

# FEDERAL COURT OF AUSTRALIA

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

File number(s): QUD 96 of 2021

Judgment of: **DOWNES J**

Date of judgment: 29 November 2022

Catchwords: **CORPORATIONS** – alleged contraventions of ss 12DA and 12DB *Australian Securities and Investments Commission Act 2001* (Cth) and s 912A(1) *Corporations Act 2001* (Cth) – where bank failed to waive monthly account fees in relation to certain accounts in breach of its contract with customers – whether a notation on the customer account statement or passbook that a fee had been charged was an implied representation by the bank that it had a contractual entitlement to charge that fee – whether misleading or deceptive conduct – whether a contractual promise to waive a fee carried with it an implied representation that the bank had and would have adequate systems and processes to ensure that the fee would be waived – whether false or misleading representations in connection with supply of financial services – consideration of characteristics of ordinary and reasonable member of the class of customers to whom representations were alleged to have been made – whether bank’s conduct was a failure to do all things necessary to ensure that the financial services covered by its licence were provided honestly, efficiently and fairly – where bank introduced measures and improved its systems in order to assist in detecting and preventing issues associated with the failure to waive fees – where bank took steps to investigate the cause of the errors; designed, implemented and tested an appropriate mechanism for rectifying errors and preventing their recurrence; identified all customers and customer accounts affected by the errors; and remediated all affected customers, where possible, or made contributions to charity – claims dismissed

Legislation: *Australian Securities and Investments Commission Act 2001* (Cth) ss 12BA(1), 12BB, 12DA, 12DB  
*Corporations Act 2001* (Cth) ss 9, 912A, 912C, 912D, 961L  
*Evidence Act 1995* (Cth) ss 140, 191

Cases cited:

- Australian Competition & Consumer Commission v Dateline Imports Pty Ltd* [2015] FCAFC 114
- Australian Competition and Consumer Commission v Dukemaster Pty Ltd* [2009] FCA 682
- Australian Competition and Consumer Commission v Kimberly-Clark Australia Pty Ltd* [2019] FCA 992
- Australian Competition and Consumer Commission v Optus Mobile Pty Limited* [2019] FCA 106
- Australian Competition and Consumer Commission v Telstra Corporation Limited* (2007) 244 ALR 470; [2007] FCA 1904
- Australian Competition and Consumer Commission v Telstra Corporation Limited* (2018) ATPR 42–593; [2018] FCA 571
- Australian Competition and Consumer Commission v TPG Internet Pty Ltd* (2020) 278 FCR 450; [2020] FCAFC 130
- Australian Competition and Consumer Commission v Woolworths Limited* [2019] FCA 1039
- Australian Securities & Investments Commission v AMP Financial Planning Pty Ltd (No 2)* (2020) 377 ALR 55; [2020] FCA 69
- Australian Securities and Investments Commission v AGM Markets Pty Ltd (in liq) (No 3)* (2020) 275 FCR 57; [2020] FCA 208
- Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited (No 3)* [2020] FCA 1421
- Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2022] FCA 1251
- Australian Securities and Investments Commission v Camelot Derivatives Pty Ltd (In Liquidation); In the Matter of Camelot Derivatives Pty Limited (In Liquidation)* (2012) 88 ACSR 206; [2012] FCA 414
- Australian Securities and Investments Commission v Cassimatis (No 8)* (2016) 336 ALR 209; [2016] FCA 1023
- Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2020] FCA 790
- Australian Securities and Investments Commission v Dover Financial Advisers Pty Ltd* (2019) 140 ACSR 561; [2019] FCA 1932
- Australian Securities and Investments Commission v GetSwift Limited (Liability Hearing)* [2021] FCA 1384

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

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

*Australian Securities and Investments Commission v Vocation Limited (In Liquidation)* (2019) 136 ACSR 339; [2019] FCA 807

*Australian Securities and Investments Commission v Westpac Banking Corporation (Omnibus)* (2022) 159 ACSR 381; [2022] FCA 515

*Australian Securities and Investments Commission v Westpac Banking Corporation (No 2)* (2018) 266 FCR 147; [2018] FCA 751

*Australian Securities and Investments Commission v Westpac Securities Administration Ltd* (2019) 272 FCR 170; [2019] FCAFC 187

*Butcher v Lachlan Elder Realty Pty Limited* (2004) 218 CLR 592; [2004] HCA 60

*Cash Bazaar Pty Ltd v RAA Consults Pty Ltd (No 2)* (2020) 381 ALR 668; [2020] FCA 636

*Cassimatis v Australian Securities and Investments Commission* (2020) 275 FCR 533; [2020] FCAFC 52

*Clarke (as trustee of the Clarke Family Trust) v Great Southern Finance Pty Ltd (Receivers and Managers Appointed) (in liquidation)* [2014] VSC 516

*Coles Supermarkets Australia Pty Ltd v FKP Limited* [2008] FCA 1915

*Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Australian Competition and Consumer Commission* (2007) 162 FCR 466; [2007] FCAFC 132

*Concrete Constructions Group v Litevale Pty Ltd* (2002) 170 FLR 290; [2002] NSWSC 670

*Dovuro Pty Limited v Wilkins* (2003) 215 CLR 317; [2003] HCA 51

*Futuretronics International Pty Ltd v Gadzhis* [1992] 2 VR 217

*HTW Valuers (Central Qld) Pty Ltd v Astonland Pty Ltd* (2004) 217 CLR 640; [2004] HCA 54

*McGrath v Australian Naturalcare Products Pty Ltd* (2008) 165 FCR 230; [2008] FCAFC 2

*Secure Parking Pty Ltd v Woollahra Municipal Council* [2016] NSWCA 154

*SPEL Environmental Pty Ltd v IES Stormwater Pty Ltd* [2022] FCA 891

Division:	General Division
Registry:	Queensland
National Practice Area:	Commercial and Corporations
Sub-area:	Regulator and Consumer Protection
Number of paragraphs:	172
Date of hearing:	10–11 October 2022
Counsel for the Plaintiff:	Mr S Couper KC w/ Mr S Seefeld
Solicitor for the Plaintiff:	Australian Government Solicitor
Counsel for the Defendant:	Mr B Walker SC w/ Mr P Kulevski and Ms L Coleman
Solicitor for the Defendant:	Clayton Utz



## **ORDERS**

**QUD 96 of 2021**

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

**AND:**                **COMMONWEALTH BANK OF AUSTRALIA ACN 123 123  
124**  
Defendant

**ORDER MADE BY: DOWNES J**

**DATE OF ORDER: 29 NOVEMBER 2022**

### **THE COURT ORDERS THAT:**

1. The claims for the relief in the originating process are dismissed.
2. The plaintiff pay the defendant's costs of the proceeding to be agreed or, failing agreement, to be taxed.

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

## REASONS FOR JUDGMENT

### DOWNES J:

#### INTRODUCTION

- 1 The defendant (**CBA**) is a major Australian bank and the holder of an Australian Financial Services Licence.
- 2 During the period from 1 June 2010 to 11 September 2019 (**relevant period**), CBA charged a monthly account fee (**MAF**) of between \$4 and \$6 on certain transaction accounts (described as the **relevant accounts**) in circumstances where the account-holder was contractually entitled to a waiver of the MAF. This occurred on at least seven million occasions and affected around 965,899 customers across more than 800,000 accounts.
- 3 There were over 6.7 million relevant accounts as at 1 June 2010. During the relevant period, in excess of 14.8 million additional relevant accounts were subsequently opened, CBA charged a MAF to relevant accounts on approximately 215 million occasions and it applied a waiver of that fee on approximately 610 million occasions.
- 4 The contractual rights and obligations of CBA and its customers with respect to the charging of MAFs and the application of MAF waivers were contained in various documents. For the purposes of this proceeding, these documents were together defined as the **Terms and Conditions**. CBA provided customers with a copy of the applicable Terms and Conditions when an account was opened, and updated versions of those Terms and Conditions were also provided from time to time.
- 5 The Terms and Conditions provided that customers would be entitled to a MAF waiver if they satisfied specified eligibility criteria. The Terms and Conditions also contained words to the effect:
- (1) that as soon as the customer received their statement, they should check and confirm the transactions shown and report any unauthorised transactions to CBA straight away; and
  - (2) with one exception, that CBA “accept[s] that sometimes we can get things wrong, and when this happens we’re determined to make them right again”.

6 From time to time, CBA also offered MAF waivers as part of discrete promotions or product offers. The documents relating to these promotions and product offers were also treated by the parties as forming part of the Terms and Conditions.

7 CBA offered different types of MAF waivers during the relevant period.

8 This proceeding concerns ten different types of MAF waiver, namely:

- (1) Relationship Balance Waiver;
- (2) Age, Service and Disability Waiver;
- (3) Student / Apprentice Waiver;
- (4) FFFL Campaign Waiver;
- (5) Sum of Deposit Waiver, which was sub-categorised into “Sum of Deposit (General)” and “Sum of Deposit (21-24 year olds)”;
- (6) Under 21s Waiver;
- (7) Wealth Package Waiver;
- (8) Home Loan Waiver;
- (9) NFHL Waiver; and
- (10) Migrant Waiver,

(described as the **relevant MAF waivers**).

9 Each of the relevant MAF waivers was subject to different eligibility criteria, which depended upon an assessment of the particular customer’s activity over a monthly period, such as the amount of savings and borrowings in contributing accounts as at the second last business day of each month or the amount deposited into the account each calendar month. In other cases, an eligible customer’s individual characteristics at a particular point in time entitled the customer to a MAF waiver, as in the case of the Student / Apprentice Waiver and the Under 21s Waiver. The application of any of the relevant MAF waivers during the relevant period therefore depended upon variables that were unique to the particular customer, that differed for each relevant MAF waiver and that could change from month to month.

10 During the relevant period, the customer account statements which were issued to customers set out the transaction history on the account, identifying the date of a transaction, the amount debited or credited and a transaction description.

- 11 A MAF was described in customer account statements during the relevant period as a “Prev Month Acct Fee”, “Monthly Account Fee”, “Account Keeping Fee” or “Account Fee”.
- 12 The customer account statements contained a note on page 1 directing the customer to check that the entries listed in the statement are correct or to contact CBA immediately in the event of any errors in the statement. Examples of such notes included the following:

**Example 1:**

Note:

Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221.

Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.

**Example 2:**

Note:

Please check that the entries listed on this statement are correct. For further information on your account including; details of features, fees, any errors or complaints, please contact us on the details above. Proceeds of cheques are not available until cleared.

**Example 3:**

Note:

Have you checked your statement today? It’s easy to find out more information about each of your transactions by logging on to the CommBank App or NetBank. Should you have any questions on fees or see an error please contact us on the details above. Cheque proceeds are available when cleared.

- 13 For the passbook accounts, CBA issued customers with a passbook which was generally required to be presented by customers in CBA branches for any deposit or withdrawal by the customer. For deposits by the customer, branch staff printed in a customer’s passbook the date of the deposit, a description of the transaction and the amount of the deposit. For withdrawals by the customer, branch staff printed in a customer’s passbook the amount of the withdrawal, the balance of the account and a verification comment (being a receipt number, or, if manually recorded, a branch stamp, for each transaction). Other transactions not initiated by the customer, such as account fees (including MAFs), were printed on the passbook when the customer presented it at a CBA branch.

- 14 At different times during the relevant period, CBA identified at least 30 incidents in which MAF waivers were not applied. At those times, CBA logged the incidents in its relevant systems and separately investigated those incidents. This proceeding relates to 29 of those incidents which the parties described as the **MAF Waiver Issues**. Some of the MAF Waiver Issues involved manual errors by CBA staff.
- 15 Upon detection of each MAF Waiver Issue, CBA took steps to investigate the cause of the error; design, implement and test an appropriate mechanism to rectify that error and prevent its recurrence; identify all customers and customer accounts affected by the error in question; and remediate all affected customers (where possible).
- 16 CBA also sent correspondence to the plaintiff (**ASIC**) about its discovery of the MAF Waiver Issues. It also responded to notices issued by ASIC. ASIC's case is based in part on the content of statements made by CBA in that correspondence.
- 17 CBA accepts that the MAF Waiver Issues should not have occurred. CBA received around \$48 million (not including interest) during the relevant period for MAFs that were incorrectly charged. As at 13 September 2021, approximately \$64,426,019 had been remediated to customers or paid to charity (where CBA was unable to make payments to customers).

### **THIS PROCEEDING**

- 18 By its **Concise Statement** dated 31 March 2021, ASIC alleges that CBA contravened ss 12DA and 12DB(1)(e), (g) and (i) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and s 912A(1)(a) and (c) of the *Corporations Act 2001* (Cth). ASIC seeks declaratory relief, pecuniary penalty orders and associated relief.
- 19 Taking into account aspects of its case which were abandoned during the hearing, the primary legal grounds relied upon by ASIC for this relief are that:
- (1) on each occasion that CBA notified the customer that a MAF had been charged, CBA impliedly represented to the customer that it had a contractual entitlement to charge the MAF. That contention, insofar as it pertains to customers who were eligible for a MAF waiver, underpins ASIC's allegation that CBA engaged in misleading or deceptive conduct in contravention of s 12DA *ASIC Act* and that it made a false or misleading representation concerning the existence or effect of a condition, right or remedy in contravention of s 12DB(1)(i) *ASIC Act*. If established, such contraventions are also

alleged to be a contravention of s 912A(1)(c) *Corporations Act*. This part of ASIC's case will be described as the **charging and notification case**;

- (2) on each occasion that CBA entered into or varied a contract with customers, CBA impliedly represented that it had and would have adequate systems and processes in place to ensure that it could provide MAF waivers to eligible customers, when it did not have adequate systems and did not have reasonable grounds (within the meaning of s 12BB(1) *ASIC Act*) for stating that it would in the future have such systems, in contravention of any or all of ss 12DA, 12DB(1)(e) and 12DB(1)(g) *ASIC Act*, which, if established, is also alleged to be a contravention of s 912A(1)(c) *Corporations Act*. This part of ASIC's case will be described as the **systems and processes case**;
- (3) CBA contravened s 912A(1)(a) *Corporations Act* by its conduct in each of (i) charging MAFs to customers who were eligible for a MAF waiver, (ii) continuing and maintaining systems and processes that were "not capable of ensuring compliance with obligations to customers", and (iii) failing to undertake "an appropriate review of the multiple systemic issues that contributed to the ongoing failures of CBA's systems to apply MAF Waivers". This part of ASIC's case will be described as the **fairness and efficiency case**.

20 By Order dated 30 April 2021, Derrington J ordered that all matters of liability be heard before matters of relief.

21 By its **Concise Statement in Response** dated 4 June 2021, CBA denied each contravention alleged by ASIC in the Concise Statement and its entitlement to the relief sought.

22 By way of overview on the substantive issues, it is the position of CBA that:

- (1) as to the charging and notification case – in order for ASIC's case to succeed, the Court would need to be persuaded that the notional customer reasonably understood that by wrongly charging a MAF and notifying a customer of that charge, CBA had unilaterally amended the terms of its bargain with the customer, inconsistently with the express terms of that bargain. It would also force a characterisation of the conduct of CBA that it had arbitrarily, for a significant minority of customers, resiled from its representations to the world that it would not charge a MAF to certain cohorts of customers, a representation which it continued to honour for the vast majority of customers in the same cohorts. CBA also submitted that the alleged representation cannot be reconciled with the prominent notation that appears on the customer account statements, directing

the customer to check the statement and contact CBA if there appear to be any errors therein;

- (2) as to the systems and processes case – even if the Court was to accept ASIC’s invitation to discern an actionable implied representation from CBA’s entry into contracts with customers, ASIC cannot establish that any such representation was false, misleading or deceptive, and whether such representation took an absolute form, or some lesser form as to “adequacy”. CBA submits that this is because, throughout the relevant period, CBA did in fact have in place adequate systems and processes for the provision of MAF waivers and it did in fact have reasonable grounds for making any representations that it would have such systems and processes in place in the future. CBA submits that, importantly, it is not disputed that CBA applied MAFs and MAF waivers in excess of 825 million times during the relevant period. The large number of failures that ASIC relies upon in this proceeding (approximately seven million) is a reflection not of some form of systemic failure, as alleged by ASIC, but of the magnitude of CBA’s business, the sheer length of the relevant period (111 months) and the aggregation by ASIC in this proceeding of discrete issues. CBA submits that the case for ASIC relies on some attempt by CBA to warrant a state of perfection, which is not only divorced from the reasonable reality of scale operations, but runs directly counter to the express representations CBA made to its customers acknowledging the possibility of errors and inviting them to be corrected if found;
- (3) as to the fairness and efficiency case – CBA did not breach its obligation to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, and ASIC has failed to articulate what necessary “things” CBA needed (but failed) to do in order to discharge that obligation.

23 On 14 September 2022, the parties filed an Amended Statement of Agreed Facts within the meaning of s 191 of the *Evidence Act 1995* (Cth). That document, with attachments, is an annexure to these reasons. To the extent that particular facts deserve emphasis, they will be referred to in these reasons.

24 The parties also filed a document which contained an agreed summary of the legal issues in dispute.

## **MATERIAL RELIED UPON**

25 By its amended tender list, ASIC relied upon an affidavit of Ms Kelly Rodgers sworn on 7 March 2022. Ms Rodgers is a solicitor employed as a Senior Manager in Financial Services Enforcement with ASIC. Ms Rodgers' affidavit exhibited documents which had been extracted from a database maintained by ASIC. ASIC relied on all such documents except for tabs 27 and 28 of exhibit KLR-1. Certain documents which formed part of the exhibit to her affidavit were the subject of successful objection by CBA.

26 Ms Rodgers was not required for cross-examination.

27 ASIC also relied upon the Modified Code of Banking Practice 2004, Code of Banking Practice 2013 and Banking Code of Practice 2019. CBA disputed the relevance of the fact that, at all times during the relevant period, CBA adopted the Code of Banking Practice (as amended from time to time) published by the Australian Banking Association and that the Code of Banking Practice is referred to in the Terms and Conditions which applied during the relevant period. However, it did not object to the tender of the documents, and addressed their impact on the case in their submissions.

28 CBA relied upon two affidavits as follows:

- (1) affidavit of Ms Kate Crous sworn on 6 June 2022. Ms Crous is the Executive General Manager, Everyday Banking at CBA; and
- (2) affidavit of Mr Daniel Tysoe sworn on 6 June 2022. Mr Tysoe is the Executive Manager, Digital Product Development at CBA.

29 Ms Crous and Mr Tysoe were cross-examined on their affidavits.

30 By its amended tender list, CBA also relied upon various customer account statements, together with a representative sample of the documents constituting the Terms and Conditions governing the accounts during the relevant period.

## **STANDARD OF PROOF**

31 A contravention of ss 12DA and 12DB *ASIC Act* and s 912A *Corporations Act* is a civil wrong that must be proved on the balance of probabilities in accordance with s 140 *Evidence Act*.

32 That standard of proof is informed by s 140(2) *Evidence Act*, which requires the Court to take account of the nature of the cause of action, the nature of the subject-matter of the proceeding and the gravity of the matters alleged.



33 As stated by the Full Court in *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Australian Competition and Consumer Commission* (2007) 162 FCR 466; [2007] FCAFC 132 at [30]–[31]:

The mandatory considerations which s 140(2) specifies reflect a legislative intention that a court must be mindful of the forensic context in forming an opinion as to its satisfaction about matters in evidence. Ordinarily, the more serious the consequences of what is contested in the litigation, the more a court will have regard to the strength and weakness of evidence before it in coming to a conclusion.

Even though he spoke of the common law position, Dixon J’s classic discussion in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361–363 of how the civil standard of proof operates appositely expresses the considerations which s 140(2) of the *Evidence Act* now requires a court to take into account. Dixon J emphasised that when the law requires proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. He pointed out that a mere mechanical comparison of probabilities independent of any belief in its reality, cannot justify the finding of a fact. But he recognised that ...:

No doubt an opinion that a state of facts exists may be held according to indefinite gradations of certainty; and this has led to attempts to define exactly the certainty required by the law for various purposes. Fortunately, however, at common law no third standard of persuasion was definitively developed. Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony, or indirect inferences ...

34 In deciding whether ASIC has proved its case, I have taken into account the considerations in s 140(2) *Evidence Act* being the nature of the cause of action, the nature of the subject-matter of the proceeding and the gravity of the matters alleged by ASIC. In particular, it is relevant to the latter consideration that penalties are sought by ASIC for the alleged contraventions of s 12DB(1) *ASIC Act* occurring after 1 April 2015 and s 912A(5A) *Corporations Act* (which entered into force on 13 March 2019).

### **WHAT IS ASIC’S CASE CONCERNING CBA’S SYSTEMS AND PROCESSES?**

35 By the Concise Statement in Response, CBA described “the majority” of the allegations in the Concise Statement as “entirely unparticularised”. The complaint about lack of particularisation was made more than once in this document, especially concerning allegations that CBA did not have adequate systems and processes.

36 A further complaint about ASIC's case was made in paragraph 4 of a letter from CBA's solicitors dated 7 December 2021 as follows:

... we note that key aspects of ASIC's case remain unparticularised, including with respect to the pleaded concept of "systems and processes" and the alleged "systemic issues" underpinning the MAF Waiver Issues. Those deficiencies are identified in CBA's Concise Statement in Response, and have not been remedied to date.

37 By letter dated 9 May 2022, CBA's solicitors wrote to ASIC, stating that CBA "repeats the matters outlined in the letter of 7 December 2021, in particular paragraphs 3, 4 and 5".

38 The complaints about lack of particulars were repeated in CBA's submissions filed on 30 September 2022.

39 These complaints were justified. The allegations that CBA's "systems and processes" were not "adequate" to ensure that the MAF waivers would be applied (the systems and processes case) and that it did not continue and maintain systems and processes that were "capable of ensuring" that MAF waivers were applied (the fairness and efficiency case) were central to ASIC's case, but were vague and ambiguous.

40 Notwithstanding the solicitors' correspondence and submissions which were filed almost two weeks prior to the hearing, no particulars were provided by ASIC. This was in circumstances where ASIC did not file or notify an intention to rely upon any evidence, whether expert or otherwise, which identified any standard against which the "systems and processes" could be measured so it could be determined whether or not they were "adequate" and "capable".

41 The reason for the lack of such evidence emerged during oral submissions on the first day of the hearing as follows:

HER HONOUR: Well, I noticed in the concise statement in response that some complaints were made about a lack of particularisation of particular allegations, and they seem to be said again in the opening submissions from the bank ... – so, if we have a look at, just for example, paragraph 4 of the opening submissions from ASIC, on page 3, this phraseology appears in many places. It talks about "adequate systems", and "adequate systems and processes", and I just wanted to know what that means.

MR COUPER: Your Honour, what it means is this – and perhaps we can deal with it by reference to the 29 events, if I might call it that. **With respect to each of those events, what was required was a computer system, and processes to utilise it, which caused the MAF waiver to be applied.**

HER HONOUR: So, every time? 100 per cent? 100 per cent success? Is that the standard? I'm trying to understand what the standard is to say something is adequate or - - -

MR COUPER: **Yes, that – we would say that's the standard.** But your Honour, if

the bank is going to say, “You will receive this waiver” – so, take – if one takes a particular case – so, take an example – if one takes, for example, the cases where a customer was entitled to a waiver if they deposited \$2000 per month into a relevant account, our submission is that, if that is the waiver which the Commonwealth Bank says would be applied in those circumstances, **the bank needed to have in place a system – both a computer system and procedures related to that system – to ensure that that happened.** It’s not good enough to say, “There’s a chance it will work,” or, “It’s fairly likely to work. We’re not really sure.” **What is required, in our submission, is that, when the agreement is made by the bank, “We will waive this fee” – that it has systems in place which means it will waive the fee.** And the same is apposite, in our respectful submission, to each of the categories of waiver set out in schedule 6 to the statement of agreed facts.

It’s not to the point, in our respectful submission, that there were different types of failure, because one is looking at a situation in which, as I say, there are a number of relevant accounts, and number of types of MAF waiver available, if I may use that term, and in each case if one focuses on the particular MAF waiver which the bank says to the customer, “This is what you will get,” then **the bank was obliged to make sure that’s what the customer got, and a system which failed to make that happen was not an adequate system.** That’s the passage [sic] the plaintiff advances, your Honour.

HER HONOUR: So, it is – you are contending for a 100 per cent success rate.

MR COUPER: Yes.

(emphasis added)

42 On the second day of the hearing, senior counsel for ASIC submitted as follows:

... As we apprehended, we accept this proposition that, where a party enters into a contract which requires its performance of an obligation, **there is a representation that it is capable of performing the obligation and that it intends to do so, but we focus on “capable”.**

In the context of this bank situation, there is no discernible difference between the bank saying we are capable of befalling [sic] our obligation to apply MAF waivers to your relevant account and the bank saying we have the systems and procedures in place which will ensure we apply that MAF waiver. They’re the same thing. ...

In circumstances where the obligation to apply the MAF waiver in each case was an ongoing obligation, it’s a straightforward proposition, in our submission, that the implied representation goes beyond saying, well, we can do it now, but for some undefined reason, we might cease to be able to provide your contractual entitlement in the future. **It’s the sensible proposition that what the bank is saying impliedly is we have and will continue to have the systems and processes in place so that our continuing ongoing obligation to give you MAF waivers will be met.**

HER HONOUR: 100 per cent guarantee? ... So you think a reasonable person reading the terms and conditions, if they do, would consider the bank was saying to them we guarantee you that we will apply the waiver? ... Is that ASIC’s case?

MR COUPER: ... **We’re saying our case is, when the bank says to a customer, “You’re entitled to this MAF’s waiver. We will ensure that you get it,” yes, that’s 100 per cent.** ...

(emphasis added)

## ASIC'S RELIANCE ON COMMUNICATIONS FROM CBA

43 As part of its evidence to establish that CBA's systems and processes were not "adequate" to ensure that the MAF waivers would be applied and that it did not continue and maintain systems and processes that were "capable of ensuring" that MAF waivers were applied, ASIC sought to tender and rely upon statements made by different senior representatives of CBA in its correspondence to ASIC commencing in 2014, including in responses provided by CBA to notices of direction under s 912C *Corporations Act*. These documents were the subject of objection by CBA.

44 ASIC relied on two documents in particular, being a s 912D notice sent by CBA to ASIC dated 14 June 2019 (**14 June notice**) and a statement in response to a notice of direction under s 912C *Corporations Act* dated 30 August 2019 (**30 August statement**).

45 The 14 June notice relevantly stated:

### Updated breach details

We have previously reported to ASIC that certain MAF waiver criteria were not applied on some Smart Access and Complete Access Accounts (**MAF Waiver Issue**).

Our further investigations have revealed a number of additional instances of failures to correctly apply various MAF waiver criteria under our standard Transaction, Savings and Investment Account Terms and Conditions in addition to the failures identified in our Good Governance Notification dated 17 December 2018 and our notification of 23 May 2019 (**Additional MAF Waiver Issues**).

Consistent with our notification of 23 May 2019, we acknowledge that charging customers a MAF when we said it would be waived, combined with the time CBA took to detect the majority of these incidents and in some cases the length of the period over which the issue has occurred, constituted conduct which fell below the expected standard. In addition, the aggregate number of customers affected by the MAF Waiver Issue and the Additional MAF Waiver Issues, and the aggregate loss to those customers is a significant breach of section 912A(1)(a) for the purposes of section 912D of the *Corporations Act*.

For these same reasons we consider in this case we did not have appropriate compliance measures in place to prevent or otherwise detect earlier the MAF Waiver Issue and the Additional MAF Waiver Issues over the relevant period. Accordingly we also acknowledge that there has been a breach of CBA's obligation to comply with a condition of our licence (section 912A(1)(b)) in respect of the MAF Waiver Issue and Additional MAF Waiver Issues, namely the obligation to establish and maintain compliance measures that ensure, as far as is reasonably practicable, that the licensee complies with the provisions of the financial services laws in respect of those issues.

(emphasis original)

46 The particular sentence in the 14 June notice on which ASIC wished to rely stated:

For these same reasons, we consider in this case we did not have appropriate

compliance measures in place to prevent or otherwise detect earlier the MAF Waiver Issue and the Additional MAF Waiver Issues over the relevant period.

47 This statement was said by ASIC to be admissible as an admission of fact. Senior counsel for ASIC submitted that “[w]e don’t seek to rely upon any statement as an admission of law.”

48 The admission was relied upon, not only in relation to the matters referred to in the 14 June notice but also in relation to previously notified MAF waiver issues. It was also submitted by ASIC that notifications by CBA made after the 14 June notice were captured by this admission.

49 Although the 14 June notice made explicit reference to a letter dated 17 December 2018 and another s 912D notice dated 23 May 2019 (**23 May notice**), the statement in the 14 June notice did not contain any representation of fact as to CBA’s systems which extended beyond the MAF waiver issues referred to in that notice. In particular, the 14 June notice was concerned with instances of failure to correctly apply MAF waiver criteria *in addition to* the failures identified in the letter of 17 December 2018 and the 23 May notice.

50 Further, the critical sentence in the 14 June notice upon which ASIC relied as containing an admission stated that CBA considered that *in this case* (that is, as identified in that notice) “we did not have appropriate compliance measures in place”. When the statement is read in context, including the identification of the issues in that notice as being the “Additional MAF Waiver Issues”, ASIC’s submission that the “admission” contained in the 14 June notice extended to the failures to apply the MAF waiver as identified in the 17 December 2018 letter and 23 May notice (or any prior correspondence from CBA) is incorrect and cannot be accepted for this reason.

51 A further and more fundamental problem arises with ASIC’s characterisation of the critical sentence in the 14 June notice as being an admission of fact that CBA’s systems were not appropriate. It raises the obvious question – precisely what is being admitted by CBA? The reference to *appropriate* compliance measures means that the statement includes a conclusion that depends upon the application of a legal standard. As such, it provides no basis for a finding that CBA’s systems and processes were not appropriate at any particular time for the purposes of the allegations made in this proceeding: see *Dovuro Pty Limited v Wilkins* (2003) 215 CLR 317; [2003] HCA 51 at [67]–[71] (Gummow J, with whom McHugh and Heydon JJ agreed).

52 Further, the critical sentence in the 14 June notice begins with the words “For these same reasons” which is a reference to the preceding paragraph, which paragraph included admissions of contravention of the *Corporations Act*. Further, what follows the critical sentence in the

same paragraph is a further admission of contravention. One cannot divorce these admissions of contravention which both infect and surround the critical sentence so as to erect a standalone admission of fact. To do so is artificial because, when read in context, the critical sentence is and forms part of an admission of contravention of s 912A *Corporations Act* and is therefore not an admission of fact.

53 Further, the purported admission of fact is a statement of opinion that “we consider” that we did not have “appropriate compliance measures”. But what does “appropriate” even mean? Against what standard are the compliance measures being compared? Is what CBA considers to be “appropriate” in the context of the 14 June notice the same thing as what ASIC contends is “adequate” in this proceeding? On what facts is this opinion based? Do these facts align with ASIC’s case in this proceeding? Even if it is admissible, no weight can be attached to this purported admission without knowing the answers to these questions.

54 It follows that the rejection of the critical sentence in the 14 June notice as being an admission of fact has the consequence that correspondence sent by CBA prior to and after this notice cannot be regarded as having been captured by this purported admission, contrary to ASIC’s submission in support of the admission of this correspondence. This justifies the exclusion of the correspondence dated 29 August 2014, 19 September 2014, 18 March 2016, 4 May 2016, 17 December 2018, 9 October 2019 and 13 November 2019 as well as the 23 May notice.

55 The 30 August statement contained statements at [8.8(d)] and [9.2] which ASIC also submitted were admissions of fact by CBA. The 30 August statement relevantly provided:

[Q8c]. [Provide] an explanation of why, at the time of making the Significant Breach Notification Decision (s912A(1)(b)), a second breach notification was issued.

...

Question 8(c)

8.1 While the May Breach Notification was being prepared, CBA received the May s912C Notice, on 22 May 2019.

8.2 The May s912C Notice required CBA to provide details of any instance where MAF waivers had not been correctly applied in the period 31 May 2010 to 22 May 2019 (the Additional MAF Waiver Issues) – including the detection, nature, rectification, impact and remediation of each of these Issues.

...

8.7 Of the 25 Additional MAF Waiver Issues identified:

(a) some had been the subject of previous breach reports to ASIC (being Items 5, 14, 22 and 24 as described at paragraph 6.5); and

- (b) some of the issues had not been considered to be reportable, because, for example, they affected a small number of customers or had a minor financial impact (for example, each of Items 3, 9, 15 and 20 affected less than 1,000 customers and had a financial impact of under \$8,000);
- 8.8 Having conducted this exercise, and considering further legal advice, CBA determined that:
- (a) it had correctly reported some of the Additional MAF Waiver Issues to ASIC on the basis that they involved significant breaches;
  - (b) considered individually, the majority of the remaining Additional MAF Waiver Issues would not have been required to be the subject of a breach report; and
  - (c) however, viewed holistically, the Issues were significant because:
    - (i) customers were charged a MAF when CBA said it would be waived;
    - (ii) the time taken by CBA to detect the majority of the issues;
    - (iii) the period over which some of the Issues occurred;
    - (iv) the aggregate number of customers affected; and
    - (v) the aggregate loss to customers.
  - (d) **for the same reasons, CBA concluded that its compliance measures in place to prevent or detect the issues were not appropriate.**
- 8.9 On this basis, CBA made the June Breach Notification Decision.
- [Q9]. Provide an explanation of why CBA had failed to realise the scale and scope of the MAF waiver issue prior to the Significant Breach Notification (s912A(1)(b)).
- 9.1 As described above and in the June Response and the July Response, the Issues had a number of different root causes and were detected through different mechanisms. In some instances, the cause of the failures to correctly apply a MAF waiver were one-off or manual errors, while in other cases there was a root cause that resulted in multiple problems manifesting separately. In some instances, these occurred years apart or in relation to different products.
- 9.2 **As set out in the June Breach Notification, CBA considers that in this instance it did not have appropriate compliance measures in place to prevent or otherwise detect earlier the Issues.**

(emphasis added; original emphasis omitted)

56 However, the reference to *appropriate* compliance measures again means that these statements include a conclusion that depends upon the application of a legal standard. This is especially so as the statement in [8.8(d)] is made following consideration of legal advice. The statement in [9.2] is a repetition of the conclusion in the 14 June notice, and so is not admissible for the same reasons that the conclusion in the 14 June notice is not admissible.

57 These statements are therefore not bare admissions of fact and they provide no basis for a finding that CBA’s systems and processes were not appropriate at any particular time for the purposes of the allegations made in this proceeding: see *Dovuro* at [67]–[71].

58 Further, the purported admissions of fact are statements of opinion. But again, these purported admissions raise obvious questions such as – what does “appropriate” mean? By what standard are the compliance measures compared? Is “appropriate” the same thing as “adequate”? On what facts is each opinion based? Do these facts align with ASIC’s case in this proceeding? Even if admissible, no weight can be attached to this evidence without knowing the answers to these questions.

59 It follows that the exclusion of [8.8(d)] and [9.2] in the 30 August statement from the evidence has the consequence that correspondence sent by CBA after this notice cannot be regarded as having been captured by these purported admissions, contrary to ASIC’s submission. This justifies the exclusion from the evidence of the statement issued by CBA dated 27 May 2020 and the attached appendix.

## **THE CHARGING AND NOTIFICATION CASE**

### **ASIC’s allegations**

60 ASIC alleges that on each occasion that CBA charged a MAF, and notified the customer of charging a MAF, CBA impliedly represented to the customer that it had a contractual entitlement to do so, when that was not the case.

61 Although the Concise Statement alleged that CBA also made an express representation on each such occasion, this allegation was abandoned by ASIC during the hearing.

62 The conduct on which ASIC relied by way of “notification” is each occasion that CBA issued a customer account statement to its customers recording that it had charged the MAF (or, where applicable, recorded this in a customer’s passbook).

63 In particular, it relied on the fact that the MAF was shown on the bank statement by the words, “Prev Month Acct Fee”, “Monthly Account Fee”, “Account Keeping Fee” or “Account Fee” and was similarly recorded in passbooks.

64 ASIC submits that the notification in a customer’s account statement or passbook that the customer’s money had been debited for the payment of a fee carried with it the implied representation that CBA was entitled to charge that fee.



65 ASIC contended that, on each of those occasions where CBA charged a MAF when it should have applied a MAF waiver, CBA engaged in misleading or deceptive conduct or conduct that was likely to mislead or deceive, and made false or misleading representations concerning the existence or effect of a condition, right or remedy, in contravention of ss 12DA and 12DB(1)(i) *ASIC Act*.

66 ASIC also alleged, and this was not disputed, that CBA was acting in trade or commerce in connection with the supply of financial services when it engaged in such conduct.

### **Agreed legal issues**

67 Taking into account ASIC's modifications to its case as presented at the hearing, the first issue is whether CBA, by its conduct in charging a MAF to a customer and issuing a customer account statement to a customer who had been charged a MAF, made an implied representation that:

- (1) it had a contractual entitlement to charge the MAF; and
- (2) it was entitled to depart from its contractual promise that it would not charge a MAF on the relevant accounts where a customer had been promised a MAF waiver.

68 The second issue is whether, as CBA contends, the sole representation conveyed by customer account statements as regards MAFs was that a MAF of a particular amount had been deducted from the account in question on or around the nominated date, and that the customer should check whether that entry was correct and notify CBA in the event of any error.

69 The third issue is whether, if CBA made the implied representation as contended by ASIC (which CBA denies) in circumstances where the customer was entitled to a MAF waiver, CBA contravened either or both of ss 12DA and 12DB(1)(i) *ASIC Act*.

70 The final issue is whether CBA, by the conduct referred to in the previous paragraph (conduct which is alleged by ASIC but denied by CBA), breached its general obligation to comply with financial services laws in contravention of s 912A(1)(c) *Corporations Act*.

## The relevant legislation

71 Section 12DA(1) *ASIC Act* relevantly provided as follows:

### 12DA Misleading or deceptive conduct

- (1) A person must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.

72 At the commencement of the relevant period, there was no s 12DB(1)(i) *ASIC Act*.

73 Section 12DB(1)(i) *ASIC Act* (being the provision relied upon by ASIC and which came into force on 1 January 2011) relevantly provided as follows:

### 12DB False or misleading representations

- (1) A person must not, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services:

...

- (i) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including an implied warranty under section 12ED).

74 While ss 12DA(1) and 12DB(1)(i) respectively prohibit “misleading or deceptive conduct” and “false or misleading representations”, there is no material difference between the two expressions: *Australian Securities and Investments Commission v MLC Nominees Pty Ltd* (2020) 147 ACSR 266; [2020] FCA 1306 at [47] (Yates J).

75 In relation to s 12DB(1) *ASIC Act*, the word “services” is defined to include “any rights ... benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce”, subject to certain exceptions which are not presently relevant: s 12BA(1) *ASIC Act*.

76 The relevant principles in relation to the statutory prohibitions against misleading or deceptive conduct were helpfully summarised in *Australian Competition and Consumer Commission v TPG Internet Pty Ltd* (2020) 278 FCR 450; [2020] FCAFC 130 (Wigney, O’Byrne and Jackson JJ). At [22], the Court stated:

[t]he central question is whether the impugned conduct, viewed as a whole, has a sufficient tendency to lead a person exposed to the conduct into error (that is, to form an erroneous assumption or conclusion about some fact or matter): ...

(citations omitted)

77 The Court identified a number of subsidiary principles, directed to the central question, as follows:

- (a) First, conduct is likely to mislead or deceive if there is a real or not remote chance or possibility of it doing so: see *Global Sportsman Pty Ltd v Mirror Newspapers Pty Ltd* (1984) 2 FCR 82 at 87, referred to with apparent approval in *Butcher* at [112] by Gleeson CJ, Hayne and Heydon JJ; *Noone v Operation Smile (Australia) Inc* (2012) 38 VR 569 at [60] per Nettle JA (Warren CJ and Cavanough AJA agreeing at [33]).
- (b) Second, it is not necessary to prove an intention to mislead or deceive: *Hornsby Building Information Centre Pty Ltd v Sydney Building Information Centre Ltd* (1978) 140 CLR 216 at 228 per Stephen J (with whom Barwick CJ and Jacobs J agreed) and at 234 per Murphy J; *Puxu* at 197 per Gibbs CJ; *Google Inc v Australian Competition and Consumer Commission* (2013) 249 CLR 435 (*Google*) at [6] per French CJ and Crennan and Kiefel JJ.
- (c) Third, it is unnecessary to prove that the conduct in question actually deceived or misled anyone: *Taco Bell* at 202 per Deane and Fitzgerald JJ; *Puxu* at 198 per Gibbs CJ; *Google* at [6] per French CJ and Crennan and Kiefel JJ. Evidence that a person has in fact formed an erroneous conclusion is admissible and may be persuasive but is not essential. Such evidence does not itself establish that conduct is misleading or deceptive within the meaning of the statute. The question whether conduct is misleading or deceptive is objective and the Court must determine the question for itself: see *Taco Bell* at 202 per Deane and Fitzgerald JJ; *Puxu* at 198 per Gibbs CJ.
- (d) Fourth, it is not sufficient if the conduct merely causes confusion: *Taco Bell* at 202 per Deane and Fitzgerald JJ; *Puxu* at 198 per Gibbs CJ and 209-210 per Mason J; *Campomar* at [106]; *Google* at [8] per French CJ and Crennan and Kiefel JJ.
- (e) Fifth, where the impugned conduct is directed to the public generally or a section of the public, the question whether the conduct is likely to mislead or deceive has to be approached at a level of abstraction where the Court must consider the likely characteristics of the persons who comprise the relevant class to whom the conduct is directed and consider the likely effect of the conduct on ordinary or reasonable members of the class, disregarding reactions that might be regarded as extreme or fanciful: *Campomar* at [101]-[105]; *Google* at [7] per French CJ and Crennan and Kiefel JJ.

78 In *Australian Securities and Investments Commission v Dover Financial Advisers Pty Ltd* (2019) 140 ACSR 561; [2019] FCA 1932 at [99], O'Bryan J observed that:

In assessing whether conduct is likely to mislead or deceive, the courts have distinguished between two broad categories of conduct, being conduct that is directed to the public generally or a section of the public, and conduct that is directed to an identified individual. As explained by the High Court in *Campomar*, the question whether conduct in the former category is likely to mislead or deceive has to be approached at a level of abstraction, where the Court must consider the likely characteristics of the persons who comprise the relevant class of persons to whom the conduct is directed and consider the likely effect of the conduct on ordinary or reasonable members of the class, disregarding reactions that might be regarded as extreme or fanciful (at [101]-[105]). In *Google Inc v Australian Competition and*

*Consumer Commission* (2013) 249 CLR 435; 294 ALR 404; 99 IPR 197; [2013] HCA 1, French CJ and Crennan and Kiefel JJ (as her Honour then was) confirmed that, in assessing the effect of conduct on a class of persons such as consumers who may range from the gullible to the astute, the Court must consider whether the “ordinary” or “reasonable” members of that class would be misled or deceived (at [7]). In the case of conduct directed to an identified individual, it is unnecessary to approach the question at an abstract level; the Court is able to assess whether the conduct is likely to mislead or deceive in light of the objective circumstances, including the known characteristics of the individual concerned. However, in both cases, the relevant question is objective: whether the conduct has a sufficient tendency to induce error ...

79 Where the statement is made to the public or a section of the public, the Court considers its effect upon ordinary or reasonable members of the class in question all of whom are presumed to take reasonable care to protect their own interests: *Australian Securities and Investments Commission v Vocation Limited (In Liquidation)* (2019) 136 ACSR 339; [2019] FCA 807 at [631]–[632] (Nicholas J).

80 In *Australian Competition and Consumer Commission v Telstra Corporation Limited* (2007) 244 ALR 470; [2007] FCA 1904, Gordon J, in the context of considering s 52 of the *Trade Practices Act 1974* (Cth), set out a two-step analysis for assessing misleading or deceptive conduct at [14]–[15] as follows:

The relevant legal principles have been well traversed by Australian courts. A two-step analysis is required. First, it is necessary to ask whether each or any of the pleaded representations is conveyed by the particular events complained of: ...

Second, it is necessary to ask whether the representations conveyed are false, misleading or deceptive or likely to mislead or deceive. This is a “quintessential question of fact”: ...

(citations omitted)

81 This two-step analysis has been quoted with approval in a number of decisions of the Court: see *Australian Securities and Investments Commission v GetSwift Limited (Liability Hearing)* [2021] FCA 1384 at [2109]; *Australian Competition and Consumer Commission v Woolworths Limited* [2019] FCA 1039 at [84]; *Australian Competition and Consumer Commission v Kimberly-Clark Australia Pty Ltd* [2019] FCA 992 at [288]; *SPEL Environmental Pty Ltd v IES Stormwater Pty Ltd* [2022] FCA 891 at [34].

82 In *Australian Competition & Consumer Commission v Dateline Imports Pty Ltd* [2015] FCAFC 114 (Gilmour, McKerracher and Gleeson JJ), the Full Court cited the principles in *Australian Competition and Consumer Commission v Dukemaster Pty Ltd* [2009] FCA 682 (Gordon J) at [10] as being the “correct approach concerning representations of different types” in relation s 52 *Trade Practices Act*, and quoting at [179]:

2. ... it would be wrong to select particular words or acts which although misleading in isolation do not have that character when viewed in context ...

See also *Australian Securities and Investments Commission v National Australia Bank Limited* [2022] FCA 1324 at [239] (Derrington J) (*ASIC v NAB*).

- 83 This accords with the observations by McHugh J in *Butcher v Lachlan Elder Realty Pty Limited* (2004) 218 CLR 592; [2004] HCA 60 at [109] (albeit in relation to s 52 *Trade Practices Act*):

... It invites error to look at isolated parts of the corporation's conduct. The effect of any relevant statements or actions or any silence or inaction occurring in the context of a single course of conduct must be deduced from the whole course of conduct. Thus, where the alleged contravention of s 52 relates primarily to a document, the effect of the document must be examined in the context of the evidence as a whole. The court is not confined to examining the document in isolation. It must have regard to all the conduct of the corporation in relation to the document including the preparation and distribution of the document and any statement, action, silence or inaction in connection with the document.

(citations omitted)

- 84 Finally, s 912A(1)(c) *Corporations Act* requires that a financial services licensee must comply with financial services laws, which includes ss 12DA(1) and 12DB(1)(i) *ASIC Act*.

### **Consideration**

- 85 ASIC submits that the ordinary or reasonable customer would know from the notation on the customer account statement that CBA had charged a fee. So much may be accepted.

- 86 ASIC then submits that, with that knowledge, a reasonable understanding of such a customer would be that a bank does not charge a fee unless it is entitled to do so. It submits that the alternative is that it is reasonable to expect a bank to take a customer's money with no entitlement.

- 87 However, this ignores another alternative, being that a reasonable understanding of the ordinary and reasonable customer is that the fee has been or, at least, might have been charged in error.

- 88 The members of those classes of customers who entered a contract with CBA in relation to the relevant accounts are likely to be taking reasonable care of their own interests. They are also likely to have had their own personal experiences of, or otherwise be aware that there is at least some prospect of, computer systems malfunction, software design errors, and human error in relation to data input. They would be aware that CBA's systems are computerised and that CBA's processes involve human interaction with those systems. They would understand that customer account statements are generated by CBA's computerised systems and, having regard

to the size of CBA's operations, are unlikely to have been reviewed by any of CBA's personnel before being issued. They would also be aware that the systems and processes within large organisations such as banks are not and cannot be expected to be perfect all of the time; that all organisations (even banks), and the people within them, sometimes make mistakes and that, for a variety of reasons, a contractual promise by CBA to waive a fee otherwise payable in relation to their account might not translate into that fee being waived for reasons which may not involve any intentional conduct by CBA.

89 Further, the ordinary and reasonable customer would not view a customer account statement as an invoice, but as a record of transactions that have occurred on the account. The ordinary and reasonable customer understands that a customer account statement is sent to customers so that they may acquaint themselves with those transactions and satisfy themselves that no disputed transactions have occurred, either by error of the bank, or mistake or malfeasance by third parties.

90 For this reason, the facts of this case differ from those relied upon by ASIC, namely *Australian Competition and Consumer Commission v Telstra Corporation Limited* (2018) ATPR 42–593; [2018] FCA 571 (Moshinsky J), *Australian Competition and Consumer Commission v Optus Mobile Pty Limited* [2019] FCA 106 (Murphy J) and *Australian Securities and Investments Commission v Westpac Banking Corporation (Omnibus)* (2022) 159 ACSR 381; [2022] FCA 515 (Beach J) (*Westpac Omnibus*). Further, each of these decisions involved determinations by agreement. In *ASIC v NAB*, where similar representations were alleged, ASIC also relied on these three decisions. As observed by Derrington J in that case at [292], “great care should be taken in relying on consent determinations, especially where the applicant is a regulator and any agreement as to statutory contravention might well have been motivated by extraneous factors”.

91 Another decision relied upon by ASIC is that of Allsop CJ in *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited (No 3)* [2020] FCA 1421 in support of their case against CBA:

[13] ... Despite all other features, the banker and customer relationship is at the heart of the economic system. It is a relationship based on contract, but, as the Code of Banking Practice reveals, it is founded on trust and good faith in a commercial sense.

[14] It would shock any customer to know that his or her bank took and was continuing to take his or her money in fees when it knew that there was a risk that it had no authority to do so, and without thereafter coming to a view that

it did have that authority ...

...

[17] ... It is unrealistic to consider that there is other than a degree of consumer vulnerability in dealing with banks with carefully drawn contracts of adhesion which can be changed at will by the bank on a take-it-or-leave-it basis. Contracts of adhesion are a central part of commercial life and much commerce could not be undertaken without them. They are not evil things in their own right. Nevertheless, they must be understood to be what they are, that is, standard forms drafted by the bank or the contracting commercial house, in these kinds of circumstances, on a take-it-or-leave-it basis. The customer can leave, of course, and they are free to do so, but the reality of commercial and consumer life is that the customer expects that the bank will at all times adhere, and adhere strictly and faithfully, to its contractual rights which it has chosen to express in its contract of adhesion.

92 However, this authority does not assist ASIC. This is not a case where it is alleged that CBA charged MAFs to customers when it knew that it had no contractual entitlement to do so, or charged MAFs “when it knew that there was a risk that it had no authority to do so, and without thereafter coming to a view that it did have that authority” (to use the words of Allsop CJ). While the customer expects that the bank will adhere to the terms of the contract, the ordinary and reasonable customer (as described above) does not expect perfection from a bank in the performance of its contract.

93 ASIC also submits that the understanding of the ordinary bank customer was reinforced by CBA’s adoption of the **Code** of Banking Practice during the relevant period, to which reference was made in the Terms and Conditions. Particular reliance was placed on the 2013 version of the Code which included the following under the heading, “Our key commitments and general obligations”:

We will act fairly and reasonably towards you in a consistent and ethical manner. In doing so we will consider your conduct, our conduct and the contract between us.

...

We will comply with all relevant laws relating to banking services.

(emphasis omitted)

94 ASIC submits that CBA’s adoption of the Code conveys to its customers that (among other things) it will not take their money unless it is entitled to do so (although this conduct was not relied upon as being a further representation). It also submits that CBA would not be acting “fairly, reasonably” and in an “ethical manner” if it took customers’ money with no entitlement to do so.

95 This means that, on ASIC's case, members of those classes of customers who opened a relevant account with CBA would be aware of the Code, and its adoption by CBA (presumably through the Terms and Conditions). However, even if such customers were aware of the Code, it does not follow that they would be aware of its content. In any event, having regard to the characteristics of the class of customers referred to above and the content of the Code, they would not construe its adoption by CBA as some form of representation that no errors will ever be made by CBA, including in relation to the charging of fees: see also *ASIC v NAB* at [277].

96 There are further matters which tell against a finding that the implied representation was conveyed as alleged by ASIC.

97 First, customer account statements issued by CBA during the relevant period contained a note on the first page requesting that customers check that the entries listed in the statement were correct, and that they contact CBA immediately in the event of any errors. That notation enjoyed a prominent position at the top of the first page of the account statements.

98 This means that the very same document that is alleged to have conveyed the implied representation expressly put customers on notice that their account statement may contain incorrect or erroneous entries in a manner which was likely to have been seen by them.

99 In circumstances where CBA acknowledged the possibility of error in account statements and therefore contemplated the possibility of a MAF being debited incorrectly, the notional customer would not have been led to believe that CBA was representing as a matter of fact that it had correctly charged the fees identified in that statement. That is because one cannot properly infer that a document says a particular thing if there are statements in the document which are to the opposite effect: see *Clarke (as trustee of the Clarke Family Trust) v Great Southern Finance Pty Ltd (Receivers and Managers Appointed) (in liquidation)* [2014] VSC 516 at [1333] (Croft J); see generally *ASIC v NAB* at [260]–[261].

100 Second, the Terms and Conditions during the relevant period expressly encouraged customers to check the transactions on their account statement upon receipt and report any unauthorised transactions to CBA. ASIC submitted that the notional customer would not understand the reference to transactions as including a reference to the charging of fees by CBA. However, the notional customer would not read the reference to transactions in such a narrow way, but would understand that they were being asked to check if the entries in the customer account statement were correct, including in relation to any debits such as fees.



101 This is especially as, except for the period between 1 June 2010 and 29 May 2011, the Terms and Conditions also contained an express statement to the effect that CBA “accept[s] that *sometimes we can get things wrong*, and when this happens we’re determined to make them right again” (emphasis added). By that express acceptance, CBA disclaimed any guarantee of perfect accuracy as regards the account statements or entries in the passbook.

102 Third, customers who met the contractual eligibility criteria for a MAF waiver were in a contractual relationship with CBA constituted by their acceptance of the Terms and Conditions. Pursuant to the Terms and Conditions, CBA represented to such customers that they would be exempt from paying a MAF on the basis that they were eligible for a waiver.

103 The implied representation alleged by ASIC is therefore inconsistent with CBA’s express contractual representations as to an eligible customer’s exemption from the payment of a MAF. This means that ASIC’s case carries with it a *further* implied representation that CBA was entitled unilaterally to resile from its earlier contractual promise as to the circumstances in which it would not charge a MAF and that it had in fact resiled from that contractual promise. ASIC appeared to accept this when it reached agreement with CBA about the legal issues, but did not make submissions to support this further implied representation. Yet it must succeed on both to succeed at all.

104 In any event, there was no such further implied representation. Having regard to the characteristics of the class of customers referred to above, the notional customer would not conclude that, by incorrectly charging a MAF and recording that charge in a computer-generated statement or passbook, CBA evinced an intention and expressed a positive right to act in a manner completely contrary to what it had promised in the written contract.

105 Instead, in all of the circumstances, the sole representation conveyed by customer account statements or a notation in a passbook as regards MAFs was that a MAF of a particular amount had been deducted from the account in question on or around the nominated date, and the customer should check whether that entry was correct and notify CBA in the event of any error.

## **Conclusion**

106 For these reasons, ASIC failed to establish that, by its conduct in charging a MAF to a customer and issuing a customer account statement to a customer who had been charged a MAF (or notifying such a charge in a passbook), CBA made an implied representation that it had a contractual entitlement to charge the MAF and that it was entitled to depart from its contractual

promise that it would not charge a MAF on the relevant accounts where a customer had been promised a MAF waiver.

107 As no implied representation was made by CBA as alleged, ASIC failed to establish that CBA contravened either ss 12DA or 12DB(1)(i) *ASIC Act* or that it breached its general obligation to comply with financial services laws in contravention of s 912A(1)(c) *Corporations Act*.

## THE SYSTEMS AND PROCESSES CASE

### ASIC's allegations

108 ASIC alleges that, on each occasion during the relevant period that CBA entered into a contract with a customer to establish a relevant account, by the customer's acceptance of the Terms and Conditions, and each time CBA sent a customer an updated version of the Terms and Conditions during the relevant period after the customer had entered into the contract, CBA, on each occasion:

- (1) made implied representations that it had, and would have adequate systems and processes in place to ensure that it could provide the MAF waivers where a customer satisfied the criteria specific to a relevant account contained in the Terms and Conditions; and
- (2) made those implied representations when it did not have adequate systems and did not have reasonable grounds (within the meaning of s 12BB(1) of the *ASIC Act*) for stating it would have systems in the future to provide the benefits, and the price for services, in the form of MAF waivers,

in contravention of ss 12DA, 12DB(1)(e) and/or 12DB(1)(g) of the *ASIC Act*.

109 ASIC also alleged, and this was not disputed, that CBA was acting in trade or commerce in connection with the supply of financial services when it engaged in such conduct.

### Agreed legal issues

110 The first issue is whether CBA, on each occasion during the relevant period that it:

- (1) entered into a contract with a customer, by the customer's acceptance of the Terms and Conditions; and
- (2) sent a customer an updated version of the Terms and Conditions following the customer's entry into a contract with CBA,

made implied representations that it had, and that it would have, adequate systems and processes in place to ensure that it could provide the MAF waivers where a customer satisfied the criteria specific to a relevant account contained in the Terms and Conditions.

111 Taking into account the submissions by ASIC at the hearing, as referred to above, the question is whether CBA conveyed an implied representation that its current systems and processes were capable of ensuring that the MAF waiver would be applied *and* that those systems and processes would always be so capable, without fail.

112 The second issue is whether by making such a representation, in circumstances where:

- (1) CBA did not have adequate systems to provide MAF waivers (which ASIC alleges but CBA denies), and
- (2) CBA did not have reasonable grounds for representing that it would have systems in the future to provide MAF waivers (which ASIC alleges but CBA denies),

CBA contravened ss 12DA, 12DB(1)(e) and/or 12DB(1)(g) of the *ASIC Act*.

113 The final issue is whether CBA, by the conduct referred to in the previous paragraph (conduct which is alleged by ASIC but denied by CBA), breached its general obligation to comply with financial services laws in contravention of s 912A(1)(c) *Corporations Act*.

### **The relevant legislation**

114 Section 12DA(1) *ASIC Act* relevantly provided as follows:

#### **12DA Misleading or deceptive conduct**

- (1) A person must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.

115 At the commencement of the relevant period, ss 12DB(1)(e) and 12DB(1)(g) *ASIC Act* did not exist in their current form.

116 Sections 12DB(1)(e) and 12DB(1)(g) (being the provisions relied upon by ASIC and which came into force on 1 January 2011) relevantly provided that:

#### **12DB False or misleading representations**

- (1) A person must not, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services:

...

- (e) make a false or misleading representation that services have sponsorship, approval, performance characteristic, uses or benefits; or
- ...
- (g) make a false or misleading representation with respect to the price of services.

117 By reference to the terms of these provisions, it was contended by ASIC that the implied representations were false or misleading as to the benefits of services, and with respect to the price of services.

118 Here, the “financial services” were the relevant accounts offered by CBA. The term “benefit” is defined in s 9 *Corporations Act* as “any benefit, whether by way of payment of cash or otherwise”. The “benefit”, for the purposes of s 12DB(1)(e) is the entitlement for customers to receive MAF waivers when certain criteria are met. “Price” includes a “charge of any description”: s 12BA(1) *ASIC Act*. The “price of services”, for the purposes of s 12DB(1)(g), includes that the MAF will be waived when those criteria are met.

119 The general principles with respect to misleading or deceptive conduct in contravention of s 12DA *ASIC Act* and false or misleading representations in contravention of s 12DB(1) *ASIC Act* have been addressed earlier in these reasons.

120 As to the application of these principles to the systems and processes case, additional considerations arise.

121 The divining of representations from the making of contractual promises and the entry into contracts is a task to be approached with caution and with an eye to all the facts and not by reference to implying representations mechanistically from equivalent promises: *McGrath v Australian Naturalcare Products Pty Ltd* (2008) 165 FCR 230; [2008] FCAFC 2 at [138] (Allsop J, as his Honour then was) which was cited with approval in *Cash Bazaar Pty Ltd v RAA Consults Pty Ltd (No 2)* (2020) 381 ALR 668; [2020] FCA 636 at [227] (Steward J). In a similar vein, Ormiston J (as his Honour then was) observed in *Futuretronics International Pty Ltd v Gadzhis* [1992] 2 VR 217 at 238 that:

... If a promissory statement is to be the subject of complaint, it is also necessary to ask how did it amount to misleading or deceptive conduct. It is wrong to view every contractual obligation as an unqualified promise to perform the stipulated act. Indeed it is rare that a contractual promise is not in some way qualified by some reciprocal obligation to be performed by the promisee or by some other circumstance. If the promise induced the other party to enter into the agreement, as one can readily accept it would, then it is that promise and the circumstances then surrounding it which must be examined. The promise can only be said to be misleading or deceptive if it was in

some way inaccurate; otherwise every unfulfilled mutual contractual promise will constitute misleading or deceptive conduct, a consequence which I cannot believe those who drafted the Act intended. If intention be relevant, the promise may be misleading if the promisor had no intention to fulfil it at the time it was made and accepted. If intention be irrelevant, then the promise may be misleading if the promisor had no ability to perform it at that time. ...

- 122 In *Concrete Constructions Group v Litevale Pty Ltd* (2002) 170 FLR 290; [2002] NSWSC 670 at [167]–[169], Mason P (as his Honour then was) cited *Futuretronics* with approval and observed that:

I readily accept that it will be comparatively easy to establish that a contracting party is implicitly representing a present intention to perform [the contract] according to its tenor. If the other party can establish causation and loss then damages should ensue, although there is usually little point in addressing such a claim because the law of contract will compensate the innocent party for the consequences of non-performance without even having to prove misleading intent from the inception.

But when one turns to an alleged implicit representation as to *capacity* to perform things are not so simple, nor should they be. There are policy reasons for restraint. The law arms the parties to a contract with rights to damages and other forms of relief if breach occurs or is threatened. A complex set of common law, equitable and statutory rights are superimposed on the terms of the bargain chosen by the parties. That bargain may have the simplicity as a contract to sell a loaf of bread or the complexity of a building agreement such as the one in question in this case.

Why should the parties be found or presumed to have intended more by what they expressly represented and understood? Of course, s 52 goes beyond intentionally misleading or deceptive conduct, but it does not follow that the innocent party understood or relied upon anything more than the express representations and the usually adequate consequences stemming from breach of them stemming from the law touching the mutually chosen regime, that is, contract.

- 123 An express contractual promise or representation will generally constitute an actionable implied misrepresentation only if the promisor had no intention or capability of carrying it out at the time that it was made: see, for example, *Coles Supermarkets Australia Pty Ltd v FKP Limited* [2008] FCA 1915 at [68]–[69]; *Secure Parking Pty Ltd v Woollahra Municipal Council* [2016] NSWCA 154 at [95]; *Australian Securities and Investments Commission v Cassimatis (No 8)* (2016) 336 ALR 209; [2016] FCA 1023 at [661]–[662] (appeal dismissed: *Cassimatis v Australian Securities and Investments Commission* (2020) 275 FCR 533; [2020] FCAFC 52); *HTW Valuers (Central Qld) Pty Ltd v Astonland Pty Ltd* (2004) 217 CLR 640; [2004] HCA 54 at [13]; *Cash Bazaar* at [228].
- 124 Finally, s 912A(1)(c) *Corporations Act* requires that a financial services licensee must comply with financial services laws, which includes ss 12DA(1), 12DB(1)(e) and 12DB(1)(g) *ASIC Act*.

## Consideration

- 125 ASIC submits that the express statements in the Terms and Conditions, which contained the entitlement criteria for each of the relevant MAF waivers, amounted to the implied representations. It submitted that the ordinary customer would expect that, having stated in plain terms that it would not charge a MAF in certain circumstances, CBA would have adequate systems and processes in place to make good on that promise.
- 126 The implied representations alleged by ASIC go well beyond a representation that CBA had a present ability to fulfil its promise; they include a representation that CBA would ensure the fulfilment of the promise – in the sense of guaranteeing or making certain that it was carried out. That representation is alleged to have been conveyed in the absence of express agreement by the parties concerning the capabilities of CBA’s systems and processes, and in circumstances where the notional customer will have a remedy for breach of contract in the event that the promised waiver was not applied. ASIC failed to establish how the implied representations arose from CBA’s express promises in these circumstances.
- 127 Further, except for the period between 1 June 2010 and 29 May 2011, the Terms and Conditions also contained words to the effect that CBA “accept[s] that sometimes we can get things wrong, and when this happens we’re determined to make them right again”. This express acknowledgement that errors might be made by CBA in the performance of the contract with the customer negates the existence of the alleged implied representation. One does not impliedly represent an existing and future ability to perform a contract perfectly but, at the same time, expressly acknowledge the possibility of an error in that performance.
- 128 The express acknowledgement that sometimes CBA “get[s] things wrong” is, in any event, aligned with the understanding of the ordinary and reasonable member of the class of customers who entered the contracts with CBA. Having regard to the characteristics of the class of customers referred to above, a notional customer would not have been misled or deceived because they would not have regarded any such representation as being credible, even if it had been made.
- 129 In support of the systems and process case, ASIC relied upon the decision of *Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2020] FCA 790 (Beach J) (*ASIC v CBA*). It submitted that, whilst that matter proceeded on agreed facts, the Court accepted that certain brochures, the application form and the terms and conditions documents represented to each relevant customer to the effect that CBA had, and would

continue to have, adequate systems and processes to ensure that customers received the benefits, fee waivers and interest rate discounts in accordance with the contractual documents. ASIC relied upon the conclusion by Beach J at [34] that:

On the basis of the agreed facts in my view there is little doubt that the elements of ss 12DB(1)(e) and (g) of the ASIC Act have been made out concerning the making of the representations and their falsity or misleading aspect.

130 However, *ASIC v CBA* is of no assistance to ASIC. That is because the representation alleged and accepted in that case arose in materially different circumstances (namely, where a promotional offer was made to a discrete subset of customers who were invited to pay consideration for certain benefits) and from a different set of contractual documents.

131 Further, that case proceeded on an agreed basis as to the facts, including the representations which had been conveyed. As observed by Beach J at [12], “Before turning to the detail I note that as sufficient factual matters have been agreed, I have not been required to determine any factual question on its merits”.

132 *ASIC v CBA* also proceeded on an agreed basis as to the legal characterisation of those agreed facts and the statutory contraventions ultimately alleged by ASIC. In those circumstances, the Court was not called upon to consider (much less determine) the application of the relevant principles to those materially different facts which had been agreed between the parties. In particular, Beach J referred to these admissions by CBA at [3]–[5].

133 On 26 October 2022, being after the hearing of this proceeding, the decision of *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2022] FCA 1251 (O’Callaghan J) (*ASIC v ANZ*) was handed down. This was also a determination by agreement between a regulator and a party. There are similarities with the facts of that case and this case in that it involved a bank failing to confer a promised contractual benefit on certain customers and ASIC alleged (and ANZ agreed) that on each occasion ANZ issued contractual documents, and an updated version of those documents, ANZ made implied representations that it had, and would continue to have, adequate systems and processes in place to administer the particular benefits on relevant products (as applicable) in accordance with the contractual documents: see, for example, [110] and [179].

134 However, *ASIC v ANZ* is also of no assistance. It proceeded on an agreed basis as to the facts, as well as the legal characterisation of those agreed facts and the statutory contraventions ultimately alleged by ASIC. It involved a different set of contractual documents to that being

considered in this proceeding. Further, insofar as the case concerned an analysis of whether each implied representation in that case was misleading or deceptive, ANZ's systems were substantially manual and therefore susceptible to human error: see [42] and [50]. By contrast, CBA did not have one singular "system" for waiving MAFs during the relevant period, but rather, a network of systems that worked to detect and give effect to a customer's eligibility for a waiver, involving both manual and automated processes.

135 In any event and for reasons already explained, great care should be exercised before applying decisions which involve determinations by agreement between a regulator and a party.

### **Conclusion**

136 For these reasons, ASIC failed to establish that CBA, on each occasion during the relevant period that it entered into a contract with a customer, by the customer's acceptance of the Terms and Conditions, and when it sent a customer an updated version of the Terms and Conditions following the customer's entry into a contract with CBA, conveyed an implied representation that it had, and that it would have, adequate systems and processes in place to ensure that it could provide the MAF waivers where a customer satisfied the criteria specific to a relevant account contained in the Terms and Conditions.

137 Further, if such a representation was conveyed, it was not misleading or deceptive or likely to mislead or deceive because it would not have a sufficient tendency to induce error, having regard to the characteristics of the persons who comprise the relevant class of persons to whom the conduct is directed and the likely effect of the conduct on ordinary and reasonable members of that class.

138 ASIC therefore failed to establish that CBA contravened any of ss 12DA, 12DB(1)(e) or 12DB(1)(g) *ASIC Act* or that it breached its general obligation to comply with financial services laws in contravention of s 912A(1)(c) *Corporations Act*.

## **THE FAIRNESS AND EFFICIENCY CASE**

### **ASIC's allegations**

139 ASIC relevantly alleges that CBA's conduct in incorrectly charging MAFs when customers were entitled to MAF waivers under the Terms and Conditions (defined as **MAF System Failings**) arose out of CBA's continuing failure over the relevant period to establish and maintain appropriate systems and processes to ensure it could apply the MAF waivers in accordance with the Terms and Conditions.



140 ASIC also relevantly alleges that:

- (1) at no stage during the relevant period did CBA conduct a broad review of the MAF System Failings to ensure the MAF waivers were correctly applied to the relevant accounts;
- (2) the 30 instances of incorrect charging were separately identified and investigated, but CBA failed to undertake a review of the systemic problem causing the MAF System Failings to prevent further instances of incorrect charging of MAFs.

141 ASIC then alleges that, by its conduct in each of:

- (1) failing to apply the MAF waivers to customer accounts in respect of relevant accounts (on at least 7,033,346 occasions) over the relevant period when it impliedly represented that it would do so;
- (2) continuing and maintaining throughout the relevant period systems and processes that were not capable of ensuring compliance with obligations to customers; and
- (3) failing to undertake an appropriate review of the multiple systemic issues that contributed to the ongoing failures of CBA's systems to apply MAF waivers in accordance with the Terms and Conditions,

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 in contravention of s 912A(1)(a) *Corporations Act*.

### **Agreed legal issue**

142 The overarching agreed legal issue is whether CBA breached s 912A(1)(a) *Corporations Act* (which CBA denies) by:

- (1) failing to apply the MAF waivers to relevant accounts (on at least 7,033,346 occasions) over the relevant period when it impliedly represented that it would do so;
- (2) continuing and maintaining throughout the relevant period systems and processes that were not capable of ensuring compliance with obligations to customers; and
- (3) failing to undertake an appropriate review of the multiple systemic issues that contributed to the ongoing failures of CBA's systems to apply MAF waivers in accordance with the Terms and Conditions.

## The relevant legislation

- 143 Section 912A(1)(a) *Corporations Act* provides that a financial services licensee “must do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly”.
- 144 In *Australian Securities and Investments Commission v Westpac Securities Administration Ltd* (2019) 272 FCR 170; [2019] FCAFC 187 at [173], Allsop CJ identified that s 912A(1)(a) is part of the statute’s legislative policy to require social and commercial norms or standards of behaviour to be adhered to by a licensee.
- 145 A contravention of s 912A(1)(a) does not depend upon any contravention or breach of a separately existing legal duty or obligation; rather, the statutory standard is itself the source of the obligation: *Australian Securities and Investments Commission v AGM Markets Pty Ltd (in liq) (No 3)* (2020) 275 FCR 57; [2020] FCA 208 (Beach J) (*ASIC v AGM*) at [512].
- 146 The requirement to do all things necessary to “ensure”, and the use of the word “ensure”, is forward looking: see generally *Australian Securities & Investments Commission v AMP Financial Planning Pty Ltd (No 2)* (2020) 377 ALR 55; [2020] FCA 69 at [105] in which Lee J considered the meaning of the word “ensure” in the context of s 961L *Corporations Act* which requires that a financial services licensee must take reasonable steps to ensure that representatives comply with identified provisions of the legislation.
- 147 The phrase “efficiently, honestly and fairly” is a composite or compendious phrase which is generally regarded as 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”: *Australian Securities and Investments Commission v Camelot Derivatives Pty Ltd (In Liquidation); In the Matter of Camelot Derivatives Pty Limited (In Liquidation)* (2012) 88 ACSR 206; [2012] FCA 414 (Foster J) at [69] which was cited with approval in *Cassimatis* at [674] (Edelman J); see also *Westpac Omnibus* at [64] and [66]. In *ASIC v AGM*, Beach J stated at [528] that, “it is not justifiable to take one word from a composite phrase, artificially elevate its significance and read it in a manner asymmetrically in favour of an investor”.
- 148 In *Camelot*, Foster J expressed agreement with the following propositions:
- (1) 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;

- (2) the word "efficient" refers to a person who performs his duties efficiently, meaning the person is adequate in performance, produces the desired effect, 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;
- (3) 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;
- (4) 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.

149 Beach J approved and restated these principles in *Australian Securities and Investments Commission v Westpac Banking Corporation (No 2)* (2018) 266 FCR 147; [2018] FCA 751 at [2347]–[2350], *ASIC v AGM* at [505]–[512] and *Westpac Omnibus* at [60]–[61].

150 The passage from *Camelot* was also restated in *Cassimatis* at [674], with Edelman J observing that the expression "efficiently, honestly and fairly" includes an assessment of reasonable expectations of performance and reasonable standards of performance.

151 In *ASIC v NAB* at [364], in which similar allegations were advanced by ASIC as are made in this proceeding, Derrington J stated that:

[T]here is a difficulty with ASIC's case in this respect in that it is cast in specifically limited terms. It charged that s 912A(1) was breached if NAB did not have systems in place to, *inter alia*, "ensure" that wrongful overcharging did not occur, which was said to result in the conclusion that its services were not been provided efficiently, honestly and fairly. However, such a conclusion does not necessarily follow from the foregoing. It may be undoubted that though s 912A requires the financial licensee to conform to high standards of commercial morality and ethics, it does not require standards of absolute perfection. It is most improbable that the legislature could have intended that the provision of banking services, which necessarily involve human interactions, must be completely free of error or mistake. Therefore, whilst it may be necessary for a bank to have in place systems to ensure that systemic overcharging of fees does not occur, it is quite another thing to suggest that the systems and processes must ensure that no overcharging ever occurs. It is the latter which is the subject of ASIC's allegation in relation to s 912A and, for that reason, it cannot be sustained.

152 Having regard to these authorities, the obligation imposed by s 912A(1)(a) must accommodate the possibility of error; were the position otherwise, then s 912A(1)(a) would set a standard that demanded absolute perfection, rather than a reasonable standard of performance.

### Consideration

153 In support of the fairness and efficiency case, ASIC again relied upon the decision of *ASIC v CBA* and, in particular, the statement by Beach J at [57] that:

In summary there is little doubt that CBA breached its obligation to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a).

154 However, as already observed, *ASIC v CBA* is of no assistance. The case involved materially different circumstances. Further, that case proceeded on an agreed basis as to the facts, as to the legal characterisation of those agreed facts and the statutory contraventions alleged by ASIC. That is made plain by [48], [49], [52]–[56] of that decision. In those circumstances, the Court was not called upon to consider (much less determine) the application of the relevant principles to those materially different facts which had been agreed between the parties.

155 Turning to ASIC’s allegations in this case, while it is accepted that CBA failed to apply the MAF waivers to relevant accounts (on at least 7,033,346 occasions) over the course of the relevant period, there was no *implied* representation that it would apply those waivers (which is the first limb of the fairness and efficiency case). Rather, CBA made an *express* promise that it would apply the MAF waiver if certain criteria were met as identified in the Terms and Conditions.

156 Moreover, s 912A(1)(a) is concerned with an anterior question, namely, the taking of steps to achieve compliance with the statutory norm before any specific instance of non-compliance has arisen. The failures to apply the MAF waivers during the relevant period therefore did not, in themselves, demonstrate any breach of CBA’s forward-looking obligation to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, and ASIC did not identify or establish what CBA should have done – but failed to do – so as to ground a contravention of s 912A(1)(a).

157 As to the second limb of the fairness and efficiency case, being that CBA continued and maintained systems and processes throughout the relevant period “that were not capable of ensuring compliance with obligations to customers”, this allegation implies the existence of a static set of systems and processes. However, CBA introduced new and additional systems,

processes and controls throughout the relevant period directed at preventing the charging of a MAF in circumstances where a MAF waiver should be applied. Further, it implemented system fixes to address the root causes of each MAF Waiver Issue as they were identified and investigated, which ultimately brought an end to the incorrect charging of each particular MAF. Further, throughout the relevant period, CBA “refined and expanded upon” the systems and processes that it already had in place for the charging of MAFs and application of MAF waivers. In these circumstances, it is not the case, and ASIC did not establish, that CBA “continued and maintained” (that is, simply persisted with) deficient systems and processes throughout the relevant period.

158 Further, ASIC’s case was that a finding should be made, unassisted by expert evidence or evidence of any relevant comparator, that CBA’s systems and processes were not “adequate” or “capable” throughout the relevant period. However, a failure to apply a waiver properly at one point in time (or even numerous points in time) does not tell you what it is about CBA’s systems and processes which is not “adequate” or “capable”, or whether that was the case, or when that was the case (including whether it was a continuing failure). All it tells you is that that there has been a failure. A case of the kind brought by ASIC cannot be proved in this way, especially having regard to the need for ASIC to establish what CBA should have done, but failed to do.

159 Although there were at least seven million occasions on which a MAF was *erroneously* charged during the relevant period when it ought to have been waived, CBA applied a MAF waiver to relevant accounts on approximately 610 million occasions during the same period. The occasions on which CBA wrongly charged a MAF therefore represented a very small percentage of the total number of occasions on which CBA was contractually required to waive MAFs during the relevant period (that is, about 1%). CBA’s systems and processes for providing specific MAF waivers were not infallible – no systems are – but they operated as intended almost all of the time. As a consequence, ASIC did not establish that CBA’s systems and processes failed to achieve a reasonable standard of performance. This tells against a conclusion that s 912A(1)(a) has been contravened.

160 ASIC accepted that, upon detection of each MAF Waiver Issue, CBA took steps to investigate the cause of the error; design, implement and test an appropriate mechanism to rectify that error and prevent its recurrence; identify all customers and customer accounts affected by the error in question; and remediate all affected customers (where possible). It formed no part of ASIC’s

case that CBA's systems and processes were deficient in terms of detecting and correcting error – instead, ASIC's case was that no error should have occurred in the first place.

161 A requirement to establish and maintain systems and processes in which an error will *never* occur was not something that was necessary for CBA to do to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly within the meaning of s 912A(1)(a) *Corporations Act*. If the legislature had required perfection from licensees, the legislation would have stated this.

162 The third limb of the fairness and efficiency case was that CBA failed to undertake an “appropriate review”. The notion of an appropriate review is also described by ASIC as a “broad review” and a review of the “systemic problem causing the MAF System Failings”.

163 CBA complained that “ASIC has at no stage identified what is in fact encompassed by the notion of an ‘appropriate review’. That concept is not particularised in the Concise Statement, nor elaborated upon in ASIC's opening submissions”.

164 By oral submissions of its senior counsel, ASIC submitted that an “appropriate review” was a review undertaken of each of the available MAF waivers to see whether the computer systems and processes “had the result that those MAF waivers were actually applied”. It was submitted that it would be an “obvious thing” to a lay person to do: go into the “system which actually applies the [MAF waivers] and check it”.

165 However, as already observed, CBA did not have one singular “system” for waiving MAFs during the relevant period, but rather, a network of systems that worked to detect and give effect to a customer's eligibility for a waiver, involving both manual and automated processes.

166 Further, the notion of an “appropriate review” proceeds from the unstated premise that a review of that character – at some unidentified point in time – had the potential to identify and prevent further MAF Waiver Issues. The burden was therefore upon ASIC to demonstrate how a “broad” or “appropriate review” into one MAF Waiver Issue was capable of preventing the occurrence of unrelated MAF Waiver Issues. ASIC did not attempt to discharge that burden. For example, it did not adduce evidence that CBA's systems and processes fell short of a reasonable standard of performance, and why that was the case (such as by reference to industry standards). Nor did ASIC adduce evidence or otherwise establish that there was a “systemic problem” which caused the different failures to apply the MAF waiver. To the contrary, the

evidence adduced by CBA established that there were a number of different causes of the errors, and no singular “systemic problem” as such.

- 167 Importantly, ASIC adduced no evidence to contradict, and did not challenge, the evidence of Ms Crous that a process of looking at “all the possible types of MAF waiver in existence and checking to see whether those MAF waivers were being properly applied” was “not possible”. Ms Crous also gave unchallenged evidence that:

Given the enormous volume of transactions which occur across all customer accounts, and the enormous volume of statements generated across all customer accounts, it would not be possible to have a process which checked each and every transaction on an account to check that the transaction had legitimately occurred, including whether a fee had been correctly applied. For example, verifying the accuracy of a merchant transaction would involve staff contacting all merchants (in respect of credit and debit card payments) to ensure entries on statements were correct. In respect of fees, a verification process would require a check of every relevant input involved in the correct application of a fee (or a potential fee waiver), including verification of the data relevant to the application of the fee or the entitlement to a fee waiver, verification of whether each data source had been correctly inputted into the relevant system (including manual entries), and verification of whether those systems then correctly analysed the data to apply the fee or fee waiver.

To take an example, where a MAF was incorrectly charged because staff had, through human error, incorrectly recorded some of the relevant information pertaining to the customer and that incorrect information then made its way into the SAP Platform, in order to approach a perfect state of accuracy of customer account statements in all instances, each employee within CBA that dealt with customer accounts would need to have every action they have taken in respect of each account verified by another person. There are instances of human error which are not easily verifiable.

Equally, where the error resulted from a coding error by a computer programmer, in order to approach perfect accuracy and prevent that error from occurring, every action taken by a programmer would need to be verified to ensure that nothing unintended or unanticipated occurred. Preventing human errors in this way is not feasible in any practical resourcing sense.

- 168 That a review of the kind posited by ASIC was not feasible finds support in other evidence adduced by CBA.
- 169 Ms Crous gave evidence that the MAF Waiver Issues related to different types of MAF waiver, which arose at different times, were detected on various dates throughout the relevant period, were identified by CBA through different personnel in different business units, and by different methods and were caused by errors of various types including manual errors and errors relating to the operation of different components of different CBA systems. Her evidence was that, in almost all instances, the incorrect charging had its origins in some form of manual or human error of which there were three broad categories:

- (1) a manual error in the sense that staff members failed to follow a procedure properly or there was an error in the creation of a procedure. Ms Crous gave unchallenged evidence that, while it is necessary to consider the role and potential broader impact of the affected procedure, typically, this category of error is specific to the particular incident. She further stated that there will often be no reason to believe that the specific error would have been repeated in respect of different procedures relating to different systems, products or price options;
- (2) the category of system error, for example, a coding error, a coder failing to follow a process, or a failure to ensure a specific file loads. Ms Crous gave unchallenged evidence that, usually, with this type of error, it is attributable to human error, and absent any other indicative factor, it is neither necessary nor feasible to investigate whether an error of a similar type might have occurred elsewhere in connection with the other systems which support the products for which Everyday Banking is responsible;
- (3) where data relating to a customer may have been incorrectly recorded which may result in them not receiving waivers for which they are eligible, or a fee being incorrectly charged. Ms Crous gave unchallenged evidence that, absent any other indicative factor, there is no reason to think that just because information in relation to one customer was incorrectly recorded it has been likewise incorrectly recorded for other customers.

170 This evidence demonstrated that an “appropriate” or “broad” review of CBA’s systems and processes was not warranted, and the failure by CBA to undertake such a review, even if it had been possible, was not something that was necessary for CBA to do to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly within the meaning of s 912A(1)(a) *Corporations Act*.

### **Conclusion**

171 For these reasons, ASIC failed to establish that 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 in contravention of s 912A(1)(a) *Corporations Act*.



## DISPOSITION

172 The claims for the relief in the originating process will be dismissed with costs.

I certify that the preceding one hundred and seventy-two (172) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Downes.

Associate:



Dated: 29 November 2022

# ANNEXURE

CMF.0003.0008.0041



FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: QUEENSLAND  
DIVISION: GENERAL

NO QUD 96 OF 2021

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

## DOCUMENT A - AMENDED STATEMENT OF AGREED FACTS

### Introduction

1. The Plaintiff, the Australian Securities and Investments Commission (**ASIC**), and the Defendant, Commonwealth Bank of Australia (**CBA**), agree to the facts set out below in this Statement of Agreed Facts for the purposes of s 191 of the *Evidence Act 1995* (Cth).
2. At different times during the period from 1 June 2010 to 11 September 2019 (**Relevant Period**), CBA charged a monthly account fee (**MAF**) of between \$4 and \$6 on certain transaction accounts in circumstances where the account holder was contractually entitled to a waiver of the MAF (**MAF Waiver**).
3. At different times during the Relevant Period, CBA identified at least 30 incidents in which MAF Waivers were not applied. At those times, CBA logged the incidents in its relevant systems and separately investigated those incidents. For the purpose of these proceedings, 29 of these incidents are outlined in **Schedule 6** annexed to this document and collectively referred to as the "**MAF Waiver Issues**".
4. In this document, a reference to "**MI #**" means the MAF incident number identified by the item or row number in Schedule 6.

### CBA Overview

5. CBA is a major Australian bank. As at the close of market on 30 March 2021, CBA was the largest listed company in Australia by market capitalisation, which was approximately \$151 billion.
6. As at 30 June 2020, CBA's total assets exceeded \$1 trillion, and CBA reported a net profit of \$9.634 billion (after tax) for the financial year.
7. CBA at all material times held Australian Financial Services Licence number 234945.

### Monthly Account Fees and Waivers

8. At different times during the Relevant Period, CBA made available the following transaction, savings and investment account types for which a MAF was charged:
  - a) Smart Access;
  - b) Complete Access;

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- c) Streamline e-access;
  - d) Streamline unlimited;
  - e) Streamline (Electronic and Assisted/Electronic);
  - f) Commonwealth Direct Investment;
  - g) Cash Investment Account;
  - h) Cash Management Call Account;
  - i) Savings Investment Account;
  - j) Passbook Savings Account; and
  - k) High Performance Cash Account.<sup>1</sup>
9. A MAF was also charged on the Award Saver Account up until 7 July 2010. CBA has not identified any occasion during the Relevant Period on which a MAF was incorrectly charged on an Award Saver Account. The account types in paragraph 8 above and the Award Saver Account are collectively defined in paragraph 5 of ASIC's Concise Statement as the "**Relevant Accounts**".
10. The contractual rights and obligations of CBA and its customers with respect to the charging of MAFs and the application of a Relevant MAF Waiver (defined at paragraph 12 below) during the Relevant Period were contained in:
- a) the Transaction Savings and Investment Account (**TSIA**) terms and conditions (as amended from time to time by way of variation notices); and / or
  - b) Offer Confirmation Letters (**OCLs**) (OCLs generally contained a description of the price and the current terms for an account, including terms which were in addition to, or which modified any term of, the TSIA terms and conditions)<sup>2</sup>; and / or
  - c) Wealth Package Fact Sheets and Mortgage Advantage Fact Sheets (which formed part of the Wealth Package terms and conditions),
- together, the **Terms and Conditions**.
11. In addition to the MAF Waivers contained in the Terms and Conditions, at different times during and prior to the Relevant Period CBA offered exemptions from MAFs as part of discrete:
- a) promotion offers, being offers to customers via promotional materials, including online advertising, major newspapers, on television and in branch through branch merchandising. Specifically, the "Fee Free for Life Campaign" (**FFFL Campaign**) (which is related to MI #6) was a discrete promotion offer made between 15 November 2009 and 26 February 2010 (**FFFL Campaign Period**); and

<sup>1</sup> The High Performance Cash Account was progressively migrated to the Cash Management Call Account, and the migration was completed by 17 May 2010.

<sup>2</sup> CBA notes that OCLs were only utilised after introduction of the Systems, Applications and Products system ("SAP Platform").

- b) product offers that were disclosed to customers via information materials, such as fact sheets or online materials including via a CommBank webpage. For example, customers applying for the specific home loan product – the No Fee Variable Rate Home Loan product – may have also been eligible for a transaction account with no MAF for the life of the home loan product (being, the No Fee Home Loan (NFHL) Waiver).
12. These proceedings concern the following MAF Waivers which were available at various times during the Relevant Period:
- a) Relationship Balance Waiver;
  - b) Age, Service and Disability Waiver;
  - c) Student / Apprentice Waiver;
  - d) FFFL Campaign Waiver;
  - e) Sum of Deposit Waiver, which was sub-categorised into "Sum of Deposit (General)" and "Sum of Deposit (21-24 year olds)";
  - f) Under 21s Waiver;
  - g) Wealth Package Waiver;
  - h) Home Loan Waiver;
  - i) NFHL Waiver; and
  - j) Migrant Waiver,
- collectively, the **"Relevant MAF Waivers"**.
13. At the commencement of the Relevant Period, 6,756,576 Relevant Accounts (or 5,981,760 Relevant Accounts excluding Award Saver Accounts) were open. 14,841,944 Relevant Accounts (or 14,663,202 Relevant Accounts excluding Award Saver Accounts) were subsequently opened during the Relevant Period. At the commencement of the Penalty Period (being the period between 1 April 2015 and 11 September 2019), 7,490,471 Relevant Accounts (excluding Award Saver Accounts) were open. 6,810,666 Relevant Accounts (excluding Award Saver Accounts) were subsequently opened during the Penalty Period.
14. From at least 1 June 2010, the Terms and Conditions contained one of the following definitions of a MAF, or a definition in substantially similar terms:
- Monthly Account Fee – charged to your account on the first business day each month for the previous complete calendar month.
- OR
- A monthly account fee applies to some accounts. We debit your account each month for the previous complete calendar month [fn 1: The Bank is progressively changing when fees and charges are debited to accounts. During the changeover period, fees and charges will either be debited on the first business day of each month, or, on the first calendar day of each month, depending on the account...]
- OR
- A monthly account fee applies to some accounts. We debit your account on the first calendar day of each month (and when the account is closed or switched to another product) for the previous complete calendar month...

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OR

The monthly account fee and withdrawal fees for transactions made in a month are debited to your account on the first day of the following month. For Passbook accounts, these fees are debited on the first business day of the following month. These fees are also debited when the account is closed...

15. The relevant sections of the Terms and Conditions concerning the definition of a "MAF" are set out in **Schedule 4A** annexed to this document. Unless stated otherwise, the amendments to the TSIA terms and conditions throughout the Relevant Period, and the differences as between different versions of the OCLs, Wealth Package Fact Sheets and Mortgage Advantage Fact Sheets that were issued during the Relevant Period are not material and/or not relevant for the purpose of these proceedings.
16. The amount of the MAF charged on each account type was set out in the Terms and Conditions and was between \$4 and \$6 per month. The MAFs charged to each account during the Relevant Period are set out in **Schedule 3** annexed to this document.
17. During the Relevant Period, CBA issued customer account statements to customers in respect of 10 of the 12 Relevant Accounts (but not the Savings Investment Account and the Passbook Savings Account - together, the "**Passbook Accounts**"). Those customer account statements set out the transaction history on the account, identifying the date of a transaction, the amount debited or credited and a transaction description. In the case of a MAF, the transaction was described in customer account statements during the Relevant Period as a "Prev Month Acct Fee", "Monthly Account Fee", "Account Keeping Fee" or "Account Fee". The specific MAF narrations used on customer account statements in the period from 2008 to 2021 are set out in **Schedule 5** annexed to this document.
18. Customer account statements for the Relevant Accounts during the Relevant Period also contained a note on page 1 directing the customer to check that the entries listed in the statement are correct and / or to contact CBA immediately in the event of any errors in the statement (see **Schedule 5** annexed to this document).
19. The TSIA terms and conditions during the Relevant Period contained words to the effect:
  - a) that as soon as the customer received their statement, they should check and confirm the transactions shown and report any unauthorised transactions to CBA straight away (see **Schedule 4B** annexed to this document); and
  - b) with one exception, that CBA "accept[s] that sometimes we can get things wrong, and when this happens we're determined to make them right again" (see **Schedule 4C** annexed to this document).
20. For the Passbook Accounts, CBA issued customers with a passbook which was generally required to be presented by customers in CBA branches for any deposit or withdrawal by the customer. For deposits by the customer, branch staff printed in a customer's passbook the date of the deposit, a description of the transaction and the amount of the deposit. For withdrawals by the customer, branch staff printed in a customer's passbook the amount of the withdrawal, the balance of the account and a verification comment (being a receipt number, or, if manually recorded, a branch stamp, for each transaction). Other transactions not initiated by the customer, such as account fees (including MAFs), were printed on the passbook when the customer presented it at a CBA branch.

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**Introduction of MAFs and MAF Waivers**

21. All of the Relevant MAF Waivers were introduced on or prior to the Relevant Period with the exception of the Under 21s, Home Loan, NFHL, Sum of Deposit (for 21 – 24 year olds) and Migrant Waivers, as well as that part of the Age, Service or Disability Pension Waiver which applied to those customers on a disability pension and that part of the Student/Apprentice Waiver which applied to those customers who were apprentices.
22. In around 1989, CBA introduced MAFs and certain MAF waivers. The initial MAF waivers applied primarily to students and pensioners. The waiver applicable to pensioner customers was the Pensioner Concession, now the "Age, Service or Disability Pension Waiver".
23. From 1989, the Relevant MAF Waivers were introduced as follows:
  - a) Relationship Balance Waiver was introduced on 1 December 1994;
  - b) Sum of Deposit (General) Waiver was introduced on 1 June 2010, and the Sum of Deposit (21-24 year olds) Waiver was introduced on 17 October 2011;
  - c) Under 21s Waiver was introduced on 8 July 2010;
  - d) Age, Service and Disability Waiver was introduced on 1 February 1989 (thereafter, the disability pension exemption was introduced on the Age, Service and Disability Waiver on 20 March 2013);
  - e) Home Loan Waiver was introduced on 30 September 2015;
  - f) NFHL Waiver was introduced on 1 February 2011;
  - g) Student/Apprentice Waiver (previously referred to as "Full-time Tertiary Students") was introduced on 24 February 1989 (and extended on 8 July 2010 to include apprentices);
  - h) FFFL Campaign Waiver was introduced on 15 November 2009;
  - i) Migrant Waiver was introduced in May 2012, and from introduction was only applied on the Systems, Applications and Products platform (**SAP Platform**); and
  - j) Wealth Package Waiver was introduced in March 2002. In order for a customer to hold a Wealth Package, they needed to have paid the associated annual fee.

**Systems and Processes****Systems during the Relevant Period**

24. At all times during the Relevant Period, CBA had in place systems for the charging of fees (including MAFs) and the application of MAF Waivers.

*Systems applying MAF Waivers*

25. There were three systems or platforms (**Core Banking Platforms**), in combination with other systems, in place during the Relevant Period to apply MAF Waivers, these being:

- a) the Demand Deposit System Platform (**DDS Platform**), CBA's legacy banking platform (that was replaced by the SAP Platform) which was in operation from at least the time MAFs and MAF Waivers were introduced to approximately 2013. However, the migration of the Relevant Accounts to the SAP Platform substantially occurred between September and November 2010.
  - b) the **SAP Platform**, CBA's core banking platform from approximately 2010. The SAP Platform was introduced as part of the Core Banking Modernisation (**CBM**) program, a program that took approximately five years to complete, at a cost of around \$1 billion, commencing in 2007. The CBM program was a major technological change to CBA's core banking platform in which significant resources and capital were invested.
  - c) the **Passbook Platform**, CBA's banking platform for Passbook products, including the Passbook Accounts. The Relationship Balance Waiver and the Age, Service and Disability Waiver were the only two Relevant MAF Waivers available on Passbook Accounts during the Relevant Period.
26. The eligibility criteria for the Relevant MAF Waivers were specified in the Terms and Conditions and the related promotional materials (in the case of the FFFL Campaign Waiver) and information materials (in the case of the NFHL Waiver).
  27. The eligibility criteria for the Relevant MAF Waivers, as they were contained in the Terms and Conditions, are set out in **Schedule 2** annexed to this document.
  28. The eligibility criteria for the Relevant MAF Waivers, as they were contained in the related promotional materials and information materials, are as follows:
    - a) with respect to the FFFL Campaign Waiver, where a customer opened a relevant account during the FFFL Campaign Period and deposited \$2,000 during a particular month, they were entitled to a MAF Waiver on relevant accounts for that month;
    - b) with respect to the NFHL Waiver, where a customer held a No Fee Variable Rate Home Loan, from 1 February 2011 until 1 November 2014 they were entitled to a MAF Waiver on relevant accounts.
  29. Prior to the migration from the DDS Platform to the SAP Platform, the DDS Platform operated to apply some of the Relevant MAF Waivers, being the Relationship Balance Waiver, Sum of Deposit (General) Waiver, FFFL Campaign Waiver, Under 21s Waiver, Student / Apprentice Waiver, Age, Service and Disability Waiver and Wealth Package Waiver.
  30. Post-migration of the Relevant Accounts to the SAP Platform, the application of all of the Relevant MAF Waivers during the Relevant Period was facilitated by the SAP Platform, in conjunction with various other systems which worked:
    - a) to store, maintain or transfer relevant customer, account and other data between systems; or
    - b) to calculate whether customers were eligible for a MAF Waiver.
  31. The Passbook Platform was in operation from at least the introduction of MAFs, and MAF Waivers, in 1989.
  32. For a period of time during the CBM program, the SAP Platform and the DDS Platform were running concurrently until the migration from the DDS Platform to the SAP Platform was completed.

*Account Pricing and Origination*

33. During the Relevant Period, in respect of the DDS Platform and the SAP Platform, customer accounts could be originated by either:
- a) CBA staff, by means of the front end user interface known as CommSee (this is often referred to as the **Assisted Channel**); or
  - b) the customer, by means of the NetBank website, the CommBank website, or the CommBank App (on the SAP Platform only) (**Customer Initiated Channel**).
34. In respect of accounts set up on the SAP Platform, the process of originating an account (referred to as the "origination process") involved:
- a) sourcing relevant information from the customer (for example, name, address and date of birth);
  - b) if the customer was new to CBA, building a customer profile with the customer's relevant information via CommSee which was then stored in either the Customer Information Facility (**CIF**, being a legacy system) or SAP Business Partner (**SAP BP**) which replaced CIF during the Relevant Period. Both CIF and SAP BP continuously interacted with CommSee, for example, it was through CommSee that staff could update the customer's profile on CIF or SAP BP throughout the life of the account;
  - c) determining, among other things, the products (i.e. account types) and price option/s (being, price variations for a given product) which were available for a customer. This determination was conducted by a system called **COSSE** (Customer Offer Sales and Service Engine), in interaction with CommSee or the Customer Initiated Channels;
  - d) applying a price option to each account, noting a given account on the SAP Platform could only have one price option selected at a point in time. In the Assisted Channel, the CBA staff member would select in CommSee an appropriate price option for the customer from those returned by COSSE. In the Customer Initiated Channel, depending on the Relevant MAF Waiver, the price option would generally be applied via the specific application flow on the particular CommBank webpage; and
  - e) thereafter, setting up an account on the SAP Platform with the customer and account details sourced through the steps above. On the SAP Platform, account data was stored in **SAP Banking** including the product, price option and transaction postings for each account. SAP Banking also stored the customer's date of birth, which was derived from SAP BP (or CIF, if applicable) and was used in assessing eligibility for age-based MAF Waivers, for example the Sum of Deposit Waiver and Under 21s Waiver.
35. On the SAP Platform, price options were the means by which a MAF Waiver could be applied. Depending on the type of Relevant Account (for example, Smart Access) and the information on a customer's profile, different price options were available on a Relevant Account.
36. Relevant to the application of a MAF Waiver, there were two categories of price options on which an account could be placed:
- a) price options on which a MAF Waiver was automatically applied on the SAP Platform by virtue of the account being on that particular price option.

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- i. In relation to the Relevant MAF Waivers, the price options falling into this category were the Student Price Option (for the Student / Apprentice Waiver), Welcome to Australia Price Option (for the Migrant Waiver), NFHL Price Option (for the NFHL Waiver) and Wealth Package Price Option (for the Wealth Package Waiver).
    - ii. In order for a customer's account to be placed on one of these price options, the customer needed to have met the defined eligibility criteria for the Relevant MAF Waiver. For example, if a student showed their student ID to a CBA staff member, the student status recorded in CBA's systems meant the customer was eligible to be placed on the Student Price Option, and thereafter the MAF would automatically be waived on the SAP Platform.
  - b) price options which contained various "benefits", such as a MAF Waiver, for which the application of the MAF Waiver depended on the customer's personal data or relevant attributes at the time of settlement (typically scheduled to occur monthly on the first calendar day of a month covering the previous month).
    - i. The Relevant Accounts were each configured with certain benefits, including MAF Waivers. The available benefits differed across the Relevant Accounts.
    - ii. Where an account was placed on a price option containing the benefit of a MAF Waiver/s, the waiver would not be applied on the SAP Platform until the customer met the defined eligibility criteria in any settlement period (i.e. typically the month prior to the time of settlement). For example, if the customer deposited \$2,000 into their account in a calendar month, or held an aggregate of \$50,000 or more in eligible contributing accounts as at the second last business day of each calendar month or received an eligible pension payment.
    - iii. By way of example, the Smart Access Account and the Complete Access Account, when placed on the Classic Price Option (a price option which was available to all customers on certain accounts) had the benefit of the Relationship Balance Waiver, the Sum of Deposit Waiver, the Age, Service and Disability Waiver and the Under 21s Waiver. If the customer met the eligibility criteria for any of these MAF Waivers, the customer would receive a waiver.
37. In respect of accounts set up on the DDS Platform, an account could be originated either by means of the Assisted Channel or the Customer Initiated Channel. The origination process involved the following:
- a) sourcing relevant information from the customer (for example, name, address and date of birth);
  - b) choosing a product and fee option, whether by means of the Assisted Channel or the Customer Initiated Channel, a customer could review the product terms and conditions which listed all products, and their fees, available to them, and the customer would decide on what product and fee option they wanted;
  - c) in the case of the Assisted Channel:
    - i. if the customer was new to CBA, building a customer profile via CommSee, through which CBA staff would select the product and the fee option chosen by the customer. Similar to the SAP Platform, CommSee would interact with CIF in order to create a customer profile in CIF; and

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- ii. thereafter, the account would be set up on the DDS Platform;
  - d) in relation to the Customer Initiated Channel, the customer would be able to select their chosen product and fee option via NetBank or CommBank which would initiate the creation of an account on the DDS Platform and a customer profile in CIF.
38. Accounts were set up on the DDS Platform via offline batching, that is, the system would process the data in large batches overnight so that accounts would be set up the next business day. For accounts originated on the weekend or a public holiday, the offline batching would occur overnight on the next business day.
  39. The DDS Platform and Passbook Platform did not utilise price options for the application of MAF Waivers. Rather, the DDS Platform and Passbook Platform, in applying MAF Waivers, would rely on various 'indicators' applied to each account in these platforms, for example, an indicator for the particular product and fee option which had been selected and a fee exemption type, which, when analysed collectively at settlement, signalled whether a waiver ought to be applied to a given account.
  40. The DDS Platform and Passbook Platform also analysed transaction data of all payments received into customer accounts. When the DDS Platform or the Passbook Platform recognised certain payments to customer accounts, the DDS Platform and Passbook Platform were configured to apply a MAF Waiver to the relevant eligible account each month. For some of the Relevant MAF Waivers, as described below, the DDS Platform and Passbook Platform interacted with other systems in applying the MAF Waiver.
  41. In addition, MAF Waivers could manually be applied on the DDS Platform and Passbook Platform by CBA staff by switching on a "Valued Customer Flag" (referred to as a **V Flag**) on the customer's account, which gave effect to the waiver.

***Summary of the application of the Relevant MAF Waivers during the Relevant Period***

42. Set out below is a summary of how each Relevant MAF Waiver was intended to apply during the Relevant Period by the applicable Core Banking Platforms, in combination with ancillary systems, noting that the application of the Relevant MAF Waivers changed from time to time during the Relevant Period.

***Relationship Balance Waiver***

43. The Relationship Balance Waiver was applied in each of the Core Banking Platforms.
44. The Relationship Balance Waiver is an example of a benefit on certain Relevant Accounts. The application of the Relationship Balance Waiver on the SAP Platform relied on the interaction between the following systems:
  - a) on a monthly basis the Fee Rebate System (**FRS**) sourced:
    - i. customer account balances for transaction and savings accounts and customer account relationships information from the SAP Platform (via a transport layer known as the Operational Data Store (**ODS**)) and from CIF (before CIF was replaced by SAP BP); and
    - ii. customer account balances directly from the Passbook System, the Home Loan System up until 2015 (**HLS**, being CBA's product system for most types of home loans which stored, among other things, account balances) and, for a period of time during the CBM program, the DDS Platform;

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- b) FRS assessed the account balance and account relationships data in order to aggregate account balances from eligible contributing accounts on a monthly basis and calculate the overall Relationship Balance for each customer (i.e. to determine whether or not the \$50,000 threshold had been met);
  - c) once FRS identified those accounts which were eligible for the Relationship Balance Waiver, FRS instructed the SAP Platform, via ODS, to apply an 'indicator' (also referred to as a "flag") that the Relationship Balance Waiver criteria had been met and that the waiver should be applied to those accounts; and
  - d) the Relationship Balance Waiver was only applied on the SAP Platform at settlement to those accounts which were flagged with the indicator.
45. The application of the Relationship Balance Waiver on the DDS Platform relied on the interaction between the following systems:
- a) FRS extracted account balances on a monthly basis from eligible contributing accounts within the Passbook Platform, DDS Platform, the HLS and, for a period of time during the CBM program, the SAP Platform (via ODS), as well as sourcing the account relationships information from CIF to ascertain which accounts should be aggregated for each customer to calculate the overall Relationship Balance for each customer;
  - b) once FRS identified those accounts which were eligible for the Relationship Balance Waiver, FRS instructed the DDS Platform to apply an 'indicator' that the Relationship Balance Waiver criteria had been met and that the waiver should be applied to those accounts; and
  - c) the Relationship Balance Waiver was only applied on the DDS Platform at settlement to those accounts which were flagged with the indicator.
46. The application of the Relationship Balance Waiver to Passbook Accounts in the Passbook Platform, similar to the DDS and SAP Platforms, relied on the following interaction between systems:
- a) FRS extracted account balances on a monthly basis from eligible contributing accounts within the Passbook Platform, the DDS Platform or (via ODS) the SAP Platform (as applicable) and (up until 2015) the HLS, to calculate the overall Relationship Balance for each customer;
  - b) once FRS identified those accounts which were eligible for the Relationship Balance Waiver, FRS instructed the Passbook Platform to apply an 'indicator' that the Relationship Balance Waiver criteria had been met and that the waiver should be applied to those accounts; and
  - c) the Relationship Balance Waiver was only applied in the Passbook Platform at settlement to those accounts which were flagged with the indicator.

*FFFL Campaign Waiver*

- 47. The FFFL Campaign Waiver was a waiver that only applied on the DDS Platform, by way of manual processes.
- 48. In summary, if a customer was determined to have opened their account during the campaign period and deposited \$2,000 per calendar month into the applicable account, a central team would apply the waiver to the applicable accounts by way of switching on a V Flag on the customer's account, which gave effect to the waiver.

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49. After the migration from the DDS Platform to the SAP Platform, customers were migrated to a price option which entitled them to the Sum of Deposit Waiver, if the customer deposited \$2,000 per calendar month into the account. The application of that waiver is described below.

*Sum of Deposit General & 21-24 year olds Waiver*

50. The Sum of Deposit (General) Waiver was applied on both the SAP Platform and the DDS Platform. The Sum of Deposit (21-24 year olds) Waiver was applied only on the SAP Platform.
51. The Sum of Deposit Waiver is an example of a benefit on certain Relevant Accounts.
52. The application of the Sum of Deposit Waivers on the SAP Platform relied on the following:
- a) if a customer was new to CBA, the customer's date of birth was captured within their customer profile in SAP BP (or CIF, if applicable) during the origination process. If a customer was an existing CBA customer, their date of birth on their existing customer profile was utilised when the account was originated. The date of birth was then recorded in SAP Banking, having been derived from SAP BP (or CIF if applicable), when the account was set up on the SAP Platform. The customer's date of birth was relevant to the Sum of Deposit (21-24 year olds) Waiver which required customers to be aged between 21 and 24 years old. If it was a joint account, the oldest date of birth was recorded against the account and was used to assess eligibility for the Sum of Deposit (21-24 year olds) Waiver.
  - b) if the account was opened on or after 1 June 2010, or within the FFFL Campaign Period for customers who were eligible for the FFFL Campaign Waiver, then the account was placed on a price option which had the benefit of the Sum of Deposit Waivers.
  - c) for customers on the eligible price option, the SAP Platform would:
    - i. record the aggregate value of eligible credit transactions to determine the sum of deposits in that account; and
    - ii. determine, based on the customer's date of birth in SAP Banking, whether the customer met the age criteria for the Sum of Deposit (21-24 year olds) Waiver.
  - d) at settlement, the SAP Platform would apply the Sum of Deposit Waivers where the SAP Platform determined that the customer had met the eligibility criteria.
53. On the DDS Platform, in respect of the Sum of Deposit (General) Waiver, if a customer was determined to have met the eligibility criteria at the end of each calendar month (that is, the customer opened their account on or after 1 June 2010, or within the FFFL Campaign Period for customers who were eligible for the FFFL Campaign Waiver, and deposited \$2,000 per calendar month into the applicable account), a central team would apply the waiver to the applicable accounts by way of switching on a V Flag on the customer's account, which gave effect to the waiver.

*Under 21s Waiver*

54. The Under 21s Waiver was applied on both the SAP Platform and the DDS Platform.

55. On the SAP Platform, the Under 21s Waiver is an example of a benefit on certain Relevant Accounts, which relied on the customer's age. The application of the Under 21s Waiver was determined and applied on the SAP Platform, based on the date of birth of the customer. In summary:
- a) if a customer was new to CBA, the customer's date of birth was captured within their customer profile on SAP BP (or CIF, if applicable) during the origination process. If a customer was an existing CBA customer, their date of birth on their existing customer profile was utilised when the account was originated;
  - b) the date of birth was recorded in SAP Banking, having been derived from SAP BP (or CIF if applicable) when the account was set up on the SAP Platform.
  - c) the SAP Platform was configured to automatically apply the Under 21s Waiver at account settlement, if it determined from the date of birth in SAP Banking that the age of the account holder was under 21 years old; and
  - d) where it was a joint account, the SAP Platform was configured to automatically apply the Under 21s Waiver at account settlement, if the SAP Platform determined from the date of birth in SAP Banking that the age of the oldest account holder was under 21 years old.
56. On the DDS Platform, the Under 21s Waiver was applied as follows:
- a) if a customer was new to CBA, the customer's date of birth was captured within their CIF profile during the origination process. If a customer was an existing CBA customer, their existing profile details were used when the account was originated;
  - b) when the account was opened on the DDS Platform, the date of birth was recorded at the account level on the DDS Platform, where it was used to determine the customer's eligibility for the waiver. If it was a joint account, the oldest date of birth was recorded against the account and was used to assess eligibility for the Under 21s Waiver; and
  - c) the DDS Platform was configured to automatically apply the Under 21s Waiver at account settlement where it determined the customer's age was under 21 years old.

*Age, Service and Disability Waiver*

57. The Age, Service and Disability Waiver was applied in each of the Core Banking Platforms.
58. The SAP Platform, DDS Platform and Passbook Platform were configured to:
- a) read and interpret eligible pension payments posted to the Core Banking Platforms in each settlement period; and
  - b) apply the Age, Service and Disability Waiver, following recognition of such a payment.

*NFHL Waiver*

59. The NFHL Waiver from introduction was only applied on the SAP Platform.

60. From February 2011 to approximately May 2012, the application of the NFHL Waiver relied on the Relationship Balance Waiver eligibility criteria, and therefore customers received the waiver via the Relationship Balance Waiver.
61. From approximately May 2012, the NFHL Waiver was applied via a specific price option, being the NFHL Price Option, which meant the waiver was automatically applied on the SAP Platform in each settlement period. In summary:
- a) whether a customer's account was originated via the Assisted Channel or the Customer Initiated Channel, if a customer held a NFHL, this was reflected in the customer's profile in CommSee;
  - b) COSSE determined, and communicated to CommSee, whether the account was eligible to be placed on the NFHL Price Option by analysing the customer profile information in CommSee. The fact that a customer held a NFHL made them eligible for that price option;
  - c) thereafter, the NFHL Price Option would be selected by the CBA staff member, and once the account was set up, or updated (if the account was already open) on the SAP Platform, the price option was recorded in SAP Banking; and
  - d) the SAP Platform was configured to apply the NFHL Waiver at account settlement, by reason of the NFHL Price Option.

*Home Loan Waiver*

62. The Home Loan Waiver from introduction was only applied on the SAP Platform.
63. The Home Loan Waiver is an example of a benefit on certain Relevant Accounts. The application of the Home Loan Waiver relied on the ODS system. In summary:
- a) in determining whether a customer was eligible for the Home Loan Waiver, information held within SAP BP (or CIF, if applicable), SAP Banking and HLS, including the list of the accounts held by that customer, was fed into the ODS system;
  - b) ODS then analysed this information to confirm whether (1) the customer held an eligible Home Loan and an eligible transaction account, (2) the account was held individually or jointly in a personal name; and (3) the debit balance of the loan was greater than \$1; and
  - c) the outcome of that analysis in ODS, that is, whether the customer was eligible for the Home Loan Waiver was fed back to the SAP Platform, where the waiver was applied at settlement to eligible accounts.

*Student / Apprentice Waiver*

64. The Student / Apprentice Waiver was applied in both the SAP Platform and the DDS Platform.
65. On the SAP Platform, the Student / Apprentice Waiver is an example of a waiver which was applied via a particular price option, being the Student Price Option. This meant that the waiver was automatically applied on the SAP Platform at settlement, until the student status expired. In summary:
- a) if a customer was a student or apprentice and presented their student identification card at a CBA branch, the student status, as well as the expiry of that student status based on the student identification card, was inputted into

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CommSee. If an account was originated online by the customer, the customer could select the student application page on the CommBank webpage which had a specific 'student application flow'. This student application flow was programmed to place customers on the Student Pricing Option, subject to COSSE determining the customer's eligibility for that price option, for a period of time, after which the customer would need to visit a CBA branch and present their student identification card to continue to receive the waiver;

- b) by virtue of the student status recorded in CommSee or the online application via the specific 'student application flow', COSSE would determine the customer's entitlement to the Student Price Option and enable the CBA staff member or the student application flow webpage to place the account on that price option; and
  - c) the SAP Platform was configured to apply the Student / Apprentice Waiver at settlement, by virtue of the Student Price Option, until such time as the student status expired. The Student Price Option would be removed automatically once the student status expired.
66. On the DDS Platform, the Student / Apprentice Waiver was applied as follows:
- a) if a customer was a student or apprentice, and presented their student identification card to a CBA staff member, the student status, as well as the expiry of that student status based on the student identification card, was inputted into CommSee, which interacted with the DDS Platform;
  - b) the DDS Platform was configured to apply the Student / Apprentice Waiver at settlement, until the expiry date of the student status.

#### *Migrant Waiver*

67. The Migrant Waiver is an example of a waiver which was applied via a particular price option, being a Welcome to Australia Price Option. This meant that the waiver was automatically applied on the SAP Platform each settlement period. In summary:
- a) in order for a customer to be placed on a Welcome to Australia Price Option, they needed to:
    - i. meet the eligibility criteria;
    - ii. apply to open an Everyday Smart Access account online via the dedicated "Moving to Australia" page on CommBank.com.au (**MTA webpage**). The current MTA webpage, launched in 2014, provided an online origination process for customers to apply for, and open, in real time, an Everyday Smart Access account with a Welcome to Australia Price Option. Prior to this, from 2012, when the Welcome to Australia Price Options were introduced, customers could apply to open an Everyday transaction account prior to arriving in Australia, via an e-form which was provided on a previous version of the MTA webpage; and
    - iii. have cookies enabled on their browser when applying via the MTA webpage. Cookies were used so that when a customer submitted a migrant application form online via the MTA webpage, that application form, in which a Unique Ad Identifier (**UAI**) code (which was historically stored in a cookie on the customer's browser) was embedded, would pass through the application process in order to apply the relevant pricing. The UAI code was linked to a price option, being a Welcome to Australia Price Option and was the mechanism which ensured that a Welcome to Australia Price Option was applied to the account;

- b) when the account was set up, or updated, in the SAP Platform, the price option was recorded in SAP Banking;
- c) the Welcome to Australia Price Option was configured for a period of 12 months, after which the waiver expired; and
- d) the SAP Platform was configured to apply the Migrant Waiver to eligible accounts at settlement, by reason of the Welcome to Australia Price Option.

*Wealth Package Waiver*

- 68. The Wealth Package Waiver was applied on the SAP Platform and the DDS Platform.
- 69. On the SAP Platform, the Wealth Package Waiver is an example of a waiver which was applied via a particular price option, being the Package Accounts Price Option, which meant the waiver was automatically applied on the SAP Platform at settlement. In summary:
  - a) the Package Accounts Price Option could only be applied to existing accounts, that is, a customer, subject to meeting the eligibility criteria, would need to be switched to the Package Accounts Price Option from whichever price option they were on from origination or thereafter;
  - b) if a customer held a Wealth Package, this was reflected in the customer's profile in CommSee;
  - c) as part of the Wealth Package on-boarding, CBA's Package Management team would identify the customer's existing account and perform a manual price option switch to place the customer's account on the Package Accounts Price Option;
  - d) the SAP Platform was configured to apply the Wealth Package Waiver at settlement, by virtue of the Package Accounts Price Option.
- 70. On the DDS Platform, the Wealth Package Waiver was applied as follows:
  - a) if a customer held a Wealth Package, this was reflected in the customer's profile in CommSee. In order for a customer to hold a Wealth Package, they would have had to have paid the associated annual fee;
  - b) CBA understands that when a new Wealth Package was set up, the package management team would apply the relevant pricing to a customer's profile and; and
  - c) the DDS platform was configured to apply the Wealth Package Waiver at settlement, by virtue of the customer's profile having been manually flagged to receive the MAF Waiver.

*Passbook Accounts*

- 71. During the Relevant Period, no new Passbook Accounts were originated, on the basis that as at 30 November 2009, the Passbook Accounts were no longer available for sale. This did not impact existing holders of the Passbook Accounts.

*Processes and controls to introduce the Relevant MAF Waivers*

- 72. At all times during the Relevant Period, CBA had in place processes and controls intended to ensure the Relevant MAF Waivers were applied correctly. Those processes and controls were refined and expanded upon throughout the Relevant Period. The relevant processes and controls about which ASIC and CBA agree are

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summarised in paragraphs 73 to 84 below. Certain of those processes and controls assisted in identifying certain MAF Waiver Issues as further set out in Schedule 6 annexed to this document.

73. Despite these processes and controls, on occasions CBA incorrectly charged MAFs in circumstances where a MAF Waiver should have been applied.<sup>3</sup>
74. Fees and Interest Reasonableness Model (**FIRM**):
  - a) In December 2012, CBA commenced the Major Defects Project to improve the detection and remediation of system-related issues impacting the delivery of deposit and transaction products.
  - b) As a result of the Major Defects Project, in 2015, CBA developed, tested and implemented FIRM, a control designed to detect anomalies resulting from incorrect charging and paying of fees and interest, including customers incorrectly being charged a MAF or not having their MAF waived. FIRM was the subject of external validation by Ernst & Young, as well as internal review.
  - c) FIRM analysed the customer population as a whole, and generated an exception report which identified instances where customers had been charged fees that were either over or under the anticipated amount, and the size or extent of the cohort was beyond CBA's expected variance.
  - d) CBA's product managers considered the exception reports generated by FIRM on a periodic basis. In relation to MAFs, the product managers would select a sample of the exceptions that FIRM had identified and examine whether there was a genuine problem leading to the incorrect charging of MAFs. In most instances there was no error, and the exception report was the result of either insufficient or mismatched data being provided to FIRM or FIRM required coding enhancements to reflect the applicable terms and conditions governing eligibility for MAF Waivers. Where the exception report identified a genuine concern that had not previously been addressed, the product team was responsible for ensuring there was a system fix, model update and, if applicable, that affected customers were remediated.
  - e) For example, MI # 1 and 19 were detected with the assistance of FIRM
75. CBA conducted testing on a quarterly basis as part of its "Control Assurance Program" following the implementation of FIRM which was intended to ensure the ongoing operational effectiveness of FIRM (**CAP testing**).
76. The Product Governance Forum (**PGF**): The Better Customer Outcomes Program (**BCOP**) introduced the PGF in or about March 2015. The PGF/BCOP conducted deep dives into the products in Retail Banking Services (which includes products where a MAF Waiver is applied) on a regular basis and prepared papers containing findings and recommendations for consideration. For example, a review conducted by the BCOP identified MI #10.
77. Financial reporting: The finance department prepared monthly financial reports on financial performance, for example, fee revenue of the business unit for the particular month. The reports were reviewed for anomalies or variances from expected fee revenue results (including, for example, with respect to expected revenue from MAFs).

<sup>3</sup> ASIC notes that further details (which are not agreed) as to these processes and controls are set out in Document C (*Facts in Dispute – Facts relied upon by ASIC*) at paragraph 1.

None of the MAF Waiver Issues were identified as a result of financial reporting of this kind.<sup>4</sup>

78. Audit processes conducted under Group Audit and Assurance (**Group Audit**): The scope and frequency of audits depended on the risk rating of the subject matter. Group Audit reported its findings and any potential issues (including in relation to MAF Waivers) to the Accountable Executive in the Final Internal Audit Report and Final Issues Log. For example, Group Audit identified MI #17 and 23.
79. Customer complaint monitoring: Customer complaints were monitored on a monthly basis to assist in identifying trends in customer complaints with regard to the possible incorrect application of business rules, including MAFs and MAF Waivers. For example, MI #28 was identified following customer complaints regarding student price options not being applied to customer accounts.
80. RiskInSite / Group Risk Management Framework: Since around 2012, CBA had processes in place to record "incidents" in RiskInSite. RiskInSite is CBA's governance risk and compliance management system which supports day to day risk management activities in accordance with its Group Risk Management Framework. CBA staff are required to log an "incident" in RiskInSite when the actual outcome of a business process differs from the expected outcome due to inadequate or failed processes, people or systems and external events.
81. At certain times during the Relevant Period, CBA also had in place a number of specific controls with respect to particular MAF Waivers. For example:
  - a) *Relationship Balance control report*: This report was designed to ensure that the Relationship Balance Waiver was applied correctly. The Relationship Balance control report was a monthly report reviewed by Product Managers within the Everyday Banking division of the Retail Banking Services business unit (which at the time was known as the Deposits and Transactions division). The Product Manager reviewed potentially eligible accounts to determine whether the accounts were eligible for a Relationship Balance Waiver in the previous month.
  - b) *No Fee Variable Rate Home Loan reconciliation model*: In August 2015, CBA introduced a control report designed to ensure that the NFHL Waiver was being correctly applied to customer accounts. The reconciliation model outputs were monitored and tracked to ensure appropriate accountability of investigation and analysis with respect to the NFHL Waiver. The reconciliation model was also subject to CAP testing (outlined in paragraph 75 above).
82. In addition, certain processes and controls were also implemented as part of the migration from the DDS Platform to the SAP Platform (as part of the CBM program).
83. Before the SAP Platform was applied in a "live" environment, CBA undertook "Launch, Pilot, Offer and Migration" testing. Relevantly to the correct application of MAF Waivers, CBA undertook the following testing:
  - a) *Launch testing*: in a SAP testing environment, CBA designed launch testing to test the new capability of savings and transaction accounts when introduced to the new SAP Platform. Launch testing included the testing of MAF Waiver functionality. Various control accounts on the SAP testing environment were prepared and pilot (or test) activities were designed to test various scenarios such as "waive a fee for a customer and capture a reason".

<sup>4</sup> CBA notes the further detail (which is not agreed) as to financial reporting set out in Document C (*Facts in Dispute - Facts relied upon by CBA*) at paragraph 19.

- b) *Migration testing*: CBA designed migration testing to test the entire migration, from the extraction of legacy accounts on the DDS Platform to the loading of these accounts and their corresponding transactions on the SAP Platform. Migration testing included End to End Testing. Relevant to the application of MAF Waivers, End to End testing was designed to test the new SAP functionality introduced during launch worked as expected on the migrated data and applied "Event-based / End of Month settlement" matters such as MAF waivers.
  - c) Further regression testing, which involved testing whether related bank applications on the SAP Platform and other functions operated correctly following launch activities intended to ensure there were no unintended consequences of the change.
84. As a further control, Pricewaterhousecoopers (**PwC**) was engaged to test certain outputs from the testing environments to validate interest, fee and tax calculations. PwC verified that the test environments accurately allowed for instances where the account holder was eligible for a MAF Waiver in respect of the Relevant Accounts that they tested.

#### Incorrect charging of MAFs

85. During the Relevant Period, CBA charged MAFs to certain customers in circumstances where the account holder was contractually entitled to a MAF Waiver. The incorrect charging of MAFs affected the account types listed in **Schedule 1**.
86. CBA accepts that the Relevant MAF Waivers were not applied to accounts for certain customers who were entitled to a MAF Waiver during the Relevant Period and that these errors should not have occurred.
87. In Schedule 6 to ASIC's Concise Statement, ASIC identified the 30 "different ways" during the Relevant Period in which CBA incorrectly charged MAFs when customers were entitled to MAF Waivers. ASIC defined these incidents as "MAF System Failings". In this Statement of Agreed Facts, ASIC no longer presses the allegation with respect to what was identified as item 30 in Schedule 6 to ASIC's Concise Statement.
88. The 29 separate incidents of incorrect charging are collectively, for these proceedings, referred to as the "**MAF Waiver Issues**", as set out in paragraph 3 above. Some of the MAF Waiver Issues involved manual errors by CBA staff.<sup>5</sup>
89. **Schedule 6** annexed to this document sets out in a table for each Relevant MAF Waiver:
- a) the applicable incident number and incident description on RiskInSite;
  - b) the start date of the incorrect charging of the MAF;
  - c) the date facts relevant to the incident were first detected;
  - d) the date(s) of the rectification of the incident (including, where relevant, the system fix date(s));
  - e) a short description of the MAF Waiver Issues connected to each Relevant MAF Waiver; and

<sup>5</sup> ASIC notes the further detail (which is not agreed) as to the causes of the MAF Waiver Issues set out in Document C (*Facts in Dispute – Facts relied upon by ASIC*) at paragraphs 4 to 10.

- f) remediation details of the incident.

**CBA's identification of different incidents of incorrect charging of MAFs**

90. As illustrated in Schedule 6, the MAF Waiver Issues arose, and were detected and rectified, at different times during the Relevant Period. Each of the 29 MAF Waiver Issues related to one of 10 different MAF Waivers, specifically the:

- a) Sum of Deposit Waiver;
- b) FFFL Campaign Waiver;
- c) Relationship Balance Waiver;
- d) Age, Service or Disability Pension Waiver;
- e) NFHL Waiver;
- f) Home Loan Waiver;
- g) Under 21s Waiver;
- h) Migrant Waiver;
- i) Student/Apprentice Waiver; and
- j) Wealth Package Waiver.

Some of the individual MAF Waivers were related to more than one MAF Waiver Issue.

91. In relation to the identification of each MAF Waiver Issue:

- a) On 13 January 2011, IN-SON-11086228 (MI #7), which relates to the Relationship Balance Waiver, was detected through a customer complaint in branch.
- b) On 1 November 2012, IN-018007 (MI #16), which relates to the Age, Service or Disability Pension Waiver, was detected by the CBM team.
- c) On 12 February 2013, IN-015322 (MI #8), which relates to the Relationship Balance Waiver, was detected during monthly manual validation of fee charging in FRS.
- d) On 7 May 2014, IN-034478 (MI #23), which relates to the Under 21s Waiver, was detected through a Group Audit Report, which referenced a customer complaint.
- e) On 30 May 2014, IN-035982 (MI #22), which relates to the Under 21s Waiver, was detected by Group Audit who identified that the SAP Platform design did not align with disclosures in the Terms and Conditions.
- f) On 30 May 2014, IN-035981 (MI #17), which relates to the Age, Service or Disability Pension Waiver, was detected by Group Audit who identified that certain accounts were being charged a MAF when they were entitled to a MAF Waiver, on the basis that an eligible pension had been directly credited to the accounts.

- g) Between May and August 2014, IN-041995 (MI #29), which relates to the Wealth Package Waiver, and IN-037844 (MI #18), which relates to the NFHL Waiver, were detected through a broad review of CBA's interest and fee concession arrangements as part of Project Phoenix.
- h) On 14 August 2015, IN-057843 (MI #27), which relates to the Student / Apprentice Waiver, was detected through business reporting.
- i) On 27 January 2016, IN-077462 (MI #9), which relates to the Relationship Balance Waiver, was detected through a review of a sample of Streamline accounts as part of the BCOP.
- j) On 2 February 2016, IN-080407 (MI #10) and IN-080409 (MI #12), which relate to the Relationship Balance Waiver, were detected through review and analysis as part of BCOP.
- k) On 12 February 2016, IN-082308 (MI #11), which relates to the Relationship Balance Waiver, was detected through a Group Audit review of accounts to check whether fee waivers applied to those accounts matched disclosure in the Terms and Conditions.
- l) On 26 February 2016, IN-081021 (MI #13), which relates to the Relationship Balance Waiver, was detected through a complaint via the Financial Ombudsman Service.
- m) On 19 April 2016, IN-098578 and IN-100318 (MI #19), which relate to the Home Loan Waiver, were detected through FIRM investigations.
- n) On 7 August 2016, IN-099067 (MI #14), which relates to the Relationship Balance Waiver, was detected through incidents raised with the IT Service Desk.
- o) On 16 March 2017, IN-139554 (MI #25), which relates to the Migrant Waiver, was detected through the marketing dashboard which measured "click throughs" from the online portal.
- p) In August 2017, IN-161323 (MI #1) was detected through review of a FIRM exception report. In about August 2018, MI #2 was detected during investigation into IN-161323 (MI #1). Both these incidents relate to the Sum of Deposit Waiver.
- q) On 21 August 2017, IN-157622 (MI #15), which relates to the Relationship Balance Waiver, was detected by a specific FIRM exception report that looked at Relationship Balance errors.
- r) On 8 March 2018, IN-188191 (MI #20), which relates to the Home Loan Waiver, was detected by CBA's Central Investigations and Remediation Team (CIRT) as part of the remediation process for IN-098578 and IN-100318 (MI #19).
- s) In late April 2018, IN-184100 (MI #28), which relates to the Student/Apprentice Waiver, was detected following customer complaints.
- t) On 21 December 2018, IN-222521 (MI #3), which relates to the Sum of Deposit Waiver, was detected during the process of CIRT writing the business rules and data analytics to size the impacted population for the purposes of remediation in respect of IN-161323 (MI #1 and 2).

- u) On 15 February 2019, IN-236232 (MI #4), which relates to the Sum of Deposit Waiver, was detected by CIRT analysis conducted during the process of remediation of IN-161323 (M #1 and 2).
  - v) On 3 April 2019, IN-228525 (MI #26), which relates to the Migrant Waiver, was detected through a reconciliation exercise conducted as part of the rectification of IN-139554 (MI #25).
  - w) On 23 May 2019, IN-240622 (MI #24), which relates to the Under 21s Waiver, was detected by the Fees and Interest Accuracy team as part of their investigation into transaction fees.
  - x) On 24 May 2019, IN-240948 (MI #21), which relates to the Home Loan Waiver, was detected by CIRT as part of the remediation process for IN-188191 (MI #20).
  - y) On 29 July 2019, IN-244288 (MI #5), which relates to the Sum of Deposit Waiver, was detected through self-initiated review of the Sum of Deposit Waiver applications as a result of investigations into IN-161323 (MI #1 and 2).
  - z) On 28 October 2019, IN-267345 (MI #6) was detected through a review into the FFFL Campaign which was self-initiated following the incidents in IN-161323 (MI #1 and 2) and IN-244288 (MI #5).
92. Upon detection of each MAF Waiver Issue, CBA took steps to: (a) investigate the cause of the error; (b) design, implement and test an appropriate mechanism for rectifying that error and preventing its recurrence; (c) identify all customers and customer accounts affected by the error in question and (d) remediate all affected customers.
93. CBA has also implemented, over time, certain processes and controls including ongoing monitoring, directed at preventing the charging of a MAF in circumstances where a Relevant MAF Waiver applies. Some examples of the processes and controls are outlined in paragraphs 73 to 84 above.

#### ***Causes of the MAF Waiver Issues***

94. The paragraphs below summarise the root cause or causes of each MAF Waiver Issue, customers and customer accounts affected and total remediation paid. Each of the root cause or causes identified by CBA and set out below and in Schedule 6 are the root cause or causes of the MAF Waiver Issues.<sup>6</sup>

#### ***Sum of Deposit Waiver***

95. Under the Terms and Conditions the Sum of Deposit Waiver applied to eligible accounts if the account holder met specified criteria including as to amounts deposited in a given month. During the Relevant Period, Schedule 6 records five MAF Waiver Issues in relation to the Sum of Deposit Waiver.
- a) MI #1 concerned the failure to apply the Sum of Deposit (21 - 24 year olds) Waiver as a result of three root causes: a date of birth mismatch, missing transaction codes for the Sum of Deposit calculation and the SAP migration.

<sup>6</sup> The parties note that the characterisations (which are not agreed) of the root cause or causes of the MAF Waiver Issues are set out in Document C. ASIC notes (*Facts in Dispute – Facts relied upon by ASIC*) at paragraphs 4 to 10. CBA notes (*Facts in Dispute – Facts relied upon by CBA*) at paragraphs 13, 14, 20 to 22.

- b) MI #2 was identified during the investigation into MI #1 and concerned the failure to apply the Sum of Deposit (General) Waiver as a result of two root causes: missing transaction codes for the Sum of Deposit calculation and the SAP migration.

A total of 190,847 customers and 173,172 customer accounts were affected by MI #1 and #2, and \$30,517,211.04 in remediation was paid.

- c) MI #3 concerned manual errors by CBA staff who used a generic bank-initiated transaction code (5210) to process customer-initiated deposits. As a result, the deposit was classified as a bank-initiated transaction and therefore not included in the calculation of a customer's Sum of Deposit Waiver when it should have been.
- d) MI #4 concerned certain fund transfers being treated by CBA staff as bank-initiated transactions (not customer-initiated transactions) with the result that they were not being included as deposits in the calculation of a customer's Sum of Deposit Waiver when they should have been.

A total of 4,587 customers and 4,134 customer accounts were affected by MI #3 and MI #4, and \$27,500.79 in remediation was paid.

- e) MI #5 concerned the failure to apply the Sum of Deposit Waiver in respect of customers who had newly established an eligible account on the DDS Platform from 1 June 2010 to the date of migration to the SAP Platform.

A total of 151,065 customers and 129,360 customer accounts were affected by MI #5, and \$2,371,147.32 in remediation was paid.

#### *FFFL Campaign Waiver*

96. The FFFL Campaign was an advertising campaign conducted during the FFFL Campaign Period, under which CBA offered to waive the MAF on any Streamline or Debit MasterCard Transaction Account for a particular month, if the following conditions were met: (a) a Streamline or Debit MasterCard Transaction Account was opened during the FFFL Campaign Period; and (b) the customer deposited \$2,000 or more during that particular month. If an existing customer switched into an eligible account during the FFFL Campaign Period, or otherwise held an eligible account during the FFFL Campaign Period, and deposited \$2,000 or more, such customers were only included in the FFFL Campaign if they specifically requested to be included.
97. The FFFL Campaign was offered to customers through online advertising, major newspapers, branch merchandising and on television. Following the FFFL Campaign, from 1 June 2010, the Sum of Deposit (General) Waiver was made available to eligible customers.
98. During the Relevant Period, Schedule 6 records one MAF Waiver Issue in relation to the FFFL Campaign.
- a) MI #6 concerned the failure to apply the FFFL Campaign Waiver as a result of errors which impacted sub-sets of new and existing customers. A total of 196,788 customers and 179,843 customer accounts were affected and \$26,705,163.57 in remediation was paid.

#### *Relationship Balance Waiver*

99. In broad terms, under the Terms and Conditions, if a customer had an aggregate of savings and borrowings of \$50,000 or more in eligible contributing accounts as at the second last business day of each month, the applicable account was entitled to a MAF Waiver. During the Relevant Period, Schedule 6 records nine MAF Waiver Issues in relation to the Relationship Balance Waiver. By way of summary:

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- a) MI #7 concerned the failure to apply the Relationship Balance Waiver to eligible accounts due to the FRS ("batch job") failing to run on a monthly basis to update the fee status of customer accounts following the migration to the SAP Platform in 2010; and in the month of April 2011, a coding error impacted the FRS rebate flags for that month causing MAFs to be incorrectly applied to certain accounts. A total of 88,296 customers and 77,271 customer accounts were affected and \$878,875.15 in remediation was paid.
- b) MI #8 concerned the failure to apply the Relationship Balance Waiver to eligible accounts due to a manual error in which an incorrect file containing month-end account balances was loaded into FRS for the purposes of the calculation of the balance(s) in eligible contributing account(s) to determine eligibility for the Relationship Balance Waiver on 1 February 2013. A total of 36,202 customers and 35,384 customer accounts were affected and \$171,449.67 in remediation was paid.
- c) MI #9 concerned the failure to apply the Relationship Balance Waiver to eligible Streamline accounts on the "Price option 108 - Special Offer" due to that price option not being configured correctly in the SAP Platform. A total of 224 customers and 190 customer accounts were affected and \$2,280 in remediation was paid.
- d) MI #10 concerned the failure to apply the Relationship Balance Waiver to eligible accounts due to an incorrect configuration of the ODS system which caused issues in calculating the Relationship Balance when the second last business day of the month fell on a Friday. In addition, for a period the Terms and Conditions incorrectly recorded that the Relationship Balance would be calculated on the second last "day" of the month, rather than the second last "business day". A total of 8,398 customers and 7,506 customer accounts were affected and \$36,293.38 in remediation was paid.
- e) MI #11 concerned the failure to apply the Relationship Balance Waiver to eligible accounts due to an error in the wording of the Terms and Conditions which had the effect of not explicitly excluding the balance in non-personal accounts from the Relationship Balance calculation. In addition, system IT issues, primarily as a result of the migration to the SAP Platform, caused waivers to fail for some customers who had switched or closed products mid-month. A total of 100,147 customers and 94,940 customer accounts were affected and \$1,483,849.46 in remediation was paid.
- f) MI #12 concerned the failure to apply the Relationship Balance Waiver to eligible accounts due to a manual error by CBA staff who incorrectly classified some Savings Investment Accounts as "non-personal" (i.e. non-eligible for the Relationship Balance calculation), instead of "personal". A total of 1,384 customers and 1,233 customer accounts were affected and \$10,416.44 in remediation was paid.
- g) MI #13 concerned the failure to apply the Relationship Balance Waiver to eligible Passbook Accounts, by reason of the fact that account statements were not issued for Passbook Accounts resulting in those account holders failing to be notified of changes to eligibility criteria in calculating the Relationship Balance. This had the effect of the Relationship Balance being calculated by reference to the new conditions in circumstances where those customers had not received the required 30 days notification of the new conditions. A total of 3,070 customers and 2,309 customer accounts were affected and \$120,463.30 in remediation was paid.
- h) MI #14 concerned the failure to apply the Relationship Balance Waiver to eligible accounts due to an inadvertent archiving of data files as a result of a one-off system error with the effect that account balances for July 2016 were incorrectly recorded as \$0.00 and did not contribute to the calculation of the Relationship

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Balance. A total of 10,204 customers and 8,629 customer accounts were affected and \$45,823.40 in remediation was paid.

- i) MI #15 concerned the failure to apply the Relationship Balance Waiver to eligible Future Home Saver (**FHS**) Accounts due to a manual error by the Group Reference Data (**GRD**) team in failing to instruct business analysts that the FHS product was to be configured to contribute to the Relationship Balance calculation. A total of 3 customers and 3 customer accounts were affected and \$14 in remediation was paid.

*Age, Service and Disability Waiver*

100. In broad terms, under the Terms and Conditions, if an applicable account was credited with an Aged Pension, Service Pension or, from 20 March 2013, a Disability Pension, the account was entitled to a MAF Waiver. During the Relevant Period, Schedule 6 records two MAF Waiver Issues in relation to the Aged, Service or Disability Pension Waiver. By way of summary:

- a) MI #16 concerned the failure to apply the Age, Service or Disability Pension Waiver to eligible Cash Management Call Accounts (**CMCAs**) due to those accounts not being configured correctly in the SAP Platform upon migration to that system in 2010. As a consequence, CMCAs which were credited with an eligible pension were incorrectly charged a MAF. A total of 3,931 customers and 2,925 customer accounts were affected and \$264,764 in remediation was paid.
- b) MI #17 concerned the failure to apply the Age, Service or Disability Pension Waiver to eligible Smart Access, Complete Access and Streamline accounts due to those accounts not being configured correctly in the SAP Platform upon migration to that system in 2010, and extended to the price options applying to customers under the age of 25. A total of 11,542 customers and 9,926 customer accounts were affected and \$31,605.81 in remediation was paid.

*NFHL Waiver*

101. On 1 February 2011, CBA launched the NFHL product through advertising material. As part of the NFHL product offering, customers were entitled to a MAF Waiver (the NFHL Waiver) on eligible transaction accounts if they held a No Fee Variable Rate Home Loan. During the Relevant Period, Schedule 6 records one MAF Waiver Issue in relation to the NFHL Waiver.

- a) MI #18 concerned manual errors by CBA staff who did not select the correct NFHL Price Option at origination of the NFHL product for some customers. A total of 20,682 customers and 15,531 customer accounts were affected and \$378,450.64 in remediation was paid.

*Home Loan Waiver*

102. From 30 September 2015, the Terms and Conditions broadly provided that customers with a current home loan (excluding Viridian Line of Credit and Equity Unlock for Seniors) held individually or jointly in their personal name(s) and, at certain times subject to further relevant criteria, were entitled to the Home Loan Waiver. Relevantly, between 1 July 2016 and 3 October 2019, customers were required to have a debit balance greater than \$1 on their home loan account to be entitled to the Home Loan Waiver. The requirement to have a debit balance greater than \$1 did not apply during the period 30 September 2015 to 30 June 2016. During the Relevant Period, Schedule 6 records three MAF Waiver Issues in relation to the Home Loan Waiver.

- a) MI #19 concerned a misalignment between the disclosure of the Terms and Conditions to customers (as at 30 September 2015) and the configuration of CBA's systems which only applied the Home Loan Waiver where a Home Loan account had a balance of greater than \$1. A total of 200 customers and 173 customer accounts were affected and approximately \$4,731.89 in remediation was paid.

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- b) MI #20 concerned certain instances where the Home Loan Waiver was not applied because data was not received by the SAP Platform from the ODS system in time for the waiver to be applied. A total of 12,179 customers and 10,684 customer accounts were affected and \$59,185.37 in remediation was paid.
- c) MI #21 concerned a misalignment between the disclosure of the Terms and Conditions to customers (as at 1 July 2016) and the configuration of CBA's systems such that some customers who were entitled to the Home Loan Waiver did not receive the waiver. A total of 4,425 customers and 3,660 customer accounts were affected and \$8,921.75 in remediation was paid.

#### *Under 21s Waiver*

103. In broad terms, under the Terms and Conditions, if an eligible account holder or a beneficiary of a personal trust account was aged under 21 years, the applicable account was entitled to a MAF Waiver. During the Relevant Period, Schedule 6 records three MAF Waiver Issues in relation to the Under 21s Waiver. By way of summary:
- a) MI #22 concerned the failure to apply the Under 21s Waiver due to the SAP Platform not being configured to read the dates of birth of beneficiaries of personal trust accounts and instead using the date of birth of the oldest account holder to determine eligibility for the Under 21s Waiver. As a consequence, certain personal trust accounts with beneficiaries under the age of 21 were incorrectly charged a MAF. A total of 1,882 customers and 2,042 customer accounts were affected and \$91,170.10 in remediation was paid.
  - b) MI #23 concerned the failure to apply the Under 21s Waiver due to a design problem with the SAP Platform whereby, when a customer's date of birth was updated in CommSee, it did not flow through to the SAP Platform. As a consequence, the SAP Platform used the incorrect date of birth in determining eligibility for the Under 21s Waiver resulting in some eligible customers not receiving the Under 21s Waiver. A total of 2,182 customers and 2,218 customer accounts were affected and \$112,748.15 in remediation was paid.
  - c) MI #24 concerned the failure to apply the Under 21s Waiver due to the SAP Platform being configured to use a customer's date of birth at the beginning of the month, regardless of intra-month changes to the date of birth. As a consequence, where a change to a customer's date of birth occurred during a particular month, the updated date of birth was not used for the assessment of the Under 21s Waiver resulting in some eligible customers not receiving the Under 21s Waiver. A total of 4,093 customers and 4,181 customer accounts were affected and \$122,036.24 in remediation was paid.

#### *Migrant Waiver*

104. Under the Terms and Conditions, customers who met certain eligibility criteria and opened an account online through the MTA webpages on CommBank.com.au were entitled to receive the Migrant Waiver. During the Relevant Period, Schedule 6 records two MAF Waiver Issues in relation to the Migrant Waiver. By way of summary:
- a) MI #25 concerned the incorrect configuration of certain webpages in CommBank.com.au which resulted in the UAI codes being removed from some of the call to action links/buttons on the MTA webpages. A total of 11,099 customers and 10,833 customer accounts were affected and \$93,954.02 in remediation was paid.
  - b) MI #26 concerned manual errors arising from the bulk switching of customers into the Welcome to Australia Price Option during the rectification of incident MI #25. A total of 2,187 customers and 2,119 customer accounts were affected and \$5,324.94 in remediation was paid.

*Student / Apprentice Waiver*

105. Broadly, under the Terms and Conditions, if a customer attends an educational institution located in Australia or is undertaking an Australian apprenticeship, an applicable account is entitled to the Student/Apprentice Waiver (at certain times limited to a particular period). During the Relevant Period, Schedule 6 records two MAF Waiver Issues in relation to the Student/Apprentice Waiver. By way of summary:
- a) MI #27 concerned a failure to apply the Student/Apprentice Waiver as a result of a manual error by CBA staff arising from an omission in the Standard Operating Procedures. The Standard Operating Procedures omitted the step that required CBA staff to apply the student price option. A total of 963 customers and 949 customer accounts were affected and \$7,422.19 in remediation was paid.
  - b) MI #28 concerned the failure to apply the Student/Apprentice Waiver by reason of a system error arising from a software update to CommSee which in turn affected data in the ODS system. A total of 20,837 customers and 18,439 customer accounts were affected and \$231,975.59 in remediation was paid.

*Wealth Package Waiver*

106. Broadly, under the Terms and Conditions, a customer who had an eligible Wealth Package and paid an annual package fee was entitled to certain interest and fee discounts including a MAF Waiver on eligible transaction accounts, namely, the Wealth Package Waiver. During the Relevant Period, Schedule 6 records one MAF Waiver Issue relating to the Wealth Package Waiver. By way of summary:
- a) MI #29 concerned 4 manual errors which caused certain Wealth Package customers to pay a MAF when they were entitled to a MAF Waiver. A total of 78,482 customers and 54,904 customer accounts were affected and \$643,241.34 in remediation was paid.

**Remediation**

107. CBA has undertaken separate remediation programs or initiatives (depending on the size or scope of the affected customers) for each of the MAF Waiver Issues in Schedule 6. CBA has provided ASIC with regular updates on the progress of some of those remediation programs (for example the remediation program for MI # 1 and 2).
108. CBA has completed the customer remediation programs for the MAF Waiver Issues. As at 13 September 2021, the total amount remediated to customers or paid to charity where CBA was unable to make payments to customers, is around \$64,426,019 for 965,899 customers<sup>7</sup> across all 29 of the MAF Waiver Issues.
109. Schedule 6 records the amount of remediation that CBA has made to customers who were affected by each of the MAF Waiver Issues.
110. CBA first paid remediation for one of the MAF Waiver Issues (MI #7, IN-SON 1106228) in August 2011. The remediation program CBA conducted in respect of MI #7 was completed by September 2011.
111. The dates on which CBA detected the MAF Waiver Issues and paid remediation are set out in Schedule 6.

<sup>7</sup> This is the total number of customers identified for the purpose of each of the 29 MAF Waiver Issues in Schedule 6. Some customers may have been affected by (and received remediation under) more than one incident and therefore the number of unique customers affected by the MAF Waiver Issues is lower.

112. In some instances, CBA is unable to send a remediation payment – for example because CBA has been unable to contact a customer as it does not have contact details or where the customer is deceased and there is no documentation to identify the executor, administrator or next of kin. CBA's policies and procedures outlined steps that were to be followed including paying the amount to charity or unclaimed monies if after taking reasonable steps the customer could not be contacted.
113. As at 3 November 2021, there are approximately 3,284 customer accounts where CBA has not sent or been able to send a remediation payment or yet made a payment to charity in accordance with CBA's policies and procedures. Reasons for the former are set out in paragraph 112 above and include, by way of example, where the customer is deceased and there is no documentation to identify the executor, administrator or next of kin.
114. Of the \$64,426,019 in remediation paid in respect of 965,899 customers, at least \$345,262 for 53,601 customers was paid to charity where a remediation amount was less than \$10 (or less than \$20 in the case of deceased customers) and the customer no longer has an eligible account with CBA for an electronic funds transfer payment.

**Unpaid interest or compensation**

115. CBA did not pay customers a component for compensation or interest in the remediation programs for 13 of the MAF Waiver Issues, which are set out in **Schedule 7** annexed to this document.
116. Since the establishment in 2015 of a dedicated team which became known as CIRT, all remediation payments to customers affected by a MAF Waiver Issue have included consideration of whether to include a component for interest.

**CBA's steps to address MAF Waivers not correctly applied**

117. Some of the MAF Waiver Issues arose in the context of the transition from CBA's 40-year-old end-of-life software platform to a new SAP Platform and the migration of transaction and retail accounts.
118. During the Relevant Period, CBA has identified certain issues within its systems which have caused some of the MAF Waiver Issues. For example, when the SAP Platform was introduced in 2010, the system was inadequately designed to manage date of birth changes. Consequently, when a customer changed their date of birth at the customer profile level, this did not flow through the system to update at the account level.
119. As set out at paragraphs 2 to 3 above, and further detailed in Schedule 6, CBA incorrectly charged MAFs to customers at different times during the period from 1 June 2010 to 11 September 2019. By 11 September 2019, CBA had completed the Major Defects Project and had introduced FIRM.

**Numbers of times CBA charged MAFs when CBA was not entitled to charge**

120. During the Relevant Period, CBA incorrectly charged MAFs on at least 7 million occasions to approximately 1 million customers across more than 800,000 customer accounts. As stated in paragraph 108 above, CBA has paid around \$64,426,019 in remediation including interest.
121. During the Relevant Period, CBA received around \$48 million (not including interest) in MAFs that were incorrectly charged when a MAF Waiver should have been applied.

122. During the Penalty Period (from 1 April 2015 to 11 September 2019), CBA incorrectly charged MAFs on approximately 2,400,000 occasions to the value of approximately \$11,500,000.
123. During the period from 13 March 2019 to 11 September 2019, CBA incorrectly charged MAFs on 5,834 occasions to the value of \$18,300.

**Effect on customers**

124. During the Relevant Period, some CBA customers were charged a MAF in circumstances where the account holder was contractually entitled to a waiver of the MAF.
125. Around 965,899 customers were incorrectly charged a MAF by CBA on at least 7 million occasions, in circumstances where CBA (before remediation) benefited from at least \$64,426,019 (including interest) in incorrectly charged MAFs (see paragraph 108 above).
126. CBA customers affected by the MAF Waiver Issues suffered financial loss (up until the date the CBA customers were remediated) and inconvenience as a result of these failings because they lost access to those funds at the time.
127. Additionally, because CBA has not paid compensation or interest to those customers identified in paragraph 115 above, those customers were deprived of those amounts for a period of time and were not compensated by CBA for the interest accruing on those amounts.
128. Further, CBA has not paid or been able to pay remediation to all customers such as customers where CBA is unable to send a remediation payment (as noted in paragraph 112 above) or where a remediation amount was less than a certain amount and the customer no longer had an eligible account with CBA (as noted in paragraph 114 above).

**Documents B and C**

This Amended Statement of Agreed Facts has been filed in accordance with the orders of the Court on 9 September 2022. The Amended Statement of Agreed Facts sets out the agreed narrative of facts (including those where their legal significance is in dispute).

The parties have identified:

- the agreed facts, the relevance of which is not agreed in "Document B"; and
- the facts that are not agreed in "Document C".



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



.....  
Ross McInnes  
Clayton Utz  
Lawyer for the Defendant

**Schedule 1 – Relevant Accounts**

Affected accounts	Waivers affecting account types
Smart Access	Sum of Deposit Waiver (General) Sum of Deposit Waiver (21 – 24 year olds) Waiver Home Loan Waiver Under 21s Waiver Wealth Package Waiver Relationship Balance Waiver Age, Service or Disability Pension Waiver Migrant Waiver Student/Apprentice Fee Free for Life Campaign Waiver No Fee Home Loan Waiver
Complete Access	Sum of Deposit Waiver (General) Sum of Deposit Waiver (21 – 24 year olds) Waiver Home Loan Waiver Under 21s Waiver Wealth Package Waiver Relationship Balance Waiver Age, Service or Disability Pension Waiver Student/Apprentice Waiver Fee Free for Life Campaign Waiver No Fee Home Loan Waiver
Streamline e-access	Sum of Deposit Waiver (General) Sum of Deposit Waiver (21 – 24 year olds) Waiver Home Loan Waiver Under 21s Waiver Relationship Balance Waiver Age, Service or Disability Pension Waiver Fee Free for Life Campaign No Fee Home Loan Waiver
Streamline unlimited	Sum of Deposit Waiver (General) Sum of Deposit Waiver (21 – 24 year olds) Waiver Home Loan Waiver Under 21s Waiver Wealth Package Waiver Relationship Balance Waiver Age, Service or Disability Pension Waiver Fee Free for Life Campaign No Fee Home Loan Waiver
Streamline (Electronic and Assisted/Electronic)	Sum of Deposit Waiver (General) Sum of Deposit Waiver (21 – 24 year olds) Waiver Home Loan Waiver Under 21s Waiver Wealth Package Waiver

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Affected accounts	Waivers affecting account types
	Relationship Balance Waiver Age, Service or Disability Pension Waiver Student/Apprentice Waiver No Fee Home Loan Waiver
Commonwealth Direct Investment	Sum of Deposit Waiver (General) Sum of Deposit Waiver (21 – 24 year olds) Waiver Home Loan Waiver Relationship Balance Waiver
Cash Investment Account	Sum of Deposit Waiver (General) Sum of Deposit Waiver (21 – 24 year olds) Waiver Home Loan Waiver Wealth Package Waiver Relationship Balance Waiver
Cash Management Call Account	Sum of Deposit Waiver (General) Sum of Deposit Waiver (21 – 24 year olds) Waiver Home Loan Waiver Wealth Package Waiver Relationship Balance Waiver Age, Service or Disability Pension Waiver
Savings Investment Account	Relationship Balance Waiver Age, Service or Disability Pension Waiver
Passbook Savings Account	Relationship Balance Waiver Age, Service or Disability Pension Waiver
High Performance Cash Account	Relationship Balance Waiver Age, Service or Disability Pension Waiver



## Amended Schedule 2 - Criteria for MAFs Waiver entitlement from Terms and Conditions

	Period in effect	Summary of MAFs Waiver entitlement criteria from Terms and Conditions <sup>1</sup>				
Relationship Balance Waiver						
1.	31 May 2010 – 29 May 2011	<p>If a customer:</p> <ul style="list-style-type: none"><li>holds an applicable account individually and has, as at the second last business day of each month, an aggregate of savings and borrowings of \$50,000 or more (<b>Relationship Balance</b>) in eligible contributing accounts (set out below) being:<ul style="list-style-type: none"><li>the total of the savings and borrowings in eligible contributing accounts held individually; and</li><li>the part of the savings and borrowings in eligible contributing accounts held jointly if that amount in each account were to be apportioned equally among the joint account holders; or</li></ul></li><li>holds an applicable account jointly and has, as at the second last business day of each month, an aggregate of savings and borrowings of \$50,000 or more (<b>Relationship Balance</b>) in eligible contributing accounts (set out below) that he or she holds jointly with the same joint account holders,</li></ul> <p>the applicable account is entitled to a MAF Waiver.</p> <table><tr><th>Eligible contributing accounts</th><th>Accounts that do not contribute to the Relationship Balance</th></tr><tr><td>Accelerator Cash Account, Base Variable Rate Home Loan*, Base Variable Rate Investment Home Loan*, Austudy/Abstudy Loans, AwardSaver Account, CALIA Transaction Facility, Campus Loan, Cash Investment Account, Cash Management Call Account, Complete Access, Complete Home Loan, Commonwealth Direct Investment Account, Farm Management Deposit, Fully Drawn Loan, High Performance Cash Account, Home Equity Facility, Investment Home Loan, Line of Credit (Colonial branded), Money Market Call Account, Mortgage Interest Saver Account, NetBank Saver, Passbook Savings Account, Pensioner Security Account - Keycard/Cheque, Pensioner Security Account - Passbook</td><td>All non-personal accounts, CBFC Products, Commercial Bills, Commonwealth Bank Investment Bonds, Commonwealth Financial Services products, Credit Cards, Development Bank products, First Home Saver Accounts, Homepath products, Superannuation Savings Account, Security Investments</td></tr></table>	Eligible contributing accounts	Accounts that do not contribute to the Relationship Balance	Accelerator Cash Account, Base Variable Rate Home Loan*, Base Variable Rate Investment Home Loan*, Austudy/Abstudy Loans, AwardSaver Account, CALIA Transaction Facility, Campus Loan, Cash Investment Account, Cash Management Call Account, Complete Access, Complete Home Loan, Commonwealth Direct Investment Account, Farm Management Deposit, Fully Drawn Loan, High Performance Cash Account, Home Equity Facility, Investment Home Loan, Line of Credit (Colonial branded), Money Market Call Account, Mortgage Interest Saver Account, NetBank Saver, Passbook Savings Account, Pensioner Security Account - Keycard/Cheque, Pensioner Security Account - Passbook	All non-personal accounts, CBFC Products, Commercial Bills, Commonwealth Bank Investment Bonds, Commonwealth Financial Services products, Credit Cards, Development Bank products, First Home Saver Accounts, Homepath products, Superannuation Savings Account, Security Investments
Eligible contributing accounts	Accounts that do not contribute to the Relationship Balance					
Accelerator Cash Account, Base Variable Rate Home Loan*, Base Variable Rate Investment Home Loan*, Austudy/Abstudy Loans, AwardSaver Account, CALIA Transaction Facility, Campus Loan, Cash Investment Account, Cash Management Call Account, Complete Access, Complete Home Loan, Commonwealth Direct Investment Account, Farm Management Deposit, Fully Drawn Loan, High Performance Cash Account, Home Equity Facility, Investment Home Loan, Line of Credit (Colonial branded), Money Market Call Account, Mortgage Interest Saver Account, NetBank Saver, Passbook Savings Account, Pensioner Security Account - Keycard/Cheque, Pensioner Security Account - Passbook	All non-personal accounts, CBFC Products, Commercial Bills, Commonwealth Bank Investment Bonds, Commonwealth Financial Services products, Credit Cards, Development Bank products, First Home Saver Accounts, Homepath products, Superannuation Savings Account, Security Investments					

<sup>1</sup> The terms and conditions referred to in this schedule are contained within the Transaction Savings and investment Account terms and conditions; Offer Confirmation Letters (OCLs) and Wealth Package Fact Sheets.

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	Period in effect	Summary of MAFs Waiver entitlement criteria from Terms and Conditions <sup>1</sup>		
		<table><tr><td>Personal Credit Line, Personal Loan, Premium Banking Account, Private Banking Account, Viridian Line of Credit, Residential Property Investment Loan, Savings Investment Account, Smart Access, Streamline Account (including Streamline Overdraft), Term Deposit, Term Loan.  * Includes Commonwealth Bank and Colonial branded facilities</td><td>(Negotiable Certificates of Deposit), Youthsaver Account.</td></tr></table>	Personal Credit Line, Personal Loan, Premium Banking Account, Private Banking Account, Viridian Line of Credit, Residential Property Investment Loan, Savings Investment Account, Smart Access, Streamline Account (including Streamline Overdraft), Term Deposit, Term Loan.  * Includes Commonwealth Bank and Colonial branded facilities	(Negotiable Certificates of Deposit), Youthsaver Account.
Personal Credit Line, Personal Loan, Premium Banking Account, Private Banking Account, Viridian Line of Credit, Residential Property Investment Loan, Savings Investment Account, Smart Access, Streamline Account (including Streamline Overdraft), Term Deposit, Term Loan.  * Includes Commonwealth Bank and Colonial branded facilities	(Negotiable Certificates of Deposit), Youthsaver Account.			
2.	30 May 2011 – 11 March 2014	As above except with respect to the eligible accounts, namely: <ul style="list-style-type: none"><li>from 30 May 2011 to 19 March 2013, the eligible contributing accounts included "GoalSaver Account" and did not include "High Performance Cash Account" and "Premium Banking Account"; and</li><li>from 20 March 2013 to 11 March 2014, the eligible contributing accounts included "GoalSaver Account" and an umbrella category "Home Loans" (which was defined as "Commonwealth Bank and Colonial branded facilities - Excludes Staff Home Loans, HomePath Home loans and Home Loans in the name of a non personal entity") and did not include "Base Variable Rate Home Loan", "Base Variable Rate Investment Home Loan", "Complete Home Loan", "Fully Drawn Loan", "High Performance Cash Account", "Home Equity Facility", "Investment Home Loan", "Premium Banking Account" and "Residential Property Investment Loan".</li></ul>		
3.	12 March 2014 – 29 September 2015	As above except that the eligible contributing accounts are as set out below. <table><tr><td><b>Eligible contributing accounts</b></td></tr><tr><td>Accelerator Cash Account, Austudy/Abstudy Loans, AwardSaver Account, CALIA Transaction Facility, Campus Loan, Cash Investment Account, Cash Management Call Account, Complete Access, Commonwealth Direct Investment Account, Farm Management Deposit, GoalSaver Account, Home Loans#, Line of Credit (Colonial branded), Money Market Call Account, Mortgage Interest Saver Account, NetBank Saver, Passbook Savings Account, Pensioner Security Account - Card/Cheque, Pensioner Security Account - Passbook, Personal Credit Line, Personal Loan, Private Banking Account, Viridian Line of Credit, Savings Investment Account, Smart Access, Streamline Account (including Streamline Overdraft), Term Deposit, Term Loan.  # Includes Commonwealth Bank and Colonial branded facilities – Excludes Staff Home Loans, HomePath Home loans and Home Loans in the name of a non personal entity.</td></tr></table>	<b>Eligible contributing accounts</b>	Accelerator Cash Account, Austudy/Abstudy Loans, AwardSaver Account, CALIA Transaction Facility, Campus Loan, Cash Investment Account, Cash Management Call Account, Complete Access, Commonwealth Direct Investment Account, Farm Management Deposit, GoalSaver Account, Home Loans#, Line of Credit (Colonial branded), Money Market Call Account, Mortgage Interest Saver Account, NetBank Saver, Passbook Savings Account, Pensioner Security Account - Card/Cheque, Pensioner Security Account - Passbook, Personal Credit Line, Personal Loan, Private Banking Account, Viridian Line of Credit, Savings Investment Account, Smart Access, Streamline Account (including Streamline Overdraft), Term Deposit, Term Loan.  # Includes Commonwealth Bank and Colonial branded facilities – Excludes Staff Home Loans, HomePath Home loans and Home Loans in the name of a non personal entity.
<b>Eligible contributing accounts</b>				
Accelerator Cash Account, Austudy/Abstudy Loans, AwardSaver Account, CALIA Transaction Facility, Campus Loan, Cash Investment Account, Cash Management Call Account, Complete Access, Commonwealth Direct Investment Account, Farm Management Deposit, GoalSaver Account, Home Loans#, Line of Credit (Colonial branded), Money Market Call Account, Mortgage Interest Saver Account, NetBank Saver, Passbook Savings Account, Pensioner Security Account - Card/Cheque, Pensioner Security Account - Passbook, Personal Credit Line, Personal Loan, Private Banking Account, Viridian Line of Credit, Savings Investment Account, Smart Access, Streamline Account (including Streamline Overdraft), Term Deposit, Term Loan.  # Includes Commonwealth Bank and Colonial branded facilities – Excludes Staff Home Loans, HomePath Home loans and Home Loans in the name of a non personal entity.				

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	Period in effect	Summary of MAFs Waiver entitlement criteria from Terms and Conditions <sup>1</sup>				
4.	30 September 2015 – 8 February 2016	<p>If a customer:</p> <ul style="list-style-type: none"><li>• holds an applicable account either individually or jointly; and</li><li>• has, as at the second last day of each month, an aggregate of savings and borrowings of \$50,000 or more (<b>Relationship Balance</b>) in eligible contributing accounts (set out below) held either individually or jointly,</li></ul> <p>the applicable account is entitled to a MAF Waiver.</p> <table><tr><th>Eligible contributing accounts</th></tr><tr><td>Accelerator Cash Account, Award Saver Account, Cash Investment Account, Cash Management Call Account, Complete Access, Commonwealth Direct Investment Account, Farm Management Deposit, GoalSaver Account, NetBank Saver, Passbook Savings Account, Private Banking Account, Savings Investment Account, Smart Access, Streamline Account, Term Deposit and Viridian Line of Credit.</td></tr></table>	Eligible contributing accounts	Accelerator Cash Account, Award Saver Account, Cash Investment Account, Cash Management Call Account, Complete Access, Commonwealth Direct Investment Account, Farm Management Deposit, GoalSaver Account, NetBank Saver, Passbook Savings Account, Private Banking Account, Savings Investment Account, Smart Access, Streamline Account, Term Deposit and Viridian Line of Credit.		
Eligible contributing accounts						
Accelerator Cash Account, Award Saver Account, Cash Investment Account, Cash Management Call Account, Complete Access, Commonwealth Direct Investment Account, Farm Management Deposit, GoalSaver Account, NetBank Saver, Passbook Savings Account, Private Banking Account, Savings Investment Account, Smart Access, Streamline Account, Term Deposit and Viridian Line of Credit.						
5.	9 February 2016 – 25 August 2016	As above, except that the day of the month on which the applicable account(s) must have the relevant aggregate of savings or borrowings or more is "the second last business day of the month".				
6.	26 August 2016 – 15 December 2016	<p>If a customer:</p> <ul style="list-style-type: none"><li>• holds an applicable account either individually or jointly in personal name(s); and</li><li>• has, as at the second last business day of each month, an aggregate of savings and borrowings of \$50,000 or more (<b>Relationship Balance</b>) in eligible contributing accounts (set out below) held either individually or jointly in personal name(s),</li></ul> <p>the applicable account is entitled to a MAF Waiver.</p> <table><tr><th>Eligible contributing accounts</th><th>Accounts that do not contribute to the Relationship Balance</th></tr><tr><td>All accounts covered by the Transaction, Savings and Investment Accounts Terms and Conditions dated 12 March 2014 as amended as well as the following accounts: Accelerator Cash, Farm Management Deposit, Passbook Savings Private Banking, Term Deposit and Viridian Line of Credit that are held either individually or jointly in personal name(s).</td><td>Any account where one or more of the account holders is a non-personal entity (eg a trustee, company, association or business) or the account is for business purposes.</td></tr></table>	Eligible contributing accounts	Accounts that do not contribute to the Relationship Balance	All accounts covered by the Transaction, Savings and Investment Accounts Terms and Conditions dated 12 March 2014 as amended as well as the following accounts: Accelerator Cash, Farm Management Deposit, Passbook Savings Private Banking, Term Deposit and Viridian Line of Credit that are held either individually or jointly in personal name(s).	Any account where one or more of the account holders is a non-personal entity (eg a trustee, company, association or business) or the account is for business purposes.
Eligible contributing accounts	Accounts that do not contribute to the Relationship Balance					
All accounts covered by the Transaction, Savings and Investment Accounts Terms and Conditions dated 12 March 2014 as amended as well as the following accounts: Accelerator Cash, Farm Management Deposit, Passbook Savings Private Banking, Term Deposit and Viridian Line of Credit that are held either individually or jointly in personal name(s).	Any account where one or more of the account holders is a non-personal entity (eg a trustee, company, association or business) or the account is for business purposes.					

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	Period in effect	Summary of MAFs Waiver entitlement criteria from Terms and Conditions <sup>1</sup>				
7.	16 December 2016 - 30 April 2017	<p>As above except that:</p> <ul style="list-style-type: none"><li>the applicable account must have been held by the customer for at least one calendar month since:<ul style="list-style-type: none"><li>the opening of the account; or</li><li>the price offer applicable to the account changed.</li></ul></li></ul>				
8.	1 May 2017 - 3 October 2019	<p>If a customer:</p> <ul style="list-style-type: none"><li>holds an applicable account either individually or jointly in personal name(s);</li><li>the applicable account has been held by the customer for at least one calendar month since:<ul style="list-style-type: none"><li>the opening of the account; or</li><li>the price offer applicable to the account changed; and</li></ul></li><li>has, as at the second last business day of each month, an aggregate of savings and borrowings of \$50,000 or more (<b>Relationship Balance</b>) in eligible contributing accounts (set out below) held either individually or jointly in personal name(s).</li></ul> <p>the applicable account is entitled to a MAF Waiver.</p> <table><tr><th>Eligible contributing accounts</th><th>Accounts that do not contribute to the Relationship Balance</th></tr><tr><td>All accounts covered by the Transaction, Savings and Investment Accounts Terms and Conditions dated 1 May 2017 as amended as well as the following accounts: Accelerator Cash, Farm Management Deposit, Passbook Savings Private Banking, Term Deposit and Viridian Line of Credit that are held either individually or jointly in personal name(s).</td><td>Any account where one or more of the account holders is a non-personal entity (eg a trustee, company, association or business) or the account is for business purposes.</td></tr></table>	Eligible contributing accounts	Accounts that do not contribute to the Relationship Balance	All accounts covered by the Transaction, Savings and Investment Accounts Terms and Conditions dated 1 May 2017 as amended as well as the following accounts: Accelerator Cash, Farm Management Deposit, Passbook Savings Private Banking, Term Deposit and Viridian Line of Credit that are held either individually or jointly in personal name(s).	Any account where one or more of the account holders is a non-personal entity (eg a trustee, company, association or business) or the account is for business purposes.
Eligible contributing accounts	Accounts that do not contribute to the Relationship Balance					
All accounts covered by the Transaction, Savings and Investment Accounts Terms and Conditions dated 1 May 2017 as amended as well as the following accounts: Accelerator Cash, Farm Management Deposit, Passbook Savings Private Banking, Term Deposit and Viridian Line of Credit that are held either individually or jointly in personal name(s).	Any account where one or more of the account holders is a non-personal entity (eg a trustee, company, association or business) or the account is for business purposes.					

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	Period in effect	Summary of MAFs Waiver entitlement criteria from Terms and Conditions <sup>1</sup>
<b>Age, Service or Disability Pension Waiver</b>		
9.	31 May 2010 – 29 May 2011	If an Australian Service (also referred to as an "Australian War Veteran pension") or Aged pension is directly credited to an applicable account, the applicable account is entitled to a MAF Waiver.
10.	30 May 2011 – 19 March 2013	As above.
11.	20 March 2013 – 11 March 2014	If an Australian Service (also referred to as an "Australian War Veteran pension"), Aged or Disability pension is directly credited to an applicable account, the applicable account is entitled to a MAF Waiver.
12.	12 March 2014 – 30 April 2017	As above.
13.	1 May 2017 – 14 August 2018	As above, except: <ul style="list-style-type: none"> <li>the word "Australian" is removed; and</li> <li>the words "War Veteran" were replaced with "Service".</li> </ul>
14.	15 August 2018 – 3 October 2019	As above except re-insertion of the word "Australian".
<b>Student / Apprentice Waiver<sup>2</sup></b>		
15.	31 May 2010 – 7 July 2010	If the customer is a full-time tertiary student and presents suitable student identification, the applicable account is entitled to a MAF Waiver.
16.	8 July 2010 – 11 March 2014	If the customer attends an education institution located in Australia and supplies suitable student identification, or is undertaking an Australian apprenticeship, the applicable account is entitled to a MAF Waiver.
17.	12 March 2014 – 30 April 2017	As above.
18.	1 May 2017 – 3 October 2019	If the customer is a student and presents suitable student identification, or an apprentice, the applicable account is entitled to a MAF Waiver.

<sup>2</sup> The eligibility criteria for the Student / Apprentice Waiver ceased to appear in the TSIsAs from 1 May 2017. From this date, the evidence of the terms governing the waiving of the MAFs for the Student / Apprentice Waiver is contained in OCLs. Rows 15 to 17 of the Schedule reflect the eligibility criteria for the Student / Apprentice Waiver as set out in the TSIsAs in the period 31 May 2010 to 30 April 2017. Rows 18 to 21 reflect the eligibility criteria for the Student / Apprentice Waiver as set out in OCLs.

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	Period in effect	Summary of MAFs Waiver entitlement criteria from Terms and Conditions <sup>1</sup>
19.	21 January 2014 – 22 January 2015	If the customer attends an education institution located in Australia, or is undertaking an Australian apprenticeship, the applicable account is entitled to a MAF Waiver for 60 days from account opening. Following those 60 days, if the customer visits any branch and shows their student identification, the MAF Waiver continues to apply to the applicable account. <sup>3</sup>
20.	23 January 2015 – 3 October 2019	If the customer attends an education institution located in Australia, or is undertaking an Australian apprenticeship, the applicable account is entitled to a MAF Waiver for 12 months from account opening. <sup>4</sup>
21.	25 January 2013 – 3 October 2019	If the customer attends an education institution located in Australia, and visits any branch and shows their student identification annually, the applicable account is entitled to a MAF Waiver for the following 12 month period. <sup>5</sup>
<b>Sum of Deposit (21-24 year olds) Waiver</b>		
22.	17 October 2011 – 30 April 2017	If the customer: <ul style="list-style-type: none"> <li>• is 21-24 years old and, in the case of joint accounts, none of the customers are over the age of 24;</li> <li>• opened their account on or after 1 June 2010; and</li> <li>• deposits at least \$1,000 into the account each calendar month (excluding Bank initiated transactions), the applicable account is entitled to a MAF Waiver.</li> </ul>
23.	1 May 2017 – 30 July 2018	As above except the words "excluding Bank initiated transactions" are removed.
24.	1 August 2018 – 29 September 2019	If the customer: <ul style="list-style-type: none"> <li>• is 21-24 years old and, in the case of joint accounts, the oldest customer is not over the age of 24; and</li> </ul>

<sup>3</sup> These are the eligibility criteria for the Student / Apprentice Waiver for Smart Access accounts on the Online Student Pricing 1 price option which applied in this period. There were five other price options for the Student / Apprentice Waiver that had their own eligibility criteria applying in different periods.

<sup>4</sup> These are the eligibility criteria for the Student / Apprentice Waiver for Smart Access accounts on the Online Student Pricing 1 price option which applied in this period. There were five other price options for the Student / Apprentice Waiver that had their own eligibility criteria applying in different periods.

<sup>5</sup> These are the eligibility criteria for the Student / Apprentice Waiver for Smart Access accounts and Complete Access accounts on the Student Pricing Amazon price option which applied in this period. There were five other price options for the Student / Apprentice Waiver that had their own eligibility criteria applying in different periods. Sum of Deposit (General) Waiver

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	Period in effect	Summary of MAFs Waiver entitlement criteria from Terms and Conditions <sup>1</sup>
		<ul style="list-style-type: none"> <li>deposits at least \$1,000 into the account each calendar month, then the account is entitled to a MAF Waiver, the applicable account is entitled to a MAF Waiver.</li> </ul>
<b>Sum of Deposit (General) Waiver</b>		
25.	1 June 2010 - 31 July 2018	If the customer: <ul style="list-style-type: none"> <li>opened an applicable account on or after 1 June 2010; and</li> <li>deposits at least \$2,000 into the account in a calendar month (excluding Bank initiated transactions), the applicable account is entitled to a MAF Waiver.</li> </ul>
26.	1 August 2018 - 3 October 2019	If the customer: <ul style="list-style-type: none"> <li>has an applicable account; and</li> <li>deposits at least \$2,000 into the account in a month, the applicable account is entitled to a MAF Waiver.</li> </ul>
<b>Under 21s Waiver</b>		
27.	8 July 2010 – 11 March 2014	If the customer: <ul style="list-style-type: none"> <li>is under the age of 21; and</li> <li>either:               <ul style="list-style-type: none"> <li>an account holder; or</li> <li>the beneficiary of a personal trust account.</li> </ul> </li> </ul> In the case of joint accounts, the oldest account holder is not 21 years old or older, the applicable account is entitled to a MAF Waiver.
28.	12 March 2014 – 6 November 2016	As above.
29.	7 November 2016 – 29 September 2019	If the customer: <ul style="list-style-type: none"> <li>is under the age of 21; and</li> </ul>

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	Period in effect	Summary of MAFs Waiver entitlement criteria from Terms and Conditions <sup>1</sup>
		<ul style="list-style-type: none"> <li>in the case of joint accounts, the oldest account holder is not 21 years or older, the applicable account is entitled to a MAF Waiver.</li> </ul>
30.	30 September 2019 – 3 October 2019	As above except replacement of "21" with "25".
<b>Wealth Package Waiver<sup>2</sup></b>		
31.	23 August 2008 – 11 March 2014	If the customer: <ul style="list-style-type: none"> <li>has a Wealth Package; and</li> <li>pays an annual package fee,</li> </ul> the applicable account is entitled to a MAF Waiver.
32.	12 March 2014 – 2 April 2017	As above.
33.	[removed]	
34.	[removed]	
35.	3 April 2017 – 3 October 2019	If the customer: <ul style="list-style-type: none"> <li>opened a Wealth Package before 3 April 2017, unless the customer has been notified that:               <ul style="list-style-type: none"> <li>the Wealth Package has been set up on, or transferred to, the Bank's package platform; and</li> <li>the Wealth Package Fact Sheet does not apply; and</li> </ul> </li> <li>pays an annual package fee.</li> </ul>
<b>Home Loan Waiver</b>		
37.	30 September 2015 – 30 June 2016	If the customer:

<sup>2</sup> The eligibility criteria for the Wealth Package Waiver ceased to appear in the TSIs from 1 May 2017. From this date, the evidence of the terms governing the waiving of MAFs for the Wealth Package is contained in Wealth Package Fact Sheets and Mortgage Advantage Fact Sheets. For the purpose of these proceedings, the criteria in the Mortgage Advantage Fact Sheets are materially the same as the Wealth Package Fact Sheets.



	Period in effect	Summary of MAFs Waiver entitlement criteria from Terms and Conditions <sup>1</sup>
		<ul style="list-style-type: none"> <li>has a current home loan (excluding Viridian Line of Credit and Equity Unlock Loan for Seniors); and</li> <li>owns that loan either individually or jointly in personal name(s), the applicable account is entitled to a MAF Waiver.</li> </ul>
38.	1 July 2016 – 3 October 2019	<p>If the customer has a current home loan (excluding Viridian Line of Credit and Equity Unlock Loan for Seniors) which:</p> <ul style="list-style-type: none"> <li>is held either individually or jointly in their personal name(s); and</li> <li>has a debit balance greater than \$1, the applicable account is entitled to a MAF Waiver.</li> </ul>
<b>Migrant Waiver<sup>7</sup></b>		
39.	25 May 2012 – 18 January 2019	<p>If the customer:</p> <ul style="list-style-type: none"> <li>is aged 14 years or over;</li> <li>arrives in Australia in the next 3 months from the time they apply;</li> <li>opens the account in their personal name; and</li> <li>opens the account online via a dedicated CBA webpage, the applicable account type is entitled to a MAF Waiver for 12 months.</li> </ul>
40.	29 April 2014 – 18 January 2019	<p>As above, except that if the customer is to attend an education institution located in Australia, the applicable account is entitled to a MAF Waiver for 6 months from account opening.</p> <p>Following those 6 months, if the customer visits any branch and shows their student identification, the applicable account is entitled to a Student/Apprentice MAF Waiver.<sup>8</sup></p>
41.	19 January 2019 – 3 October 2019	<p>If the customer:</p> <ul style="list-style-type: none"> <li>is aged 14 years or over;</li> </ul>

<sup>7</sup> The eligibility criteria for the Migrant Waiver was contained in OCLs.

<sup>8</sup> This row of the Schedule describes the Student / Apprentice Waiver for Smart Access accounts on the 'Welcome to Australia - Student Migrant' price option which applied in this period.

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	Period in effect	Summary of MAFs Waiver entitlement criteria from Terms and Conditions <sup>1</sup>
		<ul style="list-style-type: none"> <li>arrives in Australia in the next 3 months from the time they apply, or arrived within Australia no longer than 3 months before the time they apply; and</li> <li>opens the account in their personal name; and</li> <li>opens the account online via a dedicated CBA webpage,</li> </ul> the applicable account type is entitled to a MAF Waiver for 12 months.
42.	19 January 2019 – 7 March 2019	<p>As above, except that if the customer is to attend or attends an education institution located in Australia, the applicable account is entitled to a MAF Waiver for 6 months from account opening.</p> <p>Following those 6 months, if the customer visits any branch and shows their student identification, the applicable account is entitled to a Student/Apprentice MAF Waiver.<sup>9</sup></p>
43.	8 March 2019 – 3 October 2019	As above, except "6 months" replaced with "12 months". <sup>10</sup>

<sup>9</sup> This row of the Schedule describes the Student / Apprentice Waiver for Smart Access accounts on the 'Welcome to Australia - Student Migrant' price option which applied in this period.

<sup>10</sup> This row of the Schedule describes the Student / Apprentice Waiver for Smart Access accounts on the 'Welcome to Australia - Student Migrant' price option which applied in this period.

**Schedule 3 - Charges applied for MAFs to each Relevant Account**

Relevant Account	MAF charged per month
Smart Access	\$4
Complete Access	\$6
Streamline e-access	\$4
Streamline unlimited	\$6
Streamline (Electronic and Assisted/Electronic)	\$5
Commonwealth Direct Investment	\$5
Cash Investment Account	\$5
Cash Management Call Account	\$5
Award-Saver Account	\$5
Savings Investment Account	\$5
Passbook Savings Account	\$5
High Performance Cash Account	\$5

## Schedule 4A – Definitions of MAF in Terms and Conditions

Time Period	Definition of MAF
from 30 November 2009	a fee "charged to [the customer's] account on the first business day each month for the previous complete calendar month"
from 8 July 2010	<p>"[a] monthly account fee applies to some accounts. We debit your account each month for the previous complete calendar month", with footnote 1 saying that "[t]he Bank is progressively changing when fees and charges are debited to accounts. During the changeover period, fees and charges will either be debited on the first business day of each month, or, on the first calendar day of each month, depending on the account"</p> <p>There were the following variations effective 6 October 2010 to the core front-book TSIA dated 8 July 2010:</p> <ul style="list-style-type: none"> <li>for new accounts opened at a branch in Western Australia, and to accounts with BSB's in the range of 066000 - 066999 (inclusive) opened via 13 2221 or 13 1998, on or after 6 October 2010; and existing accounts opened before 6 October 2010: <ul style="list-style-type: none"> <li>"Monthly account fees are debited to accounts on the first calendar day each month (and when the account is closed or switched to another product)";</li> <li>"Footnote 1 no longer applies to government charges and now reads "The monthly account fee payable for partial months is calculated pro-rata on a daily basis. If you switch price options within the same product the next monthly account fee payable will be the total of the pro-rata monthly account fee payable for each option" ..."</li> </ul> </li> </ul> <p>There were the following variations effective 20 October 2010 to the core front-book TSIA dated 8 July 2010:</p> <ul style="list-style-type: none"> <li>for new accounts opened on or after 20 October 2010; and existing accounts opened before 20 October 2010: <ul style="list-style-type: none"> <li>"Monthly account fees are debited to accounts on the first calendar day each month (and when the account is closed or switched to another product)";</li> <li>"Footnote 1 no longer applies to government charges and now reads "The monthly account fee payable for partial months is calculated pro-rata on a daily basis. If you switch price options within the same product the next monthly account fee payable will be the total of the pro-rata monthly account fee payable for each option" ..."</li> </ul> </li> </ul> <p>There were the following variations effective 20 October 2010 to the core back-book TSIA dated 8 July 2010:</p> <ul style="list-style-type: none"> <li>for new accounts opened on or after 20 October 2010; and existing accounts opened before 20 October 2010:</li> </ul>

Time Period	Definition of MAF
	<ul style="list-style-type: none"> <li>o "Monthly account fees for Smart Access, Complete Access, Streamline, Cash Investment Account and Cash Management Call Account (including former High Performance Cash Account) are debited on the first calendar day each month (and when the account is closed or switched to another product)";</li> <li>o "Monthly account fees for Passbook Savings Account and Savings Investment Account are debited on the first business day each month";</li> <li>o "Footnote 1 no longer applies to government charges, Passbook Savings Account and Savings Investment Account and now reads "The monthly account fee payable for partial months is calculated pro-rata on a daily basis. If you switch price options within the same product the next monthly account fee payable will be the total of the pro-rata monthly account fee payable for each option" ..."</li> </ul>
from 30 May 2011	<p>monthly account fee applies to some accounts. We debit your account on the first calendar day of each month (and when the account is closed or switched to another product) for the previous complete calendar month"</p> <p>The monthly account fee payable for partial months is calculated pro-rata on a daily basis. If you switch price options within the same product the next monthly account fee payable will be the total of the pro-rata monthly account fee payable for each option.</p> <p>There were the following variations to the core TSIA dated 30 May 2011:</p> <ul style="list-style-type: none"> <li>• for Cash Investment Accounts opened with the following features and/or services from 30 May 2011: <ul style="list-style-type: none"> <li>o Business or non-personal entities;</li> <li>o Mailing of multiple statements (unless an overdraft facility applies);</li> <li>o CommBiz, Diamond, Quickline, Online Data Exchange (ODX), eCommDirect, HVDD,</li> <li>o CBALink; or</li> <li>o Merchant facilities,</li> </ul> <p>"[w]e debit your account on the first business day each month for the previous complete calendar month";</p> </li> <li>• for Cash Investment Accounts opened with the following features and/or services from 17 August 2011: <ul style="list-style-type: none"> <li>o CommBiz, Diamond, Quickline, Online Data Exchange (ODX), eCommDirect, HVDD,</li> <li>o CBALink,</li> </ul> <p>"[w]e debit your account on the first business day each month for the previous complete calendar month";</p> </li> <li>• for Cash Investment Accounts opened from 17 October 2011 and from 5 November 2011 with: <ul style="list-style-type: none"> <li>o CommBiz, Diamond, Quickline, Online Data Exchange (ODX), eCommDirect, HVDD or CBALink,</li> </ul> <p>"Debited on the first business day each month for the previous complete calendar month";</p> </li> </ul> <p>In relation to the back-book versions of the TSIA's on various dates from 30 May 2011:</p>

Time Period	Definition of MAF
	<ul style="list-style-type: none"> <li>A monthly account fee applies to some accounts. We debit your account each month for the previous complete calendar month. For Smart Access, Complete Access, Streamline, Cash Investment Account and Cash Management Call Account - on the first calendar day of each month (and when the account is closed or switched to another product), and for Passbook Savings Account and Savings Investment Account - on the first business day each month.</li> </ul> <p>There was the following variation to the TSIA dated 12 March 2014 on various dates from 12 March 2014:</p> <ul style="list-style-type: none"> <li>"Monthly account fees and Government charges for Commonwealth Direct Investment Account are debited on the first calendar day each month (and when the account is closed or switched to another product)."</li> </ul>
from 1 May 2017 to September 2019	<p>"[t]he monthly account fee and withdrawal fees for transactions made in a month are debited to your account on the first day of the following month. For Passbook accounts, these fees are debited on the first business day of the following month. These fees are also debited when the account is closed".</p> <p>If, during a month, you switch account types or price options or your account is closed:</p> <ul style="list-style-type: none"> <li>The monthly account fee for each account type or price option is calculated pro-rata on a daily basis and added together as your total fee for the month.</li> </ul>

## Schedule 4B - Other Terms and Conditions

Period in effect	Summary of term in the Terms and Conditions	Reference
30 November 2009 – 7 July 2010	<p><i>'Section 2: Opening and operating your Transaction, Savings and Investment accounts</i></p> <p>...</p> <p><i>How to find out what is in your account</i></p> <p>...</p> <p><i>You should retain all transaction records to enable you to verify entries. Check these entries for accuracy as soon as you receive your statement. Report any unauthorised transactions to the Bank as soon as possible. The date which appears on the transaction record may vary from the date that appears on your statement of account. This is due to the fact that transactions completed on non-business days and after 'cut-off' time on business days (typically mid to late afternoon) may be held over to be processed on the next business day. If you have a query regarding any entries on your statement, you should call 13 2221.'</i></p>	TSIA dated 30 November 2009 [CBA.0001.0001.0093] at pp 26-27
8 July 2010 – 29 May 2011	<p><i>'Section 2: Other things you should know</i></p> <p><i>Your account statements and notices</i></p> <p>...</p> <p><i>Checking the transactions on your statement</i></p> <p><i>As soon as you receive your statement, you should confirm the transactions shown with your transaction records and report any unauthorised transactions to us straight away. When you check your transactions, keep in mind that the date you made a transaction may be different to the date shown on your statement. To find out more information on transaction processing dates, visit our website or call us.'</i></p>	TSIA dated 8 July 2010 [CBA.0001.0001.0140] at p 17
30 May 2011 – 19 March 2013	<p><i>'Part 2: Other things you should know</i></p> <p><i>2.1 Your account statements and notices</i></p> <p>...</p> <p><i>Checking the transactions on your statement</i></p> <p><i>As soon as you receive your statement, you should confirm the transactions shown with your transaction records and report any unauthorised transactions to us straight away. When you check your transactions, keep in mind that the date you made a transaction may be different to the date shown on your statement. To find out more information on transaction processing dates, visit our website or call us.'</i></p>	TSIA dated 30 May 2011 [CBA.0001.0001.0322] at p 16

Period in effect	Summary of term in the Terms and Conditions	Reference
20 March 2013 – 30 December 2013	<p><i>'Part 2: Other things you should know</i>  <i>2.1 Your account statements and notices</i>  <i>...</i>  <i>Checking the transactions on your statement</i>  <i>As soon as you receive your statement, you should confirm the transactions shown with your transaction records and report any unauthorised transactions to us straight away. When you check your transactions, keep in mind that the date you made a transaction may be different to the date shown on your statement. To find out more information on transaction processing dates, visit our website or call us.'</i></p>	TSIA dated 20 March 2013 [CBA.0001.0001.0568] at p 16
31 December 2013 – 11 March 2014	<p><i>'Part 2: Other things you should know</i>  <i>2.1 Your account statements and notices</i>  <i>...</i>  <i>Checking the transactions on your statement</i>  <i>As soon as you receive your statement, you should confirm the transactions shown with your transaction records and report any unauthorised transactions to us straight away. When you check your transactions, keep in mind that the date you made a transaction may be different to the date shown on your statement. To find out more information on transaction processing dates, visit our website or call us.'</i></p>	TSIA dated 31 December 2013 [CBA.0001.0001.0940] at p 19
12 March 2014 – 30 April 2017	<p><i>'Part 2: Other things you should know</i>  <i>2.1 Your account statements and notices</i>  <i>...</i>  <i>Checking the transactions on your statement</i>  <i>As soon as you receive your statement, you should confirm the transactions shown with your transaction records and report any unauthorised transactions to us straight away. When you check your transactions, keep in mind that the date you made a transaction may be different to the date shown on your statement. To find out more information on transaction processing dates, visit our website or call us.'</i></p>	TSIA dated 12 March 2014 [CBA.0001.0001.0998] at p 19
1 May 2017 – 29 September 2019	<p><i>'2. Managing your account</i>  <i>2.1 How you'll receive your account statements</i>  <i>...</i>  <i>Check your statement as soon as you get it. If you see any transaction you're unsure about, let us know straight away. Remember that the date you made a transaction could be different to the date on the statement (it may be the day we process the transaction - or, for overseas transactions, the transaction date in the relevant country).'</i></p>	TSIA dated 1 May 2017 [CBA.0001.0001.7699] at p 10



## Schedule 4C - Other Terms and Conditions

Period in effect	Summary of term in the Terms and Conditions	Reference
30 November 2009 – 7 July 2010	<p>'Section 2: Opening and operating your Transaction, Savings and Investment accounts</p> <p>...</p> <p><i>What if you have a complaint?</i></p> <p>We aim to provide excellent customer service. If you think we have failed, you should let us know promptly so that we can try and put things right. Also, by telling us where you think we have failed, we will be able to provide you a better service in the future. To assist you, we offer free internal and external avenues to deal with your concerns.'</p>	TSIA dated 30 November 2009 [CBA.0001.0001.0093] at p 30
8 July 2010 – 29 May 2011	<p>'Section 2: Other things you should know</p> <p>...</p> <p><i>How you can make a complaint</i></p> <p>If you have a complaint, we want to hear about it and take the opportunity to resolve it to your satisfaction. We will investigate the complaint, answer your questions and do all we can to regain your confidence.'</p>	TSIA dated 8 July 2010 [CBA.0001.0001.0140] at p 24
30 May 2011 – 19 March 2013	<p>'Part 2: Other things you should know</p> <p>...</p> <p><i>2.10 What to do if you have a complaint?</i></p> <p>We accept that sometimes we can get things wrong, and when this happens we're determined to make them right again.'</p>	TSIA dated 30 May 2011 [CBA.0001.0001.0322] at p 22
20 March 2013 – 30 December 2013	<p>'Part 2: Other things you should know</p> <p>...</p> <p><i>2.10 What to do if you have a complaint?</i></p> <p>We accept that sometimes we can get things wrong, and when this happens we're determined to make them right again.'</p>	TSIA dated 20 March 2013 [CBA.0001.0001.0568] at p 23
31 December 2013 – 11 March 2014	<p>'Part 2: Other things you should know</p> <p>...</p> <p><i>2.11 What to do if you have a complaint?</i></p> <p>We accept that sometimes we can get things wrong, and when this happens we're determined to make them right again.'</p>	TSIA dated 31 December 2013 [CBA.0001.0001.0940] at p 28
12 March 2014 – 30 April 2017	<p>'Part 2: Other things you should know</p> <p>...</p> <p><i>2.11 What to do if you have a complaint?</i></p>	TSIA dated 12 March 2014 [CBA.0001.0001.0996] at p 28

Period in effect	Summary of term in the Terms and Conditions	Reference
	<i>We accept that sometimes we can get things wrong, and when this happens we're determined to make them right again.'</i>	
1 May 2017 – 29 September 2019	<i>'4.7. Making a complaint We try to get things right the first time - but if we don't, we'll do what we can to fix it.'</i>	TSIA dated 1 May 2017 [CBA.0001.0001.7699] at p 28

## Amended Schedule 5 – Narrations and notes on bank statements

Relevant Account	Date Period in Use	Description/ Narration	Document ID (example)	Notes
Smart Access	2008-2010	"Prev Month Acct Fee" "Monthly Account Fee"	CBA.3000.1024.0029 (2008) CBA.3000.1024.0070 (2009) CBA.1000.0044.0102 (2010)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
		"Account Keeping Fee" "Monthly Account Fee"	CBA.1000.0046.0027 (2010)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
	2011	"Account Keeping Fee" "Account Fee"	CBA.1000.0044.0110 (2011)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.

Relevant Account	Date Period in Use	Description/ Narration	Document ID (example)	Notes
	2012-2020	"Account Fee"	CBA.1000.0044.0122 (2012) CBA.1000.0044.0125 (2013)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
			CBA.1000.0044.0132 (2014) CBA.1000.0044.0138 (2015) CBA.1000.0044.0145 (2016) CBA.1000.0044.0155 (2017)	Note: Please check that the entries listed on this statement are correct. For further information on your account including details of features, fees, any errors or complaints, please contact us on the details above. Proceeds of cheques are not available until cleared.
			CBA.1000.0044.0163 (2018) CBA.1000.0044.0395 (2019) CBA.3000.1027.0001 (2020)	Note: Have you checked your statement today? It's easy to find out more information about each of your transactions by logging on to the CommBank App or NetBank. Should you have any questions on fees or see an error please contact us on the details above. Cheque proceeds are available when cleared.
Complete Access	2008-2010	"Prev Month Acct Fee"	CBA.3000.1024.0023 (2008)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
		"Monthly Account Fee"	CBA.3000.1024.0062 (2009)	
		"Prev Month Acct Fee"	CBA.1000.0044.0223 (2010)	Note: Proceeds of cheques are not available until cleared. Please

Relevant Account	Date Period in Use	Description/ Narration	Document ID (example)	Notes
				check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
		"Account Keeping Fee" "Monthly Account Fee"	CBA.1000.0046.0023 (2010)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
	2011	"Account Keeping Fee" "Account Fee"	CBA.1000.0044.0225 (2011)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
	2012-2020	"Account Fee"	CBA.1000.0044.0251 (2012)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of

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				benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
			CBA.1000.0044.0233 (2013)	Note: Please check that the entries listed on this statement are correct. For further information on your account including details of features, fees, any errors or complaints, please contact us on the details above. Proceeds of cheques are not available until cleared.
			CBA.1000.0044.0267 (2014)	
			CBA.1000.0044.0276 (2015)	
			CBA.1000.0044.0281 (2016)	
			CBA.1000.0044.0290 (2017)	
			CBA.1000.0044.0306 (2018)	Note: Have you checked your statement today? It's easy to find out more information about each of your transactions by logging on to the CommBank App or NetBank. Should you have any questions on fees or see an error please contact us on the details above. Cheque proceeds are available when cleared.
			CBA.1000.0044.0315 (2019)	
			CBA.3000.1020.0012 (2020)	
Streamline e-Access	2008-2009	"Prev Month Acct Fee"	CBA.3000.1024.0037 (2008)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
		"Monthly Account Fee"	CBA.3000.1024.0078 (2009)	
	2010	"Prev Month Acct Fee"	CBA.1000.0044.0213 (2010)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint,

Relevant Account	Date Period in Use	Description/ Narration	Document ID (example)	Notes
				information about our dispute resolution process is available from the same enquiry number.
Streamline Unlimited	2008-2010	"Prev Month Acct Fee" "Monthly Account Fee"	CBA.3000.1024.0045 (2008) CBA.3000.1024.0082 (2009) CBA.1000.0044.0221 (2010)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
Streamline (Electronic and Assisted/ Electronic)	2008-2010	"Prev Month Acct Fee" "Monthly Account Fee"	CBA.3000.1024.0033 (2008) CBA.3000.1024.0072 (2009) CBA.1000.0044.0174 (2010)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
		"Prev Month Acct Fee" "Account Keeping Fee" "Monthly Account Fee"	CBA.1000.0046.0029 (2010)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
	2011	"Account Fee"	CBA.1000.0044.0176 (2011)	Note: Proceeds of cheques are not available until cleared. Please

Relevant Account	Date Period in Use	Description/ Narration	Document ID (example)	Notes
				check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
		"Account Keeping Fee" "Account Fee"	CBA.1000.0048.0014 (2011)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
	2012-2018	"Account Fee"	CBA.1000.0044.0178 (2012)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221 Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
			CBA.1000.0044.0179 (2013)	Note: Please check that the entries listed on this statement are correct. For further information on your account including; details of features, fees, any errors or complaints, please contact us on the details above. Proceeds of cheques are not available until cleared.
			CBA.1000.0044.0185 (2015) CBA.1000.0044.0195 (2016) CBA.1000.0044.0200 (2017)	



Relevant Account	Date Period in Use	Description/ Narration	Document ID (example)	Notes
			CBA.1000.0044.0205 (2018)	Note: Have you checked your statement today? It's easy to find out more information about each of your transactions by logging on to the CommBank App or NetBank. Should you have any questions on fees or see an error please contact us on the details above. Cheque proceeds are available when cleared.
Commonwealth Direct Investment	2014-2020	"Account Fee"	CBA.1000.0044.0316 (2014)	Note: Please check that the entries listed on this statement are correct. For further information on your account including; details of features, fees, any errors or complaints, please contact us on the details above. Proceeds of cheques are not available until cleared.
			CBA.1000.0044.0325 (2015)	
			CBA.1000.0044.0322 (2016)	
			CBA.1000.0044.0328 (2017)	
			CBA.1000.0044.0332 (2018) CBA.1000.0044.0398 (2019) CBA.3000.1020.0001 (2020)	Note: Have you checked your statement today? It's easy to find out more information about each of your transactions by logging on to the CommBank App or NetBank. Should you have any questions on fees or see an error please contact us on the details above. Cheque proceeds are available when cleared.
Cash Investment	2008-2010	"Prev Month Acct Fee"	CBA.3000.1024.0057 (2008)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221 or call your Relationship Manager. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
			CBA.3000.1024.0055 (2009) CBA.1000.0044.0336 (2010)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of

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				benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
	2010	"Prev Month Acct Fee" "Account Keeping Fee"	CBA.1000.0046.0017 (2010)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
	2011	"Account Keeping Fee" "Account Fee"	CBA.1000.0044.0338 (2011)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
	2012-2020	"Account Fee"	CBA.1000.0044.0340 (2012) CBA.1000.0044.0342 (2013)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.

Relevant Account	Date Period in Use	Description/ Narration	Document ID (example)	Notes
			CBA.1000.0044.0344 (2014) CBA.1000.0044.0346 (2015) CBA.1000.0044.0347 (2016) CBA.1000.0044.0350 (2017)	Note: Please check that the entries listed on this statement are correct. For further information on your account including; details of features, fees, any errors or complaints, please contact us on the details above. Proceeds of cheques are not available until cleared.
			CBA.1000.0044.0352 (2018) CBA.1000.0044.0357 (2019) CBA.3000.1020.0005 (2020)	Note: Have you checked your statement today? It's easy to find out more information about each of your transactions by logging on to the CommBank App or NetBank. Should you have any questions on fees or see an error please contact us on the details above. Cheque proceeds are available when cleared.
Cash Management Call	2008-2010	"Prev Month Acct Fee"	CBA.3000.1024.0021 (2008) CBA.3000.1024.0059 (2009) CBA.1000.0044.0361 (2010)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
	2010	"Prev Month Acct Fee" "Account Keeping Fee"	CBA.1000.0046.0019 (2010)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
	2011	"Account Keeping Fee" "Account Fee"	CBA.1000.0044.0363 (2011)	Note: Proceeds of cheques are not available until cleared. Please

Relevant Account	Date Period in Use	Description/ Narration	Document ID (example)	Notes
	2012-2020	"Account Fee"		check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
			CBA.1000.0044.0367 (2012)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
			CBA.1000.0044.0369 (2013)	Note: Please check that the entries listed on this statement are correct. For further information on your account including details of features, fees, any errors or complaints, please contact us on the details above. Proceeds of cheques are not available until cleared.
			CBA.1000.0044.0373 (2014)	
			CBA.1000.0044.0379 (2015)	
			CBA.1000.0044.0385 (2016)	
			CBA.1000.0044.0386 (2017)	Note: Have you checked your statement today? It's easy to find out more information about each of your transactions by logging on to the CommBank App or NetBank. Should you have any questions on fees or see an error please contact us on the details above. Cheque proceeds are available when cleared.
AwardSaver Account	2008-2010	"Prev Month Acct Fee"	CBA.1000.0044.0388 (2018)	
			CBA.1000.0044.0391 (2019)	
			CBA.3000.1020.0009 (2020)	
			CBA.3000.1024.0053 (2008)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on
			CBA.3000.1024.0043 (2009)	
			CBA.3000.1019.0003 (2010)	

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				13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
High Performance Cash	2008-2010	"Prev Month Acct Fee"	CBA.3000.1024.0027 (2008) CBA.3000.1024.0068 (2009)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.
			CBA.3000.1019.0008 (2010)	Note: Proceeds of cheques are not available until cleared. Please check that the entries listed on this statement are correct. If there are any errors, please contact the Bank immediately on 13 2221 or call your Relationship Manager. Further information about your account, including details of benefits or fees and charges, is available by telephoning the enquiry number listed above. If you have a complaint, information about our dispute resolution process is available from the same enquiry number.

## Amended Schedule 6 – MAF Waiver Issues

Table 6A: Incidents relating to the Sum of Deposit Waiver

No	Incident	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
1.	Entitlement calculated incorrectly for waiver based on total of value of deposits by customer (Sum of Deposit Waiver (21-24 year olds)) <b>IN-161323</b>	2011	August 2017	1/08/2018 (TSIA update)	<p>MI #1 and #2 relate to the same "incident" as logged in RiskInSite, namely "IN-161323". This incident relates to CBA's investigation into the Sum of Deposit Waiver in 2018 in which CBA identified three system-related root causes of the failure to apply the Sum of Deposit Waiver. In short, customers who were 21-24 years old were entitled to a fee waiver (referred to by CBA as a Sum of Deposit (21-24 year olds) Waiver) if they deposited in a calendar month at least \$1,000 in eligible transactions into the relevant account opened on or after 1 June 2010. Some customers did not receive the relevant waiver when they were entitled to it, and were incorrectly charged MAFs, as a result of incorrect configuration of CBA's systems arising from the three system-related root causes identified below.</p> <p><i>Identification</i></p> <p>On 14 August 2017, through FIRM investigations it was identified that some customers had not received the Sum of Deposit Waiver. On 29 September 2017, incident IN-161323 was logged in RiskInSite. In March 2018, the incident was estimated to impact around 4,000 accounts with a financial impact of around \$80,000 in the financial year 2016 to 2017. By August 2018, the investigation into the incident revealed a broader Sum of Deposit Waiver issue (see Sum of Deposit (General)).</p> <p><i>Root cause (as identified by CBA)</i></p> <p>Three root causes for the incident identified by CBA were as follows:</p> <ul style="list-style-type: none"> <li>• <b>SAP migration issues</b> which arose where some customers who opened accounts between 1 June 2010 and the date of the migration of those accounts from CBA's legacy banking platform (DDS Platform) to the SAP Platform (from around September 2010) were migrated onto the incorrect pricing option in the SAP Platform, which resulted in the account not being eligible for the Sum of Deposit Waiver. The SAP migration substantially occurred between September and November 2010. During the SAP migration period: (i) customers who opened their account from 1 June 2010 were eligible for the Sum of Deposit Waiver; and (ii) customers who opened their account on or prior to 31 May 2010 were not eligible for the Sum of Deposit Waiver. As part of the SAP migration, customers who opened their account on or prior to 31 May 2010 were to be transferred to a price option without the Sum of Deposit rules configured. The investigation in 2018 revealed that as part of the SAP migration: <ul style="list-style-type: none"> <li>o customers who switched products (for example, from a NetBank Saver account to a Smart Access account) from 1 June 2010 but prior to the</li> </ul> </li> </ul>	<p>Remediation dates: May 2020 (with payments to charity made in July 2020)</p> <p>Customers affected: 190,847</p> <p>Customer accounts affected: 173,172</p> <p>Total remediation amount: \$30,517,252.70</p> <p>Total remediation paid: \$30,517,211.04</p> <p>Interest compensation included? Yes</p>

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No	Incident	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
					<p>completion of the SAP migration were not identified as customers with a new account opening date after 31 May 2010 (rather, the original account opening date on or prior to 31 May 2010 was used) and therefore these customers were migrated to a price option in the SAP Platform without the Sum of Deposit rules configured; and</p> <p>customers who opened a DDS product from 1 June 2010 but prior to the completion of the SAP migration were not identified as customers with an account opening date after 31 May 2010 and therefore these customers were likewise migrated to a price option in the SAP Platform without the Sum of Deposit rules configured.</p> <ul style="list-style-type: none"> <li>• <b>date of birth mismatch</b> which arose from inconsistencies between the date of birth recorded in the account level in the SAP Platform and the date of birth recorded in the customer profile level in CommSee. When a customer's date of birth was changed or updated at the customer profile level in CommSee, it did not flow through to update the date of birth at the account level in the SAP Platform.</li> <li>• <b>missing transaction codes</b> which arose where certain customer-initiated deposits were not being considered in the calculation to determine whether a customer had reached the monthly threshold for eligibility for the Sum of Deposit Waiver, with the ultimate result that a customer did not receive the relevant waiver, and was incorrectly charged MAFs.</li> </ul> <p><i>Rectification</i></p> <p>Each of the three root causes that CBA identified were rectified as follows:</p> <ul style="list-style-type: none"> <li>• SAP migration issues - on 1 August 2018, the Terms and Conditions were amended so that all accounts were able to access the waiver regardless of when they were opened.</li> <li>• Date of birth mismatch - in August 2016, a system fix was introduced for date of birth changes after that date by ensuring that any date of birth changes made at the customer profile level in CommSee would flow through to update the date of birth at the account level in the SAP Platform for all accounts held by that customer. Rectification was completed for other customers and accounts with a date of birth mismatch by 30 May 2019 by accepting the date of birth at the customer profile level in CommSee as the correct date of birth and applying this at the account level in the SAP Platform.</li> <li>• Missing transaction codes for Sum of Deposit Waiver calculation - by September 2019, missing transaction codes were added and incorrect transaction codes were removed from the system.</li> </ul>	

No	Incident	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
2.	Entitlement calculated incorrectly for waiver based on total of value of deposits by customer (Sum of Deposit Waiver (General)) <b>IN-161323</b>	2010	August 2018	1/08/2018 (TSIA update)	<p>MI #1 and #2 relate to the same incident as logged in RiskInSite, namely "IN-161323". This incident relates to CBA's investigation into the Sum of Deposit Waiver in 2018 referred to in row 1.</p> <p><i>Identification, root cause (as identified by CBA) and rectification</i></p> <p>In about August 2018, during investigation into the Sum of Deposit Waiver (21-24 year olds), it was found that some customers entitled to receive the Sum of Deposit Waiver (General) were also affected. In short, customers were entitled to this waiver if they deposited in a calendar month at least \$2,000 in eligible transactions into the relevant account opened on or after 1 June 2010. Some customers did not receive the relevant waiver and were incorrectly charged MAFS.</p> <p>The root causes were identified by CBA as the incorrect configuration of CBA's systems, specifically the "SAP migration issues" and "missing transaction codes" issue set out in row 1 of this table.</p>	
3.	Waiver based on total of deposits by customer - some deposits processed using transaction code 5210 excluded from calculation of Sum of Deposit waiver <b>IN-222521</b>	N/A	21/12/2018	7/09/2019	<p>This incident "IN-222521" relates to manual errors by CBA staff who applied a generic bank-initiated transaction code (5210) when processing some customer-initiated deposits which should have been included in the Sum of Deposit Waiver calculation.</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>On 21 December 2018, during the process of CIRT writing the business rules and undertaking data analytics to size the impacted population for the purposes of remediation in respect of IN-161323, CBA identified that as a result of manual errors by its staff, some customer-initiated deposits were processed as bank-initiated deposits (using a generic bank-initiated transaction code (5210)) and not taken into account in the calculation of a customer's entitlement to the Sum of Deposit Waiver when they should have been. Accordingly, some customers who were entitled to a Sum of Deposit Waiver did not receive the waiver, and were incorrectly charged MAFS.</p> <p>On 13 February 2019, the incident was logged in RiskInSite.</p> <p><i>Rectification</i></p> <p>On 7 September 2019, a system fix was implemented in the SAP Platform by adding transaction code 5210 to be part of the Sum of Deposit Waiver calculation configuration.</p>	<p>Remediation dates: December 2019 and May 2020</p> <p>Customers remediated: 4,587</p>



No	Incident	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
4.	Waiver based on total of deposits by customer – (transaction codes 5193 (FCA Transfer In) and 5194 (FX Transfer In) excluded from Sum of Deposit waiver) <b>IN-236232</b>	N/A	15/02/2019	7/09/2019 and 27/09/2019	<p>This incident "IN-236232" relates to the incorrect configuration of CBA's systems which resulted in certain transaction codes being considered as bank-initiated transactions as opposed to customer-initiated transactions.</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>On 15 February 2019, through CIRT analysis conducted during the process of remediation of IN-161323, CBA identified that as a result of incorrect configuration of its systems, funds transferred from foreign currency accounts (FCA) or through foreign exchange transactions (FX) into transaction accounts were given transaction codes 5193 and 5194 and treated as bank-initiated deposits in CBA's systems and not taken into account in the calculation of a customer's entitlement to the Sum of Deposit Waiver when they should have been. Accordingly, some customers who were entitled to a Sum of Deposit Waiver did not receive the waiver, and were incorrectly charged MAFs.</p> <p><i>Rectification</i></p> <p>System fixes were implemented in the SAP Platform on 7 and 27 September 2019.</p>	<p>Customer accounts remediated: 4,134</p> <p>Total remediation paid: \$27,500.79</p> <p>Interest compensation included? Yes</p>
5.	Entitlement calculated incorrectly for waiver based on total of deposits by customer - Demand Deposit System (DDS) platform <b>IN-244288</b>	1/06/2010	29/07/2019	September to November 2010	<p>This incident "IN-244288" relates to the identification of certain customers who were eligible for the Sum of Deposit Waiver and incorrectly charged a MAF during the period from 1 June 2010 (while the accounts were on the DDS Platform) until the migration to the SAP Platform (commencing in September 2010).</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>Through a self-initiated review of the Sum of Deposit Waiver applications as a result of investigations into IN-161323, on 29 July 2019, CBA identified that a number of accounts opened on the DDS Platform from 1 June 2010 who met the Sum of Deposit Waiver eligibility criteria were charged a MAF while they were still on the DDS Platform (that is, prior to the accounts being migrated to the SAP Platform).</p> <p>On 2 August 2019, IN-244288 was logged in RiskInSite.</p> <p>Due to the length of time that has elapsed since the period during which this incident occurred, CBA considers that evidence to identify the root cause is limited. As a result, CBA's understanding of the root causes identified below is based on current day analysis.</p> <p>The root causes appear to CBA to be that the process to apply the Sum of Deposit Waiver on the DDS Platform contained several steps being manual in nature and therefore open to human error and the decommissioning of the DDS Platform and shift to the SAP Platform was in progress at this time which meant that adequate system controls were not established for the DDS Platform.</p>	<p>Remediation dates: approx. December 2019 to January 2020 and April 2020 to June 2020 for additional NPV payments</p> <p>Customers affected: 151,065</p> <p>Customer accounts affected: 129,360</p> <p>Total remediation amount: \$2,372,720.40</p>

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No	Incident	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
					<i>Rectification</i> CBA considered that no rectification was required because the error ceased once all transaction accounts were migrated from the DDS Platform to the SAP Platform.	Total remediation paid: \$2,371,147.32 Interest compensation included? Yes

Table 6AA: Incident relating to the Fee Free for Life Campaign

Table 6AA: Incidents relating to the Fee Free for Life Campaign						
No.	Incident	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
6.	Entitlement calculated incorrectly for waiver based on total of deposits by customer - further Sum of Deposit DDS Issue <b>IN-267345</b>	1/12/2009	28/10/2019	September to November 2010 For customers placed on incorrect price options post-SAP migration, the amendment of the TSIA with effect from 1 August 2018 removed the eligibility requirement for the Sum of Deposit Waiver (General) that accounts be opened on or after 1 June 2010	<p>This incident "IN-267345" arose as a result of errors which impacted sub-sets of:</p> <ul style="list-style-type: none"> <li>a) new customers who opened an eligible transaction account on the DDS Platform during the Campaign Period and did not have the correct flag applied in the DDS Platform and were subsequently migrated to the incorrect price option in the SAP Platform; and</li> <li>b) existing customers who switched to an eligible transaction account during the Campaign Period and did not request to be included in the Fee Free for Life (FFFL) Campaign during the Campaign Period, and otherwise met the eligibility criteria for the FFFL Campaign Waiver.</li> </ul> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>On 28 October 2019, through a self-initiated review into the FFFL Campaign Waiver following the incidents in IN-161323 and IN-244288, CBA detected that some eligible accounts which originated on the DDS Platform during the Campaign Period had been charged a MAF despite meeting the FFFL Campaign Waiver criteria whilst on the DDS Platform.</p> <p>On 29 October 2019, the incident was logged in RiskInSite.</p> <p>As a result of further investigations conducted throughout 2020, CBA discovered that a broader pool of customers were impacted by this incident, being:</p> <ul style="list-style-type: none"> <li>a) customers who were placed on an incorrect price option in the DDS Platform were also placed on an incorrect price option on the SAP Platform; and</li> <li>b) existing customers who switched to an eligible account during the Campaign Period, but had not specifically requested to be included in the FFFL Campaign. Such accounts were not classified as accounts which were newly opened during the Campaign Period when they should have been, and therefore customers who did not request to be included were not considered to have met the eligibility criteria for entitlement to a waiver under the FFFL Campaign. CBA attributed this to the fact the advertising material did not disclose to existing customers that they needed to specifically request to be included in the FFFL Campaign upon product switch to an eligible transaction account. This error accounted for the majority of impacted customers in this incident.</li> </ul>	<p>Remediation dates: November 2020 (with payments to charity made in February 2021)</p> <p>Customers affected: 196,783</p> <p>Customer accounts affected: 179,843</p> <p>Total remediation amount: \$26,715,686.82</p> <p>Total remediation paid: \$26,705,163.57</p> <p>Interest compensation included? Yes</p>

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Table 6AA: Incidents relating to the Fee Free for Life Campaign						
No.	Incident	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
					<p>Due to the length of time that has elapsed since the period during which this incident occurred, CBA considers that evidence to identify the root cause in respect of the new customers who opened an eligible customer account on the DDS Platform during the Campaign Period is limited. As a result, CBA's understanding of the root causes identified below is based on current day analysis.</p> <p>The primary root causes appear to CBA to be that:</p> <ul style="list-style-type: none"> <li>a) the process to apply the FFFL Campaign Waiver on the DDS Platform contained several steps being manual in nature and therefore open to human error;</li> <li>b) the decommissioning of the DDS Platform, and the shift to the SAP Platform, was in progress around the time of the incident, which meant that adequate system controls were not established for the DDS Platform.</li> </ul> <p>A secondary root cause appears to CBA be that adequate Risk In Change assessments, in relation to the SAP migration, were not undertaken to manage delivered risk. There is also no evidence available to identify if there were any controls to prevent or detect these errors.</p> <p><i>Rectification</i></p> <p>For the cohort of new customers with eligible accounts impacted on the DDS Platform, CBA considered that no DDS system rectification was required, because the error in DDS ceased once all transaction accounts were migrated from the DDS Platform to the SAP Platform.</p> <p>For the cohort of impacted customers with eligible accounts which were placed on incorrect price options in the SAP Platform and existing customers who switched to an existing eligible account during the Campaign Period, but had not specifically requested to be included in the FFFL Campaign, the Terms and Conditions were amended with effect from 1 August 2018 to remove the eligibility requirement for the Sum of Deposit Waiver (General) that accounts be opened on or after 1 June 2010. At that time, all relevant SAP price options were updated to include the Sum of Deposit (General) Waiver. Consequently, any incorrect charging of MAF to customers in this cohort ceased from 1 August 2018.</p>	

Table 6B: Incidents relating to the Relationship Balance Waiver

Table 6B: Incidents relating to the Relationship Balance Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
7.	Incorrect charging of fees for customers who were entitled to a Relationship Balance waiver <b>IN-SON-11086228</b>	Approx. 13 August 2010	13/01/2011	29/09/2011	<p>This incident "IN-SON-11086228" relates to a failure to apply the Relationship Balance Waiver to eligible accounts due to the FRS ('batch job') failing to run on a monthly basis to update the fee status of customer accounts following the migration to the SAP Platform in 2010 and, additionally, in the month of April 2011, a coding error impacting the FRS rebate flags for that month causing MAFs to be incorrectly applied to certain accounts.</p> <p>A process within FRS (referred to as a 'batch job') is run on a monthly basis to update the fee status of customers' accounts (i.e. whether or not the customer was eligible for the Relationship Balance Waiver).</p> <p>The fee status of Relationship Balance customers' accounts is indicated by rebate flags (for example, 'not fee exempt' - which signalled the account was not entitled to a waiver).</p> <p>Once FRS has determined the accounts eligible for the Relationship Balance Waiver, FRS instructs the SAP Platform of the accounts eligible for a Relationship Balance Waiver.</p> <p><i>Identification, root cause (as identified by CBA) and preliminary rectification</i></p> <p>On 13 January 2011, through a customer complaint in branch, CBA discovered that the monthly FRS batch job process had failed to run since September 2010, having the effect that:</p> <ul style="list-style-type: none"> <li>a) for existing accounts, the fee status reverted to the status which existed prior to the migration to the SAP Platform, meaning accounts which prior to the migration to the SAP Platform were not entitled to the Relationship Balance Waiver, maintained that status; and</li> <li>b) for new accounts on the SAP Platform, the fee status was automatically set to 'not fee exempt', that is, not entitled to the Relationship Balance Waiver.</li> </ul> <p>On 11 February 2011, the incident was logged in RiskInSite.</p> <p>By 21 February 2011, the FRS batch job was re-initiated. However, during execution, the process returned errors which required further review. The errors with this initial fix to re-initiate the FRS batch job process were primarily attributed to a file size issue on the SAP Platform, which prevented the relevant files from being loaded onto the</p>	<p>Remediation dates: August to September 2011</p> <p>Customers remediated: 88,296</p> <p>Customer accounts remediated: 77,271</p> <p>Total remediation paid: \$878,875.15</p> <p>Interest/compensation included? No</p>

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Table 6B: Incidents relating to the Relationship Balance Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
					<p>SAP Platform in order to run the batch job.</p> <p>In the period before a permanent fix was created and implemented, a manual loading process was utilised.</p> <p>At the beginning of May 2011, it was identified that MAFs had incorrectly been charged for the month of April 2011. Further investigations identified that the root cause was attributed to a coding error which impacted the FRS rebate flags for accounts in April 2011, by causing the flags to incorrectly record the accounts' eligibility for the waiver.</p> <p>The incident impacted customers eligible for the Relationship Balance Waiver:</p> <ul style="list-style-type: none"> <li>from September 2010 to February 2011, when the FRS batch job failed to run;</li> <li>from February 2011 until a permanent fix was in place in August 2011, noting that the attempt to re-initiate the FRS batch job in February 2011 returned errors; and</li> <li>in the month of April 2011, for incorrect charging at the beginning of May.</li> </ul> <p><i>Permanent rectification</i></p> <p>By the end of August 2011, CBA had implemented a permanent fix, that is, the batch job to update the fee status of Relationship Balance accounts was restored to waive MAFs for eligible accounts.</p> <p>In relation to customers impacted for the month of April 2011, on 23 May 2011, a fee rebate file for the end of April 2011 was re-run, which corrected all fee rebate flags for the end of April 2011.</p>	
8.	Customers incorrectly charged MAF as result of wrong file being uploaded <b>IN-015322</b>	1/02/2013	12/02/2013	1/03/2013	<p>This incident "IN-015322" relates to a failure to apply the Relationship Balance Waiver to eligible accounts due to a manual error by CBA staff in which an incorrect file containing month-end account balances was loaded into FRS for the purposes of the calculation of the balance(s) in eligible contributing account(s) to determine eligibility for the Relationship Balance Waiver on 1 February 2013.</p> <p>Manual loading of the files into FRS had been conducted as part of a "hygiene" exercise to amend the Relationship Balance status of 1.6 million customer records that had been incorrectly flagged for a Relationship Balance waiver. This manual process was an exception to the usual systemized process for calculating and applying the Relationship Balance waiver.</p>	<p>Remediation dates: February 2013</p> <p>Customers remediated: 36,202</p> <p>Customer accounts remediated: 35,384</p> <p>Total remediation paid: \$171,449.67</p>

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Table 6B: Incidents relating to the Relationship Balance Waiver						
No	Issue	Start date of incorrect charging	Date of deflection by CBA	System fix date	Incident description	Remediation details
					<p><i>Identification and root cause (as identified by CBA)</i></p> <p>On 12 February 2013, as part of the manual validation of fee charging in FRS as part of a "hygiene" exercise, CBA identified an anomaly with the volume of accounts that were scheduled for Relationship Balance Waivers on 1 March 2013.</p> <p>For the FRS calculation on 1 February 2013, the incorrect month-end account balance file was loaded. This was a manual error.</p> <p>On 18 February 2013, the incident was logged in RiskInSite.</p> <p>The error resulted in some customers being incorrectly charged MAFs because the system picked up incorrect information on account balances to calculate eligibility for the Relationship Balance Waiver.</p> <p><i>Rectification</i></p> <p>A peer review process was introduced to ensure correct uploading of files to the FRS as part of the "hygiene" exercise.</p> <p>The loading of files into FRS for the purposes of determining eligibility for the Relationship Balance Waiver reverted to being an automated process from 1 March 2013.</p>	Interest/compensation included? No
9.	Errors in the application of the Relationship Balance fee waiver <b>IN-077462</b>	1/01/2011	27/01/2016	1/02/2016	<p>This incident "IN-077462" relates to a failure to apply the Relationship Balance Waiver to eligible Streamline accounts on the "Price option 108 - Special Offer" (<b>Price Option 108</b>) due to that price option not being configured correctly in the SAP Platform.</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>Customers who held a Streamline account on a particular price option, Price Option 108, were eligible for the Relationship Balance Waiver, for the months during which the customer met the Relationship Balance Waiver criteria.</p> <p>On 27 January 2016, during a review of a sample of Streamline accounts as part of BCOP, CBA identified 8 Streamline accounts that were overcharging MAFs.</p> <p>On 5 February 2016, the incident was logged in RiskInSite.</p> <p>CBA discovered that Price Option 108 had not been configured in the SAP Platform to apply the Relationship Balance Waiver when customers met the eligibility criteria, resulting in eligible accounts not receiving the Relationship Balance Waiver.</p>	<p>Remediation dates: June to August 2016</p> <p>Customers remediated: 224</p> <p>Customer accounts remediated: 190</p> <p>Total remediation paid: \$2,280</p> <p>Interest/compensation included? No</p>

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Table 6B: Incidents relating to the Relationship Balance Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
					<p><i>Rectification</i></p> <p>A system fix was applied from 1 February 2016, which reconfigured the Price Option 108 in the SAP Platform so that accounts on that price option would receive the Relationship Balance Waiver if they met the eligibility criteria.</p>	
10.	Misalignment between system design and TSIA which impacted the application of business day rules which affected the application of the Relationship Balance waiver <b>IN-080407</b>	1/03/2011	2/02/2016	9/02/2016 (TSIA update) 7/04/2016 (ODS system fix)	<p>This incident "IN-080407" relates to a failure to apply the Relationship Balance Waiver to eligible accounts due to:</p> <ul style="list-style-type: none"> <li>a) an incorrect configuration of the ODS system which caused issues in calculating the Relationship Balance when the second last business day of the month fell on a Friday; and</li> <li>b) the Terms and Conditions incorrectly recording for a period that the Relationship Balance would be calculated on the second last "day" of the month, rather than the second last "business day".</li> </ul> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>CBA intended, at all times, for the Relationship Balance to be calculated on the second last business day of the month, and for its systems to be configured as such. However, on 2 February 2016, through review and analysis as part of BCOP, CBA identified two errors:</p> <ul style="list-style-type: none"> <li>• by reason of a Variation Notice, the Terms and Conditions in place omitted, by mistake, the word "business" from the relevant Relationship Balance clause. The Variation Notice in question made a particular amendment to the Relationship Balance clause in the Terms and Conditions, which became effective on 30 September 2015. It was this amendment which omitted the word "business". This had the effect of stating that the Relationship Balance would be calculated on the second last day of the month, instead of the second last business day of the month. The period affected by this omission was 30 September 2015 to 9 February 2016; and</li> <li>• an issue with the configuration of the ODS system meant that CBA's intention to calculate the Relationship Balance on the second last business day of the month was not necessarily executed on those occasions where the second last business day of the month fell on a Friday.</li> </ul> <p>On 4 March 2016, the incident was logged in RiskInSite.</p>	<p>Remediation dates: June to August 2016</p> <p>Customers remediated: 8,398</p> <p>Customer accounts remediated: 7,506</p> <p>Total remediation paid: \$36,293.38</p> <p>Interest/compensation included? No</p>

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Table 6B: Incidents relating to the Relationship Balance Waiver						
No	Issue	Start date of incorrect charging	Date of deflection by CBA	System fix date	Incident description	Remediation details
					<p><i>Rectification</i></p> <p>The Terms and Conditions were amended via a Variation Notice effective 9 February 2016, to re-insert the word 'business' into the calculation description for the Relationship Balance Waiver. That is, the Terms and Conditions were amended to provide that the Relationship Balance would be calculated on the second last business day of the month.</p> <p>In relation to the configuration of the ODS system, CBA implemented a system fix on 7 April 2016 - where the second last business day of the month fell on a Friday, the ODS system was re-configured so that the file containing the data for the second last business day of the month (that is, the Friday) would remain available for sufficient time on the following Monday. This enabled the Relationship Balance calculation process to be undertaken by the FRS before the file was replaced with a file containing later data.</p>	
11.	Non-personal account not included in Relationship Balance waiver under the TSIA <b>IN-082308</b>	1/09/2010	12/02/2016	26/8/2016 (TSIA update) System fixes 2017-2018	<p>This incident "IN-082308" relates to a failure to apply the Relationship Balance Waiver to eligible accounts due to:</p> <ul style="list-style-type: none"> <li>a) an error in the wording of the Terms and Conditions which had the effect of not explicitly excluding the balance in non-personal accounts from the Relationship Balance calculation; and</li> <li>b) system IT issues, primarily as a result of the migration to the SAP Platform, causing Relationship Balance Waivers to fail for some customers who had switched or closed products mid-month.</li> </ul> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>CBA intended that the calculation of the monthly Relationship Balance for the purpose of determining eligibility for a Relationship Balance Waiver would be based on the balance in the customer's personal accounts only – and would ignore the balance in business or other non-personal accounts. CBA's systems were configured to calculate the Relationship Balance on this basis.</p> <p>On 12 February 2016, through a Group Audit review of accounts to check whether fee waivers applied to those accounts matched disclosure in the Terms and Conditions, CBA identified that the wording of the Terms and Conditions as updated in July 2010 erroneously did not draw this distinction, with the effect that, under the Terms and Conditions from that date, customers were entitled to have their non-personal account balances included in the calculation.</p>	<p>Remediation dates: January to August 2017</p> <p>Customers affected: 100,147</p> <p>Customer accounts affected: 94,940</p> <p>Total remediation amount: \$1,500,926.32</p> <p>Total remediation paid: \$1,483,849.46</p> <p>Interest/compensation included? Yes</p>

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Table 6B: Incidents relating to the Relationship Balance Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
					<p>On 4 March 2016, the incident was logged in RiskInSite.</p> <p>Around August 2016, in reviewing the Relationship Balance Waiver, and developing and applying the remediation code for the suite of personal accounts impacted by wording of the Terms and Conditions, CBA identified that, distinct from the non-personal customers affected by the Terms and Conditions disclosure issue, some accounts did not have the Relationship Balance Waiver applied, despite being eligible for the Relationship Balance Waiver.</p> <p>A subsequent investigation identified that system IT issues, primarily as a result of the migration to the SAP Platform, caused waivers to fail for some customers who had switched or closed products mid-month. Several other IT root causes were identified and attributed to one-off/unique scenarios that the system infrastructure was unable to facilitate, or anticipate.</p> <p><i>Rectification</i></p> <p>The Terms and Conditions were amended via a Variation Notice effective 26 August 2016, and an accompanying notice published in <i>The Australian</i>. The Variation Notice amended the Terms and Conditions to specifically state that an account is not a "contributing account" where one or more of the account holders is a non-personal entity (for example a trustee, company, association or business) or the account is for business purposes. That is, the amended Terms and Conditions excluded non-personal accounts from contributing to a customer's overall Relationship Balance.</p> <p>In relation to the system issues:</p> <ul style="list-style-type: none"><li>a) effective 16 December 2016, a notice to customers was published and the Terms and Conditions amended (via Variation Notice) to reflect how the system manages the Relationship Balance Waiver when a customer switches a product or price option; and</li><li>b) CIRT built a control report designed to detect accounts where fees were not waived due to unique reasons or scenarios for which the system cannot cater. The control functions so that any fees applied in error are reversed, within a week, by the business. Thereafter, the various IT root causes were fully investigated, and fixes were deployed to ensure there were no repeat occurrences.</li></ul>	

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Table 6B: Incidents relating to the Relationship Balance Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
12.	Customers charged MAF incorrectly due to account classification type applied to Savings Investments Account (SIA) <b>IN-080409</b>	1/12/2010	2/02/2016	Impacted accounts were reclassified to be included in Relationship Balance calculation (April 2016)	<p>This incident "IN-080409" relates to a failure to apply the Relationship Balance Waiver to eligible accounts due to a manual error by CBA staff who incorrectly classified some Savings Investment Accounts as "non-personal" (i.e. non-eligible for the Relationship Balance calculation), instead of "personal".</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>When opening a Savings Investment Account, frontline staff were required, as part of CBA's processes, to classify the nature of the account, that is, whether the account was a personal, or non-personal account.</p> <p>On 2 February 2016, it was discovered through review and analysis as part of BCOP that during this process, some personal accounts were incorrectly classified as non-personal accounts (which are not eligible for the Relationship Balance Waiver) as a result of staff errors during origination or maintenance of accounts.</p> <p>This had the effect that the balance of the account did not contribute to the calculation of the customer's Relationship Balance, for the purpose of applying the Relationship Balance Waiver, because non-personal accounts are excluded from these calculations.</p> <p>On 4 March 2016, the incident was logged in RiskinSite.</p> <p><i>Rectification</i></p> <p>The system logic was fixed and impacted accounts were switched to the correct classification by CBA implementing system validation rules to ensure alignment between the account type classification, that is, the classification (either "personal" or "non-personal") applied by frontline staff on account opening, and the customer type classification, that is, whether the customer was personal or non-personal (i.e. business).</p>	<p>Remediation dates: June to August 2016</p> <p>Customers remediated: 1,384</p> <p>Customer accounts remediated: 1,233</p> <p>Total remediation paid: \$10,416.44</p> <p>Interest compensation included? No</p>
13.	Customers charged MAFs incorrectly when CBA failed to inform Passbook	N/A	28/02/2016	6/07/2016 (customer notification via advertisement)	<p>This incident "IN-081021" relates to a failure to apply the Relationship Balance Waiver to eligible Passbook Accounts by reason of a failure to notify Passbook account holders of changes to eligibility criteria in calculating the Relationship Balance.</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>On 30 September 2015, CBA changed its Relationship Balance Waiver criteria, as part of a simplification process, including to exclude a number of accounts from</p>	<p>Remediation dates: August to September 2016</p> <p>Customers remediated: 3,070</p>

Table 6B: Incidents relating to the Relationship Balance Waiver						
No	Issue	Start date of incorrect charging	Date of deflection by CBA	System fix date	Incident description	Remediation details
	customers of fee changes <b>IN-081021</b>				<p>contributing to the calculation of the Relationship Balance.</p> <p>This change was communicated via an account statement message to impacted accounts, subject to the following exception. On 26 February 2016, in the course of responding to a complaint via the Financial Ombudsman Service, CBA discovered that it had failed to adequately inform customers with Passbook Accounts of these changes to the Relationship Balance Waiver criteria, because account statements are not issued for such accounts.</p> <p>This had the effect that between September 2015 and August 2016, the Relationship Balance for customers with Passbook Accounts was being calculated by reference to the new conditions, rather than the pre-30 September 2015 conditions, in circumstances where these customers had not received the required 30 days notification of the new conditions.</p> <p>On 10 March 2016, the incident was logged in RiskInSite.</p> <p><i>Rectification</i></p> <p>On 6 July 2016, customers with Passbook Accounts were notified of the change in Relationship Balance criteria by a notice published in <i>The Australian</i>, which provided a 30 day notification period, before the change became effective in August 2016.</p>	<p>Customer accounts remediated: 2,309</p> <p>Total remediation paid: \$120,463.30</p> <p>Interest compensation included? No</p>
14.	Customers were incorrectly charged MAF due to a one-off system change <b>IN-099067</b>	N/A	7/08/2016	25/08/2016 (FRS/ODS process was rerun to reassess customer eligibility based on correct account balances)	<p>This incident "IN-099067" relates to a failure to apply the Relationship Balance Waiver to eligible accounts due to an inadvertent archiving of data files as a result of a one-off system error with the effect that account balances for July 2016 were incorrectly recorded as \$0.00 and did not contribute to the calculation of the Relationship Balance.</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>On 7 August 2016, through incidents raised with the IT Service Desk, CBA identified that a cohort of customers were not receiving the Relationship Balance Waiver, despite holding an account balance greater than \$50,000.</p> <p>Investigations into this incident revealed that a one-off system change resulted in the ODS system data files of certain accounts for July 2016 being archived. These accounts would have been used to determine the July balance for the purpose of assessing entitlement to the Relationship Balance Waiver. By mistakenly archiving these files, the balance for July 2016 for the affected accounts was incorrectly recorded as \$0.00 when it was provided to FRS. As a consequence, the FRS rebate</p>	<p>Remediation dates: August 2016</p> <p>Customers remediated: 10,204</p> <p>Customer accounts remediated: 8,629</p> <p>Total remediation paid: \$45,823.40</p> <p>Interest compensation included? No</p>

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Table 6B: Incidents relating to the Relationship Balance Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
					<p>flag, which signifies an account's eligibility for the Relationship Balance Waiver, was removed, with the effect that some customers were not given the Relationship Balance Waiver, despite being eligible for the waiver on their correct (i.e. actual) total account balance.</p> <p>As a consequence, this meant that these accounts would also be charged a MAF during the month-end settlement for August, if the FRS flag was not reinstated before that time.</p> <p>On 11 August 2016, the incident was logged in RiskInSite.</p> <p><i>Rectification</i></p> <p>By 25 August 2016, CBA's IT teams had fixed the error by updating the FRS rebate flags on impacted accounts. The update involved either adding or removing the flag, to ensure that FRS had the correct status regarding eligibility for the Relationship Balance Waiver, that being the status the customer would have had if the archiving error in July 2016 had not occurred.</p>	
15.	Future Home Saver (FHS) account balance not counting towards Relationship Balance calculation <b>IN-157622</b>	1/08/2017	21/09/2017	28/08/2017	<p>This incident "IN-157622" relates to a failure to apply the Relationship Balance Waiver to eligible FHS accounts due to a manual error by the GRD team in failing to instruct business analysts that the FHS product was to be configured to contribute to the Relationship Balance calculation.</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>The FHS product/account, which was a special purpose savings account for customers wishing to save money specifically for the deposit on a home purchase, was rolled out in July 2017. Although FHS accounts themselves do not charge MAF fees, the monthly balance in the FHS account should have been included in the Relationship Balance calculation for the purposes of determining eligibility for the Relationship Balance Waiver for eligible customers.</p> <p>On 21 August 2017, through a specific FIRM exception report that looked at Relationship Balance errors, CBA identified that, due to a configuration error in CBA's GRD, the balance in the FHS account was not included in the Relationship Balance calculation.</p> <p>CBA identified the root cause as a failure by the GRD team to send a template of how the FHS product was to be configured for the Relationship Balance to the business</p>	<p>Remediation dates: August 2017</p> <p>Customers remediated: 3</p> <p>Customer accounts remediated: 3</p> <p>Total remediation paid: \$14</p> <p>Interest compensation included? No</p>

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Table 6B: Incidents relating to the Relationship Balance Waiver						
No	Issue	Start date of incorrect charging	Date of deflection by CBA	System fix date	Incident description	Remediation details
					<p>analysts who were working on the product. This meant that the balance in the FHS account was not included in the Relationship Balance calculations.</p> <p><i>Rectification</i></p> <p>The GRD team implemented a fix on 28 August 2017 which meant that the FHS product was configured to be included in the Relationship Balance calculation.</p>	

Table 6C: Incidents relating to the Age, Service or Disability Pension Waiver

Table 6C: Incidents relating to the Age, Service or Disability Pension Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
16.	Customers charged MAFs incorrectly who held a Cash Management Call Account (CMCA) and were either receiving an Aged pension or Australian war veterans pension <b>IN-018007</b>	N/A	1/11/2012	end of October 2013	<p>This incident "IN-018007" relates to a failure to apply the Age, Service or Disability Pension Waiver to CMCA's due to those accounts not being configured correctly in the SAP Platform upon migration to that system in 2010. As a consequence, Cash Management Call Accounts (CMCA's) which were credited with an eligible pension were incorrectly charged a MAF.</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>On 1 November 2012, as part of a systems fix designed to rectify a separate incident, CBA's CBM team observed that due to incorrect configuration the MAF Waiver had not been applied to eligible CMCA accounts since 2010 when the CMCA accounts were migrated to the SAP Platform. On 14 June 2013, the incident was logged in RiskInSite.</p> <p><i>Rectification</i></p> <p>Effective from 31 October 2013, the incident was rectified by way of a product system update.</p>	<p>Remediation dates: June 2013</p> <p>Customers remediated: 3,931</p> <p>Customer accounts remediated: 2,925</p> <p>Total remediation paid: \$264,764</p> <p>Interest compensation included? No</p>
17.	MAF charged incorrectly to Aged, Disability and Veteran Pension customers <b>IN-035981</b> <b>IN-051726</b>	N/A	30/05/2014	1/09/2015	<p>These incidents "IN-035981" and "IN-051726" relate to a failure to apply the Age, Service or Disability Pension Waiver to eligible Smart Access, Complete Access and Streamline accounts due to those accounts not being configured correctly in the SAP Platform upon migration to that system in 2010, and extended to the price options applying to customers under the age of 25.</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>On 30 May 2014, CBA Group Audit identified that certain Smart Access, Complete Access, Streamline and CMCA's were being charged a MAF when they were entitled to an Age, Service or Disability Pension Waiver, on the basis that an eligible pension had been directly credited to the accounts (upon further investigation, it was confirmed that the issue did not apply to CMCA's).</p>	<p>Remediation dates: September 2015</p> <p>Customers remediated: 11,542</p> <p>Customer accounts remediated: 9,926</p> <p>Total remediation</p>

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Table 6C: Incidents relating to the Age, Service or Disability Pension Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
					<p>The root cause of the incident was identified by CBA as the incorrect configuration of the price options in the SAP Platform applying to Smart Access, Complete Access and Streamline accounts from September 2010 when the accounts were migrated to the SAP Platform.</p> <p>On 8 July 2014, the incident was logged in RiskInSite.</p> <p>On 12 May 2015, a separate incident, IN-051726, was logged in RiskInSite, in relation to additional errors relating to the configuration of the equivalent price options for customers under the age of 25 who were the recipients of an eligible pension.</p> <p><i>Rectification</i></p> <p>Both incidents (IN-035681 and IN-051726) were rectified through a reconfiguration of the relevant price options in the SAP Platform, effective from 1 August 2015 for the Smart Access and Complete Access price options and effective from 1 September 2015 for the Streamline price option.</p>	<p>paid: \$31,606.81</p> <p>Remediation not confirmed paid: \$7,064.62</p> <p>Interest compensation included? No</p>



Table 6D: Incidents relating to the No Fee Home Loan Waiver

Table 6D: Incidents relating to the NFHL Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
18.	MAF charged incorrectly to No Fee Home Loan (NFHL) customers <b>IN-037844</b>	N/A	August 2014	1/11/2014 (removal of MAF waiver for NFHL customers)	<p>This incident "IN-037844" relates to manual errors by CBA staff who did not select the correct NFHL Price Option at origination of the NFHL product.</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>In October 2011 and May 2012, CBA upgraded CommSee to amend some aspects of the process used to apply the MAF Waiver, by making available an appropriate price option that would automatically waive the MAF. In about August 2014, as part of Project Phoenix (a project established to undertake, amongst other things, a review of the application of Wealth Package concessions), CBA identified that as a result of manual errors by CBA staff (who did not always select the correct NFHL Price Option at origination), some NFHL customers did not receive a MAF Waiver automatically, and were incorrectly charged MAFs.</p> <p>The incident was logged in RiskInSite on 29 August 2014.</p> <p><i>Rectification</i></p> <p>From 1 November 2014, concessions for transaction accounts (including MAF Waivers) were removed from the NFHL product offering.</p>	<p>Remediation dates: October 2015 and June 2016</p> <p>Customers remediated: 20,682</p> <p>Customer accounts remediated: 15,531</p> <p>Total remediation paid: \$378,450.64</p> <p>Interest compensation included? Yes</p>

Table 6DD: Incidents relating to the Home Loan Waiver

Table 6DD: Incidents relating to the Home Loan Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
19.	Home Loan MAF waiver not applied to eligible transaction accounts (where home loan balance less than \$1) <b>IN-098578</b> <b>IN-100318</b>	1/10/2015 (IN-098578) 1/11/2015 (IN-100318)	19/04/2016	1/07/2016 (TSIA was updated with effect from this date)	<p>Incident "IN-098578" and "IN-100318" relate to a misalignment between the disclosure of the Terms and Conditions to customers (as at 30 September 2015) and the configuration of CBA's systems which only applied the Home Loan Waiver where a Home Loan account had a balance of greater than \$1.</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>On 19 April 2016, through FIRM, it was discovered that some eligible home loan customers who were entitled to a MAF Waiver did not receive the waiver and were incorrectly charged MAFs.</p> <p>The matter was logged in RiskInSite on 9 August 2016.</p> <p>Investigation revealed that since inception of this fee waiver, in September 2015, CBA's systems were configured only to apply the MAF Waiver to customers with a home loan debit balance of greater than \$1.</p> <p><i>Rectification</i></p> <p>On 1 July 2016, CBA published a notice to customers advising of the requirement for a home loan to hold a debit balance greater than \$1 in order to qualify for the Home Loan Waiver. CBA also prepared a Variation Notice effective 1 July 2016 which amended the disclosures in the Terms and Conditions to state that the Home Loan Waiver would only apply if a customer's debit balance was greater than \$1.</p>	<p>Remediation dates: IN-098578 - September 2016 and October 2016; IN-100318 - June 2018</p> <p>Customers remediated: 200</p> <p>Customer accounts remediated: 173</p> <p>Total remediation paid: \$4,731.89</p> <p>Interest compensation included? No</p>
20.	Entitlement to Home loan MAF waiver not applied to eligible transaction accounts (where home loan	2/10/2015	8/03/2018	September 2018	<p>This incident "IN-188191" relates to certain instances where the Home Loan Waiver was not applied because data was not received by the SAP Platform from the ODS system in time for the waiver to be applied for particular months.</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>On 8 March 2018, as part of the remediation process for IN-098578 and IN-100318, CIRT identified that there were customer accounts with a home loan balance greater than \$1 that did not appear to have had a MAF Waiver applied.</p> <p>On 24 May 2018, the incident was logged in RiskInSite.</p> <p>CBA identified that the root cause for the incident was that a data file required to inform the</p>	<p>Remediation dates: October to November 2018 and additional NPV payments in November to December 2019</p> <p>Customers remediated: 12,179</p>

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Table 6DD: Incidents relating to the Home Loan Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
	balance is greater than \$1) <b>IN-188191</b>				SAP Platform that a customer held a home loan and was eligible for a MAF Waiver had not been received in time for the waiver to be applied for particular months. More specifically, this arose due to a synchronisation data issue between 2 systems (the SAP Platform and ODS) where one of the sales product tables was holding null sales product value (i.e. no product type) which caused the load from the SAP Platform to the ODS system to fail for affected accounts. <i>Rectification</i> On 11 September 2018, a system fix was implemented so that the 2 systems synchronised.	Customer accounts remediated: 10,684 Total remediation paid: \$59,165.37 Interest compensation included? Yes
21.	Home Loan waivers not applied to some eligible transaction accounts when home loan debit balance was greater than \$1 <b>IN-240948</b>	N/A	24/05/2019	Update to the TSIA via a variation notice effective 17 October 2019	This incident "IN-240948" relates to the misalignment between the disclosure of the Terms and Conditions to customers (as at 1 July 2016) and configuration of CBA's systems such that some customers who were entitled to the Home Loan Waiver did not receive the waiver. <i>Identification and root cause (as identified by CBA)</i> On 24 May 2019, as part of the remediation process for IN-188191, CIRT identified that some customers who were entitled to a Home Loan Waiver did not receive the waiver and were incorrectly charged MAFs. The incident was logged in RiskinSite on 11 July 2019. Investigations revealed that details regarding the implementation of the waiver (i.e. timing and exclusions) were not sufficiently disclosed in the Terms and Conditions to reflect the system behaviour as follows: <ul style="list-style-type: none"> <li>CBA's systems were configured so that eligibility for the Home Loan Waiver was calculated on the business day (which excludes public holidays) prior to the last calendar day of the month;</li> <li>in order to be eligible for the Home Loan Waiver, CBA's systems also required customers to have held accounts for at least 1 calendar month from opening the account; and</li> <li>the 'Staff Housing Loan', a legacy product previously available to CBA employees, was not included in the balance calculation for the Home Loan Waiver eligibility.</li> </ul> The Terms and Conditions at the relevant time did not include: <ul style="list-style-type: none"> <li>the timing of when the Home Loan Waiver would be calculated;</li> <li>that customers must have held the eligible account for at least one calendar month</li> </ul>	Remediation dates: February 2020 Customers affected: 4,425 Customer accounts affected: 3,660 Total remediation amount: \$8,922.31 Total remediation paid: \$8,921.75 Interest compensation included? Yes

Table 6DD: Incidents relating to the Home Loan Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
					<p>since it was opened; and</p> <ul style="list-style-type: none"> <li>that 'Staff Housing Loans' were not classified as a CBA Home Loan which contributed to the calculation for the Home Loan Waiver eligibility.</li> </ul> <p><i>Rectification</i></p> <p>On 17 October 2019, CBA rectified the incident by way of an updated disclosure in the Terms and Conditions. A notice was issued effective 17 October 2019 to update the Terms and Conditions to:</p> <ul style="list-style-type: none"> <li>exclude 'Staff Housing Loans' from being an eligible CBA Home Loan;</li> <li>state that eligibility for the Home Loan Waiver is considered 'on the business day prior to the last calendar day of that month with any waiver applying to the fees for that month'; and</li> <li>state that the customer must have held the transaction account for at least one calendar month since the account was opened, or the pricing offer applicable to that account changed.</li> </ul>	

Table 6E: Incidents relating to Under 21s Waiver

Table 6E: Incidents relating to Under 21s Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
22.	MAF incorrectly charged on accounts with beneficiaries of trusts under 21 years <b>IN-035982</b>	N/A	30/05/2014	7/11/2016 (TSIA updated effective)	<p>This incident "IN-035982" relates to the failure to apply the Under 21s Waiver due to the SAP Platform not being configured to read the dates of birth of beneficiaries of personal trust accounts, and instead using the date of birth of the oldest account holder to determine eligibility for the MAF Waiver. This resulted in personal trust accounts with beneficiaries under the age of 21 being incorrectly charged a MAF.</p> <p><i>Identification</i></p> <p>On 30 May 2014, CBA Group Audit identified that the design of the SAP Platform did not align with the disclosures in the Terms and Conditions in that the SAP Platform was not configured to read the dates of birth of beneficiaries of personal trust accounts and, for the purposes of determining the personal trust account's eligibility for the Under 21s Waiver, the date of birth of the oldest account holder was being used instead. Consequently, certain personal trust accounts were incorrectly charged a MAF, despite meeting the eligibility requirements for an Under 21s Waiver as disclosed in the Terms and Conditions.</p> <p>On 8 July 2014, the incident was logged in RiskInSite.</p> <p><i>Root causes (as identified by CBA)</i></p> <p>CBA identified the root cause of this incident was a design gap in the SAP Platform due to the fact there had not previously been a business requirement to support the capability of capturing beneficiaries' dates of birth on personal trust accounts. This had the effect that when an 'in trust for' account was opened, the SAP Platform used the age of the oldest account holder to determine if any fee waiver applied, in circumstances where the age of the oldest account holder often exceeded 21 years.]</p> <p><i>Rectification</i></p> <p>Effective from 7 November 2016, CBA amended its Terms and Conditions, via a Variation Notice, to remove the Under 21s Waiver for beneficiaries of personal trust accounts, but to retain the Under 21s Waiver for account holders who were under the age of 21 years. This made the disclosure in the Terms and Conditions consistent with the configuration of the SAP Platform. Customers were notified of the change via a notice published on 7 November 2016.</p>	<p>Remediation dates: December 2016 to January 2017</p> <p>Customers remediated: 1,682</p> <p>Customer accounts remediated: 2,042</p> <p>Total remediation paid: \$91,170.10</p> <p>Interest compensation included? No</p>

Table 6E: Incidents relating to Under 21s Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
23.	Incorrect calculation of entitlement to waiver if customer under 21 years (Date of Birth mismatch) <b>IN-034478</b>	1/10/2010	7/05/2014	August 2016	<p>This incident "IN-034478" relates to the failure to apply the Under 21s Waiver due to a design problem with the SAP Platform whereby when a customer's date of birth was updated in CommSee, it did not flow through to the SAP Platform.</p> <p><i>Identification</i></p> <p>On 7 May 2014, CBA Group Audit identified this incident through a customer complaint. On 15 May 2014, the incident was logged in RiskInSite.</p> <p><i>Root causes (as identified by CBA)</i></p> <p>To determine eligibility for an aged-based MAF Waiver, the SAP Platform used the date of birth recorded in the account level on the SAP Platform.</p> <p>The root cause of the incident, as identified by CBA, arose from inconsistencies between the date of birth recorded in the account level in the SAP Platform and the date of birth recorded in the customer profile level in CommSee. When a customer's date of birth was changed or updated at the customer profile level in CommSee, it did not flow through to update the date of birth at the account level in the SAP Platform. As a result, the SAP Platform used the incorrect date of birth taken from the account level in the SAP Platform, resulting in eligible customers not receiving the Under 21s Waiver.</p> <p><i>Rectification</i></p> <p>In August 2016, a system fix was introduced for date of birth changes after that date by ensuring that any date of birth changes made at the customer profile level in CommSee would flow through to update the date of birth at the account level in the SAP Platform for all accounts held by that customer. Rectification was completed for other customers and accounts with a date of birth mismatch by 30 May 2019 by accepting the date of birth at the customer profile level in CommSee as the correct date of birth and applying this at the account level in the SAP Platform.</p>	<p>Remediation dates: July to August 2019 and additional NPV payments in November 2019 and January 2020</p> <p>Customers remediated: 2,182</p> <p>Customer accounts remediated: 2,218</p> <p>Total remediation paid: \$112,748.15</p> <p>Interest compensation included? Yes</p>
24.	Fees and interest waiver logic following date of birth	17/09/2010	23/05/2019	N/A	<p>This incident "IN-240622" relates to the failure to apply the Under 21s Waiver due to the SAP Platform being configured to use a customer's date of birth at the beginning of the month, regardless of intra-month changes to the date of birth. This resulted in such changes not being picked up for the purposes of assessing eligibility for the Under 21s Waiver and eligible customers not receiving the MAF Waiver.</p> <p><i>Identification and root cause (as identified by CBA)</i></p>	<p>Remediation dates: July 2020 to 31 March 2021</p> <p>Customers affected: 4,093</p>

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Table 6E: Incidents relating to Under 21s Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
	changes IN-240622				<p>To determine eligibility for an aged-based MAF Waiver, the SAP Platform was configured to use the date of birth at the beginning of the month, regardless of intra-month changes to the date of birth. Where a change to a customer's date of birth occurred during a particular month, the updated date of birth was not used for the purposes of determining eligibility for the Under 21s Waiver. As a result, where an updated date of birth entitled a customer to an Under 21s Waiver, the Under 21s Waiver was not applied to the relevant account.</p> <p>On 23 May 2019, as part of their investigation into transaction fees, the Fees and Interest Accuracy team identified the issue.</p> <p>On 8 July 2019, the incident was logged in RiskinSite.</p> <p>CBA identified the root cause of the incident as being the inadequate design of the SAP Platform such that it assumed that a customer's date of birth was static, and hence the system was not designed to handle alterations to a customer's date of birth. The reason that dates of birth needed to be occasionally altered was that incorrect dates of birth were sometimes recorded for customers due to staff input error and because a customer's date of birth was not historically required to be captured.</p> <p><i>Rectification</i></p> <p>As at 31 May 2021, a DOB Control Report (being a detective control) had been implemented to identify and remediate any customers who changed their date of birth and as a result were incorrectly charged fees and interest in that month and historically based on the new date of birth. The DOB Control Report was first run on 10 May 2021 and will continue to run on a regular basis.</p>	<p>Customer accounts affected: 4,181</p> <p>Total remediation amount: \$122,105.86</p> <p>Total remediation paid: \$122,036.24</p> <p>Interest compensation included? Yes</p>

Table 6F: Incidents relating to Migrant Waiver

Table 6F: Incidents relating to Migrant Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
25.	Migrants who used a particular webpage to set up account charged MAF incorrectly (flow Unique Ad Identifier (UAI) Code tagging drop off) <b>IN-139554</b>	07/07/2016	16/03/2017	22/03/2017 (corrected UAI coding on relevant webpages) 17/05/2018 (Introduced business processes to manually switch affected customers to the correct migrant price option)	<p>This incident "IN-139554" relates to the incorrect configuration of certain webpages on CommBank.com.au which resulted in the Unique Ad Identifier (UAI) codes being removed from some of the call to action links/buttons on the Moving to Australia (MTA) webpages.</p> <p><i>Identification</i></p> <p>On 16 March 2017, through the marketing dashboard which measured "click throughs" (i.e. activity) from the online portal, CBA detected that eligible customers were not identified as qualifying for the Welcome to Australia Price Option which included the Migrant Waiver and, as a result, the MAF was not waived.</p> <p>On 22 March 2017, the incident was logged in RiskInSite.</p> <p><i>Root cause (as identified by CBA)</i></p> <p>When a qualifying migrant customer applies online for a new account, UAI code tagging (which applied the specific discount, depending on the website) should be automatically assigned to their application, which identified them as being eligible for the Migrant Waiver. Following a revision to the MTA webpages in CommBank.com.au, the UAI code was removed from some of the call to action links/buttons on the MTA webpages. This had the effect that eligible customers were not identified as qualifying for the relevant price option. Consequently, the Welcome to Australia Price Option was not applied to the account and the MAF was not waived.</p> <p><i>Rectification</i></p> <p>Gaps in the implementation of the UAI codes were rectified on 22 March 2017. The UAI tagging that was required for customers to receive the right pricing or Migrant Waiver was reinstated.</p> <p>Following further investigation, in November 2017 and January 2018, CBA identified that there were further eligible customers who had opened accounts through MTA webpages which did not have the Welcome to Australia Price Option applied.</p> <p>On and from 17 May 2018, business processes were introduced to manually switch affected customers to the Welcome to Australia Price Option on a monthly basis.</p>	<p>Remediation dates: August to September 2018</p> <p>Customers affected: 11,099</p> <p>Customer accounts affected: 10,833</p> <p>Total remediation amount: \$103,328.72</p> <p>Total remediation paid: \$93,954.02</p> <p>Interest compensation included? Yes</p>

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Table 6F: Incidents relating to Migrant Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
26.	Migrants who used Moving To Australia (MTA) Page incorrectly charged MAF <b>IN-228525</b>	24/08/2018	3/04/2019	20/05/2019 (MTA pages updated to disclose that in order to qualify for migrant MAF waiver the customer must have cookies enabled when opening an account)	<p>This incident "IN-228525" relates to manual errors arising from the bulk switching of customers to the Welcome to Australia Price Option during the rectification of IN-139554.</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>On 3 April 2019, through a reconciliation exercise conducted as part of the rectification of IN-139554, it was identified that despite the Welcome to Australia Price Option being manually corrected for accounts affected by that incident, due to the time lapse between the date these accounts were opened and the date they were switched to the correct price option, a pro-rata MAF was charged for the number of days the accounts were in the incorrect price option. Further, where the account balance went into debit as a result of the charging of this pro-rata MAF, debit interest was charged to the account.</p> <p>On or about 8 April 2019, the Incident was logged in RiskInSite.</p> <p>On 14 June 2019, it was noted that from 1 June 2018 to 20 May 2019, the MTA webpage did not contain a disclosure that cookies must be enabled.</p> <p>The root cause of the incident was identified by CBA as the manual process of bulk switching customers to the Welcome to Australia Price Option which did not override pro-rata MAF and other knock-on charges. This arose because the Welcome to Australia Price Option switch date could not be backdated to the account opening date, resulting in pro-rata MAF charges for the time lapse between account opening and price option switch date.</p> <p><i>Rectification</i></p> <p>As of 21 May 2019, the MTA webpages were updated to disclose that in order to qualify for the Migrant Waiver the customer must have cookies enabled on the browser when opening an account.</p>	<p>Remediation dates: November 2019</p> <p>Customers remediated: 2,187</p> <p>Customer accounts remediated: 2,119</p> <p>Total remediation paid: \$5,324.94</p> <p>Interest compensation included? Yes</p>

Table 6G: Incidents relating to the Student/Apprentice Waiver

Table 6G: Incidents relating to the Student/Apprentice Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
27.	Incorrect charging of MAF on student accounts <b>IN-057843</b>	N/A	14/08/2015	August 2015 (correction to SOPs and impacted accounts switched to correct price option)	<p>This incident "IN-057843" relates to a failure to apply the Student/Apprentice Waiver as a result of a manual error by CBA staff arising from an omission in the Standard Operating Procedures. During 2015 "O-Week" (orientation week) events, which took place between February 2015 and March 2015, CBA offered student customers the ability to sign up for the Student Price Option (which waived the MAF) on campus where O-Week campaigns were held.</p> <p>The Student Price Option was intended to be applied by CBA's Processing Services team (which was responsible for applying the applicable price option to relevant accounts), followed by customers receiving a notification via SMS that their account had student option benefits, including a fee waiver, applied.</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>On 14 August 2015, through business reporting, it was identified that there were fewer students' accounts on the Student Price Option than expected for the O-Week campaign.</p> <p>On 19 August 2015, the incident was logged in RiskInSite.</p> <p>By 20 August 2015, investigation revealed that the root cause for the incident was that the Processing Services team had failed to apply the applicable Student Price Option. This was attributed to instructions in the Standard Operating Procedures, which set out the process to be undertaken by the Processing Services team to apply student options to relevant accounts. The Standard Operating Procedures omitted the step to apply the Student Price Option, which offered the fee waiver, and which resulted in the incorrect charging of a MAF for a period of 1 to 3 months depending on when the customer signed up to the account.</p> <p><i>Rectification</i></p> <p>In August 2015:</p> <ul style="list-style-type: none"> <li>a fix was applied by bulk switching the impacted customers to the correct Student Price Option which applied the MAF Waiver; and</li> <li>the Standard Operating Procedures were updated to include the relevant step for applying the Student Price Option which applied the MAF Waiver.</li> </ul>	<p>Remediation dates: August 2015</p> <p>Customers remediated: 963</p> <p>Customer accounts remediated: 949</p> <p>Total remediation paid: \$7,422.19</p> <p>Interest compensation included? No</p>

Table 6G: Incidents relating to the Student/Apprentice Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
26.	Incorrect charging of MAF on Student and Apprentices Smart Access Account <b>IN-184100</b>	2/11/2016	27/04/2018	24/05/2018	<p>This incident "IN-184100" relates to the failure to apply the Student/Apprentice Waiver by reason of a system error arising from a software update to CommSee which in turn affected data in the ODS system.</p> <p>Eligibility for the Student Price Option is determined on an ongoing basis through the monitoring of customers' student status. This occurs via the ODS system using data fed into it from CommSee.</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>In late April 2018, Group Customer Relations escalated customer complaints regarding the Student Price Options not being applied appropriately to customer accounts. On 2 May 2018, investigations revealed that the Student Price Option being applied to some customers' accounts was automatically expiring within 2 days of being applied to some customer accounts.</p> <p>The incident was logged in RiskinSite on 7 May 2018.</p> <p>Further investigations revealed that a software update to CommSee in November 2016 removed the mandatory employment requirements from a customer's profile including education level, occupation category and fulltime student status, however these fields were not updated in the ODS system and were still mandatory for the Student Price Option in the ODS system. As a result, when a Student Price Option was applied to a customer profile in CommSee without those employment fields completed, the load of that data into the ODS system failed which in turn resulted in the Student Price Option being automatically removed from the customer's profile. This error led to some customers who were eligible for a MAF Waiver being charged a MAF.</p> <p><i>Rectification</i></p> <p>On 23 May 2018, a manual fix was implemented involving the bulk switching of 11,333 customers back on to the Student Price Option for a further 12 months.</p>	<p>Remediation dates: November to December 2018</p> <p>Customers remediated: 20,837</p> <p>Customer accounts remediated: 18,439</p> <p>Total remediation paid: \$231,975.59</p> <p>Interest compensation included? Yes</p>

Table 6H: Incidents relating to the Wealth Package Waiver

Table 6H: Incidents relating to the Wealth Package Waiver						
No	Issue	Start date of incorrect charging	Date of detection by CBA	System fix date	Incident description	Remediation details
29.	Project Phoenix (Wealth Package) – errors with Deposit and Transaction products <b>IN-041995</b>	1/09/2008	May–August 2014 for deposit and transaction account impacts	September 2015 (system changes to enable MAF waiver to be automatically applied by the system, that is, the introduction of the Home Loan MAF waiver)	<p>This incident "IN-041995" relates to the Wealth Package and 4 manual errors which caused certain Wealth Package customers to pay a MAF when they were entitled to the Wealth Package Waiver.</p> <p>The Wealth Package (and variants of this name) offered customers discounts on their Home Loan interest rate and fees as well as benefits on other products, including the Wealth Package Waiver on eligible transaction accounts and term deposits. In September 2010, term deposits were removed from the Wealth Package benefits. The Wealth Package Waiver was applied to customers' accounts manually by way of applying a package price option in CommSee. As a result of 4 errors, certain Wealth Package customers who were entitled to the Wealth Package Waiver did not receive the waiver.</p> <p><i>Identification and root cause (as identified by CBA)</i></p> <p>Between May and August 2014, as part of Project Phoenix, CBA identified the following 4 errors which caused certain Wealth Package customers to pay a MAF when they were entitled to the Wealth Package Waiver:</p> <ul style="list-style-type: none"> <li>a) the Wealth Package Waiver ceasing to apply when a customer switched product types;</li> <li>b) CBA staff failing to select the Wealth Package Price Option for customers who have an active Wealth Package;</li> <li>c) CBA staff failing to apply the Wealth Package Waiver to existing and eligible transaction accounts when they were setting up a new Wealth Package for customers; and</li> <li>d) failing to apply the Wealth Package Waiver where a customer set up a transaction account online via NetBank.</li> </ul> <p>As a result of these errors, some transaction accounts were not receiving the Wealth Package Waiver despite meeting the eligibility criteria.</p> <p>On 21 November 2014, the incident was logged in RiskInSite.</p> <p><i>Rectification</i></p> <p>From 30 September 2015, CBA introduced the Home Loan Waiver to automate the waiver of the MAF for customers who held eligible Home Loan and transaction accounts resolving the incident from that date.</p>	<p>Remediation dates: November 2015 to October 2016</p> <p>Customers affected: 78,482</p> <p>Customer accounts affected: 54,904</p> <p>Total remediation amount: \$643,281.87</p> <p>Total remediation paid: \$643,241.34</p> <p>Interest compensation included? Yes</p>

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**Schedule 7 – Remediation where components of interest not paid**

<b>MAF Waiver Issue Item number (from Schedule 6)</b>	<b>Description of MAF Waiver Issue</b>
7	Incorrect charging of fees for customers who were entitled to a Relationship Balance Waiver <b>IN-SON-11086228</b>
8	Customers incorrectly charged MAF as result of wrong file being uploaded <b>IN-015322</b>
9	Errors in the application of the Relationship Balance fee waiver <b>IN-077462</b>
10	Misalignment between system design and TSIA which impacted the application of business day rules which affected the application of the Relationship Balance waiver <b>IN-080407</b>
12	Customers charged MAF incorrectly due to account classification type applied to Savings Investments Account (SIA) <b>IN-080409</b>
13	Customers charged MAFs incorrectly when CBA failed to inform Passbook customers of fee changes <b>IN-081021</b>
14	Customers were incorrectly charged MAF due to a one-off system change <b>IN-099067</b>
15	Future Home Saver (FHS) account balance not counting towards Relationship Balance calculation <b>IN-157622</b>
16	Customers charged MAFs incorrectly who held a Cash Management Call Account (CMCA) and were either receiving an Aged pension or Australian war veterans pension <b>IN-018007</b>
17	MAF charged incorrectly to Aged, Disability and Veteran Pension Customers <b>IN-035981</b> and <b>IN-051726</b>
19	Home Loan MAF waiver not applied to eligible transaction accounts (where home loan balance less than \$1) <b>IN-098578</b> and <b>IN-100318</b>
22	MAF incorrectly charged on accounts with beneficiaries of trusts under 21 years <b>IN-035982</b>
27	Incorrect charging of MAF on student accounts <b>IN-057843</b>