

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 29/11/2021 4:01:37 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 process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	VID704/2021
File Title:	IN THE MATTER OF 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



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 29/11/2021 4:25:19 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.



Form 2  
Rules 2.2 and 15A.3

## ORIGINATING PROCESS

**FEDERAL COURT OF AUSTRALIA**  
**DISTRICT REGISTRY: VICTORIA**  
**DIVISION: GENERAL**

**NO VID OF 2021**

**IN THE MATTER OF WESTPAC BANKING CORPORATION (ACN 007 457 141)**

**AUSTRALIAN SECURITIES AND INVESTMENTS**  
**COMMISSION**

Plaintiff

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

Defendant

### **A. DETAILS OF APPLICATION**

This application is made under ss 19 and 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), and ss 1317E, 1317G and 1317J(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**).

The Plaintiff seeks a declaration of contraventions of the Corporations Act, a pecuniary penalty order and a costs order.

On the facts stated in the affidavit of Jody Marshall dated 26 November 2021 and the Statement of Facts and Admissions dated 26 November 2021, the Plaintiff seeks:

#### **Declaration**

1. A declaration, under s 21 of the FCA Act and s 1317E of the Corporations Act, that Westpac Banking Corporation (**Westpac**) breached its obligation to do all things necessary to ensure the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened ss 912A(1)(a) and 912A(5A) of the Corporations Act, in that:
  - a. On and after 13 March 2019, Westpac knew that it did not have processes or controls in place:
    - i. to identify when a company holding a bank account with Westpac had been deregistered under the Corporations Act; or

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Filed on behalf of the Plaintiff, ASIC  
Prepared by: Jody Marshall  
AGS lawyer within the meaning of s 55I of the *Judiciary Act*  
1903

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The Australian Government Solicitor,  
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- ii. to manage on an ongoing basis Westpac bank accounts held in the name of deregistered companies (**Deregistered Company Accounts**) in a manner consistent with funds in those accounts having vested in ASIC or the Commonwealth pursuant to s 601AD of the Corporations Act.
- b. Despite this knowledge:
  - i. Westpac did not implement within its Westpac Institutional Bank (**WIB**) division ongoing processes or controls to identify and manage Deregistered Company Accounts until, at the earliest, October 2019;
  - ii. for all other divisions within Westpac:
    - 1. Westpac did not commence implementation of manual processes to identify and manage Deregistered Company Accounts until 27 October 2020;
    - 2. Westpac did not approve or provide adequate funding or resources to implement ongoing processes or controls to identify and manage Deregistered Company Accounts until October 2020; and
    - 3. Westpac did not implement ongoing processes or controls to identify and manage Deregistered Company Accounts until, at the earliest, 25 March 2021.
- c. Further, between 13 March 2019 and 27 October 2020:
  - i. Westpac did not place any blocks on withdrawals from approximately 4200 Deregistered Company Accounts which Westpac had identified in that period;
  - ii. Westpac staff removed withdrawal blocks from approximately 100 Deregistered Company Accounts which Westpac had previously identified; and
  - iii. Westpac did not have controls or adequate systems in place to prevent staff from removing blocks on withdrawals from Deregistered Company Accounts which had been identified and blocked.
- d. Further:
  - i. at all times after August 2019, Westpac knew that Deregistered Company Accounts for companies which had been deregistered before April 2017 remained open;
  - ii. however, Westpac did not take steps to manage or remediate those historical Deregistered Company Accounts, which totalled approximately 11,000 accounts, until, at the earliest, 25 March 2021.
- e. By the above conduct in paragraphs (b) to (d), approximately 21,000 Deregistered Company Accounts held with Westpac (both accounts identified and not identified by Westpac), remained open or were reopened, and transactions could be carried out on those accounts, which included funds from those accounts being received by persons authorised by Westpac to operate the accounts and third parties, in circumstances where those funds in fact vested in ASIC or the Commonwealth.



- f. In respect of the Deregistered Company Accounts in paragraph (e), Westpac:
- i. received payment of fees, interest, overdraft and loan repayments from funds held in the Deregistered Company Accounts (both accounts identified and not identified by Westpac) and made use of the funds in those accounts in the course of its business, in circumstances where the funds had vested in ASIC or the Commonwealth; and
  - ii. did not remit to ASIC or the Commonwealth funds from those accounts which had vested in ASIC or the Commonwealth. The total vested funds that could be, and in some instances were, withdrawn and / or paid to third parties on the instructions of persons who had previously been authorised by the now deregistered company to operate the accounts rather than remitted to ASIC or the Commonwealth, is estimated at a total of:
    1. in respect of deregistered companies which remained deregistered:
      - I. approximately \$35.5m calculated at the date that the company was deregistered; and
      - II. approximately \$44.2 million calculated at the date that the company was identified by WBC as deregistered; and
    2. approximately \$41m in respect of companies that were subsequently reinstated or are in the process of being reinstated.
- g. Despite having previously told ASIC that it was implementing an ongoing control or process to deal with Deregistered Company Accounts, at all times on and after 13 March 2019 until November 2020, Westpac did not tell ASIC that it had not implemented an ongoing control or process across its divisions.

### Penalty

2. An order pursuant to s 1317G of the Corporations Act that, within 30 days of the order, Westpac pay to the Commonwealth of Australia such pecuniary penalty as the Court determines to be appropriate in respect of Westpac's conduct declared to be a contravention of s 912A(5A) of the Corporations Act.

### Other orders

3. An order that the Defendant pay the Plaintiff's costs of and incidental to the proceeding.
4. Such further or other order as the Court considers appropriate.

Date: 26 November 2021

.....  
 Jody Marshall  
 AGS lawyer  
 for and on behalf of the Australian Government Solicitor  
 Lawyer for the Plaintiff



This application will be heard by .....at 305 William St,  
Melbourne VIC 3000 at ..... \*am/\*pm on .....

**B. NOTICE TO DEFENDANT**

TO: Westpac Banking Corporation  
  
C/- WESTPAC GROUP SECRETARIAT WESTPAC PLACE  
  
Level 18, 275 Kent Street,  
  
Sydney, NSW 2000

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. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

*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.

**C. FILING**

Date of filing: 26 November 2021

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*Registrar*

This originating process is filed by Jody Marshall for the plaintiff.

**D. SERVICE**

The plaintiff's address for service is:

Australian Government Solicitor  
  
Level 11, 145 Ann Street, Brisbane QLD 4001

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