

## **AMENDED SUMMONS**

**Filed pursuant to leave granted by the Court on 16 December 2019**

### **COURT DETAILS**

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

### **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	Kerry Michael Quirk, Plaintiff
Legal representative	Bill Petrovski, William Roberts Lawyers
Legal representative reference	701900167
Contact name and telephone	Ding Pan (02) 9552 2111
Contact email	<u><a href="mailto:SSFclassaction@williamroberts.com.au">SSFclassaction@williamroberts.com.au</a></u>

This summons is listed at

### **TYPE OF CLAIM**

Mercantile Law

## RELIEF CLAIMED

Unless otherwise stated, definitions in the Amended Commercial List Statement apply. In prayer 4(b) below and "Common Questions" 8, 12-18, 20-22, 24(e), 25(d) and 31 below, the reference to Group Members is a reference to the group members who satisfied paragraphs 2(a) and 2(b) in the "Representative action" section below.

1A A declaration that the First Defendant engaged in each of the SIS Act Contraventions, General Law Conflict of Interest Contraventions, General Law Failure to Advise Contravention, Breaches of Trust and Unconscionable Conduct Contravention.

1B A declaration that the Second and Third Defendants were involved in each of the SIS Act Contraventions and Unconscionable Conduct Contravention by the First Defendant while they were directors of the First Defendant.

1C An injunction pursuant to s 315(1) and (2) of the *Superannuation Industry (Supervision) Act 1993 (Cth)* (SIS Act), s 12GD(1) or 12GM(1) or (2) of the *Australian Securities and Investments Commission Act 2001 (Cth)* (ASIC Act) or the equitable jurisdiction of the Court:

(a) restraining the First Defendant from continuing to charge the Plaintiff and Group Members (who are members of superannuation funds under the Master Trust) any Excess Fees to fund the payment of Conflicted Remuneration in respect of Suncorp Products; and

(b) restraining the First Defendant from continuing to pay Conflicted Remuneration in respect of Suncorp Products.

1 An order pursuant to s 55(3) of the ~~*Superannuation Industry (Supervision) Act 1993 (Cth)*~~ SIS Act that the First, Second and Third Defendants pay ~~compensation~~ to the Plaintiff and each of the Group Members ~~for~~ the amount of loss and or damage suffered by them by reason of the First Defendant's ~~contraventions of the covenants set out in s52(2)(b), (c) and (d) of the *Superannuation Industry (Supervision) Act 1993 (Cth)*~~ having engaged in each of the SIS Act Contraventions.

2 ~~Interest.~~ Further or alternatively to paragraph 1, an order pursuant to s 315(11) of the SIS Act that the First Defendant pay to the Plaintiff and each of the Group Members

the amount of loss or damage suffered by them by reason of the First Defendant having engaged in each of the SIS Act Contraventions.

- 3 ~~Costs.~~ Further or alternatively to paragraphs 1 and 2, an order that the First Defendant pay the Plaintiff and Group Members equitable compensation for the General Law Conflict of Interest Contraventions or Breaches of Trust, including, inter alia, by restoring the accounts of the Plaintiff and Group Members in the superannuation funds under the Master Trust by the amount of the Excess Fees deducted from them by the First Defendant since 1 July 2013 to make Conflicted Remuneration Payments.
- 4 ~~Such further or other orders as the Court sees fit.~~ An order pursuant to:
- (a) section 12GF(1) of the ASIC Act that the First, Second and Third Defendants pay to the Plaintiff and Group Members the amount of loss or damage suffered by them by the Unconscionable Conduct Contravention; or
  - (b) section 12GM(1) or (2) of the ASIC Act that the First, Second and Third Defendants pay to the Plaintiff and Group Members, or to the accounts of the Plaintiff and Group Members in the superannuation funds under the Master Trust of which they are members, the amount of loss or damage suffered by them by the Unconscionable Conduct Contravention.

5 An order pursuant to subsections 177(1)(f) and (2) of the *Civil Procedure Act 2005* (NSW) awarding any damages in an aggregate amount to give effect to the relief claimed in prayers 1 to 4 on behalf of Group Members.

6 Interest.

7 Costs.

8 Such further or other order or orders as the Court sees fit.

### **Representative action**

Unless otherwise stated, definitions in the Amended Commercial List Statement apply.

1 The Plaintiff brings this proceeding as representative party for and on behalf of the Group Members pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW).

2 The members of the group to whom this proceeding relates (**Group Members**) are those persons:

- (a) who are or were members of a superannuation fund under the Master Trust; (as this term is defined in paragraph 11 of the Amended Commercial List Statement); and
- (b) whose accounts were affected by the payment of Conflicted Remuneration (as this term is defined in paragraph 20 of the Amended Commercial List Statement) to Financial Services Licensees (as this term is defined in paragraph 9 of the Amended Commercial List Statement) in the period 1 July 2013 to 21 June 2019, inclusive (**Relevant Period**);

and or:

- (c) ~~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 2001* (Cth)) of the First Defendant (Suncorp); or~~
  - ~~(ii) a judge, judge of Appeal or the Chief Justice of the Supreme Court of New South Wales or a judge of the Chief Justice of the High Court of Australia~~

who at any time during the Relevant Period received payment, or was 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) who 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 a 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 VIIIB of the Family Law Act 1975 (Cth),

and:

(e) who 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.

### 3 Questions common to claims of the Plaintiff and the Group Members

The questions of law or fact common to the claims of the Group Members are:

1 Did the Suncorp Master Trust Deed contain the covenants set out in s 52(2)(b), (c) and(d) of the ~~Superannuation-Industry (Supervision) Act 1993 (Cth)~~ SIS Act?

2 If the answer to question 1 is 'yes', what is the scope and content of the duties imposed by the covenants in (**Statutory Covenants**):

(a) s 52(2)(b) of the SIS Act?

(b) s 52(2)(c) of the SIS Act?

(c) s 52(2)(d) of the SIS Act?

3	<p><del>Were there any contracts or arrangements that effectively grandfathered Conflicted Remuneration following 1 July 2013? Whether Suncorp's conduct as trustee of the superannuation funds under the Master Trust has been conduct which:</del></p> <p><u>(a) involves provision of a financial service within the meaning of s 12BAB of the ASIC Act; and</u></p> <p><u>(b) is in trade or commerce?</u></p>
4	<p><del>Were there any contracts or arrangements that effectively grandfathered Conflicted Remuneration following the Super Simplification Decision? Whether Suncorp adopted and implemented the Suncorp Fee Purpose by setting Fees at the level they were set to enable part or all of those fees (the Excess Fees) to be used to fund the Conflicted Remuneration Payments to Financial Services Licensees after:</del></p> <p><u>(a) 1 July 2013; or</u></p> <p><u>(b) 1 August 2016?</u></p>
5	<p><del>Was there an actual conflict between the interests of the Plaintiff and each of the Group Members, on the one hand, and Suncorp's own interests and the interests of Suncorp's associates on the other? Whether the Conflicted Remuneration Payments made by Suncorp to Financial Services Licensees were prohibited by the FOFA Reforms following 1 July 2013 or 1 August 2016?</del></p>
6	<p><del>Did Suncorp know, or ought it to have known, of the actual conflict between the interests of the Plaintiff and Group Members and the interests of Suncorp's own interests and the interests of Suncorp's associates? Were there any arrangements that effectively caused Conflicted Remuneration Payments to be Grandfathered Benefits following 1 July 2013?</del></p>
7	<p><del>If the answer to questions in 5 and 6 is 'yes', did Suncorp contravene the covenant in s52(2)(b) of the SIS Act to exercise the degree of care, skill and diligence that a prudent superannuation trustee would have exercised if they were the trustee of the Suncorp Funds in making the Grandfathering Decision? Were there any arrangements that effectively caused Conflicted Remuneration Payments to be Grandfathered Benefits following 1 August 2016?</del></p>

8 ~~If the answer to questions in 5 and 6 is 'yes', did Suncorp contravene the covenant in s52(2)(b) of the SIS Act to exercise the degree of care, skill and diligence that a prudent superannuation trustee would have exercised if they were the trustee of the Suncorp Funds in making the Super Simplification Decision? Was there an actual conflict between the interests of the Plaintiff and each of the Group Members, on the one hand, and Suncorp's own interests and the interests of Financial Services Licensees, on the other hand, in relation to:~~

~~(a) Suncorp continuing to charge Excess Fees to the Plaintiff and each of the Group Members to fund the payment of Conflicted Remuneration from 1 July 2013 or 1 August 2016;~~

~~(b) Suncorp continuing to make Conflicted Remuneration Payments to Financial Services Licensees, or to reimburse members of the Suncorp Adviser Network for any Conflicted Remuneration Payments that they made, from 1 July 2013 or 1 August 2016?~~

9 ~~Did Suncorp contravene the covenant in s52(2)(c) of the SIS Act to perform the trustee's duties and exercise its powers in the best interests of the members of the Suncorp Funds in making the Grandfathering Decision? Did Suncorp know (including whether it recklessly shut its eyes), or ought it to have known, of the actual conflict between the interests of the Plaintiff and Group Members on the one hand, and Suncorp's own interests and the interests of Financial Services Licensees on the other hand, referred to in question 8 above?~~



10 ~~Did Suncorp contravene the covenant in s52(2)(c) of the SIS Act to perform the trustee's duties and exercise its powers in the best interests of the members of the Suncorp Funds in making the Super Simplification Decision? If the answer to 8 or 9 above is 'yes', did Suncorp engage in the SIS Act Conflict of Interest Contraventions or the General Law Conflict of Interest Contraventions by failing to give priority to the interests of the Plaintiff and the Group Members in circumstances where there was a conflict between those interests and the interests of Suncorp and Financial Services Licensees in:~~

- ~~(a) Suncorp continuing to charge Excess Fees to the Plaintiff and each of the Group Members to fund the payment of Conflicted Remuneration from 1 July 2013;~~
- ~~(b) Suncorp continuing to make Conflicted Remuneration Payments to Financial Services Licensees, or to reimburse members of the Suncorp Adviser Network for any Conflicted Remuneration Payments that they made, from 1 July 2013;~~
- ~~(c) Suncorp making the Continuation of Conflicted Remuneration Decisions;  
or~~
- ~~(d) Suncorp engaging in each act of Implementing the Continuation of Conflicted Remuneration Decisions?~~

- 11 If the answer to questions in 5 and 6 is 'yes', did Suncorp contravene the covenant in s 52(2)(d) of the SIS Act by failing to give priority to the interests of the Plaintiff and the Group Members in circumstances where there was a conflict between those interests and the interests of Suncorp and its associates in making the Grandfathering Decision? If the answer to 8 or 9 above is 'yes', did Suncorp engage in the SIS Act Conflict of Interest Contraventions or the General Law Conflict of Interest Contraventions by failing to give priority to the interests of the Plaintiff and the Group Members in circumstances where there was a conflict between those interests and the interests of Suncorp and Financial Services Licensees in:
- (a) Suncorp continuing to charge Excess Fees to the Plaintiff and each of the Group Members to fund the payment of Conflicted Remuneration from 1 August 2016;
  - (b) Suncorp continuing to make Conflicted Remuneration Payments to Financial Services Licensees, or to reimburse members of the Suncorp Adviser Network for any Conflicted Remuneration Payments that they made, from 1 August 2016;
  - (c) Suncorp making the Super Simplification Decision; or
  - (d) Suncorp engaging in each act of Implementing the Super Simplification Decision?

- 12 ~~If the answer to questions in 5 and 6 is 'yes', did Suncorp contravene the covenant in s 52(2)(d) of the SIS Act by failing to give priority to the interests of the Plaintiff and the Group Members in circumstances where there was a conflict between those interests and the interests of Suncorp and its associates in making the Super Simplification Decision? Was it in the best interests of the Plaintiff and each of the Group Members for Suncorp to cease:~~
- ~~(a) charging Excess Fees to the Plaintiff and each of the Group Members to fund the payment of Conflicted Remuneration from 1 July 2013 or 1 August 2016;~~
  - ~~(b) making Conflicted Remuneration Payments to Financial Services Licensees, or reimbursing members of the Suncorp Adviser Network for any Conflicted Remuneration Payments that they made, from 1 July 2013 or 1 August 2016?~~

13 ~~If Suncorp had complied with its Statutory Covenants in making the Grandfathering Decision, would it have:~~

~~(a) made the Grandfathering Decision?~~

~~(b) entered into the Distribution Agreements?~~

~~(c) made the Conflicted Remuneration Payments to financial services licensees or their authorised representatives in relation to the financial products administered through the Master Trust from 1 July 2013 onwards; or~~

~~(d) reimbursed the Conflicted Remuneration Payments from members' funds from 1 July 2013 onwards?~~

Did Suncorp know, or ought it to have known, that it was in the best interest of the Plaintiff and each of the Group Members for Suncorp to cease:

(a) charging Excess Fees to the Plaintiff and each of the Group Members to fund the payment of Conflicted Remuneration from 1 July 2013 or 1 August 2016;

(b) making Conflicted Remuneration Payments to Financial Services Licensees, or reimbursing members of the Suncorp Adviser Network for any Conflicted Remuneration Payments that they made, from 1 July 2013 or 1 August 2016?

14 ~~If Suncorp had complied with its Statutory Covenants in making the Super Simplification Decision, would it have:~~

~~(a) made the Conflicted Remuneration Payments to financial services licensees or their authorised representatives in relation to the financial products administered through the Master Trust from 1 August 2016 onwards?~~

~~(b) reimbursed the Conflicted Remuneration Payments from members' funds from 1 August 2016 onwards?~~

If the answer to questions 12 or 13 are 'yes', did Suncorp engage in the Best Interests Contraventions by:

(a) continuing to charge Excess Fees to the Plaintiff and each of the Group Members to fund the payment of Conflicted Remuneration from 1 July 2013;

(b) continuing to make Conflicted Remuneration Payments to Financial Services Licensees, or to reimburse members of the Suncorp Adviser Network for any Conflicted Remuneration Payments that they made, from 1 July 2013;

(c) making the Continuation of Conflicted Remuneration Decisions; or

(d) engaging in each act of Implementing the Continuation of Conflicted Remuneration Decisions?

15 ~~If the answer to any or all of the questions 7 to 14 is "yes", is Suncorp liable to compensate the Plaintiff and the Group Members for their loss or damage?~~

If the answer to questions 12 or 13 are 'yes', did Suncorp engage in the Best Interests Contraventions by:

- (a) continuing to charge Excess Fees to the Plaintiff and each of the Group Members to fund the payment of Conflicted Remuneration from 1 August 2016;
- (b) continuing to make Conflicted Remuneration Payments to Financial Services Licensees, or reimbursing members of the Suncorp Adviser Network for any Conflicted Remuneration Payments that they made, from 1 August 2016;
- (c) making the Super Simplification Decision; or
- (d) engaging in each act of Implementing the Super Simplification Decision?

16 ~~Were the Second and Third Defendants (the Directors) involved in Suncorp's contraventions in relation to the Grandfathering Decision? Did Suncorp engage in the Due Care and Skill Contraventions by:~~

- (a) continuing to charge Excess Fees to the Plaintiff and each of the Group Members to fund the payment of Conflicted Remuneration from 1 July 2013;
- (b) continuing to make Conflicted Remuneration Payments to Financial Services Licensees, or reimbursing members of the Suncorp Adviser Network for any Conflicted Remuneration Payments that they made, from 1 July 2013;
- (c) making the Continuation of Conflicted Remuneration Decisions; or
- (d) engaging in each act of Implementing the Continuation of Conflicted Remuneration Decisions?

17 ~~If the answer to question 16 is "yes", are the Directors liable to compensate the Plaintiff and the Group Members for their loss or damage? Did Suncorp engage in the Due Care and Skill Contravention by:~~

- ~~(a) continuing to charge Excess Fees to the Plaintiff and each of the Group Members to fund the payment of Conflicted Remuneration from 1 August 2016;~~
- ~~(b) continuing to make Conflicted Remuneration Payments to Financial Services Licensees, or to reimburse members of the Suncorp Adviser Network for any Conflicted Remuneration Payments that they made, from 1 August 2016;~~
- ~~(c) making the Super Simplification Decision; or~~
- ~~(d) engaging in each act of Implementing the Super Simplification Decision?~~

18 ~~If Suncorp and/or the Directors are liable to compensate the Plaintiff and the Group Members, what is the proper methodology for assessing statutory compensation? Did Suncorp engage in the SIS Act Failure to Advise Contravention or General Law Failure to Advise Contravention by failing to advise the Plaintiff and Group Members that they had the right to request Suncorp to transfer their investment to a product in respect of which:~~

- ~~(a) members would not be charged Excess Fees; or~~
- ~~(b) Suncorp would not (directly or through members of the Suncorp Adviser Network) pay Financial Services Licensees any Conflicted Remuneration?~~

19 ~~Did Suncorp engage in the SIS Act Failure to Advise Contravention or General Law Failure to Advise Contravention by exercising its discretion not to advise the Plaintiff and Group Members that they had the right to request Suncorp to transfer their investment to a product in respect of which:~~

- ~~(a) members would not be charged Excess Fees;~~
- ~~(b) Suncorp would not (directly or through members of the Suncorp Adviser Network) pay Financial Services Licensees any Conflicted Remuneration?~~

20 Did Suncorp engage in the Other SIS Act Contraventions by:

- (a) continuing to charge Excess Fees to the Plaintiff and each of the Group Members to fund the payment of Conflicted Remuneration from 1 July 2013;
- (b) continuing to make Conflicted Remuneration Payments to Financial Services Licensees, or to reimburse members of the Suncorp Adviser Network for any Conflicted Remuneration Payments that they made, from 1 July 2013;
- (c) making the Continuation of Conflicted Remuneration Decisions; or
- (d) engaging in each act of Implementing the Continuation of Conflicted Remuneration Decisions?

21 Did Suncorp engage in the Other SIS Act Contraventions by:

- (a) continuing to charge Excess Fees to the Plaintiff and each of the Group Members to fund the payment of Conflicted Remuneration from 1 August 2016;
- (b) continuing to make Conflicted Remuneration Payments to Financial Services Licensees, or to reimburse members of the Suncorp Adviser Network for any Conflicted Remuneration Payments that they made, from 1 August 2016;
- (c) making the Super Simplification Decision; or
- (d) engaging in each act of Implementing the Super Simplification Decision?



22 Did Suncorp engage in the Breaches of Trust by:

- (a) continuing to charge Excess Fees to the Plaintiff and each of the Group Members to fund the payment of Conflicted Remuneration from 1 July 2013;
- (b) continuing to make Conflicted Remuneration Payments to Financial Services Licensees, or to reimburse members of the Suncorp Adviser Network for any Conflicted Remuneration Payments that they made, from 1 July 2013;
- (c) making the Continuation of Conflicted Remuneration Decisions; or
- (d) engaging in each act of Implementing the Continuation of Conflicted Remuneration Decisions?

23 Did Suncorp engage in the Breaches of Trust by:

- (a) continuing to charge Excess Fees to the Plaintiff and each of the Group Members to fund the payment of Conflicted Remuneration from 1 August 2016;
- (b) continuing to make Conflicted Remuneration Payments to Financial Services Licensees, or to reimburse members of the Suncorp Adviser Network for any Conflicted Remuneration Payments that they made, from 1 August 2016;
- (c) making the Super Simplification Decision; or
- (d) engaging in each act of Implementing the Super Simplification Decision?

24	<p><u>If Suncorp had complied with its Statutory Covenants, the General Law Conflict Duty or its duty to comply with the Terms of the Trust Deed, would it have:</u></p> <ul style="list-style-type: none"> <li>(a) <u>made the Continuation of Conflicted Remuneration Decisions;</u></li> <li>(b) <u>engaged in each act of Implementing the Continuation of Conflicted Remuneration Decisions;</u></li> <li>(c) <u>entered into the Suncorp Financial Distribution Agreement, Guardian Distribution Agreement or Standard Pacific Distribution Agreement;</u></li> <li>(d) <u>made the Conflicted Remuneration Payments to Financial Services Licensees, or reimbursed members of the Suncorp Adviser Network for any Conflicted Remuneration Payments that they made, in relation to the Suncorp Products from 1 July 2013 onwards; or</u></li> <li>(e) <u>charged Excess Fees to the Plaintiff and Group Members to fund the payment of Conflicted Remuneration in relation to Suncorp Products from 1 July 2013 onwards?</u></li> </ul>
25	<p><u>If Suncorp had complied with its Statutory Covenants, the General Law Conflict Duty or its duty to comply with the Terms of the Trust Deed, would it have:</u></p> <ul style="list-style-type: none"> <li>(a) <u>made the Super Simplification Decision;</u></li> <li>(b) <u>engaged in each act of Implementing the Super Simplification Decision;</u></li> <li>(c) <u>made the Conflicted Remuneration Payments to Financial Services Licensees, or reimbursed members of the Suncorp Adviser Network for any Conflicted Remuneration Payments that they made, in relation to the Suncorp Products from 1 August 2016 onwards; or</u></li> <li>(d) <u>charged Excess Fees to the Plaintiff and Group Members to fund the payment of Conflicted Remuneration in relation to Suncorp Products from August 2016 onwards?</u></li> </ul>
26	<p><u>If the answer to any or all of questions 8 to 25 above is "yes", is Suncorp liable to pay or compensate the Plaintiff and the Group Members for their loss or damage?</u></p>
27	<p><u>If the answer to any or all of questions 8 to 25 above is "yes", should the injunction sought in relief 1C above be granted?</u></p>

<p><u>28</u> Were the Second and Third Defendants (the <b>Directors</b>) involved in Suncorp's SIS Act Contraventions?</p>
<p><u>29</u> If the answer to question 27 is "yes", are the Directors liable to pay or compensate the Plaintiff and the Group Members for their loss or damage?</p>
<p><u>30</u> If Suncorp or the Directors are liable to pay or compensate the Plaintiff and the Group Members, what is the proper methodology for assessing statutory damages under the SIS Act or equitable compensation, including in an aggregate amount pursuant to subsections 177(1)(f) and (2) of the <i>Civil Procedure Act 2005</i> (NSW)?</p>
<p><u>31</u> Whether the Plaintiff and the Group Members were in a position of vulnerability as against Suncorp in respect of its performance of its role as trustee of the superannuation funds under the Master Trust (regardless of the individual circumstances of particular Group Members)?</p>

32 Whether, in all of the circumstances, Suncorp engaged in the Unconscionable Conduct Contravention by any or all the following (regardless of the individual circumstances of particular Group Members):

- (a) engaging in Suncorp's Unconscionable Course of Conduct;
- (b) making each of the Continuation of Conflicted Remuneration Decisions;
- (c) engaging in each act of Implementing the Continuation of Conflicted Remuneration Decisions;
- (d) making the Super Simplification Decision;
- (e) engaging in each act of Implementing the Super Simplification Decision;
- (f) not performing any Cessation of Arrangement Act, Cessation of Payment Act or Cessation of Member Charging Act;
- (g) adopting and engaging in each act of implementing the Suncorp Fee Purpose;
- (h) adopting and engaging in each act of implementing Suncorp's Continuation of Fees Purpose;
- (i) adopting and engaging in each act of implementing the Improper Purpose;
- (i) deciding not to, prior to 1 July 2013:
  - (i) terminate the Superseded Distribution Agreement;
  - (ii) amend the Trust Deed, the Governing Rules (applicable to each of the Divisions, Sub-Divisions and Plans that issued Suncorp Products), the Suncorp Products or the PDS issued in respect of each of the Suncorp Products, to remove Conflicted Remuneration Payments and to remove the charging of Excess Fees on members for the Conflicted Remuneration Payments;
  - (iii) use the Intra-Fund Transfer Power under the Trust Deed to transfer the interests of members to a Division, Sub-Division or

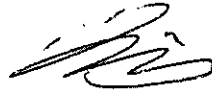
	<p><u>Plan that issued a Suncorp Product that did not involve the payment of Conflicted Remuneration or the charging of Excess Fees on members for the Conflicted Remuneration Payments; or</u></p> <p>(iv) <u>not enter into or terminate the Distribution Agreements;</u></p> <p>(k) <u>continuing to make Conflicted Remuneration Payments, to reimburse members of the Suncorp Adviser Network for Conflicted Remuneration Payments they made or charge members Excess Fees to fund the making of Conflicted Remuneration Payments in relation to the Suncorp Products:</u></p> <p>(i) <u>after 1 July 2013; or</u></p> <p>(ii) <u>after 1 August 2016.</u></p>
33	<u>If the answer to question 32 is "yes", is Suncorp liable to pay or compensate the Plaintiff and the Group Members for their loss or damage?</u>
34	<u>Were the Directors involved in Suncorp's Unconscionable Conduct Contravention?</u>
35	<u>If the answer to question 34 is "yes", are the Directors liable to pay or compensate the Plaintiff and the Group Members for their loss or damage?</u>
36	<u>If Suncorp or the Directors are liable to pay or compensate the Plaintiff and the Group Members, what is the proper methodology for assessing statutory damages or compensation under the ASIC Act, including in an aggregate amount pursuant to subsections 177(1)(f) and (2) of the <i>Civil Procedure Act 2005</i> (NSW)?</u>

#### **SIGNATURE OF LEGAL REPRESENTATIVE**

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor on record, by his fellow Principal

Date of signature

20 December 2019

### NOTICE TO DEFENDANT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the plaintiff's costs of bringing these proceedings.

Before you can appear before the court you must file at the court an appearance in the approved form.

### HOW TO RESPOND

**Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the summons from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

Court forms are available on the UCPR website at [www.ucprforms.justice.nsw.gov.au](http://www.ucprforms.justice.nsw.gov.au) or at any NSW court registry.

### REGISTRY ADDRESS

Street address	Level 5, Law Courts Building 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

## **PARTY DETAILS**

### **PARTIES TO THE PROCEEDINGS**

#### **Plaintiff**

Kerry Michael Quirk

#### **Defendants**

Suncorp Portfolio Services Limited, First Defendant

Geoffrey Edward Summerhayes, Second Defendant

Sean Carroll, Third Defendant

### **FURTHER DETAILS ABOUT PLAINTIFF**

#### **Plaintiff**

Name	Kerry Michael Quirk
Address	c/- William Roberts Lawyers Level 22 66 Goulburn Street Sydney NSW 2000

#### **Legal representative for Plaintiff**

Name	Blagoj (Bill) Petrovski
Practising certificate number	41964
Firm	William Roberts Lawyers
Address	Level 22, 66 Goulburn Street Sydney NSW 2000
DX address	Not applicable
Telephone	02 9552 2111
Fax	02 9552 1911
Email	bill.petrovski@williamroberts.com.au
Electronic service address	Not applicable

**DETAILS ABOUT DEFENDANTS****First Defendant**

Name Suncorp Portfolio Services Limited  
Address Level 28  
266 George Street  
Brisbane QLD 4000

**Second Defendant**

Name Geoffrey Edward Summerhayes  
Address 28 Iredale Avenue  
Cremorne Point NSW 2090

**Third Defendant**

Name Sean Carroll  
Address 8 Busby Place  
Frenchs Forest NSW 2086