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Details of Filing

Document Lodged:	Statement of Agreed Facts
File Number:	NSD293/2017
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v WESTPAC BANKING CORPORATION ACN 007 457 141
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

Dated: 4/09/2018 2:19:56 PM AEST Registrar

Important Information

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No. NSD293 of 2017

Federal Court of Australia

District Registry: New South Wales

Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Applicant

WESTPAC BANKING CORPORATION (ACN 007 457 141)

Respondent

Statement of Agreed Facts

For the purposes only of settling this proceeding, the Applicant, the Australian Securities and Investments Commission (**ASIC**), and the Respondent, Westpac Banking Corporation (**Westpac**), jointly make this Statement of Agreed Facts.

A. THE PARTIES

1. ASIC is a body corporate, which is established by s 7 of the *Australian Securities Commission Act 1989* (Cth) and continues by operation of s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**). It is entitled to sue by reason of s 8 of the ASIC Act.

2. Westpac Banking Corporation (**Westpac**) is, and was between 12 December 2011 and March 2015, a body corporate incorporated according to law and able to be sued in its own name. It is an authorised deposit-taking institution as defined in s 5(1) of the *Banking Act 1959* (Cth). It is (and was between 12 December 2011 and March 2015), the holder of an Australian Credit Licence granted under s 38 of the *National Consumer Credit Protection Act 2009* (Cth) (**Act**) and a licensee within the meaning of s 5 of the Act.

3. Unless stated otherwise, the facts set out below relate to the period between 12 December 2011 and March 2015 (**Relevant Period**).

B. WESTPAC'S HOME LENDING POLICIES AND PRACTICES

4. During the Relevant Period Westpac entered into credit contracts within the meaning of s 5 of the Act under the brand "Westpac" with persons who were consumers within the meaning of s 5 of the Act. The credit contracts were secured against residential property and had terms of up to 30 years. In this Statement of Agreed Facts, these credit contracts are referred to as "**Home Loans**". Unless otherwise stated, this Statement of Agreed Facts relates only to Home Loans assessed and Conditionally Approved by Westpac using its Automated Decision System as defined in 18 below.

5. In respect of some Home Loans, there was an initial period (**Interest Only Period**) during the term of the loan when the consumer was only required to make payments of interest and fees, and was not required to make repayments of principal (**Interest Only Loans**).

Westpac Policies and Procedures

6. During the Relevant Period, Westpac had a suite of policies relating to Westpac credit contracts, including the assessment of Home Loan applications. These were collectively known as Westpac's Consumer Credit Policy Manual (**CCPM**).

7. During the Relevant Period, the CCPM included the following chapters:

   (a) Consumer Credit Risk Management;

   (b) Responsibilities and Accountability;

   (c) Accreditation and Education;

   (d) Credit Risk Governance;

   (e) National Credit Code;

   (f) Evaluation;

   (g) Security;

   (h) Lending Value Ratio;

   (i) Serviceability; and

   (j) Verification.

8. During the Relevant Period, Westpac had a comprehensive suite of procedures relating to Westpac credit contracts, including the assessment of Home Loan applications. These were collectively known as Westpac's Consumer Credit Procedures Manual (**CCPP**).

9. During the Relevant Period, the CCPP included the following chapters:

   (a) Customer Interview; and

   (b) Completing an Application for Finance.

10. These policies and procedures were available to all staff at Westpac involved in the assessment of Home Loan applications. These policies and procedures were used in the training of staff in the policies and procedures to be followed in the assessment of Home Loans.

Home Loan application process

11. Before entering into a Home Loan, Westpac required consumers to provide information (**Application Information**) by either:

   (a) completing Westpac form PFI001 titled "Loan Application" (**Application Form**); or

   (b) providing (in person, by phone, electronically or through a broker) information sufficient to allow Westpac to record information substantially equivalent to the fields in the Application Form.

12. Westpac also required consumers to submit relevant supporting documents (such as pay slips or tax returns).

13. The Application Form included fields for consumers to provide:

   (a) their gross annual pre-tax income and/or monthly after tax income of various types (**Declared Income**);

   (b) their monthly expense information by reference to a number of headings and descriptions of categories as set out below;

   (c) information about the consumers' liabilities in the following categories:

(i) "housing loans, overdrafts and other loans (including business/company loans) that are secured by mortgages";

(ii) "credit cards, store cards, unsecured overdrafts etc";

(iii) "other loans, including personal loans, vehicle leases, hire purchase, commercial bill, contingent liabilities etc"; and

(iv) "other liabilities including provisional taxation, HECS, guarantees on loans and leases, etc".

14. The Application Form sought information as to consumers' monthly expenses in the following categories:

(a) "Absolute Basic Expenses" (for example, groceries, transport, petrol, utilities, rates, clothing);

(b) "Education Expenses";

(c) "Childcare Fees";

(d) "Insurance (including car, CTP, building, contents, health, income protection)";

(e) "Mobile Phone / Internet / Pay TV";

(f) "Ongoing Rent/Board after loan is drawn"

(g) "Child Maintenance/Alimony"; and

(h) "Other (for example, holidays, entertainment, gym membership, cleaning or gardening services)".

15. Westpac referred to the items listed in paragraphs (a) to (e) and (h) in paragraph 14 above (**Declared Living Expenses**) as "Expenses" within its Automated Decision System (as defined below).

16. Westpac referred to the items listed in paragraphs (f) and (g) in paragraph 14 above and monthly amounts referable to the liabilities declared under the items listed in subparagraph 13(c) above (except where those liabilities were to be cleared by the proposed loan) as "Outgo" within its Automated Decision System (**Outgoings**).

17. During the period between the submitting of the Application Form and the decision by Westpac whether or not to offer a Home Loan to the consumer, it was possible that further information would be provided by the consumer or ascertained by Westpac which may have been included within the consumer's Declared Living Expenses or Outgoings, or going to the consumer's Declared Income.

The Automated Decision System

18. Westpac operated an automated decision-making system as part of its process for deciding whether or not to offer a Home Loan to a consumer (**Automated Decision System**). Operation of the Automated Decision System would result in one of the following outcomes:

    (a) decline, in which the application was returned to the relevant **Lending Staff**, being:

        (i) the Home Finance Manager for first party channel loans; or

        (ii) the Broker Processing Unit (**BPU**) for third party channel loans,

    (**Decline**).

    The Lending Staff could then request that the application be referred for manual assessment by a Westpac credit officer in accordance with Westpac's credit authority policies or could consult with the consumer and, if appropriate, amend and resubmit the application to the Automated Decision System;

    (b) referral, in which the application was referred by the Automated Decision System for manual assessment by a Westpac credit officer in accordance with Westpac's credit authority policies (**Refer**); or

    (c) conditional approval, in which the application was approved subject to further checks as set out below (**Conditionally Approve**).

19. The Automated Decision System would recommend a:

    (a) Decline outcome if an application triggered any decline automated rule;

    (b) Refer outcome if an application triggered any refer automated rule but did not also trigger a decline automated rule; or

(c) Conditionally Approve outcome if the application did not trigger any decline or refer automated rules.

20. The Automated Decision System included over 200 "rules" which included decline rules and refer rules. At the start of the Relevant Period, approximately 208 automated rules were used. At the end of the Relevant Period, approximately 217 automated rules were used. Some of the rules contained in the Automated Decision System are described in paragraphs below.

The Serviceability Calculation Rule

21. One of the rules used in the Automated Decision System during the Relevant Period, was the **Serviceability Calculation Rule**. The Serviceability Calculation Rule was used to calculate the financial position and servicing capacity of a prospective consumer at origination.

22. A loan application passed the Serviceability Calculation Rule:

(a) if the application did not require lenders' mortgage insurance (**LMI**), and the result was a **Final Net Monthly Surplus** (as calculated using the formula described in paragraphs 24 – 34, or **Final Net Monthly Shortfall** (as calculated using the formula described in paragraphs 24 – 34 below) of no more than $400; or

(b) if the application required LMI, and the result was a **Final Net Monthly Surplus** (as calculated using the formula described in paragraphs 24 – 34 below) of $0 or more.

23. A loan application did not pass the Serviceability Calculation Rule, and the Automated Decision System recommended a Decline outcome, if the result was a Final Net Monthly Shortfall (as calculated using the formula described in paragraphs 24 – 34 below) of $400 or more for any loan application.

24. Westpac used the following formula (as elaborated upon, and using the defined terms set out, below) for the Serviceability Calculation Rule:

Final Net Monthly Surplus or Final Net Monthly Shortfall = Net Monthly Income – (Assessed Monthly Repayments + Outgoings) - (HEM Benchmark +"buffer").

25. For the purpose of the Serviceability Calculation Rule, Westpac calculated a consumer's Final Net Monthly Surplus/Shortfall in the following way. ***Firstly***, a consumer's **Net Monthly Surplus Income** was calculated, by subtracting the consumer's Outgoings (referred to in paragraph 16 above) and **Assessed Monthly Repayments** from the consumer's **Net Monthly Income**. In relation to this calculation:

(a) the consumer's Net Monthly Income was based on the consumer's Application Information and any information provided pursuant to paragraph 17 above, but included only after tax monthly income that was verified in accordance with Westpac's Verification process (**Verified Monthly Income**), and certain categories of income were either excluded (such as some government income support payments) or were subject to discounts depending on income type (such as dividends, rental income and bonuses) in accordance with the policies set out in the CCPM;

(b) the figure for the consumer's Assessed Monthly Repayments was calculated for all Home Loans, including Interest Only Loans, using an amortisation calculation on the basis that the full amount of credit agreed between Westpac and the consumer available under the proposed Home Loan (**Credit Limit**) would be drawn at the commencement of the Home Loan and that an amount representing the figure that would be payable if monthly repayments of principal, interest and fees were to be made over the full term of the Home Loan at the proposed interest rate to be offered at origination; and the Home Loan would be repaid in full at the end of the term (**Full Term Method**);

(c) During the Relevant Period Westpac did not calculate Assessed Monthly Repayments based on the minimum monthly repayment that would be required after the end of the Interest Only Period to repay the loan in full over the remaining term of the loan (**Residual Term**), assuming the consumer made only the minimum required repayments of interest and fees during the Interest Only Period, using the interest rates applicable at origination (**Residual Term Method**); and

(d) Westpac used the Full Term Method to determine a figure for the consumer's Assessed Monthly Repayments for both Interest Only Loans (as defined in paragraph 5 above) and principal and interest loans.

26. ***Secondly***, Westpac calculated a **Required Minimum Monthly Surplus** figure for the consumer. This figure was calculated by adding a figure derived from the **HEM Benchmark** to a **"buffer"** figure.

27. Westpac did not use Declared Living Expenses in the calculation of the Required Minimum Monthly Surplus.

28. The **'HEM Benchmark'** was the Household Expenditure Measure, which was compiled by reference to expenditure data from the 2009/2010 ABS Household Expenditure Survey (as updated each quarter by reference to the Consumer Price Index) and scaled for geographic location of the applicant's intended place of residence after loan settlement, the applicant's number of dependents and marital status, but not scaled for income.

29. The HEM Benchmark was developed by the Melbourne Institute of Applied Economic and Social Research in response to a request from the Risk Managers Roundtable. The Risk Managers Roundtable was a group of industry participants, including major Australia credit providers, who met regularly to discuss, amongst other things, issues related to regulatory and legislative developments.

30. On 26 February 2010, ASIC issued *"Regulatory Guide 209 - Credit Licensing: Responsible lending conduct'* (a copy of which appears at **WBC.501.030.0001**) which recorded at RG 209.61 that:

> *In determining whether a credit contract is likely to result in substantial hardship for the consumer, we expect you will take into account information obtained about the customer's financial situation as part of the 'reasonable inquiries' process set out in Section B. Therefore, in administering the law, we will take the following factors into account when considering whether a transaction is likely to result in substantial hardship:*
> *(a) the money the consumer is likely to have remaining after their living expenses have been deducted from their after-tax income;*
> *(b) how consistent and reliable the consumer's income is (and the size of the loan relative to their income level);*
> *(c) whether the consumer's expenses are likely to be significantly higher than average (e.g. because they live in a remote area);*
> *(d) the consumer's other debt repayment obligations and similar commitments (e.g. child support);*
> *(e) how much of a buffer there is between the consumer's disposable income and the repayments (e.g. how vulnerable they are to an increase in interest rates, or the impact once any 'honeymoon' rate ends); and*
> *(f) whether the consumer is likely to have to sell their assets, such as a car, to repay the loan.*

31. It also recorded at RG 209.64 that:

"Benchmarks can be useful tools in the process of determining whether a particular consumer will experience substantial hardship as a result of meeting the obligations of a credit contract. Applying benchmarks, as set out in the following paragraphs, may provide a credit licensee with an indication of whether a consumer would be assumed to be exposed to substantial hardship. For example, such benchmarks could assess whether a consumer's disposable income is:

(a) below a level where they do not have funds to meet their realistic living costs and those of their dependants;
(b) below an amount based on a particular objective indicator (e.g. the Henderson Poverty Index plus a certain margin); or
(c) below the maximum applicable level of government benefits for a person in the financial and family situation of the consumer.

We would expect credit providers to have detailed policies and processes to assess whether a consumer will be able to repay a loan. These include processes for calculating what funds a person needs to pay for basic living expenses in order to determine how much they can borrow (i.e. at what level a consumer can make repayments)."

32. The **"buffer"** was an amount equal to a fixed predetermined percentage (**"buffer rate"**) of certain of the consumer's liabilities, being:

(a) the proposed Credit Limit of the Home Loan;

(b) the higher of the balance or limit of all existing liabilities held with Westpac (except where those liabilities were identified as being cleared by the new loan); and

(c) the higher of the balance or limit of all other existing secured mortgage debt (except where those liabilities were identified as being cleared by the new loan).

33. The "buffer rate" was set by reference to a number of variables, most relevantly the highest two year mortgage interest rate movement observed between 1992 and 2013, subject to an overriding requirement that the buffer rate not be less than the difference between Westpac's lowest offered home loan rate and a "floor rate" set by Westpac having regard to guidance by APRA.

34. ***Thirdly***, the Required Minimum Monthly Surplus was subtracted from the Net Monthly Surplus Income to calculate the Final Net Monthly Surplus/Shortfall. The Declared Living Expenses formed no part of the calculation of Final Net Monthly Surplus or Final Net Monthly Shortfall for the purpose of the Serviceability Calculation Rule.

The 70% Ratio Rule

35. The Automated Decision System also contained a rule that would be triggered if the consumer's Declared Living Expenses exceeded 70% of Verified Monthly Income (**70% Ratio Rule**).

36. If a loan application triggered the 70% Ratio Rule, the Automated Decision System would recommend a Refer outcome.

37. Westpac used Declared Living Expenses when determining whether an application triggered the 70% Ratio Rule.

38. Declared Living Expenses were not used by any rule within the Automated Decision System other than the 70% Ratio Rule.

Steps after the Automated Decision System

39. The Automated Decision System processed the information input into it in relation to an application for a Home Loan and if the application was Conditionally Approved, the application was referred to:

(a) the BPU for loans originated through Westpac's "broker channel"; or

(b) the Sales Support Unit (**SSU**) for other loans,

to complete remaining checks.

40. If the application triggered one or more applicable rules, including the Serviceability Calculation Rule or the 70% Ratio Rule, the application would either be recommended by the Automated Decision System:

(a) a Decline outcome; or

(b) a Refer outcome.

41. An application that triggered a Decline or Refer outcome could subsequently be approved if it were manually assessed by a Westpac credit officer, or if the details in the application system were amended (supported by required documentation) and resubmitted to the Automated Decision System resulting in the loan being Conditionally Approved.

42. If a loan application was Conditionally Approved, a Westpac staff member could still exercise a discretion to manually refer or decline a loan application.

Interest Only Loans

43. The monthly payments by the consumer to Westpac after the expiry of the Interest Only Period (**Residual Monthly Payments**) included both interest on the balance of the drawn amount outstanding (**Loan Balance**) and a component of principal over the Residual Term.

44. The Residual Monthly Payments required to be made after the expiry of the Interest Only Period were calculated using an amortisation calculation that depended on:

(a) the then applicable interest rate;

(b) the Credit Limit at the relevant time;

(c) the length of the Residual Term; and

(d) applicable fees.

45. Consumers could make additional repayments on their loan, or deposit additional funds in an offset account (if that was permitted by the terms of the Home Loan). Additional repayments and money held in an offset account would reduce the amount of interest that accrued on a Home Loan. This would result in consumers paying off their loan prior to the expiry of the Residual Term, because the interest accruing would be less. If consumers had made additional repayments on their loan, or deposited additional funds in an offset account, they could (subject to this being allowed by the terms of the Home Loan) reduce their monthly repayments during the Residual Term by reducing the Credit Limit of their loan.

46. Depending on the Credit Limit and any amounts paid ahead or held in a linked offset account, the total contributions paid by a consumer during the Residual Term might be higher, lower or equal to the monthly payments that would have been required if the repayment of principal had occurred throughout the loan term.

47. Westpac used the Full Term Method in the Serviceability Calculation Rule to calculate the consumer's required monthly loan repayments under Interest Only Loans. As a result, assuming no change in interest rates during the Interest Only

Period, the amount of the loan repayment calculated by the Serviceability Calculation Rule was:

(a) higher than the actual loan repayments required to be made by the consumer during the Interest Only Period; and

(b) lower than the actual loan repayments required to be made by the consumer after the expiry of the Interest Only Period (assuming the consumer did not pay ahead on their loan or accumulate funds in a linked offset account during the Interest Only Period).

48. Interest Only Loans entered into by Westpac had Interest Only Periods of up to 15 years.

C. HOME LOANS

49. During the Relevant Period:

(a) approximately 261,987 Home Loans were entered into by Westpac that were Conditionally Approved by the Automated Decision System and not referred for manual assessment by a Westpac credit officer (**Automatically Assessed Home Loans**);

(b) approximately 211,937 Automatically Assessed Home Loans were Conditionally Approved by the Automated Decision System in circumstances where consumers had provided Declared Living Expenses that were below the applicable HEM Benchmark;

(c) approximately 50,050 Automatically Assessed Home Loans were Conditionally Approved by the Automated Decision System in circumstances where consumers had provided Declared Living Expenses that were higher than the applicable HEM Benchmark (**Expense Home Loans**);

(d) approximately 45,009 Expense Home Loans were Conditionally Approved by the Automated Decision System and would have been Conditionally Approved by the Automated Decision System if Westpac had used the consumer's Declared Living Expenses that were higher than the applicable HEM Benchmark;

(e) approximately 5,041 Expense Home Loans that were Conditionally Approved by the Automated Decision System would not have passed the Serviceability

Calculation Rule and would not have been Conditionally Approved by the Automated Decision System if Westpac had used the higher of Declared Living Expenses or the relevant HEM Benchmark in the Serviceability Calculation Rule (**Serviceability Expense Home Loans**).

50. During the Relevant Period:

(a) approximately 49,839 Interest Only Loans were entered into by Westpac that were Conditionally Approved by the Automated Decision System for the purpose of purchasing owner occupied properties using the Full Term Method rather than the Residual Term Method (**Owner Occupier Interest Only Loans**);

(b) approximately 44,444 Owner Occupier Interest Only Loans would have been Conditionally Approved by the Automated Decision System if Westpac had used the Residual Term Method within its Serviceability Calculation Rule;

(c) approximately 5,395 Owner Occupier Interest Only Loans that were Conditionally Approved by the Automated Decision System would not have been Conditionally Approved by the Automated Decision System if Westpac had used the Residual Term Method within its Serviceability Calculation Rule (**Serviceability Owner Occupier IO Home Loans**); and

(d) approximately a further 441 Owner Occupier Interest Only Loans (that were neither Serviceability Expense Home Loans nor Serviceability Owner Occupier IO Home Loans), that were Conditionally Approved by the Automated Decision System would not have been Conditionally Approved by the Automated Decision System if Westpac had used *both*:

(A) the higher of Declared Living Expenses or the relevant HEM Benchmark; and

(B) the Residual Term Method,

within its Serviceability Calculation Rule. (**Combined Serviceability Owner Occupier IO Home Loans**).

51. Westpac accepts that:

(a) Westpac should have had regard to Declared Living Expenses in the Serviceability Calculation Rule in the Automated Decision System by using the higher of Declared Living Expenses and the HEM Benchmark within the Serviceability Calculation Rule;

(b) applications for Serviceability Expense Home Loans should have been referred for manual assessment by a Westpac credit officer to determine whether the loan was unsuitable;

(c) Westpac in its Automated Decision System in relation to Owner Occupier Interest Only Loans should have used:

    (i) the Residual Term Method instead of the Full Term Method; and

    (ii) the higher of Declared Living Expenses and the HEM Benchmark within the Serviceability Calculation Rule, and

(d) applications for Serviceability Owner Occupier IO Home Loans and Combined Serviceability Owner Occupier IO Home Loans should have been referred for manual assessment by a Westpac credit officer to determine whether the loan was unsuitable for them.

52. Westpac therefore admits that, in the circumstances set out above and where during the Relevant Period the Serviceability Rule should have required the applications for approximately:

(a) 5,041 Serviceability Expense Home Loans;

(b) 5,395 Serviceability Owner Occupier IO Home Loans; and

(c) 441 Combined Serviceability Owner Occupier IO Home Loans,

not to be approved without being referred to manual assessment by a Westpac credit officer prior to approval, Westpac contravened the requirements of s128 of the Act.

D. PERFORMANCE OF HOME LOANS

53. The **90+ Day Delinquency Rate** (meaning accounts in arrears for 90 days or more) for Westpac branded Home Loans as a whole has been between 0.45% and 0.67% in the years from 2011 to 2017.

54. Westpac has in place policies and procedures to allow consumers who are suffering hardship to make applications for hardship assistance to reduce or defer repayments in the short term to manage through a period of financial difficulty if they are unable to service their loan repayment obligations.

55. During the Relevant Period, in any given month, Westpac received applications for hardship assistances to reduce or defer repayments in relation to approximately 0.08% to 0.17% of the total number of Westpac branded Home Loans.

56. Home Loans Conditionally Approved by the Automated Decision System during the Relevant Period have to date:

(a) had a lower rate of hardship applications than manually approved Home Loans originated during the Relevant Period; and

(b) had a similar rate of 60+ Days Delinquency to manually approved Home Loans originated during the Relevant Period.

57. As at 31 July 2018, there were 21 Serviceability Expense Home Loans that were in hardship under Westpac's hardship assistance program, representing 0.42% of all Serviceability Expense Home Loans. As at 31 July 2018, there were 19 Serviceability Expense Home Loans that were in 90+day arrears on their loan repayments, representing 0.38% of all Serviceability Expense Home Loans.

58. As at 31 July 2018, there were 17 Serviceability Owner Occupier IO Home Loans that were in hardship under Westpac's hardship assistance program, representing 0.32% of all Serviceability Owner Occupier IO Home Loans. As at 31 July 2018, there were 18 Serviceability Owner Occupier IO Home Loans that were in 90+day arrears on their loan repayments, representing 0.34% of all Serviceability Owner Occupier IO Home Loans.

59. As at 31 July 2018, none of the Combined Serviceability Owner Occupier IO Home Loans were in hardship under Westpac's hardship assistance program or in 90+day arrears on their loan repayments.

60. Of Westpac branded Home Loans between 2007 and 2017:

(a) 46% of Interest Only Loans had made additional repayments of at least $5,000 or had at least $5,000 held in a linked offset account within twelve months of the loan being originated; and

(b) 41% of loans making repayments of principal had made additional repayments of at least $5,000 or had at least $5,000 held in a linked offset account within twelve months of the loan being originated.

61. Westpac branded Home Loans Conditionally Approved by the Automated Decision System during the Relevant Period have had a higher rate of additional repayments or funds held in linked offset accounts than manually approved Home Loans originated during the Relevant Period.

62. Westpac monitors, and intends to continue to monitor, the performance of Serviceability Expense Home Loans, Serviceability Owner Occupier IO Home Loans and Combined Serviceability Owner Occupier IO Home Loans compared with Westpac's wider loan book.

E. THE CONDUCT AND KNOWLEDGE OF WESTPAC AND ITS SENIOR MANAGEMENT

63. Prior to the Relevant Period, Westpac acting in good faith made enhancements to its policies and procedures, including the Automated Decision System, in order to address its obligations under the Act.

64. At all material times during the Relevant Period, in promulgating the policies and procedures set out in paragraphs 6 to 10 above, Westpac knew:

(a) how a Final Net Monthly Surplus or Final Net Monthly Shortfall for a Home Loan application was calculated, including:

(i) that Westpac used the Full Term Method to determine a figure for the consumer's Assessed Monthly Repayments for both Interest Only Loans and principal and interest loans;

(ii) that Westpac did not use the Residual Term Method to determine a figure for the consumer's Assessed Monthly Repayments for Interest Only Loans; and

(iii) that Westpac did not use Declared Living Expenses in the calculation of the Required Minimum Monthly Surplus;

(b) that a loan application did not trigger the Serviceability Calculation Rule if the application did not require LMI, and the result was a Final Net Monthly Surplus or a Final Net Monthly Shortfall of no more than $400; and

(c) that a loan application did not trigger the Serviceability Calculation Rule if the application required LMI, and the result was a Final Net Monthly Surplus of $0 or more.

65. Westpac's policies and procedures in relation to compliance with its responsible lending obligations under the Act were approved and authorised by Westpac's senior management.

66. At all material times during the Relevant Period, Westpac and its senior management believed that Westpac's policies and procedures for the assessment of Home Loan applications were sufficient to enable Westpac to assess whether a particular Home Loan was unsuitable for the consumer applying for that Home Loan.

67. In 2015 Westpac updated its assessment processes and Westpac now assesses Home Loan applications using the Residual Term Method for Interest Only Loans and the higher of the applicable HEM and the consumer's Declared Living Expenses for all Home Loans.

68. Westpac has never previously been ordered to pay a penalty for contravention of the Act.

F. FINANCIAL PERFORMANCE OF WESTPAC AND REVENUE DERIVED FROM THE HOME LENDING BUSINESS

69. Westpac prepares consolidated financial statements that include its assets, liabilities, equity, income, expenses and cash flows.

70. For the financial year ended 30 September 2017, Westpac's net assets were $851,875,000,000, including loans worth $684,919,000,000.

71. During the Relevant Period, the home lending business of Westpac was profitable. Revenue generated by that business, together with earnings before interest and tax (EBIT), was the largest contributor to Westpac's earnings during that period.

72. Westpac's net profit after tax, total assets and market capitalisation for the financial years during and since the Relevant Period were as set out in the following table:

Financial Year	Net profit after tax	Total Assets	Market Capitalisation
2011-2012	$5.97 billion	$675 billion	$76.5 billion
2012-2013	$6.82 billion	$697 billion	$101.8 billion
2013-2014	$7.56 billion	$771 billion	$100 billion
2014-2015	$8.01 billion	$812 billion	$95 billion

2015-2016	$7.45 billion	$839 billion	$99 billion
2016-2017	$7.99 billion	$852 billion	$108 billion

G. COOPERATION WITH ASIC

73. Westpac cooperated with ASIC throughout the investigation ASIC conducted in relation to the subject matter of the Proceeding prior to the commencement of the Proceeding.

Moira Leonie Saville by her partner

CONRAD GRAY

Solicitor for the Applicant

Date 4 September 2018

MOIRA LEONIE SAVILLE

KING & WOOD MALLESONS

Solicitor for the Respondent

Date 4 September 2018