

# Funds in Court Bushfire Class Action Information Guide



The Settlement Distribution Schemes approved in respect of the East Kilmore – Kinglake and Murrindindi – Marysville Bushfire Class Actions provide that settlement funds for persons under legal disability must be paid into Court by payment to the Senior Master of the Supreme Court of Victoria.

In this context a person under legal disability is:-

- A person who is under the age of 18 years; OR
- A person who is over 18 years old and who is incapable, by reason of injury, disease, senility, illness or physical or mental infirmity, of managing their own settlement funds.

The Senior Master is an Associate Justice of the Supreme Court. All money paid into Court is invested and administered by the Senior Master with the assistance of Funds in Court [FIC], a division of the Supreme Court. The Judicial Registrar assigned to Funds in Court assists the Senior Master with his judicial obligations in respect of applications for the payment out of funds.

Persons for whom funds are held in Court are known as “beneficiaries”.

## WHAT HAPPENS WHEN FUNDS ARE RECEIVED BY FIC?

Upon receipt of funds, a Trust Officer is allocated responsibility for the day to day dealings with the funds managed for each beneficiary. With over 5,500 beneficiaries, it is not possible for the Senior Master or the Judicial Registrar to deal personally with each beneficiary, or their caregiver.

You are encouraged to contact a Trust

Officer whenever dealing, or intending to deal, with the funds in Court. By providing the name of the beneficiary, you will be placed in contact with the Trust Officer.

Please note that only the Senior Master or the Judicial Registrar make decisions in respect of the funds, not the Trust Officer.

The Trust Officer acts as the means of contact between the beneficiary, or caregiver, and the Senior Master or the Judicial Registrar, and is able to advise you concerning the use of the funds.

## HOW THE FUNDS CAN BE USED

Subject to direction by the Senior Master or the Judicial Registrar, funds may be used for any constructive purpose. However, prior to the use of the funds, an order of the Court will be required. Such orders carry requirements which must be satisfied. Those requirements may be complex where large amounts are involved, say for the purchase of a car or a house. They are less complex where a small amount is requested, say for the purchase of Christmas presents. In every case, you are encouraged to discuss these requirements with your Trust Officer before you commit any use of the funds in Court.

In assessing any request made of the funds, the following analysis will be made:

- What will be the benefit to the beneficiary?
- Can the funds afford to pay for the request?
- How will any interest of the beneficiary be protected?

Funds are used to pay for many things, such as regular maintenance, school fees, or the purchase of a car or, usually where

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the funds are held 'until further order', a house. However, the Senior Master or the Judicial Registrar will not approve the release of funds to make loans, or to purchase or operate a business, save in the most exceptional circumstances.

The important things to do are:

- to discuss any request to be made of the funds before committing to their expenditure
- to provide all information required.

By so doing, the Senior Master or the Judicial Registrar will be able to consider your request as quickly and fairly as possible.

## **WHEN FUNDS ARE HELD "UNTIL FURTHER ORDER"**

If the order:

- provides for payment into Court of funds for a person who is already aged 18; or
- does not provide for the funds to be paid out at age 18,

the funds are held "until further order" [UFO]. This means that the Senior Master will administer the funds indefinitely for such a beneficiary.

However, if the beneficiary has attained 18 years of age and considers that he/she is able to administer the funds, the beneficiary may apply for payment out of the funds held by the Senior Master.

The ability of the beneficiary to administer the funds will need to be confirmed. Usually, an opinion of a suitably qualified expert is obtained. In most cases, such an expert is a Neuropsychologist, or other person, who has examined the beneficiary in the past, and is aware of his/her circumstances. If arranged by FIC, the

reasonable cost of doing so will be paid from the funds, regardless of any outcome.

Should a beneficiary wish to apply for payment out of the funds, he/she should contact his/her Trust Officer. The Trust Officer will assist in making any necessary arrangements.

## **PAYMENT OUT AT 18**

When funds are held for a person under the age of 18, the order often provides that the funds be paid to that person when he/she attains the age of 18. FIC will contact the beneficiary in the 2-3 weeks prior to their 18<sup>th</sup> birthday. Therefore, it is important that FIC is kept informed whenever a beneficiary changes address.

The procedure for payment out of funds at age 18 is outlined in the Payment Out at 18 Information Guide.

All Information Guides are available on [www.fundsincourt.vic.gov.au](http://www.fundsincourt.vic.gov.au).

The process can take some time. Therefore, beneficiaries should not spend moneys before they are actually received. If there are special circumstances, please bring them to the attention of your Trust Officer, or the member of the Payments Out Team.

## **HOW FUNDS ARE MANAGED AND INVESTED**

### ***Common Fund Investments***

There are two types of Common Funds for beneficiaries: Common Fund No.2 [CF-2] and Common Fund No.3 [CF-3]. Only beneficiaries can have their money invested in these funds. The Common

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Funds are pooled investments with assets held in the name of the Senior Master, on behalf of the beneficiaries.

Both funds are managed and administered in-house.

### **Common Fund No. 2**

CF-2 is similar to a bank account but is controlled by the Senior Master. Money in CF-2 is protected by a government guarantee.

Beneficiaries with funds in CF-2 will receive interest on their funds. Interest accrues daily and is paid yearly on 1 June each year. The annual crediting rate will be based on the actual returns generated by the CF-2 investments in the preceding 12 months. Other factors such as the operating costs of the Office are also considered in determining the crediting rate which is approved by the Chief Justice of the Supreme Court following a recommendation from the Senior Master.

### **Common Fund No. 3**

CF-3 invests primarily in the largest and most liquid stocks in the Australian market, often referred to as "Blue Chip" companies. The aim of CF-3 is to provide beneficiaries with capital growth and dividend income over a long-term time horizon.

CF-3 is valued daily via the calculation of the unit price. The unit price and the number of units held, is used to determine the value of each beneficiary's investment in CF-3. The unit price may rise or fall depending on the value of the underlying shares in the portfolio. There is no government guarantee for money invested

in CF-3.

The Senior Master will generally consider investment in CF-3 where the funds will be invested for at least six years.

### **COST RECOVERY**

FIC is almost entirely self-funded and does not charge direct fees for the administration of the funds. The Senior Master does, however, partially recoup the operating costs of FIC by fixing a rate of interest in respect of Common Fund No. 2 [CF-2] which is slightly less than the income actually produced by the investments of the Common Fund.

For more information on how the Senior Master recovers the FIC's costs, please see [fundsincourt.vic.gov.au](http://fundsincourt.vic.gov.au) at "About Us/What We Do/Cost Recovery".

### **TAXATION**

Interest earned by the funds is taxable in the name of the Senior Master as trustee for the beneficiary, at the appropriate individual rate. Tax returns in respect of such income are prepared and lodged by FIC.

However, if a beneficiary should earn other income, a separate tax return is required. Because both tax returns need to complement each other, the use of a tax agent or accountant is strongly recommended. The agent or accountant should feel free to contact this Office to discuss any tax-related matters. The reasonable costs of the agent or accountant can be paid from the funds in Court.

Receipt of the funds in Court may affect a beneficiary's right to receive payments or

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benefits from one or more of the following organisations:

- Commonwealth Rehabilitation Service
- Centrelink
- Health Insurance Commission
- Medicare
- Transport Accident Commission
- Workcover

Of course, receipt of the funds may also create entitlements for a beneficiary.

Our Client Liaison Officers can visit you anywhere in Australia to discuss these matters with you and provide information about the provision of other services and assistance, such as:

- Attendant care
- Counselling
- Rehabilitation services
- Special care accommodation
- Education
- Access to the Guardianship List of the Victorian Civil and Administrative Tribunal
- Other related services for people with a disability

Again, you are encouraged to discuss these matters with your Trust Officer, in conjunction with the Client Liaison Officer.

## CONTACT DETAILS

### Located at:

Level 5, 469 La Trobe Street,  
Melbourne, Victoria

### Postal address:

Funds in Court  
Supreme Court of Victoria  
210 William Street, Melbourne  
Victoria 3000

**Phone:** 1300 039 390

**Fax:** 1300 039 388

From overseas:

**Phone:** 61 3 9032 3777

**Fax:** 61 3 9032 3700

**Email:** [requests@fundsincourt.vic.gov.au](mailto:requests@fundsincourt.vic.gov.au)

**Website:** [www.fundsincourt.vic.gov.au](http://www.fundsincourt.vic.gov.au)

### Hours of operation:

Monday to Friday 9am – 5pm