

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/05/2022 9:28:14 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: VID691/2021  
File Title: JESSICA AMY CHALLENOR v QSUPER BOARD (ABN 32 125 059 006)  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 24/05/2022 9:28:17 AM AEST

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

Registrar

### Important Information

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

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



Form 33  
Rule 16.32

## Defence

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

1. As to paragraph 1 of the Statement of Claim dated 18 March 2022 (**SoC**), the Respondent:
  - (a) says that, unless otherwise indicated:
    - (i) terms defined terms in the SoC have the same meaning in this defence;
    - (ii) the defence adopts the headings used in the SoC 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.

#### B. The parties

2. As to paragraph 2 of the SoC, 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*

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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		
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*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 SoC, 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 the QSuper Board 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 the QSuper Board with QInsure as described in paragraph 3(a)(iv) of the SoC;
- (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 the QSuper Board; 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 SoC.
- 5. As to paragraph 5 of the SoC, 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 Board 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 Board 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 Board 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 Board 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 Board 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 Board 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 Board 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 Board 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 Board 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 SoC, 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 SoC.
- 8. As to the allegations in paragraph 8 of the SoC, the Respondent:
  - (a) denies that persons who are alleged to be Group Members pursuant to paragraphs (b) and (c) of paragraph 3 of the SoC 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 SoC 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 SoC, the Respondent:
- (a) refers to and repeats paragraphs 8 and 10;
  - (b) denies that QSuper Board 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 SoC; and
  - (c) otherwise admits the allegations in paragraph 9.
10. As to the allegations in paragraph 10 of the SoC, the Respondent:
- (a) denies that QSuper Board 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 Board 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 Board 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 SoC insofar as it concerns interests in a superannuation fund other than accumulation interests.
11. As to the allegations in paragraph 11 of the SoC 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 SoC 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 SoC 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) 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;

#### **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 SoC;
  - (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 SoC; 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.

15. As to the allegations in paragraph 15 of the SoC, 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 SoC, 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 SoC, the Respondent:

- (a) says, as to paragraph 17(a):
  - (i) the general law duties of trustees required QSuper Board to exercise its duties and powers to the standard of an ordinary prudent person of business similarly positioned to the QSuper Board; and
  - (ii) that it otherwise denies the allegations in paragraph 17(a);
- (b) says, as to paragraph 17(b), that it:
  - (i) admits QSuper Board 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) as to paragraph 17(c), admits the allegations and says further that:
  - (i) it is the duty of the QSuper Board 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), refers to and repeats paragraph 17(c) above and otherwise admits the allegations in paragraph 17(d).

## **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 SoC, the Respondent:

- (a) says that prior to 1 July 2016 the QSuper Board 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 SoC 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 SoC, 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;
  - (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 otherwise 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 SoC, 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 SoC;
- (h) pursuant to clause 21.4.2 of the Insurance Policy, insured benefits were payable to QSuper Board 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 Board in respect of a member were credited to the member's accumulation account by QSuper Board;

**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 Board 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 SoC, 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) the QSuper Board 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 Board 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;

### **Particulars**

In the particulars set out in Schedule B.3 of the SoC:

- (1) the white collar rate for income protection cover should be '.70' and not '.65' and columns F, G and H of the table are incorrect.
- (2) the professional rate for income protection cover should be '.65' and not '0.60' and columns I, J and K of the table are incorrect.
- (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 SoC, save to say that QSuper Board 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 SoC, 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 to affected members under a cover letter, together with a document referred to as a 'brochure' (**Notice Packs**);
  - (c) Notice Packs were distributed to members who had not elected to receive notifications from QSuper Board by electronic means by direct mail between about 19 May and 31 May 2016;
  - (d) Notice Packs were distributed to members who had elected to receive notifications from QSuper Board by electronic means by electronic mail between about 26 May and 31 May 2016;
  - (e) the 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 Board 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 an electronic version of the cover letter including a hyperlink to the QSuper Fund website; and

**Particulars**

Letter from QSuper Board to the Applicant dated 30 May 2016.

- (g) the Respondent relies on the Notice Pack sent to the Applicant for its full terms, meaning and effect.
23. As to the allegations in paragraph 23 of the SoC, 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 SoC, 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.*

...

<p><i><b>Premiums and occupational ratings</b></i></p>	<p><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 <b>default rate to standard rate.</b>”</i></p>
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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 a 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 SoC.
25. As to the allegations in paragraph 25 of the SoC, the Respondent:
- (a) refers to and repeats paragraphs 22 and 26; and
- (b) otherwise denies the allegations in paragraph 25.
26. As to the allegations in paragraph 26 of the SoC, the Respondent:
- (a) refers to and repeats paragraphs 22 and 24 above;
- (b) says that all of the 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 Board were making changes to insurance, including:

*“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. Additionally we’ve extended the*



*benefit period for income protection cover to up to three years, instead of two, and from 1 July you'll also have lots more options around waiting periods and benefit periods. 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".*

- (c) says that the reference in 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 paragraph 26(b) 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;
- (d) 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;
- (e) 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
- (f) otherwise denies the allegations in paragraph 26 of the SoC.

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

27. As to the allegations in paragraph 27 of the SoC, 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 SoC and refers to and repeats paragraph 27 above.
29. As to the allegations in paragraph 29 of the SoC, 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 the QSuper Board 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 the QSuper Board 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 SoC and refers to and repeats paragraphs 24 and 26 above.

**G. Misleading or deceptive conduct**

31. As to the allegations in paragraph 31 of the SoC, the Respondent says as follows:
- (a) the Respondent refers to and repeats paragraph 26 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 Board 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 Board was a not-for-profit entity;
- (iv) at all relevant times QSuper Board 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 Board 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 Board pursuant to section 23J of the QSuper Deed and premiums deducted pursuant to section 23K of the QSuper Deed;
  - (vii) QSuper Board 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 Board to members of the QSuper Fund and further says that the Insurance Policy was issued by QInsure to QSuper Board and insurance cover was a feature of the superannuation

interests issued by QSuper Board in the QSuper Fund to members with an accumulation interest (other than in respect of an income account);

- (ii) the Respondent denies that the so-called 'Insurance Change Representation' (the making 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 the Notice was not sent in relation to the issuing of a superannuation interest or other dealing in a superannuation interest by QSuper Board within the meaning of section 766C of the Corporations Act;
- (iii) the Respondent denies that the so-called 'Insurance Change Representation' (the making 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 the Notice was not sent in relation to the issuing of a superannuation interest or other dealing in a superannuation interest by QSuper Board within the meaning of section 12BAB(7) of the ASIC Act; (2) was not 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' and 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 SoC, the Respondent:

- (a) denies allegations in paragraph 32;
- (b) refers to and repeats paragraphs 22, 24 and 26 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, 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 SoC and refers to and repeats paragraphs 5, 22 to 26 and 31 to 32 above.

**H. Contraventions of trustee covenants**

**I. Contravention of care and skill covenants**

34. As to the allegations in paragraph 34 of the SoC, 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 Board in the absence of the member making an election and providing relevant information about the member to QSuper Board;
  - (d) says QSuper Board 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.
35. As to the allegations in paragraph 35 of the SoC:

- (a) the Respondent says that the allegations are vague and defective, and liable to be struck out, insofar as they fail to properly particularise the kind of system the Applicant alleges a prudent superannuation trustee would institute;
- (b) under cover of the objection at paragraph 35(a) above, the Respondent:
  - (i) denies the allegations in paragraphs 35(a) and 35(b) of the SoC;
  - (ii) refers to and repeats paragraph 34 above; and
  - (iii) further says that QSuper Board 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;
- (c) under cover of the objection at paragraph 35(a) above, the Respondent:
  - (i) denies the allegations in paragraph 35(c) of the SoC;
  - (ii) refers to and repeats paragraphs 24 and 26 above; and
  - (iii) says in the premises 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;

### **Particulars**

The Respondent refers to and repeats paragraph 32 above.

- (d) under cover of the objection at paragraph 35(a), the Respondent says 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 Board 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 Board 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 Board 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; and
- (e) the Respondent otherwise denies the allegations in paragraph 35 of the SoC.

36. As to the allegations in paragraph 36 of the SoC:

- (a) the Respondent says that the allegations are vague and defective, and liable to be struck out, insofar as they fail to properly particularise the kind of system the Applicant alleges a prudent superannuation trustee would institute;
- (b) under cover of the objection at paragraph 35(a) above, the Respondent refers to and repeats paragraph 36 above; and

- (c) the Respondent otherwise denies the allegations in paragraph 36 of the SoC.

37. The Respondent denies the allegations in paragraph 37 of the SoC.

## **II. Contraventions of Best Interests Covenants**

38. As to the allegations in paragraph 38 of the SoC:

- (a) the Respondent says that the allegations are vague and defective, and liable to be struck out, insofar as they fail to properly particularise the kind of system the Applicant alleges a prudent trustee would institute;
- (b) under cover of the objection at paragraph 38(a) above, the Respondent refers to and repeats paragraphs 17(b) and 35 above;
- (c) says that it is unable to plead to unparticularised allegations regarding unidentified Group Members; and
- (d) the Respondent otherwise denies the allegations in paragraph 38.

39. The Respondent denies the allegations in paragraph 39 of the SoC.

## **III. Contraventions of No Conflicts Covenant**

40. The Respondent denies the allegations in paragraph 40 of the SoC and further says:

- (a) it refers to and repeats paragraphs 13 and 17 above;
- (b) QSuper Board 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 Board or QInsure;
- (c) the duty of QSuper Board 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 Board;

### **Particulars**

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

- (d) QSuper Board owed a duty to all of the members of the QSuper Fund;



- (e) QSuper Board 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 Board arranged the Insurance Policy with QInsure in the interests of members of the QSuper Fund as a whole.
41. The Respondent denies the allegations in paragraph 41 of the SoC and refers to and repeats paragraphs 35 and 40 above.
42. The Respondent denies the allegations in paragraph 42 of the SoC and refers to and repeats paragraphs 36 and 40 above.

**I. Breaches of general law obligations**

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

**J. Harm to the Applicant and Group Members**

44. As to the allegations in paragraph 44 of the SoC, 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) does not know and cannot admit the allegations at paragraph 44(e) 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 does not admit that the Applicant read or relied upon the May Letter or other information provided as part of the Notice Pack;

**Particulars**

Telephone call between the Applicant and a QSuper operator on 6 March 2017.

- (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 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;
- (vi) 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';
- (vii) 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

(viii) 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 SoC and refers to and repeats paragraph 44 above.

46. As to the allegations in paragraph 46 of the SoC, the Respondent:

(a) the Respondent refers to and repeats paragraphs 35 and 44(c) above;  
and

(b) denies the allegations in paragraph 46.

47. As to the allegations in paragraph 47 of the SoC:

(a) the Respondent says that the allegations are vague and defective, and liable to be struck out, insofar as they fail to properly particularise the kind of system the Applicant alleges a prudent superannuation trustee would institute;

(b) under cover of the objection at paragraph 47(a) above, the Respondent 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.

- (c) under cover of the objection at paragraph 47(a) above, the Respondent refers to and repeats paragraph 35 above;
  - (d) says that it is unable to plead to unparticularised allegations regarding unidentified Group Members;
  - (e) under cover of the objection at paragraph 47(a) above, the Respondent denies that persons who are alleged to be Group Members pursuant to sub-paragraphs (b) and (c) of paragraph 3 of the SoC were eligible for insurance cover and therefore for any occupational rating; and
  - (f) under cover of the objection at paragraph 47(a) above, the Respondent otherwise denies the allegations in paragraph 47.
48. As to the allegations in paragraph 48 of the SoC, the Respondent:
- (a) denies the allegations in paragraph 48 of the SoC and refers to and repeats paragraphs 29, 31, 32, 34, 35, 36, 38, 41, 42 and 43 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 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.

**K. Entitlement to relief**

49. The Respondent 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, 32 and 44 above, and that any damages recoverable are limited by section 12GF(1B) of the ASIC 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 Member failed to take reasonable care, 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 12GF(1B) of the ASIC 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 paragraph 48(b)(ii) above.

Date: 24 May 2022



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Signed by Emma Costello  
Lawyer for the Respondent by her partner, Amanda  
Jane Engels

This pleading was prepared by Wendy Harris QC, Sera Mirzabegian SC, Suzanne Mackenzie 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: 24 May 2022



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Signed by Amanda Jane Engels  
Partner of the Lawyer for the Respondent