

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: 13/12/2024 5:05:51 PM AEDT
Date Accepted for Filing: 13/12/2024 5:12:41 PM AEDT
File Number: VID1368/2024
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v HSBC
BANK AUSTRALIA LIMITED ACN 006 434 162
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

Federal Court of Australia
District Registry: Victoria
Division: General

No. VID of 2024

IN THE MATTER OF HSBC BANK AUSTRALIA LIMITED
ACN 006 434 162

Australian Securities and Investments Commission
Plaintiff

HSBC Bank Australia Limited (ACN 006 434 162)
Defendant

A. DETAILS OF APPLICATION

This application is made under s 21 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**) and ss 1101B, 1317E, 1317G(1)(a) and 1317J of the *Corporations Act 2001* (Cth) (**Corporations Act**) and ss 166, 167 and 182 of the *National Consumer Credit Protection Act 2009* (Cth) (**Credit Act**).

The plaintiff seeks declarations of contraventions of the Corporations Act and the Credit Act, pecuniary penalty orders and ancillary orders, including costs.

In this Originating Process, terms which are defined in the accompanying Statement of Claim dated 13 December 2024 (**Statement of Claim**) have the same meaning as they do in that document.

On the facts stated in the Statement of Claim, the plaintiff seeks the relief stated below.

Filed on behalf of (name & role of party)	The Plaintiff, Australian Securities and Investments Commission		
Prepared by (name of person/lawyer)	Fred Prickett and JK Muckersie		
Law firm (if applicable)	Clayton Utz		
Tel	0404 318 400 / 0410 531 730	Fax	03 9629 8488
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Address for service (include state and postcode)	Email addresses above and Level 18, 333 Collins Street, Melbourne VIC 3000		
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Declarations

- 1 A declaration that, from 1 January 2023 to 1 June 2024, in failing to have adequate controls for the prevention and detection of Unauthorised Payments as referred to in paragraph 27 of the Statement of Claim, HSBC Australia failed to do all things necessary to ensure that:
 - a) the financial services covered by the AFSL were provided efficiently, honestly and fairly, in contravention of ss 912A(1)(a) and (5A) of the Corporations Act; and
 - b) the credit activities covered by the ACL were engaged in efficiently, honestly and fairly, in contravention of ss 47(1)(a) and (4) of the Credit Act.
- 2 Additionally or alternatively to paragraph 1 above, a declaration that, from 1 January 2023 to 1 June 2024, in failing to have adequate controls for the prevention and detection of Unauthorised Payments as referred to in paragraph 27 of the Statement of Claim in the circumstances of paragraph 9 of the Statement of Claim and where HSBC Australia management had identified the matters described in 28 of the Statement of Claim, alternatively in the circumstances of paragraphs 9 to 12 and 28 of the Statement of Claim, HSBC Australia failed to do all things necessary to ensure that:
 - a) the financial services covered by the AFSL were provided efficiently, honestly and fairly, in contravention of ss 912A(1)(a) and (5A) of the Corporations Act; and
 - b) the credit activities covered by the ACL were engaged in efficiently, honestly and fairly, in contravention of s 47(1)(a) and (4) of the Credit Act.
- 3 A declaration that by each of the following failures (either individually or in combination):
 - a) between January 2020 and August 2023, failing to have adequate systems and processes to ensure that significant, widespread or systemic non-compliance with the prescribed timeframes in the ePayments Code set out in paragraphs 15(c), 15(d) and 15(f) of the Statement of Claim did not occur, or otherwise prevent such non-compliance occurring;
 - b) between January 2020 and October 2023, failing to have adequate systems and processes to ensure that there was not a significant, widespread or systemic failure to consider and/or apply the Liability Rules in conducting its investigation into unauthorised transactions (within the meaning of the ePayments Code) or to refer to the relevant clauses of the ePayments Code when reporting the outcome of investigations to Customers, or otherwise prevent such failures occurring;
 - c) between January 2020 and November 2024 (or alternatively November 2023), failing to have adequate systems and processes to identify, track and report the extent to



which HSBC Australia was complying with the requirements in the ePayments Code set out in paragraphs 15(c), 15(d) and 15(f) of the Statement of Claim,

HSBC Australia failed to do all things necessary to ensure that:

- d) the financial services covered by the AFSL were provided efficiently, honestly and fairly, in contravention of ss 912A(1)(a) and (5A) of the Corporations Act; and
 - e) the credit activities covered by the ACL were engaged in efficiently, honestly and fairly, in contravention of s 47(1)(a) and (4) of the Credit Act.
- 4 A declaration, that in the period from 1 January 2020 until April 2024, by failing to have adequate systems and processes to ensure that there were not significant, widespread or systemic failures to reinstate full access or use of the Blocked Customers' accounts, or to advise the Blocked Customers of the process to reinstate full access or use of their accounts, promptly or within a reasonable period of time (or at all), following the report of an unauthorised transaction, or otherwise to prevent such non-compliance occurring, HSBC Australia failed to do all things necessary to ensure that:
- a) the financial services covered by the AFSL were provided efficiently, honestly and fairly, in contravention of ss 912A(1)(a) and (5A) of the Corporations Act; and
 - b) the credit activities covered by the ACL were engaged in efficiently, honestly and fairly, in contravention of s 47(1)(a) and (4) of the Credit Act.

Pecuniary penalties

- 5 HSBC Australia pay to the Commonwealth of Australia pecuniary penalties in such amount as the Court determines to be appropriate in respect of each of the contraventions referred to in paragraphs 1 to 4 above.

Other Orders

- 6 An adverse publicity order, pursuant to s 1101B(1)(a)(i) of the Corporations Act and s 182(1) of the Credit Act, that requires HSBC Australia to:
- a) disclose to persons specified in the order, at its expense and in the way specified in the order, the declarations of contravention and pecuniary penalty order referred to in paragraphs 1 to 5 above and such other information as determined by the Court; and
 - b) publish, at its expense and in the way specified in the order, an advertisement in the terms as determined by the Court.
- 7 HSBC Australia pay the plaintiff's costs.
- 8 Such further or other orders as the Court thinks fit.



Date: 13 December 2024

A handwritten signature in blue ink, appearing to read 'Fred Prickett', written over a dotted horizontal line.

Signed by Fred Prickett

Solicitor for the Plaintiff

This application will be heard by the Federal Court of Australia at 305 William Street Melbourne
at *am/*pm on 2024.

B. NOTICE TO DEFENDANT(S) (IF ANY)

TO: HSBC Bank Australia Limited (ACN 006 434 162)
Tower 1 International Towers Sydney
Level 36, 100 Barangaroo Avenue
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.

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 Fred Prickett, Clayton Utz, Solicitor for the plaintiff.

D. SERVICE

The Plaintiff's address for service is

Fred Prickett, Clayton Utz

Level 18, 333 Collins St, Melbourne VIC 3000

Email: fprickett@claytonutz.com; jmuckersie@claytonutz.com

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