

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/11/2021 12:50:17 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### 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
File Number:	VID691/2021
File Title:	JESSICA AMY CHALLENGOR v QSUPER BOARD (ABN 32 125 059 006)
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads "Sia Lagos".

Dated: 24/11/2021 9:00:04 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



## Originating application starting a representative proceeding under Part IVA of the Federal Court of Australia Act 1976

No. 2021

Federal Court of Australia  
District Registry: Victoria  
Division: Commercial and Corporations National Practice Area

**JESSICA AMY CHALLENGOR**

Applicant

And

**QSUPER BOARD ABN 32 125 059 006**

Respondent

To the Respondent

The Applicant 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.

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:** Owen Dixon Commonwealth, Law Courts Building, 305 William Street, Melbourne VIC 3000

Date:

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

**Details of claim**

On the grounds stated in the accompanying Concise Statement, the Applicant claims, on its own behalf and on behalf of Group Members (as defined below):

Filed on behalf of (name & role of party) Jessica Amy Challenger  
Prepared by (name of person/lawyer) Joshua Aylward  
Law firm (if applicable) Shine Lawyers  
Tel (07) 3006 6082 Fax (07) 3229 1999  
Email jaylward@shine.com.au  
**Address for service** Level 13, 160 Ann Street, BRISBANE QLD 4000  
(include state and postcode)



***Monetary relief in respect of contravention of s 1017B***

1. An order, pursuant to s1022B(2)(e) of the *Corporations Act 2001* (Cth) (**Corporations Act**), that the Respondent (**QSuper Board**) compensate the Applicant and the Group Members for the damage suffered by them which resulted from the QSuper Board's contraventions of s1017B(1) of the Corporations Act.
2. *Alternatively to Order 1*, an injunction pursuant to s1324(1) of the Corporations Act requiring the QSuper Board to repay to the Applicant and Group Members amounts equal to the excess insurance premiums deducted from their accounts by reason of them not having been subject to Occupational Rates;
3. *Further, or alternatively to Orders 1 and 2*, an order pursuant to s 1324(10) of the Corporations Act that the QSuper Board compensate the Applicant and the Group Members for the damage suffered by them which resulted from the QSuper Board's contraventions of s1017B(1) of the Corporations Act.

***Monetary relief in respect of contravention of misleading or deceptive conduct***

4. *Further or in the alternative*, an order that the QSuper Board pay to the Applicant and the Group Members damages pursuant to:
  - (a) s1041I of the Corporations Act;
  - (b) s12GF of the *Australian Securities and Investments Commission Act 2001* (Cth); and/or
  - (c) s236 of the *Australian Consumer Law*.
5. *Further or in the alternative to Order 4*, an injunction pursuant to:
  - (a) s1324 of the Corporations Act;
  - (b) s12GD of the *Australian Securities and Investments Commission Act 2001* (Cth); and/or
  - (c) s232 of the *Australian Consumer Law*,
 requiring the QSuper Board to repay to the Applicant and Group Members amounts equal to the excess insurance premiums deducted from their accounts by reason of them not having made an election to be subject to Occupational Rates;
6. *Further or in the alternative to Orders 4 and 5*, a compensation order pursuant to:
  - (a) s1324(10) and/or s1325 of the Corporations Act;
  - (b) s12GM of the *Australian Securities and Investments Commission Act 2001* (Cth); and/or
  - (c) ss237 and/or 243 of the *Australian Consumer Law*.

***Monetary relief in respect of contravention of s 55(3) of SIS Act and general law duties***

7. *Further or in the alternative*, an order that the QSuper Board pay statutory compensation pursuant to s55(3) of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**) to the Applicant and Group Members in the amount of the loss or damage suffered by them as a result



of a contravention of s55(1) (as in force prior to its repeal on 6 April 2019) or s54B(1) of the SIS Act which resulted from the QSuper Board's contraventions of the SIS Act.

8. *Further or in the alternative to Order 7*, an order in the equitable jurisdiction of the Court that the QSuper Board pay the Applicant and Group Members equitable compensation for the breaches by the QSuper Board of its general law obligations to the Applicant and Group Members.

***Alternative Relief (restoration of fund)***

9. *Further, or in the alternative to Orders 1-3*, an order pursuant to s1324(1) of the Corporations Act requiring the QSuper Board to restore to the accounts of the Applicant and Group Members in the QSuper Fund such amount as is necessary to restore those accounts to the balance they would have had, had the Applicant and Group Members been subject to Occupational Rates.

10. *Further, or in the alternative to Orders 4-6*, an order pursuant to:

- (a) s1324 of the Corporations Act;
- (b) s12GD of the *Australian Securities and Investments Commission Act 2001* (Cth); and/or
- (c) s232 of the *Australian Consumer Law*,

requiring the QSuper Board to restore to the accounts of the Applicant and Group Members in the QSuper Fund such amount as is necessary to restore those accounts to the balance they would have had, had the Applicant and Group Members been subject to Occupational Rates.

11. *Further, or in the alternative to Orders 7-8*, an order in the equitable jurisdiction of the Court for account, requiring the QSuper Board to restore to the accounts of the Applicant and Group Members in the QSuper Fund such amount as is necessary to restore those accounts to the balance they would have had, had the Applicant and Group Members been subject to Occupational Rates.

***Other relief***

12. Interest pursuant to s51A of the *Federal Court of Australia Act 1976* (Cth) on all monetary sums awarded.
13. Costs;
14. Such further or other relief as the Court determines is appropriate.

**Questions common to claims of group members**

Capitalised terms have the same meaning as in the Concise Statement.

The questions of law or fact common to the claims of the group members are:

1. Whether the Notice issued by the QSuper Board to the Accumulation Members satisfied the requirements of s1017B(1A) and (4) of the Corporations Act.
2. If the answer to question 1 is no, whether the Applicant and Group Members suffered loss or damage because of that contravention.



3. Whether the covenants in s52 of the SIS Act are implied terms of the QSuper Deed.
4. Whether the conduct of the QSuper Board alleged in the Concise Statement contravened a covenant or covenants contained or taken to be contained in the QSuper Deed.
5. In the answer to questions 3 and 4 is yes, whether the Applicant and Group Members suffered loss or damage by or resulting from each such contravention.
6. Whether the QSuper Board breached the general law duties owed by it to the beneficiaries of the QSuper Fund.
7. If the answer to question 6 is yes, whether the Applicant and Group Members suffered loss or damage by or resulting from each such contravention.
8. If the answer to question 2, 5 and/or 7 is yes, the correct measure of the compensation for which the QSuper Board may be liable to the Applicant and the Group Members.

### **Representative action**

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.

The group members to whom this proceeding relates are all persons who, not being a Judge, Judicial Registrar or Registrar of the Federal Court of Australia or of the High Court of Australia:

1. were Accumulation Members of the QSuper Fund on 17 May 2016, and who, but for their failure to make an election to be subject to Occupational Rates, would have been entitled to a Professional Rate or White Collar Rate (**Fund Member**) after 1 July 2016 had they made the necessary election under the Insurance Policy; or
2. at any time after 1 July 2016 received payment from a deceased Fund Member of all or part of the interest of the Fund Member attributable to the Fund Member's interest in the QSuper Fund; or
3. satisfy both of the following paragraphs:
  - (a) was the spouse of a person who was a Fund Member;
  - (b) pursuant to an order or settlement in a *Family Law Act 1975* (Cth) proceeding or a superannuation agreement within the meaning of part VIIIB of that Act, at any time received a transfer from a Fund Member of all or part of the Fund Member's interest in the QSuper Fund.

### **Applicant's address**

The Applicant's address for service is:

Place: Level 13, 160 Ann Street, BRISBANE QLD 4000

Email: jaylward@shine.com.au



The Applicant's address is 55 Bridges Road, Morayfield QLD 4506

**Service on the Respondent**

It is intended to serve this application on the Respondent.

Date: 23 November 2021

A handwritten signature in blue ink, which appears to read "Joshua Aylward", is written over a horizontal dotted line.

Signed by Joshua Aylward  
Lawyer for the Applicant