

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
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File Number:	VID1107/2025
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v EQUITY TRUSTEES SUPERANNUATION LIMITED (ACN 055 641 757) IN ITS CAPACITY AS TRUSTEE OF THE AMG SUPERANNUATION FUND AND SUPER SIMPLIFIER
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



*Sia Lagos*

Registrar

### 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.



Federal Court of Australia  
District Registry: Victoria  
Division: General

No.

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Plaintiff

**EQUITY TRUSTEES SUPERANNUATION LIMITED (ACN 055 641 757) IN ITS CAPACITY AS TRUSTEE  
OF THE AMG SUPERANNUATION FUND AND SUPER SIMPLIFIER**

Defendant

**AMENDED ORIGINATING PROCESS**

**A. DETAILS OF APPLICATION**

This application is made under s 21 of the *Federal Court of Australia Act* 1976 (Cth) (**Federal Court Act**), ss 52(2)(b), 52(2)(c), 52(6)(b), 52(12), 54B(1), 196 and ~~496~~215(1) of the *Superannuation Industry (Supervision) Act* 1993 (Cth) (**SIS Act**) and ss 912A(1)(a), 912A(5A), 1101B, 1317E and 1317G(1) of the *Corporations Act* 2001 (Cth) (**Corporations Act**).

Capitalised terms in this Originating Process have the same meaning as in the Amended Statement of Claim filed ~~26 August~~10 October 2025 (**SOC**).

The plaintiff (**ASIC**) seeks against the defendant (**ETSL**):

1. Declarations of contraventions of ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act under s 21 of the Federal Court Act.
2. Declarations of contraventions of s 54B(1) of the SIS Act under s 196(2) of the SIS Act.
3. Declarations of contraventions of s 912A(1)(a) of the Corporations Act under s 21 of the Federal Court Act.
4. Declarations of contraventions of s 912A(5A) of the Corporations Act under s 1317E of the Corporations Act.
5. Monetary penalty orders under s 196(3) of the SIS Act.

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Filed on behalf of Australian Securities and Investments Commission, Plaintiff

Prepared by Rebecca Jaffe

Law firm HWL Ebsworth Lawyers

Tel +61 3 8644 3500

Fax 1300 365 323

Email [rjaffe@hwle.com.au](mailto:rjaffe@hwle.com.au)

Ref RJ:1227992

**Address for Service** **HWL EBSWORTH LAWYERS**

Level 8, 447 Collins Street, Melbourne VIC 3000

Email: [rjaffe@hwle.com.au](mailto:rjaffe@hwle.com.au)

6. Pecuniary penalty orders under s 1317G(1) of the Corporations Act.

6A. Compensation orders under s 215(1) of the SIS Act.

6B. Orders pursuant to s 1101B of the Corporations Act.

7. Costs.

On the facts stated in the SOC, ASIC seeks the following relief:

### **Declarations**

*Contraventions with respect to the approval of the Balanced, Conservative and Growth classes of the SMF on the NQ Super APL*

8. Declarations that, in approving each of the Balanced, Conservative and Growth classes of the SMF for inclusion as investment options on the NQ Super APL in the period between 4 and 23 February 2022, ETSL contravened:

(a) each of ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act; and

(b) s 912A(1)(a) of the Corporations Act,

by:

(i) not having a sufficient understanding and knowledge of the SMF, in breach of the Understanding and Knowledge Duty pleaded in paragraph 88(a) of the SOC;

(ii) not ensuring that effective due diligence was undertaken that was commensurate with the nature and characteristics of the SMF, in breach of the Effective Due Diligence Duty pleaded in paragraph 88(b) of the SOC; and

(iii) not having a sufficient understanding and knowledge of how the SMF was expected to perform under a range of appropriate stress scenarios, in breach of the Stress Testing Duty pleaded in paragraph 88(c) of the SOC.

9. Declarations that, by reason of each of the contraventions referred to in paragraph 8(a) above, ETSL contravened s 54B(1) of the SIS Act.

10. Declarations that, by reason of each of the contraventions referred to in paragraph 8(b) above, ETSL contravened s 912(5A) of the Corporations Act.

*Contraventions with respect to the increase to the holding limits of the Balanced, Conservative and Growth classes of the SMF to 95% on NQ Super*

11. Declarations that, in increasing the holding limits applicable to each of the Balanced, Conservative and Growth classes of the SMF as investment options on NQ Super from 50% to 95% in the period between 3 and 4 March 2022, ETSL contravened:

- (a) each of ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act; and
- (b) s 912A(1)(a) of the Corporations Act,

by not ensuring that appropriate holding limits (including holding limits prescribed in the Additional Information Booklet) were applied to the SMF, in breach of the Holding Limits Duty pleaded in paragraph 89 of the SOC.

- 12. Declarations that, by reason of each of the contraventions referred to in paragraph 11(a) above, ETSL contravened s 54B(1) of the SIS Act.
- 13. Declarations that, by reason of each of the contraventions referred to in paragraph 11(b) above, ETSL contravened s 912(5A) of the Corporations Act.

*Contraventions with respect to the approval of the High Growth class of the SMF on the NQ Super APL*

- 14. Declarations that, in approving the High Growth class of the SMF for inclusion as an investment option on the NQ Super APL in the period between 8 and 11 March 2022, ETSL contravened:

- (a) each of ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act; and
- (b) s 912A(1)(a) of the Corporations Act,

by:

- (i) not having a sufficient understanding and knowledge of the SMF, in breach of the Understanding and Knowledge Duty pleaded in paragraph 88(a) of the SOC;
- (ii) not ensuring that effective due diligence was undertaken that was commensurate with the nature and characteristics of the High Growth class of the SMF, in breach of the Effective Due Diligence Duty pleaded in paragraph 88(b) of the SOC; and
- (iii) not having a sufficient understanding and knowledge of how the SMF was expected to perform under a range of appropriate stress scenarios, in breach of the Stress Testing Duty pleaded in paragraph 88(c) of the SOC.

- 15. Declarations that, by reason of each of the contraventions referred to in paragraph 14(a) above, ETSL contravened s 54B(1) of the SIS Act.
- 16. Declarations that, by reason of each of the contraventions referred to in paragraph 14(b) above, ETSL contravened s 912(5A) of the Corporations Act.

*Contraventions with respect to the approval of Balanced, Conservative, Growth and High Growth classes of the SMF on the Super Simplifier APL*

- 17. Declarations that, in approving each of the Balanced, Conservative, Growth and High Growth classes of the SMF for inclusion as investment options on the Super Simplifier APL in the period between 29 May and 17 August 2023, ETSL contravened:

- (a) each of ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act; and
- (b) s 912A(1)(a) of the Corporations Act,

by:

- (i) not having a sufficient understanding and knowledge of the SMF, in breach of the Understanding and Knowledge Duty pleaded in paragraph 117(a) of the SOC;
- (ii) not ensuring that effective due diligence was undertaken that was commensurate with the nature and characteristics of the SMF, in breach of the Effective Due Diligence Duty pleaded in paragraph 117(b) of the SOC; and
- (iii) not having a sufficient understanding and knowledge of how the SMF was expected to perform under a range of appropriate stress scenarios, in breach of the Stress Testing Duty pleaded in paragraph 117(c) of the SOC.

- 18. Declarations that, by reason of each of the contraventions referred to in paragraph 17(a) above, ETSL contravened s 54B(1) of the SIS Act.
- 19. Declarations that, by reason of each of the contraventions referred to in paragraph 17(b) above, ETSL contravened s 912(5A) of the Corporations Act.

*Contraventions with respect the ongoing monitoring of the SMF on NQ Super*

- 20. Declarations that ETSL contravened:

- (a) each of ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act; and
- (b) s 912A(1)(a) of the Corporations Act,

by breaching:

- (i) the Performance Monitoring Duty pleaded in paragraph 140(a) of the SOC; and
- (ii) the Atchison Ongoing Monitoring Requirements Duty pleaded in paragraph 140(b) of the SOC,

by:

- (iii) failing to obtain Atchison APL Quarterly Review Reports from Atchison for AMG Super (including NQ Super) that monitored the performance of the SMF, in the quarters ending March 2022, June 2022, September 2022 and December 2022;
- (iv) failing to obtain an Atchison APL Annual Liquidity Analysis Report from Atchison for AMG Super (including NQ Super) which included the SMF, in September 2022;
- (v) failing to ensure Atchison's compliance with Atchison's NQ Super Ongoing Monitoring Requirements; and

- (vi) failing to report to the BIC with respect to the performance of the SMF in the period from 23 February 2022 to October 2023.

21. Declarations that, by reason of each of the contraventions referred to in paragraphs 20(a)(i) and (ii) above, ETSL contravened s 54B(1) of the SIS Act.
22. Declarations that, by reason of each of the contraventions referred to in paragraphs 20(b)(i) and (ii) above, ETSL contravened s 912(5A) of the Corporations Act.

*Contraventions with respect to the ongoing monitoring of the SMF on Super Simplifier*

23. Declarations that ETSL contravened:

- (a) each of ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act; and
- (b) s 912A(1)(a) of the Corporations Act,

by breaching:

- (i) the Performance Monitoring Duty pleaded in paragraph 140(a) of the SOC; and
- (ii) the Atchison Ongoing Monitoring Requirements Duty pleaded in paragraph 140(b) of the SOC,

by:

- (iii) failing to obtain Atchison APL Quarterly Review Reports from Atchison for Super Simplifier that monitored the performance of the SMF, in the quarter ending September 2023;
- (iv) failing to obtain an Atchison APL Annual Liquidity Analysis Report from Atchison for Super Simplifier which included the SMF, in September 2023;
- (v) failing to ensure Atchison's compliance with Atchison's Super Simplifier Ongoing Monitoring Requirements; and
- (vi) failing to report to the BIC with respect to the performance of the SMF in the period from 21 July 2023 to October 2023.

24. Declarations that, by reason of each of the contraventions referred to in paragraphs 23(a)(i) and (ii) above, ETSL contravened s 54B(1) of the SIS Act.
25. Declarations that, by reason of each of the contraventions referred to in paragraphs 23(b)(i) and (ii) above, ETSL contravened s 912(5A) of the Corporations Act.

*Other ongoing monitoring contraventions*

26. Declarations that ETSL contravened:

- (a) each of ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act; and

(b) s 912A(1)(a) of the Corporations Act,

by failing to report to the BIC with respect to the performance of the SMF in the period from 23 February 2022 to October 2023, in breach of the BIC Reporting Duty pleaded in paragraph 140(c) of the SOC.

27. Declarations that ETSL contravened:

(a) each of ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act; and

(b) s 912A(1)(a) of the Corporations Act,

by failing to manage, monitor and review the relationship with Atchison and Atchison's performance under the Outsourcing Agreements, in breach of the Outsourcing Duty pleaded in paragraph 140(d) of the SOC.

28. Declarations that, by reason of each of the contraventions referred to in paragraphs 26(a) and 27(a) above, ETSL contravened s 54B(1) of the SIS Act,.

29. Declarations that, by reason of each of the contraventions referred to in paragraphs 26(b) and 27(b) above, ETSL contravened s 912(5A) of the Corporations Act.

### **Pecuniary and Monetary Penalties**

30. An order pursuant to s 1317G(1) of the Corporations Act that ETSL pay to the Commonwealth a pecuniary penalty in an amount to be fixed by the Court in respect of each contravention of s 912A(5A) of the Corporations Act.

31. Further or alternatively, an order pursuant to s 196(3) of the SIS Act that ETSL pay to the Commonwealth a monetary penalty in an amount to be fixed by the Court in respect of each contravention of s 54B(1) of the SIS Act.

### **Compensation Orders and Remediation Program**

31A. Orders pursuant to s 215(1) of the SIS Act that ETSL pay compensation, in an amount to be fixed by the Court, to:

(a) AMG Super (on behalf of all past and present members of AMG Super (NQ Super & Pension division) who instructed ETSL to invest in any class of the SMF on their behalf (NQ Super Members)); and

(b) Super Simplifier (on behalf of all past and present members of Super Simplifier who instructed ETSL to invest in any class of the SMF on their behalf (Super Simplifier Members)).

31B. Further or alternatively to paragraph 31A above, orders pursuant to s 1101B of the Corporations Act that, by a date to be fixed by the Court, ETSL:

(a) establish and implement a review and remediation program (Remediation Program) to:

(i) identify all:

(A) NQ Super Members; and

(B) Super Simplifier Members;

(ii) determine the loss suffered by:

(A) AMG Super (on behalf of all NQ Super Members);

(B) Super Simplifier (on behalf of all Super Simplifier Members);

(C) each NQ Super Member; and

(D) each Super Simplifier Member.

as a result of ETSL's contravention(s) of s 912A of the Corporations Act, s 52 of the SIS Act and/or s 54B of the SIS Act referred to in paragraphs 8 to 10, 14 to 16 and 17 to 19 above;

(iii) inform:

(A) AMG Super and each NQ Super Member of any loss suffered by that NQ Super Member; and

(B) Super Simplifier and each Super Simplifier Member of any loss suffered by that Super Simplifier Member.

as determined pursuant to paragraph 31B(a)(ii) above and what, if any, entitlement they have in respect of that loss; and

(iv) pay, or cause to be paid, to each NQ Super Member and each Super Simplifier Member, or to AMG Super (on behalf of each NQ Super Member) and Super Simplifier (on behalf of each Super Simplifier Member), their entitlement in respect of loss referred to in paragraphs 31B(a)(ii) and (iii) above; and

(b) appoint (at ETSL's cost) a suitably qualified independent expert, to be agreed upon by the parties or, in the absence of agreement, to be determined by the Court, to prepare and provide to ASIC and the Court:

(i) on a date to be fixed by the Court, an interim report on the Remediation Program, including as to whether the expert perceives any deficiencies in the design, implementation and effectiveness of the Remediation Program; and

(ii) within 2 months of the completion of the Remediation Program, a final report on the Remediation Program, including as to whether the expert perceives any deficiencies in the design, implementation and effectiveness of the Remediation Program.



## Other orders

32. An order that ETSL pay ASIC's costs.
33. Such further or other orders as the Court thinks fit.

**Dated:** ~~26 August~~ 20 October 2025

A handwritten signature in blue ink, appearing to be "Rebecca Jaffe", is located above the signature line.

.....  
Signed by Rebecca Jaffe  
Lawyer for the Plaintiff

This application will be heard by the Federal Court of Australia at Level 7, Commonwealth Law Courts, 305 William Street, Melbourne in the State of Victoria at        am/pm on

## **B. NOTICE TO DEFENDANT(S) (IF ANY)**

TO: Equity Trustees Superannuation Limited (ACN 055 641 757) in its capacity as trustee of the AMG Superannuation Fund and Super Simplifier of Level 1, 575 Bourke Street, Melbourne VIC 3000

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the Plaintiff.

*Note* Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

## **C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY**

Not applicable



**D. FILING**

Date of filing: ~~26 August~~ 20 October 2025

.....  
Registrar

This originating process is filed by Rebecca Jaffe of HWL Ebsworth Lawyers, solicitor for the Plaintiff.

**E. SERVICE**

The Plaintiff's address for service is:

C/- HWL EBSWORTH LAWYERS  
Level 8, 447 Collins Street  
Melbourne VIC 3000

Email: [rjaffe@hwle.com.au](mailto:rjaffe@hwle.com.au)

The Plaintiff's address is Level 7, 120 Collins Street, Melbourne VIC 3000.

It is intended to serve a copy of this originating process on the defendant.