

## NOTICE OF FILING

### Details of Filing

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File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v HSBC BANK AUSTRALIA LIMITED ACN 006 434 162
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A handwritten signature in blue ink that reads "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 59  
Rule 29.02(1)

## Affidavit

No. VID1368 of 2024

Federal Court of Australia  
District Registry: Victoria  
Division: General

### Australian Securities and Investments Commission

Plaintiff

**HSBC Bank Australia Limited (ACN 006 434 162)**

Defendant

Affidavit of: **Felicity Louise Healy**  
Address: Level 7, 39 Martin Place Sydney NSW 2000  
Occupation: Solicitor  
Date: 28 May 2025

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Filed on behalf of (name & role of party) HSBC Bank Australia Limited (ACN 006 434 162), Defendant  
Prepared by (name of person/lawyer) Felicity Healy  
Law firm (if applicable) Ashurst Australia  
Tel (02) 9258 6000 Fax (02) 9258 6999  
Email felicity.healy@ashurst.com  
Address for service Level 7, 39 Martin Place Sydney NSW 2000  
(include state and postcode)

I, Felicity Louise Healy say on oath:

1. I am a partner at Ashurst Australia and I am the solicitor on record for the defendant, HSBC Bank Australia Limited (ACN 006 434 162) (**HSBC Australia**), in these proceedings. I have day to day conduct of this proceeding on behalf of HSBC Australia.
2. I am authorised to make this affidavit on behalf of HSBC Australia.
3. By making this affidavit, I do not intend and am not authorised to waive privilege in any communication, or record of communication, that is the subject of HSBC Australia's legal professional privilege. Nothing in this affidavit ought to be construed as involving a waiver of privilege. To the extent that anything may be construed as involving a waiver of privilege, I withdraw and do not rely on that part of this affidavit.
4. Unless otherwise stated, I make this affidavit based on my own knowledge. Where statements are not made from my own knowledge, I have identified the source of the information.
5. I refer to my affidavit sworn and filed in these proceedings on 23 May 2025 (**First Affidavit**) and Exhibit FLH-1 to my First Affidavit.

**Correspondence with ASIC's legal representatives in relation to the filing of HSBC's defence**

6. By orders made on 7 March 2025, HSBC Australia was required to file its defence by 4:00pm on 8 May 2025.
7. As early as 10 March 2025, for the reasons set out in my First Affidavit, I became aware that HSBC Australia may require additional time beyond 8 May 2025 to file its defence. At about that time, I sought to engage with the legal representatives for ASIC, Clayton Utz, to (i) advise them of the likelihood that HSBC Australia may require additional time to file its defence; (ii) ascertain ASIC's position in this regard and (iii) if possible, obtain ASIC's consent to a variation of the timetable.
  - (a) Exhibited at pages 200 to 202 of Exhibit FLH-1 is a copy of a letter dated 10 March 2025 that I caused to be sent to Clayton Utz. That letter stated that HSBC Australia may "require further time to prepare its defence" as a result of the amendments made to the Statement of Claim by ASIC.
  - (b) Annexed to this affidavit and marked "FLH-2" is a copy of a letter dated 26 March 2025 that I caused to be sent to Clayton Utz. In that letter, amongst other things, I acknowledged receipt on behalf of my client of an email from ASIC regarding a reconciliation exercise that ASIC itself had been conducting in respect of the data




previously provided by HSBC. I confirmed that HSBC was considering ASIC's queries and would respond shortly.

- (c) Between 10 April 2025 and 28 April 2025, I contacted Fred Pickett, the partner at Clayton Utz with carriage of this matter on behalf of ASIC, on a number of occasions. The purpose of these telephone calls was, amongst other things, to advise Clayton Utz of the nature of the data anomalies which had been identified following ASIC's queries and to ascertain whether ASIC would be prepared to consent to an extension of the time for HSBC to file its defence to enable HSBC to complete its own data reconciliation exercise. On or around 15 April 2025, during a telephone call between myself and Fred Prickett, Mr Prickett advised me that before ASIC was willing to consider the possibility of an extension of time, it first required further information.
- (d) On or around 24 April 2025, I caused a letter to be sent to Clayton Utz in response to the request for additional information about HSBC's data reconciliation exercise. Given that the process was yet to be completed, Ashurst committed to providing further information and an update in respect of the likely timing of the defence towards the end of April 2025. Exhibited at pages 203 to 204 of Exhibit FLH-1 is a copy of a letter dated 24 April 2025 that I caused to be sent to Clayton Utz.
- (e) On 8 May 2025, during a telephone call between myself and JK Muckersie of Clayton Utz, I provided Ms Muckersie with an update in connection with the data reconciliation exercise. I advised Ms Muckersie that HSBC was still completing the data reconciliation exercise but that Ashurst intended to shortly send a detailed update setting out the nature of the inaccuracies identified and the proposed timeframes.
- (f) Exhibited at pages 206 to 210 of Exhibit FLH-1 is a copy of a letter dated 9 May 2025 that I caused to be sent to Clayton Utz. That letter provided further detail on the nature of the inaccuracies in the data identified by HSBC Australia, proposed that HSBC Australia provide ASIC with updated Customer Data and revised versions of Schedules F and H and that the existing timetable be varied, or alternatively, that HSBC Australia file its defence and plead denials in respect of the information contained in Schedules F and H.
- (g) Exhibited at pages 211 to 212 of Exhibit FLH-1 is a copy of a letter from Clayton Utz to Ashurst dated 12 May 2025. In that letter, Clayton Utz did not address HSBC Australia's proposal that the timetable be varied. That letter requested that HSBC Australia identify when it proposed to file its defence.



- (h) Exhibited at pages 213 to 214 of Exhibit FLH-1 is a copy of a letter dated 13 May 2025 that I caused to be sent to Clayton Utz. Amongst other things, that letter informed ASIC that HSBC Australia intended to file its defence by 13 June 2025 but that the updated data would be made available as soon as it was ready.
  - (i) Exhibited at page 215 of Exhibit FLH-1 is a copy of a letter dated 13 May 2025 from Clayton Utz to Ashurst. That letter, sent in response to ASIC's letter dated 13 May 2025, stated that "ASIC will determine its position once it has had the opportunity to review the corrected data and revised annexures".
  - (j) Exhibited at page 216 of Exhibit FLH-1 is a copy of a letter dated 16 May 2025 that I caused to be sent to Clayton Utz. That letter stated that HSBC Australia was working "as quickly as possible".
  - (k) Exhibited at pages 217 to 218 is a copy of a letter dated 20 May 2025 from Clayton Utz to Ashurst. In relation to HSBC Australia seeking an order for an extension in time for the filing of its defence, the letter stated that "ASIC [would] consider its position in relation to any proposed orders put forward by HSBC after receipt of such an affidavit".
  - (l) Annexed to this affidavit and marked "FLH-3" is a copy of an email from Clayton Utz to the Associate to her Honour, Justice Bennett, dated 23 May 2025 confirming that the parties were continuing to liaise on the form of orders and that a further update on this would be provided as soon as possible.
8. Throughout Ashurst's communications with Clayton Utz, referred to in paragraph 7 above, I held the view that the parties would be able to agree to an extension of time for HSBC Australia to file its defence, in advance of the Case Management Hearing set down on 26 May 2025, approximately two weeks after the date required for the filing of HSBC's defence. The letters that I caused to be sent to Clayton Utz were sent with the intention of facilitating that agreement between the parties.
9. If ASIC had provided its consent to HSBC Australia's proposal to file its defence on 13 June 2025, I would have endeavoured to send a joint communication to the Associate to her Honour, Justice Bennett, to request that an order be made in Chambers extending the time in paragraph 4 of the orders made on 7 February 2025 to 13 June 2025. Equally, had ASIC indicated that it would not consent irrespective of the outcome of the data reconciliation exercise I would have caused a communication to be sent to the Associate to her Honour, asking for the matter to be re-listed. However, despite Ashurst's continued communications with Clayton Utz, HSBC Australia was not able to get a definitive response as to ASIC's position with respect to an extension of the time to file its defence.



**Communications with the Court and the case management of these proceedings**

10. On reflection, I should have notified the Court prior to 8 May 2025 of:
- (a) the delays that HSBC Australia were experiencing in connection with verifying the data for the purposes of responding to Schedules F and H of the Amended Statement of Claim; and
  - (b) that, for this reason, sought an extension on behalf of HSBC of the date for the filing of its defence to 13 June 2025.
11. I sincerely and respectfully apologise to this Honourable Court for failing to send a communication to this effect. I accept that a party failing to comply with a Court order is a serious matter. I also recognise that failing to inform the Court and seek an extension before the time for compliance lapsed impacted the Court's ability to actively case manage these proceedings in a just, quick and efficient manner.

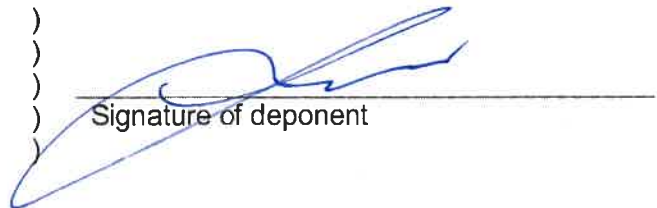
Sworn by the deponent  
at Sydney  
in New South Wales  
on 28 May 2025  
Before me:



\_\_\_\_\_  
Signature of witness

James Samson, Solicitor

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Signature of deponent



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26 March 2025

Fred Prickett and JK Muckersie  
Clayton Utz  
Level 18, 333 Collins Street  
Melbourne VIC 3000

This and the following 1 pages is the annexure marked "FLH-2" referred to in the affidavit of Felicity Louise Healy, sworn before me on 28 May 2025

Sign:   
Solicitor: James Samson

Dear Colleagues

**Australian Securities and Investments Commission v HSBC Bank  
Australia Limited (ACN 006 434 162)  
Federal Court of Australia Proceedings VID 1368 / 2024**

We refer to recent correspondence and in particular to:

- (a) your letter dated 12 March 2025; and
- (b) your emails on 20 March 2025 serving different versions of the Amended Statement of Claim (**ASOC**) and Amended Concise Statement (**ACS**).

We acknowledge your advice that the version of the ASOC served at 6.23 pm contained an error and that the version of the ASOC circulated at 7.55 pm is the correct version upon which ASIC seeks to rely.

**Confidentiality**

We also acknowledge your confirmation that ASIC will apply redactions to the above documents in line with the orders made by the Court on 17 March 2025 before filing. As requested we will advise you shortly of any other redactions proposed by HSBC in connection with ASIC's most recent amendments.

**Schedules F and H**

From our initial preliminary review of the amendments, we note that Schedules F and H to the ASOC appear to have been replaced in their entirety. Accordingly we ask that you please confirm that the amendments to Schedule F and H of the Amended Statement of Claim are compliant with the requirements of Rule 16.59 of the Federal Court Rules.

To this end, we note that Schedule F includes 13 data points across 950 customers and Schedule H includes 10 data points across 603 customers. As you will appreciate, the steps needed to consider and respond to amendments of this kind are significant and should our client be required to conduct a manual reconciliation this may delay the preparation of its defence.

If the amendments to Schedule F and H of the Statement of Claim are not compliant with the Federal Court Rules we request that you please provide appropriately marked up schedules identifying the amendments as a matter of urgency.

**Next steps**

Respectfully our client does not agree with your characterisation of its engagement to date set out in your letter dated 12 March 2025. As you are aware, our client was served with the proceedings immediately prior to the Christmas break in circumstances where ASIC would have expected that our client would have had a number of key stakeholders on leave. Further, our client was required to simultaneously complete production of a number of Statutory Notes despite the commencement of the proceeding. Notwithstanding this our client has endeavoured to meet all of the timeframes sought.

We confirm that our client is currently in the process of reviewing the most recent amendments set out in the ASOC and ACS. We will advise you shortly if it considers it is necessary for it to seek further and better particulars in respect of the amendments and/or requires further time to serve its defence in light of the amendments by ASIC. We anticipate in connection with ASIC's obligations as a model litigant that our client will not be criticised for undertaking these steps.

Finally we are instructed that by email dated 10 March 2025 ASIC contacted our client directly with respect to a reconciliation exercise which we understand ASIC is conducting in connection the customer data previously provided by HSBC. Our client is in the process of considering these queries and will respond shortly.

Yours sincerely



**Ashurst**



# "FLH-3"

**Samson, James 66843**

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**From:** JK Muckersie <jmuckersie@claytonutz.com>  
**Sent:** Friday, 23 May 2025 2:51 PM  
**To:** Associate E. BennettJ  
**Cc:** Fred Prickett; Pete Karamountzos; Lucy Walsh; Carla Strazdins; Napadow, Sherry 66191; Samson, James 66843; Healy, Felicity 66150; Reid, Judy 66961; Gordon, Jonathan 66186; Piesiewicz, Gabrielle 65637  
**Subject:** VID1368/2024 ASIC v HSBC Bank Australia Limited (ACN 006 434 162) [CU-L.FID4062157]  
**Attachments:** Plaintiff's outline of submissions - 23 May 2025.pdf

**Caution: External email.**

Dear Associate

We refer to the above proceedings, in which we act for the plaintiff, and the case management hearing set down for 26 May 2025. Please see attached the plaintiff's submissions, which provide an update on where matters are at in advance of the hearing. We note that the parties are continuing to liaise on the form of orders and will provide a further update on this as soon as possible.

We respectfully request that a Teams link be made available for our clients to watch the hearing.

We confirm the solicitors for the defendant are copied on this email.

Yours faithfully

CU

**JK Muckersie** (she/her)

**Special Counsel**

**Clayton Utz**

Wurundjeri Land, Level 18, 333 Collins Street, Melbourne VIC 3000 Australia | +613 9286 6844 | +61 410 531 730 | [jmuckersie@claytonutz.com](mailto:jmuckersie@claytonutz.com) | [claytonutz.com](http://claytonutz.com)

I acknowledge the Traditional Custodians of the land on which we work and their continuing connections to land, waters and community.

This page is the annexure marked "FLH-3" referred to in the affidavit of Felicity Louise Healy, sworn before me on 28 May 2025

Sign:   
Solicitor: James Samson