

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 10/08/2023 4:00:31 PM AEST
Date Accepted for Filing: 10/08/2023 4:12:20 PM AEST
File Number: NSD847/2023
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v LGSS
PTY LIMITED ACN 078 003 497 AS TRUSTEE FOR LOCAL
GOVERNMENT SUPER ABN 28 901 371 321
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



Sia Lagos

Registrar

Important Information

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

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



Originating process

No. NSD of 2023

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

Australian Securities and Investments Commission

Plaintiff

LGSS Pty Limited ACN 078 003 497 as trustee for Local Government Super ABN 28 901 371 321

Defendant

A. DETAILS OF APPLICATION

This application is made pursuant to sections 12GBA(1), 12GBB(1), 12GD(1) and 12GLB(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**the ASIC Act**) and section 21 of the *Federal Court of Australia Act 1976* (Cth).

The Plaintiff (**ASIC**) seeks declarations, pecuniary penalties, adverse publicity orders and an injunction against the Defendant (**LGSS**) in respect of false or misleading representations and conduct liable to mislead the public in relation to investments made in the superannuation fund known as Local Government Super (ABN 28 901 371 321) (**Active Super**) during the period from 1 February 2021 to 31 June 2023 (**the relevant period**).

On the facts stated in the accompanying Concise Statement, ASIC seeks:

Declarations

1. Declarations pursuant to section 12GBA(1) of the ASIC Act that, during the relevant period, LGSS contravened section 12DB(1)(a) of the ASIC Act by making false or misleading representations that Active Super would not make or hold investments in companies that derive more than 10% of their revenue from gambling.

Filed on behalf of (name & role of party) Australian Securities and Investments Commission, Plaintiff
Prepared by (name of person/lawyer) Nick Kelton, Litigation Counsel
Law firm (if applicable) Australian Securities and Investments Commission
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(include state and postcode)



2. Declarations pursuant to section 12GBA(1) of the ASIC Act that, during the relevant period, LGSS contravened section 12DF(1) of the ASIC Act by making representations to the public that Active Super would not make or hold investments in companies that derive more than 10% of their revenue from gambling and thereafter making investments contrary to those representations.
3. Declarations pursuant to section 12GBA(1) of the ASIC Act that, during the relevant period, LGSS contravened section 12DB(1)(a) of the ASIC Act by making false or misleading representations that Active Super would not make or hold investments in companies that derive any revenue from tobacco.
4. Declarations pursuant to section 12GBA(1) of the ASIC Act that, during the relevant period, LGSS contravened section 12DF(1) of the ASIC Act by making representations to the public that Active Super would not make or hold investments in companies that derive any revenue from tobacco and thereafter making investments contrary to those representations.
5. Declarations pursuant to section 12GBA(1) of the ASIC Act that, during the relevant period, LGSS contravened section 12DB(1)(a) of the ASIC Act by making false or misleading representations that Active Super would, following Russia's invasion of Ukraine, divest its Russian investments and make or hold no further investments in Russia.
6. Declarations pursuant to section 12GBA(1) of the ASIC Act that, during the relevant period, LGSS contravened section 12DF(1) of the ASIC Act by making representations to the public that Active Super would, following Russia's invasion of Ukraine, divest its Russian investments and make or hold no further investments in Russia and thereafter making or holding investments contrary to those representations.
7. Declarations pursuant to section 12GBA(1) of the ASIC Act that, during the relevant period, LGSS contravened section 12DB(1)(a) of the ASIC Act by making false or misleading representations that Active Super would not make or hold investments in companies that derive any revenue from oil tar sands projects.
8. Declarations pursuant to section 12GBA(1) of the ASIC Act that, during the relevant period, LGSS contravened section 12DF(1) of the ASIC Act by making representations to the public that Active Super would not make or hold investments in companies that derive any revenue from oil tar sands projects and thereafter making investments contrary to those representations.



9. Declarations pursuant to section 12GBA(1) of the ASIC Act that, during the relevant period, LGSS contravened section 12DB(1)(a) of the ASIC Act by making false or misleading representations that Active Super would not make or hold investments in companies that derive one-third or more of their revenue from coal mining.
10. Declarations pursuant to section 12GBA(1) of the ASIC Act that, during the relevant period, LGSS contravened section 12DF(1) of the ASIC Act by making representations to the public that Active Super would not make or hold investments in companies that derive one-third or more of their revenue from coal mining and thereafter making investments contrary to those representations.

Pecuniary Penalties

11. Orders pursuant to section 12GBB(1) of the ASIC Act that LGSS pay pecuniary penalties in respect of its contraventions of sections 12DB(1)(a) and 12DF(1) of the ASIC Act.

Adverse Publicity Orders

12. Adverse publicity orders pursuant to section 12GLB(1) of the ASIC Act, requiring LGSS to:
 - (a) disclose the contraventions alleged in this proceeding, and the circumstances giving rise to those contraventions; and
 - (b) publish by form, means and channels to be determined by the Court, at its own expense, those disclosures.

Injunction

13. An injunction pursuant to section 12GD(1) of the ASIC Act restraining LGSS from making any of the statements identified in Annexure A to the accompanying Concise Statement while Active Super continues to hold any of the investments identified in Annexure B to the accompanying Concise Statement.

Other Orders

14. Costs.
15. Such further or other orders as the Court deems fit.

**B. NOTICE TO DEFENDANT**

TO: LGSS Pty Limited (ACN 078 003 497) atf Local Government Super (ABN 28 901 371 321),
Level 12, 28 Margaret St,
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.

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: [Registry will insert time and date]

Place: [address of Court]

Date: 10 August 2023

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

Nick Kelton

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Signed by Nick Kelton
Litigation Counsel, Australian Securities and
Investments Commission



C. FILING

Date of filing:

.....
Registrar

This originating process is filed by Nick Kelton, solicitor for the plaintiff.

D. SERVICE

The plaintiff's address for service is Level 5, 100 Market St, Sydney NSW 2000.

It is intended to serve a copy of this originating process on the defendant.