

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 19/07/2018 12:47:20 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: NSD1030/2018  
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v  
WESTPAC BANKING CORPORATION ACN 007 457 141  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 19/07/2018 12:47:23 PM AEST

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 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.

## Statement of claim

(Filed pursuant to the orders of the Honourable Justice Wigney made on 19 July 2018)



No. NSD1030 of 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

### 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

#### The parties

1. The plaintiff (**ASIC**) is and at all material times was:
  - (a) a body corporate under s 8(1)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**); and
  - (b) entitled to commence and maintain these proceedings in its corporate name under s 8(1)(d) of the ASIC Act.
  
2. The defendant (**Westpac**) is and at all material times was:
  - (a) the holder of an Australian Financial Securities Licence number 233714 (**Licence**); and
  - (b) carrying on a financial services business in Australia within the meaning of s 911D of the *Corporations Act 2001* (Cth) (the **Act**).

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

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(include state and postcode)

## Sudhir Sinha

3. Sudhir Sinha (**Mr Sinha**) was at all material times until 10 November 2014:
- (a) an employee of Westpac Financial Consultants Limited (**WFC**), a subsidiary of Westpac;
  - (b) employed by WFC in the role of Senior Financial Planner and seconded to Westpac;
  - (c) engaged in providing to clients, from time to time, financial services within the meaning of s 766A(1) of the Act (**Financial Services**), including financial product advice within the meaning of s 766B(1) of the Act (**Financial Product Advice**);
  - (d) designated as a “Partner” operating in the “Partnership” business model operated by Westpac (**Westpac Partnership Model**);
  - (e) as a “Partner” operating in the Westpac Partnership Model, the head of a group of people, known within Westpac as a “partnership”, consisting of himself, one or more Senior Financial Planners or Assistant Financial Planners, and one or more Paraplanners or Planner Assistants (together, **Sinha Partnership Employees**), all of whom were employees of Westpac and/or WFC (the **Sinha Partnership**);
  - (f) in the premises of all, some or any of the facts pleaded in subparagraphs (a) to (e) above, a “representative” of Westpac within the meaning of s 910A(a) of the Act (a **Representative**);
  - (g) not a Representative of any person who is the holder of an Australian Financial Services Licence other than Westpac; and
  - (h) not an “authorised representative” of Westpac as defined in s 761A of the Act for the purposes of Chapter 7 of the Act.

## Sinha Partnership revenue model

4. At all material times:
- (a) Mr Sinha’s remuneration was partly fixed and partly variable;
  - (b) to the extent that Mr Sinha’s remuneration was variable, it included moneys payable to him pursuant to the Westpac Partnership Model;
  - (c) pursuant to the Westpac Partnership Model:
    - (i) the pay of the Sinha Partnership Employees and the upfront costs associated with the Sinha Partnership were payable by Westpac, alternatively, WFC;

- (ii) the revenue generated by Sinha Partnership Employees was paid to Westpac;
- (iii) a portion of that revenue ranging from 48% to 53% was allocated to the Sinha Partnership (the **Sinha Partnership Revenue Allocation**);
- (iv) the remuneration costs of all Sinha Partnership Employees other than Mr Sinha, the fixed remuneration of Mr Sinha, certain other administrative, service and overhead costs incurred by the Sinha Partnership, and a "partnership reserve" were deducted from the Sinha Partnership Revenue Allocation (the **Sinha Partnership Deductions**); and
- (v) the Sinha Partnership Revenue Allocation for a monthly period less the Sinha Partnership Deductions for that period was an amount of money payable to Mr Sinha as a "partner payout" (**Sinha Partner Pay**).

### **Mr Sinha's compliance history**

5. At all material times up to approximately November 2014 Westpac undertook, or purported to undertake, a review from time to time of the work product and performance of its Representatives, including Mr Sinha.

#### **Particulars**

- (i) The compliance reviews were undertaken on an annual basis, with more frequent reviews occurring depending on the risk category assigned to Mr Sinha, as determined at his previous compliance review.
- (ii) Westpac response to notice of direction under s912C(1) of the Act dated 13 February 2017 (SUD.1009.0001.0003).

6. As part of this review process, Mr Sinha was required by Westpac to complete various remedial action plans to address identified areas of concern and shortcomings in 2002, 2007, 2008, 2009 and 2010.

#### **Particulars**

Remedial Action Plans dated 20 May 2002 (WBC.003.003.0073), 17 October 2007 (WBC.003.003.0129), 13 November 2008 (WBC.003.002.0314), 4 May 2009 (WBC.003.003.0155) and 22 February 2010 (WBC.003.002.0496).

7. From 2004 to 2009, Mr Sinha underwent compliance audits on 8 occasions. He was rated "Effective" on 3 of those occasions but "Requires Improvement" or "Qualified" on 5 occasions, as follows:

- (a) in 2004, Mr Sinha received a "Requires Improvement" compliance rating;
- (b) in 2005, Mr Sinha received an "Effective" compliance rating;

- (c) in 2006, Mr Sinha initially received a "Requires Improvement" compliance rating, which was subsequently amended to "Qualified";
- (d) in 2007, Mr Sinha underwent 2 compliance audits – for the first audit he received a "Requires Improvement" compliance rating, and for the second audit he initially received a "Qualified" compliance rating, which was subsequently amended to "Effective";
- (e) in 2008, Mr Sinha initially received a "Qualified" compliance rating, which was subsequently amended to "Effective"; and
- (f) in 2009, Mr Sinha underwent 2 compliance audits – for the first audit he received a "Requires Improvement" compliance rating, and for the second audit he received a "Qualified" compliance rating.

#### **Particulars**

Compliance audits dated 16 September 2004 (WBC.003.002.0319), 30 August 2005 (WBC.003.002.0335), 9 March 2006 (WBC.003.003.0184; WBC.003.003.0180), 19 March 2007 (WBC.003.002.0301), 3 October 2007 (WBC.003.002.0326; WBC.003.003.0123), 28 July 2008 (WBC.401.005.0042; WBC.003.002.0314); 9 February 2009 (WBC.003.003.0155); and 24 August 2009 (WBC.003.002.0500).

8. Common issues identified by Westpac in the above audits included:
  - (a) failure to identify client circumstances and objectives;
  - (b) failure to address alternative strategies;
  - (c) lack of disclosure;
  - (d) poor record keeping; and
  - (e) failure to ensure advice and/or products were appropriate.
  
9. In 2010, Westpac carried out an investigation into Mr Sinha following whistle-blower complaints (**2010 Investigation**) which relevantly determined that, of the sample files reviewed:
  - (a) 100 per cent had the summary of costs table removed from the document;
  - (b) 8 per cent contained inappropriate advice by Mr Sinha;
  - (c) 42 per cent disclosed no reasonable basis for the advice provided by Mr Sinha;
  - (d) 12.5 per cent contained under-disclosure by Mr Sinha;
  - (e) 28 per cent contained blank forms signed by clients.

**Particulars**

- (i) Memo dated 28 March 2010 titled "Sudhir Sinha File Reviews" (WBC.003.003.0010).
- (ii) Emails between Mark Spiers, Neville Price and others dated 7 April 2010 (WBC.402.039.0117).
- (iii) Memo dated 14 April 2010 titled "Final Report – Sudhir Sinha" (WBC.003.003.0011).

10. The 2010 Investigation initially concluded, through Westpac senior management, including its Head of Advice, that the concerns identified were sufficiently serious so as to warrant Mr Sinha's termination, however, at the conclusion of the investigation, Westpac determined that it did not have grounds to terminate Mr Sinha's employment.

**Particulars**

Emails between Mark Spiers, Neville Price and others dated 1 April 2010 (WBC.402.034.0685) and 7 April 2010 (WBC.402.039.0117).

11. Following the 2010 Investigation, Westpac increased the compliance risk rating for Mr Sinha to High Risk, applied remuneration consequences and subjected Mr Sinha to another Remedial Action Plan as well as Westpac's pre-vetting process.

**Particulars**

- (i) Remedial Action Plan dated 19 April 2010 (WBC.003.003.0003) and email dated 29 April 2010 outlining the actions required (WBC.402.035.0424).
- (ii) Memo dated 14 April 2010 titled "Final Report – Sudhir Sinha" (WBC.003.003.0011).

12. Whilst subjected to pre-vetting of his advices in the period May to July 2010, only 6 out of 17 advices submitted by Mr Sinha for pre-vetting were rated "Effective", with 3 rated "Qualified" and 8 rated "Requires Improvement".

**Particulars**

Westpac response to notice of direction under s912C(1) of the Act dated 13 February 2017 (SUD.1009.0001.0003).

13. On 7 July 2010, a pre-vetting representative of Westpac stated that Mr Sinha was "still grappling with legal and business requirements" and that it would be "premature to release him from pre-vet".

**Particulars**

Email from Lenny Briffa to Mike Arnold dated 7 July 2010 (WBC.402.038.0443).

14. Notwithstanding the statement by the pre-vetting representative referred to in paragraph 13 above, Mr Sinha was released from pre-vetting on or about 13 July 2010.
15. On 4 May 2011, Westpac completed a compliance review of Mr Sinha and rated him "Effective". However, the audit also:
- (a) identified a failure to complete a relevant checklist;
  - (b) recommended file noting how and when research and analysis was conducted;
  - (c) recommended care be taken to ensure that ownership of assets is properly recorded; and
  - (d) inconsistencies in recording of client instructions with respect to insurance cover.

**Particulars**

Compliance audits dated 4 May 2011 (WBC.402.035.0361; WBC.402.035.0855)

16. On 17 May 2012, Westpac completed a compliance review of Mr Sinha and rated him "Effective". However, the audit also:
- (a) identified failures to have clients complete and sign risk profile sections;
  - (b) identified failures to include specific product features and warnings; and
  - (c) identified failure to adhere to Westpac's policies on 'execution only' service by charging in excess of the allowable fees.

**Particulars**

Compliance audit dated 17 May 2012 (WBC.003.002.0484)

17. On 29 August 2013, Westpac completed a compliance review of Mr Sinha and rated him "Effective". However, the audit also:
- (a) identified missing documentation in relation to a customer;
  - (b) identified oversights in relation to the scope and subject matter of advice in relation to a customer and step 5 of the "Best Interests Duty";
  - (c) identified a paraplanning error in the disclosure of advice fees and that trauma insurance was not recommended to a client without adequate explanation as to why it was not recommended;
  - (d) provided a Statement of Advice to a customer that was not consistent with the research on file for that customer;

- (e) identified that the scope of advice in one Statement of Advice appeared to have been cut and paste from a different file because the names and details referenced did not relate to the relevant customers;
- (f) identified repeated failures to identify the scope and subject matter of the advice;
- (g) identified a failure to consider alternative strategies for customers.

**Particulars**

Compliance audit dated 29 August 2013 (WBC.003.003.0133).

18. On 25 September 2014, Westpac completed a compliance review of Mr Sinha and rated him "Requires Improvement".

**Particulars**

- (i) Compliance audit dated 25 September 2014 (WBC.003.002.0344).
- (ii) Westpac response to notice of direction under s912C(1) of the Act dated 13 February 2017 (SUD.1009.0001.0003).

19. By reason of the matters referred to in paragraphs 5 to 16 above (**Compliance History**), as at 1 July 2013, and continuing, Westpac knew, or ought reasonably to have known, that there was a significant risk that Mr Sinha would not comply with the Best Interests Obligations contained Part 7.7A, Division 2 of the Act on and from that date.

20. Notwithstanding:

- (a) that Mr Sinha was subject to pre-vetting of his advices in the period May to July 2010 as identified in paragraphs 11 to 13 above; and
- (b) the deficiencies identified in the compliance reviews for 2011, 2012 and 2013 referred to in paragraphs 15 – 17 above,

Mr Sinha received "High Achievement" performance review ratings by Westpac in each September for the years 2010-2013.

**Particulars**

Westpac response to notice of direction under s912C(1) of the Act dated 13 February 2017 (SUD.1009.0001.0003).

21. Further, notwithstanding the Compliance History and the matters pleaded in paragraphs 17 and 18, Westpac permitted Mr Sinha to continue providing financial advice to Westpac customers until November 2014, including the specific advices referred to at paragraphs 22 to 137 herein.



## The AA Advice

22. On or about 6 June 2013, Mr Sinha had a meeting with Mr AA and Mrs AA (the **6 June 2013 Meeting**) at which it was decided that Mr Sinha would provide Mr and Mrs AA with financial advice.
23. At the time of the 6 June 2013 Meeting, Mrs AA had the benefit of:
  - (a) funds in accounts she held within a BT Business Super 1 superannuation (**super**) fund, a BT Business Super 2 super fund and an AXA Tailored Super fund (together, the **Existing AA Super Funds**); and
  - (b) a Westpac term life insurance policy and two BT business super term life and total and permanent disability (**TPD**) insurance policies (together, the **Existing AA Life Insurance Policies**).
24. On or about 2 July 2013, Mr Sinha provided to Mr and Mrs AA a statement of advice (**SOA**) dated 2 July 2013 (the **AA SOA**).
25. Included in the AA SOA were the following recommendations (together, the **AA Recommendations**):
  - (a) a recommendation that Mrs AA consolidate her super by rolling over the funds in accounts held with the Existing AA Super Funds into a BT Foundation Portfolio SuperWrap super fund (the **Recommended AA Super Fund**) (the **AA Super Rollover Recommendation**);
  - (b) a recommendation that Mrs AA:
    - (i) take out, within the Recommended Super Fund, term life insurance with cover of \$750,000 under a BT Term Life Protection Plan (the **Recommended AA Life Insurance Policy**) to be held within the Recommended AA Super Fund; and
    - (ii) once that insurance was established, cancel the Existing AA Life Insurance Policies,

(the **AA Life Insurance Recommendation**); and
  - (c) a recommendation that Mr AA take out income protection insurance, with a monthly benefit of \$9,380 and a 5-year benefit period, under a BT income protection plan (the **Recommended AA IP Insurance Policy**) to be held within his existing BT SuperWrap super fund account (the **AA IP Insurance Recommendation**).
26. The AA SOA constituted a report of the AA Recommendations for the purposes of s 766B(1) of the Act.

27. Each of Mrs AA's interests in each of the Existing AA Super Funds was a "financial product" within the meaning of Part 7.1, Division 3 of the Act (**Financial Product**).

**Particulars**

ASIC relies on s 763A(1)(a) and s 764A(1)(g) of the Act.

28. Mrs AA's interest in the Recommended Super Fund, if the AA Super Rollover Recommendation were implemented, would be a Financial Product.

**Particulars**

ASIC relies on s 763A(1)(a) and s 764A(1)(g) of the Act.

29. Each of the Existing AA Life Insurance Policies was a Financial Product.

**Particulars**

ASIC relies on s 763A(1)(b) and s 764A(1)(e) or (f) of the Act.

30. The Recommended AA Life Insurance Policy, if acquired by Mrs AA, would be a Financial Product.

**Particulars**

ASIC relies on s 763A(1)(b) and s 764A(1)(e) or (f) of the Act.

31. The Recommended AA IP Policy, if acquired by Mr AA, would be a Financial Product.

**Particulars**

ASIC relies on s 763A(1)(b) and s 764A(1)(d), (e) or (f) of the Act.

32. By reason of the matters in paragraph 25(a) above, and paragraphs 27 and/or 28 above, the AA Super Rollover Recommendation was Financial Product Advice.

33. By reason of the matters in paragraph 25(b) above, and paragraphs 29 and/or 30 above, the AA Life Insurance Recommendation was Financial Product Advice.

34. By reason of the matters in paragraphs 25(c) and 31 above, the AA IP Insurance Recommendation was Financial Product Advice.

35. By reason of the matters in paragraph 26, and all, some or any of the matters in paragraphs 32, 33 and 34 above, the AA SOA was Financial Product Advice.

36. The advice constituted by each of the AA Recommendations and, further or alternatively, the AA SOA (the **AA Advice**) was given or directed to Mr and Mrs AA in circumstances where:

- (a) Mr Sinha had considered one or more of Mr and Mrs AA's objectives, financial situation and needs (otherwise than for the purposes of compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) or with regulations or AML/CTF Rules, under that Act); or
- (b) a reasonable person might expect Mr Sinha to have considered one or more of those matters.

### Particulars

In relation to (a) and (b), ASIC relies on the following matters:

- (A) The AA SOA was provided to Mr and Mrs AA as a result of the 6 June 2013 Meeting in which they disclosed to Mr Sinha various information about, and discussed with him, their objectives, financial situation and needs.
  - (B) The AA SOA was provided under cover of a letter that contained the statement "*This Statement of Advice (SoA), or financial plan, is a record of my recommendations and how they can help meet your objectives, financial situation and needs*".
  - (C) The Executive Summary on page 3 of the AA SOA contained the statement "*The following is a summary of my recommendations based on your objectives, financial situation and needs (also referred to in this SoA as the 'relevant circumstances')*".
  - (D) Page 5 of the AA SOA contains the statement "*In making my recommendations to you, I have identified your relevant circumstances, clarified the subject matter and scope of advice to be provided, and considered the appropriateness of my recommendations and any alternative strategies to achieve your objectives*".
  - (E) The AA SOA purports to set out information about Mr and Mrs AA's objectives and needs, including in the section headed "What's Important to You".
  - (F) The AA SOA purports to set out information about Mr and Mrs AA's financial situation, including in the section headed "You and Your Money".
37. In the premises of paragraphs 32, 33, 34 and/or 35 above, and paragraph 36 above, the AA Advice was "personal advice" within the meaning of s 766B(3) of the Act (**Personal Advice**).

38. The AA Advice was a Financial Service provided to each of Mr and Mrs AA as a “retail client” within the meaning of s 761G of the Act (a **Retail Client**).
39. In the premises of paragraphs 37 and 38 above, Division 2 of Part 7.7A of the Act applied in relation to the provision of the AA Advice to Mr and Mrs AA.

**Particulars**

Section 961(1) of the Act.

Contravention of s 961B(1) of the Act

40. In contravention of s 961B(1) of the Act, Mr Sinha did not act in the best interests of Mr and Mrs AA in relation to the AA Advice.

**Particulars**

- (i) Mr Sinha failed to do all or any of the following things in relation to the AA Advice:
- (A) identify the objectives, financial situation and needs of Mr and Mrs AA that were disclosed to Mr Sinha by Mr and Mrs AA through instructions, as contemplated by s 961B(2)(a) of the Act;
- (B) identify:
- (1) the subject matter of the advice that had been sought by Mr and Mrs AA (whether explicitly or implicitly), as contemplated by s 961B(2)(b)(i) of the Act; or
- (2) the objectives, financial situation and needs of Mr and Mrs AA respectively that would reasonably be considered as relevant to the advice sought on that subject matter (**Mr and Mrs AA’s Respective Relevant Circumstances**), as contemplated by s 961B(2)(b)(ii) of the Act;
- (C) in circumstances where it was reasonably apparent that information relating to Mr and Mrs AA’s Respective Relevant Circumstances was incomplete or inaccurate, make reasonable inquiries to obtain complete and accurate information, as contemplated by s 961B(2)(c) of the Act;
- (D) in circumstances where, in considering the subject matter of the advice sought by Mr and Mrs AA, it was reasonable to consider recommending one or more financial products:

- (1) conduct a reasonable investigation into the financial products that might achieve those of the objectives and meet those of the needs of Mr and Mrs AA that would reasonably be considered as relevant to the advice on the subject matter, as contemplated by s 961B(2)(e)(i) of the Act; and
  - (2) assess the information gathered in the investigation, as contemplated by s 96B1B(2)(e)(ii) of the Act;
  - (E) base all judgments in advising Mr and Mrs AA on Mr and Mrs AA's Respective Relevant Circumstances, as contemplated by s 961B(2)(f) of the Act.
- (ii) Further or alternatively, ASIC repeats the particulars to paragraph 41 below.

#### Contravention of s 961G of the Act

41. In contravention of s 961G of the Act, Mr Sinha provided the AA Advice to Mr and Mrs AA in circumstances where it would not have been reasonable to conclude that the advice was appropriate to each of them, had Mr Sinha satisfied the duty under s 961B of the Act to act in the best interests of each such client.

#### **Particulars**

- (i) As to the AA Super Rollover Recommendation:
  - (A) the recommendation was made without conducting a proper review of the Existing AA Super Funds or a proper comparison between them and the Recommended AA Super Fund;
  - (B) the recommendation misleadingly implied that such a review and comparison had been conducted by Mr Sinha;
  - (C) it would have been cheaper to roll over all Mrs AA's super into her existing AXA Tailored Super fund than rolling over all her super into the Recommended AA Super Fund as recommended;
  - (D) implementing the recommendation would result in Mrs AA holding an amount of cash that substantially exceeded the acceptable range for that asset class according to the benchmark asset allocation for her investment risk profile of "high growth".
- (ii) As to the AA Life Insurance Recommendation:

- (A) the recommendation was made without conducting a proper review of the Existing AA Life Insurance Policies or a proper comparison between them and the Recommended AA Life Insurance Policy;
  - (B) the recommendation misleadingly implied that such a review and comparison had been conducted by Mr Sinha;
  - (C) the Recommended AA Life Insurance Policy had a higher annual premium than the combined premiums of the Existing AA Life Insurance Policies, and provided less term life cover than those policies combined and (unlike those policies) no TPD cover;
  - (D) there was an intrinsic benefit in retaining the Existing AA Life Insurance Policies, and a risk in replacing them with the Recommended Life Insurance Policy as advised, considering the application of s 29(3) of the *Insurance Contracts Act 1984* (Cth) (the **IC Act**) to new life insurance contracts within the first 3 years after the contract being entered into, and the advice did not take account of that benefit and risk;
  - (E) the AA SOA failed to disclose or properly disclose to Mrs AA the effect of s 29(3) of the IC Act or the risk and benefit referred to in paragraph (D) above;
  - (F) the AA SOA did not properly advise Mrs AA on the appropriateness of maintaining \$750,000 worth of term life insurance cover as recommended;
  - (G) the AA SOA did not include proper advice to Mrs AA on the advantages and disadvantages of funding the Recommended AA Life Insurance Policy through super or, specifically, that doing so would erode her super savings.
- (iii) As to the AA IP Insurance Recommendation:
- (A) the Recommended AA IP Insurance Policy for Mr AA provided only a 5-year benefit period, whereas he required a benefit period to age 65;
  - (B) the AA SOA did not include advice to Mr AA about the advantages and disadvantages of obtaining income protection insurance with a benefit period of only 5 years (rather than to age 65) and of holding it inside super;

- (C) Mr AA had sufficient cash flow to fund income protection insurance premiums outside super and would have obtained a greater tax advantage by holding that insurance outside super because the premiums would then have been deductible at his highest marginal tax rate rather than the lower concessional tax rate applicable to income within super.
- (iv) As to the AA Advice generally, the AA SOA did not meaningfully or adequately consider any alternative strategies to the courses of action it recommended, or adequately set out the advantages and disadvantages of each.
- (v) Further particulars will be provided after services of evidence.

#### Contravention of s 961J of the Act

42. Mr and Mrs AA had:
- (a) an interest in Mr Sinha acting in their best interests in relation to the advice that he was to provide to them; and
  - (b) an interest in that advice being appropriate to them in their circumstances.
43. Westpac, alternatively an associate within the meaning of s 11 and/or s 13 of the Act (an **Associate**) of Westpac, had a pecuniary interest in the AA Super Rollover Recommendation being implemented.

#### **Particulars**

- (i) If the AA Super Rollover Recommendation were implemented:
    - (A) an implementation fee estimated at \$833 would be payable to Westpac, alternatively an Associate of Westpac, as outlined on page 35 of the AA SOA (the **AA Implementation Fee**); and
    - (B) product fees and charges would be payable to Westpac, alternatively an Associate of Westpac, in respect of the Recommended AA Super Fund, as outlined on pages 37-38 of the AA SOA.
  - (ii) Further particulars will be provided after the service of evidence.
44. Mr Sinha had a pecuniary interest in the AA Super Rollover Recommendation being implemented.

**Particulars**

- (i) If the AA Super Rollover Recommendation were implemented, a portion of the AA Implementation Fee would be liable to be added to the Sinha Partnership Revenue Allocation, which would thereby increase the potential Sinha Partner Pay for the period in which it was allocated as pleaded in paragraph 4 above.
- (ii) Further particulars will be provided after the service of evidence.

45. Westpac, alternatively an Associate of Westpac, had a pecuniary interest in the AA Life Insurance Recommendation being implemented.

**Particulars**

- (i) If the AA Life Insurance Recommendation were implemented, an initial commission estimated at \$1,441, and ongoing commissions estimated at \$131 per annum for the life of the recommended life insurance policy, would be payable to Westpac, alternatively an Associate of Westpac, as outlined on pages 38-39 of the AA SOA (the **AA Life Insurance Commissions**).
- (ii) Further particulars will be provided after the service of evidence.

46. Mr Sinha had a pecuniary interest in the AA Life Insurance Recommendation being implemented.

**Particulars**

- (i) If the AA Life Insurance Recommendation were implemented, a portion of the AA Life Insurance Commissions would be liable to be added to the Sinha Partnership Revenue Allocation, which would thereby increase the potential Sinha Partner Pay for the period in which it was allocated as pleaded in paragraph 4 above.
- (ii) Further particulars will be provided after the service of evidence.

47. Westpac, alternatively an Associate of Westpac, had a pecuniary interest in the AA IP Insurance Recommendation being implemented.

**Particulars**

- (i) If the AA IP Insurance Recommendation were implemented, an initial commission estimated at \$4,253, and ongoing commissions estimated at \$387 per annum for the life of the recommended income protection insurance policy, would be payable to Westpac, alternatively an Associate



of Westpac, as outlined on pages 38-39 of the AA SOA (the **AA IP Insurance Commissions**).

(ii) Further particulars will be provided after the service of evidence.

48. Mr Sinha had a pecuniary interest in the AA IP Insurance Recommendation being implemented.

**Particulars**

(i) If the AA IP Insurance Recommendation were implemented, a portion of the AA IP Insurance Commissions would be liable to be added to the Sinha Partnership Revenue Allocation, which would thereby increase the potential Sinha Partner Pay for the period in which it was allocated as pleaded in paragraph 4 above.

(ii) Further particulars will be provided after the service of evidence.

49. In circumstances where:

- (a) Mr and Mrs AA had the interests pleaded in paragraph 42 above; and
- (b) Westpac, alternatively an Associate of Westpac, had all, some or any of the pecuniary interests in the implementation of aspects of the AA Advice pleaded in paragraphs 43, 45 and 47 above; and
- (c) further or alternatively to (b) above, Mr Sinha had all, some or any of the pecuniary interests in the implementation of aspects of the AA Advice pleaded in paragraphs 44, 46 and 48 above,

there was a conflict between (on the one hand) the interests of Mr and Mrs AA and (on the other hand) the interests of:

- (d) Westpac;
- (e) alternatively to (d) above, an Associate of Westpac; and
- (f) further or alternatively to (d) and (e) above, Mr Sinha.

50. In the circumstances pleaded in paragraph 49 above, Mr Sinha knew or reasonably ought to have known that there was the conflict of interests pleaded in that paragraph.

51. In circumstances where:

- (a) Mr Sinha did not act in Mr and Mrs AA's best interests in relation to the AA Advice as pleaded in paragraph 40 above; and

- (b) further or alternatively, the AA Advice was not appropriate to each of Mr AA and Mrs AA as pleaded in paragraph 41 above,

Mr Sinha did not give priority to the interests of Mr and Mrs AA in giving the AA Advice.

52. In the premises of the facts pleaded in paragraphs 50 and 51 above, Mr Sinha contravened s 961J in giving the AA Advice.

### The BB Advice

53. On or about 8 November 2013, Mr Sinha had a meeting with Mr BB and Mrs BB (the **8 November 2013 Meeting**) at which it was decided that Mr Sinha would provide Mr and Mrs BB with financial advice.
54. At the time of the 8 November 2013 Meeting:
- (a) Mr BB had funds in a Rest super fund (the **Mr BB's Existing Super Fund**);
  - (b) Mrs BB had funds in a TWU super fund (the **Mrs BB's Existing Super Fund**);
  - (c) Mr BB held a term life and TPD insurance policy within Mr BB's Existing Super Fund (the **Mr BB's Existing Life Insurance Policy**); and
  - (d) Mrs BB held a term life and TPD insurance policy within Mrs BB's Existing Super Fund (the **Mrs BB's Existing Life Insurance Policy**).
55. On or about 10 December 2013, Mr Sinha provided an SOA to Mr and Mrs BB dated 10 December 2013 (the **BB SOA**).
56. Included in the BB SOA were the following recommendations (together, the **BB Recommendations**):
- (a) a recommendation that Mr and Mrs BB establish a self-managed super fund (the **BB SMSF**) and, once established, roll over the money in Mr BB's Existing Super Fund and Mrs BB's Existing Super Fund (together, the **Existing BB Super Funds**) and redirect their super guarantee contributions, into the BB SMSF (the **BB SMSF Recommendation**);
  - (b) a recommendation that Mr BB salary sacrifice \$14,270, and that Mrs BB salary sacrifice \$3,000, per year into the BB SMSF (the **BB Salary Sacrifice Recommendation**);
  - (c) a recommendation that Mr and Mrs BB pursue a gearing strategy of having the BB SMSF borrow \$250,000 and purchase residential property worth \$400,000 (the **BB Loan and Property Purchase Recommendation**);
  - (d) a recommendation that Mr and Mrs BB:

- (i) each take out insurance under a BT Protection Plan with term life cover of \$445,000 in respect of his or her life (to be held in the name of the BB SMSF), TPD cover of \$445,000 in respect of his or her total and permanent disability (to be held in the name of the BB SMSF) and trauma cover in the amount of \$195,000 for each of them (to be held in his or her own name) (the **Recommended BB Life Insurance Policies**); and
- (ii) once those policies were established, cancel Mr BB's Existing Life Insurance Policy and Mrs BB's Existing Life Insurance Policy (together, the **Existing BB Life Insurance Policies**),

(the **BB Life Insurance Recommendation**); and

- (e) a recommendation that each of Mr and Mrs BB take out insurance under a BT Protection Plan with income protection cover of \$8,450 per month for Mr BB and \$2,920 per month for Mrs BB (the **Recommended BB IP Insurance Policies**) (the **BB IP Insurance Recommendation**).

57. The BB SOA constituted a report of the BB Recommendations for the purposes of s 766B(1) of the Act.

58. Each of Mr and Mrs BB's respective interests in the Existing BB Super Funds was a Financial Product.

**Particulars**

ASIC relies on s 763A(1)(a) and s 764A(1)(g) of the Act.

59. Each of Mr and Mrs BB's respective interests in the BB SMSF, once the BB SMSF was established, would be a Financial Product.

**Particulars**

ASIC relies on s 763A(1)(a) and s 764A(1)(g) of the Act.

60. Each of the Existing BB Life Insurance Policies was a Financial Product.

**Particulars**

ASIC relies on s 763A(1)(b) and s 764A(1)(e) or (f) of the Act.

61. Each of the Recommended BB Life Insurance Policies, if acquired by Mr and Mrs BB respectively, would be a Financial Product.

**Particulars**

ASIC relies on s 763A(1)(b) and s 764A(1)(e) or (f) of the Act.

62. Each of the Recommended BB IP Insurance Policies, if acquired by Mr and Mrs BB respectively, would be a Financial Product.

#### Particulars

ASIC relies on s 763A(1)(b) and s 764A(1)(d), (e) or (f) of the Act.

63. By reason of the matters in paragraph 56(a) above, and paragraphs 58 and/or 59 above, the BB SMSF Recommendation was Financial Product Advice.
64. By reason of the matters in paragraph 56(b) above, and paragraphs 58 and/or 59 above, the BB Salary Sacrifice Recommendation was Financial Product Advice.
65. By reason of the matters in paragraph 56(c) above, and paragraphs 58 and/or 59 above, the BB Loan and Property Purchase Recommendation was Financial Product Advice.
66. By reason of the matters in paragraph 56(d) above, and paragraphs 60 and/or 61 above, the BB Life Insurance Recommendation was Financial Product Advice.
67. By reason of the matters in paragraphs 56(e) and 62 above, the BB IP Insurance Recommendation was Financial Product Advice.
68. By reason of the matters in paragraph 57 above, and all, some or any of the matters in paragraphs 63 to 67 above, the BB SOA was Financial Product Advice.
69. The advice constituted by each of the BB Recommendations and, further or alternatively, the BB SOA (the **BB Advice**) was given or directed to Mr and Mrs BB in circumstances where:
- (a) Mr Sinha had considered one or more of Mr and Mrs BB's objectives, financial situation and needs (otherwise than for the purposes of compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) or with regulations or AML/CTF Rules, under that Act); or
  - (b) a reasonable person might expect Mr Sinha to have considered one or more of those matters.

#### Particulars

In relation to (a) and (b), ASIC relies on the following matters:

- (A) The BB SOA was provided to Mr and Mrs BB as a result of the 8 November 2013 Meeting in which they disclosed to Mr Sinha various information about, and discussed with him, their objectives, financial situation and needs.
- (B) The BB SOA was provided under cover of a letter that contained the statement "*This Statement of Advice (SoA), or financial plan, is*

*a record of my recommendations and how they can help meet your objectives, financial situation and needs”.*

- (C) The Executive Summary on page 3 of the BB SOA contained the statement *“The following is a summary of my recommendations based on your objectives, financial situation and needs (also referred to in this SoA as the ‘relevant circumstances’)”.*
- (D) Page 8 of the BB SOA contains the statement *“In making my recommendations to you, I have identified your relevant circumstances, clarified the subject matter and scope of advice to be provided, and considered the appropriateness of my recommendations and any alternative strategies to achieve your objectives”.*
- (E) The BB SOA purports to set out information about Mr and Mrs BB’s objectives and needs, including in the section headed *“What’s Important to You”.*
- (F) The BB SOA purports to set out information about Mr and Mrs BB’s financial situation, including in the section headed *“You and Your Money”.*

- 70. In the premises of paragraphs 63, 64, 65, 66, 67 and/or 68 above, and paragraph 69 above, each of the BB Recommendations and, further or alternatively, the BB SOA, was Personal Advice.
- 71. The BB Advice was a Financial Service provided to each of Mr and Mrs BB as a Retail Client.
- 72. In the premises of paragraphs 70 and 71 above, Division 2 of Part 7.7A of the Act applied in relation to the provision of the BB Advice to Mr and Mrs BB.

#### **Particulars**

Section 961(1) of the Act.

#### Contravention of s 961B(1) of the Act

- 73. In contravention of s 961B(1) of the Act, Mr Sinha did not act in the best interests of Mr and Mrs BB in relation to the BB Advice.

#### **Particulars**

- (i) Mr Sinha failed to do all or any of the following things in relation to the BB Advice:

- (A) identify the objectives, financial situation and needs of Mr and Mrs BB that were disclosed to Mr Sinha by Mr and Mrs BB through instructions, as contemplated by s 961B(2)(a) of the Act;
  - (B) identify:
    - (1) the subject matter of the advice that had been sought by Mr and Mrs BB (whether explicitly or implicitly), as contemplated by s 961B(2)(b)(i) of the Act; or
    - (2) the objectives, financial situation and needs of Mr and Mrs BB respectively that would reasonably be considered as relevant to the advice sought on that subject matter (**Mr and Mrs BB's Respective Relevant Circumstances**), as contemplated by s 961B(2)(b)(ii) of the Act;
  - (C) in circumstances where it was reasonably apparent that information relating to Mr and Mrs BB's Respective Relevant Circumstances was incomplete or inaccurate, make reasonable inquiries to obtain complete and accurate information, as contemplated by s 961B(2)(c) of the Act;
  - (D) in circumstances where, in considering the subject matter of the advice sought by Mr and Mrs BB, it was reasonable to consider recommending one or more financial products:
    - (1) conduct a reasonable investigation into the financial products that might achieve those of the objectives and meet those of the needs of Mr and Mrs BB that would reasonably be considered as relevant to the advice on the subject matter, as contemplated by s 961B(2)(e)(i) of the Act; and
    - (2) assess the information gathered in the investigation, as contemplated by s 961B(2)(e)(ii) of the Act;
  - (E) base all judgments in advising Mr and Mrs BB on Mr and Mrs BB's Respective Relevant Circumstances, as contemplated by s 961B(2)(f) of the Act.
- (ii) Further or alternatively, ASIC repeats the particulars to paragraph 74 below.

Contravention of s 961G of the Act

74. In contravention of s 961G of the Act, Mr Sinha provided the BB Advice to Mr and Mrs BB in circumstances where it would not have been reasonable to conclude that the advice was appropriate to each of them, had Mr Sinha satisfied the duty under s 961B of the Act to act in the best interests of each such client.

**Particulars**

- (i) As to the BB SMSF Recommendation, the BB Salary Sacrifice Recommendation and the BB Loan and Property Purchase Recommendation:
- (A) the recommendations were made without conducting a proper review of the Existing BB Super Funds, or a proper comparison between remaining invested in them and the strategy of setting up the BB SMSF and pursuing the attendant recommended rollovers, loan and property purchase;
  - (B) the recommendations misleadingly implied that such a review and comparison had been conducted by Mr Sinha;
  - (C) the BB SOA did not appropriately advise Mr and Mrs BB of the advantages and disadvantages of implementing the recommendations;
  - (D) the costs associated with implementing the BB SMSF Recommendation and the BB Loan and Property Purchase Recommendation (including one-off implementation costs) were high compared with the clients' existing super arrangements;
  - (E) purchasing an investment property worth \$400,000 with a loan of \$250,000 in accordance with the BB Loan and Property Purchase Recommendation would have yielded, on Mr Sinha's own assumptions in the BB SOA, a net compound return to Mr and Mrs BB over five years of less than 1% per annum;
  - (F) implementing the BB Loan and Property Purchase Recommendation would result in the value of the property assets held by Mr and Mrs BB being far in excess of the acceptable range for that asset class (and the value of assets in all other asset classes being far below the acceptable range) according to the benchmark asset allocation for their investment risk profile of "growth";

- (G) the BB SOA did not properly advise Mrs and Mrs BB on the appropriateness of the recommended salary sacrifices into the BB SMSF.
- (ii) As to the BB Life Insurance Recommendation:
- (A) the recommendation was made without conducting a proper review of the Existing BB Life Insurance Policies or a proper comparison between them and the Recommended BB Life Insurance Policies;
  - (B) the recommendation misleadingly implied that such a review and comparison had been conducted by Mr Sinha;
  - (C) the Recommended BB Life Insurance Policies were more expensive per dollar of cover than the Existing BB Life Insurance Policies;
  - (D) there was an intrinsic benefit in retaining the Existing BB Life Insurance Policies, and a risk in replacing them with new policies such as the Recommended BB Life Insurance Policies, considering the application of s 29(3) of the IC Act to new life insurance contracts within the first 3 years after the contract being entered into, and the BB Advice did not take account of that benefit and risk;
  - (E) the BB SOA failed to disclose or properly disclose to Mr and Mrs BB the effect of s 29(3) of the IC Act or the risk and benefit referred to in paragraph (D) above;
  - (F) if necessary, Mr and Mrs BB could have increased the level of cover held under the Existing BB Life Insurance Policies, which could have been achieved, while implementing the other aspects of the BB Advice, by maintaining a minimum balance in the Existing BB Super Funds to cover the premiums and fees in those funds;
  - (G) the recommendation that Mr and Mrs BB take out term life and TPD insurance cover in the same amounts as each other did not reflect their different income and earning capacities;
  - (H) the Recommended BB Life Insurance Policy for Mrs BB provided only a 5-year benefit period, whereas she required a benefit period to age 65;



- (I) the BB SOA did not properly advise Mrs and Mrs BB on the appropriateness of the levels of term life, TPD and trauma cover that it was recommended they take out.
- (iii) As to the BB IP Insurance Recommendation, the BB SOA did not properly advise Mrs and Mrs BB on the appropriateness of the levels of income protection insurance that it was recommended they take out.
- (iv) As to the BB Advice generally, the BB SOA did not meaningfully or adequately consider any alternative strategies to the courses of action it recommended, or set out the advantages and disadvantages of each.

Contravention of s 961J of the Act

- 75. Mr and Mrs BB had an interest in the advice contained in the BB SOA being appropriate to them, and in its content not being affected, or potentially affected, by any pecuniary interest of Westpac, Mr Sinha or any Associate of either of them.
- 76. Westpac, alternatively an Associate of Westpac, had a pecuniary interest in the BB SMSF Recommendation being implemented.

**Particulars**

- (i) If the BB SMSF Recommendation, alternatively the BB SMSF Recommendation and one or more of the other BB Recommendations, were implemented, an implementation fee of \$3,000 would be payable to Westpac, alternatively an Associate of Westpac, as outlined on page 47 of the BB SOA (the **BB Implementation Fee**).
  - (ii) Further particulars will be provided after the service of evidence.
77. Mr Sinha had a pecuniary interest in the BB SMSF Recommendation being implemented.

**Particulars**

- (i) If the BB SMSF Recommendation, alternatively the BB SMSF Recommendation and one or more of the other BB Recommendations, were implemented, a portion of the BB Implementation Fee would be liable to be added to the Sinha Partnership Revenue Allocation, which would thereby increase the potential Sinha Partner Pay for the period in which it was allocated as pleaded in paragraph 4 above.
- (ii) Further particulars will be provided after the service of evidence.

78. Westpac, alternatively an Associate of Westpac, had a pecuniary interest in the BB Life Insurance Recommendation being implemented.

**Particulars**

- (i) If the BB Life Insurance Recommendation were implemented:
- (A) initial commissions would be payable to Westpac, alternatively an Associate of Westpac, in amounts estimated at \$4,202 in respect of the Recommended BB Life Insurance Policy for Mr BB and \$3,115 in respect of the Recommended BB Life Insurance Policy for Mrs BB; and
- (B) ongoing commissions would be payable to Westpac, alternatively an Associate of Westpac, in amounts estimated at \$382 per annum for the life of the Recommended BB Life Insurance Policy for Mr BB and \$283 per annum for the life of the Recommended BB Life Insurance Policy for Mrs BB,

as outlined on pages 49-50 of the BB SOA (the **BB Life Insurance Commissions**).

- (ii) Further particulars will be provided after the service of evidence.

79. Mr Sinha had a pecuniary interest in the BB Life Insurance Recommendation being implemented.

**Particulars**

- (i) If the BB Life Insurance Recommendation were implemented, a portion of the BB Life Insurance Commissions, a portion of the BB Life Insurance Commissions would be liable to be added to the Sinha Partnership Revenue Allocation, which would thereby increase the potential Sinha Partner Pay for the period in which it was allocated as pleaded in paragraph 4 above.
- (ii) Further particulars will be provided after the service of evidence.

80. Westpac, alternatively an Associate of Westpac, had a pecuniary interest in the BB IP Insurance Recommendation being implemented.

**Particulars**

- (i) If the BB IP Insurance Recommendation were implemented:
- (A) initial commissions would be payable to Westpac, alternatively an Associate of Westpac, in amounts estimated at \$4,672 in respect

of the Recommended BB IP Insurance Policy for Mr BB and \$1,773 in respect of the Recommended BB IP Insurance Policy for Mrs BB; and

- (B) ongoing commissions would be payable to Westpac, alternatively an Associate of Westpac, in amounts estimated at \$425 per annum for the life of the Recommended BB IP Insurance Policy for Mr BB and \$161 per annum for the life of the Recommended BB IP Insurance Policy for Mrs BB,

as outlined on page 49 of the BB SOA (the **BB IP Insurance Commissions**).

- (ii) Further particulars will be provided after the service of evidence.

81. Mr Sinha had a pecuniary interest in the BB IP Insurance Recommendations being implemented.

**Particulars**

- (i) If the BB IP Insurance Recommendation were implemented, a portion of the BB IP Insurance Commissions would be liable to be added to the Sinha Partnership Revenue Allocation, which would thereby increase the potential Sinha Partner Pay for the period in which it was allocated as pleaded in paragraph 4 above.
- (ii) Further particulars will be provided after the service of evidence.

82. In circumstances where:

- (a) Mr and Mrs BB had the interest pleaded in paragraph 75 above; and
- (b) Westpac, alternatively an Associate of Westpac, had any or all of the pecuniary interests in the implementation of aspects of the BB Advice pleaded in paragraphs 76, 78 and 80 above; and
- (c) further or alternatively to (b) above, Mr Sinha had any or all of the pecuniary interests in the implementation of aspects of the BB Advice pleaded in paragraphs 77, 79 and 81 above,

there was a conflict between (on the one hand) the interests of Mr and Mrs BB and (on the other hand) the interests of:

- (d) Westpac;
- (e) alternatively to (d) above, an Associate of Westpac; and

further or alternatively to (d) and (e) above, Mr Sinha.

83. In the circumstances pleaded in paragraph 82 above, Mr Sinha knew or reasonably ought to have known that there was the conflict of interests pleaded in that paragraph.

84. In circumstances where:

- (a) Mr Sinha did not act in Mr and Mrs BB's best interests in relation to the BB Advice as pleaded in paragraph 73 above; and
- (b) further or alternatively, the BB Advice was not appropriate to each of Mr BB and Mrs BB as pleaded in paragraph 74 above,

Mr Sinha did not give priority to the interests of Mr and Mrs BB in giving the BB Advice.

85. In the premises of the facts pleaded in paragraphs 83 and 84 above, Mr Sinha contravened s 961J in giving the BB Advice.

#### **The CC Advice**

86. On or about 23 June 2014, Mr Sinha had a meeting with Mr CC and Mrs CC (the **23 June 2014 Meeting**) at which it was decided that Mr Sinha would provide financial advice to Mr and Mrs CC, alternatively to Mr CC.

87. At the time of the 23 June 2014 Meeting:

- (a) Mr CC had an AMP Super fund account (the **Existing AMP Account**), an LGSP WA Super transition-to-retirement (**TTR**) account (the **Existing LGSP TTR Account**) and an LGSP WA Super accumulation account (the **Existing LGSP Accumulation Account**) (together, the **Existing CC Accounts**); and
- (b) Mr and Mrs CC had a joint cash account (the **CC Cash Account**).

88. On or about 2 July 2014, Mr Sinha provided an SOA to Mr and Mrs CC dated 2 July 2014 (the **CC SOA**).

89. Included in the CC SOA were the following recommendations (together, the **CC Recommendations**):

- (a) recommendations that Mr CC:
  - (i) roll over all funds from the Existing AMP Account and the Existing LGSP TTR Account, and roll over some of the funds from the Existing LGSP Accumulation Account, into a new BT Foundation SuperWrap super fund account (the **Recommended CC Super Account**);
  - (ii) then, roll over the combined funds into a BT Foundation SuperWrap pension account (the **Recommended CC Pension Account**),

(the **CC Super Rollover Recommendations**);

- (b) a recommendation that Mr CC draw the maximum pension of \$32,800 per year from the Recommended CC Pension Account;
  - (c) a recommendation that Mr CC leave the Existing LGSP Accumulation Account open for future contributions and salary sacrifice \$18,000 per year into it; and
  - (d) a recommendation that Mr CC direct any surplus to the CC Cash Account.
90. The CC SOA constituted a report of the CC Recommendations for the purposes of s 766B(1) of the Act.
91. Each of the Existing CC Accounts was a Financial Product.

**Particulars**

ASIC relies on s 763A(1)(a) and s 764A(1)(g) of the Act.

92. Each of the Recommended CC Super Account and the Recommended CC Pension Account, if established, would be a Financial Product.

**Particulars**

ASIC relies on s 763A(1)(a) and s 764A(1)(g) of the Act.

93. The CC Cash Account was a Financial Product.

**Particulars**

ASIC relies on s 763A(1)(a) and s 764A(1)(g) or (i) of the Act.

94. By reason of the matters in paragraph 89 above, and paragraphs 91 to 93 above, each of the CC Recommendations was Financial Product Advice.

95. By reason of the matters in paragraph 90 above, and all, some or any of the matters in paragraphs 91 to 94 above, the CC SOA was Financial Product Advice.

96. The advice constituted by each of the CC Recommendations and, further or alternatively, the CC SOA (the **CC Advice**) was given or directed to Mr and Mrs CC, alternatively to Mr CC, in circumstances where:

- (a) Mr Sinha had considered one or more of Mr and Mrs CC's, alternatively Mr CC's, objectives, financial situation and needs (otherwise than for the purposes of compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) or with regulations or AML/CTF Rules, under that Act); or

- (b) a reasonable person might expect Mr Sinha to have considered one or more of those matters.

### Particulars

In relation to (a) and (b), ASIC relies on the following matters:

- (A) The CC SOA was provided to Mr and Mrs CC as a result of the 23 June 2014 Meeting in which they disclosed to Mr Sinha various information about, and discussed with him, their objectives, financial situation and needs.
- (B) The CC SOA was provided under cover of a letter that contained the statement *“This Statement of Advice (SoA), or financial plan, is a record of my recommendations and how they can help meet your objectives, financial situation and needs”*.
- (C) The Executive Summary on page 3 of the CC SOA contained the statement *“The following is a summary of my recommendations based on your objectives, financial situation and needs (also referred to in this SoA as the ‘relevant circumstances’)”*.
- (D) Page 5 of the CC SOA contains the statement *“In making my recommendations to you, I have identified your relevant circumstances, clarified the subject matter and scope of advice to be provided, and considered the appropriateness of my recommendations and any alternative strategies to achieve your objectives”*.
- (E) The CC SOA purports to set out information about Mr and Mrs CC’s objectives and needs, including in the section headed “What’s Important to You”.
- (F) The CC SOA purports to set out information about Mr and Mrs CC’s financial situation, including in the section headed “You and Your Money”.
97. In the premises of paragraphs 94 to 96 above, the CC Advice was Personal Advice.
98. The CC Advice was a Financial Service provided to each of Mr and Mrs CC, alternatively to Mr CC, as a Retail Client.
99. In the premises of paragraphs 97 and 98 above, Division 2 of Part 7.7A of the Act applied in relation to the provision of the CC Advice to Mr and Mrs CC, alternatively to Mr CC.

### Particulars

Section 961(1) of the Act.

#### Contravention of s 961B(1) of the Act

100. In contravention of s 961B(1) of the Act, Mr Sinha did not act in the best interests of Mr and Mrs CC, alternatively of Mr CC, in relation to the CC Advice.

### Particulars

- (i) Mr Sinha failed to do all or any of the following things in relation to the CC Advice:
  - (A) identify the objectives, financial situation and needs of Mr and Mrs CC, alternatively of Mr CC, that were disclosed to Mr Sinha by Mr and Mrs CC through instructions, as contemplated by s 961B(2)(a) of the Act;
  - (B) identify:
    - (1) the subject matter of the advice that had been sought by Mr and Mrs CC, alternatively by Mr CC, (whether explicitly or implicitly), as contemplated by s 961B(2)(b)(i) of the Act; or
    - (2) the objectives, financial situation and needs of Mr and Mrs CC respectively that would reasonably be considered as relevant to the advice sought on that subject matter (**Mr and Mrs CC's Respective Relevant Circumstances**), alternatively the objectives, financial situation and needs of Mr CC that would reasonably be considered as relevant to the advice sought (**Mr CC's Relevant Circumstances**), as contemplated by s 961B(2)(b)(ii) of the Act;
  - (C) in circumstances where it was reasonably apparent that information relating to Mr and Mrs CC's Respective Relevant Circumstances, alternatively to Mr CC's Relevant Circumstances, was incomplete or inaccurate, make reasonable inquiries to obtain complete and accurate information, as contemplated by s 961B(2)(c) of the Act;
  - (D) in circumstances where, in considering the subject matter of the advice sought by Mr and Mrs CC, alternatively by Mr CC, it was reasonable to consider recommending one or more financial products:

- (1) conduct a reasonable investigation into the financial products that might achieve those of the objectives and meet those of the needs of Mr and Mrs CC, alternatively of Mr CC, that would reasonably be considered as relevant to the advice on the subject matter, as contemplated by s 961B(2)(e)(i) of the Act; and
- (2) assess the information gathered in the investigation, as contemplated by s 961B(2)(e)(ii) of the Act;
- (E) base all judgments in advising Mr and Mrs CC on Mr and Mrs CC's Respective Relevant Circumstances, alternatively base all judgments in advising Mr CC on Mr CC's Relevant Circumstances, as contemplated by s 961B(2)(f) of the Act.
- (ii) Further or alternatively, ASIC repeats the particulars to paragraph 101 below.

#### Contravention of s 961G of the Act

101. In contravention of s 961G of the Act, Mr Sinha provided the CC Advice to Mr and Mrs CC, alternatively to Mr CC, in circumstances where it would not have been reasonable to conclude that the advice was appropriate to each of Mr and Mrs CC, alternatively to Mr CC, had Mr Sinha satisfied the duty under s 961B of the Act to act in the best interests of each such client.

#### **Particulars**

- (i) The CC Super Rollover Recommendations were made without conducting a proper review of the Existing CC Accounts or a proper comparison between them and the Recommended CC Super Account or the Recommended CC Pension Account.
- (ii) Those recommendations misleadingly implied that such a review and comparison had been conducted by Mr Sinha.
- (iii) Implementing the CC Super Rollover Recommendations would result in the value of assets held by Mr CC in each risk profile asset class being significantly outside the acceptable range for that asset class according to the benchmark asset allocation for his investment risk profile of "balanced".
- (iv) The fees associated with implementing the CC Advice (including an implementation fee of \$9,840 and exit costs of \$320 as outlined on page 28 of the CC SOA) were out of proportion to the tax benefits that would



accrue to Mr CC from implementing the advice, having regard to the fact that Mr CC was 62 years of age at the time the CC Advice was provided and he planned to retire at age 65.

- (v) The CC SOA did not consider the issue of how Mr and Mrs CC would manage their existing investment property loans of approximately \$975,000 as recorded in the CC SOA, which related to properties in which they had little equity (the stated value of the investment properties in the CC SOA being \$1,050,000).
- (vi) The CC SOA did not meaningfully or adequately consider any alternative strategies to the courses of action it recommended, or set out the advantages and disadvantages of each.

#### Contravention of s 961H of the Act

102. It was reasonably apparent that information relating to the objectives, financial situation and needs of Mr and Mrs CC, alternatively of Mr CC, on which the CC Advice was based was incomplete or inaccurate.

#### **Particulars**

That information was incomplete or inaccurate in the following respects:

- (i) Mr and Mrs CC had not provided to Mr Sinha details of their existing insurances except that it was all held within super.
  - (ii) Information about those insurances held within super was relevant to the appropriateness of the CC Super Rollover Recommendations, because any insurance policies held inside the Existing AMP Account and the Existing LGSP TTR Account would have been cancelled, and the benefit in them lost, when those existing accounts were closed as recommended.
103. The CC SOA did not contain, and was not (when given to Mr and Mrs CC) otherwise accompanied by, a warning that:
- (a) the advice in the CC SOA was, or may be, based on incomplete or inaccurate information relating to Mr and Mrs CC's, alternatively Mr CC's, relevant personal circumstances; and
  - (b) because of that, Mr and Mrs CC should, alternatively Mr CC should, before acting on the advice, consider the appropriateness of the advice having regard to their, alternatively his, objectives, financial situation and needs.
104. In the premises of paragraphs 102 and 103 above, Mr Sinha contravened s 961H of the Act in relation to the CC Advice.

Contravention of s 961J of the Act

105. Mr and Mrs CC had:

- (a) an interest in Mr Sinha acting in their best interests in relation to the advice that he was to provide to them; and
- (b) an interest in that advice being appropriate to them in their circumstances.

106. Alternatively to paragraph 105 above, Mr CC had:

- (a) an interest in Mr Sinha acting in his best interests in relation to the advice that Mr Sinha was to provide to him; and
- (b) an interest in that advice being appropriate to him in his circumstances.

107. Westpac, alternatively an Associate of Westpac, had a pecuniary interest in the CC Super Rollover Recommendations being implemented.

**Particulars**

(i) If the CC Super Rollover Recommendations were implemented:

- (A) an "investment entry" or "implementation" fee estimated at \$9,840 would be payable to Westpac, alternatively an Associate of Westpac, as outlined on pages 28 and 33 of the CC SOA (the **CC Implementation Fee**); and
- (B) product fees or charges would be payable to Westpac, alternatively an Associate of Westpac, in respect of the Recommended CC Super Account and the Recommended CC Pension Account as outlined on pages 35-38 of the CC SOA.

(ii) Further particulars will be provided after the service of evidence.

108. Mr Sinha had a pecuniary interest in the CC Super Rollover Recommendations being implemented.

**Particulars**

- (i) If the CC Super Rollover Recommendations were implemented, a portion of the CC Implementation Fee would be liable to be added to the Sinha Partnership Revenue Allocation, which would thereby increase the potential Sinha Partner Pay for the period in which it was allocated as pleaded in paragraph 4 above.
- (ii) Further particulars will be provided after the service of evidence.

109. In circumstances where:

- (a) Mr and Mrs CC had the interest pleaded in paragraph 105 above; and
- (b) alternatively to (a) above, Mr CC had the interest pleaded in paragraph 106 above; and
- (c) Westpac, alternatively an Associate of Westpac, had any or all of the pecuniary interests in the implementation of aspects of the CC Advice pleaded in paragraph 107 above; and
- (d) further or alternatively to (c) above, Mr Sinha had any or all of the pecuniary interests in the implementation of aspects of the CC Advice pleaded in paragraph 108 above,

there was a conflict between (on the one hand) the interests of Mr and Mrs CC, alternatively of Mr CC, and (on the other hand) the interests of:

- (e) Westpac;
- (f) alternatively to (d) above, an Associate of Westpac; and

further or alternatively to (d) and (e) above, Mr Sinha.

110. In the circumstances pleaded in paragraph 109 above, Mr Sinha knew or reasonably ought to have known that there was the conflict of interests pleaded in that paragraph.

111. In circumstances where:

- (a) Mr Sinha did not act in Mr and Mrs CC's, alternatively in Mr CC's, best interests in relation to the CC Advice as pleaded in paragraph 100 above; and
- (b) further or alternatively, the CC Advice was not appropriate to each of Mr and Mrs CC, alternatively if Mr CC, as pleaded in paragraph 101 above,

Mr Sinha did not give priority to the interests of Mr and Mrs CC, alternatively of Mr CC, in giving the CC Advice.

112. In the premises of the facts pleaded in paragraphs 110 and 111 above, Mr Sinha contravened s 961J in giving the CC Advice.

### **The DD/EE Advice**

113. On or about 2 August 2014, Mr Sinha had a meeting with Dr DD and Mr EE (the **2 August 2014 Meeting**) at which it was decided that Mr Sinha would provide financial advice to Dr DD and Mr EE.

114. At the time of the 2 August 2014 Meeting:
- (a) Dr DD had funds in a BT SuperWrap super account (the **Existing DD Account**);
  - (b) Mr EE had funds in a BT SuperWrap super account (the **Existing EE Account**); and
  - (c) Dr DD and Mr EE had a joint cash account (the **DD/EE Cash Account**).
115. On or about 7 August 2014, Mr Sinha provided an SOA to Dr DD and Mr EE dated 7 August 2014 (the **DD/EE SOA**).
116. Included in the DD/EE SOA were the following recommendations (together, the **DD/EE Recommendations**):
- (a) recommendations that:
    - (i) Dr DD roll over some of the funds from the Existing DD Account into new BT SuperWrap Pension Plan+ account (the **Recommended DD Account**); and
    - (ii) Mr EE roll over some of the funds from the Existing EE Account into new BT SuperWrap Pension Plan+ account (the **Recommended EE Account**),
 (the **DD/EE Super Rollover Recommendations**);
  - (b) recommendations that:
    - (i) Dr DD draw a pension from her Recommended DD Account of \$20,000 per year; and
    - (ii) Mr EE draw a pension from his Recommended EE Account of \$4,000 per year,
 (the **DD/EE Pension Drawing Recommendations**); and
  - (c) recommendations that Dr DD and Mr EE direct any surplus funds into the DD/EE Cash Account.
117. The DD/EE SOA constituted a report of the DD/EE Recommendations for the purposes of s 766B(1) of the Act.
118. Each of the Existing DD Account and the Existing EE Account was a Financial Product.

#### **Particulars**

ASIC relies on s 763A(1)(a) and s 764A(1)(g) of the Act.

119. Each of the Recommended DD Account and the Recommended EE Account was a Financial Product.

**Particulars**

ASIC relies on s 763A(1)(a) and s 764A(1)(g) of the Act.

120. The DD/EE Cash Account was a Financial Product.

**Particulars**

ASIC relies on s 763A(1)(a) and s 764A(1)(g) or (i) of the Act.

121. By reason of the matters in paragraph 117 above, and all, some or any of the matters in paragraphs 118, 119 and/or 120 above, the DD/EE SOA was Financial Product Advice.

122. The DD/EE Advice was given or directed to Dr DD and Mr EE in circumstances where:

- (a) Mr Sinha had considered one or more of Dr DD's and Mr EE's objectives, financial situation and needs (otherwise than for the purposes of compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) or with regulations or AML/CTF Rules, under that Act); or
- (b) a reasonable person might expect Mr Sinha to have considered one or more of those matters.

**Particulars**

In relation to (a) and (b), ASIC relies on the following matters:

- (A) The DD/EE SOA was provided to Dr DD and Mr EE as a result of the 2 August 2014 Meeting in which they disclosed to Mr Sinha various information about, and discussed with him, their objectives, financial situation and needs.
- (B) The DD/EE SOA was provided under cover of a letter that contained the statement "*This Statement of Advice (SoA), or financial plan, is a record of my recommendations and how they can help meet your objectives, financial situation and needs.*"
- (C) The Executive Summary on page 3 of the DD/EE SOA contained the statement "*The following is a summary of my recommendations based on your objectives, financial situation and needs (also referred to in this SoA as the 'relevant circumstances')*".
- (D) Page 6 of the DD/EE SOA contains the statement "*In making my recommendations to you, I have identified your relevant*

*circumstances, clarified the subject matter and scope of advice to be provided, and considered the appropriateness of my recommendations and any alternative strategies to achieve your objectives”.*

- (E) The DD/EE SOA purports to set out information about Dr DD’s and Mr EE’s objectives and needs, including in the section headed “What’s Important to You”.
  - (F) The DD/EE SOA purports to set out information about Dr DD’s and Mr EE’s financial situation, including in the section headed “You and Your Money”.
123. In the premises of paragraphs 121 and 122 above, the advice constituted by each of the DD/EE Recommendations and, further or alternatively, the DD/EE SOA (the **DD/EE Advice**) was Personal Advice.
124. The DD/EE Advice was a Financial Service provided to each of Dr DD and Mr EE as a Retail Client.
125. In the premises of paragraphs 123 and 124 above, Division 2 of Part 7.7A of the Act applied in relation to the provision of the DD/EE Advice to Dr DD and Mr EE.

#### **Particulars**

Section 961(1) of the Act.

#### Contravention of s 961B(1) of the Act

126. In contravention of s 961B(1) of the Act, Mr Sinha did not act in the best interests of Dr DD and Mr EE in relation to the DD/EE Advice.

#### **Particulars**

- (i) Mr Sinha failed to do all or any of the following things in relation to the DD/EE Advice:
  - (A) identify the objectives, financial situation and needs of Dr DD and Mr EE that were disclosed to Mr Sinha by Dr DD and Mr EE through instructions, as contemplated by s 961B(2)(a) of the Act;
  - (B) identify:
    - (1) the subject matter of the advice that had been sought by Dr DD and Mr EE (whether explicitly or implicitly), as contemplated by s 961B(2)(b)(i) of the Act; or

- (2) the objectives, financial situation and needs of Dr DD and Mr EE respectively that would reasonably be considered as relevant to the advice sought on that subject matter (**Dr DD's and Mr EE's Respective Relevant Circumstances**), as contemplated by s 961B(2)(b)(ii) of the Act;
  - (C) in circumstances where it was reasonably apparent that information relating to Dr DD's and Mr EE's Respective Relevant Circumstances was incomplete or inaccurate, make reasonable inquiries to obtain complete and accurate information, as contemplated by s 961B(2)(c) of the Act;
  - (D) in circumstances where, in considering the subject matter of the advice sought by Dr DD and Mr EE, it was reasonable to consider recommending one or more financial products:
    - (1) conduct a reasonable investigation into the financial products that might achieve those of the objectives and meet those of the needs of Dr DD and Mr EE that would reasonably be considered as relevant to the advice on the subject matter, as contemplated by s 961B(2)(e)(i) of the Act; and
    - (2) assess the information gathered in the investigation, as contemplated by s 961B(2)(e)(ii) of the Act;
  - (E) base all judgments in advising Dr DD and Mr EE on Dr DD's and Mr EE's Respective Relevant Circumstances, as contemplated by s 961B(2)(f) of the Act.
- (ii) Further or alternatively, ASIC repeats the particulars to paragraph 127 below.

#### Contravention of s 961G of the Act

127. In contravention of s 961G of the Act, Mr Sinha provided the DD/EE Advice to Dr DD and Mr EE in circumstances where it would not have been reasonable to conclude that the advice was appropriate to each of Dr DD and Mr EE, had Mr Sinha satisfied the duty under s 961B of the Act to act in the best interests of each such client.

#### **Particulars**

- (i) The DD/EE Super Rollover Recommendations and the DD/EE Pension Drawing Recommendations were made without conducting a proper review of the Existing DD Account and Existing EE Account or a proper

comparison between them (on the one hand) and the Recommended DD Account and Recommended EE Account respectively (on the other hand).

- (ii) Those recommendations misleadingly implied that such a review and comparison had been conducted by Mr Sinha.
- (iii) Rather than making rollovers from the clients' existing super accounts into a new BT SuperWrap Pension Plan+ accounts as recommended, pensions could have been established in the Existing DD Account and Existing EE Account (together, the **Existing DD/EE Accounts**), which would have avoided the "investment entry fee" or "implementation fee" payable for implementing the switch to the Recommended DD Account and Recommended EE Account (together, the **Recommended DD/EE Accounts**) in amounts estimated at \$5,934 for Dr DD and \$1,760 for Mr EE (as outlined on pages 27-28 and 32-33 of the DD/EE SOA).
- (iv) The DD/EE SOA rejected that strategy on the basis that the Recommended DD/EE Accounts had lower ongoing account-keeping fees than the Existing DD/EE Accounts, but this analysis was flawed because, by making only partial rollovers from their existing super accounts as recommended, Dr DD and Mr EE would be subject to ongoing account-keeping fees for both the Existing DD/EE Accounts and the Recommended DD/EE Accounts.
- (v) On the analysis in the DD/EE SOA, the ongoing product fees for the Recommended DD Account were higher than for the Existing DD Account.
- (vi) The DD/EE SOA should have considered Mr EE's existing investment allocations and recommended a higher allocation of his investment portfolio to "defensive" investment products in line with his investment risk profile.
- (vii) The DD/EE SOA did not meaningfully or adequately consider any alternative strategies to the courses of action it recommended, or set out the advantages and disadvantages of each.

#### Contravention of s 961H of the Act

128. It was reasonably apparent that information relating to the objectives, financial situation and needs of Dr DD and Mr EE on which the DD/EE Advice was based was incomplete or inaccurate.



**Particulars**

When the DD/EE Advice was given to Dr DD and Mr EE:

- (i) neither Dr DD nor Mr EE had the objective of generating an extra \$24,000 of income per annum from existing super as suggested in the DD/EE SOA and the Customer Profile Booklet prepared in advance of the provision of the DD/EE SOA;
- (ii) neither Dr DD and Mr EE had, or informed Mr Sinha that they had, a vacant investment property affecting their cash flow as suggested in the DD/EE SOA and the Customer Profile Booklet;
- (iii) Dr DD and Mr EE were not struggling with cash flow as suggested in the Customer Profile Booklet.

129. The DD/EE SOA did not contain, and was not (when given to Dr DD and Mr EE) otherwise accompanied by, a warning that:

- (a) the advice in the DD/EE SOA was, or may be, based on incomplete or inaccurate information relating to Dr DD's and Mr EE's relevant personal circumstances; and
- (b) because of that, Dr DD and Mr EE should consider the appropriateness of the advice having regard to their objectives, financial situation and needs.

130. In the premises of paragraphs 128 and 129 above, Mr Sinha contravened s 961H of the Act in relation to the DD/EE Advice.

**Contravention of s 961J of the Act**

131. Dr DD and Mr EE had:

- (a) an interest in Mr Sinha acting in their best interests in relation to the advice that he was to provide to them; and
- (b) an interest in that advice being appropriate to them in their circumstances.

132. Westpac, alternatively an Associate of Westpac, had a pecuniary interest in the DD/EE Super Rollover Recommendations being implemented.

**Particulars**

- (i) If the DD/EE Super Rollover Recommendation were implemented:
  - (A) "investment entry" or "implementation" fees estimated at \$5,934 for Dr DD and \$1,760 for Mr EE would be payable to Westpac, alternatively an Associate of Westpac, as outlined on pages 27-28

and 32-33 of the DD/EE SOA (the **DD/EE Implementation Fees**);  
and

(B) product fees or charges estimated at \$4,411 for Dr DD and \$1,679 for Mr EE would be payable to Westpac, alternatively an Associate of Westpac, in respect of the Recommended DD/EE Accounts, as outlined on pages 34-36 of the DD/EE SOA.

(ii) Further particulars will be provided after the service of evidence.

133. Mr Sinha had a pecuniary interest in the DD/EE Super Rollover Recommendations being implemented.

**Particulars**

(i) If the DD/EE Super Rollover Recommendations were implemented, a portion of the DD/EE Implementation Fees would be liable to be added to the Sinha Partnership Revenue Allocation, which would thereby increase the potential Sinha Partner Pay for the period in which it was allocated as pleaded in paragraph 4 above.

(ii) Further particulars will be provided after the service of evidence.

134. In circumstances where:

- (a) Dr DD and Mr EE had the interest pleaded in paragraph 131 above; and
- (b) Westpac, alternatively an Associate of Westpac, had any or all of the pecuniary interests in the implementation of aspects of the DD/EE Advice pleaded in paragraph 132 above; and
- (c) further or alternatively to (b) above, Mr Sinha had any or all of the pecuniary interests in the implementation of aspects of the DD/EE Advice pleaded in paragraph 133 above,

there was a conflict between (on the one hand) the interests of Dr DD and Mr EE and (on the other hand) the interests of:

- (d) Westpac;
- (e) alternatively to (d) above, an Associate of Westpac; and

further or alternatively to (d) and (e) above, Mr Sinha.

135. In the circumstances pleaded in paragraph 134 above, Mr Sinha knew or reasonably ought to have known that there was the conflict of interests pleaded in that paragraph.

136. In circumstances where:

- (a) Mr Sinha did not act in Dr DD's and Mr EE's best interests in relation to the DD/EE Advice as pleaded in paragraph 126 above; and
- (b) further or alternatively, the DD/EE Advice was not appropriate to each of Dr DD and Mr EE as pleaded in paragraph 127 above,

Mr Sinha did not give priority to the interests of Dr DD and Mr EE in giving the DD/EE Advice.

137. In the premises of the facts pleaded in paragraphs 135 and 136 above, Mr Sinha contravened s 961J in giving the DD/EE Advice.

### **Contraventions of s 961K of the Act**

138. In the circumstances pleaded in paragraphs 2 and 3 above, Westpac was the "responsible licensee", within the meaning of s 961P of the Act, of Mr Sinha in relation to each of the following contraventions by Mr Sinha:

- (a) in relation to the AA Advice:
  - (i) the contravention or contraventions of s 961B(1) of the Act pleaded at paragraph 40 above;
  - (ii) the contravention or contraventions of s 961G of the Act pleaded at paragraph 41 above; and
  - (iii) the contravention or contraventions of s 961J of the Act pleaded at paragraph 52 above;
- (b) in relation to the BB Advice;
  - (i) the contravention or contraventions of s 961B(1) of the Act pleaded at paragraph 73 above;
  - (ii) the contravention or contraventions of s 961G of the Act pleaded at paragraph 74 above; and
  - (iii) the contravention or contraventions of s 961J of the Act pleaded at paragraph 85 above;
- (c) in relation to the CC Advice;
  - (i) the contravention or contraventions of s 961B(1) of the Act pleaded at paragraph 100 above;
  - (ii) the contravention or contraventions of s 961G of the Act pleaded at paragraph 101 above;

- (iii) the contravention or contraventions of s 961H of the Act pleaded at paragraph 104 above; and
  - (iv) the contravention or contraventions of s 961J of the Act pleaded at paragraph 112 above;
- (d) in relation to the DD/EE Advice;
- (i) the contravention or contraventions of s 961B(1) of the Act pleaded at paragraph 126 above;
  - (ii) the contravention or contraventions of s 961G of the Act pleaded at paragraph 127 above;
  - (iii) the contravention or contraventions of s 961H of the Act pleaded at paragraph 130 above; and
  - (iv) the contravention or contraventions of s 961J of the Act pleaded at paragraph 137 above.

139. In the premises of paragraphs 2, 3 and 138 above, each contravention by Mr Sinha referred to in paragraph 138 above constituted a contravention by Westpac of s 961K of the Act under s 961K(2) of the Act.

#### **Contravention of s 912A of the Act**

140. At all material times, as a holder of the Licence, Westpac was required:

- (a) pursuant to s 912A(1)(a) of the Act, to do all things necessary to ensure that the financial services covered by the Licence were provided efficiently, honestly and fairly; and
- (b) pursuant to s 912A(1)(c) of the Act, to comply with the financial services laws (which included s 961K of the Act).

141. During the period 1 July 2013 until 10 November 2014, in contravention of s 912A(1)(a) of the Act, Westpac failed to do all things necessary to ensure that the financial services covered by the Licence were provided efficiently, honestly and fairly by reason of the matters in paragraphs 19 to 21 above.

#### **Particulars**

The Plaintiff repeats the matters pleaded:

- (i) in relation to the AA Advice:
  - (A) the contravention or contraventions of s 961B(1) of the Act pleaded at paragraph 40 above;

- (B) the contravention or contraventions of s 961G of the Act pleaded at paragraph 41 above; and
- (C) the contravention or contraventions of s 961J of the Act pleaded at paragraph 52 above;
- (ii) in relation to the BB Advice;
  - (A) the contravention or contraventions of s 961B(1) of the Act pleaded at paragraph 73 above;
  - (B) the contravention or contraventions of s 961G of the Act pleaded at paragraph 74 above; and
  - (C) the contravention or contraventions of s 961J of the Act pleaded at paragraph 85 above;
- (iii) in relation to the CC Advice;
  - (A) the contravention or contraventions of s 961B(1) of the Act pleaded at paragraph 100 above;
  - (B) the contravention or contraventions of s 961G of the Act pleaded at paragraph 101 above;
  - (C) the contravention or contraventions of s 961H of the Act pleaded at paragraph 104 above; and
  - (D) the contravention or contraventions of s 961J of the Act pleaded at paragraph 112 above;
- (iv) in relation to the DD/EE Advice;
  - (A) the contravention or contraventions of s 961B(1) of the Act pleaded at paragraph 126 above;
  - (B) the contravention or contraventions of s 961G of the Act pleaded at paragraph 127 above;
  - (C) the contravention or contraventions of s 961H of the Act pleaded at paragraph 130 above; and
  - (D) the contravention or contraventions of s 961J of the Act pleaded at paragraph 137 above.

142. By contravening s 961K of the Act, Westpac failed to comply with the financial services laws, in contravention of s 912A(1)(c) of the Act.

#### **Particulars**

Under paragraph (a) of the definition of “financial services law” in s 761A of the Act, a “financial services law” includes a provision of Chapter 7 of the Act, which includes s 961K of the Act.

#### **Relief**

143. By reason of the matters pleaded above, the Plaintiff seeks declaratory relief and pecuniary penalties against the defendant (Westpac), as follows:

- (a) A declaration pursuant to s 1317E(1) of the Corporations Act that Westpac has contravened section 961K(2) of the Corporations Act in respect of each contravention of sections 961B, 961G, 961H and 961J of the Corporations Act by its representative, Mr Sudhir Sinha, in relation to which contraventions Westpac was the responsible licensee.
- (b) Orders pursuant to s 1317G(1E) of the Corporations Act that Westpac pay pecuniary penalties in respect of its contraventions of s 961K(2) of the Corporations Act in such amount as the Court considers appropriate.
- (c) A declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA**) that during the period 1 July 2013 to 10 November 2014, in contravention of the Corporations Act, Westpac failed to do all things necessary to ensure that the financial services covered by the licence (being those services relating to the provision of the advice referred to the Statement of Claim) were provided efficiently, honestly and fairly.
- (d) A declaration pursuant to s 21 of the FCA that during the period 1 July 2013 to 10 November 2014, in contravention of s 912A(1)(c) of the Corporations Act, Westpac failed to comply with the financial services laws (being s 961K(2) of the Corporations Act).
- (e) Costs.
- (f) Such further or other order as the Court sees fit.

Date: 19/7/18

Nick Kelton

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Signed by Nick Kelton  
Lawyer for the Plaintiff

This pleading was prepared by Nick Kelton, lawyer

**Certificate of lawyer**

I Nick Kelton certify to the Court that, in relation to the statement of claim filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 19/7/18

*Nick Kelton*

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Signed by Nick Kelton  
Lawyer for the Plaintiff