

## NOTICE OF PROPOSED SETTLEMENT

FEDERAL COURT OF AUSTRALIA  
COLONIAL MYSUPER CLASS ACTION (VID1139 OF 2019)

### WHY IS THIS NOTICE IMPORTANT?

This notice contains important information about the proposed settlement of the Colonial MySuper Class Action filed by Lesley Coatman (**the Applicant**) against respondents including Colonial First State Investments Limited (**Colonial**), the trustee of the Colonial First State FirstChoice Superannuation Trust, and former executive director Linda Elkins (**the Respondents**).

If you are a group member in the Colonial MySuper Class Action your legal rights will be affected by the proposed settlement. **Please read this notice carefully.** Additional information is also available on Maurice Blackburn's website at [mblackburn.com.au/ColonialMySuper](http://mblackburn.com.au/ColonialMySuper) which you are encouraged to read.

### KEY DETAILS OF THE PROPOSED SETTLEMENT

1. **WHY YOU HAVE RECEIVED THIS NOTICE:** You have received this notice as you have been identified as a likely group member in the Colonial MySuper Class Action.
2. **WHAT IS THE COLONIAL MYSUPER CLASS ACTION?** The Colonial MySuper Class Action is based on allegations that the Respondents breached their statutory and general law obligations owed to beneficiaries of the FirstChoice Employer Super (**FCES**) division of the FirstChoice Fund, by failing to transfer beneficiaries' accrued default amounts (**ADAs**) to the simple and low cost MySuper Product as soon as reasonably practicable. The Respondents deny any wrongdoing or that the ADAs were not transferred as soon as reasonably practicable and deny all alleged breaches of their statutory and general law obligations.
3. **PROPOSED SETTLEMENT:** The parties in the Colonial MySuper Class Action have agreed to a proposed settlement of the proceeding, under which Colonial will pay (without admission of liability or wrongdoing) a total settlement sum of **\$56.3 million** (inclusive of costs and interest) in full and final settlement of the claims brought by the Applicant on behalf of approximately 102,000 group members (**Settlement Sum**). The proposed settlement must first be approved by the Federal Court of Australia as fair and reasonable before it is binding on the parties and group members. Colonial will not use any assets of the FirstChoice Fund, including any operational risk financial reserve, to pay the proposed settlement sum or the costs of its distribution to eligible group members.

The Federal Court will consider whether to approve the proposed settlement at a hearing at **10:15am** on **20 June 2022** in Melbourne. If you are a group member in the Colonial MySuper Class Action, you have the right, if you wish, to attend that hearing. As a result of the current COVID-19 pandemic, and depending on the circumstances at that time, that hearing may take place either in person or by video.

4. **THE POTENTIAL RELEVANCE OF ANOTHER CLASS ACTION:** If you are a group member in the class action *Marcel Eugene Krieger & Anor v Colonial First State Investments Limited* (Federal Court proceeding number VID 1141/2019) (**Krieger Class Action**) against Colonial, it may be that recovery of an amount in the Colonial MySuper Class Action as a result of the

proposed settlement, if approved by the Court, may impact on the amount of loss and damages recoverable in the Krieger Class Action to the extent that the same loss or damages are sought to be recovered. If you have any queries concerning the Krieger Class Action you should contact the lawyers conducting it, Slater & Gordon at [ColonialFeesClassAction@slatergordon.com.au](mailto:ColonialFeesClassAction@slatergordon.com.au).

5. **LEGAL AND OTHER COSTS:** Maurice Blackburn will seek payment of the reasonable legal costs incurred in conducting the Colonial MySuper Class Action from the Settlement Sum. Maurice Blackburn estimates those costs will total approximately \$14.5 million. The Court has appointed an Independent Costs Referee to assess whether the legal costs are fair and reasonable. Only costs that the Court decides are fair and reasonable will be deducted from the Settlement Sum. At the time at which the Court will consider the reasonableness of the proposed settlement, Maurice Blackburn will also seek that a reimbursement payment of no more than \$25,000 be deducted from the Settlement Sum to be paid to the Applicant, Lesley Coatman, for her time, inconvenience and any expenses incurred in conducting the class action on behalf of all group members. Again, this payment is subject to approval by the Federal Court. If the Court approves the proposed deductions there will be approximately **\$41.8 million** available for distribution to group members (plus any interest accrued in relation to the Settlement Sum).

6. **WHAT GROUP MEMBERS NEED TO DO TO:**

**OPTION A – DO NOTHING:** If you are a group member in the Colonial MySuper Class Action (and have not previously opted out of the proceeding) **there is nothing you need to do in order to receive a settlement payment.** If the proposed settlement is approved, an Independent Expert Consultant will calculate individual settlement payments pursuant to a Settlement Distribution Scheme including an agreed Apportionment Formula. Further details regarding the Settlement Distribution Scheme and Apportionment Formula are set out at paragraph 8 below.

**OPTION B – OBJECT TO THE PROPOSED SETTLEMENT:** If you are a group member you have the right to make submissions as to why the Court should not approve the proposed settlement (or any particular aspect of it). In order to lodge an objection, you must return the **attached** Notice of Objection Form by **4:00pm AEST on 3 June 2022** to:

- The Federal Court: [EA.MurphyJ@fedcourt.gov.au](mailto:EA.MurphyJ@fedcourt.gov.au); and
- Maurice Blackburn: [ColonialMySuperObjections@mauriceblackburn.com.au](mailto:ColonialMySuperObjections@mauriceblackburn.com.au).

7. **WHO WILL ADMINISTER THE PROPOSED SETTLEMENT:** The proposed settlement will be administered by Colonial, with oversight provided by an Independent Expert Consultant. Reporting in relation to the settlement distribution will also be provided to Maurice Blackburn as Settlement Administrator and the Court.
8. **INDIVIDUAL SETTLEMENT PAYMENTS:** Subject to approval by the Court, the amount of the Settlement Sum which is ultimately available for distribution to group members (after the deduction of any approved legal costs and reimbursement payment) will be distributed in accordance with a Settlement Distribution Scheme. The Settlement Distribution Scheme will include a proposed Apportionment Formula which will determine how each group member's individual entitlement to a share of the Settlement Sum will be calculated.

At the time of distribution of this notice, the parties are yet to finalise the Settlement Distribution Scheme, however, a copy of this document will be made available on Maurice Blackburn's website at [mblackburn.com.au/ColonialMySuper](http://mblackburn.com.au/ColonialMySuper) by no later than 6 May 2022.

9. It is not presently possible to provide an estimate of how much each individual group member may receive following a distribution of the Settlement Sum. This is because the size of each settlement payment will depend, in part, on each group member's individual superannuation balance at the time that the Applicant alleges the transfer to MySuper should have occurred (i.e. on a date between 1 July 2015 and 31 December 2015). Settlement payments will also depend on the specific fees paid by individual members and the particular investment options in which group member's superannuation was invested before and after being transferred to Colonial's MySuper product. Finally, the amount of the Settlement Sum which is available for distribution to group members will also depend on the legal costs and other deductions approved by the Federal Court before distribution to group members can occur (see point 5 above).
10. It is possible that some group members will not receive a settlement payment because, on the basis of the proposed Apportionment Formula, the group member's superannuation balance was not, in fact, reduced or was reduced by less than \$20 as a result of the timing of the transfer of their superannuation to Colonial's MySuper Product. More information about how the Apportionment Formula will work will be available in the Settlement Distribution Scheme. As noted above, a copy of the Settlement Distribution Scheme will be made available on Maurice Blackburn's website at [mblackburn.com.au/ColonialMySuper](http://mblackburn.com.au/ColonialMySuper) by no later than 6 May 2022.
11. **ACCESSING A SETTLEMENT PAYMENT:** If the settlement is approved and you are currently able to access your superannuation (for example, because you have retired) you may be able to be paid a settlement payment in cash. If you are not currently eligible to access your superannuation (for example, because you have not yet reached retirement age) any settlement payment will most likely be made into either an active account in the FirstChoice Fund or into your current superannuation account if you have transferred or rolled over your superannuation to another fund. In relation to inactive accounts, Colonial intends to seek an order that it can make a trustee voluntary payment to the Australian Taxation Office (**ATO**) in accordance with the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth) if Colonial reasonably believes paying the amount to the ATO would be in the best interest of the group member. If you are unsure whether you have an active member account in the FirstChoice Fund or you have another query about your account, you should contact Colonial on 13 13 36.
12. **FURTHER INFORMATION:** The purpose of this notice is to provide group members in the Colonial MySuper Class Action with an overview of the key aspects of the proposed settlement. Further detailed information is provided on the website of Maurice Blackburn at [mblackburn.com.au/ColonialMySuper](http://mblackburn.com.au/ColonialMySuper). You are encouraged to read that information which includes information in relation to the following topics:
- What is a class action?
  - What is the Colonial MySuper Class Action about?
  - What is MySuper?
  - What is an accrued default amount (ADA)?
  - Am I a group member in the Colonial MySuper Class Action?
  - The proposed settlement
  - What do group members need to do?
  - Are group members liable for legal costs?
  - The Settlement Approval Process
  - Relevant Documents (including the Statement of Claim and Defence)
  - What if I have further questions?

**If you have any questions about this notice or the class action, further information is available from Maurice Blackburn**, the lawyers conducting the class action, at [ColonialMySuper@mauriceblackburn.com.au](mailto:ColonialMySuper@mauriceblackburn.com.au) or by calling Maurice Blackburn on 1800 517 371. Alternatively you may seek your own legal advice.

Please note that the Federal Court is not able to answer any questions you may have in relation to this notice

**IMPORTANT: COMPLETE THIS FORM ONLY IF YOU INTEND TO OBJECT TO THE  
PROPOSED SETTLEMENT OF THE COLONIAL MYSUPER CLASS ACTION**

**NOTICE OF OBJECTION TO PROPOSED SETTLEMENT  
FEDERAL COURT OF AUSTRALIA  
COLONIAL MYSUPER CLASS ACTION (VID1139 OF 2019)**

To:

- The Federal Court of Australia ([EA.MurphyJ@fedcourt.gov.au](mailto:EA.MurphyJ@fedcourt.gov.au)) and
- Maurice Blackburn Lawyers ([ColonialMySuperObjections@mauriceblackburn.com.au](mailto:ColonialMySuperObjections@mauriceblackburn.com.au))

The person identified below gives notice that they object to the proposed settlement of the Colonial MySuper Class Action:

**A. DETAILS OF OBJECTOR**

<b>Name of Group Member</b>	
<b>Postal Address</b>	
<b>Email Address</b>	
<b>Phone Number</b>	

**B. GROUNDS OF OBJECTION**

The ground(s) for my objection to the proposed settlement are as follows (set out in the space below any submissions you wish to make – you may attach additional pages if necessary):

**C. ATTENDANCE AT HEARING ON 20 JUNE 2022**

- I do not intend to appear at the settlement approval hearing, but wish for my submission to be considered in my absence
- I do intend to appear at the settlement approval hearing  
(please tick one of the two above options)

If you do intend to appear at the settlement approval hearing, please complete the following:

- I will appear on my own behalf
- I will be represented by a lawyer:  
.....  
(please insert lawyer details)

**D. SIGNING OF NOTICE**

.....

Please sign here

Date: