

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 16/03/2020 1:55:46 PM AEDT 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:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	VID180/2020
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124
Registry:	VICTORIA 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 'Sia Lagos'.

Dated: 16/03/2020 2:04:24 PM AEDT

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.



Form 2
Rule 2.2 and 15A.3

ORIGINATING PROCESS

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

NO

OF 2020

IN THE MATTER OF COMMONWEALTH BANK OF AUSTRALIA

ACN: 123 123 124

**AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION**

Plaintiff

**COMMONWEALTH BANK OF AUSTRALIA ACN 123 123
124**

Defendant

A. DETAILS OF APPLICATION

This application is made under sections 19 and 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), sections 12GBA(1), 12GJ(1) and 12GLB(1)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), and section 1101B of the *Corporations Act 2001* (Cth) (**Corporations Act**).

The Plaintiff seeks declarations of contraventions of the ASIC Act and the Corporations Act, pecuniary penalty orders, adverse publicity orders and ancillary orders, including costs.

In this originating process, terms which are defined in the Concise Statement dated 16 March 2020 have the same meaning as they do in that document.

On the facts stated in the accompanying Concise Statement, the Plaintiff seeks:

Declarations

1. A declaration under s 21 of the FCA Act, and or s 1101B of the Corporations Act that, by the AA+ Package Brochures, AA+ Package Application Form and AA+ Package Terms and Conditions (**Contractual Documents**) and in all the circumstances, on 123 occasions during the period 16 March 2014 and 31 December 2015 (**Penalty Period**) CBA represented to a customer in trade or commerce that:

Filed on behalf of the Plaintiff, ASIC

File ref: 18010111

Prepared by: Jody Marshall

AGS lawyer within the meaning of s 55I of the *Judiciary Act*
1903

Address for Service:

The Australian Government Solicitor,
Level 11, 145 Ann St, Brisbane, QLD 4000
Jody.Marshall@ags.gov.au

Telephone: 07 3360 5751

Lawyer's Email:

Jody.Marshall@ags.gov.au

Facsimile: 07 3360 5795

DX 119 Brisbane



- 1.1. CBA had adequate systems and processes in place to ensure that AA+ Package customers received the benefits to which customers were entitled under the AA+ Package, including fee waivers and interest rate discounts, and bonus interest on savings (**AA+ Package Benefits**), each of which were financial services within s 12BAB(1)(g) of the ASIC Act in relation to 20 financial products within the meaning of s 12BAA of the ASIC Act (**Relevant Products**) (as applicable) in accordance with the Contractual Documents; and or
- 1.2. AA+ Package customers received AA+ Package Benefits on Relevant Products (as applicable) in accordance with the Contractual Documents;

(Benefits Representations),

which representations were each:

- 1.3. a false or misleading representation that services have benefits, in connection with the supply or possible supply of financial services, in contravention of s 12DB(1)(e) of the ASIC Act; and
 - 1.4. misleading or deceptive conduct, or conduct that was likely to mislead or deceive, in relation to financial services, in contravention of s 12DA(1) of the ASIC Act.
2. A declaration under s 21 of the FCA Act, and or s 1101B of the Corporations Act that, by the Contractual Documents and in all the circumstances, on 123 occasions during the Penalty Period CBA represented to a customer in trade or commerce that:
 - 2.1. CBA had adequate systems and processes to ensure that AA+ Package customers received fee waivers and interest rate discounts (**AA+ Package Price Benefits**) on Relevant Products (as applicable) in accordance with the Contractual Documents, in circumstances where CBA did not; and or
 - 2.2. AA+ Package customers received AA+ Package Price Benefits on Relevant Products (as applicable) in accordance with the Contractual Documents, in circumstances where AA+ Package customers did not,

(Price Representations),

which representations were each:

- 2.3. a false or misleading representation with respect to the price of services, in connection with the supply or possible supply of financial services, in contravention of s 12DB(1)(g) of the ASIC Act; and
 - 2.4. misleading or deceptive conduct, or conduct that was likely to mislead or deceive, in relation to financial services, in contravention of s 12DA(1) of the ASIC Act.
3. A declaration under s 21 of the FCA Act, and or s 1101B of the Corporations Act that, by the Contractual Documents and in all the circumstances, on 123 occasions during the Penalty Period CBA represented to a customer in trade or commerce that upon



acquiring the AA+ Package and during the period for which the customer would be entitled to AA+ Package Benefits:

- 3.1. CBA would have adequate systems and processes in place to ensure that AA+ Package customers would receive AA+ Package Benefits on Relevant Products (as applicable) in accordance with the Contractual Documents; and or
- 3.2. CBA would apply AA+ Package Benefits on Relevant Products (as applicable) in accordance with the Contractual Documents,

(Future Benefits Representations),

which representations were each a representation with respect to a future matter within the meaning of s 12BB(1) of the ASIC Act in circumstances where CBA did not have reasonable grounds for making the representation, and therefore:

- 3.3. a false or misleading representation that services have benefits, in connection with the supply or possible supply of financial services, in contravention of s 12DB(1)(e) of the ASIC Act; and
 - 3.4. misleading or deceptive conduct, or conduct that was likely to mislead or deceive, in relation to financial services, in contravention of s 12DA(1) of the ASIC Act.
4. A declaration under s 21 of the FCA Act, and or s 1101B of the Corporations Act that, by the Contractual Documents and in all the circumstances, on 123 occasions during the Penalty Period CBA represented to a customer in trade or commerce that upon acquiring the AA+ Package and during the period for which the customer would be entitled to AA+ Package Benefits:

- 4.1. CBA would have adequate systems and processes to ensure that AA+ Package customers received AA+ Package Price Benefits on Relevant Products (as applicable) in accordance with the Contractual Documents; and or
- 4.2. CBA would apply AA+ Package Price Benefits on Relevant Products (as applicable) in accordance with the Contractual Documents,

(Future Price Representations),

which representations were each a representation with respect to a future matter within the meaning of s 12BB(1) of the ASIC Act in circumstances where CBA did not have reasonable grounds for making the representation, and therefore:

- 4.3. a false or misleading representation with respect to the price of services, in connection with the supply or possible supply of financial services, in contraventions of s 12DB(1)(g) of the ASIC Act; and
- 4.4. misleading or deceptive conduct, or conduct that was likely to mislead or deceive, in relation to financial services, in contravention of s 12DA(1) of the ASIC Act.



5. A declaration under s 21 of the FCA Act, and or s 1101B of the Corporations Act that on each of the 3,905 occasions during the Penalty Period that CBA in trade or commerce accepted payment of the AA+ Package Fees for the provision of the AA+ Package Benefits, which are financial services within the meaning of s 12DI(3)(a) of the ASIC Act, when there were reasonable grounds for believing that CBA would not be able to supply the financial services within a reasonable time, in contravention of s 12DI(3) of the ASIC Act.
6. A declaration under s 21 of the FCA Act, and s 1101B of the Corporations Act that on each occasion that CBA contravened ss 12DA(1), 12DB(1)(e), 12DB(1)(g) and or 12DI(3) of the ASIC Act, as referred to in paragraphs 1 to 5 above, CBA breached its general obligation as a financial service licensee to comply with financial services laws in contravention of s 912A(1)(c) of the Corporations Act.
7. A declaration under s 21 of the FCA Act, and s 1101B of the Corporations Act that by its conduct in each of:
 - 7.1. failing to apply the AA+ Package Benefits to customer accounts in respect of Relevant Products on 32,927 occasions during the Penalty Period when it was required to do so by the Contractual Documents;
 - 7.2. mischarging customers who migrated from the AgriAdvantage Package to the AA+ Package on 837 occasions during the Penalty Period; and
 - 7.3. continuing and maintaining throughout the Penalty Period systems that were not capable of ensuring compliance with obligations to customers,

CBA breached its obligation to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

Penalties

8. An order pursuant to s 12GBA(1) of the ASIC Act that, within 30 days of the order, CBA pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of CBA's conduct declared to be contraventions of:
 - 8.1. s 12DB(1)(e) of the ASIC Act, as arising out of the 123 occasions that CBA made a Benefits Representation between 16 March 2014 and 31 December 2015;
 - 8.2. s 12DB(1)(g) of the ASIC Act, as arising out of the 123 occasions that CBA made a Price Representation between 16 March 2014 and 31 December 2015;
 - 8.3. s 12DB(1)(e) of the ASIC Act, as arising out of the 123 occasions that CBA made a Future Benefits Representation between 16 March 2014 and 31 December 2015;



8.4. s 12DB(1)(g) of the ASIC Act, as arising out of the 123 occasions that CBA made a Future Price Representation between 16 March 2014 and 31 December 2015, and or

8.5. s 12DI(3) of the ASIC Act, as arising out of the 3,905 occasions that CBA accepted payment of the AA+ Package Fees for the provision of the AA+ Package Benefits between 16 March 2014 and 31 December 2015.

Other orders

- 9. An order pursuant to s 12GLB(1)(a) of the ASIC Act that, within 30 days of the order, CBA take all reasonable steps to cause to be published, at its own expense, a notice stating that it has been ordered to pay a pecuniary penalty because it has made false or misleading representations, and accepted payments when there were reasonable ground for believing that it would not be able to provide the financial services, in a manner and form approved by the Court.
- 10. An order that the Defendant pay the Plaintiff's costs of and incidental to the proceeding.
- 11. Such further or other orders as the Court considers appropriate.

Date: 16 March 2020

J. Marshall
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Jody Marshall
AGS lawyer
for and on behalf of the Australian Government Solicitor
Lawyer for the Plaintiff

This application will be heard byat the Commonwealth Law Courts Building, 305 William Street VIC 3001 at *am/*pm on

B. NOTICE TO THE DEFENDANT

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



If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the Plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

D. FILING

Date of filing: 16 March 2020

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Registrar

E. SERVICE

The Plaintiff's address for service is:

Australian Government Solicitor,
Level 11, 145 Ann St, Brisbane, QLD 4000
Email: Jody.Marshall@ags.gov.au

The Australian Government Solicitor's telephone, facsimile, and document exchange numbers are:

Tel: 07 3360 5751
Fax: 07 3360 5795
DX 119 Brisbane

It is intended to serve a copy of this originating process on the Defendant.