

**SUPREME COURT OF VICTORIA**

**NUIX CLASS ACTION**

**LAY & BATCHELOR**

**V**

**NUIX LIMITED (ACN 117 140 235) & ORS**

## **IMPORTANT COURT NOTICE**

**This is an important notice that the Supreme Court of Victoria has ordered be published and distributed to group members on whose behalf this class action is brought and who may be affected by it.**

**You should read this notice carefully as it may affect your legal rights. Any questions you have concerning this notice should not be directed to the Supreme Court of Victoria.** If there is anything in this notice that you do not understand, you should seek legal advice.

A class action has been commenced by two representative plaintiffs William Lay and Daniel Joseph Batchelor (the **Plaintiffs**) in the Supreme Court of Victoria against, Nuix Limited (**Nuix**), Macquarie Capital (Australia) Limited (**MCAL**), and a former director of Nuix, Mr Daniel Phillips (**Phillips**) (together, the **Defendants**) (the **Nuix Class Action**).

The Nuix Class Action has been brought on behalf of investors who acquired an interest in Nuix shares during the period 18 November 2020 to 29 June 2021.

The Plaintiffs allege that between 18 November 2020 to 29 June 2021, Nuix engaged in or was involved in:

- misleading and deceptive conduct;
- inadequate disclosures in the Nuix IPO prospectus; and/or
- contraventions of Nuix's continuous disclosure obligations.

The Plaintiffs further allege that:

1. Phillips (as a director of Nuix) was involved in the alleged omissions and/or alleged misleading and deceptive statements in the Prospectus in relation to the Nuix IPO, and the alleged contraventions of Nuix's continuous disclosure obligations;

2. MCAL (who was an underwriter of the issue of Nuix shares pursuant to the Prospectus) is liable, along with Nuix and Phillips, for alleged omissions and/or alleged misleading and deceptive statements in the Prospectus in relation to the Nuix IPO.

The Defendants deny these allegations and are defending the class action.

Unless it is settled earlier, the trial for the Nuix Class Action will start on 27 July 2026.

You have received this notice because you may be a group member in the Nuix Class Action.

As explained below, you may do **one of three things** in response to this notice:

1. **Register** for the class action by **4pm AEST on 28 February 2025** and be eligible to receive monetary compensation from any settlement approved by the Court which may be reached between the parties at mediation or up to two months after mediation; or
2. **Do nothing** and remain a group member, but not be eligible to receive monetary compensation from any settlement approved by the Court which may be reached between the parties at mediation or up to two months after mediation, and you may lose your right to seek compensation from the Defendants in relation to the same (or similar) claims; or
3. **Opt out** of the class action by **4pm AEST on 28 February 2025** by completing the Online Opt Out Notice at <https://nuixclassaction.shine.com.au/OptOut>. If you opt out, you will lose the right to any monetary compensation from any settlement reached between the parties and subsequently approved by the Court, or from any judgment of the Court, but keep your right to seek compensation in an action you may start yourself or in which you may participate.

See section C below “**What are my options?**” for further details on each option.

## **THINGS YOU SHOULD KNOW ABOUT THE NUIX CLASS ACTION**

### **A. What is the Nuix Class Action?**

1. There were three class actions brought against Nuix which alleged similar claims in Australia:
  - a. On 19 November 2021, a proceeding against Nuix was brought in the Supreme Court of Victoria by Shine Lawyers on behalf of lead plaintiff William Lay and group members (**Lay proceeding**).

- b. On 23 November 2021, a proceeding against Nuix, MCAL and Macquarie Group Limited (MGL) was brought in the Supreme Court of Victoria by Phi Finney McDonald on behalf of lead plaintiff Daniel Batchelor and group members (**Batchelor proceeding**).
  - c. On 9 March 2022, a proceeding against Nuix, MCAL, MGL and other parties was brought in the Supreme Court of Victoria by Banton Group on behalf of lead plaintiff Stella Stefana Bahtiyar and group members (**Bahtiyar proceeding**).
2. On 23 August 2022, the Supreme Court of Victoria ordered that the class actions filed by Shine Lawyers and Phi Finney McDonald would be consolidated (**Consolidated Proceeding**), and the Bahtiyar proceeding be permanently stayed (stopped).
3. The Supreme Court also allowed Phi Finney McDonald and Shine Lawyers' proposal that the firms continue to work together in the conduct of the consolidated class action. To this end, Shine Lawyers are the solicitors on the record and Phi Finney McDonald is engaged to work on the matter under an agency arrangement.
4. This notice relates to the Consolidated Proceeding (i.e., the Nuix Class Action).
5. The detailed allegations and defences are set out in the parties' pleadings.
6. A copy of these documents is available at <https://www.shine.com.au/service/class-actions/nuix-class-action#case-documents>.

**B. Are you a group member?**

7. You are a group member in the Nuix Class Action if you:
  - a. acquired an interest in shares in Nuix Limited (ASX: NXL) between 18 November 2020 to 29 June 2021;
  - b. suffered loss by reason of the conduct alleged against the Defendants in the Nuix Class Action; and
  - c. are not:
    - i. a related party, a related body corporate, an associated entity, a director or officer of Nuix or a close associate of a director or officer of Nuix; or

- ii. a Chief Justice, Justice, Associate Justice or Registrar of the Supreme Court of Victoria or the High Court of Australia.

8. If you are unsure whether or not you are a group member, you should contact Shine Lawyers on 1800 560 656 or at [NuixClassAction@shine.com.au](mailto:NuixClassAction@shine.com.au), or seek your own legal advice without delay.

**C. What are your options?**

9. If you are a group member in this class action, you have the following options:

**Option 1: Register by 4pm AEST on 28 February 2025**

**Group members who wish to be eligible to receive compensation from any settlement that may be reached at mediation, or up to two months after mediation, must register their claim by 4pm AEST on 28 February 2025 with Shine Lawyers. To register, group members must complete the Group Member Registration Form online via the Shine Lawyers website at <https://nuixclassaction.shine.com.au/Registration>.**

If you have:

- (a) registered your interest with Shine Lawyers or Phi Finney McDonald and provided details of your claim; or
- (b) retained Shine Lawyers or Phi Finney McDonald to act on your behalf in relation to the Nuix Class Action

you do not have to register again. You will be contacted directly if you need to provide further information.

**Option 2: Do Nothing**

If you do nothing (i.e. neither opt out or register), you will remain an unregistered group member and remain bound by any order, judgment or settlement in the Nuix Class Action.

**However, if you do not register by 4pm AEST on 28 February 2025, you will not be entitled to receive compensation from any settlement that may be reached at mediation, or up to two months after mediation. If the class action is settled in that period, you may lose your**

**right to seek compensation from the Defendants in relation to the same (or similar) claims alleged in any class action.**

If the class action is not settled at mediation, or up to two months after mediation, group members who have not registered may be given another opportunity to register in the event of a successful outcome following the initial trial of the NuiX Class Action in July 2026.

To be eligible to receive compensation from any settlement that may be achieved at mediation, or up to two months after mediation, you must register (see Option 1) by **4pm AEST on 28 February 2025**.

**Option 3: Opt Out**

**If you do not wish to be a group member** you can remove yourself by opting out of the class action by **4pm AEST on 28 February 2025**. **To opt out, you must** complete and submit the 'Online Opt Out Form at: <https://nuixclassaction.shine.com.au/OptOut> **before 4pm AEST on 28 February 2025**.

If you opt out, then you:

- a. will cease to be a group member;
- b. will not be affected by any orders made in the class action and will not receive any compensation from the class action if it succeeds at trial or settles before trial; and
- c. will not be bound by any releases which may operate for the benefit the Defendants, and you will be able to commence your own claim against the Defendants.

If you wish to bring your own claim against the Defendants, you should seek independent legal advice as a matter of urgency because there are strict time limits to commence any such claim.

If you wish to opt out but you cannot do so online, please contact Shine Lawyers at 1800 560 656 between 9:00am to 5:00pm AEST.

## **FURTHER INFORMATION ABOUT CLASS ACTION PROCEEDINGS**

### **D. What is a class action?**

10. A class action, also known as a group proceeding, is an action that is brought by one or more plaintiff(s) on behalf of themselves and group members against one or more other defendant(s), where the plaintiff(s) and the group members have similar claims against the defendant(s).
11. Group members are bound by any judgment or settlement entered into in the class action unless they choose not to participate by “opting out” of the proceeding. This means that:
  - a. if the class action is successful, registered group members may be eligible for a share of any settlement monies or Court-awarded damages;
  - b. if the class action is unsuccessful, group members are bound by that result;
  - c. any settlement obtained in the proceeding may involve the parties seeking that the Court make an order which would release the Defendants, and their directors or officers and any of their related entities, from any further liability in respect of the claims made in, or similar to those made in, this class action, or claims which are not made in this class action but could have been made where they relate to the same facts and circumstances as those that are the subject of this class action; and
  - d. regardless of the outcome of the class action, group members will not be able to pursue their claims against the defendant(s) in separate legal proceedings unless they have opted out.
12. If you consider that you have a claim against the Defendants based on your individual circumstances or otherwise additional to the claims described in the Nuix Class Action, it is important that you seek independent legal advice about the potential binding effects of the class action before the deadline for opting out.

### **E. What is registration?**

13. To be eligible to share in any settlement that may be achieved at mediation, or up to two months after mediation, you must register by **4pm AEST on 28 February 2025**.

14. You can register by providing your name, contact details, and information about your relevant trading in Nuix shares at <https://nuixclassaction.shine.com.au/Registration>.
15. Registration gives the parties information about the value of all the claims of group members who seek to share in compensation from any settlement. This information assists the parties to determine a fair and reasonable settlement.
16. Registering does not mean you enter into a contract for Shine Lawyers or Phi Finney McDonald to represent you.
17. There are only two possible outcomes for registered group members:
  - a. in the event of a successful mediation or trial, and assuming you meet all eligibility criteria, you are entitled to receive a share of the settlement or award of damages, with a single fee (described further below) deducted from the total settlement or award of damages for legal costs to be paid to Shine Lawyers and Phi Finney McDonald for running the class action; or
  - b. in the event of an unsuccessful mediation or trial, the class action and your claim as a group member is unsuccessful. If this happens, you will not be liable for legal costs or required to pay anything.

**F. What is opt-out?**

18. The plaintiff(s) in class actions do not need to seek the consent of group members to commence a class action on their behalf. However, group members can cease to be group members by “opting out” of the proceeding. If you are a group member in the Nuix Class Action but you do not want to continue to be a group member, you can opt out now.
19. If you opt out of the Nuix Class Action, you:
  - a. will not be affected by any orders made in the Nuix Class Action or by any settlement reached between the parties;
  - b. will not be permitted to receive any distribution from any damages award or settlement outcome arising from the Nuix Class Action; and
  - c. will not be bound by any releases which may operate for the benefit of the Defendants and you will be able to commence separate proceedings against Nuix on your own behalf if you so wish (subject to any applicable time limits).

**G. Will you be liable for legal costs?**

20. You will **not need to pay any out-of-pocket legal costs** by remaining a group member or by registering in this class action.
21. Group members will not need to pay any out-of-pocket costs as a result of participating in the proceeding. If the class action is unsuccessful, group members will have no liability for legal costs and will not be required to pay anything.
22. To bring the class action, the Plaintiffs signed litigation funding agreements with Woodsford and Litigation Lending Services (**LLS**) (**Funding Agreements**). Pursuant to those Funding Agreements, the Plaintiffs have agreed to apply for a Court order to have any Proceeds (as defined below) obtained from a settlement or a judgment to be distributed as follows:
- a. *First*, repayment of reasonable costs (Cash Outlay, as further defined below) incurred by Woodsford and LLS;
  - b. Second, payment of Woodsford and LLS' Success Fee (defined below), Shine Lawyers and Phi Finney McDonald's deferred fees (including any costs incurred pursuant to the agency agreement between Shine Lawyers and Phi Finney McDonald) and a 25% uplift on those deferred fees, and any unpaid insurance premiums due (including any deferred and contingent premiums). Shine Lawyers and Phi Finney McDonald will not charge the uplift fee if this would cause the plaintiffs and group members to receive less than a total of 70% of any resolution sum; and
  - c. *Third*, payment of the balance to all group members (including the Plaintiffs) in accordance with a distribution scheme approved by the Court.
23. **Proceeds** are the total amount received (including any settlement sum, or compensation, costs and damages awarded by the Court and interest), paid or credited to, in favour of, for the benefit of, or the order of, the Plaintiffs or Group Members, by the Respondents or any third party which relates to the subject matter of the class action.
24. The **Cash Outlay** is the total amount of legal and other fees and costs (incl. GST) advanced by Woodsford and/or LLS plus all other fees and costs relating to the class action reasonably incurred by Woodsford and/or LLS. Those costs include:
- a. Shine Lawyers' and Phi Finney McDonald's fees;



- b. the costs of the Woodsford – Nuix – Litigation Funding Scheme (previously ARSN 655 927 521);
  - c. third party costs, including barristers’ fees, upfront (but not deferred and contingent premiums for after-the-event (**ATE**) insurance and the costs of any deeds of indemnity purchased from the ATE insurers to satisfy the Respondent’s requests and/or applications for security for costs (if necessary)).
25. The Plaintiffs also intend to apply for a payment from the Proceeds for compensation for any time and expense incurred in acting as the Plaintiffs. The balance of any proceeds will then be paid to group members in accordance with a distribution scheme approved by the Court.
26. Pursuant to the Funding Agreements, the Plaintiffs have agreed to apply for an order that will fairly distribute their obligations under the Funding Agreements among people who have benefited from this action. This will be by the way of what is known as a Common Fund Order, Funding Equalisation Order, or may be by another order of the Court.
27. The proposed distribution arrangements are described in more detail below.

**H. Plaintiffs’ costs and Woodsford’s and LLS’ Success Fee**

28. If the class action is successful, the Plaintiffs intend to seek an order that you contribute to the costs out of/from any settlement or judgment received by you in respect of your claim. These costs are taken into account before you receive any award or compensation.
29. The Funding Agreements mean that Woodsford and LLS are paying the Plaintiffs’ legal costs, including the costs of bring the claim on behalf of group members. Shine Lawyers and Phi Finney McDonald are also deferring some of their fees.
30. In return for the funding that Woodsford and LLS provides under the Funding Agreements for the Plaintiffs’ ‘own-side’ cost (as distinct from the adverse costs risk, which is discussed further below), Woodsford and LLS charge a ‘Success Fee’ payable from any Proceeds.
31. The Plaintiffs have agreed to apply for a Common Fund Order consistent in amount with Woodsford’s and LLS’ Success Fee. Woodsford’s and LLS’ Success Fee, as defined in the Funding Agreement, will be 16% of Proceeds up to AU\$50,000,000 plus 10% of Proceeds above AU\$50,000,000.

**I. Indemnification against Adverse Costs provided by Woodsford and LLS**

32. If the class action is unsuccessful, the Court may order the Plaintiffs (and/or other third parties such as Woodsford and/or LLS) to pay some part of a successful Defendants' costs (known as **Adverse Costs**).
33. To protect against the risk of Adverse Costs, Woodsford and LLS have:
- a. indemnified the Plaintiffs (and any Group Member who acts as a representative party) against liability for any Adverse Costs order made against the Plaintiffs; and
  - b. obtained ATE insurance to:
    - i. provide the Plaintiffs and Group Members with additional protection against the risk of Adverse Costs (the ATE insurance, provided by an A-rated ATE insurer, expressly covers Adverse Costs payable by the Plaintiffs); and
    - ii. assist the Plaintiffs to provide security for the Defendants' costs.
34. In return for this protection against the Adverse Costs risk, the Plaintiffs have agreed to apply for a Court order that the cost of any such ATE insurance, including any deferred and contingent ATE insurance premiums, be payable from the Proceeds (in addition to the other costs mentioned above, including Woodsford's and LLS' Success Fee).
35. Any application for the deduction of costs from the Proceeds, including Woodsford's and LLS' Success Fee and the costs of ATE insurance, is subject to Court approval.

**J. Where can you get copies of relevant documents?**

36. Copies of relevant documents may be obtained by:
- a. accessing the Shine Lawyers website at <https://www.shine.com.au/service/class-actions/nux-class-action#case-documents>;
  - b. accessing the Supreme Court of Victoria website at <https://www.supremecourt.vic.gov.au/areas/group-proceedings/nux>;
  - c. contacting Shine Lawyers at [NuxClassAction@shine.com.au](mailto:NuxClassAction@shine.com.au) or 1800 560 656 between 9:00am to 5:00pm AEST and requesting a copy; or
  - d. visiting the Commercial Court Registry of the Supreme Court of Victoria at 450 Little Bourke Street, Melbourne.

**K. Questions?**

37. If you are unclear about whether you are a group member, or if you have any other questions regarding the NuiX Class Action, you should contact Shine Lawyers by emailing [NuiXClassAction@shine.com.au](mailto:NuiXClassAction@shine.com.au) or seek independent legal advice without delay.
38. If you wish to register or opt out but you cannot do so online or otherwise require assistance, please call Shine Lawyers at 1800 560 656 between 9:00am to 5:00pm AEST. At the time of your call, please ensure you have all available information relevant to your trading in NuiX securities if you are registering.