

## 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: 3/11/2023 2:09:19 PM AEDT  
Date Accepted for Filing: 3/11/2023 2:20:57 PM AEDT  
File Number: VID926/2023  
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v  
TELSTRA SUPER PTY LTD ACN 007 422 522  
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



*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

Rules 2.2 and 15A.3

## Originating process

No VID of 2023

Federal Court of Australia

District Registry: Victoria

Division: General

### **Australian Securities and Investments Commission**

Plaintiff

### **Telstra Super Pty Ltd (ACN 007 422 522)**

Defendant

#### **A. DETAILS OF APPLICATION**

This application is made under s 21 of the *Federal Court of Australia Act 1976* (Cth) (the **Federal Court Act**) and ss 1101B, 1317E and 1317G of the *Corporations Act 2001* (Cth) (the **Corporations Act**).

The Plaintiff seeks declarations of contravention of ss 912A(1)(a), (g) and (5A) of the Corporations Act, pecuniary penalty orders, other orders and costs against the Defendant.

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

#### **Declarations**

1. Pursuant to s 21 of the Federal Court Act and/or ss 1101B(1) and/or 1317E(1) of the Corporations Act, a declaration that between 7 December 2021 and 23 May 2023 the Defendant failed to comply with its internal dispute resolution procedure by:
  - (a) failing on 106 occasions to comply with the maximum timeframe for providing complainants with an IDR response;

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Filed on behalf of (name & role of party) Australian Securities and Investments Commission, the Plaintiff  
Prepared by (name of person/lawyer) Nick Kelton, Lawyer, ASIC  
Law firm (if applicable) Australian Securities and Investments Commission  
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- (b) failing on 23 occasions to inform complainants in IDR responses or IDR delay notifications about their right to take their complaint to AFCA or to include AFCA's contact details;
- (c) failing on 85 occasions to inform complainants in IDR delay notifications about the reasons for the delay; or
- (d) failing to resource its internal dispute resolution process so that it operated fairly, effectively and efficiently;

and on each occasion thereby contravened s 912A(1)(g) and therefore s 912A(5A) of the Corporations Act, read with s 7(1) of the *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98*.

2. Pursuant to s 21 of the Federal Court Act and/or ss 1101B(1) and/or 1317E(1) of the Corporations Act, a declaration that between 7 December 2021 and 23 May 2023 the Defendant failed to do all things necessary to ensure that the financial services covered by its Australian financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) and therefore s 912A(5A) of the Corporations Act.

#### **Pecuniary penalties**

3. Pursuant to s 1317G(1) of the Corporations Act, an order that the Defendant pay to the Commonwealth a pecuniary penalty or pecuniary penalties in relation to the conduct declared to be in contravention of s 912A(1)(a), (g) and/or (5A) of the Corporations Act, in an amount or amounts to be fixed by the Court.

#### **Other orders**

4. Pursuant to s 1101B(1) of the Corporations Act, an order that the Defendant publish at its own expense a notice stating the findings, declarations and orders made in this proceeding, in the terms and in the manner that the Court considers appropriate.
5. Pursuant to s 1101B(1) of the Corporations Act, an order that the Defendant, within such time and in such a manner as the Court considers appropriate:
  - (a) have in place appropriate and adequately resourced systems, policies and procedures to ensure that it complies with its internal dispute resolution procedure as required by s 912A(1)(g) of the Corporations Act read with s 7(1) of the *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98*;



- (b) provide the Plaintiff at the Defendant's own expense with a written report of a suitably qualified independent expert confirming that the Plaintiff has complied with sub-paragraph (a) above; and
  - (c) agree with the Plaintiff on the identity of the independent expert and the terms of the independent expert's retainer, or in default of agreement those matters be determined by the Court.
6. An order that the Defendant pay the Plaintiff's costs of and incidental to the proceeding.
7. Such further or other orders as the Court considers appropriate.

Date: 3 November 2023

*Nick Kelton*

Nick Kelton  
Lawyer for the Plaintiff

This application will be heard by ..... at 305 Williams Street, Melbourne, VIC, 3000 ..... \*am/\*pm on .....

**B. NOTICE TO DEFENDANT**

TO: Telstra Super Pty Ltd  
Level 10, 130 Lonsdale Street  
Melbourne VIC 3000

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:

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*Registrar*

This originating process is filed by the Plaintiff.

**D. SERVICE**

The plaintiff's address for service is

Australian Securities and Investments Commission  
Level 7, 120 Collins Street, Melbourne, VIC, 3000  
Email: [nicholas.kelton@asic.gov.au](mailto:nicholas.kelton@asic.gov.au)

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