

## SUPPLEMENTARY OPT OUT NOTICE

### MLC SUPER FUND CLASS ACTION (NSD1736/2019)

### FOR POTENTIAL CLASS MEMBERS WHO PAID “PLAN SERVICE FEES” IN RELATION TO MASTERKEY BUSINESS SUPER

#### 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 Class Member in the “MLC Super Fund Class Action” which has been commenced against NULIS Nominees (Australia) Limited in its capacity as trustee for the MLC Super Fund (**NULIS**).

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

1. **Opt out of the class action** by **14 October 2022** (4.00PM (Sydney time)). This means that you remove yourself as a Class Member and will not be bound by the outcome of any judgment or settlement in the class action. If the class action is successful, you will not be eligible to share in the benefit of any settlement or judgment in the class action. You will be able to bring your own claim against NULIS seeking any compensation to which you are entitled, provided that you issue Court proceedings within the time limit applicable to your claim.
2. **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 qualify as a Class Member, you will have the benefit of any result in the class action. NULIS’ position is that any compensation should be paid back to the superannuation accounts of members (i.e. rather than directly into the bank accounts of members).

**You can register your details** to provide information about your claim and receive updates about the case. **This is voluntary** – you do not need to register at this time to remain a Class Member or to be notified of any settlement or judgment, but it may be important to keep your details up to date.

#### A. INFORMATION ABOUT THE CLASS ACTION

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

A class action is a type of legal action in which one person can bring a claim on behalf of a group of persons (referred to as Class Members).

Unless a Class Member ‘opts out’ (as explained in section B below), they stay in the class action even if they did not do anything to join it.

## **2. What is the MLC Super Fund Class Action about?**

The class action seeks compensation (that is, money) in respect of fees and premiums charged to superannuation accounts of some members of the MLC Super Fund (ABN 70 732 426 024) (**MLC Super Fund**) between 1 July 2016 to 23 September 2020 from which some commissions were deducted and paid to financial services licensees. The solicitors running the case are William Roberts Lawyers (**WRL**).

The class action is against NULIS Nominees (Australia) Limited as trustee for the MLC Super Fund (**NULIS**). The Applicant claims that NULIS breached certain legal duties as a result of two decisions made by the Board of NULIS and the continued payment of some commissions in the period 1 July 2016 to 23 September 2020. NULIS denies the allegations made against it and is defending the class action.

For further detail about the allegations made in the class action against NULIS and the responses from NULIS, you may refer to the Fourth Further Amended Statement of Claim and the Defence to it, both of which can be accessed at <https://portal.omnibridgeway.com/mlc>, <https://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions> and <https://www.williamroberts.com.au/Class-Actions/MLC-Super-Class-Action>.

## **3. Is a Class Member liable for any costs and charges?**

Class Members are not, and will not be, liable for any “out of pocket” legal costs by remaining in this class action. Companies related to Omni Bridgeway Limited (**Omni Bridgeway**) are funding the case by paying WRL and covering any exposure to pay NULIS’ costs. The costs of running the class action are being paid in the first instance by Omni Bridgeway and WRL.

If the class action is unsuccessful, Class Members will have no liability to pay any legal and funding costs.

If the class action is successful and results in the payment of money by NULIS, the Court will be asked by the Applicant or Omni Bridgeway to distribute the legal and funding costs, from the money recovered, among all persons who have benefitted from the class action (sometimes referred to as an “**Expense Sharing Order**”). The effect of an Expense Sharing Order, if made, would be that all Class Members who benefit from the class action will contribute to the legal and funding costs equally. An Expense Sharing Order means even Class Members who do not sign up to a litigation funding agreement with Omni Bridgeway might have to contribute to legal and funding costs out of their share of any money obtained from the class action in the same way as those that sign a litigation funding agreement do. NULIS does not consider that an Expense Sharing Order is appropriate if the class action is successful. Instead, NULIS claims that any compensation should be restored to the superannuation accounts of the Class Members, without deducting any funding or legal costs. NULIS will be liable to pay WRL’s reasonable costs if the class action is successful.

## **4. Am I a Class Member?**

The criteria to be a Class Member is set out at paragraph 3 of the Fourth Further Amended Statement of Claim, which can be accessed at <https://portal.omnibridgeway.com/mlc>,

<https://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions> and <https://www.williamroberts.com.au/Class-Actions/MLC-Super-Class-Action>.

You may be a Class Member if:

- (a) you were a member of The Universal Super Scheme prior to 1 July 2016;
- (b) you became a member of the MLC Super Fund from 1 July 2016;
- (c) between 1 July 2016 and 23 September 2020, you were charged a fee called a “plan service fee” in respect of the MasterKey Business Super product and have not had that fee fully refunded by NULIS; and
- (d) you did not receive services in exchange for that fee.

**If you received this notice directly via email or mail, NULIS’ business records indicate that you meet criteria (a) to (c) above and therefore are likely a potential Class Member.**

If you are unsure if you qualify as a Class Member, you may provide your details at <https://portal.omnibridgeway.com/mlc>, after which you may be assisted with further information.

## **B. YOUR TWO OPTIONS**

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### ***OPTION 1 – OPT OUT AND CEASE TO BE A CLASS MEMBER***

If you qualify as a Class Member and you opt out, you will cease to be a Class Member of the MLC Super Fund Class Action. This means you will not receive any money from the class action if the matter is successful at trial or settles. If you opt out, you will no longer be a part of the class action but will be able to bring your own claim against NULIS in relation to the allegations covered by the class action (as summarised in section 2 above) provided that you issue Court proceedings within the time limit applicable to your claim.

This class action suspended limitation periods but they will start to run again if you opt out. Therefore, if you opt out, you will only have a limited period of time to take your own action before your claims are lost in whole or in part. You should seek independent legal advice before opting out. To opt out is to take a serious step - you should not do it unless you understand what it means.

**To opt out of this class action you need to complete the annexed "Opt out notice" and then return it to the Federal Court of Australia at the address on the form by no later than 4:00pm (Sydney time) on 14 October 2022.**

## **OPTION 2 – REMAIN IN THE CLASS ACTION**

Class Members who do not opt out by **14 October 2022** (Option 1 above) will remain Class Members. **This means that you do not have to do anything to remain in the class action.**

If you qualify as a Class Member, you will be bound by the outcome of the MLC Super Fund Class Action. If the class action is successful, depending on the relief granted and the nature of your interest in your superannuation account, you may be eligible to share in the benefit provided under any order, judgment or settlement in favour of the Applicant and Class Members. NULIS' position is that any compensation should be paid back to the superannuation accounts of members (i.e. rather than directly into the bank accounts of members).

If the class action is unsuccessful or is not as successful as you might have wished, and you qualify as a Class Member, you will continue to be bound by the outcome of the MLC Super Fund Class Action and will not be able to bring another action against NULIS for the same claim or potentially for any related claim.

At some point you may be requested to provide some information in order to participate in any settlement. If the class action does not settle, you may also need to run your individual case following judgment on common issues in the class action.

## **REGISTER YOUR DETAILS FOR THE CLASS ACTION**

Class Members are invited to provide their details to the funder and the lawyers running the class action. Registration is voluntary and you do not have to register to remain a Class Member.

**If you are no longer a member of the MLC Super 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. If you want to register, you should go to Omni Bridgeway's website: <https://portal.omnibridgeway.com/mlc> and complete the information form online only.

## **C. THREE IMPORTANT THINGS TO NOTE**

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**First, this is not a scam.** You can check (and get copies of relevant documents about the class action) by:

- visiting the website of the Federal Court of Australia: <https://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions>;
- visiting the website of Omni Bridgeway: <https://portal.omnibridgeway.com/mlc>; or
- visiting the website of WRL: <https://www.williamroberts.com.au/Class-Actions/MLC-Super-Class-Action>.

**Secondly, if you wish to remain in the class action,** you do not need to do anything in relation to this Notice. You can actively register your interest for the class action, which may assist the Applicant and WRL to consider your details and circumstances in order to advance your claim specifically for any settlement talks that may occur in the future. Registering is voluntary – you do not need to register at this time to remain a Class Member or to be notified of any settlement or judgment (although registering may assist to keep your contact details up to date).

**Thirdly, if there is anything of which you are unsure of** or you don't want to speak with WRL (or you want to understand their involvement or the funding agreements or retainer better – copies of which can be obtained following registration via Omni Bridgeway's website portal), you should get legal advice from your own solicitor.

**ANNEXURE 1**

Form 21

Rule 9.34

**Opt out notice**

No. 1736 of 2019

Federal Court of Australia

District Registry: New South Wales

Division: General

**Mervyn Lawrence Brady**

Applicant

**NULIS Nominees (Australia) Limited (ACN 008 515 633) in its capacity as trustee of the MLC Super Fund**

Respondent

To: The Registrar

Federal Court of Australia

New South Wales District Registry

Level 17, Law Courts Building, Queens Square, Sydney NSW 2000

The person named below, as a Class Member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that the person is opting out of the representative proceeding.

Name of Class Member	
Postal address of Class Member	
Telephone contact	
Email address	
ACN/ABN (if a company)	

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

Person completing this form	
Authority of person completing	
Postal address of person completing this form:	
Telephone contact	
Email address	

Date:

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Signed by (print name)  
Class Member / Lawyer for the Class Member / Class  
Member representative