

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 29/11/2021 4:23:40 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:	NSD1239/2021
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v WESTPAC BANKING CORPORATION ABN 33 007 457 141
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 4:40:08 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.



## ORIGINATING PROCESS

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD. of 2021

IN THE MATTER OF WESTPAC BANKING CORPORATION  
ABN: 33 007 457 141

**Australian Securities and Investments Commission**  
Plaintiff

**Westpac Banking Corporation** ABN 33 007 457 141  
Defendant

### A. DETAILS OF APPLICATION

This application is made under section 21 of the *Federal Court of Australia Act 1976* (Cth), sections 12GBA(1) and 12GBC(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (as in force prior to 13 March 2019), and section 1101B of the *Corporations Act 2001* (Cth).

The Plaintiff seeks declarations of contravention of the ASIC Act, pecuniary penalty orders and ancillary orders, including costs.

On the facts stated in the Statement of Agreed Facts and Admissions dated 29 November 2021, and using the terms defined at the end of this Part A, the Plaintiff seeks:

#### **Declaratory relief**

##### *Westpac-branded cards*

- 1 A declaration pursuant to section 21 of the FCA Act that between 17 March 2011 and 30 November 2015, the Defendant (**Westpac**):
  - (a) in trade and commerce and in connection with the supply of financial services, on 709 occasions represented to a Debt Purchaser that one or more interest rates applied to a customer's corresponding Westpac-branded card account balance and that no other interest rates applied to the customer's account, when in fact the interest rate or rates that Westpac (and then the

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Filed on behalf of:	Australian Securities & Investments Commission, Plaintiff		
Prepared by:	Nicolette Bearup		
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<b>Address for service</b>	Australian Securities and Investments Commission Level 5, 100 Market Street Sydney New South Wales 2000		

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Debt Purchaser) was entitled to charge the customer on either a portion of the account balance, or the whole of the account balance, was lower than the lowest interest rate that Westpac provided to the Debt Purchaser; and

- (b) thereby, on each occasion, in contravention of section 12DB(1)(a) and (i) of the ASIC Act, Westpac made false and misleading representations, and in contravention of section 12DA(1) of the ASIC Act, made misleading and deceptive representations.
- 2 A declaration pursuant to section 21 of the FCA Act that between 1 December 2015 and 10 May 2018, Westpac:
  - (a) in trade and commerce and in connection with the supply of financial services, on 3,477 occasions represented to a Debt Purchaser that one or more interest rates applied to a customer's corresponding Westpac-branded card account balance and that no other interest rates applied to the customer's account, when in fact the interest rate or rates that Westpac (and then the Debt Purchaser) was entitled to charge the customer on either a portion of the account balance, or the whole of the account balance, was lower than the lowest interest rate that Westpac provided to the Debt Purchaser; and
  - (b) thereby, on each occasion, in contravention of section 12DB(1)(a) and (i) of the ASIC Act, Westpac made false and misleading representations, and in contravention of section 12DA(1) of the ASIC Act, made misleading and deceptive representations.
- 3 A declaration pursuant to s 21 of the FCA Act and s 1101B of the Corporations Act that, between 17 March 2011 and 10 May 2018, by reason of the conduct described in the declarations in paragraphs 1 and 2 above, Westpac failed to comply with financial services laws in contravention of s 912A(1)(c) of the Corporations Act.

*Westpac-branded loans*

- 4 A declaration pursuant to section 21 of the FCA Act that between 10 October 2013 and 30 November 2015, Westpac:
  - (a) in trade and commerce and in connection with the supply of financial services, on 28 occasions represented to a Debt Purchaser that an interest rate applied to the customer's Westpac-branded loan account balance and that no other interest rates applied to the customer's account, when in fact the interest rate that Westpac (and then the Debt Purchaser) was entitled to charge on the whole of the account balance was lower than the interest rate that Westpac provided to the Debt Purchaser; and
  - (b) thereby on each occasion, in contravention of section 12DB(1)(a) and (i) of the ASIC Act, made false and misleading representations; and, in



contravention of section 12DA(1) of the ASIC Act, made misleading and deceptive representations.

- 5 A declaration pursuant to section 21 of the FCA Act that between 1 December 2015 and 10 May 2018, Westpac:
- (a) in trade and commerce and in connection with the supply of financial services, on 162 occasions represented to a Debt Purchaser that an interest rate applied to the customer's Westpac-branded loan account balance and that no other interest rates applied to the customer's account, when in fact the interest rate that Westpac (and then the Debt Purchaser) was entitled to charge on the whole of the account balance was lower than the interest rate that Westpac provided to the Debt Purchaser; and
  - (b) thereby on each occasion, in contravention of section 12DB(1)(a) and (i) of the ASIC Act, made false and misleading representations; and in contravention of section 12DA(1) of the ASIC Act, made misleading and deceptive representations.
- 6 A declaration pursuant to s 21 of the FCA Act and s 1101B of the Corporations Act that, between 10 October 2013 and 10 May 2018, by reason of the conduct described in the declarations in paragraphs 4 and 5 above, Westpac failed to comply with financial services laws in contravention of s 912A(1)(c) of the Corporations Act.

*St George-branded cards*

- 7 A declaration pursuant to section 21 of the FCA Act that between 1 March 2010 and 30 November 2015, Westpac, in trade and commerce and in connection with the supply of financial services, represented to a Debt Purchaser that one single interest rate applied to a customer's St George-branded card account balance and that no other interest rates applied to the customer's account, when in fact:
- (a) on 450 occasions, the interest rate that Westpac (and then the Debt Purchaser) was entitled to charge on the whole of the account balance was lower than the single interest rate that Westpac provided to the Debt Purchaser; and
  - (b) on 6,840 occasions, two or more interest rates applied to different parts of the customer's account balance and the interest rate that Westpac (and then the Debt Purchaser) was entitled to charge the customer on a part of the account balance was lower than the single interest rate that Westpac provided to the Debt Purchaser,
- thereby on each occasion, in contravention of section 12DB(1)(a) and 12DB(1)(g) (from 10 March 2010 to 31 December 2010) and 12DB(1)(i) (from 1 January 2011) of the ASIC Act, made false and misleading representations; and in contravention of section 12DA(1) of the ASIC Act, made misleading and deceptive representations.



- 8 A declaration pursuant to section 21 of the FCA Act that between 1 December 2015 and 19 March 2018, Westpac, in trade and commerce and in connection with the supply of financial services, represented to a Debt Purchaser that one single interest rate applied to a customer's St George-branded card account balance and that no other interest rate applied to the customer's account, when in fact:
- (a) on 532 occasions, the interest rate that Westpac (and then the Debt Purchaser) was entitled to charge on the whole of the account balance was lower than the single interest rate that Westpac provided to the Debt Purchaser; and
  - (b) on 4,337 occasions, two or more interest rates applied to different parts of the customer's account balance and the interest rate that Westpac (and then the Debt Purchaser) was entitled to charge the customer on a part of the account balance was lower than the single interest rate that Westpac provided to the Debt Purchaser,

thereby on each occasion, in contravention of section 12DB(1)(a) and (i) of the ASIC Act, made false and misleading representations; and in contravention of section 12DA(1) of the ASIC Act, made misleading and deceptive representations.

- 9 A declaration pursuant to s 21 of the FCA Act and s 1101B of the Corporations Act that, between 1 March 2010 and 19 March 2018, by reason of the conduct described in the declarations in paragraphs 7 and 8 above, Westpac failed to comply with financial services laws in contravention of s 912A(1)(c) of the Corporations Act.

### **Pecuniary penalties**

- 10 An order pursuant to section 12GBA and section 12GBC of the ASIC Act (as in force prior to 13 March 2019) that, within 14 days of the date of the order, Westpac pay to the Commonwealth of Australia pecuniary penalties in respect of Westpac's contraventions set out in paragraphs 2, 5, and 8 in such amount as the Court considers appropriate.

### **Costs and other orders**

- 11 An order that Westpac pay the Plaintiff's costs of and incidental to the proceedings.
- 12 Such further or other orders as the Court considers appropriate.

### **Definitions**

- (i) *ASIC Act* means the *Australian Securities and Investments Commission Act 2001* (Cth).
- (ii) *Corporations Act* means the *Corporations Act 2001* (Cth).



- (iii) **Debt Purchaser** means Baycorp Collections PDL (Australia) Pty Limited (ACN 119 478 778), Credit Corp Services Pty Ltd (ACN 082 928 872), Panthera Finance Pty Ltd (ACN 147 634 482), ACM Group Pty Limited (ACN 127 181 097), Credit Corp Acceptance Pty Limited (ACN 119 211 317) (then known as Great Western Asset Management Pty Ltd), Lion Finance Pty Ltd (ACN 095 926 766), and/or Pioneer Credit Solutions Pty Ltd (ACN 136 062 970).
- (iv) **FCA Act** means the *Federal Court of Australia Act 1976* (Cth).
- (v) **St George-branded cards** means St George-branded consumer credit cards, Bank SA-branded consumer credit cards and Bank of Melbourne-branded consumer credit cards.
- (vi) **Westpac-branded cards** means Westpac-branded consumer credit cards.
- (vii) **Westpac-branded loans** means Westpac-branded Flexi Loans.

Date: 29 November 2021

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 Signature of Nicolette Bearup  
 Lawyer for the Plaintiff

This application will be heard by ..... at  
 [address of Court] at ..... \*am/\*pm on .....

## B. NOTICE TO DEFENDANT(S)

TO: **Westpac Banking Corporation** ABN 33 007 457 141  
 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: [*date of filing to be entered by Registrar*]

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*Registrar*

This originating process is filed by the plaintiff.

### D. SERVICE

The plaintiff's address for service is Australian Securities and Investments Commission, Level 5, 100 Market St, Sydney.

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