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5<sup>th</sup> July 2021

## **Consultation on Recommendation 20 of the Parliamentary Joint Committee (PJC) report on litigation funding and class actions**

The Treasurer and Attorney-General are invited to accept for consideration the submission of Litigation Lending Services Ltd (**LLS**).

### **Section 1 – Introduction and Executive Summary**

#### *Introduction*

The Treasury and the Attorney-General's Department have failed to acknowledge:

1. A cap:
  - a. **Denies the fundamental right of every Australian to not be impeded in their right to legal representation.** This is illustrated in a case when the cost of running the case exhausts the minimum return to claimants. That right should not be restricted, particularly by the Government who, in failing to regulate the market, has contributed to the need for the private sector to enforce the law.
  - b. **Penalises the victim and rewards the defendant.** Why should the defendant not be restricted in their costs of the legal action but, through the Governments cap, the victim is restricted to a budget? The defendant (often the Government or big business) can hire the best legal team and deploy delaying tactics at will to increase costs for the victim. The Government, in imposing a cap, is trying to interfere with the victim to run a case over an extended period of time.
  - c. **Is not the same for all class actions.** If you have displaced minority groups, in pursuing a non-shareholder class action it can take:
    - i. a longer time; and
    - ii. more money.

- d. **Can not be considered in isolation of certainty for Common Fund Orders (CFO's)** to be made by the Courts in class actions as they materially contribute to the risk return economics for the case to proceed.
  - e. **Ignores the asymmetrical risk litigation funders take on with adverse costs when the claim fails.** Not only does the litigation funder lose the investment in legal fees and expenses incurred on behalf of pursuing the matter for the victim, the litigation funder also has to pay the defendants legal fees and costs which would otherwise be paid by the victim. In simple terms the litigation funder takes on the risk of investing one dollar to lose two dollars hence the need for a return to compensate for this asymmetric risk. **Pricing of 2x or 20% merely place the investor in litigation funding in a neutral position, prior to any return on capital put at risk for the benefit of victims whose government, government regulator or corporate has failed them, hence the requirement for a higher return<sup>1</sup>.**
  - f. **Would not have covered the legal costs of running 36% of class actions in the last 20 years, disregarding any returns to litigation funders.<sup>2</sup>**
2. **Returns to funders are prior to expenses of running an investment business.** Significant costs are incurred in running operating businesses that are not reflected in any of the Government's analysis of litigation funders returns. The Governments analysis also fails to acknowledge that, especially for non-shareholder class actions, significant research costs are incurred over many years prior to any matter being pursued.

In the following paper we consider the questions posed in the Treasurer and Attorney-General request for consultation on Recommendation 20 of the PJC's report. LLS strongly encourage the Government to continue a consultative approach with the litigation funding industry on empirical evidence analysis prior to implementation of Recommendation 20.

### Who is LLS?

LLS is an un-listed Australian Public Company, which is majority Australian-owned, pays tax in Australia, and whose employees are all Australian taxpayers. LLS' litigation funding business has been in operation for over 20 years

LLS operates a disputes funding business; it provides funding to third party clients in respect of their solicitor fees, counsel fees, court costs, expert and other costs that are related to court litigation, on a contingent basis. Where the litigation is successful (either via court determination or commercial settlement), LLS receives a share of the client's resolution proceeds calculated either as a multiple of the funding advanced or as a

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<sup>1</sup> Thomson Reuters (25 June 2021) Funders' pricing and the real value of litigation risks by Tets Ishikawa

<sup>2</sup> PwC (16 March 2021) *Models for the regulations of returns to litigation funders*

percentage of the resolution amount (as agreed between the client and LLS). This is in addition to the return of its original funding costs. In the alternative event of an unsuccessful outcome, LLS does not seek to recover the funding it has provided and additionally, may also be obligated to pay the opponent party/s costs.

LLS is also conscious that its obligations extend beyond the pecuniary. LLS takes seriously its responsibility to conduct its operations in a manner that affords both fairness to its clients and respect to the integrity of the Australian court system. To that end, LLS is proud that its funded cases have achieved successful outcomes for its clients, that reflect its corporate ethos.

LLS has been a member of the Association of Litigation Funders Australia (**ALFA**) since the ALFA's inception and was instrumental in its establishment.

### Executive summary

LLS are cognisant of the concerns conveyed in Chapter 13 of the Parliamentary Joint Committee report on litigation funding and class actions (**PJC Report**) in respect of a class action's expense to group members and returns to litigation funders generally and are committed to working with the Australian Government to alleviate these concerns.

LLS is of the view that:

1. The implementation of a minimum gross return of 70 per cent to group members in all class actions is contradictory to the overarching principle of Australia's class action regime in providing access to justice as it will undoubtedly reduce the economic viability for plaintiff law firms and litigation funders to run small to medium sized class actions or most non-shareholder class actions. **We propose a solution to this through a waterfall concept for legal fees and expenses to be reimbursed prior to any capping, the level of which requires further analysis.**
2. Any consideration of capping needs to recognise the types of class actions and their attributes, and we will propose two sets of capping models for each type:

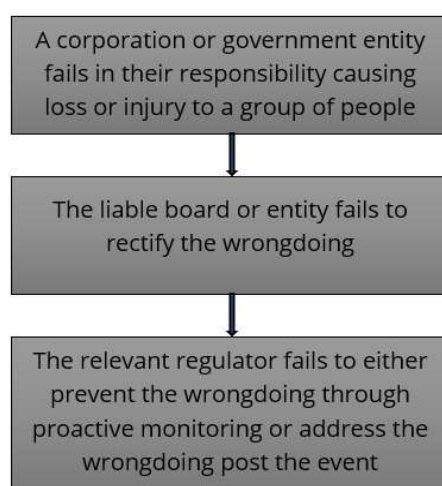
#### **a. Shareholder class actions:**

1. May be better suited to capping net returns to claimants given the lower cost to pursue aspects of these matters such as book building.
2. Follow a repetitive process where the claims are narrow (breach of continuous disclosure, misleading & deceptive conduct, etc), many experts are available, researching claims is visible, and importantly the cost of identifying potential class members and identifying their possible claims (book-building) is standardised with an up-to-date register of potential claimants that can be downloaded onto a USB stick.
3. Claimants are investors who are typically familiar with financial literature such as Product Disclosure Statements (PDS).

**b. Non-shareholder class actions**

1. These are much more complicated, and capping will most likely lead to no returns for claimants because funders will not take these cases on, especially for ones where it is likely the defendant will adopt delaying/hostile strategies to inflate costs.
2. Here the claims are varied and bespoke, novel and complex (negligence, breaches of contract, trust, racial discrimination, etc).
3. Proving product liability is risky (Johnson & Johnson Class Action).<sup>3</sup>
4. Book-builds are expensive and time consuming. As a practical matter, the identification of victims involves going on the road to lots of communities to reach the claimants or go through estates to find claimants who are deceased.
5. Claimants may not understand financial literature such as PDS.

Class actions exist due to a systematic failure at multiple levels of responsibility in a corporation or government entity which causes people to suffer a loss or injury. Class actions are a powerful tool for holding business and governments accountable.



A class action is funded and pursued to address a loss or injury caused to people by the failings of corporations or government entities at each juncture. Without litigation funding, many corporate or government wrongdoings are simply left unaddressed and those who have suffered loss or injury are further prejudiced by being unable to participate in the complex and expensive litigation of a David and Goliath battle. Any regulatory reform must not restrict the fundamental right of every Australian to make their own decisions in respect of their legal representation.

The litigation funding industry has been tainted by the misleading optics around funding commissions with little consideration by stakeholders as to the net returns and risk carried

<sup>3</sup> Gill v Ethicon Sàrl & Ors (No 5) [2019] FCA 1905. The largest women's health class action in Australian history filed by Shine Lawyers on behalf of thousands of Australian women who have been left with life altering complications after receiving Johnson & Johnson vaginal mesh or tape implants.

by litigation funders. There are significant expenses in running a litigation funding business. This is reflected in the loss experienced by key players in the industry. For example, in 3 of the last 4 reporting periods, Australia's largest litigation funding company has recorded a loss in total comprehensive income. LLS' operating company expense base is not charged as part of any class action we fund. To put this into perspective, 7 years were spent researching and preparing the class action of *Pearson v State of Queensland (No 2) (Stolen Wages Qld)*, in relation to wages stolen by the Queensland Government from First Nations people and the matter ran for approximately 4 years until a settlement was reached and none of LLS's operating expenses relating to this action over the 11 year period were charged to the claimants.

In a regular investment, the most you can lose is the amount you invested. However, in a class action (or any litigation for that matter), the risk extends beyond the investment amount, specifically in circumstances of an unsuccessful action, wherein the funder, in addition to the investment amount (which effectively becomes a write off), will likely be liable to pay adverse costs of the proceeding. Accordingly, to manage this risk, litigation funders rely on earning a multiple of their capital invested.

LLS has developed a proposal in this paper which supports a fair return for group members, without limiting group members' ability to access justice. It is necessary to recognise that there can be a material distinction in cost, risk, complexity, and time in running a 'non-shareholder class action' versus a 'shareholder class action'. As such, the approach taken by LLS is bifurcated and seeks to maintain the status quo between maximising return to group members, while maintaining the viability of actions, so as not to limit pathways to justice.

LLS consider the Australian Government ought to direct focus to review all of the PJC's recommendations as a whole solution to developing a sustainable disputes financing model prior to any single reform made in isolation. Inequities to group members and stakeholders in the Australian class action industry that need addressing include:

- a) the loophole in exempting law firms that charge their fees on a contingency basis from the requirement to hold an Australian Financial Services Licence (**AFSL**) and from the Managed Investment Scheme (**MIS**);
- b) the unsuitability of the MIS regime to particular groups of people who do not have the necessary understanding with respect to financial matters;
- c) the absence of Common Fund Orders; and
- d) the role of defendants in causing superfluous legal costs ultimately borne by group members.

## Section 2 – Consultation Questions

### 1. What is the best way to guarantee a statutory minimum return of the gross proceeds of a class action (including settlements)?

#### LLS Group Member Return Proposal

The LLS Group Member Return Proposal is based on a two tiered approach distinguishing shareholder class actions and non-shareholder class actions to strike a balance between monitoring the risk/return considerations undertaken by litigation funders and not curtailing access to justice. LLS is of the view that the LLS Group Member Return Proposal will better promote access to justice for group members by ensuring that litigation funders are able to consider viable funding to all case sizes and matter types whilst providing better surety to group members on returns on any resolution sum.

#### **Capping for Shareholder Class Actions**

In order for LLS to support a minimum return being imposed for group members, LLS will need to ensure that the mechanics of litigation costs are returned first in a priority waterfall to ensure the plaintiff law firm can obtain the minimum level of confidence in order to run the case to trial and/or appeal. Any minimum return should be reviewed periodically to measure the effectiveness both on financial metrics to all parties as well as the opportunity cost of matters not pursued.

In a compromise to the Governments proposed 70% minimum gross return, LLS propose a court monitored guideline for a 50% to 70% minimum net return to group members (calculated on the net entitlement after legal fees and disbursements) on shareholder class actions, with a priority waterfall (for legal fees and disbursements) prior to a minimum return to claimants to overcome any risks of defendants adopting obstructive tactics. The rationale for the sliding scale is to ensure that all meritorious actions are fully considered and pursued. Any funding commission would be contingent on group members achieving the said 50% to 70% minimum return, except in circumstances where the court felt it was clear the merits of the risk the funders took warranted a lower minimum return to claimants. Prior to any implementation of Recommendation 20, LLS strongly encourage the Government to continue a consultative approach with the litigation funding industry on empirical evidence analysis of the consequences of such a policy.

#### **If Capping is Required for Non-Shareholder Class Actions**

LLS propose:

1. A maximum return to funders (excluding legal fees, disbursements and insurance premiums) for non-shareholder class actions of 25% to ensure every possible deserving case is pursued, including the riskier ones in the pursuit of

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justice. The courts would still maintain oversight of the reasonableness of legal fees and litigation funders returns in approving any settlement. LLS provide an example below.

2. An exemption from the MIS regime for matters relating to First Nations Matters, disabled and other select disadvantaged minority groups (as determined by the Court) to ensure culturally acceptable communication can be delivered to these claimants.
3. A waterfall for the distribution of resolution amounts where legal fees, disbursements and insurance premiums are paid in priority to any entitlements of the funder and claimants.

LLS also consider that to reduce the cost of non-shareholder class actions, the Government must allow the courts to award a common fund order (**CFO**) to ensure all active and passive group members are provided an outcome. The inability to obtain a CFO will cause class actions to be run as a 'closed class' for those who sign up, usually prior to the commencement of the class action, together with additional costs of expensive bookbuilds. LLS urge the Government to provide the Court guidance on the acceptance of CFOs to ensure all those who suffer loss or injury are able to seek justice.

**2. How would the suggested mechanism interact with the class action system (including court processes) and the litigation funding regime?**

LLS propose that the Government implement the LLS Group Member Return Proposal by way of amendments to the current federal legislation and rules in relation to class actions. In determining whether a class action settlement is *fair and reasonable*, judges will be required to follow these thresholds.

**3. Is a minimum gross return of 70 per cent to class members the most appropriate floor for any statutory minimum return? If not, what would be the appropriate minimum and its impact on stakeholders, the class action system and the litigation funding industry?**

As foreshadowed in the LLS Group Member Return Policy, LLS don't consider that a minimum gross return of 70 per cent to class members is the most appropriate floor for any statutory minimum return.

LLS provide examples below of the LLS Group Member Return Proposal to highlight potential outcomes for group members, plaintiff law firms and litigation funders.



## Shareholder Class Actions

### **Example 1A**

*Shareholder class action settles for \$100 million. Legal fees and disbursements are \$8 million. Funding commission agreed at 25%. Court approves 70% minimum net return to claimants.*

1. *Firstly payment of legal fees and disbursements = \$8 million*
2. *= Secondly:*
  - *payment to group members (70% of settlement excluding legal fees and disbursements) = \$64.4 million*
  - *payment of the funding commission = \$25 million*
3. *Thirdly payment of additional funds remaining to group members = \$2.6 million*  
*Group members receive 73% of entitlements after legal expenses.*

### **Example 1B**

*Same shareholder class action as in Example 1A, however settlement sum is lower and costs of the litigation are higher as the defendant heavily contests litigation, was resistant to settle and the case theory is varied throughout the life of the case.*

*Shareholder class action settles for \$40 million. Legal fees and disbursements are \$25 million. Funding commission agreed at 25%. Court approves 50% minimum net return to claimants after considering the risks taken on by the funder in pursuing the matter.*

1. *Firstly payment of legal fees and disbursements = \$25 million*
2. *= Secondly:*
  - *payment to group members (50% of settlement excluding legal fees and disbursements) = \$7.5 million*
  - *payment of the funding commission = \$7.5 million (note this is reduced to an effective 18.8% to accommodate the minimum 50% return to group members (on the assumption the court agreed to the 50% minimum return to claimants to be fair and reasonable)*
3. *Additional funds remaining to group members = \$0*

*Note: The payment to the funder is reduced as their commission is contingent on the group members achieving a minimum return of 50%.*



## Non-Shareholder Class Action

### **Example 2A**

*Non-shareholder class action settles for \$40 million. Legal fees and disbursements are \$7 million. Funding commission agreed at 25%.*

- 1. Firstly payment of legal fees and disbursements = \$7 million*
- 2. Secondly payment of funding commission (25% maximum) = \$10 million*
- 3. Thirdly Payment to group members = \$23 million*  
*Group members receive 70% of entitlements after legal fees*

### **Example 2B**

*Same non-shareholder class action in 2A however settlement sum is lower and costs of the litigation are higher as the defendant heavily contests litigation, was resistant to settle and the case theory is varied throughout the life of the case.*

*Non-shareholder class action settles for \$30 million. Legal fees and disbursements are \$15 million. Funding commission agreed at 25%.*

- 1. Firstly payment of legal fees and disbursements = \$15 million*
- 2. Secondly payment of funding commission (25% maximum but Court uses discretion to lowers it to 22.5%) = \$6.75 million*
- 3. Thirdly payment to group members = \$8.25 million*  
*Group members receive 55% of entitlements after legal fees. Government should pursue defendant for top up payments for claimants or withdraw funding from regulatory agencies who failed the claimants. Restricting capital for private law enforcement will mean claimants get zero if no capital is allocated to pursuing a matter.*

### Implications of strict capping and minimum returns

LLS refers the Government to the PwC data that Omni Bridgeway provided the PJC on the impact of applying a 70% minimum return gross cap to class action data collected over the last 20 years.<sup>4</sup> The data indicated that in doing so, 36% of matters would not have covered the legal costs of running the class action, disregarding any returns to litigation funders.

LLS urge the Government to consider the settled class actions that would likely not have been funded and filed if the suggested minimum return/capping was imposed at the time these

<sup>4</sup> PwC (16 March 2021) *Models for the regulations of returns to litigation funders*

cases had run. For example, the class actions commenced on behalf of communities of Williamstown in New South Wales, Oakey in Queensland and Katherine in the Northern Territory against the Commonwealth of Australia, namely *Smith v Commonwealth of Australia (Williamstown PFAS Class Action)*, *Hudson v Commonwealth of Australia (Oakey PFAS Class Action)* and *Bartlett v Commonwealth of Australia (Katherine PFAS Class Action)* (together, the **PFAS Class Actions**). The PFAS Class Actions sought compensation for property owners in these communities after their properties lost value due to pollution caused by toxic firefighting chemicals emanating from the nearby Department of Defence bases. In February 2020, the Commonwealth of Australia settled the PFAS class actions for \$212.5 million on behalf of over approximately 2,500 group members for loss in property value, and distress and vexation caused to the communities. Contractually, the litigation funder of the PFAS Class Actions, were entitled to \$88 million in compensation however chose to limit their commission to \$53.1 million (25%).

Class Action	Litigation funding commission	Legal costs and disbursements as % of gross settlement sum	Combined remuneration to funder and legal costs as % of gross settlement sum
NSD1908/2016 <i>Smith v Commonwealth</i>	25%	11.2%	36.2%
NSD1155/2017 <i>Hudson v Commonwealth</i>	25%	23.6%	48.6%
NSD1388/2018 <i>Bartlett v Commonwealth</i>	25%	13.5%	38.5%

Source: Vince Morabito (2020), *POST-Money max Settlements in Funded Part IVA Proceedings*

As illustrated above, the PFAS Class Actions didn't meet the 70% proposed minimum gross return to group members. However, the Honourable Justice Lee in his judgment noted the following:

- *"The reality of these cases, however, is that without litigation funding, the claims of group members would not have been litigated in an adversarial way, but rather the group members would likely have been placed in a situation of being supplicants requesting compensation in circumstances where they would have been the subject of a significant inequality of arms."*
- *"It seems to be a testament to the practical benefits of litigation funding that these claims have been able to be litigated in an efficient and effective way and have produced a settlement."*
- *"There is a good deal of cynicism about the legal system in general and about class actions in particular, but to my mind, the present case is a good example of the system working and working well."*

- *“Although I am conscious of the complaints of some group members as to the size of the funding fee, when one compares it to other settlements, the amount of 25 per cent commission across the three proceedings could not be seen as anything other than fair and reasonable.”*

The implications of arbitrary capping and minimum returns will be particularly relevant in small to medium sized non-shareholder class actions. LLS are concerned that in the government's endeavour to provide fairness to group members in terms of returns of a resolution sum, the government will cause the contrary consequence of limiting the appetite of litigation funders to assist in bringing these sized claims and ultimately leaving injured individuals with no means to pursue justice and no compensation.

LLS also identify that there is additional risk in gross capping or minimum returns to include legal fees, disbursements, and insurance premiums. This inclusion will put plaintiff law firms and group members in a prejudiced position whereby defendants may adopt a combative and delaying strategy to have the plaintiff law firm incur costs above any capped amount which could lead to the abandonment of funding for a matter and prevent cases being run to mediation, trial and/or appeal.

**4. Is a graduated approach taking into consideration the risk, complexity, length and likely proceeds of the case appropriate to ensure even higher returns are guaranteed for class members in more straightforward cases?**

LLS do not recommend a hard minimum guarantee to class members and instead recommend a guideline for minimum returns that is overseen by the courts. In consideration of this, it is essential to acknowledge there can be a material distinction in cost, risk, complexity and time in running a non-shareholder class action versus a shareholder class action.

As previously outlined, shareholder class actions often follow a repetitive process where the claims are narrow (breach of continuous disclosure, misleading & deceptive conduct, etc), many experts are available, researching claims is visible, and importantly the cost of identifying potential class members and identifying their possible claims (book-building) is standardised with an up-to-date register of potential group members. Group members are investors who are typically familiar with financial literature such as Product Disclosure Statements (**PDS**).

Conversely, non-shareholder class action claims are often novel and bespoke claims in areas such as product liability, environmental law and human rights law. Establishing liability in these cases are often a complex and risky task, book-building can be expensive, and time consuming, expert and lay evidence is often more intricate, group members are not necessarily literate in financial documents such as a PDS and cases tend to take longer to resolve.

LLS experience the bespoke nature of non-shareholder class actions firsthand in funding class actions on behalf of First Nations people, including *Street & Ors v State of Western Australia (Stolen Wages WA)*, *McDonald & Ors v Commonwealth of Australia (Stolen Wages NT)*, *Stolen Wages QLD* and *Cummings & Ors v Commonwealth of Australia (Stolen Generation)*. In *Stolen Wages WA*, the Court has made orders regarding a Western Australia Outreach Program which requires the legal team, Shine Lawyers, to embark on 11 trips to Western Australia to hold numerous information sessions for group members in remote areas as traditional media and online communication is not a suitable method in contacting group members to inform them of the case, their legal rights and registration mechanisms (a copy of the WA Outreach Program is at **Annexure A**). The WA Outreach Program carries significant costs with legal teams on the road for weeks at a time. Similar outreach programs are required in any class action on behalf of First Nations people, disadvantaged groups and minority groups.

In *Stolen Wages QLD*, the Honourable Justice Murphy highlighted the matter:

- As being a large, complex class action with the funders commission being fair and reasonable; and
- That LLS took on substantial costs and risks from the outset of the litigation when the outcome was far from certain.

The group members in this action were First Nations peoples who had their wages stolen with the claim dating back to the 1930's. The fact that no one had previously funded this claim which was clearly known to exist over a long period of time, nor did any other funder launch a competing claim at the time, highlights the risk return challenge in pursuing access to justice for these First Nations people for these types of claims. This is contrary to the state of play in shareholder class actions where there are often multiple competing class actions given their more simplistic and less risky nature.

**5. How would a graduated approach to guaranteed returns for class members be implemented?**

LLS repeat our answer to question 2.

### Section 3 – Additional Issues

#### 6. What other implementation considerations would be relevant to the issues raised in this consultation paper?

##### ***Grandfathering***

To avoid any adverse impact on any class actions currently in court, consideration of grandfathering of those schemes in a similar fashion to the grandfathering of schemes already established prior to the introduction of the MIS requirements in August 2020 should be implemented.

##### ***Government & Industry Joint Committee***

LLS recommend the Treasurer and the Attorney General establish a panel constituted of Government and private sector participants to provide data and leadership into the best practices for serving the current and future group members of any class action. Consideration of membership to include:

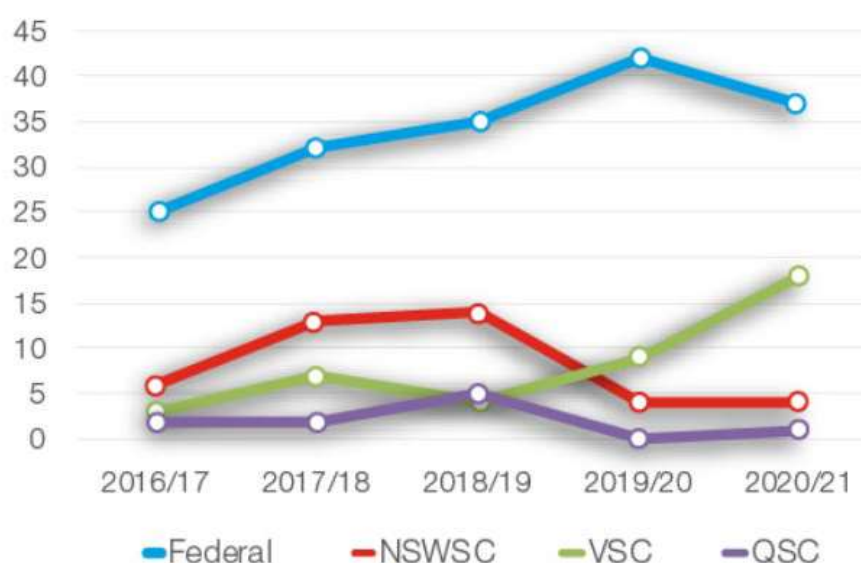
- Large Australian litigation funding companies & ALFA
- Key plaintiff side law firms
- Key defence side law firms
- Current Federal Court judge specialising in class actions
- Treasury/AG representatives
- Key barristers operating in the class action space
- AG's operating in each state of Australia which have a state based class action regime

##### ***AFSL requirement and MIS regime***

LLS embraced the recent regulatory reform in 2020 in respect of the requirement for litigation funders to hold an AFSL and were in ASIC's initial round of awarding AFSL's for litigation funders via our wholly owned subsidiary, LLS Investment Management Pty Limited (AFSL No. 524167).

In 2020, an addition was made to the *Supreme Court Act 1986* (Vic) enabling contingency fees to be paid to plaintiff law firms bringing class actions in the Supreme Court of Victoria. As a result, the industry has observed a significant increase in the number of matters filed in the Supreme Court of Victoria.

Actions filed by jurisdiction



Source: King & Wood Mallesons, 24 May 2021, *Winter is coming: Class action battles surge to new record*, <https://www.kwm.com/en/au/knowledge/insights/class-action-battles-surge-to-new-record-20210524>

LLS consider it is inequitable that in funding class actions on a no win no fee basis in the Supreme Court of Victoria jurisdiction, plaintiff law firms are exempt from holding an AFSL and establishing a MIS, whilst litigation funders are required to take these steps resulting in much higher costs to run the same case.

For litigation funders, running a MIS for any class action is an additional and significant cost and administrative consideration in our assessment of funding a class action, which plaintiff law firms do not need to contemplate.

LLS understand the requirement for industry regulation however consider that the regulation requirements should be imposed on law firms alike if they intend to run class actions on a contingency basis. This is particularly so, when the Australian Government is considering further regulatory changes in respect of arbitrary capping on funding commission and minimum returns to group members. In contemplation of this, LLS consider it important to recognise the additional costs that litigation funders carry.

### **MIS exemption**

Another contemplation and cost required by litigation funders in running a MIS for proposed matters is their ability to comply with the MIS rules, specifically their compliance with providing a PDS to group members. LLS propose that an exemption to the MIS regime is necessary in non-shareholder class actions that relate to First Nations, disabled and other select disadvantaged minority groups (to be determined by the Court on a discretionary basis)

to ensure culturally acceptable communication can be delivered to these group members. The strict application of the MIS rules does not assist these groups in having their claim pursued, specifically in relation to the provision of a product disclosure statement (**PDS**) to group members. For example, for First Nations group members:

- What language should the PDS be written in?
- Is it misleading to communicate with a group member who is not familiar with a PDS?
- What if the preferred communication of a group member is via local customs such as story, song or other cultural means?

### ***Defendant regulation***

LLS urge the Government to expand their consideration to the defendant's role in higher costs and smaller returns to group members. LLS have witnessed the various tactics adopted by defendants to delay and increase the costs in group members litigating their claim. Tactics include superfluous discovery, interlocutory applications at numerous junctures and unproductive mediations.

LLS encourage the Government to consider adopting a model similar to that deployed in the USA where large penalties are imposed on defendants (even in circumstances of settlement), defendant legal fees may not be tax deductible, and those resulting funds are distributed in part to group members, in addition to their original return, and to regulatory authorities, to increase surveillance of defendant's behaviour. In theory, this should assist in reducing the number of class actions brought.

We welcome the opportunity to continue a productive dialogue with the Treasury and Attorney-General to discuss matters raised in our submission.



Stephen Conrad  
Chief Executive Officer



Shaun Bonétt  
Chairman

5 July 2021



## Appendix A – Stolen Wages WA Outreach Program

### Information Meetings

To find out more about your entitlements, come to your nearest Information Meeting.

TOWN	DATE	TIME	LOCATION
<b>GOLDFIELDS A</b>			
Kalgoorlie	28 June 2021	10:00AM to 2:00PM	Goldfields Aboriginal Language Centre. 2 Burt St, Boulder WA 6432
Laverton	30 June 2021	10:00AM to 2:00PM	Laverton Community Resource Centre. Augusta St, Laverton WA 6440
Menzies	1 July 2021	11:00AM-3:00PM	Menzies Aboriginal Corporation. 43 Walsh St, Menzies WA 6436
Coolgardie	2 July 2021	10:00AM to 2:00PM	Judumul Aboriginal Corporation. 75 Sylvester St, Coolgardie WA 6429
Esperance	4 July 2021	10:00AM to 2:00PM	Mudjar Aboriginal Corporation. 4 Woods St, Esperance WA 6450
<b>GOLDFIELDS B</b>			
Warburton	14 July 2021	11:00AM to 3:00PM	Warburton Community Store. Warburton Community WA 6431
Wanarn	15 July 2021	10:30AM to 2:00PM	Wanarn Community Store. Wanarn Community, Ngaanyatjarra-Giles WA 0872
Warakurna	16 July 2021	10:00AM to 2:00PM	Warakurna Community. Ngaanyatjarra-Giles WA 0872
<b>KIMBERLEY (WEST) A</b>			
Broome	2 August 2021	10:00AM to 2:00PM	Broome Circle. 27 Frederick St (Cnr Weld), Broome WA 6725
Bidyadanga	3 August 2021	10:00AM to 2:00PM	Bidyadanga Community Centre. Lagrange WA 6725
Lombadina/Djarindjin	4 August 2021	10:00AM to 2:00PM	Djarindjin Community Resource Centre
Beagle Bay	5 August 2021	10:00AM to 2:00PM	Beagle Bay Community Office. Beagle Bay Community, 54 Gunburrd Dr, Dampier Peninsula WA 6725
Fitzroy Crossing	7 August 2021	10:00am to 2:00pm	Fitzroy Valley Community Resource Centre. 158 Great Northern Highway, Fitzroy Crossing, WA 6765
<b>KIMBERLEY (WEST) B</b>			
Derby	22 June 2021	10:00AM to 2:00PM	Derby Professional Centre. 2 Clarendon St, Derby WA 6728
Mowanjum	23 June 2021	10:00AM to 2:00PM	Mowanjum Art and Culture Centre. Derby WA 6728
Djimung Nguda/Budulah/ Karmarlinunga	24 June 2021	10:00AM to 2:00PM	Winun Ngari Aboriginal Corporation. 145 Loch Street, Derby WA 6728
Pandanus Park	25 June 2021	10:00AM to 2:00PM	Pandanus Park Aboriginal Corporation. Lot 353 Derby Highway, Willare WA 6728
<b>KIMBERLEY (WEST) C</b>			
Looma	1 July 2021	11:00AM to 3:00PM	Looma Community Office. Camballin WA 6728
Bayulu	2 July 2021	7:00AM to 11:00AM	Bayulu Community Office, St George Ranges WA 6128
Junjuwa	2 July 2021	12:00PM to 3:00PM	Junjuwa Community Office, Fitzroy Crossing WA 6765
Wangkatjungka	3 July 2021	10:00AM to 2:00PM	WANGKATJUNGKA Community Hall, 6765 WA
Kurnangki/Mindi Rardi	4 July 2021	9:00AM to 1:00PM	Kurnangki/Mindi Rardi Community Office, Fitzroy Crossing WA 6765
Muludja	4 July 2021	1:30pm to 4:30pm	Muludja Community Office, St George Ranges WA 6728
Yakanarra	5 July 2021	10:00AM to 2:00PM	Yakanarra Community Office, Yakanarra Community. St George Ranges WA 6728
Yungngora	6 July 2021	11:00AM to 3:00PM	Yungngora Community Office, Mount Hardman WA 6765
<b>SOUTHERN A</b>			
Perth	19 July 2021	10:00AM to 2:00PM	Wadjak Northside Aboriginal Community Centre. 2 Finchley Cres, Baiga WA 6061
Northam	20 July 2021	10:00AM to 2:00PM	Northam Recreation Centre. Peel Terrace, Northam WA 6401
Mukinbudin	21 July 2021	10:00AM to 2:00PM	Mukinbudin Community Resource Centre. 8 White St, Mukinbudin WA 6479
Bunbury	23 July 2021	10:00AM to 2:00PM	Bunbury Regional Art Gallery. 64 Wittenoom St, Bunbury WA 6230
Busselton	24 July 2021	8:00AM to 12:00PM	Busselton Community Resource Centre. 21 Cammilleri St, Busselton WA 6280
Manjimup	24 July 2021	1:00PM to 4:00PM	Manjimup Town Centre. Gilbert St, Manjimup WA 6258
Collie	25 July 2021	8:00AM to 11:00AM	Margaretta Wilson Senior Citizens Centre. 105 Forrest Street, Collie, WA 6225 Australia

## Information Meetings Continued from overleaf

TOWN	DATE	TIME	LOCATION
<b>SOUTHERN A</b>			
Narrogin	25 July 2021	1:00AM to 4:00PM	KEEDAC Venue. 129 Federal St, Narrogin WA 6312
Katanning	26 July 2021	10:00AM to 2:00PM	Katanning Aboriginal Corporation. 1 Dijon, Katanning WA 6317
Albany	27 July 2021	10:00AM to 2:00PM	Southern Aboriginal Corporation. 54-47 Serpentine Rd, Albany WA 6330
<b>SOUTHERN B</b>			
Kojonup	7 June 2021	11:00AM to 3:00PM	Kojonup Sporting Complex. Ben Parade Hwy, Kojonup WA 6395
Moora	8 June 2021	10:00AM to 2:00PM	Shire of Moora - Town Hall. 34 Padburry St, Moora WA 6410
Morawa	9 June 2021	10:00AM to 2:00PM	Shire of Morawa - Function Room. 26 Windfield St, Morawa WA 6623
Mullewa	10 June 2021	9:00AM-1:00PM	Mullewa Town Hall .8 Jose St, Mullewa WA 6630
<b>PILBARA</b>			
Port Hedland	8 June 2021	10:00AM to 2:00PM	Jimblebar Function Room. Wanangkura Stadium, Hamilton Rd, South Hedland WA 6721
Roebourne	9 June 2021	9AM to 12PM	Roebourne PCYC. Sholl St, Roebourne WA 6718
Mingullatharndo/Cheeditha	9 June 2021	12:30PM to 2PM	Cheeditha Group Aboriginal Corporation. Welcome Street, Roebourne WA 6718
Onslow	11 June 2021	10:00AM to 2:00PM	Ashburton Aboriginal Corporation Office. Unit 4 4/200 Second Avenue Onslow WA 6710
Paraburdoo	13 June 2021	9:30AM to 1:30PM	Karingal Neighbourhood Centre. 88 Anzac Pl, Paraburdoo WA 6754
Tom Price	14 June 2021	10:00AM to 2:00PM	Nintirri Centre (Community Hall). Central Rd, Tom Price WA 6751
Jigalong	15 June 2021	10:00AM to 2:00PM	Jigalong Community Office. Jigalong Community, Newman WA 6753
Nullagine	16 June 2021	10:00AM to 2:00PM	Nullagine Community Resource Centre. 39 Gallop Rd, Nullagine WA 6758
Yandeyarra/Mugarinya	17 June 2021	11AM to 3PM	Yandeyarra Remote Community School. Yandeyarra Rd, Marble Bar WA 6760
<b>MIDWEST</b>			
Geraldton	29 June 2021	10:00AM to 2:00PM	Bundiyarra Aboriginal Community Aboriginal Corporation. Eastward Rd, Geraldton WA 6530
Carnarvon	1 July 2021	9:00AM to 12:00PM	Gwoonwardu Mia. 146 Robinson St, Carnarvon WA 6701
Mungullah	2 July 2021	12:30PM to 2PM	Mungullah Community Aboriginal Corporation. 31 Acacia Way, Greys Plain WA 6701
Burringurrah	4 July 2021	10:00AM to 2:00PM	Burringurrah Community Aboriginal Corporation. Mount Augustus Road, Meekatharra WA 6642
Meekatharra	6 July 2021	10:30AM to 2:30PM	Shire Hall. Main St, Meekatharra WA 6642
Wiluna	7 July 2021	10:30AM to 2:30PM	Youth Centre. 70 Wotton Street, Wiluna WA 6646
Mount Magnet	8 July 2021	10:30AM to 2:30PM	ANZAC Hall. 90 Hepburn Street, Mount Magnet WA 6638
<b>KIMBERLEY EAST</b>			
Kununurra	27 July 2021	10:00AM to 2:00PM	Kununurra Waringarri Aboriginal Corporation. 32 Speargrass Road, Kununurra WA 6743
Wyndham	28 July 2021	10:00AM to 2:00PM	Wyndham Recreation Centre. 6 Koolama St, Wyndham WA 6740
Warmun	29 July 2021	10:00AM to 2:00PM	Warmun Community. Warmun WA 6743
Mardiwah Loop/Lundia	30 July 2021	10:00AM to 2:00PM	Mardiwah Loop Community. Halls Creek WA 6770
Kundat Djaru	31 July 2021	10:00AM to 2:00PM	Kundat Djaru Community Office. Duncan Road WA 6770
Balgo	1 August 2021	10:30AM to 2:30PM	Wirrimanu Aboriginal Corporation. 7 Balgo Community, Halls Creek WA 6770
Halls Creek	2 August 2021	10:00AM to 2:00PM	Halls Creek Community Resource Centre. 29 Thomas Street, Halls Creek WA 6770
Mirima	4 August 2021	9:00AM to 1:00PM	Mirima Dawang Woorlab-gerring Language and Culture Centre, Button Drive (off Speargrass Rd), Kununurra WA 6743

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