



ASIC
Australian Securities &
Investments Commission



S02589481

INFRINGEMENT NOTICE

Section 12GX of the *Australian Securities and Investments Commission Act 2001* (Cth)

Date of giving this notice: 17 October 2023

Unique identification code: S02589481

TO: H.E.S.T. Australia Ltd (ACN 006 818 695) (**HESTA**)

1. ASIC gives this infringement notice under section 12GX of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).
2. Payment for this infringement notice is due on 14 November 2023, being 28 days from the day after this notice is given, unless the time is extended, an arrangement is made for payment by instalments or the notice is withdrawn.
3. ASIC has reasonable grounds to believe that HESTA has contravened an infringement notice provision as follows:
 - (a) From around 9 December 2022 to 18 July 2023 (**Relevant Period**), HESTA contravened section 12DB(1)(e) of the ASIC Act by, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services, making a false or misleading representation that services have particular performance characteristics.
 - (b) HESTA is the trustee of the superannuation fund, HESTA (Superannuation Fund Number 129638949), which offers consumers a range of investment options, including the 'Balanced Growth Option' (**Option**).
 - (c) HESTA developed, approved and published during the Relevant Period a webinar relating to market volatility on its website at <https://www.hesta.com.au/campaigns/market-movements> (**Webinar**). The Webinar was published on or around 9 December 2022 and remained on the website during the Relevant Period. The webinar comprised audio of a narrator speaking over a video of a slide deck.
 - (d) The Webinar represented that a consumer would have realised a net return of approximately \$67,000 on a \$50,000 investment by staying in the Option for 10 years up to today.
 - (e) HESTA made a representation about financial services having a particular performance characteristic that was false or misleading in contravention of section 12DB(1)(e) of the ASIC Act because:
 - i. the Webinar conveyed that a customer would have realised a net return of approximately \$67,000 on a \$50,000 investment over the 10 years prior;
 - ii. a customer would not in fact have realised the stated return as at the time of viewing, but instead between \$56,647 and \$63,122, being between \$3,878 to \$10,353 less;

- iii. the net return from a \$50,000 investment made on 30 June 2012 in the Option would have equated to \$63,311.74 as at 30 June 2022, being \$3,688.26 less than the net return stated in the Webinar; and
- iv. the difference between the figure described in the Webinar and the actual investment performance was likely to mislead consumers as to the performance of the Option.

Amount payable under this notice

- 4. The amount payable under this notice in relation to the alleged contravention is \$18,780. This amount can be paid using the method detailed in the covering letter accompanying this notice.
- 5. HESTA may, in writing, apply to ASIC to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments.

Consequences of paying the amount payable under this notice

- 6. If HESTA pays the amount stated in this notice within the time for payment mentioned above then (unless this notice is withdrawn):
 - (a) any liability of HESTA for the alleged contravention is discharged;
 - (b) HESTA will not be liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought, in relation to the alleged contravention of the infringement notice provision; and
 - (c) HESTA will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.
- 7. Payment of the amount payable under this notice is not an admission of guilt or liability.

Consequences of not paying the amount payable under this notice

- 8. HESTA may choose not to pay the amount specified in this notice.
- 9. If HESTA does not pay the amount specified in this notice within the time for payment specified in paragraph 2, and the notice is not withdrawn, then HESTA may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention of the infringement notice provision.
- 10. The maximum pecuniary penalty that a court may order HESTA to pay for the alleged contravention is the greatest of:
 - (a) \$15,650,000; and
 - (b) if the court can determine the benefit derived and detriment avoided because of the contravention – that amount multiplied by 3; and
 - (c) either:
 - i. 10% of annual turnover of the body corporate for the 12-month period ending at the end of the month in which HESTA contravened, or began to contravene, the civil penalty provision;
 - ii. if the amount worked out under subparagraph (i) is greater than an amount equal to \$782,500,000 - \$782,500,000.
- 11. The maximum criminal penalty that a court may order HESTA to pay for the alleged contravention is \$6,260,000.

Applying for more time to pay the amount payable under this notice

12. ASIC may at its discretion extend the time to pay the amount payable under this notice if satisfied it is appropriate to do so.
13. If wishes to apply for an extension of time to pay the amount specified in this notice, it must do so in writing within 28 days after the day the notice is issued (see paragraph 20).

Applying to pay the amount payable under the notice by instalment

14. ASIC may at its discretion arrange for HESTA to pay the amount payable by instalments if ASIC is satisfied that it is appropriate to do so.
15. If HESTA wishes to apply for an arrangement to pay the amount payable under the infringement notice by instalments, it must do so in writing within 28 days after the day the notice is issued to HESTA (see paragraph 20).

Applying to have this notice withdrawn

16. Within 28 days after the day on which this notice is given, HESTA may apply to have this notice withdrawn by making written representations to ASIC (see paragraph 20).

Withdrawal of this notice

17. ASIC may at its discretion, by written notice given to HESTA, withdraw this notice if ASIC is satisfied that it is appropriate to do so, whether or not HESTA has applied to have this notice withdrawn (**withdrawal notice**).
18. If the withdrawal notice is given after HESTA has paid the amount specified in this notice, ASIC will refund to HESTA the amount paid under the notice.
19. If the notice is withdrawn, then HESTA may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention of the infringement notice provision.

Requirements for applications

20. An application to have this notice withdrawn, for more time to pay the amount payable under this notice or to pay by instalments:
 - (a) must be in writing;
 - (b) must include the unique identification code set out at the top of this notice;
 - (c) must include HESTA's reasons for making the application; and
 - (d) may be made by forwarding HESTA's application to ASIC at the address in paragraph 21.
21. HESTA may contact ASIC in relation to this notice by contacting:

Brendan Caridi
Australian Securities and Investments Commission
GPO Box 9827
BRISBANE QLD 4000
or by email: ACLInfringementNotices@asic.gov.au, copying
andrew.fleming@asic.gov.au



Brendan Caridi
as a delegate of the Australian Securities and Investments Commission