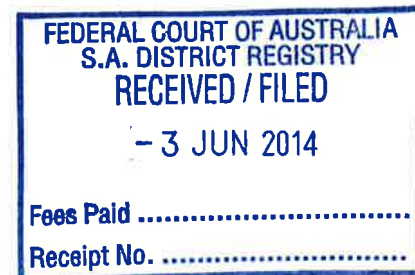


Form 17  
Rule 8.05(1)(a)

STATEMENT OF CLAIM



No. SAD 94 of 2014

Federal Court of Australia  
District Registry: South Australia

**IN THE MATTER OF ASTRA RESOURCES PLC AND ASTRA CONSOLIDATED  
NOMINEES PTY LTD (ACN 152 869 353)**

BETWEEN

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
Plaintiff

and

**ASTRA RESOURCES PLC & Others named in the schedule**  
Defendants

**Parties**

1. The plaintiff is pursuant to section 8 of the *Australian Securities and Investments Commission Act 2001* (Cth) a body corporate which may sue in its corporate name.
  
2. The first defendant, Astra Resources PLC (**Astra Resources**):
  - (a) is a company that was validly incorporated on 3 May 2011 under the laws of the United Kingdom;
  
  - (b) is and was at all material times a “body” within the meaning of s 9 of the *Corporations Act 2001* (Cth) (**the Act**).

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Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff		
Prepared by (name of person/lawyer)	Savas Miriklis		
Law firm (if applicable)			
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3. The second defendant, Astra Consolidated Nominees Pty Ltd (**Astra Nominees**):
  - (a) is a company that was incorporated on 25 August 2011;
  - (b) is and was at all material times in existence under the laws of Australia.
  
4. The third defendant, Jaydeep Biswas (**Biswas**):
  - (a) has been a director of Astra Resources from 13 June 2011;
  - (b) was a director of Astra Mining Pty Ltd (**Astra Mining**) from 15 June 2011 to 16 September 2013.
  
5. The fourth defendant, Silvana De Cianni (**De Cianni**):
  - (a) has been a director of Astra Resources since 13 June 2011;
  - (b) has been a director of Astra Mining since 28 January 2010.
  
6. The fifth defendant, Barrie Meerkin (**Meerkin**):
  - (a) was a director of Astra Resources from 3 May 2011 to 16 April 2013;
  - (b) was a director of Astra Nominees from 25 August 2011 to 16 April 2013;
  - (c) was at all material times a member or employee of the law firm Michael Sing Lawyers.
  
7. Astra Mining:
  - (a) is a company that was validly incorporated on 4 September 2009;
  - (b) is and was at all material times in existence under the laws of Australia.
  
8. Astra Project Finance Pty Ltd (**Astra Finance**):
  - (a) is a company that was validly incorporated on 9 April 2010;
  - (b) is and was at all material times in existence under the laws of Australia;

(c) is and was at all material times a subsidiary of Astra Mining.

9. Michael Sing Lawyers (MSL) at all relevant times were solicitors retained to advise and act on behalf of Astra Resources and Astra Nominees.

### PARTICULARS

The retainer was partly in writing and partly to be implied. To the extent it was in writing it was comprised by a letter dated 27 September 2011 and a costs agreement on or about the same date. To the extent it was to be implied, it was to be implied from the facts that Astra Resources and Astra Nominees at various times provided instructions to MSL and MSL acted on those instructions.

### Share Swap between Astra Mining and Astra Resources

10. In June 2011, Astra Mining:
- (a) was a public company; and
  - (b) had approximately 558 million shares on issue.
11. On or about 15 June 2011, at an extraordinary general meeting, the members of Astra Mining voted in favour a scheme whereby:
- (a) each of the existing shareholders in Astra Mining would be issued one share in Astra Resources for every one share they held in Astra Mining (“**the Share Swap**”);
  - (b) all of the existing shares in Astra Mining would be cancelled;
  - (c) 120 new shares in Astra Mining would be issued to Astra Resources;
  - (d) Astra Mining would thereby become a wholly owned subsidiary of Astra Resources.
12. Between 1 July and 8 September 2011 Astra Mining issued a further 383 million shares approximately.

13. On or about 22 August 2011, the directors of Astra Resources passed a resolution approving the Share Swap.
14. Pursuant to the resolutions referred to above, on or about 8 September 2011:
  - (a) Astra Resources issued 1,009,986,466 shares;
  - (b) Astra Mining cancelled all of its issued shares; and
  - (c) Astra Mining issued 120 new shares to Astra Resources and thereafter became a wholly owned subsidiary of Astra Resources.

#### **Issue of Astra Mining shares and Astra Resources shares to Astra Nominees**

15. On or about 26 August 2011, Astra Mining and Astra Nominees entered into an agreement for the subscription of shares in Astra Mining by Astra Nominees.

#### **PARTICULARS**

The agreement (**Share Subscription Agreement**) is in writing dated 26 August 2011.

16. There were terms of the Share Subscription Agreement that:
  - (a) Astra Mining agreed to allot and issue 40 million ordinary shares to Astra Nominees in its capacity as trustee for the Astra Consolidated Nominees Trust (**ACN Trust**);
  - (b) Astra Nominees agreed to subscribe and purchase the 40 million shares;
  - (c) Astra Nominees agreed to purchase the shares in its capacity as trustee of the ACN Trust to assist Astra Mining procure investment funding for its working capital.

17. On or about 26 August 2011, Astra Nominees made a declaration of trust in favour of Astra Mining creating the ACN Trust.

#### **PARTICULARS**

The declaration of trust was in writing by a deed (**Bare Trust Deed**) dated 26 August 2011.

18. There were terms of the Bare Trust Deed that:
- (a) Astra Nominees declared that it would hold the 40 million shares that it would subscribe for in Astra Mining on the ACN Trust for Astra Mining;
  - (b) Astra Nominees would deal with the shares as directed by Astra Mining;
  - (c) the Astra Mining shares would be held on the ACN Trust by Astra Nominees as bare trustee for Astra Mining as beneficial owner.
19. Pursuant to the Share Subscription Agreement and the Bare Trust Deed:
- (a) Astra Mining issued the shares to Astra Nominees with the purpose of Astra Nominees selling or transferring them;
  - (b) Astra Nominees acquired the shares in Astra Mining with the purpose of selling or transferring them.
20. On or about 8 September 2011, pursuant to the Share Swap:
- (a) Astra Nominees' shares in Astra Mining were cancelled; and
  - (b) in exchange for its shares in Astra Mining, Astra Nominees received the same number of shares in Astra Resources.

21. On or about 7 March 2012 Astra Resources issued a further 30 million shares to Astra Nominees.
22. The Astra Resources shares held by Astra Nominees on and from 8 September 2011:
- (a) were held by Astra Nominees on the same terms and conditions as the Share Subscription Agreement and the Bare Trust Deed;
  - (b) were issued by Astra Resources for the same purpose as Astra Mining had issued its shares to Astra Nominees, i.e. for the purpose of Astra Nominees selling or transferring them;
  - (c) were acquired by Astra Nominees for the same purpose as it had acquired the Astra Mining shares, i.e. for the purpose of Astra Nominees selling or transferring them.

#### **Appointment of brokers**

23. On or about 3 May 2011 Astra Resources appointed Aurillia Pty Ltd (**Aurillia**) its agent to raise capital for it.

#### **PARTICULARS**

The appointment was evidenced by a letter dated 3 May 2011 from Astra Resources.

24. On or about 5 July 2011, Astra Mining and Astra Resources appointed Kea Funds Corporate Pty Ltd (**Kea Funds**) their agent to secure investment funding for them by selling shares in them to investors.

#### **PARTICULARS**

The appointment was by written brokerage agreement dated 5 July 2011.

25. On or about 26 August 2011 Astra Resources appointed Oxcorp Pty Ltd (**Oxcorp**) its agent to sell shares in it held by Astra Nominees to raise finance for it.

**PARTICULARS**

The appointment was in writing by letter dated 26 August 2011 from Oxcorp to Astra Resources, countersigned on behalf of Astra Resources.

26. On or about 2 September 2011 Astra Mining appointed Kea Funds its agent to raise equity funding by the sale of its shares held by Astra Nominees.

**PARTICULARS**

The appointment was in writing by letter dated 2 September 2011 to Kea Funds, countersigned on behalf of Kea Funds.

27. On or about 9 December 2011 Astra Resources and Astra Finance appointed Michael Knobel (**Knobel**) their agent to secure investment funding for Astra Resources.

**PARTICULARS**

The appointment was by written agency agreement dated 9 December 2011.

28. On or about 12 December 2011 Astra Resources and Astra Finance appointed Oxcorp (which at that time had the name Utorr Pty Ltd) their agent to raise investment funding for Astra Resources.

**PARTICULARS**

The appointment was by written agency agreement dated 12 December 2011.

29. On or about 9 January 2012 Astra Resources and Astra Finance appointed Oxcorp their agent to secure investment funding for Astra Resources by selling shares in it held by Astra Nominees.

**PARTICULARS**

The appointment was by written agency agreement dated 9 January 2012.

30. On or about 19 January 2012 Astra Resources and Astra Finance appointed David Baird (**Baird**) their agent to secure investment funding for Astra Resources.

**PARTICULARS**

The appointment was by written agency agreement dated 19 January 2012.

31. On or about 9 February 2012 Astra Resources and Astra Finance appointed Leisuretime Media Pty Ltd (**Leisuretime**) their agent to secure investment funding for Astra Resources.

**PARTICULARS**

The appointment was by written agency agreement dated 9 February 2012.

**Distribution of application forms**

32. On or about 5 October 2011 Astra Resources sent to Gang Chen an application form for the offer of shares in Astra Resources to be acquired from Astra Nominees.

**PARTICULARS**

The application form was attached to an email dated 5 October 2011 from Juliet Giustozzi (**Giustozzi**), an employee of Astra Resources, to Gang Chen.

33. On or about 5 October 2011 Astra Resources sent to Kea Funds an application form for shares in Astra Resources to be used for offers to be made by Kea Funds as agent for Astra Resources to investors for the acquisition of shares in Astra Resources held by Astra Nominees.

**PARTICULARS**

The application form was attached to an email dated 5 October 2011 from Lenice Lim of MSL, as solicitor for Astra Resources, to Matthew Critchley (**Critchley**) of Kea Funds.



34. Thereafter on numerous occasions until about 2 November 2011 Kea Funds as agent for Astra Resources distributed application forms of the kind provided to it by Astra Resources to potential investors to whom offers were made to acquire shares in Astra Resources from Astra Nominees.

#### **PARTICULARS**

In respect of each purchase of shares recorded in Attachment 1 between about 5 October 2011 and 2 November 2011 where Kea Funds is shown as the broker in the fourth column, it distributed an application form to the purchaser listed in the first column.

35. On or about 2 November 2011 Astra Resources sent to Kea Funds and Aurillia a revised application form for shares in Astra Resources to be used for offers to be made by those brokers as agents for Astra Resources to investors for the acquisition of shares in Astra Resources held by Astra Nominees.

#### **PARTICULARS**

The revised application form was attached to:

- (a) an email dated 2 November 2011 from Lenice Lim of MSL, as solicitor for Astra Resources, to Critchley of Kea Funds; and
  - (b) an email dated 2 November 2011 from Lenice Lim of MSL, as solicitor for Astra Resources, to Milton Papadopoulos of Aurillia.
36. Thereafter on numerous occasions until about 7 May 2012 Kea Funds and Aurillia, as agents for Astra Resources, distributed revised application forms of the kind provided to it by Astra Resources to potential investors to whom offers were made to acquire shares in Astra Resources from Astra Nominees.

#### **PARTICULARS**

In respect of each purchase of shares in Attachment 1 between 2 November 2011 and 7 May 2012 where Kea Funds or Aurillia is shown as the broker in the fourth column, it distributed an application form to the purchaser listed in the first column.

37. Further, in the period from about 5 October 2011 to about 7 May 2012, other brokers referred to in paragraphs 23-31 above also distributed on behalf of Astra Resources application forms to potential investors to whom offers were made to acquire shares in Astra Resources from Astra Nominees.

#### **PARTICULARS**

In respect of each purchase of shares recorded in Attachment 1 from about 5 October 2011 to about 7 May 2012 where a broker is shown in the fourth column, the broker distributed an application form to the purchaser listed in the first column.

38. On or about 7 May 2012 Astra Resources sent to Baird and Leisuretime a revised application form for shares in Astra Resources to be used for offers to be made by those brokers as agents for Astra Resources to investors for the acquisition of shares in Astra Resources held by Astra Nominees.

#### **PARTICULARS**

The revised application form was attached to an email dated 7 May 2012 from Giustozzi to the brokers.

39. Thereafter on numerous occasions Baird and Leisuretime as agents for Astra Resources distributed revised application forms of the kind provided to them by Astra Resources to potential investors to whom offers were made to acquire shares in Astra Resources from Astra Nominees.

#### **PARTICULARS**

In respect of each purchase of shares recorded in Attachment 1 from about 7 May 2012 onwards where a broker is shown in the fourth column, that broker distributed an application form to the purchaser listed in the first column.

40. On or about 12 June 2012 Astra Resources sent to Baird a revised application form for shares in Astra Resources to be used for offers to be made by Baird as agent for Astra Resources to investors for the acquisition of shares in Astra Resources held by Astra Nominees.

**PARTICULARS**

The revised application form was attached to an email dated 12 June 2012 from Giustozzi to Baird.

41. Thereafter on numerous occasions Baird as agent for Astra Resources distributed revised application forms of the kind provided to him by Astra Resources to potential investors to whom offers were made to acquire shares in Astra Resources from Astra Nominees.

**PARTICULARS**

In respect of each purchase of shares recorded in Attachment 1 from about 12 June 2012 onwards where Baird is shown as the broker in the fourth column, he distributed an application form to the purchaser listed in the first column.

**Offers of shares**

42. In the period 8 September 2011 to 8 September 2012, Astra Nominees made offers to sell the shares in Astra Resources to which it had subscribed pursuant to the Share Subscription Agreement and the Share Swap.

**PARTICULARS**

Details of the offers are contained in Attachment 1:

- (a) the names of the investors to whom the offers were made are in the first column;
- (b) the dates on which the offers were made were on or shortly before the dates of the purchases which arose from acceptance of the offers by the investors as set out in the second column;
- (c) the amounts paid by the investors are in the third column;
- (d) the names of the brokers (where applicable) are in the fourth column.

43. Each of the offers referred to in paragraph 42 (**Offers**) was:
- (a) to an Australian resident; and
  - (b) made within Australia.

#### **Contraventions of the Corporations Act**

44. By reason of s 707 of the Act and by reason of the matters alleged in paragraphs 15-22, the Offers required disclosure pursuant to Part 6D.2 of the Act.
45. There was no disclosure pursuant to Part 6D.2 of the Act in respect of the Offers.
46. Accordingly, on each occasion on which it made an Offer, Astra Nominees contravened s 727(1) of the Act.
47. Further, by:
- (a) distributing the application forms as alleged in paragraphs 32, 33, 35, 38 and 40; and
  - (b) by causing or authorising the brokers to distribute the application forms as alleged in paragraphs 34, 36, 37, 39 and 41 by reason of s 52 of the Act
- Astra Resources on each such occasion contravened s 727(1) of the Act.

#### **Disqualification of directors**

48. Biswas was a director of Astra Resources when it on at least two occasions contravened s 727(1) of the Act by distributing application forms for Offers.

49. On each of the occasions when Astra Resources contravened s 727(1), Biswas failed to take reasonable steps to prevent the contravention in that:
- (a) he failed to consider, or to consider adequately, whether the Offers required disclosure under Part 6D.2;
  - (b) he failed to obtain independent legal advice about the disclosure requirements of the Act;
  - (c) he failed to take any steps to prevent:
    - (i) Astra Nominees from making the Offers;
    - (ii) Astra Resources from distributing the application forms for Offers;
    - (iii) the brokers from distributing application forms for Offers on behalf of Astra Resources;
    - (iv) the investors from accepting the Offers;
  - (d) he did not take any step to ensure that a disclosure document was lodged with ASIC.
50. By reason of:
- (a) the contraventions of the Act committed by Astra Resources while he was a director;
  - (b) his failure to take reasonable steps to prevent the contraventions as pleaded in paragraph 49 above
- Biswas should be disqualified pursuant to section 206E of the Act from managing a corporation for a period that the Court considers appropriate.
51. De Cianni was a director of Astra Resources when it on at least two occasions contravened s 727(1) of the Act by distributing application forms for Offers.

52. On each of the occasions when Astra Resources contravened s 727(1), De Cianni failed to take reasonable steps to prevent the contravention in that:
- (a) she failed to consider, or to consider adequately, whether the Offers required disclosure under Part 6D.2.
  - (b) she failed to obtain independent legal advice about the disclosure requirements of the Act;
  - (c) she failed to take any steps to prevent:
    - (i) Astra Nominees from making the Offers;
    - (ii) Astra Resources from distributing the application forms for Offers;
    - (iii) the brokers from distributing application forms for Offers on behalf of Astra Resources;
    - (iv) the investors from accepting the Offers;
  - (d) she did not take any step to ensure that a disclosure document was lodged with ASIC.
53. By reason of:
- (a) the contraventions of the Act committed by Astra Resources while she was a director;
  - (b) her failure to take reasonable steps to prevent the contraventions as pleaded in paragraph 52 above
- De Cianni should be disqualified pursuant to section 206E of the Act from managing a corporation for a period that the Court considers appropriate.
54. Meerkin was a director of Astra Nominees when it on at least two occasions contravened s 727(1) of the Act by making the Offers.

55. Meerkin was a director of Astra Resources when it on at least two occasions contravened s 727(1) of the Act by distributing application forms for Offers.
56. On each of the occasions when Astra Nominees and Astra Resources contravened s 727(1), Meerkin failed to take reasonable steps to prevent the contravention in that:
- (a) he failed to consider, or to consider adequately, whether the Offers required disclosure under Part 6D.2;
  - (b) he failed to obtain independent legal advice about the disclosure requirements of the Act;
  - (c) he failed to take any steps to prevent:
    - (i) Astra Nominees from making the Offers;
    - (ii) Astra Resources from distributing the application forms for Offers;
    - (iii) the brokers from distributing application forms for Offers on behalf of Astra Resources;
    - (iv) the investors from accepting the Offers;
  - (d) he did not take any step to lodge a disclosure document with ASIC.
57. By reason of:
- (a) the contraventions of the Act committed by Astra Nominees while he was a director;
  - (b) the contraventions of the Act committed by Astra Resources while he was a director;
  - (c) his failure to take reasonable steps to prevent the contraventions as pleaded in paragraph 56 above

Meerkin should be disqualified pursuant to section 206E of the Act from managing a corporation for a period that the Court considers appropriate.

AND ASIC CLAIMS the relief specified in the application.

Date: 3 June 2014



Signed by Savas Miriklis  
Lawyer for the plaintiff

This pleading was prepared by Michael Pearce SC and Michael Burnett of Counsel.

**Certificate of lawyer**

I, Savas Miriklis, 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: 3 June 2014



Signed by Savas Miriklis  
Lawyer for the plaintiff



**SCHEDULE**

No. SAD 94 of 2014

Federal Court of Australia  
District Registry: South Australia

**IN THE MATTER OF ASTRA RESOURCES PLC AND ASTRA CONSOLIDATED  
NOMINEES PTY LTD (ACN 152 869 353)**

**Defendants**

**ASTRA CONSOLIDATED NOMINEES PTY LTD (ACN 152 869 353)**  
Second Defendant

and

**JAYDEEP BISWAS**  
Third Defendant

and

**SILVANA DE CIANNI**  
Fourth Defendant

and

**BARRIE MEERKIN**  
Fifth Defendant