

NOTICE OF FILING

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File Title: JESSICA AMY CHALLENOR v QSUPER BOARD (ABN 32 125 059 006)
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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.

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Form 33
Rule 16.32

Defence to Further Amended Statement of Claim

No. VID691 of 2021

Federal Court of Australia

District Registry: Victoria

Division: Commercial and Corporations National Practice Area

JESSICA AMY CHALLENGOR

Applicant

QSUPER BOARD ABN 32 125 059 006

Respondent

A. Notes

1A. In this Defence, where the Respondent uses the defined terms and headings used in the EASoC, it does so for convenience, but does not, by doing so, admit any allegation implied by the defined term or heading so used.

1. As to paragraph 1 of the Further Amended Statement of Claim dated 19 December 2024 ~~23 February 2024~~ (EASoC), the Respondent (**QSuper**):

(a) says that, unless otherwise indicated:

- (i) terms defined terms in the EASoC have the same meaning in this defence;
- (ii) the defence adopts the headings used in the EASoC without any admission; and
- (iii) any admissions or allegations herein are made solely for the purposes of the present proceedings; and

(b) does not otherwise plead to the paragraph as it makes no allegation of fact against it.

Filed on behalf of (name & role of party)	QSuper Board ABN 32 125 059 006, the Respondent		
Prepared by (name of person/lawyer)	Amanda Jane Engels		
Law firm (if applicable)	King & Wood Mallesons		
Tel	07 3244 8000	Fax	07 3244 8999
Email	amanda.engels@au.kwm.com		
Address for service (include state and postcode)	Level 33, Waterfront Place, 1 Eagle Street, Brisbane QLD 4000		

B. The parties

2. As to paragraph 2 of the EASoC, the Respondent:
 - (a) admits that the Applicant brings the proceeding on her own behalf and seeks to bring the proceeding under Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) on behalf of the persons alleged to be Group Members described in the Originating Application; and
 - (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.

3. As to paragraph 3 of the EASoC, the Respondent says as follows:
 - (a) as to paragraph 3(a), the Respondent:
 - (i) admits that the Applicant was a member of the QSuper Fund who on 17 May 2016 was in one of the accumulation categories of membership (being either the 'Basic Accumulation Category' (**BAC**) or the 'Contributory Accumulation Category' (**CAC**)) as defined by s 22(1) and (2) of the QSuper Deed and who was an "Insured Member" under the policy of insurance established by QSuper pursuant to s 23I(1) and s 23K of the QSuper Deed and which commenced on or about 16 December 2013;
 - (ii) says that an election could be made under clause 10.7.1 of the policy of insurance entered into on or about 9 June 2016 by QSuper with QInsure as described in paragraph 3(a)(iv) of the EASoC;
 - (iii) says that relevant members are not beneficiaries under the terms of the policy of insurance which commenced on or about 16 December 2013 or the terms of the policy of insurance entered into on or about 9 June 2016, but are "Insured Members" and "Insured Persons" respectively;
 - (iv) refers to and repeats paragraphs 20(a)-(f) below;
 - (v) refers to and repeats paragraphs 18(c) and 44 below in further response to the allegations at paragraphs 3(a)(i)-(iv) concerning the Applicant and otherwise denies those allegations; and
 - (vi) otherwise does not know and cannot admit the allegations in paragraph 3(a).

- (b) as to paragraph 3(b), the Respondent:
 - (i) says that payment of a death benefit is not made 'from' a deceased Fund Member, but rather is made 'in respect of' a deceased Fund Member; and
 - (ii) otherwise does not know and cannot admit the allegations in paragraph 3(b); and
- (c) as to paragraph 3(c), the Respondent:
 - (i) says that the reference to the 'Fund Member's interest' could only relate to:
 - (1) an accumulation interest referable to a period after 1 July 2016; and
 - (2) a spouse who was entitled to a percentage split of the Fund Member's accumulation interest and not to any transfer of a fixed dollar sum or base amount;
 - (ii) says that a transfer of all or part of a Fund Member's interest is not made 'from' a Fund Member, but rather is made 'in respect of' the Fund Member by QSuper; and
 - (iii) otherwise does not know and cannot admit the allegations in paragraph 3(c).
- 4. The Respondent does not know, and therefore cannot admit, the allegation in paragraph 4 of the EASoC.
- 5. As to paragraph 5 of the EASoC, the Respondent:
 - (a) says that pursuant to the *Superannuation (State Public Sector) (Scheme Administration) Amendment Act 2021* (Qld) and declaration by the Treasurer of the State of Queensland in the Extraordinary Queensland Government Gazette No. 36 for 28 February 2022, from 1 March 2022, QSuper is a deemed registered company for the purposes of the Corporations Act, known as QSuper Board Pty Ltd ACN 657 707 009 and otherwise admits the allegations in paragraph 5(a);
 - (b) admits the allegations in paragraphs 5(b) and (c);
 - (c) denies the allegation in paragraph 5(d) and says that QSuper first commenced to hold an Australian Financial Services Licence (**AFSL**),

which was AFSL number 489650, on 1 July 2017 when it became a public offer superannuation fund;

- (d) admits the allegation in paragraph 5(e)(i) that QSuper is a person within the meaning of section 1041H of the Corporations Act but denies that it has engaged in conduct of the kind prohibited by section 1041H of the Corporations Act;
- (e) admits the allegation in paragraph 5(e)(ii) that QSuper is a person within the meaning of section 12DA(1) of the ASIC Act but denies that it has engaged in conduct of the kind prohibited by section 12DA(1) of the ASIC Act and further says that any conduct concerning the superannuation interests of members was not in trade or commerce;

Particulars

The Respondent refers to paragraph 31(b) below and the particulars thereto.

- (f) admits the allegation in paragraph 5(e)(iii) that QSuper is a person within the meaning of section 18 of the Australian Consumer Law but denies that it has engaged in conduct of the kind prohibited by section 18 of the Australian Consumer Law or that these provisions are applicable and further says:
 - (i) at all material times QSuper represented the State in the right of Queensland;

Particulars

Section 3(5) of the QSuper Act as in force at all relevant times.

- (ii) in administering the QSuper Fund pursuant to the QSuper Act and the QSuper Deed during the relevant period and arranging insurance cover pursuant to sections 23I and 23J of the QSuper Act, QSuper was not carrying on a business for the purposes of the *Competition and Consumer Act 2010* (Cth) (**CC Act**);

Particulars

Section 2B of the CC Act.

- (iii) in providing prescribed insurance pursuant to section 6 of the Superannuation (State Public Sector) Notice 2010 (**QSuper Notice**) for the basic accumulation, comprehensive accumulation and QAS accumulation categories of membership QSuper was not carrying on a business for the purposes of the CC Act;

Particulars

Section 2B of the CC Act.

- (iv) section 131A of the CC Act provides that the Australian Consumer Law does not apply to the supply of financial services or financial products;
- (v) QSuper did not carry on a business at the relevant time in Victoria or otherwise; and
- (vi) any conduct concerning the superannuation interests of members was not in trade or commerce.

Particulars

The Respondent refers to paragraph 31(b) below and the particulars thereto.

- 6. As to the allegations in paragraph 6 of the EASoC, the Respondent:
 - (a) admits the allegation in paragraph 6(a);
 - (b) admits the allegation in paragraph 6(b) and says that the terms relevantly governing the QSuper Fund for the period from 17 May 2016 to 1 July 2016 were those terms of the QSuper Act current as at 1 July 2014, the QSuper Deed current as at 10 July 2015, and the terms of the QSuper Notice current as at 31 July 2015; and
 - (c) denies that the QSuper Fund was a public offer superannuation fund before 1 July 2017 and otherwise admits the allegations in paragraph 6(c).

C. Obligations of QSuper

I. Obligations to notify changes to superannuation interest

- 7. The Respondent admits the allegations in paragraph 7 of the EASoC.

8. As to the allegations in paragraph 8 of the EASoC, the Respondent:
- (a) denies that persons who are alleged to be Group Members pursuant to paragraphs (b) and (c) of paragraph 3 of the EASoC acquired an interest in the QSuper Fund prior to 1 July 2016;
 - (b) denies that persons who are alleged to be Group Members pursuant to paragraph (c) of paragraph 3 of the EASoC were retail clients and further says that those persons did not hold a beneficial interest in the QSuper Fund; and

Particulars

Definition of 'superannuation interest' in section 10(1) of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**).

- (c) otherwise admits the allegations in paragraph 8.
9. As to the allegations in paragraph 9 of the EASoC, the Respondent:
- (a) refers to and repeats paragraphs 8 and 10;
 - (b) denies that QSuper was obliged by section 1017B of the Corporations Act to give any notice to persons who are alleged to be Group Members pursuant to paragraphs (b) and (c) of paragraph 3 of the EASoC; and
 - (c) otherwise admits the allegations in paragraph 9.
10. As to the allegations in paragraph 10 of the EASoC, the Respondent:
- (a) denies that QSuper was obliged by section 1013D of the Corporations Act to include information in the product disclosure statement issued in relation to an interest in the QSuper Fund for accumulation interests;

Particulars

- (i) QSuper relies on regulation 7.9.11K of the *Corporations Regulations* 2001 (Cth) (**Corporations Regulations**) which provides that subdivision 4.2B of the Corporations Regulations applies to accumulation superannuation products.
- (ii) QSuper relies on regulation 7.9.11N of the Corporations Regulations which modifies Part 7.9 of the Corporations Act in its application to accumulation superannuation products like the accumulation interests in the QSuper Fund.

- (iii) Clause 5B.2 of Schedule 10A of the Corporations Regulations substitutes section 1013C(1) of the Corporations Act with new sections 1013C(1) to 1013C(1F) in relation to accumulation superannuation products.
 - (iv) Clause 5B.3 of Schedule 10A of the Corporations Regulations omits s 1013D of the Corporations Act for accumulation superannuation products.
- (b) says that pursuant to regulation 7.9.11O of the Corporations Regulations a product disclosure statement issued in relation to an accumulation superannuation product was required to comply with the form and content requirements set out in Schedule 10D of the Corporations Regulations;
 - (c) says that clause 10 of Schedule 10D of the Corporations Regulations prescribes the content of a product disclosure statement to the extent it relates to insurance cover offered as part of the superannuation product;
 - (d) says that pursuant to section 1013C(3) of the Corporations Act a product disclosure statement must be worded and presented in a clear, concise and effective manner; and
 - (e) otherwise admits paragraph 10 of the EASoC insofar as it concerns interests in a superannuation fund other than accumulation interests.
11. As to the allegations in paragraph 11 of the EASoC the Respondent:
- (a) repeats paragraph 10 above;
 - (b) denies the allegations in paragraph 11 insofar as they are made in respect of accumulation superannuation products; and
 - (c) otherwise admits the allegations in paragraph 11.

II. **SIS Act covenants**

12. The Respondent admits the allegations at paragraph 12 of the EASoC and says further that the QSuper Act and the QSuper Notice also set out provisions governing the operation of the QSuper Fund.
13. The Respondent admits the allegations in paragraph 13 of the EASoC and says further that:
- (a) the governing rules of the QSuper Fund are taken to contain covenants to the effect of those covenants set out in section 52 of the SIS Act only to

the extent the governing rules of the QSuper Fund do not contain covenants to that effect pursuant to section 52(1) of the SIS Act;

- (b) ~~[not used] the covenant set out in section 52(2)(d) of the SIS Act provides that where there is a conflict between the duties of the trustee to the beneficiaries, or the interests of the beneficiaries, and the duties of the trustee to any other person or the interests of the trustee or an associate of the trustee, the trustee covenants:~~
- ~~(i) to give priority to the duties to and interests of the beneficiaries over the duties to and interests of other persons; and~~
 - ~~(ii) to ensure that the duties to the beneficiaries are met despite the conflict; and~~
 - ~~(iii) to ensure that the interests of the beneficiaries are not adversely affected by the conflict; and~~
 - ~~(iv) to comply with the prudential standards in relation to conflicts;~~
- (c) the covenants under section 52(2) of the SIS Act are cumulative and the operation of one covenant under section 52(2) of the SIS Act informs the operation of another covenant; ~~and~~
- (d) relies on section 52 of the SIS Act for its full force and effect; and

Particulars

Section 51A and Section 52 of the SIS Act.

- (e) the governing rules of the QSuper Fund:
- (i) as to the Care and Skill Covenant, are, and have been since 1 July 2013, taken to contain a covenant to the effect of that referred to in paragraph 13(a) of the FASoC; and
 - (ii) as to the Best Interests Covenant, are, and have been since 1 July 2013 and up until 1 July 2021, taken to contain a covenant to the effect of that referred to in paragraph 13(b) of the FASoC; and
 - ~~(iii) as to the No Conflicts Covenant, are, and have been since 1 July 2013, taken to contain a covenant to the effect of that referred to in paragraph 13(b) above.~~

Particulars

- (i) Schedule 1 of the *Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012* (Cth).
- (ii) Schedule 3 of the *Treasury Laws Amendment (Your Future, Your Super) Act 2021* (Cth).

14. The Respondent admits the allegations in paragraph 14 of the EASoC.
15. As to the allegations in paragraph 15 of the EASoC, the Respondent:
- (a) relies on section 7 of the SIS Act, as in force at the relevant times, for its full force and effect; and
 - (b) admits the allegations in paragraph 15.

III. Obligations at general law

16. As to the allegations in paragraph 16 of the EASoC, the Respondent:
- (a) refers to and repeats paragraph 13 above; and
 - (b) otherwise denies the allegations in paragraph 16.
17. As to the allegations in paragraph 17 of the EASoC, the Respondent:
- (a) says, as to paragraph 17(a):
 - (i) the general law duties of trustees required QSuper to exercise its duties and powers to the standard of an ordinary prudent person of business similarly positioned to QSuper; and
 - (ii) that it otherwise denies the allegations in paragraph 17(a);
 - (b) says, as to paragraph 17(b), that it:
 - (i) admits QSuper owed a fiduciary duty to act so as to not place itself in a position involving a real and sensible possibility of a conflict between the duty as a fiduciary and its own interest and to not make unauthorised profits;
 - (ii) says further that the general law duties of trustees in Australia do not encompass a positive, prescriptive duty to act in the best interests of beneficiaries; and
 - (iii) otherwise denies the allegations in paragraph 17(b);

- (c) ~~[not used] as to paragraph 17(c), admits the allegations and says further that:~~
- (i) ~~it is the duty of QSuper to adhere to the terms of the QSuper Act and the QSuper Deed (the full terms and effect of which the Respondent relies upon), which duly informs and affects the operation of the General Law Conflicts Duty and other general law duties; and~~
 - (ii) ~~the full terms and effect of any engagement with a third party, such as QInsure, must be considered with respect to the interests of the beneficiaries of the QSuper Fund as a whole; and~~

Particulars

~~Section 12 of the QSuper Deed.~~

- (d) ~~as to paragraph 17(d), says that: refers to and repeats paragraph 17(c) above and otherwise admits the allegations in paragraph 17(d).~~
- (i) ~~it is the duty of QSuper to adhere to the terms of the QSuper Act and the QSuper Deed (the full terms and effect of which the Respondent relies upon), which duly informs and affects the operation of the General Law Profits Duty and other general law duties; and~~
 - (ii) ~~the full terms and effect of any engagement with a third party, such as QInsure, must be considered with respect to the interests of the beneficiaries of the QSuper Fund as a whole,~~
- ~~and otherwise admits the allegations.~~

Particulars

Section 12 of the QSuper Deed.

D. Insurance offered to beneficiaries of the QSuper Fund

I. Position prior to 1 July 2016

18. As to the allegations in paragraph 18 of the EASoC, the Respondent:
- (a) says that prior to 1 July 2016 QSuper provided the following insurance by an arrangement described as self-insurance in respect of accumulation categories of membership:

- (i) for the CAC category members: 4 units of combined death and total and permanent disablement (**TPD**) cover and income protection cover with a 2 year benefit period and a waiting period equal to accrued sick leave plus 14 continuous days of sick leave without pay;
 - (ii) for the BAC members: 2 units of combined death and TPD cover and no income protection cover;
 - (iii) casual members: 2 units of combined death and TPD cover and no income protection cover; and
 - (iv) police: 4 units of combined death and TPD cover and no income protection cover;
- (b) says that prior to 1 July 2016 members could also elect to apply for additional combined death and TPD cover subject to a maximum limit of \$2 million (and \$1 million for casual employees) and choose to cancel their cover, but could not cancel death cover only or TPD cover only;
- (c) says that the Applicant had the following insurance cover for the period from 1 July 2015 to 30 June 2016:
- (i) from 1 July 2015 to 10 August 2015 - 4 units of standard death and TPD cover and no income protection cover;
 - (ii) from 10 August 2015 to 22 February 2016 - 4 units of standard death cover and TPD cover and income protection cover;
 - (iii) from 22 February 2016 to 30 June 2016 - 4 units of standard death cover and TPD cover and no income protection cover;
- (d) denies that persons who are alleged to be Group Members pursuant to paragraphs (b) and (c) of paragraph 3 of the EASoC were provided insurance;
- (e) says that insurance premiums were only applied to the accumulation accounts of the Applicant and persons who are alleged to be Group Members in respect of a period in which they had insurance cover; and
- (f) otherwise admits the allegations in paragraph 18.

19. As to the allegations at paragraph 19 of the FASoC, the Respondent says as follows:
- (a) the insurance arrangements the subject of the allegations in paragraph 19 were applicable from about 1 January 2015 until 30 June 2016, and the Respondent refers to and repeats paragraph 18 above and 21 below;
 - (b) as to paragraph 19(a)(i), the Respondent:
 - (i) says that premiums were deducted directly from the balance of the member's accumulation account monthly in arrears;
 - (ii) refers to and repeats paragraph 19(a) above; and
 - (iii) otherwise admits the allegations in the paragraph 19(a)(i).
 - (c) as to paragraph 19(a)(ii), the Respondent:
 - (i) says that the amount of one unit of insurance and the premium payable varied based on the age of the member;
 - (ii) refers to and repeats paragraph 19(a) above; and
 - (iii) denies the allegation in the paragraph 19(a)(ii); and
 - (d) save for the matters alleged at paragraph 19(a) above, the Respondent otherwise admits the allegations in paragraphs 19(a)(iii) and (iv);
 - (e) as to paragraph 19(b)(i), the Respondent:
 - (i) says that premiums were deducted directly from the balance of the member's accumulation account:
 - (1) fortnightly, in arrears, for members employed by the Queensland government; and
 - (2) monthly, in arrears, for members not employed by the Queensland government; and
 - (ii) refers to and repeats paragraph 19(a) above; and
 - (iii) otherwise denies the allegation in paragraph 19(b)(i); and
 - (f) save for the matters alleged at paragraph 19(a) above, the Respondent admits the allegations in paragraphs 19(b)(ii) and (iii).

Particulars

- (i) Document entitled 'Insurance Terms: Insurance for Accumulation Accounts and Voluntary Insurance for Defined benefit Members' dated 1 January 2015.
- (ii) Group Life Insurance Policy No. GR722-GL and Group Salary Continuance Insurance Policy No. GR722-SC both issued by TAL Life Limited.

II. Change to insurance arrangements from 1 July 2016

20. As to the allegations in paragraph 20 of the EASoC, the Respondent says as follows:

- (a) the QSuper Deed operative in the relevant period was the consolidated version of the QSuper Deed current as at 10 July 2015;
- (b) at all relevant times:
 - (i) section 22(2) of the QSuper Deed defined the accumulation categories of the QSuper Fund to be (i) the comprehensive accumulation category; (ii) the basic accumulation category; and (iii) the QAS accumulation category;
 - (ii) by section 22(3) of the QSuper Deed, the other categories of membership, other than the 'non-public sector accumulation category', were defined benefit categories;
 - (iii) prior to 30 June 2017, 'non-public sector accumulation category' members were covered by Chapter 10 of the QSuper Deed and were excluded from the definition of accumulation categories under Chapter 3 of the QSuper Deed; and
 - (iv) by section 22(1) of the QSuper Deed current from 30 June 2017, 'non-public sector accumulation category' members became the 'general accumulation category' members and thereby became members of an accumulation category;
- (c) pursuant to section 13 of the QSuper Act (current as at 1 July 2014), membership of the QSuper Fund on or before 17 May 2016 in one of the accumulation categories defined by section 22(1) and (2) of the QSuper Deed was compulsory for employees of numerous units of the State

public sector according to the QSuper Notice (current as at 31 July 2015/1 July 2016);

- (d) pursuant to section 6(2) of the QSuper Notice amounts held for an employee in the QSuper Fund who was a member of the basic accumulation, comprehensive accumulation or QAS accumulation categories were required to be applied towards prescribed insurance for the employee under the QSuper Deed unless the employee elected under the QSuper Deed not to have the insurance;
- (e) under the Insurance Policy, an 'Insured Person' would receive the 'Default Rate' unless the Insured Person had made an application and had been approved for an alternative Occupational Rate pursuant to Schedule 1 of the Insurance Policy;
- (f) the occupational rating categories were set out in Schedule 4 of the Insurance Policy and in addition to the 'Standard Rate', the 'Professional Rate' and the 'White Collar Rate' also included a 'High Risk Rate';
- (g) the Insurance Policy did not provide for the payment of insurance benefits to persons who are alleged to be Group Members pursuant to subparagraphs (b) and (c) of paragraph 3 of the EASoC;
- (h) pursuant to clause 21.4.2 of the Insurance Policy, insured benefits were payable to QSuper in respect of Insured Persons in the event of their disablement, terminal illness or death according to the terms and conditions of the Insurance Policy;
- (i) benefit proceeds paid to QSuper in respect of a member were credited to the member's accumulation account by QSuper;

Particulars

Section 77(2) of the QSuper Deed.

- (j) if a member was entitled to payment of a TPD benefit (or a terminal illness benefit), the balance of their accumulation account, including the insurance proceeds credited, would be payable to the member;

Particulars

Section 79 of the QSuper Deed.

- (k) if a member had died, the balance of their accumulation account, including the insurance proceeds credited, would be payable to the member's legal personal representative or to such individual as QSuper after receipt of an application for the payment determined, subject to restrictions on the payment of death benefits under the SIS Act and *Superannuation Industry (Supervision) Regulations 1994* (Cth);

Particulars

Sections 80 and 89B of the QSuper Deed.

- (l) if a member was entitled to payment of an income protection benefit, the insurance proceeds would be payable to the member;

Particulars

Section 23J of the QSuper Deed.

- (m) denies that QInsure is a subsidiary of the Respondent and says that the Respondent hold shares in QSuper Limited, being the parent company of QInsure; and
- (n) the Respondent otherwise admits the allegations in paragraph 20.
21. As to the allegations in paragraph 21 of the FASoC, the Respondent says as follows:
- (a) the Respondent admits the allegations in paragraph 21(a) and says further that:
- (i) for each Accumulation Member who was an Insured Person under the Insurance Policy, premiums were deducted from the balance of the Accumulation Member's superannuation account in the following month on an arrears basis;
- (ii) QSuper introduced changes to insurance cover for members of the QSuper Fund with an accumulation interest with effect from 1 July 2016, by introducing features which allowed members to personalise their cover with increased flexibility for combinations of cover, waiting periods, additional cover, reductions in cover, permanent opt-in of cover and occupational ratings;
- (b) the Respondent admits the allegations in paragraph 21(b) and says further that for those members who had default insurance cover prior to 1

July 2016, QSuper applied a premium to their accumulation account in the QSuper Fund with effect from 1 July 2016 at a rate referred to as the Default Rate (or for QPS Members, the 'Default Police Rate'), unless and until they ceased to have default cover, including because their cover was personalised pursuant to clause 10 of the Insurance Policy;

- (c) the Respondent admits the allegations in paragraph 21(c) and says further that the occupational ratings applied so that an Insured Person's occupational rating was the Standard Rate, unless the Insured Person had made an application and was approved for an alternative Occupational Rate, and that any Insured Person employed by the Queensland police service (excluding ranked commissioned officers or cadets) had an occupational risk rating of the 'high risk rate';

Particulars

Clause 10.7.1 of the Insurance Policy and Schedule 1 (page 82) of the Insurance Policy.

- (d) as to the allegations in paragraph 21(d)(i)(A), the Respondent:
- (i) admits that the Default Rate for death benefit cover was higher than the Standard Rate for death benefit cover for members while they were aged between 17 and 39 years;
- (ii) denies that the Standard Rate was materially less than the Default Rate for these members;

Particulars

The Default Rate was higher than the Standard Rate for unitised death benefit cover for those aged between 17 and 39 years (inclusive) by amounts ranging from 52 cents (for age 39) to \$5.22 (for age 30) per unit per annum.

- (iii) says further that the Standard Rate was higher than the Default Rate for unitised death benefit cover for those aged between 40 and 50 years (inclusive) and the Standard Rate was the same as the Default Rate for unitised death benefit cover for those aged between 51 and 69 years (inclusive);

- (iv) says further that a member's age under the terms of the Insurance Policy was to be determined as the member's current age; and
- (v) otherwise denies paragraph 21(d)(i)(A);
- (e) as to the allegations in paragraph 21(d)(i)(B), the Respondent:
 - (i) admits that the Default Rate for TPD benefit cover was higher than the Standard Rate for TPD benefit cover for members while they were aged between 17 and 39 years;
 - (ii) denies that the Standard Rate was materially less than the Default Rate for these members;

Particulars

The Default Rate was higher than the Standard Rate for unitised TPD cover for those aged between 17 and 39 years (inclusive) by amounts ranging from 52 cents (for ages 18 to 21 and 39) to \$7.30 (for ages 31 and 32) per unit per annum.

- (iii) says further that the Standard Rate was higher than the Default Rate for unitised TPD cover for those aged between 40 and 50 years (inclusive) and the Standard Rate was the same as the Default Rate for unitised TPD cover for those aged between 51 and 64 years (inclusive); and
- (iv) otherwise denies paragraph 21(d)(i)(B);
- (f) as to the allegations at paragraphs 21(d)(ii) and (iii), the Respondent:
 - (i) says the white collar rate for death and TPD cover was 65% of the Standard Rate and for income protection cover was 70% of the Standard Rate;
 - (ii) says the professional rate for death and TPD cover was 60% of the Standard Rate and for income protection cover was 65% of the Standard Rate; and
 - (iii) says the high risk rate for death cover was 175% of the Standard Rate, the high risk rate for TPD cover was 350% of the Standard

Rate and the high risk rate for income protection cover was 150% of the Standard Rate;

- (iv) says there were differing Default Rates for default income protection cover (other than default police rates) depending upon whether the Insured Person had default income protection cover with:
 - (1) a waiting period of accrued sick leave plus 14 days, which was the case for permanent CAC insurance arrangements; or
 - (2) a waiting period being the greater of accrued sick leave and 90 days, which was the case for permanent BAC insurance arrangements;
- (v) says that in each case of default income protection cover the benefit period was 3 years;
- (vi) says there were differing Standard Rates for income protection cover, depending upon whether:
 - (1) the Insured Person had salary based benefits equal to a percentage of insured salary; or
 - (2) unitised benefits as elected by the Insured Person, and then within each of those categories, whether the income protection cover was for:
 - (1) a 3 year benefit period with a waiting period of accrued sick leave plus 14 days;
 - (2) a 3 year benefit period with a waiting period of the greater of accrued sick leave or a period of 30 days, 60 days or 90 days;
 - (3) a 5 year benefit period with a waiting period of the greater of accrued sick leave or a period of 30 days, 60 days or 90 days; or
 - (4) a benefit period to age 65 with a waiting period of the greater of accrued sick leave or a period of 30 days, 60 days or 90 days;

- (vii) admits allegation in relation to paragraph 21(d)(ii)(B) and 21(d)(iii)(A) and (B);
 - (viii) says that in relation to paragraphs 21(d)(ii)(C) and 21(d)(iii)(C), in the absence of proper particularisation of what is meant by “materially less”, these paragraphs are vague and defective and liable to be struck out; and
 - (ix) otherwise denies the allegations at paragraphs 21(d)(ii) and (iii);
- (g) the Respondent says that for default income protection cover from 1 July 2016, the Default Rate for the annual premium was, for all age groups, lower than the Standard Rate in respect of the default income protection benefit with the equivalent benefit period of 3 years and waiting period of accrued sick leave plus 14 days;
- (h) the Respondent relies upon the Insurance Policy for its full terms, meaning and effect, as well as the (correct) premium rates for the various categories of cover and members; and
- (i) the Respondent says that persons who are alleged to be Group Members pursuant to sub-paragraphs (b) and (c) of paragraph 3 of the SoC did not have insurance cover from the QSuper Fund and were not directly affected by the changes to insurance cover that commenced from 1 July 2016 and those persons could not therefore have elected to have personalised insurance cover.

E. Notification of change to insurance premiums

22. As to the allegations in paragraph 22 of the FASoC, the Respondent says that:

- (aa) it admits QSuper prepared the Notice;
 - (ab) ~~save to say that~~ QSuper did not cause to be sent the Notice to persons who are alleged to be Group Members pursuant to paragraphs (b) and (c) of paragraph 3 of the FASoC; ~~the Respondent otherwise admits the allegations in paragraph 22 and further says:~~
- (a) the Notice was issued on 17 May 2016;
 - (b) the Notice was sent, or otherwise made accessible, to affected members under a cover letter, together with a document referred to as a ‘brochure’ (**Notice Packs**);

Particulars

- (i) A copy of the Notice (QSB.5001.0013.0960).
 - (ii) As to how the Notice was sent or made accessible to affected members, the Respondent refers to and repeats paragraphs 22 (c) and 22(d) (including the particulars) below.
- (c) Notice Packs were distributed to members who had not elected to receive notifications from QSuper by electronic means by direct mail (that is, by sending a hard copy of the May Letter referred to in paragraph 25 below, the Notice and a brochure by post to their address held in QSuper's records) between about 19 May and 31 May 2016;
- (d) Notice Packs were distributed to members who had elected to receive notifications from QSuper by electronic means by electronic mail (to their email addresses held in QSuper's records) between about 26 May and 31 May 2016;

Particulars

- (i) the Notice was accessible via a hyperlink in the May Email referred to in paragraph 26A below, which formed part of the Notice Pack and was sent to the members referred to in subparagraph (d). Such members could download and view the Notice in PDF format by clicking on the hyperlinked words "Important Information" in the May Email (QSB.1004.0023.1082).
- (ii) the Notice was also accessible via a hyperlink in the May Letter referred to in paragraph 25 below, which formed part of the Notice Pack and could be accessed by members referred to in subparagraph (d) by downloading and viewing the Notice in PDF format by clicking on the hyperlinked words "Important notice from the QSuper Board of Trustees" in the May Letter (QSB.5001.0008.0001).
- (iii) the Notice was also accessible to QSuper members and the general public on the QSuper public website: Affidavit of M Thomas affirmed 12 August 2024, [35].

- (e) the May Letter ~~cover letter~~ in the Notice Pack differed according to whether the member was in one of the following categories:
- (i) CAC with Queensland government, where the member was making standard contributions;
 - (ii) BAC with Queensland government, where the member was not contributing;
 - (iii) legacy account holders (including defined benefit, police and State accounts) who may or may not have held insurance through an accumulation account;
 - (iv) non-Queensland government employer accounts, where members had cover insured by a policy held by QSuper with TAL Life;
 - (v) a general catch-all category covering members who had cancelled cover, did not hold cover because they were under 16 years of age and members who held insurance through Queensland Performing Arts Trust or Queensland Ambulance Service; and
 - (vi) those members with dual death and/or TPD cover through both the self-insurance arrangements with QSuper and the policy with TAL Life and who may have also had self-insurance income protection cover;
- (f) a Notice Pack was issued to the Applicant on 30 May 2016 by electronic mail with access to an electronic version of the May Letter ~~cover letter~~ including a hyperlink to the QSuper Fund website; and

Particulars

- (i) Master for eDM spreadsheet confirming that QSuper sent the Notice Pack to the Applicant by electronic mail on 30 May 2016 (QSB.2000.0005.0003).
- (ii) Affidavit of Claire Rachael Gault affirmed on 12 August 2024 at [14].
- (iii) Letter from QSuper to the Applicant dated 30 May 2016 (QSB.5001.0002.0918).

(iv) The Respondent refers to paragraph 22(d) above, and the particulars subjoined to that paragraph.

(g) the Respondent relies on the Notice Pack sent to the Applicant for its full terms, meaning and effect;-

(h) the Respondent refers to paragraph 26A below, and the particulars subjoined to that paragraph; and

(i) otherwise denies the allegations in this paragraph.

23. As to the allegations in paragraph 23 of the FASoC, the Respondent:

(a) relies on the Notice for its full terms, meaning and effect; and

(b) otherwise admits the allegations in paragraph 23.

24. As to the allegations in paragraph 24 of the FASoC, the Respondent:

(a) says that the Notice stated in large font:

“On 1 July 2016, QSuper will be making some big changes to the insurance cover we offer you. We know every one of you is unique. That’s why these enhancements are designed to give you more opportunity to personalise your cover to meet your individual needs. It’s just another way you can feel confident we’re looking out for you, whatever stage of life you’re at.”

Particulars

Page 2 of Notice.

(b) says that the Notice also stated that:

“What’s happening on 1 July 2016?

The insurance cover you’ll have on 1 July, and the insurance you’ll be entitled to receive will vary depending on your age, current level of cover and employment situation. However some of the key things to understand are:

...

*Your premiums may change and we are introducing **occupational ratings** for premiums.*

More detailed information about these and other changes can be found on the following pages.”

Particulars

Page 2 and definitions at page 22 of the Notice.

(c) says that the Notice also stated:

“Contents

The table below outlines the main changes that will happen on 1 July 2016 and where in this document you can find out more. More detail will be in the Accumulation Insurance Guide dated 1 July 2016, which will be available on our website from 1 July 2016. Can't get to a computer? Just give us a call and we'll send you a copy.

...

<i>Premiums and occupational ratings</i>	<i>Premiums may change on 1 July 2016. We'll be introducing a new premium rating system too, and some members, will find their premiums have moved from default rate to standard rate.”</i>
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Particulars

Page 3 and definitions at pages 21-23 of the Notice.

(d) says that the Notice also stated:

“Changing your cover

You can make changes to your cover by logging into Member Online or sending us a completed Change my Insurance form or Cancel my Insurance form. You'll be able to make changes to the new insurance that applies from 1 July 2016 from that date.

Please note that you won't be able to cancel or change this insurance in Member Online until 4 July 2016, but from 1 July to 3 July you'll be able to cancel your cover using a Cancel my Insurance form, or change it using a Change my Insurance

form. You can email, fax or mail the completed form to us, and the change will take effect from the day we receive it.

Conditions apply when you change your cover, and if you increase your cover you may be required to provide health and other information.”

Particulars

Page 10 of Notice.

- (e) says that the Notice also stated:

“What will cover cost?

...

*We are also introducing **occupational ratings** from 1 July 2016, and for some members, choosing to be occupationally rated may reduce your premiums. There will be more information on **occupational rating** and premiums in the Accumulation Account Insurance Guide dated 1 July 2016.”*

Particulars

Page 14 and definitions at page 22 of the Notice.

- (f) says that the Notice referred members to the ‘Accumulation Account Insurance Guide dated 1 July 2016’ (**Insurance Guide**) to find out more information about the occupational rating and premiums and other details about the new options;

Particulars

Page 18 of the Notice.

- (g) says that the Insurance Guide explained the Occupational Rates and directed members to log into the online platform referred to as ‘Member Online’ which allowed them to enter different combinations of cover and occupational ratings to see how much their premium would be;

Particulars

The Insurance Guide was issued on 1 July 2016 and available on the website from 1 July 2016. Pages 12 and 17 to 18 of the Insurance Guide describe the Occupational Rates.

- (h) relies on the Notice for its full terms, meaning and effect;
 - (i) says that the matters set out above, including the ability of members to personalise their cover by choosing to be occupationally rated, as set out on pages 10 and 14 of the Notice, conveyed, and would be understood by ordinary and reasonable members reading the Notice as notifying them, that it was necessary to make an election in writing if they wished to be occupationally rated; and
 - (j) otherwise denies the allegations in paragraph 24 of the FASoC.
25. As to the allegations in paragraph 25 of the FASoC, the Respondent:
- (aa) admits that QSuper prepared the May Letter;
 - (a) refers to and repeats paragraphs 22 and 26; ~~and~~
 - (b) says that QSuper did not make the May Letter accessible to persons who are alleged to be Group Members pursuant to paragraphs (b) and (c) of paragraph 3 of the FASoC;
 - (c) says that the May Letter (containing personalised information tailored to the particular recipient) was sent, or otherwise made accessible, to affected members as follows:
 - (i) May Letters were distributed to members who had not elected to receive notifications from QSuper by electronic means by direct mail (that is, in hard copy by post to their address held in QSuper's records) between about 19 May and 31 May 2016;
 - (ii) May Letters were distributed to members who had elected to receive notifications from QSuper by electronic means by way of electronic mail (to their email addresses held in QSuper's records) between about 26 May and 31 May 2016; and

Particulars to (ii)

 - (i) the May Letter was accessible on QSuper's "Member Online" platform, via a hyperlink from the May Email which was sent to the members referred to in subparagraph (c)(ii);
 - (ii) the Member Online platform, being a password protected platform accessible by members, provided a secure portal

for delivering personal information to members in circumstances where it was QSuper's policy to avoid emailing such confidential information externally: Briefing note dated 20 January 2016 (QSB.1001.0013.8584); QSuper's Information Protection Policy (QSB.5001.0062.0001)

(de) otherwise denies the allegations in paragraph 25.

26. As to the allegations in paragraph 26 of the FASoC, the Respondent:

- (a) refers to and repeats paragraphs 22, ~~and 24~~ and 25 above;
- (b) says that the content of the May Letters ~~cover letters~~ varied in that each contained personalised information tailored to the particular recipient; ~~depending on the circumstances of the addressee;~~

Particulars

(i) QSB.5001.0013.0932.

(ii) QSB.5001.0002.0918.

(iii) QSB.2000.0001.0001.

(iv) The May Letters contained personalised information for each recipient including their full name, address, 'client number' (being a unique identifier of their account with QSuper), details relating to their insurance cover including the status of cover and level of cover (if the recipient held insurance cover).

- (c) says that all of the May Letters ~~cover letters~~, including the letter to the Applicant dated 30 May 2016 (~~such letters being referred to hereafter as the **May Letter**~~), stated that from 1 July 2016 QSuper were making changes to insurance, including: (in respect of members who held insurance and to the extent applicable by reference to the cover they held);

“giving you a much greater ability to personalise your cover to your situation”;

“separating out death cover and total and permanent disability (TPD) cover so you have the flexibility to personalise your levels of cover for each.”;

“The information at the end of this letter provides a snapshot of your current and future cover, so you can clearly see what will be changing on 1 July”;

“So you can easily compare how your death and TPD premiums are changing, we show you the combined death and TPD premium cost’; and

“You’ll find information on our website that highlights how our insurance cover can be personalised to suit different individual circumstances”.

Particulars

QSB.5001.0013.0932.

QSB.5001.0002.0918.

- (d) says that the reference in each the May Letter to members not having to ‘do anything’ and to the changes outlined as happening ‘automatically on 1 July 2016’ was a reference to the matters outlined in the May Letter, including those referred to in paragraphs 26(b) and (c) above, such that:
- (i) the default cover which was set out in the ‘snapshot’ of the member’s current and future cover that was personalised for each member’s circumstances at the end of the letter (including the premiums) would incept with automatic effect from 1 July 2016; and
 - (ii) also with automatic effect from 1 July 2016, members would have the option, if they so wished, to take steps to personalise their cover in line with the changes outlined;
- (e) says further that the reference in the May Letter to the ability of members to personalise their cover conveyed, and would reasonably be taken by ordinary and reasonable members reading the May Letter as meaning, that members would be able to personalise their cover including by choosing to be occupationally rated as set out on page 14 of the Notice to which the May Letter referred;

- (f) relies on the May Letter for its full terms, meaning and effect in the context of the Notice Pack ~~and the other information available to the Applicant and insured members on the QSuper website and online platform~~; and
- (g) otherwise denies the allegations in paragraph 26 of the FASoC.

F. Failure to provide sufficient notice of change to superannuation interest

26A. As to the allegations in paragraph 26A of the FASoC, the Respondent:

- (a) save to say that says that QSuper did not make the May Email accessible cause the Notice to be sent to persons who are alleged to be Group Members pursuant to paragraphs (b) and (c) of paragraph 3 of the FASoC; the Respondent otherwise admits the allegations in paragraph 26A and further says that
- (b) it refers to and relies upon the May Email for its full terms, meaning and effect;
- (c) admits that QSuper prepared the May Email;
- (d) says that May Emails were distributed to members who had elected to receive notifications from QSuper by electronic means by way of electronic mail (to their email address held in QSuper's records) between about 26 May and 31 May 2016;
- (e) says that to the extent that it came to QSuper's attention that:
- (i) a May Email "bounced back", meaning that it was not successfully delivered to the email address of the intended recipient to which it had been sent; or
 - (ii) an intended recipient of a May Email unsubscribed from email notifications.

QSuper sent that intended recipient a hard copy of their personalised May Letter and the Notice by direct mail (unless QSuper knew that the intended recipient had, by then, died or exited the QSuper Fund);

Particulars

QSB.1001.0006.8630.

QSB.1001.0007.9005, QSB.1001.0007.9006.

QSB.1001.0015.5462.

- (f) says that QSuper was not aware when it distributed the May Email that any emails were caught in spam filters on any recipients' email servers;
- (g) says that in or around February 2017, QSuper became aware that due to spam filters on some Government IT servers, some emails to members may not have been received even though these were sent to the addresses nominated by those members and no rejection notification was received by QSuper;

Particulars

Minutes of the Meeting of the QSuper Board held on 23 February 2017
(QSB.5001.0018.0039).

- (h) says that in response to the matter outlined in subparagraph (g) above, QSuper promoted the use of private email addresses rather than work email addresses and worked with the Queensland Government to endeavour to ensure that future digital communications were not blocked;

Particulars

QSB.6000.0005.0001 at .0065.

- (i) says that by the terms and conditions which applied to QSuper Fund members' use of Member Online provided at the relevant time:
- (i) it was a requirement of Member Online that members provide a valid email address, and inform QSuper if they changed it (clause 1.3);
 - (ii) members agreed that where QSuper was required by law to provide them with a document, QSuper may provide that document electronically (whether provided on or through links on Member Online or via email). This information included significant event notifications, financial services guides, product disclosure statements, members benefit statement, statements of advice, and exit statements (clause 1.3);
 - (iii) members agreed to receive emails in relation to their use of Member Online (clause 1.3);

(iv) members agreed not to dispute the validity or enforceability of electronic communications and that they would be taken to have received such communications whether or not they accessed the communications on Member Online (clause 1.3); and

Particulars

- (i) Member Online Terms and Conditions in force from 9 May 2016 until 13 June 2016 (QSB.5001.0059.0001).
- (ii) Member Online Terms and Conditions in force from 13 June 2016 until 7 January 2020 (QSB.5001.0059.0001).

(i) says that in December 2016, management of QSuper had resolved to develop a renewed insurance campaign known as “Know Your Insurance” to provide information and to educate members about their insurance coverage and options, which occurred in around May 2017;

Particulars

Minutes of the Meeting of the QSuper Board held on 23 February 2017 (QSB.5001.0018.0039 at .0040).

- (k) refers to and repeats paragraphs 22, 25 and 26; and
- (l) otherwise denies the allegations in this paragraph.

26B. As to the allegations in paragraph 26B of the EASoC, the Respondent:

(a) says that the May Email stated:

“To find out what will be changing for you, simply log in to Member Online and you’ll find a personalised letter and a link to the Important Information brochure from the QSuper Board of Trustees, these should be read together and will explain the changes in more detail.

If you have any questions about this email, or your super in general please visit our website, or give us a call on 1300 360 750.”

(b) relies on the May Email for its full terms, meaning and effect in the context of the May Letter, the Notice Pack and the other information available to

the Applicant and insured members on the QSuper website and online platform;

- (c) refers to and repeats paragraphs 22-24 and 26-26A above; and
 - (d) otherwise denies the allegations in paragraph 26B of the EASoC.
- 26C. As to the allegations in paragraph 26C of the EASoC, the Respondent:
- (a) refers to and repeats paragraph 26B above; and
 - (b) otherwise denies the allegations in paragraph 26C of the EASoC.
27. As to the allegations in paragraph 27 of the EASoC, the Respondent:
- (a) denies the allegations in paragraph 27;
 - (b) refers to and repeats paragraph 10 above; and
 - (c) says that section 1013D did not apply to accumulation interests in the QSuper Fund.
28. The Respondent denies the allegations in paragraph 28 of the EASoC and refers to and repeats paragraph 27 above.
29. As to the allegations in paragraph 29 of the EASoC, the Respondent:
- (a) admits that the changes to insurance cover arrangements which took effect on 1 July 2016 (being all of the changes and not just those aspects which introduced new options to personalise cover) constituted a material change for the purposes of section 1017B(1A) of the Corporations Act;
 - (b) admits that QSuper was required to notify members of the QSuper Fund with insurance cover associated with an accumulation account, including the Applicant, of the changes to the insurance cover arrangements in accordance with section 1017B(1) of the Corporations Act;
 - (c) admits that QSuper was required pursuant to section 1017B(4) of the Corporations Act to give affected members such information that was reasonably necessary for the members to understand the nature and effect of the change or event;
 - (d) says that it complied with that obligation; and
 - (e) otherwise denies the allegations in paragraph 29.
30. The Respondent denies the allegations in paragraph 30 of the EASoC and refers to and repeats paragraphs 22, 24, 25, 26, 26A, 26B, 26C and 29 above.

G. Misleading or deceptive conduct

31. As to the allegations in paragraph 31 of the EASoC, the Respondent says as follows:

- (a) the Respondent refers to and repeats paragraphs 26 and 26B-26C above;
- (b) the Respondent denies the allegations in paragraph 31(a) and says that its conduct in administering the superannuation interests held by members in the QSuper Fund and providing insurance cover to those members as part of their superannuation benefits was not conduct in trade or commerce because:
 - (i) QSuper was administering the superannuation interests and the provision of insurance cover in the context of public service employment arrangements;
 - (ii) the QSuper Fund offered superannuation arrangements for Queensland public servants and former Queensland public servants and other persons contracted and engaged in public sector employment in Queensland on behalf of the State of Queensland;
 - (iii) at all relevant times QSuper was a not-for-profit entity;
 - (iv) at all relevant times QSuper represented the State in the right of Queensland;

Particulars

Section 3(5) of the QSuper Act as in force at all relevant times.

- (v) QSuper was bound to provide superannuation for Queensland government employees under the QSuper Act, the QSuper Deed and the QSuper Notice;
- (vi) the terms of insurance were required to be determined by QSuper pursuant to section 23J of the QSuper Deed and premiums deducted pursuant to section 23K of the QSuper Deed;
- (vii) QSuper was not a public offer fund prior to 1 July 2017; and

- (viii) of the matters alleged in paragraph 20(c) above;
- (c) as to the allegations in paragraph 31(b):
- (i) the Respondent denies that the Insurance Policy was issued by QSuper to members of the QSuper Fund and further says that the Insurance Policy was issued by QInsure to QSuper and insurance cover was a feature of the superannuation interests issued by QSuper in the QSuper Fund to members with an accumulation interest (other than in respect of an income account);
 - (ii) the Respondent denies that either of the so-called 'Insurance Change Representation' or the 'Implied Insurance Change Representation' (the making of each of which is denied) was conduct in relation to a 'financial service' within the meaning of section 766A(1) of the Corporations Act and says further that neither the Notice nor the May Email was sent in relation to the issuing of a superannuation interest or other dealing in a superannuation interest by QSuper within the meaning of section 766C of the Corporations Act;
 - (iii) the Respondent denies that either of the so-called 'Insurance Change Representation' or the 'Implied Insurance Change Representation' (the making of each of which is denied) was conduct in relation to a 'financial service' within the meaning of section 12BAB(1) of the ASIC Act and further says (1) that neither the Notice nor the May Email was sent in relation to the issuing of a superannuation interest or other dealing in a superannuation interest by QSuper within the meaning of section 12BAB(7) of the ASIC Act; (2) was not conduct in relation to the provision of a service for the purposes of section 12BAB(1)(g) of the ASIC Act; and (3) such conduct was not in 'trade or commerce' as to which the Respondent repeats and relies on paragraph 31(b) above; and
 - (iv) otherwise denies the allegations in paragraph 31(b).

32. As to the allegations in paragraph 32 of the EASoC, the Respondent:
- (a) denies allegations in paragraph 32;
 - (b) refers to and repeats paragraphs 21-24 and 26A above; and
 - (c) says further that the Applicant and alleged Group Members to whom the Notice Pack was sent were, through the Notice, the May Letter, the May Email and the Insurance Guide referred to in the Notice and made available to members on 1 July 2016 (when the relevant changes took effect), sufficiently put on notice of the changes to the insurance cover arrangements and the need to make an election if they wished to personalise their cover, including by choosing to have an occupational rating.
- 32A. As to the allegations in paragraph 32A of the EASoC, the Respondent:
- (a) refers to and repeats paragraphs 21, 26B and 26C above;
 - (b) otherwise denies the allegations in the paragraph; and
 - (c) says further that those persons whom the May Email was sent were, through the May Letter, the Notice and the Insurance Guide referred to in the Notice and made available to members on 1 July 2016 (when the relevant changes took effect), sufficiently put on notice of the changes to the insurance cover arrangements and the need to make an election if they wished to personalise their cover, including by choosing to have an occupational rating.
33. The Respondent denies the allegations in paragraph 33 of the EASoC and refers to and repeats paragraphs 5, 22 to 26, 26B to 26C and 31 to 32A above.
- H. Contraventions of trustee covenants**
- I. Contravention of care and skill covenants**
- 33A. As to paragraph 33A of the EASoC, the Respondent:
- (a) says that, on or about May 2013, the QSuper Board approved in principle, that, given the Queensland Government was likely to introduce “Choice of Fund” for its employees, it was in the best interests of members to apply for a public offer licence;

Particulars

Minutes of the Meeting of the QSuper Board held on
23 May 2013 (QSB.5001.0030.0400 at .0407)

QSB.6000.0003.0005 at .0105.

- (b) says that, on 23 October 2014, the QSuper Board approved a resolution that the QSuper Fund should become a public offer fund as this was in the best interests of then-current and future QSuper members; and

Particulars

Minutes of the Meeting of the QSuper Board held on
23 October 2014 (QSB.5001.0020.0017).

- (c) otherwise denies the allegations in paragraph 33A of the FASoC.

33B. As to paragraph 33B of the FASoC, the Respondent:

- (a) says that by no later than 14 January 2014, employees of the Respondent had attempted to classify certain members of QSuper Fund into seven occupational classifications (**Classifications**) based on certain estimates and assumptions;
- (b) says that the attempt to classify members into the Classifications was undertaken by reference to “Minimum Obligatory Human Resources Information” (**MOHRI**) data provided to QSuper by the Public Service Commission;
- (c) says that it did not have MOHRI data for the entire membership of the QSuper Fund and that MOHRI data could not have formed a reliable basis for a trustee, acting consistently with its obligations, to implement the System (as defined in paragraph 35 of the FASoC);
- (d) says that the attempted classification exercise was undertaken for the purpose of enabling the State Actuary to price occupation ratings and was not, and could not have been, used as the basis for individual premium pricing decisions; and

Particulars

MOHRI data did not permit QSuper to know with certainty an individual member’s occupation for individual insurance or premium pricing purposes and

that, to the extent that the attachments to the 14 January Email attempt to connect MOHRI data to membership files, this was the result of a “best guess” attempt to match data as best as could be achieved by using such data as was available and making certain assumptions.

- (e) otherwise denies the paragraph.

Particulars

Further particulars will be provided after evidence.

33C. As to paragraph 33C of the EASoC, the Respondent:

- (a) says that on or about 7 November 2014, Robert Bartlett, a Product Analyst at QSuper sent an email to Greg Leo, an Insurance Consultant at QSuper, with the title “Occupations” (**7 November Email**);
- (b) says that the work described in the 7 November Email was on the basis of a sample of only 5 funds;
- (c) says that the 7 November Email states that this was because “a lot of other funds we perceive as competitors such as NGS, QIEC and Hesta don’t use occupational rating”;
- (d) relies on the 7 November Email for its full terms, meaning and effect; and
- (e) otherwise denies the allegations in paragraph 33C.

33D. As to paragraph 33D of the EASoC, the Respondent:

- (a) says that a meeting of the Product, Services & Advice Committee of QSuper took place on 15 April 2014;
- (b) says that, for the purpose of that meeting, a Decision Paper to the Product, Services & Advice Committee titled ‘Insurance Product Design Direction’ dated 15 April 2014 was prepared (**15 April 2014 PSAC Paper**);
- (c) relies on the 15 April 2014 PSAC Paper for its full terms, meaning and effect; and
- (d) otherwise denies the allegations in paragraph 33D.

33E. As to paragraph 33E of the FASoC, the Respondent:

- (a) admits the allegation in paragraph 33E(a) and further says that by no later than 18 December 2014, QSuper was aware that the QSuper Fund would be the default fund for the Queensland public sector following the introduction of choice of fund for Queensland Government Employees;
- (b) says that:
 - (i) by no later than 18 December 2014, the QSuper Board had approved that QSuper should become a public offer fund as this was in the best interests of then-current and future QSuper members, and, subject to the necessary Federal regulatory approvals being obtained, the date of effect for becoming a public offer fund was 1 July 2015; and

Particulars

Minutes of the Meeting of the QSuper Board of
Trustees held on 23 October 2014
(QSB.5001.0020.0017 at .0023).

- (ii) in fact, choice of fund did not commence, and the QSuper Fund did not become a public offer fund, until 1 July 2017;
- (c) says that although by no later than 18 December 2014, QSuper had been informed that in the ordinary course, from 1 July 2016, QSuper could no longer self-insure death, total and permanent disability or income replacement risk for members of the QSuper Fund, at the meeting of the QSuper Board on 18 December 2014 the QSuper Board:
 - (i) was advised that APRA had been briefed on the then-current adverse market conditions and had confirmed that it was willing to consider a QSuper proposal to continue or expand self-insurance (to include non-government and Public Offer members) beyond 30 June 2016, which proposal was being progressed; and
 - (ii) noted that a proposal to continue self-insurance or expand self-insurance (including non-government employees and Public Offer members) was being progressed with APRA;

Particulars

Minutes of the Meeting of the QSuper Board of Trustees held on Thursday, 18 December 2014 (QSB.5001.0020.0027 at .0030).

- (d) says that by no later than 18 December 2014, QSuper was proposing to consider establishing its own licensed life insurance company (which would ultimately be formed and known as QInsure) to insure the risks pleaded in paragraph 33E(c) of the FASoC, but as at that date QSuper was not exclusively considering this option; and
- (e) otherwise denies the allegations in paragraph 33E.

33F. As to paragraph 33F of the FASoC, the Respondent:

- (a) says that by no later than January 2015, Rice Warner was engaged by QSuper to provide certain analysis and recommendations;
- (b) says that Rice Warner's engagement by QSuper was recorded in the letter from Rice Warner to QSuper dated 8 January 2015 (bearing the document identification number QSB.1004.0031.4169), on which the Respondent relies for its full terms, meaning and effect; and
- (c) otherwise denies the allegations in paragraph 33F.

33G. As to paragraph 33G of the FASoC, the Respondent:

- (a) admits that, on or about 8 January 2015, Rice Warner provided to QSuper a letter (**Rice Warner Letter**);

Particulars

The Rice Warner Letter is document QSB.1004.0031.4169.

- (b) as to paragraph 33G(a)-(b), says that:
 - (i) the Rice Warner Letter stated that Rice Warner's assumption was that for members who elected to change their default cover (by increasing or decreasing their cover), 17% would be priced as low risk, 48% would be priced as white collar, 22% would be priced as standard and the remaining 13% would be priced as high risk;

- (ii) says that the Rice Warner Letter stated that they calculated these numbers from the 'State Actuary LS Relativities' file;
 - (iii) says that the assumed allocations referred to in (b)(i) above and the table pleaded at paragraph 33G(b) of the EASoC were developed from the attempt to match data referred to in paragraph 33B above, which involved assumptions and estimation;
- (c) as to paragraphs 33G(c)-(d), relies on the Rice Warner Letter for its full terms, meaning and effect;
 - (d) refers to and repeats paragraph 33B above; and
 - (e) otherwise denies the allegations in paragraph 33G.
- 33H. As to paragraph 33H of the EASoC, the Respondent:
- (a) says that, on 20 February 2015, Jan Brewer at QSuper requested that Rice Warner discount the occupational loading factors for the 'professional and low risk' categories by 'a further 10%/15%';
 - (b) further says that, in making the request pleaded in the paragraph, QSuper informed Rice Warner that QSuper needed to 'understand the outcomes'; and

Particulars

Email from Jan Brewer of QSuper to Thierry Bateau of Rice Warner (QSB.1004.0031.4185 at .4186).

- (c) otherwise denies the paragraph.
- 33I. As to paragraph 33I of the EASoC, the Respondent:
- (a) admits that, on or about 19 May 2015, the QSuper Board approved a proposed insurance product design, which included, inter alia, the availability of occupational ratings for those members of the QSuper Fund who personalised cover away from 'default';
 - (b) further says that the QSuper Board approved the said proposed insurance product design not for all purposes but for final pricing analysis and negotiations with insurers, and was advised that a final insurance product design solution would be presented to it for approval upon completion of the pricing feedback process;

Particulars

QSB.5001.0009.0001 at .0004.

- (c) relies on the 19 May Decision Paper and minutes of the meeting of the QSuper Board held on 19 May 2015 for their full terms, meaning and effect; and
- (d) subject thereto, admits the paragraph.

33J. As to paragraph 33J of the EASoC, the Respondent:

- (a) refers to and relies upon the 19 May Decision Paper and the minutes of the meeting of the QSuper Board on 19 May 2015 for their full terms, meaning and effect;
- (b) admits the allegations in paragraph 33J(a) and further says that the minutes of the meeting of the QSuper Board on 19 May 2015 record that it was noted to the QSuper Board that:
 - (i) the overall product design proposed would materially improve the value proposition to members, and QSuper's competitive position within the target markets for the Proteus Project, whilst addressing a range of other risk-related issues;

Particulars

QSB.5001.0009.0001 at.0003

- (ii) the introduction of occupational ratings for personalised cover would improve the competitive position, support retention and growth objectives, improve member value, and improve member equity and product sustainability, while noting that over time there may be potential upward pressure on the Standard Risk rates applied to default cover;

Particulars

QSB.6000.0003.1385 at .1546

- (c) as to paragraph 33J(b), refers to and repeats paragraph 33B above and, subject to the matters there referred to, admits the paragraph;
- (d) as to paragraph 33J(c), refers to and repeats paragraph 33B above and, subject to the matters there referred to, admits the paragraph;

- (e) subject to paragraph 33J(a), admits paragraph 33J(d);
- (f) subject to paragraph 33J(a), admits paragraph 33J(e).

33K. The Respondent admits the allegations in paragraph 33K of the FASoC.

33L. As to paragraph 33L of the FASoC, the Respondent:

- (a) says that the document referred to in the particulars subjoined to paragraph 33L of the FASoC (which the Respondent understands to be a reference to QSB.1000.0008.7285 rather than QSB.1000.0008.7286 which is the second page of the document with the former identification number) is a draft report;

Particulars

The document referred to in the particulars subjoined to paragraph 33L of the FASoC is an attachment to an email from KPMG to QSuper dated 20 January 2016, which email states that “the report is still draft and being review[ed]” and described the document as a “draft pricing paper” (QSB.1000.0008.7282).

- (b) says that the document referred to in the particulars subjoined to paragraph 33L of the FASoC was first provided to the Respondent on or about 23 December 2015;
- (c) refers to and relies upon the full terms, meaning and effect of the document referred to in the particulars subjoined to paragraph 33L of the FASoC; and
- (d) otherwise denies the allegations in paragraph 33L.

33M. As to paragraph 33M of the FASoC, the Respondent:

- (a) says that the document referred to in the particulars subjoined to paragraph 33M of the FASoC is a draft report (**Draft KPMG Report**);
- (b) says that the Draft KPMG Report is an attachment to a draft decision paper for the board of directors of QInsure Limited, not QSuper;

Particulars

QSB.1004.0022.0633.

- (c) says that the Draft KPMG Report is expressed to constitute “Appointed Actuary Advice” for QInsure, not the Respondent;
- (d) says that the document owner is expressed to be the appointed actuary of QInsure Limited, not an appointed actuary of QSuper;
- (e) denies that on 3 March 2016, QSuper management received a report prepared by QSuper’s appointed actuary;
- (f) refers to and repeats paragraph 33L above and further says that the Draft KPMG Report does not on its face refer to the KPMG November 2015 Report as that term is defined in paragraph 33L of the EASoC;
- (g) refers to and relies upon the full terms, meaning and effect of the Draft KPMG Report; and
- (h) otherwise denies the allegations in paragraph 33M.

33N. The Respondent admits paragraph 33N of the EASoC.

33O. As to paragraph 33O of the EASoC, the Respondent:

- (a) says that on or about 16 March 2016 a Decision Paper titled “Insurance Product Design” dated 23 March 2016 was provided to the QSuper Board (**23 March 2016 Decision Paper**);
- (b) as to paragraph 33O(a) of the EASoC, the Respondent:
 - (i) says that the paragraph is embarrassing;
 - (ii) under cover of this objection, denies the paragraph;
 - (iii) on the assumption that the phrase “it was not proposed that” should be read “it was now proposed that”, further says that:
 - (A) the 23 March 2016 Decision Paper did not say that “it was previously proposed that occupational rating would apply to members who had voluntary additional cover”;
 - (B) refers to and relies upon the full terms, meaning and effect of the 19 May Decision Paper, which said inter alia: “Occupational rating will apply when personalising cover away from default. Occupational rating will then apply to all cover” and “Members with additional cover

will be occupationally rated as Standard unless they apply to vary the rating”;

(C) says that the 23 March 2016 Decision Paper stated inter alia, in relation to occupational ratings other than in relation to Police members, that “Occupational ratings will apply where a member chooses to increase/personalise their cover or specifically request to be occupationally rated. The proposed occupation factors generally remain as initially proposed in the Board submission in May 2015”;

(c) otherwise refers to and relies upon the full terms, meaning and effect of the 23 March 2016 Decision Paper and, subject thereto, admits paragraph 33O(b), 33O(c), 33O(d) and 33O(e).

33P. As to paragraph 33P of the EASoC, the Respondent:

- (a) refers to and repeats paragraphs 33L to 33O above;
- (b) subject to the matters there referred to, admits paragraphs 33P(a) and 33P(e) of the EASoC;
- (c) refers to and repeats paragraph 34-35 below;
- (d) refers to and relies upon the full terms, meaning and effect of each of the documents identified in the particulars subjoined to paragraph 33P of the EASoC;
- (e) says that none of the persons who were party to the emails identified in the particulars subjoined to paragraph 33P of the EASoC were members of the QSuper Board; and
- (f) otherwise denies the allegations in paragraph 33P.

33Q. As to paragraph 33Q of the EASoC, the Respondent:

- (a) refers to and repeats paragraphs 33N and 33P above;
- (b) says that on 27 May 2016, the QSuper Board approved the execution of the QInsure Insurance Policy No. 1 with a commencement date of 1 July 2016;
- (c) refers to and relies upon the full terms, meaning and effect of the QInsure Insurance Policy No. 1; and

(d) otherwise denies the paragraph.

33R. As to paragraph 33R of the EASoC, the Respondent:

- (a) admits the paragraph; and
- (b) refers to and relies upon the full terms, meaning and effect of the QInsure Insurance Policy No. 1.

33S. As to paragraph 33S of the EASoC, the Respondent:

- (a) refers to and relies upon the full terms, meaning and effect of the QInsure Insurance Policy No. 1;
- (b) says that any part of QInsure's operating profits paid to the Respondent (whether directly or through allocation to QSuper Ltd) constituted (either directly or indirectly) assets of the QSuper Fund in which the Respondent had no personal interest in a capacity other than as trustee of the QSuper Fund;
- (c) says that the QSuper decision paper titled 'Proposed Structure of Group Life Insurance Policy' dated 23 March 2016:
 - (i) identified that the key advantages of a participating risk policy (PR Policy) such as the QInsure Insurance Policy No. 1 as being greater financial strength and sustainability in the insurance business, improved member equity and superior financial return;
 - (ii) stated that: "Importantly, the QInsure Board has resolved that the distribution of profits under the PR Policy will be at the sole discretion of the QInsure Board";
 - (iii) stated that: "If the QInsure business performs in accordance with financial forecasts, it will generate surplus capital in excess of prudential capital requirements. The QInsure Board would need to make a decision (which is at its sole discretion) whether to distribute the policyholder share of the retained profits as bonus payments to the QSuper Board. Importantly, the QSuper Board could not compel the QInsure Board to distribute policyholder retained earnings as bonuses;" and
 - (iv) stated that: "There has been extensive consultation and discussions with APRA in relation to various aspects of the PR

Policy. On 11th March APRA gave verbal clearance that they did not have any concerns about QInsure issuing a PR Policy to the QSuper Board"; and

Particulars

QSB.1011.0011.5155

- (d) otherwise denies the paragraph.
34. As to the allegations in paragraph 34 of the EASoC, the Respondent:
- (a) says whether or not it would have been in the financial interests of the Applicant and Group Members to personalise their insurance cover so that an occupational rating would apply to determine the cost of their premiums was dependent upon a number of factors which were personal to each individual member, including: the member's age, the length of time they held cover until the time of the Notice, the different elements of personalised cover they sought (including whether they obtained one or more of income protection cover, death and TPD cover), whether a pre-existing condition would affect the terms of the cover, their level of education, their seniority of position, whether they worked in an office-based environment, whether they were considered to work as a professional, the kinds of functions they undertook in their work, the extent to which their role involved light or heavy manual duties, their annual earnings, and the extent to which they might be determined to be in a high risk occupation;
 - (b) says that it is unable to plead to unparticularised allegations regarding unidentified Group Members;
 - (c) says whether changing to an occupational rating would have been in the interests of a given member depended on such personal factors as are referred to in paragraph 34(a) above, not all of which were known to QSuper in the absence of the member making an election and providing relevant information about the member to QSuper;
 - (d) says QSuper therefore does not know and cannot admit in respect of any given member whether it would have been in their financial interests to have an occupational rating automatically applied; and
 - (e) refers to and repeats paragraphs 21(d) to 21(g) above.

34A. As to the allegations in paragraph 34A of the FASoC, the Respondent denies the paragraph and:

- (a) refers to and repeats paragraphs 21, 33N, 33O, 33Q-33S and 34(a) above;
- (b) says whether any given member would have paid more (or less) for their insurance premiums than they would have had they been occupationally rated depended on individualised factors such as the following (in respect of the role they spent the most time performing):
 - (i) whether they were a nurse/nurse aid/assistant in nursing;
 - (ii) whether they were a qualified tradesperson and employed in this trade role i.e. carpenter, plumber, electrician, plasterer, concreter;
 - (iii) whether they were a police officer, firefighter, paramedic, security guard, prison warden, labourer, cleaner, janitor or professional sportsperson;
 - (iv) whether the usual work activities of their job were considered office-based or school teaching (meaning they spent at least 80 per cent of their job doing either clerical, call centre or administration activities, or working in an office or classroom-based job (e.g. accountant, lawyer, doctor, engineer, and information technology));
 - (v) whether they performed or intended to work within the next three months in a job that included any of the following risky activities:
 - (D) Handle firearms, dangerous chemicals or explosives;
 - (E) Interstate or local truck driving;
 - (F) Offshore (oil/gas platforms);
 - (G) Underground or underwater (greater than 20 per cent of the time);
 - (H) Working at heights (greater than 20 metres);
 - (I) Agricultural crop dusting or crop spraying in the air;and

- (J) Flying more than 200 hours per annum (as a passenger or pilot) other than on a commercial airline (e.g. fixed wing or helicopter);
- (vi) Whether they had a university qualification which they were using or was required in their role;

Particulars

QSB.5011.0005.0005, being a Change of Insurance form including a questionnaire in relation to occupational rating, with members required to make a declaration that the information they give on the form is true and correct.

- (c) says that the Respondent's system of occupational rating introduced by the 1 July 2016 insurance changes provided that members applying to be occupationally rated would address the matters in subparagraph (b) above by way of a declaration that the information provided by the member was true and correct; and

Particulars

QSB.5011.0005.0005, being a Change of Insurance form including a questionnaire in relation to occupational rating, with members required to make a declaration that the information they give on the form is true and correct.

- (d) says that it is unable to plead to unparticularised allegations regarding unidentified Group Members;

35. As to the allegations in paragraph 35 of the EASoC the Respondent:

- (a) refers to and repeats paragraphs 33A to 34A above;
- (b) denies the allegations in paragraph 35;
- (c) further says that QSuper does not and did not have the sort of personalised information for individual members that could or would enable it to determine what occupational rating a member qualified for, such that instituting a 'System' of the kind alleged by the Applicant was not a feasible option which QSuper could have implemented consistently with its obligations as a superannuation trustee;

- (d) further says that it acted as a prudent superannuation trustee by introducing changes to insurance cover arrangements for members with accumulation interests:
- (i) that preserved insurance coverage by ensuring the continuation of default cover;
 - (ii) pursuant to which each member's current insurance cover arrangements and their proposed future cover were communicated to them prior to 1 July 2016;
 - (iii) that gave members improved flexibility to change their insurance cover, including to decouple death and TPD cover;
 - (iv) that gave increased access to income protection cover for members who had not previously been entitled to income protection cover;
 - (v) that enabled members to personalise their cover, including by electing to be occupationally rated and automatically occupationally rated members who otherwise personalised their cover,

Particulars

Page 12 of Insurance Guide.

in each case having regard to the circumstances that:

- (vi) QSuper did not have information about each individual member's circumstances and could not have known whether an individual member would have been entitled to a white collar rate or a professional rate without obtaining further information from the member about their occupation;
- (vii) QSuper was no longer permitted to offer self-insured insurance cover to members from 1 July 2016;

Particulars

Regulation 4.07E of the SIS Regulations.

- (viii) QSuper needed to consider the interests of all members of the QSuper Fund as a whole in determining to make the changes to the insurance arrangements.

- 35A. As to paragraph 35A of the FASoC, the Respondent:
- (a) refers to and repeats paragraph 35 above;
 - (b) refers to and repeats paragraphs 24, 26, 26B and 26C above;
 - (c) says in the premise that sufficient information was available to members to allow them to understand the nature and effect of the changes to insurance cover arrangements that took effect from 1 July 2016 and what they needed to do to elect to have an occupational rating if they so desired; and

Particulars

The respondent refers to and repeats paragraph 32 above.

- (d) otherwise denies the allegations in paragraph 35A.
36. As to the allegations in paragraph 36 of the FASoC, the Respondent:
- (a) refers to and repeats paragraphs 35 and 35A above; and
 - (b) otherwise denies the allegations in paragraph 36 of the FASoC.
37. As to the allegations in paragraph 37 of the FASoC, the Respondent:
- (a) refers to and repeats paragraphs 33A to 36 above; and
 - (b) denies the allegations in paragraph 37 of the FASoC.

II. Contraventions of Best Interests Covenants

38. As to the allegations in paragraph 38 of the FASoC:
- (a) the Respondent refers to and repeats paragraphs 17(b), 35 and 35A above;
 - (b) says that it is unable to plead to unparticularised allegations regarding unidentified Group Members; and
 - (c) the Respondent otherwise denies the allegations in paragraph 38.
39. As to the allegations in paragraph 39 of the FASoC, the Respondent:
- (a) refers to and repeats paragraphs 33A to 36 and 38 above; and
 - (b) denies the allegations in paragraph 39.

~~III. Contraventions of No Conflicts Covenant~~

40. ~~[Not used] The Respondent denies the allegations in paragraph 40 of the ASoC and further says:~~

- ~~(a) it refers to and repeats paragraphs 13, and 17, 21 and 33S above;~~
- ~~(b) QSuper had no personal interest in the QSuper Fund and insurance premiums paid to QInsure were applied to ensure that the Insurance Policy was financially sustainable for all Insured Persons under the Insurance Policy, and not for the purpose of making any financial gain for the personal benefit of QSuper or QInsure;~~
- ~~(c) the duty of QSuper was to administer the QSuper Fund in accordance with the QSuper Act and the QSuper Deed, which informed all other general law duties owed by QSuper;~~

Particulars

~~Section 4 of the QSuper Act and section 12 of the QSuper Deed.~~

- ~~(d) QSuper owed a duty to all of the members of the QSuper Fund;~~
 - ~~(e) QSuper owed a duty to act fairly in dealing with different classes of beneficiaries within the QSuper Fund and to act fairly in dealing with beneficiaries within a class; and~~
 - ~~(f) QSuper arranged the Insurance Policy with QInsure in the interests of members of the QSuper Fund as a whole.~~
41. ~~[Not used] The Respondent denies the allegations in paragraph 41 of the ASoC and refers to and repeats paragraphs 35, 35A and 40 above.~~
42. ~~[Not used] The Respondent denies the allegations in paragraph 42 of the ASoC and refers to and repeats paragraphs 33A to 36 and 40 above.~~

I. Breaches of general law obligations

43. The Respondent denies the allegations in paragraph 43 of the FASoC and repeats and relies on paragraphs 13, 16, 17, 34, 34A, 35, 35A, 36, and 38 ~~and~~ 40 above.

J. Harm to the Applicant and Group Members

44. As to the allegations in paragraph 44 of the FASoC, the Respondent:

- (a) does not know and cannot admit the allegations at paragraph 44(a);
- (b) admits the allegations at paragraph 44(b);

- (c) as to paragraph 44(c):
- (i) says that if the Applicant was a school teacher and had applied to be occupationally rated the Applicant would have been entitled to an occupational rating of the white collar rate, so long as the Applicant satisfied the criteria for that rate to apply, from the date of acceptance of such an application by QInsure until 14 December 2020; and

Particulars

Clause 10.3 and Schedule 4 of the Insurance Policy.

- (ii) otherwise denies the allegations in paragraph 44(c);
- (d) admits the allegations at paragraph 44(d);
- (e) as to paragraph 44(e), the Respondent admits that the Applicant received the May Letter and the Notice but denies that she read them, and further says that:
- (i) a Notice Pack was sent to the Applicant on 30 May 2016 by electronic mail with an electronic version of the May Letter including a hyperlink to the QSuper website;
- (ii) it denies that the Applicant read or relied upon the May Letter or other information provided as part of the Notice Pack;

Particulars

- (i) Telephone call between the Applicant and a QSuper operator on 6 March 2017.
- (ii) QSB.2000.0005.0003.
- (iii) the Applicant accessed her Member Online account on 1 June 2016, including the section entitled 'Your Super' which generated a notification stating, "From 1 July 2016 Accumulation account insurance is changing notification", and the Applicant viewed that notification;
- (iv) the Applicant made a telephone call to QSuper on 1 June 2016 to discuss the option of claiming a benefit on compassionate grounds;

Particulars

Telephone call between the Applicant and a QSuper operator on 1 June 2016.

- (v) the Respondent sent the Applicant information in around May June 2017 about her insurance as part of its "Know Your Insurance" campaign, explicitly stating ~~identifying~~ that she could vary her premiums by being occupationally rated and ~~stating~~ that she could find more information in the Accumulation Account Insurance Guide which was accessible on the Respondent's website;

Particulars

- (i) Between 19 and 24 June ~~In around May 2017~~, QSuper sent the Know Your Insurance ~~such~~ information ~~to~~ referred to in this subparagraph by electronic mail to the Applicant and other members who had elected to receive notifications from QSuper by electronic mail: Affidavit of Suzanne Michelle Shanahan affirmed on 13 December 2024 at [25], (QSB.5001.0058.0001).
- (ii) A pro forma of the electronic communication is QSB.5001.0003.0003.
- (iii) The email sent to the Applicant and other recipients of the electronic communication contained a hyperlink via which the Accumulation Account Insurance Guide could be accessed.
- (iv) In around May 2017, the Know Your Insurance information was sent to members who had not so elected by direct mail ~~either electronically or in hard copy form.~~
- (v) Hard copy recipients were sent QSB.5001.0003.0001.
- (vi) The letter sent to hard copy recipients contained a statement advising that the Accumulation Account Insurance Guide could be accessed on the QSuper

website and also included the URL for the insurance section of the QSuper website.

- (vi) the Respondent sent the Applicant information about claiming a benefit on compassionate grounds by separate email communications made on 4 and 6 September 2017, 16 March 2018, 16 May 2019 and 23 March 2020;
 - (vii) the Respondent sent to the Applicant by separate email communications made on 13 July 2018, 28 November 2018 and 13 March 2019 an information pack enclosing a document entitled 'Income Protection Benefit Guide';
 - (viii) the Respondent sent to the Applicant on 17 May 2019 a notice dated 17 May 2019 describing how the Applicant's insurance cover was changing from 1 July 2019, providing a summary of the Applicant's income protection cover, death and TPD cover and the costs of that cover per week before and after 1 July 2019, and directing the Applicant to review the insurance cover on her Member Online portal to ensure that it was appropriate; and
 - (ix) the Respondent sent to the Applicant on 18 November 2020 a notice of the same date informing the Applicant that insurance costs were changing from 1 January 2021, setting out the particular changes in costs for the Applicant and steps for her to consider in changing or cancelling her cover including her default cover rating, noting that this affected how much the Applicant paid for cover, and providing a hyperlink to more information on Occupational Rates;
- (f) admits the allegations at paragraph 44(f) and further says that the Applicant could have made such an election at any time on or after 1 July 2016 to be occupationally rated by logging in to the online platform of the QSuper Fund known as 'Member Online' or by completing a 'Change of Insurance' form available from the QSuper website or by telephoning QSuper; and
- (g) admits the allegations at paragraph 44(g).

45. The Respondent denies the allegations in paragraph 45 of the EASoC and refers to and repeats paragraph 44 above.
46. As to the allegations in paragraph 46 of the EASoC, the Respondent:
- (a) the Respondent refers to and repeats paragraphs 35, 35A, 36, 44 and 45 above; and
 - (b) denies the allegations in paragraph 46.
47. As to the allegations in paragraph 47 of the EASoC, the Respondent:
- (a) says that:
 - (i) if:
 - (1) an alleged Group Member who was an Insured Person had applied to be occupationally rated; and
 - (2) the alleged Group Members was not engaged in an occupation that would make them subject to a high risk rate,

the alleged Group Member would be entitled to an occupational rating of the Standard Rate, the white collar rate or the professional rate, according to whether they satisfied the criteria for that rate to apply; and
 - (ii) that rating would then apply to the alleged Group Member from the time of the system validation (if the request were made via the Member Online platform) or with effect from the time a paper form were lodged (provided the form were found to have been complete and accepted upon processing);

Particulars

Clause 10.3 and Schedule 4 of the Insurance Policy.

- (b) refers to and repeats paragraphs 35, 35A and 36 above;
- (c) says that in around May 2017, the Respondent sent to members the Know Your insurance ~~certain~~ information referred to in paragraph 44(e)(v) above, which stated explicitly about their insurance, identifying that they could vary their premiums by being occupationally rated and stating that they could find more information in the Accumulation Account Insurance Guide which was accessible on the Respondent's website;

Particulars

The Respondent repeats the particulars to paragraph 44(e)(v) above.

~~In around May 2017, QSuper sent such information to members either electronically or in hard copy form.~~

~~A pro forma of the electronic communication is QSB.5001.0003.0003.~~

~~Hard copy recipients were sent QSB.5001.0003.0001.~~

- (d) says that it is unable to plead to unparticularised allegations regarding unidentified Group Members;
 - (e) denies that persons who are alleged to be Group Members pursuant to sub-paragraphs (b) and (c) of paragraph 3 of the EASoC were eligible for insurance cover and therefore for any occupational rating; and
 - (f) otherwise denies the allegations in paragraph 47.
48. As to the allegations in paragraph 48 of the EASoC, the Respondent:
- (a) denies the allegations in paragraph 48 of the EASoC and refers to and repeats paragraphs 29, 31, 32, 34, 35, 35A, 36, 38, 41, ~~42~~, and 43, 44 and 47 above; and
 - (b) says in the alternative that:
 - (i) the interests in the QSuper Fund of Group Members who remain members of the QSuper Fund have not vested and those members have no present entitlement to an interest in any particular property of, or any identifiable portion of, the QSuper Fund, and therefore those members cannot be taken to have suffered any actual loss or damage (which is denied), and any loss or damage consequent upon the allegations in paragraph 48 (the existence of which is denied) in relation to those Group Members can only have been suffered by the QSuper Fund; ~~and~~
 - (ii) if the Respondent is liable to compensate the Applicant or any Group Member for any loss or damage alleged by way of premiums paid from superannuation funds (which is denied),

the relevant statutory scheme requires any and all such compensation to be credited to the relevant person's superannuation balance, to ensure there is no de facto release of preserved funds, including by the payment of sums to any third party litigation funder or law firm; and

- (iii) if the Respondent is liable to compensate the Applicant or any Group Member for any loss or damage alleged by way of premiums paid from superannuation funds (which is denied), such loss or damage is limited to the period 1 July 2016 to June 2017 by reason of the provision of Know Your Insurance campaign information to the Applicant and group members, as pleaded at paragraphs 44(e)(v) and 47(c) above, in May and June 2017.

K. Entitlement to relief

49. As to paragraph 49 of the EASoC, the Respondent refers to paragraphs 44 to 48 above and denies the Applicant and Group Members are entitled to the relief identified at paragraph 49 (or any relief at all) and the Respondent further says that:

- (a) the Applicant failed to take reasonable care having regard to the matters alleged at paragraphs 22, 24, 26, 26A-26C, 32, 32A and 44 above, and that any damages recoverable are limited by sections 1041I(1B) of the Corporations Act, 12GF(1B) of the ASIC Act and/or 137B of the CC Act to the extent that the Court thinks just and equitable having regard to the Applicant's share in the responsibility for any such loss or damage;
- (b) ~~to the extent that any other Group Members who failed to make an~~ election to occupationally rate where it was advantageous to them to do so failed to take reasonable care having regard to the matters alleged at paragraphs 22, 24, 26, 26A-26C, 32, 32A and 47 above, and the Respondent says that any damages recoverable in respect of any such Group Member ought to be similarly limited; and

Particulars

The Respondent will rely upon section sections 1041I(1B) of the Corporations Act, 12GF(1B) of the ASIC Act and/or 137B of the CC Act.

- (c) to the extent that any of the Applicant and Group Members is entitled to compensatory relief of the kind sought by the Applicant and Group Members (which is denied), any such relief is to be limited in the manner pleaded at paragraphs 48(b)(ii) and/or 48(b)(iii) above.

Date: 17 February 2025



Signed by Amanda Jane Engels
Lawyer for the Respondent

This pleading was prepared by Wendy Harris KC, Sera Mirzabegian SC and Jesse Rudd of counsel.

Certificate of lawyer

I, Amanda Jane Engels, certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 17 February 2025



Signed by Amanda Jane Engels
Lawyer for the Respondent