release or other document of a similar type in which the proposed Settlement (or aspects of it) are publicly announced.
- (b) Except as required by applicable law or the requirements of any regulatory body, any non-confidential document or communication prepared by or on behalf of the Applicants, the Solicitors for the Applicants or the Funder in relation to the settlement (including communications to Group Members) will observe the following limitations:
 - (i) the settlement amounts are to be described only as payments:
 - A. ranging from \$87 million to \$127.1 million in total, depending upon participation rates for Affected Vehicles;
 - B. an average payment per Affected Vehicle of approximately \$1,400 if all Affected Vehicles participate, with average payments increasing if participation rates are lower;
- (c) the method by which payments per Affected Vehicle and payments to Group Members are determined will not be disclosed save that documents or communications may refer to the factors which may affect individual payments.

12.3 Permitted disclosure

Nothing in clause 12.1 or 12.2 shall prevent:

- (a) any of the parties from:
 - (i) disclosing, publishing or otherwise publicly making available the Settlement Scheme, Settlement Notice, Preliminary Orders or the Approval Orders;
 - (ii) to the extent that it is necessary to do so, replicating or giving effect to provisions of this Deed in the Settlement Scheme;
 - (iii) preparing or providing to the Court non-confidential and/or confidential evidence in support of the Preliminary Application, the Approval Application, any Post-Approval Application, Funding Application, Funding Equalisation Application and any application for leave to intervene by the Funder that is made pursuant to clause 10.1 or 10.2;
 - (iv) if considered by the Applicants, the Solicitors for the Applicants or the Administrator to be necessary or appropriate, making any non-confidential evidence in support of the Preliminary Application, the Approval Application or any Post-Approval Application publicly available including on any website;
 - (v) disclosing any information which has ceased to be confidential otherwise than by breach of this deed, and for the avoidance of doubt the parties are permitted to disclose any information and make public comment in relation to the Settlement that is in the same terms or to the same effect as the Settlement Scheme, Settlement Notice or in any non-confidential evidence that is filed in support of the Preliminary Application or the Approval Application;
 - (vi) complying with any order of the Court;
 - (vii) complying with any applicable law, or any requirement of any regulatory body (including any relevant stock exchange);
 - (viii) disclosing any information on a confidential basis as is necessary to obtain legal, taxation or financial advice or services;
 - (ix) disclosing any information to a professional adviser, financial adviser, banker, financier or auditor if that other person is obliged to keep the information confidential;
 - (x) disclosing any information to any of its employees to whom it is necessary to disclose the information;
 - (xi) disclosing any information to obtain the consent of any third party to any term of, or to any act pursuant to, this deed;
 - (xii) disclosing any information to enforce its rights or to defend any claim or action under this deed;
 - (xiii) where necessary and excluding confidential information referred to in 12.1(b) and (c), disclosing any information to a Related Body Corporate; or

- (xiv) disclosing any other information that is agreed between the parties.
- (b) the Solicitors for the Applicants from disclosing information on a confidential basis for the purposes of seeking instructions from or providing legal advice to any Group Member who is currently their client, but only to the extent necessary to do so to obtain such instructions or provide such advice;
- (c) the Respondents from disclosing information on a confidential basis to any Related Body Corporate.

13. Treatment of Confidential Information

13.1 Use of discovered or subpoenaed documents

The parties acknowledge that, except with leave of the Court, or any release from the Court in relation to the implied undertaking as to the use of documents produced in the course of proceedings (and then only in accordance with that leave or release):

- (a) no original or copy document, or information from a document, obtained by a party from the Respondents (including any Related Body Corporate) as a result of discovery, including in response to a Notice to Produce, or under subpoena in the Class Action Proceedings or ACCC Proceedings may be disclosed or used otherwise than for the purposes of the conduct of those Proceedings; and
- (b) all copies of documents which have been produced or given by the Respondents (including any Related Body Corporate) to the other party and which are the subject of a confidentiality undertaking must be destroyed or deleted accordingly (not including any information automatically stored on backup servers the deletion of which requires disproportional effort).

13.2 No Application for Harman Relief

The parties acknowledge that:

- (a) they will not make any application seeking relief from the implied (Harman) undertaking or otherwise make or provide support to any application for access to documents on the Court file in one or more of the Proceedings; and
- (b) in response to any enquiries made to them in relation to access to documents on the Court file in one or more of the Proceedings. the Solicitors for the Applicants will direct any third party to the Federal Court of Australia's website for further information.

13.3 Consent to Extension of Non-Publication Orders

The Applicants will consent to an extension of the non-publication orders made by the Court pursuant to s37AF and s37AG(1)(a) to 18 December 2020. The parties acknowledge that such consent was given and such orders were made on 23 September 2019.

14. Warranties

14.1 Warranties from the Applicants

- (a) Each Applicant warrants that:
 - (i) they have each taken legal advice as to the nature, effect and extent of this deed;

- (ii) the Respondents nor their officers has made any promise, representation or inducement or been party to any conduct material to the Applicants entering into this deed other than as set out in this deed;
 - (iii) they have not assigned or transferred their claims or any cause of action relating to the Class Action Proceedings to any other person; and
 - (iv) they are aware that the Respondents are relying on the warranties in this clause in executing this deed.
- (b) The Applicants will pay the Respondents on demand that amount of any Claims and Losses which results from any breach, falsity or invalidity of the warranties given in this clause 14.1.

14.2 Warranty from the Funder

- (a) The Funder warrants that
- (i) it has taken independent legal advice as to the nature, effect and extent of this deed;
 - (ii) the Respondents nor their officers has made any promise, representation or inducement or been party to any conduct material to the Applicants entering into this deed other than as set out in this deed;
 - (iii) it has not assigned or transferred any claims or entitlement relating to the Class Action Proceedings to any other person; and
 - (iv) it is aware that the Respondents are relying on the warranties in this clause in executing this deed.
- (b) The Funder will pay the Respondents on demand that amount of any Claims and Losses which results from any breach, falsity or invalidity of the warranties given in this clause 14.2.

14.3 Warranties from the Solicitors for the Applicants

- (a) Each of the Solicitors for the Applicants warrant (only in respect of the Class Action Proceedings over which they have carriage) that:
- (i) the information provided identifying Group Members who are their clients is true and correct to the best of their knowledge;
 - (ii) they have obtained instructions from each of the Applicants to settle the Class Action Proceedings on the terms set out in this deed; and
 - (iii) the Solicitors for the Applicants are aware that the Respondents are relying on the warranties in this clause in executing this deed.
- (b) The Solicitors for the Applicant will pay the Respondents on demand that amount of any Claims and Losses which results from any breach, falsity or invalidity of the warranties given by that Solicitor for the Applicant in this clause 14.3.

15. When this deed takes effect

This deed takes effect:

- (a) if counterparts of the Deed are not used, when all parties have signed the Deed;
or
- (b) if counterparts of the Deed are signed, upon exchange,
(the **Effective Date**).

16. Tax

16.1 GST

Any payment or allocation of the Settlement Sum or any part of the Settlement Sum is inclusive of any GST and no additional amount will be payable by the Respondents to any Participating Group Member or any other person on account of any GST liability that may arise in connection with that payment or allocation.

16.2 No reliance on any statement regarding tax

Each party is responsible for seeking its own advice in relation to the taxation consequences of this Deed including the payments and the releases made in accordance with this Deed. Each party expressly acknowledges that they have not relied on any representation by any other party regarding the taxation consequences of this Deed. Each party expressly acknowledges that no further payment will be made by or on behalf of the Respondents or any one of them as a result of any taxation consequences for any Applicant, Group Member, Participating Group Member or MB, BL or Funder.

17. General

17.1 Governing law

This deed is governed by and must be construed according to the laws of New South Wales.

17.2 Jurisdiction

- (a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this deed.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within clause 17.2(a).

17.3 Binding effect of this deed

This deed binds the parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of it.

17.4 Severance

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

17.5 Entire agreement

To the extent permitted by law, in relation to the subject matter of this deed, this deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

17.6 Amendments

- (a) Subject to clause 17.6(b), 17.6(c) and any order of the Court that has the effect of modifying any aspect of this deed including the Settlement Notice, Settlement Scheme or Preliminary Orders, this deed may only be varied by a deed signed by or on behalf of each party except that the parties may agree in writing (without the need to execute another deed) to vary:
 - (i) any of the Annexures to this Deed; or
 - (ii) the terms of the Approval Orders.
- (b) In the event that the parties agree to vary the Settlement Scheme in Annexure 3, the existing version of the Settlement Scheme is to be replaced with any subsequent version of the Settlement Scheme that is agreed between the parties.
- (c) In the period between the making of the Preliminary Orders and the hearing of the Approval Application an amendment can only be made pursuant to clause 17.6(a):
 - (i) if the amendment is not inconsistent with the Settlement Notice; or
 - (ii) with leave of the Court.
- (d) After the Court makes the Approval Orders an amendment can only be made pursuant to clause 17.6(a) with leave of the Court.

17.7 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.

- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

17.8 Acknowledgments

The parties acknowledge that they enter into this deed fully and voluntarily on their own information and investigation. Each party to this deed acknowledges that it is aware that it or its advisers, agents or lawyers may discover facts different from or in addition to the facts that they now know or believe to be true with respect to the Claims and that it is their intention to, and they do, fully, finally, absolutely and forever settle according to the provisions of this deed any and all Claims which now exist, or may exist or have ever existed between them.

17.9 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

Executed as a deed.

Signed, sealed and delivered by **Alister John Dalton** in the presence of:

Signature of witness

Full name of witness

Signature of Alister John Dalton

Signed, sealed and delivered by **Joanna Kathryn Dalton** in the presence of:

Signature of witness

Full name of witness

Signature of Joanna Kathryn Dalton

Signed, sealed and delivered by **Robyn Tanya Richardson** in the presence of:

Signature of witness

Full name of witness

Signature of Robyn Tanya Richardson

Signed, sealed and delivered by **William John McIntyre** in the presence of:

Signature of witness

Full name of witness

Signature of William John McIntyre

Signed, sealed and delivered by **Steven John Roe** in the presence of:

Signature of witness

Full name of witness

Signature of Steven John Roe

Signed, sealed and delivered by **Richard Cantor** in the presence of:

Signature of witness

Full name of witness

Signature of Richard Cantor

Signed, sealed and delivered by Josefina Tolentino in the presence of:

Signature of witness

Full name of witness

Executed by Maurice Blackburn Pty Ltd (ACN 105 657 949) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signed, sealed and delivered by Charles J Bannister t/as Bannister Law in the presence of:

Signature of witness

Full name of witness

Executed by Grosvenor Litigation Services Pty Ltd (ACN 609 112 996) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of Josefina Tolentino

Signature of company secretary/director

Full name of company secretary/director

Signature of Charles J Bannister

Signature of company secretary/director

Full name of company secretary/director

Signed, sealed and delivered by Volkswagen Aktiengesellschaft in accordance with the laws of its jurisdiction of incorporation and constituent documents and in the presence of:

Signature of witness

Signature of officer

Full name of witness

Full name of officer and office held

Signature of witness

Signature of officer

Full name of witness

Full name of officer and office held

**Signed, sealed and delivered by Audi
Aktiengesellschaft** in accordance with the laws
of its jurisdiction of incorporation and constituent
documents and in the presence of:

Signature of witness

Signature of officer

Full name of witness

Full name of officer and office held

Signature of witness

Signature of officer

Full name of witness

Full name of officer and office held

Signed, sealed and delivered by Skoda Auto a.s. in accordance with the laws of its jurisdiction of incorporation and constituent documents and in the presence of:

Signature of witness

Signature of officer

Full name of witness

Full name of officer and office held

Signature of witness

Signature of officer

Full name of witness

Full name of officer and office held

Executed by Volkswagen Group Australia Pty Ltd (ACN 093 117 876) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Executed by Audi Australia Pty Ltd (ACN 077 092 776) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Annexure 1 VIN List: Affected Vehicles

See Excel workbook entitled "Annexure 1 - VIN list".

Annexure 2 Calculation of Aggregate Settlement Sum



Annexure 3 Settlement Scheme

Settlement Scheme

VW, Audi and Skoda Class Actions in the Federal Court of Australia

Date 9 December 2019

Version 1

Dalton v Volkswagen AG & Ors (proceeding NSD1459/2015)

Richardson v Audi AG & Ors (proceeding NSD1472/2015)

Roe v Skoda Auto as & Ors (proceeding NSD1473/2015)

Cantor v Audi Australia Pty Ltd (proceeding NSD1307/2015)

Tolentino v Volkswagen Group Australia Pty Ltd (proceeding NSD1308/2015)

Overview

In accordance with the Deed of release and settlement that has been agreed between the parties in the Class Action Proceedings, this Settlement Scheme creates the procedures and substantive requirements for the determination of the Aggregate Settlement Sum and its distribution among Participating Group Members who are assessed as eligible to receive a Settlement Payment.

The Settlement Scheme sets out the Eligibility Criteria that need to be met in order for a Group Member to receive a Settlement Payment (see clause 4). Those Eligibility Criteria provide that Group Members are eligible to receive a Settlement Payment if they held one of a number of different interests in an Affected Vehicle at the time of either of the Qualifying Dates. These interests include ownership of a vehicle as well as some circumstances in which an Affected Vehicle was subject to a lease.

Group Members who wish to make a claim for a Settlement Payment are required to register by completing an online registration form and also by providing certain Claim Materials in support of their claim (see clause 5).

The Settlement Scheme provides for the Administrator of the settlement to undertake a review and assessment of all registered claims and make Eligibility Determinations (see clause 6). A "Notice of Assessment" will then be sent to individual Group Members who had registered claims. Group Members who disagree with the assessment and determination of their claim can request a Review of the decision made by the Administrator (see clause 8).

After all claims have been assessed and determined, the final Aggregate Settlement Sum will be worked out and then paid by the Respondents in light of the number of unique Registered Affected Vehicles in relation to which Participating Group Members satisfy the Eligibility Criteria (see clause 9).

After the Aggregate Settlement Sum has been determined, the Administrators are to calculate the final Settlement Payments that are payable to all Participating Group Members who had registered claims and satisfied the Eligibility Criteria (see clause 10).

The Applicants' Solicitors will determine how individual settlement payments are calculated, subject to Court approval. This will broadly reflect the way the Applicants' cases were put. The Respondents did not admit liability and denied that Group Members suffered any loss or that the value of their vehicles was affected by the diesel issue. This settlement represents a pragmatic negotiated commercial outcome.

If the Court authorises the Funder in the Bannister Law Proceedings to deduct amounts from the Settlement Payments of any Group Members in the Bannister Law Proceeding, those amounts will also be calculated, and the Settlement Payments of other Participating Group Members will be adjusted in light of any funding equalisation order that is made by the Court (see clause 10). A "Notice of Settlement Payment" is to be sent to Participating Group Members with information about the Settlement Payment that is due to be paid to them, and after providing their agreement to release the Respondents and keep their Settlement Payment confidential, Settlement Payments can then be released to Participating Group Members (see clause 11).

Group Members who participate in the settlement are required to cooperate with the Administrator in relation to their claim and to act honestly (see clause 12). Reasonable Administration Costs will be paid separately by the Respondents in addition to the Aggregate Settlement Sum (see clause 13).

1. Definitions and Interpretation

1.1 Dictionary

In this Settlement Scheme, the terms in the Dictionary in the Schedule to this Settlement Scheme have the meanings defined in that Dictionary.

1.2 Interpretation

In this Settlement Scheme:

- (a) Headings may be used in interpreting the meaning of provisions of this Settlement Scheme.
- (b) Where the context permits, the singular includes the plural, and the plural includes the singular.
- (c) If a word or phrase is defined in this Settlement Scheme, its other grammatical forms have a corresponding meaning.
- (d) Specifying anything in this Settlement Scheme after the words “include”, “including” or “for example” or similar expressions, does not limit what else might be included.
- (e) A reference to a clause is a reference to a clause of this Settlement Scheme.
- (f) A reference to an agreement or document (including a reference to this Settlement Scheme) is to the agreement or document as amended, supplemented, novated or replaced.
- (g) A reference to a day is to a calendar day and not to a business day, unless the context requires otherwise.

1.3 Terminology relating to Finance Arrangements

In this Settlement Scheme:

- (a) **balloon payment** means the large fixed payment due at the end of the term of a loan or a hire/purchase arrangement;
- (b) **final payment** means the last scheduled payment due under a lease, hire/purchase or loan contract. For finance contracts with a balloon payment, it is the balloon payment;
- (c) **finance lease** means a lease of property under which the risk in relation to the value of the asset rests with the lessee.
- (d) **hire/purchase arrangement** means an agreement for hire of an asset under which at the end of term or on payout, the hirer, by having made the required payments under the agreement, obtains title to the asset. Title to the asset does not pass until the final payment is made.

- (e) **novated lease** means an arrangement entered into between an employee, employer and a financier whereby the employee and the financier enter into a lease of an asset, such lease which is then novated from the employee to the employer and this novation remains in force while the employee remains employed by the employer. During that period, the employer is liable to make the lease payments under the lease (generally as part of salary sacrifice arrangements with the employee). If the employee ceases to be employed by the employer, the obligations under the lease revert to the employee.
- (f) **operating lease** means a lease which does not transfer substantially the risks of ownership to the lessee. An operating lease will generally run for less than the full economic life of the asset and the lessor would expect the asset to have a resale value at the end of the lease period.

The following terms are to be interpreted in accordance with their ordinary and usual meaning:

- (g) mortgage;
- (h) loan;
- (i) lessee;
- (j) lessor.

2. Appointment and functions of the Administrator

2.1 Appointment of Administrator

This Settlement Scheme will be administered by an Administrator appointed by the Court and the Administrator will:

- (a) administer and implement the Settlement Scheme fairly and reasonably according to its terms, and with the Administrator's duty to the Court to take priority over any obligations or duties to individual Group Members, including duties that arise from any existing solicitor-client relationship between the Administrator and their clients;
- (b) in discharging any function or exercising any power or discretion conferred by this Settlement Scheme, not be liable for any loss to Group Members arising by reason of any mistake or omission made in good faith or of any other matter or thing except wilful and individual fraud and wrongdoing on the part of the Administrator or its staff who are sought to be made liable.

2.2 Correction of Errors

The Administrator may at any time correct any error, slip, or omission that occurred in the administration or implementation of the Settlement Scheme.

3. Affected Vehicle Database

3.1 The Affected Vehicle Database

The Affected Vehicle Database is a confidential database:

- (a) prepared by Maurice Blackburn in consultation with Bannister Law; and
- (b) that is to be used by the Administrator in order to administer this settlement in accordance with the provisions of this Settlement Scheme.

3.2 Contents of Affected Vehicle Database

The Affected Vehicle Database contains the following information:

- (a) the VIN and other related identifying information for each Affected Vehicle including any Excluded Vehicle;
- (b) the Provisional Vehicle Amount for each Affected Vehicle;
- (c) any other information or data (including the NEVDIS Data or Audi Data, if it is available) that the Administrator considers to be relevant and useful in order to administer this Settlement Scheme efficiently and expeditiously,

and as set out in this Settlement Scheme, certain determinations that are made and actions that are taken by the Administrator in the course of administering this Settlement Scheme are to be recorded in the Affected Vehicle Database.

3.3 Provisional Vehicle Amounts

The “**Provisional Vehicle Amounts**” are the monetary amounts that are provisionally (that is, subject to the operation of clauses 10 and 11 of this Settlement Scheme) determined in respect of each Affected Vehicle, and have been determined by Maurice Blackburn and Bannister Law pursuant to their methodology in light of data analysed by an independent accounting expert having regard to:

- (a) the price of the model of Affected Vehicle when purchased as a new vehicle; and
- (b) an estimated value of the model of Affected Vehicle immediately before the Qualifying Date.

In the case of Excluded Vehicles, the Provisional Vehicle Amount is \$0.

3.4 Excluded Vehicles

Group Members who make claims in relation to the following categories of Affected Vehicles that are “**Excluded Vehicles**” are not entitled to receive a Settlement Payment pursuant to this Settlement Scheme:

- (a) Affected Vehicles that were written off before 18 September 2015;
- (b) Affected Vehicles that were not sold to a group member (including dealer stock) in Australia before 3 October 2015.

4. Eligibility Criteria

4.1 Eligibility Criteria

Subject to the provisions of this Settlement Scheme, a Group Member is eligible to receive a Settlement Payment pursuant to this Settlement Scheme if the Group Member satisfies the following “**Eligibility Criteria**”:

- (a) the Group Member has not opted out of both the BL Proceedings and the MB Proceedings;
- (b) the Group Member acquired an Interest in an Affected Vehicle; and
- (c) the Interest was held by the Group Member at the time of either of the Qualifying Dates.

4.2 Interest in an Affected Vehicle

When a person holds an Interest in an Affected Vehicle is determined in accordance with this clause.

An “**Interest**” means any of the following circumstances in which the Group Member held a legal or equitable interest in an Affected Vehicle:

Ownership Interest A Group Member held an Ownership Interest in an Affected Vehicle if they held legal title to the vehicle:

- (a) if the Affected Vehicle was acquired new or second hand
- (b) regardless of whether the Affected Vehicle was acquired by the Group Member wholly or partly by means of a loan (however described)
- (c) including in circumstances where the Group Member acquired ownership after making a “balloon payment”, residual value payment or final payment (however described) under the terms of lease, hire purchase agreement or other similar arrangement
- (d) including in circumstances where the Group Member repossessed an Affected Vehicle following a borrower’s default on a loan used to finance the acquisition of the Affected Vehicle and, in such case, excluding any interest held by the borrower;
- (e) excluding in circumstances where the Group Member held a Lessor Interest (Operating Lease) as defined below.

Lease Interest Subject to Clause 4.3, a Group Member held a Lease Interest in an Affected Vehicle if they held one of the following types of interest in the vehicle:

Lessee Interest (Finance Lease)

An Affected Vehicle was subject to a finance lease, novated lease or hire purchase agreement and the Group Member was the lessee or hirer (however described)

Lessee Interest (Operating Lease)

An Affected Vehicle was subject to an operating lease and the Group Member was the lessee

Lessor Interest (Operating Lease)

An Affected Vehicle was subject to an operating lease and the Group Member was the lessor

4.3 Excluded Interests

For avoidance of doubt, the following “**Excluded Interests**” are not Interests for the purpose of this Settlement Scheme, and a Group Member who held an Excluded Interest in an Affected Vehicle is not entitled to receive any Settlement Payment (but is otherwise bound by the settlement):

- (a) any legal or equitable interest that the Group Member held as the lessor of an Affected Vehicle that was subject to a finance lease or novated lease;
- (b) any legal or equitable interest that the Group Member held as the seller or vendor or holder of legal title (however described) of an Affected Vehicle that was subject to a hire purchase agreement;
- (c) excepting the circumstances described in sub-paragraph (d) of the definition of an Ownership Interest in clause 4.2, any legal or equitable interest that the Group Member held as the credit provider, lender or mortgagor (however described) in relation to any loan that was used by another person to finance the acquisition of an Affected Vehicle;
- (d) any legal or equitable interest in an Affected Vehicle that was held by:
 - (i) an Authorised Dealer; or
 - (ii) the Respondents or their Related Bodies Corporate;
 - (iii) an employee, contractor, officer, brand ambassador or staff member of the Respondents or their Related Bodies Corporate where that interest is limited to the right to use, including by way of lease from the Respondents, an assigned car or staff car owned by the Respondents.
- (e) any other interest in an Affected Vehicle that is not an Ownership Interest or a Lease Interest as defined above;
- (f) any legal or equitable interest in an Excluded Vehicle.

4.4 Qualifying Dates

The “**Qualifying Date**” is either of the following dates, being the dates identified in the definition of Group Members in (respectively) the BL Proceedings and the MB Proceedings as the dates on which a person must have held an interest in an Affected Vehicle in order to be a Group Member:

- (a) 18 September 2015; or
- (b) 3 October 2015.

4.5 Interest Conflict Due to Qualifying Dates

- (a) In the event that the Participating Group Members for any Affected Vehicle are different for each of the two Qualifying Dates (**Conflicted Vehicles**): for the purpose of calculating the Aggregate Settlement Sum, the Affected Vehicle will only be counted as one vehicle;
- (b) each Participating Group Member will be entitled to a Settlement Payment; and
- (c) there is no obligation on the Respondents to make an additional payment to the Aggregate Settlement Sum to enable Settlement Payments to Conflicted Vehicles.

5. Registration and provision of Claim Materials

5.1 Registration of claims

Subject to clause 5.2, if a Group Member wishes to make a claim for a Settlement Payment under this Settlement Scheme, the Group Member must register their claim by:

- (a) completing an online registration form at the Registration Portal at the following website:

www.vwsettlement.com.au

- (b) and at the time of doing so, providing to the best of their ability the Registration Information that is sought in the online registration form and declaring that all Registration Information supplied by the Group Member is true and correct.

5.2 Registration of claims relating to ten or more Affected Vehicles

If a Group Member wishes to make claims for Settlement Payments in relation to ten or more Affected Vehicles, the Group Member will be a “**Fleet Operator**” and must register their claim by contacting the Administrator in writing in order to notify their intention to make a claim for Settlement Payments.

5.3 Deadline for the registration of claims

A Group Member must register their claim on or before 10 March 2020 Sydney time (**Registration Deadline**).

5.4 Failure to register by the Registration Deadline

If a Group Member does not register their claim by the Registration Deadline, the Group Member is bound by the settlement but is not entitled to receive a Settlement Payment pursuant to the Settlement Scheme.

5.5 Registration of former clients of the Solicitors for the Applicants

To the extent that adequate VIN information is available to enable them to do so, the Solicitors for the Applicants may effect the preliminary registration of any Group Members who were clients of the Solicitors for the Applicants on or before 3 September 2019, and any such preliminary registration is to be treated as a valid registration for the purpose of clauses 5.1, 5.2 and 5.3.

5.6 Claim Materials – vehicle information

If NEVDIS Data or Audi Data is available to be used for the purpose of administering this Settlement Scheme and the NEVDIS Data or Audi Data contains information at a date that is reasonably proximate to the Qualifying Dates, the Registration Portal will at the time of registration identify whether there is a reasonable match (**Vehicle Match**) between:

- (a) the Registration Information provided by a Registrant in relation to an Affected Vehicle; and
- (b) information in the NEVDIS Data or Audi Data for the Affected Vehicle that is registered by the Registrant.

If there is a Vehicle Match

If there is a Vehicle Match for a Registrant's Affected Vehicle, the Registrant does not need to provide any additional materials in support of their claim, unless either:

- (a) at the time of either of the Qualifying Dates the Registrant was the lessee or hirer in a lease or hire purchase agreement in relation to their Affected Vehicle, in which case clause 5.7 applies; or
- (b) the Administrator is or becomes aware of other information that provides a reasonable basis for the Administrator to suspect that the Registrant may not have held an Interest in an Affected Vehicle at the time of either of the Qualifying Dates, in which case clause 6.1(e) applies.

If there is no Vehicle Match

If there is no Vehicle Match for a Registrant's Affected Vehicle or if NEVDIS Data or Audi Data is not available to be used for the purpose of administering this Settlement Scheme, the Registration Portal will prompt the Registrant to upload "**Claim Materials**" onto the Registration Portal.

If the Registration Portal prompts a Registrant to provide Claim Materials, the Registrant must do so either at the same time as or no later than 28 days after a Registrant registers a claim (and in any event no later than 14 days after the Registration Deadline).

A Registrant's Claim Materials are to include documents that will enable the Administrator to assess whether the Registrant held an Interest in an Affected Vehicle at either of the Qualifying Dates. For example, a Registrant may provide the following Claim Materials:

- (a) **vehicle registration certificates or similar documents from a state or territory motor vehicle registry** such as one certificate before the Qualifying Dates and one certificate after the Qualifying Dates; or
- (b) **one or more certificates of insurance** such as one certificate before the Qualifying Dates and one certificate after the Qualifying Dates, or alternatively one certificate where the period of the insurance includes the Qualifying Dates, provided that the insurance certificate identifies the VIN of the Affected Vehicle or otherwise enables the Administrator to identify the Registrant's Affected Vehicle reliably; or
- (c) **other documents** that demonstrate that the Registrant held an Interest in the Affected Vehicle at either of the Qualifying Dates, provided that those other documents identify the VIN of the Affected Vehicle or otherwise enable the Administrator to identify the Registrant's Affected Vehicle reliably.

5.7 Claim Materials – lease information to be provided by lessees

Regardless of whether there is a Vehicle Match, if a Registrant was at the time of either of the Qualifying Dates the lessee or hirer in any type of lease or hire purchase agreement relating to their Affected Vehicle, the Registrant must also provide either:

- (a) a copy of the lease or hire purchase agreement; or
- (b) written confirmation from the lessor in relation to the following aspects of the lease or hire purchase agreement:
 - (i) name of the lessee or hirer;
 - (ii) VIN of the Affected Vehicle;
 - (iii) the type of lease or agreement (ie finance, novated or operating lease);
 - (iv) duration of the lease including the commencement date and the end date of the lease or hire purchase agreement.

5.8 Claim Materials – Fleet Operators

Instead of providing Claim Materials in accordance with clause 5.6, Group Members who are Fleet Operators are to provide Claim Materials consisting of an extract or export of a database or other record keeping system used by the Fleet Operator in the ordinary course of their business in order to provide to the Administrator information in an aggregated format that:

- (a) identifies the VIN of each Affected Vehicle for which a claim is made;
- (b) identifies the type of Interest asserted by the Fleet Operator in respect of each Affected Vehicle;

- (c) provides evidence that enables the Administrator to assess whether the Interest in each Affected Vehicle was held at the Qualifying Date, for example by supplying information to the effect that the Affected Vehicle was sold after the Qualifying Date,

and:

- (d) the Fleet Operator must also provide a statutory declaration from an employee of the Fleet Operator who is authorised to attest to the veracity of the information extracted or exported from the database or record keeping system and supplied to the Administrator; and
- (e) depending on the nature of the Fleet Operator's record keeping systems and the format and contents of the materials provided pursuant to this clause, the Administrator may require the Fleet Operator to provide additional records or documents that the Administrator may rely upon in conjunction with the extract or export of any database or record keeping system.

6. Assessment Process

6.1 Process for determining eligibility

Having regard to the Eligibility Criteria the Administrator will undertake an assessment and determination of the eligibility or otherwise of each Registrant (**Eligibility Determination**) in accordance with the following provisions:

- (a) the Administrator will check whether or not the Registrant has filed an opt out notice;
- (b) subject to clause 6.1(c), the Administrator will review the Registration Information and Claim Materials provided by the Registrant in order to determine:
 - (i) whether the VIN provided for the Affected Vehicle is recorded in the Affected Vehicle Database or otherwise determined to be an Affected Vehicle pursuant to clause 7;
 - (ii) whether it is reasonable to conclude that the Registrant held an Interest in an Affected Vehicle and if so the type of Interest; and
 - (iii) whether it is reasonable to conclude that the Registrant held that Interest as at the Qualifying Date;
- (c) for the purposes of determining whether it is reasonable to conclude that a Registrant held an Interest as at the Qualifying Date, the Administrator may:
 - (i) rely on any Vehicle Match in relation to the Registrant's Affected Vehicle;
 - (ii) rely on other information or documents held by the Settlement Administrator or provided by another person;
 - (iii) obtain information from the Respondents in respect of a particular VIN;

- (iv) if the Administrator forms the view, acting reasonably, that it is not otherwise possible to determine whether a Registrant held an interest as at the Qualifying Date, seek to obtain information or documents from a third party, and accordingly may seek orders from the Court or alternatively request that the Registrant provide an authority to release any such information or documents;
- (d) in assessing claims where the Registrant appears to have had a Lease Interest, the Administrator is to:
 - (i) use its discretion and judgment in determining the type of lease that had been entered into, and to this end the Administrator may consult with an appropriately qualified vehicle industry or finance expert (which may include the Respondents or related financial services companies);
 - (ii) determine which of the different types of Lease Interests or Excluded Interests most aptly applies to the features of the Registrant's contractual arrangements;
- (e) in the event that:
 - (i) the Administrator determines that Registration Information and/or Claim Materials provided by a Registrant are insufficient in order to make an Eligibility Determination; and/or
 - (ii) the Administrator is aware of other information that provides a reasonable basis for the Administrator to suspect that the Registrant may not have held an Interest in an Affected Vehicle at the time of either of the Qualifying Dates and/or that any Vehicle Match is unreliable,the Administrator may request that the Registrant provide additional information or documents, in which case:
 - (iii) the Registrant must provide those additional materials within the timeframe specified by the Administrator; and
 - (iv) those additional materials will then constitute or form part of the Registrant's Claim Materials;
- (f) following the review of the Registration Information, Claim Materials and any other information available to the Administrators including any NEVDIS Data, Audi Data or Vehicle Match, the Administrator will complete the Eligibility Determination for each Registrant and:
 - (i) each Registrant who is assessed and determined by the Administrator as satisfying the Eligibility Criteria is a "**Participating Group Member**";
 - (ii) each Affected Vehicle in relation to which a Participating Group Member is determined by the Administrator as satisfying the Eligibility Criteria is a "**Registered Affected Vehicle**".
- (g) the Administrator will make a record of each Eligibility Determination in the Affected Vehicle Database and in doing so will identify:

- (i) each Participating Group Member;
- (ii) the Registered Affected Vehicle in which each Participating Group Member held an Interest; and
- (iii) the type of Interest held by each Participating Group Member.

6.2 Notification of Registrants regarding their eligibility or otherwise

After an Eligibility Determination is made in relation to a Registrant's claim, the Administrator will promptly send to the Registrant a "**Notice of Assessment**" in which the Administrator will:

- (a) state whether or not the Registrant has been assessed to be a Participating Group Member who is eligible to receive a Settlement Payment in relation to one or more Affected Vehicles;
- (b) if the Registrant was assessed to be Participating Group Member:
 - (i) state the details (including the VIN) of each Registered Affected Vehicle which is the subject of the Group Member's claim;
 - (ii) state the Administrator's assessment of the type of Interest/s held by the Group Member in relation to each Registered Affected Vehicle which is the subject of the Group Member's claim;
 - (iii) provide information to the Group Member to the effect that payment of any Settlement Payment/s is subject to the Group Member agreeing to release the Respondents and keep their Settlement Payment confidential;
 - (iv) provide information to the Group Member in relation to their rights to seek an Interest Review under clause 8.
- (c) if the Registrant is assessed as ineligible to receive a Settlement Payment:
 - (i) state the reason why the Registrant was assessed as ineligible to receive a Settlement Payment; and
 - (ii) provide information to the Registrant in relation to their rights to seek an Eligibility Review under clause 8.

6.3 Subsequent information that is relevant to an Eligibility Determination

If, after sending a Notice of Assessment to a Registrant and at any time up to the date on which the Administrator provides notification to the Respondents pursuant to clause 9.1, the Administrator becomes aware of information that is inconsistent with the Eligibility Determination that was made in relation to the Registrant, the Administrator is to revisit and if necessary adjust the Eligibility Determination and will notify the Registrant by sending a revised Notice of Assessment.

7. Affected Vehicles not recorded in the Affected Vehicle Database

7.1 Process for inclusion of additional Affected Vehicles

Where a person notifies the Administrator of their intention to lodge a claim for a vehicle in circumstances where:

- (a) the VIN for the vehicle in question does not appear on the Affected Vehicle Database; and
- (b) on the basis of available information, the Administrator reasonably suspects that the vehicle may be an EA189 Vehicle; for example because the vehicle is a diesel vehicle of the same model and model year as an EA189 Vehicle;

the following process will apply:

- (c) the Administrator will provide the VIN for the vehicle to the Respondents; and
- (d) the Respondents will on the basis of their records investigate and use their best endeavours to determine whether the vehicle is an EA189 Vehicle, and the Respondents will then notify the Administrator accordingly;
- (e) the Respondents' determination will be final and binding on the Administrator and the person and is not able to be reviewed;
- (f) if the vehicle is determined not to be an EA189 Vehicle, the Administrator will send a Notice of Assessment to the person in accordance with clause 6.2(c) as if they were a Registrant (and that person shall be treated as a Registrant for the purposes of clause 8).

7.2 Inclusion of Affected Vehicles in the Affected Vehicle Database

If a vehicle is determined to be an EA189 Vehicle pursuant to the process set out in clause 7.1:

- (a) the EA189 Vehicle will be added to the Affected Vehicle Database and will be treated as an Affected Vehicle; and
- (b) the Group Member's claim will proceed to be processed and assessed in accordance with this Settlement Scheme.

8. Review of Eligibility and Interest Determinations

8.1 Right to seek a Review

A Registrant has the right to seek a "**Review**" of any of the following determinations:

- (a) a determination under clause 6.1 of the type of Interest held by the Participating Group Member as at the Qualifying Date (**Interest Review**); and
- (b) a determination under clause 6.1 that the Registrant is not eligible to receive a Settlement Payment (**Eligibility Review**).

8.2 Determinations which cannot be reviewed

A Group Member is not entitled to seek a Review of the amount of a Settlement Payment calculated in accordance with clause 10.1 or the antecedent determination of the Provisional Vehicle Amount as described in clause 3.3.

8.3 Process for seeking a Review

If a Registrant wishes to seek a Review, they must do so:

- (a) by giving written notice to the Administrator no later than 14 days after the Administrator sent the Notice of Assessment to the Registrant; and
- (b) such notice must state the reason/s why the Registrant disputes the Administrator's determination.

8.4 Failure to seek a review

If a Registrant does not give written notice to the Administrator within 14 days of the Administrator sending a Notice of Assessment to the Registrant, the Notice of Assessment will be deemed to have been accepted by the Registrant and no Review will then be able to be sought.

8.5 Payment of a bond for Eligibility Review

Where a Registrant seeks an Eligibility Review and the Administrator has reasonable grounds to suspect that the Eligibility Review is unlikely to succeed, the Administrator will:

- (a) require that the Registrant pay the Administrator a bond not exceeding \$1,000 for the costs of the Review; and
- (b) if the Registrant fails to pay the bond within 14 days of receiving such a request from the Administrator, treat the Registrant's request for a Review as void and having no effect; and
- (c) the amount of any such bond is to be forfeited in the event that the Eligibility Review is unsuccessful, and is to be returned to the Registrant in the event that the Eligibility Review succeeds.

8.6 Process for Reviews

The Administrator will assess and determine Reviews according to the following procedure:

- (a) in the first instance the Administrator will consider whether it made an error in determining the Registrant's claim and, if the Administrator forms the view that it made an error, the Administrator will correct its original determination and continue with the processing of the Registrant's claim in accordance with this Settlement Scheme;
- (b) if the Administrator does not correct its original determination, the Administrator will engage a Review Assessor;

- (c) the Administrator will provide the following materials to the Review Assessor:
 - (i) a copy of the Registrant's Notice of Assessment;
 - (ii) the Registrant's written notice by which they requested the Review;
 - (iii) access to aspects of the Affected Vehicle Database that are relevant to the Registrant's claim;
 - (iv) the Registrant's Registration Information and Claim Materials;
 - (v) such other information and documents that were relied upon by the Administrator in order to determine the Registrant's claim;
- (d) save in any exceptional circumstances to be determined by the Administrator in its sole discretion, the Review Assessor must not consider any new evidence or additional materials that are not already included in the materials referred to in clause 8.6(c);
- (e) within 14 days, the Review Assessor will then:
 - (i) in an Interest Review, make a determination as to the type of Interest held by the Group Member as at the Qualifying Date;
 - (ii) in an Eligibility Review, make a determination as to whether the Registrant satisfies the Eligibility Criteria;
 - (iii) in relation to either type of Review, provide to the Administrator a brief statement of reasons for the Review Assessor's determination;
- (f) after the Administrator either:
 - (i) corrects its original determination; or
 - (ii) receives the Review Assessor's determination and statement of reasons,

the Administrator will promptly send to the Registrant a **"Notice of Review"** in which the Administrator will provide information to the Registrant about the determination of their Review including the reasons for the outcome of the Review; and
- (g) the Administrator will update the Affected Vehicle Database in order to record the outcome of the Review.

8.7 Determinations of Review Assessors are final and binding

A determination of a Review Assessor is final and binding on the Administrator and the Registrant who sought the Review.

8.8 Role of Review Assessors

The following provisions apply to Review Assessors engaged by the Administrator:

- (a) Review Assessors will act as independent arbitrators and not as counsel briefed to act for any individual Registrant or the Administrator;

- (b) in view of their familiarity with the subject matter of the Class Action Proceedings and in the interests of efficiency in the administration of this Settlement Scheme, junior counsel who had been briefed to act for the Applicants may be appointed by the Administrator as a Review Assessor;
- (c) Review Assessors have the same immunities from suit as attach to the office of a judge of the Supreme Court of New South Wales.

9. Payment of Aggregate Settlement Sum

9.1 Total Registered Affected Vehicles

Upon the completion of the assessment process under clause 6 for all claims that were registered by the Registration Deadline, and the completion of all Reviews pursuant to clause 8, the Administrator will notify the Respondents of:

- (a) the total number of Registered Affected Vehicles; and
- (b) the VIN for each Registered Affected Vehicle.

9.2 Payment of Aggregate Settlement Sum by the Respondents

The Respondents will pay the Aggregate Settlement Sum into the Settlement Account in accordance with clause 7.1 of the Deed.

9.3 Aggregate Settlement Sum is held by the Administrator on trust

Upon the Approval Order being made and the Respondents paying the Aggregate Settlement Sum into Settlement Account, and subject to the terms of the Deed and any applicable statutory requirements, the Administrator will hold the money standing from time to time in the Settlement Account on trust for:

- (a) Group Members; and
- (b) the Administrator, to the extent of its entitlement to receive Administration Costs in accordance with the terms of the Deed and this Settlement Scheme.

9.4 Settlement Sum Interest

Settlement Sum Interest will be retained by the Administrator and, after the discharge of any tax liability relating to the Settlement Sum Interest, applied to pay the Administrator's costs as approved by the Court and any such payment will reduce the Respondents' liability to pay these costs accordingly with supporting documentation to be made available by the Administrator to the Respondents.

10. Calculation of Settlement Payments

10.1 Calculation of Settlement Payments

Subject to clause 10.5(d), the Administrator will calculate the Settlement Payments of all Participating Group Members according to the following two step procedure:

First step

The Administrator will calculate each Participating Group Member's "**Unadjusted Settlement Payment**" taking into account the Provisional Vehicle Amount for the Registered Affected Vehicle and the following allocations depending on the type of Interest held by the Group Member:

| | |
|------------------------------------|--|
| Ownership Interest: | 100% of the Provisional Vehicle Amount |
| Lessee Interest (Finance Lease): | 100% of the Provisional Vehicle Amount |
| Lessee Interest (Operating Lease): | 50% of the Provisional Vehicle Amount |
| Lessor Interest (Operating Lease): | 50% of the Provisional Vehicle Amount |

Note: a Participating Group Member with a Lessee Interest (Operating Lease) is to be allocated 50% of the Provisional Vehicle Amount regardless of whether or not a claim is also made by a Participating Group Member who held a Lessor Interest (Operating Lease) in respect of the same Affected Vehicle. Conversely, a Participating Group Member with a Lessor Interest (Operating Lease) is to be allocated 50% of the Provisional Vehicle Amount regardless of whether or not a claim is also made by a Participating Group Member who held a Lessee Interest (Operating Lease) in respect of the same Affected Vehicle.

Note: In the event that the Participating Group Members for any Affected Vehicle are different for each of the two Qualifying Dates, the calculation of Unadjusted Settlement Payments will be made separately for the Participating Group Members as at 18 September 2015 and 3 October 2015.

Second step

The Administrator will calculate each Group Member's final Settlement Payment by adjusting each Participating Group Member's Unadjusted Settlement Payment to reflect the difference between the Aggregate Settlement Sum and the sum of all Unadjusted Settlement Payments.

10.2 Funding Order payments

In the event that the Court makes a Funding Order, then, within 7 days of the Aggregate Settlement Sum being paid by the Respondents in accordance with clause 9.2 above or within such other timeframe that is agreed between the Administrator and the Funder, the Administrator will determine the aggregate amount payable to the Funder, pursuant to the Funding Order, having regard to:

- (a) the Aggregate Settlement Sum; and
- (b) the total number of Participating Group Members subject to the Funding Order and the amounts of the Settlement Payments of those Participating Group Members,

and the Administrator will then pay the amount determined pursuant to this clause to the Funder within 7 days of that determination.

10.3 Funding Payments

In the event that the Funder is entitled to receive a proportion of any Participating Group Member's Settlement Payment by reason of the Funder's contractual entitlements pursuant to a litigation funding agreement between the Funder and a Participating Group Member (**Funding Payment**) then, prior to the notification of Settlement Payments to Participating Group Members as set out in clause 10.5, the Administrator will, in consultation with the Funder:

- (a) identify those Participating Group Members who are the subject of a Funding Payment obligation,
- (b) calculate the amount to be deducted from the Settlement Payments of those Participating Group Members and paid to the Funder by reason of any Funding Payment obligation, and
- (c) pay those amounts to the Funder at the time Settlement Payment is made to a Participating Group Member in accordance with clause 11, or as soon as practicable thereafter, and for the purpose of this requirement the Administrator may make payments to the Funder in tranches in which the Funding Payments of several Participating Group Members are aggregated.

To assist the Administrator to undertake those steps, if the Funder is (or may be) entitled to a Funding Payment(s) then, within 14 days of the Approval Order being made, the Funder will provide to the Administrator a "**Notice of Funding Arrangements**" containing:

- (d) the names of all Group Members with whom the Funder has an operative litigation funding agreement pursuant to which the Funder is entitled (subject to any order of the Court) to receive a Funding Payment (**Funded Group Members**); and
- (e) (to the extent that it is available to the Funder or Bannister Law) the VINs of the Affected Vehicles of Funded Group Members.

10.4 Funding Equalisation adjustment

In the event that the Court makes a Funding Equalisation Order pursuant to the Funding Equalisation Application or Alternative Funding Equalisation Application then, prior to the notification of Settlement Payments to Participating Group Members as set out in clause 10.5, the Administrator will adjust the Settlement Payments to be paid to the Participating Group Members in accordance with the Funding Equalisation Order.

10.5 Notice of Settlement Payment

After the Administrator has calculated the Settlement Payments in accordance with clause 10.1 and applied any deductions or adjustments in accordance with clauses 10.2, 10.3 and/or 10.4, then the Administrator will promptly send each Participating Group Member a "**Notice of Settlement Payment**" in which the Administrator:

- (a) notifies the final amount of the Settlement Payment which the Participating Group Member is entitled to receive;

- (b) states details of any payments made to the Funder from the Settlement Payment, in accordance with clause 10.2 and/or 10.3; and/or
- (c) if a Funding Equalisation Order is made, provides information to the effect that a Funding Equalisation adjustment was made to the Settlement Payment; and
- (d) provides information to the effect that payment of any Settlement Payment is contingent upon the Participating Group Member agreeing (in the form set out in Annexure A to the Settlement Scheme) to release the Respondents and keep the terms of their Settlement Payment confidential, and notifies the Participating Group Member how they are able to indicate their agreement via the Registration Portal.

11. Payment to Participating Group Members

11.1 Operation of this clause 11

For the avoidance of any doubt, this clause 11 must not be implemented by the Administrator until after the Approval Order becomes final.

11.2 Release of the Respondents and confidentiality of Settlement Payments

A Settlement Payment must not be made to a Participating Group Member unless the Participating Group Member has confirmed their agreement (in the form set out in Annexure A to the Settlement Scheme) to release the Respondents and keep their Settlement Payment confidential, such agreement to be provided via the Registration Portal.

11.3 Distribution of Settlement Payments

Once the Administrator is satisfied that a Participating Group Member has provided the release and confidentiality agreement in accordance with clause 11.2, the Administrator will promptly pay the Settlement Payment by electronic funds transfer to the bank account nominated by the Participating Group Member.

11.4 Unpaid Settlement Payments

In the event that the Administrator is not able to pay a Settlement Payment to a Participating Group Member, for example because the Participating Group Member:

- (a) failed within a reasonable time or otherwise refused to provide the release and confidentiality agreement in accordance with clause 11.2; or
- (b) provided incorrect bank account details or failed within a reasonable time to provide their bank account details,

any remaining unpaid amount will be retained by the Administrator and be used to pay down the Administrator's costs approved by the Court and the Respondents' liability will be reduced accordingly.

12. Reporting by the Administrator to other parties

12.1 Reporting by the Administrator to the Parties

After the commencement of the registration process in clause 5 of this Settlement Scheme, the Administrator will provide fortnightly updates to the Respondents, the Applicants and the Funder (collectively the **Parties**) in which the Administrator will provide:

- (a) a report on the number of Group Members who have registered and whose claims have been assessed including a summary of the outcome of the claims that have been assessed; and
- (b) when the Administrator is in a position to do so, a summary of the results of the implementation of clause 10.

12.2 Review of the Administrators' records

- (a) The Respondents' rights to obtain and audit the Administrator's records are set out in clause 7 of the Deed.
- (b) Provided that it does not interfere with the orderly or efficient administration of this Settlement Scheme, Parties other than the Respondents may (at their own cost) make a reasonable request that the Administrator provides information concerning the implementation of the Settlement Scheme.

12.3 Rectification of errors

If any of the Parties identifies an error in the administration of the Settlement Scheme, they will notify the Administrator and the Administrator may take any steps that are reasonably necessary pursuant to clause 2.2.

13. Rights and Obligations of Group Members

13.1 Cooperation of Group Members

Each Group Member who intends to lodge a claim for a Settlement Payment must cooperate with the Administrator and with reasonable diligence take all steps that they are required to take pursuant to this Settlement Scheme and/or that are reasonably requested by the Administrator, including:

- (a) providing information, documents or other materials;
- (b) promptly informing the Administrator of any change in their contact details;
- (c) executing documents,

and each Group Member must do so:

- (d) complying to the best of the Group Member's 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.

13.2 Obligation regarding honesty

In fulfilling the obligation in clause 13.1, each Group Member must act honestly and must take all reasonable steps to ensure that any of her or his agents or representatives likewise act honestly.

13.3 Failure to Comply

- (a) If a Group Member fails to comply with any of the obligations in clauses 13.1 or 13.2, the Administrator may, in their absolute discretion:
- (i) decline to accept the Group Member's claim;
 - (ii) determine that the Group Member is not eligible to receive a Settlement Payment pursuant to this Settlement Scheme;

and if the Administrator exercises its discretion pursuant to this clause, the Administrator will promptly notify the Group Member and make a record on the Affected Vehicle Database (**Declined Group Member**).

- (b) If a Declined Group Member is the sole registered group member who has an Interest in an Affected Vehicle, the Affected Vehicle will be deducted from the number of Affected Vehicles used to calculate the Aggregate Settlement Sum.
- (c) If Group Member becomes a Declined Group Member after the payment of the Aggregate Settlement Sum to the Administrator (for example because of the application of clause 11.4) and (b) applies, the portion of the Aggregated Settlement Sum paid attributable to the Declined Group Member's Affected Vehicle will be retained by the Administrator and be used to pay down the Administrator's costs approved by the Court and the Respondents' liability will be reduced accordingly.

13.4 Application to the Court

If the Administrator exercises its discretion in clause 13.3 adversely to the interests of a Group Member, the Group Member may (at their own cost) apply to the Court for relief.

13.5 Claims made on behalf of other person

The following provisions apply in circumstances where a person registers a claim on behalf of another person who is a Group Member:

- (a) **bodies corporate or other bodies that hold property:** the Administrator may rely on information from and steps taken pursuant to this Settlement Scheme by a person who declares to the Administrator that they are authorised to act on behalf of the body;
- (b) **deceased estates:** the Administrator may rely on information from and steps taken pursuant to this Settlement Scheme by a person who is named in any will as the executor of a deceased Group Member's estate, provided that the person provides a copy of the Group Member's will and death certificate;

- (c) **Group Members under a legal incapacity:**
 - (i) the Administrator may rely on information from and steps taken pursuant to this Settlement Scheme by a person who appears authorised to manage the legal or financial affairs of the Group Member, for example as a result of an enduring power of attorney or an order of an appropriate tribunal or court; and
 - (ii) pursuant to rule 1.34 of the *Federal Court Rules* the Administrator may act on the basis that there is dispensation with the requirements of rule 7.11 and Division 9.6 of the *Federal Court Rules*, and instead the Group Member’s claim will be taken to have been approved by the Court if Administrator assesses and determines the Group Member’s claim in accordance with the provisions of this Settlement Scheme;
- (d) **partnerships:** the Administrator may rely on information from and steps taken pursuant to this Settlement Scheme by a person who declares to the Administrator that they are a partner in or agent of the partnership;
- (e) **trusts:** the Administrator may rely on information from and steps taken pursuant to this Settlement Scheme by a person who declares to the Administrator that they are a trustee or agent of the trust.

14. Administration Costs

14.1 Payment of Administration Costs

Subject to the other provisions of this clause and to clause 9.3 of the Deed, Administration Costs are to be paid:

- (a) to the Administrator on a “solicitor and own client” basis in the event that the Administrator is a legal practice, or on such other reasonable basis as the Court considers appropriate if the Administrator is not a legal practice;
- (b) by the Respondents in addition to the amount payable as the Aggregate Settlement Sum;
- (c) in such amounts as are approved by the Court as reasonable from time to time during the implementation of this Settlement Scheme;
- (d) within 45 days of approval by the Court;
- (e) in the event the Administrator is a legal practice, at the hourly rates set out below or at such other rates that are approved by the Court from time to time, and in the event that the Administrator is not a legal practice on such other basis as the Court may approve:

| <u>Role</u> | <u>Hourly Rate (ex. GST)</u> |
|--|------------------------------|
| Principal Lawyer / Special Counsel > 15 years’ experience | \$790 |
| Principal Lawyer / Special Counsel < 15 years’ experience | \$720 |

| <u>Role</u> | <u>Hourly Rate (ex. GST)</u> |
|--|------------------------------|
| Senior Associate | \$610 |
| Associate | \$540 |
| Solicitor (Lawyer) | \$440 |
| Graduate Lawyer / Trainee Lawyer | \$350 |
| Paralegal / Law Clerk | \$250 |
| Technology Consultant / Data Administrator | \$240 |
| Customer Service Officer | \$180 |

14.2 Costs of Reviews

For the avoidance of any doubt and subject to clause 14.1, the costs associated with a Review (including the reasonable fees of a Review Assessor, if engaged by the Administrator) are Administration Costs.

15. Supervision by the Court

15.1 Supervision by the Court

Where the Administrator considers that:

- (a) the procedures to be followed in implementing this Settlement Scheme are in doubt or uncertain;
- (b) it is appropriate for the Court to give directions regarding an issue concerning the implementation or administration of this Settlement Scheme; or
- (c) it is necessary to provide a report to the Court in relation to the progress of the administration of this Settlement Scheme,

the Administrator has liberty to relist the Proceedings, upon 3 days' notice to the Respondents, MB, BL and the Funder and in doing so the Administrator is not obliged to notify any of the Group Members.

Schedule – Dictionary

| | |
|---|---|
| Administrator | means the administrator of this Settlement Scheme appointed by the Court, and where the context requires it includes any person authorised and directed to carry out certain functions under this Settlement Scheme before the making of the Approval Order |
| Administration Costs | means the professional fees and disbursements incurred in giving effect to the Deed, this Settlement Scheme, the Approval Order and/or the Settlement generally, to be paid by the Respondents in addition to the Aggregate Settlement Sum and determined in accordance with clause 14 |
| Affected Vehicle | means each VW, Audi and Skoda branded vehicle subject to the Class Action Proceedings, being those with a VIN listed in Annexure 10 of the Deed as well as any vehicles determined to be an Affected Vehicle pursuant to clause 7 |
| Alternative Funding Equalisation Application | <p>means any alternative application made by the BL Applicants seeking a funding equalisation order, being an order which will result in the difference in final payments, by reason of any litigation funding agreements, to:</p> <ul style="list-style-type: none">(a) Participating Group Members who have executed a litigation funding agreement with the Funder in relation to the BL Proceedings; and(b) other Participating Group Members, excluding Participating Group Members who had executed a retainer agreement with MB on or before 3 September 2019 or Participating Group Members who opted out of the BL Proceedings but did not opt out of the MB Proceedings <p>being equalised and redistributed amongst themselves.</p> |
| Affected Vehicle Database | has the meaning given in clause 3.2 |
| Aggregate Settlement Sum | means the amount payable by the Respondents determined in accordance with Annexure 2 of the Deed and clause 6 of the Settlement Scheme |
| Approval Order | means orders made by the Court approving the Settlement pursuant to section 33V of the <i>Federal Court of Australia Act 1976</i> (Cth) and in relation to other ancillary matters, such orders to be sought in accordance with clause 8 of the Deed |

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| Audi Data | means any mailing list data relating to the EA189 recall produced or prepared by Audi Australia Pty Ltd in October 2015 and described in the letter from Clayton Utz to Maurice Blackburn dated 27 November 2019 |
| Authorised Dealer | means any dealer of vehicles who was authorised or appointed by any of the Respondents pursuant to a dealer agreement (however described) to promote or sell vehicles manufactured by the Respondents and undertake related activities |
| Claim Materials | has the meaning given in clause 5.6 |
| Class Action Proceedings | collectively means Federal Court of Australia proceedings with the file numbers NSD1459/2015, NSD1472/2015, NSD1473/2015, NSD1307/2015 and NSD1308/2015 |
| Court | means the Federal Court of Australia |
| Deed | means the Deed of release and settlement agreed between the parties, Maurice Blackburn, Bannister Law and the Funder for the purpose of the settlement of the Class Action Proceedings |
| EA189 Vehicle | means the VW, Audi and Skoda branded vehicles with the "EA189" diesel engine that are the subject of the Class Action Proceedings |
| Eligibility Criteria | has the meaning given in clause 4.1 |
| Eligibility Determination | has the meaning given in clause 6.1 |
| Excluded Interest | has the meaning given in clause 4.3 |
| Excluded Vehicle | has the meaning given in clause 3.4 |
| Funded Group Members | has the meaning given in clause 10.3 |
| Funder | means Grosvenor Litigation Services Pty Ltd (ACN 609 112 996) of Suite 10.02, Level 10, 66 Hunter Street, Sydney NSW 2000 in its own capacity and in its capacity as trustee for the Grosvenor Litigation Services Unit Trust (ABN 40 616 418 169) |

- Funding Application** means any application made by the BL Applicants and/or the Funder seeking an order that the Funder be paid up to 10% of the settlement payments for Affected Vehicles to Participating Group Members other than:
- (a) Participating Group Members in the MB Proceedings who had executed a retainer agreement with MB on or before 3 September 2019; or
 - (b) Participating Group Members who opted out of the BL Proceedings but did not opt out of the MB Proceedings.
- Funding Equalisation Application** means any application made by the BL Applicants seeking a funding equalisation order, being an order which will result in the difference in final payments, by reason of any Funding Order, to:
- (a) Participating Group Members who had executed a retainer agreement with MB on or before 3 September 2019 or who opted out of the BL Proceedings but did not opt out of the MB Proceedings; and
 - (b) other Participating Group Members,
- being equalised and redistributed among Participating Group Members only.
- Funding Equalisation Order** means an order made pursuant to the Funding Equalisation Application or the Alternative Funding Equalisation Application
- Funding Order** means any order for payment to the Funder in the nature of the order made pursuant to a Funding Application
- Funding Payment** has the meaning given in clause 10.3
- Group Member** means persons who fall within the group definitions in the Class Action Proceedings and, for the avoidance of any doubt:
- (a) does not include any persons who have opted out of both the MB Proceedings and BL Proceedings as set out in the orders made by Foster J on 6 May 2019 or who are granted leave to opt out at any subsequent time; and
 - (b) does include any persons who have opted out of one of the MB Proceedings or the BL Proceedings but not the other proceedings

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| Interest | has the meaning given in clause 4.2 |
| Lease Interest | means any of the following: <ul style="list-style-type: none">(a) Lessee Interest (Finance Lease)(b) Lessee Interest (Operating Lease)(c) Lessor Interest (Operating Lease) |
| Lessee Interest (Finance Lease) | has the meaning given in clause 4.2 |
| Lessee Interest (Operating Lease) | has the meaning given in clause 4.2 |
| Lessor Interest (Operating Lease) | has the meaning given in clause 4.2 |
| NEVDIS Data | means any vehicle registration data and associated data relating to the EA189 Vehicles produced or prepared by Austroads Limited (ACN 136 812 390), to the extent that the parties are legally entitled or authorised to use such data for the purpose of the Deed and/or this Settlement Scheme |
| Notice of Assessment | has the meaning given in clause 6.2 |
| Notice of Funding Arrangements | has the meaning given in clause 10.3 |
| Notice of Settlement Payment | has the meaning given in clause 10.5 |
| Ownership Interest | has the meaning given in clause 4.2 |
| Participating Group Member | has the meaning given in clause 6.1(f) |
| Provisional Vehicle Amount | has the meaning given in clause 3.3 |
| Registered Affected Vehicle | has the meaning given in clause 6.1(f) |
| Registrant | Means a person who registers for the Settlement pursuant to clause 5. |
| Registration Information | means the information supplied by a Group Member at the time of registering their claim in accordance with clause 5.1 including the Group Member's name and contact details, VIN of any Affected Vehicle/s being registered, and whether the claim is being registered on behalf of a Group Member |

| | |
|--------------------------------------|--|
| Registration Portal | means the online portal available to be used by Group Members for the purpose of registering a claim in accordance with clause 5.1, providing Claim Materials in accordance with clause 5.6, confirming the agreement required by clause 11.2 and other communications between the Administrator and Group Members for the purpose of this Settlement Scheme |
| Related Body Corporate | has the meaning given in section 50 of the <i>Corporations Act 2001</i> (Cth) |
| Respondents | means Volkswagen AG, Audi AG, Skoda Auto a.s., Volkswagen Group Australia Pty Ltd and Audi Australia Pty Ltd together and severally as the context permits |
| Review Assessor | means a member of the NSW Bar with more than five years' experience who is not a senior counsel and who is appointed by the Administrator pursuant to clause 8.6(b) |
| Settlement | means the settlement of the Class Action Proceedings in accordance with the terms of the Deed and this Settlement Scheme and subject to any order of the Court |
| Settlement Account | means the interest bearing bank account established by the Administrator for the purpose of holding the Aggregate Settlement Sum (or part of it) pending or during the implementation of this Settlement Scheme and the Approval Order |
| Settlement Scheme | means this settlement scheme, including the rights and obligations created by this scheme |
| Settlement Sum Interest | means any interest earned on any monies held in the Settlement Account |
| Settlement Payment | means the amount payable to a Participating Group Member, such amount calculated and determined in accordance with clause 10 |
| Solicitors for the Applicants | means the solicitors for the applicants in the Class Action Proceedings |
| Unadjusted Settlement Payment | has the meaning given in clause 10.1 |
| Vehicle Match | has the meaning given in clause 5.6 |
| VIN | means Vehicle Identification Number |

ANNEXURE A

Summary

As stated in your Notice of Settlement Payment, you must agree to two conditions before you are able to receive your Settlement Payment. These conditions are that you agree to:

1. release the VW Group from any past or future claims relating to the issues in the class actions; and
2. keep your Settlement Payment confidential except in specified circumstances.

Release and Undertaking

This is a binding document that I agree to, for the benefit of the Volkswagen Group companies, in exchange for me receiving a Settlement Payment in the Australian diesel emissions class actions.

1. In consideration for the Volkswagen Group Parties authorising the Settlement Administrator to pay me my Settlement Payment, I:
 - a. **(Release)**: release the Volkswagen Group from any and all claims of any kind whatsoever (present or future) that I had, have or may have in any way related to or arising out of the Class Action Proceedings or in any way connected or related to the Class Action Proceedings. This includes for the avoidance of doubt any claims in relation to matters referred to in or arising from the evidence served in one or more of the Class Action Proceedings in relation to the alleged effect of the technical measures.
 - b. **(Confidentiality)**: Agree to keep all documents received from the Settlement Administrator and my Settlement Payment confidential. However, if necessary, I may disclose it:
 - i. to a professional adviser, financial adviser, banker, financier or auditor if that other person is obliged to keep the information confidential;
 - ii. to comply with any applicable law, or requirement of any regulatory body; and
 - iii. to any of my employees to whom it is necessary to disclose the information if that other person agrees in writing to keep the information confidential.
 - c. **(Tax)**: Acknowledge that I am responsible for obtaining any necessary tax advice about the Settlement Payment and this Release and that I am responsible for any tax consequences arising from them.

I acknowledge that:

2. A Volkswagen Group company may plead this Release as a bar to any Claim commenced or continued by me or on my behalf.
3. This Release is binding on my successors.
4. This Release is governed by the laws of New South Wales.
5. If any part of this Release is for any reason unenforceable, that part must be read down to the extent necessary to preserve its operation. If it cannot be read down, it must be severed.

In this Release:

Volkswagen Group means the Volkswagen Group Parties, their subsidiaries and related bodies corporate, including Volkswagen Financial Services Australia Pty Ltd (ABN 20 097 071 460) and their suppliers. It includes present and former directors, officers, board members, servants, contractors and agents.

Volkswagen Group Parties means Volkswagen AG (Germany), Audi AG (Germany), Skoda Auto a.s. (Czech Republic), Volkswagen Group Australia Pty Ltd and Audi Australia.

Execution Version**Annexure 4 Form of Release and Undertaking (Participating Group Members)****Summary**

As stated in your Notice of Settlement Payment, you must agree to two conditions before you are able to receive your Settlement Payment. These conditions are that you agree to:

1. release the VW Group from any past or future claims relating to the issues in the class actions; and
2. keep your Settlement Payment confidential except in specified circumstances.

Release and Undertaking

This is a binding document that I agree to, for the benefit of the Volkswagen Group companies, in exchange for me receiving a Settlement Payment in the Australian diesel emissions class actions.

1. In consideration for the Volkswagen Group Parties authorising the Settlement Administrator to pay me my Settlement Payment, I:
 - a. **(Release)**: release the Volkswagen Group from any and all claims of any kind whatsoever (present or future) that I had, have or may have in any way related to or arising out of the Class Action Proceedings or in any way connected or related to the Class Action Proceedings. This includes for the avoidance of doubt any claims in relation to matters referred to in or arising from the evidence served in one or more of the Class Action Proceedings in relation to the alleged effect of the technical measures.
 - b. **(Confidentiality)**: Agree to keep all documents received from the Settlement Administrator and my Settlement Payment confidential. However, if necessary, I may disclose it:
 - i. to a professional adviser, financial adviser, banker, financier or auditor if that other person is obliged to keep the information confidential;
 - ii. to comply with any applicable law, or requirement of any regulatory body; and
 - iii. to any of my employees to whom it is necessary to disclose the information if that other person agrees in writing to keep the information confidential.
 - c. **(Tax)**: Acknowledge that I am responsible for obtaining any necessary tax advice about the Settlement Payment and this Release and that I am responsible for any tax consequences arising from them.

I acknowledge that:

2. A Volkswagen Group company may plead this Release as a bar to any Claim commenced or continued by me or on my behalf.
3. This Release is binding on my successors.
4. This Release is governed by the laws of New South Wales.
5. If any part of this Release is for any reason unenforceable, that part must be read down to the extent necessary to preserve its operation. If it cannot be read down, it must be severed.

In this Release:

Volkswagen Group means the Volkswagen Group Parties, their subsidiaries and related bodies corporate, including Volkswagen Financial Services Australia Pty Ltd (ABN 20 097 071 460) and their suppliers. It includes present and former directors, officers, board members, servants, contractors and agents.

Volkswagen Group Parties means Volkswagen AG (Germany), Audi AG (Germany), Skoda Auto a.s. (Czech Republic), Volkswagen Group Australia Pty Ltd and Audi Australia.

*Execution Version***Annexure 5 Preliminary Orders****Approval and distribution of the Settlement Notice**

1. The form and content of the notice set out in Schedule 1 of these orders (**Settlement Notice**) be approved as the notice required under sections 33X and 33Y of the *Federal Court of Australia Act 1976* (Cth) (**FC Act**) in respect of the proposed settlement of the proceeding (**Proposed Settlement**).
2. The form and content of the advertisement set out in Schedule 2 of these orders (**Advertisement**) be approved subject to paragraph 4 of these Orders.
3. On or before 17 December 2019, the Settlement Notice be provided according to the following procedure:
 - (a) the Australian Respondents provide the Settlement Notice to all potential group members for whom it has email or postal addresses in its possession, including from any NEVDIS data supplied to it by Austroads Ltd, by sending Schedule 1 by email where possible and by sending Schedule 1 by post to those addressees where no email address is available or where the particular email address does not accept the requisite notification;
 - (b) the Applicants provide the Settlement Notice to all group members for whom their legal representatives have email or postal addresses in their possession, by sending Schedule 1 by email where possible and by sending Schedule 1 by post to those addressees where no email address is available or where the particular email address does not accept the requisite notification;
4. As soon as practicable after 17 December 2019 the Applicants cause to be published the Advertisement as a quarter page, in the following newspapers:
 - (a) *Herald Sun*, Victoria;
 - (b) *The Daily Telegraph*, New South Wales;
 - (c) *The Advertiser*, South Australia;
 - (d) *The Courier Mail*, Queensland;
 - (e) *The Mercury*, Tasmania;
 - (f) *Canberra Times*, Australian Capital Territory;
 - (g) *The West Australian*, Western Australia;
 - (h) *NT News*, Northern Territory; and
 - (i) *The Australian*.
5. Continuously throughout the period 17 December 2019 to 10 March 2020:
 - (a) the Settlement Notice be displayed on the class action page for this proceeding on the website of the Federal Court of Australia and be available for inspection at the District Registry of the Court in Sydney, Melbourne, Canberra, Brisbane, Adelaide, Perth, Hobart and Darwin;
 - (b) the Australian Respondents:
 - (i) publish a link to the Settlement Notice as displayed on the website of the Federal Court of Australia on the following websites:

Execution Version

- A. <https://www.volkswagen.com.au/en.html>;
- B. <https://au.volkswagen.com.au/emission>;
- C. <http://www.audi.com.au>;
- D. <https://www.audi.com.au/au/web/en/owners/vw-group-diesel-emissions-activity.html>;
- E. <http://www.skoda.com.au>; and
- F. <http://www.skoda.com.au/dieselfinfo>.

- (ii) publish a link to the Settlement Notice as displayed on the website of the Federal Court of Australia using the following social media accounts operated by the respondents and their associated corporations:

- A. <https://www.facebook.com/VolkswagenAustralia/>
- B. <https://www.facebook.com/AudiAustralia/>
- C. <https://www.facebook.com/SkodaAustralia/>

with the following post:

“A proposed settlement has been reached in the class action proceedings filed in the Federal Court of Australia against Volkswagen, Audi and Skoda in relation to the diesel emissions issue. A Settlement Notice containing important information for group members on how to register to participate in the proposed settlement is now available on the Federal Court of Australia website at www.fedcourt.gov.au/law-and-practice/class-actions/class-actions”

- (iii) include a recorded message for callers to its emissions information lines (1800 504 076, 1800 502 834 and 1800 290 749) in the following form:

“A proposed settlement has been reached in the class action proceedings filed in the Federal Court of Australia against Volkswagen, Audi and Skoda in relation to the diesel emissions issue. A Settlement Notice containing important information for group members on how to register to participate in the proposed settlement is now available on the class actions page of the Federal Court of Australia website.”

- (c) the Applicants publish a link to the Settlement Notice on the websites of the Applicants' solicitors.

Funding application

6. The Applicants in proceedings NSD1307/2015 and NSD1308/2015 and Grosvenor Litigation Service Pty Ltd are to file and serve any evidence in support of the Funding Application, Funding Equalisation Application (and/or any Alternative Funding Equalisation Application) and a written outline of submissions by 20 March 2020.
7. Pursuant to section 33ZF the Court appoints Mr Nicholas Owens SC together with Mr Robert Yezerski as an independent contradictor to represent the interests of group members in all proceedings in respect of the Funding Application and Funding Equalisation Application.
8. The Independent Contradictor is to file and serve any evidence in relation to the Funding Application and Funding Equalisation Application and a written outline of submissions by 24 March 2020.

Execution Version**Registration, class closure and opposition to the Proposed Settlement**

9. Pursuant to s 33ZF of the FC Act, and subject to any further order of the Court:
- (a) any group member who wishes to receive payment in the Proposed Settlement must register in accordance with the process set out in the proposed Settlement Scheme by 10 March 2020 (**Registration Deadline**); and
 - (b) any group member who:
 - (i) does not register on or before the Registration Deadline; or
 - (ii) registers on or before the Registration Deadline, but is determined in accordance with the process set out in the proposed Settlement Scheme to be ineligible to receive a Settlement Payment,

shall remain a group member but, in the event that the Proposed Settlement is approved by the Court, will be bound by the terms of the Deed of Release and Settlement executed by the parties but will not receive any payment pursuant to the Proposed Settlement and will be otherwise barred from making any claim against the Respondents in respect of or relating to the subject matter of these Proceedings
10. Pursuant to section 33ZF of the FC Act and in order to enable the expeditious hearing of the Approval Application, Maurice Blackburn Pty Ltd is, from the date of these orders pending the hearing of the Approval Application, authorised and directed to commence carrying out the functions in clauses 3, 4, 5, 6, 7, 8, 9.1 and 10.1 of the proposed Settlement Scheme.
11. Any group member who wishes to oppose the Approval Application or the Proposed Settlement must:
- (a) do so by 10 March 2020 using the online form at www.vwsettlement.com.au/objections ; and
 - (b) state the grounds on which they oppose the Proposed Settlement.
12. The Solicitors for the Applicants are to provide to the Respondents a copy of all outlines of opposition to the Proposed Settlement that were lodged pursuant to order 11 of these orders by no later than 13 March 2020.

Further hearing

13. The Approval Application and any Funding Application, Funding Equalisation Application and Alternative Funding Equalisation Application are listed for hearing on 26 March 2020.
14. The parties have liberty to apply on 2 days' notice to the Judge of the Court assigned to hear the Approval Application.
15. Costs are reserved.

Execution Version**Schedule 1 - Settlement Notice**

NOTICE OF PROPOSED SETTLEMENT
Volkswagen, Audi and Skoda Class Actions in the Federal Court of Australia

This notice contains important information about the proposed settlement of the Volkswagen, Audi and Skoda Australian diesel emissions class actions – please read it carefully. If you are a Group Member in any of the class actions, your legal rights will be affected by the proposed settlement.

If you do not understand the notice or you have any questions, you should contact the lawyers for the applicants in the class actions, Maurice Blackburn or Bannister Law, or seek independent legal advice. The Federal Court is not able to answer questions about the proposed settlement.

PROPOSED SETTLEMENT (SEE SECTIONS 1 AND 2 BELOW)

In early December 2019 the parties in the Volkswagen, Audi and Skoda class actions agreed on terms for the proposed settlement of the class actions. If the settlement is approved by the Federal Court, between \$87 million and \$127.1 million¹ will be available for eligible Group Members, plus legal costs and other payments. The method by which this amount is to be divided amongst group members will be determined by the lawyers acting for the applicants.

You may be eligible to receive a settlement payment if you owned an affected diesel vehicle or had certain types of vehicle leases as at **18 September 2015** or **3 October 2015**. Details of the affected vehicles are set out below, as is more information about the eligibility criteria.

WHAT GROUP MEMBERS NEED TO DO (SEE SECTION 4 BELOW)

If you want to claim a settlement payment you must **register online** at the following registration portal: www.vwsettlement.com.au

The deadline for registration in the proposed settlement is 10 March 2020
If you fail to register before the deadline you will lose your right to receive a settlement payment

At the time of registration, you may be asked to upload documents in support of your claim. If you are asked to upload documents, you must do this **within 28 days** of registering your claim. If your vehicle was leased or subject to a hire purchase agreement, you may also need to provide paperwork in relation to the lease contract. Further details about the paperwork which may need to be provided is outlined in **Section 4 below**.

COURT APPROVAL OF THE PROPOSED SETTLEMENT

On 26 March 2020, the Federal Court will be asked to approve the proposed settlement. You may attend this hearing if you wish, although you are not required to do so. The application will be heard at the Federal Court of Australia in Sydney, in the Law Courts Building at Queens Square.

If you wish to oppose or object to the proposed settlement, you must lodge a written statement of your concerns by 10 March 2020 at the following website: www.vwsettlement.com.au/objections. You may also (but do not need to) attend the hearing in the Federal Court on 26 March 2020.

¹ Figures are in Australian Dollars (AUD)

Execution Version**CONTACT DETAILS**

You can contact Maurice Blackburn or Bannister Law for further information including a copy of the Settlement Scheme or if you have any questions:

Maurice Blackburn

www.mauriceblackburn.com.au

Phone: 1800 810 812

Email: yw@mauriceblackburn.com.au

Bannister Law

www.bannisterlaw.com.au

Phone: 1300 728 760

Email: ywclients@bannisterlaw.com.au

SECTION 1: OVERVIEW OF THE CLASS ACTIONS

In 2015 five class actions were commenced in relation to the diesel emissions issue concerning approximately 100,000 Volkswagen, Audi and Skoda diesel vehicles in Australia. Two of the class actions were commenced by Bannister Law (the **Bannister class actions**) and three class actions were commenced by Maurice Blackburn (the **MB class actions**).

What are the class actions about?

In October 2015, Volkswagen, Audi and Skoda announced a voluntary recall of certain vehicles sold in Australia between 2008 and 2015 that have the “EA189” diesel engine. The announcement disclosed that the affected vehicles contained software that caused the vehicles to operate in two different modes: one mode during the NEDC laboratory test cycle for testing emissions, and a second mode outside of NEDC testing conditions, for example when on the road.

The applicants alleged that the dual mode software was a “defeat device”. They claim the Respondents acted in breach of Australian consumer protection law and did not comply with applicable safety standards. Other legal claims were also made. Both the Bannister class actions and the MB class actions sued Volkswagen Group Australia and Audi Australia, and in the MB class actions the European parent companies were also sued.

The applicants sought compensation from the respondents, claiming the true value of the affected vehicles was less than the price paid for them, or that there was a reduction in the second-hand value of the affected vehicles after October 2015.

Volkswagen, Audi and Skoda denied that their conduct was unlawful, and also denied that the applicants and Group Members suffered any financial losses at all as a result of this issue.

Who are Group Members?

Group Members in the Bannister class actions are people who held an interest in an affected vehicle as at 18 September 2015. Group Members in the MB class actions are people who held an interest in an affected vehicle as at 3 October 2015.

These two dates (18 September 2015 and 3 October 2015) are referred to in this notice as the “**Qualifying Dates**”. You qualify to participate in the settlement only if you held an interest in an affected vehicle as at **one or both of the Qualifying Dates**. See Section 2 below for more details.

Which vehicles are affected?

A list of the affected Volkswagen, Audi and Skoda diesel vehicle models appears on the last page of this notice. The easiest way to check whether your vehicle is affected is to enter your vehicle identification number (**VIN**) in the class actions registration portal (see below for details). The registration portal will only accept registration of VINs for affected vehicles.

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A VIN is a 17 digit serial number which is unique to your vehicle. It can usually be found under the bonnet near the engine, or inside the passenger side of the vehicle near the dash, in your service manual or on your certificate of registration.

SECTION 2: THE PROPOSED SETTLEMENT

On 16 September 2019 the parties in the class actions announced that they had reached an agreement to settle the proceedings. In early December 2019, the parties formalised that agreement by signing a settlement deed. Before it can take effect, the proposed settlement must be approved by the Federal Court.

If the Court approves the settlement the Volkswagen Group will pay between \$87 million and \$127.1 million to Group Members. The amount they will have to pay depends on how many affected vehicles participate in the proposed settlement. See Section 4 below for information about how to register.

In addition to the amount that will be available to pay Group Members, the Volkswagen Group has also agreed to pay the applicants' legal costs in the amount that is assessed as reasonable by an independent costs expert and approved by the Federal Court. The Volkswagen Group has also agreed to make a number of other payments, if approved by the Court, relating to the conduct of the class actions as well as the costs of administering the settlement. None of these costs and other payments will reduce the amount of the fund available to pay Group Members.

The proposed settlement will be administered in accordance with an agreed Settlement Scheme. The Settlement Scheme is a document which sets out the process for Group Members to register and claim a settlement payment and the method by which those claims are to be assessed and paid. The Settlement Scheme is available for download from the websites of Maurice Blackburn and Bannister Law, or from the registration portal, or on request from either law firm.

If you wish to claim a settlement payment for your affected vehicle, you must register at the registration portal no later than **10 March 2020**. **If you fail to register by that date, you will not be entitled to receive any settlement payment.**

Who is eligible to receive a settlement payment?

If the settlement is approved by the Federal Court, then you must satisfy three criteria to be eligible for a settlement payment. You must have:

1. acquired an "interest" in an affected vehicle; and
2. held that interest as at either of the Qualifying Dates; and
3. not "opted out" of both the Bannister class actions and MB class actions.

What is an "interest" in an Affected Vehicle?

There are several different types of legal interests that people can have in a car. The most common is legal ownership. Under the proposed settlement, you have an "interest" in an affected vehicle if, on either of the Qualifying Dates (18 September or 3 October 2015) you were:

1. the **owner** of an affected vehicle;
2. the **lessee** of an affected vehicle pursuant to an operating lease, finance lease or novated lease; or
3. the **lessor** of an affected vehicle under an operating lease.

Examples of these types of interests and how they interact with the Qualifying Dates are included as Schedule 1 of this notice.

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Under the proposed settlement you **will not qualify** for a settlement payment if:

1. you were the **lessor** of an affected vehicle under a finance or novated lease;
2. you were the **lender** or credit provider in relation to any type of secured or unsecured loan that was used by someone else to finance the acquisition of an affected vehicle (for example under a loan or hire purchase agreement), unless you repossessed the vehicle after the borrower defaulted on their loan or hire purchase agreement;
3. you are an **authorised dealer** of Volkswagen, Audi or Skoda vehicles, are a company that is related to the Volkswagen Group or had an interest limited to the right to use as affected vehicle owned by the Respondents (for example employees or contractors); or
4. your affected vehicle was **written off** before the Qualifying Dates.

How much will Group Members receive under the settlement?

Maurice Blackburn and Bannister Law will determine how individual settlement payments are calculated, subject to Court approval. The amounts that will be paid to individual Group Members are not yet known. The following general information can be provided at this time. Under the proposed settlement, payments to eligible Group Members will vary depending on a number of factors, including the number of affected vehicles of eligible Group Members who register to participate in the Settlement Scheme.

The participation rate will only be known after the completion of the registration process and after all registered claims have been assessed. In the unlikely event that every affected vehicle is registered to participate by an eligible Group Member the **estimated average** payment across all affected vehicles would be approximately \$1,400 for each affected vehicle, with average payments increasing if participation rates are lower.

The way that Maurice Blackburn and Bannister Law propose to determine individual payments will, for reasons of efficiency, broadly reflect the way they put the Applicants' case (noting that the Volkswagen Group disputed this). This means that settlement payments will also vary for different vehicle models depending on their "as new" price when purchased and their estimated second hand value immediately before the Qualifying Date.

By way of example, the owner of a 2015 model year Audi Q5 will receive a higher settlement payment than the owner of a 2009 model year Audi Q5 because the older 2009 model has depreciated more. Similarly, the owner of a 2014 model year Audi A6 will receive a higher settlement payment than the owner of a 2014 model year Volkswagen Polo because the new vehicle price of an Audi A6 is higher.

For reasons of efficiency in the administration of the settlement, and because this is a pragmatic commercial settlement, the Settlement Scheme does not involve assessment of the value of any individual vehicle and cannot do so given that it will not take into account *all* factors that may be relevant to vehicle values.

Finally, the amount of each settlement payment will also depend on the type of interest held by the eligible Group Member. The Settlement Scheme provides that a single payment amount will be available for each affected vehicle:

- owners and lessees under a finance lease or a novated lease will receive 100% of the payment;
- where there was an operating lease, part of the payment will be available for the lessee (50%) and the remainder for the lessor (50%), with those proportions reflecting the economic risks and benefits assumed by lessees and lessors and taking into account the types of legal claims made by the applicants.

Execution Version**Is the proposed settlement an admission of liability by Volkswagen, Audi and Skoda?**

No. The Respondents deny the allegations made in the class actions and the proposed settlement was agreed without any admission of liability by the Volkswagen Group. In particular, the Volkswagen Group denies that Group Members suffered any loss or that the value of their vehicles was affected by the diesel issue. This settlement represents a negotiated commercial outcome. Settlement without any admission of liability is common in Australian class actions.

Will Group Members be required to pay any legal fees?

No. You will not need to pay or make any contribution to the payment of any legal costs relating to the class actions or the administration of the proposed settlement.

If the proposed settlement is approved, as set out above, the applicants' reasonable legal costs (an amount that will be determined by the Court) will be paid by the Volkswagen Group **on top of the settlement sum**.

The reasonable, court-approved costs of administering the proposed settlement will also be paid by the Volkswagen Group on top of the settlement sum.

As a result, no amounts will be deducted from eligible Group Members' settlement payments in order to pay or contribute to the payment of the applicants' legal costs or the costs of administering the settlement. The potential for deductions from settlement payments in order to pay the Funder in the BL class actions is explained below.

SECTION 3: FUNDING APPLICATION

Bannister Law litigation funding arrangements

The Bannister class actions are funded by a litigation funder, Grosvenor Litigation Services Pty Ltd (the **Funder**). The Applicants in the Bannister class actions have entered into litigation funding agreements with the Funder. Some Group Members in the Bannister Class Actions have also entered into litigation funding agreements with the Funder.

Throughout the Bannister class actions, the Funder has:

- paid approximately \$5 million towards the Applicants' legal costs in the Bannister Law class actions; and
- given an indemnity up to the amount of \$2.1 million to the Applicants to protect them against an adverse costs order made against them.

In return, the Funder claims an entitlement to receive a 30% commission from the settlement payments to Group Members who have entered into a litigation funding agreement with the Funder.

Application for a "funding order"

The Applicants in the Bannister class actions have applied to the court for a "funding order". If the Court makes this order, the funding order will affect all Group Members who register to participate in the proposed settlement except those who have:

- signed a retainer agreement with Maurice Blackburn on or before 3 September 2019; or
- opted out of the Bannister class actions, but not the MB class actions.

If granted, the funding order will require those affected by it to pay up to a 10% commission from their settlement payments to the Funder. This would mean that:

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- people who have signed litigation funding agreements with the Funder would pay up to 10%, rather than 30% commission; and
- people who have not signed litigation funding agreements with the Funder would pay up to 10% commission, rather than nothing.

The purpose of the funding order would be to compensate the Funder for funding the Bannister class actions for the benefit of those group members, and spread the commission payable to the Funder equally amongst them.

Application for a “funding equalisation order”

If the Court does make a funding order, then the Applicants in the Bannister Law proceedings will apply for a “funding equalisation” order. This order would seek to equalise the difference between the settlement payments of Group Members who are required to contribute as a result of the funding order and those Group Members (including clients of Maurice Blackburn) who would not be required to contribute as a result of the funding order.

The effect of this order would not increase the amount paid to the Funder. Instead it would distribute the contribution to the Funder in equal proportion among all eligible Group Members, so that all eligible Group Members receive proportionately the same amount, regardless of whether they are Group Members in the Bannister class actions.

Alternatively, if the Court does not make a funding order, then the Applicants in the Bannister class actions will apply for a “funding equalisation” order limited to Group Members in the Bannister class actions (excluding clients of Maurice Blackburn).

The effect of this order would not increase the amount paid to the Funder. Instead it would equalise the amounts to be received by clients of Bannister Law who have signed funding agreements with the Funder and the amounts to be received by all other Group Members in the Bannister class actions so that each would receive proportionately the same amount.

When will the “funding application” and “funding equalisation application” be determined, and can I support or object to them?

The Federal Court will be asked to approve the funding order and funding equalisation order on **26 March 2020**.

You do not need to support or object to the funding order or the funding equalisation order. However, if you do wish object to either of those orders being made, you must lodge a written statement of your concerns by 10 March 2020 at the following website: www.vwsettlement.com.au/objections.

You may also (but do not need to) attend the hearing in the Federal Court on 26 March 2020.

If you have any questions in relation to the funding equalisation order you should contact Bannister Law on 1300 728 760.

SECTION 4: PROCESS FOR MAKING AND ASSESSING CLAIMS

The Settlement Scheme sets out the process for Group Members to register their claims and for their claims then to be assessed and final payments made to eligible Group Members.

If a Group Member does not register their claim before the registration deadline on 10 March 2020, they will not be entitled to receive a settlement payment but will nevertheless be bound by the outcome of the class actions and will be unable to bring separate legal action against the Volkswagen Group.

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Process for registration of claims

Group Members who wish to make a claim for a settlement payment must register their claim by **10 March 2020**. Except for fleet operators (discussed below), all claims must be registered using the online registration portal: www.vwsettlement.com.au

Please note: if you are a **client of Maurice Blackburn or Bannister Law** and you had previously supplied a valid VIN for an affected vehicle, your claim will be **partially registered** on your behalf. Maurice Blackburn and Bannister Law will write to their clients in order to notify them whether their claims were partially registered on their behalf. However even if your claim is partially completed on your behalf, you must still log-in to the registration portal in order to **complete your registration** and in order to supply any relevant documents as set out below. You must complete your registration before the deadline on **10 March 2020**.

Initial registration

In order to register your claim, you will need to provide the following:

- VIN for your vehicle
- Personal details such as your name and contact details
- Answers to questions about whether or not your vehicle was subject to a lease
- If you are making a claim on behalf of someone else or in the name of a company, details of the company or other person and your relationship to the company or other person

The registration portal will **only permit you to register if you enter a valid VIN** for an affected Volkswagen, Audi or Skoda vehicle. If the registration portal does not allow you to register, please check that you correctly entered the VIN, including checking that:

- the number “0” was not mistyped as the letter “O” (or vice versa)
- the number “1” was not mistyped as the letter “l” (or vice versa)
- the number “2” was not mistyped as the letter “Z” (or vice versa)
- any sequence of the letters “W” and “V” (for example “VWV”) was typed correctly

Documents to be provided

Once you have entered your initial registration information, your details will be automatically checked against any data from the National Exchange of Vehicle and Driver System (**NEVDIS**). NEVDIS data records the details of registered drivers as at October 2015.

If your details do not match the NEVDIS data, you may be asked to provide additional documents in order to confirm that you held an interest in an affected vehicle as at the Qualifying Dates. If you are asked to provide additional documents, you **must** do this **within 28 days** of registering your claim (and in any event, no later than 23 March 2020).

Schedule 2 provides some examples of documents that group members may be asked to provide.

Fleet operators

If you propose to register a claim in relation to ten (10) or more vehicles, you will be treated as a **“fleet operator”** under the Settlement Scheme, and if so you may use an alternative procedure in order register numerous vehicles *en masse*.

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Instead of using the registration portal, fleet operators must register by contacting the settlement administrator in writing at the following email address: vwfleets@mauriceblackburn.com.au. More information about the alternative registration procedure is set out in the Settlement Scheme.

Assessment and payment of claims

After you register a claim and, if required, provide supporting documents, the claim will be assessed in order to determine whether it meets the eligibility criteria to receive a settlement payment. After a determination is made, you will be sent a “Notice of Assessment” – please note that this may take several weeks from the time that your registration has been completed.

If you are assessed as ineligible you may request a review by an independent lawyer who will be appointed as a “review assessor”.

Once all claims have been finally assessed and the total number of eligible Group Members has been determined, the Volkswagen Group will pay the final settlement sum that is then able to be calculated in light of the total number of affected vehicles owned by Group Members who are assessed as eligible to receive a settlement payment. As was noted above, the settlement sum will range from \$87 million and \$127.1 million.

Once the final settlement sum is known, the settlement administrator will notify each eligible Group Member of the amount of their individual settlement payment. Before receiving payment, Group Members will need to indicate their agreement to release the Volkswagen Group from all future claims relating to the diesel emissions issue and they will also need to agree to keep the amount of their settlement payment confidential.

In due course, the court-appointed settlement administrator will distribute the settlement payments to eligible Group Members by electronic funds transfer. This will not occur until after the settlement approval hearing in the Federal Court on 26 March 2020 and until after all appeal periods have expired.

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LIST OF AFFECTED DIESEL VEHICLES

| Make | Model (Diesel) | Model Year |
|------------|-----------------|----------------|
| Volkswagen | Golf | MY 2009 - 2013 |
| | Polo | MY 2010 - 2014 |
| | Jetta | MY 2009 - 2016 |
| | Passat | MY 2009 - 2015 |
| | Passat CC | MY 2009 - 2012 |
| | Volkswagen CC | MY 2012 - 2016 |
| | Eos | MY 2009 - 2014 |
| | Tiguan | MY 2008 - 2016 |
| | Caddy | MY 2010 - 2016 |
| | Amarok | MY 2011 - 2012 |
| | Skoda | Octavia |
| Yeti | | MY 2012 - 2016 |
| Superb | | MY 2009 - 2015 |
| Audi | A1 | MY 2010 - 2015 |
| | A3 (1.6L) | MY 2009 - 2013 |
| | A3 (2.0L) | MY 2011 - 2013 |
| | A4 | MY 2008 - 2015 |
| | A5 | MY 2012 - 2016 |
| | A6 | MY 2009 - 2015 |
| | Q3 | MY 2012 - 2014 |
| Audi | TT | MY 2009 - 2014 |
| | Q5 (CAH Engine) | MY 2009 - 2011 |
| | Q5 (CGL Engine) | MY 2009 - 2016 |

Execution Version**SCHEDULE 1****EXAMPLES OF DIFFERENT INTERESTS AT THE TIME OF THE QUALIFYING DATES**

Note that the Qualifying Dates are 18 September 2015 and 3 October 2015.

Ownership

If you bought an affected vehicle in December 2012 and you still own it today, you may be entitled to a settlement payment.

Similarly, if you bought an affected vehicle in December 2012 and you later sold it after 3 October 2015, you may be entitled to a settlement payment.

On the other hand, if you bought an affected vehicle in December 2012 and you sold it in June 2015, you will not be entitled to a settlement payment.

Operating leases

If an affected vehicle was subject to an operating lease for a period of three years starting in July 2013 and ending in July 2016, both the lessee and the lessor may be entitled to a settlement payment.

On the other hand, if an operating lease had expired before 18 September 2015, the lessee will not be entitled to a settlement payment, and the lessor would only be entitled to a settlement payment if they had not disposed of the vehicle before 18 September 2015.

Finance leases and novated leases

If an affected vehicle was subject to a finance lease or a novated lease for a period of three years starting in July 2013 and ending in July 2016, the lessee may be entitled to a settlement payment, and as discussed below the lessor would not be entitled to a settlement payment.

If a lessee made a residual value payment or "balloon payment" before September 2015, they will be treated as an owner of the vehicle.

Execution Version**SCHEDULE 2**

Examples of some of the documents which you may need to provide include:

- one **registration certificate before and after** either of the Qualifying Dates (18 September 2015 or 3 October 2015); or
- certificates of insurance **before and after** either of the Qualifying Dates (18 September 2015 or 3 October 2015); or
- other documents that demonstrate that you held an interest in an affected vehicle as at the Qualifying Dates (18 September 2015 or 3 October 2015) provided that those documents identify the VIN of the affected vehicle.

If you no longer have registration certificates for your vehicle, copies can usually be obtained from the motor vehicle registry in your state or territory.

If you leased or hired an affected vehicle as at the Qualifying Dates (18 September 2015 or 3 October 2015) you will be asked to provide a copy of your lease or hire purchase contract. Instead of providing your lease or hire purchase contract, you may alternatively provide written confirmation from the organisation that leased the vehicle to you, provided that this confirmation sets out:

- the name of the lessee or hirer;
- VIN of the Affected Vehicle;
- the type of lease or agreement; and
- the start and end dates of the lease or agreement.

If you are asked to provide documents in support of your claim, you must **upload these documents onto the registration portal**. Unless you are a fleet operator (see below), do **not** send documents to Maurice Blackburn or Bannister Law by email, fax or post. You may use a smartphone or tablet device in order to take photographs of relevant documents, provided that all words and numbers are clearly legible in the photographs. The photographs can then be uploaded onto the registration portal.

*Execution Version***Schedule 2 - Advertisement**

PROPOSED SETTLEMENT
Volkswagen, Audi and Skoda Class Actions in the Federal Court of Australia

In early December 2019 the parties in the Volkswagen, Audi and Skoda Australian diesel emissions class actions agreed on terms for the proposed settlement of the class actions. If the settlement is approved by the Federal Court, between \$87 million and \$127.1 million will be available for eligible Group Members, plus legal costs and other payments as approved by the Court.

You may be eligible to receive a settlement payment if you owned an affected diesel vehicle or had certain types of vehicle leases as at **18 September 2015** or **3 October 2015**.

Details of the affected vehicles as well as more information about the eligibility criteria is set out in a Settlement Notice. You may obtain a copy of this Settlement Notice at www.vwsettlement.com.au.

WHAT GROUP MEMBERS NEED TO DO

If you want to claim a settlement payment you must **register online** at the following registration portal: www.vwsettlement.com.au

The deadline for registration in the proposed settlement is 10 March 2020
If you fail to register before the deadline you will lose your right to receive a settlement payment but will still be bound by this settlement

At the time of registration, you may be asked to upload documents in support of your claim. If you are asked to upload documents, you must do this **within 28 days** of registering your claim. If your vehicle was leased or subject to a hire purchase agreement, you may also need to provide paperwork in relation to the lease contract. Further details about the paperwork which may need to be provided is outlined in the Settlement Notice which is available at www.vwsettlement.com.au.

COURT APPROVAL OF THE PROPOSED SETTLEMENT

On 26 March 2020, the Federal Court will be asked to approve the proposed settlement. You may attend this hearing if you wish, although you are not required to do so. The application will be heard at the Federal Court of Australia in Sydney, in the Law Courts Building at Queens Square.

If you wish to oppose or object to the proposed settlement, you must lodge a written statement of your concerns by **10 March 2020** at the following website: www.vwsettlement.com.au/objections. You may also (but do not need to) attend the hearing in the Federal Court on 26 March 2020.

CONTACT DETAILS

You can contact Maurice Blackburn or Bannister Law for further information including a copy of the Settlement Scheme or if you have any questions:

Maurice Blackburn

<https://www.mauriceblackburn.com.au>

Phone: 1800 810 812

Email: vw@mauriceblackburn.com.au

Bannister Law

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Email: vwclients@bannisterlaw.com.au