

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 10/09/2019 8:59:23 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Notice of Appeal (Fee for Leave Not Already Paid) - Form 122 - Rule 36.01(1)(b)(c)
File Number:	NSD1455/2019
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v WESTPAC BANKING CORPORATION ACN 007 457 141
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 10/09/2019 10:15:49 AM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Notice of appeal

No. _____ of 20 _____

Federal Court of Australia
District Registry: NSW
Division: General

On appeal from the Federal Court

Australian Securities and Investments Commission

Appellant

Westpac Banking Corporation (ACN 007 457 141)

Respondent

To the Respondent

The Appellant appeals from the judgment as set out in this notice of appeal.

1. The papers in the appeal will be settled and prepared in accordance with the Federal Court Rules Division 36.5.
2. The Court will make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence. You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Level 17, Law Courts Building, Queens Square, Sydney, NSW

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party) Australian Securities and Investments Commission
Prepared by (name of person/lawyer) Conrad Gray, Lawyer
Law firm (if applicable) _____
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Address for service Level 5, 100 Market Street
(include state and postcode) Sydney NSW 2000



The Appellant appeals from all of the orders of the Federal Court given on 13 August 2019 at Sydney.

Grounds of appeal

Assessment under s 129

1. The primary judge erred in concluding as he did at J [27] of his reasons that “by means of the 70% Ratio Rule [the Respondent] did take into account the consumer’s declared living expenses ... as part of a process leading to an answer to the s 131(2)(a) Questions” and in dismissing the proceeding on that basis so far as it concerned declared living expenses.
2. Upon a proper construction of the provisions of Division 3 of Part 3-2 of the *National Consumer Credit Protection Act 2009 (Cth) (Act)*, the primary judge ought to have held that the Respondent did not make an assessment of whether it was likely that the consumer would be unable to comply with their financial obligations under the credit contract, or could only do so with substantial hardship, within the meaning of s 131(2)(a) of the Act, and accordingly had not made the assessment required by s 128(c).
3. Alternatively to paragraph 2, the primary judge ought to have held that, by the 70% Ratio Rule, whether alone or in conjunction with any other part of the Respondent’s purported assessment, the Respondent had not assessed the matters referred to in s 131(2)(a) of the Act and accordingly had not made the assessment required by s 128(c) of the Act.

Interest Only Loans

4. The primary judge erred in concluding as he did at J [93]-[102] of his reasons that the Respondent had made an assessment of unsuitability within the meaning of s 131(2)(a) of the Act by the method that the Respondent used in respect of interest only home loans, namely treating them as if they had no interest only period and amortising the principal over the life of the loan.
5. Upon a proper construction of Division 3 of Part 3-2 of the Act, the primary judge ought to have held that “financial obligations” in s 131(2)(a) of the Act is a reference to the repayments that the consumer is required to make under the proposed credit contract, that the method used by the Respondent did not assess the unsuitability of the credit contract by reference to such repayments, and that accordingly the Respondent did not make an assessment required by 128(c) of the Act.

**Orders sought**

1. Appeal allowed.
2. Set aside the order of the Federal Court made on 13 August 2019.
3. The matter be remitted to the primary judge for hearing as to relief (including as to the terms of declarations to be made).
4. The Respondent pay the Appellant's costs of the appeal.
5. Such other orders as the Court determines to be appropriate.

Appellant's address

The Appellant's address for service is:

Place: Level 5, 100 Market Street, Sydney, 2000

Email: conrad.gray@asic.gov.au

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 10 September 2019

A handwritten signature in blue ink, appearing to read "Conrad Gray", written over a horizontal line.

Signed by Conrad Gray
Solicitor for the Appellant