

## NOTICE OF FILING

### Details of Filing

Document Lodged:	Concise Statement
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	14/04/2025 7:20:07 AM AWST
Date Accepted for Filing:	14/04/2025 9:56:41 AM AWST
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



*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.

## Concise statement



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

No. \_\_\_\_\_ of 2025

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

### PART A: IMPORTANT FACTS GIVING RISE TO THE CLAIMS

#### Wiluna Mining Corporation Limited

1. **Wiluna** Mining Corporation Limited (ACN 119 887 606) (subject to a deed of company arrangement) was until 5 April 2024 a corporation listed on the ASX. Wiluna wholly owns and operates the Wiluna Mining Operation situated in the Northern Goldfields of Western Australia.
2. On 6 May 2022, Wiluna requested a trading halt on its securities pending an announcement regarding a proposed capital raising. On 11 May 2022, Wiluna's securities were suspended from quotation pending the release of an announcement.
3. On 16 May 2022, Wiluna released an ASX announcement notifying the market of several factors that had negatively impacted Wiluna's cashflows and resulted in the requirement to raise additional capital in the near term. On 18 May 2022, Wiluna sought an extension of the voluntary suspension on the basis that the capital raising was critical to its continued financial viability.
4. On 23 May 2022, Wiluna released an ASX announcement notifying the market of its intention to raise capital by a non-renounceable pro-rata entitlement issue to eligible shareholders. The announcement was released in circumstances where, on or about 9 May 2022, Wiluna had been advised by its external consultant that if there were significant delays in the planned capital raising or its success was materially uncertain, then Wiluna should seriously consider appointing a voluntary administrator, as well as sourcing other emergency funding.

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>	Level 1, 11 Mounts Bay Road, Perth WA 6000		
(include state and postcode)	Attention: Sam Gomersall		

5. On 24 May 2022, Wiluna lodged a prospectus with the ASX (**Prospectus**). The minimum subscription under the Prospectus was \$50 million (125,000,000 shares). The maximum subscription under the Prospectus was \$84,525,978 (211,314,945 shares) (**Full Subscription**).
6. The Prospectus provided for three methods to subscribe for shares in Wiluna:
  - (a) first, the **Entitlement Offer** by which eligible existing shareholders of Wiluna could, between 1 June 2022 (**Opening Date**) and 10 June 2022 (**Closing Date**), apply for one new share for every one share already held by that shareholder at an issue price of \$0.40 per share;
  - (b) secondly, the **Additional New Shares Offer** by which the shareholders referred to in (a) above could also, between the Opening Date and the Closing Date, apply for shares in addition to their entitlement under the Entitlement Offer on the same terms as the Entitlement Offer; and
  - (c) thirdly, the **Shortfall Offer** by which any eligible persons could apply for shares not taken under the Entitlement Offer or the Additional New Shares Offer up to and including the Full Subscription amount within three months after the Closing Date, on the same terms as under the Entitlement Offer (**Shortfall Shares**).
7. On 15 June 2022 Wiluna received an application for 17,500,000 Shortfall Shares to the value of \$7 million from or on behalf of Mr Maxim **Geyzer**. No payment for those Shortfall Shares was sent or received with the application. Further, Wiluna and Mr Geyzer had not agreed a date by which Mr Geyzer would pay Wiluna for the 17,500,000 Shortfall Shares.
8. On 17 June 2022, Wiluna issued 17,500,000 Shortfall Shares to Mr Geyzer. On 17 June 2022, Wiluna also published an ASX announcement to the market titled 'Entitlement Issue – Notification of Shortfall and Issue of Securities' (**17 June Announcement**), which included the following statement:
 

*'The Company advises that it has received completed applications for entitlements from eligible shareholders pursuant to the Entitlement Issue for 88,746,868 New Shares (amounting to \$35,498,747) and completed applications for additional new shares and shortfall shares of 54,571,172 New Shares (amounting to \$21,828,469) for a total of 143,318,040 shares (amounting to a total of \$57,327,216).'*
9. By the 17 June Announcement, Wiluna represented to the market that it had received completed applications for 143,318,040 new shares (with a total of value of \$57,327,216) (**Total Value Representation**) which comprised:
  - (a) eligible existing shareholders subscribing for 88,746,868 new shares (at a value of \$35,498,747) under the Entitlement Offer; and
  - (b) eligible existing shareholders and other persons subscribing for 54,571,172 new shares (at a value of \$21,828,469) under the Additional New Shares Offer and the Shortfall Offer (**Additional and Shortfall Share Representation**).
10. In fact, by the time of the 17 June Announcement, Wiluna:

- (a) had only received \$14,828,469 of the \$21,828,469 referred to in the Additional and Shortfall Share Representation for new shares;
- (b) had only received \$50,327,216 of the \$57,327,216 referred to in the Total Value Representation for all shares;
- (c) had issued 17,500,000 shares to Mr Geyzer without receiving payment for those shares; and
- (d) and Mr Geyzer had not agreed when Mr Geyzer would pay Wiluna the \$7 million for the 17,500,000 shares issued,

(together, the **Omitted Information**).

11. The Omitted Information was excluded from the 17 June Announcement.
12. Between 17 June 2022 and 19 July 2022, Wiluna:
  - (a) continued to trade on the ASX while it did not receive any payment in respect of the 17,500,000 Shortfall Shares that had been issued to Mr Geyzer; and
  - (b) did not get agreement or a commitment from Mr Geyzer about the date by which Mr Geyzer would pay the \$7 million for the 17,500,000 Shortfall Shares that had been issued to Mr Geyzer.
13. On 20 July 2022, Wiluna was placed in a trading halt and on 21 July 2022, Wiluna was placed into voluntary administration.
14. From at least 30 June 2022, Wiluna was aware (through an officer or officers of Wiluna) of the Omitted Information but did not disclose the Omitted Information to the ASX prior to being placed into administration on 21 July 2022, or at all.

#### **Mr Jerkovic**

15. From 27 November 2015 to 6 July 2022, Mr Milan **Jerkovic** was a director of Wiluna, and in the period from 27 November 2015 to 6 July 2022 he was the executive chairman of Wiluna's board.
16. Mr Jerkovic authorised or permitted the release of the 17 June Announcement to the ASX. Prior to the release of the 17 June Announcement, Mr Jerkovic:
  - (a) knew that Wiluna had not received any payment in respect of the 17,500,000 Shortfall Shares that had been issued to Mr Geyzer; and
  - (b) did not take reasonable steps to ensure that the 17 June Announcement was not false or misleading in a material particular and did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect.
17. Subsequent to the release of the 17 June Announcement, Mr Jerkovic did not take reasonable steps to cause Wiluna to qualify or correct the 17 June Announcement to include or otherwise disclose the Omitted Information.

### **Mr Malone**

18. From around March 2020 until around 6 July 2022, Mr James Lewis Michael **Malone** was an employee of Wiluna, employed in the role of general manager investor relations and subsequently as chief commercial officer.
19. Mr Malone drafted, or participated in the drafting of, the 17 June Announcement. Prior to the release of the 17 June Announcement, Mr Malone:
  - (a) knew that Wiluna had not received any payment in respect of the 17,500,000 Shortfall Shares that had been issued to Mr Geyzer;
  - (b) made available or gave to the directors of Wiluna, a copy of the 17 June Announcement to be published to the ASX, but did not inform the directors (other than Mr Jerkovic) that the 17 June Announcement did not contain the Omitted Information; and
  - (c) did not take reasonable steps to ensure that the 17 June Announcement was not false or misleading in a material particular and did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect.

### **PART B. RELIEF SOUGHT FROM THE COURT**

20. ASIC seeks declarations and costs against Wiluna, and declarations, pecuniary penalties and costs against Mr Jerkovic and Mr Malone, as set out in the Originating Process accompanying this Concise Statement. It also seeks disqualification orders against Mr Jerkovic and Mr Malone.

### **PART C. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT**

#### **Breach of continuous disclosure obligations by Wiluna**

21. The Omitted Information satisfied the criteria for disclosure under s 674A(2) of the *Corporations Act 2001 (Cth)* (when read with s 677(2)). From at least 30 June 2022 Wiluna knew, or 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 Wiluna's shares. Wiluna was therefore obliged to disclose this matter to the ASX immediately upon becoming aware of it. In contravention of s 674A(2) of the *Corporations Act*, Wiluna failed to notify the ASX of the Omitted Information at any time between at least 30 June 2022 and 21 July 2022.

#### **Misleading or deceptive conduct by Wiluna**

22. The 17 June Announcement was a notice in relation to a financial product or a financial service. Each of the Total Value Representation and Additional and Shortfall Share Representation was false, in that the Total Value Representation and Additional and Shortfall Share Representation each included the value of \$7 million for the Shortfall Shares issued to Mr Geyzer for which no payment had been received. Further or in the alternative, the failure to include the Omitted Information in the 17 June Announcement rendered the 17 June Announcement misleading or deceptive or likely to mislead or deceive.
23. By making either of the Total Value Representation and/or the Additional and Shortfall Share Representation in circumstances where it had issued shares for which it had not been paid,

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* in that:

- (a) relevant persons would have laboured under the erroneous assumption that Wiluna had received payments totalling \$21,828,469 under the Additional New Shares Offer and Shortfall Offer when it had not;
- (b) further or alternatively, relevant persons would have laboured under the erroneous assumption that Wiluna had a firm date by which it would receive payments totalling \$21,828,469 under the Additional New Shares Offer and Shortfall Offer when it did not;
- (c) further or alternatively, Wiluna failed to disclose that it had not received and did not know when it might receive \$7 million of the \$21,828,469 attributed to the Additional New Shares Offer and Shortfall Offer.

#### **Breach of directors' duties by Mr Jerkovic**

- 24. By reason of the matters contained in paragraphs 15 to 17 above, in contravention of s 180(1) of the *Corporations Act* Mr Jerkovic failed to exercise powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director of a corporation in Wiluna's circumstances and occupied the position of executive chairman with the same responsibilities as Mr Jerkovic, in that he caused or permitted Wiluna to contravene s 1041H(1) and/or s 674A(2) of the *Corporations Act*. His contravention of s 180(1) was serious.

#### **Omission of information to the ASX and members by Mr Jerkovic**

- 25. Mr Jerkovic authorised or permitted the making available or giving of information relating to the affairs of Wiluna, being the Total Value Representation and Additional and Shortfall Share Representation in the 17 June Announcement, to members of Wiluna and to the ASX, being an operator of a financial market, where that information did not contain the Omitted Information, rendering the Total Value Representation and Additional and Shortfall Share Representation misleading in a material respect, and without having taken reasonable steps to ensure that the information did not have omitted from it the Omitted Information.
- 26. By reason of the matters in paragraphs 15 to 17 and 25 above, Mr Jerkovic contravened s 1309(2) and (12) of the *Corporations Act*.

#### **Omission of information to the ASX and directors by Mr Malone**

- 27. Mr Malone authorised or permitted the making available or giving of information relating to the affairs of Wiluna, being the Total Value Representation and Additional and Shortfall Share Representation in the 17 June Announcement, to directors and members of Wiluna, as well as to the ASX, being an operator of a financial market, where that information did not contain the Omitted Information, rendering the Total Value Representation and Additional and Shortfall Share Representation misleading in a material respect, and without having taken reasonable steps to ensure that the information did not have omitted from it the Omitted Information.
- 28. By reason of the matters in paragraphs 18, 19 and 27 above, Mr Malone contravened s 1309(2) and (12) of the *Corporations Act*.

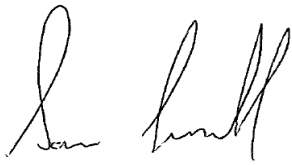
**E. THE ALLEGED HARM SUFFERED FROM THE CONDUCT**

29. As a result of the contraventions of ss 674A and 1041H of the *Corporations Act* by Wiluna, and the contraventions of s 1309 by Mr Jerkovic and Mr Malone, the market traded on a materially uninformed or misinformed basis at various times during the period 17 June 2022 to 19 July 2022. Investors rely on listed companies to provide accurate and timely information in relation to the corporation's affairs when making investment decisions. Wiluna's shareholders were exposed to the potential to suffer harm and/or be materially prejudiced by reason of Wiluna's conduct.
30. The duty imposed on Mr Jerkovic as director pursuant to s 180(1) is to protect the interests of Wiluna as a corporation. The conduct of Mr Jerkovic caused harm by exposing Wiluna to the risk of proceedings for contraventions of the *Corporations Act*, legal costs and penalties, as well as reputational damage.

**Certificate of lawyer**

I, Sam Gomersall, certify to the Court that, in relation to the Concise Statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 14 April 2025

A handwritten signature in black ink, appearing to read 'Sam Gomersall', written in a cursive style.

---

Signed by Sam Gomersall  
Lawyer for the Plaintiff



**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