

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 10/06/2021 8:23:53 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	VID307/2021
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v AUSTAL LIMITED & ANOR
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



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 10/06/2021 8:38:48 AM AEST

Registrar

### Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



## Form 2 Originating process

(rules 2.2 and 15A.3)

No. VID of 2021

Federal Court of Australia

District Registry: Melbourne

Division: General

### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

### AUSTAL LIMITED (ACN 009 250 266)

First defendant

### DAVID SINGLETON

Second defendant

#### A. DETAILS OF APPLICATION

1. This application is made under sections 180(1), 674(2), 674(2A), 1041H, 1317E and 1317G of the *Corporations Act 2001* (Cth) (**Act**), section 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA**).
2. The nature of the proceeding is an application for:
  - (a) declarations of contravention, including declarations of contravention of civil penalty provisions against each of the first defendant and the second defendant; and
  - (b) orders that the first defendant and the second defendant pay to the Commonwealth a pecuniary penalty.
3. Terms defined in the Concise Statement dated 10 June 2021 have the same meaning in this Originating Process.

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Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, plaintiff
Prepared by (name of person/lawyer)	Catherine Macrae
Law firm (if applicable)	<b>MinterEllison</b>
Tel	(03) 8608 2061
Email	catherine.macrae@minterellison.com

#### Address for service

(include state and postcode) Collins Arch, 447 Collins St, Melbourne Vic 3000



## **B. ORDERS SOUGHT**

4. On the facts stated in the Concise Statement, the plaintiff seeks the following orders:

### **AGAINST THE FIRST DEFENDANT**

- 4.1. A declaration pursuant to section 1317E of the Act and/or section 21 of the FCA that the first defendant contravened section 674(2) of the Act by failing to notify the Australian Securities Exchange on or from 6 June 2016, alternatively 13 June 2016, alternatively 16 June 2016, and before 4 July 2016 of the Writeback Information and/or the Group EBIT Information.
- 4.2. A declaration pursuant to section 21 of the FCA that the first defendant from 6 June 2016, alternatively 13 June 2016, alternatively 16 June 2016 to 4 July 2016, engaged in conduct in relation to a financial product or a financial service that was misleading or deceptive or was likely to mislead or deceive in contravention of section 1041H(1) of the Act, by failing to correct or withdraw:
  - (a) the EBIT Margin Guidance for the financial year ended 30 June 2016; and/or
  - (b) the Margin Growth Representation for the financial year ended 30 June 2016.
- 4.3. A declaration pursuant to section 21 of the FCA that the first defendant from 6 June 2016, alternatively 13 June 2016, alternatively 16 June 2016 to 4 July 2016, engaged in conduct in trade or commerce in relation to financial services that was misleading or deceptive or was likely to mislead or deceive in contravention of section 12DA of the ASIC Act, by failing to correct or withdraw:
  - (a) the EBIT Margin Guidance for the financial year ended 30 June 2016; and/or
  - (b) the Margin Growth Representation for the financial year ended 30 June 2016.
- 4.4. A declaration that the contraventions of s 674(2) referred to in paragraph 4.1 above were serious within the meaning of s 1317G(1)(c)(iii).



## **AGAINST THE SECOND DEFENDANT**

- 4.5. A declaration pursuant to s 1317E of the Act and/or section 21 of the FCA that, from 6 June 2016, alternatively 13 June 2016, alternatively 16 June 2016 to 4 July 2016, the second defendant was involved in the first defendant's contraventions of section 674(2) of the Act and thereby contravened section 674(2A).
- 4.6. A declaration pursuant to s 1317E of the Act and/or section 21 of the FCA that, from 6 June 2016, alternatively 13 June 2016, alternatively 16 June 2016 to 4 July 2016, the second defendant, in his capacity as a director of the first defendant, contravened section 180(1) of the Act by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would have exercised in the circumstances.
- 4.7. A declaration that the contraventions referred to in paragraphs 4.5 and 4.6 above were serious within the meaning of s 1317G(1)(c)(iii) and (b)(iii), respectively.

## **PECUNIARY PENALTIES**

- 7 An order pursuant to section 1317G(1) of the Act that the first defendant pay to the Commonwealth a pecuniary penalty or pecuniary penalties of an amount or amounts to be fixed by the Court.
- 8 An order pursuant to sections 1317G(1) of the Act that the second defendant pay to the Commonwealth a pecuniary penalty or pecuniary penalties of an amount or amounts to be fixed by the Court.

## **OTHER ORDERS**

- 9 An order that the defendants pay the plaintiff's costs.
- 10 Such further or other orders as the Court deems appropriate.

Date: 10 June 2021

A handwritten signature in black ink, appearing to be 'Catherine Macrae'.

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MinterEllison  
Solicitors for the plaintiff  
Signed by Catherine Macrae, Partner



This application will be heard by the Federal Court of Australia at Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne, Victoria at am/pm on

**C. NOTICE TO DEFENDANT(S) (IF ANY)**

TO:

AUSTAL LIMITED of 100 Clarence Beach Road, Henderson WA 6166

DAVID SINGLETON of 57 Keane Street, Peppermint Grove WA 6011

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: 10 June 2021

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Registrar

This originating process is filed by MinterEllison for the plaintiff.

**E. SERVICE**

The plaintiff's address for service is:

Collins Arch, 447 Collins Street, Melbourne VIC 3000

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



**Schedule**

No. VID of 2021

Federal Court of Australia  
District Registry: Melbourne  
Division: General

**Plaintiff:** AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION

**First defendant:** AUSTAL LIMITED (ACN 009 250 266)

**Second defendant:** DAVID SINGLETON