

## 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)  
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File Number: NSD1052/2022  
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v  
ONEPATH LIFE LIMITED ACN 009 657 176  
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.



Form 2

Rule 2.2

## ORIGINATING PROCESS

No. NSD of 2022

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

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
Plaintiff

**ONEPATH LIFE LIMITED (ACN 009 657 176)**  
Defendant

### A. DETAILS OF APPLICATION

This application is made under s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), ss 75A and 75B of the *Insurance Contracts Act 1984* (Cth) (**ICA**), s 1101B(1) of the *Corporations Act 2001* (Cth), and the inherent or implied jurisdiction of the Court.

The plaintiff (**ASIC**) seeks declarations of contraventions of the ICA, pecuniary penalty orders and ancillary orders, including costs against the defendant (**OnePath**).

In this Originating Process, terms which are defined in the Concise Statement dated 7 December 2022 (**Concise Statement**) have the same meaning as they do in that document.

On the facts stated in the Concise Statement, ASIC claims:

### Declarations of contravention

1. A declaration that OnePath breached the requirements of s 13 of the ICA, and thereby contravened s 13(2A) of the ICA, on three (3) occasions, in that it failed to act towards the Insured, in respect of each matter arising under or in relation to

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Filed on behalf of	Australian Securities and Investment Commission, the Plaintiff		
Prepared by	Gina Wilson		
Law firm	<b>Maddocks</b> Lawyers		
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the contract of insurance with the utmost good faith, by reason of each of the following:

- (a) from 29 September to 7 October 2020, by proceeding to make the Determination and/or send the Avoidance Letter without first:
  - (i) enquiring of the Financial Adviser as to, or otherwise investigating, the contents of the Response Letter;
  - (ii) making any further enquiries of the Insured in consequence of the matters raised in the Response Letter;
  - (iii) considering, adequately or at all, whether the apparent non-disclosures or misrepresentations within the Application Form were fraudulent, in view of the:
    - (A) matters raised in the Response Letter; and/or
    - (B) structure and format of questions, and the format of responses, within the Application Form;
- (b) from 1 June to 7 October 2020, by proceeding to make the Determination and/or send the Avoidance Letter without first in the Procedural Fairness Letter or otherwise:
  - (i) notifying the Insured that OnePath held concerns that non-disclosures or misrepresentations within the Application Form were fraudulent, identifying the basis for such concerns;
  - (ii) notifying the Insured that OnePath was considering whether there was a basis to avoid the Insured's income protection cover by reason of fraudulent non-disclosures or misrepresentations within the Application Form, identifying the basis for such considerations;
  - (iii) inviting the Insured to address the concerns and considerations referred to in (i) and (ii) in view of the bases for such concerns and considerations;
- (c) on or around 7 October 2020, by failing within the Avoidance Letter to inform the Insured of her rights and/or the availability of processes



(internal to OnePath and external) to dispute or appeal in respect of OnePath’s decision to avoid the income protection cover within the Policy.

**Penalties**

- 2. An order pursuant to s 75B of ICA that, within 30 days of the order, OnePath pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of OnePath’s conduct declared to be contraventions of s 13(2A) of the ICA.

**Other Orders**

- 3. An order pursuant to s 1101B(1) of the *Corporations Act 2001* (Cth), that, within 30 days of the order, OnePath take all reasonable steps to cause to be published, at its own expense, a notice stating that it has been ordered to pay a pecuniary penalty because it has contravened s 13(2A) of the ICA, in a manner and form approved by the Court.
- 4. An order that OnePath pay ASIC’s costs of and incidental to the proceeding.
- 5. Such further or other orders as to Court considers appropriate.

Date: 7 December 2022

.....  
*Signature of plaintiff’s legal practitioner*

This application will be heard by ..... at the Federal Court of Australia, Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW 2000 at ..... am/pm on .....

**B. NOTICE TO DEFENDANT**

TO:

**ONEPATH LIMITED (ABN 33 009 657 176)**

118 Mount Street  
NORTH SYDNEY  
NSW 2060



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 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:

.....

*Registrar*

This originating process is filed by Maddocks for the plaintiff.

### **D. SERVICE**

The plaintiff's address for service is c/- Maddocks, Level 25, Tower Two, 727 Collins Street, Melbourne VIC 3008.

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