

## OPT OUT NOTICE

### FEDERAL COURT OF AUSTRALIA

### COLONIAL MYSUPER CLASS ACTION (VID1139 OF 2019)

#### WHY IS THIS NOTICE IMPORTANT?

This is an important notice approved by the Federal Court of Australia, which you are receiving because you may be a Group Member in the Colonial MySuper Class Action proceeding filed by Lesley Coatman (the **Applicant**) against Colonial First State Investments Limited, the trustee of the Colonial First State FirstChoice Superannuation Trust, and its former executive director and Executive General Manager, Linda Maree Elkins (the **Respondents**).

This action is based on allegations that the Respondents breached their statutory and general law obligations owed to beneficiaries who were members of the FirstChoice Employer Super (**FCES**) division of the FirstChoice Fund, in relation to the transfer of beneficiaries' accrued default amounts to the simple low cost MySuper product in November 2016 and May 2017, by failing to cause those transfers to be made as soon as reasonably practicable. The Respondents deny the Applicant's claims.

**As explained in Section B below, you may do one of two (2) things in response to this notice:**

1. **Remain in the class action, in which case you do not need to do anything** in relation to this notice. You will be bound by any settlement or judgment in the class action. If the class action is successful and you are a Group Member, you will have the benefit of any result in the class action.
2. **Opt out of the class action** by submitting to the Court an Opt Out Notice in the Form that is the final page of this Notice before 31 January 2022 at 4.00PM (Sydney time). Opting out means that you remove yourself as a Group Member from the class action. If the class action is successful, you will not share in the benefit of any settlement or judgment in the class action but you would be able to bring your own individual claim against the Respondents, provided that you commence fresh Court proceedings within the time limit applicable to your claim.

**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 [www.mauriceblackburn.com.au/colonialmysuper](http://www.mauriceblackburn.com.au/colonialmysuper) or by calling Maurice Blackburn on 1800 517 371. Any questions you have concerning this notice should not be directed to the Court.

You can also **register your details with Maurice Blackburn** at [mblackburn.com.au/colonial-eoi](http://mblackburn.com.au/colonial-eoi) to provide information about your claim and receive updates about the case. This is voluntary and is not required in order to remain a Group Member.

## A. INFORMATION ABOUT THE CLASS ACTION

### 1. What is a class action?

A class action is a type of legal action where a claim is brought by one person on behalf of a group of persons (referred to as Group Members).

Unless a Group Member opts out (which is explained further in Section B below) that person will remain part of the class action and will be bound by the result.

It is important to remember that Group Members in a class action are **not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicant is responsible for the costs.

### 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 who were members of the FirstChoice Employer Super (**FCES**) division of the FirstChoice Fund, in relation to the transfer of beneficiaries' accrued default amounts (**ADAs**) to the simple low cost MySuper product in November 2016 and May 2017, by failing to cause those transfers to be made as soon as reasonably practicable.

The Applicant brings the claim under Part IVA of the *Federal Court of Australia Act 1976* (Cth) and also in her capacity as a former beneficiary of the FirstChoice Fund. The class action alleges that the Respondents, in failing to cause the transfer of the ADAs to be made as soon as reasonably practicable, contravened the *Superannuation Industry (Supervision) Act 1993* (Cth) and failed to discharge certain duties under the general law. On behalf of Group Members, the Applicant seeks compensation as a result of alleged delay in transferring the ADAs. The class action seeks relief for Group Members in the form of cash payments or payment into members' superannuation accounts.

The Respondents deny that the ADAs were not transferred as soon as reasonably practicable and deny all alleged breaches of their statutory and general law obligations.

The Respondents also contend that various remedies sought by the Applicant are not available.

Complete details of the Applicant's claims (which are set out in the Further Amended Statement of Claim and Further Amended Originating Application) and the Respondents' defences are available here: [www.mauriceblackburn.com.au/colonialmysuper](http://www.mauriceblackburn.com.au/colonialmysuper).

The Colonial MySuper Class Action is listed for an initial trial which is due to commence on Monday 4 April 2022 for three weeks. This trial will determine the common issues which arise in the class action. If the Applicant is successful at the initial trial, a further hearing or hearings may be required in order to determine any individual entitlements of Group Members.

### 3. What is 'opt out'?

The Applicant in a class action does not need to seek the consent of Group Members to commence a class action on their behalf or to identify a specific Group Member. However, Group Members can cease to be Group Members by opting out of the class action. An

explanation of how Group Members are able to opt out is found below in the section headed “Option 2 – Opt out and cease to be a Group Member” (in Section B below).

#### **4. Are you a Group Member?**

**If you received this notice directly by email, SMS or mail, Colonial’s business records indicate that you meet the criteria below and therefore are likely a Group Member.**

The criteria to be a Group Member are set out at paragraph 2 of the Further Amended Statement of Claim, which can be accessed at:

[www.mauriceblackburn.com.au/ColonialMySuper](http://www.mauriceblackburn.com.au/ColonialMySuper)

You may be a Group Member if:

- (a) you are or were a member of the Colonial First State FirstChoice Superannuation Trust; and you had an “accrued default amount” (ADA) that was transferred into the FirstChoice “Lifestages” MySuper product on or about 12 November 2016 or 24 May 2017 (FCES ADA Member); or
- (b) you received a payment (inherited) from a deceased FCES ADA Member of an amount attributable to their ADA; or
- (c) you received a transfer of superannuation interest under the *Family Law Act 1975* (Cth) attributable to their ADA.

If you would like further information in relation to whether you may be a Group Member in the class action please contact Maurice Blackburn at: [ColonialMySuper@mauriceblackburn.com.au](mailto:ColonialMySuper@mauriceblackburn.com.au) or by calling 1800 517 371.

#### **5. Are Group Members liable for costs of the Colonial MySuper Class Action?**

You will not become liable for any legal costs simply by remaining as a Group Member for the determination of the questions which are common to all Group Members.

If any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, some of that compensation may be used to help pay a share of the costs which are incurred by the Applicant in running the class action, but which are not able to be recovered from the Respondents.

### **B. YOUR OPTIONS**

#### ***Option 1: Do nothing, and remain a Group Member***

If you do nothing (i.e. if you do not take steps to opt out in accordance with Option 2 below) you will remain a Group Member in the class action and will be bound by any judgment or settlement in the proceeding.

If the class action is successful, you may be eligible to share in the benefit provided under any order, judgment or settlement that is made in favour of the Applicant and Group Members.

If the class action is not successful or not as successful as you might have wished, you will continue to be bound by the outcome of the Colonial MySuper Class Action and will not be able to bring another claim (or potentially, any related claim) against the Respondents or any related entities of the First Respondent. If you consider that you have claims against one or other of the Respondents which are based on your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action before the deadline for opting out.

***Option 2: Opt out and cease to be a Group Member***

If you do not wish to remain a Group Member in the Colonial MySuper Class Action, you must opt out of the proceeding by completing the Opt Out Notice below.

If you qualify as a Group Member and you opt out, you will cease to be a Group Member of the Colonial MySuper Class Action. This means that you will not receive any compensation from the class action if the matter is successful at trial or reaches a settlement. If you opt out, you will no longer be part of the class action but will be able to bring your own claim against the Respondents in relation to the allegations which arise in the class action (see Section A Part 2 above) provided that you issue court proceedings within the time limit applicable to your claim.

Please note that the Colonial MySuper Class Action has currently suspended limitation periods that are applicable to your claim. However, time will start to run again if you opt out. Therefore, if you opt out, you will have a limited period of time to bring your own claim should you wish to do so. You should seek your own independent legal advice about your claim and the applicable time limit prior to opting out.

**To opt out of the class action you must send a completed Opt Out Notice to the Federal Court of Australia at the address on the form by no later than 4:00pm (AEDT) on 31 January 2022.**

**C. REGISTER YOUR DETAILS**

Group Members are invited to register their details with Maurice Blackburn, the lawyers for the Applicant in the Colonial MySuper Class Action. Registration is voluntary. You do not have to register your details to remain a Group Member.

**If you are no longer a member** of the Colonial First State FirstChoice Fund you are encouraged to register and provide your current email address and other contact details. This information may be useful if there is a settlement of the proceeding.

**To register your details with Maurice Blackburn go to: [mblackburn.com.au/colonial-eoi](http://mblackburn.com.au/colonial-eoi)**

Please consider this notice carefully. If there is anything of which you are unsure, you should seek your own legal advice or contact Maurice Blackburn Lawyers on 1800 517 371.
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Form 21  
Rule 9.34

**Opt out notice**

No. VID1139 of 2019

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Lesley Coatman**

Applicant

**Colonial First State Investments Limited (ACN 002 348 352)**

**Linda Maree Elkins**

First and Second Respondents

To: The Registrar  
Federal Court of Australia  
Victorian District Registry  
305 William Street, Melbourne, VIC, 3000

....., a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976* (Cth), that I am/he/she is opting out of the above representative proceeding.

Date:

Signed by ..... [Name]

[Insert capacity eg group member / Lawyer  
for the group member]

**\*\*\* PLEASE ALSO COMPLETE CONTACT DETAILS OVER THE PAGE \*\*\***

**Group Member Details**

<b>Full Name:</b>	
<b>Email:</b>	
<b>Address:</b>	
<b>Telephone number:</b>	
<b>Colonial account number (if known)</b>	

**Details of person signing on behalf of Group Member (if applicable):**

<b>Full Name:</b>	
<b>Capacity: (eg: legal practitioner)</b>	
<b>Email:</b>	
<b>Address:</b>	
<b>Telephone number:</b>	