

## OPT OUT NOTICE

### QSuper Class Action – Notice of Opt Out Deadline

Federal Court of Australia Case No. VID691/2021

#### THIS IS AN IMPORTANT NOTICE

This is an important notice approved by the Federal Court of Australia, which you are receiving because you have been identified by QSuper as a potential group member in the class action commenced against the QSuper Board (**QSuper**) by Jessica Amy Challenor (**Applicant**) on her own behalf and on behalf of all persons who are group members.

As explained at paragraphs 29 to 36 below, you may do one of two things in response to this notice:

- I. **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 group member, you will have the benefit of any result in the class action (subject to costs and other matters explained at paragraphs 20 to 28 below). If the class action is unsuccessful, or not as successful as you might have wished, you will not be able to pursue the same claims, and may not be able to pursue related claims against QSuper in other legal proceedings.

OR

- II. **Opt out of the class action by 15 June 2023**. This means that you remove yourself as a group 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 may decide to bring your own claim against QSuper seeking any compensation to which you may be entitled, provided that if you wish to issue Court proceedings you must do so within the time limit applicable to your claim.

**You should read this notice carefully. Any questions you have about this notice should NOT be directed to the Court or QSuper. If there is anything in this notice that you do not understand, you should seek legal advice without delay.**

#### Why are you getting this notice?

1. A class action has been filed in the Federal Court of Australia against QSuper Board (**QSuper**) on behalf of certain current and former QSuper Fund Members (**Fund Members**), including those who may have received a payment from a deceased Fund Member's interest in the QSuper Fund, or those who have received a payment from a Fund Member's QSuper account pursuant to an order or settlement in a *Family Law Act 1975* (Cth) proceeding. Further details on who may be a group member in the class action are set out in this notice at paragraph 16.

2. This class action claims, among other things, that QSuper breached its obligations by failing to notify members of changes to their life insurance policy premiums.
3. You have received this notice because you have been identified by QSuper as a potential group member in this class action.

### **What is this notice about?**

4. This notice describes:
  - (a) the class action; and
  - (b) the steps you should take if you don't want to be part of it.
5. **You should read this notice carefully. Any questions you have about this notice should NOT be directed to the Court or QSuper. If there is anything in this notice that you do not understand, you should seek legal advice as soon as possible.**

### **This notice is not a scam.**

6. This notice is not a scam. You can check and get copies of the relevant documents about the class action either:
  - (a) by downloading them from Shine Lawyers at <https://www.shine.com.au/service/class-actions/qsUPER-class-action> or requesting a copy of them by telephone on 1800 325 172; or
  - (b) by contacting the Registry of the Federal Court (contact details are available at <https://www.fedcourt.gov.au/contact>).

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

7. A class action is a claim brought by one or more persons (like the Applicant in this case) on their own behalf and on behalf of a group of people (called the **Group Members**) against another person (called the **Respondent**, which is QSuper in this case).
8. The Applicant's claim and the claims of the Group Members have certain issues in common, which are referred to as **common issues**. When the Court decides the Applicant's claim, it decides the common issues, and the Group Members are bound by the Court's decision.
9. Alternatively, if the Respondent agrees to settle the claims of the Applicant and the Group Members, and if the Court approves a proposed settlement (the Court being satisfied that the settlement is fair and reasonable for the Applicant and the Group Members), the Group Members are bound by the settlement.
10. Importantly, a person does not need to elect or consent to be a Group Member. A person becomes a Group Member automatically if that person meets the criteria for being a Group Member set out in a court document filed by the Applicant to begin the class action called the

Originating Application. (The criteria that apply in this class action are explained at paragraph 16 of this notice.)

11. Although Group Members are not asked whether they wish to join a class action, they are given an opportunity to not participate in the class action by **opting out**. This notice explains how to opt out if that is a step you want to take. Before explaining this, the notice gives you some information about this class action, so that you can make an informed decision whether to opt out.

### **What is this class action about?**

12. The Applicant has launched a class action against QSuper on her own behalf and on behalf of Group Members (see definition of Group Members in this class action at paragraph 16 below). The Applicant claims, among other things, that QSuper breached its obligations by failing to properly notify members in 2016 about changes to their life insurance policy premiums and by failing to implement systems to automatically apply premiums at lower occupational rates according to the personal circumstances of certain members.
13. The insurance premium changes related to a package of new insurance arrangements introduced by QSuper from 1 July 2016 that permitted members to personalise their insurance cover and elect to have their insurance premiums charged according to occupational ratings which might have resulted in lower insurance premiums for certain members. The Applicant alleges that, as a consequence of QSuper breaching its obligations, she and other Group Members suffered losses because:
  - (a) members of the QSuper superannuation fund (**QSuper Fund**) were charged insurance premiums that were higher than they should have been; and
  - (b) to that extent the returns on members' superannuation accounts were also adversely affected.
14. The Applicant claims that the losses have also impacted beneficiaries of deceased members and (former) spouses of members whose superannuation accounts were adversely affected, and those beneficiaries and (former) spouses are therefore also Group Members for the purposes of this class action.
15. QSuper denies the allegations made in this class action and has filed a Defence which is also available via the methods set out at paragraph 6 above.

### **Who are the Group Members in this class action?**

16. The Applicant in this class action is Jessica Amy Challenor, a former member of the QSuper Fund. You are a Group Member if you either:
  - (a) were members (**Fund Members**):
    - i. of the QSuper superannuation fund (**QSuper Fund**); and

- ii. who on 17 May 2016 belonged to one of the accumulation categories defined by sections 22(1) and (2) of the *Superannuation (State Public Sector) Deed 1990* (the **QSuper Deed**); and
  - iii. who were beneficiaries of the policy of insurance established by QSuper Board by sections 23I(1) and 23K of the QSuper Deed which commenced on or about 16 December 2013; and
  - iv. who, had they made the necessary election under clause 10.4.1 of the policy of insurance entered into on or about 9 June 2016 by QSuper with QInsure Pty Ltd (**QInsure**) to be subject to “Occupational Rates” (as defined in the schedules to the policy), would have been entitled after 1 July 2016 to be charged premiums at one of the following rates:
    - A. Standard Rate (as defined in the schedules to the policy) – where the Fund Member was between the ages of 17 and 39 years (inclusive); or
    - B. Professional Rate (as defined in the schedules to the policy); or
    - C. White Collar Rate (as defined in the schedules to the policy),
 or
- (b) at any time after 1 July 2016 received payment in respect of a deceased Fund Member of all or part of the interest of a Fund Member in the QSuper Fund; or
- (c) satisfy both of the following paragraphs:
- i. was the spouse of a person who was a Fund Member; and
  - ii. pursuant to an order or settlement in a *Family Law Act 1975* (Cth) proceeding or a superannuation agreement within the meaning of part VIIIB of that Act, at any time received a transfer from a Fund Member of all or part of the Fund Member’s interest in the QSuper Fund.

17. If you meet any of (a), (b) or (c) of the above criteria, you are a Group Member in this class action.

18. If you are unsure whether or not you are a Group Member, you should contact the Applicant’s lawyers, Shine Lawyers, on 1800 325 172 or [qsuper@shine.com.au](mailto:qsuper@shine.com.au), or seek your own legal advice without delay.

### **Are there any costs potentially associated with being a Group Member?**

#### ***Litigation funding***

19. The Applicant’s lawyers are Shine Lawyers. A company called Woodsford Group (**Woodsford**) is funding the proceedings for the Applicant and Group Members. In order to bring the class action, the Applicant signed a litigation funding agreement with Woodsford (**LFA**).

### ***Legal costs***

20. The LFA means that Woodsford is paying the Applicant's legal costs, including the Applicant's costs of bringing the claim on behalf of all Group Members. Shine Lawyers are deferring some of their costs.
21. You do not have to pay any money out of pocket to participate in this case.
22. To clarify further, if the class action is unsuccessful, you will not be liable for any legal or adverse costs, but if the class action is successful it is proposed that you will contribute to the costs out of any settlement or judgment received in respect of your claim. This is explained in further detail in paragraphs 23 to 28 below.

### ***Woodsford's proposed remuneration and distribution of any funds***

23. In signing the LFA, the Applicant agreed that if the class action is successful, and the Applicant obtains proceeds from a settlement or judgment, she will repay to Woodsford from those proceeds any reasonable costs advanced by Woodsford (including any interim adverse costs, security, or upfront insurance premiums relating to after the event (ATE) insurance or adverse costs insurance), Woodsford's funding commission, unpaid (including deferred and contingent) insurance premiums due under any ATE insurance policy, as well as fees deferred by Shine Lawyers for recovery from any settlement or judgment, together with an uplift of 25% on those deferred fees.
24. Pursuant to the LFA, the Applicant has also agreed to apply for an order that will fairly distribute the Applicant's obligations under its funding agreement among all people who have benefited from the action (ie Group Members). This may be by way of what is known as a Common Fund Order, or may be by another order of the Court.
25. For the purposes of a Common Fund Order, the Applicant has agreed to apply for an amount to be paid to Woodsford consistent with the Funder's Success Fee, defined in the LFA as the amount equal to twenty-seven point five percent (27.5%) of Gross Proceeds.
26. Gross Proceeds is the total amount received (including but not limited to any settlement sum, compensation, costs and damages award by the Court and interest) paid or credited to, in favour of, for the benefit of, or to the order of, the Applicant or Group Members, by the Respondent (QSuper) or any third party which relates to the subject matter of the class action.
27. If the matter settles, or the Court orders that QSuper compensate the Applicant and Group Members, the Applicant intends to apply for orders that the following amounts be withdrawn from the Gross Proceeds, in the following order of priority:
  - (a) first, repayment to Woodsford of its reasonable costs in funding the proceeding (as described above and for the avoidance of doubt including any interim adverse costs, security, or upfront insurance premiums relating to the policy of ATE insurance or adverse costs insurance taken out by Woodsford);

- (b) secondly, payment to Woodsford of its ‘funding commission’ (or **Funder’s Success Fee**) and payment to Shine Lawyers of any deferred fees and uplift on those deferred fees, plus payment of any ATE or adverse costs insurance premiums due;
  - (c) thirdly, payment to the Applicant and any sample group members to reimburse them for expenditure reasonably incurred in the class action for the benefit of the Applicant, sample group members or Group Members; and
  - (d) fourthly, payment of the balance to all Group Members (including the Applicant) in accordance with a distribution scheme approved by the Court, noting that QSuper’s position is that any compensation should be paid back to the superannuation accounts of members (ie rather than directly into the bank accounts of members).
28. This means that if you are a Group Member **and you do not opt out**, the Court may order that your proportionate share of the costs of the class action, including your proportionate share of the Funder’s Success Fee, be deducted from any recovery made in respect of your claim (regardless of whether you have entered into an LFA) in return for Woodsford (and others, including Shine Lawyers) bearing the costs risk of the class action.

### **What do you need to do?**

#### ***Option 1: Continue to be part of this case***

29. You do not need to do anything to remain a Group Member in this class action.
30. While you do not need to register your details with Shine Lawyers, if you wish to, you may do so online at:
- <https://qsuperclassaction.shine.com.au/Registration>
31. If you choose to register your details, Shine Lawyers will keep you up to date with material developments in the case and it will be possible for your individual claims to be more specifically considered during any settlement negotiations.
32. As noted above, you do not need to register to remain a Group Member. However, it is likely that at some point, you will need to register your interest to participate in this matter, either to receive compensation (money) from any settlement sum or (if there is no settlement) to take further steps to bring your claim forward following the initial trial of common issues.
33. If you have already completed a registration form with Shine Lawyers, you do not need to provide your details again. If you are not able to complete the online registration form, please email [qsuper@shine.com.au](mailto:qsuper@shine.com.au) or phone 1800 325 172.
34. All Group Members will be bound by the result of the case in so far as it relates to them. This means that:
- (a) If the class action is successful, you will be entitled to share in the benefit of any order, judgment or settlement sum awarded in favour of the Applicant and Group Members, although you may have to satisfy certain conditions before your entitlement

arises, including completing a registration form and any conditions that apply by operation of superannuation laws.

- (b) If the class action is unsuccessful, or not as successful as you might have wished, you will not be able to pursue the same claims, and may not be able to pursue related claims against QSuper in other legal proceedings.

***Option 2: Opt out of this class action***

- 35. If you do not want to be part of this case, you will need to fill out the form annexed to the back of this notice and send it to the Registrar of the Federal Court of Australia at the address listed on the form.

**IMPORTANT: the form must reach the Registrar by no later than 15 June 2023 otherwise it will not be accepted and you will be a Group Member.** The form is called an “Opt Out Notice” and it is Annexure A to this notice. You can also obtain a copy of the Opt Out Notice from:

- (1) Shine Lawyers’ website at: <https://www.shine.com.au/service/class-actions/qsUPER-class-action>; or
- (2) By emailing [qsUPER@shine.com.au](mailto:qsUPER@shine.com.au); or
- (3) By writing to:

**QSuper Class Action**  
Shine Lawyers  
PO Box 12011  
George Street, Brisbane QLD 4000

- 36. If you opt out of the case you will not be bound by, or entitled to share in the benefit of, any order, judgment or settlement awarded in relation to this class action, but you will be at liberty to bring your own claim against QSuper, provided that if you wish to issue Court proceedings you must do so within the time limit applicable to your claim.

Annexure A

No. VID691 of 2021

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Jessica Amy Challenor**  
Applicant

**QSuper Board (ABN 32 125 059 006)**  
Respondent

By post: The Registrar  
Federal Court of Australia  
Victoria District Registry  
305 William Street  
Melbourne, VIC 3000

By Email: [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au)

**OPT OUT FORM**

**The Court has ordered that any person wishing to opt out of this class action must do so by 15 June 2023.**

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* (Cth), that the person is opting out of the proceeding.

Name of the Group Member	
Postal address of the Group Member	
Telephone number	
Email address	

If you are completing this form as the solicitor or representative of the Group Member:

Name of the person completing this form	
Authority of person completing	
Postal address of the person completing	
Telephone number	
Email address	

Date:

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Signed by

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(print name)

Group Member / Lawyer for the Group Member / Group Member Representative