

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	14/04/2025 7:20:07 AM AWST
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File Number:	WAD108/2025
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v WILUNA MINING CORPORATION LIMITED ACN 119 887 606 (SUBJECT TO DEED OF COMPANY ARRANGEMENT) & ORS
Registry:	WESTERN AUSTRALIA 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.



## Originating process

No. of 2025

Federal Court of Australia  
District Registry: Western Australia  
Division: General

IN THE MATTER OF WILUNA MINING CORPORATION LIMITED  
ACN 119 887 606 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)

### **Australian Securities and Investments Commission**

Plaintiff

**Wiluna Mining Corporation Limited (ACN 119 887 606) (subject to deed of company arrangement)** and others named in the schedule

Defendants

### **A. DETAILS OF APPLICATION**

This application is made under ss 180(1), 206C, 674A(2), 1041H(1), 1309(2), 1309(12), 1317E and 1317G of the *Corporations Act 2001* (Cth) and ss 21, 23 and 43 of the *Federal Court of Australia Act 1976* (Cth).

Against the first defendant, Wiluna, the plaintiff seeks declarations that the first defendant contravened the *Corporations Act* and costs. Against the second defendant, Mr Milan Jerkovic, the plaintiff seeks declarations that Mr Jerkovic contravened the *Corporations Act*, pecuniary penalty orders, disqualification orders, and costs. Against the third defendant, Mr James Lewis Michael Malone, the plaintiff seeks declarations that Mr Malone contravened the *Corporations Act*, pecuniary penalty orders, disqualification orders, and costs.

Unless otherwise defined in this Originating Process, terms defined in the Concise Statement dated 14 April 2025 have the same meaning in this document.

On the facts set out in the Concise Statement filed in these proceedings and served with this Originating Process, the plaintiff claims:

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff		
Prepared by (name of person/lawyer)	Sam Gomersall		
Law firm (if applicable)			
Tel	0466 290 031	Fax	(08) 9261 4227
Email	Sam.Gomersall@asic.gov.au		
<b>Address for service</b> (include state and postcode)	Level 1, 11 Mounts Bay Road, Perth WA 6000 Attention: Sam Gomersall		



## Relief against Wiluna Mining Corporation Limited

1. A declaration pursuant to s 1317E(1) of the *Corporations Act*, or in the alternative pursuant to s 21 of the *Federal Court of Australia Act*, that by at least 30 June 2022 Wiluna contravened s 674A(2) of the *Corporations Act* by failing to notify the ASX that, of the numbers reported in Wiluna's ASX announcement published on 17 June 2022 reporting on the outcome of Wiluna's capital raise, Wiluna:
  - (a) had only received \$14,828,469 of the \$21,828,469 reported for additional new shares and Shortfall Shares;
  - (b) had only received \$50,327,216 of the \$57,327,216 reported for all shares;
  - (c) had issued 17,500,000 shares to a shareholder without receiving payment for those shares; and
  - (d) and the shareholder referred to in paragraph (c) above had not agreed when that shareholder would pay to Wiluna the \$7 million for the 17,500,000 shares issued,(together, the **Omitted Information**), in circumstances where:
  - (e) the Omitted Information was information that a reasonable person would expect to have a material effect on the price or value of Wiluna's securities and was required to be disclosed to the ASX under Listing Rule 3.1;
  - (f) Wiluna was aware of the Omitted Information;
  - (g) the Omitted Information was not generally available; and
  - (h) Wiluna knew that or alternatively was reckless or negligent with respect to whether, the Omitted Information would, if it were generally available, have a material effect on the price or value of shares of shares in Wiluna.
2. A declaration pursuant to s 21 of the *Federal Court of Australia Act* that Wiluna engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 1041H(1) of the *Corporations Act*, by failing to notify the ASX that, of the numbers reported in Wiluna's ASX announcement published on 17 June 2022 reporting on the outcome of Wiluna's capital raise, Wiluna:
  - (a) had only received \$14,828,469 of the \$21,828,469 reported for additional new shares and Shortfall Shares;
  - (b) had only received \$50,327,216 of the \$57,327,216 reported for all shares;
  - (c) had issued 17,500,000 shares to a shareholder without receiving payment for those shares; and



- (d) and the shareholder referred to in paragraph (c) above had not agreed when that shareholder would pay to Wiluna the \$7 million for the 17,500,000 shares issued.

3. An order pursuant to s 43 of the *Federal Court Act* that Wiluna pay ASIC's costs.

**Relief against Mr Jerkovic**

4. A declaration pursuant to s 1317E(1) of the *Corporations Act*, or in the alternative pursuant to s 21 of the *Federal Court of Australia Act*, that between at least 30 June 2022 and 6 July 2022, Mr Jerkovic contravened s 180(1) of the *Corporations Act* in that he:

- (a) failed to discharge his duties to Wiluna with the degree of care and diligence that a reasonable person would exercise, if they were an executive chairman and director of a corporation in Wiluna's circumstances and occupied the office held by Mr Jerkovic, and had the same responsibilities within Wiluna, and
- (b) failed to take all necessary steps to cause Wiluna to qualify, withdraw or correct its ASX announcement published on 17 June 2022,

thereby causing or otherwise permitting Wiluna to contravene s 674A(2) of the *Corporations Act* and/or s 1041H(1) of the *Corporations Act*, and exposing Wiluna to the risk of legal proceedings.

5. A declaration pursuant to s 1317E(1) of the *Corporations Act* or in the alternative s 21 of the *Federal Court of Australia Act*, that the contravention in paragraph 4 above was serious within the meaning of s 1317G(1)(b)(iii) of the *Corporations Act*.
6. A declaration pursuant to s 1317E(1) of the *Corporations Act*, or in the alternative pursuant to s 21 of the *Federal Court of Australia Act*, that Mr Jerkovic contravened ss 1309(2) and (12) of the *Corporations Act* by, without having taken reasonable steps to ensure that the information did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect by:

- (a) making available or giving, or
- (b) authorising or permitting the making available or giving of,

to members of Wiluna and/or the ASX, an ASX announcement dated 17 June 2022 relating to the affairs of Wiluna and which announcement omitted information that Wiluna had not actually received payment, or agreed when payment would be made, of \$7 million for 17,500,000 Shortfall Shares issued to one shareholder which



rendered the Total Value Representation and the Additional and Shortfall Share Representation misleading in a material respect.

7. An order pursuant to s 1317G(1) of the *Corporations Act* that Mr Jerkovic pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court considers appropriate in respect of each of the declared contraventions of s 180(1) and ss 1309(2) and (12) of the *Corporations Act*.
8. An order pursuant to s 206C(1) of the *Corporations Act* that Mr Jerkovic be disqualified from managing a corporation for such period as the Court thinks fit.
9. An order pursuant to s 43 of the *Federal Court of Australia Act* that Mr Jerkovic pay ASIC's costs.

#### **Relief against Mr Malone**

10. A declaration pursuant to s 1317E(1) of the *Corporations Act*, or in the alternative pursuant to s 21 of the *Federal Court of Australia Act*, that Mr Malone contravened ss 1309(2) and (12) of the *Corporations Act* by, without having taken reasonable steps to ensure that the information did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect by:
  - (a) making available or giving, or
  - (b) authorising or permitting the making available or giving of,to directors, members of Wiluna and/or the ASX, an ASX announcement dated 17 June 2022 relating to the affairs of Wiluna and which announcement omitted information that Wiluna had not actually received payment, or agreed when payment would be made, of \$7 million for 17,500,000 Shortfall Shares issued to one shareholder which rendered the Total Value Representation and the Additional and Shortfall Share Representation misleading in a material respect.
11. An order pursuant to s 1317G(1) of the *Corporations Act* that Mr Malone pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court considers appropriate in respect of the declared contravention of ss 1309(2) and (12) of the *Corporations Act*.
12. An order pursuant to s 206C(1) of the *Corporations Act* that Mr Malone be disqualified from managing a corporation for such period as the Court thinks fit.
13. An order pursuant to s 43 of the *Federal Court of Australia Act* that Mr Malone pay ASIC's costs.

**Other orders**

14. Such further or other orders as the Court considers appropriate.

Date: 14 April 2025

A handwritten signature in black ink, appearing to read "Sam Gomersall", is positioned above the printed name.

**Sam Gomersall**

Solicitor for the Australian Securities and Investments Commission

This Originating Process was prepared by Kim Lendich, Jennifer Flinn, Kelly Zhang, Counsel, and Sam Gomersall, Lawyer.

This application will be heard by \_\_\_\_\_ at the Federal Court of Australia at Peter  
Durack Commonwealth Law Courts Building, 1 Victoria Avenue, Perth Western Australia at  
am/pm on \_\_\_\_\_ 2025

**B. NOTICE TO DEFENDANTS**

To: Wiluna Mining Corporation Limited

At: Unit 5, Level 2, 643 Murray Street, West Perth, WA 6005.

To: Milan Jerkovic

At: 55A Swan View Terrace, South Perth, WA 6151.

To: James Lewis Michael Malone

At: 6A Elvira Street, Palmyra, WA 6000.

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. FILING**

Date of filing: 14 April 2025

.....  
*Registrar*

This originating process is filed by Sam Gomersall for the plaintiff.

**D. SERVICE**

The plaintiff's address for service is:  
Australian Securities and Investments Commission  
Level 1, 11 Mounts Bay Road  
PERTH WA 6000

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

**Schedule**

No. of 2025

Federal Court of Australia

District Registry: Western Australia

Division: General

**IN THE MATTER OF WILUNA MINING CORPORATION LIMITED  
ACN 119 887 606 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)****Australian Securities and Investments Commission**

Plaintiff

**Wiluna Mining Corporation Limited (ACN 119 887 606) (subject to deed of  
company arrangement)**

First Defendant

Second Defendant: Milan Jerkovic

Third Defendant: James Lewis Michael Malone

Date: 14 April 2025