

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application - Form 15 - Rule 8.01(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 27/10/2023 3:10:18 PM AEDT
Date Accepted for Filing: 27/10/2023 3:15:02 PM AEDT
File Number: VID695/2023
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v
WESTPAC BANKING CORPORATION ACN 007 457 141
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.



Amended Originating application

Amended pursuant to the Order of Justice McEvoy dated 24 October 2023

No. VID 695 of 2023

Federal Court of Australia
District Registry: Victoria
Division: Commercial and Corporations

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 amended application.

The Court will hear this amended 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: 305 William Street, Melbourne, Victoria 3000.

The Court ordered that the time for serving this amended application be abridged to

Date: ~~4 September 2023~~

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)	Nick Kelton, Lawyer, ASIC
Tel	(03) 9280 4787 Fax 1300 729 000
Email	nicholas.kelton@asic.gov.au
Address for service (include state and postcode)	Level 7, 120 Collins Street, Melbourne, Victoria 3000.



Details of claim

On the grounds stated in the accompanying amended concise statement, the Applicant seeks:

1. Declarations pursuant to section 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) and section 166(2) of the *National Consumer Credit Protection Act 2009* (Cth) (**Credit Act**) that the Respondent (**Westpac**) contravened on multiple and separate occasions:
 - a. section 72(4) of the *National Credit Code* (being Schedule 1 to the Credit Act) (**Code**); and
 - b. sections 47(1)(a) and 47(4) of the Credit Act (in respect of conduct occurring in the period from 13 March 2019 to ~~20 March 2022~~ 7 June 2023).
2. An order, pursuant to section 167(1) and (2) of the Credit Act, that Westpac pay a pecuniary penalty to the Commonwealth for its contraventions of section 72(4) of the Code and sections 47(1)(a) and 47(4) of the Credit Act, fixed at an amount the Court considers is appropriate.
3. An order, pursuant to section 167(1) and (2) of the Credit Act, that Westpac pay the pecuniary penalty to the Commonwealth within 28 days of the order.
4. An adverse publicity order, pursuant to section 182 of the Credit Act, that requires Westpac to:
 - a. disclose the contraventions the subject of the declarations in paragraph 1 above, and the circumstances giving rise to those contraventions; and
 - b. publish by form, means and channels to be determined by the Court, at Westpac's own expense, those disclosures.
5. An order, pursuant to section 177 of the Credit Act, that Westpac, at its cost:
 - a. within such period as the Court determines, implement system, operational and process changes that are adequate to ensure hardship notices are responded to within the time limits specified by sections 72(4)-(5) of the Code; and
 - b. within one month of implementing the changes referred to in subparagraph (a):
 - i. appoint a suitably qualified independent expert agreed between Westpac and the Applicant (**ASIC**) (or, failing agreement, determined by the Court); and
 - ii. instruct the expert to prepare and provide to ASIC a written report on the outcome of the implementation of the changes referred to in subparagraph (a), including as to whether and to what extent the changes



have been fully and effectively implemented in accordance with these orders, and provide recommendations to Westpac to remedy any aspects of Westpac's systems, operations and processes to ensure compliance with sections 72(4)-(5) of the Code:

- c. within six months after appointing the expert referred to in subparagraph (b):
- i. provide to ASIC a copy of the report referred to in subparagraph (b) above;
 - ii. state what steps Westpac has taken to give effect to the expert's recommendations.

6. Costs.

7. Such further order as the Court considers appropriate.

Applicant's address

The Applicant's address for service is:

Place: Australian Securities and Investments Commission
Level 7, 120 Collins Street
Melbourne, Victoria 3000.

Email: Nicholas.kelton@asic.gov.au

The Applicant's address is Level 7, 120 Collins Street, Melbourne, Victoria 3000.

Service on the Respondent

It is intended to serve this amended application on the Respondent.

Date: ~~4 September 2023~~ 27 October 2023

Nick Kelton

Signed by Nick Kelton
Lawyer for the Applicant