

IMPORTANT – PLEASE READ

This is an important notice from the Federal Court of Australia
Please read this notice carefully – as it sets out and may affect your legal rights

COMMINSURE CLASS ACTION – OPT OUT NOTICE

This is an important notice from the Federal Court about the **Comminsure Class Action**. The Federal Court has ordered that this notice be published for the information of persons who might be group members in the **Comminsure Class Action**.

The class action is being brought by Edward Thomas and others (the **Applicants**). The **Respondents** are Commonwealth Financial Planning Limited (**CFP**), Financial Wisdom Limited (**FWL**), Colonial Mutual Life Assurance Society Pty Limited (**Comminsure** or **CMLA**) and AIA Australia Limited (**AIAA**). The claim relates to insurance advice provided by employees or authorised representatives of CFP and FWL between 21 August 2014 to 21 August 2020 (the **Relevant Period**).

In summary, the class action alleges that the Respondents failed to act in their clients' best interests. This is because they allegedly:

- failed to inform their clients that they could obtain substantially similar or better insurance policies from alternative insurers for lower premiums; and
- were incentivised through commissions and other financial and non-financial benefits to recommend insurance through Comminsure, being a related party to CFP and FWL.

The Respondents' conduct is alleged to have resulted in their clients paying higher insurance premiums.

The class action is being run by law firm Shine Lawyers. It is funded by Woodsford. If you require further information, you can visit shine.com.au/cbaaction or comminsureclassaction.enterclaim.com.

You have been identified as a potential group member because the Respondents' records indicate that you held a Comminsure Life Product during the Relevant Period and/or you have already registered with Shine Lawyers in connection with this proceeding.

It is important that you consider this notice carefully and decide whether you would like to be involved in the class action. As explained further below, you have two options:

1

Do nothing

Do nothing – this means you will remain a group member and will be bound by any judgment or settlement in the proceeding; or

2

Opt-out

Opt-out of the class action by 5 May 2025 – this means you would lose the opportunity to receive any compensation available in this action (either from a settlement or judgment), but keep your right to try to get compensation in any action you may start yourself.

A: WHAT IS A CLASS ACTION

A class action is brought by a person (the Applicant) on their own behalf and on behalf of a class of people (the **Group Members**) against another person(s) (the Respondent(s)) where the Applicant and the Group Members have similar claims against the Respondent(s). In this class action, there is more than one Applicant and more than one Respondent.

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 Applicants are responsible for costs.

Group 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. The first way is a settlement. The second way is a judgment following a trial. If there is a judgment or a settlement, Group Members will not be able pursue the same claims. They also may be unable to pursue similar or related claims against the Respondent in other proceedings.

If you consider that you have claims against any of the Respondents which are based on your individual circumstances or which are otherwise additional to the claims described in the class action, then it is important that you seek legal advice about the potential binding effects of the class action before the deadline for opting out (see below).

B: THINGS YOU SHOULD KNOW ABOUT THE COMMINSURE CLASS ACTION

What is the Commlnsure Class Action?

The Commlnsure Class Action is a class action commenced in the Federal Court of Australia against CFP, FWL, CMLA and AIAA.

The class action has been brought by the Applicants on their own behalf and on behalf of all persons who are group members.

The Applicants allege that CFP and FWL advisers:

- provided personal advice about life insurance policies to the Applicants and group members in the Relevant Period; and
- recommended that the Applicants obtain, renew, or otherwise retain one or more of the Commlnsure Life Products as part of that advice.

Are you a group member in the Commlnsure Class Action?

The Respondents' records indicate you or your superannuation fund held a relevant insurance product issued by Commlnsure.

You are a group member in the Commlnsure Class Action if, during the Relevant Period, you also received advice from an adviser or authorised representative from CFP or FWL to obtain, retain or renew that Commlnsure Life Product.

If you are unsure whether you received this advice, the safest course of action is to do nothing.

How is the Commlnsure Class Action being funded?

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.

The Applicants each entered into a litigation funding agreement (**Funding Agreement**) with Woodsford, a litigation funder. This means that Woodsford has agreed to pay the **Applicants' Costs** of the Commlnsure Class Action, which includes legal fees and third-party costs.

For more information about funding, go to section E of this notice.

C: WHY HAS THIS NOTICE BEEN ISSUED NOW?

A class action can be commenced without the consent of group members. However, group members must be given the opportunity to cease being a group member by “opting out”. This notice has been issued because the Court has set a deadline by which:

- any group member must opt-out if they do not want to participate in the proceeding;
- group members are to register if they wish to have their claim considered as part of an upcoming mediation in the proceeding, which is due to occur by 28 August 2025.

The option to opt-out is explained below. The deadline for opting out is 5 May 2025.

D: WHAT ARE MY OPTIONS?

If you are a group member, you have two options. You must choose one of them before 5 May 2025:

1

**do nothing and remain a group member;
or**

2

opt-out and cease to be a group member.

There are different consequences depending on which option you choose.

Option A – Do nothing and remain a group member

Group members who do not opt-out will remain as group members and await the outcome of the proceedings.

If you do nothing and do not opt-out, you will be bound by any settlement reached between the parties and will have the opportunity to share in any benefit resulting from the settlement. The settlement will be subject to Court approval, and you may have to satisfy certain conditions before your entitlement to share in this benefit arises. You will also be bound by any final judgment and have the opportunity to share in the benefit of any favourable judgment.

You will also be prevented from making your own claim against any of the Respondents relating to the subject matter of this class action.

If you wish to have the opportunity to participate in or receive any benefit from a settlement of the Commlnsure Class Action, the safest course is to do nothing.

Option B – Opt-out and cease to be a group member

If you do not wish to remain a group member in the Commlnsure Class Action, you must opt-out of the proceeding by completing an opt-out form that is enclosed with this notice by 5 May 2025.

If you opt-out of the Commlnsure Class Action, you:

1. will not be affected by any orders made in the Commlnsure Class Action or by any settlement reached between the parties;
2. will not be permitted to receive any distribution from any damages award or settlement outcome arising from the Commlnsure Class Action; and
3. will be able to commence separate proceedings against the Respondents on your own behalf if you wish (subject to any applicable time limits).

Opt-out forms must be submitted directly to the Victorian Registry of the Federal Court of Australia before 5 May 2025. Opt-out forms received after this time may not be accepted, with the result being that you will be treated as having not responded to this notice (see Option A above).

Each group member seeking to opt-out should fill out a separate opt-out form.

E: FUNDING INFORMATION

In return for funding the Commlnsure Class Action, the Applicants agreed that if the class action is successful (either through a judgment or settlement), they will:

- repay, from the Gross Proceeds of the judgment or settlement:
 - any costs incurred by Woodsford in relation to the class action (including any fees, interim adverse costs, security for costs, or upfront insurance premiums relating to “after the event” (**ATE**) insurance or adverse costs insurance);
 - Woodsford’s funding commission or “Success Fee”;
 - unpaid (including deferred and contingent) insurance premiums due under any ATE insurance policy; and
 - fees deferred by Shine Lawyers for recovery from any settlement or judgment, together with an uplift of 25% on those deferred fees.
- apply for an order that will fairly distribute the Applicants’ costs among all group members who have benefited from the action. This may be by way of what is known as a **Common Fund Order** or may be by another order of the Court.

The Gross Proceeds are the total amount received (including any settlement sum, or 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 Applicants or group members, by the Respondents or any third party which relates to the subject matter of the class action.

What happens if the Commlnsure Class Action is successful?

Pursuant to the Funding Agreement, the Applicants will apply for a Common Fund Order in an amount consistent with Woodsford’s Success Fee. This is the greater of 27.5% of the Gross Proceeds or 3.5 times the Cash Outlay.

The Cash Outlay is the total amount of legal and other fees and costs (including GST) advanced by Woodsford plus all other fees and costs relating to the class action reasonably incurred by Woodsford. Those costs include:

- Shine Lawyers’ fees;
- third party costs (including barristers’ fees); and
- upfront (but not deferred and contingent) premiums for ATE insurance and other costs relating to ATE insurance.

The Applicants also intend to apply to have any fees incurred for their own time involved in the class action paid from proceeds obtained from a settlement or judgment.

The Applicants will apply for the Gross Proceeds to be distributed as follows:

- First, repayment of Woodsford’s Cash Outlay;
- Secondly, payment of Woodsford’s Success Fee plus Shine Lawyers’ deferred fees and an uplift on those deferred fees, plus any unpaid insurance premiums relating to ATE insurance or Adverse Costs insurance due, including any deferred and contingent premiums; and
- Thirdly, payment of the balance to all group members (including the Applicants) in accordance with a distribution scheme approved by the Court.

Please note that the Common Fund Order and the amounts proposed to be deducted from the Gross Proceeds is **strictly subject to the Court’s Approval**.

If your insurance policy was owned by your superannuation fund, and premiums were paid out of your superannuation fund, some or all of the money you receive from the settlement may be required to be paid into your superannuation fund.

What happens if the Comminsure Class Action is unsuccessful?

If the class action is unsuccessful:

- you will not have to pay anything; and
- the Court may order the Applicants (and/or other third parties such as Woodsford) to pay part of one or more of the Respondents' costs (known as Adverse Costs).

To protect against the risk of Adverse Costs, Woodsford has:

- indemnified the Applicants against liability for any Adverse Costs order made against the Applicants; and
- obtained ATE insurance to:
 - provide the Applicants and Group Members with additional protection against the risk of Adverse Costs (the ATE insurance policy expressly covers Adverse Costs payable by the Applicants); and
 - assist the Applicants to provide security for the Respondents' costs (for example by purchasing deeds of indemnity from the ATE insurer).

In return for this protection against the risk of having to pay Adverse Costs, the Applicants have agreed to apply for the cost of any such ATE insurance, including any deferred and contingent ATE insurance premiums, to be payable from the Gross Proceeds.

You will not become liable for any legal costs simply by remaining a Group Member for the determination of common questions. The finalisation of your claim might require work to be done in relation to issues that are specific to your claim. You can engage Shine Lawyers or other solicitors to do that work for you.

F: WHERE CAN I FIND OUT MORE INFORMATION?

Copies of relevant documents, including the Originating Application, the Third Further Amended Statement of Claim and the Defence are accessible at shine.com.au/cbaaclassaction and comminsureclassaction.enterclaim.com.

If you are unable to access any of the documents referred to in this notice, or if there is anything about this notice you do not understand or which you are unsure about, you should contact the Comminsure Class Action Member Assistance Team on +61 3 9908 8909 or email comminsureclassaction@enterclaim.com or seek independent legal advice. You should not delay in making your decision.

Form 21
Rule 9.34

Opt-out notice

No. VID 559 of 2020

Federal Court of Australia
District Registry: Victoria
Division: General

Edward Thomas and others
Applicants

Commonwealth Financial Planning Limited (ACN 003 900 169) and others
Respondents

To: The Registrar
Federal Court of Australia
Victoria District Registry
Level 7, 305 William Street
Melbourne VIC 3000

[Print name], a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that [he, she, they or it (circle as applicable)] is opting out of the representative proceeding.

Date:

Signed by [Print name]
[Insert capacity eg group member / Lawyer
for the group member]
[Insert ABN/ACN]
[Insert contact details – phone, email, address]