FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v Hopkins [2024] FCA 1371

File number:	VID 288 of 2022
Judgment of:	**BEACH J**
Date of judgment:	27 November 2024
Catchwords:	**CORPORATIONS** — unregistered managed investment schemes — contraventions of s 601ED of *Corporations Act 2001* (Cth) — operation of financial services business — failure to hold an Australian financial services licence — contravention of s 911A — receivership of digital assets — winding up on just and equitable grounds — s 461(1)(k) — appointment of receivers and liquidators to schemes — pecuniary penalty — declarations — disqualification orders
Legislation:	*Corporations Act 2001* (Cth) ss 9, 206C, 461, 601ED, 601EE, 763A, 763B, 764A, 766A, 766C, 911A, 1317E, 1317G, 1323, 1324 *Federal Court of Australia Act 1976* (Cth) ss 21, 23, 57
Cases cited:	*Australian Securities and Investments Commission v Bilkurra Investments Pty Ltd* [2016] FCA 371 *Australian Securities and Investments Commission v Helou (No 2)* [2020] FCA 1650 *Australian Securities and Investments Commission v Mitchell (No 3)* (2020) 148 ACSR 630 *Australian Securities and Investments Commission v Westpac Banking Corporation (Omnibus)* (2022) 407 ALR 1 *National Australia Bank Ltd v Bond Brewing Holdings Ltd* [1991] 1 VR 386 *Rathner (liquidator), in the matter of Garrows Close Pty Ltd (in liq)* [2021] FCA 505 *Re All Purpose Labour Pty Ltd (In Liquidation) as Trustee for the ATC Unit Trust* [2024] VSC 547 *Re HIH Insurance Ltd (in prov liq) and HIH Casualty and General Insurance Ltd (in prov liq); Australian Securities and Investments Commission v Adler* (2002) 42 ACSR 80

	University of Western Australia v Gray (No 6) [2006] FCA 1825 *Vines v Australian Securities and Investments Commission* (2007) 63 ACSR 505 *Woods v Harrison, in the matter of Telco Service Holdings Pty Ltd (in liquidation)* [2017] FCA 732
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ORDERS

VID 288 of 2022

IN THE MATTER OF THE A TEAM PROPERTY GROUP PTY LTD (ACN 603 138 889)

BETWEEN:	**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION** Plaintiff
AND:	**SASHA JOAKIM HOPKINS** First Defendant
	THE A TEAM PROPERTY GROUP PTY LTD (ACN 603 138 889) Second Defendant
	SASH INVESTMENT HOLDINGS PTY LTD (ACN 154 443 768) (and others named in the schedule) Third Defendant
ORDER MADE BY:	**BEACH J**
DATE OF ORDER:	**27 NOVEMBER 2024**

THE COURT NOTES THAT:

For the purposes of this Order:

A. **Digital Assets** means property, as defined under s 9 of the *Corporations Act 2001* (Cth), that is a digital currency, virtual currency, cryptocurrency or similar.

B. **Receivers of the Digital Assets** mean the receivers and managers of the Digital Assets of each of the first, second and third defendants pursuant to the orders dated 31 May 2022 as varied and amended from time to time, including by these Orders.

C. the **Schemes** means the following managed investment schemes operated by the first and second defendants:

   (a) the Ludlow St Scheme, being the managed investment scheme operated by the first and second defendants from at least 4 December 2018 to the date of this Order and promoted by the first and second defendants to members of the public for investment in the proposed development of the real property known as 11 Ludlow Street Hamilton, Queensland;

   (b) the HHP2 Scheme, being the managed investment scheme operated by the first and second defendants from at least 12 July 2019 to the date of this Order and

promoted by the first and second defendants to members of the public for investment in the proposed development of the real property known as 128 River Terrace, Kangaroo Point, Queensland;

(c) the HHP6 Scheme, being the managed investment scheme operated by the first and second defendants from at least October 2019 to the date of this Order and promoted by the first and second defendants to members of the public for investment in the proposed development of the real property known as 1 Bryson Avenue, Brighton, Victoria;

(d) the HHP7 Scheme, being the managed investment scheme operated by the first and second defendants from at least April 2020 to the date of this Order and promoted by the first and second defendants to members of the public for investment in the proposed development of the real property known as 103 Paterson Street, Byron Bay, New South Wales;

(e) the HHP8 Scheme, being the managed investment scheme operated by the first and second defendants from at least 13 July 2020 to the date of this Order and promoted by the first and second defendants to members of the public for investment in the proposed development of the real property known as 4 Langside Road, Hamilton, Queensland;

(f) the HCI Scheme, being the managed investment scheme operated by the first and second defendants between at least 25 April 2018 and 1 December 2020 and promoted by the first and second defendants to members of the public for investment in the proposed development of the real properties known as 6-6A Darling Street, South Yarra, Victoria; 7-9 Robinson Street, Prahran, Victoria; 34 James Street, Windsor, Victoria; 4 82 Marine Parade, Elwood, Victoria 9-51 Warleigh Grove, Brighton, Victoria;

(g) the HCI2 Scheme, being the managed investment scheme operated by the first and second defendants between at least 24 June 2019 and 1 December 2020 and promoted by the first and second defendants to members of the public for investment in the proposed development of the real property known as 381-385 Anzac Highway, Camden Park, South Australia;

(h) the HCI3 Scheme, being the managed investment scheme operated by the first and second defendants between at least 3 July 2019 and 1 December 2020 and promoted by the first and second defendants to members of the public for

investment in the proposed development of the real property known as 24 Burrows Street, Brighton, Victoria;

(i) the Esplanade Brighton Scheme, being the managed investment scheme operated by the first and second defendants between at least 14 March 2019 and 1 December 2020 and promoted by the first and second defendants to members of the public for investment in the proposed development of the real property known as 29 Beach Road, Beaumaris, Victoria;

(j) the Hopkins Empire Scheme, being the managed investment scheme operated by the first and second defendants between at least 11 May 2018 and 15 March 2021 and promoted by the first and second defendants to members of the public for investment in the proposed development of the real property known as 116 Walpole Street, Kew, Victoria; and

(k) the Junction Road Scheme, being the managed investment scheme operated by the first and second defendants between at least 17 April 2018 and 3 December 2021 and promoted by the first and second defendants to members of the public for investment in the proposed development of the real properties known as 149 Junction Road, Clayfield, Queensland; 151 Junction Road, Clayfield, Queensland; and 153 Junction Road, Clayfield, Queensland.

D. the **Current Schemes** means the following managed investment schemes operated by the first and second defendants:

(a) the Ludlow Street Scheme;

(b) the HHP2 Scheme;

(c) The HHP6 Scheme; and

(d) The HHP7 Scheme.

E. The **Trusts** means:

(a) the Ludlow St Trust (ABN 95 125 394 251);

(b) Hunter Hopkins Project 2 Trust (ABN 88 403 422 103);

(c) Hunter Hopkins Project 6 Trust (ABN 81 902 024 343); and

(d) Hunter Hopkins Project 7 Trust (ABN 51 898 623 807).

THE COURT DECLARES THAT:

1. The first defendant, Mr Sasha Joakim Hopkins, operated the Schemes as unregistered managed investment schemes in contravention of subsections 601ED(5) and (8) of the *Corporations Act 2001* (Cth) (Corporations Act) in circumstances in which the Schemes were required to be registered under s 601EB of the Corporations Act in the period from at least 26 June 2018 to the date of this Order.

2. The second defendant, The A Team Property Group Pty Ltd (ACN 603 138 889) (Receivers and Managers appointed), operated the Schemes as unregistered managed investment schemes in contravention of subsections 601ED(5) and (8) of the Corporations Act in circumstances in which the Schemes were required to be registered under s 601EB of the Corporations Act in the period from 26 June 2018 to the date of this Order.

3. By operating and promoting the Schemes, the first defendant contravened s 911A(5B) of the Corporations Act, in that he carried on a financial services business without holding an Australian Financial Services Licence in the period from 26 June 2018 to the date of this Order.

4. By operating and promoting the Schemes, the second defendant contravened s 911A(5B) of the Corporations Act, in that it carried on a financial services business without holding an Australian Financial Services Licence in the period from 26 June 2018 to the date of this Order.

THE COURT ORDERS THAT

Receivership of Digital Assets

5. Effective from the date of these Orders, the Receivers of the Digital Assets be removed as receivers and managers of the Digital Assets of each of the first, second and third defendants.

6. By 11 December 2024, the first and third defendants are to provide the Receivers of the Digital Assets with details of a cryptocurrency or digital wallet nominated by them to which the Digital Assets should be transferred pursuant to order 7 below.

7. By 18 December 2024, the Receivers of the Digital Assets are to return the Digital Assets, which are in the possession or control of the Receivers of the Digital Assets at the date of these Orders, to the first and third defendants by delivering them to the

cryptocurrency or digital wallet nominated by the first and third defendants in accordance with paragraph 6 above.

8. The plaintiff will pay the reasonable costs and expenses of the Receivers of the Digital Assets to the date of these orders, and the reasonable costs and expenses of complying with order 7 above.

9. Order 25 of the 31 May 2022 orders be vacated.

Winding Up

10. Pursuant to s 461(1)(k) of the Corporations Act, the following companies are wound up on just and equitable grounds:

    (a) the second defendant, The A Team Property Group Pty Ltd (ACN 603 138 889) (Receivers and Managers appointed);

    (b) the fourth defendant, Ludlow St Hamilton Pty Ltd (ACN 626 298 020);

    (c) the sixth defendant, Hunter Hopkins Project 6 Pty Ltd (ACN 635 382 777);

    (d) the seventh defendant, Hunter Hopkins Project 7 Pty Ltd (ACN 636 807 406); and

    (e) the ninth defendant, Compound Capital Investments 1 Limited (ACN 639 543 972).

11. Pursuant to s 472(1) of the Corporations Act, Mr Anthony Norman Connelly, Mr Robert Bruce Smith and Ms Katherine Sozou of McGrathNicol (which includes McGrathNicol Partnership (ABN 41 945 982 761), McGrathNicol Advisory Partnership (ABN 34 824 776 937), McGrathNicol Transaction Advisory Pty Ltd (ABN 47 456 678 565), ACT Super Management Pty Ltd (ABN 29 073 947 690), McGrathNicol Services Pty Ltd (ABN 99 252 041 004)) (McGrathNicol) are appointed as joint and several liquidators to the second, fourth, sixth, seventh and ninth defendants (Liquidators).

12. Pursuant to s 601EE(2) of the Corporations Act, the Current Schemes be wound up.

13. The Liquidators be appointed as joint and several liquidators of the Ludlow Street Scheme, the HHP6 Scheme and the HHP7 Scheme.

14. Mr David Raj Vasudevan and Mr Timothy James Bradd of Pitcher Partners be appointed as joint and several liquidators of the HHP2 Scheme (HHP2 Liquidators).

15. The asset preservation orders made on 31 May 2022 be vacated on the appointment of the Liquidators pursuant to orders 10 and 11.

16. Pursuant to s 601EE(2) of the Corporations Act, and subject to any further orders of the Court:

(a) the winding up of the Current Schemes be conducted as if each of the schemes were a 'company' or 'corporation' for the purposes of the Corporations Act and the provisions of Parts 5.4B, 5.6, 5.7B and 5.9 of the Corporations Act and Schedule 2 to the Corporations Act (Insolvency Practice Schedule (Corporations)) applied to the winding up (with such modifications as are reasonably necessary in the circumstances);

(b) the Liquidators have power to do, in Australia and elsewhere, all things necessary or convenient to be done for or in connection with the winding up of the Ludlow Street Scheme, the HHP6 Scheme and the HHP7 Scheme, or incidental to the attainment of the winding up of the Ludlow Street Scheme, the HHP6 Scheme and the HHP7 Scheme, including the functions and powers set out in Chapter 5 of the Corporations Act (as applicable) as if each reference there to a 'company' or 'corporation' was a reference to the scheme (with such modifications as are reasonably necessary in the circumstances);

(c) the HHP2 Liquidators have power to do, in Australia and elsewhere, all things necessary or convenient to be done for or in connection with the winding up of the HHP2 Scheme, or incidental to the attainment of the winding up of the HHP2 Scheme, including the functions and powers set out in Chapter 5 of the Corporations Act (as applicable) as if each reference there to a 'company' or 'corporation' was a reference to the scheme (with such modifications as are reasonably necessary in the circumstances);

(d) without limiting the above, the Liquidators shall have the power to investigate or cause to be investigated any deficiency in the Ludlow Street Scheme, the HHP6 Scheme and the HHP7 Scheme and to exercise the powers under Part 5.9 Division 1 of the Corporations Act as if each of the schemes were a 'corporation' being wound up;

(e) without limiting the above, the HHP2 Liquidators shall have the power to investigate or cause to be investigated any deficiency in the HHP2 Scheme and to exercise the powers under Part 5.9 Division 1 of the Corporations Act as if each of the schemes were a 'corporation' being wound up; and

(f) the Liquidators and the HHP2 Liquidators shall be entitled to reasonable remuneration properly incurred in the performance of their duties arising in

connection with their appointment and in the exercise of their powers as may be approved by the Court on the application of the Liquidators or the HHP2 Liquidators, together with all costs, expenses and disbursements.

17. The plaintiff provide to the Liquidators and the HHP2 Liquidators the documents obtained by the plaintiff during its investigations related to the Current Schemes, including but not limited to:

    (a) documents produced to the plaintiff in response to notices issued pursuant to ss 19, 30 and 33 of the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act);

    (b) transcripts of examinations conducted by staff of the plaintiff pursuant to s 19 of the ASIC Act; and

    (c) to the extent permitted, reasonable and / or appropriate, documents otherwise produced voluntarily to the plaintiff during its investigations or obtained by the plaintiff through the exercise of some other power.

18. The Liquidators and the HHP2 Liquidators have liberty to apply to the Court on 3 days' written notice.

Receivership of Trusts and the Schemes

19. Pursuant to s 57 or alternatively s 23 of the *Federal Court of Australia Act 1976* (Cth) (Federal Court Act), without giving security Mr Anthony Norman Connelly, Mr Robert Bruce Smith and Ms Katherine Sozou of McGrathNicol (Receivers and Managers) are appointed as joint and several receivers and managers over the property, assets and undertakings of each of:

    (a) the Ludlow Street Scheme;

    (b) The HHP6 Scheme;

    (c) The HHP7 Scheme;

    (d) the Ludlow St Trust (ABN 95 125 394 251);

    (e) Hunter Hopkins Project 6 Trust (ABN 81 902 024 343); and

    (f) Hunter Hopkins Project 7 Trust (ABN 51 898 623 807).

    (together, the Property).

20. The Receivers and Managers be conferred with the following powers in respect of the Property:

(a) The powers in s 420 of the Corporations Act, as if the references in that provision to the 'property of the corporation' was a reference to property of the relevant Trust or Current Scheme; and

(b) The powers that a liquidator has in respect of property of a company by s 477(2) of the Corporations Act.

21. The need for the Receivers and Managers to file a guarantee under r 14.21 and 14.22 of the *Federal Court Rules 2011* (Cth) be dispensed with.

22. The Receivers and Managers shall be entitled to reasonable remuneration properly incurred in the performance of their duties arising in connection with their appointment and in the exercise of their powers as may be approved by the Court on the application of the Receivers and Managers, together with all costs, expenses and disbursements.

23. The Receivers and Managers' remuneration is to be calculated on the basis of time reasonably spent by the Receivers and Managers and any partner or employee of the firm to which the Receivers and Managers are attached, at the standard rates of the Receivers and Managers' firm from time to time for work of that nature.

24. The Receivers and Managers' remuneration, costs, expenses and disbursements are to be paid from the Property of the relevant Trust or Current Scheme to which the work for the remuneration or the cost, expense or disbursement relates.

25. The Receivers and Managers have liberty to apply to the Court on 3 days' written notice.

26. Pursuant to s 57 or alternatively s 23 of the Federal Court Act, without giving security, Mr David Raj Vasudevan and Mr Timothy James Bradd of Pitcher Partners (HHP2 Receivers and Managers) are appointed as joint and several receivers and managers over the property, assets and undertakings of each of:

(a) The Hunter Hopkins Project 2 Trust (ABN 88 403 422 103); and

(b) the HHP2 Scheme,

(together, the HHP2 Property).

27. The HHP2 Receivers and Managers be conferred with the following powers in respect of the HHP2 Property:

(a) The powers in s 420 of the Corporations Act, as if the references in that provision to the 'property of the corporation' was a reference to property of the relevant Trust or Scheme; and

(b) The powers that a liquidator has in respect of property of a company by s 477(2) of the Corporations Act.

28. The need for the HHP2 Receivers and Managers to file a guarantee under r 14.21 and 14.22 of the *Federal Court Rules 2011* (Cth) be dispensed with.

29. The HHP2 Receivers and Managers shall be entitled to reasonable remuneration properly incurred in the performance of their duties arising in connection with their appointment and in the exercise of their powers as may be approved by the Court on the application of the HHP2 Receivers and Managers, together with all costs, expenses and disbursements.

30. The HHP2 Receivers and Managers' remuneration is to be calculated on the basis of time reasonably spent by the HHP2 Receivers and Managers and any partner or employee of the firm to which the HHP2 Receivers and Managers are attached, at the standard rates of the HHP2 Receivers and Managers' firm from time to time for work of that nature.

31. The HHP2 Receivers and Managers have liberty to apply to the Court on 3 days' written notice.

Civil Penalty

32. Pursuant to s 1317G(1) of the Corporations Act, within 90 days of the date of this Order, the first defendant pay the Commonwealth of Australia a pecuniary penalty in the amount of $1,250,000 in respect of the contraventions of ss 601ED(5), 601ED(8), 601EB and 911A(5B) of the Corporations Act.

Disqualification

33. Pursuant to s 206C(1) of the Corporations Act, the first defendant be disqualified from managing a corporation for a period of 4 years from the date of this Order.

Injunctions

34. Pursuant to s 1324 of the Corporations Act, the first defendant is permanently restrained from:

(a) carrying on a financial services business in Australia without holding an Australian financial services licence covering the provision of the financial services; and

(b) operating an unregistered managed investment scheme in contravention of s 601ED(5) of the Corporations Act.

Costs

35. The first and second defendants pay the plaintiff the sum of $50,000 in satisfaction of the plaintiff's costs of the proceedings.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

BEACH J:

1 The first defendant, Mr Sasha Hopkins, and the second defendant, The A Team Property Group Pty Ltd (TATPG) have each admitted to operating 11 unregistered managed investment schemes in contravention of s 601ED(8) of the *Corporations Act 2001* (Cth) and carrying on a financial services business without the necessary Australian financial services licence in contravention of s 911A(1) and s 911A(5B).

2 The parties have jointly filed a statement of agreed facts and admissions (SAFA) setting out facts agreed between the parties pursuant to s 191 of the *Evidence Act 1995* (Cth) and admissions made by the defendants and a supplementary statement of agreed facts setting out additional agreed facts in relation to relief.

3 I am asked to make various declarations and orders based upon these statements and additional evidence, which relief and orders are not opposed.

4 By way of background, on 31 May 2022 ASIC commenced this proceeding against Mr Hopkins, TATPG and the third defendant, and sought interim relief including asset preservation orders, travel restraint orders in respect of Mr Hopkins and disclosure orders.

5 I made orders at that time against those defendants pursuant to s 1323, which orders included that Mr Michael Hill and Mr Anthony Connelly of McGrathNicol be appointed as joint and several receivers and managers of various property including digital currency, virtual currency and cryptocurrency held by each of the first, second and third defendants.

6 On 24 July 2023 the fourth to ninth defendants were joined as parties to this proceeding and ASIC filed an amended originating process in which it sought declarations of contravention, winding up orders concerning the current schemes, trusts and associated entities, and civil penalties and other orders against Mr Hopkins. I converted the proceeding to one involving pleadings.

7 On 5 June 2024, the fifth defendant, Hunter Hopkins Project 2 Pty Ltd (HHP2) was placed in liquidation by orders of this Court. Mr David Vasudevan and Mr Innis Cull were appointed joint and several liquidators of HHP2. Mr Cull has now been replaced by Mr Timothy Bradd.

8 Now the various parties have resolved their differences and put forward a joint position, which I accepted this morning and which was embodied in various orders that I made. These are my reasons for making those orders.

Factual background

9 Let me begin by identifying the relevant schemes.

The schemes

10 The following managed investment schemes were operated by Mr Hopkins and TATPG.

11 First, the Ludlow St scheme was operated by Mr Hopkins and TATPG from 4 December 2018 to now and promoted by Mr Hopkins and TATPG to members of the public for investment in the proposed development of the real property in Ludlow Street Hamilton, Queensland.

12 Second, the HHP2 scheme was operated by Mr Hopkins and TATPG from 12 July 2019 to now and promoted by Mr Hopkins and TATPG to members of the public for investment in the proposed development of the real property in River Terrace, Kangaroo Point, Queensland.

13 Third, the HHP6 scheme was operated by Mr Hopkins and TATPG from October 2019 to now and promoted by Mr Hopkins and TATPG to members of the public for investment in the proposed development of the real property in Bryson Avenue, Brighton, Victoria.

14 Fourth, the HHP7 scheme was operated by Mr Hopkins and TATPG from April 2020 to now and promoted by Mr Hopkins and TATPG to members of the public for investment in the proposed development of the real property in Paterson Street, Byron Bay, New South Wales.

15 Fifth, the HHP8 scheme was operated by Mr Hopkins and TATPG from 13 July 2020 to now and promoted by Mr Hopkins and TATPG to members of the public for investment in the proposed development of the real property in Langside Road, Hamilton, Queensland.

16 Sixth, the HCI scheme was operated by Mr Hopkins and TATPG between 25 April 2018 and 1 December 2020 and promoted by Mr Hopkins and TATPG to members of the public for investment in the proposed development of the real properties in Darling Street, South Yarra, Victoria; Robinson Street, Prahran, Victoria; James Street, Windsor, Victoria; Marine Parade, Elwood, Victoria and Warleigh Grove, Brighton, Victoria.

17 Seventh, the HCI2 scheme was operated by Mr Hopkins and TATPG between 24 June 2019 and 1 December 2020 and promoted by Mr Hopkins and TATPG to members of the public for investment in the proposed development of the real property in Anzac Highway, Camden Park, South Australia.

18 Eighth, the HCI3 scheme was operated by Mr Hopkins and TATPG between 3 July 2019 and 1 December 2020 and promoted by Mr Hopkins and TATPG to members of the public for

investment in the proposed development of the real property in Burrows Street, Brighton, Victoria.

19 Ninth, the Esplanade Brighton scheme was operated by Mr Hopkins and TATPG between 14 March 2019 and 1 December 2020 and promoted by Mr Hopkins and TATPG to members of the public for investment in the proposed development of the real property in Beach Road, Beaumaris, Victoria.

20 Tenth, the Hopkins Empire scheme was operated by Mr Hopkins and TATPG between 11 May 2018 and 15 March 2021 and promoted by Mr Hopkins and TATPG to members of the public for investment in the proposed development of the real property in Walpole Street, Kew, Victoria.

21 Eleventh, the Junction Road scheme was operated by Mr Hopkins and TATPG between 17 April 2018 and 3 December 2021 and promoted by Mr Hopkins and TATPG to members of the public for investment in the proposed development of the real properties in Junction Road, Clayfield, Queensland.

22 Now in these reasons, I have referred to the current schemes as meaning the Ludlow Street scheme, the HHP2 scheme, the HHP6 scheme and the HHP7 scheme operated by Mr Hopkins and TATPG. And in these reasons, I have referred to the trusts as meaning the Ludlow St trust, the Hunter Hopkins Project 2 trust, the Hunter Hopkins Project 6 trust and the Hunter Hopkins Project 7 trust.

23 Let me turn to some further matters by way of background.

The business of TATPG

24 TATPG was founded in 2014 by Mr Hopkins, who was at all material times the sole director and CEO, secretary and shareholder of TATPG.

25 TATPG carried on a business of providing property related services to its clients including promoting property investments. TATPG's promotional material stated that "you must surround yourself with an 'A Team' of professionals to minimise the risk and maximise the results". TATPG promoted its property investment strategy, which was described as the Hopkins formula. The Hopkins formula consisted of three phases, described as phase 1, phase 2 and phase 3.

26 During phase 1, TATPG and Mr Hopkins were to provide coaching and mentoring services in connection with property investment. The services TATPG was to provide to clients included

assisting clients to identify and source land and property, introducing clients to a finance broker, providing clients with a client relations manager to guide the client through the process, and, upon completion of any project, introducing clients to a real estate agent.

27 During phase 2, TAPTG and Mr Hopkins were to assist clients to utilise the capital growth generated by the respective clients' properties acquired in phase 1 to invest in what were described as "high yield properties", which were to generate rental income.

28 During phase 3, clients were to be given the opportunity to invest in joint venture property development projects (JV developments), which TATPG and Mr Hopkins described as exclusive opportunities. Now phase 3 usually consisted of approximately 40% to 50% of TATPG's business at the time.

29 Phase 3 generally operated as follows. Mr Hopkins would identify a particular property as suitable for a JV development. Mr Hopkins would establish a special purpose vehicle (SPV) to purchase the land. Mr Hopkins and TATPG promoted the opportunity to invest in the JV development(s) on social media, including on Facebook, in which they offered a fixed return of 25% to 50%, between 12 to 26 months, or 2% per month between 6 to 11 months. Mr Hopkins and TATPG directly liaised with prospective clients of TATPG in relation to the JV developments.

30 Now a person had to first become a client by entering into a client management agreement and paying a one-off fee before they were offered the opportunity to invest in a JV development.

31 The minimum amount to invest in a JV development was $100,000, however, TATPG and Mr Hopkins would on occasion allow a client to invest with less than $100,000.

32 Mr Hopkins and TATPG informed clients that they could invest in JV developments through personal savings, available equity or through a self-managed superannuation fund.

33 Clients entered into an unsecured loan agreement with the SPV for a particular JV development under which they would transfer funds to the SPV. Investor funds were used by the SPV in conjunction with funding obtained by way of first and second mortgage facilities with professional lenders. Under the terms of the loan agreements, the SPV agreed to pay clients a return on their investment following the sale of the property.

34 For a particular JV development, Mr Hopkins and TATPG pooled investor funds in the relevant SPV's bank account to be used by the SPV to carry out the JV development. Investors would have no day-to-day today control over how the funds were used.

35 Now there were two primary agreements that governed the relationship between clients and Mr Hopkins and TATPG.

36 First, clients were required to enter into a client management agreement with TATPG and pay a one off $16,500 fee. The services TATPG was required to provide under the client management agreements were described as "coaching and mentoring services … in connection with property investment". After entering into a client management agreement and paying the one-off fee, clients had the opportunity to invest in JV developments.

37 Second, if a client wanted to invest in a JV development, they were required to enter into a loan agreement with the relevant SPV. The loan agreement provided that in return for lending money to the SPV, the client would receive a return on investment. Depending on the particular loan agreement, the return on investment was somewhere between 25% to 50% and was to be repaid between 12 to 26 months from the date of the loan agreement(s).

38 Now Mr Hopkins is the sole shareholder of the third defendant, Sash Investment Holdings Pty Ltd, which was the sole shareholder of the SPVs.

39 Further, to the extent that any of the schemes were profitable, such profit was ultimately obtained by or under the control of Mr Hopkins via the particular SPV and Sash Investment Holdings Pty Ltd.

40 Let me now turn to the statutory provisions.

Section 601ED

41 Section 601ED(1) relevantly requires a managed investment scheme to be registered if:

(a) it has more than 20 members; and/or

(b) it was promoted by a person, or an associate of a person, who was, when the scheme was promoted, in the business of promoting managed investment schemes.

42 Section 601ED(4) sets out the mechanism by which the amount of members of a scheme is to be calculated:

> (4) For the purpose of this section, when working out how many members a scheme has:
>
> (a) joint holders of an interest in the scheme count as a single member; and
>
> (b) an interest in the scheme held on trust for a beneficiary is taken to be held by the beneficiary (rather than the trustee) if:

(i) the beneficiary is presently entitled to a share of the trust estate or of the income of the trust estate; or

(ii) the beneficiary is, individually or together with other beneficiaries, in a position to control the trustee.

43 Section 601ED(5) prohibits a person from operating a managed investment scheme in a relevant jurisdiction unless it is registered. A breach of the prohibition is also a contravention of s 601ED(8), a civil penalty provision (s 1317E(3)).

44 Now the civil penalty provisions with respect to s 601ED were introduced by the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (Cth). The application and transitional provision provides that the amendments apply in relation to the contravention of a civil penalty provision if the conduct constituting the contravention of the provision occurred wholly on or after the commencement date (s 1657).

45 Now it is to be noted that the relevant provisions of this amending legislation commenced on 13 March 2019, which was after the commencement of the Ludlow St scheme, the HCI scheme, the Hopkins Empire scheme and the Junction Road scheme, but otherwise before the commencement of the other schemes.

46 Let me say something more about the statutory terminology.

Statutory thresholds

47 The term "managed investment scheme" is defined in s 9. The definition relevantly has three positive elements and contains a number of presently inapplicable exclusions. The positive elements of the definition are as follows:

> ***managed investment scheme*** means:
>
> (a) a scheme that has the following features:
>
> (i) people contribute money or money's worth as consideration to acquire rights (***interests***) to benefits produced by the scheme (whether the rights are actual, prospective or contingent and whether they are enforceable or not);
>
> (ii) any of the contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for the people (the ***members***) who hold interests in the scheme (whether as contributors to the scheme or as people who have acquired interests from holders);
>
> (iii) the members do not have day-to-day control over the operation of the scheme (whether or not they have the right to be consulted or to give directions).
>
> …

48 The definition of "managed investment scheme" requires the identification of a "scheme", which for present purposes is simply taken to be a programme or a plan of action.

49 In relation to the schemes other than the HHP7 scheme, those plans of action included:

(a) the promotion to potential investors of the opportunity to invest in the JV developments;

(b) the establishment of SPVs to purchase the property the subject of the schemes;

(c) the requirement for clients to enter into client management agreements with TATPG in order to be able to invest in the schemes;

(d) investors entering into loan agreements to invest in the schemes;

(e) the receipt of funds from investors into bank accounts in the names of the SPV; and

(f) the application of investor funds by Mr Hopkins and TATPG to purchase, develop and sell real property the subject of the schemes.

50 In relation to the HHP7 scheme, the plan of action included:

(a) the promotion to potential investors of the opportunity to invest in the HHP7 property;

(b) CCI1 issuing redeemable preference shares to raise funds from investors for the development and sale of proposed HHP7 property;

(c) TATPG and Mr Hopkins obtaining money from the HHP7 investors via the purchase by those investors of redeemable preference shares in CCI1;

(d) the HHP7 investors' money being pooled initially in the CC1 account then subsequently transferred to the HHP7 Account by way of loan; and

(e) TATPG and Mr Hopkins agreeing with the HHP7 investors that the moneys were to be invested in a real property development project managed by TATPG and Mr Hopkins.

51 Investments made by way of loans can constitute contributions for the purposes of the definition. And each of the investors contributed a significant amount of money to the schemes.

52 Further, the element of the "managed investment scheme" definition contained in limb (a)(i) also requires that money or money's worth be contributed as consideration to acquire rights (interests) to benefits produced by the scheme.

53 The word "interest" in this context is also defined in s 9 as follows:

> ***interest***:
>
> …
>
> (b) ***interest*** in a managed investment scheme (including a notified foreign passport

> fund) means a right to benefits produced by the scheme (whether the right is actual, prospective or contingent and whether it is enforceable or not);
>
> …

54 It is well-established that schemes involving the contribution of money for a fixed interest return are capable of engaging the definitional aspect of limb (a)(i) of "managed investment scheme".

55 In relation to the schemes other than the HHP7 scheme, the loan agreements provided that in return for advancing moneys, the investors in each particular scheme would receive a right to a return on investment, being a return from proceeds of sale of the completed development of the real property the subject of the particular scheme.

56 In relation to the HHP7 scheme, the HHP7 investors acquired redeemable preference shares that entitled them to a fixed dividend of 50% after a period of 30 months. In addition, HHP7 was required to buy back the redeemable preference shares at the price that they were issued.

57 The investors in the schemes agreed that in return for advancing moneys, they would receive a right to a return on the investment, being a return from proceeds of sale of the completed development of the properties the subject of the schemes.

58 Further, the element of the "managed investment scheme" definition contained in limb (a)(ii) requires that "any" of the contributions are to be pooled or used in a common enterprise, to produce financial benefits or benefits consisting of rights or interests in property for the people who hold interests in the scheme.

59 The concept of "pooling" refers to contributions to a discernible fund, the moneys in which are to be used in an identifiable way to provide prescribed benefits to contributors.

60 Investors' money was pooled in bank accounts owned by the SPV established for the particular scheme, that those funds were used to fund the respective JV developments the subject of the schemes, and that the investors were to receive benefits prescribed by the terms of their investment.

61 Further, the final element of the "managed investment scheme" definition contained in limb (a)(iii) requires that "the members do not have day-to-day control over the operation of the scheme (whether or not they have the right to be consulted or to give directions)".

62 In relation to each of the schemes, the investors in those schemes did not have day-to-day control over the use of their money.

Requirement that the schemes be registered

63 The following schemes had more than 20 members: the HHP2 scheme; the HHP6 scheme; the HHP7 scheme; and the HCI scheme. Accordingly, the first limb of s 601ED(1) is satisfied in respect of those schemes. It is therefore unnecessary to separately consider the second limb in s 601ED(1)(b) in respect of those particular schemes.

64 The following schemes did not have more than 20 members, such that it is necessary to consider the second limb at least in respect of these schemes: the Ludlow St scheme; the HHP8 scheme; the HCI2 scheme; the HCI3 scheme; the Esplanade Brighton scheme; the Hopkins Empire scheme; and the Junction Road scheme.

65 Further, in respect of each of the schemes, the following may be noted. First, TATPG and Mr Hopkins were each in the business of promoting managed investment schemes. Second, they promoted to potential investors the opportunity to invest in the joint development of the respective real property development projects. Third, at the time they were in the business of promoting managed investment schemes.

66 Accordingly, the second limb of s 601ED(1) is satisfied in respect of each of the schemes.

67 Now none of the schemes were registered. Further, TATPG and Mr Hopkins operated each of the schemes.

68 In the circumstances, TATPG and Mr Hopkins have each contravened ss 601ED(5) and (8) in respect of their operation of each of the schemes. Further, their operation of each of the schemes constituted 11 distinct contraventions of s 601ED(8).

Section 911A – Australian Financial Services Licence

69 Section 911A(1) relevantly provides that a person who carries on a financial services business in Australia must hold an AFSL covering the provision of the financial services. A failure to comply with s 911A(1) is a contravention of s 911A(5B), which is a civil penalty provision (s 1317E(3)).

70 Now as to whether a person "carries on a financial services business" in Australia, the following may be noted.

71 First, it is not in doubt that the concept of carrying on a business includes the notion of a system, repetition or continuity of activities undertaken as part of a commercial enterprise being a going concern.

72 Second, a person provides a financial service if they inter-alia deal in a "financial product" (s 766A(1)).

73 The definition of "financial product" relevantly includes:

> **763A Meaning of *financial product***
>
> (1) A ***financial product*** is a facility through which, or through the acquisition of which, a person does one or more of the following:
>
> (a) makes a financial investment;
>
> …

74 Section 764A(1)(ba) explicitly provides that an interest in an unregistered managed investment scheme is a "financial product".

75 Further, a person "makes a financial investment" if (s 763B):

> (a) the investor gives money or money's worth (the ***contribution***) to another person and any of the following apply:
>
> (i) the other person uses the contribution to generate a financial return, or other benefit, for the investor;
>
> (ii) the investor intends that the other person will use the contribution to generate a financial return, or other benefit, for the investor (even if no return or benefit is in fact generated);
>
> (iii) the other person intends that the contribution will be used to generate a financial return, or other benefit, for the investor (even if no return or benefit is in fact generated); and
>
> (b) the investor has no day-to-day control over the use of the contribution to generate the return or benefit.
>
> …

76 Further, s 766C relevantly provides:

> (1) The following conduct (whether engaged in as principal or agent) constitutes ***dealing*** in a financial product:
>
> (a) applying for or acquiring a financial product;
>
> (b) issuing a financial product;
>
> …
>
> (2) Arranging for a person to engage in conduct referred to in subsection (1) is also ***dealing*** in a financial product, unless the actions concerned amount to providing financial product advice.

77 Now each of Mr Hopkins and TATPG carried on a financial services business in Australia and neither Mr Hopkins nor TATPG held an AFSL covering the provision of the financial services.

78 The provision of financial services for these purposes was constituted by each of Mr Hopkins and TATPG dealing in a financial product, that is, by issuing the loan agreements and/or granting investors interests in the Ludlow St scheme, the HHP2 scheme, the HHP6 scheme, the HHP8 scheme, the HCI scheme, the HCI2 scheme, the HCI3 scheme, the Esplanade Brighton scheme, the Hopkins Empire scheme and the Junction Road scheme. By the loan agreements, the respective investors made a financial investment. And by subscribing for the redeemable preference shares the subject of the HHP7 scheme, the HHP7 investors made a financial investment.

79 Let me now turn to the question of the declarations, orders and other relief sought.

Declarations

80 Section 1317E(1) provides:

> **1317E Declaration of contravention of a civil penalty provision**
>
> *Declaration of contravention*
>
> (1) If a Court is satisfied that a person has contravened a civil penalty provision, the Court must make a declaration of contravention.
>
> …

81 The definition of "civil penalty provision" includes s 601ED(8) and s 911A(5B) (s 1317E(3)). Further, the making of a declaration under s 1317E is a necessary precondition to the exercise of powers under ss 1317G and 206C.

82 More generally, the Court also has an almost unlimited discretionary power to make declarations under s 21 of the *Federal Court of Australia Act 1976* (Cth).

83 In *Australian Securities and Investments Commission v Mitchell (No 3)* (2020) 148 ACSR 630, I said at [7] to [9] the following.

> Now as to declaratory relief, I have an almost unlimited discretionary power to make declarations under s 21 of the *Federal Court Act 1976* (Cth), which "[i]t is neither possible nor desirable to fetter…by laying down rules as to the manner of its exercise" (*Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 421 at 437; [1972-73] ALR 1303 per Gibbs J). But it is confined by considerations which mark out the boundaries of judicial power.
>
> But in any event, s 1317E provides an express power to make declarations and mandates that I do so. Moreover, it is necessary to make declarations under s 1317E in order to satisfy a precondition to the exercise of my powers under s 1317G to impose a pecuniary penalty; I will discuss this later.
>
> Given the findings in my principal reasons, there is little doubt that declarations should be made, not only because of the mandatory nature of s 1317E but also because:

(a) there was a real issue that had to be resolved by a contested trial;

(b) declarations in the present case will serve the objective of general deterrence; and

(c) as I have said, in order to impose a pecuniary penalty on Mr Mitchell the making of declarations is a necessary precondition.

84 In the present case there has been a live controversy as to contravention, ASIC has a real interest in the controversy and there is a proper contradictor. Further, the declarations will have utility and serve, inter-alia, the purpose of general deterrence.

85 Further, as s 601ED(8) is a civil penalty provision, it is appropriate and consonant with s 1317E that declarations of contraventions be made in respect of TATPG and Mr Hopkins' contraventions of that provision. There are 11 such contraventions.

86 And as s 911A(5B) is also a civil penalty provision, it is appropriate and consonant with s 1317E that a declaration of contravention be made against each of TATPG and Mr Hopkins for their contravention of this provision.

87 Let me turn to the question of the winding up and receivership orders concerning the schemes, the entities and the trusts.

Winding up and receivership orders

Winding up of schemes

88 Section 601EE provides:

> **601EE Unregistered schemes may be wound up**
>
> (1) If a person operates a managed investment scheme in contravention of subsection 601ED(5), the following may apply to the Court to have the scheme wound up:
>
> (a) ASIC;
>
> …
>
> (2) The Court may make any orders it considers appropriate for the winding up of the scheme.

89 Clearly, the Court has a very broad power. Moreover, I have considerable latitude in determining the parameters and conditions concerning the method and elements of the particular winding up.

90 It is trite to observe that any such winding up of a scheme must be directed to the realisation of any assets of the scheme, the discharge of any liabilities associated with the operation of the

scheme and ultimately the distribution of any surplus to investors in the scheme net of any winding up expenses.

91 And in exercising the discretionary power under s 601EE(2), the considerations that are relevant to the exercise of the discretion to wind up companies on the just and equitable ground under s 461(1)(k) are relevant and applicable by analogy including considering the public interest and focusing on the protection of investors.

92 In the present case, the jurisdiction to wind up the current schemes has been enlivened, those schemes not having been registered in contravention of the requirement to do so. Those contraventions provide a prima facie basis for the current schemes to be wound up, which is not displaced by any discretionary factors.

93 Indeed, it is appropriate that orders be made for the winding up of the schemes given the extent and seriousness of the contraventions, Mr Hopkins' conduct and involvement in the contraventions and in controlling the schemes, the extent of investor losses, the absence of the prospect of a return to investors in several of the schemes, the desirability of an independent person being in control of any recovery process, and relatedly, the conceptual problems that would arise if finalisation of the schemes were to be effected by those presently in control of them, which would likely produce further statutory breaches.

94 And clearly, the public interest in preserving the integrity of the system of investor protection justifies that the current schemes be wound up, and justifies having independent persons with suitable qualifications and the ability to investigate the affairs of the current schemes perform the task of winding up.

Winding up of companies

95 Section 461(1)(k) provides:

> (1) The Court may order the winding up of a company if:
>
> …
>
> (k) the Court is of opinion that it is just and equitable that the company be wound up.

96 In *Australian Securities and Investments Commission v Bilkurra Investments Pty Ltd* [2016] FCA 371 I said at [54] to [58]:

> There is power to wind up a company on just and equitable grounds (s 461(1)(k)). ASIC has standing to seek such an order (ss 462(2) and 464).
>
> Generally speaking, a company may be wound up where there is a justified lack of

confidence in the conduct and management of the company's affairs such as to give rise to a real risk to the public interest that warrants protection (see *Australian Securities and Investments Commission v ActiveSuper Pty Ltd (No 2)* (2013) 93 ACSR 189 at [20] per Gordon J).

In relation to the exercise of this power, there are three factors that are of central significance:

(a) First, is there a justifiable lack of confidence in the conduct and management of the relevant company or its affairs?

(b) Second, is there a real risk to the public or the public interest that warrants protection by such an order and the incidents flowing from liquidation?

(c) Third, is the relevant company solvent? A court may be reluctant to wind up a solvent company.

In *ASIC v ActiveSuper Pty Ltd (No 2)*, her Honour at [21] to [24] elaborated on these three themes in the following terms:

> In relation to the first, a lack of confidence may arise where, "after examining the entire conduct of the affairs of the company" the Court cannot have confidence in "the propensity of the controllers to comply with obligations, including the keeping of books, records and documents, and looking after the affairs of the company" …
>
> …
>
> In relation to the second, a risk to the public interest may take several forms. For example, a winding-up order may be necessary to ensure investor protection or where a company has not carried on its business candidly and in a straightforward manner with the public … Alternatively, it might be justified in order to prevent and condemn repeated breaches of the law …
>
> In relation to the third, it has been said that "a stronger case might be required where the company was prosperous, or at least solvent" … Solvency, however, is not a bar to the appointment of a liquidator on the just and equitable ground, particularly where there have been serious and ongoing breaches of the Act …

Given one of the defendants' arguments, let me raise one issue at this point on the solvency question. If a company is solvent, that may point against a winding up on the just and equitable ground, but it is not a bar. Conversely, if there is good reason to believe that a company is either cash flow insolvent or balance sheet insolvent, whether or not the formal elements of s 459A have been satisfied, I see no good reason why such circumstances cannot be taken into account under the just and equitable ground in any event as one of the factors to consider. In other words, the two grounds are not mutually exclusive in the sense, as submitted by the defendants, that no issue of insolvency can be considered under the just and equitable ground.

97 Now if the relevant schemes are to be wound up, then it would usually follow that the associated entities should be wound up, particularly if they are little more than special purpose vehicles used in or associated with the schemes.

98 The considerations that I have referred to specifically concerning the schemes and the general principles that I discussed in *ASIC v Bilkurra Investments Pty Ltd* justify the winding up of TATPG, in addition to the SPVs behind the current schemes, being the fourth defendant in

relation to the Ludlow Street scheme, the sixth defendant in relation to the HHP6 scheme, and the seventh and ninth defendants in relation to the HHP7 scheme.

99 I note that the SPV incorporated with respect to the fifth defendant, being the entity behind the HHP2 scheme, was placed into liquidation on 5 June 2024.

Appointment of receivers

100 Section 57 of the *Federal Court of Australia Act 1976* (Cth) provides for the appointment of receivers. Further, s 23 is also an available head of power.

101 In *Woods v Harrison, in the matter of Telco Service Holdings Pty Ltd (in liquidation)* [2017] FCA 732, I said at [34] to [36] and [41] to [47] the following concerning these statutory provisions, which it is convenient to repeat with some modification.

102 The scope of the power contained in s 23 is sufficiently broad to encompass the appointment of a receiver. In any event, there is a specific power to appoint a receiver conferred by s 57, which is in the following terms:

> **Receivers**
>
> (1) The Court may, at any stage of a proceeding on such terms and conditions as the Court thinks fit, appoint a receiver by interlocutory order in any case in which it appears to the Court to be just or convenient so to do.
>
> (2) A receiver of any property appointed by the Court may, without the previous leave of the Court, be sued in respect of an act or transaction done or entered into by him or her in carrying on the business connected with the property.
>
> (3) When in any cause pending in the Court a receiver appointed by the Court is in possession of property, the receiver shall manage and deal with the property according to the requirements of the laws of the State or Territory in which the property is situated, in the same manner as that in which the owner or possessor of the property would be bound to do if in possession of the property.

103 Sections 23 and 57 are supplemented by r 14.21 of the *Federal Court Rules 2011* (Cth).

104 The condition on the grant of the statutory power under s 57 is expressed in broad terms, being where it is "just or convenient so to do". It may be noted that the statutory power does not countenance a limitation on the exercise of the power or an implicit fetter based upon phraseology such as that the appointment of a receiver is a "drastic" remedy and the power should be exercised only in "extraordinary circumstances". That is not the phraseology of the statutory power that I am requested to exercise and nor is any such limitation consistent with the authority of this Court, whatever has been said by any State intermediate appellate court.

105 The applicable position is that stated by French J in *University of Western Australia v Gray (No 6)* [2006] FCA 1825 at [71] where he stated:

> The power of the Court to appoint a receiver is statutory. It has its origins, however, as an equitable remedy. An order in the nature of an equitable remedy can be made under s 23 of the Act. The class of circumstances in which such power may be exercised is not closed. Nor are the purposes for which a receiver may be appointed and the powers and conditions attaching to such an appointment. There may be many circumstances of considerable diversity which would warrant such an order and it is important that the discretion not be unnecessarily confined by any particular line of cases to which it has been applied.

106 Now there are various purposes that may justify the appointment of a receiver. Let me set out a number of non-exhaustive possibilities.

107 One purpose may be to protect the assets of a particular defendant so that they would not be further dissipated. In a sense, its purpose may be analogous to a Mareva order. In other words, an order for the preservation of assets may be required going beyond simply an *in personam* restraint on a particular defendant.

108 Another purpose may be to enable the asset structure of a defendant to be properly investigated. Yet another purpose may be to enable the defendant to be properly managed.

109 Further, another broader purpose may be to facilitate a quasi-administration of the affairs of a defendant who is in financial difficulties. There is precedent in an appropriate case to support such a purpose, particularly in Victoria. Judicial receivership for such a purpose was ordered for example in relation to the Massey-Ferguson Group (1980), Qintex Australia Ltd (1989), TEA (1983), International Harvester Australia Ltd (1982) and the Cooperative Farmers and Graziers Direct Meat Supply Ltd (1975). Receivership for conservation can be an appropriate purpose. But it should be stressed that a judicial receivership is not for a plaintiff, as for the witch in Hansel and Gretel, in order for it to "cage the defendant and fatten him up so he will make better eating, or at least to prevent him from wasting away" (*National Australia Bank Ltd v Bond Brewing Holdings Ltd* [1991] 1 VR 386 at 553 per Kaye, Murphy and Brooking JJ).

110 Now I accept that before the practical fusion of law and equity, the Court of Chancery did not make available its remedy of receiver, and that after that fusion such a remedy has not *generally* been available, absent statutory power, as a means just for establishing a scheme for the administration of a financially embarrassed corporate debtor (*National Australia Bank Ltd v Bond Brewing Ltd* at 551). But that says nothing about the breadth of the statutory powers that can be exercised under s 23 and s 57 and their capacity to be utilised to achieve such an objective.

111 Further, it is well apparent that a plaintiff does not need to establish any legal or equitable interest in the assets of the defendant in order to justify the appointment of a receiver.

112 Further, s 1323(1)(h) can provide an additional head of power although it has not been utilised in the present case.

113 Now the parties propose that individuals associated with McGrathNicol be appointed as receivers and managers of the property, assets and undertakings of various of the schemes and trusts. Those orders are sought out of an abundance of caution, including so that scheme assets can be identified and preserved for the liquidators of those schemes. I have no difficulty with making the appointments sought. But in this context I should say a little more on trusts.

Trusts

114 Now in the present case, orders are sought for the winding up of the trustee companies.

115 In respect of the Ludlow St trust, the terms of the Ludlow St trust deed provide that the office of the trustee will be automatically vacated where the trustee is under external administration, including where receivers have been appointed or a petition for its winding up is presented to a court.

116 But the trust deeds for each of the other trusts do not contain ipso facto clauses which vacate the office of the trustee upon liquidation.

117 In respect of the appointment of a new trustee, the trust deeds for each of the trusts state the following:

> **4.4 Trustee – Appointment and Removal – Appointment of Successor**
>
> (a) The provisions of this Deed regarding the method of appointment and removal of Trustees will have effect notwithstanding any inconsistent applicable legislative provisions, to the extent permitted by the law.
>
> (b) The power of appointing a new Trustee is vested in the Principal.
>
> (c) Subject to Clause 4.4(d), the Principal may at any time and from time to time without the consent of any person by deed or instrument in writing remove any Trustee from the office of Trustee and may also at any time and from time to time and without the consent of any person by deed or instrument in writing appoint any person or Corporation to be a Trustee either alone or jointly with any continuing Trustee . A purported exercise of the Principal's power under Clauses 4.4(b) and 4.4(c) is ineffective and void if the Principal purports to:
>
> (1) appoint the Settlor as a Trustee; or
>
> (2) remove a sole Trustee or all the Trustees without appointing a replacement Trustee or Trustees;

118 The defined principal under each of the trust deeds is Mr Hopkins, who accordingly has the power under the terms of the trust deeds to remove each of the trustees and appoint new trustees to each of the trusts.

119 Accordingly, to overcome the risk of Mr Hopkins appointing new trustees to each of the trusts, it is necessary for McGrathNicol to be appointed receivers and managers over the property, assets and undertakings of the trusts to enable those assets to be dealt with and realised for the benefit of creditors, investors and for the remuneration of the receivers and managers.

120 A similar approach was taken in *Re All Purpose Labour Pty Ltd (In Liquidation) as Trustee for the ATC Unit Trust* [2024] VSC 547 by Sloss J who said at [57]:

> A reason to prefer the appointment of the Liquidators as receivers and managers over the Trust property rather than to make orders pursuant to s 63 of the Trustee Act is that there is the potential, albeit very minimal, for the unitholder unilaterally to appoint a new trustee, which would result in the Liquidators (as former trustee) potentially losing their right to retain trust assets as security for their accrued right of indemnity. This is because cl 12 of the Trust Deed provides for the appointment of a new trustee by the unitholder in the following situations …

121 Now in *Rathner (liquidator), in the matter of Garrows Close Pty Ltd (in liq)* [2021] FCA 505 I discussed the question of whether the liquidators of a corporate trustee should also be appointed as receivers or whether only additional powers should be conferred on them as liquidators. I said the following (at [5] to [12]):

> The present matter reflects a standard context where orders have been made for the purpose of selling trust assets and distributing the proceeds among trust creditors by conferring on the liquidators of a corporate trustee of a bare trust the power to either deal with the assets of the trust or to have the liquidators appointed as receivers. In the present context, the liquidators seek an order conferring on them the power to deal with the assets of the trust, without also appointing them as receivers. Receivership is not necessary as I am not dealing with multiple trusts and there is no trading on involved.
>
> Section 90-15(1) of the Insolvency Practice Schedule (Corporations) confers power on me to make "such orders as it thinks fit in relation to the external administration of a company". The "[e]xamples of orders that may be made", set out in s 90-15(3), which include "determining any question arising in the external administration of the company", demonstrate that the power is broad and is at least as extensive as the powers formerly available under ss 479(3) and 511 of the Corporations Act.
>
> Further, s 63(1) of the Trustee Act provides:
>
> > Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction, is in the opinion of the Court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument (if any) or by law, the Court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose on such terms and subject to such provisions and conditions (if any) as the Court thinks fit and may direct in what manner any money authorized to

> be expended, and the costs of any transaction are to be paid or borne as between capital and income.
>
> In my view s 63(1) not only permits the conferral of power on a corporate trustee but also its liquidators in such a capacity; that arises as a necessary implication from the terms of s 63(1) or is a necessary ancillary order, particularly as it is only the liquidators who control the insolvent corporate trustee and who must be the recipient of and exercise any relevant power in substance.
>
> Now as I say, the company's assets are held in its capacity as bare trustee, such that the company has no interest therein other than that existing by reason of the office of trustee and the holding of legal title, and with the obligation to convey the trust estate to the beneficiaries on demand.
>
> I am satisfied that s 63(1) provides me with adequate power to authorise the necessary dealing with and application of trust assets, subject to what I will say later concerning Parts 5.5 and 5.6 of the Corporations Act.
>
> In *Re Cremin (in his capacity as liquidator of Brimson Pty Ltd in (ACN 621 156 643) (in liq) and others)* (2019) 136 ACSR 649 Moshinsky J observed (at [49] and [50]):
>
> > … It is now settled that the liquidator of an insolvent (former) corporate trustee cannot sell the trust's property without order of the Court, or by appointment of a receiver over the trust assets … The rationale for this position is that, on a proper understanding, the trust assets are not the "property of the company", but are instead trust property in which the corporate trustee has a proprietary interest by way of lien or charge to secure its right of exoneration: see [*Jones (Liquidator) v Matrix Partners Pty Ltd, in the matter of Killarnee Civil & Concrete Contractors Pty Ltd (in liq)* [2018] FCAFC 40; 260 FCR 310; 124 ACSR 568] at [89]. …
> >
> > The courts are generally willing, upon an appropriate application, to make orders permitting the liquidator of a (former) corporate trustee to sell trust assets. In situations where the property of the trust will be exhausted following its sale and subsequent distribution to creditors, it may be appropriate merely to give the liquidator a power of sale … The more common course is, however, for the liquidator of the insolvent (former) corporate trustee to apply to be appointed a receiver for the purpose of selling the trust assets and distributing the proceeds among trust creditors
> >
> > …
>
> Now in the present case, in circumstances where the company has acted as a trustee of only one trust, where all assets owned by the company were held by it as trustee save its right of indemnity which is a personal asset, where all liabilities incurred by it were incurred in its capacity as trustee, and where there is no trading on, the preferable course is to confer suitable powers on the liquidators under trustee legislation instead of appointing the liquidators as receivers.

122 But the case before me is obviously different and justifies the separate appointment of receivers.

123 Let me now turn to the question of pecuniary penalties and other orders.

Pecuniary penalty

124 In addressing the question of pecuniary penalty I have applied the principles that I discussed in *Australian Securities and Investments Commission v Westpac Banking Corporation (Omnibus)* (2022) 407 ALR 1 at [108] to [140], which should be treated as incorporated by reference herein.

125 Section 1317G is the source of the Court's power to grant a pecuniary penalty in respect of a contravention of a civil penalty proceeding, and it was amended by Schedule 1 to the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (Cth) effective from 13 March 2019.

126 Section 1317G relevantly provides:

> **1317G Pecuniary penalty orders**
>
> *Court may order person to pay pecuniary penalty*
>
> (1) A Court may order a person to pay to the Commonwealth a pecuniary penalty in relation to the contravention of a civil penalty provision if:
>
> (a) a declaration of contravention of the civil penalty provision by the person has been made under section 1317E; and
>
> (b) if the contravention is of a corporation/scheme civil penalty provision, the contravention:
>
> …
>
> (iii) is serious …
>
> …
>
> *Maximum pecuniary penalty*
>
> (2) The pecuniary penalty must not exceed the pecuniary penalty applicable to the contravention of the civil penalty provision.
>
> *Pecuniary penalty applicable to the contravention of a civil penalty provision—by an individual*
>
> (3) The pecuniary penalty applicable to the contravention of a civil penalty provision by an individual is the greater of:
>
> (a) 5,000 penalty units; and
>
> (b) if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3.
>
> …

Threshold — the contraventions were "serious"

127 Now in determining whether a contravention is "serious" for the purposes of s 1317G(1)(b)(iii), the focus is on the degree of departure from the statutory obligation, as opposed to the consequences of that departure.

128 In *ASIC v Mitchell (No 3)*, I addressed at [23] to [34] what is meant by the contravention being "serious" within the meaning of s 1317G(1)(b)(iii) in the following terms but modified so as to be tailored to the context now before me.

129 Now putting to one side for the moment the text and context within which "serious" appears, one can well understand why various substitutes if not purported synonyms have been proffered by judges such as "grave", "not trifling", "weighty", "considerable", "important" or "significant". But in my view concepts such as "significant" or "not trifling" do not fit the bill adequately. Such concepts can be contrasted with their converse, such as "trivial", "minor", "inconsequential" or "insignificant". But "serious" in both its denotative and connotative senses seems to suggest something more than "significant" or "not trifling". Why do I say that? If the premise for the application of s 1317G(1)(b)(iii) is a declaration of a contravention of s 601ED or s 911A, then clearly one starts with something that is "significant" or "not trifling". The concept of "serious" must go beyond this. Now "grave" would fit the bill although it may travel beyond what is needed, and "weighty" might get close. But what about "important"? Certainly if something was serious, it would be important. Perhaps too, if something was important, it would be serious.

130 But perhaps an alternative approach is open. Perhaps "serious" does mean "significant" or "not trifling". And the answer to the previous point may be to say that there is no difficulty in finding all contraventions of s 601ED or s 911A to be serious. But of course there may be contraventions of other civil penalty provisions where one could not necessarily say this. After all s 1317E(1) identifies numerous classes of civil penalty provisions in its various subparagraphs. Hence the additional condition imposed in s 1317G(1)(b)(iii) because it has to apply to all such classes. But I would reject such an alternative approach by reference to what class of civil penalty provision one was talking about.

131 In my view, "serious" is to be applied to the particular contravention and the particular conduct underpinning it, rather than to take a class based approach applicable to the particular statutory provision; in other words you cannot simply say that a breach of s 601ED or s 911A is necessarily "serious". Back then to the question. What does "serious" mean?

132 Does "serious" look to the consequences of the conduct in terms of the relevant company or third parties? Does it look to any element of deliberateness or intent or even dishonesty? Does it look to its covertness? Does it look to its duration? Does it look to effect on reputation or financial consequences? Does it involve more than an error of judgment or inadvertence? Or does "serious" embrace any or all of the above?

133 And should one simply apply the ordinary or plain meaning of "serious" (*Vines v Australian Securities and Investments Commission* (2007) 63 ACSR 505 at [226] per Ipp JA)? One class of definition given by the Oxford English Dictionary that is relevant to the present context is "3a. Weighty, grave; important, significant, of great consequence." Now that may illuminate the scope of the adjective, but it still does not tell you what it is specifically being applied to; in any event "significant" sets the bar too low, and "weighty" might not quite get you there.

134 I propose to adopt most of the approach of Ipp JA in *Vines v ASIC*, augmented by some observations of Santow JA albeit in dissent in the result.

135 First, seriousness must focus on the particular contravention. It is not appropriate to look at the cumulative consequences of all contraventions (at [225]).

136 Second, "serious" should bear its ordinary or plain meaning (at [226]). For that purpose I will use the OED meaning that I have set out, omitting "significant" which is sometimes used simply to mean "real" or "of substance" and therefore sets the bar too low.

137 Third, the seriousness of conduct amounting to a contravention of s 601ED or s 911A cannot be reduced by reference to elements irrelevant to those sections.

138 Fourth, as Ipp JA encapsulated the concept (at [229]), subject to what I am just about to say:

> In my opinion, in this context, the seriousness of the contravention is to be determined by reference to:
>
> (a) the degree by which the officer of the corporation concerned has departed from the requisite standard of care and diligence (the standard being that explained by Spigelman CJ in the contraventions appeal reasons at [138]–[151]); and
>
> (b) the consequences, potential or actual, of the contraventions.

139 Now Ipp JA's limb (b) requires some qualification. In this respect I agree with the following observations of Santow JA (at [158], [162], [163] and [194(ii) and (vi) (first possibility)]):

> … But the question in relation to s 1317EA(5) of whether a contravention is serious is not to be determined simply by reference to its consequences. The breaches here are not analogous to the kind of breaches defined in terms of consequence, such as "dangerous driving causing death" or the civil equivalent. The statutory standard of care and diligence gives rise rather to a "non-result" offence. Detriment is not an

essential ingredient for breach of s 232(4), though commonly found.

…

Some limited guidance can be found in authorities on the expression "serious misconduct" or "serious and wilful misconduct". *Johnson v Marshall Sons & Co Ltd* [1906] AC 409 was a case concerning whether the deceased was owed compensation by his employer under the Workers Compensation Act or was disqualified by reason of his own "serious misconduct". Lord James observed (at 414) "that serious misconduct cannot be construed by the consequences of any act. A man may be told not to walk on the grass. He does so, slips up and breaks his leg. The consequences are serious, but the misconduct is not so". There however, the consequences were essentially for the person who slipped.

More relevant is the observation of Lord Loreburn LC at 411–12L "Further, the Act says it [the misconduct] must be 'serious' meaning not that the actual consequences were serious, but that the misconduct itself was so".

…

Construing s 1317EA(5), as to what is meant by the description "a serious one" applied to a declared contravention for civil penalty purposes, the following matters are relevant:

…

(ii) when seriousness of consequences enters into whether there was any breach at all, it does so for a different purpose, distinct from that of s 1317EA(5). It does so to set a context for determining the degree of care and diligence called for in the corporation's circumstances for a person placed as the relevant officer was;

…

(vi) seriousness in the context of s 1317EA(5) as I have said is directed primarily to the intrinsic gravity of the breach rather than to its consequence as such. To the extent adverse consequence enters into consideration for that purpose, it is primarily to ask whether the relevant breach reflects lack of proper concern by the offender for those adverse consequences of risk. That feature was essentially absent here because the breach was inadvertent and stemmed from error of judgment, not from lack of concern for consequences nor lack of application generally;

…

140 Applying these principles and given the facts and circumstances that I have previously recited, there is little doubt that the "serious" threshold has been satisfied concerning the contraventions of both s 601ED and s 911A.

Maximum penalty

141 The maximum penalty is an important yardstick that must be considered. Moreover, there must be some reasonable relationship between the theoretical maximum and the penalty to be imposed. This relationship may be established by reference to the circumstances of the contravener as well as the circumstances of the conduct involved in the contravention.

142 The fundamental question is what penalty is reasonably necessary to create an effective deterrent. So, the maximum penalty need not be reserved only for the worst possible cases, but rather for where it is necessary to achieve deterrence.

Statutory maximum – section 601ED(8)

143 The range of maximum penalties in respect of the contraventions by Mr Hopkins of s 601ED(8) are as follows:

Scheme	**Date operated from**	**Date operated until**	**Applicable penalty unit (commencement of scheme)**	**Applicable penalty unit (last date of operation of scheme)**	**Lowest maximum penalty**	**Highest maximum penalty**
Ludlow St scheme	4 December 2018	To date	Fixed $200,000	$313	$200,000	$1,565,000
HHP2 scheme	12 July 2019	5 June 2024	$210	$313	$1,050,000	$1,565,000
HHP6 scheme	October 2019	To date	$210	$313	$1,050,000	$1,565,000
HHP7 scheme	April 2020	To date	$210	$313	$1,050,000	$1,565,000
HHP8 scheme	26 November 2018	16 May 2023	Fixed $200,000	$275	$200,000	$1,375,000
HCI scheme	25 April 2018	1 December 2020	Fixed $200,000	$222	$200,000	$1,110,000
HCI2 scheme	24 June 2019	1 December 2020	$210	$222	$1,050,000	$1,110,000
HCI3 scheme	3 July 2019	1 December 2020	$210	$222	$1,050,000	$1,110,000
Esplanade Brighton scheme	14 March 2019	1 December 2020	Fixed $200,000	$222	$200,000	$1,110,000
Hopkins Empire scheme	11 May 2018	15 March 2021	Fixed $200,000	$222	$200,000	$1,110,000
Junction Road scheme	17 April 2018	3 December 2021	Fixed $200,000	$222	$200,000	$1,110,000
TOTAL					$6,450,000	$14,295,000

Statutory maximum – section 911A(1)

144 The range of maximum penalties in respect of the contravention by Mr Hopkins of s 911A(1) is $200,000, being the maximum as at the earliest date upon which the schemes commenced operation (April 2018), to $1,565,000, being the maximum as at the present date.

Statutory maximum – all contraventions

145 In view of the above, there is quite a difference between the lower of the total maximum penalties and the higher of the total maximum penalties.

146 Further, it is to be noted that the applicable maximum penalty was varied during the operation of each of the schemes. But in such circumstances, it may not be inappropriate to focus on the relevant latter maximum.

Mandatory statutory considerations

147 Section 1317G(6) provides that the Court must take into account all relevant matters in determining a pecuniary penalty and states:

> (6) In determining the pecuniary penalty, the Court must take into account all relevant matters, including:
>
> (a) the nature and extent of the contravention; and
>
> (b) the nature and extent of any loss or damage suffered because of the contravention; and
>
> (c) the circumstances in which the contravention took place; and
>
> (d) whether the person has previously been found by a court (including a court in foreign country) to have engaged in similar conduct; and
>
> (e) in the case of a contravention by the trustee of a registrable superannuation entity—the impact that the penalty under consideration would have on the beneficiaries of the entity.

148 Further, the factors in s 1317G(6) are non-exhaustive. The French factors provide a guide as to other relevant matters that a court may take into account. In both *ASIC v Westpac Banking Corporation (Omnibus)* and *ASIC v Mitchell (No 3)*, I set out the relevant augmented French factors. I have applied these factors tailored to the individual, Mr Hopkins.

149 Let me deal with other questions of principle.

Course of conduct and totality

150 The course of conduct principle provides that when there is an interrelationship between the factual and legal matters of two or more contraventions, the Court will consider whether it is appropriate to group them together as a course of conduct.

151 The course of conduct principle is a tool of analysis which may be used to assist in determining an appropriate penalty in any given case. It has frequently been applied when the number of legally distinct breaches is large. But the course of conduct principle does not make it appropriate or permissible to treat multiple contraventions as just one contravention for the

purposes of determining the maximum penalty. Moreover, even if the contraventions are properly characterised as arising from a single course of conduct, I am not obliged to apply the principle if the resulting penalty would fail to reflect the seriousness of the contravening conduct.

152 Further, the course of conduct principle and the totality principle overlap to ensure that the penalty imposed is not disproportionate to the contravening conduct.

153 Now in the present case where there are admitted contraventions in respect of each of the 11 schemes, together with a single contravention in respect of the failure to hold an AFSL, the course of conduct principle does not assist in determining the appropriate penalties to be imposed.

Further relevant facts

154 Let me say something about the position of investors and their losses.

155 Many of the 217 investors in the schemes were inexperienced in investing and believed that the invested funds were secure and that returns would be significant.

156 They were referred by TATPG to third parties to establish SMSFs for the purpose of investing in the schemes and paying the "client management" fee of $16,500 and they contributed most or all of their superannuation funds or savings in order to invest in the schemes.

157 The amount of investor loss in connection with the schemes is as follows, excluding the investors of the HHP8 scheme, which returned a profit:

(a) current schemes – 78 investors have suffered losses of approximately $10,280,000;

(b) schemes other than the current schemes – 139 investors have suffered losses of approximately $16,761,442; and

(c) all schemes – 217 investors have suffered losses of approximately $27,041,442.

158 Many of those investors have been significantly impacted. They will need to work for longer in order to rebuild their superannuation balances. Further, they may need to change their lifestyle in order to lower their day-to-day living expenses in order to minimise the impact of the failed investment.

159 Let me move to another topic.

160 Now Mr Hopkins was the founder and designer of the schemes and TATPG's business. He was also the director of TATPG. Evidence has been led as to his current financial position which I do not need to set out here.

161 Further, the contraventions infected the entirety of TATPG's business model and were at the heart of TATPG's business model. Further, the contraventions also spanned a lengthy period of time. The earliest schemes commenced in April 2018, being the HCI scheme and the Junction Road scheme. Many of the schemes, whilst not being actively progressed, remain on foot being the HHP2 scheme, the HHP6 scheme and the HHP7 scheme.

162 Further, Mr Hopkins has co-operated in making appropriate admissions in the defence, agreeing to the SAFA and the supplementary statement, and in consenting to the final orders.

163 Now whilst the admissions made by Mr Hopkins and TATPG as to the operation of 11 registered managed investment schemes in contravention of s 601ED(8) and carrying on a financial services business without the necessary AFSL in contravention of s 911A(1) and s 911A(5B) are serious, there is no suggestion that funds invested by TATPG clients were misappropriated.

164 Nor did Mr Hopkins or TATPG ever hold out or suggest to members of the public that he or it held an AFSL. Conversely, the client management agreements executed by new investors contained express terms to the effect that the investors acknowledged that:

> … we hold no formal qualification, certification or license in property investment, property management, investment management or real estate. We do not hold any financial services license, taxation, accounting or legal qualifications. The information and service provided is solely done so on the basis of our experience in the property and real estate industry. Therefore, any advice or recommendation provided by us is solely based on our experience and is to be adopted and implemented at your own free will and upon the provision and obtaining of proper financial, investment, legal and accounting advice.

Conclusion on penalty

165 In my view the proposed pecuniary penalties totalling $1,250,000 against Mr Hopkins are appropriate in order to achieve the overarching purpose of specific and general deterrence.

166 Mr Hopkins had a central role as the founder, designer and operator of the unregistered schemes, including advising individuals to invest their personal savings by setting up a SMSF to invest in a scheme.

167 Further, the significant investor losses totalled approximately $27 million.

168 Further, the total maximum penalty for the 12 admitted contraventions is at least $6,650,000.

169 Now in circumstances where the number of contraventions has been identified, and where the quantum of the proposed penalty is agreed, it is not necessary to fix individual penalties in respect of each particular contravention.

170 Further, the penalty to be imposed is consonant with a proper application of the totality principle.

171 Further, the penalty is appropriate taking into account the disqualification order and injunctive orders that are to be made.

Disqualification order

172 Section 206C(1) relevantly provides that the Court may disqualify a person from managing corporations for a period that the Court considers appropriate if a declaration is made under s 1317E that the person has contravened a corporation/scheme civil penalty provision.

173 Section 206C(1) sets out matters the Court may have regard to in determining whether the disqualification is justified. Section 206E also empowers the Court to make a disqualification order, but I am only acting under s 206C.

174 In *Australian Securities and Investments Commission v Helou (No 2)* [2020] FCA 1650, I said at [142] to [149] the following.

175 In determining whether disqualification is justified, I may have regard to the relevant defendant's conduct in relation to the management, business or property of any corporation and any other matters that I consider appropriate.

176 Now deterrence, both specific and general, are central objectives in determining whether an order for disqualification should be made, and if so, for what period. Further, there is also a protective objective. But what more specific principles apply?

177 In *Re HIH Insurance Ltd (in prov liq) and HIH Casualty and General Insurance Ltd (in prov liq); Australian Securities and Investments Commission v Adler* (2002) 42 ACSR 80 Santow J at [56] summarised the principles applicable to disqualification orders under ss 206C and 206E. What have become known as the Santow principles have been restated and applied by numerous judges in many other cases; it is not necessary to clutter these reasons with excessive citations. Now of course the Santow principles are not a rigid catalogue of matters to be inflexibly applied in every case. But they do inform the exercise of power as appropriate in the instant case. I have considered and applied them as appropriate.

178 Before proceeding further, let me say something about proportionality.

179 If a disqualification order is solely designed to protect persons dealing with corporations specifically and the public more generally from a nefarious or negligent use or cloak of a corporate structure, the order should be for no longer than is proportionate to that objective. And indeed such proportionality may also be consonant with achieving any necessary specific deterrence required.

180 But a disqualification order must also satisfy the objective of general deterrence. And general deterrence may require a disqualification order that is more than merely proportionate to achieving the protective function or specific deterrence. But if that be so, nevertheless the order should be no more than is proportionate to achieving such general deterrence.

181 Now it will be appreciated that I have not talked in terms of any punitive dimension. Of course, a disqualification order is a penalty, but it adds little to talk of any punitive dimension as some of the authorities do. It is a label infused with imprecision. It injects heat but little light. It is more meaningful to talk of deterrence in both its dimensions and also the Court's protective function.

182 A disqualification order against Mr Hopkins for a period of four years is appropriate having regard to his role in the contravening conduct and taking into account the other proposed relief including the pecuniary penalty and injunctive relief.

Injunctions

183 Section 1324 relevantly provides:

> **1324 Injunctions**
>
> (1) Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute:
>
> (a) a contravention of this Act; or
>
> …
>
> the Court may, on the application of ASIC, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.
>
> …
>
> (6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
>
> (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
>
> (b) whether or not the person has previously engaged in conduct of that

kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

…

184 It is appropriate that the Court restrain Mr Hopkins from committing further contraventions of a similar kind, and I will so order. One benefit of so ordering is that any breach may be enforced by contempt proceedings in addition to any statutory enforcement mechanisms that may be available.

Conclusions

185 For the foregoing reasons I made the relevant orders this morning.

I certify that the preceding one hundred and eighty-five (185) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Beach.

Associate:

Dated: 27 November 2024

SCHEDULE OF PARTIES

VID 288 of 2022

Respondents

Fourth Defendant	LUDLOW ST HAMILTON PTY LTD (ACN 626 298 020)
Fifth Defendant	HUNTER HOPKINS PROJECT 2 PTY LTD (ACN 634 176 382)
Sixth Defendant	HUNTER HOPKINS PROJECT 6 PTY LTD (ACN 635 382 777)
Seventh Defendant	HUNTER HOPKINS PROJECT 7 PTY LTD (ACN 636 807 406)
Eighth Defendant	HUNTER HOPKINS PROJECT 8 PTY LTD (ACN 637 105 821)
Ninth Defendant	COMPOUND CAPITAL INVESTMENTS 1 LIMITED (ACN 639 543 972)