

NOTICE OF FILING

Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	12/05/2025 4:33:17 PM AEST
Date Accepted for Filing:	12/05/2025 4:33:21 PM AEST
File Number:	VID1226/2024
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v UNITED SUPER PTY LTD ACN 006 261 623 AS TRUSTEE FOR THE CONSTRUCTION AND BUILDING UNIONS SUPERANNUATION FUND
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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

The date of the filing of the document is determined pursuant to the Court's Rules.



Statement of claim

No. 1226 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

Australian Securities and Investments Commission

Plaintiff

United Super Pty Ltd ACN 006 261 623 as Trustee for the Construction and Building Unions Superannuation Fund

Defendant

A. INTRODUCTION

1. The Plaintiff, the Australian Securities and Investments Commission (**ASIC**):
 - a. is a body corporate established by s 7 of the *Australian Securities Commission Act 1989* (Cth);
 - b. is continued in existence by s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
 - c. is entitled by section 8 of the ASIC Act to sue in its corporate name; and
 - d. has statutory functions and powers conferred on it by the ASIC Act and by other statutes identified in s 12A of the ASIC Act, including the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**).
2. The Defendant, United Super Pty Ltd (**Cbus**):
 - a. is the trustee for the Construction and Building Unions Superannuation Fund (**Fund**) on terms, including those pleaded in paragraph 5 below;
 - b. holds a 'RSE licence' as that term is defined in section 10(1) of the SIS Act numbered L0000604 (**RSE Licence**) issued by the Australian Prudential Regulation Authority (**APRA**);

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff		
Prepared by (name of person/lawyer)	Howard Rapke		
Law firm (if applicable)	Holding Redlich		
Tel	03 9321 9752	Fax	03 9321 9900
Email	Howard.Rapke@holdingredlich.com		
Address for service (include state and postcode)	Holding Redlich, Level 23, 500 Bourke St, Melbourne VIC 3000		

- c. holds an Australian Financial Services Licence numbered 233792 (**AFSL**) issued by ASIC;
- d. from 24 August 2021 has been authorised by its AFSL to:
 - i. deal in a financial product by issuing, applying for, acquiring, varying or disposing of a financial product in respect of superannuation; and
 - ii. provide a superannuation trustee service to retail and wholesale clients;
- e. during the period between 1 February 2022 and 12 November 2024 (**Relevant Period**), offered to, and did, facilitate the processing of death, terminal illness, and total and permanent disability (**TPD**) claims by or on behalf of Fund members (**Claims Processing Services**);
- f. outsourced parts of the Claims Processing Services pursuant to the agreement pleaded in paragraph 13 below; and
- g. can be sued.

B. FACTS AND REGULATORY BACKGROUND

The Fund and the Trust Deed governing the Fund

- 3. The Fund is a 'regulated superannuation fund', and therefore a 'registrable superannuation entity', as those terms are defined in ss 10(1) and 19 of the SIS Act.
- 4. Cbus's relationship with members of the Fund was governed by a trust deed originally executed on 27 July 1984 and amended from time to time, including on 24 December 2021 (**Trust Deed**).

Particulars

The Trust Deed is in writing and amending deed (which is also in writing) numbered thirty-one was executed on 24 December 2021.

- 5. During the Relevant Period, the Trust Deed provided, among other things, that:
 - a. the requirements, covenants, standards, prudential standards or directions under the SIS Act and the *Corporations Act 2001 (Cth)* (**Corporations Act**) were incorporated into the Trust Deed to the extent that they apply to the Fund (clauses 1.6(a) and 7.2, definition of 'Relevant Law'); and
 - b. Cbus covenanted with members of the Fund to perform and observe the covenants, trusts and conditions of the Trust Deed and the covenants and obligations imposed by the 'Relevant Law' (clause 1.5),

(severally and collectively, the **Trust Deed Covenants**).

6. By operation of s 52(1) of the SIS Act, during the Relevant Period the Trust Deed is taken to contain covenants including that Cbus would:
- a. exercise, in relation to all matters affecting the Fund, the same degree of care skill and diligence as a prudent superannuation trustee would exercise for and on behalf of the beneficiaries of which it makes investments (s 52(2)(b) of the SIS Act);
 - b. perform its duties and exercise its powers in the best financial interests of the beneficiaries (s 52(2)(c) of the SIS Act); and
 - c. do everything that is reasonable to pursue an insurance claim for the benefit of a beneficiary, if the claim has a reasonable prospect of success (s 52(7)(d) of the SIS Act),
- (severally and collectively, the **SIS Act Covenants**).

Prudential Standard SPS 231 Outsourcing

- 7. Pursuant to s 34C(1) of the SIS Act, APRA could determine standards relating to prudential matters that all 'RSE licensees' must comply with.
- 8. On 15 November 2012, APRA determined under s 34C(1) of the SIS Act that a prudential standard entitled 'Prudential Standard SPS 231 Outsourcing' applied to all 'RSE licensees' (**SPS 231**).

Particulars

Superannuation (prudential standard) determination No. 3 of 2012.

- 9. By reason of holding the RSE Licence, Cbus was required to comply with SPS 231 from 1 July 2013, being the date that SPS 231 commenced.
- 10. As it applied to Cbus, SPS 231 provided, among other things, that:
 - a. Cbus's Board was ultimately responsible for any outsourcing of a material business activity undertaken by a 'RSE licensee' and Cbus was responsible for complying with all prudential requirements and all other non-delegable legal obligations relating to the outsourced business activity (paragraph 13);
 - b. Cbus's Board must approve Cbus's outsourcing policy, which must set out its approach to outsourcing material business activities, including a detailed framework for managing all such outsourcing arrangements (paragraph 15);
 - c. any outsourcing agreement must address minimum matters, including service levels and performance requirements, the form in which data is to be kept and clear provisions identifying ownership and control of the data, reporting

requirements including the content and frequency of reporting and audit and monitoring procedures (paragraph 21);

- d. Cbus must ensure it has sufficient and appropriate resources to manage and monitor any outsourcing arrangement at all times (paragraph 30); and
- e. Cbus was required to advise APRA of any significant problems that have the potential to materially affect the outsourcing arrangement and, consequently, materially affect Cbus's business operations or the interests of beneficiaries (paragraph 31),

(severally and collectively, the **SPS 231 Requirements**).

Cbus's Outsourcing Policy

- 11. Cbus had an outsourcing policy which it amended from time to time, including in December 2021 (**Outsourcing Policy**).

Particulars

The Outsourcing Policy is in writing and version 2.0 was approved by Cbus in or around December 2021.

- 12. The Outsourcing Policy provided, among other things, that:
 - a. Cbus's Board was ultimately responsible for any outsourcing of a material business activity by Cbus (section 7, page 7);
 - b. Cbus would monitor and manage any outsourcing arrangement on an ongoing basis, consistently with its duty to act in the best financial interests of beneficiaries (section 4, page 6);
 - c. Cbus would ensure that any outsourcing agreement would comply with the requirements of SPS 231 including the SPS 231 Requirements (section 10.1, page 14);
 - d. Cbus would ensure it always had sufficient and appropriate resources to manage and monitor each material outsourced relationship, having regard to the associated risks, size and complexity of the service provider (section 12, page 17);
 - e. Cbus would seek to satisfy itself that the data managed by a 'Service Provider' is high quality, accurate and complete and consistent with the provisions of any agreement with the 'Service Provider' (section 12, page 17); and

- f. Cbus was responsible for determining the level and frequency of reporting from the outsourced service provider having regard to the associated risks, size and complexity of the service provider (section 12, page 18).

The Administration Agreement by which Cbus outsourced parts of the Claims Processing Services

13. On or around 23 December 2020, Cbus, Australian Administration Services Pty Limited (**AAS**) and Pacific Custodians Pty Limited entered an agreement pursuant to which AAS would provide administration and other services to the Fund, and Pacific Custodians would provide custody services to the Fund (**Administration Agreement**).

Particulars

The Administration Agreement is in writing and the last date on the document is 23 December 2020.

14. The Administration Agreement provided, among other things, that:
 - a. AAS would provide the 'Agreed Services' to Cbus (clause 3.1), including:
 - i. maintaining records as required by the Administration Agreement and in accordance with insurance policies (Schedule 2, clauses 2.1 and 2.6);
 - ii. meeting Cbus's claims management requirements, including processing death, total and permanent disablement and permanent incapacity cover, maintaining all claim records and documentation as required by Cbus and referring all communications to Cbus (Schedule 2, clause 2.7); and
 - iii. preparing reports for Cbus's consideration, including insurance claims listings, insurance aged claims and fortnightly underwriting and claims performance pack including number of new claims, rolling weekly claims, number of exits, number of claims per case manager and number of claims not meeting service standards (Schedule 2, clause 2.8);
 - b. AAS was required to provide written reports to Cbus in relation to the 'Agreed Services' (in the manner and within the timeframe required by Schedule 5) (clause 8.2), including:
 - i. a monthly 'SLA Report – Service level results' (Schedule 5);
 - ii. a monthly 'Insurance and Claims Report' (Schedule 5); and
 - iii. insurance and claims reports, including daily 'Death new (auto)' and 'TPD PI new (auto)' reports and monthly 'Insurance Claims Paid (for IFS)

(R170)', and 'iProcess Insurance Consolidation Report (for IFS) (R22)' (Schedule 5);

- c. Cbus could access any 'Fund Data' (i.e. all data relating to the Fund, including relating to former and current members encompassing insurance and financial information) in AAS's possession or control in any format specified in the Administration Agreement or in the format in which AAS stored the 'Fund Data' (clause 8.6(b)(v) and (vi));
- d. AAS was required to provide to Cbus a monthly 'Performance Report' as assessed against the 'Service Levels' and ensure that the 'Agreed Services' met or exceeded 'Service Levels' (clause 9.1(a));
- e. Cbus could require AAS to prepare and deliver a report identifying the cause of any failure to meet a 'Service Level' and the steps AAS had taken to prevent any future failures (clause 9.2(b));
- f. Cbus could require AAS to develop and implement a performance improvement plan to address any two failures to meet a 'Critical Service Level' within any three-month period (clause 9.2(c));
- g. Cbus and AAS would review the Administration Agreement annually to include compliance with SPS 231 and could include AAS's provision of the 'Agreed Services', AAS's performance against the 'Service Levels' and any changes required to the 'Service Levels' (clause 14.1);
- h. Cbus could appoint an auditor or other independent expert to review and report on AAS's performance of the 'Agreed Services' or AAS's resources as relevant to the provision of the 'Agreed Services', and any deficiencies reasonably determined by Cbus must be corrected by AAS at AAS's cost (clause 14.3);
- i. the parties would act in good faith to agree any amendments to the Administration Agreement arising from a material event, including amending the 'Service Levels', the manner in which any 'Agreed Service' is to be provided or AAS's obligations in respect of an 'Agreed Service' (clause 14.4);
- j. AAS was required to correct all errors in 'Fund Data' notified to it by Cbus or which it otherwise becomes aware of (clause 15);
- k. AAS was required to keep and maintain any records that Cbus reasonably requested be kept and provide those records to Cbus in any format requested (clause 16(a), (c) and (d));
- l. AAS was required to allow Cbus to conduct on-site visits at AAS's premises, access and copy 'Records' or any other documents or information in respect of

the Administration Agreement, and meet directly with AAS's personnel (clause 16(f));

- m. Cbus could at any time notify AAS that it would cease accepting a particular service provided by AAS (clause 7.1(a)); and
- n. Cbus could terminate: (i) without cause by giving AAS not less than 12 months' notice; or (ii) immediately if AAS breached a material duty or obligation under the Administration Agreement (clause 24.3).

Variation of the Administration Agreement

- 15. On or around 14 June 2022, the Administration Agreement was varied (**Variation Agreement**).

Particulars

The Variation Agreement is in writing and the last date on the document is 14 June 2022.

- 16. The Variation Agreement varied the Administration Agreement by, among other things, replacing the 'Service Levels' in the Administration Agreement with the following 'Service Levels':
 - a. as a 'Non-Critical Service Level' for 'Insurance and Complaints related Services', pay death and insurance benefits following receipt of all required documents – 99% within 3 business days and 100% within 5 business days (replacement Schedule 4, item 8);
 - b. for new insurance claims, making at least 3 attempts to contact a claimant following receipt of an adequately completed advice via writing or notification from the call centre – 3 attempts to contact within 3 business days (replacement Schedule 4, item 8);
 - c. for new insurance claims, making at least 3 attempts to contact a claimant to discuss the initial documents sent to the member – 3 attempts to contact within 5 business days of sending initial documents (replacement Schedule 4, item 8);
 - d. for death or insurance claims being progressed/assessed, contact claimant following receipt of a request for contact – 95% within 2 business days and 100% within 3 business days (replacement Schedule 4, item 8);
 - e. for claims being progressed/assessed, action work including preparing and providing claim file to Cbus and assessing work items received from the

insurer/member/claimant – 100% within 5 business days (replacement Schedule 4, item 8);

- f. for underwriting work being undertaken, action work including assess work items received from insurer/member/claimant (100% within 5 business days) and referral of underwriting/claims requests to insurer (100% in 2 business days) (replacement Schedule 4, item 8); and
 - g. for death and insurance claims, respond to Cbus – 95% within 2 business days, 100% within 3 business days and for escalated requests, 100% within 1 business day (replacement Schedule 4, item 8),
- (severally and collectively, the **Service Levels**).

C. CBUS's FINANCIAL SERVICES

Claims Processing Services covered by Cbus's AFSL

17. The Claims Processing Services were:
 - a. a 'financial service' within the meaning of section 766A(1) of the Corporations Act as they comprised:
 - i. a 'superannuation trustee service' within the meaning of section 766H(1) of the Corporations Act;
 - ii. 'dealing' in a 'superannuation product' within the meaning of section 766C(1) of the Corporations Act; and
 - b. 'financial services' covered by Cbus's AFSL that Cbus was required by s 912A(1)(a) of the Corporations Act to provide efficiently, honestly and fairly.

SIS Act obligations including SPS 231 were financial services laws

18. During the Relevant Period, each of the following formed part of 'financial services law' within the meaning of that term in s 761A of the Corporations Act:
 - a. the SIS Act Covenants; and
 - b. SPS 231, including the SPS 231 Requirements.

D. CBUS's FAILURES TO EFFICIENTLY PROCESS ITS MEMBERS' AND CLAIMANTS' DEATH AND TPD BENEFITS CLAIMS

19. By reason of Cbus's obligation under s 912A(1)(a) of the Corporations Act to provide the Claims Processing Services efficiently, honestly and fairly, and in order to comply with the Trust Deed Covenants, the SIS Act Covenants, the SPS 231 Requirements and the terms of its Outsourcing Policy, Cbus was required to:

- a. adequately monitor and manage AAS's performance under the Administration Agreement, including by ensuring that it had sufficient and appropriate resources to process all death and TPD claims by or on behalf of Fund members within a reasonable period of time;

Particulars

The specific circumstances of each claim, including the tasks required to process each claim, informs the reasonable time required to process the claim. By way of example:

- (1) the time periods identified for each of the Service Levels in the Administration Agreement were all reasonable periods of time to perform those tasks;
- (2) for a standard death claim which did not have unusual or complicated features, up to 90-120 days is a reasonable period of time to process the claim; and
- (3) for a standard TPD claim which did not have unusual or complicated features and Cbus was satisfied that a condition of release had been met, up to 7 months is a reasonable period of time to process the claim.

Further particulars may be provided following completion of discovery, evidence or other interlocutory processes of the Court.

- b. ensure that it held at all times accurate and complete data necessary to determine the volume and age of all death and TPD claims by or on behalf of Fund members, including by exercising its rights under the Administration Agreement alleged in paragraph 14 above to:
 - i. require AAS to regularly report all information reasonably necessary to determine the volume and age of all death and TPD claims;
 - ii. audit AAS to verify the accuracy and completeness of all information provided by AAS; and
 - iii. if the outcome of any audit showed that it was not receiving accurate and complete information from AAS, take all reasonable steps to ensure it received accurate and complete information from AAS;
- c. take all reasonable steps to ensure that all death and TPD claims were being processed within a reasonable period of time, including by:

- i. adequately monitoring whether all claims were being processed in a reasonable period of time;
- ii. providing clear guidance to AAS on how to process all claims in a reasonable period of time;
- iii. ensuring that AAS adhered to the Service Levels, including by taking all reasonable steps to correct any failure by AAS to adhere to the Service Levels;
- iv. ensuring that it had sufficient and appropriate resources to process all claims in a reasonable period of time, including providing reasonable training to AAS staff involved in processing claims; and
- v. in the event that claims were not processed in a reasonable period of time by AAS, having a reasonable process to:
 - 1. identify the reasons for any delays in processing claims;
 - 2. requiring AAS to take all reasonable steps to eliminate unreasonable delays in processing claims;
 - 3. identify whether AAS had taken all reasonable steps to eliminate unreasonable delays in processing claims; and
 - 4. terminate the Administration Agreement if AAS was unable to process claims within a reasonable period of time, and implement a different regime or arrangement to ensure that claims were processed within a reasonable period of time; and
- d. ensure that the relevant Cbus Board committees had sufficient oversight over and prioritised death and TPD claims processing by ensuring that they had all the information necessary to:
 - i. determine whether claims were being processed within a reasonable period of time; and
 - ii. take reasonable steps if claims were not being processed within a reasonable period of time.

Cbus failed to determine the reliability of the Death and TPD Claims Information

20. On 14 August 2024, ASIC issued a notice to Cbus requiring Cbus to produce information in relation to the age of claims made by Fund members or claimants for TPD or death benefits between 1 January 2020 and 30 June 2024.

Particulars

Notice NTC2423922 dated 14 August 2024 issued by ASIC to Cbus.

21. In response to the notice referred to in the previous paragraph, on 30 August 2024 Cbus produced the information in Schedule 1 (to this document) in relation to the age of claims made by Fund members or claimants for TPD or death benefits (collectively, the **Death and TPD Claims Information**).

Particulars

Letter from Arnold Bloch Leibler to ASIC dated 30 August 2024, enclosing a spreadsheet containing the Death and TPD Claims Information (**Letter**).

22. During the Relevant Period, the Death and TPD Claims Information represented that a significant number of death and TPD claims by Fund members or claimants were not being processed within a reasonable period of time.
23. The Letter in effect stated:
- a. that the Death and TPD Claims Information insofar as it concerned the following periods came from the following sources:
 - i. between 1 January 2020 and 30 June 2021 – data provided to Cbus from AAS from its 'iProcess' system;
 - ii. between 31 December 2021 to 30 June 2023 – data provided to Cbus from AAS from its 'Pega' system; and
 - iii. between 30 December 2023 to 30 June 2024 – data prepared by Cbus by reconciling data from Cbus's own 'Salesforce' system, data provided to Cbus by AAS from its 'Pega' system and data provided to Cbus from its insurers (TAL and Hannover Life Re); and
 - b. Cbus had, as at the date of the Letter, concerns that the Death and TPD Claims Information provided by AAS may not be reliable.
24. On 12 September 2024, ASIC issued a notice to Cbus requiring Cbus to complete an Excel workbook containing data fields related to death and TPD claims processed by Cbus during the Relevant Period.

Particulars

Notice NTC2423924 dated 12 September 2024 issued by ASIC to Cbus.

25. In response to the notice referred to in the previous paragraph, on 19 March 2025 Cbus produced an Excel workbook under cover of a letter which in effect stated that:

- a. in preparing the Excel workbook, Cbus identified several anomalies and discrepancies in data provided to it by AAS as recorded in the workbook; and
- b. Cbus was unable to complete all entries in the Excel workbook because of 'missing' data.

Particulars

Letter from Arnold Bloch Leibler to ASIC dated 19 March 2025, enclosing an Excel workbook.

Cbus failed to properly address the scale of delays, take prompt and appropriate action and identify the risks to its members and claimants

- 26. Between February 2020 and 12 November 2024, pursuant to the Administration Agreement, AAS made available to Cbus:
 - a. approximately every month, an 'Insurance Consolidation Report' (**Insurance Consolidation Report**); and
 - b. approximately every day, reports of new death and TPD benefits claims (**Daily Reports**).
- 27. The data contained in each Insurance Consolidation Report:
 - a. purported to show:
 - i. the date of notification of the claim;
 - ii. the type of claim;
 - iii. the claim status;
 - iv. the age of the claim in days; and
 - v. the age range of claim in days; and
 - b. could be filtered and sorted such that Cbus could determine the apparent number of death and TPD benefits claims:
 - i. older than 90 days;
 - ii. older than 180 days; and
 - iii. older than 365 days.
- 28. The data contained in the Daily Reports identified:
 - a. the relevant Fund member;
 - b. the type of claim; and

- c. the date of notification of the claim.
29. In the premises, AAS made or purported to make the Death and TPD Claims Information available to Cbus during the Relevant Period.
30. During the Relevant Period, Cbus had in its possession information it maintained that recorded:
- a. the date on which every death and TPD claim was first made; and
 - b. the date on which every such claim was accepted or rejected.

Particulars

Cbus had the information alleged:

- i. by reason of the matters alleged in paragraphs 26 to 28 above;
- ii. because it was responsible for deciding whether to accept or reject a claim, and made the decision to accept or reject a claim; and
- iii. in its 'Salesforce' system.

Further particulars may be provided following completion of discovery, evidence or other interlocutory processes of the Court.

31. By reason of:
- a. the Trust Deed Covenants;
 - b. the SIS Act Covenants;
 - c. the SPS 231 Requirements;
 - d. the terms of the Administration Agreement alleged in paragraphs 14.c., 14.j. and 14.k. above; and/or
 - e. the matters alleged in paragraphs 21, 23 and 26 to 30 above,
- Cbus:
- f. had or could obtain the Death and TPD Claims Information at any time during the Relevant Period; and
 - g. was obliged and able to verify the accuracy of the Death and TPD Claims Information supplied or purportedly supplied by AAS.
32. Between 22 November 2021 and 18 May 2023, Cbus's Board committees met and noted that:

- a. Cbus was receiving a substantial increase in death and TPD claim volumes and administration complaints; and
- b. additional resources had been assigned to deal with the increase in claims and complaint responses, but further action was not required.

Particulars

Cbus's Executive Risk Committee and Risk Committee meeting agendas and papers between 22 November 2021 and 18 May 2023 record the matters alleged above. Examples include:

- i. Cbus Risk Committee Meeting 22 November 2021 agenda, UNS.0003.0010.0028, pages ending .0028 and .0034.
- ii. Cbus Executive Risk Committee Meeting 2 February 2022 ERC Papers, CBS.001.003.1199, pages ending .1268 and .1280.
- iii. Cbus Risk Committee Meeting 23 November 2022, CBS.010.053.8783, at pages ending .8808 and .8824.
- iv. Cbus Executive Risk Committee Meeting 1 February 2023 ERC Papers, CBS.001.003.1821, pages ending .1830, .1831, .1840 and .1845.
- v. Cbus Risk Committee Meeting 14 February 2023, CBS.001.002.1664, at pages ending .1669, .1688, .1704 and .1718.

- 33. On 18 July 2022, Cbus prepared a business case for the approval of three additional people to assist in the processing of death and TPD benefits claims because of a steady increase in the number of claims.

Particulars

Cbus Business Case – Insurance Team Capacity (CBS.001.003.0225).

- 34. On 10 October 2022, Cbus accepted a 'Claims Reengineering Plan' proposed by AAS, which was:
 - a. brought about by AAS's poor performance in meeting service levels under the Administration Agreement, including in relation to the timely performance of tasks connected with processing of death and TPD benefits claims; and
 - b. designed to clear backlogs (including in respect of death and TPD benefits claims) and process incoming claims within a reasonable time.

Particulars

- i. Cbus's reportable situation report dated 1 September 2023 (UNS.0003.0003.0001), second paragraph of first response.
- ii. Cbus's Risk Committee Agenda dated 23 November 2022 CBS.010.053.8783 at page ending .8830.
- iii. Cbus's reportable situation report dated 5 August 2023 (UNS.0003.0001.0035), at page ending .0044.

35. In May 2023:

- a. Cbus knew that AAS had failed to:
 - i. meet the service levels under the Administration Agreement, including in relation to the timely performance of tasks connected with processing of death and TPD benefits claims; and
 - ii. clear backlogs (including in respect of death and TPD benefits claims) and process incoming claims within a reasonable period of time; and

Particulars

Cbus's knowledge is inferred from email correspondence between Cbus and AAS in and around May 2023.

- b. AAS proposed a revised recovery plan to Cbus.

Particulars

- i. AAS document titled 'Cbus Insurance Claims – Recovery Plan' (CBS.001.386.6322).
- ii. Minutes of meeting between Cbus and AAS (CBS.001.028.1118) which were circulated by email (CBS.001.028.1117).

36. On 22 August 2023, Cbus's Risk Committee met and:

- a. noted that:
 - i. Cbus had not acted efficiently in the processing of claims;
 - ii. Cbus had undertaken a process to validate claims data received from AAS; and

- iii. Cbus's insurance team observed a significant turnover in staff at AAS and identified indicators of lack of training of AAS's staff around October 2022; and
- b. endorsed re-rating the 'Insurance Offerings' material risk from 'Medium' to 'High', outside of risk appetite, to the Board.

Particulars

Cbus Risk Committee Meeting 22 August 2023 Agenda, CBS.001.002.1857, pages ending .1882, .1883 and .1886.

- 37. From August 2023, Cbus and AAS escalated the actions each of them was taking to address the delays in processing death and TPD benefits claims, including re-rating of the 'Insurance Offerings' material risk from 'Medium' to 'High' on or around 22 August 2023.

Particulars

Letter from the CEO of Cbus to the CEO of AAS dated 9 August 2023.

- 38. Despite the matters alleged in paragraphs 31.f. and 31.g. above, reporting to Cbus's Board committees prior to 22 August 2023 as alleged in paragraph 32 above failed to identify that Cbus had not adequately addressed the delays in processing death and TPD benefits claims.

Particulars

In Cbus's reportable situation report dated 5 August 2023 (UNS.0003.0001.0035), Cbus in effect acknowledged that the first instance of its failure to process death and TPD benefits claims efficiently, honestly and fairly occurred on 1 September 2022. That was almost 12 months before Cbus re-rated the 'Insurance Offering' material risk as 'High'.

- 39. Cbus had the ability under the Administration Agreement to:
 - a. require AAS to prepare a report identifying the cause for any failure to comply with service levels and the steps taken by AAS to prevent the failure from reoccurring;
 - b. request any documents or information in AAS's control relating to AAS's services;
 - c. require AAS to keep and maintain particular records and providing those records to Cbus; and

- d. audit AAS's provision of the services.

Particulars

ASIC repeats paragraph 14 above.

- 40. Cbus failed to implement, or adequately implement, the measures available to it under the Administration Agreement in a manner that would reasonably be expected to materially ameliorate the delays in processing death and TPD benefits claims.

E. CBUS's CONTRAVENTION OF ss 912A(1)(a), 912A(1)(c) AND 912A(5A) OF THE CORPORATIONS ACT AND s 54B(1) OF THE SIS ACT

- 41. In the premises pleaded in paragraphs 20 to 40 above, Cbus:
 - a. failed to adequately monitor and manage AAS's performance under the Administration Agreement, including by ensuring that it had deployed sufficient and appropriate resources to process all death and TPD claims by or on behalf of Fund members within a reasonable period of time;
 - b. failed to ensure that it held at all times accurate and complete data necessary to determine the volume and age of all death and TPD claims by or on behalf of Fund members, including by exercising its rights under the Administration Agreement to:
 - i. require AAS to regularly report all information reasonably necessary to determine the volume and age of all death and TPD claims;
 - ii. audit AAS to verify the accuracy and completeness of all information provided by AAS; and
 - iii. if the outcome of any audit showed that it was not receiving accurate and complete information from AAS, take all reasonable steps to ensure it received accurate and complete information from AAS;

Particulars

ASIC repeats paragraphs 23.b and 25 above.

- c. failed to take all reasonable steps to ensure that all death and TPD claims were being processed within a reasonable period of time, including by:
 - i. adequately monitoring whether all claims were being processed in a reasonable period of time;
 - ii. providing clear guidance to AAS on how to process all claims in a reasonable period of time;

- iii. ensuring that AAS adhered to the Service Levels, including by taking all reasonable steps to correct any failure by AAS to adhere to the Service Levels;
 - iv. ensuring that it had sufficient and appropriate resources to process all claims in a reasonable period of time, including providing reasonable training to AAS staff involved in processing claims; and
 - v. having a reasonable process to:
 - 1. identify the reasons for the delays in processing claims;
 - 2. requiring AAS to take all reasonable steps to eliminate unreasonable delays in processing claims;
 - 3. identify whether AAS had taken all reasonable steps to eliminate unreasonable delays in processing claims;
 - 4. terminate the Administration Agreement given that AAS was unable to process claims within a reasonable period of time, and implement a different regime or arrangement to ensure that claims were processed within a reasonable period of time; and
 - d. failed to ensure that the relevant Cbus Board committees had sufficient oversight over and prioritised death and TPD claims processing by ensuring that they had all the information necessary to:
 - i. determine whether claims were being processed within a reasonable period of time; and
 - ii. take reasonable steps when it became apparent that claims were not being processed within a reasonable period of time.
42. By reason of the matters pleaded in paragraphs 2 to 10 and 18 to 41 above, Cbus:
- a. breached the SIS Act Covenants; and
 - b. breached SPS 231, including the SPS 231 Requirements.

Particulars

A prudent superannuation trustee in Cbus's position would have exercised care, skill and diligence by taking the steps alleged in paragraph 19 above, acted with reasonable dispatch in processing members' and claimants' claims, and would not have failed Fund members and claimants in the manner alleged in paragraphs 20 to 41 above causing them loss or damage.

Further particulars may be provided following completion of discovery, evidence or other interlocutory processes of the Court.

43. In the premises, during the Relevant Period, Cbus:
- a. contravened ss 912A(1)(a) and 912A(5A) of the Corporations Act;
 - b. contravened s 912A(1)(c) of the Corporations Act; and
 - c. contravened s 54B(1) of the SIS Act.

F. CBUS'S FAILURE TO NOTIFY ASIC OF REPORTABLE SITUATION WITHIN 30 DAYS

44. On 5 August 2023, Cbus first lodged a reportable situation with ASIC identifying a breach, or likely breach, of obligations under the Corporations Act due to a significant breach of the core obligation contained in s 912A(1)(a) of the Corporations Act (i.e. failure to do all things necessary to ensure that the financial services covered by its AFSL are provided efficiently, honestly and fairly) (**Breach Report**).

Particulars

Breach Report dated 5 August 2023 (UNS.0003.0001.0035).

45. On 1 September 2023, Cbus responded to a request from ASIC seeking clarification of the Breach Report lodged by Cbus (**Clarification Report**).

Particulars

Clarification Report dated 1 September 2023 (UNS.0003.0003.0001).

46. The Breach Report and Clarification Report by Cbus referred to in the previous two paragraphs contained statements to the effect that:
- a. the last instance of Cbus's potential breach (of section 912A(1)(a) of the Corporations Act) occurred on 7 June 2023 and the breach was not continuing;
 - b. Cbus first discovered its breach on 7 June 2023 or in June 2023;
 - c. Cbus became aware that its breach is or would be significant on 7 July 2023;
 - d. Cbus started its investigation into the breach on 7 June 2023 or from June 2023; and
 - e. AAS's failure to completely and accurately report to Cbus hindered Cbus's ability to effectively monitor AAS's claims processing performance, (severally and collectively, the **Claims Processing Statements**).

47. On 19 December 2023, Cbus lodged an updated reportable situation with ASIC.

Particulars

Cbus's reportable situation report dated 19 December 2023
(UNS.0003.0001.0055).

48. The report lodged by Cbus referred to in the previous paragraph contained statements to the effect that despite the Claims Processing Statement identified in paragraph 46.a. above, Cbus's breach of section 912A(1)(a) of the Corporations Act was in fact continuing as at 19 December 2023.
49. On 14 August 2024, Cbus lodged an updated reportable situation with ASIC.

Particulars

Cbus's reportable situation report dated 14 August 2024 (UNS.0003.0013.0023).

50. The updated reportable situation referred to in the previous paragraph stated in effect that Cbus may have known of reasonable grounds to believe a reportable situation in relation to the Breach Report had arisen on or around 1 February 2023, when the 'Insurance Offerings Material Risk' was placed on heightened watch by Cbus's Executive Risk Committee (**Cbus's Concession**).

Particulars

- i. Cbus's reportable situation report dated 14 August 2024
(UNS.0003.0013.0023, at pages ending .0034-.0035).
 - ii. Cbus Executive Risk Committee Meeting 1 February 2023 ERC Papers,
(CBS.001.003.1821, at pages ending .1830, .1831, .1840 and .1845).
51. On 1 February 2023, Cbus:
- a. knew that it had reasonable grounds to believe that a reportable situation had arisen in relation to a breach of its obligations under s 912A(1)(a) of the Corporations Act; further or alternatively

Particulars

Cbus's knowledge is inferred from:

- i. Cbus's Executive Risk Committee noting that the 'Insurance Offerings Material Risk' had been placed on heightened watch as alleged in paragraph 50 above;

- ii. Cbus's Concession; and
- iii. the person acting as Cbus's Head of Compliance's:
 - 1. attendance at the Cbus Executive Risk Committee meeting alleged in paragraph 50 above; and
 - 2. position and responsibilities as the person authorised by Cbus to report any reportable situation to ASIC.
- b. was reckless with respect to whether it had reasonable grounds to believe that a reportable situation had arisen in relation to a breach of its obligations under s 912A(1)(a) of the Corporations Act.

Particulars

ASIC repeats the particulars under paragraph 51a. above.

It may be inferred that Cbus was reckless with respect to the reportable situation because the person acting as Cbus's Head of Compliance, as the person authorised by Cbus to report any reportable situation to ASIC, was aware of a substantial risk that a reportable situation had arisen on 1 February 2023 and, having regard to the circumstances known to that person, it was unjustifiable to take the risk of not reporting the reportable situation to ASIC.

- 52. By reason of the matters alleged in paragraphs 44 and 51 above, Cbus contravened ss 912DAA(1) and 912DAA(7) of the Corporations Act.

G. CBUS's MATERIALLY FALSE OR MISLEADING STATEMENTS

- 53. On 1 February 2023, Cbus had in its possession information that:
 - a. widespread, significant, continuing, repeated or systemic delays in the provision of its Claims Processing Services, including failures to process death and TPD benefits claims within a reasonable period of time, were occurring such that a reportable situation had arisen;
 - b. AAS was not meeting service levels under the Administration Agreement, including in relation to the timely performance of tasks connected with processing of death and TPD benefits claims within a reasonable period of time;
 - c. it had or could obtain the Death and TPD Claims Information; and
 - d. it was under a duty to, able to, verify the accuracy of any Death and TPD Claims Information supplied or purportedly supplied by AAS,

(severally and collectively, the **Claims Delay Information**).

Particulars

ASIC repeats paragraphs 21 to 23 and 26 to 35 above.

54. On 1 February 2023, the Claims Delay Information was or ought to have been apparent to Cbus from:
 - i. the Death and TPD Claims Information;
 - ii. the information in Cbus's possession alleged in paragraph 30 above;
 - iii. Cbus's duty to, and ability to, verify the accuracy of any Death and TPD Claims Information supplied or purportedly supplied by AAS; and/or
 - iv. Cbus's Board committees having met and noted that Cbus was receiving a substantial increase in death and TPD claim volumes and administration complaints as alleged in paragraph 32.a. above.
55. On and from about 1 February 2023 until 5 August 2023, Cbus:
 - a. had knowledge of the Claims Delay Information; further or alternatively

Particulars

ASIC repeats the particulars under paragraphs 51 and 53 above. Cbus's knowledge is also inferred from the person acting as Cbus's Head of Compliance's position and responsibilities as the person authorised by Cbus to report any reportable situation to ASIC.

- b. failed to take reasonable steps to inform ASIC of the Claims Delay Information.
56. By reason of the matters alleged in the previous paragraph, from 1 February 2023, Cbus did not take all reasonable steps to ensure that each of the Claims Processing Statements:
 - a. were not false or misleading in a material particular; and/or
 - b. did not have omitted from them the Claims Delay Information, being matters or things the omission of which rendered the information comprising the Claims Processing Statements misleading in a material respect.
57. By reason of the matters alleged in paragraphs 53 to 56 above, between 1 February 2023 and 5 August 2023, Cbus contravened s 1308(5) of the Corporations Act.

AND THE PLAINTIFF SEEKS:

(A) The relief set out in the Originating Process.

Date: 9 May 2025




Signed by Howard Rapke
Holding Redlich
Solicitor for the Plaintiff

This pleading was prepared by counsel, S R Senathirajah and R J Boadle.

Certificate of lawyer

I Howard Roger Rapke certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 9 May 2025



Signed by Howard Rapke
Lawyer for the Plaintiff

Schedule 1

Death claims - age profiles

As at 1 January 2020					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	297	190	48	25	100
As at 30 June 2020					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	338	246	107	71	120
As at 31 December 2020					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	493	347	106	49	138
As at 30 June 2021					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	106	776	485	298	269
As at 31 December 2021					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	0	73	324	288	473
As at 30 June 2022					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	357	368	347	358	1452
As at 31 December 2022					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	405	409	424	478	1946
As at 30 June 2023					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	308	338	207	185	480
As at 31 December 2023					
Age of claim*	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	524	227	136	180	462
As at 30 June 2024					
Age of claim*	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	458	383	234	187	532

*calculated in calendar days (as opposed to business days)

TPD claims - age profiles

As at 1 January 2020					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	889	821	171	70	133
As at 30 June 2020					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	952	1039	619	392	191
As at 31 December 2020					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	1344	852	303	108	242
As at 30 June 2021					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	349	1944	1047	506	357
As at 31 December 2021					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	0	211	1007	687	717
As at 30 June 2022					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	695	779	644	880	3167
As at 31 December 2022					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	830	814	836	885	4366
As at 30 June 2023					
Age of claim	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	639	493	193	159	385
As at 31 December 2023					
Age of claim*	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	709	400	110	91	138
As at 30 June 2024					
Age of claim*	0-90 Days	91-180 Days	181-270 Days	271-365 Days	365+ Days
Number of claims	1,035	544	258	197	379

*calculated in calendar days (as opposed to business days)