



Federal Court of Australia

District Registry: Victoria Registry

Division: General

No: VID28/2020

**SIMON MALLIA** and others named in the schedule  
Applicant

**COLONIAL FIRST STATE INVESTMENTS LTD (ACN 002 348 352)** and others  
named in the schedule  
Respondent

## **ORDER**

**JUDGE:** Justice Bennett

**DATE OF ORDER:** 21 July 2025

**WHERE MADE:** Melbourne

### **THE COURT ORDERS THAT:**

#### **Pleadings**

1. On or before 23 July 2025, the Applicant file and serve the proposed second further amended statement of claim (**2FASOC**) in the form exchanged with the Respondents on 11 July 2025.
2. On or before 3 September 2025, the Respondents file and serve their defences to the 2FASOC.
3. On or before 17 September 2025, the Applicant file and serve any reply to the defences.

#### **Opt-Out**

4. On or before 25 July 2025, the parties are to confer with respect to the proposed form of orders and notice (**Opt-Out Notice**) provided by the Applicant's solicitors to the Respondents' solicitors on 15 July 2025, with a view to finalising the steps for the distribution of the Opt-Out Notice regarding the rights of group members to opt out of the proceeding and the proposed form of orders in relation to the Opt-Out Notice.



5. On or before 1 August 2025, the parties are to either:
  - (a) provide an agreed form of orders and Opt-Out Notice to the Associate to the Honourable Justice Bennett; or
  - (b) in the event that the parties do not agree on the matters set out in order 4, file and serve any supporting outlines of submissions and affidavits that they wish to rely upon in relation to the proposed distribution of the Opt-Out Notice and orders.

### **Lay Evidence**

6. The Respondents file and serve any additional lay evidence in the proceeding by 20 August 2025.

### **Security for Costs**

7. On or before 22 August 2025, the parties are to confer in relation to the quantum and form of any further security for costs to be given by the Applicant.
8. In the event the parties cannot agree on the quantum and form of any further security for costs:
  - (a) the Respondents are to file and serve an interlocutory application and affidavit in support by 10 September 2025;
  - (b) the Applicant is to file and serve any affidavit in reply by 17 September 2025; and
  - (c) the parties are to file and serve any outline of submissions in respect of the Respondents' interlocutory application by 24 September 2025.
9. The resolution of any disagreement in relation to security for costs (as identified pursuant to order 8) be heard at the outset of the initial trial.

### **Expert Evidence, Conclaves and Joint Reports**

10. Order 3 of the orders made on 3 April 2025 be further varied so that the Applicant is to file and serve any expert evidence in reply by 1 August 2025.
11. A conclave for the actuarial related evidence involving Mr Humphreys, Mr Noyce and Mr Williamson commence from 4 August 2025.



12. Any joint reports prepared from the conclaves foreshadowed in order 10 above be filed by 26 August 2025.

#### **Common questions**

13. By 25 July 2025, the Applicant prepare and provide to the Respondents a proposed list of questions to be determined at the initial trial in the proceeding which are common to the claims of the Applicant and group members (**Common Questions**), to the extent they go beyond what was included in the Amended Originating Application filed 29 June 2023.
14. By 8 August 2025, the parties are to confer and seek to agree on a finalised list of Common Questions proposed to be determined at the initial trial (**Agreed List of Common Questions**).
15. If agreement is reached, the Applicant is to file and serve the Agreed List of Common Questions immediately thereafter.
16. If agreement is not reached, on 11 August 2025 each party is to provide to the Associate to the Honourable Justice Bennett a document setting out that party's proposed list of Common Questions together with an outline of submissions in support. Either party may request that an oral hearing occur in relation to any dispute as to the Common Questions. If the Court determines a hearing is warranted, the Court will allocate a hearing date.
17. The initial trial will determine:
  - (a) the whole of the individual claims of the Applicant and Sample Group Members; and
  - (b) the Common Questions, as agreed or determined.

#### **Witness and Trial Plan**

18. By 27 August 2025, the parties are to notify each other of all witnesses whom they intend to call to give evidence at the trial.
19. By 3 September 2025, the parties are to notify each other of the witnesses whom they require to attend for cross-examination at trial.



20. By 10 September 2025, Counsel briefed to appear at the trial of this proceeding are to confer and jointly prepare a document (**Trial Plan**) which sets out:
- (a) the proposed order and structure of lay evidence;
  - (b) the proposed order and structure of expert evidence;
  - (c) each witness to be called by each party to the proceeding;
  - (d) the estimated time allocated to each witness for examination in chief, cross-examination and re-examination;
  - (e) the estimated time allocated for opening submissions and closing submissions;  
and
  - (f) any time allocated for other issues or matters which it is proposed should be dealt with during the trial of the proceeding.
21. By 17 September 2025, the Applicant is to provide the Trial Plan to the Associate to the Honourable Justice Bennett by email. If there is any disagreement between Counsel, this should be stated in the Trial Plan and the respective positions or estimates set out.

### **Electronic Trial**

22. The trial is to be conducted as an electronic trial (**eTrial**) using documents in electronic format in accordance with an Electronic Hearing Protocol (**Protocol**) to be agreed by the parties.
23. By 8 August 2025, the parties are to confer and engage a service provider to facilitate the eTrial (**eTrial Provider**), or in default of agreement as ordered by the Court.
24. By 22 August 2025, the parties are to agree upon the Protocol, prepared in consultation with the eTrial Provider, which should have regard to the matters set out in the Technology and the Court Practice Note (GPN-TECH).
25. The Court grants leave for a real-time live transcript service to be used by any party on each day of the hearing.



26. The costs of the eTrial Provider be costs in the cause, but borne in the first instance as follows:
- (a) half of the shared costs, being the costs of the initial set up of an **Electronic Court Book**, providing the eTrial facilities and the eTrial Provider's support staff (including court operator and transcript, live stream and/or broadband facilities), be borne by the Applicant, with the other half to be borne jointly by the Respondents in the Proceedings; and
  - (b) individual costs be borne by the parties on the basis of each individual party's use of services, including the cost of:
    - (i) supplying computers, screens and standard software;
    - (ii) subscribing to a hardcopy transcript or electronic transcript service;
    - (iii) an in-court connection to a real-time/progressive transcript service;
    - (iv) remote access to the electronic courtroom; and
    - (v) technical support for the individual benefit of a party.
27. In respect of any document which the parties intend on providing to the eTrial Provider (by way of the Electronic Court Book) and/or tendering as evidence at trial which is subject to a confidentiality regime or orders in the proceeding requiring confidentiality (**confidentiality requirements**), the parties are to confer and agree any necessary amendments to those confidentiality requirements to allow their provision to the eTrial Provider and/or tendering as evidence at trial.

### **Electronic Court Book and Tender List**

28. The Electronic Court Book shall be a library of documents potentially to be tendered or put to any witness. A document shall not be taken as admitted into evidence solely by reason of its inclusion in the Electronic Court Book. The Electronic Court Book is to comprise:
- (a) Part A: final versions of the pleadings and the Agreed List of Common Questions;
  - (b) Part B: written submissions of each of the parties and joint List of Authorities;



- (c) Part C: expert reports (without any annexures or exhibits) on which the parties intend to rely at the hearing;
  - (d) Part D: lay affidavits (without any annexures or exhibits) to be relied upon by the parties; and
  - (e) Part E:
    - (i) In date order, all documents annexed, exhibited or referred to in documents included in Parts A, B and D, and any additional documents (or parts thereof) which the parties may tender at the hearing; and
    - (ii) Annexures or exhibits to expert reports.
29. The Part E index must contain the following fields:
- (a) document date;
  - (b) unique document identification number;
  - (c) document type;
  - (d) document title;
  - (e) author/from;
  - (f) recipient/to (including CC);
  - (g) host reference;
  - (h) attachment ID;
  - (i) evidence reference (identifying each pleading, affidavit, or report, the proposed tender document is referenced within, including identifying each paragraph thereof in which the proposed tender document is referred to); and
  - (j) the tendering party.
30. By 15 August 2025, the Applicant will provide to the Respondents a draft index identifying documents in Part E of the Electronic Court Book including (for the avoidance of doubt) documents which the Applicant may tender at the hearing.



31. By 5 September 2025, the Respondents are to advise the Applicant in writing of their proposed additions to, and/or any issues concerning, the draft index provided by the Applicant in order 30 above.
32. By 12 September 2025, the parties are to agree upon, and serve the e-trial provider, the final Electronic Court Book prepared in accordance with the Protocol and with the required documents and information for the Electronic Court Book to allow it to be available to the parties and the Court.
33. By 26 September 2025, the parties will ensure delivery of one copy of the Electronic Court Book on USB and one hard copy of Parts A – D of the Electronic Court Book to the Court marked for the attention of the Chambers of Justice Bennett (or otherwise provide the Associate to the Honourable Justice Bennett with access to the Electronic Court Book).

### **Objections to Evidence**

34. By 1 September 2025:
  - (a) the parties are to notify each other in writing of any proposed objections to the whole or part of any affidavit, document or report in the proceeding; and
  - (b) each objection must include a short summary stating the grounds for the objection and whether the party agrees to the evidence being relied upon for a limited purpose or otherwise.
35. By 22 September 2025, the parties are to serve a response to the list of objections to evidence received pursuant to order 34 above.
36. By 26 September 2025, the parties are to:
  - (a) confer with a view to resolving any disagreement in relation to the admissibility of the documentary, lay and/or expert evidence; and
  - (b) in the event that the parties do not resolve the disagreement as to the admissibility of documentary, lay or expert evidence, a party proposing to object to the reliance by the other party of evidence the subject of any disagreement must apply to the Court seeking a determination as to the inadmissibility of the evidence, such determination to be made at an



appropriate time during the trial, before that witness is sworn or affirmed or that document tendered (as the case may be).

### **Opening Submissions and Authorities**

37. By 12 September 2025, the Applicant is to file and serve an outline of opening submissions of no more than 50 pages.
38. By 26 September 2025, the Respondents are to file and serve an outline of opening submissions of no more than 50 pages.
39. By 1 October 2025, the Applicant is to file and serve a list of authorities.
40. By 2 October 2025, the Respondents are to file and serve a list of authorities.
41. By 3 October 2025, the Applicant is to file and serve any submissions in reply of no more than 10 pages and any additional list of authorities.

### **Sample Group Members**

42. By 25 July 2025, the Respondents will produce to the Applicant, the documents referred to in the Applicant's letter to the Respondents dated 11 July 2025 with respect to the Applicant's sample group members referred to at paragraphs 3A and 3B of the further amended statement of claim filed on 29 June 2023.
43. Compliance with order 42 in relation to the sample group member named at paragraph 1(a) of the Applicant's letter to the Respondents dated 11 July 2025 is contingent upon the Applicant filing and serving his 2FASOC in accordance with order 1.

### **Loss reports**

44. By 1 August 2025, the Applicant is to file and serve Ms Dawna Wright's expert report in reply.
45. By 8 August 2025, the Applicant is to file and serve Ms Dawna Wrights' expert report relating to the Sample Group Members.
46. By 19 September 2025, the Respondents are to file and serve any further expert evidence in response to Ms Dawna Wrights' expert report relating to the Sample Group Members.





### **Pre-trial Case Management**

- 47. The proceedings be listed for a case management hearing at 2 pm on 29 September 2025.
- 48. Liberty to apply.
- 49. Costs reserved.

Date orders authenticated: 21 July 2025

*Sia Lagos*  
Registrar

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



## Schedule

No: VID28/2020

Federal Court of Australia

District Registry: Victoria Registry

Division: General

Interested Person	MLC LIFE INSURANCE LIMITED
Interested Person	METLIFE INSURANCE LIMITED
Interested Person	TAL LIFE LIMITED
Interested Person	ZURICH AUSTRALIA LIMITED
Second Respondent	THE COLONIAL MUTUAL LIFE ASSURANCE SOCIETY LIMITED (ACN 004 021 809)
Third Respondent	AIA AUSTRALIA LIMITED (ACN 004 837 861)