



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

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.

WHY IS THIS NOTICE IMPORTANT?

1. This notice contains important information about the proposed settlement of the MLC MySuper Class Action filed by David Shimshon and Julian Cougan (**the Plaintiffs**) against MLC Nominees Pty Limited, the former trustee of The Universal Super Scheme (**TUSS**), and NULIS Nominees (Australia) Limited (**NULIS**), the trustee of the MLC Super Fund (**the Defendants**).
2. If you are a Group Member in the MLC MySuper Class Action, your legal rights will be affected by the proposed settlement. **Please read this notice carefully.** Additional information in relation to the MLC MySuper Class Action is also available on Maurice Blackburn's website at <http://mblackburn.com.au/MLC>.
3. You have received this notice as you have been identified as a likely Group Member in the MLC MySuper Class Action.

WHAT IS THE MLC MYSUPER CLASS ACTION?

4. The MLC MySuper Class Action relates to accrued default amounts (**ADAs**) held by superannuation members in MLC MasterKey Business Super (incorporating MasterKey Personal Super) (**MasterKey**) which are products within the MLC Super Fund (and previously TUSS). 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.
5. 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.
6. 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 interests of beneficiaries to do so.*"
7. 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. 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.
8. 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).

9. 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.

WHO IS A GROUP MEMBER IN THE MLC MYSUPER CLASS ACTION?

10. If you received this Settlement Notice by email or text, the Defendants' business records indicate that you are likely a Group Member in the MLC MySuper Class Action.
11. You will be a Group Member if:
- (a) your superannuation was invested in the MasterKey products and you held an ADA in MasterKey that was transferred by NULIS to a MySuper product 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 that was transferred by NULIS to a MySuper product in the MLC Super Fund on or about 3 December 2016 or 25 March 2017; or
 - (c) you were the spouse of an ADA Member and under the *Family Law Act* or a superannuation agreement received a transfer of the member's interest that was transferred by NULIS to a MySuper product in the MLC Super Fund on or about 3 December 2016 or 25 March 2017.

THE PROPOSED SETTLEMENT:

12. The parties to the MLC MySuper Class Action have agreed to a proposed settlement of the proceeding, under which the Defendants will pay (without admission of liability) a total settlement sum of **\$64.25 million** (inclusive of costs and interest) in full and final settlement of the claims brought by the Plaintiffs on behalf of approximately 330,000 Group Members (**Settlement Sum**). The Defendants will not use any assets of the MLC Super Fund, including any operational risk financial reserve, to pay the proposed settlement sum or the costs of its distribution to eligible Group Members.
13. The proposed settlement must first be approved by the Supreme Court of Victoria as fair and reasonable before it is binding on the parties and Group Members.
14. The terms of the proposed settlement are set out in a confidential Settlement Deed and a proposed Settlement Distribution Scheme. Information regarding how Group Members may access a copy of these documents is set out below.

LEGAL AND OTHER COSTS:

15. The costs of the MLC MySuper Class Action have been funded by Maurice Blackburn.
16. Maurice Blackburn will seek payment of the reasonable legal costs incurred in conducting the MLC MySuper Class Action from the Settlement Sum. Maurice Blackburn estimates those costs will total approximately \$19.9 million. This estimate includes all legal costs (professional fees and disbursements) incurred to date, future estimated legal costs of the settlement approval and settlement administration and an uplift fee on Maurice Blackburn's professional fees. 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.

17. At the time at which the Court will consider the reasonableness of the proposed settlement, Maurice Blackburn will also seek that reimbursement payments of no more than \$30,000 for each of the Plaintiffs, David Shimshon and Julian Cougan, be deducted from the Settlement Sum to recognise the Plaintiffs' time, inconvenience and any expenses incurred in conducting the class action on behalf of all Group Members. Again, these payments are subject to approval by the Supreme Court of Victoria.
18. If the Court approves the proposed deductions, there will be approximately \$44.30 million available for distribution to Group Members (plus any interest accrued in relation to the Settlement Sum). **Under no circumstances will Group Members be liable to pay any 'out-of-pocket' costs to Maurice Blackburn.**

WHAT GROUP MEMBERS NEED TO DO TO:

19. **OPTION A – DO NOTHING:** If you are a Group Member in the MLC 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 you are eligible to receive one under the Settlement Distribution Scheme (see paragraph 28 below). 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 are set out below.
20. **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, by **4:00pm AEDT on Friday, 4 April 2025** you must either:
- Complete and submit the Online Objection Notice through the Supreme Court of Victoria website at <https://www.supremecourt.vic.gov.au/areas/group-proceedings/mlc-mysuper/objection>; or
 - Return the **attached** Notice of Objection Form to the Supreme Court of Victoria:
 - by email at MLCMySuperClassAction@supcourt.vic.gov.au; or
 - by post at

Commercial Court Registry
Supreme Court of Victoria
210 William Street
Melbourne Victoria 3000
21. **If you wish to object to the proposed settlement you, or your legal representative, must also attend the settlement approval hearing (unless the Court orders otherwise) which will take place on 16 April 2025 at 10:30am at the Supreme Court of Victoria.**
22. The Notice of Objection or Online Objection Notice must be completed in one of the following ways, depending on, for example, whether the Group Member is represented by a solicitor or another person:
- (a) If the Group Member is a **person**, by that person personally signing or personally inserting their electronic signature;
 - (b) If the Group Member is **represented by a solicitor**, by the solicitor personally signing or personally inserting their electronic signature;

- (c) If the Group Member is an **estate**, by the executor of the estate personally signing or personally inserting their electronic signature; or
- (d) If there is a person holding a **power of attorney** for the Group Member, by the attorney personally signing or personally inserting their electronic signature.

23. Aside from objecting Group Members, there is no requirement that any Group Member attend the hearing.

WHO WILL DISTRIBUTE THE PROPOSED SETTLEMENT:

24. The proposed settlement will be distributed by the current trustee of the MLC Super Fund, NULIS, with oversight provided by an independent Expert Consultant. Reporting in relation to the progress of the settlement distribution will also be provided to Maurice Blackburn as Settlement Administrator and to the Court.

PROPOSED SETTLEMENT DISTRIBUTION SCHEME

25. 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 payments) will be distributed in accordance with a Settlement Distribution Scheme. The Settlement Distribution Scheme includes a proposed Apportionment Formula which will determine how each Group Member's individual entitlement to a share of the Settlement Sum will be calculated.

26. A copy of the Settlement Distribution Scheme is available on Maurice Blackburn's website at <http://mblackburn.com.au/MLC>.

INDIVIDUAL SETTLEMENT PAYMENTS:

27. 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 Plaintiffs allege the transfer to MySuper should have occurred (i.e. on a date between 1 June 2015 and 31 August 2015). Settlement payments will also depend on the specific fees paid by individual members and the particular investment options in which Group Members' superannuation was invested before being transferred to the MLC 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 Supreme Court of Victoria before distribution to Group Members can occur (see "Legal and Other Costs" above).

28. 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 the MLC 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 is available on Maurice Blackburn's website at <http://mblackburn.com.au/MLC>.

ACCESSING A SETTLEMENT PAYMENT:

29. If the settlement is approved and you are currently a member of the MLC Super Fund any settlement payment will be made into your MLC Super Fund account.
30. For Group Members who are no longer members of the MLC Super Fund, and for Group Members who received payment from a deceased ADA Member, the proposed Settlement Distribution Scheme contemplates that the Settlement Distributor will make a trustee voluntary payment to the Australian Taxation Office (**ATO**) in accordance with the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth). Funds will then be paid to members (for example by transfer into an active superannuation account or to the member directly) in accordance with the ATO's processes for ATO-held super, details of which are available on the ATO website at: <https://www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/super/growing-and-keeping-track-of-your-super/keeping-track-of-your-super/ato-held-super>. If you are unsure whether you are currently a member of the MLC Super Fund, or you have another query about your MLC account, you should contact NULIS on 132 652 (or +61 3 9966 5802 outside Australia).

WHY CAN'T ALL SETTLEMENT PAYMENTS BE MADE IN CASH?

31. In Australia, there are specific rules in relation to when a person is able to access their superannuation. Usually, a person is not able to access their superannuation until such time as they stop working or retire.
32. If the settlement is approved and 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 superannuation account in the MLC Super Fund or into your current superannuation account if you have transferred or rolled over your superannuation to another fund.
33. If you are currently able to access your superannuation (for example, because you have retired) you may be able to access (withdraw or cash out) your settlement payment from your superannuation account.

SETTLEMENT APPROVAL HEARING:

34. The proposed settlement must first be approved by the Supreme Court of Victoria as fair and reasonable in the interests of Group Members under section 33V of the *Supreme Court Act 1986* (Vic) before it is binding on the parties and Group Members.
35. The Supreme Court of Victoria will consider whether to approve the proposed settlement at a hearing at **10:30am on Wednesday, 16 April 2025** in Melbourne.
36. If you are a Group Member in the MLC MySuper Class Action, you have the right, if you wish, to attend that hearing.

OTHER CLASS ACTION PROCEEDING:

37. If you are a Group Member in the class action *Mervyn Lawrence Brady v NULIS Nominees (Australia) Limited* (Federal Court of Australia, file number NSD 1736/2019) (**Brady Class Action**), it may be that recovery of an amount in the MLC MySuper Class Action (if the settlement is approved by the Court), may impact on the amount of loss and damages that

may be recoverable in the Brady Class Action to the extent that the same loss or damages are sought to be recovered.

38. If you have any queries concerning the Brady Class Action, including whether you are a Group Member in that proceeding, you should contact the lawyers conducting it, William Roberts Lawyers. Further information in relation to the Brady Class Action may be found at: <https://www.williamroberts.com.au/class-actions/mlc-super-fund/>.

FURTHER INFORMATION:

39. Further information in relation to the MLC MySuper Class Action is provided on the website of Maurice Blackburn at <http://mblackburn.com.au/MLC>.
40. The following relevant documents may also be found on the website of Maurice Blackburn:
- (a) Second Further Amended Statement of Claim dated 4 September 2024;
 - (b) Defence to the Second Further Amended Statement of Claim dated 4 October 2024;
and
 - (c) The Proposed Settlement Distribution Scheme.
41. Group Members who wish to obtain a copy of the Settlement Deed should email Maurice Blackburn, at MLCMySuper@mauriceblackburn.com.au.
42. If you have any questions about this notice or the class action, you may contact Maurice Blackburn, at MLCMySuper@mauriceblackburn.com.au or by calling Maurice Blackburn on 1800 519 760. Alternatively, you may seek your own legal advice.
43. **Please note that the Supreme Court of Victoria is not able to answer any questions you may have in relation to this notice.**

**NOTICE OF OBJECTION TO PROPOSED SETTLEMENT
SUPREME COURT OF VICTORIA
MLC MYSUPER CLASS ACTION (Case S ECI 2020 00306)**

**YOU SHOULD ONLY COMPLETE THIS FORM IF YOU INTEND TO OBJECT TO
THE PROPOSED SETTLEMENT OF THE MLC MYSUPER CLASS ACTION**

To: The Supreme Court of Victoria

Commercial Court Registry
Supreme Court of Victoria
210 William Street
Melbourne Victoria 3000
MLCMySuperClassAction@supcourt.vic.gov.au

The person identified below is a Group Member in the above proceeding and gives notice that they object to the proposed settlement of the MLC MySuper Class Action:

A. DETAILS OF OBJECTOR

| | |
|---|--|
| Name of Group Member | |
| Capacity of person completing Notice of Objection (select one) | <input type="checkbox"/> Group Member |
| | <input type="checkbox"/> Executor for the Estate of [name]..... |
| | <input type="checkbox"/> Power of attorney for [name]..... |
| | <input type="checkbox"/> Solicitor acting for [name]..... |
| Postal Address | |
| Email Address | |
| Phone Number | |

B. GROUNDS OF OBJECTION

The ground(s) for my objection to the proposed settlement are as follows:

Please note if you are completing this form online there is a 2,000 character limit.

A. SUBMISSIONS AND EVIDENCE

- I attach submissions and/or evidence in support of my objection (limited to 2 pages).
- I do not attach any submissions or evidence in support of my objection, but wish for my objection to be considered based on my reasons set out above.

B. ATTENDANCE AT HEARING AT 10:30AM ON 16 APRIL 2025

At the hearing:

- 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

IMPORTANT NOTE – if you want this form to be considered by the Court you **must** ensure that you complete this form online via the Supreme Court of Victoria website **OR** ensure that it reaches the Supreme Court of Victoria at the postal or email address above by **4:00pm (AEDT) on 4 April 2025**.