

## SUNCORP SUPER CLASS ACTION

### NOTICE OF RIGHTS TO OPT OUT OF THE CLASS ACTION

(Supreme Court of New South Wales Proceedings numbered 2019/193556)

#### WHY IS THIS NOTICE IMPORTANT?

**This is an important notice issued to you by the Supreme Court of New South Wales  
It is sent to you because the Court considers that you are likely a class member.**

As explained below, you may do one of two things in response to this notice:

1. **opt out** of the class action by 18 December 2020 (4.00PM (Sydney time)) and lose a right to get any money compensation out of the class action (but keep your right to try to get some money compensation in an action you start yourself); or
2. **do nothing**.

If you are unsure whether you are a Class Member, you should contact William Roberts Lawyers by sending an email to [SSFclassaction@williamroberts.com.au](mailto:SSFclassaction@williamroberts.com.au), calling their offices in Sydney 02 9552 2111, Melbourne 03 9321 9111 or Brisbane 07 3894 0780, or seek your own legal advice without delay.

#### SOME THINGS YOU SHOULD KNOW ABOUT THE CLASS ACTION

1. A class action has been commenced in the Supreme Court of New South Wales by Kerry Michael Quirk (**Mr Quirk**) on his own behalf and on behalf of all persons who are "**Class Members**" against Suncorp Portfolio Services Limited, as trustee of the Suncorp Master Trust (**Suncorp**), and also against Geoffrey Edward Summerhayes and Sean Carroll, who were directors of Suncorp.
2. The class action seeks compensation (that is, money) from Suncorp, Mr Summerhayes and Mr Carroll in relation to certain fees charged by Suncorp to Class Members' superannuation account(s) and certain payments made by Suncorp to Financial Services Providers (including financial advisers).
3. The solicitors running the case are William Roberts Lawyers. A company named LCM Operations Pty Ltd (**LCM**) is funding the case.
4. If the class action wins (and the money compensation is recovered by judgment or settlement), one but not the only order which the Court may make is to distribute the legal and funding expenses, from the money recovered, equally among all persons who have benefitted from the class action. The effect of any such order, if made, would be that all Class Members who benefit from the recovery of the compensation will contribute an equal percentage of their compensation to pay the expenses and pay reasonable litigation funding charges to LCM and William Roberts Lawyers (for legal costs not paid to them by LCM).
5. If the class action loses, Class Members will have no liability.
6. Class Members are not, and will not be, liable for any "out of pocket" legal costs by remaining in this class action. The costs of running it are being picked up at present by LCM and William Roberts Lawyers.

7. Further general information about this class action (including how you can obtain certain documents filed with the Court) and class actions generally is contained in **Annexure 2**.

## **YOUR TWO OPTIONS**

### **Option 1- Opt out and cease to be a Class Member**

8. Class Members who opt out will not be bound by the outcome of the class action and will not receive any money from the class action if it wins or settles.
9. Because some of the relevant conduct of Suncorp occurred a long time ago, if this class action had not been brought, then some claims may have been lost from around 1 July 2019 onwards. This class action “stopped the clock” on those claims being lost and if you are one of these Class Members, and you opt out, you may only have a very short period of time to take your own action before your claim is lost. You should seek legal advice before opting out.
10. To opt out of this class action you need to complete the below "Opt Out Notice" contained at **Annexure 1**, and then return it to the Registrar of the Supreme Court of New South Wales at the address on the form. The Notice must reach the Registrar by no later than **4:00pm (Sydney time) on 18 December 2020**, otherwise it will not be effective.
11. **NOTE:** If you have already signed a litigation funding agreement with LCM and retainer with William Roberts Lawyers, your litigation funding agreement with LCM contains terms as to your rights and obligations in the event that you opt out of this class action.

### **Option 2 – Do nothing**

12. Class Members who do not opt out by 18 December 2020 will remain Class Members.
13. If further steps are required to bring your personal individual claim, those steps will not be funded by litigation funding from LCM (unless you have or enter a funding agreement with LCM covering those steps).

## **TWO IMPORTANT THINGS TO NOTE**

14. First, this is not a scam. In this regard, you may contact the plaintiff’s lawyers, William Roberts Lawyers and can check by visiting their website at [www.williamroberts.com.au](http://www.williamroberts.com.au), emailing them at [SSFclassaction@williamroberts.com.au](mailto:SSFclassaction@williamroberts.com.au), or telephoning them at any of their offices in Sydney 02 9552 2111, Melbourne 03 9321 9111 or Brisbane 07 3894 0780. You can also obtain documents that have been filed with the Court from William Roberts Lawyers, being copies of the Amended Commercial List Statement (**ACLS**) filed with the Court by Mr Quirk and each of the Defendants’ Amended Commercial List Responses.
15. Second, if there is anything of which you are unsure of or you don’t want to speak with William Roberts Lawyers (or you want to understand their involvement or the funding agreements or retainer better), you should get legal advice from a solicitor you choose.

## ANNEXURE 1

Form 115 (version 2)  
UCPR 58.2

## OPT OUT NOTICE

## COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity Division
List	Commercial List
Registry	Sydney
Case number	2019/193556

## TITLE OF PROCEEDINGS

Plaintiff	<b>Kerry Michael Quirk</b>
First Defendant	<b>Suncorp Portfolio Services Limited</b> in its capacity as trustee for the Suncorp Master Trust
Second Defendant	<b>Geoffrey Edward Summerhayes</b>
Third Defendant	<b>Sean Carroll</b>

## FILING DETAILS

Filed for: .....

*(Name of person opting out of class action)*

Legal representative: .....

*(If applicable)*

Legal representative reference: .....

*(If applicable)*

Contact name and telephone:

Contact email:

## OPT OUT NOTICE

Name of person opting out

Address of person opting out

I....., a Class Member in these representative proceedings,  
opt out of the proceedings.

I understand that in opting out:

- 1 I forego the right to share in any relief obtained by the representative party in the representative proceedings;
- 2 I am not entitled to receive any further notification about the conduct or disposition of the proceedings; and
- 3 To the extent that I have a claim against the defendant(s), any limitation period suspended by the commencement of the representative proceedings has recommenced to run.

### SIGNATURE

Signature of legal representative

Signature of or on behalf of  
person opting out if not legally  
represented

Capacity

.....  
(eg solicitor, authorised officer of person opting out,  
person opting out)

Date of signature

### NOTICE TO PERSON OPTING OUT

You must, within the time specified in the notice to Class Members:

- 1 file this form in the registry of the court at the address below, or in the manner provided in the notice to Class Members; and
- 2 serve a copy of this form on the representative party at the address, or in the manner provided, in the notice to Class Members.

### REGISTRY ADDRESS

Street address	Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

## ANNEXURE 2

### FURTHER MORE DETAILED INFORMATION

#### What is this class action about?

This class action involves allegations concerning:

- (1) Conflicted remuneration including:
  - (a) commissions paid to Financial Services Licensees (as defined in the Amended Commercial List Statement - ACLS) in relation to Suncorp Products (as Defined in the ACLS) including:
    - (i) commissions on contributions by members;
    - (ii) ongoing commissions paid on account of balances of member accounts;
    - (iii) commissions on insurance premiums;
    - (iv) amounts paid on the total amount of funds that Financial Services Licensees introduced to Suncorp; and
  - (b) benefits given to a Financial Services Licensee who provided financial product advice to persons as retail clients that, because of the nature of the benefit or the circumstances in which it was given:
    - (i) could reasonably be expected to influence the choice of financial product recommended by the licensee or representative to retail clients; or
    - (ii) could reasonably be expected to influence the financial product advice given to retail clients by the licensee or representative,

**(Conflicted Remuneration)**; and
- (2) The charging of fees by Suncorp to members which included amounts (**Excess Fees**) to fund the payment of Conflicted Remuneration.

The Plaintiff alleges that: (a) Suncorp's ongoing decision to pay Conflicted Remuneration; (b) each act of paying Conflicted Remuneration; and (c) the charging of Excess Fees to fund the payment of Conflicted Remuneration, after 1 July 2013, were contraventions of the duties Suncorp owed to the Plaintiff and the Class Members under the *Superannuation Industry (Supervision) Act 1993* (Cth) (SIS Act) and were breaches of the trust deed.

In summary, Mr Quirk alleges that:

- (a) It was not in his or the Class Members' best interests for Conflicted Remuneration to continue to be paid or for Excess Fees to be charged to fund the payment of Conflicted Remuneration after 1 July 2013.
- (b) There was a conflict of interest between:
  - (i) on the one hand, the interests of the Plaintiff and each of the Class Members for Conflicted Remuneration not to be paid and for Excess Fees not to be charged; and

- (ii) on the other hand, Suncorp's own interests to pay Conflicted Remuneration and the interests of Financial Services Licensees to receive Conflicted Remuneration.
- (c) It was contrary to Suncorp's duty of care, skill and diligence to continue to pay Conflicted Remuneration and charge Excess Fees to the Plaintiff and Class Members to fund the payment of Conflicted Remuneration after 1 July 2013.
- (d) Suncorp should have ceased charging Excess Fees to the Plaintiff and Class Members to fund the payment of Conflicted Remuneration from no later than 1 July 2013.
- (e) Suncorp failed to advise the Plaintiff and Class Members that they had the right to request Suncorp to transfer their investments to a product in respect of which:
  - (i) They would not be charged Excess Fees; or
  - (ii) Suncorp would not pay Financial Services Licensees any Conflicted Remuneration.
- (f) Conflicted Remuneration paid by Suncorp in respect of Suncorp Products that the Plaintiff and Class Members acquired an interest in after 1 July 2014 contravened the FOFA Reforms. In particular, Suncorp continued to pay Conflicted Remuneration after Suncorp transferred the interests of most of its members from existing Suncorp Products into 8 new Suncorp Products as part of Suncorp's Super Simplification Program implemented between 1 August 2016 and February 2017, in contravention of its duties under the SIS Act and in breach of trust.
- (g) Suncorp engaged in unconscionable conduct under s 12CB of the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act), by continuing to pay Conflicted Remuneration and charge the Plaintiff and Class Members Excess Fees to fund the payment of Conflicted Remuneration after 1 July 2013.
- (h) Carroll and Summerhayes were involved in the SIS Act contraventions and unconscionable conduct under the ASIC Act by Suncorp, summarised above, to the extent that they were directors of Suncorp at the relevant times.

Suncorp, Summerhayes and Carroll deny any wrongdoing as alleged by Mr Quirk.

For further details concerning the claim, you can obtain Copies of the ACLS and each of the Defendants' Commercial List Responses (Refer to Section 5 below).

## 2. WHAT IS A CLASS ACTION?

A class action is an action that is brought by one person (referred to as the "Plaintiff") on his or her own behalf and on behalf of a class of people (commonly referred to as "Class Members") against another person (referred to as the "Defendant") where the Plaintiff and the Class Members have the same or similar claims against the Defendant.

Class 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 Plaintiff is responsible for the costs.

Class Members are "bound" by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen in two ways: a *judgment* following a trial, or a *settlement* at any time. If there is a judgment or a settlement of a class action, Class Members *will not* be able pursue the same claims and *may not* be able to pursue similar or related claims against the Defendant in other legal proceedings. Class Members should note that:

- (a) in a *judgment* following trial, the Court will decide various common factual and legal issues in respect of the claims made by the Plaintiff and Class Members. Class Members will be bound by those findings, whether or not they are favourable to them (unless they are appealed). Importantly, if there are other proceedings between a Class Member and the Defendant, neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issues decided in the trial of common issues in the class action. This means that if the issues are resolved against the Plaintiff, Class Members will be unable to pursue claims they have which are the same as the Plaintiff's claims, and will not be able to pursue other claims which are dependent upon common issues which have been resolved against the Plaintiff; and
- (b) in a *settlement* of a class action, where the settlement provides for compensation to Class Members it is likely to extinguish *all* rights to compensation which a Class Member might have against the Defendant which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you consider that you have claims against a Defendant 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 (see below).

### 3. WHAT IS 'OPT OUT'?

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

### 4. WHO ARE THE CLASS MEMBERS?

You are a Class Member if you:

- (a) are or were a member of a superannuation fund under the Master Trust (as defined in paragraph 11 of section C of the ACLS); **and**
- (b) had an account affected by the payment of Conflicted Remuneration to Financial Services Licensees (as defined in paragraph 9 of the Amended Commercial List Statement) in the period 1 July 2013 to 21 June 2019, inclusive (**Relevant Period**); **or**
- (c) at any time during the Relevant Period received payment, or were entitled to receive payment, from a superannuation fund under the Master Trust of all or part of the benefits of a deceased member who satisfied subparagraphs (a) and (b) above, by reason of the member's death; **or**
- (d) satisfy all of the following;
  - (i) were the spouse (within the meaning of s 90MD or 90XD of the *Family Law Act 1975* (Cth)), of a member of the superannuation fund under the Master Trust who at any time during the Relevant Period had rights in or in respect of a superannuation fund under the Master Trust, and who satisfied subparagraphs (a) and (b) above; and
  - (ii) at any time during the Relevant Period received a transfer from a superannuation fund under the Master Trust of all or part of the member's account(s) in a superannuation fund under the Master Trust pursuant to an order or settlement in a *Family Law Act 1975* (Cth) proceeding or a

superannuation agreement within the meaning of Part VIII B of the *Family Law Act 1975* (Cth); **and**

- (e) were not during the Relevant Period, and are not, any of the following;
  - (i) a director, an officer, or a close associate (as defined by s. 9 of the Corporations Act) of Suncorp; or
  - (ii) a judge, judge of Appeal or the Chief Justice of the Supreme Court of NSW or a judge or the Chief Justice of the High Court of Australia.

If you are unsure whether you are a Class Member, you should contact William Roberts Lawyers by sending an email to [SSFclassaction@williamroberts.com.au](mailto:SSFclassaction@williamroberts.com.au); calling their offices in Sydney 02 9552 2111, Melbourne 03 9321 9111 or Brisbane 07 3894 0780, or seek your own legal advice without delay.

## **5. WHERE CAN YOU OBTAIN COPIES OF RELEVANT DOCUMENTS?**

Copies of relevant documents, including the Amended Commercial List Statement (ACLS) and each of the Defendants' Commercial List Responses:

- (a) can be inspected between 9am and 5pm at the offices of William Roberts Lawyers in Sydney, Melbourne and Brisbane by pre-arranged appointment, which can be made by sending an email to [SSFclassaction@williamroberts.com.au](mailto:SSFclassaction@williamroberts.com.au); calling their offices in Sydney 02 9552 2111, Melbourne 03 9321 9111 or Brisbane 07 3894 0780. For further details go to: [www.williamroberts.com.au](http://www.williamroberts.com.au) .
- (b) may be obtained from the Supreme Court of New South Wales website at <http://www.supremecourt.justice.nsw.gov.au> .