

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 29/11/2021 4:20:53 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	VID705/2021
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v BT FUNDS MANAGEMENT LTD
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



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

Dated: 29/11/2021 4:37:39 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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



Form 2  
Rules 2.2; 15A.3

## ORIGINATING PROCESS

No. VID of 2021

Federal Court of Australia  
District Registry: Victoria  
Division: Commercial and Corporations

### IN THE MATTER OF BT FUNDS MANAGEMENT LTD (ACN 002 916 458)

#### Australian Securities and Investments Commission

Plaintiff

#### BT Funds Management Ltd (ACN 002 916 458)

Defendant

#### A. DETAILS OF APPLICATION

This application is made under ss 912A, 963K, 1041H, 1101B, 1317E and 1317G of the *Corporations Act 2001* (Cth) (**Corporations Act**), ss 12DA, 12DB, 12GBA and 12GBB of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**).

This is an application for:

- (a) declaratory relief under s 12GBA of the ASIC Act, ss 1101B and 1317E of the Corporations Act and s 21 of the FCA Act;
- (b) pecuniary penalty orders under s 12GBA of the ASIC Act (as in force before 13 March 2019), s 12GBB of the ASIC Act (as in force on and from 13 March 2019) and s 1317G of the Corporations Act; and
- (c) costs under s 43 of the FCA Act,

in respect of conduct of the Defendant that is alleged to contravene ss 12DA(1) and 12DB(1) of the ASIC Act and ss 912A(1), 963K and 1041H(1) of the Corporations Act.

---

Filed on behalf of the Applicant, the Australian Securities and Investments Commission

File ref: 20206955

Prepared by: James Docherty  
AGS lawyer within the meaning of s 55I of the *Judiciary Act 1903*

Address for Service:  
The Australian Government Solicitor,  
Level 34, 600 Bourke St, Melbourne, VIC 3000  
James.Docherty@ags.gov.au

Telephone: 03 9242 1214  
Lawyer's Email:  
James.Docherty@ags.gov.au



The alleged contraventions are in connection with the Defendant's conduct in its capacity as the trustee of a superannuation fund, the Asgard Independence Plan Division Two (**Asgard Fund**).

On the facts set out in the statement of agreed facts and admissions (**Statement of Agreed Facts**) filed with this Originating Process, the Plaintiff seeks:

1. A declaration that the Defendant contravened ss 12DA(1) and 12DB(1) of the ASIC Act and s 1041H(1) of the Corporations Act:
  - (a) during the period from 30 November 2015 to 21 September 2020 in respect of members of the Asgard Fund who held insurance cover under the Asgard Employee Super Account policies held by the Defendant in its capacity as the trustee of the Asgard Fund (**AESA policies**); and
  - (b) during the period from 30 November 2015 to 4 December 2020 in respect of members of the Asgard Fund who held insurance cover under the Asgard Personal Protection Plan policies held by the Defendant in its capacity as the trustee of the Asgard Fund (**APPP policies**),

by representing that insurance fees had been properly deducted from the accounts of members who obtained insurance cover under the AESA policies on or after 22 October 2013, or who obtained insurance cover under the APPP policies on or after 1 July 2014, being the members identified in Schedule A to the Statement of Agreed Facts filed with this Originating Process, when in fact the insurance fees that were deducted included commissions that were not permitted to be deducted from the member's account.

2. A declaration that the Defendant contravened ss 12DA(1) and 12DB(1) of the ASIC Act and s 1041H(1) of the Corporations Act:
  - (a) during the period from 30 November 2015 to 21 December 2020 in respect of members of the Asgard Fund who held insurance cover under the AESA policies; and
  - (b) during the period from 30 November 2015 to 7 December 2020 in respect of members of the Asgard Fund who held insurance cover under the APPP policies,

by representing that insurance fees had been deducted as permitted or required from the accounts of members:



- (c) who obtained insurance cover under the AESA or APPP policies before 1 July 2013; and
- (d) in respect of whom, after 1 July 2013, the arrangement pursuant to which insurance commissions were paid to a financial adviser was terminated,

being the members identified in Schedule B to the Statement of Agreed Facts filed with this Originating Process, when, in fact, following the termination of the arrangement, the insurance fees that were deducted included commissions that were not permitted or were not required to be deducted from the member's account.

3. A declaration that the Defendant contravened ss 12DA(1) and 12DB(1) of the ASIC Act and s 1041H(1) of the Corporations Act during the period from 30 November 2015 to 22 June 2020 in respect of members of the Asgard Fund who:

- (a) held insurance cover under the master policies; and
- (b) returned a "Request to remove a financial adviser from an account" form to the Defendant on or after 30 November 2015,

being the persons identified in Schedule C to the Statement of Agreed Facts filed with this Originating Process, by representing that the insurance fees charged to those members did not include any fee payable to the member's financial adviser, when in fact the systems and processes of the Defendant to process "Request to remove a financial adviser from an account" forms did not ensure that the fees charged to the account of a person who returned such a form would be reduced by an amount equivalent to the commissions previously paid to the person's financial adviser in respect of the person's insurance cover.

4. A declaration that the Defendant contravened s 963K of the Corporations Act during the period from 30 November 2015 to 21 December 2020 by giving conflicted remuneration to financial advisers or their advice licensees in respect of insurance cover held by members of the Asgard Fund, being, in respect of the persons identified in Schedules D and E to the Statement of Agreed Facts filed with this Originating Process, the payment of commissions in respect of insurance cover obtained by members of the Asgard Fund under the master policies, which commission was paid as a percentage of the insurance premium payable in respect of the relevant member.
5. A declaration that by, engaging in the conduct giving rise to the contraventions the subject of each of the declarations in paragraphs 1 to 4 above, the Defendant:



- (a) contravened s 912A(1)(b) of the Corporations Act by failing to comply with a condition on its licence; and
  - (b) contravened s 912A(1)(c) of the Corporations Act by failing to comply with the financial services laws.
6. Orders pursuant to s 12GBA of the ASIC Act (as in force before 13 March 2019) and s 12GBB of the ASIC Act (as in force on and from 13 March 2019) that the Defendant pay to the Commonwealth of Australia such pecuniary penalties as the Court determines are appropriate in respect of the Defendant’s contraventions of s 12DB(1) of the ASIC Act.
  7. Orders pursuant to s 1317G of the Corporations Act that the Defendant pay to the Commonwealth of Australia such pecuniary penalties as the Court determines are appropriate in respect of the Defendant’s contraventions of s 963K of the Corporations Act.
  8. An order pursuant to s 43 of the FCA Act that the Defendant pay the Plaintiff’s costs of the proceeding.
  9. Such further or other orders as the Court considers appropriate.

Date: 29 November 2021

James Rutherford Docherty  
 For and on behalf of the  
 Australian Government Solicitor  
 Lawyer for the Plaintiff

This application will be heard by ..... at Commonwealth  
 Law Courts Building, 305 William Street, Melbourne Victoria, 3001 at ..... \*am/\*pm on ..  
 .....

**B. NOTICE TO DEFENDANT**

TO: BT Funds Management Ltd

c/- Westpac Group Secretariat  
'Westpac Place', Level 18  
275 Kent Street  
SYDNEY NSW 2000

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

*Note* Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

**C. FILING**

Date of filing: 29 November 2021

.....  
*Registrar*

This originating process is filed by The Australian Government Solicitor, for the plaintiff.

**D. SERVICE**

The Plaintiff's address for service is:

Place: The Australian Government Solicitor



Level 34, 600 Bourke Street

MELBOURNE VIC 3000

Email: james.docherty@ags.gov.au

The Australian Government Solicitor's telephone, facsimile, and document exchange numbers are:

Tel: 03 9242 1214

Fax: 03 9242 1333

It is intended to serve a copy of this originating process, statement of agreed facts and supporting affidavit of James Docherty on the Defendant.