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### Details of Filing

Document Lodged: Concise Statement  
File Number: VID181/2020  
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v  
COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 16/03/2020 2:06:17 PM AEDT

A handwritten signature in blue ink that reads 'Sia Lagos'.

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.

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# CONCISE STATEMENT

No. of 2020



**Federal Court of Australia  
District Registry: Victoria  
Division: General**

## **AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Applicant

## **COMMONWEALTH BANK OF AUSTRALIA (ACN 123 123 124)**

Respondent

### **A. Nature of proceeding**

1. The respondent, the Commonwealth Bank of Australia (ACN 123 123 124) (**CBA**), at all material times:
  - (a) held and holds an Australian credit licence (No 234945);
  - (b) was and is a credit provider within the meaning of s 204 of the National Credit Code;
  - (c) issues credit cards branded as CBA credit cards.
2. On 20 January 2017, CBA provided a credit limit increase (**CLI**) to Mr David Harris (**Harris**), increasing his credit card limit from \$27,100 to \$35,100.
3. On 21 October 2016, Harris informed CBA that he was a problem gambler and that he did not want to accept any further CLIs until he was not a problem gambler.
4. ASIC contends that in assessing the CLI, and subsequently providing the CLI, CBA contravened ss 47(1)(d), 128, 130(1), 131(1) and 133(1) of the *National Consumer Credit Protection Act* (Cth) (**NCCP Act**).

### **B. Relief sought from the Court**

5. ASIC seeks declarations, pecuniary penalties and ancillary orders as set out in the Originating Application.

### **C. Important facts giving rise to the claim**

6. Since February 2014, Harris has worked as a roofer. From February 2014 until June 2017, his salary was approximately \$70,000 a year. In June 2017, he received a salary increase to approximately \$77,000 a year.
7. In late 2014, Harris obtained his first credit card from CBA. The credit contract for the purposes of this credit card is referred to as the **Harris Credit Contract**. The credit limit was \$10,000.
8. Starting from February 2015, Harris transferred cash advances from his CBA credit card to his CBA transaction account.

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

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9. In about April or May 2015, Harris began to gamble beyond his means. Harris continued to use his CBA credit card to pay for his gambling expenses. It was common for Harris to 'max out' his card meaning that he would frequently use the full limit of his card and then try to pay off the balance in significant amounts. This sometimes resulted in full repayment but sometimes only resulted in partial repayment of his monthly credit card debt.
10. In the course of 2015, Harris obtained two further credit cards from CBA, with limits of \$7,000 and \$8,000 respectively. On 26 November 2015 CBA wrote to Harris, inviting him to apply for a CLI to \$12,100 in respect of the first credit card that he obtained from CBA. Harris subsequently applied for this CLI. CBA approved the CLI, taking Harris's combined credit limit to \$27,100.
11. Harris continued to gamble well beyond his means. Because of his gambling, Harris continued in the cycle of 'maxing out' his cards, and then paying them off. This regularly involved working for many days consecutively.
12. On 13 April 2016, Harris consolidated his three CBA credit cards into a single CBA credit card. The credit limit on the first credit card (being the Harris Credit Contract) was increased to \$27,100. The balances on the second and third cards were transferred to the first credit card, and the second and third credit cards were closed.
13. That month, Harris also incurred his first directly gambling-related expenses to a CBA credit card.
14. On 21 October 2016, during a call to CBA about an unrelated matter, a CBA staff member informed Harris that he was conditionally approved for a further CLI. During the course of that conversation, Harris said:
  - (a) *"I do not really understand why they've offered me that considering they know, clearly see that I use it for gambling and stuff like that";*
  - (b) *"I think that it's pretty bad of them to offer me that when I clearly have a gambling problem";*
  - (c) *"really they should look at that and go clearly right he gambles, so we are not going to give him any more money";*
  - (d) *"[a]t one point I had three credit cards and they let me max them out and then put it all into one ... and then offered me more money";* and
  - (e) in response to a statement from the CBA staff member that he should decline the conditionally approved CLI in light of his disclosure that he had a gambling problem, *"I wouldn't decline it yet, I am going to increase it but not just yet I want to sort my gambling stuff out first",*
15. By the conversation referred to in paragraph 14, Harris notified CBA that:
  - (a) Harris considered himself to have gambling problem;
  - (b) Harris' requirements and objectives in relation to the CLI included that he wished to cease being a problem gambler before accepting any CLI invitation;
  - (c) Harris was using the Harris Credit Contract for gambling expenses,
 and CBA was aware of the same (**Problem Gambler Notification**).
16. CBA did not formally record the fact of the Problem Gambler Notification. The Problem Gambler Notification was not passed through to CBA's credit decision systems. CBA had regard to the matters referred to in paragraph 14 only by not withdrawing Harris' conditional approval for a further CLI immediately after the phone call of 21 October 2016.

17. On 31 October 2016, CBA sent Harris a letter inviting him to apply for a further CLI, taking his credit card limit from \$27,100 to \$32,100. CBA did not consider the Problem Gambler Notification when assessing whether to make this CLI offer.
18. On 1 December 2016, CBA sent Harris a further letter, inviting Harris to apply to increase his credit card limit from \$27,100 to \$35,100. At the time, \$8,000 was the maximum credit card CLI offered by the CBA. At the time, CBA had determined that Harris was eligible for the CLI invitation because he met CBA's eligibility criteria including:
- (a) Harris' credit card had been open for at least 6 months;
  - (b) it had been at least 6 months since the last credit limit change;
  - (c) Harris had made regular payments to his credit card account;
  - (d) Harris' monthly average payments over the last 6 monthly statement cycles were equal to or greater than 2 % of the new limit being offered;
  - (e) Harris had not been declined on an application for a CBA consumer credit card product in the last 6 months;
  - (f) Harris had less than \$70,000 of CBA unsecured consumer lending exposure; and
  - (g) Harris was not in receipt of Centrelink benefits.

CBA did not consider the Problem Gambler Notification when assessing whether to make this CLI offer.

19. In early 2017, Harris took up the invitation referred to in the previous paragraph. CBA's letter included a pre-filled application form (**Application**) which allowed Harris to take up the invitation referred to in the previous paragraph by ticking boxes to confirm:
- (a) he wished to increase his credit limit to \$35,100;
  - (b) he was employed;
  - (c) his job paid at least \$106,000 per year before tax;
  - (d) after tax and expenses he had at least \$1,053 left each month to repay the credit card; and
  - (e) he did not expect anything to change which would make it difficult to make repayments.

Harris ticked each of these boxes.

20. CBA assessed the Application (**Assessment**). CBA did not take account of the Problem Gambler Notification for the purposes of the Assessment. CBA did not seek to make any further inquiries of Harris beyond those referred to in paragraph 19.
21. At the time, Harris's job continued to pay him a salary of approximately \$70,000 before tax without overtime (approximately \$55,704 after tax). Between 1 April 2015 and 20 January 2017, Harris incurred expenditure of approximately \$271,820 on his CBA transaction account and CBA credit cards, the majority of which was gambling expenditure incurred as a result of his gambling problem (this expenditure includes fees associated with cash advances but excludes the interest charges Harris incurred on his CBA credit cards).
22. On or around 20 January 2017, CBA approved the Application. Harris was given the CLI of \$8,000, taking the credit limit to the Harris Credit Contract to \$35,100 (**20 January 2017 CLI**).

23. Following the 20 January 2017 CLI, as previously, Harris kept 'maxing out' and paying off his card. Harris directly incurred on his CBA credit card the following gambling expenditure:
- (a) \$11,147 (approx.) between 21 January 2017 and 17 February 2017;
  - (b) \$1,760 (approx.) between 18 February 2017 and 20 March 2017;
  - (c) \$6,090 (approx.) between 21 March 2017 and 21 April 2017;
  - (d) \$38,870 (approx.) between 22 April 2017 and 22 May 2017; and
  - (e) \$47,882 (approx.) between 23 May 2017 and 20 June 2017.
24. Between 21 July 2017 and 18 August 2017, Harris failed to pay the minimum repayment on his credit card of \$699 which was due by 14 August 2017 and became 'overdue' on repayments. As at 18 August 2017, if he incurred no additional charges on his credit card and each month he paid only the minimum repayment, he would have paid off the balance of \$35,706.81 on his credit card in 137 years and 10 months and would end up paying estimated interest charges of \$267,232.34.
25. During the period 1 April 2015 to around August 2017:
- (a) Harris had a gambling problem and incurred the gambling expenditure referred to in paragraph 21;
  - (b) Harris was only able to continue paying off the credit card because he worked extended periods without rest days and, at other times, 6 to 7 days a week on a very physically demanding job (as a roofer) which he found very difficult. He was also reliant on winnings from gambling, and a loan from his employer, to pay his credit card debts;
  - (c) Harris' gambling problem affected his life in many ways - not just financially, but also mentally and physically. Working at times to try to keep up with repayments seriously affected his sleeping patterns, such that he was prescribed sleeping tablets. Harris suffered from depression and anxiety and had to be prescribed anti-depressants and attend sessions with a psychologist.

**D. Primary legal grounds for the relief sought**

26. ASIC contends as follows as to the Assessment and the 20 January 2017 CLI.

**D1. Reasonable Inquiries and Verification**

27. Before making the Assessment, pursuant to s 130(1)(a) and (c) of the NCCPA Act CBA was required to:
- (a) make reasonable inquiries about Harris' requirements and objectives in relation to the Harris Credit Contract; and
  - (b) take reasonable steps to verify Harris' financial situation.
28. Because of the Problem Gambler Notification, these obligations required that, before making the Assessment, CBA make further inquiries and verifications, over and above its receipt of the information provided within the Application by way of box-ticks, as referred to in paragraph 19 above. In particular, CBA was required to:
- (a) make reasonable inquiries as to whether Harris considered himself to no longer be a problem gambler;

- (b) take reasonable steps to verify whether Harris was still using his CBA credit card to pay for gambling expenses, and the extent to which he was doing so and had done so, since the Gambling Problem Notification; and
- (c) such other:
  - (i) inquiries as to Harris' requirements and objectives in relation to the Harris Credit Contract; and
  - (ii) steps to verify Harris' financial situation,

as reasonably required further to information arising out of the inquiries and verifications referred to in (a) and (b) above.

29. In contravention of s 130(1) of the NCCP Act, before making the Assessment CBA failed to undertake the inquiries and verifications referred to in paragraph 28.
30. Further, by virtue of the contravention of s 130(1) set out in paragraph 29, before providing the 20 January 2017 CLI to Harris, CBA failed to make the inquiries and verification in accordance with s 130, in contravention of s 128(d) of the NCCP Act.

**D2. 20 January 2017 CLI as Unsuitable**

31. The Harris Credit Contract with the 20 January 2017 CLI was unsuitable for Harris, at the time of the Assessment, in that it was likely that the Harris Credit Contract with the CLI would not meet Harris's requirements or objectives. In particular:
- (a) because of the Problem Gambler Notification, Harris' requirements and objectives in relation to the 20 January 2017 CLI were that he wished to not be a problem gambler before accepting the CLI invitation; and
  - (b) Harris continued to have a gambling problem at that time of the Assessment.

32. In failing to assess the Harris Credit Contract as unsuitable if the 20 January 2017 CLI was made, by reason of the matters set out in paragraph 31, CBA contravened s 131(1) of the NCCP Act.

**D3. Subsequent Provision of 20 January 2017 CLI**

33. Further, in subsequently providing the CLI to Harris, in circumstances where the Harris Credit Contract with the 20 January 2017 CLI was unsuitable by reason of the matters set out in paragraphs 31 and 32, CBA contravened s 133(1) of the NCCP Act.

**D4. Section 47(1)(d) of the NCCP Act**

34. Further or alternatively, by each of the conduct referred to in Parts D1 to D3 above, CBA failed to comply with the NCCP Act, in contravention of s 47(1)(d) of the NCCP Act.

**Certificate of lawyer**

I, Paul Barker, certify to the Court that, in relation to the Concise Statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 16 March 2020



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Paul Barker  
AGS lawyer  
for and on behalf of the Australian Government Solicitor  
Lawyer for the Applicant