



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID551/2020

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Plaintiff

**AWARE FINANCIAL SERVICES AUSTRALIA LIMITED (ACN 003 742 756)**

Defendant

**ORDER**

**JUDGE:** JUSTICE MOSHINSKY

**DATE OF ORDER:** 17 February 2022

**WHERE MADE:** Melbourne

**THE COURT NOTES THAT:**

- A. In these declarations and orders, terms which are defined in the Statement of Agreed Facts and Admissions dated 2 December 2021 have the same meaning as they do in that document.
- B. The Statement of Agreed Facts and Admissions may be inspected by a person pursuant to r 2.32(2)(d) of the *Federal Court Rules 2011* (Cth).

**THE COURT DECLARES THAT:**

1. During the period between 21 August 2014 and 30 June 2018, the defendant, Aware Financial Services Australia Limited (ACN 003 742 756), in trade or commerce accepted payment from Advice Clients for the provision of Annual Review Services, which are financial services within the meaning of s 12DI(3)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), when there were reasonable grounds for believing that Aware Financial Services Australia Limited would not be able to supply the financial services to all such clients within the period specified, and thereby contravened s 12DI(3) of the ASIC Act.
2. Aware Financial Services Australia Limited, by its conduct in each of:
  - a. contravening s 12DI(3) of the ASIC Act as referred to in paragraph 1 above;
  - b. failing to provide Annual Review Services to Advice Clients during the period between 21 August 2014 and 30 June 2018; and



- c. continuing and maintaining throughout the period between 21 August 2014 and 30 June 2018 internal procedures, measures and controls and operational and compliance systems that did not ensure compliance with representations made and obligations to all Advice Clients in respect of the Annual Review Services,

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 2001* (Cth).

3. Aware Financial Services Australia Limited, by its conduct in contravening s 12DI(3) of the ASIC Act, breached its general obligation as a financial service licensee to comply with financial services laws and thereby contravened s 912A(1)(c) of the *Corporations Act*.
4. Aware Financial Services Australia Limited, by failing to establish and maintain compliance measures that ensured between 21 August 2014 and 30 June 2018, as far as is reasonably practicable, that it complied with the provisions of the financial services laws, contravened s 912A(1)(b) of the *Corporations Act*.

#### THE COURT ORDERS THAT:

5. Within 14 days of this order, Aware Financial Services Australia Limited pay to the Commonwealth of Australia a pecuniary penalty of \$20,000,000 in respect of its conduct declared to be in contravention of s 12DI(3) of the ASIC Act.
6. Pursuant to s 12GLB(1)(a) of the ASIC Act, within 30 days of this order, Aware Financial Services Australia Limited shall publish, at its own expense, a written adverse publicity notice (**Written Notice**) in terms set out in Annexure A to this order, by:
  - a. for a period of no less than 90 days, maintaining a copy of the Written Notice, in font no less than 10 point, in an immediately visible area of <https://aware.com.au/about/media-centre>; and
  - b. for a period of no less than 365 days, any person accessing the website <http://retire.aware.com.au/secure> will be diverted to a separate website on which a copy of the Written Notice, in font no less than 10 point, will be immediately visible, which the person may close to return to the usual portal landing page; and
  - c. sending a copy of the Written Notice to each Advice Client who was a client of the defendant at any time between 21 August 2014 and 30 June 2018 – using an email or postal address known to Aware.
7. Aware Financial Services Australia Limited shall include an option on the Written Notices displayed on its websites for a member to state that they have read the Written Notice and do not wish for it to be displayed to them again. If that option is selected, the Written Notice will not be displayed to that member again.



8. Aware Financial Services Australia Limited pay the plaintiff's costs of and incidental to this proceeding.

Date that entry is stamped: 17 February 2022

*Sia Lagos*  
Registrar



## **ANNEXURE A**

### **Adverse Publicity Notice**

*The Federal Court of Australia has ordered Aware Financial Services Australia Limited (**Aware Financial Services**) (previously known as State Super Financial Services Australia Limited or StatePlus) to publish this notice. Aware Super Pty Ltd acquired Aware Financial Services on 6 June 2016.*

On 17 February 2022, Justice Moshinsky of the Federal Court of Australia (in proceeding VID 551 of 2020) ordered Aware Financial Services to pay a pecuniary penalty of \$20,000,000 for contravening Australia's financial services laws.

The Court found that Aware Financial Services contravened these laws between 21 August 2014 and 30 June 2018 by accepting payments from Advice Clients when there were reasonable grounds to believe that it would not be able to supply those reviews to all such clients within an annual period. Advice Clients were (a) Bundled Clients who received written disclosure from Aware Financial Services on or after 1 April 2013 that they would be provided with an Annual Review Service; and/or (b) Unbundled Clients who entered into an ongoing advice service arrangement that included provision of an Annual Review Service.

In many cases, Aware Financial Services did not in fact provide the promised reviews. Between 21 August 2014 and 30 June 2018, approximately 25,300 clients paid fees to Aware Financial Services without receiving the appropriate number of annual reviews from Aware Financial Services.

After reporting this conduct to the Australian Securities and Investments Commission (ASIC), Aware Financial Services has remediated approximately \$104.8 million in fees, interest and lost earnings to clients who did not receive and did not decline their annual review entitlements.

Aware Financial Services agrees that it failed to maintain an adequate standard of internal controls and compliance systems that may have avoided the potential harm to consumers. It has since made changes designed to uplift those controls and compliance systems in an effort to ensure this conduct does not recur.

### **Further Information**

Aware Financial Services' misconduct contravened the following financial service laws:

- section 12DI(3) of the *Australian Securities and Investments Commission Act 2001* (Cth); and
- sections 912A(1)(a), (b) and (c) of the *Corporations Act 2001* (Cth).

For further information about Aware Financial Services' misconduct, see the following links:

- statement of facts agreed between Aware Financial Services and ASIC [hyperlink];
- Justice Moshinsky's judgment on penalty [hyperlink]; and
- ASIC media release [hyperlink]