FEDERAL COURT OF AUSTRALIA

Boi v Aldi Foods Pty Ltd [2026] FCA 1576

File number(s):	VID 898 of 2023
Judgment of:	**MCELWAINE J**
Date of judgment:	23 October 2026
Catchwords:	**REPRESENTATIVE PROCEEDINGS** – application for approval of a settlement pursuant to s 33V(1) of the *Federal Court of Australia Act 1976* (Cth) – claims by current and former employees for unpaid work in contravention of s 50 of the *Fair Work Act 2009* (Cth) – parallel penalty proceeding by union raising common issue – settlement of both proceedings considered as single proposal – union's costs of funding met by settlement of penalty proceeding – respondent appointed scheme administrator – whether settlement fair and reasonable in the interests of group members – no deduction for funder commission or legal costs – settlement approved
Legislation:	*Fair Work Act 2009* (Cth) ss 50, 546(3)(b) *Federal Court of Australia Act 1976* (Cth) ss 37AF, 37AG(1)(a), 33V, 33ZF
Cases cited:	*Dyczynski v Gibson* [2020] FCAFC 120; (2020) 280 FCR 583 *Shop, Distributive and Allied Employees' Association v ALDI Foods Pty Ltd* [2022] FedCFamC2G 799; (2022) 318 IR 206 *Webb v GetSwift Ltd (No 7)* [2023] FCA 90; (2023) 414 ALR 500
Division:	General Division
Registry:	Victoria
National Practice Area:	Employment and Industrial Relations
Number of paragraphs:	89
Date of hearing:	9 October 2026
Counsel for the Applicants:	Mr B Slade
Solicitor for the Applicants:	A J Macken & Co

Counsel for the Respondent:	Mr GJ Hatcher SC and Ms A Perigo
Solicitor for the Respondent:	Enterprise Employment Law

ORDERS

VID 898 of 2023

BETWEEN:	**KELLY ROSLYN BOI** First Applicant
	SOUAD TANNOUS LICHAA Second Applicant
	HARINDER PAL Third Applicant
AND:	**ALDI FOODS PTY LTD** Respondent

ORDER MADE BY:	**MCELWAINE J**
DATE OF ORDER:	**23 OCTOBER 2026**

THE COURT NOTES THAT:

The parties will execute a variation to the Amended Deed such that clauses 2(b) and 2(c), which require ALDI Foods to make payments by 31 December 2026, be amended to require that such payments be made before 31 March 2027 or before the date the proceeding is dismissed, whichever is the later.

THE COURT ORDERS THAT:

Settlement approval

1. Subject to paragraph 2 below, pursuant to s 33V of the *Federal Court of Australia Act 1976* (Cth) (**Act**), the settlement of proceeding VID 898 of 2023 (the **Settlement**) be approved on the terms set out in:

   (a) the Settlement Deed made on 5 May 2026 (**Deed**), being exhibit DJM-10 to the affidavit of Dominic James Macken sworn on 23 June 2026, with parts redacted by orders made on 16 July 2026;

   (b) the Amended Settlement Deed (**Amended Deed**), being pages 15 – 47 of exhibit DJM-12 to the affidavit of Dominic James Macken sworn on 26 August 2026; and

(c) the Settlement **Distribution Scheme**, being pages 7 – 29 of Annexure MM3 to the affidavit of Margaret McNaughton dated 9 October 2026.

2. Notwithstanding clauses 2(b) and 2(c) of the Deed and the Amended Deed that require the Respondent, ALDI Foods Pty Ltd, to make payments by 31 December 2026, the Settlement is approved on the condition that such payments are made before 31 March 2027 or before the date the proceeding is dismissed, whichever is the later.

3. For the avoidance of doubt, pursuant to s 33ZF of the Act, the Applicants are authorised *nunc pro tunc* on behalf of the Group Members to:

   (a) enter into and give effect to the Amended Deed; and

   (b) conduct the transactions and take the steps contemplated by the Amended Deed and the Distribution Scheme.

4. Pursuant to s 33ZB of the Act, the persons affected and bound by the Settlement are the Applicants, ALDI Foods Pty Ltd, the Group Members and the Shop, Distributive and Allied Employees' Association (**SDA**).

Appointment of Administrator

5. Pursuant to s 33ZF of the Act, ALDI Foods Pty Ltd is appointed as the Scheme Administrator within the meaning of the Distribution Scheme:

   (a) with the powers and immunities described in the Distribution Scheme; and

   (b) subject to the obligations and requirements described in the Distribution Scheme, including:

      (i) to pay the Known Group Members their settlement money; and

      (ii) to cooperate with the SDA in accordance with section 12 of the Distribution Scheme titled SDA Audit.

Prior costs orders

6. All previous costs orders made in this proceeding be vacated.

Further adjournment

7. The hearing of the application that the proceeding be dismissed with no order as to costs be adjourned to a date to be fixed.

Other

8. Without limiting the Scheme Administrator's liberty under Order 5, the Applicants, the SDA and the Scheme Administrator have liberty to apply on five clear business days' notice to each other.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

MCELWAINE J:

1 Two proceedings were commenced on 27 October 2023. Each names **ALDI** Foods Pty Ltd as respondent. Proceeding VID 898 of 2023 is a representative proceeding under Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) in which the applicants are Kelly Boi, Souad Tannous Lichaa and Harinder Pal. It is brought on behalf of current and former ALDI employees who were employed under various Enterprise Bargaining Agreements (**EBA**) for entitlements not paid or provided. I refer to this as the **representative proceeding**.

2 Proceeding VID 899 of 2023 is brought by the Shop, Distributive and Allied Employees' Association (**SDA**) on behalf of the industrial interests of ALDI employees covered by the EBAs. The SDA seeks declaratory relief and the imposition of pecuniary penalties. I refer to this as the **penalty proceeding**.

3 The common issue in each proceeding is whether store employees and warehouse employees were not paid their entitlements in contravention of s 50 of the *Fair Work Act 2009* (Cth) (**FW Act**).

4 Following an initial interlocutory skirmish in early 2024, I ordered that the parties in each proceeding attend mediation. Acting in good faith the parties have engaged in extensive negotiations spanning a period of approximately 14 months. They have reached a proposed settlement comprising the **Settlement Deed** and the **Distribution Scheme**. Settlement of the representative proceeding requires approval pursuant to s 33V of the FCA Act. Settlement of the penalty proceeding does not require approval, but as I explain they are related and appropriately considered as a single proposal. For convenience in these reasons, I simply refer to the proposal as the **settlement**.

5 For the reasons that follow, I am satisfied that the settlement of the representative proceeding should be approved and the orders proposed made.

6 The settlement affects 32,308 former and current ALDI employees. They are the audience to which these reasons are directed and for that reason, I have stripped away technical jargon and complexity as much as is reasonably practicable. For those interested in the detail of the proposed settlement, these reasons annex the Amended Settlement Deed (Annexure A) and Settlement Distribution Scheme (Annexure B), which give effect to the settlement.

7 The settlement concerns persons who:

(1) were employed by ALDI as:

(a) store employees (or store managers and assistants) at any time between 20 March 2017 to 26 March 2023;

(b) former warehouse employees at any time between 20 March 2017 and 30 October 2022; or

(c) current warehouse employees between 20 March 2017 and 12 August 2018;

(2) were covered by one or more EBAs; and

(3) were not paid wages or interest, or were not provided with benefits, to which they were entitled under the EBAs.

8 These persons are the **Group Members**. The settlement resolves all claims of the Group Members, unless a person opted out of the representative proceeding by 12 August 2026.

BACKGROUND

9 The representative proceeding is brought by one current and two former ALDI employees on behalf of the Group Members.

10 For store employees the case is that ALDI contravened the EBAs because the employees:

(1) performed work before their rostered shift start time for which they were not paid, including consequential benefits triggered by the additional time worked; and

(2) performed work after their rostered shift end time for which they were not paid, including consequential benefits triggered by the additional time worked.

11 For warehouse employees, the claim is that ALDI contravened the EBAs by requiring some employees to perform a range of pre-commencement tasks before their rostered shift start time for which they were not paid, including consequential benefits triggered by the additional time worked.

12 Where each of the store employees and the warehouse employees are together referenced, they are the **employees**.

13 The representative proceeding claims compensation for the Group Members. The penalty proceeding overlaps with the representative proceeding where the SDA seeks declarations and orders that:

(1) the employees were, during the claim periods, entitled to be paid for work completed before, and in the case of store employees, after rostered shifts;

(2) the store employees were, during the claim period, entitled to time off in lieu for the number of minutes worked before and after their rostered shift times; and

(3) ALDI be ordered to pay any penalty to the SDA.

14 Each proceeding follows a decision of the Federal Circuit and Family Court of Australia (Division 2) in *Shop, Distributive and Allied Employees' Association v ALDI Foods Pty Ltd* [2022] FedCFamC2G 799; (2022) 318 IR 206 (**Judge Humphreys' decision**), which found that the tasks performed by four ALDI warehouse employees in the Preston Distribution Centre prior to the commencement of their shift constituted work. As such, the warehouse employees were entitled to be paid for the time spent performing these pre-commencement tasks. ALDI's position prior to Judge Humphreys' decision was that it understood that the performance of tasks before the commencement of a shift constituted "getting ready for work" and as such no payment obligation was engaged under the EBAs.

15 After that decision, ALDI examined its practices and commenced a voluntary payment program for the class of employees within the scope of the findings in that case. ALDI first made voluntary payments to current warehouse employees and later to current store employees backdated to March 2017. Some former employees also received payments upon application to ALDI. The total amount voluntarily paid was approximately $28.9 million.

16 The SDA determined that the voluntary payment program failed to fully compensate current employees and did not compensate former employees at all. Its investigation revealed several potential underpayment classes and the failure to pay consequential benefits for a very large number of former and current employees. That is, of the 32,308 Group Members, 16,378 have not received any voluntary payments.

17 The SDA entered into a funding agreement with each applicant in the representative proceeding pursuant to which the SDA agreed to pay the costs incurred in the proceeding, primarily those of the applicants' solicitor A J Macken & Co, counsel as briefed, and disbursements.

MATERIAL RELIED ON

18 There was no challenge to the material relied on by the employees and the SDA. That material included the affidavits of Michael Moses made on 15 January 2024; Brendan Quek made on 30 January 2024; Dominic Macken made on 23 June 2026, 10 July 2026 and 26 August 2026;

Margaret McNaughton made on 15 July 2026, 6 October 2026 and 9 October 2026; Ali Amin made on 26 August 2026; and Brendan Palmer made on 31 August 2026.

19 On 9 October 2026, I ordered pursuant to ss 37AF, 37AG(1)(a) and 33ZF of the FCA Act in order to prevent prejudice to the proper administration of justice, that the document titled "Confidential Opinion" attached to the affidavit of Dominic Macken made on 26 August 2026 remain confidential and its publication be prohibited for a period of 10 years or until further order. That order was made because the Confidential Opinion contains a frank assessment of the prospects of success in the representative proceeding and why in the authors' opinion the settlement is fair and reasonable. The Confidential Opinion is authored by barrister Ben Slade and solicitor Dominic Macken. Each advised the applicants in the representative proceeding and the SDA in the penalty proceeding.

THE SETTLEMENT

Settlement Deed

20 The Settlement Deed was executed on 5 May 2026. It was replaced by the Amended Settlement Deed dated 28 July 2026. The amendments are not material and do not prejudice the Group Members. It is convenient to simply refer to the amended version as the Settlement Deed.

21 The Settlement Deed is a complex document, written in dense legal language, which is usual. Expressed simply, it resolves the representative proceeding and the penalty proceeding, but only if the Court approves of the settlement of the representative proceeding.

22 In exchange for a release from liability in each proceeding, ALDI agrees to make compensation payments to Group Members and to pay to the SDA a **Costs Contribution** of $1.5 million for the costs of each proceeding. There is no litigation funder, no commission and no deduction from the amounts to be paid to the Group Members.

23 The total amount to be paid to the Group Members cannot presently be calculated. That is because ALDI must administer the Distribution Scheme whereby it must calculate the entitlements of employees under an agreed mechanism. Employees who are entitled to a payment will also receive interest. However, the SDA estimates that the total liability, inclusive of payments already made by ALDI and interest, will be approximately $55.2 million. Thus, the settlement adds a liability of approximately $16.3 million plus interest.

Voluntary payment program

24 The calculation methodology distinguishes between warehouse employees and store employees. The reason for that distinction is that after Judge Humphreys' decision, ALDI voluntarily reviewed its records and made payments to current warehouse employees. ALDI calculated the amounts for time identified in performing tasks prior to the start of a rostered shift. Importantly, payments were only made where ALDI identified an employee as having performed such pre-commencement tasks between August 2018 and October 2022. Where a payment was made, corresponding superannuation contributions were also paid.

25 As noted above, former warehouse employees who did not make a specific application to ALDI missed out under this voluntary payment program.

26 ALDI also made voluntary payments to store employees, based on a rounding rule applied to the Kronos time-keeping system. Store employees could punch in up to 10 minutes before or punch out up to 10 minutes after a rostered shift time. Their recorded start or finish time would then be automatically adjusted by Kronos to align with their rostered shift times. Thus, store employees were not paid for the actual punch in or punch out time spent at work. The rounding was not applied where the punch in or punch out time exceeded 10 minutes. Rather than undertaking an inquiry as to whether any work was performed in that 10-minute period, ALDI decided to avoid any risk of under compensation by assuming that employees had worked for that time. ALDI voluntarily paid all store employees based on actual punch times where those times fell within the 10-minute window before their rostered start or after their rostered finish times.

27 ALDI also applied an offset against payments calculated in paragraph [26] to account for time where store employees punched into a shift late or punched out of a shift early.

28 Corresponding superannuation contributions were also paid in respect of those amounts.

29 Store managers and assistant store managers were dealt with differently because they were permitted to accrue time off in lieu for hours worked beyond their rostered shift hours. If still employed when ALDI made the voluntary payments, their time in lieu balances were adjusted.

30 The SDA formed the view that the voluntary payment program did not reasonably compensate all affected employees, particularly former employees. Thus, it caused the representative proceeding and the penalty proceeding to be commenced.

31 That summary explains the complexity of the calculation mechanism for further payments provided for in the Settlement Deed and replicated in the Distribution Scheme, which divides employees into two classes: current and former employees.

Current employees

32 Current warehouse employees will receive a reassessment which extends the relevant period from 20 March 2017 to 12 August 2018 and applies the same methodology that was used in the voluntary payment program. These employees will also receive interest on any amounts previously paid for the period 20 March 2017 to 30 October 2022, along with any associated superannuation.

33 Current store employees who were employed between 20 March 2017 and 26 March 2023 will receive interest on amounts already paid under the voluntary payment program.

34 For current employees in both cases, the interest payable will be reduced by any amount already paid to an employee for the period 20 March 2017 to 27 October 2017.

Former employees

35 Former warehouse employees who were employed between 20 March 2017 and 30 October 2022 will receive payment for any pre-commencement work, calculated using the same methodology as applies to current employees (at [32] above), less any amount that has already been paid under the voluntary payment program. These employees will also receive interest on any amount due.

36 Former store employees who were employed between 20 March 2017 and 26 March 2023 will receive a payment calculated by reference to their recorded punch times. The calculation takes into account the time recorded before rostered start times or after rostered finish times, offset by any time recorded as commencing late or finishing early, and reduced by any amount already paid to the employee for that accumulated time. Interest and superannuation will also be paid where applicable.

37 Former store managers and assistant store managers employed between 20 March 2017 and 26 March 2023 who have not already received any adjustment to accrued time off in lieu, or any payment in lieu of such adjustment, will receive a payment based on the same punch time methodology (at [36] above). Interest and superannuation will also be paid where applicable.

38 Interest will be calculated at a penalty rate, adjusted by amounts already paid pursuant to the voluntary payment program and capped to March 2025. The cap reflects a concession agreed to by the SDA in negotiating the settlement.

39 Any current or former warehouse employees who are not identified as having performed any pre-commencement tasks will not receive any further payment.

40 Store managers or assistant store managers who have already received an adjustment to their accrued time off in lieu, or payment in lieu of adjustment, will not receive any further payment or benefit.

Distribution Scheme

41 The Settlement Deed requires ALDI to pay the Costs Contribution to the SDA within 14 days of approval by the Court. This is the agreed amount of the legal costs of the SDA in bringing each proceeding.

42 The Distribution Scheme provides for the distribution of settlement money to **Known Group Members**, being those Group Members whose details ALDI holds, either personally or by payment into their superannuation accounts. It includes a claims assessment methodology for calculating individual entitlements, an audit mechanism by which the SDA can oversee the administration of the Scheme, and provision for the involvement of PricewaterhouseCoopers (**PwC**) in assisting with that administration. The calculation mechanism reflects the entitlements of Group Members outlined at [32] – [40] above.

43 ALDI is nominated as the appointed Scheme Administrator. The logic of appointing ALDI, rather than an independent person, is that it has already undertaken very significant work in making calculations pursuant to the voluntary payment program and is possessed of the relevant business records. Additionally, as part of the settlement negotiations the SDA independently verified ALDI's methodology and was satisfied that it was both fair and productive of reasonable outcomes for employees.

44 Subject to any orders of the Court, the Distribution Scheme is to provide for the identification of Group Members to whom compensation is payable based on the approved claims assessment methodology and to facilitate payment of that compensation to Group Members who do not opt out of the proceeding.

45 ALDI must establish a registration portal through which former employees may provide their personal details on or before the registration date. Current employees will be treated as Group Members without needing to use the registration portal. ALDI will instruct PwC to collate the Group Member Information, including contact, banking and superannuation details, for former employees who register through the portal. ALDI is not, however, responsible for verifying the accuracy of the details provided to it. Once that process is complete, the Known Group Members to whom the settlement money is to be distributed are taken to have been identified.

46 As noted above, there will not be any deductions from the settlement money to be distributed to Group Members. This settlement is atypical in that there is no funder commission or deduction of legal costs from the settlement sum. The mechanism which achieves that is the full and final settlement of the penalty proceeding, whereby ALDI will pay $1.5 million to the SDA. That amount is sufficient to cover the costs of funding each proceeding. From that sum, the SDA is required to make reimbursement payments of $10,000 to the representative proceeding applicants in recognition of their personal contributions.

47 The intended effect is to compensate Group Members for their claimed entitlements under the applicable EBAs. The Group Members are not prejudiced by the decision of the SDA not to prosecute the penalty proceeding to trial because, if successful, the SDA would have sought the usual order pursuant to s 546(3)(b) of the FW Act, directing that any penalty be paid to it.

RELEVANT PRINCIPLES

48 The principles in relation to settlement approval under s 33V of the FCA Act are well established.

49 The role and obligation of the Court is to protect and supervise the interests of the Group Members: *Dyczynski v Gibson* [2020] FCAFC 120; (2020) 280 FCR 583, Lee J at [402].

50 The basal principle is that the Court must be satisfied that the settlement is fair and reasonable and in the interests of the Group Members as a whole. Justice Murphy, a very experienced and learned judge in Part IVA proceedings, summarised the task in *Webb v GetSwift Ltd (No 7)* [2023] FCA 90; (2023) 414 ALR 500 at [16] – [17]: stating:

> In undertaking that task, the Court:
>
> (a) assumes an onerous and protective role in relation to Group Members' interests, in some ways similar to Court approval of settlements on behalf of persons with a legal disability;

(b) must be astute to recognise that the interests of the parties before it, and those of the group as a whole (or as between some members of the group and other members), may not wholly coincide;

(c) relatedly to the second point, should be alive to the possibility that a settlement may reflect conflicts of interest or conflicts of duty and interest between participants in the common enterprise which has conducted the representative proceeding;

(d) should understand that at the point of settlement approval, the interests of the parties will ordinarily have merged in the settlement. It is likely that they both will have become "friends of the deal". As a result, both sides may not critique the settlement from the perspectives of any Group Members who may suffer a detriment or obtain lesser benefits through the settlement; and

(e) must decide whether the proposed settlement is within the range of reasonable outcomes, rather than whether it is the best outcome which might have been won by better bargaining.

The *Class Actions Practice Note* (GPN-CA) at [15.5], sets outs [sic] the factors that are ordinarily required to be addressed in the material filed in support of an application for settlement approval. These factors, drawn from the remarks of Goldberg J in *Williams v FAI Home Security Pty Ltd (No 4)* (2000) 180 ALR 459 at [19], are to be approached as a guide, insofar as they are relevant to the circumstances of the case and not as a mandatory requirement: Caason at [13]; *Davison v Commissioner of Police, NSW Police Force* [2021] FCA 1324 at [47].

51 As noted by Murphy J, the Class Actions Practice Note (GPN-CA) at [15.5] provides a list of non-mandatory and non-exhaustive factors which are ordinarily required to be addressed in the material relied on in support of a settlement approval. These factors are:

(a) the complexity and likely duration of the litigation;

(b) the reaction of the class to the settlement;

(c) the stage of the proceedings;

(d) the risks of establishing liability;

(e) the risks of establishing loss or damage;

(f) the risks of maintaining a representative proceeding;

(g) the ability of the respondent to withstand a greater judgment;

(h) the range of reasonableness of the settlement in light of the best recovery;

(i) the range of reasonableness of the settlement in light of all the attendant risks of litigation; and

(j) the terms of any advice received from counsel and/or from any independent expert in relation to the issues which arise in the proceeding.

CONSIDERATION

52 I am greatly assisted by the comprehensive evidence and experienced assessments in the affidavits of Dominic Macken, who is a very experienced employment and industrial relations

lawyer and the principal of the applicants' solicitors in the proceeding. He has more than 33 years' experience. The open parts of his affidavit made on 26 August 2026 comprehensively address the following matters.

53 First, compliance with the orders of 16 July 2026, as amended on 21 August 2026. Those orders fixed the date by which a Group Member could opt out, approved the form and content of the notice to Group Members and the method of its service, and provided the objection and opt out procedures. I am satisfied those orders have been complied with.

54 Second, the need to amend the Settlement Deed when it was discovered that there was a factual inaccuracy in the recording of a date for the calculation of interest to some of the employees. The amendment is minor, inconsequential and does not prejudice any of the Group Members.

55 Third, based on his expertise, he expressed his opinion as to the appropriateness of appointing ALDI as the Scheme Administrator. His evidence is:

> The [Distribution Scheme] contemplates that [ALDI] will be appointed Scheme Administrator. That appointment is supported by the Applicants and the SDA and there are practical reasons why it is submitted that the Court should endorse this proposal.
>
> The class action claims alleged unpaid entitlements under the provisions of enterprise agreements covering [ALDI] and the Group Members. The Group Members and each of them are either current or former employees of [ALDI]. [ALDI] has access to the records necessary to identify every Group Member, whether "Current Employees} or "Former Employees" (as defined in the [Distribution Scheme]).
>
> [ALDI] is able to precisely calculate the amount of "Settlement Money" (as defined in the [Distribution Scheme]) that should be paid to each Group Member under the terms of the proposed settlement.
>
> [ALDI] also has access to the "Group Member Information" (as defined in the [Distribution Scheme]) of all Current Employees and many Former Employees sufficient to make payments of any assessed amount of Settlement Money to those Group Members. This includes details of the "Superannuation Account" previously nominated by the Group Member for the receipt of the superannuation component of the Settlement Money.
>
> The [Distribution Scheme] does not require Current Employees to formally register via the registration portal as a pre-condition to being paid. That class of Group Member is expressly acknowledged by the terms of the [Distribution Scheme] to be "Known Group Members" for whom any payment of settlement money will be paid as part of the ordinary payroll processes regulating the relevant Group Member's current and continuing employment with [ALDI].
>
> [ALDI] is accordingly not only in a unique position to identify all Group Members but also has the advantage of access to the Group Member Information that it obtained from those Group Members during their employment by [ALDI].
>
> Some Group Member Information may no longer be current in the case of Group Members who are Former Employees. The [Distribution Scheme] addresses this issue

by making it a condition precedent to payment of Settlement Money to a Former Employee that they take proactive steps to register on the registration portal in order to be paid.

I was informed in earlier open email correspondence from Ms McNaughton and believe that [ALDI] has already precisely calculated that there are 32,308 Group Members. Ms McNaughton has further advised that, as at April 2025, 15,930 current and former employees have previously received some payment from [ALDI] as part of the voluntary payment process undertaken by [ALDI]. Ms McNaughton also informed me that 16,378 former employees had not, to that point in time, received any payment.

As the settlement of a claim is framed around the payment of individual amounts calculated in accordance with the terms of an agreed Claims Assessment Methodology (as per the Schedule to the [Distribution Scheme]), there is no particular discretion reserved to [ALDI], if appointed Scheme Administrator, to pay Group Members other than in accordance with the agreed Claims Assessment Methodology.

There is agreement between the parties as to how additional time is to be calculated and paid in the case of store employee Group Members (applying [ALDI's] Kronos clock on/clock off data) and warehouse employees (applying the same methodology for the assessment of the time value of pre-commencement tasks applied by [ALDI] to warehouse employees in its voluntary payment process).

I am informed by Mr Ali Amin, Industrial Officer of the SDA, and believe that the SDA has been able to satisfactorily reverse engineer the voluntary payment methodology adopted by [ALDI] to confirm that the application of that identified time to the requirements of the underpinning enterprise agreements will result in the payment to Known Group Members of the Settlement Money as assessed as being due to them under those agreements (ie, the loadings, allowances, penalty rates, paid breaks and superannuation).

All of these aspects of the settlement are or can be precisely known and calculated from the employee records kept and maintained by [ALDI] or, in the case of warehouse workers, from [ALDI's] assessment of the likely time it would take warehouse workers to perform their pre-commencement tasks in each of the [ALDI's] distribution centres.

In my opinion, were any other Scheme Administrator to be appointed, it could only discharge its duties by reference to the data and records already held by [ALDI] or by replicating the same inquiries already made by [ALDI] in relation to the likely time it would take warehouse workers to perform any pre-commencement tasks. To the extent that [ALDI] has already undertaken a voluntary payment process which has largely applied the proposed settlement methodology, any alternative scheme administrator would necessarily be required to duplicate a large measure of the work already undertaken by [ALDI] at a cost which would likely involve some (potentially significant) financial impact to the Settlement Money otherwise available to be distributed to the Group Members.

I also note that inherent in the proposed settlement is that the cost of the administration of the [Distribution Scheme] and the calculation and the making of payments to the Known Group Members is to be borne by [ALDI]. If the Court was to appoint an alternative scheme administrator, I expect that [ALDI] might seek to revisit the terms of settlement in relation to that aspect.

56 I accept that evidence.

57 Fourth, he addressed the audit role that the SDA may exercise under the Distribution Scheme:

> [ALDI] will have the assistance of PWC and/or KPMG to compile the Known Group Member Information. Essentially, PWC and/or KPMG will act as an independent verifier of the Group Member Information of Current Employees but also Former Employees as registration rolls out under the registration portal.
>
> PWC and/or KPMG will also review, under the terms of the [Distribution Scheme], the calculation by [ALDI] of any calculation of interest payable in accordance with the terms of the Settlement Deed to both current and former employees.
>
> The [Distribution Scheme] requires [ALDI], as Scheme Administrator, to provide a preliminary notice to Known Group Members of their calculated entitlements and advise those Group Members of their right to request a view of the identified entitlement. PWC will undertake that review for store employees and KPMG will do the review for warehouse employees. The [Distribution Scheme] provides that any review cannot result in the Known Group Member receiving a lesser payment than the amount originally notified to them by [ALDI] as the Known Group Member's assessed Settlement Money.
>
> The SDA will separately have its own independent right under the [Distribution Scheme] to audit [ALDI's] compliance with its obligations.

58 I accept the basis for and justification of that approach.

59 Fifth, as he correctly records, before an application is made to the Court to dismiss the proceeding, ALDI is required to provide a report which identifies the total of all settlement money paid to Known Group Members and the amount paid to each of those Group Members. ALDI is also obliged to disclose the number of unidentified Group Members, most likely former employees who have not registered an interest, and the total value of the settlement money which would have been payable to that group. This will enable the Court to consider for itself how much of the settlement money will effectively be retained by ALDI. The SDA will work with ALDI to implement a timetable designed to ensure that all Known Group Members will be notified of their calculated settlement money by 15 April 2027 with payments to commence upon expiration of the review date, 20 May 2027, but possibly earlier.

60 Sixth, he addressed the compromises made by ALDI in negotiating the settlement:

> [ALDI] is proposing to settle on a without admissions basis. It does not agree, has never agreed, and is not required to agree as part of the terms of settlement, that it has breached the applicable enterprise agreements in the terms contended for in the statement of claim, or at all. While the proposed settlement, if approved, would avoid the need for the filing of any formal Defences to the class action or the penalty claim, it is clear by the terms of [ALDI's] adjourned interlocutory applications to dismiss, alternatively strike out, the Applicants' pleadings in both proceedings, that [ALDI] denies that any Group Members have engaged in unpaid work for which they are entitled to be paid under the enterprise agreements, or, if they have, that [ALDI] authorised or directed the performance of such work so as to be liable to pay the Group Members for that unpaid time, and the consequential entitlements under the enterprise agreement that would flow from any entitlement to be paid for that additional time.

> [ALDI] has agreed to pay an amount for the loss of use of any Settlement Money in the nature of interest and has agreed to a methodology, that appears as an attachment to the Deed, which is likely to result in a return higher than mere cash rates returns over the relevant period, even allowing for the concession that interest payments will be capped to March 2025. Group Members would of course be entitled to make an application for interest assuming a favourable outcome at trial but the present-day value for Group Members of a negotiated payment of Settlement Money and interest now as opposed to being kept out of their entitlements for some indefinite future period, which assumes contested litigation, is a relevant consideration that weighs in the approval of the settlement.

61 Seventh, he explains the compromises made by the applicants in negotiating the settlement:

> The Applicants have agreed to quantify any claim for pre and post-shift attendances by reference to information recorded in [ALDI's] Kronos clock on/clock off system and, in the case of warehouse workers, in reliance upon [ALDI's] assessment by survey of the likely time necessary to complete any pre-commencement tasks (which was the agreed methodology that underpinned the calculation of the warehouse employees' unpaid entitlements in the litigation transacted before Judge Humphreys in the Federal Circuit and Family Court of Australia). Consideration (in the absence of discovery) as to the means by which it may be otherwise open to the Applicants to prove, beyond mere sworn assertion, in the context of contested litigation, any pre and post shift attendances of store employee Group Members not accurately recorded by the Kronos system or, in the case of warehouse employees, not appropriately compensated by [ALDI's] proposal to estimate a completion time for pre-commencement tasks, also support the compromise position set out in the Settlement Deed.
>
> The Applicants have agreed to an offset in each fortnightly pay period of pre and post shift time against any occasion in that same fortnightly period on which a Group Member commenced his or her shift late or finished early. The Applicants have also agreed to any calculated entitlement to interest on Settlement Money being offset against voluntary payments made or to be made by [ALDI] to Group Members in respect of employment periods pre-dating the claim period (ie prior to 27 October 2017). The Applicants have waived a claim for loss of amenity of the opportunity denied to Group Members to take unpaid breaks triggered by the additional time identified as payable by the settlement methodology.
>
> Beyond the above concessions, it is important to note that the methodology agreed between the parties for the calculation of the Settlement Money payable to any Group Member otherwise reflects what the applicable enterprise agreements would require to be paid applying the additional payment of time identified to be payable by the settlement methodology. That is to say, in addition to the unpaid time, the Group Member is receiving all the allowances, loadings, penalty rates, and superannuation which would be his or her entitlement under the enterprise agreement assuming that the settlement methodology accurately reflects the additional time which the statement of claim contends was worked by the Group Member.

62 Eighth, he explains the likely consequences if the settlement is not approved:

> If the class action was to proceed to the initial trial of common issues, my understanding is that it would be fully contested on almost every issue which would cause the trial to be protracted, probably running for several weeks on the common issues and with consequential hearings on quantum. Even on the assumption that the Applicants are successful on every issue, there would be no reasonable likelihood that Group Members would see any payments for some years, and certainly not by the

> expiration of the timetable for payment contemplated by the [Distribution Scheme] if settlement be approved.
>
> Further, the Proceedings (each of them) are being maintained in a costs-free jurisdiction. Absent the limited circumstances for which s570 of the FW Act provides, there is no likelihood that a successful outcome will entitle the Applicants to an order for costs against [ALDI] providing some separate, additional measure of indemnity against the significant costs likely to be expended in carrying the matter forward to trial and judgment (and potentially the exhaustion of any appellate rights).
>
> In the month leading up to the commencement of the class action and the SDA penalty claim, the SDA entered into a funding agreement with the class action Applicants. The Funding Agreement was disclosed to the Court by means of a Notice of Disclosure filed on 22 November 2023. I am instructed that the Applicants waive any confidentiality in the Notice of Disclosure and the Funding Agreement (which is framed in identical terms in the case of all Applicants). Now produced and shown to me marked "DJM-14" is a copy of that Notice of Disclosure and Funding Agreement.
>
> The Funding Agreement provides, at [7.1] that the Applicant agrees to the SDA applying to the Court for a common fund order if the circumstances are such that the SDA is otherwise unable to recover its costs of funding the class action.
>
> The proposed settlement of the penalty claim enables the SDA to recover its costs without the need to apply for a common fund order in the class action. My understanding of my instructions from the SDA is that this is the desired outcome to maximise the financial return to Group Members. If settlement is not approved, however, then, although this is not the desired outcome for the SDA, the prospect that some common fund order diminishing the potential return to Group Members might be required to permit the recovery of some proportion of the outlaid expenditure in relation to proceedings where every claim is disputed and contested, cannot be discounted. If the circumstances were to require such a common fund order, the return to Group Members would be significantly impacted.

63 Finally, he expressed his opinion in short form:

> All of these are considerations which, when weighed in the assessment of the present day value to Group Members of receiving Settlement Money now, invite the conclusion that settlement on the terms proposed is not only reasonable and commercial but also reflective of an outcome which is only likely to leave Group Members overall in a much better financial position than they would be after contested litigation, even assuming that litigation will be successful. Settlement now on the agreed terms also of course insulates the Applicants and the Group Members against the possibility that the Proceedings fail or are not wholly successful. I note that success in relation to the penalty claim is contingent upon at least some success in the class action (ie establishing some breach by [ALDI] of the applicable enterprise agreements).

64 The succinctness of his opinion masks the detailed matters addressed in the Confidential Opinion, which he co-authored with Ben Slade of counsel, who has more than 40 years' experience in class actions.

65 I turn to the exercise of the Court's discretion to approve the settlement.

66 The first issue concerns the treatment of Group Members as between themselves. I have summarised above the detail of the provisions of the Distribution Scheme. The settlement addresses claims made by all Group Members, extending to those who have received payments pursuant to the voluntary payment program (where their payments may be appropriately adjusted), as well as those who were not included in the voluntary payment program. It may not be possible to identify some former employees with certainty and therefore, those former employees will not receive a payment. It is a necessary outcome of approving a scheme that applies to such a large cohort of former and current employees. All current employees will automatically be included as Known Group Members. I am satisfied that the registration portal is an appropriate mechanism to identify former employees for whom ALDI may not have up-to-date records.

67 The second issue is whether the assessment mechanism is likely to deliver a fair outcome as between the Group Members. I am satisfied that it is. For warehouse employees, the calculation will identify any pre-commencement work performed during the period 20 March 2017 to 12 August 2018 and will adopt the same methodology employed by ALDI in making the voluntary payments for performance of equivalent tasks during the period 13 August 2018 to 30 October 2022. This requires a reasonable assessment of the estimated time required to perform pre-commencement tasks, consistent with the earlier approach of Judge Humphreys in assessing the claims of the warehouse employees.

68 The entitlements of store employees will be assessed by reference to the Kronos data, which I accept is an accurate record. In each case the methodology to calculate additional unpaid time, and where applicable additional allowances, loadings, penalties, paid breaks and superannuation under each relevant EBA is the same. As is the methodology for calculating interest.

69 Dealing next with litigation risks, they fall into two categories. One, the risk of establishing that ALDI did not make payments in accordance with EBA requirements. The other, of proving loss or damage.

70 I accept that because ALDI did not admit liability for contravening relevant provisions of the EBAs in approaching the settlement discussions it was reasonable to assume that everything would remain in issue at the trial. That is, the applicants would have been required to prove each and every contravention by establishing on the evidence that work was performed within the meaning of the FW Act, what that work was, who performed it and how the time for

performing the work was calculated, as distinct from how it should have been calculated. A further issue is that the applicants would have been required to prove that ALDI expressly or impliedly directed or authorised pre-shift and/or post-shift work to be undertaken. Even if those matters were established, ALDI would have most likely argued in defence that it was entitled to offset any underpayment by any overpayments that it in fact made to identified employees during the relevant periods. Those issues are likely to have led to a prolonged, costly, mathematically tedious and complex trial.

71 There is also the risk that if the applicants succeeded in establishing liability, it would not necessarily follow that the question of appropriate compensation would be capable of easy assessment. Self-evidently, the number of Group Members and the correspondingly large number of individual permutations would have presented complexities in making the assessment. Further, the representative proceeding made claims for non-monetary loss of amenity. The assessment of those claims would not have been straightforward.

72 These risks should be contextualised. Take as an example, Kelly Boi. She was employed as a store employee between October 2016 and late 2016 in the position of store assistant at Penrith in NSW. From late 2016 until January 2023, she was employed as a store assistant at Cranebrook in NSW. Her pleaded claim is that while an employee she clocked on prior to the rostered commencement of her shifts and clocked off after the rostered conclusion of her shifts. Her times were recorded in the Kronos system, which applied the 10-minute rounding factor so that her actual times worked before and after her rostered shift times were not calculated. She was not therefore paid for the actual time that she spent working. A necessary component of establishing that claim would be giving evidence at trial as to the requirement of ALDI that she perform the work, and the nature and frequency of the work performed.

73 The requirement component of her claim was alternatively pleaded as either being sanctioned, requested, required, directed or undertaken pursuant to a work system designed by ALDI. The particulars of that allegation extended over nine subparagraphs and would necessarily have required detailed factual evidence and analysis.

74 In negotiating the settlement, the SDA made some concessions: primarily that ALDI may apply an offset within fortnightly pay periods and set-off interest in respect of voluntary payments already made. This will apply to all Group Members. One expects concessions to be made in negotiations to resolve civil proceedings. There is nothing unusual in that. In this case the concessions reflect the risk of litigation, the time estimated to prepare and prosecute the

representative proceeding to trial and the likely very substantial costs of doing so. I am in no doubt that if that trial was to proceed, and assuming it likely that ALDI would put the applicants to proof of each allegation, it would have been very expensive and time-consuming litigation. The applicants would have faced difficulties in proving their claims, given the length of the period in issue and the absence of reliable records of the work performed.

75 The concessions offered by the SDA in negotiating the settlement were, in my view, appropriately made at an early stage in the litigation and before the position of each party became more entrenched by mounting legal costs. If the early negotiations had not resolved the proceedings, any entitlements secured by a later settlement for the Group Members would inevitably have been eroded by a common fund costs order in favour of the SDA. Each proceeding is brought in a no-costs jurisdiction by reason of s 570 of the FW Act, unless the Court is persuaded to make some other order; usually where a party has engaged in unreasonable conduct. Whilst I am satisfied that each proceeding has reasonable prospects of success before commencement, it is likely that absent this settlement the SDA would have pursued each to trial as a well-resourced union. I consider it inevitable that as costs mounted the SDA would have applied for a common fund costs order. If that was approved, the amount of any settlement achieved for the Group Members would reduce proportionately.

76 I accept that the methodology for assessing and paying the entitlements of Group Members is not perfect, however, it is a fair method to assess, determine and pay the entitlements of a very large class of employees. The methodology cuts through the complexity and number of issues raised for determination in the proceeding in a logical and justifiable way.

77 The methodology is also one that has been stress tested by the SDA. I accept that very considerable work was undertaken to reverse engineer the voluntary payment calculations by reference to the data held by ALDI, to form a view as to its appropriateness as a basis for the settlement. This is explained in detail in the affidavit of Ali Amin, who is an industrial officer employed by the SDA. In part his evidence was:

> In or about March 2024, [ALDI] provided the SDA with details of its calculations of the amount that [ALDI] would pay to the three lead applicants under its voluntary payment methodology together with the raw data supporting the calculations made by [ALDI].
>
> This was of critical importance to the SDA in the context of the settlement ultimately negotiated because it permitted the SDA for the first time to understand how [ALDI] (through the agency of KPMG) had calculated the amounts it was prepared to pay to its employees in relation to the alleged underpayments.

The SDA effectively now had sufficient information and the data to 'reverse engineer' the KPMG calculations. This enabled the ECU to assess whether [ALDI's] voluntary payments were comparable to the SDA's independent calculations of what the SDA considered the applicable enterprise agreements required the employees to be paid.

The SDA had, as part of the information provided to it by [ALDI], been given the Kronos clock on/clock off records for each of the Applicants. The major problem with the Kronos clock on/clock off system utilised by [ALDI] (which [ALDI] corrected in about March 2023, following the decision by Judge Humphreys) was that the Kronos system was automatically set to round up or round down, as to 10 minutes either side, any pre-shift or post shift attendances by employees. This meant that employees were paid for their shift hours even where the raw data retained in the Kronos system recorded pre and post shift attendances by the employees.

Using the actual raw data of the Kronos clock on/clock [off] attendances for the class action Applicants and the supplied details of their working shifts, it became possible for me to accurately gauge whether [ALDI] voluntary payment methodology, in my opinion, correctly allowed for, not only the value of any additional time identified by reference to the raw data from the Kronos records, but also any additional enterprise agreement entitlements or benefits where the additional time, in combination with the worked shift, triggered separate entitlements to loadings, penalties, allowances and breaks. [ALDI] had also separately provided for additional superannuation in relation to the additional time paid.

When I painstakingly reverse engineered [ALDI's] voluntary payment calculations for the Applicants, I was able to confirm for the first time that [ALDI's] voluntary payment methodology generally conformed to the entitlements which I and the SDA had separately calculated would be payable to the Applicants under the terms of their enterprise agreements.

There were some critical differences between the SDA's calculation of the Applicants' entitlements and [ALDI's] voluntary payment methodology.

First, the calculated entitlements of warehouse workers under [ALDI's] voluntary payment methodology were calculated differently to the entitlements of the store employees.

Following the decision by Judge Humphreys, [ALDI] had apparently undertaken tests in respect of each of its distribution centres to ascertain an approximate average time for the completion by warehouse workers (including in relation to different pre-commencement tasks performed by different cohorts of warehouse workers), of the pre-commencement tasks which Judge Humphreys had determined to be compensable work. This average completion time as determined by [ALDI] was the basis for the calculation of the payments which [ALDI] was making to warehouse workers under its voluntary payment methodology for their pre-shift attendances, regardless of whether the Kronos clocking system in fact recorded some longer period of pre-shift attendance by the warehouse workers.

If as part of its review of its practices in its warehouse, [ALDI] did not identify that warehouse workers (or a particular cohort of warehouse workers) were performing pre-commencement tasks in that warehouse, no payment was made to them.

Secondly, whilst [ALDI's] voluntary payment methodology allowed for a payment in respect of an entitlement to paid breaks triggered by the additional time, there was no recognition of lost unpaid and untaken breaks which the Applicants had accrued by reason of the additional time worked.

Thirdly, [ALDI's] methodology provided the Applicants (and, I assume, the other Group Members) with a net time payment for each fortnightly pay period. That is, where the Kronos records showed that the Applicants had clocked on after the start time for their rostered shift or had left before the end time for their rostered shift, those late start/early finish times were used to offset the calculation of any prestart/post finish time identified by Kronos in the same fortnightly pay period. My understanding is that the estimated pre-shift attendance time by warehouse workers to perform their pre-commencement tasks was also reduced by [ALDI] by this offset where it occurred.

For completeness, no part of [ALDI's] voluntary payment methodology involved any compensation (in the form of interest or otherwise) for employees being kept out of the unpaid time or the unpaid entitlements.

I note as well that the raw data supplied by [ALDI] confirmed that [ALDI] had made payments pursuant to its voluntary payment methodology in respect of earlier periods of time falling outside the claim period. This, as noted earlier, reflected the fact that [ALDI] had commenced its review from March 2023 whereas the class action commenced in October 2023.

Having undertaken an exhaustive analysis of the raw data as it applied to the class action Applicants, the SDA and I were able to assess [ALDI's] voluntary payment methodology with a view to productive mediation.

I was present at each of the three mediation sessions before Senior Registrar Legge and provided instructions in relation to subsequent discussions over many months as between the representatives for the parties which ultimately culminated in the terms of settlement.

Without going into any confidential mediation details, it is suffice to say that the SDA and [ALDI] reached agreement on:

(a) the amounts of the payments to be made by [ALDI] to former and current employees for periods on which they apparently worked before and, in the case of store employees, after shifts that had not previously been paid for, as identified in the Claim Assessment Methodology in the Settlement Distribution Scheme; and

(b) the methodology to calculate interest to be paid, being that set out in the Settlement Deed.

The SDA for its part is satisfied that the terms of settlement constitute an acceptable settlement of the class action. Every Group Member or class of Group Member is treated the same in terms of the methodology to be applied under the Settlement Deed to the calculation of his or her Settlement Money. The SDA is also satisfied that the settlement methodology ultimately agreed upon will compensate Group Members for the substantial majority of the claims advanced on their behalf in the class action.

Group Members will be paid by [ALDI] all the claimed "entitlements" under the applicable enterprise agreements that the identified additional time entitles them to. The Group Members will not receive any payment for the loss of amenity claim that the class action claimed for unpaid breaks accruing by reason of the additional time agreed to be paid. This is because it is difficult to assess the value of such a claim both because it is not easily assessable in monetary terms and its calculation would require a great deal of careful analysis of the circumstances of many Group Members for what the SDA considered would be limited ultimate value.

The terms of settlement also concede that the calculation of additional time in each fortnightly pay period will be a net amount (set off against late start/early finish times)

> in the same pay period. This is a concession over the claim as made in the class action statement of claim (ie which allowed no setoff for those periods) but I am aware from a recent decision by Justice Perram in separate class action/FWO proceedings involving Woolworths and Coles that this concession by the SDA and the Applicants may in fact reflect the correct legal position.

78 I accept his evidence.

79 There are protections built into the Distribution Scheme. In summary:

(a) Known Group Members will be individually notified of their assessments, prior to the finalisation stage;

(b) Known Group Members will have the opportunity to seek a review of their assessment including, if they elect, an independent review by PwC at no cost or risk to themselves;

(c) the SDA has the right to audit compliance by ALDI of its obligations as the Scheme Administrator; and

(d) ALDI must provide a report to the Court which will identify the number of Known Group Members and the total value of the settlement money paid to those members, but also the number of unidentified Group Members and the total value of the settlement money that would have been payable to those persons had they been identified.

80 Considering the evidence of Ali Amin in the light of those provisions, I am well satisfied that the methodology of the Distribution Scheme is fair and reasonable and that there are adequate protection mechanisms for Group Members who may disagree with a foreshadowed calculated entitlement. If the representative proceeding had been prosecuted successfully to trial, this is an outcome within the reasonable range of orders that the Court would have been minded to make in favour of the Group Members.

81 The third issue concerns deductions. There are none to the disadvantage of the Group Members, which is entirely fair and reasonable. The SDA approached the settlement negotiations on the basis that payment to Group Members must reflect individual entitlements pursuant to the EBAs. That outcome is achieved. There is no basis to think that some "deal" has been reached between the SDA and ALDI to discount the payment of $1.5 million in the penalty proceeding as related to the representative proceeding. I am also well-satisfied that the amount of the costs reflects the considerable work undertaken in each proceeding.

82 The fourth issue is any special treatment in favour of any of the Group Members. The modest payments of $10,000 each to the individual applicants are entirely justifiable for the, no doubt,

considerable time that each has spent in providing instructions to the solicitors. These payments will not be deducted from the pool of entitlements of the Group Members.

83 The fifth issue relates to the risk that ALDI may not have been able to withstand a judgment greater than the economic cost of the settlement. That is not a material risk in this case.

84 The sixth issue is whether the settlement falls within a reasonable range of realistic outcomes. The evidence is that the ultimate liability of ALDI, by combining the amount of the voluntary payments ($28.9 million) with the estimated additional liability pursuant to the settlement ($16.3 million) plus the estimate for interest to be paid on both amounts ($10 million), results in an overall payment to Group Members of approximately $55.2 million.

85 I am well-satisfied that this settlement is within the reasonable range of potential outcomes. It very appropriately assesses the litigation risks. The settlement provides a fair and reasonable calculation methodology to determine the actual quantum of underpayments, adds interest to the determined amounts, there is no deduction for the costs of the litigation or any commission and there is no risk that the amount available to the Group Members will be reduced by a common fund costs order. In the latter respect, I accepted the estimate that if each proceeding were taken to trial, the costs could have been in the order of $18 million. This amount can reasonably be expected to include the preparation of discovery of many thousands of documents not expected to be completed until mid-2027, as well as the preparation of affidavits of people who have worked with or for the applicants who can provide evidence concerning the applicants' working relationships, attentiveness and patterns of behaviour in taking breaks. After interviews, lay evidence would need to be provided to the Court in the form of witness statements for trial. Expert evidence in relation to the calculations of the entitlements expected would likely follow, with any pre-trial conclave of experts or further mediations to be completed after that. The initial trial, which will only resolve the applicants' individual claims and leave the claims of the Group Members to be subsequently determined, could then be expected to begin in mid-2028 on an estimate of four weeks. Having regard to the work to be completed up to and including the trial, I am satisfied the estimate of costs is reasonable in accordance with the advice from counsel as detailed in the Confidential Opinion.

86 One person has objected by notice dated 18 July 2026. He did not attend the hearing. In summary his objection is that as a former employee (he does not say whether he was a warehouse employee or store employee) he regularly punched in between 10 and 15 minutes before his rostered shift start time and punched out between 10 and 15 minutes after his rostered

finish time. He was employed between 9 August 2021 and 12 June 2023. He estimates that he performed between 20 and 30 minutes of unpaid work outside his rostered shift hours per shift. In 2024, he received a voluntary payment of $1,285.92. In his view this amount is materially inadequate and disproportionate to the amount of work that he actually performed. His objection is that the method of calculation in his case did not properly account for and compensate him for the actual time worked. He raises unparticularised concerns about the calculation methodology and asserts that it may not have operated fairly and consistently across all Group Members.

87 I am not satisfied that these matters weigh against my discretion to approve of the settlement. The overwhelming majority of Group Members have not objected. Of the 32,308 Group Members, 17 opt out notices were filed. The concerns raised by the objector do not reflect the detail of the assessment methodology in the Distribution Scheme, the litigation risks, the benefit in resolving the representative proceeding at an early stage before costs mount exponentially and the difficulty in accepting, on the face of it, that ALDI required the objector to perform somewhere between 20 and 30 minutes of unpaid work every day that he worked. In any event, if the objector is dissatisfied with the calculation methodology and quantum of his voluntary payment, it remains open to him, after he receives a notice from the Scheme Administrator (assuming he registers pursuant to the registration portal), to request a review of the amount of the settlement money (if any) proposed to be paid to him. If that notice is given, it will engage the independent review mechanism at cll 8.3 to 8.8 of the Distribution Scheme.

88 For these reasons, I am satisfied that the proposed settlement is fair and reasonable as between the Group Members having regard to the interests of the Group Members as a whole. I am also satisfied that the methodology of the Distribution Scheme to distribute the settlement money is fair and reasonable and that in the particular circumstances of this matter, it is appropriate that ALDI act as the Scheme Administrator.

89 Accordingly, the proposed settlement is approved pursuant to s 33V of the FCA Act and the orders sought by the applicants in the representative proceeding will be made.

I certify that the preceding eighty-nine (89) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice McElwaine.

Associate: 

Dated: 23 October 2026

ANNEXURE A

Settlement Deed

ALDI Foods Class Action
SDA Penalty Claim

16

Kelly Roslyn Boi

Souad Tannous Lichaa

Harinder Pal

Shop, Distributive and Allied Employees' Association

ALDI Foods Pty Limited (ACN 086 210 139)

(Parties)

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Settlement Deed – ALDI Foods Proceedings

Date ▶ 28 July 2026

Between the Parties

Kelly Roslyn Boi of 7 Middleton Avenue Cranbrook NSW 2749 **(Ms Boi)**

Souad Tannous Lichaa of 330/68 River Road, Ermington, NSW, 2115 **(Ms Lichaa)**

Harinder Pal of 17A Daraya Road, Marayong, NSW, 2148 **(Mr Pal)**

Shop, Distributive and Allied Employees' Association of 6th Floor, 53 Queen Street, Melbourne VIC 3000 **(SDA)**

ALDI Foods Pty Limited (ACN 086 210 139) of 1 Sargents Road Minchinbury NSW 2770

(ALDI Foods)

Recitals

1. In 2022, ALDI Foods made payments to hourly rate warehouse employees in all regions following a decision by the Federal Circuit Court of Australia relating to four Prestons Warehouse Selection employees. The Court found that tasks performed prior to the commencement of the hourly rate warehouse employees' rostered shifts constituted work, and that the employees were entitled to be paid for this time spent performing these tasks. ALDI Foods had previously understood that these tasks constituted getting ready for work, not work, and ALDI Foods was therefore not liable to pay the employees for this time. An assessment was made in each Distribution Centre to determine the amount of time hourly rate warehouse employees took to perform these pre-commencement tasks. Where it was identified that an employee undertook pre-commencement tasks, payments were made based on these assessments.

2. The payments made to the hourly rate warehouse employees by ALDI Foods were for the period from August 2018 to October 2022, based on the Court decision timeframes. Payments were only made where an employee was identified as having performed tasks prior to the commencement of their rostered shifts. Where a payment was made to an employee, superannuation was also paid. Hourly rate warehouse employees who were not then employed by ALDI Foods were not paid these payments even though ALDI was willing to make these same payments to any former hourly rate warehouse employees and subsequently did so upon application by some of those former hourly rate warehouse employees.
3. The payments made by ALDI to warehouse employees referred to in paragraphs 1 and 2 above were based on calculations done by ALDI.
4. In 2023, ALDI Foods also voluntarily made payments to hourly rate store employees based on the KRONOS rounding rules. At the time, hourly rate store employees could punch in up to 10 minutes before or after their rostered shift start time and their start time would be automatically rounded by KRONOS to their rostered shift start time. Similarly, the same hourly rate store employees could punch out up to 10 minutes before or after their rostered shift finish time and their finish times would be automatically rounded by KRONOS to their rostered shift finish time. The consequence of this rounding process was that hourly rate store employees were not paid for any work that may have been performed by them in the period of time which was rounded up or rounded down.
5. Where an employee clocked in more than 10 minutes before the start of their rostered shift or more than 10 minutes after their rostered finish time, no rounding was applied in KRONOS, so no additional payment was required.
6. To avoid the risk that any hourly rate store employee may have performed some tasks for which he or she was entitled to be paid, either in the 10 minutes prior to the start of their shift or 10 minutes after the end of his or her rostered shift, ALDI Foods voluntarily paid all hourly rate store employees based on their punch times where they punched in or out within the 10 minute window before or after their rostered time.
7. At the same time, if an hourly rate store employee punched in after his or her rostered shift start time or punched out before his or her rostered shift finish time in any fortnightly pay period, these amounts were offset against instances where an employee punched in before his or her rostered shift start time or after his or her rostered shift finish time in that same fortnight.
8. Hourly rate store employees who were still employed by ALDI Foods at the time ALDI Foods was calculating these additional payments were paid for the period March 2017 to March 2023. Where a payment was made to an employee, superannuation was also paid. Hourly rate store employees who were not then employed by ALDI Foods were not paid these payments even though ALDI Foods was willing to make these same payments to any former hourly rate store employees and subsequently did so upon application by some of those former hourly rate store employees.
9. Store Managers and Assistant Store Managers accrue time in lieu for hours worked over and above their agreed rostered hours per fortnight. Store Managers and Assistant Store Managers who were still employed by ALDI Foods at the time

ALDI Foods was calculating these additional payments had their time in lieu balance adjusted (or at their election were paid in lieu) based on their punch times for the period March 2017 to March 2023. That is, Store Managers and Assistant Store Managers accrued the difference between their punch in and out times and their rostered shift start and finish times. Store Managers and Assistant Store Managers who were not then employed by ALDI Foods were not paid (or able to be credited) these payments or time even though ALDI Foods was willing to make payments equivalent in value to the uncredited time in lieu to any former Store Managers and Assistant Store Managers and subsequently did so upon application by some of those former Store Managers and Assistant Store Managers.

10. The payments or benefits referred to in paragraphs 4 to 9 inclusive above were based on calculations done by KPMG as instructed by ALDI.

11. In October 2023, the SDA entered into a funding agreement with Ms Boi, Ms Lichaa and Mr Pal (**Class Action Applicants**) in which the SDA agreed, inter alia, to pay the costs incurred by the Class Action Applicants to prosecute a range of claims on behalf of group members (**ALDI Foods Class Action**). The ALDI Foods Class Action sought to recover on behalf of the Class Action Applicants and the Group Members various payments and entitlements in relation to, or arising from, what was contended by the SDA to be work performed by those persons which it was contended had not been paid by ALDI Foods in breach of then current and former enterprise agreements which covered the employment of those persons at the relevant time.

12. On 27 October 2023, the Class Action Applicants commenced the ALDI Foods Class Action in the Federal Court of Australia as a representative proceeding claiming compensation for themselves and on behalf of the Group Members against ALDI Foods.

13. On 27 October 2023, the SDA commenced a separate but related proceeding in the Federal Court of Australia against ALDI Foods in which the SDA sought declarations against ALDI Foods, orders that penalties be imposed on ALDI Foods and an order that those penalties be paid to the SDA (**SDA Penalty Claim**).

14. ALDI Foods is the Respondent to the ALDI Foods Class Action and is the Respondent to the SDA Penalty Claim. ALDI Foods denies the allegations in the ALDI Foods Class Action. ALDI Foods denies the allegations in the SDA Penalty Claim.

15. ALDI Foods made the payments set out above in paragraphs 1 to 8 and the adjustment to time off in lieu accruals set out in paragraph 9 both prior to and after the commencement of the ALDI Foods Class Action.

16. ALDI Foods says that the amount which has so far been paid at various times to persons who were current employees at the time payments or time in lieu were calculated and paid or credited pursuant to the processes described in recitals 1 to 9 above, and to former employees who have subsequently applied for such payments totals $28,947,415.11 including superannuation.

17. Applying the methodologies which are now in principle agreed as between the parties as part of the terms of settlement, ALDI Foods has calculated that further payments, including superannuation, are required to be paid to its current and

former employees, assuming all former employees to be contactable and willing to accept payment. The payments thus far made or yet to be made by ALDI Foods have not included any amount in respect of interest.

18. ALDI Foods has now additionally agreed to pay interest in accordance with the terms of this Deed.
19. This Deed has been entered into by the Class Action Applicants on their own behalf and for and on behalf of the Group Members as representatives of the Group Members pursuant to Part IVA of the Act.
20. The Parties have agreed to settle the Disputes, on a without admissions basis, in accordance with this Deed.

THIS DEED WITNESSES AS FOLLOWS:

1 Definitions and interpretation

1.1 Deed components

This Deed includes any schedule.

1.2 Definitions

The meanings of the terms used in this Deed are set out below.

Term	Meaning
Act	*Federal Court of Australia Act 1976* (Cth).
AJ Macken	AJ Macken & Co., the law firm that is acting for the Applicants in the ALDI Foods Class Action and is acting for the SDA in the SDA Penalty Claim.
ALDI Foods Class Action	Federal Court of Australia Proceeding No VID898 of 2023 *Kelly Roslyn Boi and others v ALDI Foods Pty Ltd (ACN 086 210 139).*
Approval Orders	orders approving the settlement of the ALDI Foods Class Action on the terms set out in this Deed, and approving the payments set out in this Deed, pursuant to *inter alia* section 33V of the Act.

Term	Meaning
Bank Account	an account with an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth).
Business Day	a day on which banks are open for business in Melbourne, excluding a Saturday, Sunday or public holiday.
Claim	1 any claim, demand, action, suit or proceeding for damages, debt, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy, whether by original claim, cross-claim or otherwise whether arising at common law, in equity, under statute or otherwise; and 2 any damage, loss, costs, charge, expense, outgoing or payment incurred as a result of the Disputes.
Costs Contribution	the sum of $1,500,000 inclusive of GST being an estimate of the SDA's Project Costs.
Court	the Federal Court of Australia.
Current Employee	A Group Member and an employee of ALDI Foods as at the time this Deed is executed and at the date when the Final Approval Orders are made.
Deed	this Deed, including the rights and obligations created by this deed.
Director	a director as defined in section 9 of the Corporations Act.
Disputes	collectively, the ALDI Foods Class Action and the SDA Penalty Claim and all disputes arising by reason of the Proceedings in relation to the Claims made thereunder.
Dollars and $	the lawful currency of the Commonwealth of Australia.

Term	Meaning
Duty	any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes, but is not limited to, any interest, fine, penalty, charge or other amount imposed in respect of the above but excludes any Tax or GST.
Final Approval Orders	the Approval Orders as taking effect (with or without modification) after the resolution of any appeals and completion of periods allowed for the institution of appeals or further appeals.
First Orders	orders approving, *inter alia,* the form, content and distribution of an opt out notice and notice of settlement to be given to Group Members and directions incidental to the hearing of the application for Approval Orders.
Former Employee	A Group Member who: (a) as at the time this Deed is executed has ceased his or her employment with ALDI Foods; or (b) is an Employee who has ceased his or her employment with ALDI Foods as at the date when Final Approval Orders are made.
Group Members	each person who: • has not opted out of the ALDI Foods Class Action by the Opt Out Date; and • fits the description of "Group Member" in paragraph [4] of the Statement of Claim in the ALDI Foods Class Action; and unless the context otherwise requires, a reference to a Group Member shall include reference to Ms Boi, Ms Lichaa and Mr Pal.
GST	goods and services tax levied under the GST Act.
GST Act	the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Term	Meaning
Notice	a notice or other communication under this Deed (but excluding any notice to Group Members).
Officer	an officer as defined in section 9 of the Corporations Act.
Opt Out Date	the date fixed by the Court pursuant to section 33J(1) of the Act (or any extension of that date).
Participating Group Members	those Group Members who are entitled to participate in the settlement and who have either elected to do so or for whom an operating Bank Account in that person's name is known.
Parties	the signatories to this Deed.
Proceedings	the ALDI Foods Class Action, being, Federal Court of Australia Proceeding No VID898 of 2023 *(Kelly Roslyn Boi and others v ALDI Foods Pty Ltd (ACN 086 210 139))* and the SDA Penalty Claim being Federal Court of Australia Proceeding No VID899 of 2023 (*SDA v ALDI Foods Pty Ltd (ACN 086 210 139))* and the facts, matters and circumstances giving rise to the causes of action pleaded by the Parties or referred to in the pleadings filed in both the ALDI Foods Class Action and the SDA Penalty Claim, the bringing of or conduct of those Proceedings (or any part of them), and all appeals from those Proceedings.
Project Costs	the costs incurred by the SDA in prosecuting and financing the SDA Penalty Claim and the ALDI Foods Class Action including the SDA's internal costs and SDA's and the Applicants' estimated legal costs and disbursements, on an indemnity basis, of and incidental to the investigation or prosecution of the claims the subject of the Proceedings, calculated in accordance with the SDA's and the Applicants' retainers of AJ Macken.
Reimbursement Payments	the sum of $10,000 for each of the Class Action Applicants in the ALDI Foods class action or such other sum as approved by the Court to be paid by the SDA from the Costs Distribution.

Term	Meaning
Related Bodies Corporate	has the meaning given to that expression in section 50 of the Corporations Act.
Related Persons	in relation to a party: 1 all Related Bodies Corporate, of that party; 2 all current and former Directors, Officers, agents, servants, employees, third party contractors and sub-contractors of that party; and 3 the current and former legal, accounting and other professional advisers to that party.
Respondent	ALDI Foods Pty Ltd (ACN 086 210 139).
Scheme Administrator	the Scheme Administrator within the meaning of the Settlement Distribution Scheme.
SDA Penalty Claim	Federal Court of Australia Proceeding No VID899 of 2023 (*SDA v ALDI Foods Pty Ltd (ACN 086 210 139)*)
Settlement Distribution Scheme	a Scheme for the distribution of payments to Participating Group Members ~~and to make Reimbursement Payments~~ in accordance with clause 7(d) of this Deed.
Statement of Claim	the Statement of Claim dated 27 October 2023 filed by the Applicants in the ALDI Foods Class Action.
Tax	any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Government Agency and includes, but is not limited to any interest, fine, penalty, charge fee or any other amount imposed in respect of any of the above but excludes Duty and GST and any tax on the net income of a party.
Third Party	a person not party to this Deed.

1.3 **Interpretation**

In this Deed:

(a) Headings and bold type are for convenience only and do not affect the interpretation of this Deed.

(b) The singular includes the plural and the plural includes the singular.

(c) Words of any gender include all genders.

(d) Other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning.

(e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.

(f) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Deed and a reference to this Deed includes any schedule, attachment and exhibit.

(g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.

(h) A reference to a document includes all amendments or supplements to, or replacements of, that document.

(i) A reference to a party to a document includes that party's successors and permitted assignees.

(j) A promise on the part of 2 or more persons binds them jointly and severally.

(k) A reference to an agreement other than this Deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.

(l) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.

(m) No provision of this Deed will be construed adversely to a party because that party was responsible for the preparation of this Deed or that provision.

(n) A reference to a body, other than a party to this Deed (including an institute, association or authority), whether statutory or not:

(1) which ceases to exist; or

(2) whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

1.4 **Interpretation of inclusive expressions**

Specifying anything in this Deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.5 **Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

2 Settlement

(a) This Deed shall take effect as an agreement enforceable according to the laws of Victoria on the date it is executed, but may be terminated in accordance with clause 3.

(b) By not later than 31 December 2026 and after this Deed is executed and after the Final Approval Orders are made, ALDI Foods will, with respect to Current Employees:

(i) Pay to current hourly rate warehouse employees who were employed between 20 March 2017 to 12 August 2018 and who performed any pre-shift work within the meaning of paragraph 60 of the Statement of Claim (**pre-commencement tasks**), prior to their rostered shift start time, an amount for the time spent performing the pre-commencement tasks prior to the commencement of their shift for the period 20 March 2017 to 12 August 2018 using the same methodology used for the payments previously made to these employees by ALDI Foods for the performance of the pre-commencement tasks performed prior to the commencement of their shift for the period 13 August 2018 to 30 October 2022;

(ii) Pay to current hourly rate warehouse employees who were employed between the period 20 March 2017 and 30 October 2022, interest on the payment referred to in (b)(i) above and interest on the payment made to these employees for the time spent performing the pre-commencement tasks prior to the commencement of their shift for the period 13 August 2018 to 30 October 2022 at the rates set out in Attachment 1 to this Deed subject to (b)(iv) below;

(iii) Pay to current hourly rate store employees who were employed between the period 20 March 2017 to 26 March 2023, interest on any payments previously made to these employees for the difference between their punch times and their rostered start times and their punch times and their rostered finish times for any time during the period 20 March 2017 to 26 March 2023 at

the rates set out in Attachment 1 to this Deed subject to (b)(iv) below;

(iv) The payments of interest required to be made pursuant to paragraphs (b)(ii) and (b)(iii) above will be reduced prior to payment by any amount paid to an employee for the period 20 March 2017 to 27 October 2017 that was made for, in the case of hourly rate warehouse employees, pre-commencement tasks and, in the case of hourly rate store employees, the employees punching in prior to their rostered shift start time and punching out after their rostered shift end time.

(v) Pay superannuation on the amounts set out in paragraph (b)(i) above.

(vi) The amounts in paragraphs (b)(i), (b)(ii) and (b)(iii), subject to paragraph (b)(iv) will be less any appropriate taxation.

(c) By not later than 31 December 2026 and after this Deed is executed and after the Final Approval Orders are made and after receipt of accurate contact information and determination by ALDI that the person is eligible for payment, ALDI Foods will, with respect to Former Employees:

(i) pay to former hourly rate warehouse employees who were employed between 20 March 2017 to 30 October 2022 and who performed pre-shift work within the meaning of paragraph 60 of the Statement of Claim (**pre-commencement tasks**), prior to their rostered shift start times, an amount for the time spent performing the pre-commencement tasks prior to the commencement of their shift for the period 20 March 2017 to 30 October 2022 using the same methodology used for Current Employees as set out in subparagraph (b)(i) above less any amount the former hourly rate warehouse employee has already been paid for any time during this period for the same pre-commencement tasks;

(ii) pay to former hourly rate warehouse employees who were employed between the period 20 March 2017 and 30 October 2022, interest on the payment referred to in (c)(i) above, prior to any deduction for payments already made, at the rates set out in Attachment 1 to this Deed subject to (c)(vii) below;

(iii) pay to former hourly rate store employees who were employed between the period 20 March 2017 to 26 March 2023, an amount calculated by reference to, in any fortnightly pay period during that period, time accrued to the employees from punching in prior to their rostered shift start times and punching out after their rostered shift end times, offset by any time when the employees punched in after their rostered shift start times or punched out before their rostered shift finish times in the same fortnightly pay period and further reduced by any amount the hourly rate store employee has already been paid for any period during the same accumulated time;

(iv) pay to former hourly rate stores employees who were employed for the period 20 March 2017 to 26 March 2023, interest on the payment referred to in (c)(iii) above, prior to any deduction for payments already made, at the rates set out in Attachment 1 to this Deed subject to (c)(vii) below;

(v) pay to former Store Managers and Assistant Store Managers who were employed between 20 March 2017 to 26 March 2023 and who had not previously received any adjustment to their time off in lieu accrual for the period 20 March 2017 to 26 March 2023, or any payment in lieu of such adjustment, an amount calculated by reference to in any fortnightly pay period during that period time accrued to the Store Managers and Assistant Store Managers from punching in prior to their rostered shift start times and punching out after their rostered shift end times for the period 20 March 2017 to 26 March 2023 offset by any time when the Store Managers and Assistant Store Managers punched in after their rostered shift start times or punched out before their rostered shift finish times in the same fortnightly pay period;

(vi) pay to former Store Managers and Assistant Store Managers who were employed for the period 20 March 2017 to 26 March 2023, interest on the payment referred to in (c)(v) above at the rates set out in Attachment 1 to this Deed subject to (c)(vii) below;

(vii) in relation to the payments of interest required to be made pursuant to paragraphs (c)(ii), (c)(iv) and (c)(vi) above, the interest will be reduced prior to payment by any amount paid to an employee for the period 20 March 2017 to 27 October 2017 that was made for, in the case of former hourly rate warehouse employees, pre-commencement tasks and, in the case of former hourly rate store employees and former Store Managers and Assistant Store Managers, the employees punching in prior to their rostered shift start times and punching out after their rostered shift end times;

(viii) pay superannuation on the amounts set out in paragraphs (c)(i), (iii) and (v) above;

(ix) The amounts in paragraphs (c)(i), (c)(ii), (c)(iii), (c)(iv), (c)(v) and (c)(vi) subject to paragraph (c)(vii) will be less any appropriate taxation.

(d) After this Deed is executed and within 14 days of the Final Approval Orders being made, ALDI Foods will pay to the SDA the Costs Contribution out of which the SDA will make the Reimbursement Payments to the Class Action Applicants.

(e) The SDA and the Class Action Applicants agree and acknowledge for the avoidance of doubt that any Current Employee or Former Employee who is or was an hourly rate warehouse employee who has not been identified to have performed any pre-commencement tasks will not receive any payment in this settlement.

(f) The SDA and the Class Action Applicants further agree and acknowledge for the avoidance of doubt that any Current Employee or Former Employee who is or was a Store Manager and Assistant Store Manager and who has already had his or her time in lieu accrual adjusted or paid out to reflect the difference between their punch times and their rostered shift start and finish times for the period 20 March 2017 to 23 March 2023, will not receive any payment or benefit in this settlement.

(g) The SDA and the Class Action Applicants agree and acknowledge that if, despite all reasonable diligent inquiry and investigation, ALDI Foods has not verified by 31 December 2026, the current contact information or personal details (including bank account details) of a Former Employee to whom a payment is required to be made pursuant to the terms of this Deed, then ALDI Foods is not required to make that payment.

3 Termination events

(a) Subject to clause 3(e), if the Court finally declines to make the Final Approval Orders in the ALDI Foods Class Action this Deed will be terminated and will be of no force and effect, unless then varied in writing by the Parties and agreed to continue.

(b) For the purpose of clause 3(a), the Court will "finally decline" to make an order if any one of the following occurs:

(1) the Court at first instance declines to make the Approval Order, and no appeal from that decision is commenced within the period provided for an appeal from that decision;

(2) the Court at first instance declines to make the Approval Order, and an appeal from that decision is commenced, and the ultimate outcome of that appeal (including any subsequent appeal or application to appeal) is that the order is not made; or

(3) the Court at first instance makes the Approval Order and an appeal from that decision is commenced, but the ultimate outcome of that appeal (including any subsequent appeal or application to appeal) is that the decision at first instance is set aside and the Approval Order is not made;

but for the avoidance of doubt, a Court will not be taken to have "finally declined" to make the ~~Final~~ Approval Order if it invites or requires any person to submit further evidence, make further submissions or provide further information in the ALDI Foods Class Action, in which event clause 3(a) does not operate until the Court makes a final decision having considered such further evidence, submissions or information.

(c) ALDI Foods is entitled to give Notice in writing to the Applicants and the SDA terminating this Deed if all of the Class Action Applicants cease to be Class Action Applicants in the ALDI Foods Class Action prior to the making of the Final Approval Orders and no Group Member is substituted as an applicant and agrees to become a party to this Deed;

(d) On the giving of a Notice in accordance with clause 3(c), this Deed will be terminated and, subject to clauses 3(e) and 3(f), will be of no force or effect.

(e) If this Deed is validly terminated for any reason:

(1) this Deed may not be adduced in evidence or otherwise referred to or relied on in any proceeding, other than a proceeding for enforcement of the terms of this Deed;

(2) the costs of and incidental to the negotiation, preparation or implementation of this Deed (including without limitation any application for the First Orders or the Approval Orders) shall be costs in the cause in the ALDI Foods Class Action.

(f) Clause 3(e) and this clause are severable from the balance of this Deed and shall survive any termination of this Deed pursuant to this clause 3.

4 Releases

Upon the making of the Final Approval Orders:

(a) the Proceedings and all possible counterclaims and notices of contribution between the Parties to the Proceedings for damages, compensation, interest and legal and administrative costs and disbursements (present and future) and penalties, are fully and finally settled;

(b) The Applicants on their behalf and on behalf of all Group Members, and the SDA, release and discharge ALDI Foods and each of the Related Persons, jointly and severally, from Claims made by the Applicants or any Group Member or the SDA in the Proceedings.

(c) ALDI Foods releases the Applicants and each of the Group Members, jointly and severally, and the SDA, from any Claim that ALDI Foods has or may have against any or all of the Applicants or the Group Members, or the SDA, relating to or arising out of or in respect of:

(1) the matters the subject of the Proceedings or any part of the Proceedings or which are raised in the Proceedings; or

(2) anything related to the Proceedings including, without limitation, any damage, loss, cost or expense suffered as a result of the matters the subject of the Proceedings or any part of the Proceedings or which are raised in the Proceedings.

5 Plea in bar

Subject to clause 3, any person who is:

(a) a Party;

(b) Related Persons of a Party; or

(c) a Group Member;

may plead this Deed in bar to any Claim or proceeding by any other such person in respect of any Claim arising out of or related in any way to the matters which are as at the date of this Deed or were at any time the subject of the Proceedings, or any part of the Proceedings or raised in the Proceedings.

6 Obligations of the Parties

(a) The Parties agree to execute all documents, refrain from performing any act incompatible with, and do all acts reasonably necessary to comply with, the terms of this Deed, including but not limited to applying for or consenting to the Approval Orders or the Final Approval Orders.

(b) The Parties agree to the communication at Attachment 2 to this Deed being posted on the myALDI portal and issued to Current Employees.

7 Court approval

(a) The settlement of the Proceedings is conditional upon the making of the Approval Orders.

(b) As soon as practicable after the date of execution of this Deed, the Applicants shall apply to the Court for the First Orders and such further or other orders as the SDA and/or the Applicants and/or ALDI Foods may deem appropriate including confidentiality orders, such confidentiality orders to include this Deed and other evidence that may be filed and tendered to the Court to support the application for the Approval Orders.

(c) ALDI Foods will, in cooperation with the SDA, cause the notice (or notices) to be provided to Group Members, in accordance with the First Orders.

(d) As soon as practicable after execution of this Deed, ALDI shall finalise the preparation of the Settlement Distribution Scheme, which scheme shall, subject to any orders of the Court, provide for:

(1) a distribution scheme to be administered by ALDI Foods as the Court appointed Scheme Administrator;

(2) the identification of those Group Members to whom compensation is payable according to an approved claims assessment methodology; and

(3) the payment of compensation to Participating Group Members

(4) the role of Price Waterhouse Coopers in assisting ALDI in the administration of the Settlement Distribution Scheme.

(e) At such time as is convenient to the Court following the provision of notice to the Group Members in accordance with the First Orders, the Applicants shall apply to the Court for the Approval Orders.

(f) The Parties agree that the Approval Orders sought from the Court will, amongst other things:

(1) provide that pursuant to section 33ZF of the Act or otherwise, the Court authorises the Applicants *nunc pro tunc* on behalf of the Group Members respectively to enter into and give effect to this Settlement Deed and the transactions contemplated by this Deed, for and on behalf of the Group Members and each of them;

(2) note that the Costs Contribution to be made to the SDA by ALDI Foods in accordance with this Deed is a payment by ALDI Foods to the SDA that is based on an estimate of the SDA's reasonable Project Costs on an indemnity basis incurred in conducting and funding the ALDI Foods Class Action and the SDA Penalty Claim;

(3) note that the Costs Contribution is independent of the Settlement;

(4) vacate any *inter partes* costs orders; and

(5) an order that the Proceedings be dismissed with no order as to costs *inter partes*, subject to any intervening order, on 31 December 2026;

(6) an order that leave be reserved to the parties to vary the order at paragraph (5) above.

(g) The Applicants are responsible for tendering such evidence (including expert or other evidence) to the Court as may reasonably be required to support the application for the Approval Orders.

(h) Without limiting the foregoing:

(1) the Parties and each of them shall do all things that are reasonably necessary to support the relevant applications for the Approval Orders and will instruct their legal representatives to do the same; but

(2) for the avoidance of doubt, nothing in this clause requires ALDI Foods to attend the hearing of any application for the Approval Orders.

8 No admissions

(a) ALDI Foods makes no admissions, including as to liability.

(b) There will be no orders for relief except as necessary to give effect to this Deed or as otherwise agreed by all the Parties.

9 Confidentiality

(a) Save that the Parties may disclose:

(1) the fact of the proposed settlement;

(2) any information to their respective insurers or their advisors,

the Parties agree to keep the terms of this Deed confidential until the filing of the application to the Court for approval of the notice to be provided to the Group Members pursuant to the First Orders at which time a confidentiality order will be sought as set out in paragraph 7(b) above .

(b) Clause 9(a) does not prevent any of the Parties from disclosing the terms of this Deed on a confidential basis to that Party's legal or financial advisers, or financial service providers (including insurers and those insurers' re-insurers and legal advisers), for the purpose of obtaining legal or financial advice, or financial services.

10 No further step in the Proceeding

No further step is to be taken in the Proceedings by the Parties, other than steps provided for in this Deed or ordered by the Court, or otherwise required by the Act or the *Federal Court Rules*.

11 No orders as to *inter partes* costs

(a) Except as otherwise provided by this Deed, no Party shall seek orders for his or her or its *inter partes* costs of the Proceedings, or *inter partes* costs of or incidental to the application for Court approval of the settlement.

(b) The Parties agree that there will be no order as to *inter partes* costs of the Proceedings.

(c) Pending Court approval, no Party shall take any step to enforce any existing *inter partes* costs order in the Proceedings.

12 Warranty as to capacity and representations

(a) Each Party warrants that she, he or it:

(1) has the legal capacity and power to enter into this Deed and have obtained all necessary consents and approvals to do so; and

(2) has not entered into this Deed in reliance upon any representations by or on behalf of any other Party which are not set out in this Deed.

13 Binding effect of this Deed

This Deed binds:

(a) the Parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of any Party; and

(b) each Group Member and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of such Group Member.

14 Execution of documents

Each Party must do, sign, execute and deliver, and must procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another Party in order to carry out and give full effect to this Deed and the rights and obligations of the Parties under it.

15 Notices

15.1 How and where Notices may be sent

A Notice must be in writing and delivered by hand or sent by pre-paid post or email to a party at the address or email address for that party in Schedule 1 or as otherwise specified by a party by Notice.

15.2 When Notices are taken to have been given and received

(a) A Notice sent by post is regarded as given and received on the second Business Day following the date of postage.

(b) A Notice sent by email is regarded as given and received when a delivery confirmation report is received by the sender which records the time that the email was delivered to the addressee's email address (unless the sender receives a delivery failure notice indicating that the email has not been delivered to the addressee).

(c) A Notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

16 Entire agreement and legal effect

This Deed constitutes the entire agreement of the Parties in relation to the matters the subject of this Deed.

17 General

17.1 Governing law and jurisdiction

(a) This Deed is governed by the law in force in Victoria.

(b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria.

17.2 Variation

Any variation of any term of this Deed must be in writing and signed by the Parties.

17.3 Time of the essence

Time is of the essence of this Deed.

17.4 Counterparts

This Deed may be executed in any number of counterparts and the counterparts taken together shall constitute one instrument. This Deed may be executed by electronic signatures.

17.5 GST

The Parties agree that all payments made under this Deed are inclusive of GST, as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

17.6 Taxation Payment

Without a concession from any other Party that ALDI Foods is under any legal obligation to withhold any amount on account of tax in relation to a payment to be made pursuant to this Deed (where ALDI Foods expressly denies all allegations that it failed to make any payment of salary or wages to Group Members required to be paid under the terms of any current or former enterprise agreements which covered the employment of Group Members at the relevant time), in the event that ALDI Foods withholds any amount on account of tax from a payment to be made pursuant to this Deed, ALDI Foods shall upon reasonable request of a Party, provide evidence that such tax has been paid.

17.7 Gross up

Except as otherwise expressly provided in this Deed, all amounts referred to in this Deed are inclusive of any tax and no additional amounts are payable by the Parties.

17.8 Deed poll

In addition to clauses 4, 5 and 6 being enforceable by the Parties to this document, the releases, covenants, representations and warranties under clauses 4, 5 and 6 given in favour of persons not a party to this document are intended to be, and are, directly enforceable by each of those persons, and this document operates as a deed poll in favour of those persons.

17.9 Attorneys

Each of the attorneys executing this Deed states that the attorney has no notice of revocation of the power of attorney appointing that attorney.

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Schedule 1

Notice details

	Kelly Roslyn Boi c/- AJ Macken, Level 11, 53 Queen Street, Melbourne VIC 3000 Attention: Dominic Macken (03) 9614 4899 Djmacken@macken.com.au
	Souad Tannous Lichaa c/- AJ Macken, Level 11, 53 Queen Street, Melbourne VIC 3000 Attention: Dominic Macken (03) 9614 4899 Djmacken@macken.com.au
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	Shop, Distributive and Allied Employees' Association Level 6, 53 Queen Street, Melbourne VIC 3000 Attention: Dominic Macken (03) 9614 4899 Djmacken@macken.com.au

ALDI Foods Pty Limited (ACN 086 210 139)

c/- Enterprise Employment Law

3/68 Kings Road New Lambton NSW 2305

(02) 49295160

Meg_mcnaughton@enterprise-law.com.au

EXECUTED AS A DEED

Signed by
Kelly Roslyn Boi

sign here ▶ _____

print name Kelly Roslyn Boi

in the presence of

sign here ▶ _____
Witness

print name _____

Signed by
Souad Tannous Lichaa

sign here ▶ _____

print name Souad Tannous Lichaa

in the presence of

sign here ▶ _____
Witness

print name _____

Signed by
Harinder Pal

sign here ▶ _____

print name Harinder Pal

in the presence of

sign here ▶ _____
Witness

print name _____

Executed by
Shop, Distributive and Allied Employees' Association
in accordance with its rules by

sign here ▶ _____
National Secretary-Treasurer

print name Gerard Dwyer

Executed by
ALDI Foods Pty Limited (ACN 086 210 139)
in accordance with section 127 of the
Corporations Act 2001 (Cth)
by

sign here ▶ _____
Company Secretary/Director

print name Lorna Raine

sign here ▶ _____
Director

print name Stefan Kopp

ATTACHMENT 1 – INTEREST RATES AND PERIODS OF PAYMENT

1. **Amounts on which Interest is Payable**
Interest payments will be made on the payments made in accordance with clause 2 (b) of the Deed.

(a) **Current warehouse employees employed between 20 March 2017 to 12 August 2018**
Interest payments are calculated up to 5 March 2025 on payments made for the period up to 12 August 2018.

(b) **Current and Former Warehouse employees who have received a payment in relation to the period from 13 August 2018 to 30 October 2022 as at the date of the Deed.**
Interest payments are calculated up to 11 December 2022 on payments made for the period from 13 August 2018 to 30 October 2022.

(c) **Former Warehouse employees who have not yet received a payment in relation to the period from 20 March 2017 to 30 October 2022 as at the date of the deed.**
Interest payments are calculated up to 5 March 2025 for payments for the period from 20 March 2017 to 30 October 2022.

(d) **Current and former hourly rate Stores employees who have received a payment for the period from 20 March 2017 to 26 March 2023 as at the date of the deed.**
Interest payments are calculated up to 12 November 2023 on payments made for the period from 20 March 2017 to 26 March 2023.

(e) **Former hourly rate Stores employees who have not yet received a payment in relation to the period from 20 March 2017 to 26 March 2023 as at the date of the deed.**
Interest payments are calculated up to 5 March 2025 for payments for the period from 20 March 2017 to 26 March 2023.

2. **Interest Payments for each year**

Employees described in	2018	2019	2020	2021	2022	2023
1. (a) *	39%	33%	11%	6%	2%	0%
1. (b)	0%	16%	11%	6%	2%	0%
1. (c)	39%	33%	28%	24%	20%	14%
1. (d)	27%	22%	17%	13%	9%	3%
1. (e)	39%	33%	28%	24%	20%	14%

*employees in 1.(a) are current employees who have already received a payment for the period from 13 August 2018 to 30 October 2022. They receive interest on the amounts to be paid for the period from 20 March 2017 to 12 August 2018 calculated up to 5 March 2025 and interest on the amounts already paid for the period from 13 August 2018 to 30 October 2022 calculated up to 11 December 2022.

3. **Calculation of Interest Payments**

(a) Interest for the financial year to 30 June 2018 will be calculated on 8/12ths of the payment made in the period from 1 July 2017 to 30 June 2018, being for the 8 month period from 26 October 2017 to 30 June 2018.

(b) Payments made to an employee in relation to the period from 20 March 2017 to 30 June 2017 and 4/12 of the payment made for the period from 1 July 2018 to 30 June 2018 (for

the period from July to October 2017) will be deducted from the total interest payment to be paid.

For example:

	2017	2018	2019	2020	2021	2022	2023	Total
Stores employees paid	0%	27%	22%	17%	13%	9%	3%	
Payments made	$22.38	$43.52 ($29.01)	$28.60	$78.95	$62.17	$111.28	$68.29	$415.19
Interest	$0	$7.83	$6.29	$13.42	$8.08	$10.02	$2.05	$47.69

1. Add 2017 payment plus 4/12 of 2018 payment ($22.38 + 1/3 x $43.52) =$36.89. This is the payment from March 2017 to October 2017.
2. Calculate 2/3 of 2018 payment (2/3 x $43.52) = $29.01
3. Calculate interest for each year, including interest on 2/3 of the payment made in 2018
4. Total the interest payable, then subtract payment made for 2017/2018 (from point 1 above)
5. Total amount payable is $47.69-$36.89=$10.80

ANNEXURE B

SETTLEMENT DISTRIBUTION SCHEME (SDS)

ALDI Foods Class Action

Kelly Roslyn Boi and others v ALDI Foods Pty Ltd (ACN 086 210 139)
Federal Court of Australia Proceeding No VID898 of 2023

An officer authorised pursuant to s 44(2) of
the Federal Court of Australia Act 1976 (Cth)
305 William Street Melbourne

9/10/26

AMY FINCH

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1. BACKGROUND

1.1 On 27 October 2023, the Class Action Applicants, Kelly Roslyn Boi, Souad Tannous Lichaa and Harinder Pal, commenced a proceeding in the Federal Court of Australia as a representative proceeding, VID898 of 2023 (**ALDI Foods Class Action**) claiming compensation for themselves and on behalf of the Group Members against ALDI Foods Pty Ltd (**ALDI Foods**).

1.2 On 27 October 2023, the SDA commenced a separate but related proceeding in the Federal Court of Australia against ALDI Foods in which the SDA sought declarations against ALDI Foods, orders that penalties be imposed on ALDI Foods and an order that those penalties be paid to the SDA, VID 899 of 2023 (**SDA Penalty Claim**).

1.3 ALDI Foods is the Respondent to the ALDI Foods Class Action and is the Respondent to the SDA Penalty Claim. ALDI Foods denies the allegations in the ALDI Foods Class Action. ALDI Foods denies the allegations in the SDA Penalty Claim.

1.4 On 5 May 2026, the parties executed a Settlement Deed (**Settlement Deed**) agreeing to resolve the disputes between them on the basis set out in the Deed, subject to Court approval of the proposed settlement and this Settlement Distribution Scheme (**SDS**) pursuant to section 33V of the *Federal Court of Australia Act 1976* (Cth) (**Act**). The Settlement Deed was re-executed on or around 25 August 2026 to clarify a minor issue.

1.5 This SDS establishes a procedure for distributing to Known Group Members a monetary sum to be paid by ALDI Foods pursuant to the settlement of the Proceeding as approved by the Court.

1.6 This SDS does not become operative until the Final Approval Orders are made.

1.7 In summary, this SDS provides for the following:

(a) a regime for the payment of Settlement Money to all Known Group Members;

(b) the method for calculating the amount of Settlement Money payable to each Group Member;

(c) a regime that enables the SDA to audit the administration of the SDS; and

(d) the role of PWC in assisting the Scheme Administrator in the administration of the SDS.

2. DEFINITIONS AND INTERPRETATION

2.1 In this SDS, paragraph references are references to the paragraphs of this document unless otherwise specified.

2.2 In this SDS, the following terms have the meanings defined below:

Term	Meaning
Account Information	the following information relating to a Group Member: (a) Bank Account Information; and/or (b) Superannuation Account Information.
Act	*Federal Court of Australia Act 1976* (Cth).
Administration Period	the period from the date on which the Final Approval Orders are made to 31 March 2027 or until the proceedings are dismissed, whichever is the latter.
AJ Macken	AJ Macken & Co., the law firm that is acting for the Applicants in the ALDI Foods Class Action and is acting for the SDA in the SDA Penalty Claim.
ALDI Foods Class Action	Federal Court of Australia Proceeding No VID898 of 2023 *Kelly Roslyn Boi and others v ALDI Foods Pty Ltd (ACN 086 210 139)*.
Approval Orders	orders approving the settlement of the ALDI Foods Class Action on the terms set out in the Settlement Deed, and approving the payments set out in the Settlement Deed, pursuant to *inter alia* section 33V of the Act.
Bank Account	an account with an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth).
Bank Account Information	A Group Member's name and the following details of that Group Member's Bank Account being: (a) Bank State Branch number (BSB); and

Term	Meaning
	(b) Account number.
Business Day	a day on which banks are open for business in Melbourne, excluding a Saturday, Sunday or public holiday.
Claim	(a) any claim, demand, action, suit or proceeding for damages, debt, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy, whether by original claim, cross-claim or otherwise whether arising at common law, in equity, under statute or otherwise; and (b) any damage, loss, costs, charge, expense, outgoing or payment incurred as a result of the Disputes.
Court	the Federal Court of Australia.
Current Employee	A Group Member and an employee of ALDI Foods as at the time the Settlement Deed was executed and at the date when the Final Approval Orders are made.
Deed	The Settlement Deed, including the rights and obligations created by the Settlement Deed.
Director	a director as defined in section 9 of the Corporations Act.
Disputes	collectively, the ALDI Foods Class Action and the SDA Penalty Claim and all disputes arising by reason of the Proceedings in relation to the Claims made thereunder.
Dollars and $	the lawful currency of the Commonwealth of Australia.
Duty	any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes, but is not limited to, any interest, fine, penalty, charge or other amount imposed in respect of the above but excludes any Tax or GST.

Term	Meaning
Final Approval Orders	the Approval Orders as taking effect (with or without modification) after the resolution of any appeals and completion of periods allowed for the institution of appeals or further appeals.
Final Group Member Information	the Group Member Information held by ALDI Foods and/or the Scheme Administrator as at the date on which the Scheme Administrator pays Settlement Money to Known Group Members.
Former Employee	A Group Member who: (a) as at the time the Settlement Deed was executed had ceased his or her employment with ALDI Foods; or (b) is an Employee who has ceased his or her employment with ALDI Foods as at the date when Final Approval Orders are made.
Group Members	each person who: (a) has not opted out of the ALDI Foods Class Action by the Opt Out Date; and (b) fits the description of "Group Member" in paragraph [4] of the Statement of Claim in the ALDI Foods Class Action; and unless the context otherwise requires, a reference to a Group Member shall include reference to Ms Boi, Ms Lichaa and Mr Pal.
Group Member Information	the last known personal details for each Group Member that are held by ALDI Foods and/or the Scheme Administrator including: (a) name; (b) date of birth; (c) contact details including a residential address, email address and/or telephone number; (d) tax file number; and (e) Account Information.
GST	goods and services tax levied under the GST Act.

Term	Meaning
GST Act	the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
Known Group Members	Group Members whose Group Member Information is known to ALDI Foods and/or the Scheme Administrator.
Notice	a notice or other communication under this Deed (but excluding any notice to Group Members).
Officer	an officer as defined in section 9 of the Corporations Act.
Opt Out Date	the date fixed by the Court pursuant to section 33J(1) of the Act (or any extension of that date), namely 12 August 2026.
Parties	the signatories to the Settlement Deed.
Proceedings	the ALDI Foods Class Action, being, Federal Court of Australia Proceeding No VID898 of 2023 *(Kelly Roslyn Boi and others v ALDI Foods Pty Ltd (ACN 086 210 139))* and the SDA Penalty Claim being Federal Court of Australia Proceeding No VID899 of 2023 (*SDA v ALDI Foods Pty Ltd (ACN 086 210 139))* and the facts, matters and circumstances giving rise to the causes of action pleaded by the Parties or referred to in the pleadings filed in both the ALDI Foods Class Action and the SDA Penalty Claim, the bringing of or conduct of those Proceedings (or any part of them), and all appeals from those Proceedings.
Project Costs	the costs incurred by the SDA in prosecuting and financing the SDA Penalty Claim and the ALDI Foods Class Action including the SDA's internal costs and SDA's and the Applicants' estimated legal costs and disbursements, on an indemnity basis, of and incidental to the investigation or prosecution of the claims the subject of the Proceedings, calculated in accordance with the SDA's and the Applicants' retainers of AJ Macken.
PWC	Price Waterhouse Coopers.
Registration Date	22 January 2027.

Term	Meaning
Registration Portal	electronic platform developed for ALDI Foods by PWC into which Former Employees are able to submit proof of identity, and enter or confirm their Group Member Information.
Related Bodies Corporate	has the meaning given to that expression in section 50 of the Corporations Act.
Related Persons	in relation to a party: 1 all Related Bodies Corporate, of that party; 2 all current and former Directors, Officers, agents, servants, employees, third party contractors and sub-contractors of that party; and 3 the current and former legal, accounting and other professional advisers to that party.
Respondent	ALDI Foods Pty Ltd (ACN 086 210 139).
Review Date	26 February 2027.
Scheme Administrator	the Scheme Administrator within the meaning of this SDS.
SDA	Shop, Distributive and Allied Employees' Association of 6th Floor, 53 Queen Street, Melbourne, VIC 3000.
SDA Penalty Claim	Federal Court of Australia Proceeding No VID899 of 2023 (*SDA v ALDI Foods Pty Ltd (ACN 086 210 139)*).
Settlement Money	the money to be paid to Known Group Members or to a Known Group Member's superannuation account by the Scheme Administrator under this SDS, the amount of which in each case is calculated in accordance with the Claims Assessment Methodology in the Schedule to this SDS.
Settlement Money Notice Date	5 February 2027.

Term	Meaning
Statement of Claim	the Statement of Claim dated 27 October 2023 filed by the Applicants in the ALDI Foods Class Action.
Superannuation Account	an account held with a regulated superannuation fund within the meaning of s 19 of the *Superannuation Industry (Supervision) Act 1993* (Cth).
Superannuation Account Information	A Group Member's name and details of that Group Member's Superannuation Account sufficient for money to be paid into the account by the Scheme Administrator.
Tax	any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Government Agency and includes, but is not limited to any interest, fine, penalty, charge fee or any other amount imposed in respect of any of the above but excludes Duty and GST and any tax on the net income of a party.
Unidentified Group Members	Group Members other than Known Group Members.

2.3 Unless the context requires otherwise, in this SDS:

(a) headings are for convenience only and do not affect interpretation of the SDS;

(b) the singular includes the plural and the plural includes the singular;

(c) a gender includes all genders;

(d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

(e) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;

(f) a reference to dollars and $ is to Australian currency;

(g) a reference to anything done by any person includes a reference to the thing as done by a director, officer, servant, agent, personal representative or legal representative if permitted to be so done by law or by any provision of the Deed or this SDS;

(h) a reference to money (including '$') is to Australian currency; and

(i) a reference to a day or a month means a calendar day or calendar month.

2.4 If the last day for doing an act is not a Business Day, the act must be done instead by the next Business Day.

3. SCHEME ADMINISTRATOR

3.1 This SDS will be administered and applied by the Scheme Administrator.

3.2 In acting as Scheme Administrator (including any incidental functions), the Scheme Administrator will administer this SDS fairly, efficiently, and reasonably according to its terms, with this obligation taking priority over any obligation to any individual Group Member.

3.3 With approval of the Court, ALDI Foods is appointed as the Scheme Administrator.

3.4 Nothing in this SDS prevents any Group Member from retaining legal representation, at his or her own cost, however no legal costs or like expenses may be claimed from the Scheme Administrator, ALDI Foods or the SDA for such representation.

3.5 Notwithstanding anything contained in this SDS, the Scheme Administrator may exercise its discretion at any time to implement processes and procedures necessary to ensure the efficient operation of this SDS, including to correct any error, slip or omission occurring in the course of the administration of this SDS.

4. ADMINISTRATION PERIOD

4.1 The Scheme Administrator will administer this SDS within the Administration Period, with the exception of those things referred to in in this SDS that may or must occur outside the Administration Period.

5. APPLICATION OF SETTLEMENT MONEY

5.1 Subject to any Approval Order becoming final and any other order of the Court, Settlement Money will be paid to Known Group Members calculated in accordance with the methodology set out in the Schedule to this SDS.

5.2 The completion of the payment of the Settlement Money to Known Group Members will satisfy any and all rights, claims or entitlements of all Known Group Members in connection with this SDS and/or arising out of the Proceedings.

6. GROUP MEMBER INFORMATION

6.1 After the Opt Out Date, ALDI Foods must compile, with the assistance of PWC, a spreadsheet containing the Group Member Information of the then Known Group Members (**Known Group Member spreadsheet**).

6.2 The Known Group Member spreadsheet will be updated from time to time by ALDI Foods and/or the Scheme Administrator as Group Member Information of Group Members becomes available.

6.3 On or before 14 December 2026, ALDI Foods, in anticipation of being appointed Scheme Administrator, with the assistance of PWC, will make available for access by all Group Members, a Registration Portal.

6.4 Current Employees will be treated as Known Group Members and will not need to access the Registration Portal.

6.5 Group Members, unless they are already a Known Group Member, must, to become a Known Group Member, access the Registration Portal and complete the Group Member Information on or before the Registration Date.

6.6 The Scheme Administrator will rely on the Final Group Member Information of Known Group Members in order to pay to the Known Group Members their Settlement Money.

6.7 The Scheme Administrator will instruct PWC to collate all identification, contact, banking and superannuation details for Former Employees that is in the possession of ALDI Foods or has been provided through the Registration Portal and provide this information to the Scheme Administrator for the purposes of the Scheme Administrator paying the Settlement Money.

6.8 Group members must ensure that the information they provide through the portal and to the Scheme Administrator is true and accurate. The Scheme Administrator is not responsible for:

(a) checking the truthfulness and accuracy of information provided by Former Employees; and

(b) any consequence that arises from the failure of a Former Employee to provide true and accurate information to the Scheme Administrator.

7. CALCULATION OF SETTLEMENT MONEY

7.1 The amount of each Known Group Member's Settlement Money will be calculated in accordance with the methodology set out in the Schedule to this SDS.

7.2 The Scheme Administrator will, so far as is consistent with its obligations under paragraph 3.2 above, administer the settlement fairly, efficiently and reasonably.

7.3 For Current Employees:

(a) the payments to be made to warehouse employees for the period March 2017 to August 2018 will be calculated by ALDI Foods;

(b) all payments of interest will be calculated by ALDI Foods, and the Scheme Administrator will instruct PWC to review ALDI Foods' calculations and either confirm or amend ALDI Foods' calculations and if amended, the Scheme Administrator will adopt PWC's amended interest calculations.

7.4 For Former Employees:

(a) the payments to be made to warehouse employees for the period 20 March 2017 to 30 October 2022 will be calculated by ALDI Foods;

(b) the payments to be made to store employees, Store Managers and Assistant Store Managers for the period 20 March 2017 to 26 March 2023 have been calculated by KPMG Australia, which calculations will be relied on by the Scheme Administrator;

(c) all payments of interest will be calculated by ALDI Foods, and the Scheme Administrator will instruct PWC to review ALDI Foods' calculations and either

confirm or amend ALDI Foods' calculations and if amended, the Scheme Administrator will adopt PWC's amended interest calculations.

8. SETTLEMENT MONEY NOTICES AND REVIEWS

8.1 By the Settlement Money Notice Date, the Scheme Administrator must distribute notices to Known Group Members of:

(a) the amount of their Settlement Money calculated according to the information available to it at that time;

(b) their right to request a review of the amount of their Settlement Money by the Review Date; and

(c) the process for how to request a review of the amount of their Settlement Money.

8.2 Known Group Members may submit a request for a review of the amount of their Settlement Money by the Scheme Administrator by the Review Date.

8.3 If a Known Group Member submits a request for a review of the amount of their Settlement Money by the Scheme Administrator in accordance with the notice provided to them pursuant to paragraph 8.1, the Scheme Administrator will:

(a) In the case of warehouse employees instruct PWC or KPMG Australia to complete the review;

(b) In the case of store employees, instruct KPMG Australia or PWC to complete the review.

8.4 In completing the review referred to in paragraph 8.3 above, the Scheme Administrator will instruct PWC and/or KPMG to recalculate the Known Group Member's Settlement Money, taking into account any further information provided by the Known Group Member.

8.5 After completing the review, the Scheme Administrator will instruct PWC and/or KPMG to advise the Scheme Administrator of the outcome.

8.6 If, in completing the review, PWC and/or KMPG determines that there is a further amount to be paid to the Known Group Member, then the Scheme Administrator will:

(a) notify the Known Group Member of the recalculated Settlement Money amount; and

(b) remit to the Known Group Member any additional amount of the Settlement Money, if any, identified in consequence of the review undertaken by PWC and/or KPMG.

8.7 A review of a Known Group Member's Settlement Money need not to be conducted if the review is not requested:

(a) in accordance with the notice provided to them pursuant to paragraph 8.1; and

(b) by the Settlement Money Notice Date Review Date.

8.8 The exercise by a Known Group Member of a right of review pursuant to paragraph 8.1 shall not in any circumstance result in the Known Group Member being paid any amount of Settlement Money less than the amount first notified to them as their entitlement pursuant to paragraph 8.1(a).

9. RELIANCE OF SCHEME ADMINISTRATOR ON GROUP MEMBER INFORMATION

9.1 The Scheme Administrator may, at its discretion, take steps to obtain further information from Group Members, including but not limited to, for the purpose of obtaining or correcting Bank Account Information or Superannuation Account Information for a Group Member. Similarly, the Scheme Administrator may, at its discretion, determine when in the Administration Period it is reasonable to cease such steps which shall be no less than 4 weeks from the date on which the Scheme Administrator took such steps to obtain further information from the Group Member.

9.2 If a Known Group Member does not provide information requested pursuant to paragraph 9.1 above within the reasonable time limit set by the Scheme Administrator, the Scheme Administrator may elect to treat the Known Group Member as an Unidentified Group Member. In such case, the Scheme Administrator has no obligation to pay the Unidentified Group Member.

9.3 A Group Member may appoint another person to deal with the Scheme Administrator on his or her behalf (provided that the Scheme Administrator receives an authorisation in writing signed by the Group Member and the appointee to that effect). If this occurs,

the Scheme Administrator is entitled to act on the basis of instructions provided and steps taken by the Group Member's appointee.

10. PAYMENT OF SETTLEMENT MONEY

10.1 The Scheme Administrator will use its best endeavours to pay to all Known Group Members their Settlement Money during the Administration Period.

10.2 The Scheme Administrator will pay each Known Group Member their Settlement Money by electronic funds transfer:

(a) into their Bank Account, the component (with interest as applicable) and less any applicable tax of their Settlement Money which is not the superannuation component of their Settlement Money;

(b) into their Superannuation Account, the superannuation component of their Settlement Money.

10.3 If a Known Group Member's Bank Account or Superannuation Account details change from those provided to the Scheme Administrator and the Settlement Money is paid, subject to the Scheme Administrator's right under paragraph 9.2 to elect to treat the Known Group Member as an Unidentified Group Member, it is the Known Group Member's responsibility to update the account details by accessing the Registration Portal.

10.4 If a Known Group Member requests to be paid the Settlement Money in a manner other than by electronic transfer and the Scheme Administrator determines that this request can reasonably be met, the Scheme Administrator can make the payment in the manner requested.

10.5 If, after the Scheme Administrator attempts to pay a Known Group Member's Settlement Money, the payment is not accepted by the relevant institution:

(a) the Scheme Administrator must make reasonable efforts in accordance with clause 9.1 to contact the Known Group Member in order to obtain valid Account Information;

(b) but if such reasonable efforts do not result in the provision of valid Account Information the Scheme Administrator will treat the Known Group Member as an Unidentified Group Member and there will be no obligation for the Scheme Administrator to pay the Unidentified Group Member.

10.6 An Unidentified Group Member will remain a Group Member for all purposes other than the entitlement to receive Settlement Money from the Scheme Administrator.

11. INFORMATION ABOUT SETTLEMENT MONEY

11.1 The Scheme Administrator will, for each Known Group Member who receives their Settlement Money:

(a) maintain a record of the Settlement Money payable and/or paid to each Known Group Member for at least 7 years; and

(b) maintain a record of each payment or attempted payment to each Known Group Member of Settlement Money and the amount paid or attempted to be paid, for at least 7 years.

11.2 On receipt of a request by a Known Group Member or an Unidentified Group Member, the Scheme Administrator will advise the Group Member of the matters in paragraph 11.1(a) and 11.1(b), as the case requires.

12. SDA AUDIT

12.1 ALDI Foods as the Scheme Administrator agrees that for periods of not less than every 2 months from the date of the making of the Final Approval Orders, the SDA can request and the Scheme Administrator must provide, information relating to the administration of this SDS sufficient for the SDA to determine whether the Scheme Administrator's obligations under the SDS are being met and that the Group Members are being treated fairly and, where the amount of the Settlement Money paid or payable to any Group Member has been determined, whether the calculation of that entitlement is consistent with the Claims Assessment Methodology set out in the Schedule to this SDS. The Scheme Administrator will instruct PWC to generate any reports, that within reason, will assist the SDA to conduct such an audit.

12.2 The Scheme Administrator shall engage promptly with the SDA in relation to the exercise by the SDA of its rights under paragraph 12.1 above and will use its best endeavours to resolve any matters of concern reasonably raised by the SDA in relation to the administration of the SDS and the calculation of the entitlements of Group Members thereunder. Without limiting the generality of the foregoing, if and when requested by the SDA to do so, the Scheme Administrator shall provide such data to

the SDA as will permit the SDA to satisfy itself that the entitlements of Group Members have been correctly calculated in accordance with the Claims Assessment Methodology set out in the Schedule to this SDS.

12.3 If, at the time that the SDA proposes to conduct an audit under paragraph 12.1 above, one or more Known Group Members have requested a review under paragraph 8.2, the Scheme Administrator will provide all details of the request and outcome of such reviews to the SDA.

12.4 Nothing in this clause will require the Scheme Administrator to provide the SDA with personal information that identifies the Current or Former Employees.

13. COURT SUPERVISION AND DISPOSAL OF PROCEEDINGS

13.1 Consistently with Part IVA of the Act, the implementation of this SDS is subject to the Court's supervision. The Scheme Administrator or the SDA may refer any issues arising in relation to this SDS or the administration of this SDS to the Court for determination. Liberty to apply will be sought to enable this.

13.2 Within 28 days following the date on which the final payment is made under this SDS and prior to 31 March 2027 or the date when proceedings are dismissed, whichever is the latter, the Scheme Administrator shall provide a brief report to the Court on:

(a) the total of all Settlement Money paid to Known Group Members during the Administration Period;

(b) the number of Known Group Members who have received Settlement Money during the Administration Period; and

(c) the number of Unidentified Group Members and the total value of the Settlement Money which would have been payable to the Unidentified Group Members had they been Known Group Members.

13.3 The Proceedings be dismissed with no order as to costs and with all previous cost orders vacated, subject to any intervening order, on 31 March 2027 with leave to be reserved to the parties to vary such order.

13.4 Any costs incurred by the Scheme Administrator under this or any other section of this SDS will be borne by the Scheme Administrator.

13.5 For the avoidance of doubt, and subject to any order of the Court, the Proceedings will remain on foot until the Court has made orders dismissing the Proceedings.

14. IMMUNITY FROM CLAIMS

14.1 The Scheme Administrator will have no liability to a Group Member who does not receive the payment of Settlement Money, unless it is the fault of the Scheme Administrator.

14.2 The Scheme Administrator will have no liability to a Known Group Member who does not receive the payment of Settlement Money or who receives Settlement Money in an incorrect amount arising from:

(a) incorrect or otherwise insufficient Account Information;

(b) fraudulent conduct other than fraudulent conduct on the part of the Scheme Administrator.

14.3 If a Group Member has a legal obligation by reason of receiving Settlement Money pursuant to this SDS, whether under statute or contract or otherwise to any individual, agency, victim, compensation payer or insurer, to pay or repay a sum from their Settlement Money, the Group Member indemnifies and holds harmless the Scheme Administrator (and/or its delegates) from and against any claim associated with that legal obligation.

14.4 The Scheme Administrator has no liability arising out of the payment of Settlement Money to a Known Group Member if the compensation is claimed by a third party or it causes an amount that would otherwise be paid to the Known Group Member to be reduced.

14.5 As at the end of the Administration Period or until the proceedings are dismissed, whichever is the latter, the Scheme Administrator shall have no obligation to pay any Group Member who as at that time is an Unidentified Group Member.

15. NOTICE

15.1 Any notice to be given pursuant to this SDS will be deemed given and received for all purposes associated with this SDS if it is:

(a) addressed to the person to whom it is to be given; and

(b) either:

(i) delivered, or sent by pre-paid mail, to that person's postal address (being, in respect of any Group Member, the current postal address recorded in the Group Member Contact Information or obtained directly from the Group Member); or

(ii) sent by email to that person's email address (being, in respect of any Group Member, the current email address recorded in the Group Member Contact Information or obtained directly from the Group Member); or

(iii) sent by SMS to that person's mobile telephone number (being, in respect of any Group Member, the current mobile telephone number recorded in the Group Member Information or obtained directly from the Group Member).

15.2 A notice that complies with this paragraph 15.1 will be deemed to have been given and received:

(a) if it was sent by mail to an addressee in Australia, ten clear Business Days after being sent;

(b) if it is sent by mail to an addressee overseas, twenty clear Business Days after being sent;

(c) if it is sent by email, at the time it is sent; and

(d) if it is sent by SMS, at the time it is sent.

15.3 Conditional upon the Court approving the appointment of ALDI Foods as Scheme Administrator, the Scheme Administrator's address and email address will be as set out below unless and until the Scheme Administrator notifies the sender otherwise:

ALDI Foods
1 Sargents Road Minchinbury NSW 2770
Email: ALDIclassaction@aldi.com.au

16. TIME

16.1 Other than the duration of the Administration Period, the time for doing any act or thing under this SDS may be extended by the Scheme Administrator at its absolute discretion.

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

SCHEDULE

CLAIM ASSESSMENT METHODOLOGY

Each individual Known Group Member's entitlement to Settlement Money is to be assessed by the Scheme Administrator in accordance with these principles and by applying the calculations in paragraphs 1 to17 below.

INDIVIDUAL KNOWN GROUP MEMBER'S ENTITLEMENT TO SETTLEMENT MONEY

To Current Employees:

1. To current hourly rate warehouse employees who were employed between 20 March 2017 to 12 August 2018 and who performed any pre-shift work within the meaning of paragraph 60 of the Statement of Claim (**pre-commencement tasks**), prior to their rostered shift start time, an amount for the time spent performing the pre-commencement tasks prior to the commencement of their shift for the period 20 March 2017 to 12 August 2018 using the same methodology used for the payments previously made to these employees by ALDI Foods for the performance of the same pre-commencement tasks performed prior to the commencement of their shift for the period 13 August 2018 to 30 October 2022;
2. To current hourly rate warehouse employees who were employed between the period 20 March 2017 and 30 October 2022, interest on the payment referred to in 1 above and interest on the payment made to these employees for the time spent performing the pre-commencement tasks prior to the commencement of their shift for the period 13 August 2018 to 30 October 2022 at the rates set out in Attachment 1 to the Settlement Deed subject to paragraph (4) below;
3. To current hourly rate store employees who were employed between the period 20 March 2017 to 26 March 2023, interest on any payments previously made to these employees for the difference between their punch times and their rostered start times and their rostered finish times and their punch times for any time during the period 20 March 2017 to 26 March 2023 at the rates set out in Attachment 1 to the Settlement Deed subject to paragraph (4) below;
4. The payments of interest required to be made pursuant to paragraphs (2) and (3) above will be reduced prior to payment by any amount paid to an employee for the period 20 March 2017 to 27 October 2017 that was made for, in the case of hourly rate warehouse employees, pre-commencement tasks and, in the case of hourly rate store employees, the employees punching in prior to their rostered shift start time and punching out after their rostered shift end time.

5. Superannuation on the amounts set out in paragraph (1) above.

6. The amounts in paragraphs 1, 2 and 3, subject to paragraph 4 will be less any applicable taxation.

To Former Employees:

7. To former hourly rate warehouse employees who were employed between 20 March 2017 to 30 October 2022 and who performed pre-shift work within the meaning of paragraph 60 of the Statement of Claim (**pre-commencement tasks**), prior to their rostered shift start times, an amount for the time spent performing the pre-commencement tasks prior to the commencement of their shift for the period 20 March 2017 to 30 October 2022 using the same methodology used for Current Employees as set out in paragraph (1) above less any amount the former hourly rate warehouse employee has already been paid for any time during this period for the same pre-commencement tasks.

8. To former hourly rate warehouse employees who were employed between the period 20 March 2017 and 30 October 2022, interest on the payment referred to in paragraph (7) above prior to any deduction for payments already made at the rates set out in Attachment 1 to the Settlement Deed subject to paragraph (13) below.

9. To former hourly rate store employees who were employed between the period 20 March 2017 to 26 March 2023, an amount calculated by reference to, in any fortnightly pay period during that period, time accrued to the employees from punching in prior to their rostered shift start times and punching out after their rostered shift end times, offset by any time when the employees punched in after their rostered shift start times or punched out before their rostered shift finish times in the same fortnightly pay period and further reduced by any amount the hourly rate store employee has already been paid for any period during the same accumulated time.

10. To former hourly rate stores employees who were employed for the period 20 March 2017 to 26 March 2023, interest on the payment referred to in paragraph (9) above prior to any deduction for payments already made at the rates set out in Attachment 1 to the Settlement Deed subject to paragraph (13) below;

11. To former Store Managers and Assistant Store Managers who were employed between 20 March 2017 to 26 March 2023 and who had not previously received any adjustment to their time off in lieu accrual for the period 20 March 2017 to 26 March 2023, or any payment in lieu of such adjustment, an amount calculated by reference to, in any fortnightly pay period during that period, time accrued to the Store Managers and Assistant Store Managers from punching

in prior to their rostered shift start times and punching out after their rostered shift end times for the period 20 March 2017 to 26 March 2023, offset by any time when the Store Managers and Assistant Store Managers punched in after their rostered shift start times or punched out before their rostered shift finish times in the same fortnightly pay period.

12. To former Store Managers and Assistant Store Managers who were employed for the period 20 March 2017 to 26 March 2023, interest on the payment referred to in paragraph (11) above at the rates set out in Attachment 1 to the Settlement Deed subject to paragraph (13) below.

13. The payments of interest required to be made pursuant to paragraphs (8), (10) and (12) above will be reduced prior to payment by any amount paid to an employee for the period 20 March 2017 to 27 October 2017 that was made for, in the case of former hourly rate warehouse employees, pre-commencement tasks and, in the case of former hourly rate store employees and former Store Managers and Assistant Store Managers, the employees punching in prior to their rostered shift start times and punching out after their rostered shift end times.

14. Superannuation on the amounts set out in paragraphs (7), (9) and (11) above.

15. The amounts in paragraphs 7, 8, 9, 10, 11 and 12 subject to paragraph 13 will be less any applicable taxation.

16. Any Current Employee or Former Employee who is or was an hourly rate warehouse employee who has not been identified to have performed any pre-commencement tasks will not receive any payment.

17. Any Current Employee or Former Employee who is or was a Store Manager or Assistant Store Manager and who has already had his or her time in lieu accrual adjusted or paid out to reflect the difference between their punch times and their rostered shift start and finish times for the period 20 March 2017 to 23 March 2023 will not receive any payment or benefit.

END OF SCHEDULE