

## NOTICE OF FILING

### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
Court of Filing FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 10/05/2024 3:50:00 PM AEST  
Date Accepted for Filing: 10/05/2024 4:06:13 PM AEST  
File Number: VID826/2023  
File Title: DANNY ALAN RAYMOND FISHER & ORS v BT FUNDS MANAGEMENT LTD (ACN 002 916 458) IN ITS CAPACITY AS TRUSTEE FOR THE RETIREMENT WRAP, BT SUPER FOR LIFE, BT SUPER AND ASGARD INDEPENDENCE PLAN DIVISION TWO (BTFM) & ORS  
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.



## Defence

No. VID 826 of 2023

Federal Court of Australia  
District Registry: Victoria  
Division: General

### **Dannyalan Raymond Fisher** and others listed in **Schedule 2**

Applicants

**BT Funds Management Ltd (ACN 002 916 458) in its capacity as trustee for BT Retirement Wrap, BT Super for Life, BT Super and Asgard Independence Plan Division Two (BTFM)** and others listed in **Schedule 2**

Respondents

### **A Parties**

In answer to the allegations made in the Statement of Claim (**SOC**) filed 19 January 2024, the First and Third Respondents plead as follows:

- 1 The First and Third Respondents do not know and therefore cannot admit the allegations in paragraph 1.
- 2 In answer to paragraph 2, the First and Third Respondents:
  - (a) Say that they are not required to, and do not, plead to the allegations in the SOC in so far as they concern Group Members (including by pleading any limitation defences and other defences that may be available against the Group Members) until after the initial trial of the Applicants' claims and after the claims of Group Members are properly particularised;
  - (b) Say that the First and Third Respondents were the trustees of the superannuation funds referred to in paragraphs 6 and 8 below;

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Filed on behalf of (name & role of party)	BT Funds Management Ltd (ACN 002 916 458) in its capacity as trustee for BT Retirement Wrap, BT Super for Life, BT Super and Asgard Independence Plan Division Two, First Respondent, and Westpac Securities Administration Limited (WSAL) (ACN 000 049 472), Third Respondent
Prepared by (name of person/lawyer)	Malcolm Stephens, Partner
Law firm (if applicable)	Allens
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- (c) Say that the Second Respondent was the issuer of the policies of insurance referred to in paragraphs 19 to 20 below in the time periods there pleaded;
- (d) In relation to the Applicants, refer to paragraphs 3 to 5 below;
- (e) Otherwise do not know and therefore cannot admit the allegations in paragraph 2.

3 In answer to paragraph 3, the First and Third Respondents:

- (a) Say that the First Applicant was a member of the Retirement Wrap superannuation fund and the holder of the superannuation product called BT Super For Life for the duration of the Relevant Period;
- (b) Otherwise do not know and therefore cannot admit the allegations in paragraph 3.

4 In answer to paragraph 4, the First and Third Respondents:

- (a) Say that, until 31 January 2020, the Second Applicant was a member of the Westpac MasterTrust Superannuation Division superannuation fund and held a superannuation product called BT Business Super;
- (b) Say that from 1 February 2020 until 3 August 2021, the Second Applicant was a member of the Retirement Wrap superannuation fund and held a superannuation product called BT Super;
- (c) Otherwise deny the allegations in paragraph 4.

**Particulars**

Westpac MasterTrust Superannuation Division did not offer BT Super.

5 In answer to paragraph 5, the First and Third Respondents:

- (a) Say that the Third Applicant was a member of the Asgard Independence Plan – Division 2 superannuation fund and the holder of the superannuation product called Asgard Employee Super Account until 14 September 2021;
- (b) Otherwise deny the allegations in paragraph 5.

**Particulars**

Asgard Employee Super Account Number (also referred to as Member Number and Investor Number): 1229086-D2-01; 1229086-06-02.

6 In answer to paragraph 6, the First and Third Respondents:

- (a) Admit the allegations in sub-paragraphs (a), (b), (c), (g), (h), (j), (l) and (n);
- (b) In relation to sub-paragraph (d):
  - (i) Admit that the First Respondent was, throughout the Relevant Period, the trustee of a superannuation fund called the Retirement Wrap;
  - (ii) Admit that the Retirement Wrap superannuation fund issued a range of superannuation products;
  - (iii) Say that of those superannuation products, the following provided group insurance cover for members:
    - (A) Westpac Group Plan MySuper;

- (B) BT Super for Life;
  - (C) BT Lifetime Super - Employer Plan;
  - (D) BT Super;
- (c) In relation to sub-paragraph (e):
- (i) Admit that the First Respondent was, for the duration of the Relevant Period until 30 June 2019, the trustee of a superannuation fund called BT Lifetime Super;
  - (ii) Admit that the BT Lifetime Super superannuation fund issued the superannuation product BT Lifetime Super – Personal Super;
  - (iii) Deny that the superannuation product BT Lifetime Super – Personal Super provided group insurance cover;
- (d) In relation to sub-paragraph (f):
- (i) Admit that the First Respondent was, throughout the Relevant Period, the trustee of a superannuation fund called Asgard Independence Plan – Division 2;
  - (ii) Admit that the Asgard Independence Plan – Division 2 superannuation fund issued a range of superannuation products;
  - (iii) Say that of those superannuation products, the following provided group insurance cover for members:
    - (A) Asgard Employee Super Account MySuper;
    - (B) Asgard Employee Super Account;
- (e) In relation to sub-paragraph (i):
- (i) Admit the allegations in sub-paragraph (i);
  - (ii) In the absence of particulars as to the alleged manner of holding out, deny the allegations in sub-paragraph (ii);
- (f) In relation to sub-paragraph (k):
- (i) Say that, until 1 August 2022, Westpac Banking Corporation (ACN 007 457 141) was the ultimate holding company of the Second Respondent;
  - (ii) Say that, on 1 August 2022, TAL Dai-ichi Life Australia Pty Ltd acquired all issued shares in the capital of WLISL;
- (g) In relation to sub-paragraph (m), admit the allegations from 6 April 2019;
- (h) Otherwise deny the allegations in paragraph 6.
- 7 In answer to paragraph 7, the First and Third Respondents:
- (a) Repeat 6(f) above and deny the allegation pleaded in sub-paragraph (b) from 1 August 2022;
  - (b) Otherwise admit the allegations in paragraph 7.
- 8 In answer to paragraph 8, the First and Third Respondents:
- (a) Admit the allegations in sub-paragraphs (a), (b), (c), (f), (h), (j) and (l);

- (b) In relation to sub-paragraph (d):
- (i) Admit that the Third Respondent was, for the duration of the Relevant Period until 30 June 2021, the trustee of a superannuation fund called Westpac MasterTrust Superannuation Division;
  - (ii) Admit that the Westpac MasterTrust Superannuation Division superannuation fund issued a range of superannuation products;
  - (iii) Say that of those superannuation products, the following provided group insurance cover to members:
    - (A) BT Business Super MySuper;
    - (B) BT Business Super;
- (c) In relation to sub-paragraph (e):
- (i) Admit that the Third Respondent was, for the duration of the Relevant Period until 30 June 2021, the trustee of a superannuation fund called Westpac Personal Superannuation Plan;
  - (ii) Admit that Westpac Personal Superannuation Plan superannuation fund issued a range of superannuation products;
  - (iii) Deny that any superannuation products issued by the Westpac Personal Superannuation Plan provided group insurance cover;
- (d) In relation to sub-paragraph (g):
- (i) admit the allegations in sub-paragraph (i);
  - (ii) In the absence of particulars as to the alleged manner of holding out, deny the allegations in sub-paragraph (ii);
- (e) In relation to sub-paragraph (i), repeat paragraph 6(f) above and deny the allegation pleaded from 1 August 2022;
- (f) In relation to sub-paragraph (k), admit the allegations from 6 April 2019;
- (g) Otherwise deny the allegations in paragraph 8.

## **B Background**

### **B.1 Obligations of BTFM and WSAL under the SIS Act**

9 In answer to paragraph 9, the First and Third Respondents:

- (a) Say that the covenants set out in sections 52(2) and 52(7) of the SIS Act (as amended from time to time) are taken to have formed part of the governing rules of the superannuation funds listed in paragraph 9;

#### **Particulars**

Superannuation Industry (Supervision) Act 1993 (Cth) (**SIS Act**) s 52(1)

- (b) Rely on the trust deeds of the superannuation funds applicable during the Relevant Period for their full terms, meaning and effect;

Trust Deed for the Retirement Wrap dated 21 November 2016

Trust Deed for the Retirement Wrap dated 23 July 2018

Trust Deed for the Retirement Wrap dated 12 April 2019

Trust Deed for the Retirement Wrap dated 1 February 2020  
 Trust Deed for the Retirement Wrap dated 16 March 2021  
 Trust Deed for the Retirement Wrap dated 29 September 2021  
 Trust Deed for BT Lifetime Super dated 5 January 2015  
 Trust Deed for Asgard Independence Plan dated 22 April 2017  
 Trust Deed for Asgard Independence Plan dated 10 November 2020  
 Trust Deed for Asgard Independence Plan dated 26 August 2021  
 Trust Deed for Asgard Independence Plan – Division 2 dated 22 November 2022  
 Trust Deed for Westpac Personal Superannuation Fund dated 1 March 2006  
 Trust Deed for the Westpac MasterTrust dated 1 July 2017  
 Trust Deed for Westpac MasterTrust dated 20 December 2019

(c) Otherwise deny the allegations in paragraph 9.

## **B.2 SIS Act**

10 In response to paragraph 10, the First and Third Respondents:

- (a) Repeat paragraph 9 above;
- (b) Otherwise deny the allegations in paragraph 10.

### **Particulars**

Trust Deed for the Retirement Wrap dated 21 November 2016  
 Trust Deed for the Retirement Wrap dated 23 July 2018  
 Trust Deed for the Retirement Wrap dated 12 April 2019  
 Trust Deed for the Retirement Wrap dated 1 February 2020  
 Trust Deed for the Retirement Wrap dated 16 March 2021  
 Trust Deed for the Retirement Wrap dated 29 September 2021  
 Trust Deed for BT Lifetime Super dated 5 January 2015  
 Trust Deed for Asgard Independence Plan dated 22 April 2017  
 Trust Deed for Asgard Independence Plan dated 10 November 2020  
 Trust Deed for Asgard Independence Plan dated 26 August 2021  
 Trust Deed for Asgard Independence Plan – Division 2 dated 22 November 2022  
 Trust Deed for Westpac Personal Superannuation Fund dated 1 March 2006  
 Trust Deed for the Westpac MasterTrust dated 1 July 2017  
 Trust Deed for Westpac MasterTrust dated 20 December 2019

## **B.3 SPS 250**

11 The First and Third Respondents admit the allegations in paragraph 11.

12 In answer to paragraph 12, the First and Third Respondents:

- (a) Admit that APRA made Prudential Standard SPS 250 Insurance in Superannuation pursuant to section 34C(1) of the SIS Act, which commenced on 1 July 2013, and was revised with effect from 1 July 2022;
- (b) Say that sub-paragraphs (a) to (k) are a general summary of the provisions of SPS 250 during the Relevant Period, except that from 1 July 2022, SPS 250 [24] referred to 'best financial interests';

- (c) Rely on Prudential Standard SPS 250 (as amended from time to time) for its full terms, meaning and effect;
- (d) Otherwise deny the allegations in paragraph 12.

**B.4 BT Financial Group Insurance Management Framework, Insurance Strategy and insurance**

13 In answer to paragraph 13, the First and Third Respondents:

- (a) Say that throughout the Relevant Period BT Financial Group (**BTFG**) had in place an Insurance Management Framework (**IMF**), as amended from time to time, that applied to the First and Third Respondents;

**Particulars**

IMF dated 24 June 2015 p 2

IMF dated 15 December 2016 p 2

IMF dated 14 June 2017 p 2

IMF dated 17 September 2018 p 3

IMF dated 19 September 2019 p 3

IMF dated 23 March 2020 p 3

IMF dated 1 July 2020 p 4

IMF dated 30 April 2021 p 4

IMF dated 30 June 2022 p 8

IMF dated 1 April 2023 p 9

- (b) Rely on the IMF, as amended from time to time throughout the Relevant Period, for its full terms, meaning and effect;
- (c) Otherwise deny the allegations in paragraph 13.

14 In answer to paragraph 14, the First and Third Respondents:

- (a) Admit the allegation in sub-paragraph (a);
- (b) In response to sub-paragraph (b), admit that the IMF was developed to be consistent with SPS 250;
- (c) Rely on the IMF, as amended from time to time throughout the Relevant Period, for its full terms, meaning and effect;
- (d) Otherwise deny the allegations in paragraph 14.

**Particulars**

IMF dated 24 June 2015

IMF dated 15 December 2016

IMF dated 14 June 2017

IMF dated 17 September 2018

IMF dated 19 September 2019

IMF dated 23 March 2020

IMF dated 1 July 2020

IMF dated 30 April 2021

IMF dated 30 June 2022

IMF dated 1 April 2023

**C WLISL and the tender**

**WLISL's group insurance business**

15 The First and Third Respondents:

- (a) Admit the Second Respondent issued master insurance policies to trustees of superannuation funds;
- (b) Otherwise do not know and therefore cannot admit the allegations in paragraph 15.

16 In answer to paragraph 16, the First and Third Respondents:

- (a) Say that, as at 1 January 2013, the Second Respondent issued a master insurance policy to the First Respondent in respect of the superannuation products Westpac Group Plan My Super and BT Super For Life;
- (b) Otherwise deny the allegations in paragraph 16.

17 The First and Third Respondents do not know and therefore cannot admit the allegations in paragraph 17.

**D Conduct of BTFM and WSAL**

18 In answer to paragraph 18, the First and Third Respondents:

- (a) Repeat paragraphs 3 to 6 and 8 above;
- (b) Say that, through the First Applicant's membership of the superannuation product 'BT Super for Life' in the Relevant Period, the First Applicant held death and total and permanent disablement (**TPD**) insurance;
- (c) Say that, through the Second Applicant's membership of the superannuation product 'BT Business Super' in the Relevant Period, the Second Applicant held death and TPD insurance;
- (d) Say that, through the Third Applicant's membership of the superannuation product 'Asgard Employee Super Account' in the Relevant Period, the Third Applicant held salary continuance insurance and life protection insurance;
- (e) Otherwise deny the allegations in paragraph 18.

19 In answer to paragraph 19, the First and Third Respondents:

- (a) Admit that the First Respondent held with the Second Respondent master insurance policies for certain members of the Retirement Wrap, BT Lifetime Super and Asgard Independence Plan – Division 2 funds during at least part of the Relevant Period;
- (b) Deny that Generic MySuper, Advance Retirement Suite Super and Beacon Superannuation Plan were superannuation products available through the Retirement Wrap, BT Lifetime Super and Asgard Independence Plan – Division 2 funds during the Relevant Period;

**Particulars**

See Schedule 1

- (c) Admit that, apart from the products referred to in the previous sub-paragraph, the superannuation products listed in sub-paragraphs 19(a) to (c) of the SOC were available through the Retirement Wrap, BT Lifetime Super and Asgard Independence Plan – Division 2 funds during at least part of the Relevant Period;

**Particulars**

See Schedule 1

- (d) Admit that the superannuation products listed in paragraphs 6(b)(iii) and 6(d)(iii) above provided group insurance cover;
- (e) Deny that the following were superannuation products providing group insurance cover:
- (i) Generic MySuper;
  - (ii) BT Retirement Selection;
  - (iii) BT Lifetime Super – Personal Super;
  - (iv) eWrap Super Account;
  - (v) eWrap Pension Account;
  - (vi) Elements Super Account;
  - (vii) Elements Pension Account;
  - (viii) Infinity eWrap Super Account;
  - (ix) Infinity eWrap Pension Account;
  - (x) ASGARD Superannuation Account;
  - (xi) Advance Retirement Suite Super;
  - (xii) Beacon Superannuation Plan;
- (f) Otherwise deny the allegations in paragraph 19.

20 In answer to paragraph 20, the First and Third Respondents:

- (a) Admit that the Third Respondent held with the Second Respondent master insurance policies for certain members of the Westpac MasterTrust Superannuation Division, BT Superannuation Savings Fund and Westpac Personal Superannuation Plan funds during at least part of the Relevant Period;
- (b) Admit that the superannuation products listed in sub-paragraphs 20(a) to (c) of the SOC were superannuation products available through the Westpac MasterTrust Superannuation Division, BT Superannuation Savings Fund and Westpac Personal Superannuation Plan funds during at least part of the Relevant Period;

**Particulars**

See Schedule 1

- (c) Admit that the superannuation products listed in paragraph 8(b)(iii) above provided group insurance cover;

- (d) Deny that the following were superannuation products providing group insurance cover:
- (i) Westpac Lifetime Superannuation Service;
  - (ii) BT Superannuation Savings Fund;
  - (iii) Westpac Personal Superannuation Bond;
  - (iv) Westpac Personal Super Investment Plan;
  - (v) Westpac Personal Superannuation Plan (1987/1990 and 1978/1990 Staff Version);
- (e) Otherwise deny the allegations in paragraph 20.

**D.1 BTFM and WSAL – group insurance contracts**

21 In answer to paragraph 21, the First and Third Respondents:

- (a) Say that master insurance policies were issued in respect of superannuation products available within superannuation funds of which either the First or Third Respondent was the trustee, rather than being issued for the funds at large;
- (b) Say that prior to 1 January 2016:
  - (i) Various third party insurers including AIA and the Second Respondent issued master insurance policies for superannuation products providing group insurance cover available in superannuation funds of which the First Respondent was the trustee;
  - (ii) AIA issued master insurance policies for superannuation products providing group insurance cover available in superannuation funds of which the Third Respondent was the trustee;
- (c) Otherwise deny the allegations in paragraph 21.

22 In answer to paragraph 22, the First and Third Respondents:

- (a) Say that a number of insurance arrangements in place in BTFG's Corporate and Retail Superannuation and Platforms business units were due to expire from February 2017, with the expiry date extended to 31 December 2017 for at least some master insurance policies issued by AIA;

**Particulars**

BTFG Request for Proposal dated 8 April 2016 p 4

Memorandum to the Boards dated 19 March 2018

- (b) Otherwise deny the allegations in paragraph 22.

23 In response to paragraph 23, the First and Third Respondents:

- (a) Say that, in 2016, BTFG sought market responses from insurers for the provision of Corporate and Retail Superannuation, and Asgard Platform Life Insurance (**RFP**);

**Particulars**

BTFG Request for Proposal dated 8 April 2016

- (b) Say that the First and Third Respondents invited life insurance providers to submit a response relating to the provision of life insurance to holders of the superannuation products set out in the RFP;

**Particulars**

BTFG Request for Proposal dated 8 April 2016

- (c) Otherwise admit the allegations in paragraph 23.

24 In response to paragraph 24, the First and Third Respondents:

- (a) Say that:

- (i) The First and Third Respondents established a steering committee and working groups with responsibility for the RFP, and in addition delegated responsibility to one Non-Executive Director to provide oversight of the RFP process and provide input into the selection criteria;

**Particulars**

Memorandum to the Boards dated 17 November 2016 (**Memorandum to the Boards**) pp 17, 36

- (ii) Rice Warner acted as a consultant to the First and Third Respondents throughout the tender process and provided actuarial services in relation thereto;

**Particulars**

BTFG Request for Proposal dated 8 April 2016 p 8

- (iii) Chant West was engaged by BTFG to understand how its insurance offers sat relative to peers on price and features offered;

**Particulars**

BTFG Request for Proposal dated 8 April 2016 p 11

- (b) Otherwise deny the allegations in paragraph 24.

25 In response to paragraph 25, the First and Third Respondents:

- (a) Say that the weighted criteria set out in the BTFG evaluation protocol for the tender process (**Evaluation Protocol**) was comprised of:

- (i) Product & pricing;
- (ii) Service model;
- (iii) Commercial and contractual;

**Particulars**

Evaluation Protocol dated 8 August 2016 pp 7-11

- (b) Otherwise deny the allegations in paragraph 25.

26 In response to paragraph 26, the First and Third Respondents:

- (a) Say that the non-weighted criteria set out in the Evaluation Protocol were comprised of:

- (i) Transition and implementation funding and risk;
- (ii) Company profile and financial strength and stability;
- (iii) Revenue uplift;

- (iv) Alignment with BTFG's desired future state;

**Particulars**

Evaluation Protocol dated 8 August 2016 pp 7-11

- (b) Otherwise admit the allegations in paragraph 26.

27 In response to paragraph 27, the First and Third Respondents:

- (a) Say that six insurers were invited to submit a response to the RFP being:

- (i) The Second Respondent;
- (ii) AIA;
- (iii) Zurich Insurance Group Limited (**Zurich**);
- (iv) MetLife Insurance Limited;
- (v) TAL Life Limited;
- (vi) Hannover Life Re of Australasia Ltd;

- (b) Say that, of those insurers invited to submit a response, only the Second Respondent, Zurich and AIA submitted responses, and only the Second Respondent and AIA submitted responses in relation to all products;

- (c) Otherwise admit the allegations in paragraph 27.

28 In answer to paragraph 28, the First and Third Respondents:

- (a) Admit the allegations in sub-paragraph (a);
- (b) In relation to sub-paragraph (b), admit that Zurich's tender response was limited to certain products;
- (c) In relation to sub-paragraph (c), say that the Boards of the First and Third Respondent were informed *inter alia* that:
  - (i) The Second Respondent's offering had various 'product & pricing' benefits compared to AIA's offering;

**Particulars**

Memorandum to the Boards pp 7-8

- (ii) The Second Respondent was given a higher score than AIA on the 'product & pricing' weighted criteria for each of the 'Super', 'Platform – Group' and 'Platform – Retail' cohorts;

**Particulars**

Evaluation Report pp 11-17

Memorandum to the Boards pp 7-8

- (d) In relation to sub-paragraph (d), say that AIA's total score on all weighted criteria was slightly higher than WLISL's for each of the "Super", "Platform – Group" and "Platform – Retail" cohorts;

**Particulars**

Evaluation Report pp 11, 14, 16

- (e) In relation to sub-paragraph (e), say that the steering committee and working groups with responsibility for the RFP recommended to the Boards of the First

and Third Respondents that WLISL be appointed as the insurer for *inter alia* the following superannuation products in Schedule 1:

- (i) BT Lifetime – Personal Super;
- (ii) Asgard Employee Super Account;
- (iii) Asgard Employee Super Account MySuper;
- (iv) BT Lifetime Super – Employer Plan;
- (v) BT Retirement Selection;
- (vi) BT Business Super;
- (vii) BT Business Super MySuper;
- (viii) Via the Asgard Personal Protection Package (which was not itself a superannuation product):
  - (A) Asgard eWrap Super Account;
  - (B) Asgard Infinity eWrap Super Account;
  - (C) Asgard Elements Super Account;
  - (D) Asgard Employee Super Account;
  - (E) Asgard Superannuation Account;
  - (F) Advance Retirement Suite Super;

**Particulars**

See Schedule 1

Memorandum to the Boards pp 2-3

- (f) Say further that, the Boards for the First and Third Respondents were informed *inter alia* that Rice Warner supported the recommendation put to the First and Third Respondents' Boards that WLISL be appointed or reappointed as insurer;

**Particulars**

Letter from Rice Warner to BTFG dated 17 November 2016

- (g) In relation to sub-paragraph (f), admit that the Boards of the First and Third Respondents on 21 November 2016 resolved to appoint or reappoint WLISL as insurer for the superannuation products referred to in sub-paragraph (e) above;
- (h) Otherwise deny the allegations in paragraph 28.

29 In answer to paragraph 29, the First and Third Respondents:

- (a) Admit that at the time of the RFP and the decision on 21 November 2016, WLISL was a related party of the First and Third Respondents;
- (b) Repeat paragraph 28 above;
- (c) Say that Rice Warner confirmed that its tender evaluation review was comprehensive and compared the competing offers on a like-for-like basis;

**Particulars**

Letter from Rice Warner to BTFG dated 17 November 2016

- (d) Otherwise deny the allegations in paragraph 29.

30 In answer to paragraph 30, the First and Third Respondents:

- (a) Say that they entered into an Insurance Services Deed (**ISD**) with WLISL on or around 29 May 2017 with effect from 1 January 2018;

**Particulars**

Insurance Services Deed between the First and Third Respondents and WLISL

- (b) Rely on the ISD for its full terms, meaning and effect;
- (c) Otherwise deny the allegations in paragraph 30.

31 In answer to paragraph 31, the First and Third Respondents:

- (a) In relation to sub-paragraph (a), say that with effect on and from 1 January 2018, the following master insurance policies were novated from AIA to the Second Respondent:

- (i) 7 master insurance policies held by the First Respondent for certain members of the funds for which the First Respondent was trustee;

**Particulars**

Group Insurance Takeover Deed dated 28 November 2017 Schedule 1

Group Life (Death and Total Permanent Disablement) Insurance Policy No. MP 8128  
(Endorsement) (Date of Issue: 26 September 2017)

Group Life (Death and Total Permanent Disablement) Insurance Policy No. MP 9962  
(Endorsement) (Date of Issue: 26 September 2017)

Group Salary Continuance Insurance Policy No. MP 9962 (Endorsement) (Date of Issue: 26 September 2017)

Asgard Personal Superannuation Master Policy – Life Protection, Total and Permanent Disablement, Salary Continuance – Policy No. MP 9959 & MP 9961 (Endorsement) (Date of Issue: 12 December 2017)

BT Lifetime Super Personal Plan & BT Retirement Selection Personal Superplan: Policy Document  
Death & TPD – Policy No. 9785 (Date of Issue: 14 December 2017)

BT Lifetime Super – Employer Plan (as a plan of Retirement Wrap ABN 39 827 542 991) Policy  
(Group Life (Death & TPD)) Policy Document – Policy No. MP8118 (Endorsement) Date of Issue:  
26 September 2017

BT Lifetime Super – Employer Plan (as a plan of Retirement Wrap ABN 39 827 542 991) Policy  
(Group Life (Death & TPD)) Policy Document – Policy No. MP9784 (Endorsement) Date of Issue:  
26 September 2017

BT Lifetime Super – Employer Plan (as a plan of Retirement Wrap ABN 39 827 542 991) Policy  
(Group Salary Continuance) Policy Document – Policy No. MP9784 (Endorsement) Date of Issue:  
26 September 2017

- (ii) 1 master insurance policy held by the First Respondent in a non-trustee capacity;

**Particulars**

Group Insurance Takeover Deed dated 28 November 2017 Schedule 1

Asgard Retail Master Policy - Life Protection, Total and Permanent Disablement, Trauma  
Protection, Critical Trauma Protection, Income Protection, Business Expenses Protection Policy  
Document – Policy No. MP9960 Date of Issue: 12 December 2017

- (iii) 2 master insurance policies held by the Third Respondent for certain members of the funds for which the Third Respondent was trustee;

**Particulars**

Group Insurance Takeover Deed dated 28 November 2017 Schedule 1

BT Business Super (as a plan of Westpac MasterTrust Superannuation Division ABN 81 236 903  
448) Policy (Group Life (Death & TPD)) Policy Document – Policy No. MP 8119 Date of Issue: 26  
September 2017

BT Business Super (as a plan of Westpac MasterTrust Superannuation Division ABN 81 236 903 448) Policy (Group Life (Death & TPD) Policy Document – Policy No. MP 9878 Date of Issue: 26 September 2017

BT Business Super (as a plan of Westpac MasterTrust Superannuation Division ABN 81 236 903 448) Policy (Group Salary Continuance) Policy Document – Policy No. MP 9878 Date of Issue: 26 September 2017

- (iv) 1 master insurance policy held by BT Funds Management No. 2 Limited (ABN 22 000 727 659);

**Particulars**

Group Insurance Takeover Deed dated 28 November 2017 Schedule 1

BT Classic Lifetime – Personal Super Plan Policy No. 9867 (Date of Issue: 14 December 2017)

- (v) Otherwise deny the allegations in sub-paragraph (a);

**Particulars**

Group Insurance Takeover Deed dated 28 November 2017 Schedule 1

- (b) In relation to sub-paragraph (b):

- (i) Say that on 19 December 2017 the Second Respondent issued two master insurance policies to N.M. Superannuation Pty Ltd (ABN 31 008 428 322), each with an effective date of 1 January 2018;

**Particulars**

PortfolioCare Corporate Superannuation Master Policy (Life Protection, Total and Permanent Disablement, Salary Continuance) Policy Document – Policy No. MP 9956 (Endorsement) Date of Issue: 19 December 2017

PortfolioCare Personal Superannuation Master Policy (Life Protection, Total and Permanent Disablement, Salary Continuance) Policy Document – Policy No. MP 9957 (Endorsement) Date of Issue: 19 December 2017

- (ii) Say that on 20 December 2017 the Second Respondent issued two master insurance policies to CCSL Ltd (ABN 51 104 967 964), each with an effective date of 1 January 2018;

**Particulars**

Life Focus Insurance Services Master Policy (Life Protection, Total and Permanent Disablement, Salary Continuance) Policy Document – Policy No. MP 8098 (Endorsement) Date of Issue: 20 December 2017

Personal Choice Private Fund Master Policy (Life Protection, Total and Permanent Disablement, Salary Continuance) Policy Document – Policy No. MP 8016 (Endorsement) Date of Issue: 20 December 2017

- (iii) Say that Asgard Capital Management Limited, a subsidiary of Westpac Banking Corporation (ACN 007 457 141), was administrator and custodian of the PortfolioCare eWrap Super, PortfolioCare eWrap Pension, PortfolioCare Super and PortfolioCare Pension accounts, which are products that were offered as part of the Wealth Personal Superannuation and Pension Fund, of which fund N.M Superannuation Pty Ltd was trustee;

**Particulars**

PortfolioCare eWrap Super/Pension – Supplementary product disclosure statement – Issue Date: 19 December 2023

PortfolioCare Super/Pension Service – Supplementary Product Disclosure Statement – Issue Date: 19 December 2023

- (iv) Say that Asgard Capital Management Ltd was administrator and custodian of the LifeFocus Wholesale eWrap Super Account and LifeFocus Wholesale eWrap Pension Account, which are products that were offered as part of the LifeFocus Superannuation Fund, of which fund CCSL Ltd was trustee;

**Particulars**

LifeFocus Wholesale eWrap Super/Pension – Product Disclosure Statement (Part 1 – General Information) Issue Date: 1 October 2017

- (v) Say that Asgard Capital Management Ltd was administrator and custodian of the Personal Choice Private eWrap Super Account and Personal Choice Private eWrap Allocated Pension Account, which are products that were offered as part of the Personal Choice Private Fund, of which fund CCSL Ltd was trustee;

**Particulars**

Personal Choice Private eWrap – Super/Pension – Annual Report 2020

- (vi) Deny that the products listed at sub-paragraph (b)(iii) to (v) above were included in the RFP; and

**Particulars**

BTFG Request for Proposal dated 8 April 2016

- (vii) Otherwise deny the allegations in sub-paragraph (b).

32 In answer to paragraph 32, the First and Third Respondents:

- (a) In relation to sub-paragraph (a):
- (i) Say that the Second Respondent provided a rate guarantee period until 30 June 2019 for certain products;

**Particulars**

Memorandum to the Boards, p 7

- (ii) Say that, with effect from 1 July 2019, the annual premium rate payable in respect of insurance provided by the Second Respondent for BT Super For Life, being a superannuation product held by the First Applicant, increased in the Relevant Period;

**Particulars**

BT Super for Life – Westpac Group Plan Product Disclosure Statement issued 17 December 2018

BT Super for Life – Westpac Group Plan Additional Information Booklet No. 1 issued 17 December 2018

BT Super for Life Product Disclosure Statement issued 1 July 2019

- (iii) Say that, with effect from 1 July 2019, the annual premium rate payable in respect of insurance provided by the Second Respondent for BT Super, being one of the superannuation products held by the Second Applicant, increased during the Relevant Period, but deny that there was an equivalent increase in the annual premium rate payable in respect of insurance provided by the Second Respondent for BT Business Super, being the other superannuation product held by the Second Applicant in the Relevant Period;

**Particulars**

BT Business Super Product Disclosure Statement issued 30 September 2017

BT Business Super Additional Information Booklet (Part 3 – Insurance) issued 30 September 2017

- (iv) Say that, with effect from 1 September 2019, the base premium payable in respect of insurance provided by the Second Respondent for Asgard Employee Super, being a superannuation product held by the Third Applicant, increased in the Relevant Period;

**Particulars**

Asgard Employee Super Account Product Disclosure Statement issued 17 December 2018

Asgard Employee Super Account Additional Information Booklet (Part 3 – Insurance) issued 17 December 2018

Asgard Employee Super Account Product Disclosure Statement issued 1 September 2019

Asgard Employee Super Account Additional Information Booklet (Part 3 – Insurance)

- (v) Repeat paragraph 28(f) above;
- (vi) Otherwise deny the allegations in sub-paragraph (a);

**Particulars**

Howes at [45(e)(i)(A)]

- (b) Say that sub-paragraphs (b) and (c) are embarrassing and liable to be struck out and, under cover of that objection, deny the allegations in the sub-paragraphs.

33 In answer to paragraph 33, the First and Third Respondents:

- (a) Deny the allegations in sub-paragraph (a);
- (b) Say that sub-paragraphs (b) and (c) are embarrassing and liable to be struck out and, under cover of that objection, deny the allegations in the sub-paragraphs.

34 In answer to paragraph 34, the First and Third Respondents:

- (a) Say that, with effect from 1 July 2020, AIA issued to the First Respondent master insurance policies for certain members of the Retirement Wrap and Asgard Independence Plan – Division 2 funds;
- (b) Say that the master insurance policies referred to in the previous sub-paragraph replaced the following master insurance policies which the First Respondent held with the Second Respondent for certain members of the Retirement Wrap and Asgard Independence Plan – Division 2 funds, which terminated with effect from 1 July 2020:
  - (i) BT Super for Life Group Life (Death & Total and Permanent Disablement) and Group Salary Continuance Insurance (WGP 01);
  - (ii) BT Super for Life Group Life Policy for the provision of Death, Terminal Illness, and Total and Permanent Disablement cover to members of the BT Super for Life Superannuation Fund (BTSFL 1 (Group Life));
  - (iii) Group Salary Continuance Policy for the provision of salary continuance cover to members of the BT Super for Life Superannuation Fund (BT SFL 1 (Salary Continuance));
  - (iv) Group Life (Death and Total and Permanent Disablement) Insurance Policy (MP 8128);

- (v) Group Life (Death and Total and Permanent Disablement) Insurance Policy (MP 9962);
- (vi) Group Salary Continuance Insurance Policy (MP 9962);
- (vii) MP 9959;
- (viii) Former BT Lifetime Super Personal Plan, BT Retirement Selection Personal Superplan and BT Superannuation Investment Fund members: Policy Document Death & TPD (MP 9785);
- (ix) Group Life (Death and Total and Permanent Disablement) Insurance Policy - Former BT Classic Lifetime – Personal Super Plan members (MP 9867);
- (x) Group Life (Death & TPD) Insurance Policy (MP 8118);
- (xi) Group Life (Death & TPD) Insurance Policy (MP 9784);
- (xii) Group Salary Continuance Insurance Policy (MP 9784);

**Particulars**

Group Insurance Takeover Deed dated 30 June 2020 Schedule 1

- (c) Deny that a superannuation product named 'BT Lifetime Super' was offered through the Retirement Wrap fund on and from 1 July 2020;
- (d) Admit that the 'BT Super for Life' superannuation product was offered through the Retirement Wrap fund on and from 1 July 2020;
- (e) Admit that the Asgard Employee Super Account and Asgard Personal Protection Package products were available through the Asgard Independence Plan – Division 2 fund on and from 1 July 2020;
- (f) Say that Asgard Personal Protection Package was not a superannuation product providing group insurance cover;
- (g) Otherwise deny the allegations in paragraph 34.

35 In answer to paragraph 35, the First and Third Respondents:

- (a) Repeat paragraph 34 above;
- (b) Otherwise deny the allegations in paragraph 35.

**D.2 Asgard**

36 In answer to paragraph 36, the First and Third Respondents:

- (a) Repeat paragraphs 19 and 34 to 35 above;
- (b) Otherwise deny the allegations in paragraph 36.

37 In answer to paragraph 37, the First and Third Respondents:

- (a) Say that the First Respondent was party to administration agreements, custody agreements and master service agreements, as amended from time to time, at various times throughout the Relevant Period;
- (b) Rely on the administration agreements, custody agreement and master services agreement as amended for their full terms, meaning and effect;

- (c) Otherwise deny the allegations in paragraph 37.

**Particulars**

- Administration Agreement between First Respondent and Asgard Capital Management Limited dated 30 June 2013
- Custody Agreement between First Respondent and Asgard Capital Management Limited dated 27 June 2013
- Variation Deed to Administration Agreement between First Respondent and Asgard Capital Management Limited dated 4 December 2013
- Variation Deed to Administration Agreement between First Respondent and Asgard Capital Management Limited dated 28 June 2016
- Amendment to Custody Agreement and Administration Agreement each between First Respondent and Asgard Capital Management Limited dated 28 June 2018
- Amendment to Custody Agreement and Administration Agreement each between First Respondent and Asgard Capital Management Limited dated 20 December 2018
- Amendment to Custody Agreement and Administration Agreement between First Respondent and Asgard Capital Management Limited dated 19 December 2019
- Agreement to Amend Custody Agreement and Administration Agreement each between First Respondent and Asgard Capital Management Limited dated 30 June 2020
- Agreement to Amend Custody Agreement and Administration Agreement between First Respondent and Asgard Capital Management Limited dated 21 December 2020

- 38 In answer to paragraph 38, the First and Third Respondents:

- (a) Admit that on 30 June 2013 the First Respondent appointed Asgard Capital Management Limited to perform certain services in relation to BTFM Products, as those terms are defined in the agreement (**Administration Agreement**);
- (b) Rely upon the Administration Agreement as varied by the amending agreements for its full terms, meaning and effect;
- (c) Otherwise deny the allegations in paragraph 38.

**Particulars**

- Administration Agreement between First Respondent and Asgard Capital Management Limited dated 30 June 2013
- Custody Agreement between First Respondent and Asgard Capital Management Limited dated 27 June 2013
- Variation Deed to Administration Agreement between First Respondent and Asgard Capital Management Limited dated 4 December 2013.
- Variation Deed to Administration Agreement between First Respondent and Asgard Capital Management Limited dated 28 June 2016
- Amendment to Custody Agreement and Administration Agreement each between First Respondent and Asgard Capital Management Limited dated 28 June 2018
- Amendment to Custody Agreement and Administration Agreement each between First Respondent and Asgard Capital Management Limited dated 20 December 2018
- Amendment to Custody Agreement and Administration Agreement between First Respondent and Asgard Capital Management Limited dated 19 December 2019
- Agreement to Amend Custody Agreement and Administration Agreement each between First Respondent and Asgard Capital Management Limited dated 30 June 2020
- Agreement to Amend Custody Agreement and Administration Agreement between First Respondent and Asgard Capital Management Limited dated 21 December 2020

- 39 In answer to paragraph 39, the First and Third Respondents:

- (a) Admit that on 27 June 2013 the First Respondent appointed Asgard Capital Management Limited as “Custodian” of the “Assets” of the “Funds”, as those terms are defined in the agreement (**Custody Agreement**);
- (b) Rely upon the Custody Agreement as amended from time to time for its full terms, meaning and effect;
- (c) Otherwise deny the allegations in paragraph 39.

**Particulars**

Custody Agreement between First Respondent and Asgard Capital Management Limited dated 27 June 2013

Amendment to Custody Agreement and Administration Agreement each between First Respondent and Asgard Capital Management Limited dated 28 June 2018

Amendment to Custody Agreement and Administration Agreement each between First Respondent and Asgard Capital Management Limited dated 20 December 2018

Amendment to Custody Agreement and Administration Agreement between First Respondent and Asgard Capital Management Limited dated 19 December 2019

Agreement to Amend Custody Agreement and Administration Agreement each between First Respondent and Asgard Capital Management Limited dated 30 June 2020

Agreement to Amend Custody Agreement and Administration Agreement between First Respondent and Asgard Capital Management Limited dated 21 December 2020

40 In answer to paragraph 40, the First and Third Respondents:

- (a) Say that sub-paragraphs (a) to (d) paraphrase terms in the trust deed for the Asgard Independence Plan from time to time;
- (b) Rely on the trust deed for Asgard Independence Plan from time to time for its full terms, meaning and effect;
- (c) Otherwise deny the allegations in paragraph 40.

**Particulars**

Trust Deed for Asgard Independence Plan dated 22 April 2017

Trust Deed for Asgard Independence Plan dated 10 November 2020

Trust Deed for Asgard Independence Plan dated 26 August 2021

Trust Deed for Asgard Independence Plan – Division 2 dated 22 November 2022

41 In answer to paragraph 41, the First and Third Respondents:

- (a) Say that sub-paragraphs (a) to (c) paraphrase terms in the trust deed for the Asgard Independence Plan – Division 2 from time to time;
- (b) Rely on the trust deeds for Asgard Independence Plan – Division 2 from time to time for its full terms, meaning and effect;
- (c) Otherwise deny the allegations in paragraph 41.

**Particulars**

Trust Deed for Asgard Independence Plan – Division 2 dated 22 November 2022

42 In answer to paragraph 42, the First and Third Respondents:

- (a) Admit that the First Respondent held with the Second Respondent master insurance policies for certain members of the Asgard Independence Plan – Division 2 fund from 1 January 2018 to 30 June 2020;
- (b) Otherwise deny the allegations in paragraph 42.

- 43 In answer to paragraph 43, the First and Third Respondents:
- (a) Admit that the master insurance policies held by the First Respondent issued by the Second Respondent in respect of members of the Asgard Independence Plan – Division 2 fund from 1 January 2018 to 30 June 2020 included master insurance policies MP 8128, MP 9962 and MP 9959 (the **WLISL Master Policies**);
  - (b) Deny that the master insurance policies that the First Respondent held that were issued by the Second Respondent for certain members of the Asgard Independence Plan – Division 2 fund included policies MP 8395, MP 8404, MP 9958 and MP 9961;
  - (c) Admit that master insurance policies MP 8128 and MP 9962 applied to certain members who held the Asgard Employee Super Account (**AESA**);
  - (d) Admit that master insurance policy MP 9959 applied to certain members who held the Asgard Personal Protection Package;
  - (e) Repeat paragraph 34(f) above;
  - (f) Otherwise deny the allegations in paragraph 43.
- 44 In answer to paragraph 44, the First and Third Respondents:
- (a) Say that certain members of the Asgard Independence Plan – Division 2 fund who held the AESA superannuation product held insurance cover under MP 9959;
  - (b) Say that AESA members were eligible to apply for insurance cover under MP 9959 in limited circumstances until 1 January 2018;
  - (c) Repeat paragraph 34(f) above;
  - (d) Otherwise deny the allegations in paragraph 44.
- 45 In answer to paragraph 45, the First and Third Respondents:
- (a) Repeat paragraph 43 above;
  - (b) Say in relation to the WLISL Master Policies that:
    - (i) MP 8128 provided death cover and TPD cover in respect of certain members of the Asgard Independence Plan – Division 2 fund who were covered under MP 8128 from 1 January 2018 until 30 June 2020;
    - (ii) MP 9962 provided death cover, TPD cover, and group salary continuance insurance cover in respect of certain members of the Asgard Independence Plan – Division 2 fund who were covered under MP9962 from 1 January 2018 until 30 June 2020;
    - (iii) MP 9959 provided life protection cover, TPD cover, and group salary continuance insurance cover in respect of certain members of the Asgard Independence Plan – Division 2 fund who were covered under MP 9959 from 1 January 2018 until 30 June 2020;
  - (c) Admit that under each of the WLISL Master Policies premiums were payable from 1 January 2018 until 30 June 2020 by the First Respondent to the Second

Respondent in respect of members of the Asgard Independence Plan – Division 2 fund who were covered under the master insurance policies at the rates set out in schedules to those master insurance policies;

- (d) Say that the premiums payable under each of MP 8128 and MP 9962 from 1 January 2018 until 30 June 2020 in respect of members of the Asgard Independence Plan – Division 2 fund included either a 'Policy Owner's administration fee' or 'Asgard administration fee';
- (e) Deny that the premiums payable under MP 9959 from 1 January 2018 until 30 June 2020 in respect of members of the Asgard Independence Plan – Division 2 fund included an administration fee, though say the premiums payable did include an 'Asgard commission';

**Particulars**

Group Life (Death and Total Permanent Disablement) Insurance Policy No. MP 8128  
(Endorsement) Date of Issue: 26 September 2017

Group Life (Death and Total Permanent Disablement) Insurance Policy No. MP 9962  
(Endorsement) Date of Issue: 26 September 2017

Group Salary Continuance Insurance Policy No. MP 9962 (Endorsement) Date of Issue: 26  
September 2017

Asgard Personal Superannuation Master Policy – Life Protection, Total and Permanent  
Disablement, Salary Continuance – Policy No. MP 9959 & MP 9961 (Endorsement) Date of Issue:  
12 December 2017

- (f) Otherwise deny the allegations in paragraph 45.

46 In answer to paragraph 46, the First and Third Respondents:

- (a) Repeat paragraph 43 above;
- (b) Say that the insurance premiums payable under MP 9962 and MP 9959 from 1 January 2018 until 30 June 2020 by the First Respondent to the Second Respondent in respect of members of the Asgard Independence Plan – Division 2 fund included an adviser commission of up to 25% in respect of certain superannuation product holders, as follows:
  - (i) In respect of MP 9962, the premiums payable included an adviser commission of up to 25% only in respect of employer sub-plans established prior to 22 October 2013 which negotiated an adviser commission of up to 25% to be payable;
  - (ii) In respect of MP 9959, the premiums payable included an adviser commission of up to 25% only in respect of those members with Life & TPD benefits greater than nil under the master insurance policy immediately prior to 1 July 2014 who negotiated an adviser commission of up to 25% to be payable;

**Particulars**

The particulars to paragraph 45(d) are repeated.

- (c) Say that the commissions that were payable in sub-paragraph (b) above were also payable prior to the Second Respondent's appointment as insurer from on or around 1 January 2018;
- (d) Otherwise deny the allegations in paragraph 46.

47 In answer to paragraph 47, the First and Third Respondents:

- (a) Repeat paragraphs 43 and 46 above;
- (b) Otherwise deny the allegations in paragraph 47.

48 In answer to paragraph 48, the First and Third Respondents:

- (a) Repeat paragraph 43 above;
- (b) Say that in relation to certain members of the Asgard Independence Plan – Division 2 fund who commenced holding the Asgard Personal Protection Package prior to 1 July 2014 the premiums deducted from members' accounts may have included adviser commissions of up to 25%;
- (c) Repeat paragraph 34(f) above;
- (d) Otherwise deny the allegations in paragraph 48.

49 The First and Third Respondents say that paragraph 49 is embarrassing and liable to be struck out and, under cover of that objection, deny the allegations in the paragraph.

50 In answer to paragraph 50, the First and Third Respondents:

- (a) Repeat paragraph 49 above;
- (b) Say that any cause of action which arose under the general law or s 55(3) of the *SIS Act* in respect of adviser commissions and premiums is time-barred to the extent such a cause of action arose prior to 6 October 2017;

**Particulars**

Limitation of Actions Act 1958 (Vic), s 21(2)

*SIS Act*, s 55(4)

- (c) Deny the allegations in paragraph 50.

**E Premiums for insurance cover**

51 In answer to paragraph 51, the First and Third Respondents:

- (a) Repeat paragraphs 32(b), 33(b) and 49 above and Part F below;
- (b) Deny the allegations in paragraph 51.

52 In answer to paragraph 52, the First and Third Respondents:

- (a) Repeat paragraphs 32(b), 33(b) and 49 above;
- (b) Repeat paragraphs 19, 20 and 34(a) above and say that the Second Respondent was not the insurer of the superannuation products pleaded in paragraphs 19 and 20 of the SOC at all times during the Relevant Period;
- (c) Deny the allegations in paragraph 52.

**F Contraventions**

53 In answer to paragraph 53, the First and Third Respondents:

- (a) In relation to sub-paragraph (a):

- (i) Say that the premiums paid by certain, but not all, members of BT Business Super included a 25.5% administration fee for standard cover;
    - (ii) Otherwise admit the allegations in sub-paragraph (a);
  - (b) Say that premiums paid by certain, but not all, members of BT Lifetime Super – Employer Plan included the administration fees set out in sub-paragraph (b);
  - (c) In relation to sub-paragraph (c):
    - (i) Say that prior to 2019 premiums paid by certain, but not all, members of BT Super included a 22% administration fee for standard cover;
    - (ii) Otherwise admit the allegations in sub-paragraph (c);
  - (d) In response to sub-paragraphs (d) to (f):
    - (i) Repeat paragraphs 47, 48 and 49 above;
    - (ii) Otherwise deny the allegations in the sub-paragraphs;
  - (e) Otherwise deny the allegations in paragraph 53.
- 54 In answer to paragraph 54, the First and Third Respondents:
- (a) Repeat paragraph 49 above;
  - (b) Deny the allegations in paragraph 54.
- 55 In answer to paragraph 55, the First and Third Respondents:
- (a) Repeat paragraph 54 above;
  - (b) Repeat paragraphs 19, 20 and 34(a) above and say that WLISL was not the insurer of the superannuation products pleaded in paragraphs 19 and 20 of the SOC at all times during the Relevant Period;
  - (c) Deny the allegations in paragraph 55.
- 56 In answer to paragraph 56, the First and Third Respondents:
- (a) Repeat paragraphs 32(b), 33(b), 49 and 55 above;
  - (b) Deny the allegations in paragraph 56.
- 57 In answer to paragraph 57, the First and Third Respondents:
- (a) Repeat paragraphs 32(b), 33(b), 49 and 55 above;
  - (b) Deny the allegations in paragraph 57.
- 58 In answer to paragraph 58, the First and Third Respondents:
- (a) Repeat paragraphs 32(b), 33(b), 49 and 55 to 57 above;
  - (b) Deny the allegations in paragraph 58.
- 59 In answer to paragraph 59, the First and Third Respondents:
- (a) Repeat paragraphs 32(b), 33(b), 49, and 55 to 57 above;
  - (b) Deny the allegations in paragraph 59.
- 60 In answer to paragraph 60, the First and Third Respondents:

- (a) Repeat paragraphs 32(b), 33(b), 49, 55 to 57 and 59 above;
- (b) Deny the allegations in paragraph 60.

61 In answer to paragraph 61, the First and Third Respondents:

- (a) Repeat paragraphs 32(b), 33(b), 49, and 55 to 57 above;
- (b) Deny the allegations in paragraph 61.

## **G Fiduciary obligations**

62 In answer to paragraph 62, the First and Third Respondents:

- (a) Admit that the First and Third Respondents owed fiduciary duties to members of the superannuation funds of which the First and Third Respondents were, respectively, trustees;
- (b) Say that the scope and application of those fiduciary duties will depend on a number of matters including the scope and operation of s 52(2) of the SIS Act, the course of dealing between the First Respondent and/or Third Respondent on the one hand, and the relevant Applicant on the other, and the terms of any express agreement between them, including the terms referred to in paragraph 79 below.

63 In answer to paragraph 63, the First and Third Respondents:

- (a) Repeat paragraphs 32(b), 33(b), 49, 55 to 57 and 62 above;
- (b) Otherwise deny the allegations in paragraph 63.

64 In answer to paragraph 64, the First and Third Respondents:

- (a) Repeat paragraphs 32(b), 33(b), 49, 55 to 57, 62 and 63 above;
- (b) Otherwise deny the allegations in paragraph 64.

65 In answer to paragraph 65, the First and Third Respondents:

- (a) Repeat paragraphs 32(b), 33(b), 49, 55 to 57, 62 and 63 above;
- (b) Otherwise deny the allegations in paragraph 65.

## **H Claim against Westpac Life (WLISL)**

66 The First and Third Respondents deny the allegations in paragraph 66.

67 The First and Third Respondents deny the allegations in paragraph 67.

68 The First and Third Respondents deny the allegations in paragraph 68.

69 The First and Third Respondents deny the allegations in paragraph 69.

70 The First and Third Respondents deny the allegations paragraph 70.

### **H.1 Knowing receipt**

71 The First and Third Respondents deny the allegations in paragraph 71.

72 The First and Third Respondents deny the allegations in paragraph 72.

73 The First and Third Respondents deny the allegations in paragraph 73.

74 The First and Third Respondents deny the allegations in paragraph 74.

75 The First and Third Respondents deny the allegations in paragraph 75.

#### **I Loss or Damage (statutory claims)**

76 In answer to paragraph 76, The First and Third Respondents:

- (a) Repeat paragraphs 32(b), 33(b), 49, and 55 to 61 above;
- (b) Deny the allegations in paragraph 76.

77 In answer to paragraph 77, the First and Third Respondents:

- (a) Repeat paragraphs 28(c)(i), 32(b), 33(b), 49, 55 to 61 and 76 above;
- (b) Deny the allegations in paragraph 77;
- (c) Say further that:
  - (i) The First Applicant made a TPD claim on 26 August 2019 following a physical injury and a consequential psychological injury;

##### **Particulars**

Amended statement of claim in Federal Court proceeding QUD295 of 2022

- (ii) The Second Respondent offered cover to holders of the BT Super For Life superannuation product for consequential injuries, but in the RFP process AIA indicated that it was unwilling to offer such cover;

##### **Particulars**

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- (iii) Had AIA, and not the Second Respondent, been selected at the conclusion of the tender process, AIA's more restrictive policy terms may not have supported a TPD claim by the First Applicant;

##### **Particulars**

Memorandum to the Boards p 27

- (iv) Had the First and Third Respondents selected an insurer other than the Second Respondent, the First Applicant may not have been able to recover his losses, either at all or to the same extent;
- (d) Say further that:
  - (i) Some Group Members held pleaded superannuation products within the Relevant Period for which the insurance premiums payable for one or more heads of cover were paid by their employer (**Insured Employee Group Members**);
  - (ii) Deny that any losses were suffered by Insured Employee Group Members in relation to premiums paid by their employers;
  - (iii) If, which is denied, there has been any loss sustained by the Insured Employee Group Members, the Insured Employee Group Members

suffered no loss in relation to the insurance premiums during the course of their employment;

- (e) Say further that:
- (i) If, which is denied, the First and/or Third Respondent has misapplied any assets of the relevant superannuation funds by deducting funds therefrom in breach of a statutory covenant or in breach of its fiduciary duties (as alleged in the SOC), then the appropriate relief may be an order that the First and/or Third Respondent, as the trustee of those funds, make good the assets of those funds;
  - (ii) If that occurs, upon the assets of the relevant funds being made good, no loss or damage will have been suffered by the Applicant or by any Group Member who remains a member of the relevant funds and there is no loss or damage to be recovered under s 55 of the SIS Act;
- (f) Say further that, if, which is denied, the First and/or Third Respondent is liable under s 55 of the SIS Act to compensate the Applicant or any of the Group Members for any loss or damage alleged in paragraph 77, the appropriate remedy may be to apply any compensation into the relevant person's superannuation balance.

## **J Relief Claimed**

78 The First and Third Respondents deny any entitlement to the relief sought against them in the Originating Process.

79 In further answer to the entire claim, the First and Third Respondents say that under the terms of the trust deeds, the First and Third Respondents are not liable to the Applicants and Group Members for the relief set out in the originating application pursuant to clauses in each of the relevant trust deeds excluding the First and Third Respondents (as applicable) from liability to members for the relief set out in the originating application.

### **Particulars**

Clause 12.1 of the Trust Deed for the Asgard Independence Plan dated 22 April 2017

Clause 12.1 of the Trust Deed for the Asgard Independence Plan dated 10 November 2020

Clause 12.1 of the Trust Deed for the Asgard Independence Plan dated 26 August 2021

Clause 5.4 of the Trust Deed for Asgard Independence Plan – Division 2 dated 22 November 2022

Clause 20.1(o) of the Trust Deed for BT Lifetime Super dated 5 January 2015

Clause 5.3 of the Trust Deed for the Retirement Wrap dated 21 November 2016

Clause 5.3 of the Trust Deed for the Retirement Wrap dated 23 July 2018

Clause 5.3 of the Trust Deed for the Retirement Wrap dated 12 April 2019

Clause 5.3 of the Trust Deed for the Retirement Wrap dated 1 February 2020

Clause 5.3 of the Trust Deed for the Retirement Wrap dated 16 March 2021

Clause 5.3 of the Trust Deed for the Retirement Wrap dated 29 September 2021

Clause 4.3(b) of the Trust Deed for Westpac Master Trust dated 1 July 2017

Clause 4.3(b) of the Trust Deed for Westpac Master Trust dated 20 December 2019

Clause 6.1 of the Trust Deed for Westpac Personal Superannuation Plan dated 1 March 2006

80 In further answer to the entire claim, the First and Third Respondents say that if, which is denied, the First and/or Third Respondent contravened a civil penalty provision by reason of the matters pleaded in the SOC:

- (a) The proceedings are “eligible proceedings” within the meaning of s 221(1) of the SIS Act;
- (b) The First and Third Respondents acted honestly at all material times;
- (c) Having regard to all the circumstances of the case, the First and Third Respondents ought fairly to be excused for any contravention;
- (d) In the premises of sub-paragraphs (a) to (c) above, the Court should relieve the First and/or Third Respondent wholly, or alternatively partly, from any such liability under s 221(2) of the SIS Act.

Date: 10 May 2024

*M Stephens*

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Signed by Malcolm Stephens  
Lawyer for First Respondent and Third  
Respondent

This pleading was prepared by Malcolm Stephens, Lawyer

## Certificate of lawyer

I Malcolm Stephens certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 10 May 2024

*M Stephens*

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Signed by Malcolm Stephens  
Lawyer for First Respondent and Third  
Respondent

## Schedule 1

<b>Fund</b>	<b>Trustee</b>	<b>Product</b>	<b>Available to members in Relevant Period</b>
<b>Retirement Wrap</b>	First Respondent	<i>Generic MySuper</i>	N/A
		<i>Westpac Group Plan MySuper</i>	Available to new and existing members from 6 October 2017 to April 2023.
		<i>BT Super for Life</i>	Available to new members from 6 October 2017 to August 2022. Available to existing members from 6 October 2017 to April 2023.
		<i>BT Lifetime Super – Employer Plan</i>	Available to new and existing members from 6 October 2017 to February 2020.
		<i>BT Retirement Selection</i>	Closed to new members prior to 6 October 2017. Available to existing members from 6 October 2017 to April 2019.
		<i>BT Super</i>	Available to new members from 23 July 2018 to August 2022. Available to existing members from 23 July 2018 to April 2023.
<b>BT Lifetime Super</b>	First Respondent	<i>BT Lifetime Super – Personal Super</i>	Closed to new members prior to 6 October 2017. Available to existing members from 6 October 2017 to April 2019.
<b>Asgard Independence Plan Division 2</b>	First Respondent	<i>Asgard Employee Superannuation Account MySuper</i>	Available to new and existing members from 6 October 2017 to October 2021.
		<i>Asgard Employee Superannuation Account</i>	As per Asgard Employee Superannuation Account MySuper.
		<i>Asgard eWrap Super Account</i>	Available to new members from 6 October 2017 to 5 December 2021. Available to existing members from 6 October 2017 to 1 April 2023.
		<i>Asgard eWrap Pension Account</i>	As per Asgard eWrap Super Account.
		<i>Asgard Elements Super Account</i>	Available to new members from 6 October 2017 to 5 December 2021. Available to existing members from 6 October 2017 to 1 April 2023.
		<i>Asgard Elements Pension Account</i>	As per Asgard Elements Super Account.
		<i>Asgard Infinity eWrap</i>	Available to new members from 6

<b>Fund</b>	<b>Trustee</b>	<b>Product</b>	<b>Available to members in Relevant Period</b>
		<i>Super Account</i>	October 2017 to 5 December 2021. Available to existing members from 6 October 2017 to 1 April 2023.
		<i>Asgard Infinity eWrap Pension Account</i>	As per Asgard Infinity eWrap Super Account.
		<i>ASGARD Superannuation Account</i>	Available to new members from 6 October 2017 to 5 December 2021. Available to existing members from 6 October 2017 to 1 April 2023.
<b>Advance Retirement Suite</b>	First Respondent	<i>Advance Retirement Suite Super</i>	Closed to new members prior to 6 October 2017. Available to existing members until March 2021.
<b>Beacon Superannuation Plan</b>	First Respondent	<i>Beacon Superannuation Plan</i>	Closed to new and existing members prior to 6 October 2017.
<b>Westpac MasterTrust Superannuation Division</b>	Third Respondent	<i>BT Business Super MySuper</i>	Closed to new members prior to 6 October 2017. Available to existing members from 6 October 2017 to August 2020.
		<i>BT Business Super</i>	As per BT Business Super MySuper.
		<i>Westpac Lifetime Superannuation Service</i>	Closed to new members prior to 6 October 2017. Available to existing members from 6 October 2017 to August 2020.
<b>BT Superannuation Savings Fund</b>	Third Respondent	<i>BT Superannuation Savings Fund</i>	Closed to new members prior to 6 October 2017. Available to existing members from 6 October 2017 to 24 July 2018.
<b>Westpac Personal Superannuation Plan</b>	Third Respondent	<i>Westpac Personal Superannuation Bond</i>	Closed to new members prior to 6 October 2017. Available to existing members from 6 October 2017 to 18 August 2020.
		<i>Westpac Personal Super Investment Plan</i>	Closed to new members prior to 6 October 2017. Available to existing members from 6 October 2017 to 18 August 2020.
		<i>Westpac Personal Superannuation Plan (1987/1990 and 1978/1990 Staff Version)</i>	Closed to new members prior to 6 October 2017. Available to existing members from 6 October 2017 to 18 August 2020.

## **Schedule 2**

**Dannyalan Raymond Fisher**

First Applicant

**Jonathan Fedson**

Second Applicant

**Roy Ferguson**

Third Applicant

**BT Funds Management Ltd (ACN 002 916 458) in its capacity as trustee for BT Retirement Wrap, BT Super for Life, BT Super and Asgard Independence Plan Division Two (BTFM)**

First Respondent

**TAL Life Insurance Services Limited (ACN 003 149 157) (WLISL)**

Second Respondent

**Westpac Securities Administration Limited (ACN 000 049 472) (WSAL)**

Third Respondent