

Hamilton-Byrne Class Action
LEEANNE CREESE v LIFE FOR ALL CREATURES LTD (ACN 096 549 003) and
OTHERS S CI 2017 03007

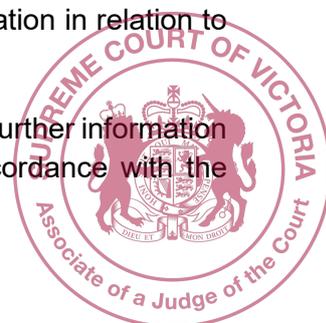
SETTLEMENT DISTRIBUTION SCHEME

Approved by the Honourable Justice Moore by orders made on 29 March 2022

BACKGROUND and SUMMARY

This part of the Scheme does not have legal effect but is provided to assist group members to understand how the Scheme will operate.

- A. By an agreement executed by counterparts in May and August 2021 (**Agreement**), the plaintiff and the defendants agreed to settle Supreme Court of Victoria Proceeding No. S CI 2017 03007, subject to the approval of the Court. The Court approved the settlement on 29 March 2022.
- B. This Scheme establishes a procedure for distributing between Group Members the settlement sum to be paid by LFAC and the Executors (**Settlement Sum**).
- C. Under the Agreement, the Settlement Sum is payable by LFAC and the Executors:
 - (a) as to \$300,000, within 30 days after Court Approval;
 - (b) as to \$300,000, upon the earlier of the date 6 months after Court Approval or the date of settlement of the proposed sale of a property owned by LFAC at 1445 Mt Dandenong Tourist Road, Olinda.
- D. This Scheme is to be read with reference to the Agreement.
- E. This Scheme provides for:
 - (a) the procedure for assessing the individual claims of Group Members;
 - (b) the entitlement of each Group Member to a distribution from the Compensation Pool.
- F. Mr James Tobin, a principal in the Class Actions Department of Mills Oakley (**Mills Oakley**) will act as Administrator of the Scheme.
- G. To assist the Administrator manage this Scheme:
 - (a) instructions and supporting documentation provided to Mills Oakley by or on behalf of Group Members to date will provide the basis of assessments under this Scheme;
 - (b) the Administrator, at his discretion, may request additional information in relation to whether or not a person is a Group Member.
 - (c) if the Administrator does not receive a response to any request for further information within 14 days, he will assess that person's entitlements in accordance with the



information in his possession.

- H. Assessment of claims of Group Members relating to a personal injury as a result of cruel and inhumane treatment by Anne Hamilton-Byrne and/or her servants or agents during the period from 1968 to 1987 have been or will be considered by a barrister experienced in personal injury law. The assessment of the Group Member's entitlement for personal injury will be made by the Administrator having regard to any such assessment.
- I. The Administrator will be assisted by Mills Oakley and will be entitled to recover the reasonable administration costs of this Scheme including reasonable costs related to the assessment of Group Members' loss and damage. Such costs have been assessed by an independent costs consultant and will form part of the Common Benefit Legal Costs which are subject to approval by the Court.
- J. Group Members who seek specific legal advice, or require other work beyond the routine information-gathering and assessment tasks undertaken by the Administrator, will be entitled to retain other solicitors as they wish but at their individual cost.
- K. The Court will have ongoing supervision over the implementation of this Scheme.
- L. The operative provisions of this Scheme are set out below.

OPERATIVE CLAUSES

1. Interpretation

- 1.1 In this Scheme, the following terms have the meanings defined (clause references are references to the clauses of this document unless otherwise specified):

Administration Costs means the disbursements (including the costs of any expert advisers and barristers) and costs incurred by the Administrator in connection with the administration of this Scheme, including assessing Group Member claims and administering the Scheme. These costs have been assessed by an independent costs consultant and shall form part of the Common Benefit Legal Costs approved by the Court.

Administrator means James Tobin, a principal in the Class Actions Department of Mills Oakley, or another person appointed by the Court as Administrator of the Scheme.

Agreement means the settlement agreement executed by the plaintiff and her legal representatives and Life For All Creatures Ltd (ACN 096 549 003), Roger Leonard Butcher and Geoffrey John Benjamin Dawes in their capacity as executors of the deceased estate of Anne Hamilton-Byrne dated 19 May 2021.

Assessment Entitlement means the amount of the equal entitlement of a Group Member to compensation from the Compensation Pool calculated in accordance with clause 6 of this Scheme.

Claimant Records means a database or other records constructed by or on behalf of Mills Oakley to contain the information for each Group Member and any information



required to identify the Group Member, including names, addresses and telephone numbers.

Claims means all manner of actions, suits, causes of action, arbitrations, debts, dues, costs, claims, demands, verdicts and judgements either at law or in equity or arising under statute and whether or not the facts, matters or circumstances giving rise to those Claims are known to any Group Member at the date of the conclusion of the Scheme.

Common Benefit Legal Costs means professional fees and disbursements incurred by Mills Oakley, including the costs of the assessment by Cate Dealehr, in relation to the proceeding and the assessment of Group Member claims for the purposes of mediation and preparation for trial, and in connection with obtaining Court Approval of the settlement of the proceeding, and which have been assessed by Cate Dealehr, an independent costs consultant appointed by the Court on 21 December 2020, and approved by the Court.

Compensation Pool means the Settlement Sum less Common Benefit Legal Costs and less the Reimbursement Payment.

Court means the Supreme Court of Victoria.

Executors means Roger Leonard Butcher and Geoffrey John Benjamin Dawes in their capacity as executors of the deceased estate of Anne Hamilton-Byrne.

Group Member means a person defined as a group member in paragraph 4 of the Further Amended Statement of Claim filed in the Proceeding on 13 March 2020 and who:

- (i) has registered with Mills Oakley and is identified in the List of Registered Group Members set out at Appendix 1 of the Agreement; or
- (ii) has delivered to Mills Oakley a completed claim registration notice pursuant to orders of the Court made on 21 December 2020.

LFAC means Life For All Creatures Ltd (ACN 096 549 003).

Mills Oakley means Mills Oakley Lawyers.

PI Claim/s means personal injury claim/s of Group Members as defined in paragraph 4(b) of the Further Amended Statement of Claim filed in the Proceeding on 13 March 2020.

Plaintiff means Leeanne Creese.

Proceeding means *Creese v Life For All Creatures Ltd & Ors*, Supreme Court of Victoria, Proceeding No S CI 2017 03007.

Reimbursement Payment means the payment made to the plaintiff in the sum of \$15,000, as approved by the Court.

Scheme means the terms of this Settlement Distribution Scheme as approved by the Court.

Settlement Approval means the making of orders granting approval of the terms of settlement of the Proceeding and the Scheme by the Court pursuant to section 33ZF of the *Supreme Court Act 1986* (Vic) including provisional approval by the Court (subject



to determination of any objections to the Scheme).

Settlement Date means 19 May 2021.

Settlement Distribution Fund means a controlled moneys account as defined in the *Legal Profession Act 2004* to be established by Mills Oakley with Westpac to hold moneys for the purpose of the Scheme, and where the context admits, will include a reference to all moneys in the account.

Settlement Sum means the amount of AUD\$600,000.00, plus any interest accruing on that amount in the Settlement Distribution Fund.

- 1.2 Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:
- (a) the singular includes the plural, and the converse also applies;
 - (b) a gender includes all genders;
 - (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (d) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
 - (e) a reference to dollars and \$ is to Australian currency;
 - (f) a reference to anything done by any person includes a reference to the thing as done by a director, officer, servant, agent, personal representative or legal representative if permitted to be so done by law or by any provision of the Agreement or this Scheme.

2. Scheme Administrator

- 2.1 The Settlement Distribution Fund shall be administered and applied by the Administrator. The Administrator, at his discretion, may utilise the services of and may in administering the Settlement Distribution Fund or Scheme as applicable delegate any power under this Scheme to any persons employed or engaged by him including barristers or other experts and rely upon their work, information and opinions.
- 2.2 In acting as Administrator (including any incidental functions) the Administrator's obligation is to do so properly on behalf of the Group Members as a whole.
- 2.3 Neither Mills Oakley, the Administrator nor any person employed by Mills Oakley will act as the lawyer for any individual Group Member in relation to his or her claim under the Scheme in relation to that Group Member's individual claim for compensation under the Scheme.
- 2.4 Following Settlement Approval and payment of the Settlement Sum in accordance with the Agreement, the Administrator shall hold the moneys in the Settlement Distribution Fund subject to and in accordance with the terms of this Scheme.



- 2.5 Notwithstanding anything elsewhere contained in this Scheme, the Administrator may at any time correct any error, slip or omission occurring in the course of his administration of the Scheme.
-

3. Group Member Information

- 3.1 The Administrator shall maintain the Claimant Records and use reasonable endeavours to ensure the accuracy of the information they contain.
- 3.2 The Claimant Records shall contain the information for each Group Member provided by the Group Member or otherwise obtained by the Administrator or Mills Oakley.
- 3.3 The Claimant Records shall include assessments of each Group Member's claim in accordance with the provisions of this Scheme.
- 3.4 The accuracy of the information in the Claimant Records shall be deemed to be accepted by each Group Member. The Administrator shall use reasonable endeavours to ensure the accuracy of the information recorded in the Claimant Records.
- 3.5 Subject to clause 3.6, a Group Member shall not be entitled to amend the information contained on the Claimant Records after the Settlement Date.
- 3.6 The Administrator may, in the Administrator's absolute discretion, request and/or take into account additional documentation or information in relation to a Group Member's claim.
-

4. Information Held by Administrator and Basis of Assessment

- 4.1 Subject to clause 4.2:
- (a) for the purpose of the administration of this Scheme, information provided by Group Members or other persons and held by the Administrator may be relied upon as accurate by the Administrator, in his absolute discretion, when administering the Scheme; and
 - (b) each Group Member's distribution from the Compensation Pool will proceed on the basis of the information contained in the Claimant Records.
- 4.2 If in the Administrator's opinion, the information held in the Claimant Records or provided by any Group Member or otherwise:
- (a) insufficiently substantiates the claim or part of a claim made by a Group Member or other person, the Administrator, in his absolute discretion, may by written notice require the Group Member or other person to provide and verify by a further declaration or otherwise such further information as the Administrator may require. If the Group Member or other person does not provide the further information in the form requested, within 14 days of such a request being made, the Administrator may determine that the claim or part of the claim as the case



may be is not eligible for any distribution from the Compensation Pool;

- (b) is sufficient notwithstanding that some information may not be included, the Administrator, in his absolute discretion, may accept it as complete.
- 4.3 The Administrator, in his absolute discretion, shall determine whether or not a person who has delivered to Mills Oakley a completed claim registration notice pursuant to orders of the Court made on 21 December 2020 meets the definition of group member in paragraph 4 of the Further Amended Statement of Claim filed in the Proceeding on 13 March 2020.
-

5. Assessment of Individual Entitlements for Personal Injury (PI) Claims

- 5.1 Within 14 days after Settlement Approval, the Administrator shall determine the Assessment Entitlement for each Group Member.
- 5.2 In respect of PI Claims:
- (a) Each Group Member's information contained in the Claimant Records and any supporting documentation has been or will be provided to Mr Tim Tobin SC who is experienced in personal injury law.
 - (b) Once Mr Tobin SC receives the information, he will consider whether a Group Member has suffered a compensable injury and if in his opinion there is such injury, notify the Administrator within 14 days or such longer period as the Administrator considers in his absolute discretion to be warranted for any individual Group Member.
 - (c) Mr Tobin SC may at his sole discretion confer with the Group Member.
 - (d) The assessment of Mr Tobin SC referred to in 5.2(b) above will be limited to an assessment of whether a Group Member has suffered a compensable injury.
-

6. Calculation of Entitlements to the Compensation Pool

- 6.1 Because the Compensation Pool is less than the total amount claimed by the Group Members, the Administrator must determine each Group Member's entitlement to a proportion of the Compensation Pool. The formula for calculation of that Assessment Entitlement is that each individual Group Member who has suffered a compensable injury will be compensated by an equal amount.
- 6.2 Each Group Member's proportion of the Compensation Pool for distribution will be calculated using the following distribution formula:

Compensation Pool / Number of Group Members = Assessment Entitlement



7. Assessment Entitlement Notices

- 7.1 A Group Member will be advised in writing of their respective Assessment Entitlements prior to distribution.
- 7.2 A Group Member will have 10 days, from the date of issue of their Assessment Entitlement, to notify the Administrator of any administrative error, slip or omission in the Assessment Entitlement.
- 7.3 In the event of a notification under clause 7.2, the Administrator shall:
- (a) undertake a review of the Assessment Entitlement for the purposes of identifying or considering any administrative error, slip or omission;
 - (b) at his sole discretion make a determination as to whether an administrative error, slip or omission has occurred; and
 - (c) within 10 days issue a further Assessment Entitlement either correcting the administrative error, slip or omission or confirming the original Assessment Entitlement.
- 7.4 The accuracy of an Assessment Entitlement shall be deemed to be accepted by a Group Member and shall be final under the Scheme if the Group Member has not notified the Administrator of any administrative error, slip or omission in the Assessment Entitlement within 10 days of the date of issue.
-

8. Group Member's Obligations, Indemnities and Reimbursement of Statutory Benefit Receipts

- 8.1 Each Group Member shall act honestly, and do all things necessary to ensure that any agent or representative of the Group Member acts honestly, in anything done in or for the purposes of participating in this Scheme and any person discharging any function or office created by this Scheme shall be entitled to rely upon the honesty of the thing done.
- 8.2 Payment of compensation pursuant to this Scheme may be subject to obligations under statutes and regulations. Accordingly, each Group Member indemnifies the Administrator in respect of all such obligations, including but not limited to payments or repayments relating to the Australian Taxation Office, Social Security, Medicare, Worker Compensation or any other statutory benefits paid to or for the benefit of the Group Member under this Scheme.
- 8.3 If a Group Member has a legal obligation, whether by reason of statute, contract or otherwise, to an agency, compensation payer or insurer to pay or repay a sum from the amount payable to the Group Member under this Scheme, the Group Member shall, as a condition of its entitlement to receive payment, indemnify the Administrator in respect of any and all such obligations.
- 8.4 Without limiting any other obligation or discretion of the Administrator under this Scheme, for the avoidance of doubt the Administrator may make such adjustments or withholdings from any payment otherwise due to a Group Member pursuant to this Scheme as may be necessary to comply with any statutory or regulatory obligation to



pay or refund any amount to a statutory or other agency.

8.5 Where the agency administering any State or Federal scheme notifies the Administrator in writing that any amount is payable to the agency from any payment payable to a Group Member under this Scheme, the Administrator:

- (a) shall pay the said amount to the agency prior to any final distribution of the balance of the Group Member's entitlements pursuant to this Scheme;
- (b) shall notify the Group Member of the payment to the agency; and
- (c) without affecting any other privilege or immunity under this Scheme, shall have no further obligation to the Group Member in respect of the said amount;

but nothing in this section shall affect any right the Group Member or the agency might have against each other in respect of the said amount.

9. Distribution of Compensation Pool

9.1 The Compensation Pool shall be allocated between Group Members on an equal basis.

9.2 Prior to final distribution from the Settlement Distribution Fund, the Administrator will cause:

- (a) Common Benefit Legal Costs as approved by the Court to be paid to Mills Oakley;
- (b) the Reimbursement Payment as approved by the Court to be paid to the Plaintiff.

9.3 If after the final distribution of the Compensation Pool to Group Members:

- (a) any amount remains or is held in the Compensation Pool; or
- (b) any cheque remains un-presented for a period of 90 days or such further period that the Administrator otherwise deems appropriate;

the amount shall be distributed equally to Group Members.

10. Immunity from Claims

10.1 The completion of distributions made pursuant to clause 9 (including distributions made by cheques that remain un-presented for 90 days) shall satisfy:

- (a) all Claims made by Group Members (including the Plaintiff) in the Proceeding; and
- (b) any Claims made by Group Members (including the Plaintiff) arising out of or relating in any way to the facts, matters or circumstances set out in the pleadings in the Proceeding or any matter that is the subject of the Proceeding or has been the subject of the Proceeding.

10.2 Upon final distribution of the Settlement Distribution Fund in accordance with this



Scheme, the Administrator shall have no further liability in respect of the Settlement Sum, the Compensation Pool or the implementation of this Scheme.

- 10.3 Without limiting any other provision for immunity in this Scheme, the Administrator in relation to this Scheme shall have the same immunities from suit as attach to the office of a judicial officer of the Court.
-

11. Disclosures to Agencies and Insurers

- 11.1 Where necessary or reasonable for the purposes of this Scheme or compliance with any statutory or contractual obligation owed by, or in respect of any compensation payable to any Group Member, the Administrator may release to:

- (a) a statutory or other agency;
- (b) an insurer; or
- (c) the Australian Taxation Office;

details of a Group Member's name, address, identifying particulars, tax file number and any Assessment Entitlement relating to the claim.

12. Supervision by the Court

- 12.1 The Administrator may refer any issues arising in relation to the Scheme to the Court for determination or advice.
- 12.2 Any costs incurred in any such referral to the Court made by the Administrator shall be deemed to be a part of the Administration Costs.
-

13. Administration Costs

- 13.1 Fees payable in respect of work performed by or on behalf of the Administrator pursuant to this Scheme shall form part of the Common Benefit Legal Costs as assessed by an independent costs consultant and payment of those costs to the Administrator will be subject to approval of the Court.
- 13.2 Notwithstanding any other provision of this Scheme, and without reducing any other rights which the Administrator might have, any costs, expenses, taxes, levies, duties, charges, fees or other imposts or obligations arising in connection with the administration of this Scheme (including without limitation the creation, retention, investment or disbursement of any part of the Settlement Distribution Fund) incurred by the Administrator over and above the Administration Costs will be borne by the Administrator.
- 13.3 Nothing in this Section shall affect any rights or obligations as between a solicitor and client of that solicitor in respect of costs incurred pursuant to any retainer or costs



agreement between the solicitor and that client.

14. Notice

- 14.1. Any notice or document to be given (or delivered) pursuant to this Scheme shall be deemed to be given (or delivered) and received for all purposes associated with this Scheme if it is:
- (a) addressed to the person to whom it is to be given; and
 - (b) either:
 - (i) delivered, or sent by pre-paid mail, to that person's postal address (being, in respect of any Group Member, the postal address recorded in the Claimant Records, as obtained from or directly from the Group Member);
 - (ii) sent by fax to that person's fax number (being, in respect of any Group Member, the fax number provided by the Group Member) and the machine from which it is sent produces a report that states that it was sent in full; or
 - (iii) sent by email to that person's email address (being, in respect of a Group Member, the email address provided by the Group Member), and a server through which it is transmitted produces a report that states that the email has been sent to the inbox of the specified email address.
- 14.2. A notice or document that complies with clause 14.1 will be deemed to have been given (or delivered) and received:
- (a) if it was sent by mail to an addressee in Australia, three (3) clear business days after being sent;
 - (b) if it is sent by mail to an addressee overseas, five (5) clear business days after being sent;
 - (c) if it is delivered or sent by fax, at the time stated on the report that is produced by the machine from which it is sent; and
 - (d) if it is sent by email, at the time it is sent.
- 14.3. The Administrator's address, fax number and email address shall be as set out below unless and until the Administrator notifies the Group Members otherwise:

Attention: James Tobin

Hamilton-Byrne Class Action Proceeding

Mills Oakley Lawyers

Level 6/530 Collins Street

Melbourne Vic 3000

Fax: (03) 9605 0933

Email: caldwell@millsOakley.com.au



15. Time

- 15.1. The time for doing any act or thing under this Scheme may be extended by order of the Court.

