

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Notice of Appeal (Fee for Leave Not Already Paid) - Form 122 - Rule 36.01(1)(b)(c)
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	3/07/2025 11:33:00 AM AEST
Date Accepted for Filing:	7/07/2025 2:12:05 PM AEST
File Number:	NSD1129/2025
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v H C F LIFE INSURANCE COMPANY PTY LIMITED ACN 001 831 250
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised

Registrar

Important Information

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

The date of the filing of the document is determined pursuant to the Court's Rules.

Notice of appeal

No. _____ of 2025

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

On appeal from the Federal Court.

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Appellant

H C F LIFE INSURANCE COMPANY PTY LIMITED (ACN 001 831 250)

Respondent

To the Respondent

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

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

Time and date for hearing:

Place: Federal Court of Australia, Law Courts Building, 184 Phillip St, Queens Square, Sydney NSW 2000

Date:

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

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

Prepared by (name of person/lawyer) Kim MacKay

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(include state and postcode)

The Appellant appeals from paragraph 1 of the orders made in NSD 413 of 2023 on 8 May 2025 upon the judgment of the Federal Court given on 28 October 2024 at Sydney in *ASIC v H C F Life Insurance Company Pty Limited* [2024] FCA 1240 (**Judgment**), and upon the judgment in *ASIC v H C F Life Insurance Company Pty Limited (Penalty)* [2025] FCA 454.

The appeal is brought with leave of the Court granted on 7 November 2024. A copy of the order giving leave is annexed to this notice.

Grounds of appeal

1. [Leave of the Court required] The primary judge erred in taking into account the ameliorative effect of s 47 of the Insurance Contracts Act 1984 (Cth) (ICA) when assessing:
 - a. any imbalance of party rights and obligations arising under those contracts (Judgment [144]); and
 - b. the reasonable necessity of the Pre-Existing Condition Terms (Judgment [158]), and ought to have found that the Pre-Existing Condition Terms satisfied s 12BG(1)(a) and (b) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).
2. In the alternative to Ground 1, the primary judge erred:
 - a. in his s 12BG(1)(a) ASIC Act assessment of whether the Pre-Existing Condition Terms caused a significant imbalance of parties' rights and obligations arising under the applicable contracts of insurance, by:
 - i. failing to find that the liability of the Pre-Existing Condition Terms to mislead the insured as to the circumstances in which benefits would not be payable by reason of a pre-existing condition (Judgment [119]), as a relevant matter to be taken into account pursuant to s 12BG(2), gave rise to or contributed to the Pre-Existing Condition Term causing a significant imbalance of party rights and obligations arising under the insurance contract; and
 - ii. finding that the Pre-Existing Condition Terms were s 12BG(3) ASIC Act transparent (Judgment [148]), when those terms did not express plainly, present clearly or make readily available to an insured that HCF Life's contractual right to deny a claim in reliance on Pre-Existing Condition Terms, and the insured's actual right to indemnity for an insured event arising from a pre-existing condition, was subject to the terms of s 47 of the ICA

and ought accordingly to have found that the Pre-Existing Condition Terms satisfied s 12BG(1)(a).

- b. by finding that the Pre-Existing Condition Terms were reasonably necessary in order to protect the legitimate interests of HCF Life for the purposes of s 12BG(1)(b) of the ASIC Act (Judgment [160]), in circumstances where:
 - i. the Pre-Existing Condition Terms were found to be misleading, ought to have been found to lack transparency for the purposes of s 12BG(3) of the ASIC Act, and accordingly should have been found not to be a proportionate response to or protection of HCF's legitimate interests of being able to offer life insurance products on a guaranteed acceptance basis or of mitigating the risk of anti-selection behaviour; and
 - ii. alternative terms, equally protective of HCF Life's legitimate interests (Judgment [157]), were available, and the primary judge:
 - 1. erred in requiring that any such alternative term cause a "significantly lesser imbalance in the parties' rights and obligations" (Judgment [158]) in order to support a finding that an impugned term is other than reasonably necessary; or
 - 2. alternatively, erred by failing to find that the alternative terms caused a significantly lesser imbalance in the parties' rights and obligations by reason of their non-misleading and transparent form, relative to the Pre-Existing Condition Terms, such that the Pre-Existing Condition Terms were other than reasonably necessary

and ought accordingly to have found that the Pre-Existing Condition Terms satisfied s 12BG(1)(b).

Orders sought

1. Paragraph 1 of the orders of the primary judge made on 8 May 2025 be set aside, and in place thereof, the Court make each of the declarations and orders sought by the appellant at paragraph 8 , 9 and 13 of its originating process dated 11 May 2023, but replacing the words “are” and “is” in paragraphs 8, 9 and 13 with the phrase “were, prior to their amendment in April 2025,”.
2. An order under s 12GNB of the ASIC Act, or alternatively s 23 of the FCA Act, that the defendant, at its own expense, is within 14 days to publish in a prominent place on the home page of the defendant’s website (being <https://www.hcf.com.au>) an amended corrective notice in such terms as are ordered by the Court, having regard to the subject matter of the orders made as sought by paragraph 1 above.
3. Costs.

Appellant’s address

The Appellant’s address for service is:

Place: Level 38, Olderfleet, 477 Collins Street, Melbourne, Australia

Email: kim.mackay@nortonrosefulbright.com

The Appellant’s address is: Level 5, 100 Market Street, Sydney, Australia.

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 3 July 2025

Signed by Kim MacKay
Lawyer for the Appellant