



## FUNDING INFORMATION SUMMARY STATEMENT

*William Lay & Daniel Joseph Batchelor v Nuix Limited & Ors – S ECI 2021 04360*

Case: S ECI 2021 04360

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### 1. How is the Nuix Class Action funded?

The Nuix class action is being jointly funded by litigation funders Woodsford Litigation Funding 13 LLP (company number OC432977) and LLS Australia Funding Pty Ltd (collectively, **the litigation funders**).

### 2. What is the role of the litigation funders and what are the basic funding terms?

Legal fees and disbursements (including, barristers' and experts' fees) will be paid by the litigation funders pursuant to the terms of the Litigation Finance Agreement (**LFA**) between the litigation funders and the Lead Plaintiffs. Consistently with reforms to the regulation of litigation funders, the Woodsford - Nuix - Litigation Funding Scheme (**Funding Scheme**) has been deregistered and will no longer apply to the funding of this proceeding.

The litigation funders will pay a proportion of the legal fees and all disbursements over the duration of the case, in accordance with the LFA. This applies to the legal fees incurred by Shine Lawyers and Phi Finney McDonald because, as explained in the Class Action Summary Statement, Shine Lawyers will be the solicitors on the record and have engaged Phi Finney McDonald under an agency arrangement such that both firms will continue working together on the class action.

To the extent that any legal costs are not covered by funding from the litigation funders, those costs will be carried by Shine Lawyers and Phi Finney McDonald on a No-Win-No-Fee (**NWNF**) basis.

Shine Lawyers and Phi Finney McDonald will charge a 25% uplift fee on the professional fees carried on a NWNF basis and will recover that uplift fee from any resolution sum paid by any defendant/s in the event of a successful outcome. Shine Lawyers and Phi Finney McDonald will not charge the uplift fee if this would cause the Lead Plaintiffs and group members to receive less than a total of 70% of any resolution sum.

Additionally, the litigation funders:

- a. will indemnify the Lead Plaintiffs (and group members who participate) against liability for any adverse costs order made against the Lead Plaintiffs (in the event that there is not a successful outcome); and
- b. have or will obtain after-the-event insurance (**ATE Insurance**) to:
  - i. provide the Lead Plaintiffs and group members with additional protection against the risk of adverse costs; and
  - ii. assist the Lead Plaintiffs to provide security for the defendants' costs.

### 3. What funding costs are the litigation funders entitled to if there is a successful outcome?

The Lead Plaintiffs and group members will not be asked to pay anything upfront. Costs will only be payable in the event of a successful outcome and then only as approved by the Court. Costs payable to the litigation funders and/or law firms (including any costs incurred pursuant to the agency agreement between Shine Lawyers and Phi Finney McDonald) will be deducted

from, and will not exceed, any compensation that group members are entitled to receive if there is a successful outcome.

In the event of a successful outcome (such as a settlement that is approved by the Court or a judgment by the Court awarding damages to group members), the litigation funders will be entitled to recover the following:

- the costs of operating the Funding Scheme prior to its deregistration;
- the legal costs and disbursements the litigation funders have paid during the course of the proceeding, including any upfront insurance premiums relating to ATE Insurance which has been obtained, adverse costs (including, for example, in relation to any interim Order for adverse costs) and security for costs (including the cost of any deeds of indemnity purchased from ATE insurers);
- any further insurance premiums (including deferred or contingent premiums) that will fall due under any ATE Insurance policy; and
- a funding commission, being a percentage of any gross resolution sum (that is, the amount of the resolution sum before deducting the above amounts for costs and premiums), to be set by the Court at the time of the successful outcome.

Before any amounts can be deducted from any resolution sum, the amount of legal costs and disbursements (including the costs of operating the Funding Scheme and the costs of ATE Insurance premiums), and the funding commission must first be approved by the Court. The Lead Plaintiffs will also seek a Common Fund Order so that all group members contribute to the costs and the funding commission regardless of whether they are a member of the Funding Scheme or have entered into any LFA with the litigation funders.

The funding commission is a percentage of the recovery which reflects the risks assumed by the litigation funders in funding the proceeding. Based on the risks presently known to the Lead Plaintiffs and the litigation funders (including the expected costs of conducting the class action), it is intended that the commission sought will be:

- 16% of any gross resolution sum up to \$50 million; plus
- 10% of any gross resolution sum to the extent it exceeds \$50 million.

#### **4. What happens if there is not a successful outcome?**

If there is not a successful outcome, the litigation funders will pay any adverse costs orders that are made. The Lead Plaintiffs and group members will not be asked to pay Shine Lawyers or Phi Finney McDonald's costs or disbursements. The litigation funders will not seek and are not entitled to recover from group members any costs they have paid in relation to the case.

#### **5. Who can I contact to get further information about the funding of the class action?**

Group members may contact Shine Lawyers, at no out-of-pocket cost, via:

<b>Email</b>	<a href="mailto:NuixClassAction@shine.com.au">NuixClassAction@shine.com.au</a>
<b>Phone</b>	1800 560 656
<b>Website</b>	<a href="https://www.shine.com.au/service/class-actions/nuix-class-action">https://www.shine.com.au/service/class-actions/nuix-class-action</a>