



S01863987

## Infringement notice

section 331 of the Act  
paragraph 40(a) of the Regulations

Date of issue: 16/08/16

Unique identification code: S01863987

TO: **Commonwealth Bank of Australia ACN 123 123 124**  
**Ground Floor Tower 1**  
**201 Sussex Street**  
**Sydney NSW 2000**

1. I, David McGuinness, give this infringement notice under regulation 39 of the *National Consumer Credit Protection Regulations 2010*.
2. I have reasonable grounds to believe that you have contravened the following civil penalty provision:

On 15 September 2015 at 4:15 PM at Morwell, Victoria, as a holder of Australian Credit Licence number 234945 pursuant to section 35 of the *National Consumer Credit Protection Act 2009* (the Act), you engaged in conduct contrary to subsection 133(1)(a) of the Act, namely entering into a credit contract with a consumer for an overdraft facility with a credit limit of \$1,000, when the contract was unsuitable for the consumer pursuant to subsection 133(2)(a) of the Act.

The contract was unsuitable for the consumer pursuant to section 133(2)(a) of the Act in that at the time the credit contract was entered into, it was likely that the consumer would be unable to comply with the consumer's obligations under the contract, or could only comply with substantial hardship.

Due to a programming error in the serviceability calculation, you assessed the unsuitability of the contract without taking into account the consumer's declared housing expenses and living expenses. Instead you substituted \$0 housing expenses, and living expenses based on a benchmark which was substantially less than that declared by the consumer. Had you assessed the unsuitability of the contract taking into account the consumer's declared expenses, the contract would have been assessed as unsuitable because the consumer's expenses were greater than the consumer's income.

### Penalty under this notice

3. The penalty for the alleged offence under this notice is **\$9,000.00** for an individual or **\$45,000.00** for a body corporate.

The applicable penalty in this notice is **\$45,000.00**.

This penalty can be paid by (see attached invoice for payment options).

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the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):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) any liability you have for the alleged contravention of the provision will be discharged; and
  - (b) no civil proceedings will be brought against you by the Commonwealth for the alleged contravention; and;
  - (c) you will not be taken to have admitted guilt in respect of the alleged contravention; and
  - (d) you will not be taken to have been found guilty of the alleged contravention.

#### **Consequences of failure to pay penalty under this notice**

5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, civil proceedings may be brought against you for the alleged contravention.
6. The maximum penalty that a court may impose for this offence is **2,000** penalty units for an individual and **10,000** penalty units for a body corporate.

#### **Time for payment**

7. The time for payment is:
  - (a) within 28 days after the day on which the notice is given to you; or
  - (b) if you apply for a further period of time in which to pay the penalty, and the application is granted — within the further period allowed; or
  - (c) if you apply for a further period of time in which to pay the penalty, and the application is refused or is taken to have been refused — within the later of:
    - (i) 7 days after:
      - (A) the day you receive the notice of refusal; or
      - (B) the application is taken to have been refused; and
    - (ii) 28 days after the day on which the infringement notice was given to you; or
  - (d) if you apply for permission to pay the penalty by instalments, and the permission is granted — in accordance with the permission; or
  - (e) if you apply for permission to pay the penalty by instalments, and the permission is refused or is taken to have been refused — within the later of:
    - (i) 7 days after:
      - (A) the day you receive the notice of refusal; or
      - (B) the application is taken to have been refused; and
    - (ii) 28 days after the day on which the infringement notice was given to you; or
  - (f) if you apply for the notice to be withdrawn, and the application is refused or is taken to have been refused — within the later of:
    - (i) 7 days after:

- (A) the day you receive the notice of refusal; or
  - (B) the application is taken to have been refused; and
- (ii) 28 days after the day on which the infringement notice was given to you.

#### **Further penalty for continuing offence**

8. If the alleged contravention of the civil penalty provision continues beyond 15 September 2015 a further penalty may be imposed even if the penalty imposed by this notice is paid.

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

9. Within 28 days after you receive this notice, you may apply to the **Credit Infringement Notice Officer** to have this notice withdrawn.

*(the Credit Infringement Notice Officer is the nominated person)*

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

10. Within 28 days after you receive this notice, you may apply to the nominated person for a further period of up to 28 days in which to pay the penalty under this notice.

#### **Applying to pay the penalty under this notice by instalments**

11. Within 28 days after you receive this notice, you may apply to the nominated person for permission to pay the penalty under this notice by instalments.

#### **Requirements for applications**

12. An application to have this notice withdrawn, or for more time to pay the penalty under this notice, or for permission to pay the penalty under this notice by instalments:
- (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) for an application for permission to pay the penalty under this notice by instalments — include the proposed amount and frequency of instalments; and
  - (e) may be made by forwarding your application to:

**Credit Infringement Notice Officer**

**Australian Securities and Investments Commission**

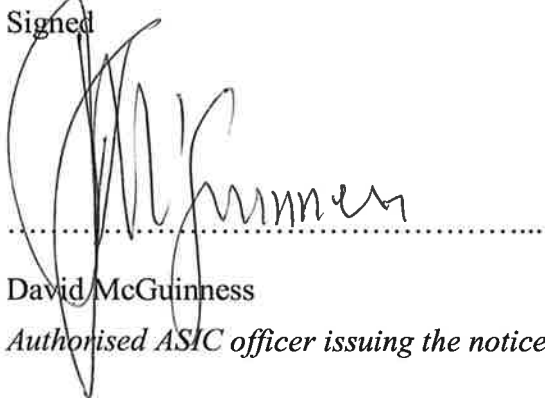
**GPO Box 9827**

**Melbourne VIC 3001**

**or by facsimile: (03) 9280 3444**

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

Signed

A handwritten signature in black ink, appearing to read 'David McGuinness', is written over a horizontal dotted line. The signature is somewhat stylized and overlaps the line.

David McGuinness

*Authorised ASIC officer issuing the notice*



ASIC

Australian Securities & Investments Commission

**To:** Commonwealth Bank of Australia  
ACN 123 123 124

**Address:** Commonwealth Bank of Australia  
Ground Floor Tower 1  
201 Sussex Street  
SYDNEY NSW 2000

Level 5, 100 Market Street,  
Sydney NSW 2000  
GPO Box 9827, Sydney NSW 2001  
DX 653 Sydney

Telephone: +61 2 9911 2000  
Facsimile: +61 2 9911 2414  
www.asic.gov.au

**Infringement Notice** S01863987  
**Unique Identification**  
**Code:**  
**Account Number:** 66123123124  
**Issue Date:** 16/08/2016

INVOICE

**Infringement Notice Penalty \$45,000.00**

This invoice is issued for payment of the penalty under infringement notice S01863987

To stop further action being taken in relation to the alleged offence/ civil penalty contravention described in the infringement notice, ensure payment of the penalty is made within 28 days of receipt of the infringement notice

For assistance, contact Helen Hasek on (02) 9911 5714

This notice may not include all monies owed to ASIC.  
Not Subject to GST, (Treasurer's Determination Exempt Taxes, Fees and Charges).



**Payment Slip**

**Recipient:** Commonwealth Bank of Australia

**Account Number:** 66123123124

**Due this notice:** \$45,000.00

**PAYMENT OPTIONS**



**Billpay Code: 8929**  
**Ref: 669123123124242**

**Australia Post,**  
Present this payment slip. Pay by cash, cheque or EFTPOS.

**Phone**  
Call 13 18 16 to pay by MasterCard or Visa

**Online**  
Go to postbillpay.com.au to pay by MasterCard or Visa

**Electronic Funds Transfer**  
ASIC's account details are:  
BANK: Reserve Bank of Australia  
BSB: 093003  
BANK ACCOUNT: 317118  
ACCOUNT NAME: ASIC Collectors rec.Acc.  
REFERENCE: 6691231231242



**Biller Code: 17301**  
**Ref: 6691231231242**

Use these details for phone or internet banking. Call your financial institution to pay from your cheque, savings or credit card account. For info; www.bpay.com.au

**Mail**  
Mail this payment slip and cheque (do not staple) to ASIC,  
Locked Bag 5000, Gippsland Mail Centre VIC 3841

Aus Post Barcode: \*814 129 0006691231231242 42