

Settlement Distribution Scheme

Exactech Class Action

1 July 2025

Simon Harrold v Exactech Australia Pty Ltd ACN 146 150 754 & Anor
Federal Court of Australia, Proceeding NSD 1224/2024

Overview and Summary

- A. On 29 May 2025, Federal Court Proceeding NSD 1224/2024 (*Simon Harrold v Exactech Australia Pty Ltd ACN 146 150 754 & Anor*) (the **Proceeding**) was settled, subject to Court approval, on terms subsequently set out in a deed of settlement executed by the parties. If the settlement is approved, an Administrator will be appointed by the Court (the proposed Administrator is GMP Law) to administer the Settlement Fund created in accordance with the terms of this Settlement Scheme.
- B. This Settlement Scheme (the **Scheme**) sets out the procedures and substantive requirements for the distribution of the Settlement Fund which is proposed to be established if the proposed settlement of the Proceeding is approved. The Scheme enables the assessment of eligibility and rights to compensation of Participating Group Members by the Administrator and provides for the payment by the Administrator of compensation to Participating Group Members out of the Settlement Fund. It is to be read in conjunction with the Deed. Terms not otherwise defined in this Scheme are as defined in the Deed.
- C. The Scheme will not come into effect unless and until the Court approves the proposed settlement pursuant to section 33V(1) of the *Federal Court of Australia Act 1976* (Cth) and the Approval Orders are made.
- D. The proposed settlement and this Scheme are made with a specific denial of liability and are not to be represented as an admission of liability by the Respondents or any of their related entities.
- E. The objective of the Scheme is to provide some compensation for all Participating Group Members. In view of the magnitude of the Settlement Sum, the Scheme's objective is to be met by paying Non-Personal Injury Participating Group Members a nominal sum in compensation and by paying Personal Injury Participating Group Members compensation only for non-economic loss damages. It is not intended that the compensation paid to Personal Injury Participating Group Members represents their full entitlement to damages for having been implanted with an Exactech Device or compensation for any head of damages other than a contribution for non-economic loss.
- F. The Scheme is to be implemented and claims assessed and paid in as timely and cost-effective manner as possible. It has the following major elements:

Stage	Clause	Procedure
Registration	Clause 4	Group Members who wish to make a claim under this Scheme, must complete a Registration Form within the prescribed timeframe.
Eligibility determination	Clause 5	The Administrator will assess and determine the eligibility of Group Members to become Participating Group Members and to receive compensation under the Scheme.

Third Party Recovery	Clause 6	The Administrator will identify and pay all Third Party Recovery Amounts, which Participating Group Members are liable to make.
Assessment of Compensation	Clause 7	The Administrator will assess and determine the amount of compensation to be paid to the Participating Group Members.
Review rights	Clause 8	A Review may be sought by a person who is dissatisfied with a determination that they are not an eligible Participating Group Member, or by a Participating Group Member who is dissatisfied with a compensation assessment.
Payment of Compensation and Scheme Finalisation	Clause 9	Following the determination of all Participating Group Member's Assessed Compensation Amounts (including after Review) and payment of all Participating Group Members' Third Party Recovery amounts, the Administrator will pay Compensation to Participating Group Members.

1. Definitions and interpretation

1.1 In this Scheme, terms shall have the meanings set forth below.

"Administration Costs" means the legal costs and disbursements incurred by the Administrator or its delegates or agents in implementing, giving effect to, or administering the Settlement Fund in accordance with the terms of this Scheme and calculated in accordance with clause 13.

"Administrator" means the administrator of this Scheme appointed in accordance with clause 2.1 and with the Court's approval.

"Approval Orders" means orders of the Court, whether at first instance or on appeal, approving the settlement of the Proceeding on the terms set out in the Deed and approving the management and distribution of the Settlement Sum in accordance with the Scheme.

"Assessed Compensation Amount" means the amount equal to the value of the Participating Group Member's claim as assessed by the Administrator pursuant to the Damages Protocol. The amount payable to a Participating Group Member under this Scheme may ultimately be adjusted in accordance with clause 9.

"BPA" means any bulk payment agreement between Medicare Australia and the Respondents and/or the Administrator for the payment of Third Party Recovery Amounts to Medicare Australia that Group Members are liable to make upon being assessed as being eligible to receive an Assessed Compensation Amount.

"Claim" means any claim, demand, action, suit, proceeding or liability of any kind for damages, debt,

restitution, account, equitable compensation, injunctive relief, specific performance, costs, interest or any other remedy in connection with, arising from or related to the Proceeding or the matters, circumstances or allegations which are or were the subject of the Proceeding.

“Claim Deadline” means 60 days after Scheme Commencement.

“Compensation Review” has the meaning given in clause 8.1(b).

“Court” means the Federal Court of Australia.

“Coverage Period” means the period commencing from 1 January 2003 to 5 September 2024.

“Deed” means the Deed of Settlement and Release executed by Simon Harrold, Gerard Malouf & Partners Pty Ltd, Exactech Australia Pty Ltd and Exactech, Inc. on 29 May 2025.

“Eligibility Criteria” has the meaning given in clause 5.1.

“Eligibility Review” has the meaning given in clause 8.1(a).

“Exactech” means Exactech AUS and Exactech Inc.

“Exactech AUS” means Exactech Australia Pty Ltd.

“Exactech Inc” means Exactech Incorporated.

“Exactech Devices” means one or more of the devices listed in Annexure 2.

“Group Members” means persons who had surgery performed on them in Australia to implant any of the Exactech Devices identified in Annexure 2.

“Harrold Payment” means a payment to the Applicant of \$100,000 in damages, interest and any Third Party Recovery Amounts (other than to Medicare Australia) he is liable to make.

“Implant Evidence” means the documentation that must be obtained to establish proof of implantation with an Exactech Device (which, for the avoidance of doubt, need not be in a form which would be admissible under the *Evidence Act 1995* (Cth)), namely:

- (a) product identification sticker, tag or label from the Exactech Devices.
- (b) medical records contemporaneous to the implantation procedure for the Exactech Device recording the product identification information (product numbers) from the product identification sticker, tag or label or information identifying the model of Exactech Device; or
- (c) medical records contemporaneous to the implantation procedure for the Exactech Device providing confirmation that the implanted device was an Exactech Device.
- (d) documentation from the implanting surgeon providing confirmation that the implanted device was an Exactech Device.
- (e) documentation from the implanting hospital providing confirmation that the implanted device was an Exactech Device.

- (f) documentation from a private health insurer providing confirmation that the implanted device was an Exactech Device by way of prosthesis code or device description.

“Non-Personal Injury Participating Group Member” means a Participating Group Member who has not suffered a physical or psychiatric injury or undergone any revision or other surgery as a consequence of the implantation of the Exactech Device.

“Notice of Eligibility” has the meaning given in clause 5.3.

“Notice of Assessment” has the meaning given in clause 7.3.

“Notice of Review Assessment” has the meaning given in clause 8.5.

“Personal Injury Participating Group Member” means a Participating Group Member who has suffered a physical or psychiatric injury or who has undergone revision surgery or any other surgery secondary to the implantation of the Exactech Device (excluding any injury caused by the performance of the surgery itself).

“Recovery Legislation” means the *Health and Other Services (Compensation) Act 1995* (Cth), *Social Security Act 1991* (Cth), *Veterans’ Entitlements Act 1986* (Cth), and *National Disability Insurance Scheme Act 2013* (Cth) see clause 6.1(c)

“Registration Form” means a registration form submitted in accordance with clauses 4.1, 4.2 or 4.3

“Review Assessor” means a member of the Bar or a solicitor who is appointed by the Administrator pursuant to clause 8.5(a). The Review Assessor must not be employed by or be a principal of GMP Law and must have at least five years’ experience in personal injury litigation.

“Revision Surgery” means any operation to remove or to remove and replace any part of an Affected Device.

“Scheme Commencement” means the first business day after the payment of the Settlement Fund into the Settlement Account.

“Settlement” means settlement of the Proceeding in accordance with the terms of the Deeds and subject to any Approval Orders.

“Settlement Sum” means \$8,700,000 inclusive of all damages, interest, costs, counsel fees and disbursements, Third Party Recovery Amounts and Administration Costs and any GST applicable to those costs or amounts.

“Settlement Fund” means the Settlement Sum (or part of it), which upon the Court making the Approval Orders, is transferred to the Administrator to be held and managed as a fund and to be distributed by the Administrator under the direction of the Administrator.

“Settlement Account” means a bank account established by the Administrator for the purpose of holding the Settlement Fund (or part of it) pending or during the implementation of the Settlement Scheme and the Approval Orders.

“Scheme” or “Scheme” means this Scheme, including the rights and obligations created by this Scheme. For the avoidance of doubt, the Scheme may be amended by the Court as it deems fit.

“Simon Harrold” means the Applicant.

“Surgical or Treatment Evidence” means proof, by way of contemporaneous medical records, which may include contemporaneous medical practitioner or hospital records supplemented by a letter or report from the medical practitioner providing any necessary clarification of the contents of the records in respect of which compensation is claimed under this Scheme. For the avoidance of doubt, Surgical or Treatment Evidence need not be in a form which would be admissible under the *Evidence Act 1995* (Cth).

“Third Party Recovery Amounts” means any amount separately or in any combination that the Applicants, the Respondents or Group Members may be liable to make to third parties, including a private health insurer (as defined in the *Private Health Insurance Act 1987* (Cth)), to Medicare Australia by virtue of the provisions of the *Health and Other Services (Compensation) Act 1995* (Cth) or any BPA, to the Department of Social Security or Centrelink by virtue of the *Social Security Act 1991* (Cth), to the Department of Veteran’s Affairs in respect of amounts claimed under the *Veterans’ Entitlements Act 1986* (Cth), and to the National Disability Insurance Agency in respect of amounts claimed under the *National Disability Insurance Scheme Act 2013* (Cth).

“\$ or dollar” means the lawful currency of the Commonwealth of Australia.

2. Appointment and functions of the Administrator

2.1 Appointment of the Administrator

- (a) Subject to the Court’s approval, GMP Law will be appointed as the Administrator to administer and implement the Scheme fairly and reasonably according to its terms.
- (b) GMP Law’s duties to the Court will take priority over any duties they may owe to individual Group Members.
- (c) In the performance of its functions as the Administrator, GMP Law will have the same immunities from suit under s.54B as attach to a Referee appointed pursuant to s.54A of the *Federal Court of Australia Act 1976* (Cth) by the Court.

2.2 Correction of errors

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

3. Implementation of the Settlement

3.1 Payment of the Harrold Payment

As soon as reasonably practicable after the Settlement is approved by the Court and the Respondents have paid the Settlement Sum into the Settlement Account less any Third Party Recovery Amounts they are liable to make from the Harrold Payment, the Administrator will:

- (a) pay any Third Party Recovery Amounts from the Harrold Payment that has not already been paid by the Respondents and which Simon Harrold is liable to make;
- (b) pay to Simon Harrold the Harrold Payment less any Third Party Recovery Amounts in accordance with the Approval Orders; and
- (c) pay to GMP Law the Applicant’s costs that are approved by the Court in the Approval Orders in accordance with clause 5.1 of the Deed.

3.2 Application of the balance of the Settlement Fund

Following payments pursuant to clause 3.1, the balance of the Settlement Sum including any interest will become the Settlement Fund which will be applied and distributed as follows:

- (a) to Third Parties in accordance with Clause 6;
- (b) to Participating Group Members in accordance with Clause 9;
- (c) to the Administrator for Administration Costs in accordance with Clause 13.

4. Registration of Group Members

4.1 Submission of Registration Form

Group Members who wish to participate in the Scheme must complete and submit a Registration Form by the Claim Deadline (accessible at the following website: <https://www.gerardmaloufpartners.com.au/exactech-class-action/>).

4.2 Alternative methods of registration

If a Group Member is not able to complete an online Registration Form and informs the Administrator of that inability, the Administrator will permit the Group Member's registration to be effected by completing and returning a hard copy Registration Form, which the Administrator will post to the Group Member by registered post with a reply paid envelope.

4.3 Failure to register by the Claim Deadline

Subject to clause 4.4, if a Group Member registers their claim after the Claim Deadline, the Group Member is not entitled to participate in the Scheme and foregoes any right they may have had to receive compensation from the Settlement Fund.

4.4 Discretion to waive late registrations

In its discretion, the Administrator may accept a late registration (that is, a registration effected after the Claim Deadline), if the Group Member has reasonable grounds for late registration, including for the following reasons:

- (a) illness or incapacity; or
- (b) a prolonged absence from their usual place of residence; or
- (c) such other reason as the Administrator may in its sole discretion accept,

except that the Administrator must not accept a late registration if it is received by the Administrator more than six months after the Claim Deadline.

5. Assessment and determination of eligibility

5.1 Eligibility Criteria

A Group Member becomes a Non-Personal Injury Participating Group Member and is eligible to apply to receive compensation pursuant to this Scheme if they satisfy the following Eligibility Criteria:

- (a) the Group Member was implanted with an Exactech Device in Australia during the Coverage Period; and
- (b) the Group Member has:
 - (i) not opted out of the Proceeding; and
 - (ii) not entered into a deed of release with Exactech or any of their related entities in respect of a claim for damages for being implanted with an Exactech Device; and
 - (iii) not received full and final satisfaction from any other person or entity (such as a surgeon or a hospital) in respect of a claim for damages for being implanted with an Exactech Device.
- (c) The Group Member has registered their claim by the Claim Deadline (or by such later time as the Administrator permits in accordance with clause 4.5).

A Group Member becomes a Personal Injury Participating Group Member if, in addition to satisfying the Non-Personal Injury Participating Group Member criteria, the Group Member has suffered a physical or psychiatric injury or has undergone revision surgery or any other surgery as a result of being implanted with an Exactech Device.

5.2 Process for determining eligibility

The Administrator will assess and determine the eligibility of a Group Member pursuant to clause 5.1 in accordance with the following provisions:

- (a) the Administrator will obtain the Group Member's Implant Evidence;
- (b) the Administrator will confirm whether the Group Member has filed an opt out notice and, if so, will obtain a copy of the opt out notice;
- (c) the Administrator will provide to the Respondents an authority signed by the Group Member to obtain confirmation from the Respondents as to whether clause 5.1(b)(ii) applies to the Group Member;
- (d) the Administrator will obtain evidence from the Group Member of any compensation they have received and, if necessary, provide to any relevant person or entity an authority signed by the Group member to obtain confirmation as to whether clause 5.1(b)(iii) applies to the Group Member;
- (e) in respect of a Group Member who claims to be a Personal Injury Participating Group Member, the Administrator will obtain a statutory declaration from the Group Member to the effect that they have suffered an injury and specifying what injury or injuries or what revision surgery or other surgery they claim to have suffered as a consequence of receiving an Exactech Device; and

- (f) upon review of the information obtained in accordance with clauses 5.2(a) to (e), the Administrator will determine whether the Group Member meets the Eligibility Criteria set out in clause 5.1 and is, therefore, a Participating Group Member.

5.3 Notification to Group Members regarding their eligibility or otherwise

After a determination is made as to whether a Group Member is a Participating Group Member, the Administrator will promptly send to the Group Member a Notice of Eligibility in which the Administrator will:

- (a) state whether the Group Member meets the Eligibility Criteria and is therefore a Participating Group Member; and
- (b) state whether the Group Member is a Personal Injury Participating Group Member or a Non-Personal Injury Participating Group Member; and
- (c) if the Group Member was assessed as ineligible to participate in the Scheme, provide:
 - i. a short statement of the basis on which the Group Member has been determined not to meet the Eligibility Criteria; and
 - ii. information in relation to their right to seek a Review under clause 8 of this Scheme.

5.4 Clarification regarding steps required to be taken where a Group Member opted out or has otherwise resolved their claim

For the avoidance of doubt, if the Administrator obtains information which demonstrates that a Group Member fails to satisfy any of the eligibility criteria in 5.1, the Administrator:

- (a) is not obliged to obtain any further information or materials under clause 5.2; and
- (b) may proceed to make a determination about eligibility.

6. Third Party Recovery

6.1 Process and sequence for assessment and payment of Third Party Recovery Amounts

The Administrator will, in sequence:

- (a) inform Simon Harrold that he or the Respondents may be liable to pay Third Party Recovery Amounts as a result of his receiving the Harrold Payment;
- (b) inform Simon Harrold that all Third Party Recovery Amounts in relation to his claim will be deducted from the Harrold Payment and paid directly by the Respondents or otherwise paid by the Administrator from the Harrold Payment;
- (c) identify any and all Third Party Recovery Amounts in relation to the claim of Simon Harrold and obtain and, if required, provide to the Respondents, all relevant documents and all necessary statutory clearances under the Recovery Legislation to facilitate the payment of the Third Party Recovery Amounts as soon as reasonably practicable;

- (d) pay any Third Party Recovery Amounts in relation to Simon Harrold before any compensation is paid to Simon Harrold or any compensation or any Third Party Recovery Amounts are paid in relation to the claims of Participating Group Members;
- (e) inform Personal Injury Participating Group Members that they or the Respondents may be liable to pay Third Party Recovery Amounts as a result of their receiving compensation under this Scheme;
- (f) inform Personal Injury Participating Group Members that all Third Party Recovery Amounts will be paid from the Settlement Fund regardless of whether that sum would ordinarily be paid directly by the Respondents;
- (g) identify any and all Third Party Recovery Amounts in relation to each Personal Injury Participating Group Member's claim and obtain and, if required provide to the Respondents, all relevant documents and all necessary statutory clearances (for example under the *Social Security Act 1991* (Cth) or *National Disability Insurance Scheme Act 2013* (Cth)) or Notices of Charge (under the *Health and Other Services (Compensation) Act 1995* (Cth)) to facilitate the payment of the Third Party Recovery Amounts as soon as reasonably practicable;
- (h) identify and calculate any Third Party Recovery Amounts for each Personal Injury Participating Group Member based on the Assessed Compensation Amount for each Personal Injury Participating Group Member;
- (i) deduct and pay any Third Party Recovery Amounts from the Assessed Compensation Amount of each Personal Injury Participating Group Member before a Personal Injury Participating Group Member is paid the balance of their Assessed Compensation Amount;

7. Assessment of Participating Group Members' claims

7.1 Assessment of claims

- (a) Participating Group Members' Claims will be assessed and determined by the Administrator or their delegates in accordance with the Damages Assessment Protocol which appears at Annexure 1.
- (b) Any delegate appointed by the Administrator to assess the claims of Participating Group Members must be a lawyer with at least five years' experience in personal injury litigation.

7.2 Process for determining Participating Group Members' claims

- (a) In respect of Non-Personal Injury Participating Group Members, the Administrator will, without requiring the production of further information concerning damages, determine the Non-Personal Injury Participating Group Member's Assessment Compensation Amount.
- (b) In respect of Personal Injury Participating Group Members, the Administrator may obtain the following in so far as it is relevant to the assessment of the Personal Injury Participating Group Member's claim:

- (i) instructions and information from the Personal Injury Participating Group Member;
- (ii) Surgical or Treatment Evidence;
- (iii) Medical or clinical records;
- (iv) reports of treating medical practitioners;
- (c) In respect of Personal Injury Participating Group Members, upon receiving the information in 7.2(b) the Administrator will:
 - (i) assess damages in accordance with the Damages Assessment Protocol in Annexure 1;
 - (ii) adjudicate as expeditiously and reasonably as possible;
 - (iii) determine the Personal Injury Participating Group Member's Assessed Compensation Amount.

7.3 Notification of Participating Group Members' Assessed Compensation Amounts

After a determination is made of a Participating Group Member's Assessed Compensation Amount, the Administrator will promptly send to the Participating Group Member a Notice of Assessment in which the Administrator will:

- (a) state the Participating Group Member's Assessed Compensation Amount;
- (b) provide information to the Participating Group Member about the determination of their entitlements under this Scheme;
- (c) inform the Personal Injury Participating Group Member that they will be paid their Assessed Compensation Amount less any Third Party Recovery Amounts only after the Assessed Compensation Amounts have been determined for all Participating Group Members and all Third Party Recovery Amounts have been determined and paid for all Personal Injury Participating Group Members.
- (d) provide information to the Participating Group Member in relation to their right to seek a Review under clause 8.

8. Review of Administrator's Determinations

8.1 Right to seek a Review

A person who has registered to participate in this Scheme has the right to seek a Review of the following determinations:

- (a) a determination under clause 5 that the registered person is not eligible to receive compensation (**Eligibility Review**); and
- (b) in the case of a Participating Group Member, a determination under clause 7 regarding the amount of compensation that may be payable to the Participating Group Member (**Compensation Review**).

8.2 Process for seeking a Review

If a registered person (including a Participating Group Member) wishes to seek an Eligibility Review or a Compensation Review, they must do so:

- (a) by giving written notice to the Administrator no later than 28 days after the Administrator has sent a Notice of Eligibility or Notice of Assessment (as applicable) to the registered person or Participating Group Member; and
- (b) the notice seeking a review of a Notice of Assessment must state the components of the assessment which the Participating Group Member disputes and the reasons why the Participating Group Member disputes those components of the assessment, and provide any additional evidence that has not been previously provided to the Administrator.

8.3 Failure to seek a Review

If a registered person or Participating Group Member does not give written notice to the Administrator within 28 days as required by clause 8.2, the registered person or Participating Group Member will be deemed to have accepted the determination in their Notice of Eligibility or Notice of Assessment (as the case may be).

8.4 Payment of a bond for Reviews

Subject to clause 13.4, where a registered person or the Participating Group Member seeks an Eligibility Review or a Compensation Review, the Administrator may, in its absolute discretion:

- (a) require that the registered person pay to the Administrator a bond not exceeding \$400 for the cost of Eligibility Review;
- (b) require that the Participating Group Member pay to the Administrator a bond not exceeding \$400 for the cost of Compensation Review;
- (c) if the registered person or the Participating Group Member fails to pay the bond within 28 days of receiving any such request, the Administrator must treat the request for a review as void and of no effect.

8.5 Process for determination of Reviews

Following receipt of a notice seeking an Eligibility Review or a Compensation Review, and upon payment of any bond required in accordance with clause 8.4:

- (a) the Administrator will engage a Review Assessor;
- (b) the Administrator will provide the following materials to the Review Assessor:
 - (i) if an Eligibility Review, the registered person's written notice and evidence by which they requested the Eligibility Review; or
 - (ii) if a Compensation Review, the Participating Group Member's:
 - (A) Implant Evidence and Notice of Eligibility; and
 - (B) Material obtained pursuant to clause 7.2(b) and the Notice of Assessment;

- (c) unless the Review Assessor considers it reasonably necessary to do so, the Review Assessor will not consider any new evidence or additional materials beyond that contemplated by 8.5(b);
- (d) the Review Assessor will then:
 - (i) in an Eligibility Review, make a determination as to whether the Administrator made an error in applying the Eligibility Criteria;
 - (ii) in a Compensation Review, make a determination as to the amount of compensation that the Participating Group Member is assessed as being entitled to receive pursuant to this Scheme, and in doing so the Review Assessor must only:
 - (A) consider the issues in relation to which the Participating Group Member seeks a Review; and
 - (B) determine whether the Administrator made an error in assessing the claim;
 - (iii) in relation to either type of review, prepare and provide to the Administrator a brief statement of reasons for the Review Assessor's determination and, if relevant, include details of the amounts assessed;
- (e) in carrying out a Compensation Review, a Review Assessor must make his or her own determination of the Participating Group Member's Assessed Compensation Amount.
- (f) after receiving a Review Assessor's determination and statement of reasons, the Administrator will promptly send to the registered person or Participating Group Member a Notice of Review Assessment in which the Administrator provides:
 - (i) information to the registered person or the Participating Group Member about the determination of their review and the impact of that determination on the registered person's or the Participating Group Member's entitlements (if any) under this Scheme; and
 - (ii) a copy of the Review Assessor's statement of reasons.

8.6 Determinations of Review Assessors are final and binding

- (a) A determination of a Review Assessor is final and binding on the Administrator and the registered person or the Participating Group Member who sought the review, and neither the Administrator nor the registered person nor the Participating Group Member is entitled to appeal to the Court or any other court or tribunal in relation to any asserted error of jurisdiction, fact or law arising from the Review Assessor's determination.
- (b) Following a Compensation Review, the Review Assessor's determination will be deemed to be the Participating Group Member's Assessed Compensation Amount for the Participating Group Member under this Scheme, subject to any adjustment under clause 9.2.

8.7 Role of Review Assessors

Review Assessors engaged by the Administrator:

- (a) will act as independent arbitrators and not as counsel briefed to act for any individual Participating Group Members or the Administrator;
- (b) have the same immunities from suit as attach to the office of a judge of the Court under s. 54B of the *Federal Court of Australia Act 1976* (Cth).

9. Payment of Assessed Compensation Amounts and Scheme Finalisation

9.1 Timing of Payment

To avoid the risk that Third Party Recovery Amount payments and payments to Participating Group Members will in aggregate be greater than the sum available for distribution from the Settlement Fund, and the risks relating to any potential insolvency event concerning Exactech AUS, the Administrator will not make any payment to any Participating Group Member until such time as:

- (a) the Assessed Compensation Amounts are determined for all Participating Group Members;
- (b) all Review Assessments have been determined or the time for seeking reviews has expired;
- (c) all Third Party Recovery Amounts have been determined and paid for all Participating Group Members;
- (d) all Review Assessors have been paid; and
- (e) in any event, not before a period of seven months have elapsed commencing from the date of payment of the Settlement Sum to the Administrator.

9.2 Adjustment to Compensation Payments

Upon determination of the aggregate value of all Assessed Compensation Amounts, the aggregate value of all Assessed Compensation Amounts is adjusted up or down to reflect the final sum available for distribution to Participating Group Members inclusive of interest but less the final costs of administering the Scheme.

9.3 Payment of Compensation

Once the Administrator is satisfied that the steps specified in clause 9.1 and 9.2 have been completed, subject to withholding sufficient funds estimated to meet the Administration Costs, to be paid pursuant to Clause 13, the Administrator will pay each Participating Group Member their Assessed Compensation Amount as expeditiously as possible:

- (a) less all Third Party Recovery Amounts applicable to their claim;
- (b) with a pro rata adjustment in proportion to the aggregate adjustment made under clause 9.2.

9.4 Payment of Compensation

Once all payments have been made under clause 9.3, and the Administration Costs have been paid pursuant to clause 13, the Administration of the Settlement Fund will cease.

10. Management of the Settlement Fund

10.1 Settlement Fund is held by the Administrator

Upon Settlement Approval, subject to the terms of the Deed, this Scheme, and any applicable statutory requirements, the Administrator will hold the money in the Settlement Account.

10.2 Management of the Settlement Fund

The Administrator will take all reasonable steps to ensure that the Settlement Fund and payments to Participating Group Members are managed in such a way as to maximise the availability of sufficient funds to make compensation payments to all Participating Group Members.

10.3 Payments to Participating Group Members

The Administrator shall:

- (a) not make payments to Participating Group Members until all Participating Group Members' Assessed Compensation Amounts and Third Party Recovery Amounts are determined and, with respect to the Third Party Recovery Amounts, paid; and
- (b) ensure that, insofar as reasonably practicable, the Settlement Fund is distributed equitably amongst Participating Group Members having regard to the total Assessed Compensation Amounts, income interest earned on the Settlement Fund and Administration Costs.

11. Obligations of the Participating Group Members

11.1 Cooperation of the Participating Group Members

Each Participating Group Member must cooperate with the Administrator and take all steps that they are required to take pursuant to this Scheme and/or that are reasonably requested or directed by the Administrator, including:

- (a) providing instructions, information, documents or other materials;
- (b) providing authorities or permissions;
- (c) attending and participating in meetings or telephone conferences with the Administrator or any other person (such as a Review Assessor);
- (d) promptly informing the Administrator of any change in their contact details;
- (e) executing documents,

and each Participating Group Member must:

- (f) comply to the best of the Participating Group Member's ability with the substance, and not merely the form, of any requirement, request or direction; and
- (g) comply by the date or within the timeframe specified in the requirement, request or direction.

11.2 Obligation regarding honesty

In fulfilling the obligation in clause 11.1, each Participating Group Member must act honestly and must take all reasonable steps to ensure that any of their agents or representatives likewise act honestly.

11.3 Disclosure to agencies and other organisations

Participating Group Members acknowledge and agree that the Administrator may, if required by statute or contract, disclose their personal information, details of their claim or other documents and materials to an agency or other organisation including Centrelink, Medicare, the National Disability Insurance Agency, a private health insurer, a worker's compensation authority or the Australian Taxation Office.

12. Persons under a disability

12.1 Application of this clause

This clause applies if a Participating Group Member is a "person under a legal incapacity" within the meaning of the *Federal Court Rules 2011*.

12.2 Process for claims requiring approval by the Court

The following procedure applies where settlement or compromise of a Participating Group Member's claim requires approval by the Court:

- (a) if any entitlement to compensation is subject to approval by the Court pursuant to rules 7.11 or 9.70 of the *Federal Court Rules 2011*, the Administrator will at the earliest opportunity join in supporting the Participating Group Member's "litigation representative" or "interested person" to seek appropriate orders for approval of the relevant compensation payment;
- (b) if the Court does not approve the payment to the Participating Group Member, the claim will be referred back to the Administrator for further assessment and determination, and the Administrator will again join in seeking appropriate orders for approval at the earliest opportunity after the claim has been reassessed.

13. Costs

13.1 Payment of Administration Costs

Subject to the other provisions of this clause, Administration Costs are to be paid to the Administrator:

- (a) in accordance with clause 13.2;
- (b) from the Settlement Fund;

- (c) in such amounts as are approved by the Court from time to time during the implementation of this Scheme;
- (d) in the case of disbursements which individually total no more than \$3,000, on a quarterly basis from the Settlement Fund provided that the disbursements have been reasonably incurred.

13.2 Costs of determining Participating Group Members' claims

Subject to the Court's approval, the Administrator is entitled to charge \$700,000 for the costs of administration inclusive of GST.

13.3 Fees charged by Review Assessors

The Review Assessor will be paid fees of \$400 for Eligibility Review and fees of \$400 for Compensation Review. These fees are exclusive of GST and will be Administration Costs paid out of the Settlement Fund.

13.4 Costs of Reviews

The following provisions apply in relation to the costs of a Review:

Eligibility Review

- (a) if a registered person succeeds in an Eligibility Review:
 - (i) the costs of the Review will be Administration Costs; and
 - (ii) any bond paid by the registered person (now a Participating Group Member) will be returned;
- (b) if a registered person fails in an Eligibility Review, the Administrator will apply the bond paid by the registered person to the payment of the review costs payable by the registered person.

Compensation Review

- (c) if a Participating Group Member succeeds in a Compensation Review and the amount assessed by the Review Assessor is greater than the amount initially assessed by the Administrator, the costs of the review will be Administration Costs and any bond paid by the Participating Group Member will be returned;
- (d) if a Participating Group Member fails in a Compensation Review, the bond paid by the Participating Group Member will be applied toward the cost of the review and any shortfall in costs will be deducted from the compensation payable to the Participating Group Member.

13.5 Costs of lawyers other than the Administrator or its delegates

Nothing in this Scheme prevents a Participating Group Member from retaining or seeking advice from a lawyer who is not performing the role of Administrator (which for the purpose of this clause includes GMP Law), except that:

- (a) the Participating Group Member does so at their own cost; and

- (b) the Participating Group Member's lawyer is not entitled to recover any legal costs from the Administrator and any such legal costs must not be treated as Administration Costs unless the Administrator made a written request that the Participating Group Member's lawyer carry out the legal work in question.

14. Supervision by the Court

14.1 Supervision by the Court

The Administration of the Settlement Fund and implementation of the Scheme are subject to the supervision of the Court.

14.2 Administrator may apply to the Court for directions

Where the Administrator considers that:

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

the Administrator may approach the Court for directions and the Administrator may seek to be joined to the Proceeding for that purpose.

ANNEXURE 1 – DAMAGES ASSESSMENT PROTOCOL

1. The purpose of the Damages Assessment Protocol is to set out how a Participating Group Member's damages are to be calculated under the Scheme.
2. A Participating Group Member's Assessed Compensation Amount will be the amount of damages assessed under this Damages Assessment Protocol.
3. The Protocol is intended to make the process of assessing a Participating Group Member's claim as simple as possible while preserving the rights of those Participating Group Members to review the assessed value of their claims. It offers a just, quick and cheap method for calculating a Participating Group Member's damages. For Personal Injury Participating Group Members, it uses the number of revision operations as a proxy for the severity of a Group Member's injury and for assessing loss in a standardised manner, thereby avoiding the need for detailed individualised assessments or medicolegal examinations.
4. The Assessed Compensation Amount payable to a Personal Injury Participating Group Member does not include any amount for economic loss (whether past or future), out-of-pocket expenses (whether past or future), or past care (whether gratuitous or paid). The Assessed Compensation Amount reflects only a contribution to the Group Member's entitlement to non-economic loss, assessed in a simplified manner consistent with the objectives of the Damages Assessment Protocol.
5. To make the process of assessment as streamlined as possible, the Damages Assessment Protocol recognises five categories of claim:
 - (a) Claims where the Participating Group Member is a Non-Personal Injury Participating Group Member (**Category A**).
 - (b) Claims where the participating Group Member is a Personal Injury Participating Group Member who has not undergone any revision surgery, but who may have undergone surgery that is not revision surgery, or who has suffered a psychiatric injury or a physical injury not requiring revision surgery (**Category B**).
 - (c) Claims where the Participating Group Member is a Personal Injury Participating Group Member who has undergone revision surgery in relation to a single Exactech Device, or requires revision of a single Exactech Device, or has sustained an injury but is unable to undergo revision for medical reasons (**Category C**).
 - (d) Claims where the Participating Group Member is a Personal Injury Participating Group Member who has undergone bilateral revision surgery (i.e., revision surgery to both left and right sides) and/or has undergone revision surgery in relation to two or more Exactech Devices, whether at the same anatomical site or different anatomical sites (**Category D**).
 - (e) Claims where the Participating Group Member is a Personal Injury Participating Group Member who has undergone revision surgery in relation to three or more Exactech Devices, whether at the same anatomical site or at multiple anatomical sites (**Category E**);
6. **Determination of category of claim**
 - 6.1 After receiving all required evidence and information, a Participating Group Member will be assessed by the Administrator and allocated to Category A, B, C, D or E.

7. Assessment of Damages

- 7.1 A Participating Group Member's Assessed Compensation Amount will be calculated by reference to the category of claim to which they have been allocated, as follows:
- (a) Category A: \$500.
 - (b) Category B: \$1,000.
 - (c) Category C: \$2,000.
 - (d) Category D: \$4,000.
 - (e) Category E: \$6,000.
- 7.2 In accordance with clause 9.2 of the Scheme a Participating Group Member's Assessed Compensation Amount may be adjusted up or down to reflect the final sum available for distribution to Participating Group Members inclusive of interest but less the final costs of administering the Scheme.
- 7.3 For avoidance of doubt, a Participating Group Member cannot be assessed for compensation in more than one category of claim.

8. Compensation for Estates of Participating Group Members

- 8.1 Estates of Participating Group Members are entitled to recover a lump sum amount of \$500.

ANNEXURE 2 – EXACTECH DEVICES

Affected Devices

Row	Summary for ARTG Entry	Class	Registration No.	Registration date	Deregistration date	Conditions
1	Assumed, Novation THA Insert	Assumed III	TBA	Prior to 2003	TBA	TBA
2	Assumed, Friendly Hip / Cup Insert	Assumed III	TBA	Prior to 2003	TBA	TBA
3	Assumed, Optetrak TKA Insert	Assumed III	TBA	Prior to 2003	TBA	TBA
4	Assumed, Prosthesis, internal, joint, hip acetabular Insert	IIb	287411	11 February 2010	TBA	TBA
5	Assumed, a device from the AcuMatch Hip System which used an Insert manufactured with MXPLE	Assumed III	TBA	1 July 2015, approximately	TBA	TBA
6	Equinox Humeral Liner – Reverse Shoulder Prosthesis Cup	III	264172	24 November 2015	TBA	Part 4 – 5, Div. 2 of the TGA Part 5, Div. 5.2 of the Medical Devices Regulation (or MDR)
7	Equinox Glenoid, Pegged – Prosthesis, Internal, Joint, Shoulder, Glenoid Component	III	264381	25 November 2014	24 December 2024	Part 4 – 5, Div. 2 of the TGA Part 5, Div. 5.2 of the MDR
8	Equinox Glenoid, Cage Pegged – Prosthesis, Internal, Joint, Shoulder, Glenoid Component	III	270232	16 February 2016	24 December 2024	Part 4 – 5, Div. 2 of the TGA Part 5, Div. 5.2 of the MDR
9	Optetrak RBK PS, Hi-Flex Tibial Insert	Assumed III	277745	12 July 2016	28 June 2018	Assumed:

	– Mobile Bearing Knee					Part 4 – 5, Div. 2 of the TGA Part 5, Div. 5.2 of the MDR
10	Optetrak Tibial Insert, CC w/Retaining Screw – Prosthesis, Knee, Internal, Insert Component	III	277743	12 July 2016		Part 4 – 5, Div. 2 of the TGA Part 5, Div. 5.2 of the MDR
11	Optetrak Tibial Insert, CR Slop – Prosthesis, Knee, Internal, Insert Component	Assumed III	278343	28 July 2016	28 June 2019	Assumed: Part 4 – 5, Div. 2 of the TGA Part 5, Div. 5.2 of the MDR
12	Equinox Glenoid, Posterior Augment, 8 Degree, Pegged, Cemented – Prosthesis, Internal, Joint, Shoulder, Glenoid Compartment	III	278648	3 August 2016	24 December 2024	Part 4 – 5, Div. 2 of the TGA Part 5, Div. 5.2 of the MDR
13	Optetrak Patellar Component, 3-Peg, Cemented – Polyethylene Patella Prosthesis	III	279041	11 August 2016		Part 4 – 5, Div. 2 of the TGA Part 5, Div. 5.2 of the MDR
14	Optetrak Logic Tibial Insert, CRC – Prosthesis, Knee, Internal, Insert Component	III	284907	23 January 2017		Part 4 – 5, Div. 2 of the TGA Part 5, Div. 5.2 of the MDR
15	Optetrak Tibial Insert, PS – Prosthesis, Knee, Internal, Insert Component	III	285677	14 February 2017	28 June 2019	Assumed: Part 4 – 5, Div. 2 of the TGA

						Part 5, Div. 5.2 of the MDR
16	Optetrak Tibial Insert, Hi Flex, PS – Prosthesis, Knee, Internal, Insert Component	Assumed III	286119	24 February 2017	28 June 2019	Assumed: Part 4 – 5, Div. 2 of the TGA Part 5, Div. 5.2 of the MDR
17	Optetrak Logic Tibial Insert, CR – Prosthesis, Knee, Internal, Insert Component	III	285442	09 February 2017		Part 4 – 5, Div. 2 of the TGA Part 5, Div. 5.2 of the MDR
18	Optetrak Logic, Tibial Insert, PS – Prosthesis, Knee, Internal, Insert Component	III	285502	10 February 2017		Part 4 – 5, Div. 2 of the TGA Part 5, Div. 5.2 of the MDR
19	Optetrak Logic Tibial Insert PSC – Prosthesis, Knee, Internal, Insert Component	III	285503	10 February 2017		Part 4 – 5, Div. 2 of the TGA Part 5, Div. 5.2 of the MDR
20	Optetrak Logic TBK Tibial Insert, Posterior Stabilized – Prosthesis, Knee, Internal, Insert Component	III	285911	20 February 2017		Part 4 – 5, Div. 2 of the TGA Part 5, Div. 5.2 of the MDR
21	Assumed, a device from the Novation Hip System which used an Insert manufactured with MXPLE (such as the acetabular cup)	Assumed III	TBA	1 September 2017, approximately	TBA	TBA
22	Equinox Glenoid, Cage Pegged, Posterior Augment – Prosthesis, Internal Joint,	III	293762	12 September 2017	24 December 2024	Part 4 – 5, Div. 2 of the TGA

	Shoulder, Glenoid Component					Part 5, Div. 5.2 of the MDR
23	Prosthesis, internal, joint, shoulder, total		159609			
24	Equinox Reverse Shoulder Constrained Humeral Liner - Reverse shoulder prosthesis cup		279721			
25						