

## NOTICE OF FILING AND HEARING

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. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	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
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



*Sia Lagos*

Dated: 29/11/2021 5:16:46 PM AEDT

Registrar

### Important Information

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

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

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



Form 2  
Rules 2.2; 15A.3

## ORIGINATING PROCESS

**Federal Court of Australia**  
**District Registry: New South Wales**  
**Division: Commercial and Corporations**

**No. NSD**                      **of 2021**

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

**AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION**

Plaintiff

**WESTPAC BANKING CORPORATION (ACN 007 457 141)**

Defendant

### **A. DETAILS OF APPLICATION**

This application is made under sections 1101B, 1317E and 1317G of the Corporations Act 2001 (Cth) (**Corporations Act**), sections 12GBA, 12GBB and 12GLA of the Australian Securities and Investments Commission Act 2001 (Cth) (**ASIC Act**), sections 19 and 21 of the Federal Court of Australia Act 1976 (Cth) (**FCA Act**) and the inherent or implied jurisdiction of the Court.

The plaintiff seeks declarations of contravention by the defendant (**WBC**) of sections 12DB(1) and 12DM(1) of the ASIC Act and section 912A(5A) of the Corporations Act, compliance orders and costs. The plaintiff also seeks declarations in relation to contraventions of section 12DA(1) of the ASIC Act and sections 912A(1) and 1041H(1) of the Corporations Act.

On the facts stated in the Statement of Agreed Facts and Admissions filed in these proceedings and served with this Originating Process, the plaintiff claims:

### **Declarations**

#### ***Duplicate Policies***

1. Declarations pursuant to s 12GBA of the ASIC Act that during the period 30 November 2015 to 30 June 2021 (**Relevant Period**):
  - (a) WBC caused Westpac General Insurance Limited ACN 003 719 319 (**WGIL**) to issue to each of the customers identified in Part A of

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

File ref: 20206962

Prepared by: James Docherty  
AGS lawyer within the meaning of s 551 of the *Judiciary Act*  
1903

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Schedule 1 to the Statement of Agreed Facts and Admissions (**DP Customers**), a home and contents insurance policy or landlord insurance policy (**Policy**), in circumstances where the DP Customer already held a Policy in respect of the same 'risk address' (together, **Duplicate Policies**);

- (b) Duplicate Policies were issued to each DP Customer in the following circumstances:
  - (i) the DP Customer requested a change (**Change**) to their Policy (**Original Policy**);
  - (ii) due to system limitations, the Change required a new Policy to be created (**New Policy**);
  - (iii) this gave rise to the need for a cancellation request to be made for the Original Policy by WBC's representative;
  - (iv) the cancellation request for the Original Policy was not made by WBC's representative; and
  - (v) as a result, Duplicate Policies remained in effect - the Original Policy, being the Policy to be 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;
- (c) after the Change, WBC collected premiums for an overlapping period in respect of both Policies, and in respect of the DP Customers, sent annual renewal documents in respect of the Original Policy;
- (d) during the course of the conduct referred to in (b) and (c) above, in trade or commerce, and in connection with the supply of the financial services covered by its Australian financial services licence number 2337149 (the **Services**), WBC represented to each DP Customer (the **DP Representations**) that:
  - (i) 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;
  - (ii) the DP Customer had agreed to continue to acquire services provided by the Original Policy, within the meaning of s 12DB(1)(b) of the ASIC Act;
  - (iii) the DP 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;
  - (iv) the DP Customer was liable to pay the premiums for the Original Policy and that WBC and/or WGIL had a continuing right to collect amounts for premiums in respect of the Original Policy, which were representations concerning the existence of a right, within the meaning of s 12DB(1)(i) of the ASIC Act;



- (e) the DP Representations were false or misleading because:
- (i) WBC did not arrange for the cancellation of the Original Policy;
  - (ii) each DP Customer had not agreed to the Original Policy continuing from the time of the Change;
  - (iii) the DP Customer did not have a need for the Original Policy upon the issuance of the New Policy; and
  - (iv) WBC did not have a right to collect the premiums for the Original Policy from the time of the Change; and
- (f) by reason of (a), (b), (c), (d) and (e) above, in respect of each of the DP Customers, WBC contravened each of sections 12DB(1)(b), (h) and (i) of the ASIC Act.
2. A declaration that, during the Relevant Period, by reason of the matters set out in Declaration 1 above, 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(1) of the Corporations Act.
3. A declaration pursuant to s 1317E of the Corporations Act that, between 13 March 2019 to 24 May 2021, WBC failed to do all things necessary to ensure that the Services were provided efficiently, honestly and fairly, and thereby contravened sections 912A(1)(a) and 912A(5A) 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 alternatively, adequate:
- (a) 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**);
  - (b) 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**);
  - (c) risk management procedures the objectives of which were to monitor the success or otherwise of the DP Detective Controls and DP Preventative Controls (the **DP Monitoring Controls**).
4. A declaration pursuant to s 1317E of the Corporations Act that, between 13 March 2019 to 24 May 2021, by reason of the matters set out in Declaration 3 above, WBC failed to take reasonable steps to ensure that its representatives complied with the financial services laws, and thereby contravened ss 912A(1)(ca) and 912A(5A) of the Corporations Act.
5. A declaration that, during the Relevant Period prior to 13 March 2019, 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 alternatively, adequate DP Detective Controls, DP Preventative Controls and DP Monitoring Controls.



6. A declaration that, during the Relevant Period prior to 13 March 2019, by reason of the matters set out in Declaration 5 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.
7. A declaration that, during the Relevant Period, by reason of the matters set out in Declarations 1 to 6 above, WBC failed to comply with the financial services laws, and thereby contravened s 912A(1)(c) of the Corporations Act.

### ***Policies Issued Without Consent***

8. Declarations pursuant to s 12GBA of the ASIC Act that during the Relevant Period:
  - (a) WBC caused WGIL to issue to each of the customers identified in Part B of Schedule 1 to the Statement of Agreed Facts and Admissions (the **Non-Consent Customers**), the Policies identified 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 Policy relevant to that customer;
  - (b) after the Non-Consent Policy was issued, WBC sent to each of the Non-Consent Customers a pack of documents (the **New Business Welcome Pack**) which:
    - (i) informed the Non-Consent Customer that he or she had been issued with a Policy;
    - (ii) 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;
  - (c) during the course of the conduct referred to in (a) and (b) above, in trade or commerce, and in connection with the Services, WBC represented to each Non-Consent Customer (the **Non-Consent Representations**) that:
    - (i) the Non-Consent Customer had agreed to acquire the services provided by the Non-Consent Policy, within the meaning of s 12DB(1)(b) of the ASIC Act;
    - (ii) the Non-Consent Customer was liable to pay the premiums for the Non-Consent Policy set out in the New Business Welcome Pack and that WBC had a continuing right to be paid amounts for premiums in respect of the Non-Consent Policy set out in the New Business Welcome Pack, which were representations concerning the existence of a right, within the meaning of s 12DB(1)(i) of the ASIC Act;
  - (d) the Non-Consent Representations were false or misleading because:
    - (i) the Non-Consent Customers did not agree to the Non-Consent Policy being issued;



- (ii) WBC was not entitled to be paid the amount of premium set out in the New Business Welcome Pack for the Non-Consent Policies; and
  - (e) by reason of (a), (b), (c) and (d) above, in respect of each of the Non-Consent Customers, WBC contravened each of sections 12DB(1)(b) and (i) of the ASIC Act.
9. A declaration that, during the Relevant Period, by reason of the matters set out in Declaration 8 above, 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(1) of the Corporations Act.
  10. Declarations pursuant to s 12GBA of the ASIC Act that, during the Relevant Period, by reason of the matters set out in Declaration 8 above, WBC in trade or commerce asserted on one or more occasions to Non-Consent Customers a right to payment from another person for unsolicited financial services, and by each such assertion contravened section 12DM(1) of the ASIC Act.
  11. A declaration that, during the Relevant Period, by reason of the matters set out in Declarations 8 to 10 above, WBC failed to comply with the financial services laws, and thereby contravened s 912A(1)(c) of the Corporations Act.

### **Pecuniary Penalties**

12. Orders pursuant to ss 12GBA (as in force before 13 March 2019) and/or 12GBB (as in force on and from 13 March 2019) of the ASIC Act, that WBC pay to the Commonwealth of Australia pecuniary penalties in respect of each of its contraventions of each of ss 12DB(1)(b), (h) and (i) and 12DM(1) of the ASIC Act in such amount as the Court considers appropriate.
13. Orders pursuant to s 1317G of the Corporations Act that WBC pay to the Commonwealth of Australia pecuniary penalties in respect of each of its contraventions of s 912A(5A) of the Corporations Act in such amount as the Court considers appropriate.

### **Other orders**

14. An order pursuant to s 43 of the FCA Act that WBC pay the plaintiff 's costs of the proceedings.
15. An order pursuant to s 1101B(1) of the Corporations Act and s 12GLA(1) of the ASIC Act requiring that WBC:
  - (a) within 1 month of the date of the order, engage an independent expert with expertise in regulatory compliance, the identity of whom is to be agreed between the parties, or in the absence of agreement, as proposed by the parties and determined by the Court;
  - (b) instruct the expert to:
    - (i) review WBC's arrangements for ensuring that it complies with ss 912A and 1041H of the Corporations Act and ss 12DA, 12DB



and 12DM of the ASIC Act in relation to dealing in home and contents insurance policies and landlord insurance policies;

- (ii) prepare a written report which:
  - A. describes his or her expertise and confirms his or her independence;
  - B. identifies any aspects of the arrangements referred to in sub-paragraph (i) above that, in the opinion of the expert, is not appropriate or adequate to cause WBC to comply with ss 912A and 1041H of the Corporations Act and ss 12DA, 12DB and s 12DM of the ASIC Act in the future; and
  - C. provides recommendations to WBC to remedy any aspects of WBC's arrangements of the kind described in sub-paragraph B above identified in the course of the expert's review;
- (c) within 7 months of the date of the order, WBC must provide to ASIC a copy of the report referred to in sub-paragraph (b)(ii) above which has been signed by the expert;
- (d) within 13 months of the date of the order, WBC must provide to ASIC a written report signed by the expert and a Group Executive of WBC which:
  - (i) annexes a copy of the report referred to in sub-paragraph (b)(ii) above;
  - (ii) states what steps WBC has taken to give effect to the expert's recommendations;
  - (iii) annexes a copy of all internal documents that have been amended as a consequence of the expert's recommendations; and
  - (iv) identifies any of the expert's recommendations not given effect to by WBC, and the reasons why WBC did not give effect to those recommendations.

16. Such further or other order as the Court thinks fit.

Date: 29 November 2021

A handwritten signature in black ink, appearing to read 'James Docherty', written over a horizontal line.

James Docherty  
For and on behalf of the  
Australian Government Solicitor  
Lawyer for the Plaintiff



This application will be heard by ..... at Queens  
Square, Phillip Street, Sydney NSW 2000 at ..... \*am/\*pm on .....

**B. NOTICE TO DEFENDANT**

TO: Westpac Banking Corporation

c/- Westpac Group Secretariat  
  
'Westpac Place', Level 18  
  
275 Kent Street  
  
SYDNEY NSW 2000

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

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

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

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

**C. FILING**

Date of filing: 29 November 2021

.....  
*Registrar*

This originating process is filed by The Australian Government Solicitor for the plaintiff.

**D. SERVICE**

The plaintiff's address for service is:

Place: The Australian Government Solicitor

Level 34, 600 Bourke Street

MELBOURNE VIC 3000

Email: james.docherty@ags.gov.au

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

Tel: 03 9242 1214





Fax: 03 9242 1333

It is intended to serve a copy of this originating process, statement of agreed facts and supporting affidavit of James Docherty on the Defendant.