

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

BEN GREENE

Defendant

CONCISE STATEMENT

A. INTRODUCTION

1. Electro Optic Systems Holdings Limited (**EOS**) is a public company which designs and manufactures products for space, communication and defence markets and is listed on the Australian Stock Exchange (**ASX**). At all relevant times, its annual reporting period ended on 31 December each year (**FY**). In late June 2022, EOS provided guidance to the ASX that it expected its FY2022 revenue to be equal to or greater than its FY2021 revenue, which was \$212.3 million. By 25 July 2022, EOS was aware that its FY2022 revenue was likely to be significantly lower than its FY2021 revenue. However, EOS did not disclose this information until 31 October 2022. In failing to do so, EOS breached its continuous disclosure obligations under the **ASX Listing Rules** and contravened s 674A(2) of the *Corporations Act 2001* (**Act**).
2. Dr Ben Greene was the Group Chief Executive Officer (**CEO**) of EOS until 31 July 2022, and a director of EOS at all relevant times. He breached his duty under s 180(1) of the Act on 25 July 2022 by joining in the resolutions described in paragraph 25 below and by failing to inform the Board of EOS of the matters set out in paragraphs 14 to 18 below, and failing to recommend to the Board that the Guidance announced in late June 2022 be revised, or otherwise ensure that the EOS Board was provided with sufficient and timely information to enable the directors to make decisions about revenue guidance in compliance with the Listing Rules.

B. IMPORTANT FACTS GIVING RISE TO THE CLAIM

3. In and before 2022, EOS was included in the official list of the ASX and was a listed disclosing entity within the meaning of s 111AL(1) of the Act. The ordinary shares of EOS were ED securities of EOS within the meaning of ss 111AE and 111AK of the Act and ASX Listing Rule 3.1 required EOS to tell the ASX any information concerning it that a reasonable person would expect to have a material effect on the price or value of its ordinary shares and to do so immediately upon becoming aware of such information.
4. From at latest 2017, at or around the time of announcing its results for the previous year, or at or around the time of its Annual General Meeting, EOS made announcements to the ASX with guidance about its revenue expectations for the current financial year. EOS from time to time made announcements to the ASX providing updates or revisions to this revenue guidance. Decisions to make

announcements to the ASX providing revenue guidance were made by the EOS Board.

5. Dr Greene founded the business of EOS and its subsidiaries (**EOS Group**). At all relevant times, Dr Greene was a director of EOS and, until 31 July 2022, the CEO of EOS and the EOS Group. Dr Greene's responsibilities as CEO included supervising the preparation of, and approving, management reports to the EOS Board, including management forecasts of revenue, profits and cash flow, and ensuring that the EOS Board was provided with sufficient and timely information about management forecasts of revenue, profits and cash flow to enable the Directors of EOS to make decisions about revenue guidance in compliance with its continuous disclosure obligations.
6. At all relevant times, one of EOS' subsidiaries, EOS Defence Systems Pty Ltd (**EOSDS**), manufactured remote weapon stations (**RWS**), turrets, and sensor systems for various military applications, including infantry fighting vehicles, combat reconnaissance vehicles and naval vessels.
7. A significant part of the business of EOSDS in FY2022 related to EOS' ongoing performance of a major contract for the supply of, amongst other things, RWS units to be manufactured by EOS and installed on vehicles (**Land RWS units**) and vessels supplied by the customer.
8. In March 2022, EOS announced to the ASX that its revenue for FY2021 was \$212.3 million.
9. On 27 May 2022, EOS announced to the ASX that its revenue for FY2022 was expected to be higher than in FY2021.
10. In June 2022, the EOS Board was informed that management's revised forecast for revenue in FY2022 was \$268.1 million (**June Forecast**), comprising \$173 million from existing contracts (**Contracted Business**) and \$95.1 million from contracts yet to be obtained from asserted business opportunities (**New Business**).
11. On 29 June 2022, EOS announced to the ASX that it expected its FY2022 revenue to equal or exceed its revenue in FY2021 (**June Guidance**).
12. In the first week of July 2022, Dr Greene and the acting Chief Financial Officer (**CFO**) of EOS prepared revised forecasts of revenue, expenses and cash flow for FY2022 (**July 2022 Forecast**). The July 2022 Forecast contained actual amounts up to 31 May 2022 and forecast amounts for the remainder of the financial year. It predicted FY2022 operating revenue for the EOS Group of \$213.6 million, of which \$24.1 million had been recognised up to 31 May 2022 and \$189.5 million was expected to be recognised in the remaining 7 months of 2022. The amount of \$189.5 million of forecast business included \$143.8 million of "**Contracted Business**" and \$45.7 million of "**New Business**".
13. On or about 24 July 2022, the acting CFO revised the July 2022 Forecast to include actual figures for the month of June 2022 as then known (**Revised July 2022 Forecast**). The Revised July 2022 Forecast predicted FY2022 revenue of \$212.2 million, of which \$175.8 million was expected to be recognised between 1 July 2022 and 31 December 2022 (**2H 2022**). The amount of \$178.5 million included \$129.3 million of Contracted Business and \$46.5 million of New Business.
14. The predicted 2H 2022 revenue from Contracted Business in the Revised July 2022 Forecast included approximately \$[REDACTED] million to be recognised from the manufacture and successful testing of [REDACTED] land RWS units under the RWS Contract. In fact, at the time of the Revised July 2022 Forecast, due to supply chain issues, including a shortage of parts, EOS did not have the capacity, and did not reasonably expect, to manufacture and test more than [REDACTED] land RWS units for the remainder of 2022.
15. Further or in the alternative, the predicted 2H 2022 revenue from New Business in the Revised July 2022 Forecast included \$15 million to be received from one or more

other entities under a contract or commitment to contribute that amount towards the cost of research and development to be undertaken by EOS in 2022. In fact, at the time of the Revised July 2022 Forecast, EOS did not reasonably expect to recognise \$15 million or any amount from such a contract or commitment in 2022 because it had not entered into any contract or received any commitment from any other entity to contribute \$15 million or any other amount to research by EOS in 2022, or made a formal request to any other entity to enter into such a contract or make any such commitment, and no other entity had expressed an intention to enter into a contract or make any such commitment.

16. Further or in the alternative, the predicted 2H 2022 revenue from New Business in the Revised July 2022 Forecast included \$12 million to be recognised from a new contract or contracts for the supply of ■ RWS units. In fact, at the time of the Revised July 2022 Forecast, EOS did not reasonably expect to recognise, \$12 million or any amount from such a contract or contracts in 2022 because it was not in contract negotiations for the sale of ■ or any other number of RWS units and had not been informed by or on behalf of any possible buyer of RWS units of an intention to negotiate the purchase of ■ or any other number of RWS Units.
17. Further or in the alternative, the predicted 2H 2022 revenue from New Business in the Revised July 2022 Forecast included \$10 million to be recognised from a contract with the Commonwealth of Australia under which it would be the head or “prime” contractor for a risk mitigation activity relating to a major Department of Defence acquisition program named Land ■ (Land ■). In fact, at the time of the Revised July 2022 Forecast, EOS did not reasonably expect to recognise \$10 million or any amount from such a contract or contracts in 2022 because the Land ■ program had not yet been given first pass approval by the Australian Government and EOS did not have any reasonable basis to expect that the approval would occur, and a contract for the proposed risk mitigation would be entered into in sufficient time, for EOS to recognise revenue from that contract in 2022.
18. For the reasons set out in paragraphs 14 to 17 above, at the time of the Revised July 2022 Forecast, EOS was not likely to recognise, and, further or alternatively, did not reasonably expect to recognise, FY2022 revenue greater than \$164 million, alternatively \$179 million, alternatively \$191 million (**July 2022 Forecast Information**).
19. On 24 July 2022, the acting CFO sent to Dr Greene and his Chief Advisor the Finance Report for July 2022 (**July 2022 Finance Report**), which was then circulated to the other Directors of EOS. The report stated that a forecast by management indicated that EOS was now expected to achieve revenue of approximately \$212 million in 2022 including revenue from New Business of \$46.5 million, none of which had yet been contracted. The report further stated that the “[c]urrent financial position and the past performance makes it highly un-likely to achieve such an ambitious target. If the past performance is considered, it is expected that the revenue for the current year will be significantly less than last year’s revenue”.
20. By 25 July 2022, Dr Greene knew, or by virtue of the proper discharge of his duties and responsibilities ought to have known, the facts set out in paragraphs 6 to 18 above and each of them.
21. Further, Dr Greene knew or ought to have known on 25 July 2022 that a significant reduction in EOS’ FY2022 revenue expectations from the June Guidance was information that:
  - (a) would, or was likely to, influence people who commonly invest in securities in deciding whether to acquire or dispose of the ordinary shares of EOS;
  - (b) EOS was required by the ASX Listing Rules to disclose to the ASX; and

- (c) if not disclosed by EOS to the ASX would result in a contravention by EOS of the Act;

Alternatively, Dr Greene was aware on 25 July 2022 that there was a serious risk that those matters and each of them were true.

22. On 25 July 2022, the EOS Board (including Dr Greene) met and, amongst other business, discussed the July 2022 Finance Report. The acting CFO informed the directors that the forecast revenue was not likely to be realised because: cash flow restrictions from Q2 2022 would impact supplier responsiveness and therefore productivity, output and revenue in Q3 2022; the program teams executing the current contracts advised him that there were material items in the forecast that may now slip into 2023; and prior experience indicated that EOS would not realise all New Business contained in the forecast.
23. Dr Greene did not ensure that on 25 July 2022 the EOS Board was provided with sufficient and timely information to enable the Directors of EOS to make decisions about giving revenue guidance in compliance with the Listing Rules. Dr Greene did not inform the directors at the meeting of the facts set out in paragraphs 14 to 18 above or any of them. Dr Greene did not recommend to the Board that the June Guidance be revised.
24. On 25 July 2022:
  - (a) by reason of paragraph 20, EOS was aware of and had the July 2022 Forecast Information;
  - (b) the July 2022 Forecast Information was information that would, or would be likely to, influence people who commonly invest in securities in deciding whether to acquire or dispose of ordinary shares in EOS;
  - (c) EOS was required by Listing Rule 3.1 to give the July 2022 Forecast Information to the ASX;
  - (d) the July 2022 Forecast Information was not generally available within the meaning of section 676 of the Act.
25. The EOS Board, including Dr Greene, resolved on 25 July 2022 that there was insufficient or sufficiently incomplete information before it to adopt a revised revenue forecast and issue revised guidance. The Board instructed the acting CFO to update the revenue forecast with specific attention to the new business included in the current forecast but not yet secured. The Directors of EOS instructed management that the Board expected more fidelity around forecasts and underlying assumptions, and that they wanted detail on why the forecast revenue had fluctuated so substantially. Dr Greene undertook to coordinate a paper with the acting CFO.
26. On 25 July 2022, EOS was negligent with respect to whether, the July 2022 Forecast Information would, or would be likely to, influence people who commonly invest in securities in deciding whether to acquire or dispose of ordinary shares in EOS.
27. EOS did not notify the ASX of the July 2022 Forecast Information on 25 July 2022 or on any subsequent date, up to 31 October 2022. By failing to do so, EOS contravened s 674A(2) of the Act.
28. If the EOS Board had been informed of the matters set out in paragraphs 14 to 18 above, or if Dr Greene had recommended that the June Guidance be revised, or if Dr Greene had ensured that on 25 July 2022 the EOS Board was provided with sufficient and timely information to enable the Directors of EOS to make decisions about giving revenue guidance in compliance with the Listing Rules, the Board would have, alternatively may have, resolved to disclose the July 2022 Forecast Information.
29. On 7 September 2022, EOS released its Half Year Report to the ASX, which stated that its revenue in the first half of 2022 had been \$53.8 million. Contained within the

announcement was a section headed “Guidance” which stated, amongst other things, that delivery against existing contracts in H1 2022 was impacted by supply chain constraints and some impact was expected to continue into H2 2022 which may cause some revenue recognition to be delayed from H2 2022 into H1 2023. The announcement stated further that the awarding of new contracts has been slower than expected over recent months although there were significant new business opportunities that may provide increases in revenue in the short term.

30. On 31 October 2022, EOS released to the ASX its “*Activity Statement for the Quarter ending 30 September 2022*” which stated, amongst other things, that revenue from Contracted Business in FY2022 was expected to be “*in the range of \$100 - \$140*” million with a further \$40-\$80 million previously expected to be recognised in FY2022 “*now more likely*” to be recognised in FY2023. The announcement stated that New Business opportunities that were previously expected to earn approximately \$30 million in revenue in FY2022 were now expected to be signed in Q4 2022 or 2023 and earn revenue during 2023 and subsequent years.

**C. SUMMARY OF RELIEF SOUGHT FROM THE COURT**

31. ASIC seeks declarations, pecuniary penalties, disqualification orders and costs against Dr Greene for contraventions of s 180(1) of the Act as set out in the Originating Process accompanying this Concise Statement.

**D. PRIMARY LEGAL GROUNDS FOR RELIEF SOUGHT**

32. By his conduct described in paragraphs 23 and 25 above, further or alternatively, if and to the extent that on 25 July 2022 Dr Greene did not have knowledge of the facts set out in paragraphs 6 to 18 above, Dr Greene failed to discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of EOS in EOS’ circumstances and occupied the office held by, and had the same responsibilities within EOS, as Dr Greene, and contravened s 180(1) of the Act.

**E. ALLEGED HARM**

33. Investors rely on listed companies to provide accurate and timely information in relation to the company's affairs when making investment decisions. As a result of the failure of EOS to disclose material information to the ASX, shares in EOS traded in an uninformed or misinformed market throughout the period from 26 July 2022 to 31 October 2022, or alternatively, 31 August 2022 (prior to the trading halt placed on the EOS listing on the ASX between 1 September 2022 and 7 September 2022). Dr Greene’s failure to discharge his duties with the requisite degree of care and diligence materially contributed to that failure.
34. For the purposes of s 1317G(1) of the Act, Dr Greene’s contraventions materially prejudiced the interests of EOS and/or its members and/or were serious.

Date: 25 November 2025

This concise statement was prepared by James Hutton SC and Robert Strong and Jacqueline Fumberger of counsel.

### **CERTIFICATE OF LAWYER**

I, Jody Marshall, certify to the Court that, in relation to the concise statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the concise statement.

Date: 25 November 2025

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Jody Marshall

AGS lawyer for and on behalf of the Australian Government Solicitor

Lawyer for the Plaintiff