

FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v RAMS Financial Group Pty Ltd (Penalty) [2025] FCA 1304

File number(s): NSD 885 of 2025

Judgment of: **SHARIFF J**

Date of judgment: 24 October 2025

Catchwords: **CONSUMER LAW** – admitted contraventions of ss 31(1), 47(1)(a), 47(1)(b), 47(1)(d), 47(1)(e) and 47(4) of the *National Consumer Credit Protection Act 2009* (Cth) – joint position and submissions as to pecuniary penalties to be imposed – whether contraventions established on agreed facts – whether declarations should be made – whether quantum of penalties appropriate

Legislation: *Corporations Act 2001* (Cth) s 912A(1)(a)
National Consumer Credit Protection Act 2009 (Cth) ss 5(1), 6, 7, 8, 29, 31(1), 47(1)(a), 47(1)(b), 47(1)(d), 47(1)(e), 47(4), 166, 167B(2)
Evidence Act 1995 (Cth) s 191
Federal Court of Australia Act 1976 (Cth) ss 37AF(1), 37AG(1)(a)
Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019 (Cth)
National Consumer Credit Protection Regulations 2010 (Cth)

Cases cited: *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 113; 254 FCR 68
Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union [2018] HCA 3; 262 CLR 15
Australian Building and Construction Commissioner v Pattinson [2022] HCA 13; 274 CLR 450
Australian Competition and Consumer Commission v Hillside (Australia New Media) Pty Ltd trading as Bet365 (No 2) [2016] FCA 698
Australian Competition and Consumer Commission v Multimedia International Services Pty Ltd [2016] FCA 439; 243 FCR 392

Australian Competition and Consumer Commission v Optus Mobile Pty Ltd [2019] FCA 106

Australian Competition and Consumer Commission v Telstra Corporation Ltd [2010] FCA 790; 188 FCR 238

Australian Competition and Consumer Commission v TPG Internet Pty Ltd [2013] HCA 54; 250 CLR 640

Australian Competition and Consumer Commission v Universal Music Australia Pty Ltd (No 2) [2002] FCA 192; 201 ALR 618

Australian Securities and Investments Commission v AGM Markets Pty Ltd (in liq) (No 3) [2020] FCA 208; 275 FCR 57

Australian Securities and Investments Commission v AMP Financial Planning Pty Ltd (No 2) [2020] FCA 69; 377 ALR 55

Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited [2023] FCA 256

Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited [2023] FCA 1150; 169 ACSR 649

Australian Securities and Investments Commission v BT Funds Management Limited [2021] FCA 844

Australian Securities and Investments Commission v Camelot Derivatives Pty Ltd (in liq) [2012] FCA 414; 88 ACSR 206

Australian Securities and Investments Commission v Citigroup Global Markets Australia Pty Limited (ACN 113 114832) (No. 4) [2007] FCA 963; 160 FCR 35

Australian Securities and Investments Commission v Commonwealth Bank of Australia [2020] FCA 790

Australian Securities and Investments Commission v Commonwealth Bank of Australia [2022] FCA 1422

Australian Securities and Investments Commission v Ferratum Australia Pty Limited (in liq) [2023] FCA 1043

Australian Securities and Investments Commission v Layaway Depot Pty Ltd [2023] FCA 1685

Australian Securities and Investments Commission v MLC Nominees Pty Ltd [2020] FCA 1306; 147 ACSR 266

Australian Securities and Investments Commission v National Australia Bank Ltd [2020] FCA 1494

Australian Securities and Investments Commission v National Australia Bank Ltd [2022] FCA 1324

Australian Securities and Investments Commission v RAMS Financial Group Pty Ltd [2025] FCA 1087

Australian Securities and Investments Commission v

Westpac Banking Corporation (Omnibus) [2022] FCA 515
Australian Securities and Investments Commission v Westpac Banking Corporation (No 3) [2018] FCA 1701
Australian Securities and Investments Commission v Westpac Banking Corporation [2019] FCA 2147
Australian Securities and Investments Commission v Westpac Securities Administration Limited, in the matter of Westpac Securities Administration Limited [2021] FCA 1008
Australian Securities Investments Commission v Membo Finance Pty Ltd (No 2) [2023] FCA 126
Barbaro v The Queen [2014] HCA 2; 253 CLR 58
Commonwealth v Director, Fair Work Building Industry Inspectorate [2015] HCA 46; 258 CLR 482
Competition and Consumer Commission v Woolworths Limited [2016] FCA 44; ATPR-42-521
Construction, Forestry, Mining and Energy Union v Cahill [2010] FCAFC 39; 269 ALR 1
Flight Centre Ltd v Australian Competition and Consumer Commission (No 2) [2018] FCAFC 53; 260 FCR 68
Green v The Queen [2011] HCA 49; 244 CLR 462
Hili v The Queen [2010] HCA 45; 242 CLR 520
Lacey v Attorney-General (Qld) [2011] HCA 10; 242 CLR 573
Mayfair Wealth Partners Pty Ltd v Australian Securities and Investments Commission [2022] FCAFC 170; 295 FCR 106
NW Frozen Foods Pty Ltd v Australian Competition and Consumer Commission [1996] FCA 1134; 71 FCR 285
Singtel Optus Pty Ltd v Australian Competition and Consumer Commission [2012] FCAFC 20; 287 ALR 249
Trade Practices Commission v CSR Limited [1990] FCA 521; ATPR 41-076

Division:	General Division
Registry:	New South Wales
National Practice Area:	Commercial and Corporations
Sub-area:	Commercial Contracts, Banking, Finance and Insurance
Number of paragraphs:	195
Date of hearing:	21 October 2025

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Solicitor for the Respondent	Allens

ORDERS

NSD 885 of 2025

BETWEEN: **AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION**
Applicant

AND: **RAMS FINANCIAL GROUP PTY LTD ACN 105 207 538**
Respondent

ORDER MADE BY: SHARIFF J

DATE OF ORDER: 24 OCTOBER 2025

THE COURT ORDERS THAT:

1. The parties confer and provide short minutes of order to the Associate to Justice Shariff which give effect to the reasons for judgment dated 24 October 2025 in respect of the declarations of contravention required to be made under s 166 of the *National Consumer Credit Protection Act 2009* (Cth) (the **Credit Act**).
2. Within 30 days, the Respondent (**RFG**) pay to the Commonwealth an aggregate pecuniary penalty of \$20 million in respect of RFG's conduct found to have contravened ss 31(1), 47(1)(a), 47(1)(b), 47(1)(e), and 47(4) of the Credit Act.
3. RFG pay the Applicant's costs as agreed or taxed.
4. Pursuant to s 37AF of the *Federal Court of Australia Act 1976* (Cth) (the **FCA Act**), and on the ground specified in s 37AG(1)(a), namely, that it is necessary to prevent prejudice to the proper administration of justice, for a period of 10 years from the date of this Order, the following information, in connection with Federal Court proceeding number NSD 885 of 2025, be suppressed and not published:
 - (a) references to the names and locations of RAMS Franchises, RAMS Franchise principals and loan writers, including their initials, as referred to in:
 - (i) page 31 of the hyperlinked Statement of Agreed Facts and Admissions on Liability, which is tendered and marked Exhibit 1 (**Hyperlinked SAFA**); and

- (ii) columns B and C contained at Annexure KAB-01 of the affidavit of Kristina Andrea Belci affirmed on 20 October 2025 (**Belci Affidavit**); and
 - (b) references to the unlicensed unaccredited referrers as referred to in the Belci Affidavit, being:
 - (i) the names of unlicensed unaccredited referrers in column D contained at Annexure KAB-01;
 - (ii) the name, CRN, ABN, and ACN of the entity the subject of the search at Annexure KAB-02; and
 - (iii) the name of the individual the subject of the email correspondence at Annexure KAB-03; and
 - (c) the redacted information in the documents set out in Schedule 1 to these Orders, as hyperlinked to the Hyperlinked SAFA, being:
 - (i) references to the names and locations of the RAMS Franchises, RAMS Franchise principals and loan writers, including their initials;
 - (ii) references to the names of the unlicensed unaccredited referrers;
 - (iii) references to the personal information of RAMS customers including names, contact information, property addresses, bank account numbers, BSB numbers and bank card numbers; and
 - (iv) references to the names and contact information of Westpac employees.
5. Pursuant to s 37AI of the FCA Act, all material contained in the documents set out in Schedule 1 of these Orders, as attached to, and accessible by hyperlinks in, the Hyperlinked SAFA, be suppressed and not published pending completion of the redactions referred to in order 4(c) of these Orders.

SCHEDULE 1

#	Document Name	Date	Document ID
1	GI Report	17 August 2019	RAM.001.032.3971
2	GI Report	27 September 2019	RAM.001.152.0017
3	GI Report	30 September 2019	RAM.001.038.1065
4	GI Report	24 October 2019	RAM.001.038.3139
5	GI Report	1 May 2020	RAM.001.032.3850
6	GI Report	5 May 2020	RAM.001.032.3953
7	GI Report	7 May 2020	RAM.001.032.4089
8	GI Report	19 May 2020	RAM.001.032.3942
9	GI Report	17 June 2020	RAM.001.037.6866
10	GI Report	29 July 2020	RAM.001.038.3685
11	GI Report	24 November 2020	RAM.001.038.3495
12	GI Report	20 May 2021	RAM.001.038.3393
13	GI Report	21 July 2020	RAM.001.038.3559
14	GI Report	1 September 2021	RAM.001.038.3413
15	GI Report	15 September 2021	RAM.001.012.0199
16	GI Report	30 September 2021	RAM.001.012.0191
17	GI Report	25 March 2022	RAM.001.037.0602
18	GI Report	29 March 2022	RAM.001.037.0610
19	GI Report	29 March 2022	RAM.001.037.0722
20	GI Report	4 August 2022	RAM.001.037.0400
21	GI Report	4 August 2022	RAM.001.113.0031
22	GI Report	7 February 2023	RAM.001.113.0730
23	GI Report	7 February 2023	RAM.001.113.0738
24	GI Report	24 May 2023	RAM.001.006.1093
25	GI Report	26 May 2023	RAM.001.006.1080
26	GI Report	13 June 2023	RAM.001.011.9365
27	GI Report	14 June 2023	RAM.001.011.9336
28	GI Report	21 June 2023	RAM.001.006.1123
29	GI Report	18 August 2023	RAM.001.006.1141
30	GI Report	18 August 2023	RAM.001.011.9396
31	GI Report	18 August 2023	RAM.001.011.9413
32	GI Report	18 August 2023	RAM.001.011.9445

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*

REASONS FOR JUDGMENT

SHARIFF J:

1. INTRODUCTION

- 1 These proceedings involve an examination as to whether the respondent, RAMS Financial Group Pty Ltd (**RFG**), contravened important provisions of the *National Consumer Credit Protection Act 2009* (Cth) (the **Credit Act**). Although RFG has admitted liability and has agreed to pay a civil penalty of \$20 million, it is nevertheless necessary for the Court to decide whether contraventions have occurred and, if so, whether the agreed penalty is appropriate.
- 2 RFG was, and is, a wholly-owned subsidiary of Westpac Banking Corporation (**Westpac**). Westpac acquired RFG in 2008. RFG was, and is, the holder of an “Australian credit license” (**ACL**) granted under the Credit Act. RFG sought to provide credit services, and to assist, consumers through a franchise network (the **RAMS Franchise Network**) by which its franchisees (**RAMS Franchisees**) used the RAMS business name to provide credit assistance to consumers in relation to the distribution of RAMS-branded home loans which were, in fact, home loans with Westpac (albeit those loans were branded as “**RAMS Home Loans**”). RFG appointed RAMS Franchisees and their staff as authorised credit representatives (**ACRs**) of RFG for the purposes of providing credit assistance.
- 3 One of the central purposes of the Credit Act is to protect consumers and to do so by the regulation of the conduct of licensees. An essential aspect of this regulatory scheme is that persons involved in the provision of a “credit service” to consumers, including by providing “credit assistance” to them, must be licensed. As I explain below, a further essential aspect of the scheme is that, as provided for by s 31(1) of the Credit Act, a licensee is prohibited from engaging in a credit activity and, in the course of doing so, conducting business with a person who is also engaging in a credit activity without an Australian credit licence authorising them to do so. The purpose of this prohibition is to ensure that the overall objectives of the statutory scheme are not frustrated by “licensees engaging with unlicensed persons to subvert its intent”: *Australian Securities and Investments Commission v National Australia Bank Ltd* [2020] FCA 1494 (*ASIC v NAB*) at [90] (Lee J).
- 4 A further important aspect of the regulatory scheme enacted under the Credit Act is found in s 47(1). That section relevantly requires a licensee to do all things necessary to ensure that the credit activities authorised by the licence are engaged in “efficiently, honestly and fairly”

(s 47(1)(a)), that adequate arrangements are in place to ensure that clients are not disadvantaged by conflicts of interest (s 47(1)(b)), and that reasonable steps are taken to ensure that representatives of the licensee comply with credit legislation (s 47(1)(e)).

5 I am satisfied on the facts that the parties have agreed to in the present case that RFG failed to comply with these basal obligations. On 84 occasions, RFG (through its franchise representatives) accepted referrals of consumers from third parties who were not licensed. There were yet further occasions when RFG accepted referrals of consumers from third parties who were not accredited by RFG in accordance with its own policies and procedures. The facts further demonstrate that, whilst RFG had policies and procedures in place, they were inadequate in several fundamental respects including in seeking to avoid conflicts of interest and breaches of privacy. I am satisfied that RFG failed to ensure that certain of its franchise representatives complied with the Credit Act and RFG's applicable policies including as to dealing only with accredited referrers, conflicts of interest, privacy, use of information technology systems, and other behaviour.

6 The conduct that lies at the heart of the proceedings came to light when RFG and Westpac commenced investigating potential instances of misconduct that were alleged to have occurred within the RAMS Franchise Network. Some of the investigations were commenced at RFG's initiative, and others were commenced following one or more complaints being made. Those investigations expanded over time, and there were many of them. RFG and Westpac determined in various respects that the allegations of misconduct were substantiated, and that in other respects they were not. Amongst other things, RFG and Westpac's investigations substantiated allegations that some RAMS Franchisees had failed to comply with various of RFG's policies and the Credit Act.

7 RFG disclosed the various findings of its investigations to ASIC and thereafter ASIC commenced its own investigation into RFG. RFG co-operated with ASIC in its investigation. RFG and Westpac have taken other commendable steps such as embarking upon reviews and audits to improve their systems and policies and have taken a conservative approach to the payment of compensation to consumers by way of remediation.

8 Nevertheless, the facts here establish that (as acknowledged by RFG and Westpac's Board Risk Committee) the "root causes" of the contraventions were that RFG was conducted as an "autonomous business with a unique risk profile" which was borne of its franchise model, and, further, RFG had an immature risk culture, a deficient control environment and there was

insufficient oversight of its non-standard methods of business. In the circumstances, it is important that the penalty to be imposed must serve the object of deterrence and promote compliance with the regulatory regime.

- 9 By the time that these proceedings were commenced, the parties had reached agreement as to the facts relevant to RFG’s admissions of liability. Specifically, based on those agreed facts, RFG admitted that it had contravened the Credit Act during the period from 3 June 2019 to 30 April 2023 (the **Relevant Period**). As a result, ASIC seeks declaratory relief and the imposition of pecuniary penalties against RFG in respect of contraventions of ss 31(1), 47(1)(a), (b), (d) and (e) and 47(4) the Credit Act. RFG agrees that orders should be made to this effect. The parties have subsequently reached agreement as to the facts relevant to penalty and as to the form of relief that should be granted including as to the quantum of the penalty to be imposed.
- 10 The parties’ position as to these matters is set out in the Updated Statement of Agreed Facts and Admissions on Liability dated 30 July 2025 (**Liability SAFA**), the Updated Statement of Agreed Facts on Relief dated 30 July 2025 (**Penalty SOAF**), and the joint submissions as to penalty filed on 5 August 2025 (**Joint Submissions**).
- 11 There is a recognised public interest in the settlement of proceedings under regulatory regimes in order to avoid lengthy and complex civil litigation. However, the fact that the parties have agreed that a declaration of contravention should be made does not relieve the Court of the obligation to satisfy itself that the making of the declaration is appropriate: *Commonwealth v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46; 258 CLR 482 (**FWBII**) (French CJ, Kiefel, Bell, Nettle and Gordon JJ) at [59]. The role of the Court is not merely to “rubber stamp” orders agreed between a regulator and a person who has admitted contravening a statute: *FWBII* at [30]–[31], [48], [58]. It is necessary for the Court to determine whether the declarations and pecuniary penalty orders are appropriate and should be made: *FWBII* at [59]. In this respect, the Court is assisted by joint submissions, especially where they are advanced by a specialist regulator able to offer “informed submissions as to the effects of contravention on the industry and the level of penalty necessary to achieve compliance”: *FWBII* at [60]–[61]; *Australian Securities and Investments Commission v Westpac Banking Corporation (Omnibus)* [2022] FCA 515 at [100]–[101] (Beach J).
- 12 For the reasons set out below, I have concluded that having regard to the agreed facts and all the relevant circumstances, with some exceptions, the declarations sought by the parties should be made and that the aggregate agreed penalty of \$20 million falls within the permissible range

of penalties for the contraventions which RFG has admitted. Before turning to my reasons for so concluding, it is necessary for me at the outset to mention three matters.

13 **First**, there are other proceedings before the Court that involve RFG (NSD 671/2024) (the **Class Action Proceedings**). The Class Action Proceedings relate to RFG’s conduct in terminating the franchise agreements of the RAMS Franchisees. I addressed the subject matter of the Class Action Proceedings in my separate reasons for declining an application for leave to intervene in these proceedings made by the lead applicant of those proceedings: see *Australian Securities and Investments Commission v RAMS Financial Group Pty Ltd* [2025] FCA 1087. As I said in those reasons, the findings made in these proceedings are based on the agreed facts that are before me and do not give rise to any determination of any factual or legal issue as between RFG and the group members in the Class Action Proceedings. It is necessary for me to again reiterate that:

- (a) to the extent that RFG has admitted contraventions of ss 47(1)(a), (b) and (e) of the Credit Act, it has done so on the basis that the investigations conducted by RFG and Westpac substantiated allegations that some (but not all) of the RAMS Franchisees engaged in misconduct;
- (b) it is based on the fact of RFG and Westpac substantiating allegations of misconduct (as opposed to establishing the underlying fact of that misconduct), that RFG has admitted that it failed in various ways to comply with its obligations under ss 47(1)(a), (b), (d) and (e) of the Credit Act;
- (c) ASIC and RFG jointly submit that the obligation under ss 47(1)(a), (b), (d) and (e) of the Credit Act as applicable to RFG (as licensee) may be established by RFG accepting (as it has done here) that its relevant processes and systems were deficient in various ways; and
- (d) to the extent that RFG has admitted contraventions of s 31(1) of the Credit Act, those admissions are based on the agreed facts before me and do not preclude those facts being contradicted or challenged in the Class Action Proceedings.

14 **Second**, it is also necessary for me to reiterate that given the parties tendered the Liability SAFA and the Penalty SOAF, I have not been required to determine any factual question on its merits which is a consequence of s 191 of the *Evidence Act 1995* (Cth). As Beach J mentioned in *Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2020] FCA 790 at [12], “all that I need to be satisfied of is whether the agreed facts on their

face provide a sufficient foundation for the declarations and orders sought. The text of s 191(2)(a) makes this plain”.

15 **Third**, both as a result of certain matters arising in the Class Action Proceedings and because of the nature of some of the sensitive nature of the materials that were before me (such as the personal details of consumers), I was satisfied that it was *necessary* to make suppression and non-publication orders under s 37AF(1) of the *Federal Court of Australia Act 1976* (Cth) (the **FCA Act**) in order to prevent prejudice to the administration of justice (as specified in s 37AG(1)(a)). I did not make orders in the terms sought by ASIC, which would have suppressed and prevented the publication altogether of certain of the investigation reports as were referenced in hyperlinks to the Liability SAFA. Instead, I have limited the operation of the suppression and non-publication orders to names, identities, locations and personal or information relating to the RAMS Franchises, particular managers, and consumers. My orders under s 37AF(1) will operate for a period of 10 years but are subject to further order.

2. THE RELEVANT PROVISIONS OF THE CREDIT ACT

16 Chapter 2 of the Credit Act contains a licensing regime for those seeking to engage in a “credit activity”, as defined in the Credit Act. There is no dispute between the parties that RFG is, and was at all material times, the holder of ACL number 388065 (**RFG’s ACL**) and, therefore, a licensee for the purposes of the Credit Act.

17 Section 6 of the Credit Act provides that a person engages in a “credit activity” if the person is a credit provider under a credit contract or carries on a business of providing credit to which the *National Credit Code* (being Sch 1 of the Credit Act) applies. A person also engages in a “credit activity” if the person provides a “credit service”, which is defined in s 7 as providing “credit assistance” to a consumer or acting as an “intermediary”. Relevantly, s 8 of the Credit Act defines “credit assistance” as follows:

A person provides **credit assistance** to a consumer if, by dealing directly with the consumer or the consumer’s agent in the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the person or another person, the person:

(a) suggests that the consumer apply for a particular credit contract with a particular credit provider; or

...

(d) assists the consumer to apply for a particular credit contract with a particular credit provider; or

...

18 Section 9 of the Credit Act defines “acts as an intermediary” as follows:

A person *acts as an intermediary* if, in the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the person or another person, the person:

- (a) acts as an intermediary (whether directly or indirectly) between a credit provider and a consumer wholly or partly for the purposes of securing a provision of credit for the consumer under a credit contract for the consumer with the credit provider; or

...

19 Part 2–1 of Ch 2 of the Credit Act prohibits persons from engaging in credit activities and related activities without an ACL. As has been observed, the purpose of these prohibitions is to ensure that credit activities (as defined) are regulated by the Credit Act, and that those engaging in credit activities are subject to the requirements imposed on licensees under the Act: *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2023] FCA 256 (*ASIC v ANZ*) at [12] (O’Byrne J).

20 Section 31(1) of the Credit Act provides:

31 Prohibition on conducting business with unlicensed persons

Prohibition on conducting business with unlicensed persons

- (1) A licensee must not:

- (a) engage in a credit activity; and
- (b) in the course of engaging in that credit activity, conduct business with another person who is engaging in a credit activity;

if, by engaging in the credit activity, the other person contravenes section 29 (which deals with the requirement to be licensed).

Civil penalty: 5,000 penalty units.

21 As will be apparent from the text, the prohibition in s 31(1) is reliant upon the “other person contravening section 29”. Section 29 of the Credit Act provides as follows:

29 Prohibition on engaging in credit activities without a licence

Prohibition on engaging in credit activities without a licence

- (1) A person must not engage in a credit activity if the person does not hold a licence authorising the person to engage in the credit activity.

Civil penalty: 5,000 penalty units.

22 The interaction between ss 29 and 31 has the effect that a licensee is prohibited from engaging in a credit activity by conducting a business with another person who is said to be engaging in

a credit activity but where in fact that other person is not licensed to do so. As I will explain later in these reasons, the facts before me establish, and it is admitted, that RFG engaged in conduct in this regard that was prohibited by s 31(1).

- 23 In *ASIC v ANZ*, O’Byrne J referred to the observations made about the statutory scheme by Lee J in *ASIC v NAB*, and stated as follows at [13]–[15]:

As observed by Lee J in *Australian Securities and Investments Commission v National Australia Bank Ltd* [2020] FCA 1494 (*ASIC v NAB*) (at [90]), the section seeks to ensure that the overall objectives of the credit regime are not frustrated by licensees engaging with unlicensed persons to subvert its intent.

Section 110(1)(b) of the Credit Act provides that the regulations may exempt a “credit activity” from certain provisions of the Credit Act. Relevantly, reg 25 of the National Consumer Credit Protection Regulations 2010 (Cth) (Credit Regulations) exempts certain credit activities from the requirement in s 29 to hold an Australian credit licence. The exemptions include where a person (a referrer) refers a consumer to a licensee (such as a bank) which is able to provide a particular credit activity to the consumer (such as a home loan). The limits of the activities in which the referrer may engage are prescribed by reg 25. Relevantly, reg 25(2) allows a licensee to receive from an unlicensed person, and the unlicensed person to provide to a licensee, the name and contact details of a consumer and a short description of the purpose for which the consumer may want a provision of credit...

Part 2.2 of Ch 2 of the Credit Act regulated the issue of, and compliance with, Australian credit licences. The key aims of the licensing regime are to regulate credit industry participants and enhance consumer protection: *ASIC v NAB* at [83]. Further, the licensing regime assisted in ensuring that those who engage in “credit activity” are subject to the responsible lending requirements in Ch 3 of the Credit Act. In *ASIC v NAB* (at [85]), Lee J observed:

Those requirements aim to protect consumers (both from conduct of lenders and from consumers making poor borrowing decisions) by imposing standards of behaviour on licensees prior to and when entering into a credit contract. The conduct requirements apply only to persons who are licensed under the National Credit Act (that is, holders of an ACL). Relevantly, licensees are required to test the suitability of the proposed credit contract and assess the consumer’s ability to meet their financial obligations under the proposed credit contract. To do so requires direct dealings between the lender and the putative borrower, hence the prohibition on an unlicensed intermediary.

- 24 Separately, but also relatedly, s 47(1)(a), (b), (d) and (e) of the Credit Act provide as follows:

47 General conduct obligations of licensees

General conduct obligations

- (1) A licensee must:
- (a) do all things necessary to ensure that the credit activities authorised by the licence are engaged in efficiently, honestly and fairly; and
 - (b) have in place adequate arrangements to ensure that clients of

the licensee are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by the licensee or its representatives; and

...

(d) comply with the credit legislation; and

(e) take reasonable steps to ensure that its representatives comply with the credit legislation; and

...

25 Section 47(4) of the Credit Act provides that:

Civil penalty for non-compliance

(4) The licensee must not contravene paragraph (1)(a), (b), (c), (e), (f), (g), (h), (i), (j), (k), (l) or (m).

Civil penalty: 5,000 penalty units.

Note: Contravening paragraphs (1)(c) (obligation to comply with conditions on the licence) and (d) (compliance with the credit legislation) has consequences under other provisions.

26 As I explain below, RFG admits that, by reason of the conduct that it has found to be substantiated, it contravened these provisions. It should also be noted, as identified in the notation to s 47(4), that a failure to comply with s 47(1)(d) (being the general obligation to “comply with the credit legislation”) does not itself constitute a contravention of s 47(4).

3. THE AGREED FACTS

27 For completeness, I have attached the Liability SAFA and the Penalty SOAF to these reasons. They are marked respectively as Annexures A and B.

28 For convenience and so that these reasons cohesively explain the relevant factual basis upon which I am satisfied that the orders sought by the parties should be made (with exceptions relating to the alleged contravention of s 47(1)(d) and certain other matters), I have set out below the facts that I considered to be relevant to my determination. In doing so, I have borrowed from the Liability SAFA and the Penalty SOAF where I have considered it appropriate to do so.

3.1 Background to the Franchise Arrangements

29 RFG was acquired by Westpac in 2008. During the Relevant Period, RFG provided credit assistance to consumers:

(a) between at least 1 January 2018 and 15 December 2020:

- (i) in relation to RAMS-branded home loans financed by Westpac; and
 - (ii) in relation to home loans with other lenders on the “RAMS Choice” (a third party aggregator) panel; and
- (b) from 16 December 2020, only in relation to RAMS-branded home loans financed by Westpac.

30 RFG operated a franchise model through the RAMS Franchise Network whereby RAMS Franchisees used the RAMS business name to provide credit assistance to consumers in relation to the distribution of RAMS-branded home loans. The RAMS-branded home loans were credit contracts with Westpac and were loans to which the Credit Act applied.

31 There were a total of 73 RAMS Franchisees from time to time within the RAMS Franchise Network during the course of the Relevant Period, though the number of RAMS Franchisees operating at any one time varied.

32 The RAMS Franchisees operated under individual RAMS franchise agreements with RFG (**Franchise Agreement**), which were amended from time to time and were subject to the Franchising Code of Conduct, as enacted by the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014* (Cth).

33 The RAMS Franchisees employed their own staff, including staff involved in submitting loan applications (**Loan Writers**). The Loan Writers were ACRs of RFG.

3.2 The policies and practices applicable to RFG and RAMS Franchisees

34 During the Relevant Period, Westpac Group and Consumer Division policies (**Westpac Policies**) applied to RFG's Head Office staff. RAMS Franchisees and their employees (including Loan Writers) were required to comply with the RAMS Franchise Network's Operations Manual, as amended by RFG from time to time (**RAMS Operations Manual**) and incorporated by reference into the Franchise Agreement.

35 In addition, RAMS Franchisees were required to comply with policies, guidelines, and procedures as amended by RFG from time to time (**RAMS Policies**), which relevantly included:

- (a) the RAMS Compliance Policy – National Consumer Protection Act 2009 (Cth) Policy;
- (b) the RAMS Conflict of Interest Policy and the RAMS Conflicts of Interest Procedure (**the RAMS Conflict of Interest Policy**);

- (c) the RAMS Franchise Behavioural and Ethical Standards Policy;
- (d) the RAMS Franchise Third Party Referrer Policy (the **RAMS Referrer Policy**);
- (e) the RAMS Referrer Procedure;
- (f) the RAMS Franchise Technology Code of Use Policy;
- (g) the RAMS Customer Identification Procedure;
- (h) the RAMS Privacy Operating Guidelines;
- (i) the RAMS Lending Guidelines;
- (j) the RAMS Disclosure Document 2014 Code;
- (k) the RAMS Franchise Sales Procedure; and
- (l) the RAMS Customer Identification Policy.

3.3 RAMS authorised credit representatives (ACRs)

36 Prior to, and during, the Relevant Period, RFG appointed RAMS Franchisees, and certain employees of the RAMS Franchisees, as its ACRs, within the meaning of s 64 of the Credit Act (**RAMS ACRs**). These appointments were made pursuant to the Credit Act and documented in written Corporate Credit Representative Agreements with corporate RAMS Franchisees and written Credit Representative Agreements with non-corporate RAMS Franchisees and employees of RAMS Franchisees (collectively, the **Credit Representative Agreements**). Pursuant to the Credit Representative Agreements, RFG appointed RAMS ACRs as:

- (a) its credit representatives under the Credit Act, and authorised them to engage in credit activities on its behalf; and
- (b) sub-agents of Westpac to carry out identification procedures on Westpac's behalf for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and the Verification of Identity Regulations (being any requirements to identify a person in connection with the granting of a mortgage).

37 The Credit Representative Agreements authorised RAMS ACRs to carry out, relevantly, the following activities:

- (a) to follow up on leads provided by RFG, the RAMS Franchisee or self-generated leads;
- (b) to provide a credit guide to a customer in accordance with RFG's instructions;
- (c) to conduct interviews to make reasonable inquiries about a customer's financial situation, and their requirements and objectives, using tools provided by RFG;

- (d) to take reasonable steps to verify a customer’s financial situation in accordance with RAMS Policies;
- (e) to make a preliminary assessment about whether a facility or variation to an existing facility is not unsuitable for a customer, using tools provided by RFG; and
- (f) to assist a customer to complete an application or variation application for facilities that are determined to be not unsuitable by the preliminary assessment, using tools provided by RFG.

38 The parties agreed, and I am satisfied that, that when carrying out the activities described in the preceding paragraph, RAMS ACRs engaged in a “credit activity” for the purposes of the Credit Act. I am also satisfied that RAMS ACRs were, pursuant to subparagraph (a)(iii) of the definition of “representatives” in s 5(1) of the Credit Act, representatives of RFG.

39 RFG required RAMS ACRs to:

- (a) complete initial training to satisfy training standards as determined by RFG prior to acting under their ACR appointment;
- (b) complete ongoing training, as specified by RFG and set out in the RAMS Operations Manual;
- (c) comply, relevantly, with the RAMS Policies, and to use the information technology and other operational systems provided to them by RFG, including RFG’s systems infrastructure;
- (d) deal only with accredited referral partners in accordance with the RAMS Operations Manual and the RAMS Referrer Policy; and
- (e) disclose details of any actual or perceived conflicts of interest, in particular where the RAMS ACR had a personal interest which could be inconsistent with the interests of RFG or its customers, such that it could influence or compromise, or appear to influence or compromise, the RAMS ACR's duties and responsibilities to RFG or its customer, in accordance with the RAMS Operations Manual and the RAMS Conflict of Interest Policy.

3.4 RFG’s requirements relating to Accredited Referrers

40 During the Relevant Period, RAMS Franchisees and their employees received referrals of prospective customers from third parties (**referrals**).

41 RAMS Franchisees and their employees were only permitted by RFG to accept referrals from third parties who were, with limited exceptions, referrers who had been accredited (**Accredited Referrers**) in accordance with the requirements of the RAMS Operations Manual, the RAMS Referrer Policy and the “RAMS Franchise Referrer Procedure” (the **RAMS Accreditation Process**). Throughout the Relevant Period, RAMS Franchisees received induction training about the policies and procedures in place that applied to the use of Accredited Referrers, and their associated responsibilities under the RAMS Accreditation Process.

42 Pursuant to the RAMS Accreditation Process, only the following three types of referrers could be accredited:

- (a) an entity that held an ACL under Part 2–2 of the Credit Act or who was an ACR of an ACL holder under Part 2–3 of the Credit Act, and who conducted a referral business;
- (b) an entity that was exempt under the *National Consumer Credit Protection Regulations 2010* (Cth) and conducted a business in which providing referrals was incidental to its main activities (**Exempt Referrer**); or
- (c) a Westpac-approved broker that held an ACL or was an ACR (**Westpac-Approved Broker**).

3.5 RFG’s process for accrediting referrers

43 In order for a prospective referrer to become accredited under the RAMS Accreditation Process, a RAMS Franchisee or employee was required to:

- (a) gather information about the identity of the prospective referrer;
- (b) gather information to confirm whether the prospective referrer held a current ACL, was a current ACR of an ACL-holder, was a Westpac-Approved Broker, or was an Exempt Referrer;
- (c) conduct searches in relation to the prospective referrer, including a company search (where relevant) and searches to determine whether the prospective referrer had been banned or disqualified by ASIC; and
- (d) undertake any other steps set out in the RAMS Operations Manual, RAMS Referrer Policy and RAMS Franchise Referrer Procedure in relation to the prospective referrer.

44 Next, the RAMS Franchisee or employee was required to submit the accreditation request to RFG for determination. Westpac would then perform additional checks on the prospective

referrer and related individuals prior to determination (including ABN and ASIC searches, verification of the prospective referrer's business address, and checks against Westpac's internal databases, which included the names of individuals with known misconduct, financial crime links, or involvement in fraud).

45 A team within RFG called "RAMS Franchise Field Compliance" would notify the relevant RAMS Franchisee of the outcome of the accreditation request and, if approved, a "Referrer Agreement" was required to be entered into between the relevant RAMS Franchisee and the prospective referrer. If accredited, and subject to the type of referrer (eg, an Exempt Referrer or Westpac-Approved Broker), Accredited Referrers would:

- (a) provide consumer details, including the consumer's name, contact details, and a short description of their purpose for seeking the provision of credit, if known, to the RAMS Franchisee;
- (b) conduct an initial lending conversation with the consumer; and/or
- (c) provide completed home loan application forms and supporting documents to the RAMS Franchisee.

46 In the event a consumer who wished to apply for a RAMS-branded home loan was referred to a RAMS Franchisee by an Accredited Referrer, the RAMS Franchisee or RAMS ACR was required to inform RFG that the loan application had been so referred, including by providing details of the Accredited Referrer's unique referrer identifier code in the relevant electronic lodgement system (known as Symmetry) as part of the home loan application process.

3.6 Loan application process

47 During the Relevant Period, consumers approached RAMS Franchisees:

- (a) through a central RAMS phone number for consumer enquiries, being 13RAMS (137 267), which referred consumers to the RAMS Franchisees;
- (b) through Accredited Referrers; or
- (c) by directly approaching a RAMS Franchisee or a Loan Writer.

48 Having been approached by consumers, RAMS Franchisees or their Loan Writers obtained information and documents from the consumers for the purpose of submitting loan applications to RFG for RAMS-branded home loans.

49 Prior to lodging home loan applications on behalf of consumers, during the Relevant Period RAMS Franchisees and their Loan Writers were required:

- (a) pursuant to the Franchise Agreement, to ensure the consumer's information was accurately captured, and that the information was a true and accurate reflection of the consumer's circumstances;
- (b) pursuant to the Credit Representative Agreement, to take reasonable steps to correctly collate and convey any information provided to RFG or any lender (including information in relation to any application), and not provide any information that the RAMS Franchisee or its officers, employees, agents or contractors knows (or should know) is false, misleading or forged;
- (c) pursuant to the RAMS Policies:
 - (i) to identify the consumer;
 - (ii) to assess whether the consumer was eligible for a RAMS-branded home loan, in accordance with the RAMS Lending Guidelines, as amended from time to time;
 - (iii) to perform a preliminary suitability assessment about the consumer, in the course of which they were required to ascertain the consumer's financial situation by:
 - (A) identifying and recording accurately the consumer's requirements and objectives and ensuring any recommended loan met their requirements;
 - (B) collecting accurate, relevant and complete information about the consumer, including their financial information; and
 - (C) checking, verifying and assessing the consumer's information, including financial information, carefully to ensure RFG had a complete picture of the consumer's financial situation, including income, expense, employment status, and exit strategy should the loan term exceed the consumer's expected retirement age; and
 - (iv) in the course of performing the suitability assessment, to:
 - (A) obtain supporting documents to confirm the consumer's financial and personal situation as described and set out in the RAMS Lending Guidelines, as amended from time to time and the Operations Manual including documents required for Pay As You Go employees, loan

statements, documents required for self-employed consumers and documents to substantiate the consumer's funds to complete the transaction such as a deposit;

- (B) review the consumer's supporting documentation in accordance with the RAMS Lending Guidelines;
 - (C) validate the consumer's declared liabilities (and were strongly recommended to obtain a report from a credit reporting body);
 - (D) optionally obtain valuations;
 - (E) assess the capacity of the consumer to service the loan; and
- (v) before submitting a loan application, check all the consumer's information carefully to ensure RFG had a complete picture of the consumer's financial position.

50 Once the above steps were complete, the RAMS Franchisee or Loan Writer was required to submit the loan application to a team comprised of Westpac employees called "RAMS Credit & Loan Operations" (**RAMS Credit**), which, on behalf of Westpac, processed applications for approved products from receipt of the application until they instructed solicitors to prepare loan documents for settlement.

51 Upon receipt of a loan application, RAMS Credit first undertook a "triage" process (which throughout the Relevant Period, was undertaken by a team called "**RAMS Home Ownership Services**") to ensure that the loan application was in a state ready for assessment by a RAMS Credit Manager. As part of the "triage" process, RAMS Credit was required to:

- (a) ensure that all supporting documents were provided in accordance with the RAMS Policies;
- (b) assess whether there was any missing information or documents;
- (c) verify information in the loan application by cross-checking it against supporting documents;
- (d) undertake "Requirements and Objectives checks", including to ensure that the loan application included a full and complete preliminary assessment; and
- (e) use triage "checklists" to perform their functions.

52 If, following the "triage" process, the loan application was determined to be in a state ready for assessment by a RAMS Credit Manager, it was allocated to a RAMS Credit Manager within

RAMS Credit to conduct, on behalf of the credit provider, a substantive assessment of whether the credit contract would be unsuitable for the customer.

53 The assessment by a RAMS Credit Manager involved:

- (a) reviewing the loan application and ensuring it complied with policy, verifying the income documents, and checking for red flag indicators that could indicate fraud;
- (b) considering the comprehensive credit report information as well as security information contained within the valuation report;
- (c) reviewing financial statements that could indicate non-disclosure of information;
- (d) performing an unsuitability assessment on behalf of Westpac;
- (e) completing a “credit memorandum” which referenced the credit calculations, as well as completing servicing calculations; and
- (f) sending the loan to the Settlement Team for settlement if approved.

54 On some occasions, as an additional step within the process, the loan application was referred to the RAMS Risk and Fraud Operations team (**RAMS Risk and Fraud**), including where there were anomalies or concerns about information or consumers in respect of an application.

55 Once a RAMS Credit Manager assessed the application, the RAMS Credit Manager, on behalf of Westpac as the credit provider, would approve the application conditionally, approve the application unconditionally, defer the application for the purpose of obtaining further information, or decline the application.

56 Since at least June 2019, RFG also conducted post-loan settlement “Welcome Calls” with consumers, in respect of which:

- (a) the calls were outsourced to a contact centre at Unisys Mortgage Processing (**UMP**);
- (b) the callers were required to collect information from consumers;
- (c) the information collected permitted UMP to determine whether there were anomalies in the manner in which RAMS ACRs discharged their obligations under the RAMS’ ACL (including whether the consumer had been referred from a third party other than an Accredited Referrer); and
- (d) in the event of an anomaly, UMP was required to refer the Welcome Calls to RAMS Compliance for further review.

3.7 Investigations Process

During the Relevant Period, misconduct concerns relating to a RAMS Franchise could be investigated by one RFG or by:

- (a) a group within Westpac called the Secured Lending Taskforce (**SLTF**), which could have received the request to investigate from either RFG or Westpac; or
- (b) a group within Westpac called Group Investigations, which could have received the request to investigate from either RFG or Westpac.

Where SLTF undertook an investigation into misconduct concerns relating to a RAMS Franchise, it provided the findings of that investigation to relevant groups, which included Group Investigations. Those findings could be incorporated by Group Investigations (also referred to as **GI**) into its investigation.

From around mid-2022, having regard to information sharing restrictions imposed by relevant laws, RFG was provided with only a summary of SLTF's findings, and only in instances where termination and/or revocation of the Franchise Agreement and/or Credit Representative Agreement was recommended by Westpac.

Where GI undertook an investigation into misconduct concerns relating to a RAMS Franchise it would, on completion of its investigation, prepare a report which included its findings about whether the misconduct was “substantiated” (**GI Report**).

Of the 35 GI Reports that informed Schedules 1 and 2 of the Liability SAFA, 24 GI Reports were addressed, or copied, to RFG’s Managing Director. In relation to the remaining GI Reports, all were addressed, or copied, to either the Head of Risk and Compliance and/or in-house lawyers supporting the RAMS business.

During the Relevant Period, RFG used Westpac’s risk and compliance system, known as “**JUNO**”, to record and manage risk and compliance issues.

3.8 The findings of misconduct within the RAMS Franchise Network

During the Relevant Period, Westpac and RFG undertook investigations, including through GI and SLTF, into allegations of misconduct relating to the RAMS Franchises.

The nature of the alleged misconduct investigated by GI and SLTF varied widely. Schedules 1 and 2 to the Liability SAFA summarise substantiated findings of misconduct made by GI (**GI Findings**). The GI Findings:

- (a) relate to conduct that occurred over the course of a 5-year period from at least 1 January 2018 to April 2023;
- (b) involve staff, including RAMS Franchisees and Loan Writers, at 12 RAMS Franchises (being RAMS Franchises A, B, C, D, E, F, G, H, I, J, K, and L) (**Relevant Franchises**); and
- (c) are set out in 35 GI Reports, the first of which is dated 17 August 2019 (RAMS Franchise G) and the last of which is dated 18 August 2023 (RAMS Franchise J).

65 RFG was made aware of the GI Findings, including through the provision of GI reports to its Managing Director, Head of Risk and Compliance, and/or in-house lawyers supporting the RAMS business.

66 Schedule 1 of the Liability SAFA summarises the GI Findings in relation to the Relevant Franchises. Specifically:

- (a) the first column sets out the item number;
- (b) column A identifies the category of misconduct with reference to one or more of the categories of misconduct as discussed below;
- (c) column B identifies the time period over which the misconduct occurred;
- (d) column C summarises the particular misconduct in respect of each item number;
- (e) column D identifies the RAMS or Westpac Policies that GI found had been breached by virtue of the misconduct;
- (f) column E identifies the date of the relevant GI Report; and
- (g) column F identifies whether there was a related SLTF Report, and the number of that Report.

67 Schedule 2 of the Liability SAFA summarises the GI Findings of the “Unlicensed Referrer Misconduct” (see [71] below) in relation to the Relevant Franchises that involved contraventions of s 31(1) of the Credit Act. Specifically:

- (a) column A identifies the item number in Schedule 1 that relevantly deals with Unaccredited Referrer Misconduct;
- (b) column B identifies the Relevant Franchise;
- (c) column C identifies the name of the Relevant Franchise staff member that accepted the referral; and

(d) column D identifies the number of contraventions of s 31(1) of the Credit Act referable to the item number.

68 In addition, I have received a further revised version of Schedule 2 in an Affidavit of Ms Kristina Andrea Belci affirmed 20 October 2025 at Annexure KAB-01. This was a non-anonymised version of Schedule 2 of the Liability SAFA. As I have addressed above, I have made suppression and non-publication orders in respect of the content that reveals identifying information.

3.9 The categories of misconduct

69 The misconduct which is the subject of the GI Reports is categorised for the purposes of Column A of Schedule 1 of the Liability SAFA as follows:

- (a) Unaccredited Referrer Misconduct;
- (b) Conflict of Interest Misconduct;
- (c) False Documentation Misconduct;
- (d) Transfer of Funds Misconduct;
- (e) Privacy and IT Misconduct; and
- (f) Other Policy and Procedure Misconduct.

70 For present purposes, it is convenient to provide a brief summary of each category of misconduct.

3.9.1 Unaccredited Referrer Misconduct

71 RFG and Westpac found substantiated instances of some RAMS Franchises accepting referrals from unaccredited referrers. In those instances, RFG and Westpac were satisfied that the relevant RAMS Franchises breached the RAMS Referrer Policy (**Unaccredited Referrer Misconduct**): see Schedule 1 of the Liability SAFA at rows 1, 2, 5, 6, 8, 9, 10, 11, 13, 16, 23, 28, 32, 40, 44, 50, 54, 57, 60, 63, 64, 65, 69, 70, 71, 72, and 83.

3.9.2 Unlicensed Referrer Misconduct

72 Where representatives at the Relevant Franchises accepted referrals from unaccredited referrers who did not hold an ACL under Part 2–2 of the Credit Act or who were not an authorised representative of an ACL holder under Part 2–3 of the Credit Act at the time of the referral

(**Unlicensed Referrer Misconduct**), RFG contravened s 31(1) of the Credit Act, as addressed in further detail below and in Schedule 2 of the Liability SAFA.

3.9.3 Conflicts of Interest Misconduct

73 During the Relevant Period, the types of conduct identified by GI in respect of particular Relevant Franchises included that they were found by RFG and Westpac to have:

- (a) engaged in credit activities where there was a conflict of interest or relationships between representatives at the Relevant Franchises and other commercial businesses which provided services or referrals to the Relevant Franchises as described in Schedule 1 of the Liability SAFA at rows 22, 26, 27, 31, 33, 38, 39, 56, 67, and 81, including by:
 - (i) while acting as a principal at a Relevant Franchise, being listed as the sole signatory on the bank accounts of a company which referred loan applications to the Relevant Franchise and personally receiving commissions from those referrals;
 - (ii) personally, receiving monies from referrers; and
 - (iii) while acting as a principal at a Relevant Franchise, failing to declare a conflict of interest with an Accredited Referrer operated by that principal's brother; and
- (b) thereby, breached the RAMS Conflict of Interest Policy.

3.9.4 False Documentation Misconduct

74 During the Relevant Period, the types of conduct identified by GI in respect of particular Relevant Franchises included that they were found by RFG and Westpac to have:

- (a) submitted loan applications prepared by representatives at the Relevant Franchises which included, likely in order to increase the prospects of the loan application being approved, false information and/or documents in support of the loan applications in the manner identified in Schedule 1 of the Liability SAFA at rows 14, 25, 35, 40, 41, 44, 51, 65, 77, and 83, including by:
 - (i) altering the declared expenses in loan applications to enable the loan to meet serviceability requirements;
 - (ii) representing that their own home loan application was for an investment property when in fact it was to be owner-occupied; and

- (iii) coding loan applications to a party other than the true referrer; and
- (b) thereby, breached the policies described in the corresponding column D of those rows in Schedule 1.

3.9.5 Transfer of Funds Misconduct

75 During the Relevant Period, the types of conduct identified by GI in respect of particular Relevant Franchises included that they were found by RFG and Westpac to have:

- (a) Transferred funds in relation to loans in the manner identified in Schedule 1 of the Liability SAFA at rows 29, 36, 39, and 45, including by:
 - (i) facilitating the payment of customer arrears payments with the result that the Relevant Franchise continued to receive commission payments; and
 - (ii) making a payment to a customer for the purpose of satisfying the customer's settlement fees and the first year of the annual package fee; and
- (b) thereby, breached the policies described in the corresponding column D of those rows in Schedule 1.

3.9.6 Privacy and IT Misconduct

76 During the Relevant Period, the types of conduct identified by GI in respect of particular Relevant Franchises included that they were found by RFG and Westpac to have:

- (c) misused information or IT systems in the manner described in Schedule 1 of the Liability SAFA at rows 3, 4, 7, 15, 17, 19, 20, 21, 24, 30, 34, 37, 43, 46, 52, 55, 58, 61, 62, 64, 68, 73, 74, 79, 80, 82 and 84, including by:
 - (i) distributing RFG software to unaccredited referrers or persons not employed by RFG;
 - (ii) using unauthorised personal email accounts to store and distribute confidential customer identification and documentation; and
 - (iii) sharing a username and password with a third party; and
- (d) thereby, breached the policies described in the corresponding column D of those rows in Schedule 1.

3.9.7 Other Policy and Procedure Misconduct

77 During the Relevant Period, the types of conduct identified by GI in respect of particular Relevant Franchises included that they were found by RFG and Westpac to have:

- (a) breached other policies and procedures, or guidelines, not otherwise described in one of the categories described above, in the manner described in Schedule 1 of the Liability SAFA at rows 1, 2, 9, 12, 18, 26, 29, 31, 33, 35, 42, 47, 48, 49, 53, 56, 59, 66, 73, 75, 76, 78, 80, 84, and 85, including by:
 - (i) establishing proxy referrers knowing them to be employees of banned referrer companies;
 - (ii) failing to identify multiple anomalies in supporting documentation for loan applications at a level expected of a prudent loan writer; and
 - (iii) failing to identify customers themselves (but rather accepting false certified copies of customer identification from referrers); and
- (b) thereby, breached the policies described in the corresponding column D of those rows in Schedule 1.

3.10 Franchisee Oversight Controls Review and Project Guardian

78 In response to concerns identified with the conduct of a particular RAMS Franchise, Westpac:

- (a) on 5 October 2022, commenced a review into RFG's Franchisee Oversight Controls (**Franchisee Oversight Controls Review**), to assess the effectiveness of the control environment within RAMS, specifically focussed on the oversight of certain franchisee conduct, being conflicts of interest, the use of unaccredited referrers, and the misrepresentation of loan application information; and
- (b) on 25 November 2022, commenced "**Project Guardian**", the purpose of which was to investigate and respond to possible misconduct by other franchisees within the RAMS Franchise Network and uplift RAMS controls to ensure that similar issues would be avoided in the future.

79 Project Guardian ran over the course of approximately 22 months at a cost of approximately \$46 million. Project Guardian included monitoring and targeted reviews of all RAMS Franchisees, reviews of historical and new loan applications referred by RAMS Franchisees, the engagement of an external expert to conduct an independent review of the RAMS control environment, and the implementation of associated control uplifts.

80 Westpac and RFG committed over 200 employees and external consultants to Project Guardian. In the course of this project:

- (a) RFG enhanced relevant policies, procedures and controls, developed and updated training modules, and completed an enhancement of the RFG risk profile and supervision and monitoring framework; and
- (b) there was an increase in the number of investigations conducted by GI and SLTF into RAMS Franchisees as evidenced in Schedule 1 of the Liability SAFA. These investigations were conducted in tandem with RFG's uplift of its policies, procedures, and controls, and resulted in the termination of Franchise Agreements with RAMS Franchisees and Credit Representative Agreements with RAMS ACRs.

81 As part of Project Guardian, Westpac also undertook a broad review exercise which involved a review of the entire portfolio of RAMS loans settled in the period December 2016 to December 2022.

82 The process resulted in Westpac remediating 48 customer loans to a value of \$7,567,418. In determining whether a loan required remediation, Westpac did not require evidence of any actual misconduct by RAMS Franchisees (that is, customers were remediated even if it could not be established that any financial harm they may have suffered was the result of conduct of RAMS ACRs).

83 The loans requiring remediation represented approximately 0.05% of all loans originated through the RAMS Franchise Network between December 2016 and December 2022.

84 The total remediation value represented 0.025% of the RAMS total portfolio value as at September 2024 and 0.0009% of the Westpac total portfolio value as at September 2024.

3.11 Other audits and reviews

85 On 13 December 2022, the Executive Manager (Credit Quality and Regulatory Change) at Westpac delivered a report on the findings of the Franchisee Oversight Controls Review to the Managing Director (Mortgages).

86 On 14 April 2023, Westpac's Group Audit team finalised its "RAMS Franchisee Management and Oversight Audit Report" which reported on the findings of its audit.

87 On 15 September 2023, the Westpac Board Risk Committee received a Memorandum reporting to it on Westpac management's analysis of "Root Causes relating to RAMS Matters", in which four root causes were identified as contributing to the deficiencies in RFG, being:

- (a) an autonomous business with a unique risk profile;
- (b) an immature risk culture and capability within RFG;
- (c) a deficient control environment and controls testing; and
- (d) insufficient oversight of a non-standard end-to-end business unit.

3.12 Closing the RAMS business

88 Following commencement of Project Guardian, having regard to the findings of the investigations conducted by GI and SLTF into RAMS Franchisees and their employees, RFG terminated Credit Representative Agreements with ACRs who had been the subject of substantiated findings of misconduct.

89 RFG wound down the RAMS Franchise Network in its entirety, effective 6 August 2024, which included the termination of all remaining Franchise Agreements and the termination of the remaining Credit Representative Agreements.

3.13 ASIC's investigation

90 Commencing in September 2022, RFG and Westpac reported to ASIC on multiple occasions potential breaches of ss 31(1) and 47 of the Credit Act pursuant to the requirement in s 50B of the Credit Act.

91 ASIC commenced its investigation into the conduct the subject of these reports in mid-2023.

92 RFG fully cooperated with ASIC in its investigation, and has engaged constructively with ASIC in relation to several voluntary requests for information and documents.

4. THE CONTRAVENTIONS

93 Based on the agreed facts, I am satisfied that RFG contravened the Credit Act for the reasons set out below.

4.1 Contraventions of s 31(1) of the Credit Act

94 As set out at [22] above, the interaction between ss 29 and 31 has the effect that a licensee, in the course of engaging in a credit activity, is prohibited from engaging in that credit activity by

conducting a business with another person where that other person is not licensed to engage in a credit activity.

95 Relevantly, as applied to the circumstances here, the question that arises is whether on the agreed facts, RFG, during the course of being engaged in a credit activity, conducted business with another person who was engaging in a credit activity without a licence authorising that activity.

96 The agreed and admitted facts demonstrate that there were 84 instances where consumers were referred to RAMS Franchisees by third parties who were not licensed to provide credit activity. Those third parties included accountants, tax agents, and other types of advisors. The fact that those persons were not licensed at the relevant times is established by evidence adduced by ASIC which establishes that:

- (a) ASIC maintains a database of the names and details of all individuals who hold, or held, an ACL;
- (b) ASIC also maintains a database of the names and details of all individuals who are, or have been, authorised credit representatives of an ACL holder under Part 2–3 of the Credit Act;
- (c) subject to one qualification, a search of these databases disclosed that none of the entities or persons identified in a suppressed and redacted version of Schedule 2 of the Liability SAFA are recorded as being the holders of an ACL or an authorised representative of an ACL holder; and
- (d) in one instance, although the corporate entity was recorded as an authorised credit representative of a different ACL holder, there is no evidence that the individual person who provided the referral to the relevant RFG Franchisee was an authorised credit representative of any ACL holder or sub-authorised by the relevant corporate entity to provide credit services.

97 I am satisfied that in each of these instances RFG was dealing with a person who was not licensed to provide a credit activity.

98 As to whether in each such instance, the other person (being the referrer) was engaged in a “credit activity”, the parties submitted that the broad definitions of “credit activity” and “credit assistance” in ss 7 and 8 of the Credit Act encompassed such activities. I am satisfied that by referring a consumer to a RAMS Franchisee for the purpose of obtaining a home loan, the

“other person” was at the very least (in the course of, or incidentally, to a business carried on by that person) providing “credit assistance” to that consumer as provided for in s 8 of the Credit Act. In each such instance, the “other person” had in one or another way advised or suggested that the relevant consumer apply for or obtain a home loan through the relevant RAMS Franchisee.

99 Accordingly, I am satisfied that RFG contravened s 31(1) on each of the 84 occasions identified in Schedule 2 of the Liability SAFA.

4.2 Contraventions of s 47(1)(a) of the Credit Act

100 As set out above, s 47(1)(a) required RFG to “do all things necessary to ensure that the credit activities authorised by its licence were” engaged in “efficiently, honestly and fairly”.

101 The meaning of the phrase “efficiently, honestly and fairly” in s 47(1)(a) is informed by cases on s 912A(1)(a) of the *Corporations Act 2001* (Cth) (the **Corporations Act**), which uses the same expression: *Australian Securities Investments Commission v Membo Finance Pty Ltd (No 2)* [2023] FCA 126 at [37] (Yates J). The parties in their joint submissions provided a useful summary of the relevant propositions to be drawn from those cases, from which I have borrowed as they are both accurate and an efficient summation of those propositions.

102 The authorities in relation to the obligation in s 912A(1)(a) of the Corporations Act (“to do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly”) include the following propositions (per Foster J in *Australian Securities and Investments Commission v Camelot Derivatives Pty Ltd (in liq)* [2012] FCA 414; 88 ACSR 206 at [69] (with citations omitted)):

- (a) the words “efficiently, honestly and fairly” must be read as a compendious expression, meaning a person who goes about their duties efficiently having regard to the dictates of honesty and fairness, honestly having regard to the dictates of efficiency and fairness, and fairly having regard to the dictates of efficiency and honesty;
- (b) the words “efficiently, honestly and fairly” connote a requirement of competence in providing advice and in complying with relevant statutory obligations. They also connote an element not just of even handedness in dealing with clients but a less readily defined concept of sound ethical values and judgment in matters relevant to a client’s affairs;

- (c) the word “efficient” refers to a person who performs his duties efficiently, meaning the person is adequate in performance, produces the desired effect and is capable, competent and adequate. Inefficiency may be established by demonstrating that the performance of a licensee’s functions falls short of the reasonable standard of performance by a dealer that the public is entitled to expect;
- (d) it is not necessary to establish dishonesty in the criminal sense. The word “honestly” may comprehend conduct which is not criminal but which is morally wrong in the commercial sense; and
- (e) the word “honestly” when used in conjunction with the word “fairly” tends to give the flavour of a person who not only is not dishonest, but also a person who is ethically sound.

103 A contravention of the “efficiently, honestly and fairly” standard does not require a contravention or breach of a separately existing legal duty or obligation, whether statutory, fiduciary, common law or otherwise given that the statutory standard itself is the source of the obligation: *Australian Securities and Investments Commission v AGM Markets Pty Ltd (in liq) (No 3)* [2020] FCA 208; 275 FCR 57 at [512] (Beach J). Section 912A(1)(a) of the Corporations Act has been described as “a statutory norm to be read conformably with s 760A and the other provisions of the Corporations Act and the ASIC Act”: *AGM Markets* at [519] (Beach J).

104 The word “ensure” as contained in the statutory text imports a forward-looking element into the obligation. It is necessary not only to act efficiently, honestly and fairly from day to day, but to take steps to guard against lapses from that standard by employees or representatives: *Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2022] FCA 1422 at [146] (Downes J), citing *Australian Securities and Investments Commission v AMP Financial Planning Pty Ltd (No 2)* [2020] FCA 69; 377 ALR 55 at [105] (Lee J), cited with approval in *Australian Securities and Investments Commission v Ferratum Australia Pty Limited (in liq)* [2023] FCA 1043 at [49] (Kennett J) (*ASIC v Ferratum*).

105 Although the subjective intention of the alleged contravener may clearly be relevant, the standard may be unintentionally breached. Contravention is generally a matter for objective analysis: *Australian Securities and Investments Commission v National Australia Bank Ltd* [2022] FCA 1324 at [352] (Derrington J) cited with approval in *ASIC v Ferratum* at [49] (Kennett J).

106 As applicable to RFG, and based on the agreed facts, I am satisfied that in the operation of the RAMS Franchise Network, RFG was required to take particular steps to comply with s 47(1)(a) of the Credit Act. Although those steps themselves were not prescribed in s 47(1)(a) of the Credit Act, given that RFG was engaged in credit activities through the RAMS Franchise Network it was imperative that it took appropriate and adequate steps to “ensure” that the RAMS Franchisees could, and did, comply with its own policies in providing efficient, honest and fair services to consumers who were seeking to enter into, and did enter into, home loans.

107 In particular, as the parties submitted, I am satisfied that this obligation required RFG to:

- (a) create adequate policies and procedures for the operation of the RAMS Franchise Network;
- (b) take reasonable steps to ensure that those policies and procedures were complied with by RFG and RAMS ACRs;
- (c) adequately investigate and respond to possible misconduct within the RAMS Franchise Network including:
 - (i) in relation to non-compliance with the RAMS Policies;
 - (ii) in response to investigations by the SLTF and GI; and
 - (iii) by implementing appropriate controls to manage identified risks, where those risks were identified in the course of the relevant investigations; and
- (d) conduct adequate compliance audit and routine loan file review procedures to detect misconduct in relation to loan applications received from RAMS Franchisees.

108 The parties also agreed and jointly submitted that RFG was required by s 47(1)(a) to comply with its obligations pursuant to ss 31(1), 47(1)(b) and 47(1)(e) of the Credit Act. I have doubts about this submission and do not consider it necessary to accept the joint position of the parties in this respect, or to make such a finding. The effect of the parties’ joint position in this respect is that RFG was required by s 47(1)(a) to comply with other provisions of the Credit Act, which would add little, if anything, to those other obligations. This submission is to be contrasted to the separate contention, which I do accept, that s 47(1)(a) extends to a licensee ensuring that it has adequate policies and procedures in place to discharge its obligations under ss 31(1), 47(1)(c), (d), and (e). The separate contention focusses on the adequacy of systems, policies and procedures directed to ensuring compliance, as opposed to merely requiring compliance with another obligation. However, in respect of s 47(1)(b) it is to be observed that it is an

obligation which already requires a licensee to have in place “adequate arrangements” to ensure that its clients are not disadvantaged by conflicts of interest. Generally, I share the views that O’Byrne J expressed in respect of a similar issue that arose in *ASIC v ANZ* where his Honour stated at [57]:

It cannot be doubted that the stipulation in s 47(1)(a), that a licensee must do all things necessary to ensure that the credit activities authorised by the licence are engaged in efficiently, honestly and fairly, is important. There is a body of case law in respect of the analogous provision in s 912A(1)(a) of the Corporations Act 2001 (Cth), although there has been limited appellate consideration of the provision (there was limited discussion in *Australian Securities and Investments Commission v Westpac Securities Administration Ltd* (2019) 272 FCR 170). In my view, the question whether ANZ’s conduct in this case constitutes a contravention of s 47(1)(a) is not free from doubt. The relationship between each of the paragraphs of s 47(1), and how paragraph (a) should be construed in light of the other paragraphs, may need consideration. An overly broad construction of paragraph (a), as propounded by ASIC, may render otiose the other paragraphs. In the circumstances of the present case, I am not willing to make a declaration of contravention of s 47(1)(a) solely on the basis of ANZ’s admission and without contest. The admission has no practical consequences for ANZ as the admission, and proposed declaration, would be merely duplicative of the other admissions.

109 Despite some of the infelicity in the parties’ position and the declarations that they proposed, I am nevertheless satisfied that RFG contravened s 47(1)(a) by:

- (a) failing to take reasonable and adequate steps to ensure that RAMS Franchises and their staff complied with RAMS Policies;
- (b) failing to create and establish adequate policies and procedures for responding to possible misconduct;
- (c) failing to create an effective consequence management policy which set out parameters about when concerns about possible misconduct should be referred by RFG for investigation; and
- (d) failing to implement effective controls to ensure that RFG representatives did not breach the policy requirement not to deal with unaccredited referrers, including by failing to:
 - (i) satisfy itself that there were adequate processes in place to verify that a referrer was accredited;
 - (ii) put in place controls to monitor the accuracy of an Accredited Referrer’s unique referrer identifier code which was required to be entered in Symmetry by the RAMS Franchise as part of the home loan application process; and

- (iii) include post-loan settlement “Welcome Calls”, as described in paragraph 51 of the Liability SAFA, to consumers as a control in JUNO, as a result of which RFG management was unable to assess and confirm whether that control was operating effectively, in circumstances where Welcome Calls were the key control used by RFG for identifying the use of Unaccredited Referrers;
- (e) failing to take adequate steps to ensure that RAMS Franchisees and their employees adhered to the process for a prospective referrer to become accredited under the Accreditation Process, which failure led to the use of referrers who:
 - (i) did not hold a current ACL under Part 2–2 of the Credit Act;
 - (ii) were not an authorised representative of an ACL holder under Part 2–3 of the Credit Act; or
 - (iii) not exempt from being required to hold an ACL under the credit legislation;
- (f) failing to establish adequate compliance audit and routine loan file review procedures to detect misconduct, including by:
 - (i) establishing compliance audits with a very narrow focus that, among other things, were not designed to identify misconduct, and which excluded higher risk loan applications (such as declined or withdrawn files) from sampling processes; and
 - (ii) establishing an inappropriately undemanding paper file review process (5 files, every 6 months) undertaken by the RAMS Field Franchise sales team and was not focused on detecting misconduct issues; and
- (g) failing to adequately respond to possible misconduct within the RAMS Franchise Network, including by virtue of failing to:
 - (i) record all incidents of misconduct in a central location and to include sufficient information in JUNO to enable analysis of those incidents;
 - (ii) review incidents of potential misconduct with a view to determining whether they were indicative of systemic issues within the RAMS Franchise Network;
 - (iii) implement an adequate mechanism to monitor, consider and respond to incidents of misconduct;
 - (iv) impose consistent consequences for findings of misconduct in Westpac GI Reports and failing to adequately record consequences imposed for the misconduct found in the Westpac GI Reports; and

- (v) adequately document the rationale for approving the extension of the term of a Franchise Agreement, having regard to incidents of misconduct in respect of that RAMS Franchise; and
- (h) failing to identify systemic misconduct issues arising from investigations into misconduct at individual franchises.

110 It is on the above basis that I am satisfied that RFG contravened s 47(1)(a) of the Credit Act. However, as I address below, it is preferable that the parties prepare a revised form of declarations that reflect these reasons.

4.3 Contraventions of s 47(1)(b) of the Credit Act

111 Section 47(1)(b) of the Credit Act required RFG to have in place adequate arrangements to ensure that its clients were not “disadvantaged by any conflict of interest” that might have arisen wholly or partly in relation to credit activities engaged in by it or its representatives.

112 Section 47(1)(b) has not been the subject of previous judicial consideration. In *Australian Securities and Investments Commission v Citigroup Global Markets Australia Pty Limited (ACN 113 114832) (No. 4)* [2007] FCA 963; 160 FCR 35, Jacobson J considered the analogous s 912A(1)(aa) of the Corporations Act. His Honour found that “adequate management” did not require the elimination of unauthorised conflicts by obtaining express consent (at [443]). His Honour observed in obiter that “[a]dequate arrangements require more than a raft of written policies and procedures. They require a thorough understanding of the procedures by all employees and a willingness and ability to apply them to a host of possible conflicts” (at [454]).

113 The parties jointly submitted that in order to comply with s 47(1)(b) of the Credit Act, RFG was required to have in place adequate arrangements to ensure that consumers were not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities undertaken by it. It was further submitted that, in order to comply with s 47(1)(b) of the Credit Act, RFG was required to have in place adequate arrangements to ensure that RAMS ACRs complied with policies and procedures that were implemented for the purposes of ensuring RAMS ACRs complied with this aspect of the obligations contained in the Credit Act.

114 I accept the parties’ joint submissions. Section 47(1)(b) of the Credit Act required RFG to have in place “adequate” arrangements to achieve and promote the statutory norm to “ensure” an objective, specifically, being “to ensure” that clients were not disadvantaged by any conflict of interest that might have arisen. The relevant conflict of interest is one that “might have arisen

wholly or partly in relation to credit activities engaged in” by RFG or its representatives, which included the RAMS ACRs. That obligation, as Jacobson J observed in obiter in *Citigroup*, involves something much more than having in place written policies dealing with conflicts of interest, but that they be adequate to bring about a result, namely, the statutory objective of avoiding disadvantage to clients arising from a conflict of interest. Such a failure may be established even in the absence of proof of actual disadvantage in so far as it is established that there were not “adequate arrangements” to “ensure” the relevant result.

115 In the present case, the parties submitted, and I accept, that RFG contravened s 47(1)(b) by failing to:

- (a) pursuant to the RAMS Conflict of Interest Policy, ensure that the RAMS Conflicts of Interest Register was completed, despite there being known conflicts of interest that required being managed;
- (b) prior to Project Guardian, adequately respond to actual conflicts of interest identified in the course of investigations undertaken by SLTF and GI; and
- (c) provide RAMS Franchisees and their employees with ongoing, mandatory training on conflicts of interest, in addition to simply providing regular Compliance Newsletters distributed to the RAMS Franchise Network that included reminders of managing conflicts of interest and requiring ACRs to provide an annual attestation confirming that they had read and understood certain policies, including the RAMS Conflict of Interest Policy.

116 It is on the above basis that I am satisfied that RFG contravened s 47(1)(b) of the Credit Act.

4.4 Contraventions of s 47(1)(d) of the Credit Act

117 Section 47(1)(d) required RFG to comply with the credit legislation, which includes the Credit Act: see s 5(1).

118 Section 47(1)(d) is not a civil penalty provision as it is not so specified in s 47(1)(4) of the Credit Act. Despite this, the parties agreed, and jointly submitted, that the Court should declare that RFG contravened s 47(1)(d). It was submitted that RFG’s contravention of s 47(1)(d) follows from its failures to comply with ss 31(1), 47(1)(a), 47(1)(b) and 47(1)(e) (addressed below). It was submitted that the Court had power to make a declaration to this effect under s 21 of the FCA Act.

119 I do not accept the parties' joint submissions. As s 47(1)(d) of the Credit Act is not specified
as a civil penalty provision, I am not satisfied that it is a provision that is capable of
contravention. It may be a normative statutory standard that is observed in the breach but that
does not render an alleged infringer's breach of the statutory standard a contravention of the
Credit Act.

120 In any event, the alleged contravention adds little to the others that are claimed. The alleged
contravention is said to arise only because RFG contravened ss 31(1), 47(1)(a), 47(1)(b) and
47(1)(e). I see no utility in finding that RFG contravened the Credit Act merely because of that
fact, and I am not satisfied that I should declare that to be the case. Further, the parties do not
seek a penalty in respect of the alleged contravention of s 47(1)(d), which they could not do in
any event as it is not a civil penalty provision.

121 Accordingly, I am not satisfied that RFG contravened s 47(1)(d) of the Credit Act.

4.5 Contraventions of s 47(1)(e) of the Credit Act

122 Section 47(1)(e) required RFG to take reasonable steps to ensure that its representatives
complied with the credit legislation, which includes the Credit Act: see s 5(1).

123 In *ASIC v ANZ*, O'Bryan J stated at [52] that s 47(1)(e) is concerned with processes and
procedures implemented by a licensee to ensure that its representatives comply with, amongst
other things, the Credit Act.

124 In the present case, RFG's contravention of s 47(1)(e) is an essentially an extension of its failure
to ensure compliance with ss 31(1), 47(1)(a) and (b) of the Credit Act in that it failed to ensure
that its representatives complied with these provisions of the Credit Act. In short, RFG failed
to take reasonable steps to ensure that the relevant RAMS Franchisees complied with s 31(1),
47(1)(a) and (b) of the Credit Act. Accordingly, I am satisfied that RFG contravened s 47(1)(e)
on this basis.

5. THE DECLARATIONS

125 By s 166(2), the Court *must* make a declaration if satisfied that a person has contravened a civil
penalty provision.

126 As the Full Court observed in *Mayfair Wealth Partners Pty Ltd v Australian Securities and
Investments Commission* [2022] FCAFC 170; 295 FCR 106 (Jagot, O'Bryan and Cheeseman
JJ) (at [184] in respect of the analogous s 12GBA of the *Australian Securities and Investments*

Commission Act 2001 (Cth)), the mandatory terms of the section necessarily overrides the discretionary considerations to which a court might otherwise have given weight in declining to make a declaration: see *ASIC v ANZ* at [41] (O’Bryan J).

127 Section 31(1) is a civil penalty provision, and s 47(4) provides that ss 47(1)(a), 47(1)(b), and 47(1)(e) are civil penalty provisions. It should be noted that ss 47(1)(a), (b) and (e) have been civil penalty provisions since the commencement of the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (Cth) on 13 March 2019, which was before the commencement of the Relevant Period.

128 For the reasons set out above, I am satisfied that RFG has contravened ss 31(1), s 47(1)(a), (b) and (e) and, accordingly, declarations must be made. However, I am not satisfied that the declarations proposed by the parties reflect the matters I have set out above, especially as to the proposed declaration as to s 47(1)(a) (which, amongst other things, merely seeks the Court to declare in part that RFG failed to comply with s 47(1)(a) because it did not comply with ss 31(1) and 47(1)(b) and (e). Section 166(3) of the Credit Act requires that the declarations I make must specify particular details including as to the “conduct that constituted the contravention”. Not all of the orders proposed by the parties addressed the conduct with sufficient particularity. I will invite the parties to provide short minutes of order specifying declarations that reflect these reasons (without those declarations becoming unnecessarily granular in detail).

129 As already noted, I am not satisfied that declarations should be made to the effect that RFG contravened s 47(1)(d) of the Credit Act as it is not a civil penalty provision.

6. THE APPROPRIATE PENALTY

130 The Court’s power to impose a civil penalty is conferred by s 167 which provides that the Court may order payment of a pecuniary penalty in relation to contraventions of a civil penalty provision. Sections 31(1), 47(1)(a), 47(1)(b), and 47(1)(e) are civil penalty provisions. As noted above, the parties (naturally) did not seek a penalty in respect of the alleged contravention of s 47(1)(d) as it is not a civil penalty provision.

131 The parties made joint submissions as to the appropriate penalty to be imposed. I have gratefully adopted their summation of relevant matters where applicable.

6.1 The maximum penalty

132 The maximum penalty for a corporation for the contravention of each of ss 31(1), 47(1)(a), 47(1)(b), and 47(1)(e) is addressed by s 167B(2) of the Credit Act, which provides that:

- (2) The *pecuniary penalty applicable* to the contravention of a civil penalty provision by a body corporate is the greatest of:
 - (a) the penalty specified for the civil penalty provision, multiplied by 10; and
 - (b) if the court can determine the benefit derived and detriment avoided because of the contravention--that amount multiplied by 3; and
 - (c) either:
 - (i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
 - (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units--2.5 million penalty units.

133 For the purposes of s 167B(2)(a), the specified penalty for a contravention of each of ss 31(1), 47(1)(a), 47(1)(b), and 47(1)(e) is at least 50,000 penalty units.

134 During the Relevant Period, a penalty unit was \$210 until 30 June 2020, \$222 between 1 July 2020 and 31 December 2022, and \$275 from 1 January 2023. Accordingly, the maximum penalty for a contravention of each of the provisions alleged is \$10.50 million to \$13.75 million.

135 For the purposes of s 167B(2)(b), it is not possible to calculate any benefit derived or detriment avoided.

136 For the purposes of s 167B(2)(c), “annual turnover” is defined in s 5 to include the turnover of “the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during the 12-month period”, excluding certain specified supplies. Thus, for present purposes, this includes Westpac’s annual turnover.

137 The agreed facts are that the relevant total revenue of Westpac in 2019 was \$20.649 billion, 10% of which was \$2.0649 billion. That amount is a greater figure than “an amount equal to 2.5 million penalty units” for the purposes of s 167B(2)(c)(ii), which is \$525 million (based on a penalty unit of \$210), and therefore, the relevant figure is based on 2.5 million penalty units.

138 Accordingly, for the purposes of s 167B(2), the maximum penalty amount for the breaches of
each of ss 31(1), 47(1)(a), 47(1)(b), and 47(1)(e) is based on 2.5 million penalty units.

6.2 The number of contraventions

139 There are two types of contraventions to which a penalty applies in the present case, namely:

- (a) contraventions of s 31(1) (**s 31(1) Contraventions**); and
- (b) contraventions of RFG's general obligations under s 47(1) (**General Obligations Contraventions**), being contraventions of ss 47(1)(a), 47(1)(b), and 47(1)(e).

140 The s 31(1) Contraventions totalled 84 contraventions. That is because there were 84 instances
in which RFG accepted referrals from unlicensed referrers. This occurred through the conduct
of nine representatives of RFG who had an ownership interest in, or were employed by, five
RAMS Franchises, and occurred over three and a half years, from June 2019 to 2 February
2023.

141 The General Obligations Contraventions, which occurred between 3 June 2019 and 30 April
2023, came about as a result of failures by RFG to meet its responsibilities as set out above ss
47(1)(a), 47(1)(b), and 47(1)(e).

6.3 Factors relevant to the assessment of penalty

142 Section 167(3) provides that in determining the appropriate pecuniary penalty, the Court must
have regard to all relevant matters including:

- (c) the nature and extent of the contravention;
- (d) the nature and extent of any loss or damage suffered because of the contravention;
- (e) the circumstances in which the contravention took place; and
- (f) whether the person has previously been found by a court (including a court in a foreign
country) to have engaged in similar conduct.

143 Further to the matters above, other factors (in some respects overlapping with the express
matters) that have been identified as being potentially relevant in setting a pecuniary penalty
in relation to a body corporate include:

- (a) whether RFG or Westpac obtained a financial gain or benefit from the contraventions;
- (b) whether the contraventions arose from the conduct of senior management;
- (c) whether RFG had a corporate culture conducive to compliance;

- (d) the size and financial position of RFG;
- (e) the size and financial position of Westpac;
- (f) identification of problems and remediation;
- (g) cooperation with ASIC; and
- (h) whether RFG is likely to engage in further contraventions: see, eg, *Australian Securities and Investments Commission v Westpac Banking Corporation (No 3)* [2018] FCA 1701 at [49] (Beach J).

144 These are “augmented” from the “French Factors”: *Trade Practices Commission v CSR Limited* [1990] FCA 521; ATPR 41-076 at [42] (French J). Those factors were endorsed in *NW Frozen Foods Pty Ltd v Australian Competition and Consumer Commission* [1996] FCA 1134; 71 FCR 285 at 292 (Burchett and Kiefel JJ) and have also been further explained and expanded upon in later decisions, see, for example, *Australian Securities and Investments Commission v Westpac Banking Corporation* [2019] FCA 2147 at [258]–[259] (Wigney J), *Australian Competition and Consumer Commission v Woolworths Limited* [2016] FCA 44; ATPR-42-521 at [161] (Edelman J) (*ACCC v Woolworths*), *Australian Securities and Investments Commission v AMP Financial Planning Pty Ltd (No 2)* [2020] FCA 69; 377 ALR 55 at [2], [185], [220], [230] (Lee J); *Australian Securities and Investments Commission v MLC Nominees Pty Ltd* [2020] FCA 1306; 147 ACSR 266 at [214] and [276] (Yates J); *Australian Securities and Investments Commission v BT Funds Management Limited* [2021] FCA 844 at [44] (Wheelahan J); *Australian Securities and Investments Commission v Westpac Securities Administration Limited, in the matter of Westpac Securities Administration Limited* [2021] FCA 1008 at [84] (O’Bryan J); *Australian Competition and Consumer Commission v Optus Mobile Pty Limited* [2019] FCA 106 at [59]–[62] (Murphy J).

145 The appropriateness of the amount of a penalty must be assessed by reference to the specific civil penalty provision which has been contravened in light of its context and purpose, and the objects of the relevant statute as a whole: see *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2018] HCA 3; 262 CLR 157 at [116] (Keane, Nettle and Gordon JJ), citing *FWBII* at [55] (French CJ, Kiefel, Bell, Nettle and Gordon JJ).

6.3.1 The nature and extent of the contraventions and the circumstances in which they took place

146 The contraventions took place in the course of RFG, as a licensee and franchisor, operating the
RAMS Franchise Network, where RAMS Franchisees used the RAMS business name to
provide credit assistance to consumers.

147 The nature of the contraventions of s 31(1) of the Credit Act were serious in that they involved
RFG (through its representative Franchisees) engaging in business with unlicensed referrers on
84 occasions during the Relevant Period. These were basal failures to ensure compliance with
an elementary aspect of RFG's business: the generation of revenue by assisting consumers to
obtain home loans by way of referrals from licensed referrers.

148 The contraventions of s 47(1)(a), (b) and (e) demonstrate an inadequacy in RFG's policies,
systems and procedures. In the context of RFG operating its business via the RAMS Franchise
Network these contraventions were also of a basal kind in that they disclose a failure by RFG
to properly manage its representatives.

149 It may be accepted in RFG's favour that it did have policies and procedures in place and did
make endeavours to bring about compliance but as the agreed facts here show, those policies
and procedures were inadequate.

150 The parties submitted that the contraventions came about by reason of a number of interrelated
factors. In this regard, I accept that RFG's contraventions arose as a result of:

- (a) RFG being operated as an autonomous business within Westpac with a unique risk
profile, including because:
 - (i) RFG operated as a stand-alone business within the Westpac Group after it was
acquired in 2008 and, despite some integration into the Westpac Group,
remained structurally separated;
 - (ii) RFG relied on a network of franchisees who, with their employees, were its
representatives for the purposes of the Credit Act; and
- (b) RFG having an immature risk culture and capability, including because of:
 - (i) failures by RFG's senior management to identify and manage possible
misconduct within the RAMS Franchise Network; and

- (ii) capability and competence gaps within RFG which contributed to the deficient control environment noted below as well as a failure to recognise and escalate risk and compliance issues;
- (c) there being a deficient control environment and controls testing within RFG, including because there were deficient controls relating to:
 - (i) conflicts of interest;
 - (ii) monitoring RAMS Franchisee compliance with RAMS Policies; and
 - (iii) the identification of, and consequences for, possible misconduct; and
- (d) insufficient oversight by RFG which was, by virtue of its operation of the RAMS Franchise Network, a non-standard end-to-end business.

6.3.2 The nature and extent of any loss suffered because of the contraventions

151 The parties submitted that it was not possible to say with certainty that any actual loss was suffered as a result of the contraventions, or how any such loss might be quantified.

152 However, it was submitted that there is a reasonable inference available that the findings of misconduct in the GI Reports had the potential to result in consumer loss, and that, where consumer loan applications were approved by Westpac in reliance on false documentation, the loan applications may have been rejected if Westpac had known the consumer's true financial position.

153 Whilst I accept that no loss has been established, I accept and I am satisfied that RFG's contravening conduct exposed consumers to a risk of loss that the loans they entered may not have been suitable for their circumstances which also exposed them to a risk that they may have been unable to service their loans without substantial hardship, or may have defaulted on their loan repayments and incurred fees or charges, as a consequence of those defaults.

154 It is unnecessary for me to make any findings as to whether such risks materialised, and I was not invited to do so.

155 It is also unnecessary for me to make a finding that any particular franchisee engaged in misconduct, and the parties did not ask the Court to do so.

156 I accept that RFG and Westpac implemented a remediation program, which sought to identify consumers who might potentially have suffered loss, and to remediate them.

6.3.3 Deterrence

157 The principles applicable to the imposition of pecuniary penalties are uncontroversial; they were considered by the High Court in *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13; 274 CLR 450 (**Pattinson**) (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ) (cf [75] (Edelman J)). There, the Court observed (at [15]) that “civil penalties are imposed primarily, if not solely, for the purpose of deterrence”. Deterrence encompasses both specific and general deterrence: [31].

158 In *Pattinson*, their Honours referred (at [17]) to the earlier decision of the High Court in *Australian Competition and Consumer Commission v TPG Internet Pty Ltd* [2013] HCA 54; 250 CLR 640 at [66] which approved the statement by the Full Court in *Singtel Optus Pty Ltd v Australian Competition and Consumer Commission* [2012] FCAFC 20; 287 ALR 249 at [62] (Keane CJ, Finn and Gilmour JJ), that a civil penalty: “must be fixed with a view to ensuring that the penalty is not such as to be regarded by [the] offender or others as an acceptable cost of doing business”.

159 In *Australian Securities and Investments Commission v Westpac Banking Corporation (Omnibus)* [2022] FCA 515 at [126], Beach J made the following observations on the issue of deterrence in the context of a company within a broader corporate structure:

In considering the extent to which the penalty achieves deterrence, it is relevant to have regard to a contravener’s size and financial position. In this respect, where the contravener is a distinct legal entity within a broader corporate structure, it is appropriate to take into account that broader structure in assessing deterrence, including where the contravener is part of a much larger, internally coordinated and wealthy corporate group.

160 As noted above, a key factor in the Court being satisfied as to the appropriateness of the agreed penalty will be the achievement of both general and specific deterrence.

161 As to general deterrence, the agreed penalty should create sufficient disincentive for licensees in RFG’s position to pay inadequate attention to their general conduct obligations as licensees, and in particular, when overseeing a network of authorised credit representatives.

162 As to specific deterrence, the parties submitted that as RFG has wound down the RAMS Franchise Network there was little need for specific deterrence. However, the parties accepted that Westpac continues to have a number of wholly owned subsidiaries and there is a need to ensure that there is sufficient disincentive to Westpac to engage in similar conduct in the future and serve to encourage compliance with the Credit Act. It is unnecessary to decide whether

(in the context of a group of companies) the latter factor is one directed towards general or specific deterrence. It is sufficient to note that in determining whether the penalty proposed by the parties is appropriate, I have taken into account that Westpac continues to operate a business whereby there is need to ensure that it is deterred so as to encourage compliance with the Credit Act.

163 I am satisfied that general deterrence looms large as significant factor in the present case. As noted above, the contraventions here related to basal matters. Specifically:

- (a) the s 31(1) Contraventions were the result of RFG ultimately accepting referrals from unlicensed referrers;
- (b) RFG also accepted referrals from unaccredited referrers contrary to RFG's RAMS Referrer Policy and RAMS Referrer Procedure;
- (c) the contravention of s 47(1)(b) was the result of RFG's failure to ensure compliance with basal policies as to conflicts of interest;
- (d) the contravention of s 47(1)(e) was the result of RFG's failure to take reasonable steps to ensure that the RAMS Franchises complied with their obligations under credit legislation; and
- (e) the contravention of s 47(1)(a) was the result of RFG's multiple failings as to inadequate policies, procedures and systems.

6.3.4 Whether RFG has previously been found by a court to have engaged in similar conduct

164 RFG has not previously been found by a court to have contravened provisions of the Credit Act or otherwise engaged in similar conduct.

165 RFG is a wholly owned subsidiary of Westpac. Westpac has not been found by a court to have contravened provisions of the Credit Act. However, the parties drew my attention to the fact that Westpac is party to another proceeding before the Court (VID695/2023), which was also commenced by ASIC. In that matter, Westpac has admitted to having contravened s 47(1)(a) and s 72(4) of the *National Credit Code* by failing to respond to customers' hardship notices within time.

6.3.5 Whether RFG or Westpac obtained a financial gain or benefit from the contraventions

166 The parties submitted that it is reasonable to infer that during the Relevant Period, some of the misconduct of the type the subject of the GI Reports (to the extent it in fact occurred) is likely to have resulted in RAMS Credit approving (and Westpac, therefore, entering into) loan applications in circumstances where those applications may not otherwise have been approved (and loans entered into). In particular, loans originated from unaccredited referrers (which occurred on 102 instances as described in Schedule 1 of the Liability SAFA, of which 84 instances were unaccredited referrers who were also unlicensed or unauthorised as described in Schedule 2 of the Liability SAFA) may not have been received, and therefore, not entered into. Loan applications supported by apparently false documentation may not have been approved in the absence of that false documentation.

167 I accept that such an inference may be drawn. However, I also accept that any benefit Westpac, RFG or any customers may have received in relation to these loans is not able to be quantified.

6.3.6 Whether contraventions arose from the conduct of senior management

168 There is no evidence that the contraventions arose from deliberate misconduct by any of RFG's senior management.

169 RFG's Managing Director was accountable for matters that included: RAMS financial and non-financial outcomes; leading and developing the RAMS Franchise distribution model; and management of the franchise system.

170 RFG's senior managers, including RFG's Managing Director, were aware of findings by Westpac of misconduct within the RAMS Franchise Network through receipt of the GI Reports summarised in Schedule 1 of the Liability SAFA. Despite RFG's senior managers receiving those GI Reports, before Project Guardian commenced in late 2022, RFG did not respond adequately to possible misconduct within the RAMS Franchise Network, including by not amending policies and procedures to respond to possible misconduct and not appropriately reviewing incidents of misconduct found in the GI reports with a view to determining whether they were indicative of possible systemic issues within the RAMS Franchise Network.

6.3.7 Whether RFG had a corporate culture conducive to compliance

171 The parties submitted that before Project Guardian, RFG had an immature risk culture, including for the reasons described above. Although RFG had policies and procedures for the

operation of the RAMS Franchise Network, the GI Reports included findings of misconduct within the Network, including the use by RAMS Franchisees of unaccredited referrers, and despite the receipt by senior managers of these Reports as set out above, RFG failed to respond adequately before the implementation of Project Guardian.

6.3.8 Size and financial position of RFG and Westpac

172 At the commencement of the Relevant Period, in 2019, RFG's total revenue was \$101,349,000 and its net profit was \$17,894,798. In 2023, its total revenue was \$157,899,000 and its net profit was \$19,693,297. As at September 2024, RFG's total portfolio value was \$29,836,000,000, which represented 3.7% of Westpac's total portfolio value as at September 2024 (being \$806,767,000,000).

6.3.9 Identification of problems and remediation

173 In July 2020, Westpac's GI team produced the first of several reports in which it identified issues arising in relation to one of the RAMS Franchises.

174 As noted above, in response to the conduct issues identified, and a subsequent review to assess the effectiveness of the control environment within RFG, Westpac and RFG commenced "Project Guardian". As part of that Project, Westpac completed a customer remediation program.

175 In addition to the work done as part of Project Guardian, Westpac conducted a series of additional reviews and audits that I have set out above.

176 The purpose of these steps was to identify the root causes of the issues at RFG and to improve its systems to avoid similar issues occurring in future.

177 Subsequently, RFG has wound down the RAMS Franchise Network in its entirety by 6 August 2024. Westpac and RFG continue to support existing customers who had entered into RAMS-branded home loans.

6.3.10 Cooperation with ASIC

178 It is an agreed fact that RFG has:

- (a) co-operated with ASIC since ASIC commenced its investigation into RFG in mid-2023. That cooperation has included voluntarily providing material and information where

RFG and Westpac considered that the material or information could assist ASIC with its investigation;

- (b) admitted contraventions at the earliest available opportunity, including by way of filing the Liability SAFA at the commencement of the Proceeding; and
- (c) worked with ASIC to facilitate the prompt and efficient resolution of these proceedings, including by filing the Penalty SOAF, and reaching agreement with ASIC as to the quantum of penalty to be proposed for the Court's consideration.

179 This co-operation is a mitigating factor in favour of RFG. It has avoided the need for a contested hearing in what would have been complex litigation that would have consumed considerable time and resources of the Court and ASIC.

6.3.11 Whether RFG is likely to engage in further contraventions

180 The RAMS Franchise Network has been wound down completely. Accordingly, it is reasonable to infer that RFG will not engage in further contraventions.

6.3.12 Parity and civil penalty comparatives

181 It is accepted that courts will endeavour to apply the parity principle by treating like cases alike: *Australian Competition and Consumer Commission v Optus Mobile Pty Ltd* [2019] FCA 106 at [40] (Murphy J). However, differences in the facts and circumstances which underlie different cases mean there is usually little to be gained by comparing the penalties imposed in other litigation: *Singtel Optus* at [60] (Keane CJ, Finn and Gilmour JJ); *Australian Competition and Consumer Commission v Hillside (Australia New Media) Pty Ltd trading as Bet365 (No 2)* [2016] FCA 698 at [28] (Beach J) (**ACCC v Bet365**); *ACCC v Woolworths* at [133]–[134] (Edelman J); *Flight Centre Ltd v Australian Competition and Consumer Commission (No 2)* [2018] FCAFC 53; 260 FCR 68 at [69] (Allsop CJ, Davis and Wigney JJ). This does not mean that penalties imposed in other cases are never relevant: *Australian Competition and Consumer Commission v Multimedia International Services Pty Ltd* [2016] FCA 439; 243 FCR 392 at [123] (Edelman J). The parity principle is a doctrine developed in criminal law, the chief purpose of which is to ensure that like offenders are treated in a like manner: *Green v The Queen* [2011] HCA 49; 244 CLR 462 at [28] (French CJ, Crennan and Kiefel JJ). Otherwise, the consistency that is sought is “consistency in the application of the relevant legal principles, not some numerical or mathematical equivalence.”: *Hili v The Queen* [2010] HCA 45; 242 CLR 520 at [18], [48], and [49] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ);

Lacey v Attorney-General (Qld) [2011] HCA 10; 242 CLR 573 at [54] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ); *Barbaro v The Queen* [2014] HCA 2; 253 CLR 58 at [40], and [41] (French CJ, Hayne, Kiefel and Bell JJ); *Australian Competition and Consumer Commission v Universal Music Australia Pty Ltd (No 2)* [2002] FCA 192; 201 ALR 618 at [34] (Hill J).

182 Accordingly, while consideration of analogous cases may provide guidance to the Court, as Beach J stated in *CBA Agri* at [77]:

in all but the co-offender scenario or analogues thereof it is conceptually problematic to look at penalties in other cases to calibrate a figure in the present case when all that one has from the other cases are single point determinations produced by opaque intuitive synthesis. Deconvolution analysis of the single point determinations in order to work out the causative contribution of any particular factor is unrealistic.

See also, more generally, *Singtel Optus* at [60] (Keane CJ, Finn and Gilmour JJ); *ACCC v Bet365* at [28] (Beach J); *ACCC v Woolworths* at [133]–[134] (Edelman J).

183 Differences in the facts and circumstances of previous cases mean there is usually little utility in comparing the penalties imposed in other regulatory proceedings. However, some broad level guidance may be obtained from an assessment of other civil penalty decisions. In this regard, I have had regard to the following (which the parties drew to my attention):

- (a) In *ASIC v NAB*, Lee J considered a referrer program put in place by NAB where unlicensed “introducers” referred prospective customers to bankers. In that case, NAB admitted to 260 contraventions of s 31, which also involved 260 contraventions of s 47(1)(d) and at least one contravention of s 47(1)(a). Lee J accepted a “headline” penalty of \$21.9 million, discounted by 30% to provide for a total penalty of \$15 million.
- (b) In *ASIC v ANZ*, O’Byrne J considered contraventions by ANZ of s 31(1) in relation to 50 home loan applications, and a contravention of s 47(1)(e) by failing to take reasonable steps to ensure that its representatives complied with s 31(1), in that ANZ did not have adequate processes in place in connection with its Home Loan Introducer Program to ensure compliance with s 31(1). O’Byrne J ordered an aggregate pecuniary penalty of \$10 million.

184 In light of the comparative cases noted above, the parties submitted that the agreed penalty is appropriate.

6.3.13 Course of conduct and totality principles

185 The Court may group the contraventions together as a single course or courses of conduct: see *Construction, Forestry, Mining and Energy Union v Cahill* [2010] FCAFC 39; 269 ALR 1 at [39] and [42] (Middleton and Gordon JJ); see also *Singtel Optus* at [53] (Keane CJ, Finn and Gilmour JJ), citing *Australian Competition and Consumer Commission v Telstra Corporation Ltd* [2010] FCA 790; 188 FCR 238 at [231]–[235] (Middleton J). There are several principles that are relevant to the determination of penalties in such circumstances. There is a useful summary of the relevant principles in *Australian Securities and Investments Commission v Layaway Depot Pty Ltd* [2023] FCA 1685, at [37]–[44]. There, Rangiah J noted five general principles:

- (a) whilst contraventions arising from separate acts ordinarily attract separate penalties, where there is an inter-relationship between the factual and legal matters of two or more contraventions, the Court may consider whether it is appropriate to group them as a single course of conduct so as to avoid double punishment;
- (b) where there have been discrete episodes, each involving deliberation, then such a grouping may be inapposite, even if each episode reflects a common theme, strategy or model;
- (c) even a single strategy involving a single or substantially consistent form of conduct might deny such a grouping where the conduct is directed toward numerous recipients;
- (d) in determining the appropriate penalty for a large number of contraventions, the Court will generally have regard to the “totality” principle, as a final consideration of whether the cumulative total of the penalty is just and appropriate and in proportion to the contravening conduct considered as a whole; and
- (e) the Court is not obliged to apply the course of conduct or totality principles if the resulting penalty fails to reflect the seriousness of the contravention.

6.4 Determination as to the appropriate pecuniary penalty

186 In the present case, I accept the parties’ submission that the theoretical maximum penalty is so great that it is of no assistance: see *ASIC v NAB* at [156] (Lee J).

187 ASIC and RFG jointly submitted that the appropriate pecuniary penalty (before discounting for cooperation), pursuant to s 167(2), was \$30 million apportioned in respect of the admitted contraventions as follows:

- (a) in respect of the contravention of s 47(1)(a) and 47(4), a penalty of \$5.5 million;
- (b) in respect of the contravention of s 47(1)(b) and 47(4), a penalty of \$3.5 million;
- (c) in respect of the contravention of s 47(1)(e) and 47(4), a penalty of \$6.5 million;
- (d) in respect of the contraventions of s 31(1) on 84 occasions, a penalty of \$14.5 million.

188 ASIC and RFG jointly submitted that a discount of one third was appropriate, on account of RFG's admissions, cooperation, and implementation of the remediation scheme to compensate consumers who might have suffered any loss: see *ASIC v NAB* at [161] (Lee J).

189 The total penalty ASIC and RFG propose is \$20 million. The parties submit that this total penalty is just and appropriate and not excessive having regard to the totality of the relevant contravening conduct. It was submitted that the amount was reflective of, and proportionate to, the seriousness of the contravening conduct and the necessity to serve as a deterrent.

190 It was also submitted that the present case was one where it was appropriate in light of the agreed position between the parties and the number of contraventions to impose a single penalty, relying upon: *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 113; 254 FCR 68 at [149] (Dowsett, Greenwood and Wigney JJ). I agree that such an approach is appropriate in the present case and accords with that which has been taken by other judges in this Court: see eg *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2023] FCA 1150; 169 ACSR 649 at [151]–[152] (Beach J).

191 In my assessment, the penalty proposed by the parties is within the permissible range and reflects the objective seriousness and circumstances of the contravening conduct. Having regard to the facts and admissions set out in the Liability SAFA and the Penalty SOAF, the considerations set out above and the applicable principles, I am satisfied that it is appropriate to impose an aggregate pecuniary penalty in the amount of \$20 million.

192 As noted above, the contraventions here were serious in that they pertained to obligations that are designed to proscribe unlicensed and other related conduct that is essential to protect consumers and to regulate industry participants including the representatives of licensees. I accept that the contravening conduct exposed consumers to significant risks and took place over an extended period.

193 I also accept that the conduct here did not relate to every RAMS Franchise, and that RFG did have systems and policies in place which were well-intentioned and directed towards

compliance, though they proved to be inadequate and/or ineffective. It is also in RFG and Westpac's favour that the matters were ultimately disclosed to ASIC and there was full co-operation with ASIC in its investigations. It is commendable that RFG and Westpac have dedicated time, money and resources to improvements to their systems (albeit the RAMS Franchise Network is being wound down). It is also commendable that RFG and Westpac have taken a conservative and generous approach to remediation.

194 Taking into account all of these factors, I am satisfied that the penalty proposed is sufficient to
195 achieve deterrence.

7. COSTS

195 RFG has agreed to pay ASIC's costs of the proceedings and I have made orders to this effect.

I certify that the preceding one hundred and ninety-five (195) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Shariff.

Associate:



Dated: 24 October 2025

Annexure A

Liability SAFA

Federal Court of Australia
District Registry: New South Wales
Division: General

No. NSD 885 of 2025

Australian Securities and Investments Commission

Applicant

RAMS Financial Group Pty Limited ACN 105 207 538

Respondent

Updated Statement of Agreed Facts and Admissions on Liability

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Filed on behalf of the Australian Securities and Investments Commission, Applicant

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INTRODUCTION

1. The Applicant (**ASIC**) and the Respondent (**RFG**) agree, pursuant to s 191 of the *Evidence Act 1995* (Cth), that the facts stated in this Statement of Agreed Facts and Admissions (**SAFA**) are not, for the purposes of this proceeding, disputed. The schedules to the SAFA form part of the SAFA.
2. RFG has at all material times been the holder of an Australian Credit Licence (**ACL**) granted under the *National Consumer Credit Protection Act 2009* (Cth) (**Credit Act**). It was engaged in the provision of credit activities authorised by its ACL and was relevantly regulated by the Credit Act.
3. This proceeding concerns conduct by RFG from 3 June 2019 to 30 April 2023 (**Relevant Period**) regarding its engagement in credit activities, and the engagement of its representatives in such credit activities. RFG admits that some of the relevant conduct, including misconduct found by Westpac's Group Investigations (**GI**) team of the nature described in paragraphs 66–72 below, occurred prior to the Relevant Period, in the period 1 January 2018 to 2 June 2019.
4. For the conduct found by Westpac's GI team to have occurred during the Relevant Period, the parties submit that in addition to declaratory relief pursuant to s 166 of the Credit Act, the Court ought to make an order that RFG pay pecuniary penalties pursuant to s 167 of the Credit Act, as well as ASIC's costs.
5. By reason of the agreed facts set out in this SAFA, RFG admits that during the Relevant Period:
 - (a) RFG contravened s 31(1) of the Credit Act, by its representatives accepting referrals of consumers for loans, in circumstances where the referrers were contravening s 29 of the Credit Act in making the referrals;
 - (b) RFG contravened s 47(1)(a) of the Credit Act, by failing to do all things necessary to ensure that the credit activities authorised by the RFG ACL were engaged in efficiently, honestly, and fairly;
 - (c) RFG contravened s 47(1)(b) of the Credit Act by failing to have in place adequate arrangements to ensure that consumers were not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by RFG or its representatives;

- (d) RFG contravened s 47(1)(d) of the Credit Act by failing to comply with the credit legislation;
 - (e) RFG contravened s 47(1)(e) of the Credit Act by failing to take reasonable steps to ensure that its representatives complied with the Credit Act;
 - (f) declarations of contraventions of the above sections ought to be made:
 - (i) pursuant to s 166 of the Credit Act for the contraventions of ss 31(1), 47(1)(a), 47(1)(b) and 47(1)(e) of the Credit Act; and
 - (ii) pursuant to s 21 of the Federal Court Act for the contravention of s 47(1)(d) of the Credit Act;
 - (g) an order ought to be made that RFG pay pecuniary penalties pursuant to s 167 of the Credit Act in respect of the contraventions of ss 31(1), 47(1)(a), 47(1)(b), and 47(1)(e) of the Credit Act; and
 - (h) RFG ought to be ordered to pay ASIC's costs of the present proceeding.
6. Except where otherwise stated, the facts set out in this SAFA relate to the Relevant Period.
 7. The schedules to the SAFA comprise:
 - (a) Schedule 1, being a table summarising the findings of misconduct made by Westpac's GI team following investigations into allegations of misconduct at a number of RFG franchises between at least 1 January 2018 and April 2023; and
 - (b) Schedule 2, being a table summarising findings made by Westpac's GI team of occasions on which RFG franchisees and employees dealt with unaccredited referrers in circumstances where those dealings resulted in contraventions of s 31(1) of the Credit Act by RFG as licensee.
 8. The parties jointly seek the declarations and orders sought in the Originating Application dated 3 June 2025.

AGREED BACKGROUND FACTS

Relevant Entities

9. ASIC was at all material times, and remains:
 - (a) a body corporate established under s 7 of the *Australian Securities and Investments Act 1989* (Cth) and continued in existence under s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
 - (b) entitled under s 8 of the ASIC Act to sue and be sued in its corporate name.
10. RFG is and was at all material times:
 - (a) a company incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - (b) the holder of ACL number 388065 (**RFG ACL**), which licence (as amended from time to time) it has held since 1 March 2011;
 - (c) a licensee for the purposes of ss 31 and 47 of the Credit Act; and
 - (d) a wholly owned subsidiary of Westpac Banking Corporation (**Westpac**).
11. RFG's total portfolio value as at September 2024 was \$29,836,000,000, which represented 3.7% of Westpac's total portfolio value as at September 2024 (being \$806,767,000,000).

Application of the Credit Act

12. At all material times, RFG was authorised by the RFG ACL, relevantly, to engage in “credit activities other than as a credit provider” by undertaking certain credit activities including:
 - (a) to provide a credit service, where RFG was not, or would not be (where the service relates to a credit contract or proposed credit contract) the credit provider under the contract;
 - (b) to perform the obligations or to exercise the rights of a credit provider in relation to a credit contract or proposed credit contract under which RFG was not or would not be the credit provider; and
 - (c) to perform the obligations or to exercise the rights of a mortgagee in relation to a mortgage or proposed mortgage that secures, or would secure, obligations under a credit contract, under which RFG was not the credit provider.
13. As the holder of an ACL, at all material times, RFG was:

- (a) pursuant to s 31(1) of the Credit Act, prohibited from engaging in a credit activity, if in doing so, it conducted business with another person who was engaging in a credit activity, and by engaging in the credit activity, the other person contravened s 29 of the Credit Act (which deals with the requirement to be licensed); and
- (b) subject to the general conduct obligations of a licensee in s 47 of the Credit Act, which relevantly included:
 - (i) in s 47(1)(a), an obligation to do all things necessary to ensure that the credit activities authorised by the RFG ACL were engaged in efficiently, honestly and fairly;
 - (ii) in s 47(1)(b), an obligation to have in place adequate arrangements to ensure that consumers were not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by it or its representatives;
 - (iii) in s 47(1)(d), an obligation to comply with the credit legislation (which includes the Credit Act); and
 - (iv) in s 47(1)(e), an obligation to take reasonable steps to ensure that its representatives complied with the credit legislation (which includes the Credit Act).

RFG and its Representatives

- 14. Westpac acquired RFG in 2008.
- 15. During the Relevant Period, RFG, pursuant to the RFG ACL, relevantly assisted consumers to obtain home loans financed by Westpac (albeit those loans were branded as “RAMS Home Loans”). That assistance included conducting (through RAMS Franchisees and Loan Writers) a preliminary assessment of whether the credit contract would be not unsuitable for the consumer. RFG was not, itself, a credit provider.
- 16. More specifically, pursuant to the RFG ACL, RFG provided credit assistance:
 - (a) between at least 1 January 2018 and 15 December 2020:
 - (i) in relation to RAMS-branded home loans financed by Westpac; and
 - (ii) in relation to home loans with other lenders on the “RAMS Choice” (a third-party aggregator) panel; and
 - (b) from 16 December 2020, only in relation to RAMS-branded home loans financed by Westpac.

17. During the Relevant Period, RFG:
- (a) had a subsidiary board, the directors of which were appointees of Westpac;
 - (b) was managed by a Managing Director who:
 - (i) was an employee of Westpac;
 - (ii) was a director of the subsidiary board; and
 - (iii) reported to a Westpac Executive, the role and title of whom varied from time to time during the Relevant Period;
 - (c) operated a Head Office, the staff of which were employees of Westpac;
 - (d) was located within a business division of Westpac, the name of which varied from time to time during the Relevant Period;
 - (e) established and maintained various management and operations committees, which supported and monitored RFG's operations, the members of which were either RFG Head Office staff or Westpac staff, all of whom were employees of Westpac; and
 - (f) operated a franchise network as described starting in the following paragraph.
18. During the Relevant Period, RFG, as franchisor, operated the **RAMS Franchise Network**, where:
- (a) franchisees (**RAMS Franchisees**) used the RAMS business name to provide credit assistance to consumers in relation to the distribution of RAMS-branded home loans; and
 - (b) the RAMS-branded home loans were credit contracts with Westpac (being credit to which the Credit Act applied).
19. There were a total of 73 RAMS Franchisees from time to time within the RAMS Franchise Network during the course of the Relevant Period, though the number of RAMS Franchisees operating at any one time varied.
20. During the Relevant Period, RAMS Franchisees:
- (a) operated under individual RAMS franchise agreements with RFG (**Franchise Agreement**):
 - (i) the terms of which were amended from time to time; and

- (ii) which were subject to the Franchising Code of Conduct, as enacted by the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014* (Cth); and
 - (b) employed their own staff, including staff involved in submitting loan applications (**Loan Writers**).
21. During the Relevant Period, RAMS Franchisees and Loan Writers were Authorised Credit Representatives (**ACRs**) of RFG as described in paragraph 29 below.

Policies applicable to RFG and RAMS Franchises

22. During the Relevant Period, Westpac Group and Consumer Division policies (**Westpac Policies**) applied to RFG's Head Office staff.
23. During the Relevant Period, in addition to the terms of the Franchise Agreement, RAMS Franchisees and their employees (including Loan Writers) were required to comply with:
- (a) the RAMS Franchise Network's Operations Manual, as amended by RFG from time to time (**RAMS Operations Manual**), and incorporated by reference into the Franchise Agreement;
 - (b) policies, guidelines, and procedures as amended by RFG from time to time (**RAMS Policies**), which relevantly included:
 - (i) the RAMS Compliance Policy – National Consumer Protection Act 2009 (Cth) Policy;
 - (ii) the **RAMS Conflict of Interest Policy** and the RAMS Conflicts of Interest Procedure;
 - (iii) the RAMS Franchise Behavioural and Ethical Standards Policy (the **RAMS Behavioural Policy**);
 - (iv) the RAMS Franchise Third Party Referrer Policy (the **RAMS Referrer Policy**);
 - (v) the RAMS Referrer Procedure;
 - (vi) the RAMS Franchise Technology Code of Use Policy (the **RAMS Technology Code of Use Policy**);
 - (vii) the RAMS Customer Identification Procedure (the **RAMS Identification Procedure**);
 - (viii) the RAMS Privacy Operating Guidelines (the **RAMS Privacy Guidelines**);

- (ix) the **RAMS Lending Guidelines**;
 - (x) the RAMS Disclosure Document 2014 Code;
 - (xi) the RAMS Franchise Sales Procedure; and
 - (xii) the RAMS Customer Identification Policy.
24. The RAMS Franchise Incident and Consequence Management Policy, later referred to as the RAMS Consequence Management Guidelines (**Consequence Management Policy**), provided for the manner in which any RAMS Franchise Network contract breaches should be managed by RFG, which included breaches of:
- (a) a Franchise Agreement, as referred to in paragraph 20(a) above;
 - (b) the RAMS Operations Manual, as referred to in paragraph 23(a) above; and
 - (c) a Credit Representative Agreement, as referred to in paragraph 29 below.
25. Further, during the Relevant Period, RAMS Franchisees and their employees (including Loan Writers) were required to operate using RFG's systems infrastructure, which relevantly included:
- (a) an electronic lodgement, leads management and home loan application lodgement system (**Symmetry**), which was the system RAMS Franchisees and their employees (including Loan Writers) used to submit consumer loan applications to RFG;
 - (b) RAMS Origination System (**ROS**), which was an IT system that RFG used, among other things, to process loan applications, and which provided RAMS Franchisees and their employees (including Loan Writers) with visibility of the status of loan applications they had submitted. The ROS interfaced with Symmetry; and
 - (c) various other RFG information technology systems, including RFG mobile device applications and RFG infrastructure connecting franchise sites to RFG and support services via a RAMS Help Desk.
26. During the Relevant Period, RFG provided, pursuant to the Franchise Agreements, ongoing commissions to RAMS Franchisees in relation to the distribution of RAMS-branded home loans to consumers (calculated as a percentage of the outstanding balance of active settled loans each month, less any 'Royalty Fee' or 'RAMS Share' (defined in the Franchise Agreement) to which RFG was entitled in respect of a given product) (**Trail Commission**). The Franchise Agreements provided that:

- (a) RFG was required to continue to pay Trail Commission where the Franchise Agreement expired at the end of its term, unless the parties agreed otherwise;
 - (b) where a Franchise Agreement ended early, a lower rate of commission at 75% of standard Trail Commission applied; and
 - (c) Trail Commission ceased on loans while they were more than 90 days in arrears.
27. With the exception of the 25% reduction in Trail Commission where a Franchise Agreement was terminated, the Franchise Agreements did not include any provisions to terminate Trail Commission payments to RAMS Franchisees where misconduct relating to the RAMS Franchisee was detected. That structure did not incentivise RAMS Franchisees to avoid misconduct (including misconduct falling within the categories described in paragraphs 66–72 below) in their business activities.
28. Pursuant to its obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**), Westpac established an Anti-Money Laundering and Counter-Terrorism Financing Part B Program, which Westpac required RFG to comply with. In 2012, RFG set up an Electronic Verification Scorecard which stipulated the rules by which an RFG customer could be identified digitally.

RAMS Authorised Credit Representatives

29. Prior to, and during, the Relevant Period, RFG appointed RAMS Franchisees, and certain employees of the RAMS Franchisees, as its ACRs, within the meaning of s 64 of the Credit Act (**RAMS ACRs**). These appointments were made pursuant to the Credit Act and documented in the following agreements:
- (a) written Corporate Credit Representative Agreements with corporate RAMS Franchisees; and
 - (b) written Credit Representative Agreements with non-corporate RAMS Franchisees and employees of RAMS Franchisees
- (collectively, **Credit Representative Agreements**).
30. Pursuant to the Credit Representative Agreements, RFG appointed RAMS ACRs:
- (a) as its credit representatives under the Credit Act, and authorised them to engage in credit activities on its behalf; and
 - (b) as subagents of Westpac to carry out identification procedures on Westpac's behalf for the purposes of the AML/CTF Act and the Verification of Identity Regulations

(being any requirements to identify a person in connection with the granting of a mortgage).

31. The Credit Representative Agreements authorised RAMS ACRs to carry out, relevantly, the following activities:
 - (a) to follow up on leads provided by RFG, the RAMS Franchisee or self-generated leads;
 - (b) to provide a credit guide to a customer in accordance with RFG's instructions;
 - (c) to conduct interviews to make reasonable inquiries about a customer's financial situation, and their requirements and objectives, using tools provided by RFG;
 - (d) to take reasonable steps to verify a customer's financial situation in accordance with RAMS Policies;
 - (e) to make a preliminary assessment about whether a facility or variation to an existing facility is not unsuitable for a customer, using tools provided by RFG; and
 - (f) to assist a customer to complete an application or variation application for facilities that are determined to be not unsuitable by the preliminary assessment, using tools provided by RFG.
32. When carrying out the activities described in the preceding paragraph, RAMS ACRs engaged in a "credit activity" for the purposes of the Credit Act.
33. Further, RAMS ACRs were, pursuant to subparagraph (a)(iii) of the definition of "representatives" in s 5(1) of the Credit Act, representatives of RFG.
34. RAMS ACRs were required to:
 - (a) complete initial training to satisfy training standards as determined by RFG prior to acting under their ACR appointment;
 - (b) complete ongoing training, as specified by RFG and set out in the RAMS Operations Manual described in paragraph 23(a) above;
 - (c) comply, relevantly, with the RAMS Policies, and to use the information technology and other operational systems provided to them by RFG, including RFG's systems infrastructure described in paragraph 25 above;
 - (d) deal only with accredited referral partners as described in paragraph 37 below, in accordance with:

- (i) the RAMS Operations Manual described in paragraph 23(a) above; and
 - (ii) the RAMS Referrer Policy described in paragraph 23(b)(iv) above; and
- (e) disclose details of any actual or perceived conflicts of interest, in particular where the RAMS ACR had a personal interest which could be inconsistent with the interests of RFG or its customers, such that it could influence or compromise, or appear to influence or compromise, the RAMS ACR's duties and responsibilities to RFG or its customer, in accordance with:
- (i) the RAMS Operations Manual described in paragraph 23(a) above; and
 - (ii) the RAMS Conflict of Interest Policy described in paragraph 23(b)(ii) above.
35. Where RAMS Franchisees and RAMS ACRs failed to comply with RAMS Policies, the RAMS Franchisees and RAMS ACRs breached their Franchise Agreements and Credit Representative Agreements with RFG.

Operation of the RAMS Franchise Network

RFG's process for accrediting referrers

36. During the Relevant Period, RAMS Franchisees and their employees received referrals of prospective customers from third parties (**referrals**).
37. During the Relevant Period, RAMS Franchisees and their employees were only permitted to accept referrals from third parties who were, with limited exceptions, referrers who had been accredited (**Accredited Referrers**) in accordance with the requirements of:
- (a) the RAMS Operations Manual;
 - (b) the RAMS Referrer Policy; and
 - (c) the RAMS Franchise Referrer Procedure
- (**the RAMS Accreditation Process**).
38. Throughout the Relevant Period, RAMS Franchisees received induction training about the policies and procedures in place that applied to the use of Accredited Referrers, and their associated responsibilities under the RAMS Accreditation Process.
39. Pursuant to the RAMS Accreditation Process, only the following three types of referrers could be accredited:
- (a) an entity that held an ACL under Part 2-2 of the Credit Act or who was an ACR of an ACL holder under Part 2-3 of the Credit Act, and who conducted a referral business;

- (b) an entity that was exempt under the *National Consumer Credit Protection Regulations 2010* (Cth) and conducted a business in which providing referrals was incidental to its main activities (**Exempt Referrer**); or
- (c) a Westpac-approved broker that held an ACL or was an ACR (**Westpac-Approved Broker**).

40. During the Relevant Period:

- (a) in order for a prospective referrer to become accredited under the RAMS Accreditation Process:
 - (i) a RAMS Franchisee or employee was required to:
 - (A) gather information about the identity of the prospective referrer;
 - (B) gather information to confirm whether the prospective referrer held a current ACL, was a current ACR of an ACL-holder, was a Westpac-Approved Broker or was an Exempt Referrer;
 - (C) conduct searches in relation to the prospective referrer, including a company search (where relevant) and searches to determine whether the prospective referrer had been banned or disqualified by ASIC; and
 - (D) undertake any other steps set out in the RAMS Operations Manual, RAMS Referrer Policy and RAMS Franchise Referrer Procedure in relation to the prospective referrer;
 - (ii) the RAMS Franchisee or employee was required to submit the accreditation request to RFG for determination;
 - (iii) Westpac would perform additional checks on the prospective referrer and related individuals prior to determination (including ABN and ASIC searches, verification of the prospective referrer's business address, and checks against Westpac's internal databases, which included the names of individuals with known misconduct, financial crime links or involvement in fraud);
 - (iv) a team within RFG called "RAMS Franchise Field Compliance" notified the relevant RAMS Franchisee of the outcome of the accreditation request; and
 - (v) a Referrer Agreement was required to be entered into between the relevant RAMS Franchisee and the prospective referrer;
- (b) once accredited and subject to the type of referrer they were (see paragraph 39 above), Accredited Referrers would:

- (i) provide consumer details, including the consumer's name, contact details and a short description of their purpose for seeking the provision of credit, if known, to the RAMS Franchisee;
 - (ii) conduct an initial lending conversation with the consumer; and/or
 - (iii) provide completed home loan application forms and supporting documents to RAMS Franchisee.
41. In the event a consumer who wished to apply for a RAMS-branded home loan was referred to a RAMS Franchisee by an Accredited Referrer, the RAMS Franchisee or RAMS ACR was required to inform RFG that the loan application had been so referred, including by providing details of the Accredited Referrer's unique referrer identifier code in Symmetry as part of the home loan application process.

Loan application process

42. During the Relevant Period, consumers approached RAMS Franchisees:
- (a) through a central RAMS phone number for consumer enquiries, being 13RAMS (137 267), which referred consumers to the RAMS Franchisees;
 - (b) through Accredited Referrers; or
 - (c) by directly approaching a RAMS Franchisee or Loan Writer.
43. Having been approached by consumers, RAMS Franchisees or their Loan Writers obtained information and documents from the consumers for the purpose of submitting loan applications to RFG for RAMS-branded home loans.
44. Prior to lodging home loan applications on behalf of consumers, during the Relevant Period RAMS Franchisees and their Loan Writers were required:
- (a) pursuant to the Franchise Agreement, to ensure accurate capture of the consumer's information, and that the information was a true and accurate reflection of the consumer's circumstances;
 - (b) pursuant to the Credit Representative Agreement, to take reasonable steps to correctly collate and convey any information provided to RFG or any lender (including information in relation to any application), and not provide any information that the RAMS Franchisee or its officers, employees, agents or contractors knows (or should know) is false, misleading or forged;
 - (c) pursuant to the RAMS Policies:
 - (i) to identify the consumer;

- (ii) to assess whether the consumer was eligible for a RAMS-branded home loan, in accordance with the RAMS Lending Guidelines, as amended from time to time;
- (iii) to perform a preliminary suitability assessment about the consumer, in the course of which they were required to ascertain the consumer's financial situation by:
 - (A) identifying and recording accurately the consumer's requirements and objectives and ensuring any recommended loan met their requirements;
 - (B) collecting accurate, relevant and complete information about the consumer, including their financial information; and
 - (C) checking, verifying and assessing the consumer's information, including financial information, carefully to ensure RFG had a complete picture of the consumer's financial situation, including income, expense, employment status, and exit strategy should the loan term exceed the consumer's expected retirement age; and
- (iv) in the course of performing the suitability assessment, to:
 - (A) obtain supporting documents to confirm the consumer's financial and personal situation as described and set out in:
 - (1) the RAMS Lending Guidelines, as amended from time to time; and
 - (2) the Operations Manual;
 including:
 - (3) documents required for Pay As You Go employees;
 - (4) loan statements;
 - (5) documents required for self-employed consumers; and
 - (6) documents to substantiate the consumer's funds to complete, such as the deposit;
 - (B) review the consumer's supporting documentation in accordance with the RAMS Lending Guidelines;
 - (C) validate the consumer's declared liabilities (and were strongly recommended to obtain a report from a credit reporting body);
 - (D) optionally obtain valuations;
 - (E) assess the capacity of the consumer to service the loan; and

- (v) before submitting a loan application, check all the consumer's information carefully to ensure RFG had a complete picture of the consumer's financial position.
- 45. Once the above steps were complete, the RAMS Franchisee or Loan Writer submitted the loan application to a team comprised of Westpac employees called "RAMS Credit & Loan Operations" (**RAMS Credit**), which, on behalf of Westpac, processed applications for approved products from receipt of the application until they instructed solicitors to prepare loan documents for settlement.
- 46. Upon receipt of a loan application, RAMS Credit first undertook a "triage" process (which throughout the Relevant Period, was undertaken by a team called "RAMS Home Ownership Services") to ensure that the loan application was in a state ready for assessment by a RAMS Credit Manager. As part of the "triage" process, RAMS Credit was required to:
 - (a) ensure that all supporting documents were provided in accordance with the RAMS Policies;
 - (b) assess whether there was any missing information or documents;
 - (c) verify information in the loan application by cross-checking it against supporting documents;
 - (d) undertake "Requirements and Objectives checks", including to ensure that the loan application included a full and complete preliminary assessment; and
 - (e) use triage "checklists" to perform their functions.
- 47. If, following the "triage" process, the loan application was determined to be in a state ready for assessment by a RAMS Credit Manager, it was allocated to a RAMS Credit Manager within RAMS Credit to conduct, on behalf of the credit provider, a substantive assessment of whether the credit contract would be unsuitable for the customer.
- 48. The assessment by a RAMS Credit Manager involved:
 - (a) reviewing the loan application and ensuring it complied with policy, verifying the income documents and checking for red flag indicators that could indicate fraud;
 - (b) considering the comprehensive credit report information as well as security information contained within the valuation report;
 - (c) reviewing financial statements that could indicate non-disclosure of information;
 - (d) performing an unsuitability assessment on behalf of Westpac;

- (e) completing a “credit memorandum” which referenced the credit calculations, as well as completing servicing calculations; and
 - (f) sending the loan to the Settlement Team for settlement if approved.
49. On some occasions, as an additional step within the process, the loan application was referred to the RAMS Risk and Fraud Operations team (**RAMS Risk and Fraud**), including where there were anomalies or concerns about information or consumers in respect of an application.
50. Once a RAMS Credit Manager assessed the application, the RAMS Credit Manager, on behalf of Westpac as the credit provider, would take one of the following steps:
- (a) approve the application conditionally;
 - (b) approve the application unconditionally;
 - (c) defer the application for the purpose of obtaining further information; or
 - (d) decline the application.
51. Since at least June 2019, RFG also conducted post-loan settlement “Welcome Calls” with consumers, in respect of which:
- (a) the calls were outsourced to a contact centre at Unisys Mortgage Processing (**UMP**);
 - (b) the calls were required to collect information from consumers;
 - (c) the information collected permitted UMP to determine whether there were anomalies in the manner in which RAMS ACRs discharged their obligations under the RAMS’ ACL (including whether the consumer had been referred from a third party other than an Accredited Referrer); and
 - (d) in the event of an anomaly, UMP was required to refer the Welcome Calls to RAMS Compliance for further review.

Investigations process

52. During the Relevant Period, misconduct concerns relating to a RAMS Franchise could be investigated by one or more of:
- (a) RFG;
 - (b) a group within Westpac called the Secured Lending Taskforce (**SLTF**), which could have received the request to investigate from either RFG or Westpac; and
 - (c) a group within Westpac called GI (defined above), which could have received the request to investigate from either RFG or Westpac.

53. Where SLTF undertook an investigation into misconduct concerns relating to a RAMS Franchise, it provided the findings of that investigation to relevant groups, which included GI. Those findings could be incorporated by GI into its investigation. From around mid-2022, having regard to information sharing restrictions imposed by relevant laws, RFG was provided with only a summary of SLTF's findings, and only in instances where termination and/or revocation of the Franchise Agreement and/or Credit Representative Agreement was recommended by Westpac.
54. Where GI undertook an investigation into misconduct concerns relating to a RAMS Franchise it would, on completion of its investigation, prepare a report which included its findings about whether the misconduct was "substantiated" (**GI Report**). Of the 35 GI Reports that have informed Schedules 1 and 2 to this SAFA, 24 GI Reports were addressed, or copied, to RFG's Managing Director. In relation to the remaining GI Reports, all were addressed, or copied, to either the Head of Risk and Compliance and/or in-house lawyers supporting the RAMS business.
55. During the Relevant Period, RFG used Westpac's risk and compliance system, known as "JUNO", to record and manage risk and compliance issues.

RFG's Responsibilities

56. In the operation of the RAMS Franchise Network, RFG was required to comply with the obligations described at paragraph 13 above. Having regard to the nature and size of RFG's business, this required RFG to:
- (a) in order to comply with s 47(1)(a) of the Credit Act, amongst other things:
 - (i) create adequate policies and procedures for the operation of the RAMS Franchise Network;
 - (ii) take reasonable steps to ensure that those policies and procedures were complied with by RFG and RAMS ACRs;
 - (iii) adequately investigate and respond to possible misconduct within the RAMS Franchise Network (**RAMS Misconduct Investigation Responsibilities**), including:
 - (A) in response to investigations by:
 - (1) the SLTF; and
 - (2) GI; and

- (B) by implementing appropriate controls to manage identified risks, where those risks were identified in the course of discharging RAMS Misconduct Investigation Responsibilities; and
- (iv) comply with its obligations pursuant to ss 47(1)(b) and 47(1)(e) as described in paragraphs (b) and (c) below, and its obligations pursuant to s 31(1) of the Credit Act;
- (b) in order to comply with s 47(1)(b) of the Credit Act, have in place adequate arrangements to ensure that consumers were not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities undertaken by it **(RAMS Conflicts of Interest Responsibilities)**; and
- (c) in order to comply with s 47(1)(e) of the Credit Act, have in place adequate arrangements to ensure that RAMS ACRs complied with policies and procedures that were implemented for the purposes of ensuring RAMS ACRs complied with the Credit Act, including to:
 - (i) conduct adequate compliance audit and routine loan file review procedures to detect misconduct in relation to loan applications received from RAMS Franchisees; and
 - (ii) adequately investigate and respond to possible misconduct within the RAMS Franchise Network as described in subparagraph 56(a)(iii) above

(RAMS Policy and Procedure Compliance Responsibilities).

AGREED FACTS ON LIABILITY

Misconduct within the RAMS Franchise Network

- 57. During the Relevant Period, Westpac and RFG undertook investigations, including through GI and SLTF, into allegations of misconduct relating to the RAMS Franchises.
- 58. The nature of the alleged misconduct investigated by GI and SLTF varied widely, including as described in paragraphs 66–72 below.

The Agreed Schedules

- 59. Schedules 1 and 2 to this SAFA summarise substantiated findings of misconduct made by GI (**GI Findings**). The GI Findings:
 - (a) relate to conduct that occurred over the course of a 5-year period from at least 1 January 2018 to April 2023;

- (b) involve staff, including RAMS Franchisees and Loan Writers, at 12 RAMS Franchises (being RAMS Franchises A, B, C, D, E, F, G, H, I, J, K and L) (**Relevant Franchises**); and
 - (c) are set out in 35 GI Reports, the first of which is dated 17 August 2019 (RAMS Franchise G) and the last of which is dated 18 August 2023 (RAMS Franchise J).
60. RFG was made aware of the GI Findings, including through the provision of GI reports to its Managing Director, Head of Risk and Compliance and/or in-house lawyers supporting the RAMS business.

Schedule 1 – RAMS Franchise Misconduct

61. Schedule 1 to this SAFA summarises the GI Findings in relation to the Relevant Franchises. Specifically:
- (a) the first column sets out the item number;
 - (b) column A identifies the category of misconduct with reference to one or more of the categories of misconduct described in paragraphs 66–72 below;
 - (c) column B identifies the time period over which the misconduct occurred;
 - (d) column C summarises the particular misconduct in respect of each item number;
 - (e) column D identifies the RAMS or Westpac Policies that GI found had been breached by virtue of the misconduct;
 - (f) column E identifies the date of the relevant GI Report; and
 - (g) column F identifies whether there was a related SLTF Report, and the number of that Report.
62. The misconduct which is the subject of the GI Reports is categorised for the purposes of Column A of Schedule 1 as follows:
- (a) Unaccredited Referrer Misconduct;
 - (b) Conflict of Interest Misconduct;
 - (c) False Documentation Misconduct;
 - (d) Transfer of Funds Misconduct;
 - (e) Privacy and IT Misconduct; and
 - (f) Other Policy and Procedure Misconduct.

63. Cases involving concerns about false documentation that were investigated by GI and SLTF included occasions where loan applications submitted to RFG by RAMS Franchises were found by Westpac's GI team to have been supported by false documentation in respect of which:
- (a) the false documentation was provided to RFG presumably in order to increase the prospects of the loan application being approved by RAMS Credit on behalf of Westpac;
 - (b) one example of a case involving false documentation as found by Westpac's GI team was described as a "staged wages" case, which occurred when loan applications were found to have been supported by misleading documentation (such as false pay slips from non-existent employers, supported by bank account statements which showed payments into those accounts of amounts coinciding with the false pay slips) which gave the impression (or "staged") that the loan applicant was receiving wages of a particular amount from a particular employer, where those representations were untrue;
 - (c) where GI and/or SLTF undertook investigations into concerns about false documentation, it was sometimes the case that GI and/or SLTF was satisfied that false documentation had been provided in support of a loan application, but did not then proceed to, or were not able to, determine which party or parties (from among the loan applicant, the referrer and the RAMS Franchisee or their employees) knew that false documents had been supplied in support of a loan application. Accordingly, the False Documentation Misconduct described in paragraph 69 below does not capture all instances where false documentation may have been provided to RFG in support of loan applications, only those instances where GI and/or SLTF made findings that RAMS Franchisees or their employees were involved in the misconduct; and
 - (d) the False Documentation Misconduct described in paragraph 69 below captures those occasions where, in the opinion of the GI investigator, it could be established that RAMS Franchisees or their employees had *themselves* knowingly submitted loan applications supported by false documentation or information or were complicit in doing so. In a number of the investigations undertaken by GI and SLTF during the Relevant Period, GI and/or SLTF was unable to determine whether the RAMS Franchisee or their employees knew that the documents supplied were false.
64. Where, in the GI Reports described in Schedule 1, GI found that the RAMS or Westpac Policies identified in Column D of Schedule 1 had been breached by virtue of the misconduct, those policies are not necessarily an exhaustive list of the RAMS or Westpac Policies breached by virtue of the misconduct.

Schedule 2 – Section 31(1) Contraventions

65. Schedule 2 to this SAFA summarises the GI Findings of Unaccredited Referrer Misconduct (as defined in paragraph 66 below) in relation to the Relevant Franchises that involved contraventions of s 31(1) of the Credit Act. Specifically:
- (a) column A identifies the item number in Schedule 1 that relevantly deals with Unaccredited Referrer Misconduct;
 - (b) column B identifies the Relevant Franchise;
 - (c) column C identifies the name of the Relevant Franchise staff member that accepted the referral; and
 - (d) column D identifies the number of contraventions of s 31(1) of the Credit Act referable to the item number.

Categories of Misconduct within the RAMS Franchise Network

Unaccredited Referrer Misconduct

66. During the Relevant Period, the types of conduct identified by GI in respect of particular Relevant Franchises included the following:
- (a) accepting referrals from unaccredited referrers as described in Schedules 1 and 2; and
 - (b) thereby, breaching the RAMS Referrer Policy (**Unaccredited Referrer Misconduct**).
67. Where representatives at the Relevant Franchises accepted referrals from unaccredited referrers who did not hold an ACL under Part 2-2 of the Credit Act or who were not an authorised representative of an ACL holder under Part 2-3 of the Credit Act at the time of the referral, RFG contravened s 31(1) of the Credit Act, as described in paragraphs 88–89 below.

Conflicts of Interest Misconduct

68. During the Relevant Period, the types of conduct identified by GI in respect of particular Relevant Franchises included the following:
- (a) engaging in credit activities where there was a conflict of interest or relationships between representatives at the Relevant Franchises and other commercial businesses which provided services or referrals to the Relevant Franchises as described in Schedule 1 at rows 22, 26, 27, 31, 33, 38, 39, 56, 67 and 81, including by:
 - (i) while acting as a principal at a Relevant Franchise, being listed as the sole signatory on the bank accounts of a company which referred loan applications to the Relevant Franchise and personally receiving commissions from those referrals;
 - (ii) personally, receiving monies from referrers; and
 - (iii) while acting as a principal at a Relevant Franchise, failing to declare a conflict of interest with an Accredited Referrer operated by that principal's brother; and
 - (b) thereby, breaching the RAMS Conflict of Interest Policy.

False Documentation Misconduct

69. During the Relevant Period, the types of conduct identified by GI in respect of particular Relevant Franchises included the following:
- (a) submitting loan applications prepared by representatives at the Relevant Franchises which included, likely in order to increase the prospects of the loan application being approved, false information and/or documents in support of the loan applications in the manner identified in Schedule 1 at rows 14, 25, 35, 40, 41, 44, 51, 65, 77 and 83, including by:
 - (i) altering the declared expenses in loan applications to enable the loan to meet serviceability requirements;
 - (ii) representing that their own home loan application was for an investment property when in fact it was to be owner-occupied; and
 - (iii) coding loan applications to a party other than the true referrer; and
 - (b) thereby, breaching the policies described in the corresponding column D of those rows in Schedule 1.

Transfer of Funds Misconduct

70. During the Relevant Period, the types of conduct identified by GI in respect of particular Relevant Franchises included the following:
- (a) transferring funds in relation to loans in the manner identified in Schedule 1 at rows 29, 36, 39 and 45, including by:
 - (i) facilitating the payment of customer arrears payments with the result that the Relevant Franchise continued to receive commission payments; and
 - (ii) making a payment to a customer for the purpose of satisfying the customer's settlement fees and the first year of the annual package fee; and
 - (b) thereby, breaching the policies described in the corresponding column D of those rows in Schedule 1.

Privacy and IT Misconduct

71. During the Relevant Period, the types of conduct identified by GI in respect of particular Relevant Franchises included the following:
- (a) misusing information or IT systems in the manner described in Schedule 1 at rows 3, 4, 7, 15, 17, 19, 20, 21, 24, 30, 34, 37, 43, 46, 52, 55, 58, 61, 62, 64, 68, 73, 74, 79, 80, 82 and 84, including by:
 - (i) distributing RFG software to unaccredited referrers or persons not employed by RFG;
 - (ii) using unauthorised personal email accounts to store and distribute confidential customer identification and documentation; and
 - (iii) sharing a username and password with a third party; and
 - (b) thereby, breaching the policies described in the corresponding column D of those rows in Schedule 1.

Other Policy and Procedure Misconduct

72. During the Relevant Period, the types of conduct identified by GI in respect of particular Relevant Franchises included the following:
- (a) breaching other policies and procedures, or guidelines, not otherwise described in one of the categories described above, in the manner described in Schedule 1 at rows 1, 2, 9, 12, 18, 26, 29, 31, 33, 35, 42, 47, 48, 49, 53, 56, 59, 66, 73, 75, 76, 78, 80, 84 and 85, including by:

- (i) establishing proxy referrers knowing them to be employees of banned referrer companies;
 - (ii) failing to identify multiple anomalies in supporting documentation for loan applications at a level expected of a prudent loan writer; and
 - (iii) failing to identify customers themselves (but rather accepting false certified copies of customer identification from referrers); and
- (b) thereby, breaching the policies described in the corresponding column D of those rows in Schedule 1.

RFG's Failings

Failure to comply with RAMS Policy and Procedure Compliance Responsibilities and RAMS Misconduct Investigation Responsibilities

73. During the Relevant Period, RFG failed to:

- (a) take adequate steps to ensure that RAMS Franchises and their staff did not breach RAMS Policies in the manner described in Schedule 1;
- (b) prior to Project Guardian (as defined in sub-paragraph 77(b) below), create adequate policies and procedures for responding to possible misconduct, including by:
 - (i) adopting a consequence management process where decisions about consequences for misconduct by RAMS ACRs rested with the RAMS Head of Sales and the RAMS Head of Risk and Compliance and only if those two senior managers disagreed on the consequence would the Managing Director have the final decision right, in circumstances where the Head of Sales had a competing interest between promoting sales and growth verses penalising a RAMS Franchisee, and where that competing interest was not clearly mitigated; and
 - (ii) failing to create an effective consequence management policy which:
 - (A) set out parameters about when concerns about possible misconduct should be referred by RFG to SLTF or GI for investigation; and
 - (B) set out processes for addressing those matters described in subparagraph (f) below;
- (c) implement effective controls to ensure that RFG representatives did not breach the policy requirement not to deal with unaccredited referrers, including by failing to:

- (i) satisfy itself that there were adequate processes in place to verify that a referrer was accredited;
 - (ii) put in place controls to monitor the accuracy of an Accredited Referrer's unique referrer identifier code which was required to be entered in Symmetry by the RAMS Franchise as part of the home loan application process; and
 - (iii) include Welcome Calls as a control in JUNO, as a result of which, RFG management was unable to assess and confirm whether that control was operating effectively, in circumstances where Welcome Calls were the key control used by RFG for identifying the use of unaccredited referrers;
- (d) take adequate steps to ensure that RAMS Franchisees and their employees adhered to the process for a prospective referrer to become accredited under the Accreditation Process, which failure led to the use of referrers who:
 - (i) did not hold a current ACL under Part 2-2 of the Credit Act;
 - (ii) were not an authorised representative of an ACL holder under Part 2-3 of the Credit Act; or
 - (iii) not exempt from being required to hold an ACL under the credit legislation;
- (e) establish adequate compliance audit and routine loan file review procedures to detect misconduct, including by:
 - (i) establishing compliance audits with a very narrow focus that, among other things, were not designed to identify misconduct, and which excluded higher risk loan applications (such as declined or withdrawn files) from sampling processes; and
 - (ii) establishing an inappropriately undemanding paper file review process (5 files, every 6 months) undertaken by the RAMS Field Franchise sales team and was not focused on detecting misconduct issues; and
- (f) adequately respond to possible misconduct within the RAMS Franchise Network, including by virtue of failing to:
 - (i) record all incidents of misconduct in a central location and to include sufficient information in JUNO to enable analysis of those incidents;
 - (ii) review incidents of misconduct with a view to determining whether they were indicative of systemic issues within the RAMS Franchise Network;
 - (iii) implement an adequate mechanism to monitor, consider and respond to incidents of misconduct;

- (iv) impose consistent consequences for misconduct, and failing to adequately record consequences imposed for misconduct;
- (v) adequately document the rationale for approving the extension of the term of a Franchise Agreement, having regard to incidents of misconduct in respect of that RAMS Franchise; and
- (vi) identify systemic misconduct issues arising from investigations into misconduct at individual franchises.

Failure to comply with RAMS Conflicts of Interest Responsibilities

74. RFG failed to have in place adequate arrangements to ensure that consumers were not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities undertaken by it, including by virtue of failing to:
- (a) pursuant to cl 8.3.1 of the RAMS Conflict of Interest Policy, ensure that the RAMS Conflicts of Interest Register was completed, despite there being known conflicts of interest that required being managed;
 - (b) prior to Project Guardian, adequately respond to actual conflicts of interest identified in the course of investigations undertaken by SLTF and GI, by virtue of those matters described in paragraph 73 above; and
 - (c) provide RAMS Franchisees and their employees with ongoing, mandatory training on conflicts of interest, in addition to simply providing regular Compliance Newsletters distributed to the RAMS Franchise Network that included reminders of managing conflicts of interest and requiring ACRs to provide an annual attestation confirming that they had read and understood certain policies, including the RAMS Conflict of Interest Policy.

Identification of problems within the RAMS Franchise Network and response

Identification of problems with RAMS Franchise C

75. In July 2020, GI produced the first of several reports in which it identified issues arising in relation to RAMS Franchise C.
76. In July 2022, RAMS Fraud/Credit Risk began sampling loan applications from RAMS Franchise C. As a result of this sampling:
- (a) on 1 August 2022, SLTF began monitoring 100% of new loan applications from RAMS Franchise C to substantiate the veracity of the applications prior to credit approval;

- (b) on 30 September 2022, Westpac recommended that RFG terminate the Franchise Agreement and Credit Representative Agreements with RAMS Franchise C and principal, given the substantial number of anomalies identified; and
- (c) between October 2022 and December 2022, RFG terminated the Franchise Agreement with RAMS Franchise C and Credit Representative Agreements with ACRs of RAMS Franchise C.

Franchisee Oversight Controls Review and Project Guardian

77. In response to the concerns identified with the conduct of RAMS Franchise C, Westpac:

- (a) on 5 October 2022, commenced a review into RFG's Franchisee Oversight Controls (**Franchisee Oversight Controls Review**), to assess the effectiveness of the control environment within RAMS, specifically focussed on the oversight of certain franchisee conduct, being conflicts of interest, the use of unaccredited referrers, and the misrepresentation of loan application information; and
- (b) on 25 November 2022, commenced "Project Guardian", the purpose of which was to investigate and respond to possible misconduct by other franchisees within the RAMS Franchise Network and uplift RAMS controls to ensure that similar issues would be avoided in the future.

78. Project Guardian ran over the course of approximately 22 months at a cost of approximately \$46 million. Project Guardian included monitoring and targeted reviews of all RAMS Franchisees, reviews of historical and new loan applications referred by RAMS Franchisees, the engagement of an external expert to conduct an independent review of the RAMS control environment and the implementation of associated control uplifts. Westpac and RFG committed over 200 employees and external consultants to Project Guardian. In the course of this project:

- (a) RFG enhanced relevant policies, procedures and controls, developed and updated training modules and completed an enhancement of the RFG risk profile and supervision and monitoring framework; and
- (b) there was an increase in the number of investigations conducted by GI and SLTF into RAMS Franchisees as evidenced in Schedule 1. These investigations were conducted in tandem with RFG's uplift of its policies, procedures and controls, and resulted in the termination of Franchise Agreements with RAMS Franchisees and Credit Representative Agreements with RAMS ACRs.

79. As part of Project Guardian, Westpac also undertook a broad review exercise which involved a review of the entire portfolio of RAMS loans settled in the period December 2016 to December 2022. The process resulted in Westpac remediating 48 customer loans to a value of \$7,567,418. In determining whether a loan required remediation, Westpac did not require evidence of any actual misconduct by RAMS Franchisees (that is, customers were remediated even if it could not be established that any financial harm they may have suffered was the result of conduct of RAMS ACRs).
80. The loans requiring remediation represented approximately 0.05% of all loans originated through the RAMS Franchise Network between December 2016 and December 2022. The total remediation value represented 0.025% of the RAMS total portfolio value as at September 2024 and 0.0009% of the Westpac total portfolio value as at September 2024.

Other audits and reviews

81. On 13 December 2022, the Executive Manager, Credit Quality and Regulatory Change at Westpac delivered a report on the findings of the Franchisee Oversight Controls Review to the Managing Director, Mortgages.
82. On 14 April 2023, Westpac's Group Audit team finalised its "RAMS Franchisee Management and Oversight Audit Report" which reported on the findings of its audit.
83. On 15 September 2023, the Westpac Board Risk Committee received a Memorandum reporting to it on Westpac management's analysis of "Root Causes relating to RAMS Matters", in which four root causes were identified as contributing to the deficiencies in RFG, being:
- (a) autonomous business with a unique risk profile;
 - (b) immature risk culture and capability within RFG;
 - (c) deficient control environment and controls testing; and
 - (d) insufficient oversight of a non-standard end-to-end business.

Closing the RAMS business

84. Following commencement of Project Guardian, having regard to the findings of the investigations conducted by GI and SLTF into RAMS Franchisees and their employees (referred to at paragraph 59 above), RFG terminated Credit Representative Agreements with ACRs who had been the subject of substantiated findings of misconduct.

85. RFG wound down the RAMS Franchise Network in its entirety, effective 6 August 2024, which included the termination of all remaining Franchise Agreements and the termination of the remaining Credit Representative Agreements.

ASIC's investigation

86. Commencing in September 2022, RFG and Westpac reported to ASIC on multiple occasions potential breaches of ss 31(1) and 47 of the Credit Act pursuant to the requirement in s 50B of the Credit Act.
87. ASIC commenced its investigation into the conduct the subject of these reports in mid-2023. RFG has fully cooperated with ASIC in its investigation, and has engaged constructively with ASIC in relation to several voluntary requests for information and documents.

ADMITTED CONTRAVENTIONS OF THE CREDIT ACT

Contraventions of s 31(1) of the Credit Act

88. On each occasion described in Schedule 2, RFG:
- (a) engaged in a credit activity pursuant to its ACL;
 - (b) in the course of engaging in that credit activity, by its ACRs, conducted business with another person, who engaged in credit activity; and
 - (c) in those circumstances contravened s 31(1) of the Credit Act.
89. As described in Schedule 2:
- (a) RFG contravened s 31(1) of the Credit Act in total, during the Relevant Period, on 84 occasions; and
 - (b) the parties seek declarations pursuant to s 166 of the Credit Act and civil penalties pursuant to s 167 of the Credit Act in respect of these contraventions.

Contraventions of s 47 of the Credit Act

90. In the circumstances of paragraph 74 above, RFG:
- (a) failed to have in place adequate arrangements to ensure that RFG's customers were not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by RFG or its representatives; and
 - (b) thereby, contravened s 47(1)(b) of the Credit Act.

91. In the circumstances of paragraph 73 above, RFG:
- (a) failed to take reasonable steps to ensure that its representatives complied with the credit legislation; and
 - (b) thereby, contravened s 47(1)(e) of the Credit Act.
92. In the circumstances of paragraphs 88–91 above, RFG:
- (a) failed to do all things necessary to ensure that the credit activities authorised by the RFG ACL were engaged in efficiently, honestly and fairly; and
 - (b) thereby, contravened s 47(1)(a) of the Credit Act.
93. In the circumstances of paragraphs 88–92 above, RFG:
- (a) failed to comply with the credit legislation; and
 - (b) thereby, contravened s 47(1)(d) of the Credit Act.

SCHEDULE 1 – RAMS FRANCHISEE MISCONDUCT

This Schedule, as described in paragraph 61 of the SAFA, summarises the GI Findings in respect of RAMS Franchisee Misconduct in relation to the Relevant Franchises.

The misconduct found in the GI Findings in respect of:

- RAMS Franchise A commences at item 1;
- RAMS Franchise B commences at item 11;
- RAMS Franchise C commences at item 26;
- RAMS Franchise D commences at item 38;
- RAMS Franchise E commences at item 49;
- RAMS Franchise F commences at item 57;
- RAMS Franchise G commences at item 63;
- RAMS Franchise H commences at item 67;
- RAMS Franchise I commences at item 69;
- RAMS Franchise J commences at item 73;
- RAMS Franchise K commences at item 80; and
- RAMS Franchise L commences at item 81.

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
1.	Other Policy and Procedure Misconduct	December 2018	A loan writer: a. charged a customer a commission clawback; and	RAMS Behavioural Policy RAMS Referrer Policy	17 June 2020	SLTF 659

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
			b. directed payment of those funds into his personal bank account.			
2.	Unaccredited Referrer Misconduct Other Policy and Procedure Misconduct	Between March 2018 to November 2019	The franchise principal: a. was complicit with the establishment of proxy referrers knowing them to be employees of a banned referrer company; b. supervised loan writers who accepted loan applications from unaccredited referrers; c. authorised the acceptance of loan applications and payment of loan commissions to unaccredited referrers; d. supervised a loan writer who accepted loan applications from unaccredited referrers and was complicit in the submission of a 'proxy' accreditation request of an employee of an unaccredited referrer entity; and e. was complicit with former employee charging a commission clawback; and supervised a loan writer who distributed RAMS Loan software to an unaccredited referrer.	RAMS Behavioural Policy RAMS Referrer Policy	17 June 2020	SLTF 709
3.	Privacy and IT Misconduct	May 2019	A loan writer distributed RAMS Loan software to an unaccredited referrer.	RAMS Technology Code of Use Policy	17 June 2020	SLTF 709
4.	Privacy and IT Misconduct	4 July 2019	A loan writer distributed software, administered by third party suppliers to an ex-RAMS Franchise A employee and an unaccredited referrer entity.	RAMS Technology Code Of Use Policy	17 June 2020	N/A

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
5.	Unaccredited Referrer Misconduct	Between July 2018 and November 2019.	A loan writer accepted a loan application from two unaccredited referrers: a. on one occasion between October 2019 and November 2019; and b. on one occasion between 2018 and July 2019.	RAMS Behavioural Policy RAMS Referrer Policy	17 June 2020	N/A
6.	Unaccredited Referrer Misconduct	Between December 2017 and June 2019	A loan writer accepted loan applications from two unaccredited referrers: a. on 15 occasions between December 2017 and April 2018; and b. on four occasions between March 2019 and May 2019.	RAMS Referrer Policy	17 June 2020	N/A
7.	Privacy and IT Misconduct	Between February 2019 and 9 May 2019.	A loan writer distributed the RAMS Loan Servicing Calculator software to over one hundred individual email addresses of person/s not employed by the RAMS Financial Group Pty Ltd.	RAMS Technology Code Of Use Policy	17 June 2020	N/A
8.	Unaccredited Referrer Misconduct	Between July 2019 and September 2019	A loan writer accepted loan applications from an unaccredited referrer individual on five occasions.	RAMS Referrer Policy	17 June 2020	N/A
9.	Unaccredited Referrer Misconduct Other Policy and Procedure Misconduct	Between May 2018 and July 2019.	1. A loan writer as the loan manager, under his supervision of two employees established the two proxy referrers between May 2018 and April 2019, knowing those referrers to be employees of banned referrer companies.	RAMS Referrer Policy RAMS Compliance Policy RAMS Behavioural Policy	17 June 2020	SLTF 703

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
			2. A loan writer as the loan manager accepted loan applications from unaccredited referrers: a. on three occasions between July 2018 and July 2019; b. on seven occasions between August 2018 and March 2019; c. on one occasion between 20 July 2018 and 16 August 2018; d. on one occasion between 12 September 2018 and 29 October 2018; e. on three occasions between February 2019 and May 2019; f. on two occasions on or around 17 June 2019; g. on five occasions between July 2018 and June 2019; h. on 7 occasions between May 2018 and June 2019; i. on two occasions in July 2018; j. on one occasion in August 2018; and k. on two occasions between May 2018 and June 2019.			
10.	Unaccredited Referrer Misconduct	Between December 2017 and October 2019	A loan writer accepted loan applications from unaccredited referrers: a. on eight occasions between April 2018 and June 2019; and b. on one occasion between March 2019 and October 2019.	RAMS Referrer Policy	17 June 2020	SLTF 729

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
11.	Unaccredited Referrer Misconduct	Between February 2018 and March 2018.	A loan writer accepted loan applications from: a. an unaccredited referrer entity/individual on four occasions between 3 February 2018 and 13 March 2018; and b. an unaccredited referrer individual on two occasions in March 2018.	RAMS Referrer Policy	27 September 2019 24 October 2019	SLTF 610 SLTF 1050
12.	Other policy and procedure misconduct	October 2021	On or around 21 October 2021 a loan writer failed to take reasonable steps to ensure that the customer was not entering into an unsuitable credit contract in circumstances where, when assessing the customer's understanding of the English language as being adequate, the loan writer did not engage or offer the use of an interpreter.	RAMS Compliance Policy RAMS Behavioural and Ethical Standards Policy	14 June 2023 21 June 2023	SLTF 1050
13.	Unaccredited Referrer Misconduct	Between January 2018 to May 2018.	A loan writer accepted loan applications/supporting documentation from unaccredited referrer entities/individuals: a. on seven occasions between 18 January 2018 and 18 March 2018; b. on two occasions between 28 February 2018 and 8 March 2018; and c. on two occasions between 12 March 2018 and 9 May 2018.	RAMS Referrer Policy	30 September 2019 24 October 2019	SLTF 518 SLTF 610
14.	False Documentation Misconduct	28 February 2018	A loan writer manipulated the serviceability outcome of a home loan application by changing and not recording correctly the liabilities and living expenses amounts.	RAMS Behavioural Policy	30 September 2019 24 October 2019	SLTF 518 SLTF 610
15.	Privacy and IT Misconduct	Between January 2018 to December 2018	A loan writer used an email system that was not authorised for business by, on at least 24 occasions between January 2018 and December 2018, receiving home loan applications and supporting documents to their personal email addresses prior to forwarding the	RAMS Technology Code Of Use Policy	30 September 2019 24 October 2019	SLTF 518 SLTF 610

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
			documents to their work email address on at least 24 occasions.			
16.	Unaccredited Referrer Misconduct	Between March 2018 to June 2021	A loan writer accepted loan applications/documentation from unaccredited referrer entities/individuals: a. on two occasions between 20 March 2018 and 27 March 2018; b. on one occasion on 21 March 2018; c. on three occasions between 23 March 2018 and 2 May 2018; and d. on one occasion on or around 21 June 2021.	RAMS Referrer Policy	24 October 2019 30 September 2019 13 June 2023 21 June 2023	SLTF 610
17.	Privacy and IT misconduct	Between March 2018 and October 2021	A loan writer: a. on three occasions between March 2018 and June 2018, emailed commercially sensitive documents marked 'For Internal Use Only' to external third parties outside of the RAMS network; b. on four occasions in March 2018, emailed and requested that third parties complete the RAMS Customer Needs Review (CNR) forms with customers; and c. on at least 20 occasions between March and August 2018, and on one occasion on or around 30 October 2021, used an email system that was not authorised for business by receiving loan supporting documents to their personal email address prior to forwarding to their work email address.	RAMS Technology Code Of Use Policy RAMS Behavioural Policy	24 October 2019 21 June 2023 30 September 2019 13 June 2023	SLTF 610
18.	Other Policy and Procedure misconduct	December 2022	A loan writer, on or around 5 December 2022, did not report that they were aware that another RAMS Franchise B employee was using an unauthorised personal email account in their business dealings.	RAMS Behavioural Policy dated 11 October 2022 .	13 June 2023	SLTF 610

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
19.	Privacy and IT Misconduct	December 2022	A loan writer, on or around 5 December 2022, used an unauthorised personal email address in her communications relating to a customer's loan application.	RAMS Technology Code Of Use Policy RAMS Behavioural Policy	21 June 2023	N/A
20.	Privacy and IT Misconduct	Not stated	A loan writer used an unauthorised personal email address to receive personal customer information.	RAMS Technology Code Of Use Policy RAMS Behavioural Policy	21 June 2023	N/A
21.	Privacy and IT Misconduct	Between June 2022 and December 2022	The franchise principal: a. used an unauthorised personal email address on three occasions in his communications relating to loan applications, between on or around 20 June 2022 and 28 October 2022; and b. failed to ensure his staff complied with all policies.	RAMS Technology Code Of Use Policy RAMS Franchise Agreement	21 June 2023	N/A
22.	Conflict of Interest Misconduct	January 2021	The franchise principal: a. did not declare that he was the principal of a real estate business; and b. as a result of the comingling of these businesses, actual conflicts were permitted to occur, including real estate business staff using the RAMS Franchise B address in the conduct of their business and on their email signature, RAMS Franchise B staff operating real estate business email addresses and real estate business staff providing rental valuations for RAMS Franchise B staff to include as supporting documentation in RAMS loan applications.	RAMS Conflicts Policy RAMS Franchise Agreement RAMS Behavioural Policy	21 June 2023	SLTF 666
23.	Unaccredited Referrer Misconduct	Between January 2018 and May 2018	Under the supervision of the franchise principal, three loan writers breached the RAMS Referrer Policy by accepting loan applications from unaccredited referrer entities/individuals between January 2018 and May 2018.	RAMS Referrer Policy	24 October 2019	SLTF 666

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
24.	Privacy and IT Misconduct	Between January 2018 and December 2018	Under the supervision of the franchise principal, two loan writers breached the RAMS Technology Code of Use Policy: a. by emailing commercially sensitive documents marked 'For Internal use Only' to external third parties outside the RAMS network, and using an email system that was not authorised for business between March 2018 and August 2018; and b. by using an email system that was not authorised for business between January 2018 and December 2018.	RAMS Technology Code Of Use Policy	24 October 2019	SLTF 666
25.	False Documentation Misconduct	28 February 2018	Under the supervision of the franchise principal, a loan writer breached their Representative Agreement, by manipulating the serviceability outcome of a home loan application by changing and not recording correctly the liabilities and living expenses amounts.		24 October 2019	
26.	Conflict of Interest Misconduct Other Policy and Procedure Misconduct	Between April 2016 and April 2021	The franchise principal maintained an active role in the management of a company for his personal benefit. Specifically, while acting as a RAMS Franchise Principal, he was listed as the sole signatory on the bank accounts of the company which referred 163 loan applications and a total of \$590,946.20 in commissions. \$277,750.00 of these commissions were transferred to his personal bank account.	RAMS Behavioural Policy RAMS Disclosure Code	29 July 2020 24 November 2020 20 May 2021	SLTF 790

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
27.	Conflict of Interest Misconduct	Between May 2019 and June 2019.	A loan manager misused her position of trust and provided a financial advantage to herself by: a. funding a loan deposit for a RAMS Franchise C customer using her personal funds, to ensure the approval and settlement of that loan; and b. receiving a reimbursement payment for the loan deposit from RAMS Franchise C customers, which payment included an additional amount for her personal gain.	Westpac Group – Anti-Bribery and Corruption Policy and Standard RAMS Behavioural Policy RAMS Conflicts Policy RAMS Compliance Policy	21 July 2020	SLTF 772
28.	Unaccredited Referrer Misconduct	Between July 2019 and July 2019	A loan manager: a. accepted loan referrals from an unaccredited referrer individual on one occasion on or around 22 July 2019; and b. accepted loan referrals from another unaccredited referrer individual on one occasion on or around 7 July 2019.	RAMS Referrer Policy	21 July 2020	SLTF 772
29.	Transfer of funds misconduct Other Policy and Procedure Misconduct	Between June 2019 and June 2019	A loan manager was complicit with the payment of customer loan arrears payments by RAMS Franchise C Business Manager in order to facilitate the continued receipt of loan commissions by RAMS Franchise C which resulted in financial disadvantage to the Westpac Banking Corporation.	Westpac Group – Anti-Bribery and Corruption Policy and Standard RAMS Behavioural Policy RAMS Compliance Policy RAMS Conflicts Policy	21 July 2020	SLTF 772
30.	Privacy and IT Misconduct	Between April 2019 and December 2019	A loan manager breached customer confidentiality by using an unauthorised personal email account to store and distribute confidential customer identification and documentation.	RAMS Technology Code Of Use Policy	21 July 2020 29 July 2020	SLTF 772

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
31.	Other Policy and Procedure Misconduct Conflict of interest misconduct	Between July 2017 and June 2019	A loan writer: a. was complicit in the referral of RAMS customers to a St. George lender in or about the period 31 May 2019 to 13 June 2019; and b. was complicit in the submission of RAMS customer loans with the knowledge that the loans were for the purpose of purchasing a property from the franchise principal on two occasions in or around the period 6 July 2017 to 19 July 2018.	Westpac Group – Anti-Bribery and Corruption Policy and Standard RAMS Behavioural Policy RAMS Compliance Policy RAMS Conflicts Policy	29 July 2020	SLTF 790 SLTF 814
32.	Unaccredited Referrer Misconduct	Between November 2018 and July 2019; and	A loan writer accepted loan referrals from an unaccredited referrer on eight occasions between 14 November 2018 and 26 July 2019.	RAMS Referrer Policy RAMS Behavioural Policy	29 July 2020 20 May 2021	SLTF 816
33.	Other Policy and Procedure Misconduct Conflict of Interest Misconduct	March 2018	On or around 16 March 2018, a loan writer was complicit in the submission of loan application for the franchise principal knowing the loan was for the purpose of purchasing a property from a RAMS Franchise C customer.	Westpac Group – Anti-Bribery and Corruption Policy and Standard RAMS Compliance Policy RAMS Conflicts Policy	29 July 2020	SLTF 817 SLTF 790
34.	Privacy and IT Misconduct	Between February 2019 and February 2020	A loan writer used a personal email account to send and receive confidential customer data and documentation.	RAMS Technology Code Of Use Policy	30 September 2021	SLTF 817

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
35.	Other Policy and procedure Misconduct False Documentation Misconduct	Not stated	A customer relationship manager was complicit in the manufacture of a non-genuine contract of sale and ordering valuations without having a genuine customer transaction.	RAMS Conflicts Policy RAMS Behavioural Policy Westpac Group – Anti-Bribery and Corruption Policy and Standard RAMS Compliance Policy	29 July 2020	SLTF 790 SLTF 812
36.	Transfer of Funds Misconduct	Between June 2019 and September 2019	A customer relationship manager was found to have paid customer loan arrears balances by making a payment transfer from her personal bank account to the customer account.	RAMS Behavioural Policy	1 September 2021	SLTF 819
37.	Privacy and IT Misconduct	Between January 2020 and February 2020	A lending manager used his personal email account to send and receive confidential customer data and documentation, along with RAMS software and documentation.	RAMS Technology Code Of Use Policy	15 September 2021	SLTF 813
38.	Conflict of Interest Misconduct	Between October 2019 and November 2021	A loan writer received a total of 11 payments without disclosing a conflict of interest as follows: a. between 10 October 2019 and 31 January 2021 from a banned referrer for a total sum of \$19,000; b. on or around 3 December 2021 from an accredited referrer in the sum of \$34,000; and c. between 9 July 2020 and 2 November 2021 from a loan writer for a total sum of \$49,800.	RAMS Conflicts Policy	4 August 2022	SLTF 966
39.	Conflict of Interest Misconduct Transfer of Funds Misconduct	May 2021	A loan writer made a payment of \$660 to a customer for the purpose of covering the customer's settlement and the first year of the annual package fee.	RAMS Behavioural Policy RAMS Conflicts Policy	4 August 2022	SLTF 966

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
40.	Unaccredited Referrer Misconduct False Documentation Misconduct	Between February 2021 and September 2021	A loan writer: a. Accepted loan referrals from a banned referrer on six occasions between February 2021 and September 2021; b. on six occasions coded loan applications to a referrer instead of the true referrer; and c. on two occasions, coded two loan applications to a referrer instead of the true referrer.	RAMS Referrer Policy RAMS Behavioural Policy	4 August 2022	SLTF 966
41.	False Documentation Misconduct	July 2021	A loan writer represented that his own home loan application was for an investment property when in fact the loan writer had signed a declaration showing that the intended purpose of the property was to be owner-occupied.	RAMS Behavioural Policy RAMS Lending Guidelines	4 August 2022	SLTF 966
42.	Other Policy and Procedure Misconduct	Between December 2020 and June 2021	A loan writer did not complete three mandatory training modules within the required time frame.	RAMS Compliance Policy	4 August 2022	SLTF 966
43.	Privacy and IT Misconduct	In January 2021 and October 2021	A loan writer: a. shared his username and password with a third party on one occasion on 21 January 2021; and b. received sensitive information on or around 1 October 2021 in relation to a customer from the personal email address of a lender in relation to a loan application.	RAMS Behavioural Policy RAMS Technology Code Of Use Policy RAMS Privacy Guidelines Westpac Group Privacy Policy	4 August 2022	SLTF 966

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
44.	Unaccredited Referrer Misconduct False documentation	Between November 2020 and June 2021	A loan writer: a. accepted referrals from a banned referrer on two occasions on or around 9 January 2021 and 28 June 2021; b. on two occasions between November 2020 and June 2021, coded two applications to another referrer, and not the true referrer source; and c. on three occasions on or around 7 April 2021 and 13 May 2021, coded three loan applications to another referrer, and not the true referrer source.	RAMS Referrer Policy RAMS Behavioural Policy	4 August 2022	SLTF 966
45.	Transfer of Funds Misconduct	Between July 2020 and November 2021	A loan writer made six payments between 9 July 2020 and 2 November 2021 for a total sum of \$49,800 to another loan writer without disclosing a conflict of interest.	RAMS Behavioural Policy RAMS Conflicts Policy	4 August 2022	SLTF 966
46.	Privacy and IT Misconduct	January 2021	A loan writer shared his username and password for the Kaplan programs and the Dita programs with a Business Manager from RAMS Franchise D.	RAMS Behavioural Policy RAMS Technology Code Of Use Policy	4 August 2022	SLTF 966
47.	Other Policy and Procedure Misconduct	Between May 2021 and December 2021 October 2022	A loan writer: a. on five occasions between 14 May 2021 and 10 December 2021, did not complete mandatory training modules within the required period; and b. relied on private tenancy agreements to support rental income in a loan application submitted on 6 October 2022 in circumstances where investment properties are not reflected in the customer personal tax returns.	RAMS Compliance Policy RAMS Franchise Sales Procedure	4 August 2022 7 February 2023	SLTF 966

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
48.	Other Policy and Procedure Misconduct	30 September 2022	The franchise principal permitted a loan writer whilst under her supervision on or around 30 September 2022 to rely on private tenancy agreements to support rental income in a loan application in circumstances where investment properties were not reflected in the customer personal tax returns.	RAMS Behavioural Policy RAMS Franchise Sales Procedure	7 February 2023	N/A
49.	Other Policy and Procedure Misconduct	Between February 2016 and October 2018	A loan manager made untrue, misleading or deceptive statements: a. on 23 February 2016, in relation to the RAMS Franchise Employee Details Form and the RAMS attestation Record Sheet 2018; and b. on or around 12 March 2017 and on or around 4 October 2018, in relation to his personal loan applications.	Credit Representative Agreement	19 May 2020	SLTF 628
50.	Unaccredited Referrer Misconduct	Between March 2018 and November 2018	A loan manager accepted loan applications from an unaccredited referrer and paid the referrer commission fees from his personal business account, '[A] Accounting and Finance' on two occasions on 22 March 2018 and 22 November 2018	Westpac Group – Anti Bribery and Corruption Standard RAMS Referrer Policy RAMS Behavioural Policy	19 May 2020	N/A
51.	False documentation misconduct	March 2018	A loan manager, on or around 1 March 2018, failed to comply with the reporting obligations of Unusual/Suspicious Matter Reporting following the receipt of suspicious customer employee pay advices.	RAMS Customer Identification Policy	19 May 2020	SLTF 628
52.	Privacy and IT Misconduct	Between January 2018 and December 2018	A loan manager between on or around 20 January 2018 and 7 December 2018, used an unauthorised personal email system to store and distribute confidential customer identification and documentation.	RAMS Technology Code Of Use Policy	19 May 2020	SLTF 628

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
53.	Other Policy and Procedure Misconduct	Between January 2018 and November 2018	A loan writer accepted false certified copies of customer identification from four third party referrers: a. on four occasions between 22 January 2018 and 12 November 2018; b. on three occasions between 8 March 2018 and 17 May 2018; c. on one occasion on 16 May 2018; and d. A Justice of Peace on one occasion between 18 September 2018 and 24 September 2018 in respect of customers who were not determined to be 'remote' customers from RAMS Franchise E.	RAMS Identification Procedure RAMS Customer Identification Policy	May 2020	SLTF 628
54.	Unaccredited referrer misconduct	Between January 2018 and August 2018	The franchise principal accepted loan referrals and authorised referral payments to unaccredited referrers on the following dates: a. on 12 March 2018; b. on or around 20 August 2018; and c. on 24 August 2018.	RAMS Referrer Policy	5 May 2020	N/A
55.	Privacy and IT Misconduct	June 2018	The franchise principal distributed his RAMS Operating System (ROS) password to his brother on 30 June 2018.	RAMS Technology Policy	5 May 2020	SLTF 101296
56.	Other Policy and Procedure Misconduct Conflict of Interest Misconduct	Between March 2018 and August 2018	The franchise principal referred potential or existing RAMS customers to a company of which his wife was sole director, and he was an authorised credit representative, on four occasions between 12 March 2018 and 14 August 2018.	Franchise Agreement	5 May 2020	SLTF 101296
57.	Unaccredited referrer misconduct	January 2018	The franchise principal authorised the acceptance of loan applications and documentation from an unaccredited referrer.	RAMS Referrer Policy RAMS Behavioural Policy	1 May 2020	N/A

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
58.	Privacy and IT Misconduct	Between November 2017 and July 2018	Under the supervision of the franchise principal, an employee distributed RAMS Loan Software to employees of another entity which was an unaccredited referrer entity.	RAMS Technology Code Of Use Policy	1 May 2020	N/A
59.	Other Policy and Procedure Misconduct	In December 2017 and March 2018	The franchise principal authorised the referral of consumers who had approached the Franchise for a loan application and lending capacity assessment, to a 'broker' another company also controlled by the franchise principal who operated under the other company's licence but was not an authorised credit representative, to process the loan application.	RAMS Behavioural Policy	1 May 2020	N/A
60.	Unaccredited referrer Misconduct	Between January 2018 and July 2018	A loan writer accepted loan applications from seven unaccredited referrer entities/individuals: a. on three occasions between 17 January 2018 and 15 February 2018; b. on three occasions between 1 March 2018 and 2 July 2018; c. on four occasions between 26 February 2018 and 26 June 2018; d. on one occasion on 18 January 2018; e. on eight occasions between 15 January 2018 and 14 May 2018; f. on two occasions between 13 February 2018 and 6 March 2018; and g. on one occasion on 11 April 2018.	RAMS Referrer Policy	1 May 2020	N/A
61.	Privacy and IT Misconduct	Between November 2017 and July 2018	A loan writer distributed RAMS Loan software to employee/s of another company.	RAMS Technology Code Of Use Policy	1 May 2020	N/A
62.	Privacy and IT Misconduct	Between November 2017 and January 2018	A franchise business manager shared the Franchise Equifax password on two occasions between 24 November 2017 and 16 January 2018.	RAMS Technology Code Of Use Policy	1 May 2020	N/A
63.	Unaccredited Referrer Misconduct	Between March 2018 and April 2019	A loan writer accepted loan supporting documentation from an unaccredited referrer.	RAMS Referrer Policy	17 August 2019	SLTF 658

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
64.	Privacy and IT Misconduct	Between April 2018 and November 2018	A loan writer: a. between 8 May 2018 and 14 May 2018, emailed confidential customer information and documentation to an unaccredited referrer; b. between 27 April 2018 and 3 May 2018, emailed customer information and documentation from his personal email account; and c. on 13 November 2018, used and shared the ANZ toolkit log on details of a RAMS Franchise Principal, with another RAMS colleague.	RAMS Technology Code Of Use Policy RAMS Referrer Policy	17 August 2019	SLTF 658
65.	False Documentation	Between March 2018 and April 2019	A loan writer coded loans to an accredited referrer instead of the true unaccredited referrer.	RAMS Referrer Policy	17 August 2019	SLTF 658
66.	Other Policy and Procedure Misconduct	Between July 2017 and September 2018	A loan writer provided false and misleading information on his "Franchise Employee Attestation Form" in relation to questions regarding past history of potential fraud and misconduct.	Credit Representative Agreement	17 August 2019	SLTF 658
67.	Conflict of Interest Misconduct	Between 2017 and August 2022	The franchise principal: a. on or around 19 November 2021, used a former RAMS Franchise H loan writer, to write his loan; b. since in or about 2017, failed to declare a Conflict of Interest with a RAMS accredited referrer operated by his brother; and c. on or around 2 May 2022, 9 May 2022 and 11 August 2022, requested MSA to delay customer refinance settlements in order to ensure the referrer operated by his brother was not subject to commission clawback.	RAMS Conflicts Policy RAMS Behavioural Policy	26 May 2023	SLTF 628

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
68.	Privacy and IT Misconduct	Between January 2022 and November 2022	The franchise principal: - on or around 6 April 2022, forwarded internal RAMS Credit decisioning to a third- party referrer; - on or around 12 May 2022, forwarded internal RAMS Credit contact details to a third-party referrer; - on or around 15 June 2022 and 25 October 2022, forwarded internal correspondence detailing customer information, including RAMS credit decisions to Third Party Referrers; and - between on or around 6 January 2022 and 9 November 2022, sent confidential customer information to a third party email address and allowed his staff, on around 27 occasions, to use third-party email accounts to deal in RAMS business records.	RAMS Behavioural Policy RAMS Technology Code Of Use Policy RAMS Privacy Guidelines	26 May 2023	SLTF 628
69.	Unaccredited Referrer Misconduct	Between October 2019 and November 2021	Under the supervision of the franchise principal: - a loan writer accepted loan applications from an unaccredited referrer; and - another loan writer accepted loan applications from an unaccredited referrer.	The RAMS Referrer Policy	25 March 2022	STLF 957

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
70.	Unaccredited Referrer Misconduct	Between April 2021 and September 2021	A loan writer accepted referrals from an unaccredited referrer on 13 occasions between 12 April 2021 and 20 September 2021.	RAMS Referrer Policy RAMS Behavioural Policy Credit Representative Agreement	29 March 2022	STLF 957
71.	Unaccredited Referrer Misconduct	Between October 2019 and October 2021	A loan writer accepted referrals from an unaccredited referrer on 38 occasions between 10 October 2019 and 29 October 2021.	RAMS Referrer Policy RAMS Behavioural Policy Credit Representative Agreement	29 March 2022	STLF 957

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
72.	Unaccredited Referrer Misconduct	Between April 2021 and November 2021	A loan writer: - accepted referrals from an unaccredited referrer on 11 occasions between April 2021 and November 2021; and - coded those loan applications to a different referrer instead of the true referrer.	RAMS Referrer Policy RAMS Behavioural Policy Credit Representative Agreement	29 March 2022	STLF 957
73.	Other Policy and Procedure Misconduct Privacy and IT Misconduct	Between January 2021 and April 2023	- The franchise principal: - on or around 27 July 2022, failed to ensure the loan's supporting accountant letter met the minimum standards in relation to a loan application; and - between in or about February 2023 to 19 April 2023, did not provide sufficient training to loan writing staff to enable them to properly undertake their roles as loan writers. - Between January 2021 and March 2023, certain loan writers of RAMS Franchise J, which was operated and controlled by the franchise principal: - accepted accountant letters in loan applications which did not meet minimum standards; - failed to detect document anomalies in loan supporting documentation; - submitted five loan applications without first conducting a 'Customer Needs' conversation;	RAMS Lending Guidelines RAMS Behavioural Policy RAMS Technology Code Of Use Policy	18 August 2023	N/A

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
			and d. used a personal email account to receive confidential customer data.			
74.	Privacy and IT Misconduct	Between January 2022 and January 2023	The franchise principal: a. on or around 16 February 2022, used a personal email account to receive confidential customer data/documentation that he remitted from his RAMS email account, including customer names, addresses, loans and loan submission dates; and b. between in or about January 2022 and January 2023, used a personal email account on four occasions to receive RAMS intellectual property remitted from his RAM's email account.	RAMS Behavioural Policy RAMS Technology Code of Use Policy	18 August 2023	N/A

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
75.	Other Policy and Procedure Misconduct.	Between September 2022 and March 2023	A loan writer between September 2022 and March 2023: a. failed to identify multiple anomalies in loan supporting documentations for four loans at a level expected of a prudent loan writer; b. did not conduct a 'Customer Needs' conversation prior to submitting three loan applications; and c. accepted accountant letters which did not meet the minimum standards for three loans	RAMS Behavioural Policy RAMS Lending Guidelines	18 August 2023	N/A
76.	Other Policy and Procedure Misconduct	Between December 2022 and January 2023	A loan writer between 13 December 2022 and 17 January 2023: a. submitted a loan application without obtaining documents which supported the residency status of the applicant; b. accepted an accountant letter in support of a loan application which did not meet the minimum standards of the RAMS Lending Guidelines and omitted the number of dependants; and c. failed to identify multiple instances of document anomalies in a loan application's supporting documentation.	RAMS Lending Guidelines RAMS Behavioural Policy	18 August 2023	N/A

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
77.	False Documentation Misconduct	February 2023	In or about February 2023, a loan writer altered the expenses in a loan application to enable the loan to meet serviceability.	RAMS Lending Guidelines RAMS Behavioural Policy	18 August 2023	N/A
78.	Other Policy and Procedure Misconduct	September 2022 and October 2022	A loan writer between September 2022 and October 2022: a. failed to identify anomalies in loan support documentation for a loan at a level expected of a prudent loan writer; and b. did not conduct a 'Customer Needs' conversation prior to submitting two loan applications.	RAMS Lending Guidelines RAMS Behavioural Policy	18 August 2023	N/A
79.	Privacy and IT Misconduct	Between March 2022 and June 2022	A loan writer used a personal email account to receive RAMS confidential customer data/documentation on or around on five occasions between 1 March 2022 and 9 June 2022.	RAMS Technology Code Of Use Policy RAMS Behavioural Policy	18 August 2023	N/A
80.	Other Policy and Procedures misconduct Privacy and IT Misconduct	Between August 2018 and February 2019	A mobile home loan manager used an unauthorised personal email account system on 85 occasions between 2 August 2018 and 28 February 2019 to store and distribute confidential customer identification and documentation.	RAMS Behavioural Policy RAMS Technology Code Of Use Policy	7 May 2020	SLTF 712
81.	Conflict of Interest Misconduct	Between May 2021 and October 2021	The franchise principal failed to declare a Conflict of Interest with a company for whom he was a sole trader. Invoices totalling \$242,000 were charged to the franchisee between May and October 2021 from the other company.	RAMS Conflicts Policy	24 May 2023	SLTF 994

#	A. Misconduct Type	B. Date(s) of Misconduct as found by Westpac's GI team	C. Misconduct as found by Westpac's GI team	D. Policies Breached	E. Date of GI Report	F. Related SLTF Report
82.	Privacy and IT Misconduct	Between March 2021 and March 2022	The franchise principal failed to: a. adhere to password management techniques; and b. ensure that a RAMS Franchise L Business Manager did not share RAMS technology usernames and passwords or store RAMS employees username and passwords.	RAMS Technology Code Of Use Policy RAMS Operations Manual	24 May 2023	SLTF 994
83.	Unaccredited Referrer Misconduct False documentation	April 2022	On or around 21 April 2022, the franchise principal coded a loan application another referrer, instead of the true referrer, unaccredited referrer.	RAMS Referrer Policy	24 May 2023	SLTF 994
84.	Privacy and IT Misconduct Other Policy and Procedures misconduct	Between January 2021 and February 2023	Under the supervision of the franchise principal, a loan writer used a personal email account to remit and receive RAMS confidential customer data/documentation, including Individual Tax Returns, application documents, valuations and settlement documents, statements, accountant letters, contracts, rental statements, and ID documents.	RAMS Behavioural Policy RAMS Operations Manual	24 May 2023	SLTF 994
85.	Unaccredited Referrer Misconduct Other Policy and Procedures misconduct	Between January 2021 and February 2023	Under the supervision of the franchise principal, a loan writer: a. on 36 occasions forwarded loan documentation including but not limited to loan applications, ID documents and income documentation to an email address associated with an unaccredited external referrer; and b. on 9 occasions received loan documentation including but not limited to loan applications, ID documents and income documentation, from an email address associated with unaccredited referrer	RAMS Behavioural Policy	24 May 2023	SLTF 994

Schedule 2 – Contraventions of s31(1) of the Credit Act by RFG

A.	B.	C.	D
Item Number of Schedule 1	RAMS Franchise	RAMS Individual	Number of Contraventions of s31(1) of the Credit Act
5	A	Loan Writer	1
6	A	Loan Writer	2
9	A	Loan Writer	1
16	B	Loan Writer	1
40	D	Loan Writer	8
44	D	Loan Writer	2
70	I	Loan Writer	12
71	I	Loan Writer	37
72	I	Loan Writer	11
85	L	Franchise Principal and Loan Writer	9

SUMMARY OF CONCLUSIONS

The total number of contraventions of section 31(1) of the Credit Act listed in this Schedule is 84.

Annexure B

Penalty SOAF

Federal Court of Australia
District Registry: New South Wales
Division: General

No. NSD 885 of 2025

Australian Securities and Investments Commission

Applicant

RAMS Financial Group Pty Limited ACN 105 207 538

Respondent

Updated Statement of Agreed Facts on Relief

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Filed on behalf of the Australian Securities and Investments Commission, Applicant

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A. INTRODUCTION

1. This Statement of Agreed Facts (**SOAF**) as to relief is made jointly by the Applicant (**ASIC**) and the Respondent (**RFG**) pursuant to section 191 of the *Evidence Act 1995* (Cth), in relation to the proceeding commenced by ASIC against RFG on 3 June 2025 (**Proceeding**).
2. The defined terms used in this SOAF are the same as those defined and used in the Updated Statement of Agreed Facts and Admissions dated 30 July 2025 (**SAFA**).
3. The facts in this SOAF are agreed to solely for the purpose of the Proceeding and do not constitute any admission outside of the Proceeding.

B. SECTION 167(3) MATTERS RELEVANT TO PENALTY

B.1. The nature and extent of the contraventions

4. There are two types of contraventions:
 - (a) contraventions of s 31(1) of the Credit Act (**s 31(1) Contraventions**); and
 - (b) contraventions of RFG's general obligations under s 47(1) of the Credit Act (**General Obligations Contraventions**), being:
 - (i) a contravention of s 47(1)(a) of the Credit Act by failing to do all things necessary to ensure that the credit activities authorised by the RFG ACL were engaged in efficiently, honestly, and fairly (**the Efficiently, Honestly and Fairly Contravention**);
 - (ii) a contravention of s 47(1)(b) of the Credit Act by failing to have in place adequate arrangements to ensure that consumers were not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by RFG or its representatives (**the Conflict of Interest Contravention**);
 - (iii) a contravention of s 47(1)(d) of the Credit Act by failing to comply with the credit legislation (**the Failure to Comply with Credit Legislation Contravention**). This contravention does not attract a civil penalty; and
 - (iv) a contravention of s 47(1)(e) of the Credit Act by failing to take reasonable steps to ensure that its representatives complied with the Credit Act (**the RFG Representatives Compliance Contravention**).

5. The s 31(1) Contraventions:
 - (a) totalled 84 contraventions;
 - (b) involved 9 representatives of RFG who had ownership interest in, or were employed by, 5 RAMS Franchises (being Franchise A, Franchise B, Franchise D, Franchise I, and Franchise L); and
 - (c) occurred over 3.5 years, from June 2019 to 2 February 2023.
6. The General Obligations Contraventions:
 - (a) occurred during the Relevant Period of 3 June 2019 (being six years from the commencement of this Proceeding) to 30 April 2023 (being the last identified date of the misconduct described as 'substantiated' in any of the GI Reports referred to in Schedule 1 to the SAFA); and
 - (b) were the result of failures by RFG, as described in paragraphs 73 and 74 of the SAFA, to meet its responsibilities as described in paragraph 56 of the SAFA.

B.2. The circumstances in which the contraventions took place

7. The contraventions took place in the course of RFG, as franchisor, operating the RAMS Franchise Network, where RAMS Franchisees used the RAMS business name to provide credit assistance to consumers as described in paragraphs 15 and 16 of the SAFA. RAMS Franchisees and Loan Writers were Authorised Credit Representatives (**RAMS ACRs**) of RFG pursuant to RFG's ACL and were authorised to engage in credit activities on its behalf, as described in paragraphs 29 to 32 of the SAFA. Those credit activities included RAMS ACRs assisting consumers to prepare loan applications and then submitting those applications to RAMS Credit for approval.
8. Whereas the contraventions occurred during the Relevant Period, as described in paragraph 3 of the SAFA, some of the relevant conduct, including the findings of misconduct in Westpac GI Reports of the nature described in paragraphs 66 to 72 of the SAFA, occurred prior to the Relevant Period, in the period 1 January 2018 to 2 June 2019.
9. A root cause analysis report prepared by Westpac (**Root Cause Analysis**) found, and the parties accept, that RFG's Failings were, as summarised in paragraph 83 of the SAFA and expanded upon below, the result of:
 - (a) RFG being an autonomous business within Westpac with a unique risk profile, including because:

- (i) RFG operated as a stand-alone business within the Westpac Group since it was acquired in 2008 and, despite some integration into the Westpac Group, remained structurally separated;
 - (ii) RFG relied on a network of franchisees who, with their employees, were its representatives for the purposes of the Credit Act; and
 - (iii) RFG utilised commission compensation arrangements to remunerate and incentivise RAMS Franchisees, as described in paragraphs 26 and 27 of the SAFA;
- (b) RFG having an immature risk culture and capability, including because of:
- (i) failures by RFG's senior management to identify and manage possible misconduct within the RAMS Franchise Network; and
 - (ii) capability and competence gaps within RFG which contributed to the deficient control environment noted below as well as a failure to recognise and escalate risk and compliance issues;
- (c) there being a deficient control environment and controls testing within RFG, including because there were deficient controls relating to:
- (i) conflicts of interest;
 - (ii) monitoring RAMS Franchisee compliance with RAMS Policies;
 - (iii) the identification of, and consequences for, possible misconduct; and
- (d) insufficient oversight of RFG which was, by virtue of its operation of the RAMS Franchise Network, a non-standard end-to-end business.

10. More specifically:

- (a) the s 31(1) Contraventions were the result of RAMS ACRs at the Relevant Franchises accepting referrals from unaccredited referrers contrary to RFG's RAMS Referrer Policy and RAMS Referrer Procedure – where those unaccredited referrers *also* either did not hold an ACL under Part 2-2 of the Credit Act or were not an authorised representative of an ACL holder under Part 2-3 of the Credit Act;
- (b) the Conflict of Interest Contravention was the result of RFG's failings described at paragraph 74 of the SAFA;
- (c) the RFG Representatives Compliance Contravention was the result of RFG's failings described in paragraph 73 of the SAFA;

- (d) the Efficiently, Honestly and Fairly Contravention was the result of :
 - (i) RFG's multiple failings described in paragraph 73 of the SAFA;
 - (ii) the s 31(1) Contraventions;
 - (iii) the Conflict of Interest Contravention; and
 - (iv) the RFG Representatives Compliance Contravention; and
- (e) the Failure to Comply with Credit Legislation Contravention was the result of RFG's failure to comply with ss 31(1), 47(1)(a), 47(1)(b) and 47(1)(e) of the Credit Act.

B.3. The nature and extent of any loss suffered because of the contraventions

- 11. There is a reasonable inference available that the findings of misconduct in Westpac GI Reports of the nature described in paragraphs 61 to 72 of the SAFA had the potential to result in consumer loss. There is also a reasonable inference available that, where consumer loan applications were approved by Westpac in reliance on false documentation, the loan applications may have been rejected if Westpac had known the consumer's true financial position. There was a risk that such consumers may have been unable to service their loans without substantial hardship, may have defaulted on their loan repayments and incurred fees or charges, as a consequence of those defaults.
- 12. As described in paragraphs 79 and 80 of the SAFA, and further elaborated on in sub-section C.6 below, Westpac undertook a customer remediation program in response to the issues that had been identified in relation to the RAMS Franchise Network. As part of that program, Westpac undertook a review of loans originated through the RAMS Franchise Network and settled in the period December 2016 to December 2022 to identify loans that were in hardship and/or arrears and met certain criteria (see paragraphs 34 and 35 below). Westpac identified and remediated the recipients of 48 loans.

B.4. Whether RFG has previously been found by a court to have engaged in similar conduct

- 13. RFG has not previously been found by a court to have contravened provisions of the Credit Act or otherwise engaged in similar conduct.
- 14. RFG is a wholly owned subsidiary of Westpac. As at the date of this SOAF, Westpac has not been found by a court to have contravened provisions of the Credit Act. However, in *Australian Securities and Investments Commission v Westpac Banking Corporation* (VID695/2023), which is currently before the Court, Westpac has admitted to having contravened s 72(4) of the National Credit Code on at least 223 occasions by failing to

respond to customers' hardship notices within time; and s 47(1)(a) of the Credit Act by: (i) failing to have in place adequate systems, controls and processes to respond to online hardship notices in time, and (ii) failing to conduct adequate risk reviews, investigations, monitoring and analysis of its online hardship notice systems and processes to enable it to identify any issues, or to otherwise ensure that its systems and processes enabled compliance with ss 72(4) and (5) of the National Credit Code.

15. Westpac, RFG's parent company, has also been found by a court to have engaged in the following similar conduct:

- (a) in 2019, in *Australian Securities and Investments Commission v Westpac Banking Corporation* [2019] FCA 2147, Westpac was found to have contravened ss 912A(1)(a), 912A(1)(c) and 961K(2) of the Corporations Act in circumstances where one Westpac representative failed to comply with the "best interests obligations" of the Corporations Act in 2013 and 2014;
- (b) in 2022, in *Australian Securities and Investments Commission v Westpac Banking Corporation (Omnibus)* [2022] FCA 515, Westpac was found to have contravened, among other provisions in the ASIC Act and the Corporations Act, ss 912A(1)(a), 912A(1)(c), 912A(1)(ca) and 912A(5A) of the Corporations Act, in relation to compliance failures, such as charging fees and providing financial products to consumers, when it should not have been charging those fees or providing those financial products to those consumers; and
- (c) in 2024, in *Australian Securities and Investments Commission v Westpac Banking Corporation (Penalty Hearing)* [2024] FCA 52, Westpac was found to have contravened, among other provisions, ss 912A(1)(a) and 912A(1)(aa) of the Corporations Act, as it did not have adequate arrangements in relation to pre-hedging transactions and the management of the conflict of interest that arose in relation to a swap deal.

C. FURTHER MATTERS RELEVANT TO PENALTY

C.1. Whether RFG or Westpac obtained a financial gain or benefit from the contraventions

16. It is unnecessary to find that any particular franchisee engaged in misconduct. However, it is reasonable to infer that during the Relevant Period, some of the misconduct of the type the subject of the GI Reports (to the extent it in fact occurred) is likely to have resulted in RAMS Credit approving (and Westpac, therefore, entering into) loan applications in circumstances where those applications may not have been approved (and loans entered into) had it not been for the misconduct. In particular, loans originating from unaccredited

referrers (which occurred on 102 instances as described in Schedule 1 of the SAFA, of which 84 instances were unaccredited referrers who were also unlicensed as described in Schedule 2 of the SAFA) may not have been received, and therefore, not entered into. Loan applications supported by false documentation may not have been approved in the absence of that false documentation. Any benefit Westpac, RFG or any customers may have received in relation to these loans has not been quantified.

C.2. Whether contraventions arose from the conduct of senior management

17. There is no evidence that the contraventions arose from deliberate misconduct by any of RFG's senior management.
18. The RFG Managing Director was accountable for matters that included:
 - (a) RAMS financial and non-financial outcomes;
 - (b) leading and developing the RAMS Franchise distribution model; and
 - (c) management of the franchise system.
19. RFG's senior managers, including the RFG Managing Director, were aware of findings of misconduct within the RAMS Franchise Network through receipt of the Westpac GI Reports summarised in Schedule 1 of the SAFA. Despite RFG's senior managers receiving those GI Reports, before Project Guardian commenced in late 2022, RFG did not respond adequately to possible misconduct within the RAMS Franchise Network, including by not uplifting policies and procedures for responding to possible misconduct and not appropriately reviewing incidents of misconduct found in the Westpac GI reports, with a view to determining whether they were indicative of possible systemic issues within the RAMS Franchise Network.

C.3. Whether RFG had a corporate culture conducive to compliance

20. The Root Cause Analysis found, and the parties accept, that before Project Guardian, RFG had an immature risk culture, including for the reasons described in paragraph 9(b) above. Although RFG had policies and procedures for the operation of the RAMS Franchise Network, the Westpac GI Reports included findings of misconduct within the network, including the use by RAMS Franchisees of unaccredited referrers, and despite the receipt by senior managers of these GI Reports as set out at paragraph 19 above, RFG failed to respond adequately until such time as the implementation of Project Guardian.

C.4. Size and financial position of Westpac

21. Westpac is one of the four largest financial institutions in Australia. As at 30 May 2025, Westpac's market capitalisation was approximately \$108.52 billion. Westpac's financial statements are reported on a consolidated basis and state the financial position of Westpac together with its controlled entities, such as RFG. As at September 2024, Westpac's total net assets were \$1,057 billion.
22. Westpac's net operating income, profit before income tax and net profit for each year during the Relevant Period was as follows:

Year	Net Operating Income (Annual Turnover)	Profit Before Income Tax	Net Profit
2019	\$20.649 billion	\$9.749 billion	\$6.784 billion
2020	\$20.183 billion	\$4.266 billion	\$2.292 billion
2021	\$21.222 billion	\$8.501 billion	\$5.463 billion
2022	\$19.606 billion	\$8.469 billion	\$5.699 billion
2023	\$21.645 billion	\$10.305 billion	\$7.195 billion

23. Westpac's net profit for 2024 was \$7.1 billion.
24. Westpac's annual turnover (within the meaning of section 5 of the Credit Act) in each 12-month period during the Relevant Period has been sufficiently high that 10% of that figure is greater than an amount equal to 2.5 million penalty units.

C.5. Size and financial position of RFG

25. During the Relevant Period, RFG's financial position for each year (ending 30 September) was as follows:

Year	Total Revenue	Net Profit	Total Portfolio Value	Total Portfolio Value ¹ as a % of Westpac's Total Portfolio Value
2019	\$101,349,000	\$17,894,798	\$34,131,360,149	4.80%
2020	\$107,723,000	\$17,263,645	\$33,026,283,308	4.70%
2021	\$98,611,000	\$17,587,559	\$32,491,797,087	4.50%

¹ **Total Portfolio Value** refers to the outstanding loan amount in the RAMS loan portfolio as at the end of each financial year before any deductions.

Year	Total Revenue	Net Profit	Total Portfolio Value	Total Portfolio Value ¹ as a % of Westpac's Total Portfolio Value
2022	\$105,837,000	\$19,335,527	\$35,843,678,825	4.80%
2023	\$157,899,000	\$19,693,297	\$35,965,075,138	4.60%
2024	\$117,856,000	-\$18,600,659	\$29,835,860,405	3.70%

26. As noted at paragraph 11 of the SAFA, RFG's total portfolio value as at September 2024 was \$29,836,000,000, which represented 3.7% of Westpac's total portfolio value as at September 2024 (being \$806,767,000,000).

C.6. Identification of problems and remediation

27. This Part supplements paragraphs 75 to 85 of the SAFA.

Project Guardian

28. In July 2020, GI produced the first of several reports in which it identified issues arising in relation to the RAMS Franchise C.
29. In response to the conduct issues identified within RAMS Franchise C, and a subsequent review to assess the effectiveness of the control environment within RFG, Westpac and RFG commenced Project Guardian, the purpose of which was to:
- (a) investigate and respond to possible misconduct by RAMS Franchisees; and
 - (b) uplift RFG's controls to ensure that similar issues would be avoided in the future.
30. Project Guardian implemented a detailed management action plan across 11 workstreams, which relevantly included:
- (a) Risk Profile, Issue & Incident Management, which sought to analyse and uplift the RAMS risk profile, and manage associated issues and incidents;
 - (b) File Review & Investigation Management, which sought to review and investigate loan application files, including to identify anomalies in documents, and investigate possible misconduct by RAMS ACRs; and
 - (c) Customer Remediation Management, which sought to manage the review of loans to identify and provide redress to impacted customers (if any).

31. Westpac committed over 200 employees and external consultants to Project Guardian. These individuals were involved in, among other activities, investigations into RAMS Franchisees and Loan Writers, consequence management for possible misconduct identified in relation to RAMS Franchisees and Loan Writers, customer remediation (see paragraphs 33–35 below), the engagement of an external expert to conduct an independent review of RFG's control environment, and delivering control and policy uplifts.
32. Project Guardian ran over approximately 22 months at a cost of approximately \$46 million.

Customer remediation program

33. Westpac completed a customer remediation program as one of the workstreams in Project Guardian.
34. As part of the customer remediation program, Westpac reviewed the entire portfolio of RAMS loans settled in the period December 2016 to December 2022 to identify those loans that met pre-defined criteria relating to hardship and arrears. The approximate 3,200 loans that satisfied these criteria were then assessed to determine whether the loans should be scoped out of remediation because the hardship and/or arrears was as a result of a life event (e.g., separation, reduced income and/or unemployment, illness, business losses, increased expenses (including medical expenses) and family emergencies) or there was a net benefit gained from the loan (having regard to, for example, any increase in the value of the mortgaged property). Where Westpac could not determine that the arrears or hardship was a result of a life event, or the customer had not received a net benefit from the loan, Westpac made a beneficial assumption in favour of the customer that the customer had experienced harm potentially contributed to by RFG, and therefore, considered them for remediation.
35. Based on the loan file review, Westpac remediated the recipients of 48 loans. This represents approximately 0.05% of all loans originated through the RAMS franchises between December 2016 and December 2022. The total remediation value of \$7,567,418 represents 0.025% of the RAMS total portfolio value as at September 2024 and 0.0009% of the Westpac total portfolio value as at September 2024. Westpac did not require evidence that these loans had been made as a result of misconduct by the RAMS ACRs, and therefore, the remediation outcomes do not evidence harm to customers. In its correspondence with these customers, RFG apologised for any potential errors that may have occurred, offered them remediation payments for any financial loss they may have incurred and an additional sum to help them seek financial, tax or legal advice, and invited them to contact RFG if they required additional support.

Other audits and reviews

36. In addition to the work done as part of Project Guardian, Westpac conducted a series of additional reviews and audits as described in paragraphs 81 to 83 of the SAFA, to identify the root causes of the issues at RFG and to improve its systems to avoid similar issues occurring in future.

Closure of the RAMS business

37. On 6 November 2023, Westpac publicly announced that it was “exploring strategic options for [its] RAMS business”.
38. In early 2024, Westpac commenced a sale process for RFG. In April 2024, Westpac terminated the sale process and subsequently commenced a process of winding down the RAMS business. RFG wound down the RAMS Franchise Network in its entirety, by 6 August 2024.
39. Westpac and RFG continue to support existing customers who entered into RAMS-branded home loans. RFG notified customers on its website, and as at the date of this SOAF, continues to advise them, that they “can still manage [their] loan or deposit products via the myRAMS app, rams.com.au, or by calling 13RAMS (137267)”.

C.7. Cooperation with ASIC

40. This part supplements paragraphs 86 and 87 of the SAFA.
41. During 2023, Westpac voluntarily met with ASIC on two occasions to provide an update on the progress of Project Guardian.
42. In mid-2023, ASIC commenced its investigation into RFG.
43. During the investigation spanning from mid-2023 to the commencement of the Proceeding, RFG and Westpac voluntarily provided material and information where RFG and Westpac considered that the material or information could assist ASIC with its investigation.
44. RFG has admitted the contraventions the subject of the Proceeding at the earliest available opportunity, including by way of filing the SAFA at the commencement of the Proceeding.

C.8. Whether RFG is likely to engage in further contraventions

45. The RAMS Franchise Network has been wound down completely. Accordingly, it is reasonable to infer that RFG will not engage in further contraventions.