

NOTICE OF FILING AND HEARING

Filing and Hearing Details

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File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v NUIX LIMITED ACN 117 140 235
Registry: NEW SOUTH WALES 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.

Form 122
Rules 36.01(1)(b); 36.01(1)(c)



Notice of appeal

No. of 2026

Federal Court of Australia
District Registry: New South Wales
Division: General

On appeal from the Federal Court of Australia

Australian Securities and Investments Commission

Appellant

Nuix Limited ACN 117 140 235

Respondent

To the Respondent

The Appellant appeals from the judgment as set out in this notice of appeal.

1. The papers in the appeal will be settled and prepared in accordance with the Federal Court Rules Division 36.5.
2. The Court will make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence. You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party) Australian Securities and Investments Commission, Appellant

Prepared by (name of person/lawyer) Caitlin Murray

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(include state and postcode) Our reference: 1374983

[Version 2 form approved 09/05/2013]



The Appellant appeals from orders 1 and 2 and the whole of the judgment of the Federal Court given on 23 April 2026 (except in so far as those orders and the judgment concerns the second to sixth defendants) at Sydney in proceedings NSD 827 of 2022: *Australian Securities and Investments Commission v Nuix Limited* [2026] CA 490 (J).

DEFINITIONS

1HFY21 ACV Result means:

- (i) Nuix Limited's (**Nuix**) annualised contract value (**ACV**) as at the end of the first half of FY21 (**1HFY21**) was approximately \$161.9 million;
- (ii) Nuix's ACV for 1HFY21 was approximately \$17.1 million, or approximately 9.6%, less than the ACV Nuix expected in order to achieve the Prospectus ACV Forecast; and
- (iii) the primary reason Nuix missed the forecast for ACV for 1HFY21 was subscription ACV underperformance (which accounted for approximately a \$17.7 million gap to the forecast).

26 February ASX Announcements means the ASX Market Release, 1HFY21 Financial Results presentation, the Interim Financial Report released by Nuix to the ASX on 26 February 2021, and the comments of Mr Rodney Vawdrey and Mr Stephen Doyle in the conference call with investors and analysts held on the morning of 26 February 2021.

8 March ASX Announcement means the ASX Market Release released by Nuix to the ASX on 8 March 2021.

ACV Information means Nuix's ACV for FY21 was likely to be materially below the Prospectus ACV Forecast.

April Information means Nuix's Revenue for FY21 was forecast to be approximately \$185 million or, in a range of \$180 million to \$185 million, and/or the Revenue Information and/or the ACV Information.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

Corporations Act means the *Corporations Act 2001* (Cth).

February Revenue Forecast means the February 2021 forecast of Nuix's Revenue for FY21 of approximately \$186.7 million.

Prospectus ACV Forecast means the ACV of Nuix at the end of FY21 was forecast to be \$199.6 million.



Prospectus Revenue Forecast means for FY21 the Revenue of Nuix was forecast to be \$193.5 million.

Revenue Information means Nuix's Revenue for FY21 was likely to be materially below the Prospectus Revenue Forecast.

GROUNDINGS OF APPEAL

18 January to 25 February 2021 – Misleading or deceptive conduct case against Nuix (J Part D)

1. In determining that Nuix's conduct, in not disclosing the 1HFY21 ACV Result between 18 January and 25 February 2021, was not conduct that was misleading or deceptive, or likely to mislead or deceive, the primary judge erred by:
 - a. finding that there was no market expectation that the ACV as at 31 December 2020 would be significantly higher than \$161.9 million;
 - b. finding that there was no reasonable expectation that the 1HFY21 ACV Result would be disclosed;
 - c. finding that the 1HFY21 ACV Result fell within ASX Listing Rule 3.1A;
 - d. finding that there was no inconsistency between the 1HFY21 ACV Result and market expectations.
2. By reason of the errors identified in ground 1, and the primary judge's findings at J [758](1) and (2) and on the whole of the evidence, the primary judge ought to have concluded, and erred in not concluding, that Nuix's conduct, in not disclosing the 1HFY21 ACV Result between 18 January and 25 February 2021, was conduct that was misleading or deceptive, or likely to mislead or deceive.

18 January to 25 February 2021 – Continuous disclosure case against Nuix (J Part E)

3. In determining that during the period from 18 January to 25 February 2021, Nuix did not contravene s 674(2) of the Corporations Act by not disclosing the 1HFY21 ACV Result to the ASX, the primary judge erred by:
 - a. reason of the errors identified in ground 1 above;



- b. failing to find that a reasonable person would have expected disclosure of the 1HFY21 Result in considering the application of ASX Listing Rule 3.1 and the exception in ASX Listing Rule 3.1A.3;
 - c. finding that the 1HFY21 ACV Result was not material;
4. By reason of the errors identified in grounds 1 and 3, and the primary judge's findings at J [769] and on the whole of the evidence, the primary judge ought to have concluded, and erred in not concluding, that:
- a. Nuix was negligent with respect to whether the 1HFY21 ACV Result would, if it were generally available, have a material effect on the price or value of Nuix's shares; and
 - b. Nuix contravened s 674(2) of the Corporations Act by not disclosing the 1HFY21 ACV Result to the ASX.

26 February to 20 April 2021 – Misleading or deceptive conduct case against Nuix (J Part F)

The 26 February ASX Announcements (J Part F.2)

5. In determining that Nuix's conduct, in making the 26 February ASX Announcements and reaffirming the Prospectus Revenue Forecast, was not conduct that was misleading or deceptive, or likely to mislead or deceive, the primary judge erred by (J Part F.2.3.1 and F.2.3.2):
- a. finding that as at 26 February 2021 Nuix's forecast of revenue for FY21 was \$193.5 million not \$186.7 million;
 - b. finding that a difference of 3.5% between a forecast of \$186.7 million and the Prospectus Forecast Revenue of \$193.5 million was not material;
 - c. finding that Nuix had reasonable grounds for the reaffirmation of the Prospectus Revenue Forecast on 26 February 2021 in circumstances where:
 - i. as at 26 February 2021, Nuix's forecast of revenue for FY21 was \$186.7 million;
 - ii. the reaffirmation of the Prospectus Revenue Forecast was based on the AUD/USD exchange rate used in the Prospectus rather than the prevailing exchange rate;



- iii. the reaffirmation of the Prospectus Revenue Forecast was expressed without any qualification that it was based on the AUD/USD exchange rate used in the Prospectus; and
 - iv. the assumption for “unbuilt pipeline” reflecting an amount for unknown opportunities did not have a reasonable basis.
6. In determining that Nuix's conduct, in making the 26 February ASX Announcements and reaffirming the Prospectus ACV Forecast, was not conduct that was misleading or deceptive, or likely to mislead or deceive, the primary judge erred by (J Part F.2.3.3):
- a. finding that the reaffirmation of the Prospectus ACV Forecast was based on a current forecast of ACV for FY21;
 - b. failing to find that in the circumstances the reasonable grounds relied upon by Nuix for the reaffirmation of the Prospectus ACV Forecast needed to be grounds actually relied upon by the board of directors (**the Board**) of Nuix;
 - c. finding that in considering the grounds relied upon Nuix for the reaffirmation of the Prospectus ACV Forecast, it was correct to consider the “pipeline coverage” analysis prepared by Mr Hooper and Mr Pipic (which was also referred to as the “February ACV Models”);
 - d. finding that the Board made a genuine assessment as to whether Nuix's ACV for FY21 was likely to be materially less than the Prospectus ACV Forecast;
 - e. failing to find that the Board and Nuix failed to make a genuine assessment of the implications of the 1HFY21 ACV Result on the attainability of the Prospectus ACV Forecast;
 - f. finding that Nuix had reasonable grounds for the reaffirmation of the Prospectus ACV Forecast on 26 February 2021 in circumstances where:
 - i. the 1HFY21 ACV Result was not consistent with the reaffirmation of the Prospectus ACV Forecast;
 - ii. the reaffirmation of the Prospectus ACV Forecast was based on the AUD/USD exchange rate used in the Prospectus rather than the prevailing exchange rate; and
 - iii. the assumption for “unbuilt pipeline” reflecting an amount for unknown opportunities did not have a reasonable basis.



7. By reason of the errors identified in grounds 5 and 6, and the primary judge's findings at J [795] and on the whole of the evidence, the primary judge ought to have concluded, and erred in not concluding that, Nuix's conduct, in making the 26 February ASX Announcements, was conduct that was misleading or deceptive, or likely to mislead or deceive.

The 8 March ASX Announcement (J Part F.3)

8. In determining that Nuix's conduct, in making the 8 March ASX Announcement, was not conduct that was misleading or deceptive, or likely to mislead or deceive, the primary judge erred by:
 - a. failing to find that a representation that Nuix's ACV as at 31 December 2021 was "in line with management's expectations", and that any underperformance was driven by the impact of currency headwinds, the timing of certain deals which completed in January 2021 and a delay in US government spending was misleading or deceptive, or likely to mislead or deceive, in light of the 1H FY21 ACV Result;
 - b. basing the determination on an ACV figure as at 31 December 2020 of \$170.5 million relying on adjustments for foreign exchange, contract slippage and delays with United States government contracts.
9. By reason of the errors identified in ground 8, and the primary judge's findings at J [869] and on the whole of the evidence, the primary judge ought to have concluded, and erred in not concluding, that Nuix's conduct, in making the 8 March ASX Announcement, was conduct that was misleading or deceptive, or likely to mislead or deceive.

Failure to correct statements made in the 26 February and 8 March Announcements prior to 21 April 2021 (J Part F.4)

10. By reason of the errors identified in grounds 5 to 9 and 17, the primary judge erred in failing to find that Nuix's conduct, in failing to correct the statements made in the 26 February ASX Announcements and the 8 March ASX Announcement reaffirming the Prospectus Revenue Forecast and the Prospectus ACV Forecast at any time prior to 21 April 2021, or in the alternative, in the period 13 April 2021 to 21 April 2021, was conduct that was misleading or deceptive, or likely to mislead or deceive.



26 February to 21 April 2021 – Continuous disclosure case against Nuix (J Part G)

The February Revenue Forecast (J Part G.2.3)

11. In determining that during the period from 26 February to 21 April 2021, Nuix did not contravene s 674(2) of the Corporations Act by not disclosing to the ASX the February Revenue Forecast, and a materially identical forecast of revenue for FY21 prepared on 1 March 2021 (**the 1 March Revenue Forecast**), the primary judge erred by:
 - a. reason of the errors identified in grounds 5 and 7 above;
 - b. failing to find that a reasonable person would have expected disclosure of the February Revenue Forecast and the 1 March Revenue Forecast in considering the application of ASX Listing Rule 3.1 and the exception in ASX Listing Rule 3.1A.3.
12. By reason of the errors identified in ground 11, and on the whole of the evidence, the primary judge ought to have concluded, and erred in not concluding, that:
 - a. the February Revenue Forecast and the 1 March Revenue Forecast were material;
 - b. Nuix was negligent with respect to whether the February Revenue Forecast and the 1 March Revenue Forecast would, if generally available, have a material effect on the price or value of Nuix's shares; and
 - c. Nuix contravened s 674(2) of the Corporations Act by not disclosing the February Revenue Forecast and the 1 March Revenue Forecast to the ASX.

The 1H FY21 ACV Result (J Part G.2.4)

13. In determining that during the period from 26 February, or alternatively 8 March 2021, to 21 April 2021, Nuix did not contravene s 674(2) of the Corporations Act by not disclosing the 1H FY21 ACV Result, the primary judge erred by:
 - a. reason of the errors identified in grounds 6, 8 and 9 above;
 - b. failing to find that a reasonable person would have expected disclosure of the 1H FY21 ACV Result in considering the application of ASX Listing Rule 3.1 and the exception in ASX Listing Rule 3.1A.3.
14. By reason of the errors identified in ground 13, and on the whole of the evidence, the primary judge ought to have concluded, and erred in not concluding, that:
 - a. the 1H FY21 ACV Result was material;



- b. Nuix was negligent with respect to whether the 1HFY21 ACV Result would, if it were generally available, have a material effect on the price or value of Nuix's shares; and
- c. Nuix contravened s 674(2) of the Corporations Act by not disclosing the 1HFY21 ACV Result to the ASX.

The Revenue Information and the ACV Information (J Part G.2.5)

15. In determining that during the period from 26 February to 21 April 2021, Nuix did not contravene s 674(2) of the Corporations Act by not disclosing the Revenue Information and/or the ACV Information, the primary judge erred by:
 - a. reason of the errors identified in grounds 5, 6 and 7 above;
 - b. failing to find that a reasonable person would have expected disclosure of the Revenue Information and/or the ACV Information in considering the application of ASX Listing Rule 3.1 and the exception in ASX Listing Rule 3.1A.3.
16. By reason of the errors identified in ground 15, and on the whole of the evidence, the primary judge ought to have concluded, and erred in not concluding, that:
 - a. the Revenue Information and the ACV Information were both material;
 - b. Nuix was negligent with respect to whether the Revenue Information and/or the ACV Information would, if generally available, have a material effect on the price or value of Nuix's shares; and
 - c. Nuix contravened s 674(2) of the Corporations Act by not disclosing the 1HFY21 ACV Result to the ASX.

The April Information (J Part G.3)

17. In determining that during the period from 13 April to 21 April 2021, Nuix did not contravene s 674(2) of the Corporations Act by not disclosing the April Information, the primary judge erred by:
 - a. failing to find that there was a substantially complete forecast of statutory revenue for FY21 of approximately \$184.4 million by 13 April 2021;
 - b. failing to find that by 13 April 2021 Nuix was aware that its Revenue for FY21 was likely to be materially below the Prospectus Revenue Forecast, or alternatively



approximately \$185 million or alternatively, in a range of \$180 million to \$185 million;

- c. failing to find that a reasonable person would have expected disclosure of the April Information in considering the application of ASX Listing Rule 3.1 and the exception in ASX Listing Rule 3.1A.3;
18. By reason of the errors identified in ground 17, and on the whole of the evidence, the primary judge ought to have concluded, and erred in not concluding that:
- a. the April Information was material;
 - b. Nuix contravened s 674(2) of the Corporations Act by not disclosing the April Information to the ASX.

ORDERS SOUGHT

1. The appeal be allowed.
2. Orders 1 and 2 of the orders made by the primary judge on 23 April 2026 (except insofar as those orders and the judgment concern the second to sixth defendants) be set aside.
3. The Court make each of the declarations sought by the appellant in its Originating Process dated 28 September 2022 (insofar as they relate to the respondent), and remit to the Federal Court for determination the question of pecuniary penalties against the respondent.
4. The respondent pay the appellant's costs of the appeal.
5. The respondent pay the appellant's costs in the Court below, or alternatively, if the matter is remitted, the costs of the trial before the primary judge be reserved for determination by the judge before whom the proceeding is to be further determined.
6. Such further or other order as the Court sees fit.

**Appellant's address**

The Appellant's address for service is:

Place: Level 40 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 (Attention: Caitlin Murray)

Email: caitlin.murray@minterellison.com

The Appellant's address is Level 5, 100 Market Street, Sydney, NSW, 2000.

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 21 May 2026

A handwritten signature in blue ink, appearing to read "Caitlin Murray".

Signed by Caitlin Murray
Lawyer for the Appellant