

# **Proposed Settlement Distribution Scheme**

Shimshon & Anor v MLC Nominees Pty Limited & Anor

S ECI 2020 00306

## BACKGROUND

- A. On 22 January 2020, David Shimshon (the First Plaintiff), commenced proceeding S ECI 2020 00306 in the Supreme Court of Victoria (**the Shimshon Proceeding**) on his own behalf and on behalf of the Group Members against MLC Nominees Pty Limited (**MLCN**) and NULIS Nominees (Australia) Limited (**NULIS**).
- B. On 25 March 2021, Julian Cougan (the Second Plaintiff) commenced proceeding VID147 of 2021 in the Federal Court of Australia (**the Cougan Proceeding**) on his own behalf and on behalf of the Group Members against MLCN and NULIS.
- C. On 23 February 2022, the Federal Court of Australia ordered that the Cougan Proceeding be transferred to the Supreme Court of Victoria pursuant to section 5(4) of the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth). On 12 May 2022, the Cougan Proceeding was consolidated into the Shimshon Proceeding.
- D. On 4 December 2024, the parties to the Proceeding executed a Deed of Settlement (**Settlement Deed**) to resolve the claims of the Plaintiffs and Group Members against the Defendants. The proposed settlement as set out in the Settlement Deed is subject to the approval of the Court pursuant to s 33V of the *Supreme Court Act 1986* (Vic) (**the Act**).
- E. The Settlement Deed provides for MLCN and NULIS to pay a total settlement amount of \$64.25 million on account of the claims advanced in the Proceeding, interest and costs (**Settlement Sum**).
- F. The Plaintiffs are represented by Maurice Blackburn. Subject to approval of the Court, Maurice Blackburn will be appointed as Settlement Administrator on the making of orders under s 33V of the Act.
- G. This Settlement Distribution Scheme sets out the principles for the application and distribution of the Settlement Sum, after payment of the Plaintiffs' Approved Costs.

# 1 Definitions

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**2FASOC** means the Second Further Amended Statement of Claim filed in the Proceeding on 4 September 2024.

**Account Number** means the unique identifier for the account in which the Group Member has or had an interest in the MLC Super Fund (regardless of whether that account remains active).

**Act** means the *Supreme Court Act 1986* (Vic).

**ADA Transfer** has the meaning set out in the Apportionment Formula Definitions in Annexure A.

**Apportioned Amount** means the amount of the Residual Settlement Sum apportioned to the Plaintiffs and each Transferred Member in accordance with the Apportionment Formula, calculated by the Expert Consultant in accordance with Clause 5.

**Apportionment Formula** means the formula set out in Annexure A.

**Approval Orders** mean orders of the Court approving the Settlement pursuant to section 33V of the Act.

**Appeal Period** means the period beginning on the date of the making of the Approval Orders and ending 63 days after that date, unless an appeal is commenced (in which case the Appeal Period ends only on the date on which the appeal is finally determined with the effect that the Approval Order is made or confirmed).

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

**Defendants** means MLCN and NULIS.

**Excluded Group Member** has the meaning set out in the Apportionment Formula Definitions in Annexure A.

**Expert Consultant** is the independent expert consultant appointed by the Settlement Distributor, in consultation with the Settlement Administrator, to perform the Residual Settlement Sum calculations set out in Clause 5.

**Family Law Act** means the *Family Law Act 1975* (Cth).

**Family Law Settlement** means an order or settlement in a Family Law Act proceeding or a superannuation agreement within the meaning of Part VIII B of that Act.

**First Plaintiff** means David Shimshon.

**Final Report** means the report made by the Settlement Distributor to the Court and the Settlement Administrator at the conclusion of the distribution of the Settlement Sum as set out in Clause 8(b).

**Group Member** means all persons who:

- a) are Group Members in the Proceeding as defined in paragraph 3 of the 2FASOC who did not opt out of the Proceeding by 15 August 2023; and
- b) are not the 4 Group Members specified in the list in Annexure A to the orders made by the Court on 4 March 2024, who are deemed to have opted out of the Proceeding.

**Individual Average Notional Apportionment** has the meaning set out in the Apportionment Formula Definitions in Annexure A.

**MLC Super Fund** means the superannuation fund known as MLC Super Fund ABN 70 732 426 024, of which NULIS is the trustee.

**MLCN** means MLC Nominees Pty Limited (ACN 002 814 959).

**NAB ADA** means an accrued default amount in the MLC MasterKey Business Super (MKBS) or MLC MasterKey Personal Super (MKPS) product in the MLC Super Fund.

**Nguyen Report** has the meaning set out in the Apportionment Formula Definitions in Annexure A.

**No Loss Group Members** has the meaning set out in the Apportionment Formula Definitions in Annexure A.

**NULIS** means NULIS Nominees (Australia) Limited (ACN 008 515 633).

**Payment Amount** means:

- a) for a Transferred Member who is not deceased and has not been the subject of an order or settlement in a Family Law Act proceeding or a superannuation agreement within the meaning of Part VIII B of the Family Law Act that resulted in the transfer of part of their interest attributable to an NAB ADA that was the subject of an ADA Transfer, 100% of the Apportioned Amount;
- b) for a Group Member who has received a payment from a deceased Transferred Member's account of all or part of the interest of the Transferred Member attributable to an NAB ADA that was the subject of an ADA Transfer, a proportion of the Apportioned Amount for the deceased Transferred Member equal to the proportion of the deceased Transferred Member's interest in the MLC Super Fund that the Group Member received;
- c) for a Transferred Member who has been the subject of an order or settlement in a Family Law Act proceeding or a superannuation agreement within the meaning of Part VIII B of the Family Law Act that resulted in the transfer of all or part of their interest attributable to an NAB ADA that was the subject of an ADA Transfer to another Group Member, a proportion of the Apportioned Amount for the Transferred Member equal to the proportion of the Transferred Member's interest in the MLC Super Fund that the Transferred Member retained;
- d) for a Group Member who is not a Transferred Member and who has been the subject of an order or settlement in a Family Law Act proceeding or a superannuation agreement within the meaning of Part VIII B of the Family Law Act that resulted in the transfer of all or part of a Transferred Member's interest attributable to an NAB ADA that was the subject of an ADA Transfer to the Group Member, a proportion of the Apportioned Amount for the Transferred Member equal to the proportion of the Transferred Member's interest in the MLC Super Fund that the Group Member received.

**Plaintiffs** means David Shimshon and Julian Cougan.

**Plaintiffs' Approved Costs** means the costs payable to Maurice Blackburn in its capacity as solicitor for the Plaintiffs and/or as Settlement Administrator as approved by the Court.

**Plaintiffs' Reimbursement** means an amount of not more than \$30,000 payable to each of the Plaintiffs, subject to approval by the Court.

**Proceeding** means proceeding S ECI 2020 00306 commenced on 22 January 2020 in the Supreme Court of Victoria.

**Related Transferred Member** means the Transferred Member to whom a Group Member's entitlement relates pursuant to paragraphs 3(b) and 3(c) of the 2FASOC.

**Remaining Group Member** means a Group Member who still has an active member account in their name in the MLC Super Fund.

**Residual Settlement Sum** means the Settlement Sum less the Plaintiffs' Approved Costs and Plaintiffs' Reimbursement, prior to the deduction of any amount of Tax payable by the Trustee for the MLC Super Fund in respect of the Residual Settlement Sum.

**Second Plaintiff** means Julian Cougan.

**Settlement** means the terms on which the parties have agreed to settle the Proceeding (subject to approval of the Court), as recorded in the Settlement Deed signed by the parties on 4 December 2024.

**Settlement Administrator** means the person authorised to enforce the Settlement Distribution Scheme on behalf of Group Members.

**Settlement Distributor** means the person or entity appointed to make payments in accordance with the Settlement Distribution Scheme, at the Defendants' cost.

**Settlement Sum** means the total settlement amount of **\$64.25 million** (inclusive of all Tax payable).

**Tax** includes any levy, charge, impost, fee, deduction, stamp duty or other tax of any nature payable, imposed, levied, collected, withheld or assessed by any Governmental Agency and includes any interest, expenses, fine, penalty or other charge payable or claimed in respect thereof.

**Transferred Member** means Group Members in the Proceeding as defined in paragraph 3(a) of the 2FASOC, not including (to the extent that they would otherwise be Group Members) any members forming part of the 'List of excluded members' in Appendix P of the Nguyen Report. For the avoidance of doubt, Transferred Members include Related Transferred Members.

**Trustee for the MLC Super Fund** means NULIS acting in its capacity as trustee of the MLC Super Fund.

**TVP** means a trustee voluntary payment made to the Australian Taxation Office in accordance with the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth).

## **2 Settlement Administrator and Settlement Distributor**

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- (a) Maurice Blackburn is appointed as the Settlement Administrator.
- (b) The Trustee for the MLC Super Fund is appointed as the Settlement Distributor.
- (c) The Settlement Distributor will, in consultation with the Settlement Administrator, appoint an independent Expert Consultant to perform the calculations described in Clause 5 below.
- (d) The Settlement Distributor will use best endeavours to distribute the Residual Settlement Sum within 12 months from the date of the first payment made pursuant to Clause 6 below. If it appears to the Settlement Distributor that this will not be possible, the Settlement Distributor will report to the Court and the Settlement Administrator on the reasons for the delay and the steps that the Settlement Distributor proposes to take to address it.
- (e) As soon as practicable (and within 30 days) following receipt of the Final Report by the Settlement Distributor and its provision to the Court, the Plaintiffs and Defendants will jointly apply to the Court for orders dismissing the Proceeding with no order as to costs and vacating all costs orders previously made in the Proceeding.
- (f) The costs of the Settlement Distributor, and the work to be undertaken by the Expert Consultant under this Settlement Distribution Scheme, will be borne by the Defendants and will not to be:
  - (i) deducted from the Settlement Sum;
  - (ii) deducted from the Residual Settlement Sum;
  - (iii) met from the MLC Super Fund's Operational Risk Financial Requirement reserves; or
  - (iv) otherwise met from any assets of the MLC Super Fund.

## **3 Supervision by the Supreme Court of Victoria**

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Consistently with Part 4A of the Act, the implementation of this Settlement Distribution Scheme is subject to the Court's supervision and in particular:

- (a) the Settlement Administrator is authorised to enforce this Settlement Distribution Scheme on behalf of Group Members;
- (b) notwithstanding (a) above, either the Settlement Administrator or the Settlement Distributor may refer any issues arising in relation to this Settlement Distribution Scheme or its administration for determination to the Court and if so doing must give each other at least 7 days' notice of an intention to make such application and serve on the other all documents filed in any such application as soon as practicable after filing; and
- (c) the Settlement Administrator is entitled to seek payment of its costs in relation to any such application or reference to the Court (other than in respect of the application contemplated in Clause 2(e) above) including from any remainder of the Residual Settlement Sum or otherwise, subject to the Court's approval.

#### **4 Payment of the Settlement Sum**

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Within 14 days of the expiry of the Appeal Period the Defendants will pay:

- (a) the Plaintiffs' Approved Costs to Maurice Blackburn;
- (b) the Plaintiffs' Reimbursement to the First Plaintiff and Second Plaintiff; and
- (c) the Residual Settlement Sum to the MLC Super Fund.

The Settlement Sum will not be met from the MLC Super Fund's Operational Risk Financial Requirement reserves, or otherwise met from any assets of the MLC Super Fund.

#### **5 Residual Settlement Sum**

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- (a) Following the payment of the Residual Settlement Sum, and prior to distribution, the Residual Settlement Sum will be held on trust by the Trustee for the MLC Super Fund in accordance with the Settlement Deed, this Settlement Distribution Scheme and the Approval Order and invested in an interest-bearing account (save that the Trustee for the MLC Super Fund has the right, on 10 business days' notice to the Settlement Administrator, to convert the account into a non-interest bearing account at any point if the Settlement Distributor believes it would be in the interests of Group Members to do so).
- (b) Within 28 days of payment of the Residual Settlement Sum to the MLC Super Fund, the Expert Consultant will calculate the amount of the Residual Settlement Sum to be apportioned to the Plaintiffs and Transferred Members in accordance with the Apportionment Formula and provide a report to the Settlement Distributor and the Settlement Administrator setting out:
  - (i) the amount of the Residual Settlement Sum;
  - (ii) the amount of any amount of Tax payable by the Trustee for the MLC Super Fund in respect of the Residual Settlement Sum, as advised by the Trustee for the MLC Super Fund;
  - (iii) for the Plaintiffs and Transferred Members who, on the application of the Apportionment Formula, are to receive a payment:
    - A. the name of each such Transferred Member;
    - B. the Individual Average Notional Apportionment for each such Transferred Member;
    - C. the Apportioned Amount for each such Transferred Member;

- D. the Payment Amount for each such Transferred Member;
  - E. the date of birth of each such Transferred Member;
  - F. the Account Number of each such Transferred Member; and
  - G. the default investment option(s) in which the NAB ADA of each such Transferred Member was held prior to the ADA Transfer.
- (iv) for the Transferred Members who, on the application of the Apportionment Formula, are not to receive a payment:
- A. the name of each such Transferred Member;
  - B. the Individual Average Notional Apportionment for each such Transferred Member;
  - C. whether the Transferred Member is an Excluded Group Member or a No Loss Group Member;
  - D. the date of birth of each such Transferred Member;
  - E. the Account Number of each such Transferred Member; and
  - F. the default investment option(s) in which the NAB ADA of each such Transferred Member was held prior to the ADA Transfer.
- (c) Within 120 days of payment of the Residual Settlement Sum to the MLC Super Fund, the Expert Consultant will calculate the amount of the Residual Settlement Sum to be apportioned to Group Members who are not Transferred Members and provide a report to the Settlement Distributor and the Settlement Administrator setting out:
- (i) the amount of the Residual Settlement Sum;
  - (ii) the amount of any amount of Tax payable by the Trustee of the MLC Super Fund in respect of the Residual Settlement Sum, as advised by the Trustee for the MLC Super Fund;
  - (iii) for Group Members who are not Transferred Members and who on the application of the Apportionment Formula are to receive a payment:
    - A. the name of each such Group Member;
    - B. the name of the Related Transferred Member;
    - C. whether the Group Member falls within paragraph 3(b) or 3(c) of the 2FASOC;
    - D. the Payment Amount of each such Group Member;
    - E. if applicable, the Account Number of the Group Member; and
  - (iv) for Group Members who are not Transferred Members and who on the application of the Apportionment Formula are not to receive a payment:
    - A. the name of each such Group Member;
    - B. the name of the Related Transferred Member;

- C. whether the Group Member falls within paragraph 3(b) or 3(c) of the 2FASOC;
  - D. the Individual Average Notional Apportionment for the Related Transferred Member;
  - E. whether the relevant Related Transferred Member is an Excluded Group Member or a No Loss Group Member;
  - F. the date of birth of each such Related Transferred Member;
  - G. the Account Number of each such Related Transferred Member; and
  - H. the default investment option(s) in which the NAB ADA of each such Related Transferred Member was held prior to the ADA Transfer.
- (v) whether, following the calculations in subclauses 5(c)(iii) and 5(c)(iv) above, the Payment Amounts set out in subclause 5(b)(iii)(D) have changed as a result of the apportionment required by paragraphs (c) and (d) of the definition of 'Payment Amount' in clause 1 above, and if so, the report is to specify the updated Payment Amount for those Transferred Members.

## **6 Allocation to Group Members**

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- (a) After receiving the reports referred to in Clause 5 above, the Settlement Distributor will:
- (i) In respect of each Plaintiff:
    - A. adjust its records in respect of the Plaintiff's member account by increasing the account balance by the Payment Amount (plus any amount of interest (net of Tax) earned on the Residual Settlement Sum calculated on a pro rata basis) by acquiring units in the investment option or options in which that account balance is invested in the MLC Super Fund; or
    - B. pay or transfer the Payment Amount (plus any amount of interest (net of Tax) earned on the Residual Settlement Sum calculated on a pro rata basis) to a superannuation account nominated by the Plaintiffs.
  - (ii) in respect of each Group Member that is a Transferred Member:
    - A. if such Group Member is a Remaining Group Member, adjust its records in respect of that member's account by increasing the account balance by the Payment Amount (plus any amount of interest (net of Tax) earned on the Residual Settlement Sum calculated on a pro rata basis) by acquiring units in the investment option or options in which that account balance is invested in the MLC Super Fund; or
    - B. if such Group Member is not a Remaining Group Member, pay or transfer the Payment Amount (plus any amount of interest (net of Tax) earned on the Residual Settlement Sum calculated on a pro rata basis) by making a TVP.



- (iii) in respect of each Group Member defined in paragraph 3(b) of the 2FASOC, pay or transfer the Payment Amount (plus any amount of interest (net of Tax) earned on the Residual Settlement Sum calculated on a pro rata basis) by making a TVP in the name of the relevant Related Transferred Member.
- (iv) in respect of each Group Member defined in paragraph 3(c) of the 2FASOC:
  - A. if such Group Member is a Remaining Group Member, adjust its records in respect of that member account by increasing the account balance by the Payment Amount (plus any amount of interest (net of Tax) earned on the Residual Settlement Sum calculated on a pro rata basis) by acquiring units in the investment option or options in which that account balance is invested in the MLC Super Fund; or
  - B. if such Group Member is not a Remaining Group Member, pay or transfer the Payment Amount (plus any amount of interest (net of Tax) earned on the Residual Settlement Sum calculated on a pro rata basis) by making a TVP.
- (b) If, after attempted distribution of the Payment Amounts (plus any amount of interest (net of Tax) earned on the Residual Settlement Sum calculated on a pro rata basis) for Group Members referred to in 6(a)(ii)(A) and 6(a)(iv)(A) above, there remain Payment Amounts which have not been able to be distributed the Settlement Distributor will make TVPs in respect of the undistributed Payment Amounts.
- (c) For the avoidance of doubt:
  - (i) the Settlement Distributor may acquire units or make payments contemplated by this Clause 6 in tranches, at its discretion; and
  - (ii) the Settlement Distributor should not seek to distribute Payment Amounts for any Transferred Member who has been the subject of an order or settlement in a Family Law Act proceeding or a superannuation agreement within the meaning of Part VIII B of the Family Law Act that resulted in the transfer of all or part of their interest attributable to an NAB ADA that was the subject of an ADA Transfer to another Group Member until the delivery of the report in clause 5(c) above.

## **7 Member communications**

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- (a) At least 30 days before the distribution of any part of the Residual Settlement Sum, the Settlement Distributor shall provide its proposed communications plan to the Settlement Administrator and the Settlement Administrator shall provide comment on it within 10 days, with such comments to be taken into account by the Settlement Distributor prior to finalising the communications plan. The communications plan will include:
  - (i) the type, and nature of the content, of the communications to be made to Group Members;
  - (ii) any telephone script or question & answer document proposed to be used to respond to telephone enquiries from Group Members; and
  - (iii) a generic, simple, plain-English explanation of the methodology (including the Apportionment Formula) by which individual Payment Amounts have been calculated and the variables relevant to this (eg, the default

investment product and the relevant time period for the calculation) which can be provided to any Group Member seeking an explanation of the manner in which their individual Apportioned Amount was calculated.

- (b) The Settlement Distributor will respond as soon as practicable to written or telephone enquiries it receives from Group Members (including No Loss Group Members and Excluded Group Members).
- (c) The Settlement Administrator may refer enquiries from Group Members (including No Loss Group Members and Excluded Group Members) seeking information about the distribution of the Settlement Sum, their Individual Apportioned Amount or Payment Amount, or the manner in which payment will be made, to the Settlement Distributor and the Settlement Distributor will respond as soon as reasonably practicable.
- (d) If, in the period until the Residual Settlement Sum is paid in accordance with Clause 6, the Settlement Distributor is contacted by any Group Member wishing to notify a changed contact email address, physical address or telephone number, the Settlement Distributor will:
  - (i) amend its records accordingly; and
  - (ii) ensure that any written communication to the Group Member made after the date on which the Residual Settlement Sum is paid in accordance with Clause 4, is sent to the Group Member's amended contact email address or physical address.
- (e) Where a Payment Amount has been credited to an active member account in the MLC Super Fund in accordance with Clauses 6(a)(i)(A), 6(a)(ii)(A), or 6(a)(iii)(A) above, the Settlement Distributor will, on the next periodic member statement for the member in whose name that account is held, identify the amount credited to the member account as a result of the Settlement Distribution Scheme and include a notation on the member statement that the amount credited relates to the distribution of a class action settlement in proceedings *Shimshon & Anor v MLC Nominees Pty Limited & Anor* proceeding S ECI 2020 00306.
- (f) The Settlement Distributor will communicate with each Group Member who does not have an active member account in their name in the MLC Super Fund by postal or email communication to their last known address held by the Settlement Distributor (where such address is available and has not been marked as invalid via the Settlement Distributor's usual business processes) to inform them of their entitlement to receive the Payment Amount pursuant to the distribution of a class action settlement in proceedings *Shimshon & Anor v MLC Nominees Pty Limited & Anor* proceeding S ECI 2020 00306 and that the Payment Amount has been paid by TVP. For the avoidance of doubt, such communications will only be made where a Group Member has been paid a Payment Amount and will be sent within 30 days of the date of payment.

## **8 Reporting by the Settlement Distributor**

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- (a) The Settlement Distributor shall, at three monthly intervals after the commencement of distribution of the Settlement Sum, report to the Settlement Administrator on the following matters:
  - (i) the dates on which payments were made to Group Members;
  - (ii) the quantum of the Payment Amounts made on each date and the number of Group Members paid on each date;
  - (iii) the number of payments made:

- A. into an account in the MLC Super Fund; and
    - B. by a TVP; and
  - (iv) any other relevant matter as determined by the Settlement Distributor.
- (b) The Settlement Distributor shall report to the Settlement Administrator and the Court within 30 days of the conclusion of the distribution of the Settlement Sum (**Final Report**) with the report to identify the following matters:
- (i) the Residual Settlement Sum;
  - (ii) the total quantum of Apportioned Amounts calculated by the Expert Consultant in accordance with Clause 5(b);
  - (iii) the total quantum of Payment Amounts distributed to Group Members;
  - (iv) if the amounts in subclauses 8(b)(ii) and 8(b)(iii) differ, an explanation for the difference;
  - (v) the amount of any amount of Tax payable by the Trustee of the MLC Super Fund in respect of the Residual Settlement Sum as advised by the Trustee for the MLC Super Fund;
  - (vi) the amounts representing the highest, lowest, mean and median payments to Group Members;
  - (vii) the number of Group Members to whom a payment was made including:
    - A. whether the payment was made into an account in the MLC Super Fund;
    - B. whether the payment was made by a TVP;
  - (viii) the number of Excluded Group Members;
  - (ix) the number of No Loss Group Members;
  - (x) the dates on which payments were made to Group Members and the quantum of the payments made on each date and the number of Group Members paid on each date;
  - (xi) an explanation of the nature of any written communications made to Group Members in relation to the distribution of the Settlement Sum, and when and by what means those communications were made; and
  - (xii) any other relevant matter as determined by the Settlement Distributor.

## Annexure A – Apportionment Formula

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### Apportionment Formula definitions:

**Actual ADA Transfer Date** means, in respect of a Member Account, the date that the ADA Transfer actually occurred.

**ADA Transfer** means, in respect of a Member Account, the transfer of Accrued Default Amounts in that account by the Trustee for the MLC Super Fund to a MySuper Product.

**Aggregate Average Notional Apportionment** means the sum of each Individual Average Notional Apportionment for all Transferred Members other than No Loss Group Members and Excluded Group Members.

**Calculation Day** means each day for which a Difference Calculation has been prepared using the Nguyen Report Methodology.

**Difference Calculations** are the calculations set out in Appendix P to the Nguyen Report (excluding any calculations of consequential loss) and reflect, in respect of the Member Account in a Transferred Member's name:

$$T - A$$

where

T is the balance that would have been in that account as at the Actual ADA Transfer Date in respect of that Member Account had the ADA Transfer in respect of that account occurred on an earlier date (being a Calculation Day in the period from 1 June 2015 to 31 August 2015), applying the Nguyen Report Methodology; and

A is the actual balance in that account as at the Actual ADA Transfer Date in respect of that Member Account.

**Excluded Group Member** means any Group Member whose Individual Average Notional Apportionment is greater than \$0 and less than \$20.00. All amounts attributable to Excluded Group Members will be distributed among the Group Members who are not Excluded Group Members or No Loss Group Members.

**Individual Average Notional Apportionment** means, in respect of each individual Transferred Member, the sum of the Difference Calculations in respect of the Member Account in that Transferred Member's name for each Calculation Day in the period from 1 June 2015 to 31 August 2015 (inclusive), divided by the number of Calculation Days in that period.

**Member Account** means an account in the MLC Super Fund in the name of a Transferred Member.

**No Loss Group Members** means any Group Member whose Individual Average Notional Apportionment is equal to or less than \$0.

**Nguyen Report** is the expert report of Mr Anh Nguyen dated 26 July 2024 and filed by the Plaintiffs in the Proceeding.

**Nguyen Report Methodology** means the methodology set out in the Nguyen Report which calculates loss as the difference between the actual closing MySuper investment option balance and the counterfactual closing MySuper investment option balance, had the ADA balance been transferred to MySuper on a date prior to the date of actual transfer and taking into account:

- (1) the investment returns achieved by the relevant MySuper investment option compared against the investment returns of the default investment option;
- (2) the actual costs and fees (including insurance premiums) paid by the member compared to the costs and fees payable in MySuper; and
- (3) the actual rebates, remediations and adjustments received by the member compared to the rebates, remediations and adjustments applicable in MySuper.

**Apportionment Formula:**

$$\begin{aligned} & \textit{Apportioned Amount} \\ &= \left( \frac{\textit{Individual Average Notional Apportionment}}{\textit{Aggregate Average Notional Apportionment}} \right) \times \textit{Residual Settlement Sum} \\ &\times (1 - \textit{tax rate borne by the MLC Super Fund with respect to the Member Account}) \end{aligned}$$