

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 26/05/2021 3:48:17 PM 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: Concise Statement
File Number: VID280/2021
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v AMP
SUPERANNUATION LIMITED & ORS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 26/05/2021 4:13:44 PM 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.

Concise statement

Federal Court of Australia
 District Registry: Victoria
 Division: General

No. VID of 2021

Australian Securities and Investments Commission

Plaintiff

AMP Superannuation Limited (ACN 008 414 104) and others

Defendant

A. The important facts giving rise to the claim

1. The proceeding concerns the charging and retention of insurance premiums and advice fees following the death of members of superannuation funds in the period between 26 May 2015 to 31 August 2019 (**Relevant Period**).
2. In the Relevant Period:
 - (a) the first defendant, AMP Superannuation Limited (**AMP Superannuation**), was a registerable superannuation entity and the trustee of the AMP Superannuation Trust and the AMP Retirement Trust. It offered superannuation products to members of these trusts known as “Custom Super”, “Super Leader”, “SignatureSuper”, “Flexible Lifetime Super” and “AMP Flexible Super”;
 - (b) the second defendant, NM Superannuation Proprietary Limited (**NM Superannuation**), was a registerable superannuation entity and the trustee of the Super Directions Fund. It offered superannuation products to members of this trust known as “Tailored Super”, “Simple Super”, “Super Directions” and “NMRP Super Directions”;
 - (c) the third defendant, AMP Financial Planning Proprietary Limited (**AMP Financial Planning**), was a financial services licensee who offered services in the nature of financial advice to members of the above trusts. Services were provided through financial advisers who were Authorised Representatives of AMP Financial Planning;
 - (d) the fourth defendant, AMP Life Limited (**AMP Life**), was a financial services licensee who performed two functions. First, it was the administrator of the above trusts.

Filed on behalf of	The Plaintiff, Australian Securities and Investments Commission		
Prepared by	Nick Kelton, Lawyer		
Tel	(03) 9280 4787	Fax	1300 729 000
Email	nicholas.kelton@asic.gov.au		
Address for service	Level 7, 120 Collins Street, Melbourne, Victoria, 3000		

Second, it was an insurer. AMP Life entered into group policies of life insurance with AMP Superannuation and NM Superannuation, and through these policies offered life insurance coverage to members of the above trusts; and

- (e) the fifth defendant, AMP Services Limited (**AMP Services**), was a member of the AMP group of companies (**AMP Group**) who provided administration services and resources to AMP Life for the purposes of its insurer and trustee administration functions.
3. Members who had acquired one of the above products each had a superannuation account administered by AMP Life. For members who obtained:
- (a) life insurance coverage from AMP Life, AMP Life deducted monthly premiums from members' accounts and paid those premiums to itself; and
 - (b) personal advice services from AMP Financial Planning, AMP Life deducted advice fees from members' accounts and remitted those fees to AMP Financial Planning. AMP Financial Planning then retained a portion of those fees and remitted the balance of the fees to the members' chosen Authorised Representative.

The conduct giving rise to the claims

4. On the death of a member:
- (a) A member's obligation to pay monthly premiums for life insurance coverage ceased. From this date, AMP Life had no entitlement to deduct, or retain, such premiums from members' accounts.
 - (b) A member's obligation to pay fees for services in the nature of personal advice ceased. From this date, AMP Financial Planning had no entitlement to deduct, or retain, such fees from member's accounts.
 - (c) Each trust deed required a member's death benefit to be calculated by reference to the member's account balance as at the date of death.
5. Despite this, in the Relevant Period:
- (a) AMP Life continued to deduct premiums and advice fees from deceased members' accounts;
 - (b) AMP Life continued to pay itself premiums and continued to remit advice fees to AMP Financial Planning; and

- (c) AMP Financial Planning continued to retain a portion of those fees and remit a portion of those fees to Authorised Representatives.
6. Members had died and were thus unable to take steps to remedy this conduct. Member representatives who were responsible for administering the members' estate were likely coming to the member's superannuation product for the first time, and thus unlikely to be aware of the terms and conditions governing the member's superannuation product. Some representatives (such as partners, family members or friends) were likely to be transacting at a time of distress.
 7. Members and their representatives were thus dependent on the defendants having adequate systems and procedures for ensuring that premiums and advice fees were not deducted following a member's death.
 8. The conduct occurred despite AMP Life being notified of members' deaths and despite receiving, from time to time, complaints from members representatives (before and during the Relevant Period) about the conduct. The conduct occurred despite the significant resources available to each defendant, and despite members paying administration fees for the proper administration of their superannuation accounts.
 9. On and from 26 June 2018, the first to fourth defendants notified the Plaintiff (**ASIC**) of the conduct under written reports lodged under s 912D of the *Corporations Act 2001* (Cth) (**Corporations Act**).
 10. On 1 May 2019, the AMP Group introduced its Insurance Premiums and Fees Charged to Deceased Customers Policy, which set out how the AMP Group would treat fees upon notification of a member's death. On 21 August 2019, the AMP Group released the Ongoing Advice Fees and the Death of a Client Policy which set out procedures to ensure ongoing advice fees would cease upon a death of a member.
 11. Prior to these policies, in the Relevant Period, the AMP Group had no, or alternatively no effective, monitoring policy or system in place to prevent and/or monitor deductions of premiums and advice fees from deceased members' accounts.
 12. On 8 November 2019, the AMP Group notified ASIC that 9,308 deceased members had been impacted by the conduct of the defendants, which commenced on 1 January 2011, and the financial impact of the conduct was estimated to be \$3.8 million (including any potential loss of earnings).
 13. Throughout 2019 and 2020, the AMP Group conducted a remediation program in which retained premiums and advice fees were returned to members' estates or representatives.

In May 2020, the AMP Group notified ASIC that it had finalised its remediation program. In August 2020, the AMP Group informed ASIC that the conduct of the defendants had affected 10,155 superannuation accounts of deceased members and caused a total financial loss of \$5,255,105.10 (including any potential loss of earnings).

The affected members

14. ASIC brings this claim in respect of 2,069 deceased members affected by the retention of premiums, and 27 members affected by the retention of advice fees.

B. The relief sought from the Court

15. The relief sought by ASIC is set out in the accompanying Originating Process.
16. ASIC alleges that AMP Superannuation, NM Superannuation, AMP Financial Planning and AMP Life each contravened their general obligations as financial services licensees under s 912A of the Corporations Act by failing to:
 - (a) do all things necessary to ensure that the financial services covered by their licences were provided efficiently, honestly and fairly;
 - (b) have in place adequate arrangements for the management of conflicts of interest (s 912A(1)(aa)); and
 - (c) comply with financial services laws (s 912(1)(c)).
17. ASIC alleges that AMP Life and AMP Financial Planning accepted payment for insurance coverage and financial advice services respectively in circumstances where there were reasonable grounds for believing that AMP Life and AMP Financial Planning respectively were unable to supply those services to deceased members (in contravention of s 12DI(3) of the *Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act)*).
18. ASIC alleges further that AMP Superannuation, NM Superannuation, AMP Financial Planning and AMP Life engaged in conduct that was, in all of the circumstances, unconscionable (in contravention of s 12CB(1) of the ASIC Act).

C. The primary legal grounds for the relief sought

19. The defendants' conduct occurred in trade or commerce and in connection with a supply of a financial service. In the case of retained premiums, the conduct occurred in connection with the dealing in a financial product, and (or alternatively) the provision of a service otherwise supplied in relation to a financial product. In the case of retained advice fees, the conduct occurred in connection with the provision of financial product advice.

General obligations claims against the first to fourth defendants (s 912A(1))

20. The first to fourth defendants failed to ensure that a system was in place (i.e. adequate policies, procedures, controls, human resources and information technology) that ensured:
- (a) the conduct did not occur and that their financial services were provided efficiently, honestly and fairly (s 912A(1)(a)); and
 - (b) they had in place a system to manage the conflict between their interests in the continued deduction of premiums and advice fees, and members' interests in premiums and advice fees ceasing after death (s 912A(1)(aa)).
21. By reason of the matters set out in this concise statement, AMP Superannuation, NM Superannuation, AMP Financial Planning and AMP Life have also failed to comply with financial services laws (s 912A(1)(c)).

Non-supply claims against AMP Life, AMP Financial Planning and AMP Services (s 12DI(3))

22. In respect of the retained premiums, AMP Life accepted premium payments at a time where there were no reasonable grounds for believing that AMP Life would be able to supply life insurance coverage to the deceased members, at any time or at all. The deceased member had died. There was no longer any life to insure.
23. In respect of the retained advice fees, AMP Financial Planning (and its Authorised Representatives) accepted advice fees at a time where there were no reasonable grounds for believing that AMP Financial Planning's Authorised Representatives would be able to supply services in the nature of personal advice, at any time or at all. The deceased member had died. There was no longer any personal advice to provide.
24. AMP Services was involved in these contraventions and is thus taken to have contravened itself (s 12GBCL).

Unconscionable conduct claims against all defendants (s 12CB(1))

25. The defendants' conduct occurred against the backdrop of common law and equitable obligations under trust deed, statutory obligations of registerable superannuation entities under the *Superannuation Industry (Supervision Act) 1993* (Cth), and statutory obligations of financial services licensees under the Corporations Act. The defendants' conduct is to be assessed objectively against these normative standards (as applicable to each defendant).
26. ASIC alleges that AMP Life and AMP Financial Planning deducted and dealt with premiums

and advice fees from members' accounts after a member had died over a long period knowing that:

- (a) the member had died;
- (b) there was no entitlement to deduct and retain premiums and advice fees;
- (c) members' representatives had previously complained about this conduct;
- (d) the existing systems and processes did not prevent and/or properly monitor such dealings; and
- (e) members and their representatives were dependent on the defendants having adequate systems and procedures for ensuring that premiums and advice fees were monitored and not deducted from members' accounts following a member's death.

27. The defendants' conduct was, in all the circumstances, unconscionable.

28. ASIC relies upon s 12CB(4)(b) of the ASIC Act. In respect of the claims against AMP Superannuation and NM Superannuation, the conduct and state of mind of AMP Life and AMP Services (as agent) was AMP Superannuation's and NM Superannuation's conduct and state of mind (s 12GH). In respect of the claims against AMP Financial Planning, AMP Financial Planning is responsible for the conduct of its Authorised Representatives (Division 6 of Part 7.6 of the Corporations Act). In respect of the claim against AMP Life, it is liable as a primary contravener, or in the alternative, as an accessory as it was involved in AMP Superannuation's and NM Superannuation's contraventions (s 12GBCL). The claim against AMP Services is based in accessorial liability.

D. The alleged harm suffered

29. The financial impact of the conduct in connection with the retention of premiums pursued in this claim totalled \$547,760, with at least \$366,599 of the premiums being charged during the Relevant Period. The financial impact of the conduct in connection with the retention of advice fees pursued in this claim totalled \$105,503, with at least \$76,053 of the advice fees being charged during the Relevant Period.

Date: 26 May 2021



Signed by Nick Kelton
Lawyer for the Plaintiff

This concise statement was prepared by Cam H Truong QC and Leigh R Howard of Counsel.

Certificate of Lawyer

I, Nick Kelton, certify to the Court that, in relation to the concise statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the concise statement.

Date: 26 May 2021



Signed by Nick Kelton
Lawyer for the Plaintiff

Filed on behalf of	The Plaintiff, Australian Securities and Investments Commission		
Prepared by	Nick Kelton, Lawyer		
Tel	(03) 9280 4787	Fax	1300 729 000
Email	nicholas.kelton@asic.gov.au		
Address for service	Level 7, 120 Collins Street, Melbourne, Victoria, 3000		
