



Federal Court of Australia

District Registry: Victoria Registry

Division: General

No: VID1614/2025

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION and another
named in the schedule
Plaintiff

DIVERSA TRUSTEES LIMITED (ACN 006 421 638)
Defendant

ORDER

JUDGE: JUSTICE MCELWAIN

DATE OF ORDER: 27 May 2026

WHERE MADE: Melbourne

Pursuant to r 39.05(g) the orders made 27 May 2026 are set aside and the following orders made in their place.

THE COURT ORDERS BY CONSENT THAT:

Pleadings

1. The plaintiff has leave to file and serve the attached Amended Originating Process.
2. The date in paragraph 2 of the order of the Court made on 17 February 2026 (17 February Order), being the date by which the defendant is to file and serve a Defence and any cross-claims, is extended from 15 May 2026 to 4 pm on 12 June 2026.
3. The date in paragraph 3 of the 17 February Order, being the date by which the plaintiff is to file and serve any Reply, is extended from 29 May 2026 to 4 pm on 26 June 2026.

Case management hearing

4. The case management hearing listed at 10.15 am on 5 June 2026 is adjourned to 10.15 am on 30 October 2026.



Other matters

5. Costs are reserved.
6. Liberty to apply.

Date orders authenticated: 27 May 2026

Sia Lagos
Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



Annexure A



Form 2
(Rule 2.2)

AMENDED ORIGINATING PROCESS

No. VID1614 of 2025

Federal Court of Australia
District Registry:
Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

DIVERSA TRUSTEES LIMITED (ACN 006 421 638)
Defendant

A. DETAILS OF APPLICATION

This application is made under ss 52(2)(b), 52(2)(c), 52(6)(a), 52(6)(b), 52(12), 54B(1), 196 and 215(1) of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**) and ss 912A(1)(a), 912A(5A), 1101B, 1317E and 1317G(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**).

In this Amended Originating Process, terms which are defined in the Concise Amended Statement of Claim dated ~~8-December-2025~~ 15 May 2026 have the same meaning in this document.

On the facts stated in the accompanying Concise Amended Statement of Claim, the Plaintiff seeks the following:

Declarations

Onboarding

1 A declaration that, by approving each of the FGMF Classes for inclusion as investment options offered to members of each of:

- (a) the Powerwrap Fund, on around 6 August 2020;
- (b) the MAP Fund, including the YourChoice and AusPrac sub-plans, on around 16 November 2020; and
- (c) the Praemium Fund, on around 12 March 2021,

and so offering them, Diversa contravened:

- (d) covenants to the effect of each of ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act contained or taken to be contained in the governing rules of the relevant Diversa Fund, and thereby s 54B(1) of the SIS Act in respect of each such contravention; and

~~(e) s 912A(1)(a), and thereby s912A(5A), of the Corporations Act,~~

(e) [not used]



in circumstances where Diversa did not have or assess information, having regard to the apparent nature and characteristics of the FGMF and serious risks of investment in the FGMF Classes, so as to exercise the power to approve and offer the FGMF Classes with due diligence or in the best interests of the beneficiaries of the relevant Diversa Fund.

2 ~~In~~Further or in the alternative to the declaration in paragraph 1, a declaration that by approving each of the FGMF Classes for inclusion as ~~i~~Investment ~~o~~Options offered to members of each of the Diversa Funds ~~without determining while failing~~ to inform members, or failing to require that members be informed, of their ~~potential illiquidity of each of the FGMF Classes at that time,~~ and so offering them, Diversa contravened:

(a) covenants to the effect of each of ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act contained or taken to be contained in the governing rules of each of the Diversa Funds, and thereby s 54B(1) of the SIS Act in respect of each such contravention; and

(b) ~~s 912A(1)(a), and thereby s912A(5A), of the Corporations Act,~~[not used].

~~in circumstances where it did not have or assess information, having regard to the apparent nature and characteristics of the FGMF and serious risks of investment in the FGMF Classes, so as to exercise the power to approve and offer the FGMF Classes with due diligence.~~

2A A declaration that, by approving each of the FGMF Classes for inclusion as Investment Options offered to members of each of the Diversa Funds and so offering them, in circumstances where:

(a) it did not have or assess information, having regard to the apparent nature and characteristics of the FGMF and serious risks of investment in the FGMF Classes, so as to exercise the power to approve and offer the FGMF Classes with due diligence or in the best interests of the beneficiaries of the relevant Diversa Fund;

(b) further or in the alternative, Diversa's conduct was not in compliance with or fulfilment of the provisions of the policies which it had adopted and maintained as trustee of each of the Diversa Funds.

Diversa failed to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in contravention of s 912A(1)(a), and thereby s912A(5A), of the Corporations Act.

2B Further or in the alternative to the declaration in paragraph 2A, a declaration that by approving each of the FGMF Classes for inclusion as Investment Options offered to members of each of the Diversa Funds while failing to inform members, or failing to require that members be informed, of the potential illiquidity of each of the Diversa Funds at or from that time, and so offering them, Diversa failed to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in contravention of s 912A(1)(a), and thereby s912A(5A), of the Corporations Act.

Monitoring and investment

3 A declaration that Diversa contravened, between around 6 August 2020 and July 2024:

(a) covenants to the effect of each of ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act contained or taken to be contained in the governing rules of each of the Diversa Funds, and s 54B(1) of the SIS Act in respect of each such contravention; and

(b) ~~s 912A(1)(a), and thereby s 912A(5A), of the Corporations Act,~~[not used].



by maintaining each of the FGMF Classes on a Diversa Fund Investment Menu in circumstances where:

- (c) as trustee of the Diversa Funds, it had not held or assessed information, having regard to the apparent nature and characteristics of the FGMF and serious risks of investment in the FGMF Classes, so as to exercise due diligence in the approval of the FGMF Classes as ~~i~~investment ~~e~~Options to members of each of the Diversa Funds;
- (d) it did not obtain or assess such information, at any time during which the FGMF Classes were offered as ~~i~~investment ~~e~~Options to members of each of the Diversa Funds;
- (e) ~~its performance, liquidity and stress testing monitoring of the FGMF used information from Falcon or First Guardian that Diversa did not independently enquire into or verify, and Diversa did not require service providers to report periodically to it as to whether investment options experienced delays in meeting redemption requests or striking unit prices; it did not take steps to adequately monitor, in respect of the FGMF, liquidity risks, asset valuation risks, delays in meeting redemption requests or striking unit prices, compliance with governance and prudential matters, risks of funds being invested or applied not in conformity with descriptions or disclosures by the FGMF, and the extent of each Diversa Fund's exposure to those risks as a substantial investor in the FGMF Classes;~~ and
- (f) each of the FGMF Classes:
 - (i) ~~[not used] remained offered and were not removed as investment options for members of the Diversa Funds; and~~
 - (ii) ~~further and in the alternative to (i),~~ remained offered as ~~i~~investment ~~e~~Options for members of the Diversa Funds without Diversa having determined to notify ~~(or require notification of)~~ members of their potential illiquidity.

3A A declaration that Diversa contravened, between around 6 August 2020 and July 2024, s 912A(1)(a), and thereby s 912A(5A), of the Corporations Act, by maintaining each of the FGMF Classes on a Diversa Fund Investment Menu:

- (a) in the circumstances set out in paragraph 3(c)-(f);
- (b) further or in the alternative, in circumstances where Diversa's conduct was not in compliance with or fulfilment of the provisions of the policies which it had adopted and maintained as trustee of each of the Diversa Funds.

4 A declaration that Diversa, from around 6 August 2020 to July 2024, contravened:

- (a) ~~a~~-covenants to the effect of ~~each of ss 52(2)(b), 52(6)(a) and 52(6)(b)~~ of the SIS Act contained or taken to be contained in the governing rules of each of the Diversa Funds, and thereby s 54B(1) of the SIS Act;
- (b) further or in the alternative, s 912A(1)(a), and thereby s 912A(5A), of the Corporations Act,

by not formulating, giving effect to or reviewing an investment strategy for each of the FGMF Classes, or the FGMF, offered to members of the Diversa Funds.

5 A declaration that, having approved the FGMF Classes in the circumstances set out in paragraph 1 above, and continuing to make them available to investors, on each occasion



that Diversa, as trustee of each of the Diversa Funds, invested in each of the FGMF Classes, Diversa:

- (a) failed to exercise the same degree of care, skill and diligence as a prudent superannuation trustee would exercise in relation to an entity of which it is trustee and on behalf of the beneficiaries of which it makes investments, and so contravened a covenant to the effect of s 52(2)(b) of the SIS Act contained or taken to be contained in the governing rules of each of the Diversa Funds, and thereby s 54B(1) of the SIS Act in respect of each such contravention;
- (b) exercised a power of investment other than in the best interests or best financial interests of the members of the Diversa Funds, and so contravened a covenant to the effect of s 52(2)(c) of the SIS Act contained or taken to be contained in the governing rules of each of the Diversa Funds, and thereby s 54B(1) of the SIS Act in respect of each such contravention; and
- (c) failed to promote the financial interests of Diversa Fund members, and so contravened a covenant to the effect of s 52(12) of the SIS Act contained or taken to be contained in the governing rules of each of the Diversa Funds, and thereby s 54B(1) of the SIS Act in respect of each such contravention;

~~(d) failed to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in contravention of s 912A(1)(a) and thereby s 912A(5A).~~

5A A declaration that, having approved the FGMF Classes in the circumstances set out in paragraph 2A, and continuing to make them available to investors, Diversa, as trustee of each of the Diversa Funds, by making investments in the FGMF Classes, failed to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in contravention of s 912A(1)(a), and thereby s 912A(5A), of the Corporations Act.

6 A declaration that Diversa contravened covenants to the effect of each of ~~ss~~ 52(2)(b), 52(2)(c), 52(6)(b) and 52(2)(c12) of the SIS Act taken to be contained in the governing rules of each of the Diversa Funds, and thereby s 54B(1) of the SIS Act in respect of each such contravention, while each of the FGMF Classes was offered as an investment option to members of the Powerwrap Fund and members of the MAP Fund and/or One Super Fund holding interests in YourChoice and AusPrac, by ~~failing to~~:

(aa) acting on directions by or for relevant Diversa Fund members for investments in FGMF Classes exceeding the 50% holding limit determined by Diversa to be applicable to each FGMF Class;

~~(a) failing to enforce the that holding limit of 50% determined by it to be applicable to each FGMF Class for members' accounts, by making investments which exceeded that limit;~~

~~(b) failing to monitor whether, and have adequate systems and processes in place which ensured to ensure that, there was compliance with the holding limit and detected to detect any infringements of it; and~~

~~(c) failing to notify members or their advisers that such a holding limit had been imposed; or~~

(d) failing to warn members or their advisers of the holding limit on the Investment Menu for the relevant Diversa Fund prior to around February 2023 (YourChoice) and July 2024 (AusPrac), or otherwise inform them of the holding limit.



6A A declaration that Diversa contravened covenants to the effect of each of s 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act taken to be contained in the governing rules of the Praemium Fund, and thereby s 54B(1) of the SIS Act in respect of each such contravention, while each of the FGMF Classes was offered as an Investment Option to members of the Praemium Fund, by:

- (a) acting on directions by or for Praemium Fund members for investment in FGMF Classes that resulted in the 50% holding limit determined by Diversa to be applicable to each FGMF Class being exceeded;
- (b) failing to enforce that holding limit; or
- (c) failing to monitor whether, and have adequate systems and processes in place to ensure that, there was compliance with the holding limit and to detect any infringements of it.

7 A declaration that Diversa contravened s 912A(1)(a), and thereby s 912A(5A), of the Corporations Act while each of the FGMF Classes was offered as an Investment Option to members of the Powerwrap Fund and members of the MAP Fund and/or One Super Fund holding interests in YourChoice and AusPrac, by ~~failing to do each of the following things:~~

- ~~(a) have adequate systems and processes in place to ensure that it and its service providers were able to apply and enforce holding limits to each FGMF Class for member accounts;~~
- ~~(b) have adequate systems and processes to ensure there was not widespread or systemic non-compliance with the holding limit of 50% determined by it to be applicable to each FGMF Class for members' accounts;~~
- ~~(c) have adequate systems and processes in place to identify failures to apply the 50% holding limit determined by it to be applicable to each FGMF Class for members' accounts; and~~
- (a) acting on directions by or for relevant Diversa Fund members for investments in FGMF Classes exceeding the 50% holding limit determined by Diversa to be applicable to each FGMF Class;
- (b) failing to enforce that holding limit;
- (c) failing to monitor whether, and have adequate systems and processes in place to ensure that, there was compliance with the holding limit and to detect any infringements of it;
- (d) failing to notify members or their advisers that such a holding limit had been imposed; or
- (e) failing to warn members or their advisers of the holding limit on the Investment Menu for the relevant Diversa Fund prior to around February 2023 (YourChoice) and July 2024 (AusPrac), or otherwise inform them of the holding limit.

7A A declaration that Diversa contravened s 912A(1)(a), and thereby s 912A(5A), of the Corporations Act while each of the FGMF Classes was offered as an Investment Option to members of the Praemium Fund, by:

- (a) acting on directions by or for Praemium Fund members for investment in FGMF Classes that resulted in the 50% holding limit determined by Diversa to be applicable to each FGMF Class being exceeded;



(b) failing to enforce that holding limit; or

(c) failing to monitor whether, and have adequate systems and processes in place to ensure that, there was compliance with the holding limit and to detect any infringements of it.

Pecuniary penalties

- 8 An order pursuant to s 196(3) of the SIS Act that Diversa pay to the Commonwealth a monetary penalty in an amount to be fixed by the Court in respect of each of the declared contraventions of s 54B(1) of the SIS Act.
- 9 An order pursuant to section 1317G(1) of the Corporations Act that Diversa pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court considers appropriate in respect of each of the declared contraventions of section 912A(5A) of the Corporations Act.

Compensation orders or remediation program orders

- 10 An order pursuant to s 215(1) of the SIS Act that Diversa pay compensation to each of the Diversa Funds, in an amount to be fixed by the Court, for loss or damage each of the Diversa Funds suffered on behalf of all past and present members who:
 - (a) instructed Diversa as trustee of the relevant Diversa Fund to invest in any class of the FGMF on the members' behalf; and
 - (b) in respect of whom the amount directed to be invested in each class of the FGMF has not been redeemed by the responsible entity of the FGMF, in full,(those current or former members of the Diversa Funds, **Affected Diversa Members**).
- 11 Further or alternatively to paragraph 10 above, an order pursuant to s 1101B of the Corporations Act that, by a date to be fixed by the Court, Diversa:
 - (a) establish and implement a review and remediation program (**Remediation Program**) to:
 - (i) identify all Affected Diversa Members;
 - (ii) determine the loss suffered by:
 - (A) each of the Diversa Funds (on behalf of all Affected Diversa Members); and
 - (B) each Affected Diversa Member,as a result of Diversa's contraventions of s 912A(5A) of the Corporations Act or s 54B(1) of the SIS Act referred to above;
 - (iii) inform each Affected Diversa Member of any loss suffered by that Affected Diversa Member;
 - (iv) pay, or cause to be paid, to each Affected Diversa Member, their entitlement in respect of their loss;
 - (b) appoint (at Diversa's cost) a suitably qualified independent expert, to be agreed upon by the parties or, in the absence of agreement, to be determined by the Court, to prepare and provide to ASIC and the Court:



- (i) on a date to be fixed by the Court, an interim report on the Remediation Program, including as to whether the expert perceives any deficiencies in the design, implementation and effectiveness of the Remediation Program,
- (ii) within 2 months of the completion of the Remediation Program, a final report on the Remediation Program, including as to whether the expert perceives any deficiencies in the design, implementation and effectiveness of the Remediation Program.

Other Orders

- 12 An order that the Defendant pay the Plaintiff's costs.
- 13 Such further or other orders as the Court considers appropriate.

Date: ~~8 December 2025~~ 26 May 2026

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Signature of Plaintiff's legal practitioner

This application will be heard by at Owen Dixon
Commonwealth Law Courts Building 305 William Street Melbourne VIC 3000 at *am/*pm
on



B. NOTICE TO DEFENDANT

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

Level 17, 60 City Road
SOUTHBANK VIC 3006

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: ~~8 December 2025~~ 26 May 2026

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Registrar

This Amended Originating Process is filed by Johnson Winter Slattery, solicitors for the Plaintiff.

D. SERVICE

The Plaintiff's address for service is:

Johnson Winter Slattery
Level 34, 55 Collins Street
MELBOURNE VIC 3000

It is intended to serve a copy of this Amended Originating Process on the defendant, by its solicitors.



Schedule

No: VID1614/2025

Federal Court of Australia

District Registry: Victoria Registry

Division: General

Applicant

HUB24 CUSTODIAL SERVICES LIMITED (ABN 94 073 633
664)