



## **SUPREME COURT OF VICTORIA**

### **IMPORTANT NOTICE**

**David Shimshon & Anor v MLC Nominees Pty Limited & Anor  
(Proceeding number: S ECI 2020 00306)**

**MLC MYSUPER CLASS ACTION (FORMERLY NAB MYSUPER CLASS ACTION)**

THIS NOTICE IS SENT BY ORDER OF THE SUPREME COURT OF  
VICTORIA.

IT IS IMPORTANT THAT YOU READ THIS NOTICE CAREFULLY  
BECAUSE IT MAY AFFECT YOUR LEGAL RIGHTS.

## **A. WHY ARE YOU RECEIVING THIS NOTICE?**

1. **This is an important notice approved by the Supreme Court of Victoria, which you are receiving because you may be a Group Member in the MLC MySuper Class Action. Please read it carefully as it may affect your legal rights.**
2. The MLC MySuper Class Action relates to the time taken by MLC Nominees and NULIS (the Defendants) to transition certain superannuation contributions invested in the MLC MasterKey Business (incorporating MasterKey Personal Super) default investment options to a simple low cost 'MySuper' option within the MLC Super Fund. The Defendants are the current and former trustees of the relevant funds.
3. The superannuation contributions in question are those invested in the MLC MasterKey Business (incorporating MasterKey Personal Super) product prior to 1 January 2014 and in respect of which the relevant member did not make an investment direction. These contributions are known as 'Accrued Default Amounts' (or ADAs).
4. The claim has been filed by David Shimshon and Julian Cougan (the Plaintiffs) on their own behalf and on behalf of other persons who had ADAs in the MasterKey products (group members). The Plaintiffs are represented by Maurice Blackburn Lawyers.
5. It is alleged that the Defendants breached their statutory and general law obligations by taking too long to transfer the ADAs to a 'MySuper' option, and that group members have suffered loss as a result of this delay. The Defendants deny the claim. Further information about the claim is set out in Part B of this Notice.
6. Read Part B of this Notice to work out if you are a Group Member.
7. If you are a Group Member, you have two options:
  - (a) **Remain in the class action, in which case you do not need to do anything in relation to this notice.** If you remain in the class action, you will be bound by any settlement or judgment. If the class action is successful and you are a Group Member, you will be entitled to the benefit of any result in the class action.
  - (b) **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 15 August 2023**). Opting out means that you remove yourself as a Group Member from the class action. If the class action is successful and you have opted out, 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 Defendants, provided that you commence fresh Court proceedings within the time limit applicable to your claim.
8. Read this notice to find out more about the class action and your options. 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 <https://www.mauriceblackburn.com.au/class-actions/join-a-class-action/mlc-mysuper-class-action/>, or by contacting Maurice Blackburn on 1800 519 760 or [mlcmysuper@mauriceblackburn.com.au](mailto:mlcmysuper@mauriceblackburn.com.au). Any questions you have concerning this Notice should not be directed to the Court.
9. You can also **register your details with Maurice Blackburn** at <https://classaction.mauriceblackburn.com.au/mlcmysuper> to receive updates about the case. This is voluntary and is not required in order to remain a Group Member.

## **B. EXPLANATORY INFORMATION**

### **What is a class action?**

10. A class action is a type of legal action where a claim is brought by one or more persons on behalf of a group of persons (referred to as group members).
11. Unless a Group Member opts out by the date ordered by the Court (which is explained further below), that person will remain part of the class action and will be bound by the result.
12. It is important to remember that group members in a class action are not required to pay any money out of their own pocket in order to remain in the MLC MySuper Class Action. Section D below sets out further information regarding legal costs which are supervised by the Court.

### **What is 'opt out'?**

13. The Plaintiff(s) in a class action do not need to seek the consent of group members or to identify specific group members to commence a class action on their behalf. However, group members must be given the opportunity to opt-out of the class action if they do not wish to participate.
14. Group members can cease to be group members by opting out of the class action by the date set by the Court (which in this case is 15 August 2023). 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 C below).

### **What is the MLC MySuper Class Action?**

15. The MLC MySuper Class Action relates to accrued default amounts (**ADAs**) held by superannuation members in MLC MasterKey Business Super (incorporating MasterKey Personal Super) which are products within the MLC Super Fund (and previously The Universal Super Scheme). ADAs are amounts contributed to the fund prior to 1 January 2014 for which the relevant member did not provide an investment direction – as a result, these amounts were invested in the default investment option selected by the member's employer.
16. Under the Stronger Super Reforms introduced by the Government:
  - (a) from 1 January 2014, all super contributions for which the relevant member did not provide an investment direction were required to be paid into a simple low cost 'MySuper' option; and
  - (b) all such contributions made before 1 January 2014 (ie ADAs) were required to be transferred to a simple low cost 'MySuper' option by no later than 30 June 2017.
17. The superannuation regulator, the Australian Prudential Regulation Authority, issued guidance in relation to the Stronger Super Reforms stating that it expected that the transfer of ADAs to MySuper "*would occur at the earliest opportunity possible where it is in the best interest of beneficiaries to do so.*"

18. The group members' ADAs were transferred to the MySuper option in either December 2016 or March 2017.
19. The claim alleges that, although group members' ADAs were transferred to a MySuper option before 30 June 2017, the Defendants contravened their statutory and general law duties to their members by failing to make the transfers to MySuper as soon as reasonably practicable.
20. The Plaintiffs bring the claim as a group proceeding (class action) under Part 4A of the *Supreme Court Act 1986* (Vic) and allege that the Defendants contravened the *Superannuation Industry (Supervision) Act 1993* (Cth) and failed to discharge certain duties under the general law.
21. On behalf of group members, the Plaintiffs seek compensation for any losses that have been incurred as a result of alleged delay in transferring the ADAs to MySuper. The class action seeks relief for group members in the form of payment into group members' superannuation accounts or cash payments (where such payments are permitted under superannuation law).
22. The Defendants deny that the ADAs were not transferred as soon as reasonably practicable and deny all alleged breaches of their statutory and general law obligations.
23. Complete details of the Plaintiffs' claims (which are set out in the Further Amended Statement of Claim) and the Defendants' response to those claims (which are set out in the Defence) are available here:  
  
<https://www.supremecourt.vic.gov.au/areas/group-proceedings/mlc-mysuper> or  
  
<https://www.mauriceblackburn.com.au/class-actions/join-a-class-action/mlc-mysuper-class-action/>
24. The MLC MySuper Class Action is currently expected to be listed for an initial trial in 2024. This trial will determine the common issues which arise in the class action. The Plaintiffs will also ask the Court to determine any entitlement to damages for all group members collectively at this trial, rather than requiring each Group Member's entitlement to be determined individually at a further hearing or hearings. However, the Court has not yet considered whether or not this proposed approach to the determination of any entitlement to damages is practical or appropriate.

**Is the MLC MySuper Class Action different from the NAB MySuper Class Action?**

25. These two names refer to the same proceeding. The case was previously referred to as the "NAB MySuper Class Action" because when this case was commenced in January 2020, the Defendant trustees were part of the NAB Group. On 1 June 2021, the Defendant trustees were sold to Insignia Limited (formerly known as IOOF Limited). Following this sale, the class action is now referred to as the "MLC MySuper Class Action".

## Are you a Group Member?

**If you received this notice directly by email or notification by SMS, the Defendants' business records indicate that you meet the criteria below and therefore are likely to be a Group Member.**

26. You are a Group Member if:
- (a) your superannuation was invested in the MLC MasterKey Business Super or the MLC MasterKey Personal Super products (**MasterKey**) and you held an accrued default amount in MasterKey that was transferred by NULIS Nominees (Australia) Limited (**NULIS**) to a MySuper option in the MLC Super Fund on or about 3 December 2016 or 25 March 2017 (**ADA Member**); or
  - (b) you received payment from a deceased ADA Member of all or part of their interest; or
  - (c) you were the spouse of an ADA Member and under the Family Law Act or a superannuation agreement you received a transfer of the member's interest.
27. 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 [mlcmysuper@mauriceblackburn.com.au](mailto:mlcmysuper@mauriceblackburn.com.au) or by calling 1800 519 760.
28. The criteria to be a Group Member are also set out at paragraph 3 of the Further Amended Statement of Claim, which can be accessed at:  
<https://www.supremecourt.vic.gov.au/areas/group-proceedings/mlc-mysuper> or  
<https://www.mauriceblackburn.com.au/class-actions/join-a-class-action/mlc-mysuper-class-action/>

## C. YOUR OPTIONS

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

29. 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.
30. 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 Plaintiffs and group members.
31. 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 MLC MySuper Class Action and will not be able to rely on the same claim (or potentially, any related claim) in other proceedings.
32. If you consider that you have claims against either of the Defendants 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**

33. If you do not wish to remain a Group Member in the MLC MySuper Class Action, you must opt out of the proceeding by completing the Opt Out Notice below and sending it to the Court by **15 August 2023**.
34. If you qualify as a Group Member and you opt out, you will cease to be a Group Member of the MLC 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 Defendants in relation to the allegations which arise in the class action (see Section B above) provided that you issue fresh court proceedings within the time limit applicable to your claim.
35. The MLC 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. If you are considering bringing your own claim, you should seek your own independent legal advice about your claim and the applicable time limit prior to opting out.
36. **To opt out of the class action you must send a completed Opt Out Notice to the Supreme Court of Victoria at the address on the form by no later than 15 August 2023.**

**D. INFORMATION ABOUT HOW THE CLASS ACTION IS BEING FUNDED**

**No 'out of pocket' costs for group members in this class action**

37. Group members are not, and will not be, liable to pay for any legal costs out of their own pocket by remaining in the MLC MySuper Class Action. All of the Plaintiffs' costs associated with running the class action will be borne by Maurice Blackburn, unless there is a successful outcome. This is called a 'conditional' fee arrangement. There is no third-party litigation funder involved in the MLC MySuper Class Action.
38. In the event that there is not a successful outcome to the MLC MySuper Class Action, group members will not be liable to pay any costs. This includes the Defendants' costs of defending the class action, and the costs of Maurice Blackburn running the class action on behalf of the Plaintiffs.
39. In the event that there is a successful outcome to the MLC MySuper Class Action:
  - (a) The Defendants may be ordered to pay some or all of the Plaintiffs' costs of running the class action.
  - (b) For any costs not paid by the Defendants, the Plaintiffs will ask the Court to approve the deduction of the reasonable amount of the costs of Maurice Blackburn running the case, from the total judgment or settlement sum for group members, before it is distributed to group members.

- (c) Maurice Blackburn may also apply to the Court to be permitted to charge an ‘uplift’ on its professional fees. An uplift fee is not a percentage of the total compensation recovered for group members. Instead, it is a percentage of Maurice Blackburn’s fees which is intended to recognise the risk borne by Maurice Blackburn in taking on the case on a ‘conditional’ basis. Maurice Blackburn may apply for an uplift fee of up to 25% of the amount of its professional fees.
- (d) The Court will independently decide what amount of legal costs (including the uplift) is reasonable to be recovered by Maurice Blackburn before the remainder of the judgment or settlement sum is distributed to group members. The Court may reduce the amount of legal costs that can be paid to Maurice Blackburn if it considers this is fair. Deductions for legal costs will never exceed a Group Member’s recovery.

#### **E. WHERE CAN YOU OBTAIN FURTHER INFORMATION?**

- 40. Copies of relevant documents, including this notice, the Further Amended Statement of Claim and Defence, may be obtained by:
  - (a) downloading them from either:
    - (i) Maurice Blackburn’s website:  
<https://www.mauriceblackburn.com.au/class-actions/join-a-class-action/mlc-mysuper-class-action/>
    - (ii) the Supreme Court of Victoria website:  
<https://www.supremecourt.vic.gov.au/areas/group-proceedings/mlc-mysuper>
  - (b) inspecting them:
    - (i) by appointment, between 9am and 5pm, at one of the offices of Maurice Blackburn, contact details for which are available from the web addresses above or by calling Maurice Blackburn on 1800 519 760;
    - (ii) at the Commercial Court Registry of the Supreme Court of Victoria at ground floor, 450 Little Bourke Street, Melbourne VIC 3000.
- 41. Please consider the above matters carefully. If there is anything of which you are unsure, you can:
  - (a) contact Maurice Blackburn on 1800 519 760 or [mlcmysuper@mauriceblackburn.com.au](mailto:mlcmysuper@mauriceblackburn.com.au); or
  - (b) seek independent legal advice.
- 42. The Supreme Court should **not** be contacted for legal advice.
- 43. This notice was approved by the Supreme Court and published pursuant to Orders made on 24 April 2023.

44. **You should not delay in making any decision to opt out or seek further advice. If you wish to opt out, you must return the opt out form attached to this Notice to the Court by 15 August 2023.**

**F. REGISTER YOUR DETAILS**

45. Group members are invited to register their details with Maurice Blackburn, the lawyers for the Plaintiffs in the MLC MySuper Class Action. Registration is voluntary. You do not have to register your details to remain a Group Member.
46. If you are no longer a member of the MLC 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:**  
**<https://classaction.mauriceblackburn.com.au/mlcmysuper>**



**NOTICE OF OPTING OUT BY GROUP MEMBER**

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMERCIAL COURT  
GROUP PROCEEDINGS LIST

No. S ECI 2020 00306

BETWEEN:

**DAVID SHIMSHON and another**

Plaintiffs

and

**MLC NOMINEES PTY LIMITED (ACN 002 814 959) and another**

Defendants

To: Manager, Commercial Court Registry and Deputy Registrar  
Supreme Court of Victoria  
Commercial Court Registry  
210 William Street Melbourne Victoria 3000  
[MLCMySuperClassAction@supcourt.vic.gov.au](mailto:MLCMySuperClassAction@supcourt.vic.gov.au)

I, [*print name*]

.....,  
a Group Member in the above group proceeding, give notice under section 33J(2) of the  
*Supreme Court Act 1986 (Vic)*, that I am opting out of this proceeding.

<b>Date:</b>	
<b>Signature of Group Member or Group Member's solicitor:</b>	
<b>Address of Group Member:</b> <b>*It is important to provide a physical or postal address so you can properly be identified for opt out purposes.</b>	
<b>Email of Group Member:</b>	

**If you would like to opt out of the MLC MySuper Class Action, please return this form to the Commercial Court Registry of the Supreme Court of Victoria by email or post, at the address set out on this form by 15 August 2023.**