

## 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: VID718/2023  
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v  
AUSTRALIANSUPER PTY LTD ACN 006 457 987  
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.



## Originating Process

No. of

Federal Court of Australia  
District Registry: Victoria  
Division: General

### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

### AUSTRALIANSUPER PTY LTD (ACN 006 457 987)

Defendant

#### A. DETAILS OF APPLICATION

This application is made under ss 912A(1)(a), 912A(5A), 1317E(1), 1317G(1), 1317J(1) and 1101B(1)(a)(i) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and ss 52(2)(b), 52(2)(c), 54B(1), s 54B(3), 196(2), 196(3) and 197(1) of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**).

The plaintiff (**ASIC**) seeks declarations of contraventions of the Corporations Act and SIS Act, pecuniary penalty orders and ancillary orders, including costs.

In this Originating Process, terms which are defined in the Concise Statement dated 7 September 2023 (**Concise Statement**) have the same meaning as they do in that document.

#### B. ORDERS SOUGHT

On the facts stated in the Concise Statement, ASIC seeks the following orders:

##### Declarations

1. A declaration pursuant to s 1317E(1) of the Corporations Act that, between 13 March 2019 and 11 May 2023, AustralianSuper did not do all things necessary to ensure that the financial services covered by the Licence were provided efficiently, honestly and fairly and thereby contravened ss 912A(1)(a) and 912(5A) of the Corporations Act by its failure:
  - a. to efficiently identify, escalate and rectify its ongoing failure to comply with s 108A of the SIS Act;
  - b. to promptly establish rules which set out a procedure to identify and merge multiple accounts of members in accordance with s 108A of the SIS Act;
  - c. to promptly identify and merge multiple accounts of members in the way that those rules would have required if AustralianSuper had established those rules promptly; and

Filed on behalf of  
Prepared by  
Tel  
Email  
Address for service

Australian Securities and Investments Commission, Plaintiff  
Savas Miriklis, Lawyer, ASIC  
(03) 9280 3442  
Savas.Miriklis@asic.gov.au  
Australian Securities and Investments Commission  
Level 7, 120 Collins Street, Melbourne, VIC 3000  
Attention: Savas Miriklis / Joshua McGechan



- d. to promptly remediate affected members.
2. A declaration pursuant to s 196(2) of the SIS Act that:
- a. between 6 April 2019 and 11 May 2023, AustralianSuper did not exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as a prudent superannuation trustee would have exercised;
  - b. between 6 April 2019 and 30 June 2021, AustralianSuper did not perform its duties and exercise its powers in the best interests of members; and
  - c. between 1 July 2021 and 11 May 2023, AustralianSuper did not perform its duties and exercise its powers in the best financial interests of members,
- and thereby contravened ss 52(2)(b), 52(2)(c) and 54B(1) of the SIS Act by its failure:
- d. to efficiently identify, escalate and rectify its ongoing failure to comply with s 108A of the SIS Act;
  - e. to promptly establish rules which set out a procedure to identify and merge multiple accounts of members in accordance with s 108A of the SIS Act;
  - f. to promptly identify and merge multiple accounts of members in the way that those rules would have required if AustralianSuper had established those rules promptly; and
  - g. to promptly remediate affected members.

**Pecuniary penalty orders**

- 3. An order pursuant to s 1317G(1) of the Corporations Act and/or s 196(3) of the SIS Act that AustralianSuper pay to the Commonwealth a pecuniary penalty in respect of the contraventions referred to in paragraph 1 and/or 2 in such amount as the Court considers appropriate.

**Other orders**

- 4. An order pursuant to s 1101B(1)(a)(i) of the Corporations Act requiring AustralianSuper to publish a notice stating the findings and orders made in this proceeding and leave the notice in place for specified period, in a manner and form approved by the Court.
- 5. An order that AustralianSuper pay ASIC’s costs of and incidental to this proceeding.
- 6. Such other order as the Court sees fit.

Date: 7 September 2023

*Savas Mirkklis*

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Savas Mirkklis

*Legal Practitioner for the  
Australian Securities and Investments Commission*

This application will be heard by ..... at the Federal Court of Australia, 305 William Street, Melbourne, Victoria 3000 at ..... am/pm on .....



**C. NOTICE TO DEFENDANT**

TO:

AUSTRALIANSUPER PTY LTD (ACN 006 457 987)

Level 30, 130 Lonsdale 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.

**D. FILING**

Date of filing:

.....

Registrar

This originating process is filed by Savas Miriklis, legal practitioner for the plaintiff.

**E. SERVICE**

The plaintiff's address for service is Level 7, 120 Collins St, Melbourne, Victoria 3000.

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