

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 29/11/2021 4:54:46 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged:	Statement of Agreed Facts
File Number:	NSD1241/2021
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v WESTPAC BANKING CORPORATION ACN 007 457 141
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Sia Lagos".

Dated: 29/11/2021 5:16:56 PM AEDT

Registrar

### Important Information

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

The 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.



FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: GENERAL

**IN THE MATTER OF WESTPAC BANKING CORPORATION LIMITED ACN 007  
457 141**

**Australian Securities and Investments Commission**

Plaintiff

**Westpac Banking Corporation ACN 007 457 141**

Defendant

**STATEMENT OF AGREED FACTS AND ADMISSIONS**

**TABLE OF CONTENTS**

**Contents**

<b>A. Introduction.....</b>	<b>4</b>
<b>B. Definitions .....</b>	<b>4</b>
<b>C. Entities.....</b>	<b>9</b>
<b>C.1 ASIC, WBC and WGIL.....</b>	<b>9</b>
<b>C.2 Distribution of WGIL Policies by WBC .....</b>	<b>9</b>
<b>D. The Duplicate Policies Issue .....</b>	<b>10</b>
<b>D.1 Conduct of WBC .....</b>	<b>10</b>
<b>D.2 The Customers .....</b>	<b>12</b>
<b>D.3 WBC's knowledge of the Duplicate Policy Issue .....</b>	<b>13</b>
<b>i) Churn, the "Duplicate Policy" cancellation reason and cancellation code .....</b>	<b>13</b>
<b>ii) Previous reporting of Duplicate Policies .....</b>	<b>15</b>
<b>iii) Recording of complaints by customers.....</b>	<b>15</b>
<b>iv) 2017 General Insurance Audit.....</b>	<b>16</b>
<b>E. Breach reporting by WBC in relation to the Duplicate Policies Issue .....</b>	<b>17</b>
<b>F. System Changes by WBC in connection with the Duplicate Policies Issue .....</b>	<b>18</b>
<b>F.1 Introduction of Churn Management System .....</b>	<b>18</b>
<b>F.2 Implementation of Detective Controls.....</b>	<b>19</b>
<b>F.3 Implementation of Preventative Controls .....</b>	<b>21</b>
<b>F.4 Implementation of Monitoring Controls .....</b>	<b>22</b>
<b>F.5 Assisted Channel Training .....</b>	<b>22</b>
<b>F.6 Customer Remediation .....</b>	<b>23</b>
<b>G. Contraventions by WBC in relation to Duplicate Policies .....</b>	<b>25</b>
<b>G.1 The cause of the Duplicate Policies .....</b>	<b>25</b>
<b>G.2 Contraventions of the ASIC Act and Corporations Act by WBC .....</b>	<b>26</b>

G.3 Sections 12DA and 12DB ASIC Act, section 1041H Corporations Act .....	26
G.4 Section 912A(1) Corporations Act 2001 (Cth) .....	28
H. Penalty Arising From The Duplicate Policy Contraventions .....	29
H.1 Nature of the contraventions: The extent to which the contravention was the result of deliberate, covert or reckless conduct, as opposed to negligence or carelessness.....	29
H.2 Nature of the contraventions: whether the contravention comprised isolated conduct, or was systematic or occurred over a period of time .....	30
H.3 Nature of the contraventions: The seniority of the officers responsible for the contravention.....	31
H.4 Nature of the contraventions: The existence, within the corporation, of compliance systems and whether there was a culture of compliance at the corporation.....	31
H.5 Nature of the contraventions: The impact or consequences of the contravention on third parties; and the extent of any profit or benefit derived as a result of the contravention ..	31
H.6 The particular circumstances of WBC: The size and financial position of WBC .....	31
H.7 The particular circumstances of WBC: Whether the company has improved or modified its compliance systems since the contravention.....	31
H.8 The particular circumstances of WBC: Whether the company (through its senior officers) has demonstrated contrition and remorse .....	32
H.9 The particular circumstances of WBC: Whether the company had disgorged any profit or benefit received as a result of the contravention, or made reparation .....	32
H.10The particular circumstances of WBC: Whether the company has cooperated with and assisted the relevant regulatory authority in the investigation and prosecution of the contravention.....	32
H.11The particular circumstances of WBC: Whether the company has suffered any extra-curial punishment or detriment arising from the finding that it had contravened the law .....	32
I. The Non-Consent Issue .....	33
I.1 The Non-consent Issue .....	33
I.2 The reasons for Non-consent Issue .....	34
I.3 Knowledge of WBC of the Non-consent Issue .....	35
i) The Deloitte Report .....	35
ii) Customer Complaints spreadsheet and other records.....	36
J. Contraventions relating to the Non-Consent Issue .....	37
J.1 Contraventions of the ASIC Act by WBC .....	37
J.2 Sections 12DA and 12DB ASIC Act, section 1041H Corporations Act .....	38
J.3 Section 12DM ASIC Act .....	38
J.4 Section 912A(1) Corporations Act .....	39
K. Penalty relating ARISING FROM the Non-Consent Contraventions .....	39
K.1 Nature of the contraventions: The extent to which the contravention was the result of deliberate, covert or reckless conduct, as opposed to negligence or carelessness.....	39
K.2 Nature of the contraventions: whether the contravention comprised isolated conduct, or was systematic or occurred over a period of time .....	40
K.3 Nature of the contraventions: The seniority of the officers responsible for the contravention.....	40
K.4 Nature of the contraventions: The existence, within the corporation, of compliance systems and whether there was a culture of compliance at the corporation.....	40
K.5 Nature of the contraventions: The impact or consequences of the contravention on third parties; and the extent of any profit or benefit derived as a result of the contravention ..	40
K.6 The particular circumstances of WBC: The size and financial position of WBC .....	41
K.7 The particular circumstances of WBC: Whether the company has improved or modified its compliance systems since the contravention.....	41
K.8 The particular circumstances of WBC: Whether the company (through its senior officers) has demonstrated contrition and remorse .....	41
K.9 The particular circumstances of WBC: Whether the company had disgorged any profit or benefit received as a result of the contravention, or made reparation .....	41
K.10The particular circumstances of WBC: Whether the company has cooperated with and assisted the relevant regulatory authority in the investigation and prosecution of the contravention.....	41
K.11The particular circumstances of WBC: Whether the company has suffered any extra-curial	

**punishment or detriment arising from the finding that it had contravened the law ..... 41**

## A. INTRODUCTION

1. This Statement of Agreed Facts and Admissions (**SOAF**) is made jointly by the Plaintiff, the Australian Securities and Investments Commission (**ASIC**), and the Defendant, Westpac Banking Corporation (**WBC**).
2. For the purposes of these proceedings,
  - a. ASIC and WBC agree that the statements in this SOAF are "agreed facts" within the meaning of s 191 of the *Evidence Act 1995* (Cth), and
  - b. to the extent that any statements in this SOAF are statements as to law or mixed fact and law, they constitute formal admissions by WBC as to those matters.
3. These proceedings involve conduct during the Relevant Period whereby WBC distributed policies of insurance issued by Westpac General Insurance Limited (**WGIL**) to certain customers in circumstances where (i) those customers came to be issued two or more policies that covered an identical risk or at least partly the same risk (ii) it was reasonable for those customers to expect that the existing policy would be cancelled; and (iii) WBC collected premiums from those customers in respect of both the customer's intended policy and the existing policy (the **Duplicate Policy Issue**); and WBC also distributed policies of insurance issued by WGIL to certain customers, who did not consent to being issued with the relevant policies (the **Non-consent Issue**).
4. By reason of the agreed facts set out in this SOAF, WBC admits that it contravened:
  - 4.1. in connection with the Duplicate Policy Issue, in relation to 3,899 Customers, ss 12DA and 12DB(1)(b), (h), and (i) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and ss 912A(1)(a), (c) and (ca), and 1041H of the *Corporations Act 2001* (Cth) (**Corporations Act**); and
  - 4.2. in connection with the Non-consent Issue, in relation to 329 customers, ss 12DA and 12DB(1)(b) and (i) and 12DM of the ASIC Act and s 912A(1)(c) and 1041H of the Corporations Act.
5. The parties jointly seek the declarations and orders set out in the accompanying Originating Process. The parties jointly submit that a penalty totalling \$15 million payable by WBC is an appropriate penalty for the admitted contraventions.

## B. DEFINITIONS

AAGIL	means Allianz Australia General Insurance Limited (ABN 99 003 719 319) (the name by which WGIL has been known since 1 July 2021).
AFCA	the Australian Financial Complaints Authority.
AFSL	with respect to WBC, means Australian Financial Services Licence numbered 233714.
Agreed Acquisition Representations	means the representation made by WBC to each Non-consent Customer by sending the New Business Welcome Packs that the customer had agreed to acquire the Policy from WBC in circumstances where they had not.
Alliance	means the Agreement establishing an alliance between WBC, WGIL and

Agreement	Allianz dated 13 January 2015 by which WBC distributed, and for which WBC received commission and a share of the profits from the supply of, the Policies.
Allianz	means Allianz Australia Insurance Limited, ABN 15 000 122 850.
ASIC	means Australian Securities and Investments Commission.
ASIC Act	means <i>Australian Securities and Investments Commission Act 2001</i> (Cth).
Assisted Channel	means the process by which a customer applies for a policy through a WBC or a Westpac Brand branch or customer contact centre.
Branch Issues Register	means the record of concerns and complaints maintained by the customer contact centre of calls received from customers in relation to issues arising from the branch.
BTPolisy	means the policy administration and/or servicing system owned and maintained by WBC and used by WGIL, in the period up to October 2015, for administering Policies issued by WGIL.
BWD Customer Sales Quality Forum	means the BTFG Bank Wealth Distribution Sales Quality Forum, or the BT Wealth Sales Quality Forum, which was established to review and confirm that the quality of BT product sales made through the consumer bank division was in line with Westpac's quality expectations and customer service promise.
Change	means a change requested by a customer to their existing Policy.
CMS	means the churn management system (being a pricing algorithm) introduced in May 2017.
CNR	means the Customer Needs Review process.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Customer	means each of the persons who held a Policy for a Risk Address identified in column B in the table contained in part A of Schedule 1 to this Document. Each of a Customer and a Non-consent Customer is a subset of WBC's customers. Use of the term "Customer" includes "Customers" and "Non-consent Customers" unless otherwise specified.
Customer Forum	means the Monthly Complaints Review Forum, later called the Customer Forum, where trends identified in relation to complaints were considered.
Detective Control	means a risk management procedure whose objective is to detect possible breaches of law.
Detective Control Defect	means the defect identified in September 2020 with respect to the Duplicate Policy exception report parameters.
DP Code	means the "DP" cancellation code applied in WBC's systems when a Policy underwritten by WGIL has to be cancelled as another WGIL underwritten Policy is in place at the same insured address for the same cover.
DP Code Customers	means the 19,982 customers who were recorded as having their Policy cancelled under the DP Code outside of the remediation process, between 1 January 2013 and 31 March 2021.
DP Detective Controls	means risk management procedures the objectives of which were to detect breaches of the "financial services laws" (as defined in the Corporations Act) in relation to the issuance of Duplicate Policies.
DP Monitoring Controls	means risk management procedures the objectives of which were to monitor the success or otherwise of the Detective Controls and Preventative Controls.
DP Preventative Controls	means risk management procedures the objectives of which were to prevent breaches of the financial services laws in relation to the issuance of Duplicate Policies.

Duplicate Policy	means a Policy, issued by WGIL and distributed by WBC under a Westpac Brand, in circumstances where the customer already held a Policy in respect of the same Risk Address at the same time.
Duplicate Policy Issue	means conduct during the Relevant Period whereby WBC distributed Policies issued by WGIL to certain customers in circumstances where (i) those customers came to be issued two or more Policies that covered the same Risk Address at the same time (ii) it was reasonable for those customers to expect that the existing Policy would be cancelled; and (iii) WBC collected premiums from those customers in respect of both Policies.
Earthrise	means the document imaging system used to capture relevant documents in relation to Policies.
Endorsement	means the pack of documents provided to customers by WBC when a Policy was amended.
Entitlement to Payment Representations	means the representations made by WBC to each Non-consent Customer, asserting to the customer that WBC was entitled to be paid the amount of premium set out in the New Business Welcome Pack.
eSales System	means the sales system used by staff in the Assisted Channel to set up a Policy after October 2015.
Frontline sellers	means staff in WBC branches and customer contact centres who had access through the Genisys and later the eSales system to apply different new business discounts through selection of a drop-down box.
General Insurance Claims Leadership Team	means the individuals within the General Insurance business who held the following roles: <ul style="list-style-type: none"> <li>a) Head of Claims, General Insurance;</li> <li>b) Senior Operations Manager;</li> <li>c) Senior Manager Home &amp; Contents Claims Operations;</li> <li>d) Senior Manager Claims Performance &amp; Support;</li> <li>e) Senior Manager, Supply Chain;</li> <li>f) Senior Manager, Claims Transformation;</li> <li>g) Strategic Relationship Manager;</li> <li>h) Quality Assurance Consultant;</li> <li>i) Senior Manager, Operational Assurance and Support;</li> <li>j) Complex Claims Team Manager;</li> <li>k) Manager BAU Claims;</li> <li>l) Team Manager;</li> <li>m) Claims Team Leader;</li> <li>n) Senior Consultant – Complex Loss; and</li> <li>o) Senior Claims Specialist.</li> </ul>
Genisys	means the sales system used by staff in the Assisted Channel to provide a quote or set up a Policy prior to 26 October 2015.
GenPact	means the off-shore team that processed quality assurance activities relating to insurance policies.
Genuine Reason	means a circumstance in which there is or may be a genuine need and/or a valid reason for a customer to hold more than one Policy for the same Risk Address at the same time, and includes circumstances in which: <ul style="list-style-type: none"> <li>– the customer has knowingly consented to a Duplicate Policy;</li> <li>– the customer has a main residence and a ‘granny flat’, a duplex, or a house on subdivided land, which has been, will be, or is likely to be,</li> </ul>

constructed at the same Risk Address.

GNAF	means Geocoded National Address File which is a unique identifier that combines the street address, the coordinates, and the mesh block identifier for a location, but not an individual Risk Address.
Initial Methodology	means the methodology used by WBC from March 2018 to identify historical and in-force Duplicate Policies without a Genuine Reason, and remediate affected customers.
Juno	means WBC's incident management system.
Monitoring Control	means a risk management procedure whose objective is to monitor the success or otherwise of Preventative Control or a Detective Control.
MWU	means the "My Weekly Update" emails issued to staff by WBC.
New Business Welcome Pack	means the pack of documents provided to the Non-consent customers by WBC at the time the Policy was issued to the customer.
New Policy	a new Policy created to effect a Change requested by a customer due to system limitations preventing the Change being effected by amending the existing Policy.
Non-consent code	means the "UL" cancellation code applied in WBC's systems where a Policy was cancelled and the reason for cancellation was recorded as being uploaded without the customer's consent.
Non-consent Customer	means each of the persons referred to as a Non-consent Customer in the table contained in part B of Schedule 1 to this Document.
Non-consent Detective Controls	means risk management procedures the objectives of which were to detect possible breaches of the "financial services laws" (as defined in the Corporations Act) in relation to the issuance of Policies without the customer's consent
Non-consent Issue	means WBC's distribution of Policies issued by WGIL to Non-consent customers, in situations where WBC admits for the purpose of these proceedings that the customer did not consent to the Policy.
Non-consent Monitoring Controls	means risk management procedures the objectives of which were to monitor the success or otherwise of the Non-consent Detective Controls and Non-consent Preventative Controls.
Non-consent Policies	means the Policies identified in Part B of Schedule 1
Non-consent Preventative Controls	means risk management procedures the objectives of which were to prevent possible breaches of the financial services laws in relation to the issuance of Policies without the customer's consent.
Non-consent Representations	means the Agreed Acquisition Representations and the Entitlement to Payment Representations
Non-consent Services	means supply of Services in circumstances where the customer did not consent to the Services.
Non-system driven churn	means churn that is not necessary because the relevant change requested by the customer is capable of being processed in the system without issuing a new Policy.
Original Policy	means the Policy held by a customer in respect of which a customer requests a Change.
Overarching Principles	means the overarching methodology and guiding principles set out in the WGIL Home and Contents Duplicate Policies Review (CR000324) "Overarching Methodology and Guiding Principles Paper" dated 31 August 2020.



Policy	means a home and contents insurance policy, or a landlord insurance policy.
pre-October 2007 cohort	means Policies cancelled prior to 30 September 2007 in respect of which WBC does not hold sufficient policyholder financial or transaction data to enable it to determine premium refund amounts for the purpose of remediation.
Preventative Control	means a risk management procedure whose objective is to prevent possible breaches of law.
Relevant Period	means the period between 30 November 2015 and at least 30 June 2021.
Remediation Report	means the methodology contained in a report prepared by WBC on 23 September 2020.
Renewal	means the pack of documents provided to DP Code Customers by WBC at the time a Policy was open to renewal by the customer.
Revised Remediation Methodology	means the revised methodology for identifying and remediating the holders of in-force and historical Duplicate Policies developed by WBC by 23 March 2020.
Risk Address	means the address of the property that is covered by a Policy.
Sales Channels	means the Assisted Channel, or the process by which a customer applies for a Policy directly via one of WBC's, or one of the WBC Brand's, websites.
Senior Role	means a role within the General Insurance business with decision making responsibilities in relation to Policies and to whom issues and incidents were to be escalated for consideration and resolution.
September 2021 Risk Report	means the report circulated by WBC's Risk Assurance Team on 20 September 2021.
Services	means the financial services supplied by WBC to a Customer for the same Risk Address within the meaning of s 766A(1)(b) and s 766C(2) of the Corporations Act and s 12BAB(1) and s 12BAB(1AA) of the ASIC Act.
SOAF	means this Statement of Agreed Facts and Admissions, made jointly by the Plaintiff, the Australian Securities and Investments Commission, and the Defendant, Westpac Banking Corporation.
Suspension Period	means the period between November 2019 and December 2020 in which the detective report identifying all potential Duplicate Policies that was reviewed by the Customer Support and underwriting team was suspended because WGIL identified an issue with the name matching methodology being used.
System-driven churn	means churn that is necessary where a customer requests a change to an existing Policy, but WBC's system does not allow for the change to be made as an amendment to the Policy. As a result, a new Policy must be issued with the amended terms and the existing Policy must be cancelled.
Unclaimed monies	means a provision for the remediation amounts owed to customers WBC has not been able to contact.
Underwriting Manual	means the Home and Contents Technical Underwriting Manual.
WBC	means Westpac Banking Corporation ACN 007 457 141.
WBC Breach Determination Forum	means a meeting held by a group of individuals known as the Breach Determination Forum for the purpose of considering potential compliance breaches within the Westpac Group, with the authority to make decisions relating to items presented to the Breach Determination Forum.
WBC Customer Remediation Policy	means the remediation programme for the Duplicate Policy Issue more fully described in section F.6 below.

Westpac Brand	means Westpac, St George, BankSA, Bank of Melbourne and RAMS.
Westpac Group Executive Risk Committee	means the committee that provides oversight of the Westpac Group's risk profile and risk management.
WGIL	means Allianz Australia General Insurance Limited, ACN 003 719 319, which: was a subsidiary of WBC until 1 July 2021; <ul style="list-style-type: none"> <li>– is now a subsidiary of Allianz;</li> <li>– was registered as an Australian public company on 2 March 1989 and has been an authorised insurer under <i>the Insurance Act 1973</i> (Cth) since 29 March 1989; and</li> <li>– was previously known as Westpac General Insurance Limited.</li> </ul>
WPolisy	means the policy administration and/or servicing system owned and maintained by Allianz under a General Insurance Alliance Agreement between WGIL, Allianz and WBC, in the period from October 2015, for administering home and contents insurance and landlord insurance policies issued by WGIL.

## C. ENTITIES

### C.1 ASIC, WBC and WGIL

6. ASIC is a body corporate:

- 6.1. established by s 7 of the *Australian Securities Commission Act 1989* (Cth);
- 6.2. continued by s 261 of the ASIC Act; and
- 6.3. entitled to sue in its corporate name, pursuant to s 8 of the ASIC Act.

7. WBC is and at all material times was:

- 7.1. a corporation duly incorporated;
- 7.2. liable to be sued in its corporate name; and
- 7.3. the holder of an Australian Financial Services Licence numbered 233714 (**AFSL**).

8. WGIL:

- 8.1. was registered as an Australian public company on 2 March 1989;
- 8.2. was at all times prior to 1 July 2021, a subsidiary of WBC;
- 8.3. has since 1 July 2021, been a subsidiary of Allianz Australia Limited, ABN 15 000 122 850 and is now known as Allianz Australia Insurance Limited (**AAGIL**); and
- 8.4. is, and at all material times was, an authorised insurer under the Insurance Act 1973 (Cth).

### C.2 Distribution of WGIL Policies by WBC

9. During the Relevant Period:

- 9.1. WGIL issued Policies to customers;
- 9.2. WBC, as agent of WGIL, distributed Policies to customers;
- 9.3. WBC's distribution of Policies issued by WGIL was authorised by WBC's AFSL;
- 9.4. WGIL continuously authorised WBC to provide services to customers on behalf of WGIL in respect of the Policies including:
  - a. entering into Policies;
  - b. varying or renewing Policies; and
  - c. collecting premiums from customers; and
- 9.5. WBC distributed the Policies through its branches, call centres and online, under the Westpac Brands.

10. During the Relevant Period, WBC used two policy administration systems to record information in relation to Policies:

- 10.1. BTPolisy, in the period up to 25 October 2015; and
- 10.2. WPolisy in the period from 26 October 2015.

**D. THE DUPLICATE POLICIES ISSUE**

**D.1 Conduct of WBC**

11. During the Relevant Period:

- 11.1. a Policy was initiated through the Sales Channels;
- 11.2. there was not a mandatory process or procedure which applied to the Assisted Channel to ensure the cancellation of an existing Policy after issuing a new Policy for the same Risk Address;
- 11.3. a failure to have adequate systems and controls in place to identify Duplicate Policies meant that Assisted Channel staff were more likely to fail to cancel a Duplicate Policy;
- 11.4. an adequate Preventative Control would have prompted the staff in the Assisted Channel to confirm a customer had a Genuine Reason to be issued a further Policy for the same Risk Address, but that did not exist;
- 11.5. an adequate Detective Control in the Assisted Channel would have identified, or facilitated the identification of a Duplicate Policy:
  - a. for the same Risk Address, but that did not exist;

- b. for which a customer did not have a Genuine Reason, but that did not exist;
  - 11.6. an adequate Monitoring Control in the Assisted Channel would have identified, or facilitated the identification of, the success, or otherwise, of:
    - a. a Preventative Control, but that did not exist; and
    - b. a Detective Control, but that did not exist.
- 12. During the Relevant Period, 8,049 Duplicate Policies were issued to 3,899 Customers. This was part of a broader pattern of conduct between 2001 and June 2021 resulting from the deficiencies identified later in this SOAF. In that time, WGIL issued and WBC distributed Duplicate Policies to no fewer than 7,252 customers with no Genuine Reason. These 7,252 customers were reviewed as part of WBC's remediation process for customers who held Duplicate Policies with no Genuine Reason. WBC's remediation process is detailed in section F.6.
- 13. As at 13 September 2021, WBC:
  - 13.1. has made remediation payments in the sum of \$7,630,743.74 to 4,159 customers (including 2,811 Customers) that WBC has been able to contact, each of whom had on issue one or more Duplicate Policies with no Genuine Reason; and
  - 13.2. has identified a further \$3,980,810.97 in remediation payments which were paid to Unclaimed monies with respect to the 3,093 customers (including 1,088 Customers) each of whom was issued a least one Duplicate Policy, likely with no Genuine Reason, but whom WBC has not been able to contact.
- 14. To identify customers for remediation, WBC adopted the following methodology to identify Duplicate Policies:
  - 14.1. identify Policies with a match for name and address (using an external company to identify real address and name matches so, for example "Smith St" would match "Smith Street"); and
  - 14.2. matched any number of Policies at a Risk Address, with no requirement for the same occupancy type.
- 15. WBC has identified 19,982 customers who were recorded as having their Policy cancelled under the DP Code outside of the remediation process, between 1 January 2013 and 31 March 2021 (the **DP Code Customers**). It is likely that a cohort of those customers were issued a Duplicate Policy without a Genuine Reason, but the number of customers in the latter cohort cannot be determined conclusively because:
  - 15.1. as a matter of WBC's general practice, where a Policy was cancelled, the reason for cancellation was recorded by way of a code in BTPolisy or WPolisy. The circumstances in which a Policy could be cancelled are set out in paragraph 23 below;

- 15.2. where a Policy was cancelled by reason of being a Duplicate Policy, the applicable code was the “DP” cancellation code (**DP Code**);
- 15.3. use of the DP Code did not differentiate between whether a Duplicate Policy was created with or without a Genuine Reason;
- 15.4. where a Policy was cancelled using the DP Code and a customer was entitled to a refund of premium paid, WBC’s practice as set out in the Underwriting Manual was to refund the customer and for that Policy to be cancelled back to the date of inception in WBC’s applicable policy administration system. The relevant policy information was updated in the policy administration system and the relevant duration of the Policy was revised to account for the Policy’s cancellation back to inception. As a result, in respect of customers who had had a Policy cancelled under the DP Code and refunded, WBC cannot now provide evidence as to the following:
  - a. whether the customer had been refunded (WBC’s policy transaction information is maintained on a journal basis which means that individual payments are not separately identifiable);
  - b. what the amount of the refund was;
  - c. whether the refund covered the whole period of time in which the customer held a Duplicate Policy without a Genuine Reason (albeit that this was the direction given to staff in the Underwriting Manual); and
  - d. whether interest was paid to the customer on the amount refunded.
- 15.5. the available records indicate refunds of more than \$15 million were paid;
- 15.6. further, in some circumstances, where the remediation program found that a Policy had already been cancelled, the cancellation code was not updated to the DP Code. WBC has not identified these Policies.

## **D.2 The Customers**

16. Customer and Policy information has been used to prepare the table contained at Part A of Schedule 1 to this SOAF. To protect personal information of the customers, information clearly identifying a Customer, Risk Address or Policy Number has been removed. WBC and ASIC both hold the identifying customer data and are aware of which customers are referred to in the schedule. Each row of Part A of Schedule 1 sets out the information listed below in respect of a specific Customer and corresponding Risk Address:
  - 16.1. Column B contained the Customer’s Risk Address, that information has been substituted with an anonymising reference linked to the customer;
  - 16.2. Column A contained the Customer’s full name, that information has been substituted with an anonymising reference linked to the customer;

- 16.3. the Customer(s) set out in column A were issued each of the Policies set out in column H of the table in part A of Schedule 1;
  - 16.4. the Risk Address and details of the insurance product are set out in columns B and E of the table in part A of Schedule 1;
  - 16.5. the period of coverage for each policy is set out in columns O and P of the table in part A of Schedule 1;
  - 16.6. the premium payment frequency for each policy is set out in column J of the table in part A of Schedule 1;
  - 16.7. the period of overlapping coverage is set out in columns C and D of the table in part A of Schedule 1; and
  - 16.8. where the information is available on WBC's systems, the remediation and interest payments for each customer are set out in columns L and N of the table in part A of Schedule 1.
17. The table in part A of Schedule 1 does not contain data as to the total value of payments made during the life of each Policy and made during the overlapping coverage period because WBC's data is maintained on a journal basis and it is not possible to identify a total accurate figure for premiums paid by each customer.

### **D.3 WBC's knowledge of the Duplicate Policy Issue**

#### **i) Churn, the "Duplicate Policy" cancellation reason and cancellation code**

18. WBC was aware of the risk of a Duplicate Policy being issued to a customer without a Genuine Reason from at least 2012, as demonstrated by the availability of a "Duplicate Policy" cancellation reason in the Underwriting Manual and the use of the DP Code. This was due, in part, to the fact that staff were, in some circumstances, required to cancel and re-issue (or "churn") Policies to effect changes requested by customers.
19. Churn refers to the issue of a new Policy in circumstances where WBC cancels an existing Policy for the same Risk Address. WBC categorises churn in the following way:
- 19.1. **System-driven churn:** this is churn that is necessary where a customer requests a change to an existing Policy, but WBC's system does not allow for the change to be made as an amendment to the Policy. As a result, a new Policy must be issued with the amended terms and the existing Policy must be cancelled;
  - 19.2. **Non-system driven churn:** this is churn that is not necessary because the relevant change requested by the customer is capable of being processed in the system without issuing a new Policy.
20. Churn gave rise to a risk of Duplicate Policies because WBC's systems did not automatically cancel an existing Policy when a new Policy was issued. Rather, the staff member responding to the customer's request was required to cancel the existing Policy.

### The Underwriting Manual

21. The Underwriting Manual directed WBC staff that in some circumstances an existing Policy must be cancelled before a new Policy is issued to effect a change (i.e., as part of System-driven churn).
22. During the Relevant Period, the Underwriting Manual contained WBC's written policy in relation to the cancellation of Policies.
23. With respect to the Underwriting Manual:
  - 23.1. the Home & Contents Product and Underwriting teams were the content owners of the Underwriting Manual;
  - 23.2. the Underwriting Manual was first introduced in August 2002 and was reviewed and periodically updated by WBC, including during the Relevant Period;
  - 23.3. the Underwriting Manual contained a section on "Policy Changes". That section was updated on 17 October 2012, 21 September 2013, November 2014, December 2015, 23 January 2018 and June 2021;
  - 23.4. an update to the Underwriting Manual dated 17 October 2012 referred to the cancellation of Duplicate Policies;
  - 23.5. the Underwriting Manual outlined in general terms the policy for cancellation of Duplicate Policies, including:
    - a. for certain specified circumstances, the Policy must be cancelled before a new Policy is issued (e.g. where an insured address is to be changed or where the owner is deceased);
    - b. if identified, a Duplicate Policy could be cancelled and refunded effective from the date the duplication began; and
    - c. branch requests for cancellations are to be processed when a Duplicate Policy has been set up by the branch;
  - 23.6. on 17 October 2012, the "Policy Cancellations" section of the Underwriting Manual was updated. It specified, under the DP Code, that an "acceptable" reason for the cancellation of a WGIL underwritten policy is if another WGIL underwritten policy is already in place at the same insured address at the same time; and
  - 23.7. an online version of the Underwriting Manual was available to WBC's underwriting team, contact centre consultants, claims managers and business development managers until late-2020, on "support point" (for the Customer Contact Centre) and on shared drives since then.

### Duplicate Policy cancellation code

24. Prior to and during the Relevant Period, WBC applied the DP Code for cancellation of Duplicate Policies. The DP Code was used in several different scenarios including:

- 24.1. where a Duplicate Policy had been issued with no Genuine Reason; and
- 24.2. if a customer contacted WBC requiring a change to their Policy, in some circumstances it would be necessary to create a new Policy to effect that change, in which case the Original Policy should have been cancelled using the DP Code.

## ii) Previous reporting of Duplicate Policies

- 25. As at October 2016, around 400 Duplicate Policies were recorded as being created each month.

## iii) Recording of complaints by customers

- 26. During the Relevant Period, the General Insurance customer contact centre operated by WBC maintained a record of concerns and complaints received from customers who called the customer contact centre in relation to issues arising from the branch (the **Branch Issues Register**).
- 27. The Branch Issues Register was provided to the relevant business development managers who had oversight over the conduct of branch staff. A summary of the Branch Issues Register was also provided to the:
  - 27.1. Monthly Complaints Review Forum (which later was called the Customer Forum) from 11 May 2016 onwards. This forum was attended by individuals holding Senior Roles including Senior Manager, Business Operations, General Insurance BT, Executive Manager, Risk Assurance, National Manager, General Insurance Distribution, Senior Compliance Manager, Service Excellence Manager, BTFG, Head of Customer Relations (BTFG), Acting National Manager, General insurance, Customer Relations, Chief Operating Office, BTFG, Senior Manager Risk – General Insurance, BTFG, Head of Bank Wealth Strategic Execution, BTFG; and
  - 27.2. BWD Customer Sales Quality Forum from 19 September 2016 onwards. This forum comprised individuals who were heads of product, and individuals in Senior Roles including Senior Manager, Risk Operators, Head of Bank Wealth Distribution, National Manager GI Distribution, Head of Risk & Compliance Westpac Retail & Premium, Head of Sales Practices Compliance, Head of Conduct, Risk and Compliance, Consumer Bank
- 28. The Branch Issues Register records numerous complaints each month throughout the Relevant Period from customers regarding Duplicate Policies, and circumstances where they had paid multiple premiums due to branch staff's failure to cancel their Original Policy such as:
  - 28.1. where customers had discovered they were "paying twice" or that they had been paying "for 2 Policies at the same time";
  - 28.2. where branch staff issued a New Policy for a customer to change the occupancy details but did not cancel the Original Policy;



- 28.3. where a customer was issued two Policies for the same Risk Address within two months of each other and had been paying premiums on both Policies for five months before the issue was identified;
  - 28.4. where a customer was issued a New Policy for the same Risk Address and branch staff failed to cancel the Original Policy. The customer paid premiums for six months on both Policies before the issue was identified;
  - 28.5. where a customer had a Policy in place from 29 May 2014; a second Policy was then set up for the customer on 9 October 2014 and the Original Policy was not cancelled. The customer was paying premiums on both Policies until June 2016;
  - 28.6. where branch staff set up a New Policy for a customer for “no obvious reason” and failed to cancel the Original Policy, resulting in the customer being charged twice;
  - 28.7. where branch staff set up a second Policy for a customer and failed to cancel the Original Policy, resulting in the customer being charged for two Policies.
- 29. Complaints reports were presented to the General Insurance Claims Leadership Team on a monthly basis.
  - 30. A monthly BWD Customer Sales Quality Forum was held between at least September 2017 and April 2021. Some meetings of the forum considered Non-System driven churn and customer complaints concerning Duplicate Policies being issued without a Genuine Reason. Minutes of the BWD Customer Sales Quality Forum were circulated to a number of staff including the National Manager - General Insurance Distribution, National Product Manager - General Insurance, BTFG, and the Senior Product Manager - General Insurance, BTFG, each of whom was in a Senior Role in relation to the relevant insurance products.
  - 31. On 17 July 2018, the Westpac Group Executive Risk Committee was first notified of the Duplicate Policy Issue.

#### **iv) 2017 General Insurance Audit**

- 32. The Duplicate Policy Issue was not identified as part of the annual audits of the General Insurance business prior to August 2017, including audit reviews of Policy initiation and underwriting for home and contents insurance that took place in 2014, 2015 and 2016. This was because those audits involved testing of different controls, including other controls related to Duplicate Policies and because they relied on a sample testing methodology that was limited in respect of the number of customers that could be tested using that methodology. In 2017, the adoption of a new data analytics methodology allowed Group Audit to interrogate Policy data in a way that it previously could not and the subsequent audit identified the Duplicate Policy issue.
- 33. The 2017 General Insurance Audit:
  - 33.1. introduced the use of data analytics which enabled WBC to examine a broader population of existing and new accounts for instances of certain activity, including Duplicate Policies;

- 33.2. ran data analytics over home and contents Policies for the 12 months up to 30 April 2017; and
  - 33.3. outlined there was, at that time, no controls in place to identify whether there were any existing active Policies on a Risk Address and, therefore, that the business could not check whether a new Policy application was valid or would be a Duplicate Policy on the same property.
- 34. As a result of the 2017 General Insurance Audit, on or about 25 August 2017, WBC identified that there may be inadequate controls in place to monitor or detect Duplicate Policies.

**E. BREACH REPORTING BY WBC IN RELATION TO THE DUPLICATE POLICIES ISSUE**

- 35. On 11 April 2018, the WBC Breach Determination Forum determined the matter of Duplicate Policies was significant and reportable to ASIC, noting:
  - 35.1. “The significant estimated total financial loss to customers”;
  - 35.2. “Number of customers impacted”; and
  - 35.3. “The duration of time before the matter was identified”.
- 36. On 23 April 2018, WBC sent to ASIC a notification under section 912D of the Corporations Act that (*inter alia*):
  - 36.1. WGIL and WBC had “identified circumstances where WGIL has incorrectly issued duplicate Home and Contents insurance policies during the period from 2001 to 2018”;
  - 36.2. “policyholders may have paid insurance premiums twice in respect of the same insured property”;
  - 36.3. as at 31 March 2018, WGIL had identified “1,781” instances of potential Duplicate Policies; and
  - 36.4. there “may be cases where there are two or more valid policies for the same customer. Accordingly, the number of customers affected may be less than 1,781”.
- 37. On 23 September 2021, at the request of ASIC, WBC provided an attestation to ASIC which confirmed that WBC was satisfied that:
  - 37.1. “the Breach is no longer occurring”;
  - 37.2. “adequate systems and processes have been put in place to ensure the Breach does not reoccur in the future, and to identify if it does reoccur”;
  - 37.3. “all fair and reasonable efforts have been made to identify and remediate affected customers”; and

- 37.4. “no benefits from the Breach have been retained by WBC or any related party”.

## **F. SYSTEM CHANGES BY WBC IN CONNECTION WITH THE DUPLICATE POLICIES ISSUE**

### **F.1 Introduction of Churn Management System**

38. Prior to May 2017, WBC identified that a cause of Non-system driven churn was the inappropriate issuing of new Policies for customers with an existing Policy for reasons including:
- 38.1. to provide “new business” discounts to customers who would not otherwise be eligible as holders of an existing Policy;
  - 38.2. in some cases, for eligibility to meet sales targets;
  - 38.3. a lack of knowledge about the Policy issuing system; and
  - 38.4. to drive a more streamlined upfront customer interaction.
39. In May 2017, WBC implemented a “churn management system” (**CMS**).
40. The CMS was developed at a time when WBC was aware that some Duplicate Policies were being produced in the Assisted Channels, but prior to the 2017 Group Audit Report in which WBC became aware that Duplicate Policies were being issued and not being cancelled.
41. The CMS is a pricing algorithm used to identify possible instances of churn. Where a quote for a new Policy was provided to a customer in relation to an existing Risk Address, the CMS aligned the “new business” premium offered at the time of the quote for the new Policy, with the renewal premium of the existing Policy.
42. The primary purpose of the CMS was to enable WBC to identify circumstances where a new quote was issued when there may have already been an existing Policy in place. This helped achieve consistency in premiums offered and thus, reduce instances of Non-system driven churn. Further, the CMS identified where WBC’s systems had produced a lower quote than a customer’s existing Policy to prevent the customer being offered a “new business” discount in circumstances where the customer was not eligible for such a discount. It also prevented WBC from unintentionally offering the customer better pricing terms on the newly quoted Policy.
43. The CMS was capable of matching quotes to existing Policies by identifying possible instances where the same Risk Address and occupancy type existed in the Policy management system in circumstances where it identifies a 'proxy' match. It was not a function of the CMS to cancel an existing Policy when a New Policy was put in place in cases of churn, or to monitor whether staff cancelled an existing Policy when establishing a New Policy for the same Risk Address. However, WBC did not consider developing a system that could identify potential duplicate Policies and flag them for assessment. Further, WBC did not develop or implement another system or program that could identify possible Duplicate Policies at the point of sale until after the 2017 Group Audit Report.

## F.2 Implementation of Detective Controls

44. WBC did not have verified effective Detective Controls in place to identify the creation of a Duplicate Policy in the absence of a Genuine Reason, until February 2021.

### The WBC Actuarial and Pricing Team Detective Control

45. In January 2018, the WBC Actuarial and Pricing team developed a Detective Control in the form of a detective report to enlist all potential Duplicate Policies, which they provided to the Customer Support and Underwriting team for review and action. As set out below, that control was effective to identify some, but not all Duplicate Policies until 30 November 2020. Since that date, the control has been rated effective to identify Duplicate Policies.
46. The first report was run in the month of January 2018 and identified a total of 1,795 potential Duplicate Policies. Subsequent reports indicated an average of 220 new Duplicate Policies were created each month.

### The WBC Detective Control

47. From March 2018, WBC introduced a Detective Control, namely WBC:
- 47.1. produced a retrospective monthly review report to determine the number of Duplicate Policies created in the preceding month;
  - 47.2. conducted an investigation to review and confirm whether these Duplicate Policies had mistakenly been issued in respect of the same Risk Address, or whether these Duplicate Policies were held for valid reasons; and
  - 47.3. conducted a monthly remediation process to refund impacted customers.
48. Under the Detective Control, a potential Duplicate Policy was identified by searching for matching information based on satisfying all four of the below criteria:
- 48.1. the first or second insured names are a match;
  - 48.2. the unit number, street number, street name and suburb are a match;
  - 48.3. the occupancy is a match; and
  - 48.4. the risk details on the Duplicate Policy match.
49. Between November 2019 and November 2020 (the **Suspension Period**), the Detective Control referred to in paragraph 47 was suspended because WBC identified an issue with the name matching methodology being used.
50. After the Suspension Period, any Duplicate Policies created during the Suspension Period were reviewed and identified as part of the broader review process conducted by WBC to identify all Duplicate Policies without a Genuine Reason, and later remediated in accordance with the terms of the Westpac Group Customer Remediation Policy.

51. In September 2020, the Underwriting and Customer Support team tested the Detective Control referred to in paragraph 47 and marked it as “requires improvement” because the Duplicate Policy exception report parameters were too restrictive, because they were based on an exact name and address match, and so may not have identified potential Duplicate Policies where the customer's name was recorded in a different way (for example, Mr John Smith and Mr J Smith) (the **Detective Control Defect**).
52. Between September 2020 and November 2020, the parameters of the Detective Control referred to in paragraph 47 were broadened to exclude “exact name match” as a report parameter to capture a greater number of potential Duplicate Policies.
53. On 30 November 2020, the Detective Control Defect was marked as “closed” in WBC’s systems following consultation between the control owner and first line risk. The Detective Control referred to in paragraph 47, as modified, then became operational.
54. In February 2021, the Detective Control in operation after 30 November 2020 was tested again by the control owner and first line risk and determined to be “effective” by WBC and WGIL.
55. Between March 2018 and 30 November 2020, the Detective Control was not entirely effective, in that it deployed name matching methodology that meant some but not all Duplicate Policies were detected.

#### Verification of Duplicate Policies

56. In August 2018, in order to identify whether a Policy was a Duplicate Policy following identification by the Detective Control, WBC created a process whereby all identified Policies in WPolisy would be reviewed. The process involved uploading the monthly report produced under the Detective Control into Earthrise and creating a single task for each Duplicate Policy:
  - 56.1. contact the creator of the second Policy via email to confirm if the Policy had been issued for a Genuine Reason or not;
  - 56.2. if a Genuine Reason for the Duplicate Policy was not identified:
    - a. send a letter to the customer querying the reason they held multiple policies for the same Risk Address at the same time;
    - b. if the customer confirmed that the Duplicate Policy had been issued without a Genuine Reason, cancel the Duplicate Policy; and
    - c. issue a refund.

#### Other

57. From at least 27 September 2019, the Detective Controls were to be supported by a new Juno incident control CTL000078283 which would give “further certainty” that the Detective Control referred to in paragraph 47 is being continually monitored and actioned. That Detective Control was suspended between November 2019 and December 2020.

### F.3 Implementation of Preventative Controls

58. In or about May 2019, as an intended Preventative Control, WBC implemented a process whereby a user of eSales in the Assisted Channel (i.e., a staff member) would be notified of the creation of a Duplicate Policy via a system warning. When the system warning was triggered, staff were required to confirm that they were not creating a Duplicate Policy without a Genuine Reason.
59. With effect from 24 May 2021, in addition to the above and as a Preventative Control, WBC implemented a system change, in the Assisted Channel, that:
  - 59.1. requires any new Policy requested through a WBC branch or call centre for the same Risk Address to be referred to the WGIL underwriting team for review and approval before the application can proceed; and
  - 59.2. requires the WGIL underwriting team to determine whether the new Policy request will result in the creation of a Duplicate Policy without a Genuine Reason, and
    - a. if so, requires the underwriting team to cancel the existing Policy on inception of the new Policy; or
    - b. if the new Policy request relates to a different insured risk for the same policy holder at the same Risk Address, requires the underwriting team to approve inception of the new Policy.
60. In the week beginning 24 May 2021, the Preventative Control referred to in paragraph 59 was not triggered in respect of 45 Policies that had been incepted in that week. The reason the underwriting referral was not triggered in at least 44 of those cases was one or more of the following reasons:
  - 60.1. the Policy was processed via an online application process (where the Preventative Control does not apply);
  - 60.2. the Policy contained the same GNAF but a different unit number;
  - 60.3. the Policy contained a different GNAF;
  - 60.4. GNAF codes apply at street level. Where a Risk Address is a rural location the data limitation causes a referral not to trigger. In the particular case notified the duplicate was a valid duplicate due to a subdivision; and
  - 60.5. a customer purchased two Policies on the same date at a similar time and the second Policy was paid for immediately after the first Policy. WGIL surmised that had there been a greater time difference between the two inception times, the second Policy would have triggered a referral. In that particular case the customer intended to purchase two Policies because the Risk Address had been subdivided and a duplex constructed.
61. These policies were otherwise identified by the operation of the Detective Control.

62. During the Relevant Period, WBC did not maintain a checklist of Genuine Reasons for Duplicate Policies for use in its Sales Channels to prevent, or minimise, the risk of Duplicate Policies with no Genuine Reason.
63. On 20 September 2021, WBC's Risk Assurance Team produced a report addressing the Detective Control referred to in paragraph 47 above and the Preventative Control referred to in paragraph 59 above and concluded that the controls were "effective" based on their testing, with "improvement opportunities" available (the **September 2021 Risk Report**).

#### **F.4 Implementation of Monitoring Controls**

64. From March 2018, as a Monitoring Control, the monthly report highlighting possible Duplicate Policies (referred to in paragraph 47.1) was monitored by one or more WBC teams.
65. From around June 2019 until around May 2021, as a Monitoring Control, WBC created an endorsement code:
  - 65.1. to be attached to any Policies where the status of a potential Duplicate Policy cannot be determined;
  - 65.2. to cause a reminder to be inserted into customer Policy Renewals and Endorsements requesting the customer contact WBC to confirm the potential Duplicate Policy status; and
  - 65.3. which would (or was accompanied by a code that would) add a page note to the Policies to ensure that if a customer contacted the call centre, the consultant will know to discuss the potential Duplicate Policy with the customer and "take the necessary action".

#### **F.5 Assisted Channel Training**

66. During the Relevant Period, 2,427 Customers were sold a Duplicate Policy through the Assisted Channel prior to June 2018.
67. Prior to June 2018, staff received training on the use and application of the Underwriting Manual. The Underwriting Manual contained the process to follow when cancelling an existing Policy and issuing a new Policy, being to use the DP code. However, there existed no specific training programme for the prevention of Duplicate Policies without a Genuine Reason within the Assisted Channel.
68. From June 2018, WBC undertook training of 259 branch staff targeted at those who had failed to cancel existing Policies so as to avoid the issue of a Duplicate Policy without a Genuine Reason. This training related to the process of cancelling and re-issuing a Policy to customers who held an existing Policy.
69. In addition, the same training was provided on an ongoing basis to 4,547 sales staff from November 2018 to May 2021.
70. Prior to February 2019, WBC did not circulate any updates or communications to all staff in relation to the Duplicate Policies Issue.
71. In February 2019, a "My Weekly Update" (**MWU**) was issued to staff in relation to the Duplicate Policies issue which provided examples of where branch staff were required

to cancel and re-establish a new policy. It also included certain action items for staff to undertake, including registering for further training. The MWU update was used to communicate certain retail and lending updates to staff.

72. In May 2019, a MWU was circulated to staff in relation to the introduction of the Duplicate Policy warning message set out at paragraph 58 above. In or around March 2021 communications about updates to the processes and procedures to prevent the creation of Duplicate Policies were provided to WBC and Westpac Brand branch staff via an MWU on the branch network.
73. In July 2019, a Lender Update was issued to St George and Bank of Melbourne staff in relation to the use of FileNet, which was an online web-based customer document repository. This communication included examples of when branch staff were required to cancel and re-establish a new Policy, and actions that could be taken to prevent customers from having Duplicate Policies.
74. In or around April 2021, further training was provided to Insurance Contact Centre staff in relation to the processes required to be followed when cancelling an existing Policy.
75. In addition to the above, certain resources were made available to staff in the Assisted Channel. In June 2018, the intranet page in relation to Policies was updated to include FAQs for cancelling Policies, instructions on how to correctly search Policy numbers and view Policy documents, and how to correctly use cancellation forms. The FAQs included information as to when a Policy should be cancelled and replaced.

## **F.6 Customer Remediation**

76. The WBC Customer Remediation Program has been guided by:
  - 76.1. the methodology contained in a report prepared by WBC on 23 September 2020 (the **Remediation Report**); and
  - 76.2. the overarching methodology and guiding principles set out in the WGIL Home and Contents Duplicate Policies Review (CR000324) "Overarching Methodology and Guiding Principles Paper" dated 31 August 2020 (the **Overarching Principles**).
77. To determine whether an apparent Duplicate Policy was, in fact, a Duplicate Policy, WBC:
  - 77.1. undertook a desktop review to determine the validity of Duplicate Policies;
  - 77.2. if the desktop review failed to identify the validity of the Duplicate Policy, an attempt was made to contact the customer to determine whether the Policy is a Duplicate Policy without a Genuine Reason;
  - 77.3. if the customer was able to be contacted and the Policy was confirmed to be a Duplicate Policy without a Genuine Reason, WBC issued a refund for the overlapping period together with an interest payment.
78. From March 2018, WBC employed a methodology to identify historical and in-force Duplicate Policies without a Genuine Reason, and remediate affected customers (**Initial Methodology**).



79. The Initial Methodology had the following limitations:
- 79.1. it required an exact match for name, address and occupancy type, and
  - 79.2. in some cases would only identify a maximum of two Policies at a Risk Address.
80. The Initial Methodology therefore failed to identify all Duplicate Policies without a Genuine Reason requiring remediation.
81. By 23 March 2020, WBC had developed a revised methodology for identifying and remediating the holders of in-force and historical Duplicate policies (**Revised Remediation Methodology**), which involved the following improvements to ensure that all current and historical Duplicate Policies without a Genuine Reason were identified:
- 81.1. removing the requirement in the Initial Methodology for same occupancy type;
  - 81.2. using an external company to identify real address and name matches (e.g. Smith St would be matched to Smith Street) and fuzzy logic matching (whereby an algorithm detects similar terms that are not identical); and
  - 81.3. allowing for any number of Policies to be identified at an address.
82. Using the Revised Methodology, WBC created a report up to 30 September 2020, which was used to commence remediation.
83. For Policies cancelled prior to 30 September 2007, WBC does not hold sufficient policyholder financial or transaction data to enable it to determine premium refund amounts (the **pre-October 2007 cohort**).
84. Where WBC did not hold complete records for affected customers and as agreed with ASIC, for the pre-October 2007 cohort, WBC has adopted the following procedure for calculating the average premium refund:
- 84.1. an average monthly premium for the pre-October 2007 cohort (sourced from monthly gross written premium records and Policies in force); and
  - 84.2. the average tenure of overlapping Policies for pre-October 2007 cohort, adjusted for the experience of the post-October 2007 cohort at the time.
85. For Policies cancelled after 30 September 2007, WBC:
- 85.1. refunded the premium paid for the overlapping period from inception to cancellation. The higher paid premium (for a customer's Duplicate Policies) was refunded; and
  - 85.2. paid interest on that amount.
86. As at 23 September 2021:

- 86.1. WBC has remitted remediation to 4,159 customers in the total amount of \$7,630,773.74; and
- 86.2. WBC has been unable to contact 3,093 customers, but have attributed to them remediation refund entitlements in the total amount of \$3,980,810.97 and paid this amount into an unclaimed monies provision.
- 87. WBC processed refunds for 57 customers in the pre-October 2007 cohort using the average refund methodology, but 56 of those customers could not be contacted and the refunds were also applied into an unclaimed monies provision.
- 88. 330 customers who held current Duplicate Policies could not be contacted and an automated stop was put in place for those customers to ensure no renewal was processed. Of those Customers:
  - 88.1. 186 were contacted by WBC and remediation payments were made; and
  - 88.2. 144 were transferred with the sale of WGIL to the Allianz group.
- 89. Interest on all customer refunds was calculated using the interest rates supplied by the AFCA website for each month over the Relevant Period.
- 90. WBC has formed the view that its remediation programme is complete as at 30 September 2021. Following WBC's submission of the final Remediation Report (referred to in paragraph 76.1) and attestation letter (referred to in paragraph 37), ASIC confirmed it had no further queries in relation to the remediation.

## **G. CONTRAVENTIONS BY WBC IN RELATION TO DUPLICATE POLICIES**

### **G.1 The cause of the Duplicate Policies**

- 91. Each Customer had a Duplicate Policy by reason of the following circumstances:
  - 91.1. the Customer requested a change (**Change**) to their original and/or existing Policy (the **Original Policy**);
  - 91.2. due to system limitations, the Change required a new Policy to be created (the **New Policy**);
  - 91.3. this gave rise to the need for a cancellation request to be made for the Original Policy;
  - 91.4. the cancellation request for the Original Policy was not made;
  - 91.5. as a result, two Policies remained in effect – the Original Policy, being the Policy that ought to have been cancelled, and the New Policy, which was the Policy that the Customer agreed to be issued and in place from the time of the Change; and
  - 91.6. the Original Policy and the New Policy were together Duplicate Policies for the same Risk Address.

92. The causes of the issue described in the preceding paragraph were:
- 92.1. a lack of Preventative Controls and Monitoring Controls over the creation of new Policies;
  - 92.2. staff failure to cancel the Original Policy once a New Policy had been established; and
  - 92.3. a lack of Detective Controls sufficient to detect the failures referred to in 92.2 in relation to all Duplicate Policies.

## **G.2 Contraventions of the ASIC Act and Corporations Act by WBC**

93. A Policy, being a contract for home and contents insurance, is a “financial product” within the meaning of s 764A(1)(d) of the Corporations Act and s 12BAA(7)(d) of the ASIC Act.
94. WGIL supplied financial services by issuing and/or varying a financial product, within the meaning of ss 766A(1)(b) and 766C(1)(b) and (d) of the Corporations Act and ss 12BAB(1)(b) and 12BAB(7)(b) and (d) of the ASIC Act.
95. WBC supplied the Services by, among other things:
- 95.1. “dealing” in a financial product by:
    - a. arranging for a Customer to acquire a New Policy: ss 766A(1)(b), 766C(1)(a) and 766C(2) of the Corporations Act; ss 12BAB(7)(a) and 12BAB(8) of the ASIC Act;
    - b. arranging for WGIL to issue a New Policy: ss 766A(1)(b), 766C(1)(b) and 766C(2) of the Corporations Act; ss 12BAB(7)(b) and 12BAB(8) of the ASIC Act;
    - c. varying the Original Policy: ss 766A(1)(b) and 766C(1)(d) of the Corporations Act; ss 12BAB(7)(d) of the ASIC Act;
    - d. arranging for the Customer and WGIL to vary the Original Policy: ss 766A(1)(b), 766C(1)(b) and 766C(2) of the Corporations Act; ss 12BAB(7)(d) and 12BAB(8) of the ASIC Act;
    - e. arranging for the Customer to “dispose” of the Original Policy: ss 761A, 766A(1)(b), 766C(1)(e) and 766C(2) of the Corporations Act; ss 12BAB(7)(e) and 12BAB(8) of the ASIC Act.
  - 95.2. providing a service in relation to a financial product, within the meaning of s 12BAB(1)(g) of the ASIC Act, that service including administration of a variation and renewal of Policies.

## **G.3 Sections 12DA and 12DB ASIC Act, section 1041H Corporations Act**

96. In connection with the supply of the Services, and the supply of financial services by WGIL, during the Relevant Period WBC represented to Customers (**Representations**) that:

- 96.1. WBC had arranged or would arrange for the cancellation of the Original Policy, which was a representation concerning the existence of a right, within the meaning of s 12DB(1)(i) of the ASIC Act;
  - 96.2. the Customer had agreed to acquire services provided by the Original Policy after the implementation of the New Policy, within the meaning of s 12DB(1)(b) of the ASIC Act;
  - 96.3. the Customer had a continuing need for the Original Policy upon the issuance of the New Policy, which was a representation within the meaning of s 12DB(1)(h) of the ASIC Act; and/or
  - 96.4. the Customer was liable to pay the premiums for the Original Policy after the implementation of the New Policy and that WBC and/or WGIL had a right to seek and collect amounts for premiums in respect of the Original Policy after the implementation of the New Policy, which were representations concerning the existence of a right, within the meaning of s 12DB(1)(i) of the ASIC Act.
97. Each or all of the Representations was conveyed by WBC in trade or commerce.
98. WBC conveyed the Representations as follows:
- 98.1. in the case of the Representation referred to in 96.1 above, by expressly or impliedly conveying to the Customer at the time of the Change that the Original Policy would be cancelled;
  - 98.2. in the case of the Representations referred to in 96.2-96.4 above:
    - a. by sending correspondence to the customer acknowledging the Change;
    - b. after the Change, by seeking and collecting premiums for an overlapping period in respect of both Policies; and
    - c. after the Change, by sending annual Renewal documents in relation to the Original Policy.
99. The Representations were false or misleading from the time of the Change because:
- 99.1. as a result of WBC's failure, WBC did not arrange for the cancellation of the Original Policy;
  - 99.2. the Customer had not agreed to the Original Policy continuing from the time of the Change;
  - 99.3. the Customer did not have a need for the Original Policy upon the issuance of the New Policy; and
  - 99.4. having conveyed to the Customer that the Original Policy would be cancelled, WBC did not have a right to seek and collect the premiums for the Original Policy from the time of the Change.

100. By reason of the matters referred to in paragraphs 96-99, during the Relevant Period WBC contravened:

100.1. s 12DB(1)(b) of the ASIC Act;

100.2. s 12DB(1)(h) of the ASIC Act; and/or

100.3. s 12DB(1)(i) of the ASIC Act.

101. By reason of these matters, during the Relevant Period WBC engaged in conduct, in this jurisdiction, that was misleading or deceptive or likely to mislead or deceive, and thereby contravened s 12DA(1) of the ASIC Act and s 1041H of the Corporations Act.

#### **G.4 Section 912A(1) Corporations Act 2001 (Cth)**

102. At all material times, WBC was obliged to:

102.1. do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, within the meaning of s 912A(1)(a) of the Corporations Act;

102.2. comply with financial services laws, within the meaning of s 912A(1)(c) of the Corporations Act; and

102.3. take reasonable steps to ensure that its representatives complied with the financial services laws, within the meaning of s 912A(1)(ca) of the Corporations Act.

103. During the Relevant Period until 24 May 2021, WBC failed to do all things necessary to ensure that the Services were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act, in that WBC failed to have in place, and, or alternatively, failed to take adequate steps to ensure that WGIL had in place, any, or adequate:

103.1. risk management procedures the objectives of which were to detect breaches of the “financial services laws” (as defined in the Corporations Act) in relation to the issuance of Duplicate Policies (the **DP Detective Controls**);

103.2. risk management procedures the objectives of which were to prevent breaches of the financial services laws in relation to the issuance of Duplicate Policies (the **DP Preventative Controls**);

103.3. risk management procedures the objectives of which were to monitor the success or otherwise of the Detective Controls and Preventative Controls (the **DP Monitoring Controls**).

104. During the Relevant Period until 24 May 2021, by reason of the matters set out above, WBC failed to take reasonable steps to ensure that its representatives complied with the financial services laws, and thereby contravened s 912A(1)(ca) of the Corporations Act.

105. During the Relevant Period, by reason of the matters set out above, WBC failed to comply with the financial services laws, and thereby contravened s 912A(1)(c) of the Corporations Act.
106. Further, during the Relevant Period, by reason of its contravention of s 12DB of the ASIC Act, WBC contravened s 912A(1)(c) of the Corporations Act.

#### **H. PENALTY ARISING FROM THE DUPLICATE POLICY CONTRAVENTIONS**

107. The factors relevant to the assessment of pecuniary penalty in this proceeding in relation to the Duplicate Policy contraventions are set out below.

##### **H.1 Nature of the contraventions: The extent to which the contravention was the result of deliberate, covert or reckless conduct, as opposed to negligence or carelessness**

108. The conduct was not deliberate, but was the result of inadequate risk management and systems failures, including inadequate or absent:
- 108.1. Detective, Preventative and Monitoring controls;
  - 108.2. mandatory processes and procedures;
  - 108.3. technology systems that would provide a system warning or require an Original Policy to be cancelled where a New Policy had been created following a Change;
  - 108.4. record keeping or escalation of issues in relation to the use of the DP Code; and
  - 108.5. staff training.
109. For the reasons described in section D.3 above, the existence of Duplicate Policies was recorded in Branch Issue Registers prior to the Relevant Period. The Branch Issue Registers were circulated to individuals in Senior Roles (who also attended meetings where the Branch Issue Registers were discussed) since at least December 2015. However, no steps to rectify WBC's systems or remediate affected customers were taken until at least March 2018 (see section F above) after the 2017 General Insurance Audit revealed instances of the Duplicate Policy Issue.
110. Following March 2018, WBC implemented the following controls to attempt to rectify the Duplicate Policies Issue:
- 110.1. in May 2019, WBC introduced the intended Preventative Control set out at paragraph 58 above.
  - 110.2. in December 2020, WBC re-introduced the Detective Control set out in section F.2 above.
  - 110.3. however, no adequate system changes or Preventative Controls were made to address the systemic failures until 24 May 2021.
111. WBC's technology systems were unsatisfactory during the Relevant Period because (*inter alia*):

- 111.1. the technology systems did not require an Original Policy to be cancelled where a New Policy had been created following a Change request and this was not uncovered or checked by human monitoring. Nor did the methodology used in the annual audits of the General Insurance business in 2014, 2015 and 2016 detect the Duplicate Policy Issue;
  - 111.2. there is a cohort of 19,982 customers where WBC recorded the customer's Policy as cancelled under the "DP Code", but for whom WBC has stated that it does not have sufficient records to determine which of the Policies for those customers are Duplicate Policies without a Genuine Reason, and WBC concedes that the number of such customers is likely to be material.
112. WBC voluntarily disclosed certain breaches to ASIC in 2018.
113. WBC's failures were below the standard expected by the community and required by law to the extent that there were limitations in the software leading to the Duplicate Policy Issue and limitations in the controls implemented in WBC's General Insurance business that consequently failed to detect Duplicate Policies.
114. WBC's approach to detection and rectifying its systems was unsatisfactory to the extent that:
- 114.1. it did not take action to rectify its failures until March 2018 and such action was not rated as effective until at least May 2021, despite individuals holding Senior Roles having been provided with copies of the Branch Issue Register identifying complaints from customers regarding the Duplicate Policy Issue (and attending meetings where the Branch Issue Register was discussed) since at least December 2015, and the General Insurance Audit identifying the Duplicate Policy Issue in August 2017; and
  - 114.2. the monthly reporting process, being the primary Detective Control, was suspended between November 2019 and November 2020 as described in paragraph 49 (although the May 2019 system warning was in effect during this time).
115. WBC'S approach to prevention was unsatisfactory to the extent that:
- 115.1. the May 2019 system warning did not prevent staff creating a Duplicate Policy without a Genuine Reason;
  - 115.2. a new Policy requested through a WBC branch or call centre for the same Risk Address was not required to be referred to the WGIL underwriting team for review and approval before the application could proceed.

**H.2 Nature of the contraventions: whether the contravention comprised isolated conduct, or was systematic or occurred over a period of time**

116. The parties repeat paragraphs 108 to 115 above.

### **H.3 Nature of the contraventions: The seniority of the officers responsible for the contravention**

- 117. The Duplicate Policy Issue was partly the result of the failure of WBC staff (who were not senior) to cancel an Original Policy, and partly the result of a lack of Preventative, Monitoring and Detective Controls, being matters for which senior officers of WBC were responsible.
- 118. Individuals who held Senior Roles within WBC were aware that complaints by customers were being received in connection with the Duplicate Policy Issue, as described in section D.3 above.

### **H.4 Nature of the contraventions: The existence, within the corporation, of compliance systems and whether there was a culture of compliance at the corporation**

- 119. WBC's compliance systems were not adequate to prevent the contraventions.

### **H.5 Nature of the contraventions: The impact or consequences of the contravention on third parties; and the extent of any profit or benefit derived as a result of the contravention**

- 120. WBC's records do not allow it to determine the total premiums collected in connection with Duplicate Policies.
- 121. The WBC Customer Remediation Policy has returned at least \$7,630,773.74 to 4,159 customers. WBC has been unable to contact 3,093 customers, but have attributed to them remediation refund entitlements in the total amount of \$3,980,810.97. There is an unknown number of customers from the cohort of 19,982 customers who had one or more Duplicate Policies without a Genuine Reason, and due to the limitations of its systems WBC is not able to identify whether those customers' premiums have been refunded in full, nor can it confirm if those customers have received interest payments. However, where a Policy was cancelled on the basis that it was a Duplicate Policy, the practice that was set out in the Underwriting Manual was that the customer was entitled to a refund and the cancellation was effective from the date the Duplicate Policy began.
- 122. The information available to Westpac records refunds and interest in relation to Policies held by Customers totalled at least \$7,373,930.25 of refunds and \$608,367.51 of interest.

### **H.6 The particular circumstances of WBC: The size and financial position of WBC**

- 123. The Westpac group, of which WBC is part, is one of the largest lending institutions in Australia. Westpac group is one of Australia's largest financial institutions. In its 2020 Full Financial Year Results announcement, Westpac group recorded its net profit attributable to owners of WBC as over \$2.3 billion. During the Relevant Period it offered a range of financial and insurance products to consumers. There exists a substantial power imbalance between WBC and its customers.

### **H.7 The particular circumstances of WBC: Whether the company has improved or modified its compliance systems since the contravention**

- 124. WBC's compliance systems have been improved since the contravention. However:



- 124.1. WBC's systems should have been improved as early as 2012 when WBC became aware of issues with Duplicate Policies (see section D.3 above);
- 124.2. WBC should have implemented risk controls as it updated its systems to ensure that it was not possible to issue Duplicate Policies for no Genuine Reason and that, in the transitional period, any Duplicate Policies were detected and cancelled in a timely way; and
- 124.3. the Preventative Control system, as recently as May 2021, did not prevent all Duplicate Policies (see paragraph 60 above).

**H.8 The particular circumstances of WBC: Whether the company (through its senior officers) has demonstrated contrition and remorse**

- 125. WBC voluntarily disclosed certain breaches to ASIC in 2018 and since that time has provided information to ASIC to enable ASIC to investigate its non-compliance.
- 126. WBC has remediated customers as referred to in section F.6 above.

**H.9 The particular circumstances of WBC: Whether the company had disgorged any profit or benefit received as a result of the contravention, or made reparation**

- 127. WBC has remediated customers as referred to in section F.6 above, with consultation from ASIC's remediation team, which was satisfied with the final remediation and attestation given by WBC. As part of this remediation, WBC also developed a methodology to remediate customers who held Duplicate Policies prior to 2007, in relation to whom less financial data was available. WBC also engaged EY to review and verify the remediation process.

**H.10 The particular circumstances of WBC: Whether the company has cooperated with and assisted the relevant regulatory authority in the investigation and prosecution of the contravention**

- 128. On 23 April 2018, WBC submitted a breach report to ASIC stating that it had incorrectly issued duplicate insurance policies.
- 129. ASIC commenced its investigation on 3 November 2020. WBC has co-operated with ASIC's notices, which is a neutral factor, because a failure to do so constitutes an offence. However, in addition to cooperating with ASIC's notices, Westpac has, since September 2021, provided ASIC with additional materials and assistance on a voluntary basis and has regularly met with ASIC to assist ASIC to understand the material it has provided.
- 130. WBC has, since September 2021, engaged collaboratively with ASIC to agree admissions in relation to the conduct.

**H.11 The particular circumstances of WBC: Whether the company has suffered any extra-curial punishment or detriment arising from the finding that it had contravened the law**

- 131. WBC has not suffered any extra-curial punishment or detriment arising from the conduct.
- 132. WBC's contraventions are not yet public knowledge.

## I. THE NON-CONSENT ISSUE

### I.1 The Non-consent Issue

133. During the Relevant Period, each of the Non-consent Customers obtained a Policy issued by WGIL and distributed by WBC, in circumstances where the Non-consent Customer did not consent to being issued with the Policy associated with their name.
134. Customer and Policy information has been used to prepare the table contained at Part B of Schedule 1 to this SOAF, listing each of the Non-consent Customers. To protect personal information of the customers, information clearly identifying a customer, Risk Address or Policy Number has been removed. WBC and ASIC both hold the identifying customer data and are aware of which customers are referred to in the schedule. Each row of Part B of Schedule 1 sets out the information listed below in respect of a specific Non-consent Customer and corresponding Risk Address:
- 134.1. Column D contained the Non-consent Customer's Risk Address, that information has been removed;
  - 134.2. Columns A and B contained the Non-consent Customer's full name, that information has been removed;
  - 134.3. the Customer was issued the Policy set out in column C;
  - 134.4. the date the Policy was created is set out in column E;
  - 134.5. the amount of premium refunded is set out in column H.
135. During the Relevant Period:
- 135.1. an "Uploaded without consent" cancellation code (the **Non-consent code**) was used in BTPolisy and WPolisy to record, amongst other things, a Policy that was cancelled by WBC because the Customer contacted WBC and asserted that they had not provided their consent to the inception of the Policy;
  - 135.2. WBC had no formal, documented escalation process in place in relation to Policies cancelled under the Non-consent code, and instead the circumstances giving rise to the cancellation were escalated at the discretion of the call centre staff who took the cancellation call;
  - 135.3. in relation to the possible identification of the Non-consent Issue, WBC had in place the following controls:
    - a. Calls taken by customer contact centre staff were recorded and a sample were monitored monthly for quality assurance purposes;
    - b. Branch staff were required to complete a Customer Needs Conversation form as part of the Customer Needs Review (**CNR**) process, part of which required staff to input the Customer's Response to the sale of a Policy;

- i. If a product had been sold without completing the CNR process, a Missing CNR Alert would be issued to the staff person's supervisor;
    - ii. The CNR Quality Check which consisted of an independent team reviewing a sample of the CNRs completed by staff to ensure the sales discussion and the product sold were consistent; and
  - c. more broadly in relation to controls monitoring banker conduct, WBC's Conduct Risk team provided a report on a monthly basis to assist in the identification of any systemic or potentially systemic mis-selling by bank branch and call centre teams.
136. Other than the Deloitte Report (completed in August 2017), until October 2021 WBC had not conducted any investigation to determine whether, and to what extent, systemic issues were the cause of a Policy being issued without the Customer's consent during the Relevant Period, including those Policies cancelled under the Non-consent code.
137. During the period from 30 November 2015 to 6 April 2021, at least 1,700 customers contacted WBC resulting in the Policy being cancelled under a Non-consent code. Of those Policies, 329 customers:
- 137.1. were issued Policies that had been initiated through either a branch or a call centre;
  - 137.2. called to cancel their Policy within 90 days' of inception, including in circumstances where the Policy was cancelled prior to cover starting;
  - 137.3. had associated call notes, recorded on the BTPolisy or WPolisy systems, that record that a customer asserted that they did not consent to being issued with the relevant Policy;
  - 137.4. were sent a New Business Welcome Pack which informed the customer that they had been issued with a Policy and which contained relevant Policy documents with relevant representations as to payment; and
  - 137.5. there are not other contemporaneous documents in WBC's records evidencing that the customer did in fact consent to the relevant Policy.
138. WBC admits that each of those 329 customers did not consent to the issuing of a Policy. These Non-consent Customers who were issued Policies without their consent are set out in the table in Part B of Schedule 1.

## **I.2 The reasons for Non-consent Issue**

139. Each Non-consent Customer had a Policy issued without their consent in the following circumstances:
- 139.1. the customer engaged in a conversation with a WBC or Westpac Brand staff member either in a branch or at a call centre during which the customer, either expressly or by implication, did not consent to being issued with a Policy;

- 139.2. the customer was subsequently issued with a Policy and was sent a New Business Welcome Pack;
- 139.3. the New Business Welcome Pack informed the customer that he or she had been issued with a Policy; and
- 139.4. documents in the New Business Welcome Pack included statements regarding the premium that would be payable by the customer (to WBC for its own benefit and on behalf of WGIL) on either a monthly or annual basis.

### **I.3 Knowledge of WBC of the Non-consent Issue**

- 140. From at least 2014, WBC was aware that Policies could be, and were being, issued without the customer's consent, and that this was a recurring issue, but no measures in addition to those referred to at 135 above were taken to prevent the issue from occurring.
- 141. In circumstances where a customer contacted WBC to assert that they had not consented to a Policy, the process set out in the Underwriting Manual was:
  - 141.1. If the cancellation was three months or less from the date of the customer's request, to accept the complaint and issue a refund for that Policy, and backdate cancellation of the Policy to the inception date.
  - 141.2. If the cancellation was more than three months from the date of the customer's request, further information was required for the Policy to be cancelled and for the cancellation to be backdated to the inception date: either the customer had to provide a written statement, or the branch who sold the policy could provide a verbal statement explaining what occurred.

#### **i) The Deloitte Report**

- 142. On or about 6 July 2017, the Consumer Bank Risk and Compliance Committee received a report prepared by Deloitte and dated 4 July 2017 (the **Deloitte Report**). Deloitte was instructed to consider "whether the Consumer Bank had sales practices issues concerning the sale or purported sale of products without the customers' knowledge or consent or any other sales practices issues that could result in customer detriment for the period 1 January 2016 to 31 December 2016." The Deloitte Report contained, *inter alia*, the following findings:
  - 142.1. that consent was "not captured directly from customers for Home and Contents Insurance sales", noting that unlike consumer credit insurance, there is a greater customer awareness of the product as a separate application process for cover is required, the product fee is not bundled or debited from the loan account, a New Business Welcome Pack is sent to customers and the product requires annual renewal. As a result of the fact that consent is not formally documented, WBC's current practice "increases the risk that the customer may think they are only getting a quote or they may not be aware they have consented to the product";
  - 142.2. that Deloitte had reviewed cases to which it was referred by Group Investigations for potential inappropriate behaviours for the period

under review and that there had been no staff terminations relating to the opening of a bank account without customer consent;

- 142.3. that allegations of staff wilful misconduct, via Policy Churning for the purpose of generating revenue, was identified and investigated by Group Investigations;
- 142.4. that the suspected misconduct was not substantiated for any of the three suspected staff members and no further action was required or taken in relation to those people;
- 142.5. that Deloitte identified 39 complaints where customers believed that they did not apply for or consent to purchasing the Policy, reflecting around 0.03% of Policies purchased within the 2016 calendar year. There were 2,257 complaints relating to Home and Contents Insurance policies across all Westpac Brands within the 2016 calendar year. However, the bulk of these related to “the claims and service experience”; and
- 142.6. that, ‘based on the work performed and subject to the limitations contained in the report, for the retail banking products and period in scope’, ‘nothing came to [Deloitte’s] attention that would cause [it] to believe that serious and widespread issues concerning the sale or purported sale of products without customers’ knowledge or consent may have occurred’.

143. In relation to paragraph 142.5 above, Deloitte did not consider instances where policies were cancelled using the Non-consent code as referred to in paragraph 137 above. In the 2016 calendar year, there were at least 690 policies cancelled using the Non-consent code and 180 of the 329 Non-Consent Customers contacted WBC in the 2016 calendar year asserting that they had been issued a Policy without their consent.

#### **ii) Customer Complaints spreadsheet and other records**

144. Between at least 2014 and 2021, WBC kept records of customer complaints, which contained:
- 144.1. records of complaints from customers who reported that Policies had been created without their consent in circumstances where they held a Policy with a different provider; and
  - 144.2. records of complaints from customers who reported that they did not own property the subject of the Policy.
145. These customer complaints registers were maintained in the first instance by the relevant team that received the complaint, for instance the Underwriting and Customer Support team or the General Insurance Contact Centre.

#### **iii) Branch Issues Register**

146. The Branch Issues Register also records complaints each month throughout the Relevant Period from customers who reported that Policies incepted at a branch had been created without their consent.

147. From December 2015 to January 2017, the Branch Issues Register recorded 167 complaints from customers that they had discovered Policies issued to them without their consent. From February 2017, the format of the Branch Issues Register changed and the data points were simplified and presented in a summarised format at the Customer Forum.
148. As set out at paragraph 27 above, the Branch Issues Register was provided to the relevant business development managers who had oversight over the conduct of branch staff. A summary of the Branch Issue Register was also provided to the:

148.1. Customer Forum from 11 May 2016 onwards; and

148.2. BWD Customer Sales Quality Forum from 19 September 2016 onwards.

#### **iv) Senior WBC Staff Fora and Meetings**

149. Complaints from customers relating to Non-consent Policies being created and uploaded without their consent were considered and reviewed at a number of fora and meetings that were attended by WBC staff in Senior Roles including on occasion, General Managers, and otherwise usually management who had responsibility for insurance products in the General Insurance business, between 15 July 2016 and July 2020. These fora highlighted trends in complaints about Non-consent Policies and provided a small sample of the types of complaints that had been received each month.
150. These fora discussed a range of topics and issues, but did not focus solely on one complaint or type of complaint. As such, they did not give priority to, or adequately evaluate, the Non-consent Issue.

### **J. CONTRAVENTIONS RELATING TO THE NON-CONSENT ISSUE**

#### **J.1 Contraventions of the ASIC Act by WBC**

151. WBC supplied financial services to a Customer (**the Non-consent Services**) within the meaning of s 12BAB(1) of the ASIC Act by, among other things:
- 151.1. “dealing” in a financial product by:
- a. arranging for a Non-consent Customer to acquire a Policy: ss 12BAB(7)(a) and 12BAB(8) of the ASIC Act;
  - b. arranging for WGIL to issue a Policy: ss 12BAB(7)(b) and 12BAB(8) of the ASIC Act;
- 151.2. providing a service in relation to a financial product, within the meaning of s 12BAB(1)(g) of the ASIC Act, that service including administration of a variation and renewal of Policies.
152. In the course of providing the Non-consent Services, WBC caused WGIL to issue to each of the Non-consent Customers the Policies identified in respect of that customer in Part B of Schedule 1 (**the Non-consent Policies**) in circumstances where the Non-consent Customer did not consent to the issuance of the Non-consent Policies (or Policy) relevant to that customer.

## **J.2 Sections 12DA and 12DB ASIC Act, section 1041H Corporations Act**

153. By sending the New Business Welcome Packs, WBC represented to each Non-consent Customer that the customer had agreed to acquire the Policy from WBC in circumstances where they had not (**Agreed Acquisition Representations**).
154. The Agreed Acquisition Representations each constituted a false or misleading representation, in trade or commerce and in connection with the supply of the Non-consent Services, that a particular person had agreed to acquire services, in contravention of s 12DB(1)(b) of the ASIC Act.
155. Further to the circumstances set out in the preceding two paragraphs, in respect of each of the Non-consent Customers, by each of the New Business Welcome Packs that were provided to the customer, and in all the circumstances, during the period 30 November 2015 to approximately 30 October 2020, WBC in trade or commerce asserted to the customer that WBC was entitled to be paid the amount of premium set out in the New Business Welcome Pack (**the Entitlement to Payment Representations**).
156. The Entitlement to Payment Representations each constituted a false or misleading representation, in trade or commerce and in connection with the supply of the Non-consent Services, that the Non-consent Customer was liable to pay the premiums for the Policy set out in the New Business Welcome Pack and that WBC had a continuing right to collect amounts for those premiums in respect of the Policy, which were representations concerning the existence of a right, within the meaning of s 12DB(1)(i) of the ASIC Act.
157. Each of the Entitlement to Payment Representations was false or misleading because WBC was not entitled to be paid the amount of premium set out in the New Business Welcome Pack because the Non-consent Customer had not consented to the Policy being issued.
158. Each of the Agreed Acquisition Representations was false or misleading because each Non-consent Customer had not agreed to acquire the Policy from WBC.
159. By reason of these matters WBC contravened, with respect to each of the Non-consent Customers:
  - 159.1. s 12DB(1)(b) of the ASIC Act; and
  - 159.2. s 12DB(1)(i) of the ASIC Act.
160. By reason of these matters, during the Relevant Period WBC engaged in conduct, in this jurisdiction, that was misleading or deceptive or likely to mislead or deceive, and thereby contravened s 12DA(1) of the ASIC Act and s 1041H of the Corporations Act.

## **J.3 Section 12DM ASIC Act**

161. The Entitlement to Payment Representations each constituted an assertion by WBC to a right to payment for the issuing of the Policy which was unsolicited.
162. WBC was prohibited from asserting a right to payment for the Non-consent Policies by s 12DM(1) of the ASIC Act.

163. By making the Entitlement to Payment Representations and engaging in the conduct referred to in paragraph 155 above, WBC asserted a right to payment from another person for unsolicited financial services in contravention of s 12DM(1) of the ASIC Act .
164. Further, because the Non-consent Policies were supplied to each Non-consent Customer without a request, the Non-consent Policy was an unsolicited financial product and/or WBC's supply of it was an unsolicited financial service within the terms of s 12BA of the ASIC Act. Section 12DMA(a) of the ASIC Act operated to relieve the customer of any liability she or he otherwise had to pay for the Non-consent Policy.
165. For the purposes of these proceedings, WBC does not assert that it had a reasonable cause to believe that there was a right to payment.

#### **J.4 Section 912A(1) Corporations Act**

166. At all material times, WBC was obliged to comply with financial services laws, within the meaning of s 912A(1)(c) of the Corporations Act.
167. By reason of its contraventions of ss 12DB and 12DM of the ASIC Act referred to above, which are part of the financial services laws, WBC contravened s 912A(1)(c) of the Corporations Act.

#### **K. PENALTY RELATING ARISING FROM THE NON-CONSENT CONTRAVENTIONS**

168. The factors relevant to the assessment of pecuniary penalty relevant to the Non-consent contraventions in this proceeding are set out below.

##### **K.1 Nature of the contraventions: The extent to which the contravention was the result of deliberate, covert or reckless conduct, as opposed to negligence or carelessness**

169. By at least 2015, WBC was aware of customer complaints in connection with policies being uploaded without consent. During the period from 13 March 2019 to 1 June 2021, WBC:
  - 169.1. was aware that the Non-consent Code was used in the policy administration systems used by WBC to record a Policy that was cancelled by WBC because the customer did not provide their consent to the issuance of the Policy;
  - 169.2. was aware that during the Relevant Period more than 1,700 customers had their Policies cancelled under the Non-consent code and was aware that during the period 1 January 2013 to 6 April 2021, more than 5,000 Policies were cancelled under the Non-consent code;
  - 169.3. failed to conduct any detailed investigation until October 2021 to determine whether, and to what extent, systemic issues were the cause of a Policy which was cancelled under the Non-consent code being issued without the customer's consent; and
  - 169.4. failed to have in place any specific escalation process applicable in relation to Policies that were cancelled under the Non-consent code
170. By 12 May 2017, WBC was aware that its systems did not require consent to be captured directly from customers for home and contents insurance sales through



branches. Despite this, no additional measures or controls were introduced following the recommendations and findings of the Deloitte Report on this issue.

171. From 2017 onwards, there was a steady decline in the number of Policies that were cancelled using the Non-consent Code. The number of policies that were cancelled using the Non-consent Code from 1 January 2017 was:

- 171.1. 459 policies in 2017 (comprising 88 Non-consent Customers);
- 171.2. 300 policies in 2018 (comprising 33 Non-consent Customers);
- 171.3. 90 policies in 2019 (comprising 9 Non-consent Customers);
- 171.4. 40 policies in 2020 (comprising 2 Non-consent Customers); and
- 171.5. 5 policies from 1 January 2021 to 6 April 2021 (comprising no Non-consent Customers).

**K.2 Nature of the contraventions: whether the contravention comprised isolated conduct, or was systematic or occurred over a period of time**

172. The parties repeat Sections K.1 above.

**K.3 Nature of the contraventions: The seniority of the officers responsible for the contravention**

173. The Non-consent Issue was partly the result of the failure of non-senior staff to appropriately create Policies, or monitor Policies which had been created, and partly the result of a lack of Preventative, Monitoring and Detective Controls, being matters for which senior officers of WBC were and are responsible.
174. Individuals who held Senior Roles within WBC were aware that customer complaints were being received in connection with the Non-consent Issue, as described above in Section I.3 above.

**K.4 Nature of the contraventions: The existence, within the corporation, of compliance systems and whether there was a culture of compliance at the corporation**

175. WBC's compliance systems were not adequate to prevent the contraventions. Nor did they promote the escalation or detection of the issue despite more than 5,000 Policies being cancelled under the Non-consent code.

176. The parties repeat section K.1 above.

**K.5 Nature of the contraventions: The impact or consequences of the contravention on third parties; and the extent of any profit or benefit derived as a result of the contravention**

177. For the 329 Non-consent Customers:

- 177.1. WBC refunded premiums paid totalling at least \$188,503.76; and

177.2. asserted a right to payment for an unknown further amount (in circumstances where customers did not make a payment).

178. Examples of interactions between WBC and certain Non-consent Customers are set out in Schedule 2.

**K.6 The particular circumstances of WBC: The size and financial position of WBC**

179. The parties repeat section H.6 above.

**K.7 The particular circumstances of WBC: Whether the company has improved or modified its compliance systems since the contravention**

180. The issue has not been identified by WBC to date as being systemic and so has not identified modifications to its compliance systems to address the issue.

**K.8 The particular circumstances of WBC: Whether the company (through its senior officers) has demonstrated contrition and remorse**

181. WBC has admitted the contraventions set out in this SOAF.

**K.9 The particular circumstances of WBC: Whether the company had disgorged any profit or benefit received as a result of the contravention, or made reparation**

182. WBC has refunded the 329 Non-consent Customers.

**K.10 The particular circumstances of WBC: Whether the company has cooperated with and assisted the relevant regulatory authority in the investigation and prosecution of the contravention**

183. The Non-consent Issue was identified by ASIC following a production of material by WBC in response to a statutory notice on 12 February 2021. WBC provided further information to ASIC about the Non-consent Issue in response to a 912C notice issued on 6 April 2021.

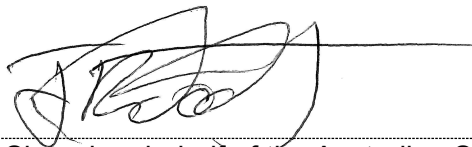
184. WBC has co-operated with ASIC's notices, which is a neutral factor, because a failure to do so constitutes an offence. However, in addition to cooperating with ASIC's notices, Westpac has, since September 2021, provided ASIC with additional materials and assistance on a voluntary basis and has regularly met with ASIC to assist ASIC to understand the material it has provided.

185. WBC has, since September 2021, engaged collaboratively with ASIC to agree admissions in relation to the conduct.

**K.11 The particular circumstances of WBC: Whether the company has suffered any extra-curial punishment or detriment arising from the finding that it had contravened the law**

186. WBC has not suffered any extra-curial punishment or detriment arising from the conduct.

187. WBC's contraventions are not yet public knowledge.



---

Signed on behalf of the Australian Securities and Investments Commission  
James Rutherford Docherty  
For and on behalf of the Australian Government Solicitor  
Lawyer for the Plaintiff



---

Signed on behalf of Westpac Banking Corporation  
Alexandra Mason, Lawyer for the defendant