

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 13/09/2021 3:15:54 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	VID1139/2019
File Title:	LESLEY COATMAN v COLONIAL FIRST STATE INVESTMENTS LIMITED & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 14/09/2021 11:55:40 AM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 19
Rule 9.32

Further Amended Originating application starting a representative proceeding under Part IVA of the Federal Court of Australia Act 1976

No. VID1139 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

Lesley Coatman

Applicant

Colonial First State Investments Limited (ACN 002 348 352) and another named in the schedule

Respondents

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Federal Court of Australia, 305 William Street, Melbourne VIC 3000

The Court ordered that the time for serving this application be abridged to

Date:

.....
Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party) Lesley Coatman (the Applicant)

Prepared by (name of person/lawyer) Miranda Nagy

Law firm (if applicable) Maurice Blackburn

Tel (02) 9261 1488 Fax (02) 9261 3318

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Address for service c/- Maurice Blackburn Lawyers
(include state and postcode) Level 32/201 Elizabeth Street, Sydney NSW 2000



Note: a term appearing for the first time in bold but not defined in this document is defined in the Further Amended Statement of Claim

Details of claim

On the grounds stated in the accompanying Further Amended Statement of Claim, the Applicant claims on behalf of herself and the Group Members:

Against the First Respondent:

1. A declaration pursuant to s 21 of the *Federal Court of Australia Act 1976 (Cth)* (**FCA Act**) that the First Respondent engaged in each of the contraventions of the *Superannuation Industry (Supervision) Act 1993 (Cth)* (**SIS Act**) alleged in section N of the Statement of Claim (**Trustee SIS Act Contraventions**).
2. A declaration pursuant s 21 of the FCA Act that the First Respondent engaged in each of the breaches of duties at general law alleged in section O of the Further Amended Statement of Claim (**Trustee General Law Breaches**).
3. A declaration pursuant to s 21 of the FCA Act that the First Respondent is not entitled to indemnify itself from the **FirstChoice Fund** in respect of any liability it or another respondent is found to have, any amount it or another respondent is ordered to pay, or the cost of doing any act it or another respondent is ordered to do, in these proceedings.

SIS Act Relief

4. An injunction pursuant to s 315(1) and s 315(2)(b) of the SIS Act, further or alternatively s 23 of the FCA Act, requiring the First Respondent, at its own expense, to notify persons affected by the Trustee SIS Act Contraventions that it has engaged in the Trustee SIS Act Contraventions.

Recovery of loss and damage – Group Members who are/were FCES ADA Members (paragraph 2(a) of the Further Amended Statement of Claim (FASOC))

5. ~~An order for statutory compensation pursuant to s 55(3) of the SIS Act, further or alternatively s 23 of the FCA Act, that the First Respondent pay to the Applicant and the Group Members the amount of the loss or damage suffered by them as a result of contraventions of s 55(1) (as in force prior to its repeal on 6 April 2019) or s 54B(1) of the SIS Act by the Trustee SIS Act Contraventions, requiring the First Respondent to:~~



- (a) ~~restore the balances of the FCES ADA Accounts of Group Members in the FirstChoice Fund and/or pay damages directly to the Applicant and any Group Member who at the date of judgment does not have an FCES ADA Account, subject to any applicable superannuation laws; and~~
- (b) ~~restore the FirstChoice Fund so that there are sufficient funds to satisfy the (restored) balances of the FCES ADA Accounts.~~
5. Orders, pursuant to and for the purposes of s 55(3) of the SIS Act, and further supported to the extent necessary by s 23 of the FCA Act:
- (a) for the assessment of the amounts of loss or damage as a result of the Trustee SIS Act Contraventions suffered by each of the Applicant and Group Members who are or were at any time FCES ADA Members, being:
- (i) additional fees wrongly deducted from FCES ADA Members' FCES ADA Accounts during the period in which the First Respondent failed, by reason of one or more of the Trustee SIS Act Contraventions, to transfer the member's FCES ADA to a **FirstChoice Lifestage** product (**Wrongful Delay Period**); and/or
- (ii) lower investment returns achieved in respect of FCES ADA Members' FCES ADA Accounts during such Wrongful Delay Period arising from either:
- A. the unit price for **Default Investment Options** incorporating additional or higher rates of fees than if the transfer to a FirstChoice Lifestage product had occurred; and/or
- B. the Default Investment Options underperforming the relevant FirstChoice Lifestage product; and
- (iii) loss consequential on (i) and (ii) above in that, during the period after the FCES ADA Member's FCES ADA had been transferred to a FirstChoice Lifestage product, the FCES ADA Member had that much less funds than he or she ought to have had in the FirstChoice Lifestage product and earning the returns under that product, such loss to be accounted for by an award of pre-judgment interest from the date of such of the **ADA Transfers** as is applicable to the FCES ADA Member until judgment in these proceedings (or such earlier date as



the person ceased to be a member of the FirstChoice Fund) or such other measure as the Court considers appropriate;

- (iv) such additional loss as the person may suffer by application of the taxation laws to any order for compensation or reinstatement of the FCES ADA Member's account balance, to be accounted for by grossing up any such order or by such other measure as the Court considers appropriate.

- (b) for the recovery of the amounts duly assessed under (a) by the relevant Group Members from the First Respondent by the First Respondent paying the amount of the loss or damage so assessed in the following manner:

Category 1 Group Members

- (i) in respect of the Applicant and any Group Member who, as at the date of judgment, no longer remains a member of the FirstChoice Fund, and who on exiting the FirstChoice Fund received his or her entitlements in cash, by payment in cash to the Applicant or Group Member grossed up as per paragraph 5(a)(iv) above if appropriate;

Category 2 Group Members

- (ii) in respect of any Group Member who remains at the date of judgment a member of the FirstChoice Fund, by payment in cash to the Group Member grossed up as per paragraph 5(a)(iv) above if appropriate, or alternatively, reinstatement of the Group Member's account balance and unit entitlements in the FirstChoice Fund grossed up as per paragraph 5(a)(iv) above if appropriate;

Category 3 Group Members

- (iii) in respect of any Group Member who as at the date of judgment no longer remains a member of the FirstChoice Fund, who on exiting the FirstChoice Fund rolled over or transferred his or her entitlements to another superannuation fund, and who has received his or her superannuation entitlements from that other fund (or subsequent fund) in cash, by payment in cash to the Group Member grossed up as per paragraph 5(a)(iv) if appropriate;



Category 4 Group Members

- (iv) in respect of any Group Member who as at the date of judgment no longer remains a member of the FirstChoice Fund, who on exiting the FirstChoice Fund rolled over or transferred his or her entitlements to another superannuation fund, by payment in cash to the Group Member grossed up as per paragraph 5(a)(iv) above if appropriate, or alternatively creation of a new account for the Group Member in the FirstChoice Fund with an appropriate account balance and unit entitlements grossed up as per paragraph 5(a)(iv) above if appropriate.

Recovery of loss and damage – Other Group Members (paras 2(b) and (c) of the FASOC) (Category 5 and Category 6 Group Members respectively)

5AA. Orders, pursuant to and for the purposes of s 55(3) of the SIS Act, and further supported to the extent necessary by s 23 of the FCA Act:

- (a) for the assessment of the amounts of loss or damage as a result of the Trustee SIS Act Contraventions suffered by each of the Group Members described in paragraph 2(b) of the FASOC by reason that the amount which the Group Member received from the deceased FCES ADA Member on inheritance was that much less than it would have been had the deceased FCES ADA Member, prior to their death, not suffered the loss or damage as set out in paragraphs 5(a)(i) – (iii);
- (b) for the assessment of the amounts of loss or damage as a result of the Trustee SIS Act Contraventions suffered by each of the Group Members described in paragraph 2(c) of the FASOC, by reason that the amount or interest which the Group Member received from the spousal FCES ADA Member on transfer under order, settlement or agreement under the *Family Law Act 1975* (Cth) was that much less than it would have been had the spousal FCES ADA Member, prior to that transfer, not suffered the loss or damage as set out in paragraphs 5(a)(i) – (iii), together with such additional loss as the Group Member suffers as set out in paragraph 5(a)(iv);
- (c) for the recovery of the amounts duly assessed under (a) and (b) by the relevant Group Members from the First Respondent by the First Respondent paying the amount of the loss or damage so assessed in the following manner:



- (i) in respect of a Group Member described in paragraph 2(b) of the FASOC, by payment in cash to the Group Member grossed up as per paragraph 5(a)(iv) above if appropriate;
- (ii) in respect of a Group Member described in paragraph 2(c) of the FASOC, in such of the manners set out in paragraphs 5(b)(i) - 5(b)(iv) as is appropriate to the circumstances of the case.

Other SIS Act relief – All Group Members

- 5A. Alternatively or in addition to paragraphs 5 and 5AA above, injunctions pursuant to s 315(1) and s 315(2) of the SIS Act, and further supported to the extent necessary by s 23 of the FCA Act:
- (a) restraining the First Respondent from engaging in the Trustee SIS Act Contraventions; and
 - (b) requiring the First Respondent to: pay the amount of the loss or damage assessed in accordance with paragraphs 5(a)(i) – (iv) and 5AA(a) and (b) to the Applicant and Group Members in such of the manners set out in paragraphs 5(b)(i) - (iv) and 5AA(c)(i) – (ii) above as is appropriate to the circumstances of the case.
 - ~~(i) — restore the balances of the FCES ADA Accounts of Group Members in the FirstChoice Fund and/or pay damages or compensation to the Applicant and any Group Member who at the date of judgment does not have an FCES ADA Account, subject to any applicable superannuation laws; and/or~~
 - ~~(ii) — restore the FirstChoice Fund so that there are sufficient funds to satisfy the (restored) balances of the FCES ADA Accounts.~~
- 5B. Alternatively or in addition to paragraphs 5, 5AA and 5A above, an order that the First Respondent pay damages to the Applicant and Group Members in respect of loss or damage assessed in accordance with paragraphs 5(a)(i) – (iv) and 5AA(a) and (b) for contraventions of s 55(1) or s 54B(1) by the Trustee SIS Act Contraventions pursuant to s 315(11) of the SIS Act, requiring the First Respondent to: such damages to be paid to the Applicant and Group Members in such of the manners set out in paragraphs 5(b)(i) – (iv) and 5AA(c)(i) – (ii) above as is appropriate to the circumstances of the case.



- (a) ~~restore the balances of the FCES ADA Accounts of Group Members in the FirstChoice Fund and/or pay damages directly to the Applicant and any Group Member who at the date of judgment does not have an FCES ADA Account, subject to any applicable superannuation laws; and/or~~
- (b) ~~restore the FirstChoice Fund so that there are sufficient funds to satisfy the (restored) balances of the FCES ADA Accounts.~~

Equitable Relief

Equitable relief – Group Members who are/were FCES ADA Members

6. Alternatively or in addition to paragraphs 5 to 5B above, ~~an order pursuant to s 23 of the FCA Act or in the equitable jurisdiction of the Court that the First Respondent pay the Applicant and Group Members equitable compensation:~~

- (a) an order for an account to be taken of the amounts which, by reason of the Trustee General Law Breaches, the First Respondent wrongly debited or wrongly failed to credit to the account balances and unit entitlements of each of the Applicant and Group Members who are or were at any time FCES ADA Members during the Wrongful Delay Period in each of the ways set out in paragraphs 5(a)(i) – (iv) above;
- (b) further or alternatively to (a), an order for an assessment of the amounts of loss or damage as a result of the Trustee General Law Breaches suffered by each of the Applicant and Group Members who are or were at any time FCES ADA Members, by reason of each of the matters set out in paragraphs 5(a)(i) – (iv);
- (c) an injunction or order for equitable compensation requiring the First Respondent to pay such amount as may be due and owing to the Applicant and Group Members who are or were at any time FCES ADA Members on the taking of the said account, and/or the amount of such loss or damage so assessed, to be paid in the following manner:

Category 1 Group Members

- (i) in respect of the Applicant and any Group Member who as at the date of judgment no longer remains a member of the FirstChoice Fund, and who on exiting the FirstChoice Fund received his or her entitlements in



cash, by payment in cash to the Applicant or Group Member grossed up as per paragraph 5(a)(iv) above if appropriate;

Category 2 Group Members

- (ii) in respect of any Group Member who remains at the date of judgment an FCES Member, by payment in cash to the Group Member, grossed up as per paragraph 5(a)(iv) above if appropriate, or alternatively reinstatement of the Group Member's account balance and unit entitlements in the FirstChoice Fund grossed up as per paragraph 5(a)(iv) above if appropriate;

Category 3 Group Members

- (iii) in respect of any Group Member who as at the date of judgment no longer remains a member of the FirstChoice Fund, who on exiting the FirstChoice Fund rolled over or transferred his or her entitlements to another superannuation fund, and who has received his or her superannuation entitlements from that other fund (or subsequent fund) in cash, by payment in cash to the Group Member grossed up as per paragraph 5(a)(iv) above if appropriate;

Category 4 Group Members

- (iv) in respect of any Group Member who as at the date of judgment no longer remains a member of the FirstChoice Fund, and who on exiting the FirstChoice Fund rolled over or transferred his or her entitlements to another superannuation fund, by payment in cash to the Applicant or Group Member grossed up as per paragraph 5(a)(iv) above if appropriate or alternatively, creation of a new account for the Group Member in the FirstChoice Fund with an appropriate account balance and unit entitlements grossed up as per paragraph 5(a)(iv) above if appropriate.

- ~~(a) restore the balances of the FCES ADA Accounts of Group Members in the FirstChoice Fund and/or pay compensation directly to the Applicant and any Group Member who at the date of judgment does not have an FCES ADA Account, subject to any applicable superannuation laws; and/or~~
- ~~(b) restore the FirstChoice Fund so that there are sufficient funds to satisfy the (restored) balances of the FCES ADA Accounts.~~



Other equitable relief – Assets of the FirstChoice Fund

7. ~~[Not used].~~ An order pursuant to s 23 of the FCA Act or in the equitable jurisdiction of the Court, to the extent necessary to ensure that relief granted under any of paragraphs 5, 5AA, 5A, 5B or 6 is efficacious, that the First Respondent take all steps necessary to ensure that any reinstatement of a Group Member's account balance and unit entitlements in the FirstChoice Fund, and any new account created for a Group Member in the FirstChoice Fund with an appropriate account balance and unit entitlements, undertaken pursuant to one or more of orders 5, 5AA, 5A, 5B and 6 above, is backed by assets in the FirstChoice Fund sufficient to support any such account balance and unit entitlements.

Against the Second Respondent:

8. An order pursuant to s 55(4A) of the SIS Act that the Applicant has leave to bring an action pursuant to s 55(3) of the SIS Act against the Second Respondent in respect of each of the contraventions of the SIS Act alleged in section Q of the Statement of Claim (**Director SIS Act Contraventions**).
9. A declaration pursuant to s 21 of the FCA Act that the Second Respondent was involved, within the meaning of s 55(3) of the SIS Act, in each of the Trustee SIS Act Contraventions.
10. A declaration pursuant to s 21 of the FCA Act that the Second Respondent engaged in each of the Director SIS Act Contraventions.
11. A declaration that the Second Respondent is not entitled to indemnify herself from the FirstChoice Fund in respect of any liability she or another respondent is found to have, any amount she or another respondent is ordered to pay, or the cost of doing any act she or another respondent is ordered to do, in these proceedings.
12. An injunction pursuant to s 315(1) and s 315(2)(b) of the SIS Act, further or alternatively s 23 of the FCA Act, requiring the Second Respondent, at her own expense, to notify persons affected by the Director SIS Act Contraventions that she has engaged in the Director SIS Act Contraventions.

SIS Act Relief

Recovery of loss and damage – Group Members who are/were FCES ADA Members (paragraph 2(a) of the FASOC)



~~13. An order pursuant to s 55(3) of the SIS Act, further or alternatively s 23 of the FCA Act, that the Second Respondent pay to the Applicant and Group Members the amount of the loss or damage suffered by them as a result of the Trustee SIS Act Contraventions, requiring the Second Respondent to:~~

~~(a) restore the balances of the FCES ADA Accounts of Group Members in the FirstChoice Fund and/or pay damages directly to the Applicant and any Group Member who at the date of judgment does not have an FCES ADA Account, subject to any applicable superannuation laws; and/or~~

~~(b) restore the FirstChoice Fund so that there are sufficient funds to satisfy the (restored) balances of the FCES ADA Accounts.~~

13. Orders, pursuant to and for the purposes of s 55(3) of the SIS Act, and further supported to the extent necessary by s 23 of the FCA Act:

(a) for the assessment of the amounts of loss or damage as a result of the Trustee SIS Act Contraventions and/or the Director SIS Act Contraventions suffered by each of the Applicant and Group Members who are or were at any time FCES ADA Members, being as set out in paragraph 5(a)(i) – (iv);

(b) for the recovery of the amounts duly assessed under (a) by the relevant Group Members from the Second Respondent paying the amount of the loss or damage so assessed in the following manner:

Category 1 Group Members

(i) in respect of the Applicant and any Group Member who as at the date of judgment no longer remains a member of the FirstChoice Fund, and who on exiting the FirstChoice Fund received his or her entitlements in cash, by payment in cash to Applicant or Group Member grossed up as per paragraph 5(a)(iv) above if appropriate;

Category 2 Group Members

(ii) in respect of any Group Member who remains at the date of judgment an FCES Member, by payment in cash to the Group Member grossed up as per paragraph 5(a)(iv) above if appropriate;

Category 3 Group Members

(iii) in respect of any Group Member who as at the date of judgment no longer remains a member of the FirstChoice Fund, who on exiting the



FirstChoice Fund rolled over or transferred his or her entitlements to another superannuation fund, and who has received his or her superannuation entitlements from that other fund (or subsequent fund) in cash, by payment in cash to the Group Member grossed up as per paragraph 5(a)(iv) above if appropriate;

Category 4 Group Members

- (iv) in respect of any Group Member who as at the date of judgment no longer remains a member of the FirstChoice Fund, and who on exiting the FirstChoice Fund rolled over or transferred his or her entitlements to another superannuation fund, by payment in cash to the Group Member grossed up as per paragraph 5(a)(iv) above if appropriate.

Recovery of loss and damage – Other Group Members (paragraphs 2(b) and (c) of the FASOC) (Category 5 and Category 6 Group Members respectively)

14. ~~Alternatively or in addition to paragraph 12 above, an order pursuant to s 55(3) of the SIS Act, further or alternatively s 23 of the FCA Act, that the Second Respondent pay to the Applicant and Group Members the amount of loss or damage suffered by them as a result of the Director SIS Act Contraventions, requiring the Second Respondent to:~~

- ~~(a) restore the balances of the FCES ADA Accounts of Group Members in the FirstChoice Fund and/or pay damages directly to the Applicant and any Group Member who at the date of judgment does not have an FCES ADA Account, subject to any applicable superannuation laws; and/or~~
- ~~(b) restore the FirstChoice Fund so that there are sufficient funds to satisfy the (restored) balances of the FCES ADA Accounts.~~

14. Orders, pursuant to and for the purposes of s 55(3) of the SIS Act, and further supported to the extent necessary by s 23 of the FCA Act:

- (a) for the assessment of the amounts of loss or damage as a result of the Trustee SIS Act Contraventions and/or the Director SIS Act Contraventions suffered by each of the Group Members described in paragraph 2(b) of the FASOC, being as set out in paragraph 5AA(a);
- (b) for the assessment of the amounts of loss or damage as a result of the Trustee SIS Act Contraventions suffered by each of the Group Members described in paragraph 2(c) of the FASOC, being as set out in paragraph 5AA(b);



- (c) for the recovery of the amounts duly assessed under (a) and (b) by the relevant Group Members from the Second Respondent paying the amount of the loss or damage so assessed in the following manner:
- (i) in respect of a Group Member described in paragraph 2(b) of the FASOC, by payment in cash to the Group Member grossed up as per paragraph 5(a)(iv) above if appropriate;
 - (ii) in respect of a Group Member described in paragraph 2(c) of the FASOC, by payment in cash to the Group Member grossed up as per paragraph 5(a)(iv) above if appropriate.

Other SIS Act relief – All Group Members

14A. Alternatively or in addition to paragraphs 13 to 14 above, injunctions pursuant to s 315(1) and s 315(2) of the SIS Act, and further supported to the extent necessary by s 23 of the FCA Act:

- (a) restraining the Second Respondent from engaging in the Director SIS Act Contraventions; and
- (b) requiring the Second Respondent to: pay the amount of the loss or damage assessed in accordance with paragraphs 13(a), 14(a) and 14(b) to the Applicant and Group Members in such manner set out in paragraphs 13(b)(i) – (iv) and 14(c)(i) – (ii) above as is appropriate.
 - ~~(i) restore the balances of the FCES ADA Accounts of Group Members in the FirstChoice Fund and/or pay damages or compensation to the Applicant and any Group Member who at the date of judgment does not have an FCES ADA Account, subject to any applicable superannuation laws; and/or~~
 - ~~(ii) restore the FirstChoice Fund so that there are sufficient funds to satisfy the (restored) balances of the FCES ADA Accounts.~~

14B. Alternatively or in addition to paragraphs 13 to 14A above, an order that the Second Respondent pay damages to the Applicant and Group Members in respect of loss or damage assessed in accordance with paragraphs 13(a), 14(a) and 14(b) pursuant to s 315(11) of the SIS Act for contraventions of s 55(1) or s 54B(1) by the Director Trustee SIS Act Contraventions, such damages to be paid to the Applicant and



Group Members in such manner set out in paragraphs 13(b)(i) – (iv) and 14(c)(i) – (ii) above as is appropriate.

requiring the Second Respondent to:

- (a) ~~restore the balances of the FCES ADA Accounts of Group Members in the FirstChoice Fund and/or pay damages directly to the Applicant and any Group Member who at the date of judgment does not have an FCES ADA Account, subject to any applicable superannuation laws; and/or~~
- (b) ~~restore the FirstChoice Fund so that there are sufficient funds to satisfy the (restored) balances of the FCES ADA Accounts.~~

Against all respondents

- 15. To the extent not otherwise awarded pursuant to one or more of the above orders, interest pursuant to s 51A of the FCA Act, alternatively in the Court's equitable jurisdiction.
- 16. Costs.
- 17. Such other order as the Court thinks fit.

Questions common to claims of group members

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

- 1. Whether the First Respondent's conduct pleaded in the Further Amended Statement of Claim contravened a covenant or covenants contained or taken to be contained in the Governing Rules of the FirstChoice Fund.
- 2. Whether the Second Respondent's conduct pleaded in the Further Amended Statement of Claim contravened a covenant or covenants contained or taken to be contained in the Governing Rules of the FirstChoice Fund.
- 3. If the answer to Question 1 is yes, whether the Second Respondent was involved in any of the contraventions by the First Respondent.
- 4. If the answer to Question 1 is yes, whether the Applicant and Group Members each of the six categories of Group Members identified in paragraphs 101I to 101O and 101Q to 101T of the FASOC (Categories of Group Members) suffered loss or damage by or resulting from each such contravention.



5. If the answer to Question 2 is yes, whether the Applicant and each of the Categories of Group Members suffered loss or damage by or resulting from each such contravention.
- 5A. If the answer to Question 5 is yes, whether the Applicant and each of the Categories of Group Members is entitled to recover the amount of the loss or damage from the First and/or Second Respondent pursuant to s 55(3) of the SIS Act, and if so the appropriate manner of such recovery.
- 5B. If the answer to Question 5 is yes, whether the Applicant and each of the Categories of Group Members is entitled to an injunction pursuant to s 315(1) of the SIS Act and an order pursuant to s 315(2) of the SIS Act requiring the First and/or Second Respondent to pay the amount of the loss or damage to each of them, and if so the appropriate manner of such payment.
- 5C. If the answer to Question 5 is yes, whether the Applicant and each of the Categories of Group Members is entitled to damages pursuant to s 315(11) of the SIS Act, and if so the manner in which such damages are to be paid.
6. Whether the First Respondent breached the general law duties owed by it to the beneficiaries of the FirstChoice Fund.
7. If the answer to Question 6 is yes, whether the Applicant and each of the Categories of Group Members suffered loss or damage by or resulting from the breach or breaches of general law duties.
8. Whether the covenants set out in s 52 of the SIS Act are implied terms of the **Trust Deed**.
9. Whether an account, an equitable injunction and/or equitable compensation is available to the Applicant and any Category of Group Member (and if so which) for breach of the covenants set out in s 52 of the SIS Act as implied terms of the Trust Deed and the other breaches of general law obligations alleged in Section O of the FASOC.
10. What principles are to be applied in assessing any statutory compensation to be paid to the Applicant or Group Members in these proceedings.
11. What principles are to be applied in assessing any equitable compensation to be paid to the Applicant or Group Members in these proceedings.



12. What is the appropriate method of distributing damages and/or compensation to the Applicant and Group Members in these proceedings.

Representative action

The Applicant brings this application as a representative party under Part IVA of the FCA Act.

The group members to whom this proceeding relates are those persons described in paragraph 2 of the Further Amended Statement of Claim.

Applicant's address

The Applicant's address for service is: Maurice Blackburn
Level 32, 201 Elizabeth Street,
Sydney NSW 2000

Email: MNagy@mauriceblackburn.com.au

The Applicant's address is: c/- Maurice Blackburn
Level 32, 201 Elizabeth Street,
Sydney NSW 2000

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 13 September 2021

A handwritten signature in cursive script that reads 'Miranda Nagy'.

Signed by Miranda Nagy
Lawyer for the Applicant



Schedule

No. VID1139 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

Respondents

Second Respondent: Linda Maree Elkins