

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 22/10/2021 5:52:17 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number:	VID28/2020
File Title:	SIMON MALLIA v COLONIAL FIRST STATE INVESTMENTS LTD & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 25/10/2021 4:20:51 PM AEDT

A handwritten signature in blue ink, reading "Sia Lagos".

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 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.



Form 17
Rule 8.05(1)(a)

Amended Statement of claim,
filed pursuant to leave granted by Justice Beach on 13 October 2021

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 trustee for Colonial First State First Choice Superannuation Trust and
Commonwealth Essential Super

First Respondent

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

Second Respondent

AIA Australia Limited (ACN 004 837 861)

Third Respondent

A Parties

- 1 The Applicant brings this proceeding as the representative party for and on behalf of the Group Members pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth).

Particulars

At the time of the filing of the Statement of Claim the claims of the Group
Members exceed 7 in number.

Filed on behalf of (name & role of party)	Simon Mallia (Applicant)		
Prepared by (name of person/lawyer)	Rebecca Jancauskas		
Law firm (if applicable)	Shine Lawyers		
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- 2 The Applicant is and was at all material times a member of the FirstChoice Personal Super superannuation fund.

Particulars

Account no. 0100 1631 4708

- 3 The members of the group to whom this proceeding relates (**Group Members**) are those persons who:

- (a) were members of at least one of the following superannuation funds:
 - (i) FirstChoice Personal Super and Pension (**FirstChoice Personal Super**);
 - (ii) FirstChoice Wholesale Personal Super and Pension (**FirstChoice Wholesale Personal Super**);
 - (iii) FirstChoice Employer Super (**FirstChoice Employer Super**);
 - (iv) Commonwealth Essential Super (**Commonwealth Essential Super**); and
- (b) held insurance cover under a group policy of insurance issued by the Second Respondent, Colonial Mutual Life Assurance Society Limited (**CommInsure**) to the First Respondent (**CFSIL**) as trustee of those funds in the period 22 January 2014 to 22 January 2020 (the **Relevant Period**).

- 4 CFSIL at all material times was, and is:

- (a) a company duly incorporated pursuant to the **Corporations Act 2001** (Cth) and capable of being sued;
- (b) a trading corporation within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
- (c) the holder of an Australian Financial Services Licence (licence no: 232468);
- (d) the trustee of the Colonial First State FirstChoice Superannuation Trust which includes a range of FirstChoice superannuation funds comprising:
 - (i) FirstChoice Personal Super;
 - (ii) FirstChoice Wholesale Personal Super;
 - (iii) FirstChoice Employer Super; and
 - (iv) Commonwealth Essential Super

(together the **CFSIL funds**);

- (e) the holder of a registrable superannuation entity (**RSE**) licence (licence no: 0002196);
- (f) a body corporate:
 - (i) carrying on the business of acting as a trustee of superannuation entities and investing money on behalf of the beneficiaries of those superannuation entities; and
 - (ii) holding itself out as having particular knowledge, skill and experience in carrying out such a business;
- (g) a subsidiary of the ultimate holding company, Commonwealth Bank of Australia (**CBA**);

Particulars

- (A) The shares in CFSIL were at all material times wholly owned by Capital 121 Pty Ltd which in turn was at all material times wholly owned by Commonwealth Insurance Holding Limited.
 - (B) Commonwealth Insurance Holding Limited was at all material times wholly owned by Colonial Holding Company Limited which in turn was at all material times a wholly owned subsidiary of CBA.
- (h) a related body corporate of CommInsure;
 - (i) a RSE licensee (**RSE licensee**) under s 10(1) of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**);
 - (j) part of a corporate group for the purpose of *Prudential Standard SPS 250 Insurance in Superannuation* (**SPS 250**).
- 5 Each reference to CFSIL in this pleading is to be read as a reference to CFSIL in its capacity as the trustee for the CFSIL funds.
- 6 The Second Respondent, CommInsure, at all material times was, and is:
- (a) the holder of an Australian Financial Services licence (licence no: 235030);
 - (b) a wholly owned subsidiary of CBA;
 - (c) a related body corporate of CFSIL;

- (d) registered under s 21 of the *Life Insurance Act 1995* (Cth) (**Life Insurance Act**) to issue life policies within the meaning of that Act;
- (e) carrying on a life insurance business within the meaning of the Life Insurance Act.

6A The Third Respondent, AIA Australia Limited (ACN 004 837 861) (**AIAA**), at all material times was, and is a company duly incorporated pursuant to the *Corporations Act 2001* (Cth) and capable of being sued.

B Background

B.1 Superannuation funds

- 7 CFSIL at all material times was, and is, the trustee of the Colonial First State FirstChoice Superannuation Trust established by a trust deed dated 29 April 1998 as amended (**FirstChoice Trust Deed**).

Particulars

The FirstChoice Trust Deed was originally dated 29 April 1998 and has been subsequently amended by various amending deeds from 25 March 2002 to 28 March 2017.

- 8 The Colonial First State FirstChoice Superannuation Trust at all material times was, and is:
- (a) a registrable superannuation entity within s 10(1) of the SIS Act;
 - (b) a regulated superannuation fund within s 19(1) of the SIS Act.
- 9 CFSIL had at all material times offered a range of superannuation funds which included:
- (a) FirstChoice Personal Super which:
 - (i) was launched in May 2002;
 - (ii) was closed to new members in May 2016;

Particulars

- (A) FirstChoice Personal Super PDS dated 22 October 2018 at cover & page 31;
- (B) The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**RC**) – Witness statement of L. M. Elkins dated 30 July 2018 at [10(b)];

(C) RC - Witness statement of P. Chun dated 31 July 2018 at [11(b)].

(b) FirstChoice Wholesale Personal Super which was launched in July 2004;

Particulars

RC - Witness statement of L.M. Elkins dated 26 July 2018 at [17(a)].

(c) FirstChoice Employer Super which:

- (i) was launched in August 2002; and
- (ii) was made available to employees of employers who had established default superannuation arrangements.

Particulars

- (A) FirstChoice Employer Super PDS dated 22 October 2018 at page 1;
- (B) RC - Witness statement of P Chun dated 31 July 2018 at [11(c)].

10 CFSIL at all material times was, and is, the trustee of the Commonwealth Essential Super established by a trust deed dated 21 December 2012 (**Commonwealth Essential Trust Deed**).

Particulars

The Commonwealth Essential Trust Deed was originally dated 21 December 2012

11 The Commonwealth Essential Super at all material times was, and is:

- (a) a registrable superannuation entity within s 10(1) of the SIS Act;
- (b) a regulated superannuation fund within s 19(1) of the SIS Act.

12 The Commonwealth Essential Super was launched in July 2013.

Particulars

- (i) Commonwealth Essential Super PDS dated 16 March 2019 at page 1;
- (ii) Commonwealth Essential Reference Guide dated 16 March 2019 at

pages 50 & 67.

B.2 Insurance

13 At all material times, members of the CFSIL funds could either:

- (a) obtain cover by default (**default cover**); or
- (b) choose to take up the cover on the advice of their financial adviser (**choice cover**).

Particulars

- (i) FirstChoice Personal Super PDS dated 28 May 2012 at page 2;
- (ii) FirstChoice Personal Super PDS dated 15 May 2017 at page 3;
- (iii) FirstChoice Personal Super PDS dated 22 October 2018 at page 2;
- (iv) FirstChoice Wholesale Personal Super dated 11 June 2013 at page 2;
- (v) FirstChoice Wholesale Personal Super dated 16 May 2016 at page 2;
- (vi) FirstChoice Wholesale Personal Super dated 22 October 2018 at page 2;
- (vii) FirstChoice Employer Super PDS dated 28 May 2012 at pages 1 & 2;
- (viii) FirstChoice Employer Super PDS dated 18 May 2015 at page 14;
- (ix) FirstChoice Employer Super PDS dated 16 May 2016 at page 16;
- (x) FirstChoice Employer Super PDS dated 18 September 2017 at pages 9 & 10;
- (xi) FirstChoice Employer Super PDS dated 22 October 2018 at page 19;
- (xii) Commonwealth Essential Super PDS dated 17 March 2018 at pages 3 & 4;
- (xiii) Commonwealth Essential Super PDS dated 16 March 2019 at pages 6 & 13.

B.3 Obligations of CFSIL under the SIS Act

14 At all material times the FirstChoice Trust Deed and the Commonwealth Essential Trust Deed contained the covenants set out in ss 52(2) and 52(7) of the SIS Act.

Particulars

s 52(1) of the SIS Act

15 At all material times CFSIL covenanted to:

- (a) exercise, in relation to all matters affecting the entity, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise in relation to an entity of which it is trustee and on behalf of the beneficiaries of which it makes investments;

Particulars

s 52(2)(b) of the SIS Act

- (b) perform the trustee's duties and exercise the trustee's powers in the best interests of the Applicant and Group Members;

Particulars

s 52(2)(c) of the SIS Act

- (c) where there is a conflict between the duties of the trustee to the beneficiaries, or the interests of the beneficiaries, and the duties of the trustee to any other person or the interests of the trustee or an associate of the trustee:
 - (i) to give priority to the duties to and interests of the beneficiaries over the duties to and interests of other persons; and
 - (ii) to ensure that the duties to the beneficiaries are met despite the conflict; and
 - (iii) to ensure that the interests of the beneficiaries are not adversely affected by the conflict; and
 - (iv) to comply with the prudential standards in relation to conflicts.

Particulars

s 52(2)(d) of the SIS Act

- (d) formulate, review regularly and give effect to an insurance strategy for the benefit of beneficiaries of the entity that includes provisions addressing each of the following matters:
 - (i) the kinds of insurance that are to be offered to, or acquired for the benefit of, beneficiaries;
 - (ii) the level, or levels, of insurance cover to be offered to, or acquired for the benefit of, beneficiaries;

- (iii) the basis for the decision to offer or acquire insurance of those kinds, with cover at that level or levels, having regard to the demographic composition of the beneficiaries of the entity;
- (iv) the method by which the insurer is, or the insurers are, to be determined;

Particulars

s 52(7)(a) of the SIS Act

- (e) consider the cost to all beneficiaries of offering or acquiring insurance of a particular kind, or at a particular level;

Particulars

s 52(7)(b) of the SIS Act

- (f) only offer or acquire insurance of a particular kind, or at a particular level, if the cost of the insurance does not inappropriately erode the retirement income of beneficiaries.

Particulars

s 52(7)(c) of the SIS Act

B.4 SPS 250

- 16 From 1 July 2013, CFSIL had imposed on it as a RSE licensee the condition that it would comply with the prudential standards made by the Australian Prudential Regulation Authority (**APRA**) under s 34C(1) of the SIS Act.

Particulars

s 29E(1)(a) and 10(1) of the SIS Act

- 17 In July 2013, pursuant to s 34C(1) of the SIS Act, APRA made SPS 250 which required that:

- (a) all RSE licensees must comply with SPS 250 in its entirety, unless otherwise expressly indicated;

Particulars

SPS 250 at [3]

- (b) where an RSE licensee is part of a corporate group, and the RSE licensee utilises group policies or functions, the Board must approve the use of group policies and functions and must ensure that these policies and functions give appropriate regard to the RSE licensee's business operations and its specific requirements;

Particulars

SPS 250 at [7]

- (c) an RSE licensee must have in place an insurance management framework to manage making insured benefits available to beneficiaries;

Particulars

SPS 250 at [8]

- (d) an RSE licensee's insurance management framework is the totality of systems, structures, policies, processes and people to manage making insured benefits available to beneficiaries;

Particulars

SPS 250 at [9]

- (e) an RSE licensee's insurance management framework must be appropriate to the size, business mix and complexity of the RSE licensee's business operations and to the types of insured benefits made available;

Particulars

SPS 250 at [10]

- (f) an RSE licensee's insurance management framework must include:
- (i) the insurance strategy required under s 52(7) of the SIS Act (which must also comply with the requirements of SPS 250);
 - (ii) policies and procedures of the RSE licensee relevant to making insured benefits available to beneficiaries, that cover but are not limited to:
 - (iii) the process by which the cost to the RSE licensee of insurance premiums is recovered from the RSE(s);

- (iv) the process for monitoring and reviewing the administration of insurance;
- (v) underwriting;
- (vi) claims assessment;
- (vii) clearly defined roles and responsibilities and lines of reporting for the oversight of the insurance management framework;
- (viii) a review process to ensure the insurance management framework remains appropriate and effective; and
- (ix) a policy for managing declined applications for insurance, applications resulting in reduced cover or restrictions, terminations of cover and requests for reinstatement;

Particulars

SPS 250 at [12]

- (g) an RSE licensee's insurance strategy must document:
 - (i) how the RSE licensee has regard to each of the factors in s 52(7) of the SIS Act;
 - (ii) the process of monitoring, reviewing and renewing the insured benefits made available to beneficiaries;

Particulars

SPS 250 at [17]

- (h) an RSE licensee must:
 - (i) develop and implement a selection process for choosing an insurer that includes, at a minimum, consideration of the prospective insurer's terms of cover and exclusions, claims philosophy, the reasonableness of the premiums to be charged and the terms of any delegation to any other person of functions associated with making available insured benefits;
 - (ii) undertake a due diligence review of the selected insurer;

Particulars

SPS 250 at [22(a) & (b)]

- (i) an RSE licensee must be able to satisfy itself that the engagement of an insurer is conducted at arm's length and is in the best interests of beneficiaries;

Particulars

SPS 250 at [23]

- (j) an RSE licensee must be able to demonstrate to APRA that the engagement of an insurer is conducted at arm's length and is in the best interests of beneficiaries;

Particulars

SPS 250 at [23]

- (k) an RSE licensee must ensure that the appropriateness, effectiveness and adequacy of its insurance management framework are subject to a review by operationally independent, appropriately trained and competent persons at least, every three years.

Particulars

SPS 250 at [25]

B.5 Insurance

18 At all material times, CFSIL offered the following Group Insurance cover to members:

- (a) death only cover (**life insurance**);
 - (b) death and Total and Permanent Disablement (**TPD**) cover;
 - (c) salary continuance Insurance (**income protection**);
- (CommInsure Group Policies).**

Particulars

- (i) FirstChoice Personal Super PDS dated 28 May 2012 at page 15;
- (ii) FirstChoice Personal Super PDS dated 18 May 2015 at page 1;
- (iii) FirstChoice Personal Super PDS dated 18 September 2017 at page 35;
- (iv) FirstChoice Personal Super PDS dated 22 October 2018 at page 35;
- (v) FirstChoice Wholesale Personal Super dated 11 June 2013 at page 2;

- (vi) FirstChoice Wholesale Personal Super dated 16 May 2016 at page 2;
- (vii) FirstChoice Wholesale Personal Super dated 22 October 2018 at page 2;
- (viii) FirstChoice Employer Super PDS dated 28 May 2012 at page 14;
- (ix) FirstChoice Employer Super PDS dated 18 May 2015 at page 14;
- (x) FirstChoice Employer Super PDS dated 16 May 2016 at page 16;
- (xi) FirstChoice Employer Super PDS dated 18 September 2017 at page 1;
- (xii) FirstChoice Employer Super PDS dated 22 October 2018 at page 18;
- (xiii) Commonwealth Essential Super PDS dated 17 March 2018 at page 13;
- (xiv) Commonwealth Essential Super PDS dated 16 March 2019 at page 13.

19 At all material times, for the purpose of providing the CommInsure Group Policies, CFSIL obtained from CommInsure or renewed with CommInsure policies of group insurance for the members of:

(a) FirstChoice Personal Super;

Particulars

- (i) Colonial First State FirstChoice Personal Super Group Life Insurance Policy – Policy No. K004737 dated 28 May 2012;
- (ii) Colonial First State FirstChoice Personal Super Group Life Insurance Policy – Policy No. K006064;
- (iii) Further particulars will be supplied after discovery.

(b) FirstChoice Wholesale Personal Super;

Particulars

- (i) Colonial First State FirstChoice Wholesale Personal Super Group Life Insurance Policy – Policy No. K006064WI dated 28 May 2012;
- (ii) Colonial First State FirstChoice Wholesale Personal Super Group Income Protection Policy – Policy No. K006064WL dated 28 May 2012;
- (iii) Further particulars will be supplied after discovery.

- (c) FirstChoice Employer Super;

Particulars

- (i) Colonial First State FirstChoice Employer Super (The employer division of the Colonial First State FirstChoice Superannuation Trust) (Employee Members) Group Life Insurance Policy – Policy No. K006126 dated 28 May 2012;
- (ii) Colonial First State FirstChoice Employer Super (The employer division of the Colonial First State FirstChoice Superannuation Trust) Group Income Protection – Policy No. K006127 dated 28 May 2012;
- (iii) Colonial First State FirstChoice Employer Super (The employer division of the Colonial First State FirstChoice Superannuation Trust) (Nominated Spouses) Group Income Protection – Policy No. K006128 dated 28 May 2012;
- (iv) Colonial First State FirstChoice Employer Super (The employer division of the Colonial First State FirstChoice Superannuation Trust) (Nominated Spouses) Group Income Protection – Policy No. K006232 dated 28 May 2012;
- (v) Further particulars will be supplied after discovery.

- (d) Commonwealth Essential Super;

Particulars

- (i) Commonwealth Essential Super Group Life Insurance Policy – Policy No. K006468 dated 3 May 2013;
- (ii) Further particulars will be supplied after discovery.

B.6 Insurance Service Agreement

- 20 At all material times CFSIL and CommInsure had entered into an Insurance Service Agreement (**ISA**) which was intended to assist CFSIL to comply with its obligations under SPS 250.

Particulars

- (a) The Insurance Service Agreement dated 30 June 2013 between CFSIL and CommInsure (**2013 ISA**);

- (b) The Insurance Service Agreement dated 28 March 2017 between CFSIL and CommInsure which replaced the 2013 ISA (**2017 ISA**).

21 Under the ISA CommInsure agreed:

- (a) to co-operate with CFSIL in providing the services identified in Schedule 1;

Particulars

- (A) 2013 ISA at [3.1(b)(i)] & Schedule 1;
- (B) 2017 ISA at [3.1(b)(i)] & Schedule 1.

- (b) to provide the services outlined in Schedule 2 of the 2013 ISA and Schedule 1 of the 2017 ISA including undertaking a premium review on a triennial basis (or such other period as agreed by the parties) and provide a report as to the outcome of that review to the trustee;

Particulars

- (A) 2013 ISA at [3.1(b)(ii)] & Schedule 2;
- (B) 2017 ISA at [3.1(b)(ii)] & Schedule 1.

- (c) (up to 27 March 2017) to provide to CFSIL the data in accordance with Schedule 3 including the data matching the requirements of SPS 250 broken down into the types of insurance category as per the table in Schedule 3;

Particulars

2013 ISA at [3.1(b)(iv)] & Schedule 3

- (d) (from 28 March 2017) to provide to CFSIL:
 - (i) the data required to meet SPS 250 and SPG 250 in the appropriate form to meet those requirements;
 - (ii) other data and reports and at such levels as agreed by the parties, including but not limited to the data set out in Schedule 2;

Particulars

2017 ISA at [3.1(b)(iv)] & Schedule 2

- (e) (from 28 March 2017) to use its best endeavours to ensure that all data and reports provided were complete and accurate;

Particulars

2017 ISA at [3.1(b)(v)] & Schedule 2

- (f) to establish and maintain appropriate controls, assessment and monitoring procedures as required to support the service standards identified in Schedule 2 of the 2013 ISA and Schedule 1 of the 2017 ISA;

Particulars

- (A) 2013 ISA at [3.1(b)(v)] & Schedule 2;
- (B) 2017 ISA at [3.1(b)(vi)] & Schedule 1.

- (g) (up to 27 March 2017) to perform regular quality checking and process reviews relating to the items specified in the service standards identified in Schedule 2; and

Particulars

2013 ISA at [3.1(b)(v)] & Schedule 2

- (h) on becoming aware of any material failure in the performance of the services, CommInsure would:
 - (i) notify CFSIL;
 - (ii) prevent ongoing and future occurrence of the failure; and
 - (iii) consult with CFSIL with a view to rectifying the failure.

Particulars

2013 ISA at [3.1(f)]

22 Under the ISA CFSIL acknowledged that:

- (a) it remained liable for its acts or omissions in relation to this agreement as if they were their own acts and omissions; and

Particulars

- (A) 2013 ISA at [3.2(a)(i)];

(B) 2017 ISA at [3.1(f)].

- (b) a breach or failure by it to perform any of its duties will not excuse CFSIL from performance of its obligations in accordance with the agreement nor would it affect the liability of CFSIL under this agreement.

Particulars

(A) 2013 ISA at [3.2(a)(ii)];

(B) 2017 ISA at [3.2(a)(ii)].

B.7 Insurance Management Framework and Insurance Strategy

- 23 At all material times the insurance relationship between CFSIL and CommInsure was further governed by various versions of CFSIL's Insurance Management Framework (IMF).

Particulars

- (i) IMF Version 2 dated 14 June 2013;
- (ii) IMF Version 3 dated 3 June 2014;
- (iii) IMF Version 4 dated 22 April 2015;
- (iv) IMF Version 5 dated 19 April 2016;
- (v) IMF Version 6 dated 2 May 2017;
- (vi) IMF Version 7 dated 18 May 2018;
- (vii) Witness statement of P. Chun dated 31 August 2018 at [19] & [20].

- 24 The IMF:

- (a) was developed in purported compliance with SPS 250;
- (b) detailed the insurance offered by CFSIL to members of each of the CFSIL funds;
- (c) described the systems, structures, policies, processes and people used by the trustee to manage the offering of insured benefits and the acquiring of insurance in relation to those benefits;
- (d) set out CFSIL's insurance strategy;
- (e) indicated that the overarching principle of the insurance strategy was to ensure that the insurance offering was managed in the best interests of members and

included selecting an insurer that provided “competitive” terms and conditions and “reasonable” and “sustainable” premium rates;

- (f) set out the activities to be undertaken by CFSIL for monitoring, due diligence and approval of the insurance provider;
- (g) designated CommInsure as the ‘incumbent insurance provider’;

Particulars

- (A) IMF Version 2 dated 14 June 2013 at [5.3];
- (B) IMF Version 3 dated 3 June 2014 at [5.3];
- (C) IMF Version 4 dated 22 April 2015 at [6.6];
- (D) IMF Version 5 dated 19 April 2016 at [6.6];
- (E) IMF Version 6 dated 2 May 2017 at [6.6];
- (F) IMF Version 7 dated 18 May 2018 at [6.6];
- (G) Witness statement of P. Chun dated 31 August 2018 at [19] & [20].

- (h) acknowledged that the incumbent insurer, CommInsure, was a related company to CFSIL and currently provided insurance cover to CFSIL on behalf of the members of the CFSIL funds;

Particulars

- (A) IMF Version 2 dated 14 June 2013 at [5.3];
- (B) IMF Version 3 dated 3 June 2014 at [5.3];
- (C) IMF Version 4 dated 22 April 2015 at [6.6];
- (D) IMF Version 5 dated 19 April 2016 at [6.6];
- (E) IMF Version 6 dated 2 May 2017 at [6.6];
- (F) IMF Version 7 dated 18 May 2018 at [6.6];
- (G) Witness statement of P. Chun dated 31 August 2018 at [19] & [20].

- (i) acknowledged that, as CommInsure was a related party to CFSIL, the processes and agreements referred to in the IMF were in place to ensure that

CFSIL as the RSE licensee acted at arm's length and in the best interests of members;

Particulars

- (A) IMF Version 2 dated 14 June 2013 at [5.3];
- (B) IMF Version 3 dated 3 June 2014 at [5.3];
- (C) IMF Version 4 dated 22 April 2015 at [6.6];
- (D) IMF Version 5 dated 19 April 2016 at [6.6];
- (E) IMF Version 6 dated 2 May 2017 at [6.6];
- (F) IMF Version 7 dated 18 May 2018 at [6.6];
- (G) Witness statement of P. Chun dated 31 August 2018 at [19] & [20].

- (j) indicated that the General Manager, Product and Investments of CFSIL was responsible for conducting the annual review of the insurer(s), maintaining regular contact with senior management of the insurer(s) and reporting the findings from the review to the board of CFSIL;

Particulars

- (A) IMF Version 2 dated 14 June 2013 at [5.5];
- (B) IMF Version 3 dated 3 June 2014 at [5.5];
- (C) IMF Version 4 dated 22 April 2015 at [6.7];
- (D) IMF Version 5 dated 19 April 2016 at [6.7];
- (E) IMF Version 6 dated 2 May 2017 at [6.7];
- (F) IMF Version 7 dated 18 May 2018 at [6.7];
- (G) Witness statement of P. Chun dated 31 August 2018 at [19] & [20].

- (k) the annual review of the insurer relationship would consider, but not be limited to, consideration of the insurer(s)'s processes and control environment, underwriting and claims management philosophy, data control and integrity, performance against service level agreements, risk and compliance controls, financial stability and balance sheet strength and market competitiveness;

Particulars

- (A) IMF Version 2 dated 14 June 2013 at [5.5];
- (B) IMF Version 3 dated 3 June 2014 at [5.5];
- (C) IMF Version 4 dated 22 April 2015 at [6.7];
- (D) IMF Version 5 dated 19 April 2016 at [6.7];
- (E) IMF Version 6 dated 2 May 2017 at [6.7];
- (F) IMF Version 7 dated 18 May 2018 at [6.7];
- (G) Witness statement of P. Chun dated 31 August 2018 at [19] & [20].

- (I) from 22 April 2015 onwards, indicated that annual market benchmarking was undertaken to ensure premium rates were competitive relative to comparable (non—related party) products on the market and were appropriate to the different segments of its market (if relevant);

Particulars

- (A) IMF Version 4 dated 22 April 2015 at [6.3];
- (B) IMF Version 5 dated 19 April 2016 at [6.3];
- (C) IMF Version 6 dated 2 May 2017 at [6.3];
- (D) IMF Version 7 dated 18 May 2018 at [6.3];
- (E) Witness statement of P. Chun dated 31 August 2018 at [19] & [20].

- (m) from 22 April 2015 indicated that CFSIL, in order to monitor emerging claims experience, would request from the insurer information such as loss ratios, incidence rates, average size of claim amounts, decline rates and reported claim values, such information providing insight as to whether the premium rates were “sustainable” or were likely to increase or decrease in the future;

Particulars

- (A) IMF Version 4 dated 22 April 2015 at [6.3].
- (B) IMF Version 5 dated 19 April 2016 at [6.3];
- (C) IMF Version 6 dated 2 May 2017 at [6.3];
- (D) IMF Version 7 dated 18 May 2018 at [6.3];

- (E) Witness statement of P. Chun dated 31 August 2018 at [19] & [20].

- (n) from 22 April 2015 onwards indicated that premiums deducted from members' accounts to pay for insurance cover had the potential to reduce retirement income;

Particulars

- (A) IMF Version 4 dated 22 April 2015 at [6.4];
- (B) IMF Version 5 dated 19 April 2016 at [6.4];
- (C) IMF Version 6 dated 2 May 2017 at [6.4];
- (D) IMF Version 7 dated 18 May 2018 at [6.4];
- (E) Witness statement of P. Chun dated 31 August 2018 at [19] & [20].

- (o) indicated that CFSIL was responsible for reviewing the premium rates for each product before the expiration of the premium rate guarantee period and the review was to ensure that the premiums were aligned with industry benchmarks and remained appropriate to the membership;

Particulars

- (A) IMF Version 2 dated 14 June 2013 at [5.7] & Appendix 2;
- (B) IMF Version 3 dated 3 June 2014 at [5.7] & Appendix 2;
- (C) IMF Version 4 dated 22 April 2015 at [6.9] & Appendix 2;
- (D) IMF Version 5 dated 19 April 2016 at [6.9] & Appendix 2;
- (E) IMF Version 6 dated 2 May 2017 at [6.9] & Appendix 2;
- (F) IMF Version 7 dated 18 May 2018 at [6.9] & Appendix 2;
- (G) Witness statement of P. Chun dated 31 August 2018 at [19] & [20].

- (p) indicated that an annual review be undertaken of the insurance offering and product features against competitors in the market to ensure that any related party arrangement was "competitive" with external offers and would include accessing any independent research data and benchmarking service level standards;

Particulars

- (A) IMF Version 2 dated 14 June 2013 at [5.3];
- (B) IMF Version 3 dated 3 June 2014 at [5.3];
- (C) IMF Version 4 dated 22 April 2015 at [6.6];
- (D) IMF Version 5 dated 19 April 2016 at [6.6];
- (E) IMF Version 6 dated 2 May 2017 at [6.6];
- (F) IMF Version 7 dated 18 May 2018 at [6.6];
- (G) Witness statement of P. Chun dated 31 August 2018 at [19] & [20].

(q) indicated that in addition to enabling CFSIL to obtain competitive insurance terms and conditions and premium rates, CFSIL considered that the current insurance arrangements with CommInsure entailed the following benefits:

- (i) access to senior management to efficiently resolve issues as they arose;
- (ii) integrated systems that provided speed and efficiency; and
- (iii) the ability to better negotiate competitive terms and conditions due to ease of access;

Particulars

- (A) IMF Version 2 dated 14 June 2013 at [5.3];
- (B) IMF Version 3 dated 3 June 2014 at [5.3];
- (C) IMF Version 4 dated 22 April 2015 at [6.6];
- (D) IMF Version 5 dated 19 April 2016 at [6.6];
- (E) IMF Version 6 dated 2 May 2017 at [6.6];
- (F) IMF Version 7 dated 18 May 2018 at [6.6];
- (G) Witness statement of P. Chun dated 31 August 2018 at [19] & [20].

(r) indicated that in renewing or exiting the insurance arrangement, the following considerations would be taken into account: the market environment for insurance; premiums charged; policy terms and conditions; administration and

system efficiency; the insurer's claims management philosophy, processes and service; risks and costs of any transfer (including takeover terms) to a new insurer; and data control and integrity;

Particulars

- (A) IMF Version 2 dated 14 June 2013 at [5.4];
- (B) IMF Version 3 dated 3 June 2014 at [5.4];
- (C) IMF Version 4 dated 22 April 2015 at [6.8];
- (D) IMF Version 5 dated 19 April 2016 at [6.8];
- (E) IMF Version 6 dated 2 May 2017 at [6.8];
- (F) IMF Version 7 dated 18 May 2018 at [6.8];
- (G) Witness statement of P. Chun dated 31 August 2018 at [19] & [20].

- (s) from 14 June 2013 to 21 April 2015, only allowed CFSIL to consider a replacement insurer where the incumbent insurer was materially impacted in its ability to make insured benefits available to members and there was no reasonable plan in place to remediate;

Particulars

IMF Version 2 dated 14 June 2013 at [5.6];

- (t) from 22 April 2015, only allowed CFSIL to consider a replacement insurer where the incumbent insurer did not continue to meet the needs of CFSIL and the members (including meeting the minimum requirements in the table in [6.5]);

Particulars

- (A) IMF Version 4 dated 22 April 2015 at [6.5];
- (B) IMF Version 5 dated 19 April 2016 at [6.5];
- (C) IMF Version 6 dated 2 May 2017 at [6.5];
- (D) IMF Version 7 dated 18 May 2018 at [6.5].

- (u) allowed CFSIL to consider a review of the insurer if the insurer was unable to meet agreed service level standards over more than two consecutive quarters and had no reasonable plan to remediate, the insurer could not meet the terms

of the policy or claims were not paid in accordance with the policy terms and conditions;

Particulars

- (A) IMF Version 2 dated 14 June 2013 at [5.5];
- (B) IMF Version 3 dated 3 June 2014 at [5.5];
- (C) IMF Version 4 dated 22 April 2015 at [6.7];
- (D) IMF Version 5 dated 19 April 2016 at [6.7];
- (E) IMF Version 6 dated 2 May 2017 at [6.7];
- (F) IMF Version 7 dated 18 May 2018 at [6.7].

- (v) indicated that the IMF and insurance strategy would be reviewed at least annually or when there were significant changes to the business environment or fund operations to ensure that the IMF and insurance strategy remained appropriate and effective;

Particulars

- (A) IMF Version 2 dated 14 June 2013 at [8];
- (B) IMF Version 3 dated 3 June 2014 at [8];
- (C) IMF Version 4 dated 22 April 2015 at [9];
- (D) IMF Version 5 dated 19 April 2016 at [9];
- (E) IMF Version 6 dated 2 May 2017 at [9];
- (F) IMF Version 7 dated 18 May 2018 at [9].

- (w) indicated that the review of the IMF and insurance strategy would be conducted by an operationally independent, appropriately trained and competent person and include an assessment of significant issues that may have been reported during the relevant period for purposes of assessing compliance with the IMF and insurance strategy.

Particulars

- (A) IMF Version 2 dated 14 June 2013 at [8];
- (B) IMF Version 3 dated 3 June 2014 at [8];
- (C) IMF Version 4 dated 22 April 2015 at [9];

- (D) IMF Version 5 dated 19 April 2016 at [9];
- (E) IMF Version 6 dated 2 May 2017 at [9];
- (F) IMF Version 7 dated 18 May 2018 at [9].

C Reviews of the group insurance

C.1 2013 review

- 25 In or about June 2013 CFSIL carried out a review of the IMF (the **2013 annual review**).
- 26 On or about 14 June 2013 the findings of the 2013 annual review were communicated to the board of CFSIL in the board paper dated 14 June 2013.

Particulars

Board paper no. CFSIL 86/2013 dated 14 June 2013

- 27 The board paper dated 14 June 2013 recommended that the board of CFSIL approve the IMF (including insurance strategy) effective 1 July 2013.

Particulars

Board paper no. CFSIL 86/2013 dated 14 June 2013 at [2.1]

- 28 The 2013 annual review did not identify that the IMF:
 - (a) materially constrained CFSIL from taking all reasonable steps to obtain insurance for its members from an insurer other than CommInsure;
 - (b) set out the processes which were likely to result in the selection of CommInsure as the insurer for its members;
 - (c) did not provide for a process that allowed CFSIL to take all reasonable steps to obtain insurance which was the most suitable and at premiums which were fair and the most economical (or lowest) for members of the CFSIL funds that could reasonably be obtained;
 - (d) did not provide for a regular open insurance or reinsurance market tender to take place or for competing proposals from third party insurers to be solicited;
 - (e) did not provide for an independent external actuary to carry out a review of the premiums proposed by CommInsure.

Particulars

Board paper no. CFSIL 86/2013 dated 14 June 2013.

29 On 14 June 2013 the board of CFSIL:

- (a) considered and discussed the board paper dated 14 June 2013;
- (b) approved the IMF (including Insurance Strategy) effective 1 July 2013;
- (c) took no other step to vary or alter the insurance arrangements with CommInsure;

(the IMF approval decision).

Particulars

- (i) Board paper no. CFSIL 38/2014 dated 3 June 2014 at [3.1];
- (ii) IMF Version 2 dated 14 June 2013 at page 2.

30 As a result of the IMF approval decision, CFSIL was bound by an IMF that:

- (a) did not allow CFSIL to take all reasonable steps to select the most appropriate insurer for the members of the CFSIL funds;
- (b) did not allow CFSIL to take all reasonable steps to obtain insurance which was the most suitable and at premiums which were fair and the most economical (lowest) for the members of the CFSIL funds that could reasonably be obtained;
- (c) alternatively to (a) and (b) above, materially constrained CFSIL from taking the steps referred to in subparagraphs (a) and (b) above;
- (d) was likely to result in the selection of CommInsure as the insurer for its members;
- (e) did not provide for a regular open insurance or reinsurance market tender to be placed or for competing proposals from third party insurers to be solicited;
- (f) did not provide for an independent external actuary to carry out a review of the premiums proposed by CommInsure; and
- (g) adversely affected the financial interests of the Applicant and each of the Group Members.

C.2 2014 review

31 In about May 2014 CFSIL carried out an annual review of CommInsure as the group insurer for the members of the CFSIL funds (the **2014 annual review**).

Particulars

Board paper no. CFSIL 38/2014 dated 3 June 2014

- 32 On or about 3 June 2014 the findings of the 2014 annual review were communicated to the board of CFSIL in the board paper dated 3 June 2014.

Particulars

Board paper no. CFSIL 38/2014 dated 3 June 2014

- 33 The board paper dated 3 June 2014:
- (a) noted that with respect to market competitiveness of the product, a detailed review had recently been undertaken as part of the insurance rate review for FirstChoice Employer Super and had been presented to the board on 30 April 2014;
 - (b) noted that as part of the rate review for FirstChoice Employer Super:
 - (i) an insurance pricing benchmark study had been undertaken by Rice Warner on behalf of CommInsure;
 - (ii) a benchmarking study had been undertaken by Chant West on behalf of CFSIL;
 - (c) noted that an earlier market competitiveness review had been completed for FirstChoice Personal Super and FirstChoice Wholesale Personal Super and had been presented to the board on 4 March 2013;
 - (d) recommended that the board of CFSIL approve minor amendments to the IMF, the changes to which were summarised in Appendix A.

Particulars

Board paper no. CFSIL 38/2014 dated 3 June 2014 at [2.1] & [3.1] – [3.9]

- 34 The 2014 annual review relied on the benchmarking reviews and studies referred to in sub-paragraphs 33(a) to (c) above which:
- (a) were insufficient to enable CFSIL to determine whether the insurance offered by CommInsure was the most suitable and at premiums which were fair and the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained;
 - (b) contained no comparison of the product features of the insurance offered by CommInsure and those features of the insurance from the other selected insurers that could reasonably be obtained;

- (c) did not have regard to, or proper regard to, the past claims experience, future likely claims experience, different product designs, definitions, terms, conditions, the demographics of the comparison and the rate structures (age, gender, occupation) of the insurance from other selected insurers;
- (d) evaluated the appropriateness of the insurers by only considering whether the insurance terms and conditions were “market competitive”; and
- (e) to the extent that the reviews and studies provided information about whether the premiums were economical, the reviews and studies put the board of CFSIL on notice that the insurance offered by CommInsure was not the most suitable and was at premiums which were not the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained but were instead merely “market competitive”.

Particulars

Board paper no. CFSIL 38/2014 dated 3 June 2014 at [3.5] & [3.6]

35 On 3 June 2014 the board of CFSIL:

- (a) considered and discussed the board paper dated 3 June 2014;
- (b) approved the amendments to the IMF in Appendix A to the paper, effective 1 July 2014;
- (c) took no other step to vary or alter the insurance arrangements with CommInsure;

(the **2014 group insurance decision**).

Particulars

Minutes of Board Meeting no. CFSIL 38/2014 dated 3 June 2014 at page 6.

36 As a result of the 2014 group insurance decision, CFSIL agreed to obtain CommInsure Group Policies in circumstances where:

- (a) to the extent it was relying on a benchmarking report to assess the premiums offered by competitor funds, it was on notice that the insurance offered by CommInsure was not the most suitable and was at premiums which were not the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained but were instead merely “market competitive”;
- (b) no independent external actuary had been engaged to carry out a review of the premiums proposed by CommInsure;

- (c) no negotiations, or no adequate negotiations, had taken place with CommInsure to obtain premiums which were fair or the most economical (lowest) for the members of the CFSIL funds;
- (d) no open insurance or reinsurance market tender had taken place; and
- (e) no attempt had been made to solicit competing proposals from third party insurers.

C.3 2015 review

- 37 In about February 2015 CFSIL carried out an annual review of CommInsure as the group insurer for the members of the CFSIL funds (the **2015 annual review**).

Particulars

Board Paper no. CFSIL 10 dated 22 April 2015

- 38 On or about 22 April 2015 the findings of the 2015 annual review were communicated to the board of CFSIL in the board paper dated 22 April 2015.

Particulars

Board Paper no. CFSIL 10 dated 22 April 2015

- 39 The board paper dated 22 April 2015:
- (a) identified that the benchmarking of current premium rates for FirstChoice Employer Super indicated that premium rates were generally higher than the median;
 - (b) identified that the premium rate increases for FirstChoice Employer Super were implemented on 1 November 2014 and since then one other key competitor had applied similar increases to their premium rates. It was expected that other direct competitors would increase premium rates in the next 6 to 12 months to counter the deteriorating disability claims experience exhibited in the market.

Particulars

Board Paper no. CFSIL 10 dated 22 April 2015 at [3.8] & [3.9]

- (c) recommended that the board of CFSIL approve the IMF (including the insurance strategy) in its amended form.

Particulars

Board Paper CFSIL 10 dated 22 April 2015 at [2.1]

- 40 The 2015 annual review relied on benchmarking reviews and studies which:
- (a) were insufficient to enable CFSIL to determine whether the insurance offered by CommInsure was the most suitable and at premiums which were fair and the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained;
 - (b) contained no comparison, or no proper comparison, of the product features of the insurance offered by CommInsure and those features of the insurance from the other selected insurers;
 - (c) did not have regard to, or proper regard to, the past claims experience, future likely claims experience, different product designs, definitions, terms, conditions and rate structures (age, gender, occupation) from other selected insurers;
 - (d) evaluated the appropriateness of the insurers by only considering whether the insurance terms and conditions were “appropriate” and “competitive”; and
 - (e) to the extent that the reviews and studies provided information about whether the premiums were economical, the reviews and studies put the board of CFSIL on notice that the insurance offered by CommInsure was not the most suitable and was at premiums which were not the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained but were instead merely “appropriate” and “competitive”.

Particulars

Board Paper CFSIL 10 dated 22 April 2015 at [3.6] – [3.9]

- 41 On 22 April 2015 the board of CFSIL:
- (a) considered and discussed the board paper dated 22 April 2015;
 - (b) approved the IMF (including the Insurance Strategy) in its amended form;
 - (c) took no other step to vary or alter the insurance arrangements with CommInsure;
- (the **2015 group insurance decision**).

Particulars

- (i) IMF Version 5 dated 19 April 2016 at page 2;

- (ii) Further particulars will be supplied after discovery.

42 As a result of the 2015 group insurance decision, CFSIL agreed to obtain CommInsure Group Policies in circumstances where:

- (a) to the extent it was relying on a benchmarking report to assess the premiums offered by competitor funds, it was on notice that insurance offered by CommInsure was not the most suitable and was at premiums which were not the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained;
- (b) no independent external actuary had been engaged to carry out a review of the premiums proposed by CommInsure;
- (c) no negotiations, or no adequate negotiations, had taken place with CommInsure to obtain premiums which were fair or the most economical (lowest) for the members of the CFSIL funds;
- (d) no open insurance or reinsurance market tender had taken place; and
- (e) no attempt had been made to solicit competing proposals from third party insurers.

C.4 2016 review

43 In April 2016 PricewaterhouseCoopers (**PwC**) delivered to CFSIL a report which reviewed the IMF and associated policies and materials in order to determine whether they adequately addressed the requirements set out in SPS 250 (**PwC review**).

44 The PwC review:

- (a) recommended that CFSIL:
 - (i) ensure there was sufficient data to review the appropriateness of insurance arrangements on a regular basis;
 - (ii) formally assess and document the level of insurance premiums;
 - (iii) formalise when and how independent advisers were used in the claims review process;
 - (iv) should include terms and conditions as part of its benchmarking reviews;
 - (v) should formally assess and document the adequacy and quality of data maintained by the insurer and ensure action was taken to address any known deficiencies;

- (b) did not involve a review of the effectiveness of the IMF;
- (c) indicated that CFSIL's policies were deficient, yet to be completed or unsupported by evidence in relation to the *'impacts of provision of insurance benefits on retirement income'*.

Particulars

- (i) PWC IMF Review dated 7 April 2016 at pages 6–8;
- (ii) PWC IMF Review dated 7 April 2016 at page 22.
- (iii) PWC IMF Review dated 7 April 2016 at page 24.

- 45 In about April 2016 CFSIL carried out a review of CommInsure as the group insurer for the members of the CFSIL funds (the **April 2016 review**).

Particulars

Board Paper no. CFSIL 05 dated 19 April 2016

- 46 On or about 19 April 2016 the findings of the April 2016 review were communicated to the board of CFSIL in the board paper dated 19 April 2016.

Particulars

Board Paper no. CFSIL 05 dated 19 April 2016.

- 47 The board paper dated 19 April 2016:

- (a) noted that:
 - (i) the benchmarking of insurance premiums had been undertaken;
 - (ii) the basis for the benchmarking was a survey conducted by Chant West as at December 2015;
 - (iii) the survey compared over 100 products available in the market;
 - (iv) further analysis had been undertaken to ensure the benchmarking captured those products that were key competitors to the CFSIL funds;
 - (v) the analysis compared premium rates by age, gender and occupation class.

Particulars

Board Paper no. CFSIL 05 dated 19 April 2016 at Attachment D - [2.1] – [2.6].

- (b) summarised that Chant West had identified that:
- (i) for FirstChoice Employer Super:
 - (A) competitor products used in the benchmarking included 5 other superannuation funds;
 - (B) overall the competitiveness of FirstChoice Employer's premium rates had improved due to some competitors increasing premium rates in the last 12 months;
 - (C) life insurance and TPD white collar rates were generally in line with the median;
 - (D) life insurance and TPD blue collar rates were higher than the median by 10% to 38% depending on age. The differential reduced with age i.e. younger members were less competitive compared to older ages;
 - (E) the 2-year benefit period income protection rates for all segments were in line or lower than the median by up to 29%;
 - (F) the age 65 benefit period income protection rates for all segments were 30% to 50% higher than the median;
 - (G) most notably long-term income protection rates were the least competitive.

Particulars

Board Paper no. CFSIL 05 dated 19 April 2016 at Attachment D - [3.1] – [3.3].

- (ii) for FirstChoice Personal Super:
 - (A) competitor products used in the benchmarking included 5 other superannuation funds;
 - (B) TPD premium rates were generally in line or lower than median across most insurance cover types and demographics by up to 27%;
 - (C) 2-year benefit period income protection white collar rates were in line with the median;

- (D) 2-year benefit period income protection for blue collar rates were higher than the median by up to 30%. Approximately 3% of the membership were blue collar and have a 2-year benefit period IP;
- (E) the exposure to the segments found to be less competitive was relatively low;
- (F) overall the FirstChoice Personal Super premiums were found to be competitive and in the best interests of members.

Particulars

Board Paper no. CFSIL 05 dated 19 April 2016 at Attachment D
- [3.6] – [3.8].

(iii) for Commonwealth Essential Super:

- (A) competitor products used in the benchmarking included 4 other superannuation funds;
- (B) the premium rate structure, member demographic and terms and conditions were not consistent hence a premium rate comparison was less informative;
- (C) white collar life insurance and TPD rates were higher than the median by approximately 15% to 90%;
- (D) blue collar life insurance and TPD rates were in line or lower than the median by approximately 10% to 25%;
- (E) overall, Commonwealth Essential Super premiums were found to be competitive and in the best of interest of members.

Particulars

Board Paper no. CFSIL 05 dated 19 April 2016 at Attachment D
- [3.9] – [3.13].

- (c) recommended that the board of CFSIL approve amendments to the IMF, including the insurance strategy as set out in Attachment C.

Particulars

Board Paper no. CFSIL 05 dated 19 April 2016 at [2.1] & [2.1.5].

48 The April 2016 annual review relied on benchmarking reviews which were:

- (a) insufficient to enable CFSIL to determine whether the insurance offered by CommInsure was the most suitable and at premiums which were fair and the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained;
- (b) contained rankings and comparisons that were insufficient to enable it to determine whether the premiums charged or offered by CommInsure were fair and the most economical (lowest) reasonably available for its members;
- (c) did not have regard to, or proper regard to, the past claims experience, future likely claims experience, different product designs, definitions, terms, conditions and rate structures (age, gender, occupation) of the insurance from other selected insurers;
- (d) evaluated the appropriateness of the insurers by only considering whether the insurance terms and conditions were “competitive” or “in line with the median”; and
- (e) to the extent that the reviews provided information about whether the premiums were economical, the reviews put the board of CFSIL on notice that the insurance offered by CommInsure was not the most suitable and was at premiums which were not the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained but were instead merely “competitive” or “in line with the median”.

Particulars

Board Paper no. CFSIL 05 dated 19 April 2016 at Attachment D – [2.1] – [3.13]

49 On 19 April 2016 the board of CFSIL:

- (a) considered and discussed the board paper dated 19 April 2016;
- (b) approved amendments to the IMF, including the insurance strategy as set out in Attachment C;
- (c) took no other step to vary or alter the insurance arrangements with CommInsure;

(the **April 2016 group insurance decision**).

Particulars

- (i) IMF Version 6 dated 2 May 2017 at page 2;
- (ii) Further particulars will be supplied after discovery.

- 50 As a result of the April 2016 group insurance decision, CFSIL agreed to obtain CommInsure Group Policies in circumstances where:
- (a) to the extent it was relying on a benchmarking report to assess the premiums offered by competitor funds, it was on notice that insurance offered by CommInsure was not the most suitable and was at premiums which were not the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained;
 - (b) no independent external actuary had been engaged to carry out a review of the premiums proposed by CommInsure;
 - (c) no negotiations, or no adequate negotiations, had taken place with CommInsure to obtain premiums which were fair or the most economical (lowest) for the members of the CFSIL funds;
 - (d) no open insurance or reinsurance market tender had taken place; and
 - (e) no attempt had been made to solicit competing proposals from third party insurers.
- 51 In about May 2016 CFSIL carried out a review on CommInsure as the group insurer for the members of the CFSIL funds (the **May 2016 review**).

Particulars

Minutes of Board Meeting no. CFSIL 07 dated 10 June 2016 at pages 5 & 6

- 52 On 20 May 2016 Rice Warner delivered to CFSIL a report which benchmarked the product features of FirstChoice Employer Super against a group of alleged market peers as agreed with CFSIL.

Particulars

Rice Warner Benchmarking Product Terms Report on FirstChoice Employer Super dated 20 May 2016 at page 3

- 53 On 20 May 2016 Rice Warner delivered to CFSIL a report which benchmarked the product features of Commonwealth Essential Super against a group of alleged market peers as agreed with CFSIL.

Particulars

Rice Warner Benchmarking Product Terms Report on Commonwealth Essential Super dated 20 May 2016 at page 3

- 54 On 23 May 2016 Rice Warner delivered to CFSIL a report which benchmarked the product features of FirstChoice Personal Super against a group of alleged market peers as agreed with CFSIL.

Particulars

Rice Warner Benchmarking Product Terms Report on FirstChoice Personal Super dated 23 May 2016 at page 3

- 55 On or about 10 June 2016 the findings of the May 2016 review were communicated to the board of CFSIL in the board paper dated 10 June 2016.

Particulars

Minutes of Board Meeting no. CFSIL 07 dated 10 June 2016 at page 5

- 56 The board paper dated 10 June 2016 noted that:
- (a) where Rice Warner had identified differences between the terms and conditions of the insurance in the CFSIL funds compared to market, the management of CFSIL would discuss with CommInsure proposed changes to the terms and conditions;
 - (b) consideration would also be given to any pricing differences.

Particulars

Minutes of Board Meeting no. CFSIL 07 dated 10 June 2016 at page 6

- 57 The May 2016 review relied on benchmarking reviews which:
- (a) were insufficient to enable CFSIL to determine whether the insurance offered by CommInsure was the most suitable and at premiums which were fair and the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained;
 - (b) did not contain a comparison, or a proper comparison, of premium rates.

Particulars

Minutes of Board Meeting no. CFSIL 07 dated 10 June 2016 at pages 5
& 6

58 On 10 June 2016, the board of CFSIL:

- (a) considered and discussed the board paper dated 10 June 2016;
- (b) requested that management amend a proposed response to questions raised by APRA to more clearly set out the actions taken in reviewing CommInsure, particularly in relation to declined claims and benchmarking policy terms and conditions; and
- (c) took no other step to vary or alter the insurance arrangements with CommInsure;

(the **June 2016 group insurance decision**).

Particulars

Minutes of Board Meeting no. CFSIL 07 dated 10 June 2016 at pages 5
& 6

59 As a result of the June 2016 group insurance decision, CFSIL agreed to obtain CommInsure Group Policies in circumstances where:

- (a) no independent external actuary had been engaged to carry out a review of the premiums proposed by CommInsure;
- (b) no negotiations, or no adequate negotiations, had taken place with CommInsure to obtain premiums which were fair or the most economical (lowest) for the members of the CFSIL funds;
- (c) no open insurance or reinsurance market tender had taken place; and
- (d) no attempt had been made to solicit competing proposals from third party insurers.

60 In about August 2016 CFSIL carried out a review of CommInsure as the group insurer for the members of the CFSIL funds (the **August 2016 review**).

Particulars

Board Paper no. CFSIL 12 dated 2 September 2016

- 61 On or about 2 September 2016 the findings of the August 2016 review were communicated to the board of CFSIL in the board paper dated 2 September 2016.

Particulars

Board Paper no. CFSIL 12 dated 2 September 2016

- 62 The board paper dated 2 September 2016 recommended that the board of CFSIL:
- (a) approve the continuation of the current insurance arrangements with the insurer on the grounds that they remain appropriate and in the best interests of members;
 - (b) authorise any two directors or one director and the company secretary to approve the revised policy terms and conditions and ISA with CommInsure;
 - (c) authorise any two directors or one director and the company secretary to execute the revised policy terms and conditions and ISA with the insurer.

Particulars

Board Paper no. CFSIL 12 dated 2 September 2016 at [2.1] & [2.1.4]

- 63 The September 2016 review relied on benchmarking reviews which:
- (a) were insufficient to enable CFSIL to determine whether the insurance offered by CommInsure was the most suitable and at premiums which were fair and the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained;
 - (b) only contained a benchmarking of the terms of the policies and not the premium rates.

Particulars

- (i) Board Paper no. CFSIL 12 dated 2 September 2016 at [4.1] & [4.3]
- (ii) Paragraph 57 and its particulars are repeated.

- 64 On 2 September 2016 the board of CFSIL:
- (a) considered and discussed the board paper dated 2 September 2016;
 - (b) approved the continuation of the current insurance arrangements with the insurer on the grounds that they remained appropriate and in the best interests of members;

- (c) took no other step to vary or alter the insurance arrangements with CommInsure;

(the **September 2016 group insurance decision**).

Particulars

- (i) Board Paper no. CFSIL 12 dated 2 September 2016 at [2.1] & [2.1.4];
- (ii) Further particulars will be supplied after discovery.

65 As a result of the September 2016 group insurance decision, CFSIL agreed to obtain CommInsure Group Policies in circumstances where:

- (a) no independent external actuary had been engaged to carry out a review of the premiums proposed by CommInsure;
- (b) no negotiations, or no adequate negotiations, had taken place with CommInsure to obtain premiums which were fair or the most economical (lowest) for the members of the CFSIL funds;
- (c) no open insurance or reinsurance market tender had taken place; and
- (d) no attempt had been made to solicit competing proposals from third party insurers.

C.5 2017 review

66 In about April 2017 CFSIL carried out an annual review on CommInsure as a group insurer for the members of the CFSIL funds (the **2017 annual review**).

Particulars

Board Paper no. CFSIL 06 dated 2 May 2017 at Attachment B.

67 On 11 April 2017 Rice Warner delivered to CFSIL a report which:

- (a) benchmarked the pricing, terms and conditions of the insurance in Commonwealth Essential Super against an agreed set of alleged market peers specified by CFSIL;
- (b) identified that:
 - (i) the life insurance premium rates were uncompetitive for white collar workers compared to the median price of the peer group, especially for females aged between 30 and 50 (next birthday);

- (ii) the life insurance and TPD premium rates for white collar workers were generally uncompetitive, especially for ages over 35 (next birthday); and
 - (iii) the life insurance and TPD premium rates for white collar occupations and smokers were disadvantaged by the fund having no smoker or occupation rating factors applied;
- (c) contained rankings, heat maps and graphs which attempted to compare the premium rates offered by the fund with those of the market peers selected by CFSIL.

Particulars

Rice Warner Report on Commonwealth Essential Super dated 11 April 2017 at page 5

- 68 On 11 April 2017 Rice Warner delivered to CFSIL a report which:
- (a) benchmarked the pricing, terms and conditions of the insurance in FirstChoice Employer Super against an agreed set of alleged market peers specified by CFSIL;
 - (b) identified that:
 - (i) the life insurance premium rates for male, manual workers, aged 20 to 45 (next birthday) and male, white collar workers, aged 22 to 30 (next birthday) were uncompetitive compared to the median price of the peer group;
 - (ii) the life insurance and TPD premium rates for males aged 20 to 25 (next birthday) were significantly more expensive than the peer group median;
 - (iii) the life insurance and TPD premium rates for manual workers were generally uncompetitive;
 - (iv) the life insurance and TPD premium rates for males were not as competitive as females because the fund did not have gender ratings;
 - (v) the income protection (2-year benefit period) premium rates for manual female workers were significantly more expensive than the peer group median;
 - (vi) the income protection (to age 65 benefit period) premium rates were not competitive;

- (c) contained rankings, heat maps and graphs which attempted to compare the premium rates offered by the fund with those of market peers selected by CFSIL.

Particulars

Rice Warner Report on FirstChoice Employer Super dated 11 April 2017 at pages 50 & 51.

- 69 On 11 April 2017 Rice Warner delivered to CFSIL a report which:
- (a) benchmarked the pricing, terms and conditions of the insurance in FirstChoice Personal Super against an agreed set of alleged market peers specified by CFSIL;
 - (b) identified that:
 - (i) the life insurance premium rates for ages 36 to 50 (next birthday) were more expensive than the median;
 - (ii) the life insurance and TPD premium rates for ages 41 to 50 (next birthday) were more expensive compared to the median, ranking 10th (on a median basis) across all scenarios;
 - (iii) the life insurance and TPD premium rates were overall 8% more expensive compared to the median over these age groups;
 - (iv) the life insurance and TPD premium rates were 2% more expensive compared to the median with females 15% more expensive;
 - (v) the life insurance and TPD insurance premium rates for professionals were 3% more expensive while white collar and light blue occupations were 12%/11% more expensive respectively;
 - (vi) the life insurance and TPD premium rates for smokers and non-smokers were 10%/7% more expensive respectively above the median;
 - (vii) the income protection (to age 65 benefit period) premium rates for white collar and light manual occupations for both 30 and 90 day waiting periods were more expensive than the median for ages 36 to 50 (next birthday);
 - (viii) the life insurance only and life insurance and TPD premium rates were placed closer to the median of the peer group while income protection insurance premiums were competitive for the 2-year benefit periods;

- (c) contained rankings, heat maps and graphs which attempted to compare the premium rates offered by the fund with those of market peers selected by CFSIL.

Particulars

Rice Warner Report on FirstChoice Personal Super dated 11 April 2017 at pages 154 & 155.

- 70 On or about 2 May 2017 the findings of the 2017 annual review were communicated to the board of CFSIL in the board paper dated 2 May 2017.

Particulars

Board Paper no. CFSIL 06 dated 2 May 2017 at Attachment B - [3.1] – [4.1].

- 71 The board paper dated 2 May 2017:

- (a) identified that:
- (i) for FirstChoice Employer Super:
 - (A) overall the competitiveness of FirstChoice Employer Super's premium rates had remained unchanged from the benchmarking performed in 2016;
 - (B) life insurance and TPD white collar rates were on average 9% lower than the median;
 - (C) life insurance and TPD blue collar rates were on average 23% higher than the median;
 - (D) 2-year benefit period, income protection rates were generally lower than the median across all segments by on average 5% for 30 day waiting period and 15% for 90 day waiting period;
 - (E) to age 65 benefit period income protection rates for all segments are generally higher than the median across on average 34% to 51% depending on the waiting period;
 - (F) most notably long-term income protection rates continued to remain uncompetitive. As part of the claims experience investigation, a more in-depth analysis had been performed on the long-term income protection portfolio. Due to the relatively small size of the portfolio, a number of specific employer plans

and a number of larger than expected average size claims contributed to the poor claims experience;

Particulars

Board Paper no. CFSIL 06 dated 2 May 2017 at Attachment B - [3.1] – [3.4]

- (ii) for FirstChoice Personal Super:
 - (A) life insurance and TPD premium rates were generally lower than the median across all segments with the exception of female non-smoker premium rates where rates for ages 36 and higher were on average 10% higher than the median;
 - (B) short-term income protection premium rates were generally lower than the median across all segments. Depending on the waiting period, the premium rates were lower on average by up to 25% compared to the median;
 - (C) long-term income protection premium rates were lower than or in line with the median across all segments with the exception of 90 day waiting period for professional and light blue collar rates where rates were on average 16% more expensive than the median;

Particulars

Board paper no. CFSIL 06 dated 2 May 2017 at Attachment B - [3.9] – [3.11]

- (iii) for Commonwealth Essential Super:
 - (A) unlike FirstChoice Personal Super and FirstChoice Employer Super, for Commonwealth Essential Super the premium rate structure, member demographic and terms and conditions were not consistent hence a premium rate comparison was less informative. The key difference was that Commonwealth Essential Super did not differentiate premium rates by occupation class unlike the peer group;
 - (B) white collar life insurance and TPD rates were higher than the median on average by 53%;
 - (C) blue collar life insurance and TPD rates were lower than the median on average by 14%.

Particulars

Board Paper no. CFSIL 06 dated 2 May 2017 at Attachment B - [3.14] – [3.20]

- (b) recommended that the board of CFSIL:
 - (i) approve the continuation of the insurance arrangements with CommInsure on the grounds that they remained appropriate and in the best interests of members;
 - (ii) approve the revised IMF, including the insurance strategy as set out in Attachment A;

Particulars

Board Paper no. CFSIL 06 dated 2 May 2017 at [2.1], [2.1.3] & [2.1.6]

72 The 2017 annual review relied on benchmarking reviews which:

- (a) were insufficient to enable CFSIL to determine whether the insurance offered by CommInsure was the most suitable and at premiums which were fair and the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained.
- (b) contained rankings, heat maps and graphs that were insufficient to enable it to determine whether the premiums charged or offered by CommInsure were fair and the most economical (lowest) reasonably available for its members;
- (c) did not have regard to, or proper regard to, the past claims experience, future likely claims experience, different product designs, definitions, terms, conditions and rate structures (age, gender, occupation) of the insurance from other selected insurers;
- (d) evaluated the appropriateness of the insurers by only considering whether the insurance terms and conditions were “competitive” or “comparable to the median”; and
- (e) to the extent that the reviews provided information about whether the premiums were economical, the reviews put the board of CFSIL on notice that the insurance offered by CommInsure was not the most suitable and was at premiums which were not the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained but were instead merely “competitive” or “in line with the median”.

Particulars

Board Paper no. CFSIL 06 dated 2 May 2017 at Attachment B –
[2.1] – [4.1]

73 On 2 May 2017 the board of CFSIL:

- (a) considered and discussed the board paper dated 2 May 2017;
- (b) approved the continuation of CommInsure as the insurer;
- (c) approved the amendments to the IMF;
- (d) took no other step to vary or alter the insurance arrangements with CommInsure;

(the **2017 group insurance decision**).

Particulars

- (i) Board Paper no. CFSIL 06 dated 2 May 2017 at [2.1], [2.1.3] & [2.1.6];
- (ii) IMF Version 6 dated 2 May 2017 at page 2;
- (iii) Further particulars will be supplied after discovery.

74 As a result of the 2017 group insurance decision, CFSIL agreed to obtain CommInsure Group Policies in circumstances where:

- (a) to the extent it was relying on a benchmarking report to assess the premiums offered by competitor funds, it was on notice that insurance offered by CommInsure was not the most suitable and was at premiums which were not the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained;
- (b) no independent external actuary had been engaged to carry out a review of the premiums proposed by CommInsure;
- (c) no negotiations, or no adequate negotiations, had taken place with CommInsure to obtain premiums which were fair or the most economical (lowest) for the members of the CFSIL funds;
- (d) no open insurance or reinsurance market tender had taken place; and
- (e) no attempt had been made to solicit competing proposals from third party insurers.

C.6 2018 review

- 75 In about April 2018 CFSIL carried out an annual review on CommInsure as group insurer for the members of the CFSIL funds (the **2018 annual review**).

Particulars

Board Paper no. CFSIL 01 dated 18 May 2018 at Attachment B

- 76 On 16 April 2018 Rice Warner delivered to CFSIL a report on FirstChoice Employer Super which:
- (a) benchmarked the pricing, terms and conditions of the insurance in that fund against an agreed set of alleged market peers specified by CFSIL and commented on the appropriateness of the peer group;
 - (b) identified that:
 - (i) Rice Warner had undertaken a benchmarking study of the insurance offered by FirstChoice Employer Super relative to a set of market peers selected by CFSIL;
 - (ii) the life insurance premium rates were uncompetitive for male manual workers aged 20 to 35 (next birthday) and male white collar workers aged 20 to 30 (next birthday);
 - (iii) the life insurance and TPD premium rates were generally competitive for white collar workers;
 - (iv) the life insurance and TPD premium rates were uncompetitive across all ages and scenarios for manual workers;
 - (v) the income protection (2-year benefit period) premium rates were uncompetitive, particularly for a 30 day waiting period and manual occupations;
 - (vi) the income protection (to age 65 benefit period) premium rates were uncompetitive against the peer group;
 - (c) contained rankings, heat maps and graphs which attempted to compare the premium rates offered by the fund with those of market peers selected by CFSIL.

Particulars

Rice Warner report on FirstChoice Employer Super dated 16 April 2018 at pages 3 & 4

- 77 On 16 April 2018 Rice Warner delivered to CFSIL a report on FirstChoice Personal Super which:
- (a) benchmarked the pricing, terms and conditions of the insurance in that fund against an agreed set of alleged market peers specified by CFSIL;
 - (b) identified that:
 - (i) the life insurance premium rates were more competitive than the peer group median for ages 21 to 30 (next birthday) compared to the peer group median;
 - (ii) the life insurance premium rates were less competitive than the peer group median for ages 36 to 60 (next birthday);
 - (iii) the life insurance and TPD premium rates were more competitive for ages 21 to 30 (next birthday) than the peer group median;
 - (iv) the life insurance and TPD premium rates were less competitive for ages 36 to 50 (next birthday) than the peer group members;
 - (v) the life insurance and TPD premium rates were overall 30% less competitive for ages 36 to 50 (next birthday) compared to the peer group median;
 - (c) contained rankings, heat maps and graphs which attempted to compare the premium rates offered by the fund with those of market peers selected by CFSIL.

Particulars

Rice Warner Report on FirstChoice Personal Super dated 16 April 2018
at pages 3 & 4

- 78 On or about 18 May 2018 the findings of the 2018 annual review were communicated to the board of CFSIL in the board paper dated 18 May 2018.

Particulars

Board Paper no. CFSIL 01 dated 18 May 2018

- 79 The board paper dated 18 May 2018:

- (a) identified that:
 - (i) on balance premium rates for each product were appropriate as outlined in Attachment C;

- (ii) the benchmarking showed that in some scenarios pricing was less competitive than the market;
- (iii) the premium rates for all products were due to expire in either June or October 2019;
- (iv) CFSIL had commenced discussions with CommInsure to review premium rates;

Particulars

Board Paper no. CFSIL 01 dated 18 May 2018 at [3.7]

(b) identified that:

- (i) for FirstChoice Employer Super:
 - (A) overall the competitiveness of the fund's premium rates had remained unchanged from the benchmarking performed in 2017;
 - (B) premiums were competitive against the peer group for both male and female rates with some exceptions;
 - (C) life insurance and TPD white collar rates were, on average, 6% lower than the median;
 - (D) life insurance and TPD blue collar rates were, on average, 24% higher than the median;
 - (E) 2-year benefit period income protection rates were generally lower than the median across all segments by an average of 15% for 90 day waiting period, but higher than the median by an average of 4% for 30 day waiting period;
 - (F) the age 65 benefit period income protection rates for all segments were generally higher than the median by an average of 28%-33% depending on the waiting period;

Particulars

CFSIL Board Paper dated 18 May 2018 at Attachment C - [3.1]
– [3.7]

- (ii) for FirstChoice Personal Super:
 - (A) premium rates were found to be competitive for certain segments only including:

- (1) life insurance and TPD premium rates for members under the age of 36 were lower than the median. However, for members aged 36 to 50, premiums were 12% above the median;
 - (2) short-term income protection premium rates were lower than the median across all segments. Depending on the waiting period, the premium rates were lower, on average, by up to 41% compared to the median;
 - (3) long-term income protection premium rates were lower than or in line with the median across most segments.
- (B) current pricing for the fund was due to expire on 30 June 2019 and the review and agreement of future pricing would need to address the pricing and terms and conditions in general and specifically for those segments that were currently uncompetitive against the peer group median;
- (C) the product feature benchmarking showed that no material limitations had been identified but some potential product enhancements could be considered including:
- (1) offering higher maximum levels of cover;
 - (2) offering higher TPD cover than life insurance based on life stages; and
 - (3) offering higher expiry age for TPD.
- (D) any product enhancements would need to be reviewed on balance with any associated pricing impacts to ensure it remained in the best interests of members;

Particulars

CFSIL Board Paper dated 18 May 2018 at Attachment C - [3.8]
– [3.12]

- (iii) for Commonwealth Essential Super:
- (A) unlike FirstChoice Personal Super and FirstChoice Employer Super, the premium rate structure, member demographic and terms and conditions were not consistent and hence a premium rate comparison was less informative. The key difference was that Commonwealth Essential Super did not differentiate premium rates by occupation class or smoker status, unlike most of the peer group;
 - (B) white collar life insurance and TPD rates were higher than the median on average by 34%;

- (C) blue collar life insurance and TPD rates were lower than the median on average by 7%.

Particulars

Board Paper no. CFSIL 01 dated 18 May 2018 at Attachment C
- [3.13]– [3.19]

- (c) stated that “(p)remiums paid by CFSIL members, which include commission, will often be higher than the median of the peer group rates for products currently open to new members”;

Particulars

Board Paper no. CFSIL 01 dated 18 May 2018 at Attachment C
- [2.11]

- (d) recommended that the board of CFSIL:
- (i) approve the continuation of the insurance arrangements with CommInsure on the grounds that they remain appropriate and in the best interests of members;
 - (ii) approve the IMF, including the insurance strategy, as set out in Attachment A.

Particulars

Board Paper no. CFSIL 01 dated 18 May 2018 at [2.1], [2.1.3] & [2.1.6] at Attachment C – [3.1] – [3.19]

80 The 2018 annual review relied on benchmarking reviews which:

- (a) were insufficient to enable CFSIL to determine whether the insurance offered by CommInsure was the most suitable and at premiums which were fair and the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained;
- (b) did not have regard to, or proper regard to, the past claims experience, future likely claims experience, different product designs, definitions, terms, conditions and rate structures (age, gender, occupation) of the insurance from other selected insurers;
- (c) evaluated the appropriateness of the insurers by only considering whether the insurance terms and conditions were “competitive”; and
- (d) to the extent that the reviews provided information about whether the premiums were economical, the reviews put the board of CFSIL on notice that the

insurance offered by CommInsure was not the most suitable and was at premiums which were not the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained but were instead merely “competitive” or “higher than the median”.

Particulars

Board Paper no. CFSIL 01 dated 18 May 2018

81 On 18 May 2018 the board of CFSIL:

- (a) considered and discussed the board paper dated 18 May 2018;
- (b) approved the continuation of the insurance arrangements with CommInsure on the grounds that they remained appropriate and in the best interests of members;
- (c) took no other step to vary or alter the insurance arrangements with CommInsure;

(the **2018 group insurance decision**).

Particulars

Minutes of Board Meeting no. CFSIL 01 dated 18 May 2018
at page 3

82 As a result of the 2018 group insurance decision, CFSIL agreed to obtain CommInsure Group Policies in circumstances where:

- (a) to the extent it was relying on a benchmarking report to assess the premiums offered by competitor funds, it was on notice that insurance offered by CommInsure was not the most suitable and was at premiums which were not the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained;
- (b) no independent external actuary had been engaged to carry out a review of the premiums proposed by CommInsure;
- (c) no negotiations, or no adequate negotiations, had taken place with CommInsure to obtain premiums which were fair or the most economical (lowest) for the members of the CFSIL funds;
- (d) no open insurance or reinsurance market tender had taken place; and
- (e) no attempt had been made to solicit competing proposals from third party insurers.

D Implementation of decisions

83 From 14 June 2013 onwards CFSIL implemented the IMF approval decision by continuing to obtain from CommInsure group insurance policies which provided cover for the members of the CFSIL funds (**implementing the IMF approval decision**).

84 From 3 June 2014 onwards CFSIL implemented the:

- (a) 2014 group insurance decision;
- (b) 2015 group insurance decision;
- (c) April 2016 group insurance decision;
- (d) June 2016 group insurance decision;
- (e) September 2016 group insurance decision;
- (f) 2017 group insurance decision; and
- (g) 2018 group insurance decision;

(together, **the group insurance decisions**);

by taking the steps in paragraph 85 below in the relevant period following each decision.

85 CFSIL implemented the group insurance decisions by:

- (a) continuing to obtain from CommInsure group insurance policies which provided cover for the members of the CFSIL funds;
- (b) charging the members of the CFSIL funds premiums for such insurance cover; and
- (c) deducting those premiums from the accounts of the members of CFSIL funds;

(**implementing the group insurance decisions**).

E Premiums for insurance cover

86 By engaging in the contraventions referred to in Part F below, the premiums paid by the Applicant and Group members were higher than the premiums that would have been paid if CFSIL had properly performed the covenants set out in s 52(2)(b), (c) & (d) and s 52(7)(a), (b) and (c) of the SIS Act (the differential referred to as the **Excess Premiums**).

Particulars

Particulars of the Excess Premiums will be provided following expert evidence.

- 87 The premiums paid by the Applicant and Group Members included the Excess Premiums on the issuing and renewal of the group insurance policies with CommInsure.

F Contraventions

- 88 At all material times there was, and is, a conflict between CFSIL's duties to, and the interests of, the Applicant and the Group Members on the one hand and the interests of CFSIL and CommInsure on the other in relation to the premiums being charged on insurance obtained from CommInsure for members of the CFSIL funds.

Particulars

- (i) It was and is CFSIL's duty to take all reasonable steps to seek, and it was and is in the financial interests of the Applicant and each of the Group Members to obtain, the most suitable insurance and at premiums which were fair and the most economical (or lowest) that could reasonably be obtained;
- (ii) It was and is in CFSIL's own interest to obtain from CommInsure insurance with the highest premiums that could be charged;
- (iii) It was and is in the financial interests of CommInsure to maximise its profits through charging the Applicant and each of the Group Members the highest premium that could be charged for issuing insurance to them.

F.1 IMF approval decision contravention

- 89 At the time of making and implementing the IMF approval decision, CFSIL knew that there was and is a conflict between CFSIL's duties to, and the interests of, the Applicant and Group Members on the one hand and the interests of CFSIL and CommInsure on the other in relation to the premiums being charged on insurance offered or obtained from CommInsure for members of the CFSIL funds.

Particulars

The Applicant repeats the particulars to sub-paragraphs 24(h) & (i) above.

- 90 Alternatively to paragraph 89, at the time of making the IMF approval decision and implementing the IMF approval decision, CFSIL ought to have known the matters pleaded in paragraph 88 above.

Particulars

The Applicant repeats the particulars to sub-paragraphs 24(h) & (i) above.

- 91 In making the IMF approval decision and implementing the IMF approval decision, CFSIL contravened, and continues to contravene, the covenant in s 52(2)(b) of the SIS Act to exercise the degree of care, skill and diligence that a prudent superannuation trustee would have exercised if they were the trustee of the CFSIL funds.

Particulars

- (a) A prudent superannuation trustee in the position of trustee of the CFSIL funds would have identified the following considerations as relevant:
- (i) the processes that should be followed by CFSIL to ensure that it took all reasonable steps to ascertain the past claims experience, the likely future claims experience, the policy terms and conditions, the rate structures (age, gender and occupation) and prevailing insurance market conditions for the CFSIL funds;
 - (ii) the processes that should have been followed by CFSIL to ensure that it took all reasonable steps to select the most appropriate insurer for the members of the CFSIL funds;
 - (iii) the processes that should have been followed by CFSIL to ensure that it took all reasonable steps to obtain insurance which was the most suitable and at premiums which were fair and the most economical (lowest) for the members of the CFSIL funds that could reasonably be obtained;
 - (iv) whether, and to what extent, there was any conflict between CFSIL's duties to, and the financial interests, of the Applicant and each of the Group Members on the one hand and its own interests and the interests of CommInsure on the other;
 - (v) whether, and to what extent, priority would be given to CFSIL's duties to, and the financial interests of, the Applicant and each of the Group Members over the interests of CFSIL and CommInsure;
 - (vi) whether, and to what extent, CFSIL's duties to the Applicant and each of the Group Members would be met despite the conflict;
 - (vii) whether, and to what extent, the financial interests of the Applicant and each of the Group Members would be adversely affected by any such conflict.
- (b) A prudent superannuation trustee in the position of trustee of the CFSIL funds would have taken all reasonable steps to obtain relevant information and advice so as to:

- (i) ascertain each of the matters in (a)(i) to (iv) above;
 - (ii) ensure that priority would be given to CFSIL's duties to, and the financial interests of, the Applicant and each of the Group Members over the interests of CFSIL and CommInsure;
 - (iii) ensure that CFSIL's duties to the Applicant and each of the Group Members be met despite the conflict;
 - (iv) ensure that the financial interests of the Applicant and each of the Group Members would not be adversely affected by any such conflict.
- (c) A prudent superannuation trustee in the position of trustee of the CFSIL funds would have taken into account the following relevant considerations:
- (i) the past claims experience, the likely future claims experience, the policy terms and conditions, the rate structures (age, gender and occupation) and prevailing insurance market conditions for the CFSIL funds;
 - (ii) each of the matters in paragraph 30 above;
 - (iii) the matters in paragraph 89 above;
 - (iv) the fact that priority had not been given to CFSIL's duties to, and the financial interests of, the Applicant and each of the Group Members over the interests of CFSIL and CommInsure;
 - (v) the fact that CFSIL's duties to the Applicant and each of the Group Members were not met despite the conflict;
 - (vi) the fact that the financial interests of the Applicant and each of the Group Members were adversely affected by that conflict in a significant way;
- (d) A prudent superannuation trustee in the position of trustee of the CFSIL funds would have approved an IMF which allowed it to:
- (i) take all reasonable steps to obtain insurance for its members from an insurer other than CommInsure;
 - (ii) carry out an open market tender or obtain competing proposals from third party insurers on a commercial arm's length basis;
 - (iii) engage and obtain from an independent external actuary a review of the premium rates charged or offered by CommInsure and the premiums which were fair and the most economical (lowest) reasonably available on the open market;
 - (iv) negotiate directly with CommInsure to obtain insurance at premiums which were fair and the most economical (lowest) for its members;

- (v) investigate, consider and assess the suitability of insurance provided by third party insurers other than CommInsure to obtain insurance at premiums which were fair and the most economical (lowest) reasonably available for its members;
- (e) A prudent superannuation trustee in the position of trustee of the CFSIL funds would not have approved an IMF which:
 - (i) materially constrained it from taking all reasonable steps to obtain insurance for its members from an insurer other than CommInsure;
 - (ii) set out a process which was likely to result in the selection of CommInsure as the insurer for its members;
 - (iii) only allowed the trustee to use benchmarking reviews to determine whether the insurance offered by CommInsure was the most suitable and at premiums which were fair and the most economical (lowest) for members of the CFSIL funds that could reasonably be obtained;
- (f) By reason of the matters particularised in (a) to (e) above and in circumstances where the financial interests of the Applicant and each of the Group Members were adversely affected in a significant way by the above conflict, a prudent superannuation trustee in the position of trustee of the CFSIL funds would not:
 - (i) have made or implemented the IMF approval decision;
 - (ii) continue to implement the IMF approval decision.

92 In making the IMF approval decision and implementing the IMF approval decision, CFSIL contravened, and continues to contravene, the covenant in s 52(2)(c) of the SIS Act to perform the trustee's duties and exercise its powers in the best interests of the members of the CFSIL funds.

Particulars

- (a) A prudent superannuation trustee in the position of trustee of the CFSIL funds would have engaged in the conduct set out in particulars (a) to (e) of paragraph 91 above;
- (b) A prudent superannuation trustee in the position of trustee of the CFSIL funds would have engaged in the conduct set out in particulars (i) to (ii) of paragraph 93(a) below;
- (c) By reason of the matters particularised in (a) and (b) above and in circumstances where the financial interests of the Applicant and each of the Group Members were adversely affected in a significant way by the above conflict, a prudent superannuation trustee in the position of trustee of the CFSIL funds would not:

- (i) have made or implemented the IMF approval decision;
- (ii) continue to implement the IMF approval decision.

93 In making the IMF approval decision and implementing the IMF approval decision in circumstances where there was and is a conflict between CFSIL's duties to, and the interests of, the Applicant and the Group Members on the one hand and the interests of CFSIL and CommInsure on the other, CFSIL contravened, and continues to contravene, the covenant in s 52(2)(d) of the SIS Act to:

- (a) give priority to its duties to, and the interests of, the Applicant and the Group Members over its interests and the interests of CommInsure.

Particulars

- (i) A prudent superannuation trustee in the position of trustee of the CFSIL funds would have identified:
 - (A) it was under a duty to the Applicant and each of the Group Members as set out in particular (i) to paragraph 88 above;
 - (B) the financial interests of the Applicant and each of the Group Members as set out in particular (i) to paragraph 88 above;
 - (C) its own interests set out in particular (ii) to paragraph 88 above;
 - (D) the financial interests of CommInsure as set out in particular (iii) to paragraph 88 above;
- (ii) A prudent superannuation trustee in the position of trustee of the CFSIL funds would not have:
 - (A) preferred its own interests over the financial interests of the Applicant and each of the Group Members;
 - (B) preferred the financial interests of CommInsure over the financial interests of the Applicant and each of the Group Members.
- (iii) A prudent superannuation trustee in the position of trustee of the CFSIL funds would have:
 - (A) preferred its duties to, and the interests of, the Applicant and each of the Group Members over the interests of itself and CommInsure;
 - (B) ensured that its duties to the Applicant and each of the Group Members were met despite the conflict;
 - (C) ensured that the financial interests of the Applicant and each of the Group Members were not adversely affected by the conflict.

- (b) ensure that its duties to the Applicant and the Group Members were met despite the conflict referred to in paragraph 88 above;

Particulars

The particulars to paragraph 93(a) above are repeated

- (c) ensure that the interests of the Applicant and the Group Members were not adversely affected by the conflict referred to in paragraph 88 above.

Particulars

The particulars to paragraph 93(a) above are repeated

- (d) By reason of the matters particularised in (a) to (c) above and in circumstances where the financial interests of the Applicant and each of the Group Members were adversely affected in a significant way by the above conflict, a prudent superannuation trustee in the position of trustee of the CFSIL funds would not:
 - (i) have made or implemented the IMF approval decision;
 - (ii) continue to implement the IMF approval decision.

F.2 The group insurance decisions contraventions

94 At the time of making each of the group insurance decisions and implementing each of the group insurance decisions, CFSIL knew (and it was a fact) that:

- (a) there was and is a conflict between CFSIL's duties to, and the interests of, the Applicant and the Group Members on the one hand and the interests of CFSIL and CommInsure on the other in relation to the premiums being charged on insurance obtained from CommInsure for members of the CFSIL funds;

Particulars

The Applicant repeats particulars 24(h) & (i) above

- (b) the premiums being charged or offered by CommInsure were not the most economical (lowest) premiums available for the Applicant and the Group Members;

Particulars

The Applicant repeats paragraphs 32 to 34, 38 to 40, 46 to 48, 52 to 56, 61 to 63, 67 to 71 and 76 to 79 above

- (c) the benchmarking reviews conducted at its direction were insufficient to enable it to determine whether the premiums being charged or offered by CommInsure were fair and the most economical (lowest) premiums reasonably available for the Applicant and Group Members.

Particulars

The particulars to paragraph 94(b) above are repeated

- 95 Alternatively to paragraph 94 above, at the time of making each of the group insurance decisions and implementing each of the group insurance decisions, CFSIL ought to have known each of the matters pleaded in paragraphs 94(a) to (c) above.

Particulars

The particulars to paragraphs 94(a) to (c) above are repeated

- 96 In making each of the group insurance decisions and implementing each of the group insurance decisions, CFSIL contravened, and continues to contravene, the covenant in s 52(2)(b) of the SIS Act to exercise the degree of care, skill and diligence that a prudent superannuation trustee would have exercised if they were the trustee of the CFSIL funds.

Particulars

- (a) A prudent superannuation trustee in the position of trustee of the CFSIL funds would have identified the following considerations as relevant:
 - (i) the past claims experience, the likely future claims experience, the policy terms and conditions, the rate structures (age, gender and occupation) and prevailing insurance market conditions for the CFSIL funds;
 - (ii) whether an independent external actuary should be engaged to carry out a review of the premiums proposed by CommInsure;
 - (iii) whether an open market insurance and/or reinsurance tender should take place;
 - (iv) whether competing proposals should be solicited from third party insurers;

- (v) what was the most appropriate insurer for the members of the CFSIL funds;
 - (vi) what were the premiums which were fair and the most economical (lowest) reasonably available for the members of the CFSIL funds;
 - (vii) whether, and to what extent, negotiations had taken place with CommInsure to obtain premiums which were fair and the most economical (lowest) for the members of the CFSIL funds;
 - (viii) the matters in particulars to paragraph 93(a) above.
- (b) A prudent superannuation trustee in the position of trustee of the CFSIL funds would have taken all reasonable steps to obtain relevant information and advice so as to ascertain each of the matters in the particulars to paragraph 93(a) above;
- (c) A prudent superannuation trustee in the position of trustee of the CFSIL funds would have taken into account the following relevant considerations:
 - (i) the past claims experience, the likely future claims experience, the policy terms and conditions, the rate structures (age, gender and occupation) and prevailing insurance market conditions for the CFSIL funds;
 - (ii) the fact that there was a significant conflict between CFSIL's duties to, and the financial interests of, the Applicant and each of the Group Members on the one hand and the interests of CFSIL and the interests of CommInsure on the other;
 - (iii) the fact that priority would not been given to the financial interests of the Applicant and each of the Group Members over the interests of CFSIL and CommInsure;
 - (iv) the fact that CFSIL's duties to, and the financial interests of, the Applicant and each of the Group Members would not be met despite the conflict;
 - (v) the fact that the financial interests of the Applicant and each of the Group Members would be adversely affected by that conflict in a significant way;
- (d) A prudent superannuation trustee in the position of trustee of the CFSIL funds would have:
 - (i) engaged in the conduct set out in paragraph 91(a) to (e) above in relation to approving any subsequent amendments to the IMF;

- (ii) carried out an open market insurance and/or reinsurance tender or obtained competing proposals from third party insurers on a commercial arm's length basis;
 - (iii) alternatively to sub-paragraph (ii) above, engaged and obtained from an independent external actuary a review of the premiums which were fair and the most economical (lowest) premiums reasonably available on the open market;
 - (iv) negotiated directly with CommInsure to obtain premiums which were fair and the most economical (lowest) premiums for its members;
 - (v) investigated, considered and assessed the suitability of insurance provided by third party insurers other than CommInsure to obtain premiums which were fair and the most economical (lowest) premiums reasonably available for its members;
 - (vi) assessed and determined whether the claims experience data obtained from CommInsure was accurate and complete;
 - (vii) taken reasonable steps to ensure that the "effectiveness" of the IMF had been reviewed by operationally independent, appropriately trained and competent persons;
 - (viii) obtained insurance provided by third party insurers other than CommInsure where that insurance offered substantially equivalent or better coverage at lower premiums;
- (e) A prudent superannuation trustee in the position of trustee of the CFSIL funds would not have:
- (i) relied on benchmarking reviews (in respect of the 2014 group insurance decision and the 2015 group insurance decision) which contained no comparison of the product features of the insurance offered by CommInsure and the product features of the insurance from the other selected insurers;
 - (ii) relied on the benchmarking reviews conducted at its direction which were insufficient to enable CFSIL to determine whether the insurance offered by CommInsure was the most suitable and at the most economical (lowest) premiums for members of the CFSIL funds;
 - (iii) relied on benchmarking reviews conducted at its direction which contained rankings, heat maps and graphs that were insufficient to enable it to determine whether the premiums charged or offered by CommInsure were fair and the most economical (lowest) reasonably available for its members;
 - (iv) relied on benchmarking reviews conducted at its direction which did not have regard to or proper regard to the past claims experience, future

likely claims experience, different product designs, definitions, terms, conditions, rate structures (age, gender, occupation) and administration fees of the insurance from other selected insurers;

- (v) evaluated the appropriateness of the insurers by only considering whether the insurance terms and conditions were “competitive” and the premium rates were “reasonable” and “sustainable”;
- (vi) relied on and implemented an IMF which:
 - (A) did not contain the matters set out in paragraph 91(d) above; and
 - (B) contained the matters set out in paragraph 91(e) above;
- (vii) by reason of the matters set out in sub-paragraphs (i) to (vi) above, put itself in a significantly disadvantageous position to negotiate with CommInsure in order to obtain premiums which were fair and the most economical (lowest) for its members;
- (f) By reason of the matters particularised in (a) to (e) above and in circumstances where the financial interests of the Applicant and each of the Group Members were adversely affected in a significant way by the above conflict, a prudent superannuation trustee in the position of trustee of the CFSIL funds would not:
 - (i) have made or implemented any of the approval decisions;
 - (ii) continue to implement any of the approval decisions.

- 97 In making each of the group insurance decisions and implementing each of the group insurance decisions, CFSIL contravened, and continues to contravene, the covenant in s 52(2)(c) of the SIS Act to perform the trustee’s duties and exercise its powers in the best interests of the members of the CFSIL funds.

Particulars

- (a) A prudent superannuation trustee in the position of trustee of the CFSIL funds would have engaged in the conduct set out in particulars (a) to (e) of paragraph 96 above;
- (b) A prudent superannuation trustee in the position of trustee of the CFSIL funds would have engaged in the conduct set out in the particulars to paragraph 98(i) and (ii) below;
- (c) By reason of the matters particularised in (a) and (b) above and in circumstances where the financial interests of the Applicant and each of the Group Members were adversely affected in a significant way by the above conflict, a prudent superannuation trustee in the position of trustee of the CFSIL funds would not:
 - (i) have made or implemented any of the approval decisions;

- (ii) continue to implement any of the approval decisions.

98 In making each of the group insurance decisions and implementing each of the group insurance decisions in the circumstances of paragraphs 94 and 95 above, CFSIL contravened, and continues to contravene, the covenant in s 52(2)(d) of the SIS Act to:

- (a) give priority to its duties to, and the interests of, the Applicant and the Group Members over its interests and the interests of CommInsure.

Particulars

The particulars to paragraph 93(a) above are repeated

- (b) ensure that its duties to the Applicant and the Group Members were met despite the conflict referred to in paragraph 88 above;

Particulars

The particulars to paragraph 93(a) above are repeated

- (c) ensure that the interests of the Applicant and the Group Members were not adversely affected by the conflict referred to in paragraph 88 above.

Particulars

The particulars to paragraph 93(a) above are repeated

- (d) by reason of the matters particularised in (a) to (c) above and in circumstances where the financial interests of the Applicant and each of the Group Members were adversely affected in a significant way by the above conflict, a prudent superannuation trustee in the position of trustee of the CFSIL funds would not:

- (i) have made or implemented any of the approval decisions;
- (ii) continue to implement any of the approval decisions.

99 In making each of the group insurance decisions and implementing each of the group insurance decisions, CFSIL contravened, and continues to contravene, each of the covenants in:

- (a) s 52(7)(a) of the SIS Act to formulate, review regularly and give effect to an insurance strategy for the benefit of the members of the CFSIL funds;

Particulars

The Applicant repeats the matters set out in paragraph 96 above;

- (b) s 52(7)(b) of the SIS Act to consider the cost to all members of the CFSIL funds of offering or acquiring insurance of a particular kind, or at a particular level;

Particulars

The particulars to paragraph 99(a) above are repeated.

- (c) s 52(7)(c) of the SIS Act to only offer or acquire insurance of a particular kind, or at a particular level, if the cost of the insurance does not inappropriately erode the retirement income of the members of the CFSIL funds.

Particulars

The particulars to paragraph 99(a) above are repeated.

- (d) By reason of the matters particularised in (a) to (c) above and in circumstances where the financial interests of the Applicant and each of the Group Members were adversely affected in a significant way by the above conflict, a prudent superannuation trustee in the position of trustee of the CFSIL funds would not:
 - (i) have made or implemented any of the approval decisions;
 - (ii) continue to implement any of the approval decisions.

100 The contraventions by CFSIL 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 constituted:

- (a) contraventions by it of s 55(1) of the SIS Act (prior to 6 April 2019); and
- (b) contraventions by it of s 54B(1) of the SIS Act (after 6 April 2019).

G Loss or Damage

101 Had CFSIL complied with the covenants in ss 52(2)(b), 52(2)(c), 52(2)(d), 52(7)(a), 52(7)(b) and 52(7)(c) of the SIS Act in making and implementing the IMF approval decision, CFSIL would not have:

- (a) made the IMF approval decision;
- (b) implemented the IMF approval decision;
- (c) continued to obtain from CommInsure group insurance at premiums which included the Excess Premiums;

- (d) continued to charge the members of the CFSIL funds premiums which included the Excess Premiums;
- (e) continued to deduct from the accounts of the members of the CFSIL funds premiums which included the Excess Premiums.

Particulars

- (i) CFSIL failed to comply with the covenants because it:
 - (A) was bound by an IMF that had the features pleaded in paragraph 30;
 - (B) relied on benchmarking decisions that had the features pleaded in paragraphs 34, 40, 48, 57, 72 and 80 above;
 - (C) failed to engage and obtain from an independent external actuary a review of the premium rates charged or offered by CommInsure and the premiums which were fair and the most economical (lowest) reasonably available on the open market;
 - (D) failed to investigate, consider and assess the suitability of insurance provided by third party insurers other than CommInsure to obtain insurance at premiums which were fair and the most economical (lowest) reasonably available for its members;
 - (E) failed to carry out an open market insurance and/or reinsurance tender or obtain competing proposals from third party insurers on a commercial arm's length basis;
 - (F) failed to negotiate directly with CommInsure to obtain insurance at premiums which were fair and the most economical (lowest) for its members.
- (ii) If CFSIL had engaged in the steps set out at (i) (C) to (F) above, the members of the CFSIL funds would not have paid premiums which included the Excess Premiums because either:
 - (A) a third party insurer would have offered a group insurance policy to CFSIL on the same terms that CommInsure offered at premiums which were lower for CFSIL's members; and
 - (B) CFSIL would have accepted those terms and CFSIL would have accepted those terms having regard to the premiums and also the third party insurer's service, financial strength, technology and relationship management; or

- (C) CommInsure would have agreed to offer a group insurance policy to CFSIL on the same terms as CommInsure offered at premiums which were fair for CFSIL's members.

102 Had CFSIL complied with the covenants in ss 52(2)(b), 52(2)(c), 52(2)(d) and 52(7)(a), 52(7)(b) and 52(7)(c) of the SIS Act in making and implementing each of the group insurance decisions, CFSIL would not have:

- (a) made any of the group insurance decisions;
- (b) implemented any of the group insurance decisions;
- (c) continued to obtain from CommInsure group insurance at premiums which included the Excess Premiums;
- (d) continued to charge the members of the CFSIL funds premiums which included the Excess Premiums;
- (e) continued to deduct from the accounts of the members of the CFSIL funds premiums which included the Excess Premiums.

Particulars

The particulars to paragraph 101 are repeated.

103 The Applicant and each of the Group Members suffered loss or damage as a result of the contraventions pleaded in Part F above.

Particulars

- (a) The above contraventions caused from 22 January 2014, and continue to cause, a reduction in the amount which the Applicant and the Group Members have received from the CFSIL funds;
- (b) The above contraventions have caused, and continue to cause, a reduction in the amount which the Applicant and the Group Members can expect to receive from the CFSIL funds.

104 By reason of the matters pleaded in paragraphs H above, CFSIL is liable to compensate the Applicant and each of the Group Members for that loss or damage.

Particulars

s 55(3) of the SIS Act

H Fiduciary obligations

105 By reason of the matters pleaded in paragraphs 7 and 10 above, CFSIL owed to the Applicant and each Group Member a fiduciary duty to:

- (a) avoid the real or substantial possibility of a conflict between CFSIL's duties to, and the interests of, the Applicant and Group Members, on the one hand, and the interests of itself and CommInsure, on the other;
- (b) not to improperly use its position to gain an advantage for itself and/or CommInsure.

H.1 Breach of fiduciary and trust obligations

106 The Applicant repeats paragraphs 94 and 95 above.

107 At all relevant times, CFSIL breached its fiduciary duties owed to the Applicant and each of the Group Members by:

- (a) failing to avoid the conflict referred to in paragraph 105(a) above; and/or

Particulars

CFSIL preferred the interests of itself and CommInsure over its duty to, and the interests of, the Applicant and each of the Group Members by obtaining a group insurance policy from CommInsure that included the Excess Premiums.

- (b) improperly using its position to gain a benefit for itself and/or CommInsure.

Particulars

- (i) The benefit to CFSIL was the receipt of the Excess Premiums by its related party, CommInsure. A further benefit to CFSIL was saving costs associated with obtaining expert actuarial advice, engaging in an open market insurance and/or reinsurance tender or obtaining competing proposals from third party insurers.
- (ii) The benefit to CommInsure was the receipt of the Excess Premiums to itself.

108 The contraventions of each 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 pleaded in Part F above also constituted breaches of trust by CFSIL.

- 109 CFSIL's conduct in paragraphs 107 and 108 above constituted a reckless failure to exercise the degree of care and diligence that the trustee was required to exercise.

Particulars

The particulars to paragraphs 91, 93, 96 and 98 above are repeated.

- 110 The Applicant and each of the Group Members suffered loss or damage by reason of the breaches pleaded in paragraphs 107, 108 and 109 above.

Particulars

The particulars to paragraph 103 above are repeated.

- 111 By reason of the matters pleaded in paragraphs 105 to 110 above, CFSIL is liable to pay equitable compensation to the Applicant and each of the Group Members.
- 112 Further or in the alternative, by reason of the matters pleaded in paragraphs 105 to 109 above, CFSIL is liable to account for and pay to the Applicant and each of the Group Members all benefits, profits and gains made by CFSIL from the receipt and use by CommInsure of the Excess Premiums.

I Involvement and knowing receipt by CommInsure

I.1 Involvement

- 113 CommInsure knew, at the time of the making of each of the group insurance decisions and implementing each of the group insurance decisions:

- (a) the matters pleaded in paragraphs 20 to 24 above and 88 to 93 above;

Particulars

- (i) CommInsure's knowledge is inferred from the fact that it:
- (A) was a party to each of the ISAs and was aware of their terms;
 - (B) developed and issued each of the Group Insurance Policies;
 - (C) provided the data used by CFSIL to conduct its annual reviews;
- (ii) Further particulars will be provided after discovery.
- (b) the matters pleaded in paragraphs 94 to 99 above.

Particulars

- (i) The particulars to sub-paragraph (a) above are repeated;
- (ii) CommInsure's knowledge is also inferred from the fact that it calculated and charged the premiums on the Group Insurance Policies;

- (iii) Further particulars will be provided after discovery.

- 114 CommInsure was involved in the making of each of the group insurance decisions and implementing each of the group insurance decisions.

Particulars

- (i) The particulars to sub-paragraph 113(a) are repeated;
- (ii) Further particulars will be provided after discovery.

- 115 By reason of the matters pleaded in paragraphs 113 and 114 above, CommInsure was involved within the meaning of section 55(3) of the SIS Act in the contraventions in paragraphs 88 to 99 above.

- 116 By reason of the matters pleaded in paragraphs 113 to 115 above, CommInsure is liable to compensate the Applicant and each of the Group Members for the loss or damage pleaded in paragraph 110 above.

Particulars

s 55(3) of the SIS Act

- 117 Further or in the alternative, by reason of the matters pleaded in paragraphs 113 to 115 above, CommInsure is liable to pay equitable compensation to the Applicant and each of the Group Members.

- 118 Further or in the alternative, by reason of the matters pleaded in paragraphs 113 and 115 above, CommInsure is liable to account for and pay to the Applicant and each of the group members:

- (a) the Excess Premiums;
- (b) all benefits, profits and gains made or derived by CommInsure from its receipt and use of the Excess Premiums.

I.2 Knowing receipt

- 119 At the time of receipt of the Excess Premiums, CommInsure knew:

- (a) the material facts giving rise to the breach of trust as pleaded in paragraph 108 above;

Particulars

- (i) The particulars to paragraph 113 above are repeated;

- (ii) Further particulars will be provided after discovery.
- (b) the material facts giving rise to the existence of the fiduciary duty owed by CFSIL to the Applicant and each of the Group Members as pleaded in paragraph 105 above; and

Particulars

- (i) The particulars to paragraph 113 above are repeated;
- (ii) Further particulars will be provided after discovery.
- (c) the material facts giving rise to the breaches of the fiduciary duty by CFSIL as pleaded in paragraph 107 above.

Particulars

- (i) The particulars to paragraph 113 above are repeated;
- (ii) Further particulars will be provided after discovery.

120 Alternatively to paragraph 119 above, CommInsure knew of the circumstances that would have indicated to an honest and reasonable person:

- (a) the material facts referred to in sub-paragraph 119(a) above;

Particulars

- (i) The particulars at sub-paragraph 119(a) above are repeated.
- (b) the material facts referred to in sub-paragraph 119(b) above;

Particulars

- (i) The particulars at sub-paragraph 119(b) above are repeated.
- (c) the material facts referred to in sub- paragraph 119(c) above.

Particulars

- (i) The particulars at sub-paragraph 119(c) above are repeated.

121 From 22 January 2014, CommInsure received the Excess Premiums.

122 By reason of the matters pleaded in paragraphs 119 to 121 above, CommInsure is liable to pay equitable compensation to the Applicant and each of the Group Members.

123 Further or in the alternative, by reason of the matters pleaded in paragraphs 119 to 121 above, CommInsure is liable to account for and pay to the Applicant and each of the Group Members:

- (a) the Excess Premiums;
- (b) all benefits, profits and gains made or derived by CommInsure from its receipt and use of the Excess Premiums.

J Transfer from CommInsure to AIAA

123A On 15 March 2021, the Federal Court of Australia confirmed a life insurance scheme pursuant to Part 9 of the *Life Insurance Act 1995* (Cth) (**Scheme**) which from 1 April 2021 provided that AIAA was liable for and assumed certain liabilities of CommInsure as specified in the Scheme.

123B If (which is not admitted) any liability of CommInsure as alleged in the Amended Statement of Claim has been transferred to, and assumed by, AIAA under the Scheme, then AIAA is liable for the relief claimed against CommInsure in the Amended Originating Application.

JK Relief claimed

124 The Applicant claims for himself and on behalf of each of the Group Members the relief set out in the accompanying Amended Originating Application.

Date: ~~22 January 2020~~ 22 October 2021



Signed by Rebecca Lee Jancauskas
Lawyer for the Applicant

This pleading was prepared by Thomas Bagley, counsel, and settled by A S Martin SC.

Certificate of lawyer

I, Rebecca Lee Jancauskas, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~22 January 2020~~ 22 October 2021



Signed