

## NOTICE OF FILING

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File Title:	JESSICA AMY CHALLENGOR v QSUPER BOARD (ABN 32 125 059 006)
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "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.

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**Reply**  
**to Defence to Further Amended Statement of Claim**

No. VID691 of 2021

Federal Court of Australia

District Registry: Victoria

Division: Commercial and Corporations National Practice Area

**JESSICA AMY CHALLENGOR**

Applicant

**QSUPER BOARD ABN 32 125 059 006**

Respondent

To the QSuper Board's ~~defence dated 24 May 2022~~ Defence to Further Amended Statement of Claim dated 17 February 2025 (Defence), the Applicant says:

1. Save and except insofar as the Defence contains admissions, and subject to the following, she joins issue with the QSuper Board on its Defence.
2. As to paragraph 10 of the Defence, the Applicant says that Schedule 10D (**Schedule 10D**) to the *Corporations Regulations 2001* (Cth) (**Corporations Regulations**) required that a Product Disclosure Statement for a superannuation product (including an accumulation superannuation product) include sections which must be numbered and titled:
  - (a) "6. Fees and costs", which was required by cl. 8 of Schedule 10D to set out the fees and costs that are charged in relation to an investment option; and
  - (b) if the superannuation offered insurance cover, "8. Insurance in your super", which described in summary form:
    - (i) the main types of insurance cover that a person can acquire; and
    - (ii) who is responsible for paying the insurance costs and how they are calculated.
3. As to paragraph 18(d) of the Defence, the Applicant says that:

Filed on behalf of	Jessica Amy Challenor, Applicant		
Prepared by	Craig Allsopp		
Law firm	Shine Lawyers		
Tel	+61 2 8754 7270	Fax	+61 2 9267 5650
Email	callsopp@shine.com.au		
<b>Address for service</b> (include state and postcode)	Level 13, 160 Ann Street, BRISBANE QLD 4000		

- (a) insurance was provided to the Group Members who satisfied the group definition in paragraph 3(a) of the Further Amended Statement of Claim (FASOC); and
  - (b) interests in the Fund of Fund Members were transferred to Group Members who satisfy the group definition in paragraphs 3(b) and (c) of the FASOC.
4. As to paragraph 20(g) of the Defence, the Applicant:
- (a) refers to and repeats paragraph 3(b) above; and
  - (b) says further, that the Insurance Policy provided for the payment of insurance benefits to some Fund Members, all or part off whose interest in the QSuper Fund was transferred to Group Members who satisfy the definitions in sub-paragraphs (b) and (c) of paragraph 3 of the FASOC.
5. As to paragraph 21(i) of the Defence, the Applicant refers to and repeats paragraphs 3(b) and 4 above.
6. As to paragraph 22 of the Defence, the Applicant:
- (a) In answer to subparagraphs 22(b) and (c):
    - (i) repeats paragraphs 23, 24, 26, 26B and 36(b) of the FASOC;
    - (ii) says that the various documents alleged by the QSuper Board to have been part of the Notice Pack distributed to members who had not elected to receive notifications from QSuper by electronic means by way of electronic mail did not include:
      - 1. a statement (as pleaded in paragraphs 24, 26(e) and 26B(d) of the FASOC) that it was necessary for a member to make an election in writing if they wished to be occupationally rated;
      - 2. a statement (as pleaded in paragraph 36(b) of the FASOC) that it was necessary for the member to make an election to be occupationally rated to enjoy lower insurance premiums associated with the Standard Rate, White Collar Rate and/or Professional Rate, if they qualified for one of the occupational ratings pleaded in paragraph 21(d) of the FASOC.
  - (b) In answer to subparagraphs 22(b) and (d):
    - (i) says that the various documents alleged by the QSuper Board to have been part of the Notice Pack distributed to members who had elected to receive notifications from QSuper by electronic means by way of electronic mail:

1. did not include the Notice, which was not attached to the May Email, and so was not distributed to such members;
  2. did not include the May Letter, which was not attached to the May Email, and so was not distributed to such members;
- (ii) says, in respect of the various documents alleged by the QSuper Board to have been part of the Notice Pack distributed to members who had elected to receive notifications from QSuper by electronic means by way of electronic mail, that the provision, in the May Email, of a hyperlink to the Notice, and/or a hyperlink to access Member Online and to a notification through which the member could download the May Letter, did not amount to either the distribution or making accessible, of such documents to such members (and Particular (iii) to paragraph 25(b) of the FASOC is repeated).
- (iii) repeats paragraphs 23, 24, 26, 26B and 36(b) of the FASOC;
- (iv) says that the various documents alleged by the QSuper Board to have been part of the Notice Pack distributed, or made accessible, to members who had elected to receive notifications from QSuper by electronic means (including the May Email) did not include:
1. a statement (as pleaded in paragraphs 24, 26(e) and 26B(d) of the FASOC) that it was necessary for a member to make an election in writing if they wished to be occupationally rated;
  2. a statement (as pleaded in paragraph 36(b) of the FASOC) that it was necessary for the member to make an election to be occupationally rated to enjoy lower insurance premiums associated with the Standard Rate, White Collar Rate and/or Professional Rate, if they qualified for one of the occupational ratings pleaded in paragraph 21(d) of the FASOC.
- (c) otherwise joins issue with paragraph 22 of the Defence, save for the admissions contained therein.
7. As to paragraph 24 of the Defence, the Applicant:
- (a) admits that the Notice contained the statements set out in subparagraphs 24(a), (b), (c), (d), (e), (f), and (g) of the Defence;

- (b) relies on the Notice for its full terms, meaning and effect, together with the full terms meaning and effect of all documents pursuant to which QSuper purported to notify the Insurance Change, namely the May Letter and/or the May Email;
- (c) otherwise joins issue with paragraph 24 of the Defence, save for the admissions contained therein.

8. As to paragraph 25 of the Defence, the Applicant:

- (a) In answer to subparagraphs 25(a) and (c)(i):
  - (i) repeats paragraph 6(a) of this Reply;
  - (ii) says that the May Letter as part of the various documents alleged by the QSuper Board to have been part of the Notice Pack distributed to members who had not elected to receive notifications from QSuper by electronic means:
    - 1. did not constitute notifying the Insurance Change within the meaning of s 1017B(1) of the Corporations Act;
    - 2. alternatively, did not constitute a notice giving such members the information that was reasonably necessary for them to understand the nature and effect of the Insurance Change as required by s 1017B(3)-(4) of the Corporations Act, having regard to the matters pleaded in paragraphs 23, 24, 25, 26 and 26A of the FASOC and/or the reply to paragraph 22(c) of the Defence;
    - 3. alternatively, did not constitute a notice giving such members the information that was reasonably necessary for them to understand the nature and effect of the Insurance Change as required by s 1017B(3)-(4) of the Corporations Act, having regard to the matters pleaded in paragraphs 32 and 32A of the FASOC;
- (b) In answer to subparagraph 25(a) and (c)(ii) of the Defence:
  - (i) repeats paragraph 6(b) of this Reply;
  - (ii) says that the making of the May Letters accessible to members who had elected to receive notifications from QSuper by electronic means via Member Online via hyperlink from the May Email:
    - 1. did not constitute notifying the Insurance Change within the meaning of s 1017B(1) of the Corporations Act;

2. alternatively, did not constitute a notice giving such members the information that was reasonably necessary for them to understand the nature and effect of the Insurance Change as required by s 1017B(3)-(4) of the Corporations Act, having regard to the matters pleaded in paragraphs 23, 24, 25, 26 and 26A of the FASOC and/or the reply to paragraph 22(d) of the Defence;
  3. alternatively, did not constitute a notice giving such members the information that was reasonably necessary for them to understand the nature and effect of the Insurance Change as required by s 1017B(3)-(4) of the Corporations Act, having regard to the matters pleaded in:
    - a. paragraphs 21(b), 21(c), 21(d), 22, 23, 24, 25, 26 and 26A and/or 32 of the FASOC; and
    - b. paragraphs 21(b), 21(c), 21(d) and/or 32A of the FASOC.
  - (c) otherwise joins issue with paragraph 25 of the Defence, save for the admissions contained therein.
9. As to paragraph 26 of the Defence, the Applicant:
- (a) repeats paragraphs 6, 7 and 8 of this Reply;
  - (b) admits that the content of the May Letters varied in that each contained personalised information tailored to the particular recipient, but says that the May Letters did not vary in that they each:
    - (i) did include the statements pleaded in paragraph 26(a) to (d) of the FASOC; and
    - (ii) did not include:
      1. a statement (as pleaded in paragraphs 24, 26(e) and 26B(d) of the FASOC) that it was necessary for a member to make an election in writing if they wished to be occupationally rated;
      2. a statement (as pleaded in paragraph 36(b) of the FASOC) that it was necessary for the member to make an election to be occupationally rated to enjoy lower insurance premiums associated with the Standard Rate, White Collar Rate and/or Professional Rate, if they qualified for one of the occupational ratings pleaded in paragraph 21(d) of the FASOC.

- (c) otherwise joins issue with paragraph 26 of the Defence, save for the admissions contained therein.
10. As to paragraph 26A of the Defence, the Applicant:
- (a) repeats paragraphs 6(b), 8(b) and 9 of this Reply, and says that the May Email:
- (i) did include the statements pleaded in paragraph 26B(a)-(b) of the FASOC; and
  - (ii) did not include:
    1. a statement (as pleaded in paragraphs 24, 26(e) and 26B(d) of the FASOC) that it was necessary for a member to make an election in writing if they wished to be occupationally rated;
    2. a statement (as pleaded in paragraph 36(b) of the FASOC) that it was necessary for the member to make an election to be occupationally rated to enjoy lower insurance premiums associated with the Standard Rate, White Collar Rate and/or Professional Rate, if they qualified for one of the occupational ratings pleaded in paragraph 21(d) of the FASOC.
- (b) otherwise joins issue with paragraph 26A of the Defence, save for the admissions contained therein.
11. As to paragraph 26B of the Defence, the Applicant:
- (a) repeats paragraphs 6, 7, 8, 9 and 10 of this Reply; and
- (b) otherwise joins issue with paragraph 26B of the Defence, save for the admissions contained therein.
12. As to paragraph 26C of the Defence, the Applicant:
- (a) repeats paragraph 11 of this Reply; and
- (b) otherwise joins issue with paragraph 26C of the Defence, save for the admissions contained therein
13. As to paragraph 27 of the Defence, the Applicant refers to paragraph 2 above, and says further that the Insurance Change (including so far as it affected accumulation superannuation products) concerned:
- (a) the fees and costs charged in relation to the QSuper Fund, within the meaning of cl. 8(1)(a) of Schedule 10D; and

- (b) how the costs associated with the insurance products are calculated, within the meaning of cl. 10(2)(d) of Schedule 10D.
14. As to paragraph 28 of the Defence, the Applicant refers to paragraphs 2 and 13 above, and says further that the Insurance Change (including so far as it affected accumulation superannuation products) was a matter that would have been required by Schedule 10D to be included in a Product Disclosure Statement for an interest in the QSuper Fund, within the meaning of s1017B(1A)(a) of the Corporations Act.
15. As to paragraph 30 of the Defence, the Applicant:
- (a) repeats paragraphs 6, 7, 8, 9, 10, 11 and 12 of this Reply;
- (b) otherwise joins issue with paragraph 30 of the Defence.
16. As to paragraph 44(c)(i) of the Defence, the Applicant admits that paragraph.
17. As to paragraph ~~44(e)~~ 47(e) of the Defence, the Applicant:
- (a) refers to and repeats paragraphs 3(b) and 4 above; and
- (b) says further that:
- (i) Group Members who satisfy the definitions in sub-paragraphs (b) and (c) of paragraph 3 of the FASOC received a payment from a Fund Member, or a received a transfer of a Fund Member's interest, in the circumstances set out in sub-paragraph (c)(i) and (ii) of paragraph 3 of the FASOC; and
- (ii) the Fund Member in (i) was eligible for a standard occupational rating, or a white collar or professional rating.
18. As to paragraph 48 of the Defence, the Applicant:
- (a) admits that the pro forma electronic communication referred to in paragraph 44(e)(v) of the Defence (QSB.5001.003.0003), stated that:
- You have a wide range of options available to personalise your insurance premiums and cover based on your circumstances. For instance you can vary your premiums by being occupationally rated. You can also permanently opt in or out of cover.*
- (b) admits that the communication sent to members who had not elected to receive communications from QSuper by electronic mail referred to in Particular (v) to paragraph 44(e)(v) of the Defence (QSB.5001.0003.0001), stated that:
- You have a wide range of options available to personalise your insurance premiums and cover based on your circumstances. For instance you can vary your premiums by being occupationally rated. You can also permanently opt in or out of cover.*



(c) says that neither of the documents referred to in 18(a) or (b), included:

- (i) a statement (as pleaded in paragraphs 24, 26(e) and 26B(d) of the FASOC) that it was necessary for a member to make an election in writing if they wished to be occupationally rated;
- (ii) a statement (as pleaded in paragraph 36(b) of the FASOC) that it was necessary for the member to make an election to be occupationally rated to enjoy lower insurance premiums associated with the Standard Rate, White Collar Rate and/or Professional Rate, if they qualified for one of the occupational ratings pleaded in paragraph 21(d) of the FASOC.

(d) refers to and repeats paragraph 26(c), 26B(c) and (d), 26C, 30 and 32 and 32A of the FASOC; and

(e) otherwise joins issue with paragraph 48 of the Defence.

19. As to paragraph 49 of the Defence, the Applicant:

(a) In answer to sub-paragraphs 49(a) and (c):

- (i) repeats paragraphs 22, 24, 26, 26A-26C, 32, 32A and 44 of the FASOC;
- (ii) repeats paragraphs 6, 7, 8, 9, 10, 11 and 15 of this Reply; and
- (iii) says that it is just and equitable for the QSuper Board and not the Applicant to bear responsibility for the Applicant's loss and damage
- (iv) otherwise joins issue on sub-paragraph 49(a) of the Defence.

(b) in answer to sub-paragraphs 49(b) and (c), says that the time to plead Group Member claims will be after the trial of common questions.

Date: 25 February 2025



Signed by Craig Allsopp  
Lawyer for the Applicant

This Reply was prepared by Shine Lawyers, A Mobrici and TJD Chalke of counsel, and settled by William A D Edwards of King's Counsel.

**Certificate of lawyer**

I Craig Allsopp certify to the Court that, in relation to the reply filed on behalf of the Applicant, 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: 25 February 2025



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Signed by Craig Allsopp  
Lawyer for the Applicant