



ASIC

Australian Securities & Investments Commission

## INFRINGEMENT NOTICE

### Section 12GXA of the *Australian Securities and Investments Commission Act 2001*

Day of issue: 23 July 2014

Unique identification code: A4229596

TO: Westpac Banking Corporation  
ACN: 007 457 141  
'Westpac Place'  
Level 20  
275 Kent Street  
SYDNEY NSW 2000

1. ASIC issues this infringement notice under section 12GXA of the *Australian Securities and Investments Commission Act 2001* (the *ASIC Act*) in respect of the conduct described in paragraph 2 below to the extent that it occurred in the period from 24 July 2013 to 19 May 2014.
2. ASIC has reasonable grounds to believe that you have contravened an infringement notice provision as follows:

**From 1 July 2013 to at least until 19 May 2014 (Relevant Period), you contravened section 12DF(1) of the ASIC Act by, in trade or commerce, engaging in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of financial services.**

#### Particulars

**ASIC is concerned that during the Relevant Period, you made the following representations in the Product Disclosure Statement for Westpac Annuity Deposit dated 1 July 2013 (Westpac Annuity Deposit PDS), including on page 11:**

- (a) The "*Earnings Rate*" is calculated on the principal amount invested by the investor on the commencement of their Westpac Annuity Deposit ("Principal Amount").
- (b) The "*Earnings Rate*" is equivalent to or comparable to the rate of return earned on a Westpac Annuity Deposit.
- (c) The "*Earnings Rate*" for the Westpac Annuity Deposit is equivalent to or comparable to the effective interest rate received on the Westpac Annuity Deposit.

- (d) The effective interest rate received on a Westpac Annuity Deposit will not materially change irrespective of the "Residual Principal Amount" option, being the portion of the investor's Principal Amount (0%, 25%, 50%, 75% or 100%) chosen by the investor to be returned at the maturity of their investment ("RPA option"), selected.
- (e) The effective interest rate received on a Westpac Annuity Deposit will not materially change irrespective of any draw-down of the Principal Amount.
- (f) The effective interest earned on a Westpac Annuity Deposit will not materially change irrespective of the RPA option selected.
- (g) The effective interest earned on a Westpac Annuity Deposit will not materially change irrespective of any draw-down of the Principal Amount.

These representations were liable to mislead the public in that:

- (h) The "*Earnings Rate*" for the Westpac Annuity Deposit is referable only to the "*Principal Balance*", being the difference between the Principal Amount and any principal component of the investor's investment paid to the investor in accordance with the RPA option chosen by the investor, and did not reflect the rate of return paid on the Principal Amount over the entire term of the investment save for a Westpac Annuity Deposit with a 100% RPA option.
- (i) The "*Earnings Rate*" is not equivalent to or comparable to the rate of return earned on a Westpac Annuity Deposit save for a Westpac Annuity Deposit with a 100% RPA option because it takes into account the draw-downs, if any, of the Principal Amount included in the income stream.
- (j) The "*Earnings Rate*" is not equivalent to or the same as the effective interest rate an investor would receive on a Westpac Annuity Deposit save for a Westpac Annuity Deposit with a 100% RPA option.
- (k) In the scenarios on page 11 of the Westpac Annuity Deposit PDS, the rate of return and/or effective interest rate received on a Westpac Annuity Deposit ranged between 1.18% and 4.60% as compared to the advertised Earnings Rates of between 4.07% and 4.60%", depending on:
  - i. the RPA option selected;
  - ii. the drawdown of the Principal Amount.
- (l) The rate of return and/or effective interest earned on a Westpac Annuity Deposit varied materially depending on:
  - i. the RPA option selected;
  - ii. any draw down of the Principal Amount.

#### Penalty under this notice

- 3. The penalty payable under this notice in relation to the alleged contravention is \$10,200.

This penalty is payable to ASIC on behalf of the Commonwealth.

This penalty can be paid using one of the methods detailed in the enclosed invoice.

#### **Consequences of complying with this notice**

4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):
  - (a) no proceedings (whether criminal or civil) will be brought against you by the Commonwealth or ASIC for the alleged contravention of the infringement notice provision or an offence constituted by the same conduct; and
  - (b) you will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.

#### **Consequences of failing to comply with this notice**

5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 the consumer protection provisions of the ASIC Act (whether criminal or civil) against you for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
6. The maximum pecuniary penalty that a court may order you to pay for the alleged contravention is \$1,700,000.

#### **Time for payment**

7. The time for payment is:
  - (a) within 28 days after the day on which the notice is issued to you; or
  - (b) if ASIC extends, by notice in writing the compliance period for this notice, within that further period allowed.

#### **Applying for more time to pay the penalty under this notice**

8. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.
9. If you wish to apply for an extension of time to pay the penalty specified in this notice, you should do so in writing within 28 days after the day the notice is issued to you (see paragraph 15).

#### **Applying to have this notice withdrawn**

10. Within 28 days after the day on which this notice is issued, you may apply to ASIC in writing to have this notice withdrawn.

11. Evidence or information that you or your representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against you or your representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

#### **Withdrawal of this notice**

12. ASIC may, by written notice given to you, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not you have applied to have this notice withdrawn.
13. A withdrawal notice must be given to you within the time for payment of this infringement notice to be effective.
14. If the withdrawal notice is given after you have paid the penalty specified in this infringement notice, ASIC will refund to you the amount paid under the infringement notice.

#### **Requirements for applications**

15. An application to have this notice withdrawn, or for more time to pay the penalty under this notice:
  - (a) must be in writing; and
  - (b) must include the unique identification code set out at the top of this notice; and
  - (c) must include your reasons for making the application; and
  - (d) may be made by forwarding your application to ASIC at the address in paragraph 16.
16. You may contact ASIC in relation to this notice by contacting:

**Cathy Lee**

**Australian Securities and Investments Commission**

**GPO Box 9827**

**Sydney NSW 2000**

**Or by facsimile: (02) 9911 2414**

**or by email: [ACLInfringementNotices@asic.gov.au](mailto:ACLInfringementNotices@asic.gov.au)**



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Peter Kell

as a delegate of the Australian Securities and Investments Commission