

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 10/05/2022 7:26:52 AM AWST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	WAD84/2022
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v AUSTRALIAN MINES LIMITED ACN 073 914 191 & ANOR
Registry:	WESTERN AUSTRALIA 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

Dated: 10/05/2022 11:14:30 AM AWST

Registrar

Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Originating process

Federal Court of Australia

No. WAD

of 2022

District Registry: Western Australia

Division: General

Australian Securities and Investments Commission

Plaintiff

Australian Mines Limited ACN 073 914 191

First Defendant

Benjamin John Bell

Second Defendant

A. DETAILS OF APPLICATION

1. This application is made under sections 180(1), 206C, 206E, 674(2), 1317E and 1317G of the *Corporations Act 2001 (Act)*.
2. The nature of the proceedings is an application for:
 - (a) declarations of contravention by the First Defendant of section 674(2) of the Act and ASX Listing Rule 3.1;
 - (b) declarations of contravention by the Second Defendant of section 180(1) of the Act;
 - (c) orders that the First Defendant and Second Defendant pay to the Commonwealth a pecuniary penalty;
 - (d) an order that the Second Defendant be disqualified from managing corporations for a period that the Court considers appropriate.

B. ORDERS SOUGHT

On the facts stated in the Plaintiff's Concise Statement, and adopting the defined terms in the Concise Statement, the Plaintiff seeks the following orders:

Filed on behalf of Australian Securities and Investments Commission, the Plaintiff

Prepared by: Jennifer Flinn

AGS lawyer within the meaning of s 55I of the *Judiciary Act 1903*

Address for Service:

Australian Government Solicitor
Level 21, 2 The Esplanade, Perth, WA 6000

Telephone (08) 9268 1116

Email: jennifer.flinn@ags.gov.au



DECLARATIONS

3. A declaration under s1317E of the Act that the:

- (a) SKI Funding Information;
- (b) Discounted Offtake Value Information; and/or
- (c) Buyer's Discount Information,

was information that was;

- (i) material information; and
- (ii) not generally available,

within the meaning of ASX Listing Rule 3.1 and Chapter 6CA of the Act, and that by failing to disclose such information to the ASX, the First Defendant contravened ASX Listing Rule 3.1 and ss674(2) of the Act.

4. A declaration under s1317E of the Act that, by:

- (a) making the Representations, while he was aware, or ought reasonably to have been aware, that the Representations were false in a material particular or were materially misleading;
- (b) having made the Representations, failing to cause the First Defendant to correct those Representations, or to tell the ASX the Material Information;
- (c) making the Value Representation inconsistently with the JORC Code in circumstances where he was aware, or ought reasonably to have been aware, that the making of the similar \$5 billion Statements at an earlier time had resulted in the ASX making inquiries of the First Defendant as to its compliance with the JORC Code and led to the issuing of the RIU Retraction;
- (d) not taking reasonable steps to determine or ensure that the Value Representation made at the Hong Kong and London 121 Presentations complied with the JORC Code;
- (e) having made the Value Representation, by failing to disclose to the ASX:
 - (i) the modifying factors and other matters required by the JORC Code;
 - (ii) the Discounted Offtake Valuation Information; and/or
 - (iii) the SKI Funding Information; and/or



- (f) causing the First Defendant to contravene s674(2) of the Act and thereby exposing the First Defendant to the risk of proceedings for contraventions of the Act, legal costs and penalties;
 - (g) the Second Defendant contravened s180(1) of the Act by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they:
 - (i) were a director of a corporation in the First Defendant's circumstances; and
 - (ii) occupied the office held by, and had the same responsibilities within the corporation as, the Second Defendant.
5. A declaration that the contraventions referred to in paragraph:
- (a) 3 were serious within the meaning of s 1317G(1A)(c)(iii) of the Act; and
 - (b) 4 were serious within the meaning of s1317G(1)(b)(iii) of the Act.

PECUNIARY PENALTIES

- 6. An order under section 1317G of the Act that the First Defendant pay to the Commonwealth a pecuniary penalty or pecuniary penalties of an amount or amounts to be fixed by the Court.
- 7. An order under section 1317G of the Act that the Second Defendant pay to the Commonwealth a pecuniary penalty or pecuniary penalties of an amount or amounts to be fixed by the Court.

DISQUALIFICATION

- 8. An order under section 206C of the Act, further or in the alternative section 206E of the Act, that the Second Defendant be disqualified from managing corporations for such period as the Court considers appropriate.

OTHER ORDERS

- 9. Costs.
- 10. Further or other orders as to the Court seem appropriate.

Dated: 10 May 2022.

A handwritten signature in cursive script, appearing to read 'Jennifer Flinn'.

Signed by Jennifer Flinn
AGS Lawyer
for and on behalf of the Australian Government Solicitor
Lawyer for the Plaintiff

**C. NOTICE TO DEFENDANTS**

TO: Australian Mines Ltd of Level 34
ACN 073 914 191 1 Eagle Street
 Brisbane QLD 4000

Benjamin John Bell of 104 Panorama View
 Hoddys Well WA 6566

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.

Before appearing before the Court, you must if you have already done so file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff in the originating process.

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.

D. FILING

Date of filing:

Registrar:

This originating process is filed by the Australian Government Solicitor.

E. SERVICE

The Plaintiff's address for service is:

Place: Level 21, 2 The Esplanade, Perth, WA 6000

Email: Jennifer.flinn@ags.gov.au

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