

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	9/09/2025 3:10:17 PM AEST
Date Accepted for Filing:	9/09/2025 11:15:06 PM AEST
File Number:	VID28/2020
File Title:	SIMON MALLIA v COLONIAL FIRST STATE INVESTMENTS LTD & ORS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Hearing
Time and date for hearing:	06/10/2025, 10:00 AM
Place:	Please check Daily Court List for details



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.



**Second Further Amended Originating application starting a
representative proceeding under Part IVA of the Federal Court of
Australia Act 1976**

No.

Federal Court of Australia
District Registry: Victoria
Division: General

Simon Mallia
Applicant

Colonial First State Investments Ltd (ACN 002 348 352)
In its capacity as former trustee for Colonial First State First Choice Superannuation Trust and
Commonwealth Essential Super
First Respondent

The Colonial Mutual Life Assurance Society Pty Limited (ACN 004 021 809)
Second Respondent

AIA Australia Limited (ACN 004 837 861)
Third Respondent

To the Respondents

The Applicant for himself and on behalf of each of the Group Members applies for the relief set
out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the
time and place stated below. If you or your lawyer do not attend, then the Court may make
orders in your absence.

Filed on behalf of (name & role of party) Simon Mallia (Applicant)

Prepared by (name of person/lawyer) Craig Allsopp

Law firm (if applicable) Shine Lawyers

Tel 02 8754 7270 Fax 02 9267 5650

Email callsopp@shine.com.au

Address for service Shine Lawyers, Level 13, 160 Ann Street, Brisbane, QLD 4000
(include state and postcode)



You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: 305 William St, Melbourne Victoria 3000

Date:

Signed by an officer acting with the authority
of the District Registrar

Details of claim

On the grounds stated in the accompanying Second Further Amended Statement of Claim, the Applicant for himself and on behalf of each of the Group Members claims:

1. An order pursuant to s 55(3) of the *Superannuation Industry (Supervision) Act 1993* (Cth) that the Respondents pay compensation to the Applicant and each of the Group Members for loss and damage suffered by them by reason of the First Respondent's contraventions of the covenants set out in ss 52(2)(b), (c) and (d) and 52(7)(a), (b) and (c) of the *Superannuation Industry (Supervision) Act 1993* (Cth) on an aggregate basis pursuant to s 33Z(1)(f) of the *Federal Court of Australia Act 1976* (Cth).
2. Alternatively to the order referred to in paragraph 1 above, an order that, in the event that the Applicant and the Group Members so elect, the First Respondent pay equitable compensation to the Applicant and each of the Group Members for loss and damage suffered by them by reason of the First Respondent's breaches of fiduciary duty and trust.
3. Alternatively to the orders referred to in paragraphs 1 and 2 above, an order that, in the event the Applicant and Group Members so elect, the First Respondent accounts for and pays to the Applicant and each of the Group Members all benefits, profits and gains made or derived by the First Respondent from the Group Insurance Contracts.
4. An order that an enquiry be held to determine the amount payable to the Applicant and each of the Group Members pursuant to the order referred to in paragraph 3 above.
- 4A. Alternatively to the orders referred to in paragraphs 1 to 4 above, an order that the First Respondent restore the assets of the CFSIL funds to the extent they are found to have been wrongfully depleted.



5. Alternatively to the orders referred to in paragraphs 1, 2, 3, and 4 and 4A above, an order that, in the event the Applicant and Group Members so elect, the Second Respondent and/or Third Respondent accounts for and pays to the Applicant and each of the Group Members all benefits, profits and gains made or derived by the Second Respondent from the Group Insurance Contracts.
6. An order that an enquiry be held to determine the amount payable to the Applicant and each of the Group Members pursuant to the order referred to in paragraph 5 above.
7. An order that the Respondents pay to the Applicant and each of the Group Members compound interest on monthly rests at the rate of 4% above the Cash Rate Target from time to time set by the Reserve Bank of Australia.
8. Alternatively to the order referred to in paragraph 7 above, an order that the Respondents pay to the Applicant and each of the Group Members interest pursuant to s 51A(1) of the *Federal Court of Australia Act 1976* (Cth).
9. Costs.
10. Such further or other order or orders as the Court sees fit.

Representative action

- 1 The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.
- 2 The Group Members to whom this proceeding relates are all persons who:
 - (a) were members of at least one of the following superannuation funds:
 - (i) FirstChoice Personal Super and Pension;
 - (ii) FirstChoice Wholesale Personal Super and Pension;
 - (iii) FirstChoice Employer Super;
 - (iv) Commonwealth Essential Super; and
 - (b) held insurance cover under a group policy of insurance issued by Colonial Mutual Life Assurance Society Pty Limited or AIA Australia Limited to Colonial First State Investments Ltd as trustee of those funds in the period 22 January 2014 to ~~22~~ 15 ~~January~~ February ~~2020~~.

Questions common to claims of Group Members



Defined terms have the meaning given to them in the Second Further Amended Statement of Claim filed ~~22 October 2021~~ 24 July 2025.

The questions of law or fact common to the claims of the Group Members are those set out below or such other Common Questions as agreed by the parties and approved by the Court or as otherwise determined by the Court:

1	Did the FirstChoice Trust Deed and the Commonwealth Essential Trust Deed contain the covenants set out in ss 52(2)(b), (c) and (d) and 52(7)(a), (b) or (c) of the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth) (SIS Act)?
2	If the answer to question 1 is 'yes', what was the scope and content of the duties imposed by the covenants in: (a) s 52(2)(b) of the SIS Act; (b) s 52(2)(c) of the SIS Act; (c) s 52(2)(d) of the SIS Act; (d) s 52(7)(a) of the SIS Act; (e) s 52(7)(b) of the SIS Act; and (f) s 52(7)(c) of the SIS Act.
3	Was there a conflict between CFSIL's duties to, and the interests of, the Applicant and each of the Group Members, on the one hand, and CFSIL's own interests and the interests of CommInsure on the other?
4	Did CFSIL know, or ought it to have known, of the conflict between CFSIL's duties to, and the interests of, the Applicant and Group Members and the interests of CFSIL and CommInsure?
5	Did CFSIL contravene the covenant in s 52(2)(b) of the SIS Act by: (a) making the IMF approval decision; (b) implementing the IMF approval decision; (c) making any of the group insurance decisions; (d) implementing any of the group insurance decisions;



	(e) obtaining from CommInsure group insurance at premiums which included the Excess Premiums; or (f) charging the members of the CFSIL funds premiums which included the Excess Premiums.
6	Did CFSIL contravene the covenant in s 52(2)(c) of the SIS Act by: (a) making the IMF approval decision; (b) implementing the IMF approval decision; (c) making any of the group insurance decisions; (d) implementing any of the group insurance decisions; (e) obtaining from CommInsure group insurance at premiums which included the Excess Premiums; or (f) charging the members of the CFSIL funds premiums which included the Excess Premiums.
7	Did CFSIL contravene the covenant in s 52(2)(d) of the SIS Act by: (a) making the IMF approval decision; (b) implementing the IMF approval decision; (c) making any of the group insurance decisions; (d) implementing any of the group insurance decisions; (e) obtaining from CommInsure group insurance at premiums which included the Excess Premiums; or (f) charging the members of the CFSIL funds premiums which included the Excess Premiums.
8	Did CFSIL contravene the covenants in any or all of s 52(7)(a), (b) or (c) of the SIS Act by: (a) making any of the group insurance decisions; (b) implementing any of the group insurance decisions; (c) obtaining from CommInsure group insurance at premiums which included the Excess Premiums; or



	(d) charging the members of the CFSIL funds premiums which included the Excess Premiums.
9	If the answer to any or all of the questions 5 to 8 is 'yes', did CFSIL's contraventions cause loss or damage to the Applicant and the Group Members?
10	If the answer to any or all of the questions 5 to 9 is 'yes', is CFSIL liable to compensate the Applicant and the Group Members for their loss or damage?
11	If CFSIL is liable to compensate the Applicant and Group Members, what is the proper methodology for assessing statutory compensation and awarding damages on an aggregate basis?
Breach of trust and fiduciary duty	
12	If the answer to any or all of the questions 5 to 8 is 'yes', did the contraventions of the covenants in ss 52(2)(b), 52(2)(c), 52(2)(d) and 52(7)(a), (b) and (c) of the SIS Act also constitute breaches of trust by CFSIL?
13	Did CFSIL owe fiduciary duties to the Applicant and Group Members?
14	If the answer to question 13 is 'yes', what was the scope and content of those fiduciary duties?
15	Did CFSIL breach its fiduciary duties owed to the Applicant and Group Members?
16	If CFSIL is liable for breach of trust or breach of fiduciary duty to the Applicant and Group Members: (a) is CFSIL liable to pay equitable compensation to the Applicant and each of the Group Members; (b) what is the proper methodology for assessing equitable compensation? (c) alternatively, is CFSIL liable to account for all benefits, profits and gains made or derived by it; and (d) what is the proper methodology for quantifying those benefits, profits and gains?



Involvement	
17	Was CommInsure involved in CFSIL's contraventions of ss 52(2)(b),(c) and (d) and 52(7)(a), (b) and (c) of the SIS Act?
18	If the answer to question 17 is 'yes', is CommInsure liable to compensate the Applicant and the Group Members for their loss or damage?
19	If CommInsure is liable to compensate the Applicant and the Group Members, what is the proper methodology for assessing statutory compensation and awarding damages on an aggregate basis?
Knowing receipt	
20	Did CommInsure know the matters alleged at paragraph 119 of the <u>Second</u> Further Amended Statement of Claim?
21	Would an honest and reasonable person have known each of the matters in paragraph 119 of the <u>Second</u> Further Amended Statement of Claim?
22	If CommInsure is liable for knowing receipt to the Applicant and Group Member (a) is CommInsure liable to pay equitable compensation to the Applicant and each of the Group Members; (b) what is the proper methodology for assessing equitable compensation? (c) alternatively, is CommInsure liable to account for all benefits, profits and gains made or derived by it; and (d) what is the proper methodology for quantifying those benefits, profits and gains?
Scheme	
23	What effect did the life insurance scheme under Part 9 of the <i>Life Insurance Act 1995</i> (Cth) dated 1 April 2021 have on the liabilities the subject of the allegations pleaded against CommInsure in the <u>Second</u> Further Amended Statement of Claim?

**Applicant's address**

The Applicant's address for service is:

Place: Shine Lawyers, Level 13, 160 Ann Street, Brisbane QLD 4000

Email: callsopp@shine.com.au

The Applicant's address is: Shine Lawyers, Level 13, 160 Ann Street, Brisbane, QLD 4000

Service on the Respondents

It is intended to serve this application on the Respondents.

Date: 9 September 2025

A handwritten signature in blue ink, appearing to read "C Allsopp", is located below the date.

Signed by Craig Allsopp
Lawyer for the Applicant