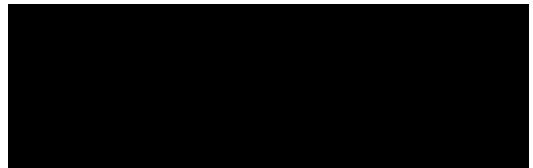


NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application - Form 15 - Rule 8.01(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 5/09/2024 11:15:16 AM AEST
Date Accepted for Filing: 5/09/2024 3:19:46 PM AEST
File Number: VID898/2024
File Title: AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY v MICHAEL JOSEPH O'CONNOR
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



R

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 15
Rules 8.01(1), 8.04(1)

ORIGINATING APPLICATION

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL**

NO VID OF 2024

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY

Applicant

MICHAEL JOSEPH O'CONNOR

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

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

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

TIME AND DATE FOR HEARING:

PLACE:

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

Date:

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

Filed on behalf of the Applicant, the Australian Prudential
Regulation Authority

File ref: 24001904

Prepared by: Katrina Close
AGS lawyer within the meaning of s 551 of the *Judiciary Act*
1903

Telephone: 03 9242 1230
Lawyer's Email:
Katrina.Close@ags.gov.au

Address for Service:
The Australian Government Solicitor,
Level 34, 600 Bourke St, Melbourne, VIC 3000
Katrina.Close@ags.gov.au



DETAILS OF CLAIM

1. On the grounds stated in the accompanying affidavit or other document prescribed by the rules the Applicant claims:
 - a) declaratory relief pursuant to s 196(2) of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**);
 - b) orders for monetary penalties pursuant to s 196(3) of the SIS Act;
 - c) an order that the Respondent be disqualified from being or acting as a responsible officer of any corporate trustee of a superannuation entity pursuant to s 126H(1) of the SIS Act;
 - d) costs pursuant to s 43 of the *Federal Court of Australia Act 1976* (Cth), in respect of contraventions of s 54B(2) of the SIS Act by the Respondent.
2. The Court's jurisdiction to hear the application and grant the relief is found in ss 126H(1) and 196(2) and (3) of the SIS Act.

Declarations

3. Pursuant to s 196(2) of the SIS Act, a declaration that, during the period between March 2020 to October 2021, while he was a director of First Super Pty Ltd (ABN 42 053 498 472) (the **Trustee**), which was the corporate trustee of First Super (ABN 56 286 625 181) (**First Super**), Mr O'Connor:
 - a) failed to act honestly in all matters concerning First Super, in breach of the covenant set out in s 52A(2)(a) of the SIS Act;
 - b) failed to exercise, in relation to all matters affecting First Super, the same degree of care, skill and diligence as a prudent superannuation entity director would exercise, in breach of the covenant in s 52A(2)(b) of the SIS Act;
 - c) failed to perform his duties and exercise his powers as director of the Trustee in the best financial interests of the members of First Super, in breach of the covenant in s 52A(2)(c) of the SIS Act; and
 - d) in circumstances where there was a conflict between, on the one hand, his duties to, and the interests of, the members of First Super, and, on the other hand, his duties to, and the interests of, the then Construction, Forestry, Maritime, Mining and Energy Union (**Union**): (i) failed to give priority to his duties to and the interests of the members of First Super over his duties to and the interests of the Union; (ii) failed to ensure that his duties to the members of



First Super were met despite the conflict; and (iii) failed to ensure that the members of First Super were not adversely affected by the conflict, in breach of the covenant in s 52A(2)(d) of the SIS Act,

and therefore, in each case, contravened s 54B(2) of the SIS Act, by:

- e) causing the Union to employ a person (**BT**) in a full-time role in which, under an agreement between the Union and the Trustee, the Trustee paid the Union for BT's salary and entitlements;
 - f) directing BT to do, or approving BT doing, work in her previous role for the Union including as a MSR Organiser for the benefit of the Union, rather than in her role as MESC Coordinator for the benefit of the Trustee; and
 - g) despite being aware that BT was spending a substantial proportion of her time doing work in her previous role for the Union including as a MSR Organiser for the benefit of the Union, rather than in her role as MESC Coordinator for the benefit of the Trustee, and that the Trustee was paying the Union for BT's salary and entitlements:
 - i. failing to inform or disclose to the staff of the Trustee that BT was continuing to carry out work of that kind, or seek approval for her to carry out that work; and
 - ii. failing to take steps to ensure that the Trustee was not charged for the full amount of BT's salary and entitlements;
 - h) engaging in the conduct at 3(e) to 3(g) with the purpose of ensuring that BT would continue to do substantial work in her previous role for the Union including as a MSR Organiser for the benefit of the Union, rather than in her role as MESC Coordinator for the benefit of the Trustee, while having her employment funded by the Trustee;
 - i) alternatively to 3(h), engaging in the conduct at 3(f) to 3(g) with the purpose of ensuring that BT would continue to do substantial work in her previous role for the Union including as a MSR Organiser for the benefit of the Union rather than in her role as MESC Coordinator for the benefit of the Trustee, while having her employment funded by the Trustee.
4. Pursuant to s 196(2) of the SIS Act, a declaration that, during the period between January 2020 to October 2020, while he was a director of the Trustee, which was the corporate trustee of First Super, Mr O'Connor:



- a) failed to act honestly in all matters concerning First Super, in breach of the covenant in s 52A(2)(a) of the SIS Act;
- b) failed to exercise, in relation to all matters affecting First Super, the same degree of care, skill and diligence as a prudent superannuation entity director would exercise, in breach of the covenant in s 52A(2)(b) of the SIS Act;
- c) failed to perform his duties and exercise his powers as director of the Trustee in the best financial interests of the members of First Super, in breach of the covenant in s 52A(2)(c) of the SIS Act; and
- d) in circumstances where there was a conflict between, on the one hand, his duties to, and the interests of, the members of First Super, and, on the other hand, his duties to, and the interests of, the Union: (i) failed to give priority to his duties to and the interests of the members of First Super over his duties to and the interests of the Union; (ii) failed to ensure that his duties to the members of First Super were met despite the conflict; and (iii) failed to ensure that the members of First Super were not adversely affected by the conflict, in breach of the covenant in s 52A(2)(d) of the SIS Act,

and therefore, in each case, contravened s 54B(2) of the SIS Act, by:

- e) being involved, on behalf of the Union, in the negotiation of the extension of an agreement between the Union and the Trustee, under which the Trustee agreed to pay the Union fees in exchange for the provision of services by the Union to the Trustee;
- f) failing to inform or disclose to staff and directors of the Trustee that he was involved in that negotiation;
- g) in the course of his involvement in the negotiation, approving the Union making an offer to the Trustee which increased the fees under the MESC Contract without any corresponding increase in the services provided under the Contract;
- h) further or alternatively to 4(g), in the course of his involvement in the negotiation, engaging in conduct with the intention of benefiting the Union at the expense of First Super and its members' interests.



Pecuniary penalties

5. Pursuant to s 196(3) of the SIS Act, an order that the Respondent pay to the Commonwealth monetary penalties of an amount the Court determines appropriate in respect of the Respondent's contraventions of s 54B(2) of the SIS Act.

Disqualification order

6. Pursuant to s 126H(1), an order disqualifying the Respondent from being or acting as a responsible officer of any body corporate that is a trustee of a superannuation entity for a period the Court considers appropriate.

Other orders

7. Costs.
8. Such further or other orders as the Court considers appropriate.

APPLICANT'S ADDRESS

The Applicant's address for service is:

Australian Government Solicitor,
Level 34, 600 Bourke St, Melbourne, VIC 3000

Email: Katrina.Close@ags.gov.au

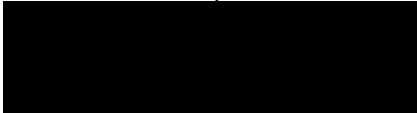
The Australian Government Solicitor's telephone number is:

Tel: 03 9242 1230

SERVICE ON THE RESPONDENT

It is intended to serve this application on the Respondent.

Date: 5 September 2024



.....
Katrina Close
AGS lawyer
for and on behalf of the Australian Government Solicitor
Lawyer for the Applicant