

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 31/03/2021 3:11:37 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application - Form 15 - Rule 8.01(1)
File Number:	QUD96/2021
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Dated: 31/03/2021 4:02:41 PM AEST

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

Registrar

Important Information

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

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

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



Form 2
Rule 2.2 and 15A.3

ORIGINATING PROCESS

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: QUEENSLAND
DIVISION: GENERAL

NO QUD **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

A. DETAILS OF APPLICATION

This application is made under sections 19 and 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), sections 12GBA(1), 12GJ(1) and 12GLB(1)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) (as in force prior to 13 March 2019), sections 12GBA(1) and 12GBB(1) of the ASIC Act (as in force from 13 March 2019), section 1101B of the *Corporations Act 2001* (Cth) (**Corporations Act**), and sections 1317E(1), 1317G(1) and 1317J(1) of the Corporations Act (as in force from 13 March 2019).

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

In this originating process, terms which are defined in the Concise Statement dated 31 March 2021 have the same meaning as they do in that document.

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

Declarations

1. A declaration under s 21 of the FCA Act or s 1101B of the Corporations Act that between 1 June 2010 and 11 September 2019 on each occasion of charging or notifying the customer of the charging of a monthly access fee (**MAF**), and in doing so expressly or impliedly representing in trade or commerce that it had a contractual entitlement to do so when it did not, as a result of the customer being entitled to a

Filed on behalf of the Plaintiff, ASIC

File ref: 18010111

Prepared by: Jody Marshall
AGS lawyer within the meaning of s 55I of the *Judiciary Act*
1903

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waiver of the MAF by meeting specified criteria (**MAF Waiver**), CBA on each occasion it made a representation engaged in conduct in relation to financial services that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act.

2. A declaration under s 21 of the FCA Act or s 1101B of the Corporations Act that, between 1 June 2010 and 12 March 2019, on each occasion of charging or notifying the customer of the charging of a MAF, and in doing so expressly or impliedly representing in trade or commerce that it had a contractual entitlement to do so when it did not as a result of the customer being entitled to a MAF Waiver, CBA on each occasion it made a representation made false and/or misleading representations in connection with the supply of financial services concerning the existence or effect of a condition, right or remedy in contravention of s 12DB(1)(i) of the ASIC Act.
3. Further, a declaration under s 21 of the FCA Act or s 12GBA(1) of the ASIC Act that, between 13 March 2019 and 11 September 2019, on each occasion of charging or notifying the customer of the charging of a MAF, and in doing so expressly or impliedly representing in trade or commerce that it had a contractual entitlement to do so when it did not as a result of the customer being entitled to a MAF Waiver, CBA on each occasion it made a representation made false and/or misleading representations in connection with the supply of financial services concerning the existence or effect of a condition, right or remedy in contravention of s 12DB(1)(i) of the ASIC Act.
4. A declaration under s 21 of the FCA Act or s 1101B of the Corporations Act that, between 1 June 2010 and 11 September 2019:
 - 4.1. on each occasion that CBA entered into a contract with a customer, by the customer's acceptance of the transaction account terms and conditions, contained in a document titled 'Transaction Savings and Investment Account terms and conditions' (**Terms and Conditions**), to establish a Relevant Account; and
 - 4.2. on each occasion that CBA subsequently sent a customer an updated version of the Terms and Conditions after the customer had entered into the contract,

CBA, acting in trade or commerce in connection with the supply of financial services:
 - 4.3. 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
 - 4.4. made those implied representations when it did not have adequate systems and did not have a 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,

and CBA therefore on each occasion it made the representation engaged in conduct in relation to financial services that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act.



5. A declaration under s 21 of the FCA Act or s 1101B of the Corporations Act that, between 1 June 2010 and 12 March 2019:

5.1. on each occasion that CBA entered into a contract with a customer, by the customer's acceptance of the Terms and Conditions, to establish a Relevant Account; and

5.2. on each occasion that CBA subsequently sent a customer an updated version of the Terms and Conditions after the customer had entered into the contract,

CBA, acting in trade or commerce in connection with the supply of financial services:

5.3. 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

5.4. made those implied representations when it did not have adequate systems and did not have a 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,

and CBA therefore on each occasion it made the representation:

5.5. made false and/or misleading representations in connection with the supply of financial services concerning the benefits of services in contravention of s 12DB(1)(e) of the ASIC Act; and

5.6. made false and/or misleading representations in connection with the supply of financial services with respect to the price of services in contravention of s 12DB(1)(g) of the ASIC Act.

6. Further, a declaration under s 21 of the FCA Act or s 12GBA(1) of the ASIC Act that, between 13 March 2019 and 11 September 2019:

6.1. on each occasion that CBA entered into a contract with a customer, by the customer's acceptance of the Terms and Conditions, to establish a Relevant Account; and

6.2. on each occasion that CBA subsequently sent a customer an updated version of the Terms and Conditions after the customer had entered into the contract,

CBA, acting in trade or commerce in connection with the supply of financial services:

6.3. 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

6.4. made those implied representations when it did not have adequate systems and did not have a 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,

and CBA therefore on each occasion it made the representation:

6.5. made false and/or misleading representations in connection with the supply of financial services concerning the benefits of services in contravention of s 12DB(1)(e) of the ASIC Act; and

6.6. made false and/or misleading representations in connection with the supply of financial services with respect to the price of services in contravention of s 12DB(1)(g) of the ASIC Act.

7. A declaration under s 1101B of the Corporations Act or s 21 of the FCA Act that, by CBA's conduct in each of paragraphs 1 to 6 above in contravention of ss 12DA(1), 12DB(1)(e), 12BD(1)(g) and 12DB(1)(i) of the ASIC Act, CBA breached its general obligation to comply with financial services laws in contravention of s 912A(1)(c) of the Corporations Act.

8. A declaration under s 1101B of the Corporations Act or s 21 of the FCA Act that by CBA's conduct, between 1 June 2010 and 12 March 2019, in:

8.1. failing, on each occasion, to apply MAF Waivers to customer accounts in respect of Relevant Accounts when it impliedly represented that it would do so;

8.2. continuing and maintaining systems and processes that were not capable of ensuring compliance with obligations to customers; and

8.3. 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, and thereby contravened s 912A(1)(a) of the Corporations Act.

9. Further, a declaration under s 1317E(1) of the Corporations Act that by CBA's conduct, between 13 March 2019 and 11 September 2019, in:

9.1. failing, on each occasion, to apply MAF Waivers to customer accounts in respect of Relevant Accounts when it impliedly represented that it would do so;

9.2. continuing and maintaining systems and processes that were not capable of ensuring compliance with obligations to customers; and

9.3. 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, and thereby contravened s 912A(5A) via s 912A(1)(a) of the Corporations Act.

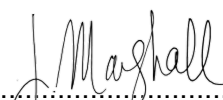
Penalties

- 10. An order pursuant to s 12GBA(1) of the ASIC Act (as in force prior to 13 March 2019) and s 12GBB(1) of the ASIC Act (as in force from 13 March 2019) that, within 30 days of the order, CBA pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of CBA’s conduct declared to be contraventions of s 12DB(1) of the ASIC Act occurring after 1 April 2015.
- 11. An order pursuant to s 1317G(1) of the Corporations Act (as in force from 13 March 2019) for a financial services civil penalty that, within 30 days of the order, CBA pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of CBA’s conduct declared to be in contravention of s 912A(5A) via s 912A(1)(a) pursuant to s 1317E(1) of the Corporations Act.

Other orders

- 12. An order pursuant to s 12GLB(1)(a) of the ASIC Act that, within 30 days of the order, CBA take all reasonable steps to cause to be published, at its own expense, a notice stating that it has been ordered to pay a pecuniary penalty because it has made false or misleading representations in a manner and form approved by the Court.
- 13. An order that the Defendant pay the Plaintiff’s costs of and incidental to the proceeding.
- 14. Such further or other orders as the Court considers appropriate.

Date: 31 March 2021


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

This application will be heard byat the Harry Gibbs Commonwealth Law Courts Building, 119 North Quay Brisbane QLD 4000 at *am/*pm on



B. NOTICE TO THE DEFENDANT

TO: Commonwealth Bank of Australia Limited
c/o Clayton Utz
Level 15, 1 Bligh Street, Sydney NSW 2000

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

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

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

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

D. FILING

Date of filing: 31 March 2021

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Registrar

E. SERVICE

The Plaintiff's address for service is:

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

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

Tel: 07 3360 5751



Fax: 07 3360 5795

DX 119 Brisbane

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