

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 8/10/2021 11:47:55 AM AEDT 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: VID573/2021  
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v  
DIVERSA TRUSTEES LIMITED  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 8/10/2021 1:15:56 PM AEDT

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

No. VID of 2021

Federal Court of Australia  
District Registry: Victoria  
Division: General

In the matter of **DIVERSA TRUSTEES LIMITED (ACN 006 421 638)**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Plaintiff

**DIVERSA TRUSTEES LIMITED (ACN 006 421 638)**

Defendant

1. This is a claim against the Defendant (**Diversa**), a superannuation trustee, for contraventions of ss 912A(1)(a) and (ca) of the *Corporations Act 2001* (Cth) between 13 March 2019 and 18 December 2020 (**Relevant Period**) in failing to do all things necessary to ensure that the financial services covered by its Australian financial services licence (**Licence**) were provided efficiently, honestly and fairly, and failing to take reasonable steps to ensure that its representatives complied with the financial services laws.

**IMPORTANT FACTS GIVING RISE TO THE CLAIM**

2. Diversa’s Licence authorised it to provide general advice and to deal in superannuation products. It relevantly acted as trustee of the MAP Master Superannuation Plan (Division II) (later known as OneSuper), which had a sub-plan known as **YourChoice Super**.
3. Diversa outsourced the day-to-day operation of the superannuation fund:
  - 3.1. OneVue Super Services Pty Ltd (**OneVue Super**) provided administration services, including admission of new members, maintaining members’ records, managing claims based on financial hardship for members, and calculating and arranging payment of any fees to external service providers and remuneration to advisers.
  - 3.2. OneVue Wealth Services Ltd (**OneVue Wealth**) provided platform and custody services, including onboarding and maintaining advisers, breach and incident rectification and managing online and technology services; and (from 22 May 2019) provided promotion services, including general marketing, distribution and sales, training of authorised representatives and reporting on service levels and compliance and sponsor services, including the operation and maintenance of the fund website, preparation of annual reports and provision of a call centre for members and advisers.

---

Filed on behalf of (name & role of party) Australian Securities and Investments Commission, Plaintiff  
Prepared by (name of person/lawyer) Savas Miriklis  
Law firm (if applicable) Australian Securities and Investments Commission  
Tel (03) 9280 3442 Fax \_\_\_\_\_  
Email savas.miriklis@asic.gov.au  
**Address for service** Level 7, 120 Collins Street, Melbourne VIC 3000  
(include state and postcode) \_\_\_\_\_

4. OneVue Super and OneVue Wealth (together, **OneVue Entities**), which also held Licences, were subsidiaries of OneVue Holdings Ltd, which was also Diversa's parent until 27 June 2019. Many of the key personnel of the group continued on after that date.
5. Mr Nizi Bhandari (**Bhandari**) operated a "lost superannuation" consolidation business described as Australian Super Finder (**ASF**), through his company, The Australian Dealer Group Pty Ltd (**ADG**), which itself had a Licence. They were engaged by the OneVue Entities, as described below. Their business model was as follows:
  - 5.1. Services were promoted through a website (<https://australiansuperfinder.com.au>) and a call centre based in the Philippines.
  - 5.2. The website stated that searching for customers' 'lost' superannuation accounts was "free", and consolidating accounts attracted a "once-off fee".
  - 5.3. In fact, customers became liable to pay substantial fees to them and Diversa including: (a) administration fees of approximately 0.25% p.a. asset-based fee (for an average daily balance under \$250,000), (b) \$150 account-keeping fee, (c) 0.03% expense recovery fee plus \$50 p.a., (d) insurance administration fees of \$77 or \$99 for establishment and approximately \$77 or \$99 p.a. thereafter (should the member choose to take up retail insurance cover) or 10% of the premium as an administration fee (should the member choose to take up group insurance cover), (e) super consolidation service fees ranging from \$110 to \$4,400 (depending on the number of super accounts to be recovered and the extent of work required to consolidate them).
  - 5.4. They promoted, and signed up or rolled-over customers to, YourChoice Super and used it in their superannuation aggregation business. Following engagement by the OneVue Entities, ADG and Bhandari were registered on the OneVue Secure Online Portal, which gave them access to the platform and enabled them to use, promote and sign up or roll-over customers to, YourChoice Super. They used the OneVue platform to access "SuperMatch", a free online service provided by the Australian Tax Office, to find details of the customers' existing super fund accounts.
  - 5.5. Once a customer signed-up or rolled-over, YourChoice Super was used as a "temporary consolidation account" into which the customer's superannuation would be consolidated, and from which fees were deducted before any rollover into the customer's subsequent superannuation fund.
  - 5.6. For many customers who signed-up or rolled over, once the funds from their other accounts were temporarily consolidated in YourChoice Super, an application was submitted on their behalf for withdrawal of moneys, including on the basis of financial hardship.
  - 5.7. During the Relevant Period, 77 "financial hardship" withdrawal applications from YourChoice Super were processed by Diversa, from customers of Bhandari, ADG and ASF (comprising 15.65% of the total applications for financial hardship processed by Diversa over the same period).
  - 5.8. A significant volume of other (non-"financial hardship") withdrawals by Bhandari, ADG and ASF on behalf of customers were processed by Diversa. During the Relevant

Period, at least 4,283 such withdrawal applications from YourChoice Super were processed by Diversa, from customers of ASF (comprising 48.94% of the total non-hardship applications from YourChoice Super processed by Diversa over that period).

6. Throughout the Relevant Period, Diversa, further or alternatively the OneVue Entities, knew or ought to have known (including inter alia through Stephen Blood, who served as OneVue's Executive General Manager of Risk & Compliance from January 2017 to March 2021, Diversa's Executive General Manager of Fiduciary Services from April 2018 to June 2019, and OneVue's Group Chief Risk Officer and Head of Legal from June 2019 to March 2020; and through other Diversa and OneVue employees) in relation to Bhandari, ASF and ADG, that inter alia:
  - 6.1. their business was super aggregation;
  - 6.2. they charged customers upfront adviser service fees for the consolidation service;
  - 6.3. they used YourChoice Super in their superannuation aggregation business, and promoted, and signed up or rolled-over customers to, YourChoice Super, having been engaged by the OneVue Entities;
  - 6.4. a very high number of financial hardship and other withdrawal claims were submitted on behalf of their customers;
  - 6.5. it was likely that many customers were vulnerable and unsophisticated;
  - 6.6. customers became liable for exorbitant fees as a proportion of their account balance;
  - 6.7. prior to their relationship with the OneVue Entities, they had been asked to leave another financial services licensee, MLC, because of the way in which they conducted their super aggregation business;
  - 6.8. they had used 'dummy' email accounts to establish new YourChoice Super accounts; and
  - 6.9. there was at least a risk that Bhandari, ASF and ADG were engaging in misleading or deceptive conduct or unconscionable conduct or not doing all things necessary to ensure that the financial services covered by ADG's Licence were provided efficiently, honestly and fairly, and were thereby not complying with the financial services laws.
7. Diversa, further or alternatively the OneVue Entities, also knew or ought to have known (including inter alia through Mr Blood, and through other Diversa and OneVue employees) in relation to Bhandari, ASF and ADG, that inter alia:
  - 7.1. (from at least February 2019): they were being investigated by the Plaintiff (**ASIC**);
  - 7.2. (from at least May 2019): their business model was substantially as described in paragraph 5 above;
  - 7.3. (from at least August 2019): they were charging high fees on recently activated accounts of customers (who became YourChoice Super members), and the closure of

many of those customers' initial accounts would have resulted in a loss of insurance benefits attached to those accounts, and further withdrawals (both hardship and other) were being processed in relation to customers;

- 7.4. (from at least October 2019): they had submitted a withdrawal request containing a false certification;
  - 7.5. (from at least 5 March 2020): a customer complained to the Australian Financial Complaints Authority concerning their sales tactics and the fees;
  - 7.6. (from at least 5 March 2020): their practice of handling customer complaints was to refund them early to prevent escalation; and
  - 7.7. (from at least 17 March 2020): their use of the "SuperMatch" service resulted in the Australian Taxation Office's revocation of the OneVue Platform's access to that service.
8. Diversa outsourced the day-to-day operations to the OneVue Entities without adequately retaining control over or supervising or monitoring those operations. Diversa did not take any, or any sufficient, action in response to issues that were brought or should have come to its attention in relation to Bhandari, ASF and ADG. Steps that Diversa could have taken but did not take in relation to them included: reviewing and evaluating their marketing and advertising (required pursuant to Diversa's internal policies); reviewing and approving any marketing material or statements used in promoting, and signing up or rolling-over customers to, YourChoice Super (required pursuant to Diversa's internal policies); reviewing and approving any call scripts utilised by the call centre when promoting or signing up potential new customers; establishing or enforcing a policy for overseeing the training and supervision of representatives (required under Diversa's Licence); adequately monitoring or appropriately overseeing the monitoring of activities in relation to YourChoice Super (required pursuant to Diversa's internal policies and the *Superannuation (prudential standard) determination No.3 of 2012: Prudential Standard SPS 231 Outsourcing*, with which Diversa was required to comply as a registrable superannuation entity licensee), including sales and marketing, communications to potential new customers on the website and through the call centre, complaints, provision of financial services to potential new customers and compliance with all applicable legislation; establishing and maintaining compliance measures to ensure that, as far as is reasonably practicable, it complied with the provisions of the financial services laws, including in relation to its representatives (required pursuant to Diversa's Licence); and ceasing to allow them to promote, or sign up customers to, YourChoice Super or use it in their superannuation aggregation business.
  9. Diversa did not supervise or monitor properly the conduct of the OneVue Entities or take steps to reduce the risks of them, via Bhandari, ASF and ADG, engaging in, or permitting, conduct which was inefficient, dishonest and unfair towards customers, or in contravention of financial services laws.
  10. Diversa permitted Bhandari, ASF and ADG to continue to operate the business using YourChoice Super, until 18 December 2020 when the business was sold. In February 2021 ASIC permanently banned Bhandari as an adviser and cancelled ADG's Licence.

**RELIEF SOUGHT FROM THE COURT**

11. ASIC seeks the relief set out in the originating process.

**PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT**

- 12. By reason of the matters set out in paragraphs 2 to 10 above, Diversa contravened s 912A(1)(a) of the *Corporations Act* during the Relevant Period in failing to do all things necessary to ensure that the financial services covered by Diversa’s Licence were provided efficiently, honestly and fairly.
- 13. Further or alternatively, by reason of the matters set out in paragraphs 2 to 10 above, Diversa contravened s 912A(1)(ca) of the *Corporations Act* during the Relevant Period in failing to take reasonable steps to ensure that the OneVue Entities, who were Diversa’s representatives (within the meaning of s 910A of the *Corporations Act*), whether by themselves or by their agents or representatives (Bhandari, ASF and ADG), complied with the financial services laws, relevantly the prohibitions against misleading or deceptive conduct (in s 1041H of the *Corporations Act* and s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth)), the prohibitions against unconscionable conduct (in s 12CB of the *ASIC Act* and in s 991A of the *Corporations Act*), and the requirements that licensees do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly (in s 912A(1)(a) of the *Corporations Act*) and take reasonable steps to ensure that their representatives comply with the financial services laws (in s 912A(1)(ca) of the *Corporations Act*).
- 14. Under ss 769B(1) and 769B(3) of the *Corporations Act* and ss 12GH(1) and (2) of the *ASIC Act*, the conduct and state of mind of Bhandari, ASF and ADG, as the agents of the OneVue Entities, are attributed to the OneVue Entities, and the conduct and state of mind of the OneVue Entities, as Diversa’s agents, are attributed to Diversa.

**ALLEGED HARM**

15. Diversa’s contraventions enabled Bhandari, ASF and ADG to lure customers, many of whom faced financial hardship, and who became liable for substantial fees for little if any benefit in return, thus eroding their superannuation balances. This defeated or diminished genuine customer choice, and impacted decisions made by customers who may have acted on the belief that signing-up or rolling-over to YourChoice Super would be financially beneficial to them whereas in fact it had the opposite effect.

Date: 8 October 2021



.....  
Solicitors for the Plaintiff

This Concise Statement was prepared by Sahrah Hogan of counsel, and settled by Oren Bigos QC.

**CERTIFICATE OF LAWYER**

I, Savas Miriklis, 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: 8 October 2021



.....  
Lawyer for the Plaintiff