

FEDERAL COURT OF AUSTRALIA

NOTICE OF PROPOSED SETTLEMENT FOR \$140 MILLION

Simon Mallia v Colonial First State Investments Limited & Ors VID 28/2020

THIS NOTICE IS IMPORTANT PLEASE READ IT CAREFULLY, AS IT MAY AFFECT YOUR LEGAL RIGHTS

A. WHAT IS THIS NOTICE?

1. This notice is sent by order of the Federal Court of Australia. It contains information about the:
 - (a) the proposed \$140 million settlement of the **Class Action** commenced in the Federal Court of Australia against Colonial First State Investments Limited (**CFSIL**) the former trustee of the Colonial First State FirstChoice Superannuation Trust and Essential Super, The Colonial Mutual Life Assurance Society Pty Limited (**CMLA**) and AIA Australia Limited (**AIAA**) (collectively, the **Respondents**); and
 - (b) your right to 'opt out' of the Class Action, meaning you will not be bound by the proposed settlement and you will not receive any share of the Settlement Sum.
2. If you are a Group Member in the Class Action, your legal rights will be affected by the Proposed Settlement. Please read this notice carefully. Additional information is also available on the website of Shine lawyers, the law firm representing the Applicant, at <https://www.shine.com.au/service/class-actions/colonial-first-state-class-action>, which you are encouraged to read.

B. WHY HAVE YOU RECEIVED THIS NOTICE?

3. You have received this notice because you have been identified by the Respondents as a Group Member in the Class Action, or you have registered for the Class Action with Shine Lawyers.
4. **Group Members** in this Class Action are any person who:
 - (a) was a member of one or more of the following superannuation funds:
 - (i) FirstChoice Personal Super;
 - (ii) FirstChoice Wholesale Personal Super;
 - (iii) FirstChoice Employer Super; or
 - (iv) Commonwealth Essential Super; and
 - (b) held insurance cover under a group policy of insurance issued by CMLA to CFSIL as trustee of those funds in the period 22 January 2014 to 15 February 2022.

5. You may also be receiving this notice because you are the executor or contact for the estate of a Group Member, or you received a share of a Group Member's superannuation by way of a Family Law order or agreement.

C. WHAT DO YOU NEED TO DO?

6. As explained further in this notice, you have three options:

Option 1: Remain a Group Member and do nothing – If you are a Group Member and the proposed settlement is approved, then there is nothing you need to do to receive a settlement payment.

Option 2: Remain a Group Member and object to the proposed settlement – If you are a Group Member and you think the proposed settlement (or a particular aspect of it) should not be approved, then you may lodge an objection. If you object and the settlement is still approved, then there is nothing you need to do to receive a payment.

Option 3: Opt out of the class action – meaning you will no longer be a part of the class action. If you opt out you will not receive any compensation from the class action if the settlement is approved by the Court, or if the Court otherwise awards compensation.

7. If you are a Group Member and object to the settlement payment you will not be prevented from receiving a settlement payment for this reason.

D. WHAT IS A CLASS ACTION

8. A class action is a legal proceeding brought by one or a small number of people (the 'Applicant/s') on their own behalf and on behalf of a larger group of people (called group members) who all have similar claims against one or more 'Respondents'.

9. 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(s) are responsible for costs but all group members may share in any compensation.

- E. Group members are not asked whether they would like to join a class action. If they fit the definition of group member given in a particular class action, they are automatically part of it unless they opt out.

F. WHAT IS THIS CLASS ACTION ABOUT?

10. The Class Action is based on allegations that:

- (a) CFSIL breached its trustee duties to act in the best interests of its members and not to improperly use its position to gain an advantage for itself or for CMLA; and
- (b) CMLA knew or ought to have known of the existence of the trustee duties CFSIL owed to its members and that it knowingly took receipt of profits of the excess premiums charged to group members.

11. AIAA was joined to the proceedings because it acquired ownership of CMLA's life insurance business on 1 April 2021.
12. The Respondents deny any wrongdoing.

G. WHAT IS THE PROPOSED SETTLEMENT?

13. The Respondents have agreed that CFSIL will pay \$140 million (inclusive of costs and interest) in full and final settlement of the claims brought by the Applicant on behalf of approximately 850,000 group members (**Settlement Sum**). The settlement is made without any admission of liability by the Respondents.
14. The Proposed Settlement must be approved by the Federal Court of Australia as fair and reasonable before it is binding on the parties and Group Members. The Federal Court of Australia will consider whether to approve the Proposed Settlement at a hearing at 4:30 pm on 25 March 2026 in Melbourne (**Settlement Hearing**). If you are a Group Member in the Class Action, you have the right, if you wish, to attend the Settlement Hearing.
15. CFSIL will not use any assets of the First Choice Fund or Essential Super Fund, including any operational risk financial reserve, to pay the Proposed Settlement sum or the costs of its distribution to eligible Group Members.

H. LITIGATION AND FUNDING COSTS

16. The Applicant's lawyers are Shine Lawyers.
17. Woodsford, a litigation funder, funded part of the legal costs incurred by the Applicant to bring the Class Action. The terms of the funding are in a litigation funding agreement signed by the Applicant and Woodsford (the **Funding Agreement**). The balance of the Applicant's legal costs for the Class Action have been deferred by Shine Lawyers.
18. **You do not have to pay any money out of pocket to participate in this class action and no money will be taken from your superannuation account.** If the class action is unsuccessful (should the Proposed Settlement not be approved), you will not have to pay anything. If the Proposed Settlement is approved, then depending in your circumstances, you will receive compensation into your superannuation account or in more limited circumstances be paid directly.
19. Before payments are made to eligible Group Members, the Applicant will seek Court approval that registered Group Members contribute a proportion of the amount of compensation that they are awarded under the settlement to the costs of bringing the class action, including a commission to be paid to the litigation funder. This is called a **Common Fund Order**. The Applicant intends to apply for the costs below to be deducted from the Settlement Sum of \$140 million. These costs will only be deducted if the Court says they are fair and reasonable.
 - (a) Legal costs, fees and expenses currently estimated at approximately \$14,260,701.48 incurred by the Applicant in running the class action;
 - (b) A litigation funding commission of \$38,500,000 which is equivalent to 27.5% of the Settlement Sum;

- (c) The costs of procuring adverse costs insurance in case of an adverse costs order in the class action including insurance premia, and the costs of insurer deeds of indemnity which were provided to the Respondents by way of security for costs in the class action, so that the class action could continue, in the amount of \$4,488,400;
- (d) An uplift to Shine Lawyers of 25% of the legal fees that were not paid by the Funder, estimated at \$1,255,366.85;
- (e) Payments to the Applicant and sample group members estimated at approximately \$24,000 to reimburse them for their time and expenses incurred in representing Group Members in the class action;
- (f) the costs of a contradictor, who will be appointed to represent the interests of Group Members by assisting the Court determine the fairness and reasonableness of the Proposed Settlement; and
- (g) The reasonable costs of administering the settlement, subject to Court approval.

20. Based on the above, (excluding the reasonable costs of administering the settlement) the Applicant estimates that \$81,472,531.67 of the \$140 million will be distributed to Group Members, being 58.2%.

Litigation Funding Commission

- 21. Throughout the course of the class action, Woodsford provided litigation funding to the Applicant on the terms set out in the Funding Agreement. Under this arrangement, Woodsford paid legal costs incurred in prosecuting the class action, including the cost of solicitors, barristers and experts.
- 22. In return for the funding that Woodsford has provided for the Applicant's costs (as distinct from the adverse costs risk, which is discussed further below), Woodsford charges a litigation funding commission. As notified in the opt-out notice to Group Members distributed in 2023, the Applicant intends to apply to the Court for a Common Fund Order under which Woodsford would be paid a litigation funding commission of 27.5% of the Settlement Sum.

Adverse Costs Insurance

- 23. Adverse costs are costs of the successful party in the litigation that the Court may order the unsuccessful party in the litigation to pay.
- 24. To protect against the risk of adverse costs, Woodsford:
 - (a) indemnified the Applicants against liability for any adverse costs order made against the Applicant; and
 - (b) obtained adverse costs insurance to:
 - (i) provide the Applicant and Group Members with additional protection against the risk of adverse costs (the insurance policy expressly covers adverse costs payable by the Applicant); and

(ii) assist the Applicant to provide security for the Respondents' costs (for example by purchasing deeds of indemnity from the adverse costs insurer).

(c) In return for this protection against the risk of having to pay adverse costs, and as notified in the opt out notice, the Applicant agreed to apply for the cost of any such insurance, including any deferred and contingent insurance premiums, to be payable from the Settlement Sum, subject to Court approval.

I. INFORMATION ABOUT YOUR OPTIONS

25. You have one of three options in response to this notice.

Option 1 – Remain a Group Member and do nothing

26. If you are Group Member you may be entitled to share in the Settlement Sum. Depending on the circumstances of the Group Member, money may either be paid directly to the Group Member or into their superannuation account. There is nothing you need to do to receive this payment.

Option 2 – Remain a Group Member and object to the proposed settlement

27. This option is the same as Option 1 except that in addition to remaining a Group Member, you also decide to lodge an objection 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 in Annexure B to this notice by 4:00 pm (AEDT) on 13 March 2026 to:

(a) the Federal Court of Australia at The Registrar, Federal Court of Australia, Victoria District Registry, Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne VIC 3000; and

(b) Shine Lawyers, by email to colonialclassaction@shine.com.au

Option 3 – Opt Out of the Class Action

28. If you opt out, you will cease to be a Group Member. This means that you will not be bound by the outcome of the class action, and you will not be entitled to share in the Settlement Sum, or if it is not approved, any other court-ordered compensation or settlement that might be agreed in the class action.

29. By opting out, you will be entitled to bring your own claim in relation to the allegations covered by this class action against the Respondents. However, if your reason for opting out is so that you may bring your own claim against any of the Respondents, then you should seek legal advice about that claim, including in relation to any applicable time limits on your claim.

30. To opt out you must complete an "Opt Out Notice" form. A copy of this form is at Annexure A to this Notice. You must return the completed form directly to the Victorian District Registry of the Federal Court (Level 7, Commonwealth Law Courts, 305 William Street, Melbourne) or by email to vicreg@fedcourt.gov.au before the Opt Out Deadline of 4pm AEDT on 13 March 2026.

31. You should seek independent legal advice before doing so. Opting out is a serious step and you should not do so unless you understand what it means.
32. Any Opt Out Notices received after the Opt Out Deadline will be invalid and, unless otherwise ordered, you will remain a member of the Class Action.
33. If you opt out, you will not receive compensation as part of the class action.

J. HOW MUCH COMPENSATION WILL YOU RECEIVE IF YOU DON'T OPT OUT?

34. It is not presently possible to provide an estimate of how much each individual Group Member will receive. This is because the amount of compensation each Group Member receives will depend upon their specific circumstances and the Court's approval.
35. Subject to approval by the Court, the amount of the Settlement Sum which is 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 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. A copy of the proposed settlement distribution scheme will be available for review upon request.

K. WHO WILL ADMINISTER THE PROPOSED SETTLEMENT

36. Subject to Court approval:
 - (a) CFSIL and Avanteos Investments Limited (**AIL**) will be appointed as the Settlement Distributor. AIL is the current trustee of the Colonial First State FirstChoice Superannuation Trust and Essential Super; and
 - (b) Shine Lawyers will be appointed as the Settlement Administrator.
37. This means that Shine Lawyers will have oversight of the overall settlement distribution, and CFSIL or AIL are responsible for distributing payments to the Group Members.

L. LEGAL CONSEQUENCES OF THE SETTLEMENT APPROVAL HEARING

38. **If the Court approves the Proposed Settlement** and you are an eligible Group Member who did not opt out, you may receive a share of the Settlement Sum distributed under the settlement. You will also be bound by the settlement and cannot take legal action against the Respondents or their related entities for claims like those made in the Class Action.
39. **If the Court does not approve the Proposed Settlement** no money will be distributed. The Class Action will need to go to trial to be determined by the Court unless another settlement can be reached. There might need to be trials of many or all of the Group Members' claims, even if the Applicant is successful at trial. This will take a long time and be expensive. There is no guarantee the parties will be able to agree to another settlement.

M. HOW LONG WILL THE SETTLEMENT TAKE?

40. A number of steps need to be taken to process the proposed settlement. An indication of the steps is set out in the timeline below.
41. The distribution of this notice represents step 4 in the list below.

SETTLEMENT TIMELINE	
1.	Mediation - settlement agreement reached by the parties The parties attended a mediation and agreed to settle the class action for \$140 million. This amount includes legal costs and represents a full and final resolution of the claims brought by the Applicant and Group Members. The settlement is subject to the parties executing a 'deed of settlement' and the Court's approval of the settlement.
2.	The parties' lawyers write up the deed of settlement, prepare the notice of proposed settlement (i.e. this document), and ask the Court for a hearing date The settlement is formally documented in the signed deed of settlement. A number of documents are prepared for the next Court hearing, including this notice and the method of assessing and distributing the proposed settlement.
3.	Parties attend a Court hearing The Court: <ul style="list-style-type: none">• reviews the notice of proposed settlement and makes orders about its content and distribution to Group Members;• reviews the proposed settlement distribution scheme; and• sets a date for the settlement approval hearing.
4.	Notice of proposed settlement sent to Group Members The distribution of this notice tells Group Members about the proposed settlement, what it means for them and what their options are in response to the notice.
5.	Settlement Approval Hearing The Court reviews the settlement, proposed deductions from the Settlement Sum, hears any objections lodged by Group Members and makes orders approving the settlement if it is satisfied it is <u>fair and reasonable</u> and <u>in the interests of Group Members</u> .
6.	Distribution of settlement payments to Group Members If the settlement is approved, the Settlement Administrator and Settlement Distributor will follow the process set out in the settlement distribution scheme (as approved by the Court) to determine, and make, the payments to each Group Member.

N. WHERE CAN I GET MORE INFORMATION?

42. The purpose of this notice is to provide Group Members in the Class Action with an overview of the key aspects of the Proposed Settlement. If you have any questions about this notice or the Class Action, further detailed information is provided on the website Shine Lawyers at <https://www.shine.com.au/service/class-actions/colonial-first-state-class-action> . You may also wish to seek your own legal advice.

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

Annexure A

Form 21
Rule 9.34

OPT OUT NOTICE

IMPORTANT: You should only complete this form if you do **NOT** want to participate in the Class Action

No. VID 28 of 2020

Federal Court of Australia
District Registry: Victoria
Division: General

Simon Mallia

Applicant

Colonial First State Investments Ltd (ACN 002 348 352) and others
Respondents

By Post: **The Registrar**
 Federal Court of Australia
 Victoria District Registry
 Owen Dixon Commonwealth Law Courts Building
 305 William Street
 Melbourne VIC 3000

By Email: vicreg@fedcourt.gov.au

I, (*insert name*), a Group Member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that I am opting out of the class action.

Date	
Signed by Group Member or Lawyer for Group Member (circle as applicable)	

Please complete the information on the following page

Group Member Details

Full Name:	
Telephone number	
Email	
Address	
Colonial First State account number (if known)	

If you are signing as the solicitor or representative of the Group Member:

Full Name	
Capacity (eg, legal practitioner)	
Telephone number	
Email	
Address	

Annexure B

NOTICE OF OBJECTION TO PROPOSED SETTLEMENT

SIMON MALLIA v COLONIAL FIRST STATE INVESTMENTS LIMITED & ORS (VID 28/2020)

FEDERAL COURT OF AUSTRALIA

IMPORTANT: ONLY COMPLETE THIS FORM IF YOU WANT TO OBJECT TO THE PROPOSED SETTLEMENT OF THE COLONIAL FIRST STATE SUPER INSURANCE CLASS ACTION

To:

The Federal Court of Australia:

The person identified below gives notice that they object to the Proposed Settlement of the Colonial First State Super Insurance Class Action:

A. DETAILS OF OBJECTOR

Name of Group Member:	
Postal Address:	
Email Address:	
Phone Number:	

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):

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C. ATTENDANCE AT HEARING ON 25 March 2026

Please select one option:

- 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

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:

.....
Lawyer's name and firm

D. SIGNATURE

.....
Signature of group member

Date: