

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 1/03/2017 12:42:30 PM AEDT 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 Application - Form 15 - Rule 8.01(1)
File Number:	NSD293/2017
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v WESTPAC BANKING CORPORATION ACN 007 457 141
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	First Case Management Hearing
Time and date for hearing:	21/03/2017, 9:30 AM
Place:	Court Room 21A, Level 17 Law Courts Building Queen's Square, Sydney



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 1/03/2017 4:03:14 PM AEDT

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 APPLICATION

No. \_\_\_\_\_ of 2017

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

### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Applicant

### WESTPAC BANKING CORPORATION (ACN 007 457 141)

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you, or your lawyer, do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** Law Courts Building, Queens Square, Sydney NSW 2000

Date:

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of (name & role of party) Australian Securities and Investments Commission, Applicant

Prepared by (name of person/lawyer) Conrad Gray

Law firm (if applicable) N/A

Tel (02) 9911 2313

Fax (02) 9911 2414

Email conrad.gray@asic.gov.au

**Address for service** Level 5, 100 Market Street  
(include state and postcode) Sydney NSW 2000

**Details of claim**

On the grounds stated in the Concise Statement filed on 1 March 2017 and using the defined terms as set out in Annexure A and Annexure B to this Application, the Applicant claims:

**Declarations**

1. The Applicant seeks the declarations as set out at Annexure A to this application.

**Pecuniary penalties**

2. An order pursuant to s 167 of the Act that within 30 days of the date of this order, Westpac pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of Westpac's contraventions of ss 128, 131(1) and 133(1) of the Act set out in the proposed declarations in paragraphs 1, 3, 5-8, 10-13, 15-18, 20-23, 25-28, 30-31 and 33 of Annexure A to this application.

**Other Orders**

3. Such further orders as the Court determines to be appropriate.

**Costs**

4. An order that Westpac pay the Applicant's costs.

**Applicant's address**

The Applicant's address for service is:

Place: Level 5, 100 Market Street, Sydney NSW 2000

Email: [conrad.gray@asic.gov.au](mailto:conrad.gray@asic.gov.au)

The Applicant's address is Level 5, 100 Market Street, Sydney NSW 2000

**Service on the Respondent**

It is intended to serve this application on all Respondents.

Date: 1 March 2017

A handwritten signature in blue ink, appearing to read 'Conrad Gray', written over a horizontal line.

Signed by Conrad Gray  
Lawyer for the Applicant



## Annexure A to Originating application

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

No.                      of 2017

### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Applicant

### WESTPAC BANKING CORPORATION (ACN 007 457 141)

Respondent

1. A declaration under s 166 of the *National Consumer Credit Protection Act 2009* (Cth) (the **Act**) or, alternatively s 21 of the *Federal Court Act 1976* (Cth), that during the period between 12 December 2011 and March 2015 inclusive (**Relevant Period**), as regards all Home Loans (meaning loans secured against residential property) entered into by Westpac during that period which were not referred for manual assessment, the respondent (**Westpac**) failed to comply with s 128 of the Act in that the Serviceability Assessment for all such contracts relied solely upon statistical data from the 2009/2010 ABS Household Expenditure Survey (**HEM Benchmark Figures**) for monthly expenses and did not assess monthly expenses having regard to the consumer's living expenses as declared to Westpac (**Declared Living Expenses**).
2. A declaration under s 21 of the *Federal Court Act 1976* (Cth) that during the Relevant Period, as regards all Home Loans entered into by it during that period which were not referred for manual assessment, Westpac failed to comply with ss 131 and 133 of the Act in that, as regards each Home Loan:
  - (a) Westpac was required to take into account the Declared Living Expenses for the purpose of determining under ss 131(2) and 133(2) whether the Home Loan was unsuitable;
  - (b) Westpac did not do so;
  - (c) instead, Westpac relied for this purpose solely upon the HEM Benchmark Figures and it was not permitted under ss131(4) and 133(4) to do so.



### Declarations in respect of Home Loan A

3. A declaration under s 166 of the Act that in respect of Home Loan A Westpac contravened s 128 of the Act in that:
  - (a) Westpac assessed whether or not the Home Loan would be suitable for the consumer by reference to assessments of monthly income compared with monthly outgoings and expenses (**Serviceability Assessment**) in reliance upon monthly HEM Benchmark Figures rather than upon the Declared Living Expenses;
  - (b) further or in the alternative the monthly Declared Living Expenses were greater than the monthly HEM Benchmark Figure used by Westpac; and
  - (c) further or in the alternative, had the Declared Living Expenses rather than the HEM Benchmark Figure been used in the Serviceability Assessment the Final Net Monthly Shortfall would have been \$1,128.07.
4. A declaration under s 21 of the *Federal Court Act 1976 (Cth)* that in respect of Home Loan A Westpac failed to comply with the requirements of ss 131 and 133 of the Act in that:
  - (a) Westpac was required to take into account the Declared Living Expenses for the purpose of determining under ss 131(2) and 133(2) whether the Home Loan was unsuitable for the purposes of ss 131(1) and 133(1);
  - (b) Westpac did not do so;
  - (c) instead, Westpac relied for this purpose solely upon the HEM Benchmark Figures and it was not permitted under ss 131(4) and 133(4) to do so.
5. A declaration under s 166 of the Act that in respect of Home Loan A Westpac:
  - (a) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable; and
  - (b) contravened s 133(1) of the Act by entering into the Home Loan, in circumstances where:
    - (c) the monthly Declared Living Expenses were greater than the monthly HEM Benchmark Figure used by Westpac for this assessment; and
    - (d) if the Serviceability Assessment had relied upon the monthly Declared Living Expenses the deficit between monthly income and monthly outgoings and expenses would have been greater than \$400.
6. A declaration under s 166 of the Act that, in respect of Home Loan A, Westpac:



- (a) contravened s 128 of the Act;
- (b) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable;  
and
- (c) contravened s 133(1) of the Act by entering into the Home Loan,

in circumstances where:

- (d) for an initial period of ten years the loan was to be interest only and the monthly payments by the consumer to Westpac at the expiry of the initial period were to include both interest and a component for the repayment of principal over the period of the loan remaining after the expiry of the initial period (**Residual Monthly Payments**);
- (e) the assessment of monthly outgoings and expenses in the Serviceability Assessment did not rely upon the Residual Monthly Payments;
- (f) the Serviceability Assessment relied upon monthly HEM Benchmark Figures rather than monthly Declared Living Expenses; and
- (g) further or in the alternative, if the Serviceability Assessment had relied upon the Residual Monthly Payments and monthly Declared Living Expenses the deficit between monthly income and monthly outgoings and expenses would have been \$2,570.07.

7. In the alternative to paragraph 6, a declaration under s 166 of the Act that, in respect of Home Loan A, Westpac:

- (a) contravened s 128 of the Act;
- (b) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable;  
and
- (c) contravened s 133(1) of the Act by entering into the Home Loan,

in circumstances where:

- (d) for an initial period of ten years the loan was to be interest only such that the total amount of interest that a consumer would pay over the life of Home Loan A was greater than if the consumer made principal and interest repayments throughout the full term of the loan (**Additional Costs of Loan A**);
- (e) the Serviceability Assessment did not take account of the Additional Costs of Loan A;



- (f) the Serviceability Assessment relied upon monthly HEM Benchmark Figures rather than monthly Declared Living Expenses; and
- (g) further or in the alternative, if the Serviceability Assessment had taken account of the Additional Costs of Loan A and monthly Declared Living Expenses, the deficit between monthly income and monthly outgoings and expenses would have been \$1,619.09.

### **Declarations in respect of Home Loan B**

- 8. A declaration under s 166 of the Act that in respect of Home Loan B Westpac contravened s 128 of the Act in that:
  - (a) Westpac assessed whether or not the Home Loan would be suitable for the consumer by reference to the Serviceability Assessment of monthly income compared with monthly outgoings and expenses in reliance upon HEM Benchmark Figures for monthly expenses rather than upon Declared Living Expenses;
  - (b) further or in the alternative the monthly Declared Living Expenses were greater than the monthly HEM Benchmark Figure used by Westpac; and
  - (c) further or in the alternative, had the Declared Living Expenses rather than the HEM Benchmark Figure been used in the Serviceability Assessment the Final Net Monthly Shortfall would have been \$1,175.20.
- 9. A declaration under s 21 of the *Federal Court Act 1976 (Cth)* that in respect of Home Loan B Westpac failed to comply with the requirements of ss 131 and 133 of the Act in that:
  - (a) Westpac was required to take into account the Declared Living Expenses for the purpose of determining under ss 131(2) and 133(2) whether the Home Loan was unsuitable for the purposes of ss 131(1) and 133(1);
  - (b) Westpac did not do so;
  - (c) instead, Westpac relied for this purpose solely upon the HEM Benchmark Figures and it was not permitted under ss 131(4) and 133(4) to do so.
- 10. A declaration under s 166 of the Act that in respect of Home Loan B Westpac:
  - (a) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable; and
  - (b) contravened s 133(1) of the Act by entering into the Home Loan, in circumstances where:



- (c) the monthly Declared Living Expenses were greater than the monthly HEM Benchmark Figure used by Westpac for this assessment; and
  - (d) if the Serviceability Assessment had relied upon the monthly Declared Living Expenses the deficit between monthly income and monthly outgoings and expenses would have been greater than \$400.
11. A declaration under s 166 of the Act that, in respect of Home Loan B, Westpac:
- (a) contravened s 128 of the Act;
  - (b) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable; and
  - (c) contravened s 133(1) of the Act by entering into the Home Loan, in circumstances where:
    - (d) for an initial period of fifteen years the loan was to be interest only and the monthly payments by the consumer to Westpac at the expiry of the initial period were Residual Monthly Payments;
    - (e) the assessment of monthly outgoings and expenses in the Serviceability Assessment did not rely upon the Residual Monthly Payments;
    - (f) the Serviceability Assessment relied upon monthly HEM Benchmark Figures rather than monthly Declared Living Expenses; and
    - (g) further or in the alternative, if the Serviceability Assessment had relied upon the Residual Monthly Payments and monthly Declared Living Expenses the deficit between monthly income and monthly outgoings and expenses would have been \$4,385.20.
12. In the alternative to paragraph 11, a declaration under s 166 of the Act that, in respect of Home Loan B, Westpac:
- (a) contravened s 128 of the Act;
  - (b) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable; and
  - (c) contravened s 133(1) of the Act by entering into the Home Loan, in circumstances where:
    - (d) for an initial period of fifteen years the loan was to be interest only such that the total amount of interest that a consumer would pay over the life of Home Loan B was





greater than if the consumer made principal and interest repayments throughout the full term of the loan (**Additional Costs of Loan B**);

- (e) the Serviceability Assessment did not take account of the Additional Costs of Loan B;
- (f) the Serviceability Assessment relied upon monthly HEM Benchmark Figures rather than monthly Declared Living Expenses; and
- (g) further or in the alternative, if the Serviceability Assessment had taken account of the Additional Costs of Loan B and monthly Declared Living Expenses, the deficit between monthly income and monthly outgoings and expenses would have been \$1,983.65

### **Declarations in respect of Home Loan C**

13. A declaration under s 166 of the Act that in respect of Home Loan C Westpac contravened s 128 of the Act in that:
  - (a) Westpac assessed whether or not the Home Loan would be suitable for the consumer by reference to the Serviceability Assessment of monthly income compared with monthly outgoings and expenses in reliance upon HEM Benchmark Figures for monthly expenses rather than upon Declared Living Expenses;
  - (b) further or in the alternative the monthly Declared Living Expenses were greater than the monthly HEM Benchmark Figure used by Westpac; and
  - (c) further or in the alternative, had the Declared Living Expenses rather than the HEM Benchmark Figure been used in the Serviceability Assessment the Final Net Monthly Shortfall would have been \$1,479.28.
14. A declaration under s 21 of the *Federal Court Act 1976 (Cth)* that in respect of Home Loan C Westpac failed to comply with the requirements of ss 131 and 133 of the Act in that:
  - (a) Westpac was required to take into account the Declared Living Expenses for the purpose of determining under ss 131(2) and 133(2) whether the Home Loan was unsuitable for the purposes of ss 131(1) and 133(1);
  - (b) Westpac did not do so;
  - (c) instead, Westpac relied for this purpose solely upon the HEM Benchmark Figures and it was not permitted under ss 131(4) and 133(4) to do so.
15. A declaration under s 166 of the Act that in respect of Home Loan C Westpac:



- (a) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable;  
and
- (b) contravened s 133(1) of the Act by entering into the Home Loan,  
in circumstances where:
- (c) the monthly Declared Living Expenses were greater than the monthly HEM Benchmark Figure used by Westpac for this assessment; and
- (d) if the Serviceability Assessment had relied upon the monthly Declared Living Expenses the deficit between monthly income and monthly outgoings and expenses would have been greater than \$400.
16. A declaration under s 166 of the Act that, in respect of Home Loan C, Westpac:
- (a) contravened s 128 of the Act;
- (b) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable;  
and
- (c) contravened s 133(1) of the Act by entering into the Home Loan,  
in circumstances where:
- (d) for an initial period of five years the loan was to be interest only and the monthly payments by the consumer to Westpac at the expiry of the initial period were Residual Monthly Payments;
- (e) the assessment of monthly outgoings and expenses in the Serviceability Assessment did not rely upon the Residual Monthly Payments;
- (f) the Serviceability Assessment relied upon monthly HEM Benchmark Figures rather than monthly Declared Living Expenses; and
- (g) further or in the alternative, if the Serviceability Assessment had relied upon the Residual Monthly Payments and monthly Declared Living Expenses the deficit between monthly income and monthly outgoings and expenses would have been \$1,863.28.
17. In the alternative to paragraph 16, a declaration under s 166 of the Act that, in respect of Home Loan C, Westpac:
- (a) contravened s 128 of the Act;
- (b) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable;  
and



(c) contravened s 133(1) of the Act by entering into the Home Loan, in circumstances where:

- (d) for an initial period of five years the loan was to be interest only such that the total amount of interest that a consumer would pay over the life of Home Loan C was greater than if the consumer made principal and interest repayments throughout the full term of the loan (**Additional Costs of Loan C**);
- (e) the Serviceability Assessment did not take account of the Additional Costs of Loan C;
- (f) the Serviceability Assessment relied upon monthly HEM Benchmark Figures rather than monthly Declared Living Expenses; and
- (g) further or in the alternative, if the Serviceability Assessment had taken account of the Additional Costs of Loan C and monthly Declared Living Expenses, the deficit between monthly income and monthly outgoings and expenses would have been \$1,617.08.

#### **Declarations in respect of Home Loan D**

18. A declaration under s 166 of the Act that in respect of Home Loan D Westpac contravened s 128 of the Act in that:
- (a) Westpac assessed whether or not the Home Loan would be suitable for the consumer by reference to the Serviceability Assessment of monthly income compared with monthly outgoings and expenses in reliance upon HEM Benchmark Figures for monthly expenses rather than upon Declared Living Expenses;
  - (b) further or in the alternative the monthly Declared Living Expenses were greater than the monthly HEM Benchmark Figure used by Westpac; and
  - (c) further or in the alternative, had the Declared Living Expenses rather than the HEM Benchmark Figure been used in the Serviceability Assessment the Final Net Monthly Shortfall would have been \$797.17.
19. A declaration under s 21 of the *Federal Court Act 1976 (Cth)* that in respect of Home Loan D Westpac failed to comply with the requirements of ss 131 and 133 of the Act in that:
- (a) Westpac was required to take into account the Declared Living Expenses for the purpose of determining under ss 131(2) and 133(2) whether the Home Loan was unsuitable for the purposes of ss 131(1) and 133(1);
  - (b) Westpac did not do so;



- (c) instead, Westpac relied for this purpose solely upon the HEM Benchmark Figures and it was not permitted under ss 131(4) and 133(4) to do so.
20. A declaration under s 166 of the Act that in respect of Home Loan D Westpac:
- (a) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable; and
  - (b) contravened s 133(1) of the Act by entering into the Home Loan,
- in circumstances where:
- (c) the monthly Declared Living Expenses were greater than the monthly HEM Benchmark Figure used by Westpac for this assessment; and
  - (d) if the Serviceability Assessment had relied upon the monthly Declared Living Expenses the deficit between monthly income and monthly outgoings and expenses would have been greater than \$400.
21. A declaration under s 166 of the Act that, in respect of Home Loan D, Westpac:
- (a) contravened s 128 of the Act;
  - (b) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable; and
  - (c) contravened s 133(1) of the Act by entering into the Home Loan,
- in circumstances where:
- (d) for initial periods of three years (in respect of \$150,000 of the total amount loaned (being \$315,000)) and five years (in respect of \$165,000 of the total amount loaned) the loan was to be interest only and the monthly payments by the consumer to Westpac at the expiry of the initial periods were Residual Monthly Payments;
  - (e) the assessment of monthly outgoings and expenses in the Serviceability Assessment did not rely upon the Residual Monthly Payments;
  - (f) the Serviceability Assessment relied upon monthly HEM Benchmark Figures rather than monthly Declared Living Expenses; and
  - (g) further or in the alternative, if the Serviceability Assessment had relied upon the Residual Monthly Payments and monthly Declared Living Expenses the deficit between monthly income and monthly outgoings and expenses would have been \$1,116.17.



22. In the alternative to paragraph 21, a declaration under s 166 of the Act that, in respect of Home Loan D, Westpac:

- (a) contravened s 128 of the Act;
- (b) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable;  
and
- (c) contravened s 133(1) of the Act by entering into the Home Loan,

in circumstances where:

- (d) for an initial period of three years (in respect of \$150,000 of the total amount loaned (being \$315,000)) and five years (in respect of \$165,000 of the total amount loaned) the loan was to be interest only such that the total amount of interest that a consumer would pay over the life of Home Loan D was greater than if the consumer made principal and interest repayments throughout the full term of the loan (**Additional Costs of Loan D**);
- (e) the Serviceability Assessment did not take account of the Additional Costs of Loan D;
- (f) the Serviceability Assessment relied upon monthly HEM Benchmark Figures rather than monthly Declared Living Expenses; and
- (g) further or in the alternative, if the Serviceability Assessment had taken account of the Additional Costs of Loan D and monthly Declared Living Expenses, the deficit between monthly income and monthly outgoings and expenses would have been \$891.34.

#### **Declarations in respect of Home Loan E**

23. A declaration under s 166 of the Act that in respect of Home Loan E Westpac contravened s 128 of the Act in that:

- (a) Westpac assessed whether or not the Home Loan would be suitable for the consumer by reference to the Serviceability Assessment of monthly income compared with monthly outgoings and expenses in reliance upon HEM Benchmark Figures for monthly expenses rather than upon Declared Living Expenses;
- (b) further or in the alternative the monthly Declared Living Expenses were greater than the monthly HEM Benchmark Figure used by Westpac; and



- (c) further or in the alternative, had the Declared Living Expenses rather than the HEM Benchmark Figure been used in the Serviceability Assessment the Final Net Monthly Shortfall would have been \$1,980.46.
24. A declaration under s 21 of the *Federal Court Act 1976 (Cth)* that in respect of Home Loan E Westpac failed to comply with the requirements of ss 131 and 133 of the Act in that:
- (a) Westpac was required to take into account the Declared Living Expenses for the purpose of determining under ss 131(2) and 133(2) whether the Home Loan was unsuitable for the purposes of ss 131(1) and 133(1);
  - (b) Westpac did not do so;
  - (c) instead, Westpac relied for this purpose solely upon the HEM Benchmark Figures and it was not permitted under ss 131(4) and 133(4) to do so.
25. A declaration under s 166 of the Act that in respect of Home Loan E Westpac:
- (a) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable;  
and
  - (b) contravened s 133(1) of the Act by entering into the Home Loan,  
in circumstances where:
    - (c) the monthly Declared Living Expenses were greater than the monthly HEM Benchmark Figure used by Westpac for this assessment; and
    - (d) if the Serviceability Assessment had relied upon the monthly Declared Living Expenses the deficit between monthly income and monthly outgoings and expenses would have been greater than \$400.
26. A declaration under s 166 of the Act that, in respect of Home Loan E, Westpac:
- (a) contravened s 128 of the Act;
  - (b) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable;  
and
  - (c) contravened s 133(1) of the Act by entering into the Home Loan,  
in circumstances where:
    - (d) for an initial period of fifteen years (in respect of \$150,000 of the total amount loaned (being \$542,000)) the loan was to be interest only and the monthly payments by the consumer to Westpac at the expiry of the initial period were Residual Monthly Payments;



- (e) the assessment of monthly outgoings and expenses in the Serviceability Assessment did not rely upon the Residual Monthly Payments;
  - (f) the Serviceability Assessment relied upon monthly HEM Benchmark Figures rather than monthly Declared Living Expenses; and
  - (g) further or in the alternative, if the Serviceability Assessment had relied upon the Residual Monthly Payments and monthly Declared Living Expenses the deficit between monthly income and monthly outgoings and expenses would have been \$2,362.46.
27. In the alternative to paragraph 26, a declaration under s 166 of the Act that, in respect of Home Loan E, Westpac:
- (a) contravened s 128 of the Act;
  - (b) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable; and
  - (c) contravened s 133(1) of the Act by entering into the Home Loan, in circumstances where:
    - (d) for an initial period of fifteen years (in respect of \$150,000 of the total amount loaned (being \$542,000) ) the loan was to be interest only such that the total amount of interest that a consumer would pay over the life of Home Loan E was greater than if the consumer made principal and interest repayments throughout the full term of the loan (**Additional Costs of Loan E**);
    - (e) the Serviceability Assessment did not take account of the Additional Costs of Loan E;
    - (f) the Serviceability Assessment relied upon monthly HEM Benchmark Figures rather than monthly Declared Living Expenses; and
    - (g) further or in the alternative, if the Serviceability Assessment had taken account of the Additional Costs of Loan E and monthly Declared Living Expenses, the deficit between monthly income and monthly outgoings and expenses would have been \$2,080.62

#### **Declarations in respect of Home Loan F**

28. A declaration under s 166 of the Act that in respect of Home Loan F Westpac contravened s 128 of the Act in that:



- (a) Westpac assessed whether or not the Home Loan would be suitable for the consumer by reference to the Serviceability Assessment of monthly income compared with monthly outgoings and expenses in reliance upon HEM Benchmark Figures for monthly expenses rather than upon Declared Living Expenses;
  - (b) further or in the alternative the monthly Declared Living Expenses were greater than the monthly HEM Benchmark Figure used by Westpac; and
  - (c) further or in the alternative, had the Declared Living Expenses rather than the HEM Benchmark Figure been used in the Serviceability Assessment the Final Net Monthly Shortfall would have been \$3,599.86.
29. A declaration under s 21 of the *Federal Court Act 1976 (Cth)* that in respect of Home Loan F Westpac failed to comply with the requirements of ss 131 and 133 of the Act in that:
- (a) Westpac was required to take into account the Declared Living Expenses for the purpose of determining under ss 131(2) and 133(2) whether the Home Loan was unsuitable for the purposes of ss 131(1) and 133(1);
  - (b) Westpac did not do so;
  - (c) instead, Westpac relied for this purpose solely upon the HEM Benchmark Figures and it was not permitted under ss 131(4) and 133(4) to do so.
30. A declaration under s 166 of the Act that in respect of Home Loan F Westpac:
- (a) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable; and
  - (b) contravened s 133(1) of the Act by entering into the Home Loan,
- in circumstances where:
- (c) the monthly Declared Living Expenses were greater than the monthly HEM Benchmark Figure used by Westpac for this assessment; and
  - (d) if the Serviceability Assessment had relied upon the monthly Declared Living Expenses the deficit between monthly income and monthly outgoings and expenses would have been greater than \$400.

#### **Declarations in respect of Home Loan G**

31. A declaration under s 166 of the Act that in respect of Home Loan G Westpac contravened s 128 of the Act in that:





- (a) Westpac assessed whether or not the Home Loan would be suitable for the consumer by reference to the Serviceability Assessment of monthly income compared with monthly outgoings and expenses in reliance upon HEM Benchmark Figures for monthly expenses rather than upon Declared Living Expenses;
  - (b) further or in the alternative the monthly Declared Living Expenses were greater than the monthly HEM Benchmark Figure used by Westpac; and
  - (c) further or in the alternative, had the Declared Living Expenses rather than the HEM Benchmark Figure been used in the Serviceability Assessment the Final Net Monthly Shortfall would have been \$608.40.
32. A declaration under s 21 of the *Federal Court Act 1976 (Cth)* that in respect of Home Loan G Westpac failed to comply with the requirements of ss 131 and 133 of the Act in that:
- (a) Westpac was required to take into account the Declared Living Expenses for the purpose of determining under ss 131(2) and 133(2) whether the Home Loan was unsuitable for the purposes of ss 131(1) and 133(1);
  - (b) Westpac did not do so;
  - (c) instead, Westpac relied for this purpose solely upon the HEM Benchmark Figures and it was not permitted under ss 131(4) and 133(4) to do so.
33. A declaration under s 166 of the Act that in respect of Home Loan G Westpac:
- (a) contravened s 131(1) of the Act by failing to assess the Home Loan as unsuitable; and
  - (b) contravened s 133(1) of the Act by entering into the Home Loan, in circumstances where:
    - (c) the monthly Declared Living Expenses were greater than the monthly HEM Benchmark Figure used by Westpac for this assessment; and
    - (d) if the Serviceability Assessment had relied upon the monthly Declared Living Expenses the deficit between monthly income and monthly outgoings and expenses would have been greater than \$400.



## Annexure B to Originating application

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

No.                      of 2017

### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Applicant

### WESTPAC BANKING CORPORATION (ACN 007 457 141)

Respondent

**Home Loan A** refers to the loan in the amount of \$1,170,000 entered into by Westpac on or around 17 July 2014.

**Home Loan B** refers to the loan in the amount of \$1,250,000 entered into by Westpac on or around 11 July 2014.

**Home Loan C** refers to the loan in the amount of \$800,000 entered into by Westpac on or around 14 July 2014.

**Home Loan D** refers to the combined loans in the amounts of \$150,000 and \$165,000 entered into by Westpac on or around 24 June 2014.

**Home Loan E** refers to the combined loans in the amounts of \$392,104 and \$150,000 entered into by Westpac on or around 11 July 2014.

**Home Loan F** refers to the loan in the amount of \$750,000 entered into by Westpac on or around 4 May 2014.

**Home Loan G** refers to the loan in the amount of \$409,000 entered into by Westpac on or around 13 August 2014.

