

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 12/11/2024 2:39:22 PM AEDT  
Date Accepted for Filing: 12/11/2024 2:45:53 PM AEDT  
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  
Reason for Listing: To Be Advised  
Time and date for hearing: To Be Advised  
Place: To Be Advised



*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.



Form 2  
Rules 2.2, 15A.3

## Originating application

No. \_\_\_\_\_ 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. DETAILS OF APPLICATION

This application is made under sections 1101B(1), 1317E and 1317G of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 21 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**).

For the purposes of this application:

**AFSL** means Cbus' Australian Financial Services Licence number 233792.

**ASIC** means the Australian Securities and Investments Commission.

**Breach Report** means the report lodged with ASIC by Cbus on 5 August 2023, bearing document number 1U0125229 and reference number 351562.

**Cbus** means the Defendant, United Super Pty Ltd ACN 006 261 623 as Trustee for the Construction and Building Unions Superannuation Fund.

**Clarification Report** means the email sent by Cbus to ASIC dated 1 September 2023 responding to ASIC's questions in connection with the Breach Report.

**Concise Statement** means the Concise Statement dated 12 November 2024 accompanying this originating application.

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Applicant		
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		
<b>Address for service</b> (include state and postcode)	Holding Redlich, Level 23, 500 Bourke St, Melbourne VIC 3000		



**Relevant Period** means 1 September 2022 to 12 November 2024.

On the facts stated in the Concise Statement, the Plaintiff claims:

### **Declarations**

The following declarations pursuant to section 1317E and/or section 21 of the Federal Court Act.

1. A declaration that Cbus contravened sections 912A(1)(a) and 912A(5A) of the Corporations Act by failing to do all things necessary to ensure that financial services covered by its AFSL were provided efficiently, honestly and fairly.
2. A declaration that Cbus contravened sections 912DAA(1) and 912DAA(7) of the Corporations Act by failing to notify ASIC of a reportable situation with 30 days after Cbus first knew that, or was reckless with respect to whether, there were reasonable grounds to believe the reportable situation had arisen.
3. A declaration that Cbus contravened section 1308(5) of the Corporations Act by failing to take all reasonable steps to ensure that the Breach Report and the Clarification Report were not materially false or misleading because of statements made in those documents.

### **Pecuniary penalties**

4. An order pursuant to section 1317G of the Corporations Act that Cbus pay a pecuniary penalty in respect of the contraventions of:
  - a. sections 912A(1)(a) and 912A(5A) of the Corporations Act, as referred to in paragraph 1 above;
  - b. sections 912DAA(1) and 912DAA(7) of the Corporations Act, as referred to in paragraph 2 above;
  - c. section 1308(5) of the Corporations Act, as referred to in paragraph 3 above.

### **Adverse publicity/Compliance orders**

5. Orders under section 1101B(1) of the Corporations Act requiring Cbus, within such time and in such manner as the Court sees fit, to:
  - a. publish, by form, means and channels to be determined by the Court, at its own expense, an adverse publicity notice disclosing the contraventions



declared in this proceeding and the circumstances giving rise to those contraventions;

- b. have in place appropriate systems, policies and procedures to ensure that it processes death and total permanent disability benefit claims within reasonable time frames;
- c. have in place an appropriate program to remediate members affected by the contraventions referred to in paragraph 1 above; and
- d. provide ASIC with a written report of an independent expert confirming Cbus’s compliance with paragraph 5b and c above.

**Other orders**

- 6. An order that the Defendant pay ASIC’s costs.
- 7. Such further or other order as the Court considers appropriate.

Date: 12 November 2024

**Howard Rapke**  
**HOLDING REDLICH**  
*Solicitor for the Plaintiff*

This application will be heard by ..... at  
[address of Court] at ..... \*am/\*pm on .....

**B. NOTICE TO DEFENDANT(S) (IF ANY)**

TO: United Super Pty Ltd (ACN 006 261 623)  
Level 22 / 130 Lonsdale Street  
Melbourne VIC 3000

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: *[date of filing to be entered by Registrar]*

.....  
*Registrar*

This originating process is filed by Howard Rapke, Holding Redlich, Solicitor for the plaintiff.

**D. SERVICE**

The plaintiff's address for service is Level 23, 500 Bourke Street, Melbourne Vic 3000