

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/03/2021 12:14:06 PM ACDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	SAD25/2021
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v STATEWIDE SUPERANNUATION PTY LTD
Registry:	SOUTH AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



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

Dated: 4/03/2021 12:22:36 PM ACDT

Registrar

Important Information

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

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

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



Originating process

No. _____ of 2021

Federal Court of Australia
District Registry: South Australia
Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

STATEWIDE SUPERANNUATION PTY LTD (ACN 008 099 223)
Defendant

A. DETAILS OF APPLICATION

This application is made under ss 19 and 21 of the *Federal Court of Australia Act 1976* (Cth), ss 1317G and 1101B of the *Corporations Act 2001* (Cth) (**Corporations Act**) and ss 12GBA, 12GBB, 12GLA and 12GLB of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

The plaintiff seeks declarations of contraventions of the Corporations Act and the ASIC Act, pecuniary penalty orders and ancillary orders, including costs.

In this Originating Process, terms which are defined in the Concise Statement have the same meaning as they do in the Concise Statement, unless otherwise indicated.

On the facts stated in the accompanying Concise Statement, the plaintiff seeks:

Declarations

1. A declaration that Statewide in trade or commerce engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive and thereby contravened s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act, in that Statewide issued annual statements to members:
 - a. on approximately 276 occasions in respect of the year ending 30 June 2018;
 - b. on approximately 2,744 occasions in respect of the year ending 30 June 2019,

that stated that the member held insurance cover as at 30 June of the relevant year, when the member did not then have insurance cover under the Statewide Insurance Policies.

2. A declaration that Statewide in trade or commerce engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive and thereby contravened s 1041H(1) of the Corporations Act and s

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff		
Prepared by (name of person/lawyer)	Hugh Copley		
Law firm (if applicable)			
Tel	(07) 3867 4700	Fax	(07) 3867 4725
Email	hugh.copley@asic.gov.au		
	Level 20		
Address for service	240 Queen Street		
(include state and postcode)	BRISBANE QLD 40001		



12DA(1) of the ASIC Act, in that Statewide issued annual statements to members:

- a. on approximately 2,000 occasions in respect of the year ending 30 June 2018;
- b. on approximately 3,000 occasions in respect of the year ending 30 June 2019,

that stated that one or more insurance premiums had been deducted from the member's superannuation account, at times when the member did not have insurance cover under the Statewide Insurance Policies, which in all the circumstances represented that, at the time the deduction(s) was (were) made:

- (i) the member held insurance cover under the Statewide Insurance Policies, when he/she did not; and
 - (ii) Statewide was entitled to deduct that/those insurance premium(s), when it was not; and
 - (iii) the member was required to pay that/those insurance premium(s), when he/she was not.
3. A declaration that, during the period 1 May 2017 to 30 June 2020, Statewide in trade or commerce engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive and thereby contravened s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act, in that Statewide sent to members:
- a. on approximately 10,819 occasions, 'U\$4k Warning Letters' or 'Nil Balance Warning Letters'; and
 - b. on approximately 5,077 occasions, 'PYS Warning Letters',

which represented that:

- c. the member had insurance cover that may cease; and
- d. action needed to be taken in order to maintain insurance cover,

at times when the member did not hold insurance cover under the Statewide Insurance Policies.

4. A declaration that, by reason of the matters in paragraph 2, Statewide in connection with the supply of financial services made a false or misleading representation to each member who received an annual statement referred to in paragraph 2 with respect to the amount required to have been paid by the member as a member of the Fund, and by each such representation thereby contravened s 12DB(1)(g) of the ASIC Act.
5. A declaration that, by reason of the matters in paragraph 2, Statewide in connection with the supply of financial services made a false or misleading representation to each member who received an annual statement referred to in paragraph 2 concerning the existence of a right of Statewide, namely the right to deduct the applicable insurance premium(s) and, further, a condition imposed on that member, namely the obligation to pay the applicable insurance premium(s), and by each such representation thereby contravened s 12DB(1)(i) of the ASIC Act.



6. A declaration that, on each occasion that Statewide contravened ss 12DA(1), 12DB(1)(g), or 12DB(1)(i) of the ASIC Act or s 1041H(1) of the Corporations Act, as referred to in paragraphs 1 to 5 above, Statewide breached its general obligation as a financial service licensee to comply with financial services laws, in contravention of s 912A(1)(c) of the Corporations Act.
7. A declaration that by its conduct in each of:
 - a. issuing correspondence to members in respect of their insurance cover that was in error having regard to the terms of Statewide Insurance Policies, as referred to in paragraphs 1 to 3 above;
 - b. failing to adequately and properly test insurance data migrated to, and insurance coding within, its administration platform Acurity;
 - c. failing to ensure that the terms of the Statewide Insurance Policies as to cancellation were accurately reflected in rules applying in its Acurity administration system and in the administration of the U\$4K Rule;
 - d. failing to maintain and implement adequate policies for the executive authorisation or consideration of changes to be made to or within the Acurity administration system, and the testing of changes prior to their implementation;
 - e. deducting, on or after 1 July 2017, approximately \$1,500,000 in insurance premiums from member superannuation accounts in circumstances where member insurance cover had ceased under the terms of the relevant Statewide Insurance Policies;
 - f. failing, on or after May 2018 when Statewide became aware of instances of Mischarging Conduct to up to 1,300 members whose insurance coverage had ceased, to (1) inform those members of the overcharging (2) prevent further overcharging of those members and (3) prevent the issue of subsequent Currently Insured Representations to those and other members,

Statewide breached its obligation to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

8. A declaration that, by failing to lodge a written report with ASIC before 6 August 2019, or in the alternative 4 September 2019, on matters relating to breaches by it of obligations under ss 912A(1)(a) or 912A(1)(c) of the Corporations Act that were significant for the purposes of s 912D(1)(b) of the same, arising from the making of false or misleading representations to Fund members concerning their insurance cover, Statewide contravened ss 912D(1B) and 912D(3) of the Corporations Act, in circumstances where it became aware of such breaches by no later than 22 July 2019 or, in the alternative, 20 August 2019.

Penalty

9. An order that Statewide pay to the Commonwealth a pecuniary penalty in respect of the contraventions referred to in paragraphs 4 and 5 in such amount as the Court considers appropriate, pursuant to s 12GBA(1) of the ASIC Act (as it then was) for such contraventions as occurred by reason of representations made prior to 13 March 2019, and pursuant to s 12GBB(3) of the ASIC Act for such contraventions as occurred by reason of representations made on or after 13 March 2019.



10. An order pursuant to s 1317G(1) of the Corporations Act that Statewide pay to the Commonwealth a pecuniary penalty in respect of the contravention referred to in paragraph 8 in such amount as the Court considers appropriate.

Other orders

11. An order pursuant to either ss 12GLA(2) or 12GLB(1)(a) of the ASIC Act that within 30 days of the order, Statewide shall take all reasonable steps to cause to be published, at its own expense, a notice in terms the Court considers appropriate on the appropriate part of its website in the same style and format as commensurate notices in Statewide's website, but in a font not smaller than 10 point.
12. Orders under s 1101B(1) of the Corporations Act:
 - a. requiring Statewide to establish and implement a review and remediation program to:
 - i. identify all past and present members of the Fund whose insurance status was subject to application of the U\$4K Rule or Nil Balance Rule during the Relevant Period;
 - ii. determine whether the insurance status of past and present members of the Fund was correct under the terms of the Statewide Insurance Policies in place at all applicable times during and after the Relevant Period;
 - iii. identify all past and present members of the Fund who during the Relevant Period either or both (1) received correspondence from Statewide indicating current insurance under Statewide Insurance Policies at a time when the member did not hold such insurance or (2) were charged insurance premiums when the member did not hold insurance cover under the Statewide Insurance Policies in place at the relevant time;
 - iv. inform past and present members of the Fund of any corrections to their insurance status during or after the Relevant Period arising from the undertaking of the review and remediation programme, and any compensation entitlement;
 - v. compensate past and present members of the Fund for all overcharged premiums arising from any failure to apply the U\$4K Rule or Nil Balance Rule in accordance with Statewide Insurance Policies (including for loss of return on amounts incorrectly charged, with the aim to place the member in the position they would have been had incorrect charging not occurred);
 - b. appointing a suitably qualified independent expert to prepare and provide to ASIC a report on the review and remediation program, including as to whether the expert perceives any deficiencies in the implementation and effectiveness of that review and remediation program.
13. An order that Statewide pay the plaintiff's costs of and incidental to this proceeding.
14. Such other order as the Court sees fit.

Date: 4 March 2021



A handwritten signature in purple ink, consisting of stylized initials.

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Signature of plaintiff's legal practitioner

This application will be heard by _____ at Level 5, Roma Mitchell
Commonwealth Law Courts Building, 3 Angas Street, Adelaide SA 5000
at _____ *am/*pm on _____

B. NOTICE TO DEFENDANT

TO: **STATEWIDE SUPERANNUATION PTY LTD**
(ACN 008 099 223)
Level 11, 211 Victoria Square
ADELAIDE SA 5000

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

Date of filing:

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Registrar

This originating process is filed by the Australian Securities and Investments Commission for the plaintiff.

D. SERVICE

The plaintiff's address for service is:

Australian Securities and Investments Commission
Level 20, 240 Queen Street
BRISBANE QLD 4000
DX 322 Brisbane



Email: hugh.copley@asic.gov.au

The plaintiff's telephone, facsimile, and document exchange numbers are:

Tel: (07) 3867 4700

Fax: (07) 3867 4725

The plaintiff's address is:

Australian Securities and Investments Commission
Level 20, 240 Queen Street
BRISBANE QLD 4000

It is intended to serve a copy of this originating process on the defendant.