



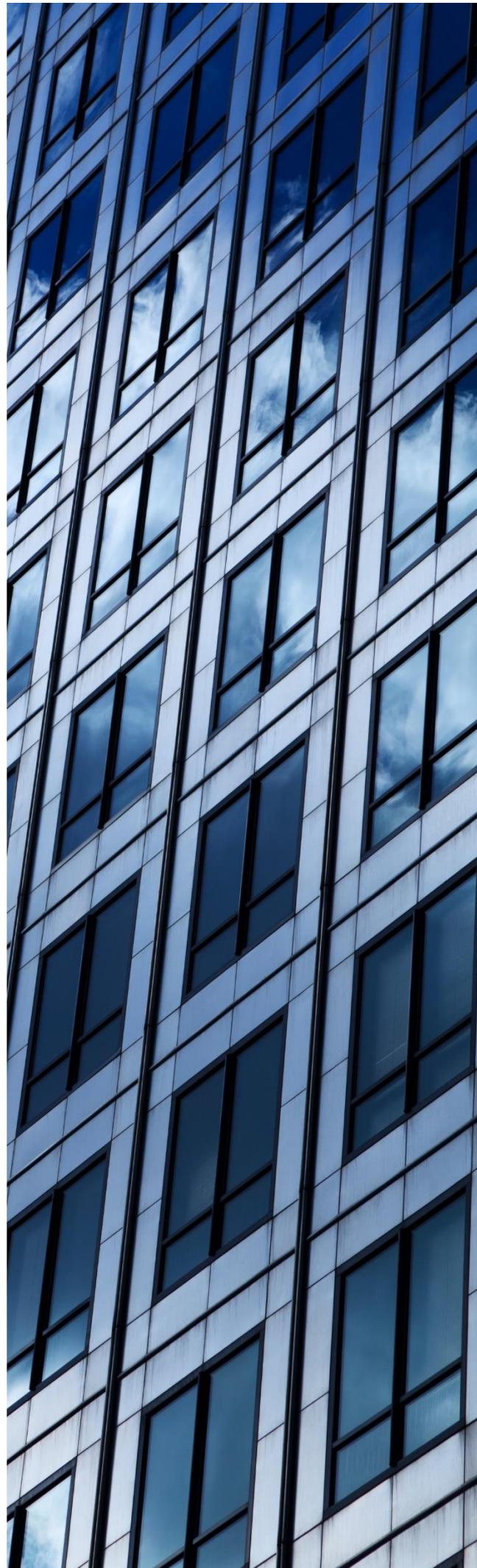
Product Disclosure Statement  
Issued 8 October 2021

**TYRO LITIGATION FUNDING  
SCHEME**

**ARSN 652 674 505**

For the purpose of conducting a Class Action to compensate business owners who suffered loss as a result of a system outage.

Issued by CASL Governance Ltd  
ACN 643 977 833,  
AFS Licence No. 525889



## Important Information (General Advice Warnings)

In this Product Disclosure Statement “**Scheme**” means the Tyro Litigation Funding Scheme 652 674 505, a managed investment scheme that is registered with the Australian Securities and Investments Commission (**ASIC**).

The information in this Product Disclosure Statement (**PDS**) is general information only and does not take into account your personal financial situation or needs. You may wish to consult a licensed financial adviser to obtain financial advice that is tailored to suit your personal circumstances.

The information in this PDS is subject to change from time-to-time. Information that is not material information can be updated by us. Updated information can be obtained by going to our website, by calling us, or by contacting your licensed financial adviser. You may request a paper copy of any updated information at any time, free of charge.

This PDS does not constitute an offer or invitation in any place in which, or to any person to whom, it would not be lawful to make such an offer or invitation. The distribution of this PDS outside Australia may be restricted by law in the place it is received, and persons who come into possession of this PDS outside Australia should seek advice on and observe any such restrictions. Any failure to comply with such restrictions may constitute a violation of applicable laws.

## About this Product Disclosure Statement

The purpose of this PDS is to explain your rights and entitlements if you choose to participate in and/or continue as a Member of the Class Action funded by CHC Investment Fund Pty Ltd ATF the CHC Investment Fund Unit Trust (ACN 643 822 799, Authorised Representative No.001292133) (the **Funder**), which is an Authorised Representative of CASL Governance Ltd (ACN 643 977 833, AFS Licence No. 525889) (the **Responsible Entity** or **CASL**), the issuer of this document.

This PDS is designed to help you make a decision about whether to participate and receive funding from the Funder or whether to take specific steps to opt out of the Class Action (and therefore out of this Scheme).

The Responsible Entity will use the litigation management services of Court House Capital Management Limited (ACN 649 150 872, Authorised Representative No.001292132) (the **Manager**), an Authorised Representative of the Responsible Entity.

This PDS contains information that is relevant to Claimants in the Class Action and further information that may be specific to the Funder or the Lawyer.

To help you with some of the terms used in this PDS, definitions have been provided.

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## Key Commercial Terms

### 1. No win, No fee

This PDS should be read in full and provides important disclosures about the Class Action, the operation of the Scheme, the Risks and the Fees & Costs.

The following are highlighted for you to contemplate:

- (i) There are no upfront costs for you to participate as a Member of this Scheme and the Class Action, as the Funder will pay the costs of the Class Action in return for an agreed amount which will only be payable from any Claim Proceeds if the Funded Claim is successful;
- (ii) **If the Funded Claim is successful**, an amount will be paid to you that is approved by the Court after deducting approved costs associated with the Class Action; and
- (iii) **If the Funded Claim is unsuccessful**, the Funder will not receive return of its investment and you will not be required to pay any amount.

Once you have considered all the information in this PDS, sought relevant legal and financial advice and then wish to proceed, complete the Application Form which is attached to this document (see **Annexure A**) or available via <https://courthousecapital.com.au/tyro-class-action/>

Throughout this document, there are a number of defined terms that are capitalised such as “Claimant”. The definitions for each of these terms is contained in the Dictionary section at the end of this PDS.

### 2. Fees & Costs

It is important you understand the potential fees and costs which may be deducted from amounts payable to you as a Member of the Scheme and the Class Action **if the Class Action is successful**.

The importance of this aspect to you as a Member reflects its prominence in this PDS ahead of other legal disclosures.

Deductions from the Settlement or judgment proceeds can only be paid by the Responsible Entity **if the Court approves them** and determines the Settlement or judgment proceeds and the deductions are fair and reasonable.

These fees and costs are deducted from Claim Proceeds. You will not be asked to contribute any additional money to satisfy these amounts which include:

- (i) fees paid by the Funder for costs associated with the Class Action and the operation of the Scheme;
- (ii) remuneration of the Funder for the provision of the funding outlined in (i) above, together with the provision of any indemnities and securities as outlined in the Litigation Management and Funding Agreement (**LMFA**);
- (iii) remuneration to the Manager for the provision of litigation management services as outlined in the LMFA; and
- (iv) any remaining amounts owed to the Lawyer.

There may be other fees and costs that will be considered by the Court appropriate to be deducted from the Claim Proceeds.

The known or likely fees and costs of the Scheme and Class Action are set out in detail in Section 32.

The remuneration payable to the Funder for providing relevant funding and management services for the Class Action and Scheme **subject to Court approval**, is as follows:

- (i) 25% of Claim Proceeds received after the Claim is filed and before the expiry of 18 months after filing; or
  - (ii) 30% of Claim Proceeds received on or after the expiry of 18 months after filing,
- plus GST if applicable

The Lawyer, who acts in the collective interests of Claimants, has considered the remuneration outlined above for the Funder against alternate options available in the market and concluded the remuneration is both market competitive and appropriate given the risks associated with the Class Action.

The Court will ultimately determine the appropriate remuneration to be paid to the Funder if the Class Action is successful.

### 3. This Class Action needs your support to proceed to conclusion

The following are highlighted for you to contemplate:

- (i) There is a risk that the Class Action does not receive sufficient support from enough Claimants to make it commercially viable for the Funder. Where insufficient support from Claimants is received, the Class Action and Scheme **may not proceed**; and
- (ii) You should consider this risk in determining whether or not you proceed to submit an Application Form for this Scheme and support this Class Action.

There may be alternate schemes or class actions promoted by other law firms and litigation funders available for the same or similar claims against the Defendant Entities, and you should consider whether these are better suited to your personal circumstances.

Equally, you may prefer to commence litigation against the Defendant Entities on your own, with your own financial resources whilst accepting the inherent risks associated with litigation.

It is important you make a fully informed decision with the advice of your financial and legal advisers.

Participation in the Scheme is subject to risks. Some key risks include:

- (i) Your claim may be unsuccessful which means that you will have lost the time and effort you put into the litigation.
- (ii) The costs, including legal expenses, to fund the Funded Claim may exceed any monetary award or judgment in your favour in which case you may not receive any proceeds from the monetary award of judgment.
- (iii) The Defendant Entities may be unable to pay any of or the entire settlement or judgment sum.
- (iv) The claim is heavily reliant on the performance and participation of the Lawyer and the Manager.
- (v) The Responsible Entity may be prevented from seeking remedies against the Funder or the Manager for breach of obligations if the Responsible Entity does not have funds to meet any litigation costs involved.
- (vi) If the LMFA is terminated and a Funded Member later receives monetary compensation in respect of the Funded Claim, the Funded Member must still reimburse the Funder and pay an adjusted amount to the Funder from that money in accordance with the LMFA.
- (vii) The Funder may in its absolute discretion cease funding at any stage or if the claim is no longer commercially viable or determine not to provide funding in respect of any appeals in which case it will be necessary to appoint a replacement funder for any such appeals.
- (viii) The Funder may become insolvent or may not be able to meet its funding obligations.

- (ix) If the Funded Claim is unsuccessful or if the Funded Claim delivers limited Claim Proceeds or if lengthy settlement negotiations or interlocutory or pre-trial proceedings are necessary, the fees and costs of the Scheme may mean that Members are not entitled to receive a payment in relation to the Funded Claim.
- (x) The interests of the Funder and Manager in the Funded Claim are not necessarily the same as Members and although you may have certain rights to provide a direct instruction to the Lawyer, there is a risk the Manager gives instructions that are not instructions the Member would provide.
- (xi) A Passive Member has no entitlement to a distribution from the Scheme or the Custodian, unless directed by Court Order.
- (xii) Changes in any law (including tax laws) regulation or government policy in Australia could have an impact on the Scheme's performance.
- (xiii) The spread of COVID-19 has the potential to impact or delay the settlement or final determination of the Funded Claim and result in increased costs and expenses over the life of the Scheme.

We recommend that you read Sections 57 to 64 for further information on risks.

## Key Information on the Class Action and the Scheme

### 4. The Class Action and the Scheme

This Scheme relates to a class action currently against Tyro Payments Limited (**Tyro**).

The precise composition of the Defendant Entities, which may change from time-to-time, is determined by the Representative Member in consultation with the Lawyers and Funder.

The Proceedings are proposed to be filed in the Federal Court of Australia (the **Class Action**).

The claims of **SPOZAC PTY LIMITED (ACN 112 100 231) as Trustee for the LDB Family Trust t/as Not Just Cakes** (the **Representative Member**) include:

- (i) On 5 January 2021, the Representative Member and each Member experienced an outage in their connectivity to Tyro EFTPOS Facilities, causing their Tyro EFTPOS Terminals to be inoperable and incapable of repair by remote software updates;
- (ii) Due to the outage, the Representative Member and each Member were unable to process non-cash payments while they awaited rectification of the outage;
- (iii) Consequently, the Representative Member and each Member experienced a substantial loss of business and goodwill; and
- (iv) The Representative Member and Members are entitled to recover their losses by reason of Tyro's alleged contraventions of the Australian Consumer Law and alleged contractual breaches relating to the reliability of Tyro's EFTPOS Terminals and associated software.

You should consider whether you may have a claim in the Class Action.

The claims that are being made in the Class Action **ARE NOT** part of the Scheme.

This is because the claims of Claimants to be pursued through the Class Action are rights that belong to the Claimants personally, they arise from damage or loss that a Claimant has suffered and are not able to be transferred to anyone else.

This means that those claims are incapable of assignment to the Scheme. The difference between an Interest in the Scheme and a claim in the Class Action is further explained in Section 14.

The costs associated with running the Class Action will be met by the Funder (where paid by the Funder, the **Project Payments**) or the Lawyer.



The Funder, Manager and Lawyer will each have an Interest in the Scheme, in separate classes depending on their respective role and entitlements, which is administered by the Responsible Entity.

As a potential or actual Claimant in the Class Action, if you elect to take advantage of the funding offered by the Funder you will need to consider the relationships and potential for actual or perceived conflicts between the Responsible Entity, the Manager, the Funder and the Lawyer.

## Who are the team supporting the Class Action and Scheme?

### 5. Who is the Lawyer?

## BANNISTER LAW

Bannister Law (the **Lawyer**) is a Sydney based class action law firm and has been engaged in relation to the Class Action.

The website for the Lawyer can be accessed here:

<https://bannisterlaw.com.au/>

The Lawyer is appointed by the Representative Member.

The Lawyer requests that every Claimant applying to become a Member of this Scheme also enters into the Lawyer's Retainer, so that each Claimant is a client of the Lawyer. You will not have to pay the Lawyer's fees as they are paid by the Funder and may be recouped out of Claim Proceeds if the Funded Claim is successful, subject to Court approval.

### 6. Who are the Funder and Manager?



CHC Investment Fund Pty Ltd ATF the CHC Investment Fund Unit Trust (the **Funder**), is an Australian specialist litigation funder.

The Funder is an Authorised Representative (No.001292133) of CASL Governance Ltd, AFSL No. 525889.

As at the date of this PDS, the net assets combined with contractually committed but undrawn capital of the Funder, is approximately \$12,000,000 .

Court House Capital Management Limited (the **Manager**), is an Australian specialist legal claims manager.



The Manager is an Authorised Representative (No.001292132) of CASL Governance Ltd, AFSL No. 525889.

The Funder and Manager are both appointed by the Responsible Entity and have agreed to provide their services in relation to the Funded Claim in accordance with the LMFA and as described in this PDS.

The website for the Funder and the Manager can be accessed here:

<https://courthousecapital.com.au/>

## 7. Who is the Responsible Entity?



CASL Governance Ltd AFSL No. 525889 is the Scheme's Responsible Entity and issuer of this PDS.

The Responsible Entity's responsibilities and obligations are governed by the Scheme's Constitution, the *Corporations Act 2001* and general trust law.

The website for the Responsible Entity can be accessed here:

[www.casl.com.au](http://www.casl.com.au)

## Useful general information

### 8. What is litigation funding?

Litigation can be one of the most effective means of resolving a dispute or obtaining a remedy for wrongdoing. Parties however that choose to pursue litigation assume considerable financial and other risks.

Engaging with an experienced Funder and Manager in mitigating those risks by providing financial resources and strategic oversight and guidance brings commercial and financial leverage and capacity to see disputes through to commercial outcomes.

Litigation funding is particularly useful in the context of class actions or multi-party litigation.

Often, it will not be economically viable for an individual claimant to bring an individual claim because the costs and risks of litigating an individual claim may outweigh the value of the claim itself. Generally, litigation funding in class actions allows the members of the class to be involved in one court proceeding with one set of lawyers.

If the class action is unsuccessful in court, you owe the litigation funder nothing. This is described as non-recourse funding.

Litigation funding paid by the funder can help pay your legal fees, assisting with the high cost of litigation and enabling your claims to be represented by leading solicitors and barristers.

Importantly, the involvement of a litigation funder in a class action addresses the risk an opponent may outspend you in pursuing their legal defence; equality of arms is important to achieve justice in the adversarial civil justice system.

A litigation funder levels the playing field, ensuring claims are considered on their legal merits rather than the depth of available financial resources.

## 9. What is a class action?

A class action is a special type of court proceeding. Generally, in order for a class action to be commenced, all that is required is:

- (i) at least 7 people exist with claims against the same party;
- (ii) the claims of those 7 or more people arise out of similar or related circumstances; and
- (iii) the claims of those 7 or more people give rise to substantial common issues of law or fact.

The key feature of a class action is the representative nature of the proceeding.

In a class action, one or a small number of persons, known as the “representative parties”, commence a court proceeding against one or more defendants or respondents.

The proceeding is not an action by a class or group. The proceeding is a claim made by the representative party in which a class or group of non-parties can be bound.

While the representative party advances their claim in the interests of all members of the class, the class usually plays a passive role, at least until the common issues are resolved.

In a class action, the representative party’s claim is used to resolve as many factual and legal issues common to the class members as possible. Depending on the nature of the class action, there may be sub-groups that have issues common only to them.

The court manages the proceedings closely to ensure the common issues pertaining to the class members are dealt with in the most efficient and expeditious manner.

The court will make a judgment about the common issues unless the claim is settled prior to this determination.

There may be circumstances pertaining to individual members of the class that are different and not determined by the judgment of the court relating to the class and individual actions may need to be pursued following resolution of the common issues.

## 10. What is a scheme?

A scheme is a litigation funding scheme, constituted as a registered managed investment scheme, which is created by some or all of the class members agreeing with the litigation funder to pursue a class action. The litigation funder, the manager and the appointed lawyers, if they are to be paid from settlement or judgment proceeds, are also members of the scheme.

The Scheme is treated as a managed investment scheme under the *Corporations Act 2001* because claimants are regarded as contributing something valuable (i.e. their future entitlement to a share of any claim proceeds paid as a result of the class action) in return for the benefit of the funding and the services provided by the litigation funder, manager and the appointed lawyers. The contributions of the claimants as members are pooled to produce a financial benefit. The Responsible Entity, which has the ultimate control and responsibility to operate the Scheme, has authorised and appointed the Manager to assist with certain operations of the Scheme.

The Responsible Entity for the Scheme will ensure the Funder, Manager and the Lawyer are paid any amounts, approved by the Court, from the resolution of the class action.

## Scheme and Class Action documents

### 11. Why are there so many documents?

Since 22 August 2020, class actions in Australia must operate as registered managed investment schemes under the *Corporations Act 2001*.

These registered schemes are regulated by ASIC which requires a prescribed level of information be disclosed to potential scheme members, the operators of the scheme hold sufficient regulatory capital and the manager is trained, skilled and licenced to provide the particular financial services.

These legal and regulatory requirements are designed principally **to protect your interests**.

### 12. Which documents are the most important?

Each document listed below is important and serves a specific purpose.

The following documents are relevant to the commitments you make in relation to the Scheme and Class Action and require you to make decisions. You should read and consider each of these documents and seek legal and financial advice before making any decision:

- (i) Product Disclosure Statement (this document)
- (ii) Application Form
- (iii) Lawyer's Retainer
- (iv) LMFA (which incorporates the terms of the Law Firm Relationship Agreement)
- (v) The Financial Services Guide

The following documents relate to the operation of the Scheme and may be made available on request:

- (vi) Scheme Constitution
- (vii) Law Firm Relationship Agreement, as signed
- (viii) Litigation Funding Relationship Deed
- (ix) Compliance Plan

If you would like a copy of these documents, you may email your request to [info@courthousecapital.com.au](mailto:info@courthousecapital.com.au)

Some of these documents are described in more detail in Sections 33 - 38 and 55.

This Product Disclosure Statement contains information about the financial services being provided.

## Frequently asked questions by Claimants

### 13. How do I participate if I have a claim?

In this section, "you" means a Claimant who is considering applying for an Interest in the Scheme and participating in the Class Action as a Funded Member of the class.

If you have suffered a loss of the type that is being alleged in the Class Action, you should consider whether you wish to participate as a Funded Member of the class, with funding from the Funder. Please carefully read this PDS and the Application Form that is attached at the back of this document (see **Annexure A**) or available via <https://courthousecapital.com.au/tyro-class-action/>, as they explain the terms on which the Funder will agree to fund the costs of bringing the Class Action and on which the Responsible Entity will operate the Scheme.



If you would like to participate as a Funded Member of the Class Action, you should complete the Application Form at the back of this PDS or available via <https://courthousecapital.com.au/tyro-class-action/>, and return it to the Responsible Entity. The contact details for the Responsible Entity are on the Application Form. The Responsible Entity will check your details and process your application, on the basis that you represent in the Application Form that you are eligible to be a Funded Member of the Class Action, and will record your name in the register of Members of the Scheme.

The Responsible Entity will confirm via email, or otherwise in writing, its acceptance of your application to participate in the Scheme. Subsequent to this acceptance, if it is determined you do not have a valid claim in the Class Action your Interests in the Scheme will be cancelled and the Responsible Entity will remove your details from the register of Members of the Scheme.

#### 14. Is the Scheme different to the Class Action?

The Scheme is different from the Class Action.

The Scheme is created by the pooling of the Funder's promises to pay the Project Payments to fund the conduct of the Class Action, the Manager's promises to provide services in connection with the management of the Class Action and Scheme, the Lawyer's promises to conduct the Class Action with a portion of their professional fees at risk, together with each Claimants' contribution to the Scheme of their Claim Proceeds (if any) in order that it can be divided up between the Lawyer, the Funder, the Manager and the Claimants in accordance with the relevant Court approval.

The performance of these mutual promises is monitored and administered by the Responsible Entity. As a Claimant, your claim in the Class Action remains your own personal property, which cannot be assigned because it is personal to you and particular to your own circumstances.

As a Funded Member, it is only your share of any Claim Proceeds that results from a successful claim that you assign to the Scheme.

#### 15. What am I agreeing to by applying for an Interest in the Scheme?

You are agreeing to accept an Interest in the Scheme but will not pay anything for that Interest unless the Funded Claim is successful.

When you apply for an Interest in the Scheme as a Funded Member, you agree to assign your future interest in any Claim Proceeds to the Funder and Manager and you agree that, subject to Court Order, your future interest in Claim Proceeds will be allocated between the Funder, the Manager, the Lawyer and you and you agree to give instructions to the Lawyer, consistent with this allocation, when called upon.

**If you are a Funded Member, after the Cooling-Off Period (see Section 21 for details of the cooling-off terms), you will not be able to undo this assignment, even if you withdraw from the Scheme.**

#### 16. What will it cost me to participate in the Scheme?

All the costs of running the Class Action will be met by the Funder or the Lawyer. You will not have to pay anything to acquire your Interest in the Scheme.

The Funder will pay part of the Lawyer's fees, the costs of the barristers, any experts or consultants reasonably necessary to prosecute the claim, and the Court costs. The Funder will also arrange for any security for costs or Order for Costs made against the Representative Member to be satisfied, if required.

You will not have to pay any of these costs other than from Claim Proceeds achieved from settlement or judgment in the Class Action.



The Manager will provide services to the Responsible Entity in connection with the management of the Class Action and Scheme.

The Lawyer has agreed to accept deferred payment of a portion of its professional fees, to which it is otherwise entitled, from any Claim Proceeds, which may only be payable if a successful result is achieved in the Class Action.

In return:

- (i) Funded Members agree to appoint the Lawyer who will prosecute the Class Action;
- (ii) if you are the Representative Member, you agree to appoint the Lawyer and give instructions to the Lawyer when requested;
- (iii) if you are a Funded Member, you assign to the Funder and Manager any Claim Proceeds that may be awarded to you by the Court or agreed with the Defendant Entities in a settlement that is approved by the Court as being fair and reasonable;
- (iv) the Funder aims to recoup the Project Payments and be paid an agreed remuneration from the Claim Proceeds, subject to Court approval. This is what the Funder receives in return for providing funding for the costs of the Class Action and the Scheme;
- (v) the Manager aims to be paid its agreed remuneration from the Claim Proceeds, subject to Court approval. This is what the Manager receives in return for providing services in connection with the Class Action; and
- (vi) the Lawyer aims to recoup any unpaid fees to which it is entitled, including any uplift, from the Claim Proceeds, subject to Court Approval. This is what the Lawyer receives for providing the Legal Services Undertakings.

Fees & Other Costs are outlined in Section 2.

## 17. Which type of Scheme Member am I?

There are different types of membership of the Scheme as follows:

- (i) Passive Member
- (ii) Unfunded Active Member
- (iii) Funded Member

A **Passive Member** is a Claimant that has a qualifying claim in the Class Action but has not entered into any agreements with the Lawyer, Funder or Manager or submitted an Application Form in relation to the Scheme.

A Passive Member is encouraged to complete an Application Form to at least become an Unfunded Active Member, as a Passive Member has **no entitlement** to a distribution from the Scheme unless ordered by the Court.

Converting from a Passive Member to an Unfunded Active Member does not cost you anything.

An **Unfunded Active Member** is a Claimant that has a qualifying claim in the Class Action, and who has submitted an Application Form to the Responsible Entity but has not entered into a LMFA.

A **Funded Member** is a Claimant that has a qualifying claim in the Class Action, and has:

- (i) submitted an Application Form to the Responsible Entity; and
- (ii) entered as a party into a LMFA.

You should consider a risk that exists if you choose not to become a Funded Member as outlined in Section 3.

The Lawyer, the Funder and the Manager are also Members of the Scheme referable to their respective roles and entitlements in relation to the Scheme.

## **18. What happens at the end of the Class Action?**

If the Class Action is unsuccessful, you will pay nothing and you will receive nothing. The Representative Member may be ordered to pay the Defendant Entities' costs, however the Funder has agreed to pay for those costs, unless the LMFA has been terminated.

If the Class Action is successful (either because the Court decides in favour of the Representative Member and awards damages, or because the Defendant Entities agree to settle all claims that constitute the Class Action out of Court, and the Court approves that settlement as being fair and reasonable), a distribution scheme is typically established to distribute the Claim Proceeds as required by the Court judgment and/or any settlement agreement.

Typically, an administrator of the distribution scheme is appointed by the Court and this may be the Lawyer, or an independent third-party such as a major accounting firm.

The Funder, Manager and the Lawyer are paid their respective share of the Claim Proceeds as set out in the Scheme's Constitution, subject to Court approval including any adjustments the Court may require.

The remainder of the Claim Proceeds will be distributed amongst the Claimants. Each Claimant's share of this sum will depend on the merits of each Claimant's own claims in the Class Action. The proportion of the Claimants' share of the Claim Proceeds to which you may be entitled will depend on the relative merits and quantum of your claim as a proportion of all the claims on the Claim Proceeds. This proportion will typically be determined by either the Court (which may require you to give evidence) or by the distribution scheme administrator in accordance with the Court approved distribution scheme.

The Lawyer and the Funder are not responsible for determining the value of your share of the Claim Proceeds (if any) as the calculations and methodology are set and approved by the Court. The Responsible Entity or Lawyer may be appointed by the Court to administrate the payment of your share of the Claim Value in accordance with the Court approved methodology.

Your share of any Claim Proceeds may alternatively be paid directly to you by a Court-appointed distribution scheme administrator, or such other person appointed by the Court, and any such payments will be treated as distributions by the Scheme.

In certain circumstances, a Defendant Entity may meet its obligations with assets rather than cash. We will contact you if that happens.

Once the administration of the distribution scheme has been completed and all funds have been paid to the Court approved recipients, the Responsible Entity intends to arrange to wind up the Scheme.

## **19. What if I want to sue the Defendant Entities directly, without funding from the Funder?**

You may opt out of the Class Action and the Scheme (and therefore the funding arrangements) and bring a claim by yourself, but you will need to meet your legal costs from your own financial resources.

If you apply for an Interest in this Scheme as a Funded Member, and subsequently wish to withdraw after the expiry of the Cooling-Off Period (see Section 21 for details of the cooling-off terms), a share of your Claim Proceeds may still be paid to the Scheme.

Please see Section 22 for important information about withdrawing from the Scheme.

## **20. Can I get funding from another litigation funder?**

Other litigation funders may have made arrangements with claimants to bring a class action about the same or similar matters as this Class Action. You may choose to participate with a different funder instead of the Funder and Responsible Entity (but you may not apply for funding through more than one scheme as you cannot assign your share of the Claim Proceeds more than once).

The Court may make orders that combine these different class actions and order that the Claim Proceeds are shared between all the claimants and funders, regardless of which scheme they are a member of (if any). You should consider all funding options that may be available, and seek financial and legal advice, before making any decision about your claim.

## **21. Tell me about my cooling-off rights if I change my mind**

As a Funded Member, you have a 21 day Cooling-Off Period to determine whether the funding arrangements with the Funder meet your needs.

By completing the Application Form and electing to become a Funded Member, you appoint the Responsible Entity as your agent and attorney to sign the Lawyer's Retainer and the LMFA on your behalf. The 21 day Cooling-Off Period commences on the day that the Responsible Entity provides you with a fully executed LMFA.

If, during the 21 day Cooling-Off Period, you decide that the funding arrangements do not meet your needs, you may withdraw your application by notifying us in writing at [info@courthousecapital.com.au](mailto:info@courthousecapital.com.au). Your confidentiality obligations and the limitation of the Responsible Entity's liability will survive even if you exercise your rights during the Cooling-Off Period.

If you do exercise your rights during the Cooling-Off Period, the Responsible Entity will either reclassify you as a Passive Member or as an Unfunded Active Member in accordance with your instructions.

If you apply for an Interest in this Scheme as a Funded Member, and subsequently wish to withdraw after the expiry of the Cooling-Off Period, a share of your Claim Proceeds may still be paid to the Scheme.

Any Cooling-Off Period ends automatically if the Court makes an order that stipulates an end date for opting out of the Class Action. You will not be able to exercise any cooling-off rights or withdraw from the Scheme after this Court stipulated date.

## **22. What happens if I want to terminate the funding arrangements or withdraw from the Scheme?**

If you wish to terminate the funding arrangements after the Cooling-Off Period, you cannot undo the previous assignment of a portion of your Claim Proceeds to the Funder and Manager. The Funder and Manager will remain entitled to a share of your Claim Proceeds.

If you wish to withdraw from the Scheme, you will not be paid anything by doing so, except in the unlikely event that the Court makes an order for payment to you. You may only withdraw from the Scheme if you opt out of the Class Action or otherwise cease to have an interest in the outcome of the Class Action.

If you wish to terminate the funding arrangements or withdraw from the Scheme, you should contact the Manager in writing at [info@courthousecapital.com.au](mailto:info@courthousecapital.com.au). You may be required to provide an opt out notice depending on your instructions.

### 23. What is an opt out notice?

An opt out notice is a form of notice mandated by the Court, to be completed by any Claimant wishing to opt out of the Class Action and be excluded from membership of the class in relation to whom the common facts are to be determined by the Class Action.

Where you are a Passive Member, Unfunded Active Member or a Funded Member and wish to withdraw from the Scheme, you must complete an opt out notice at the same time.

### 24. Can the Funder stop funding the Class Action?

Yes, the Funder has the right to terminate their services by providing 14 days written notice to you (or with no notice, if there has been a material breach of the LMFA which is incapable of remedy).

The Funder intends to consult the Lawyer and the Representative Member before exercising any such right, but after that it may still decide to stop funding any or all of the claims that make up the Class Action.

This decision to stop funding will most likely occur because the Funder considers the chances of the Class Action succeeding are too low and the cost of funding outweighs the likely benefit.

If this occurs, the Funder will be liable to pay the Lawyer's fees **up to that point** along with any order made by the Court for the Representative to pay the Defendant Entities' costs.

The Claimants will not be required to pay anything to the Funder if the Funder makes the decision to stop funding.

Any Claimant may decide to continue with the proceedings without funding (or with the support of a different funder) noting they will be responsible for the costs of prosecuting the claims including any adverse costs if the claim is unsuccessful. If you recover any Claim Proceeds, a share of your Claim Proceeds may still be paid to the Scheme.

### 25. Will I be required to appear in Court?

It is extremely rare for claimants in a class action to be required to appear in Court.

The Representative Member will need to provide instructions to the Lawyer and may need to attend Court from time to time. It is likely that the Representative Member will also have to provide evidence in the form of an affidavit or witness statement and appear at the trial or another hearing in the matter to give evidence in the witness box.

In some class actions, in addition to the Representative Member, a small number of "sample group members" may also be required to provide evidence.

It is possible that you will be asked to be a sample group member, but will not be required to do so unless you agree.

At the conclusion of the trial of the Representative Member's claim and the common issues, if the Court is unable to fully resolve the claims of all claimants, it may be necessary for those claimants to commence individual proceedings to finalise their claims.

### 26. What is the role of the Representative Member and what do they do?

The Representative Member is named as the representative party in the Class Action and carries on the litigation in their own name. Other parties may be named as representative parties however none of the other Claimants have been designated as representative parties at this stage.

The Representative Member, along with the Responsible Entity and Manager, has the right and obligation to give certain instructions to the Lawyer who is conducting the litigation.

If you are the Representative Member, the Lawyer will provide assistance to you in dealing with the formalities of the Class Action and you most likely will have an active role in the proceedings.

All other Claimants may be affected by the decisions made by the Representative Member.

From a practical perspective, it is not possible for all Claimants to give instructions to the Lawyer in respect of the conduct of the Class Action, which is why the Representative Member is given the right to give instructions to the Lawyer on significant matters pursuant to the LMFA and the Lawyer's Retainer.

If you are not the Representative Member, the extent of the instructions you may be called upon to give to the Lawyer may be limited to instructing them to include you as a Claimant in the Class Action and the extent of the losses that you claim to have suffered as result of the conduct of one or more Defendant Entities in the Class Action.

## **27. Who provides legal advice to the Claimants?**

Only the Lawyer provides legal advice in relation to the Class Action. The Funder, Manager and Responsible Entity do not provide any legal advice.

As a condition of applying for an Interest as a Funded Member of the Scheme and obtaining the benefit of funding, you instruct the Lawyer to act for you in relation to the Class Action.

Information about the Lawyer's Retainer is found in Section 38.

If you are unsure whether you should participate in the Class Action, we encourage you to obtain your own legal advice or such other professional advice that you may require in order to assess the merits of participating in the Class Action.

Under the LMFA, the Lawyer is instructed that it can accept day to day instructions from the Manager in the management of the Class Action (subject to certain exceptions). At no stage are the Manager or Funder acting as lawyers or providing legal advice.

## **28. Do I get a say in whether the Class Action settles and for how much?**

Much thought and analysis goes into whether a class action settles and, if so, on what basis and for what amount (if any).

Any settlement must be agreed between the parties to the Class Action, being the Representative Member on the one hand and the Defendant Entities on the other hand.

In recognition of the Funder's involvement in the Class Action, the Funder has a right to state the terms of any settlement that the Funder considers appropriate. If there is a difference of opinion between the Representative Member and the Funder regarding any potential settlement, the difference of opinion will be resolved by the most senior barrister of those retained by the Lawyer in respect of the Class Action.

If you are a Claimant, but not the Representative Member, you are not entitled to participate in any settlement discussions, but you will be entitled to lodge an objection (at your own cost) at a settlement approval Court hearing to let the Court know that you disagree, and the reasons why you disagree, with the settlement.

The Court ultimately decides whether a settlement is fair and reasonable for the Claimants overall and therefore whether it should be approved.

### **29. What happens if I disagree with the way in which the Responsible Entity is managing the Scheme?**

If you are unhappy with the way the Scheme is operated by the Responsible Entity or with how the litigation is being managed by the Manager, you can raise a complaint by contacting the Responsible Entity.

Details about how you can raise a complaint is set out in Section 68 of this document.

### **30. What happens if I disagree with the way in which the Lawyer is managing the Class Action?**

If you are unhappy with the way the Lawyer is conducting the Class Action, you can raise a complaint directly with the Lawyer.

Complaints and disputes with the Lawyer in relation to its professional services do not fall under the complaints policy of the Responsible Entity.

### **31. Will I have to pay tax?**

There may be taxation implications associated with your entitlement to Claim Proceeds.

As the law requiring funded class actions to be operated as managed investment schemes is new, the application of tax laws and ATO policy to amounts received by the responsible entity of a scheme or to claim proceeds received by members of a scheme is untested.

A brief outline of the likely taxation treatment of claim proceeds referable to a scheme is set out below.

**The Responsible Entity recommends that you obtain your own independent taxation advice in respect of any possible tax implications.**

Claim Proceeds are expected to be considered capital of the scheme and not taxable income of the scheme. As mentioned above, as the law regulating litigation funding schemes is new, this position has not been confirmed by ATO or the Courts at the date of the issue of this PDS.

The taxation treatment of claim proceeds received by a member should be governed by the principles that apply to taxation of compensation for wrong or loss, including the principles applied by the ATO on the capital gains tax treatment of compensation in its Taxation Ruling TR 95/35. The tax treatment will depend on the personal circumstances of the claimant and the particular nature of the claim.

## Detailed disclosure of fees & other costs

### 32. Fees & Other Costs

In reliance on ASIC Corporations (Disclosure in Dollars) Instrument 2016/767, the Responsible Entity has not set out the “dollar” estimate of fees and disbursements of the Lawyer, the Manager, the Funder or Responsible Entity or any premium payable for Adverse Costs Insurance. Disclosure is set out in the Lawyer’s Retainer and the LMFA.

#### Responsible Entity: Fees and expenses

The Responsible Entity will be paid the following fees for operating the Scheme:

- (i) a \$10,000 establishment fee;
- (ii) \$9,000 per month management fee or part thereof from the date one month prior to the date the Scheme is registered by ASIC to the date of the termination of the Scheme; and
- (iii) a \$5,000 Scheme termination fee, plus GST.

The \$9,000 per month management fee is payable quarterly in advance by the Funder (but not from Scheme Assets), or as otherwise agreed between the Responsible Entity and the Funder, and in accordance with the prevailing regulations.

The Responsible Entity is also entitled to be reimbursed for ordinary expenses incurred in the proper performance of its duties in relation to the Scheme, including the costs of the Custodian, director fees, compliance committee member fees, any administrator’s costs, audit and taxation fees (see ‘Responsible Entity: Other costs’ below for more information).

The Responsible Entity may also be entitled to be reimbursed for abnormal or extraordinary expenses incurred in the future (such as litigation costs, the costs of convening Member meetings and termination and wind-up costs).

In circumstances where the Scheme is unlikely to have Available Cash until Claim Proceeds are received, the fees and expenses of the Responsible Entity will be paid by the Funder. Any payment by the Funder will be considered

a fee funded out of Scheme Assets and will reduce the amount of Claim Proceeds (if any),

subject to Court approval, payable to Members if the Funded Claim is successful.

#### The Lawyer: Legal fees & disbursements

The Lawyer is entitled to receive fees and reimbursement for costs in connection with the provision of legal services concerning the Funded Claim.

Further information, including dollar estimates of fees and costs, is available from the Lawyer.

The Lawyer’s Retainer includes information in relation to applicable hourly rates charged in relation to work performed by the Lawyer as well as details about other disbursements that may be incurred and charged from time to time.

Fees payable to the Lawyer will be calculated based on time spent by the solicitors and other personnel having regard to the following hourly rates, which may be increased pursuant to an annual review:

Practitioner/Position	Hourly Rates (exc GST)
Principal (Partner equivalent)	\$650
Legal Consultant	\$600
Special Counsel	\$500
Senior Associate	\$370
Associate	\$320
Graduate Lawyer	\$200
Paralegal	\$200
Admin/Clerk	\$200

The fees and expenses of the Lawyer are either paid by the Funder and recouped out of Claim Proceeds if the Funded Claim is successful or paid directly from Scheme Assets.

#### Funder remuneration and expenses

The Funder is entitled to receive remuneration and reimbursement of Project Payments in return for the provision of the Funding and

Management Undertakings under LMFAs entered into with Members.

The Funder is entitled to:

- (i) 25% of Claim Proceeds received after the Claim is filed and before the expiry of 18 months after filing; or
- (ii) 30% of Claim Proceeds received on or after the expiry of 18 months after filing,

plus GST if applicable

The Funder is also entitled to be reimbursed from Claim Proceeds, an amount equal to the Project Payments paid by the Funder, including:

- (i) the Responsible Entity's fees and expenses, or any right of indemnity, pursuant to the Scheme Constitution;
- (ii) the Lawyer's fees and disbursements;
- (iii) disbursements of the Funder, including Adverse costs Order Expenses, and the Manager; and
- (iv) any GST payable as a result of the above costs or expenses being incurred.

All amounts to be deducted from Claim Proceeds are subject to Court approval.

Further information about fees and costs payable to the Funder is set out in the LMFA.

#### **Additional Defendants & Appeals**

If any other party (other than the Defendant Entities) becomes a defendant or respondent and the Funder agrees to pay for the joinder of that additional defendant or respondent, then the Funder's fees will increase by an amount or percentage as set out in the LMFA subject to any cap provided in the LMFA.

If the Funder agrees to pay the costs and disbursements of any appeal, the Funder's fee will increase by an amount or percentage as set out in the LMFA subject to any cap provided in the LMFA.

#### **Responsible Entity: Other costs**

The Constitution does not provide for the Responsible Entity to charge fees additional to those described in this Fees & Other Costs section, but does entitle the reimbursement of costs and expenses, whether incurred before or after registration of this Scheme, connected with:

- (i) the Constitution and the formation of the Scheme, any modification, repeal or replacement of the Constitution and lodgement with ASIC;
- (ii) the Litigation Funding Relationship Deed;
- (iii) the Law Firm Relationship Agreement;
- (iv) the LMFAs;
- (v) the preparation, review, printing, distribution and promotion of any disclosure document, product disclosure statement or information memorandum in respect of Interests and any material supplemental, or in replacement of, such document;
- (vi) the sale, purchase, transfer, insurance, custody of, and any other dealing with, the Assets;
- (vii) the preparation, printing and postage of distribution statements or any other communications with Members;
- (viii) convening and holding meetings of, and dealings with, Members (other than expenses payable under section 252C(4) of the Corporations Act 2001), and the implementation of any resolutions passed at a meeting of Members;
- (ix) the engagement of delegates, brokers, underwriters, custodians, administrators, other agents, valuers, asset consultants, advisers and contractors of all kinds including legal costs and expenses (charged at the usual commercial rates of the relevant legal services provider);
- (x) preparation and audit of the taxation returns, financial statements and reports and accounts of the Scheme;
- (xi) computer and other facilities relating to the matters in paragraphs (v) and (viii);
- (xii) any costs incurred in connection with, or as a result of, any agreement in connection with the Scheme to which the Members are parties and any costs which any such agreement provides

- (xiii) are to be borne by the Scheme or paid for out of the Assets of the Scheme; any interest or other costs of borrowing for the Scheme (although the Responsible Entity does not intend to borrow);
- (xiv) Tax, including any amount charged by a supplier of goods or services, or both, to the Responsible Entity by way of or as a reimbursement for GST;
- (xv) termination of the Scheme and the retirement or removal of the Responsible Entity and the appointment of a replacement (unless the retirement or removal of the Responsible Entity is foreshadowed prior to the Scheme being registered);
- (xvi) any court proceedings, arbitration or other dispute concerning the Scheme or this Constitution including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a Court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this paragraph (p) must be repaid by the Responsible Entity;
- (xvii) complying with any law, and any request or requirement of the ASIC; and

- (xviii) any indemnity in favour of any Compliance Committee Member in relation to liability incurred in good faith.

Any increase in fees or costs will be notified to relevant Members.

#### *Differential fees*

The Responsible Entity, Funder or Manager may agree a different fee arrangement with certain Members on a case-by-case basis to the extent permitted under the *Corporations Act 2001*.

This includes, but is not limited to, differential arrangements as follows:

- (i) in relation to certain Members who are wholesale clients within the meaning of the *Corporations Act 2001*; or
- (ii) in relation to certain Members based on (a) the total estimated value of Interest held by a Member; or (b) the total estimated period of time during which the Member has held its Interest.

As at the date of this PDS, no differential fee arrangements are in place with any Members.

## Operation of the Scheme

### 33. Constitution

The Constitution contains a number of provisions relating to the rights, terms, conditions and obligations imposed on both the Responsible Entity, as the responsible entity, and the Members (including Passive Members).

Subject to the rights, obligations and liabilities of a class, your Interest will not give you an interest in any particular Assets.

The Responsible Entity's responsibilities and obligations, as the Responsible Entity of the Scheme, are governed by the Constitution of the Scheme and the *Corporations Act*, as well as general trust law. The Constitution contains a number of provisions relating to the rights, terms, conditions and obligations imposed on both the Responsible Entity, as the responsible

entity, and Members. Some of the provisions of the Constitution are discussed elsewhere in this PDS. Other provisions relate to a Member's rights under the Constitution, and include:

- (i) a Member's right to share in any Scheme income, and how it is calculated. A Member's entitlement to a share in the Claim Proceeds (where the Funded Claim is successful) will be payable in accordance with the arrangements set out in the LMFA and Court Order. The entitlement of a Member to Claim Proceeds is an Asset of the Scheme (but is not

income of the Scheme). In practice, it is expected that Scheme income will be minimal and may comprise interest or other income earned in respect of the Claim Proceeds (for example

- where held in a bank account pending distribution to Members).
- (ii) what you are entitled to receive if the Scheme is wound up;
  - (iii) the nature of each Interest - identical rights attach to each Interest within a class;
  - (iv) a Member's rights with respect to meetings; and
  - (v) the quorum requirement for meetings – at least two Members unless the Scheme has only one Member who may vote on a Member resolution, in which case that one Member constitutes a quorum.

There are also provisions governing the Responsible Entity's powers and duties, including:

- (i) when the Constitution can be amended - generally the Constitution can only be amended where the Responsible Entity reasonably believes that the changes will not adversely affect Members' rights or if the amendments are approved at a meeting of Members;
- (ii) when the Responsible Entity can retire as the Responsible Entity of the Scheme - when permitted by law;
- (iii) when the Responsible Entity can be removed as the responsible entity of the Scheme - which is when required by law; and
- (iv) powers to invest and borrow money, however, it is not expected that the Responsible Entity will exercise such powers.

The Constitution and the Corporations Act also deal with the Responsible Entity's liabilities in relation to the Scheme and when it can be reimbursed out of the Scheme's Assets (including Claim Proceeds), for example:

- (i) the Responsible Entity is not liable for acting in reliance and in good faith on professional advice;
- (ii) the Responsible Entity may only be liable to Members for loss to the extent that the Corporations Act imposes such liability; and
- (iii) the Responsible Entity is entitled to be indemnified and can be reimbursed for any liability it incurs in connection with

the proper performance of its duties in respect of the Scheme.

The Constitution also requires that the Responsible Entity and Member each strictly maintain the confidentiality of the LMFA and any other documentation or information provided to the Responsible Entity by the Member or the Lawyer or vice versa for a purpose connected to the Funded Claim, subject to certain exceptions.

Copies of the Constitution are available, free of charge, on request from the Responsible Entity.

### 34. Custody Agreement

Equity Trustees Limited ABN 46 004 031 298, AFSL No. 240975 (**Custodian**) is the custodian of the Assets of the Scheme.

The Custody Agreement dated 17 November 2020 governs the services the Custodian will provide to the Responsible Entity.

Under the Custody Agreement, the Custodian must act on instructions from the Responsible Entity and holds legal title to the Assets of the Scheme. The role of the Custodian will be subject to Court Order relating to Scheme Assets such as Claim Proceeds.

The Custodian has no supervisory role in relation to the operation of the Scheme and is not responsible for protecting the interests of Members.

### 35. Law Firm Relationship Agreement

The Responsible Entity, Funder, Manager and Lawyer are party to a Law Firm Relationship Agreement.

This Law Firm Relationship Agreement sets out the terms on which the Lawyer is funded to provide legal services in respect of the claims of the Claimants the Lawyer's reporting obligations to the Responsible Entity, and the circumstances in which the Lawyer's appointment may be terminated by the Lawyer or the Responsible Entity.

### 36. **Litigation Funding Relationship Deed**

The Responsible Entity, Funder and Manager are party to a Litigation Funding Relationship Deed. Some of its key features are summarised below:

- (i) the Responsible Entity is required to consult and cooperate with the Funder and Manager in relation to a range of operational matters in relation to the Scheme;
- (ii) the Funder and Manager agree to provide certain management services in relation to this Scheme;
- (iii) the Funder and the Manager have undertaken to the Responsible Entity to comply with their obligations under the LMFAs;
- (iv) an undertaking by the Funder and the Manager to the Responsible Entity to comply with their obligations under the Law Firm Relationship Agreement and enforce any rights under that agreement against the Lawyer; and
- (v) provision for the termination of the Litigation Funding Relationship Deed in certain cases involving default by or insolvency of the Funder or Manager.

### 37. **LMFA**

If the Funder decides to offer litigation funding to you, the Responsible Entity, Funder and Manager will enter into an LMFA with you for the Class Action and the Funding and Management Undertakings will be provided to Funded Members, conditional on the terms of the LMFA.

Under the LMFA, Funded Members agree to assign their interests in the Claim Proceeds to the Funder and Manager and the Funder and Manager are entitled, as assignees to be paid certain amounts from any Claim Proceeds (as detailed in Section 32 above) if the Funded Claim is successful. Funded Members also agree to pay, from Claim Proceeds, any amounts owing to the Lawyer which have not been funded by the Funder.

Funding may cease if the Responsible Entity considers further funding to be commercially unviable.

Under the LMFA, Claimants also agree that the Representative Member, along with the Responsible Entity and Manager, has the right and obligation to give certain instructions to the Lawyer who is conducting the litigation and these instructions may be given on behalf of all Funded Members.

The Funder and the Manager are not providing any advice or making any recommendation as to whether Claimants ought to enter into the LMFA. You should obtain independent advice before signing.

Cooling off rights are granted under the LMFA, meaning a Funded Member may withdraw from the LMFA within 21 days after they receive a fully executed copy of the LMFA and are notified that they have been accepted and registered as a Funded Member of the Scheme. If a Funded Member exercises this right and withdraws from the LMFA, the Responsible Entity may reclassify the Member into either the Unfunded Active Member Class or Passive Member Class. Confidentiality obligations and the limitation of the Responsible Entity's liability will survive even if the LMFA is withdrawn during the Cooling-Off Period.

Following termination of a LMFA, after the Cooling-Off Period, the Funder, Manager, Responsible Entity and Lawyer continue to have rights to be paid fees and costs out of Scheme Assets if Claimants or their affiliates recover any Claim Proceeds.

### 38. **Lawyer's Retainer**

Members who enter into the Lawyer's Retainer agree that the Lawyer will conduct and undertake the Class Action in accordance with the instructions of, and in consultation with, the Representative Member.

The Lawyer's Retainer also sets out the scope of your instructions to the Lawyer and the fees that the Lawyer is entitled to charge from any Claim Proceeds. If you are a Funded Member, the terms of the LMFA and/or Law Firm Relationship Agreement prevail to the extent of any inconsistency with the Lawyer's Retainer.

### 39. Application for an Interest

Persons wishing to become Active Members are required to submit an Application Form (whether online or via post), together with any required supporting documentation, to the Manager in Sydney, Australia. A printable copy of the Application Form is found in Annexure A of the PDS.

If any part of the application process is outstanding at this time, the Responsible Entity reserves the right not to accept the applicant as an Active Member of the Scheme (and such person may instead be classified as a Passive Member).

You should also read the copy of the LMFA and Lawyer's Retainer provided with the Application Form. You need not sign and return copies of those agreements. Under the Application Form, for convenience, you are taken to elect to appoint the Responsible Entity as your attorney to execute the LMFA and Lawyer's Retainer on your behalf.

The Responsible Entity may also classify you as an Active Member if you complete the Application Form and provide written notification (including via website registration) to the Responsible Entity, Funder or Lawyer (in the form determined by the Responsible Entity and Funder) that you agree to, or wish to, participate in the Scheme.

Eligible persons from jurisdictions other than Australia must contact the Responsible Entity in relation to relevant documentation.

The completed Application Form can be sent to the Manager (on behalf of the Responsible Entity) via the following:

Mail: Court House Capital Management Limited  
 Attention: Tyro Litigation Funding Scheme  
 Level 45, 19 Martin Place  
 Sydney NSW 2000  
 Email: info@courthousecapital.com.au  
 Website: <https://courthousecapital.com.au/class-actions/tyro>

The Responsible Entity reserves the right to refuse any application or admission as an Active Member if:

- (i) the admission of the Member would result in cost to the Responsible Entity;
- (ii) admission would trigger a licence or registration requirement under any other jurisdiction; or
- (iii) the applicant has not provided satisfactory information in their application or for any other reason.

The Responsible Entity need not provide reasons for refusing to accept an application.

### 40. Withdrawal Arrangements

The Scheme is generally expected to be illiquid given that the primary Assets of the Scheme are the right to enforce the Funding and Management Undertakings and the potential entitlement to a share in the Claim Proceeds if the Funded Claim is successful.

If the Funded Claim is successful, Claim Proceeds may become available towards the end of the life of the Scheme to be distributed to Members.

Accordingly, as it is not envisaged that the Scheme will hold liquid assets (other than if the Funded Claim is successful), a Member will not have the right to withdraw from the Scheme (subject to any right to opt out permitted by law).

The Responsible Entity is not expected to make any withdrawal offers.

The Responsible Entity may permit or require withdrawal of the Interest of any Member if the Member:

- (i) opts out of the Class Action in relation to the Funded Claim in accordance with the Court rules or any order of the Court; or
- (ii) ceases to have an interest in the outcome of the Class Action in relation to the Funded Claim.

### 41. Withdrawal Price

The Responsible Entity is not required to pay any amount to the Member in connection with

cancellation of the Member's Interest, other than any amount determined by Court Order, if applicable, or if there is no Court Order, the Member's Share Percentage of any Available Cash.

## 42. Reporting

If you are a Funded Member, the Manager and Lawyer will report to you in accordance with the LMFA and Lawyer's Retainer entered into with you.

The Responsible Entity, through the Manager, intends to also provide the following reports to Members:

- (i) **Quarterly reporting** containing a summary report on progress of the Funded Claim.
- (ii) **Annual Report** including any financial statements and auditor's report will be made available by email or on a secure website notified to Members in due course for each financial year ending 30 June.

You can contact the Manager on (02) 9221 8000 for updated information and other general information about the Scheme.

The Responsible Entity will only provide reports to Members who have provided an email and physical address.

## 43. Distributions to Members

The potential entitlement of a Member to share in Claim Proceeds is an Asset of the Scheme. The entitlement may be satisfied by the Custodian (if the Funded Claim is successful), subject to requirements of any Court Order and subject to the terms of the LMFA (if applicable).

If Claim Proceeds are held in a bank account or otherwise invested pending distribution, the Scheme may also distribute interest or other income earned.

Accordingly, the Responsible Entity does not expect the Scheme will generate significant income or make distributions during the term of the Scheme.

If the Scheme distributes any amount, these distributions will be directly credited to your nominated bank account.

Unless otherwise agreed with the Responsible Entity, Members must nominate a bank account held in their own name with an Australian domiciled bank.

Cash distributions will only be paid in Australian dollars to such an account.

## 44. Your obligations, acknowledgements and instructions

If you are a Funded Member, the non-monetary commitments by you are contained in the LMFA.

You must co-operate in good faith with the Manager and comply with any reasonable request the Manager makes, and, in particular, provide to the Manager all information that the Manager reasonably requires. You must follow all reasonable legal advice given by the Lawyer in relation to the Funded Claim.

The non-monetary commitments by you are in order to achieve the Overarching Objective of the claim for the benefit of you, other Members and the Funder and Manager. A failure to comply with your non-monetary commitments may affect your rights in relation to the Funding and Management Undertakings.

## 45. Termination of the Scheme

The Responsible Entity may (subject to consultation with the Manager) resolve at any time to terminate, liquidate and wind up the Scheme in accordance with the Scheme's Constitution.

The Scheme may otherwise terminate if required by law or Court Order. A notice will be provided to Members advising of the Scheme's termination. Upon termination and after conversion of Scheme Assets into cash (to the extent within the control of the Responsible Entity) and payment of, or provision for, all costs and liabilities (actual and anticipated), the net proceeds will in broad terms be distributed to each Member according to the Member's Share Percentage.

If the Funded Claim is not successful, then Scheme Assets will likely be \$0 and a Member would not receive any distribution upon winding up of the Scheme.

If the Funded Claim is successful and there are Claim Proceeds, then a Member is entitled to receive a share of the Claim Proceeds, determined in accordance with their LMFA (if applicable) and after Scheme wind-up costs are paid.

In practice, payment will be made in the manner determined by Court Order, which may

involve payment being made indirectly via the Custodian or directly by the Lawyer to Active Members and (if directed by Court Order) Passive Members.

The Scheme will generally be operated until the Custodian distributes all Claim Proceeds or the Funded Claim is finalised unless terminated earlier in accordance with the terms of the Constitution. The expected term of the Scheme will depend on the course of the Funded Claim and is not able to be reliably estimated.

## Conflicts of Interest

### 46. Conflicts management

All transactions to which the Responsible Entity, Funder and Manager may have, or may be perceived to have, a conflict of interest, including related party transactions, will be conducted to ensure they comply with the relevant legislation.

The Responsible Entity, Funder and Manager comply with a conflicts management policy (the **Conflicts Management Policy**).

Whenever a conflict of interest is identified, the Responsible Entity is obligated to ensure that the Claimant's interests are adequately protected.

The Responsible Entity may be required to disclose conflicts of interests to Members and to ensure that its disclosure is timely, prominent, specific and meaningful, and contains enough detail to understand and assess the potential impact on the service provided by the Responsible Entity. These conflict situations will be monitored, assessed and evaluated by the Responsible Entity.

### 47. Potential Conflicts - General

The Responsible Entity, Manager and Funder have identified aspects of the Scheme that have the potential to lead to conflicts of interest, including:

#### *Pre-existing relationships*

There may be a pre-existing legal or commercial relationship between the Funder,

Manager, Lawyer, Claimants, Defendant Entities or Responsible Entity.

#### *Interests of the Parties*

The interests of the Funder and Manager in the Scheme are not necessarily the same as Members and although you may have certain rights to provide a direct instruction to the Lawyer, there is a risk the Manager gives instructions that are not instructions the Member would provide.

A portion of the Lawyer's professional fees is deferred and may be recouped out of Claim Proceeds only if the Funded Claim is successful, subject to Court approval.

The Lawyer may be entitled to cease acting on the Class Action. This event would potentially cause significant disruption to the Class Action and the Scheme.

#### *Providing instructions to the Lawyer*

Either the Responsible Entity or Manager is entitled to provide instructions to the Lawyer in connection with the carriage of the Class Action. In practice, instructions will be provided by the Manager.

#### *Potential future retainers*

The Lawyer may see the Funder or the Manager potentially facilitating future retainers concerning different legal proceedings, to be paid for by the Funder.

#### *How to achieve the Scheme's objectives*

Claimants, the Lawyer, the Funder, the Responsible Entity and the Manager may have different views about how to achieve the Scheme's Overarching Objective.

Other potential conflicts may occur during the course of the Class Action and conduct of the Scheme.

Potential conflicts are generally addressed in Scheme documentation (see Section 12), including the LMFA, Lawyer's Retainer, Law Firm Relationship Agreement and Litigation Funding Relationship Deed.

For example, the LMFA:

- (i) informs Claimants of any pre-existing relationships between the Responsible Entity, the Funder, the Manager and the Lawyer;
- (ii) confirms that the Lawyer is retained by the Claimants;
- (iii) confirms that if the Lawyer considers they may be in a position of conflict they may, in certain circumstances:
  - take instructions from or give advice to any Claimant, whose instructions will override those of the Manager (as authorised agent for the Responsible Entity) and may be contrary to the interests of the Manager (as authorised agent for the Responsible Entity); and
  - not give the Manager (as authorised agent for the Responsible Entity) advice or act on the Manager's (as authorised agent for the Responsible Entity) instructions where that advice or those instructions may be contrary to a Claimant's interests; and
- (iv) identifies procedures to resolve disputes between the Responsible Entity, the Funder, the Manager and Funded Members.

#### **48. Potential Conflicts Concerning Class Action Claims**

Actions funded by the Funder may include Claimants who have not entered into a LMFA.

Generally, all issues of law or fact common to all Claimants are determined for the benefit of all members of the class and only then are the separate claims of each Claimant determined (assuming there is no earlier settlement).

The Funder's funding and remuneration and the Manager's remuneration is usually reimbursed from the Claim Proceeds by class members on a pro-rata basis according to the size of their share of Claim Proceeds (as determined by the Lawyer, the Court or a Court-appointed Administrator). Distribution of a Member's share of Claim Proceeds is also usually on this basis.

If you are a Funded Member and opt out of the Class Action (after the relevant cooling-off rights have expired), the LMFA requires you to pay to the Funder, Manager and Lawyer their entitlements from any monetary compensation you may later receive in respect of your claim that was included in the claim funded by the Funder.

Potential conflicts may arise where:

- (i) some Members have stronger claims than other Members which may result in issues in relation to the allocation of Claim Proceeds or Members with stronger claims bearing a share of the costs of the weaker claims; and
- (ii) adding additional Members (whether Funded Members or not) may not be in the interests of existing Funded Members.

Class actions are blunt instruments designed to enable receipt of the benefits of conducting all claims through one proceeding (particularly from the point of view of saving costs). The resultant potential conflicts may be addressed in the following ways:

- (i) the LMFA addresses conflicting interests around settlements (see section titled Potential Conflicts Concerning Settlements below);
- (ii) the Lawyer determines the value of each claim for the purposes of cost allocation and global settlement sum allocation; and
- (iii) the Funder may determine whether to enter into LMFAs with additional persons. It may be necessary for them to do so in order to ensure that the claim is viable or to improve the prospects of settlement.

#### 49. Potential Conflicts Concerning Settlements

You may want to settle and the Responsible Entity, Manager and/or Funder may not, or vice versa. This may happen for many reasons, including:

- (i) differing views on the prospects of success;
- (ii) the Funder is financially exposed if the claim is lost (because the Funder has paid the legal costs) whilst Claimants other than the Representative Member in Class Actions are not;
- (iii) the Funder wants to make a return on the time and money it invests in the claim;
- (iv) The Manager wants to make a return on the resources it invests in the claim;
- (v) a Member may consider his/her potential entitlement to Claim Proceeds to be too low; or
- (vi) potentially higher funding fees may be payable if the claim resolves later than earlier.

These potential conflicts are addressed in the LMFA on the basis that potential settlements of claims are referred to the most senior counsel retained by the Lawyer to decide whether the proposed settlement is fair and reasonable and

only if his or her opinion is positive, and Court approval is obtained, will the claim settle.

#### 50. Potential Conflicts Concerning Termination of the LMFA

The Responsible Entity, Manager and/or Funder may not want to continue funding a claim despite Claimants wishing the Funder to continue funding or vice versa.

Funding may cease if the decision of the High Court of Australia in Application No. M120 of 2020 or any other matter causes the Funder to consider further funding to be commercially unviable.

The LMFA addresses this potential conflict by:

- (i) specifying the rights which Claimants, the Responsible Entity, the Funder and the Manager have to terminate the LMFA and the consequences; and
- (ii) providing dispute resolution procedures in the event a dispute arises between Claimants, the Responsible Entity, the Funder and the Manager.

### General Terms

#### 51. Indemnity of the Responsible Entity

The Constitution provides that the Responsible Entity is entitled to be indemnified for any liability incurred by it in properly performing or exercising any of its duties in relation to the Scheme (including without limitation the costs of winding up the Scheme).

The Responsible Entity is entitled to be paid fees, reimbursed for expenses or indemnified in the following order of priority: first, out of any Available Cash, then to the extent of any rights to be paid or reimbursed by the Funder under the Litigation Funding Relationship Deed, and then out of any other Assets.

Amounts reimbursed or paid by the Funder to the Responsible Entity may be taken into account as a recoverable cost (**Project Payments**) under the LMFA and therefore reduce a Member's ultimate entitlement to a share of the Claim Proceeds.

#### 52. Indemnity of the Funder & Manager

Under the terms of the Litigation Funding Relationship Deed, the Responsible Entity (in its capacity as Responsible Entity) indemnifies the Funder and the Manager to the extent of any Assets of the Scheme against any loss or liabilities reasonably incurred by the Funder and the Manager, and any direct costs, charges and expenses incurred by the Funder and the Manager by reason of the Funder and the Manager properly performing their duties

and obligations under the Litigation Funding Relationship Deed.

### 53. Valuation

The Responsible Entity is relying on *ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787* which provides relief from the requirement to value Scheme Assets at regular intervals.

Accordingly, the Responsible Entity does not intend to undertake regular valuations of the Assets.

Any advice in relation to the prospects of success and quantum of the settlement amount in relation to the Funded Claim should be sought from the Lawyer.

Any valuation amount ascribed to any Asset in annual financial statements of the Scheme is not necessarily an indicator of the value of the prospective Claim Proceeds in relation to the Funded Claim.

### 54. Consents

The Funder, Manager, Lawyer and Custodian have given, and at the date of this PDS have not withdrawn, their written consent:

- (i) to be named in this PDS in their respective roles; and
- (ii) to the inclusion of the statements made about them, the Scheme and to the information attributed to them in the form and context in which this information appears.

The Funder, Manager, Lawyer and Custodian have not caused or otherwise authorised the issue of this PDS.

None of the Funder, Manager, Lawyer or Custodian, nor their employees, officers or associated companies accept any responsibility arising in any way for errors or omissions from this PDS, other than in relation to the statements for which they have provided consent.

### 55. Compliance Plan

The Responsible Entity has prepared and lodged a compliance plan for the Scheme with ASIC. The compliance plan sets out how the Responsible Entity will ensure compliance with the Corporations Act and the Constitution when operating the Scheme.

### 56. Replacement of the Responsible Entity

It is foreshadowed that the Manager has applied to ASIC for an Australian financial services licence for an authorisation to operate litigation funding schemes which would allow it to become the responsible entity of the Scheme and replace the Responsible Entity.

The Responsible Entity will provide its consent to retire as responsible entity of the Scheme in circumstances where:

1. the Scheme Members approve appointment of the Manager as the new responsible entity of the Scheme;
2. the Manager has obtained an Australian financial services licence with the requisite authorisations; and
3. the Responsible Entity is able to discharge its statutory obligations in providing such consent.

Any costs of replacing the Responsible Entity will be borne by the Manager and will not be payable from Scheme Assets.

The LMFA contains details of the anticipated Scheme Expenses. If the Responsible Entity is replaced by the Manager, as described above, Scheme Expenses will be subject to change but are not anticipated to exceed the amount disclosed in the LMFA.

## Risks

### 57. Key Risks

Participation in the Scheme carries risks. You are not guaranteed any monetary award or judgment in respect of the Funded Claim.

The following discussion of certain risk factors does not purport to be an exhaustive list or a complete explanation of all the risks in the Scheme or participation in the Funded Claim.

The Funder, Manager and Responsible Entity recommend you talk to a financial adviser and your legal adviser (including the Lawyer) about the risks Participation in the Scheme carries risks. You are not guaranteed any monetary award or judgment in respect of the Funded Claim.

The following discussion of certain risk factors does not purport to be an exhaustive list or a complete explanation of all the risks in the Scheme or participation in the Funded Claim.

The Funder, Manager and Responsible Entity recommend you talk to a financial adviser and your legal adviser (including the Lawyer) about the risks involved in participating in the Scheme and how it might impact on your individual financial circumstances.

### 58. Litigation Risks

Litigation is risky. Outcomes are often not as expected. Your claim may be unsuccessful which means that you will have lost the time and effort you put into the litigation.

Litigation can take a number of years to conclude and be subject to multiple levels of appeal. The costs, including legal expenses, to fund the Funded Claim may exceed any monetary award or judgment in your favour in which case you may not receive any proceeds from the monetary award of judgment.

Even if you are successful, the Defendant Entities may be unable to pay any of or the entire settlement or judgment sum.

The claim is heavily reliant on the performance of the Lawyer, and in certain cases, the recommendations of the Manager. The

Lawyer may cease providing services where the Lawyer is no longer in a position to act for

Members (provided that the Lawyer has the benefit of any necessary Court Order). Key people who have significant expertise and experience and are significant to the management of the Scheme may become unable or unavailable to perform their role.

The Responsible Entity will monitor the activities of the Funder and Manager but retains its right to recover fees and expenses from the Scheme Assets if a breach by those entities causes the Responsible Entity to breach its obligations (provided the Responsible Entity has properly performed its duties). In such circumstances, the Responsible Entity may have rights to take action for breach against the Funder or the Manager under the Litigation Funding Relationship Deed or the LMFA (as applicable). Remedies resulting from such an action may include recovery of all or part of the amounts that were paid from the Scheme Assets. However, the Responsible Entity may be prevented from seeking remedies if the Responsible Entity does not have funds to meet any litigation costs involved. The Responsible Entity may invite Members to contribute funds at the time to meet the associated costs, but if funds are not available, the Responsible Entity may be prevented from seeking such remedies.

### 59. Funding Risks

LMFAs are structured so that Funded Members will not be required to pay any money other than from settlement or judgment proceeds. However, if you are the Representative Member in the Funded Claim you will not be indemnified for any Order for Costs incurred after termination of the LMFA.

The Funding and Management Undertakings are subject to terms, including that the Funded Member is complying with its obligations under the LMFA.

If the LMFA is terminated and a Funded Member later receives monetary compensation in respect of claims that are the subject of the

Funded Claim, the Funded Member may still be required to pay an amount to the Funder from that money.

The Funder may in its absolute discretion determine not to provide funding in respect of any appeals in which case it will be necessary to appoint a replacement funder for any such appeals.

The Funder agrees to pay the costs along the way but may become insolvent or otherwise unable to meet its payment obligations.

If the Funder is unable to pay costs, Members do not decide to provide their own funding and no replacement funder is available, the Funded Claim may not proceed.

## 60. Financial Risks

Even if the Funded Claim is successful, the net amount payable to a Member is likely to be reduced by the fees and expenses payable to the Responsible Entity, Funder, Manager and Lawyer as these may be a material component deducted from Claim Proceeds, reducing Scheme Assets.

If the Funded Claim is unsuccessful or if the Funded Claim delivers limited Claim Proceeds, the fees and costs of the Scheme may mean that Members are not entitled to receive a payment in relation to the Funded Claim. Please review the summary of fees and other costs set out in Section 2 in determining whether to become a Member or pursue remedies through other avenues.

## 61. Other Risks

Participation in the Scheme carries the following additional risks:

- Scheme may not proceed - if the decision of the High Court of Australia Application No. M120 of 2020 or any other matter causes the Funder to consider further funding to be commercially unviable, the Scheme may not proceed.
- Insolvency risk - the risk that the Funder becomes insolvent or otherwise defaults. In that case, if you wish to continue the claim, you will then need to find a replacement funder or provide your own funding.

Otherwise, you may cease to be entitled to a remedy.

- Termination of the Scheme - the Responsible Entity may terminate, liquidate and wind up the Scheme.
- Additional settlement negotiations, interlocutory court processes, defendants and appeals – there is a risk that the fees and costs may increase if lengthy settlement negotiations are required or if there are significant additional interlocutory or pre-trial court process or additional defendants are joined to the proceedings beyond the amounts initially budgeted for. As a consequence, a Member's return from the Scheme may be eroded by those additional fees and costs.
- Conflicts of interest (including related party dealings) – there is a potential conflict of interest between the interests of the Funder, Manager, Lawyer, Members and the Responsible Entity. See Sections 46 to 50 for further detail regarding conflicts of interest.
- LMFAs - the Funder may determine whether to enter into LMFAs with additional persons.
- Breach by the Funder or Manager – if the Funder or Manager breach the Funding and Management Undertakings, the Responsible Entity may be entitled to sue the Funder or Manager for breach pursuant to their respective covenants and agreements under the Litigation Funding Relationship Deed but may be prevented from pursuing litigation if the Responsible Entity does not have funds to meet any litigation costs. The Responsible Entity may invite Members to contribute funds at the time to meet the associated costs, but if funds are not available, the Responsible Entity may be prevented from enforcing the Funding and Management Undertakings, leading to discontinuation of the Funded Claim if a replacement funder cannot be found and loss of an entitlement to Claim Proceeds. If the Lawyer confirms in writing to the Responsible Entity that it considers the Funded Claim is meritorious and able to be conducted in a manner likely to conclude in

receipt of Claim Proceeds materially greater than estimated Project Payments, then the Responsible Entity shall apply best efforts to locate a replacement funder within a reasonable period of time. However, if a replacement funder is not found the Responsible Entity may take steps to wind up the Scheme on the grounds that it considers that the purpose of the Scheme cannot be accomplished.

## 62. Specific Risks for Passive Members

A Passive Member has **no entitlement** to a distribution from the Scheme or the Custodian, unless directed by Court Order.

The Responsible Entity may not be able to make a distribution and reclassify a Passive

Member as an Active Member if the person does not complete an Application Form and provide information required by the Responsible Entity.

## 63. Legal, Regulatory and Tax Risks

Changes in any law (including tax laws) regulation or government policy in Australia could have an impact on the Scheme's performance.

## 64. COVID-19

The spread of COVID-19 has the potential to impact or delay the settlement or final determination of the Funded Claim and result in increased costs and expenses over the life of the Scheme.

## Other Regulatory Matters

### 65. Design and Distribution Obligations

Interests in the Scheme are classified as products which are regulated by the Product Design and Distribution Obligations under Part 7.8A of the Corporations Act. Commencing from 5 October 2021, the Responsible Entity may be required to prepare a written 'Target Market Determination' applicable to the issue and distribution of Interests in the Scheme from that date. If required, the Responsible Entity will prepare and publish a copy of a Target Market Determination for the Scheme on its website on or before 5 October 2021 in accordance with ASIC's regulatory guidance contained in Regulatory Guide 274 – Product design and distribution obligations.

and item 54 of Table 1 in subsection 6(2) of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (**AML Act**) in respect of the provision of designated services.

Any financial institution appointed to make payments to Members from Claim Proceeds has appropriate obligations under the AML Act.

### 66. Anti-Money Laundering and Counter-Terrorism Financing Act

The Responsible Entity has been granted an exemption by the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) under the Anti-Money Laundering and Counter-Terrorism Financing Act (Exemption-CASL Governance Ltd) Instrument 2020 (No. 15) from item 35 of Table 1 in subsection 6(2)

## Privacy & Complaints

### 67. Privacy Statement

The Privacy Act 1988 (**Privacy Act**) and the Australian Privacy Principles regulate the way organisations collect, use, disclose, keep, secure and give people access to their personal information. As the Responsible Entity, we are committed to respecting the privacy of Members' personal information throughout the information lifecycle and our Privacy Policy details how we do this.

The Responsible Entity may collect personal information about Member's and individuals associated with Members in order to provide products and services to Members, and to ensure compliance with legal and regulatory obligations (including under the Corporations

Act and tax-related legislation). Members must ensure that all personal information that Members provide to the Responsible Entity is true and correct in every detail, and should those personal details change it is the Members' responsibility to ensure that you promptly advise the Responsible Entity of the changes in writing. If Members do not provide the information requested the Responsible Entity may not be able to process the application (as an Active Member, if applicable) or administer or manage the Member's Interest. The Responsible Entity may also obtain or confirm information about individual Member from publicly available sources in order to meet regulatory obligations.

The Responsible Entity may disclose Member information to other members of its corporate group or to third parties, where it is necessary, in order to provide Members with the products or services. Those third parties may be situated in Australia or offshore, and the Responsible Entity will take reasonable steps to ensure that all third parties with whom it has a contractual relationship or other influence comply with the Australian Privacy Principles.

The third parties that the Responsible Entity may disclose Member information to expressly in relation to the Funded Claim include, but are not limited to:

- (i) those providing services for administering or managing the Scheme, including the Funder and Manager, any administrator or registrar, and auditors, or those that provide mailing or printing services;
- (ii) the Lawyer;
- (iii) those where you have consented to the disclosure and as required by law; and
- (iv) regulatory bodies such as ASIC, ATO and APRA.

The Responsible Entity, the Funder or the Manager may from time to time provide Members with direct marketing and/or educational material about products and services they believe may be of interest to Members. Members have the right to "opt out" by contacting the relevant entity.

The Responsible Entity's Privacy Policy contains information about how a Member can access information held about them, seek a correction if necessary, make a complaint if the Member thinks there has been a breach of their privacy and about how the Responsible Entity will deal with that complaint. Full details of the Responsible Entity's Privacy Policy is available at [www.casl.com.au](http://www.casl.com.au).

You can contact the Responsible Entity's Privacy Officer on +61 1800 26 26 00, or email to [enquiries@casl.com.au](mailto:enquiries@casl.com.au) to request a copy of the policy.

### 68. Complaints Resolution

The Responsible Entity has an established complaint handling process and is committed to properly considering and resolving all complaints.



If you have a complaint in connection with the Scheme, please contact us on:

Phone: +61 1800 26 26 00  
 Post: CASL Governance Ltd  
 Level 13, 115 Pitt Street  
 Sydney NSW 2000  
 Email: enquiries@casl.com.au

If we are unable to resolve the complaint or you are not satisfied with our response to your complaint, you may be able to lodge a complaint with the Australian Financial Complaints Authority (“AFCA”). Contact details are:

Online: [www.afca.org.au](http://www.afca.org.au)  
 Phone: 1800 931 678  
 Email: [info@afca.org.au](mailto:info@afca.org.au)  
 Post: GPO Box 3, Melbourne VIC 3001.

The external dispute resolution body is established to assist you in resolving your complaint where you have been unable to do so with the Responsible Entity.

However, it’s important that you first contact the Responsible Entity, as outlined above, to permit an opportunity to resolve the complaint without needing to revert to the external dispute resolution process.

## Dictionary

Active Member	a person who is a General Member of a litigation funding scheme in relation to the Funded Claim and has provided a completed Application Form to the Responsible Entity.
Adverse Costs Insurance	a contract of insurance that provides cover for the costs incurred by the Defendant Entities that may be subject of an Order for Costs and/or security for costs in any form required for costs of the Defendant Entities in the Class Action.
Adverse Cost Order Expenses	any insurance premium or expense, including GST, incurred in securing or providing Adverse Cost Order insurance or security for Adverse Cost Orders, respectively.
AEDT	Australian Eastern Daylight Time
AFCA	Australian Financial Complaints Authority.
AFSL	Australian Financial Services Licence.
Application Form	the form to be completed by Members where they elect to be either a Funded Member or an Unfunded Active Member.
Assets	the assets, rights and benefits (if any) which are held or required to be held by the Responsible Entity in connection with the Scheme, as outlined in this PDS.

ASIC	Australian Securities and Investments Commission.
ATO	Australian Taxation Office.
Available Cash	the cash or cash equivalent Assets of the Scheme, less any provision or reserve on account of meeting anticipated expenses or obligations of the Scheme (including in relation to any withdrawal or winding up).
Business Day	a day other than a Saturday or a Sunday on which banks are open for general banking business in Sydney.
Claimant or Member	the holder of an Interest (including persons recorded jointly on the register). Passive Members, the Funder, the Manager and Lawyer are considered Members. However, in this PDS, references to Members or Claimants do not include Passive Members, the Funder, the Manager or Lawyer unless expressly stated.
Claim Proceeds	the sum of money, or the value of any goods or services, which is attributable to the resolution, settlement, judgment and/or enforcement of the Funded Claim and any interest (including interest earned on trust money), and any monies recovered by virtue of a costs order or any agreement in respect of costs in relation to the Funded Claim. The Claim Proceeds refers to the gross value of these sums and is not net of any costs or expenses of conducting the Funded Claim.
Class Action	The proposed proceedings to be filed In the Federal Court of Australia against Tyro Payments Limited
Compliance Plan	the compliance plan prepared by the Responsible Entity for the Scheme and lodged with ASIC.
Constitution	the constitution of the Scheme which sets out the rights, responsibilities and beneficial interest of both Members and the Responsible Entity in relation to the Scheme.
Cooling-Off Period	means the period ending 21 days after the LMFA has been executed and delivered by all parties.
Corporations Act	the Corporations Act 2001 (Cth) and Corporations Regulations 2001 (Cth), as amended from time to time.
Court Order	a judgement, order or direction of the court or tribunal in which the Funded Claim is conducted.
Custodian	Equity Trustees Limited or any other person appointed in its place as custodian or sub-custodian, subject to Court Order.
Custody Agreement	the custody agreement dated 17 November 2020, between the Responsible Entity and the Custodian which appoints the Custodian as custodian of the Assets of the Scheme.
Defendant Entities	the defendant entities covered by the LMFA, as varied from time to time.

Funded Claim	the claim or legal proceeding made or to be made in relation to the Defendant Entities as contemplated in the Lawyer's Retainer and LMFA.
Funded Member	means an Active Member who has entered into a LMFA in respect of the Funded Claim.
Funder	CHC Investment Fund Pty Ltd ATF the CHC Investment Fund Unit Trust
Funding and Management Undertakings	the undertakings of the Funder under a LMFA, in relation to the Funded Claim (including any undertaking to pay amounts on account of legal costs and disbursements and the undertakings of the Manager to provide claims management services.
General Member	means a Member of the Scheme who is not the Funder, Manager or Lawyer.
GST	Goods and Services Tax.
Interest	an interest in the Scheme.
Law Firm Relationship Agreement	an agreement (however described) entered into between the Responsible Entity, the Funder, the Manager (if applicable) and Lawyer in relation to the Funded Claim.
Lawyer	the qualified legal practice appointed to provide legal services in relation to the Funded Claim.
Lawyer's Retainer	an engagement letter or similar agreement relating to the provision of legal services entered into by a Member in relation to the Funded Claim.
Legal Services Undertakings	the undertakings of the Lawyer under a Lawyer's Retainer in relation to the Funded Claim.
Litigation Funding Relationship Deed	the deed entered into among the Responsible Entity, the Funder and the Manager (if applicable) in relation to the Scheme.
LMFA	a Litigation Management Funding Agreement entered into between the Responsible Entity, Funder, the Manager and a Member in relation to the Funded Claim substantially in the form set out in Annexure A to the Constitution. The key terms of the LMFA are summarised in this PDS.
Manager	Court House Capital Management Limited
Member or Claimant	the holder of an Interest (including persons recorded jointly on the register). Passive Members, the Funder, the Manager and Lawyer are considered Members. However, in this PDS, references to Members or Claimants do not include Passive Members, the Funder, the Manager or Lawyer unless expressly stated.
Member's Share Percentage	generally determined by the Responsible Entity with reference to the Member's entitlement to damages in relation to the Funded Claim as a percentage to the aggregate entitlement of all Members in the same Class as the Member in relation to the Funded Claim.

Offer	the offer of Interests as outlined in this PDS.
Overarching Objective	the just resolution of the Claims as quickly, inexpensively and efficiently as possible with the aim of maximising the present value of money received via the Settlement or adjudication of the Claims, net of costs, whilst having due regard to all risks including, in particular, the risk of the Claims being unsuccessful.
Order for Costs	any costs order made in favour of the Defendant Entities in the Class Action
Passive Member	a Member of a litigation funding scheme who is not an Active Member.
PDS	this Product Disclosure Statement.
Project Payments	the costs of the Funded Claim agreed to be paid by the Funder in accordance with the terms of a LMFA.
Representative Member	means <b>SPOZAC PTY LIMITED (ACN 112 100 231) as Trustee for the LDB Family Trust t/as Not Just Cakes</b> , the representative party in the Funded Claim.
Responsible Entity	CASL Governance Ltd.
Scheme	the Tyro Litigation Funding Scheme (ARSN 652 674 505), a managed investment scheme that is registered with the Australian Securities and Investments Commission ( <b>ASIC</b> ).
Scheme Expenses	any amount payable to the Responsible Entity on account of fees or expenses, or any right of indemnity, including GST, pursuant to the Scheme Constitution.
Settlement	any agreement providing for the settlement, compromise, discontinuance, withdrawal, dismissal or waiver for all or part of the Funded Claim.
Unfunded Active Member	an Active Member that has not entered into a LMFA.

## Directory

Funder	<p>CHC Investment Fund Pty Ltd ATF the CHC Investment Fund Unit Trust  Level 45, 19 Martin Place Sydney, NSW 2000  Ph: +61 2 9221 8000  Web: <a href="https://courthousecapital.com.au/">https://courthousecapital.com.au/</a></p>
Manager	<p>Court House Capital Management Limited  Level 45, 19 Martin Place Sydney, NSW 2000  Ph: +61 2 9221 8000  Web: <a href="https://courthousecapital.com.au/">https://courthousecapital.com.au/</a></p>
Responsible Entity	<p>CASL Governance Ltd  Level 13, 115 Pitt Street, Sydney 2000 NSW  Ph: +61 1800 26 26 00  Web: <a href="http://www.casl.com.au">www.casl.com.au</a></p>
Custodian	<p>Equity Trustees Limited  Level 1, 575 Bourke Street, Melbourne 3000 VIC  Ph: +61 3 8623 5000  Web: <a href="http://www.eqt.com.au">www.eqt.com.au</a></p>

## Annexure A

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### Application Form: Tyro Litigation Funding Scheme

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Please use this Application Form if you wish to make an application for an Interest as an Active Member in the Tyro Litigation Funding Scheme.

#### PART A

#### 1. Please read and ensure you understand the accompanying Product Disclosure Statement (PDS)

The Product Disclosure Statement (PDS) is issued by CASL Governance Ltd ABN 97 643 977 833 AFS Licence No. 525889 (CASL) as responsible entity of the Tyro Litigation Funding Scheme. The PDS is also available at <https://courthousecapital.com.au/tyro-class-action/>. The law prohibits any person passing this Application Form on to another person unless it is accompanied by a complete PDS. We will provide, on request and without charge, a paper or electronic form of the PDS and any document that updates the PDS as required by law.

You must read the Lawyer's Retainer and the Litigation Management and Funding Agreement. By executing this Application Form and confirming in section 7 of Part B of this Application Form that you wish to be a Funded Member, you are appointing CASL as your attorney to sign the Lawyer's Retainer and the Litigation Management and Funding Agreement on your behalf. You will not need to sign and return the Lawyer's Retainer or Litigation Management and Funding Agreement.

#### 2. Complete all sections of this Application Form online, then print and sign in the relevant fields using a black pen. If completing the form manually, please write in block letters, using a black pen. If you make an error while completing this form, do not use correction fluid. Cross out your mistakes and initial your changes.

#### 3. Send your documents to Court House Capital Management Limited

You can return your Application Form by Email by sending to:  
info@courthousecapital.com.au.

Alternatively, you can return your Application Form by Post by sending to the Manager (on behalf of CASL): Court House Capital Management Limited Attention: Tyro Litigation Funding Scheme. Level 45, 19 Martin Place, SYDNEY NSW 2000.

#### 4. Your Privacy

For the purposes of providing products and services to you, CASL and its associates collect personal information about you (as outlined in the PDS) including from sources such as the Application Form and other forms, from other written, electronic or verbal correspondence, from your advisers, and/or from information captured on our internet websites.

When you sign this Application Form, you agree that CASL can, consistent with the *Privacy Act 1988* (Cth) (**Privacy Act**), collect, use and disclose personal information about you for those purposes. In some circumstances, CASL may be required by law to collect your personal information.

We take reasonable steps to ensure that any third party to whom we disclose your personal information is bound by privacy obligations to protect information about you.

Under the Privacy Act, you have rights to request access to, and correction of, personal information CASL holds about you.

You can find more information about how CASL handles and manages your personal information, and about your rights in connection with access, correction and complaints, in the

CASL Privacy Policy at [www.casl.com.au](http://www.casl.com.au). If you would like a copy of CASL's Privacy Policy, please contact our Privacy Officer on +61 1800 26 26 00 or [enquiries@casl.com.au](mailto:enquiries@casl.com.au).

**PART B**

Complete all relevant sections of this Application Form online, then print and sign in the relevant fields using a black pen. If completing the form manually, please write in block letters, using a black pen. If you make an error while completing this form, do not use correction fluid. Cross out your mistakes and initial your changes.

**1. Do you have an existing or previous Interest in any other CASL Litigation Funding Scheme?**

No

Yes, the CASL Litigation Funding Scheme is/was

**2. Contact Details**

First name:

Middle name:

Surname:

Telephone number (include area code):

Email address:

What is your relationship to the Claimant?

Claimant Sole Trader	✓
Director of Claimant Company	
Individual within Claimant Partnership	
Agent of Claimant	
Other (please note)	

**3. Claimant Details**

<b>Full legal name</b>	<input type="text"/>
<b>ABN / ACN (if applicable)</b>	<input type="text"/>
<b>Date of birth (if applicable)</b>	<input type="text"/>
<b>Claimant Address</b>	<input type="text"/>
<b>Suburb</b>	<input type="text"/>

<b>State</b>	
<b>Postcode</b>	
<b>Country</b> <i>(if not Australia)</i>	

**4. Relevant information to assess eligibility and potential losses**

The information provided below will be used to assess whether your Claim falls within the scope of the Tyro Litigation Funding Scheme and to enable an assessment of the likely losses, to the extent possible, attached to your Claim and the aggregate Claim of all Members.

As at 5 January 2021, I WAS/WAS NOT (*Please circle*) a customer of Tyro Payments Limited (**Tyro**) who had entered into a written agreement to use physical Tyro EFTPOS terminals and software to accept non-cash payments.

**5. Bank Account Details**

You are requested to provide your bank account details to reduce any delays and minimise costs in the future should a distribution from the Tyro Litigation Funding Scheme become payable to you.

You may at any time make changes to these instructions by providing written notice to CASL in accordance with the PDS.

Financial institution name:

Bank Swift Code:  
*(if outside Australia)*

Account name:

Bank Code (e.g. BSB):

Account number:

**6. Annual Reports**

The annual financial statements of the Tyro Litigation Funding Scheme will be available free at <https://courthousecapital.com.au/tyro-class-action/>. Please note there is likely to be no material information contained in the annual financial statements unless and until the Funded Claim is successful (Scheme Assets are expected to be minimal unless the Funded Claim is successful).

If you would like to receive a copy by post or email, please indicate below.

This refers to annual reports only.

By Email

By Post

## 7. Acknowledgements

When you complete this Application Form you make the following declarations:

- I have received, read and understood the PDS relating to the Litigation Funding Scheme to which this Application Form applies and agree to be bound by the terms and conditions of the PDS and the constitution (each as amended from time to time) of the Litigation Funding Scheme.
- By applying to be a Funded Member, I acknowledge that I have received, read and understood each of the Lawyer's Retainer and the Litigation Management and Funding Agreement relating to the Litigation Funding Scheme to which this Application Form applies, and agree to be bound by the terms and conditions of the Lawyer's Retainer and the Litigation Management and Funding Agreement.
- Where completed online, I agree that my electronic signing of this Application Form through the completion of Section 8 is legally binding.
- I consent to the exercise and enforcement by the Responsible Entity (or the Manager as agent of the Responsible Entity) on my behalf of any rights I might have under the Lawyer's Retainer.
- If my Application Form is incomplete, CASL will not process my Application Form and will notify me.
- I acknowledge that CASL may make relevant Litigation Funding Scheme information available by electronic or digital means. I consent to receiving relevant Litigation Funding Scheme information either via the email address provided or if the relevant Litigation Funding Scheme information is available digitally, I consent to receiving notification of where to access the relevant Litigation Funding Scheme information via the email address or mobile number provided.
- I hereby acknowledge and agree that CASL has outlined in the PDS provided to me how and where I can obtain a copy of CASL's Privacy Policy. I consent to my/our personal information being collected, held, used and disclosed in accordance with CASL's Privacy Policy.
- I acknowledge that CASL may be required to disclose my personal information to external third parties. I hereby consent to the disclosure of any of my personal information to external third parties including but not limited to the administrator, the custodian, the registry provider, and their related bodies corporate who may be located outside Australia and to government agencies (if required by law) for the purpose of administering the Litigation Funding Scheme.
- I hereby confirm that the personal information that I have provided is correct and current in every detail, and should these details change, I shall promptly advise CASL in writing of the change(s).
- I acknowledge that CASL, or its associated or related parties, does not guarantee any outcome, financial or non-financial, in any time period from the Litigation Funding Scheme, the Relevant Claim, or the Claimant's share of any Claim Proceeds.
- I acknowledge that an Interest in the Litigation Funding Scheme is subject to a number of legal, commercial and regulatory risks as outlined in the PDS.
- I have considered my personal circumstances and, where appropriate, obtained legal, tax and/or financial advice.
- I represent that I am not prohibited or restricted by an applicable securities or other laws or regulations from applying for or holding an Interest in the Litigation Funding Scheme or from receiving the PDS and this Application Form.
- I hereby acknowledge that I do not have an Interest in the Litigation Funding Scheme as an Active Member until CASL has confirmed acceptance of my Interest as an Active Member and I am recorded on the register of the Litigation Funding Scheme where required. As a Funded Member, acceptance of my interest as a Funded Member will be accompanied by a fully executed LMFA.

- I acknowledge that if my Application Form and required accompanying documents (if any see above) are not complete and I am not admitted as a Funded Member, CASL may classify me as a member in another class as determined by CASL under the constitution.
- I hereby acknowledge that it is my responsibility to ensure this Application Form is properly and fully complete and CASL is not liable in respect of any delays should I be required to provide further information to process my Application.
- I acknowledge that I am 18 years of age or over and I am eligible to hold an Interest in the Litigation Funding Scheme.
- Subject to the constitution, I appoint CASL as my agent to submit a withdrawal request on my behalf in respect of my Interest in the Litigation Funding Scheme in circumstances where CASL, in its sole discretion, determines that I have become ineligible to hold an Interest in the Litigation Funding Scheme or I have provided misleading information in this Application Form.
- I acknowledge that in order to comply with AML/CTF laws (if applicable), CASL may be required to take action, including delaying or refusing the processing of any application, distribution or withdrawal.
- I agree to provide further information or personal details to CASL if required to meet its obligations under anti-money laundering and counter-terrorism legislation and acknowledge that processing of my Application Form or subsequent distributions from settlement proceeds may be delayed and will be processed on the Business Day after all required information has been received and verified to the satisfaction of CASL.
- I am not a “politically exposed” person for the purpose of any Australian AML Law.

**8. Signing the Application Form**

By signing this Application Form you are signing as a **deed poll** in favour of CASL Governance Ltd (ABN 97 643 977 833) as responsible entity of the Tyro Litigation Funding Scheme.

By executing this deed poll as the Claimant (or on behalf of the Claimant, with their express consent), I make all the declarations, acknowledgements, certifications and representations set out above in all sections of Part A and Part B and I:

*(please tick)*

appoint (whereby you will become a Funded Member)

do not appoint (whereby you will become an Unfunded Active Member)

CASL Governance Ltd ABN 97 643 977 833 as my agent and attorney to sign the Lawyer’s Retainer and the Litigation Management and Funding Agreement on my behalf.

Signature of Claimant:

Print full name:

Date:

**Witness**

Signature of witness:

Print full name of witness:

Date:

## 9. Returning Completed Application Form

Have you completed sections 1, 2, 3, 4, 5, 6 and 8 of Part B?

YES

NO

If Yes, please send the Completed Application Form:

- by email to:  
info@courthousecapital.com.au with the subject: "Application Form"
  - or by post to:  
Court House Capital Management Limited  
Attention: Tyro Litigation Funding Scheme  
Level 45, 19 Martin Place  
Sydney NSW 2000
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