

NOTICE OF FILING

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Details of Filing

Document Lodged:	Statement of Agreed Facts
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



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

Dated: 29/11/2021 4:40:19 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.



STATEMENT OF AGREED FACTS AND ADMISSIONS

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

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Accompanying this Statement of Agreed Facts and Admissions (**SAFA**) and forming part of it is an Exhibit containing copies of certain documents referred to below. References to customers' names, account numbers and addresses have been redacted in the documents. A USB marked 'SAFA' has been prepared by the parties containing a bundle of agreed documents which will be tendered at trial. A reference to a document identification number in this SAFA is a reference to that document on the USB. The facts, matters and circumstances recorded in this SAFA and in the Exhibit may be used by the Court to draw inferences of fact.

1. This SAFA is made jointly by the plaintiff (**ASIC**) and the defendant (**Westpac**), in support of proposed orders sought by the parties in relation to admitted contraventions of s 12DA(1) and s 12DB(1) (a) and (i) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) (as it stood immediately prior to 13 March 2019), and s 912A(1)(c) of the *Corporations Act 2001* (Cth) (**Corporations Act**).
2. ASIC and Westpac have agreed the facts and admissions set out in this SAFA for the purposes of s 191 of the *Evidence Act 1995* (Cth) (**Evidence Act**) and that these facts and admissions will not be disputed by the parties for the purpose of the proceedings to which this SAFA relates (**Proceedings**).
3. This SAFA identifies the facts relevant to each of the contraventions alleged by ASIC and admitted by Westpac for the purpose of the Proceedings. The facts agreed to, and the admissions made, are agreed to and made solely for the purposes of the Proceedings. This SAFA also identifies documents Exhibited to the SAFA which the parties agree are to be tendered jointly and support the facts and the admissions made.
4. In this SAFA:
 - (a) **ADI** means authorised deposit-taking institution
 - (b) **ACL** means Australian Credit Licence
 - (c) **AFSL** means Australian Financial Services Licence
 - (d) **Banking Code** means the *Code of Banking Practice*
 - (e) **Credit Code** means the *National Credit Code* in Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cth)
 - (f) **Customer Credit Contract** means the agreement between a customer, including an Impacted Customer, and Westpac, including the Letter of Offer and/or Credit Account Offer and/or Conditions of Use and any Variation Letter

- (g) **Customer Credit Products** means together the Westpac-branded cards and loans and the St George-branded cards
- (h) **Date of Debt Sale** means the date that Westpac sold and assigned a customer's account, including an Impacted Customer's account, (including its rights, title and interest under the Customer Credit Contracts) to the Debt Purchaser
- (i) **Debt Purchasers** means the entities listed at paragraph 31
- (j) **Debt Sale Agreements** means the agreements between Westpac and the Debt Purchasers, listed in Annexure A for Westpac-branded cards and loans and Annexure B for St George-branded cards
- (k) **Impacted Customer** means a customer whose information is included in EXHIBIT: DOS.0092.0001.0008 for whom the Date of Debt Sale was on or after 1 March 2010
- (l) **Pre-penalty Period** means 1 March 2010 to 30 November 2015
- (m) **Penalty Period** means 1 December 2015 to 10 May 2018
- (n) **Promotional Interest Rate** includes any or all of the honeymoon interest rate, balance transfer interest rate, introductory interest rate, promotional plan interest rate, or other promotional interest rate, but excludes a concessionary interest rate
- (o) **Relevant Period** means 1 March 2010 to 10 May 2018
- (p) **Representations** means the Westpac Card Representations, the Westpac Loan Representations and the St George Representations
- (q) **Sale File** means an electronic file with data for St George-branded cards and Westpac-branded cards and loans, including applicable interest rates, provided by Westpac to a Debt Purchaser at or about the Date of Debt Sale.
- (r) **SGB** means the entity formerly known as St. George Bank Limited ACN 055 513 070
- (s) **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
- (t) **St George Representations** means the representations set out in paragraph 52

- (u) **St George Write-Off Accounts** means customer accounts for St George-branded cards where the account was recorded as being more than 180 days overdue
- (v) **Variation Letter** means an agreement between Westpac and a customer, including an Impacted Customer, to reduce the interest rate applying to a Customer Credit Contract
- (w) **Westpac** means Westpac Banking Corporation (ACN 007 457 141)
- (x) **Westpac-branded cards** means Westpac-branded consumer credit cards
- (y) **Westpac-branded cards and loans** means together the Westpac-branded credit cards and Westpac-branded Flexi Loans
- (z) **Westpac-branded loans** means Westpac-branded Flexi Loans
- (aa) **Westpac Card Representations** means the representations set out in paragraph 41
- (bb) **Westpac Loan Representations** means the representations set out in paragraph 39
- (cc) **Westpac Write-Off Accounts** means customer accounts for Westpac-branded cards and loans within Westpac's debt recovery software platform (known as Tallyman) where the account was recorded as being more than 180 days overdue

A. THE PARTIES

5. ASIC is and was at all material times a body corporate:
 - (a) established by section 7 of the Australian Securities Commission Act 1989 (Cth) and continued in existence under (as if it had been established under) the ASIC Act by operation of section 261 of the ASIC Act; and
 - (b) able to sue in its corporate name, by reason of section 8 of the ASIC Act.
6. Westpac is and was at all material times: [EXHIBIT: DOS.0003.0001.1294 and DOS.0003.0001.1311]
 - (a) a public company registered pursuant to the Corporations Act;
 - (b) a company with its ordinary shares and other securities listed for trading on the Australian Securities Exchange;

- (c) an ADI within the meaning of the *Banking Act 1959* (Cth), and licensed to carry on banking business in Australia, holding an AFSL and an ACL both numbered 233714 (Westpac AFSL and ACL);
 - (d) a trading and financial corporation; and
 - (e) able to sue and be sued in its corporate name.
- 7. Prior to the Relevant Period SGB assumed all of the right, title and interest to, and all obligations under, all agreements customers had with the Bank of South Australia trading as Bank SA. Bank SA became a brand operated by Westpac through its St George Bank operating division from 1 March 2010.
- 8. On 1 December 2008, Westpac acquired all of the issued shares in SGB.
- 9. On and from 1 March 2010:
 - (a) Westpac commenced a new operating division trading under the name of St George Bank;
 - (b) Westpac acquired all the assets and assumed all the liabilities of SGB;
 - (c) Westpac assumed all of the right, title and interest to, and all obligations under, all agreements with SGB's customers including in respect of all financial services provided to customers of SGB and continued to provide those services under the Westpac AFSL and ACL;
 - (d) SGB was deregistered.
- 10. Bank of Melbourne is and was at all material times a banking brand operated by Westpac through its St George Bank operating division.
- 11. The following financial metrics for Westpac are set out in **Annexure C**:
 - (a) the annual turnover of Westpac for the 12-month period ending each month from December 2015 to May 2018;
 - (b) the approximate market share of Westpac (among other ADIs for: (i) unsecured personal loans; and (ii) credit cards);
 - (c) total volume for Westpac-branded cards for the 12-month period ending each month from December 2015 to May 2018;

- (d) total volume for Westpac-branded Flexi Loans for the 12-month period ending each month from December 2015 to May 2018;
- (e) total volume for St George-branded cards for the 12-month period ending each month from December 2015 to May 2018;
- (f) Westpac's total assets, net assets, revenue and profit after tax for the years ended 30 September 2015 to 30 September 2021 and the corresponding half-yearly figures;
- (g) for the period from December 2015 to May 2018, the total monthly value of:
 - (i) the amounts outstanding and owing to Westpac for the St George Write-Off Accounts and Westpac Write-Off Accounts which were sold to one or more of the Debt Purchasers (**Total Face Value**); and
 - (ii) the amounts paid by Debt Purchasers to Westpac for the debts owing to Westpac in 11(g)(i) (above) (**Total Purchase Price**).

B. BACKGROUND

12. At all material times during the Relevant Period, pursuant to its AFSL and ACL, Westpac:
 - (a) carried on a business of, amongst other things, supplying financial services (within the meaning of Part 2, Division 2 of the ASIC Act) to customers in connection with:
 - (i) Westpac-branded credit cards;
 - (ii) Westpac-branded 'Flexi Loan' personal loans;
 - (iii) St George-branded credit cards;
 - (iv) Bank SA-branded credit cards; and
 - (v) Bank of Melbourne-branded credit cards;
 - (b) as part of that business, pursuant to those financial services, made credit available to its customers in exchange for, amongst other things, the right to charge those customers interest in respect of the financial services it supplied; and
 - (c) from time to time, sold and assigned to third-party debt purchasers the rights it held in relation to the credit card and Flexi Loan accounts of certain customers.

13. At all material times during the Relevant Period:
- (a) the Westpac-branded cards and loans;
 - (b) St George-branded cards;
- were credit facilities and financial products (within the meaning of Part 2, Division 2 of the ASIC Act) in which Westpac dealt and provided financial services (within the meaning of Part 2, Division 2 of the ASIC Act) in respect of them.
14. At all material times during the Relevant Period, Westpac implemented a policy of selling and assigning customer accounts and debts from:
- (a) Westpac-branded cards and loans; and
 - (b) St George-branded cards,
- where customers were, or were considered to be, in default of making the required repayments on their accounts and Westpac had written off the debts on those accounts.
15. Westpac typically wrote off customer debts for Westpac-branded cards and loans and St George-branded cards when the required repayments were at least 180 days past the date the repayments were due and payable.
16. Westpac is a party to agreements with Impacted Customers in relation to Westpac-branded cards and loans and St George-branded cards pursuant to which those customers were provided financial accommodation.
17. The terms of the Customer Credit Products, for each relevant customer, were set out in the Customer Credit Contracts.
18. With respect to Westpac-branded loans, the Customer Credit Contract provided a single interest rate applicable to the debt, unless a customer was also given a Promotional Interest Rate. [EXHIBIT: WBA.0006.0001.0001 and WBA.0057.0001.7529]
19. In certain instances, Westpac agreed to lower the interest rate otherwise applicable to a Westpac-branded loan to a concessionary rate, including a zero rate, often because the customer was experiencing financial hardship, and through arrangements entered into under the procedures set out in the hardship provisions in the Credit Code and the Banking Code.

20. With respect to Westpac-branded cards and St George-branded cards, the Customer Credit Contracts for those credit facilities provided, in exchange for the provision of financial accommodation, a range of interest rates applicable to certain debt balances within the customer account: [EXHIBIT: WBA.5000.0014.0011, WBA.0060.0001.0040, WBA.0064.0001.1009 and WBA.0057.0001.7107]
- (a) a promotional or ‘honeymoon’ interest rate applicable to balance transfers;
 - (b) purchase interest rates applicable to the account balance for purchases made by customers using the credit card; and
 - (c) cash advance interest rates applicable to the account balance for cash advances (or amounts treated as cash advances) made to customers using the credit card.
21. In certain instances, Westpac agreed to lower the interest rate otherwise applicable to the relevant credit card account balances to a concessionary rate or to a zero rate, often because the customer was experiencing financial hardship, and through arrangements entered into under the procedures set out in the hardship provisions in the Credit Code and the Banking Code.
22. Accordingly, there could be a range of interest rates (including a zero rate) applicable to customer account balances of Westpac-branded cards and St George-branded cards but, as a minimum, there would always be, at least, a separate interest rate for purchases and a separate interest rate for cash advances.
23. The existence of a range of interest rates, used in relation to a range of balance types within a customer account, is typical within financial institutions offering credit cards and is apparent from the terms of the Customer Credit Contracts.
24. The agreement between Westpac and the customer to apply a concessionary interest rate to a Westpac-branded card, a Westpac-branded loan and/or a St George-branded card is set out in correspondence, referred to in this SAFA as a Variation Letter, between Westpac and the customer and specifies the concessionary interest rate(s) and associated details applicable to the account and its balance(s).
25. The existence of concessionary interest rates, used in relation to the whole balance or a range of balance types within a customer account, is typical within financial institutions offering loans and credit cards and is apparent from the terms of the Variation Letters and from the practice of Westpac offering some customers concessionary interest rates when

they sought a variation of their Consumer Credit Contracts on the basis of financial hardship, either under the procedure set out in the Credit Code or otherwise.

26. The Customer Credit Contracts included terms to the effect that Westpac:
- (a) in respect of Westpac-branded loans – Westpac would make financial accommodation available to the relevant customers in exchange for, amongst other things, the right to charge those customers interest in respect of funds advanced to, or at the direction of, the customer;
 - (b) in respect of Westpac-branded cards and St George-branded cards – Westpac could apply differing rates of interest to the financial accommodation provided to the customer according to the nature of that financial accommodation:
 - (i) credit purchase interest rates, which applied to purchases made using the relevant credit card;
 - (ii) cash advance interest rates, which applied to cash advanced to, or at the direction of, the customer (or taken to be so advanced); and
 - (iii) promotional, honeymoon or balance transfer interest rates, which could apply to the aggregate balance of the account or to specific balances (such as purchases or balance transfers from other accounts or third-party credit providers) and/or for specific time periods; and
 - (c) in respect of the Westpac-branded cards and loans and the St George-branded cards could transfer and assign its rights to third parties in relation to the customer account under the relevant Customer Credit Contract, as well as provide the third party with all the relevant customer information that privacy laws permitted.

C. DEBT SALES BY WESTPAC

C.1 Overview

27. The Proceedings concern 16,535 Impacted Customers with Customer Credit Contracts with Westpac.
28. Certain agreed facts relevant to contravention and penalty with respect to each of the 16,535 Impacted Customers include those set out in Westpac's response dated 8 October 2021 to an ASIC notice issued under s49 of the *National Consumer Credit Protection Act 2009* (Cth) on 23 June 2021 and marked with ASIC barcode NTC2109425, which is

EXHIBIT: DOS.0092.0001.0008 to this SAFA. Specifically each row of EXHIBIT: DOS.0092.0001.0008 sets out the information listed below in respect of a specific customer and corresponding account number:

- (a) Column A, contained the Impacted Customer's account number, however that information has been removed to protect the customer's personal information;
- (b) Column B, contained the Impacted Customer's full name, however that information has been removed to protect the customer's personal information;
- (c) at Column C, whether the Impacted Customer's account was a Westpac-branded account or a St George-branded account;
- (d) at Column D, whether the product linked to the Impacted Customer's account was a credit card or a 'Flexi Loan' personal loan;
- (e) at Column E, the name of the Debt Purchaser who purchased from Westpac the debt on the Impacted Customer's account;
- (f) at Column F, the Australian Credit Licence number of the Debt Purchaser who purchased from Westpac the debt on the Impacted Customer's account;
- (g) at Column G, the date that the Impacted Customer's account was created;
- (h) at Column H, the Date of Debt Sale;
- (i) at Column I, the aggregate dollar amount of the debt on the Impacted Customer's account that Westpac sold and assigned to the Debt Purchaser as at the Date of Debt Sale;
- (j) at Column J, whether the Debt Purchaser engaged in collections activities in relation to the Impacted Customer's account, with 'Yes' indicating that the Debt Purchaser did and 'No' indicating that the Debt Purchaser did not;
- (k) at Column K, whether a concessionary interest rate applied to the Impacted Customer's account as at the Date of Debt Sale, with 'Yes' indicating that a concessionary interest rate did apply and 'No' indicating that a concessionary interest rate did not apply;
- (l) at Column L, the purchase interest rate that was applicable, as at the Date of Debt Sale, to the Impacted Customer's account balance for purchases made on that account pursuant to the Customer Credit Contract;

- (m) at Column M, the balance owed by the Impacted Customer against the purchase interest rate at Column L as at the Date of Debt Sale;
- (n) at Column N, the expiry date of the purchase interest rate at Column L (if applicable);
- (o) at Column O, the cash advance interest rate that was applicable, as at the Date of Debt Sale, to the Impacted Customer's account balance for cash advances made on the Impacted Customer's account pursuant to the Customer Credit Contract;
- (p) at Column P, the balance owed by the Impacted Customer against the cash advance interest rate at Column O as at the Date of Debt Sale;
- (q) at Column Q, the expiry date of the cash advance interest rate at Column O (if applicable);
- (r) at Column R, the Promotional Interest Rate that was applicable, as at the Date of Debt Sale, to the Impacted Customer's account pursuant to the Customer Credit Contract;
- (s) at Column S, the balance owed by the Impacted Customer against the Promotional Interest Rate at Column R as at the Date of Debt Sale;
- (t) at Column T, the expiry date of the Promotional Interest Rate at Column R (if applicable);
- (u) at Column U, the concessionary interest rate applicable to the Impacted Customer's account pursuant to the Customer Credit Contract as at the Date of Debt Sale (if applicable);
- (v) at Column V, the balance owed by the Impacted Customer against the concessionary interest rate at Column U as at the Date of Debt Sale (if applicable);
- (w) at Column W, the expiry date of the concessionary interest rate at Column U (if applicable);
- (x) at Column X, whether any interest rate/s other than or additional to the interest rates in Columns L, O, R and/or U applied to any part of the Impacted Customer's account pursuant to the Customer Credit Contract as at the Date of Debt Sale;
- (y) at Column Y, the purchase interest rate corresponding with "interest_rate_purchase", that Westpac provided to the Debt Purchaser in the Sale

File as the purchase rate applicable to the Impacted Customer's account (if applicable);

- (z) at Column Z, the cash advance interest rate corresponding with "interest_rate cash", that Westpac provided to the Debt Purchaser in the Sale File as the cash advance rate applicable to the Impacted Customer's account (if applicable);
- (aa) at Column AA, the interest rate corresponding with 'mat_pre_jud_int' provided by Westpac to the Debt Purchaser in the Sale File as applicable to the Impacted Customer's account;
- (bb) at Column AB, whether any interest rate/s other than or additional to the interest rates in Columns Y, Z and/or AA were provided by Westpac to the Debt Purchaser in the Sale File as applicable to the Impacted Customer's account;
- (cc) at Column AC, the maximum interest rate percentage that the Debt Purchaser applied in its collection activities on the Impacted Customer's account between the Date of Debt Sale and 19 September 2018;
- (dd) at Column AD, the interest rate percentage that the Debt Purchaser applied in its collection activities on the Impacted Customer's account as at 19 September 2018;
- (ee) at Column AE, the adjusted interest rate percentage that was applied to the Impacted Customer's account as at 23 June 2021 as a part of the remediation action taken on the Impacted Customer's account (if applicable);
- (ff) at Column AF, whether it was the Debt Purchaser or Westpac who applied the adjusted interest rate percentage at Column AE for the purposes of customer remediation (if applicable);
- (gg) at Column AG, the adjusted interest rate percentage that was still to be applied to the Impacted Customer's account as at 23 June 2021 as a part of the remediation action taken on the Impacted Customer's account (if applicable);
- (hh) at Column AH, whether it would be the Debt Purchaser or Westpac who would apply the adjusted interest rate percentage at Column AG for the purposes of customer remediation (if applicable);
- (ii) at Column AI, the balance adjustment, being a dollar amount reduction to the balance of the debt on the Impacted Customer's account to remediate over-charged

interest, that was applied to the Impacted Customer's account as at 23 June 2021 (if applicable);

- (jj) at Column AJ, whether it was the Debt Purchaser or Westpac who applied the balance adjustment at Column AI for the purposes of customer remediation (if applicable);
- (kk) at Column AK, the balance adjustment that was still to be applied to the Impacted Customer's account as at 23 June 2021 as a part of the remediation action taken on the Impacted Customer's account (if applicable);
- (ll) at Column AL, whether it was the Debt Purchaser or Westpac who would apply the balance adjustment at Column AK for the purposes of customer remediation (if applicable);
- (mm) at Column AM, the amount of interest refunded to the Impacted Customer's account as at 23 June 2021 as a part of the remediation action taken on the Impacted Customer's account (if applicable);
- (nn) at Column AN, whether it was the Debt Purchaser or Westpac who applied the interest refund at Column AM for the purposes of customer remediation (if applicable);
- (oo) at Column AO, the interest refund that was still to be applied to the Impacted Customer's account as at 23 June 2021 as a part of the remediation action taken on the Impacted Customer's account (if applicable);
- (pp) at Column AP, whether it was the Debt Purchaser or Westpac who would apply the interest refund at Column AO for the purposes of customer remediation (if applicable);
- (qq) at Column AQ, whether as at 23 June 2021 the Impacted Customer's account had, in relation to a debt or debts that included the debt on the Impacted Customer's account:
 - (i) been the subject of a sequestration order after the Date of Debt Sale;
 - (ii) entered into a Part IX or Bankruptcy Act 1966 (Cth) (**Bankruptcy Act**) debt agreement after the Date of Debt Sale, but had not been declared bankrupt via a sequestration order;

- (iii) legal proceedings brought against the customer by the Debt Purchaser (or someone on the Debt Purchaser's behalf) to recover all or part of the Impacted Account debt, but does not include bankruptcy proceedings;
 - (iv) not been the subject of a sequestration order, Part IX or Bankruptcy Act debt agreement, or the subject of legal proceedings.
- (rr) at Column AR, whether any of the following actions had been applied to the Impacted Customer's account as at 23 June 2021 :
- (i) relinquish bankruptcy;
 - (ii) set aside bankruptcy;
 - (iii) set aside Part IX or Bankruptcy Act debt agreement;
 - (iv) cease legal proceedings,
 - (v) set aside legal proceedings;
 - (vi) cease judgment enforcement;
 - (vii) other action not including an interest refund, balance adjustment or interest rate adjustment.
- (ss) at Column AS, whether it was the Debt Purchaser or Westpac who applied the actions at Column AR for the purposes of customer remediation.
- (tt) at Column AT, the actions at Column AR that were still to be applied to the Impacted Customer's account as at 23 June 2021 ; and
- (uu) at Column AU, whether it would be the Debt Purchaser or Westpac who would apply the actions at Column AT for the purposes of customer remediation.

29. During the Pre-penalty Period:

- (a) 737 Impacted Customers' Westpac-branded card and loan debts, and their associated Customer Credit Contracts, were sold and assigned to Debt Purchasers under 18 Debt Sale Agreements;
- (b) 7,290 Impacted Customers' St George-branded card debts, and their associated Customer Credit Contracts, were sold and assigned to Debt Purchasers under 18 Debt Sale Agreements.

30. During the Penalty Period:

- (a) 3,639 Impacted Customers' Westpac-branded card and loan debts, and their associated Customer Credit Contracts, were sold and assigned to Debt Purchasers under 13 Debt Sale Agreements. Of those Impacted Customers, 508 had concessionary interest rates applying to their accounts.
- (b) 4,869 Impacted Customers' St George-branded card debts, and their associated Customer Credit Contracts, were sold and assigned to Debt Purchasers under 11 Debt Sale Agreements. Of those Impacted Customers 512 had concessionary interest rates applying to their accounts.

31. The Debt Sale Agreements were made with the following debt purchasers:

- (a) in respect of Westpac-branded loans:
 - (i) Baycorp Collections PDL (Australia) Pty Limited (ACN 119 478 778) (only for the Penalty Period);
 - (ii) Credit Corp Services Pty Ltd (ACN 082 928 872); and
 - (iii) Panthera Finance Pty Ltd (ACN 147 634 482).
- (b) in respect of Westpac-branded cards:
 - (i) ACM Group Pty Limited (ACN 127 181 097);
 - (ii) Baycorp Collections PDL (Australia) Pty Limited (ACN 119 478 778);
 - (iii) Credit Corp Acceptance Pty Limited (ACN 119 211 317) (then known as Great Western Asset Management Pty Ltd);
 - (iv) Credit Corp Services Pty Ltd (ACN 082 928 872);
 - (v) Lion Finance Pty Ltd (ACN 095 926 766), also referred to as Collections House;
 - (vi) Panthera Finance Pty Ltd (ACN 147 634 482); and
 - (vii) Pioneer Credit Solutions Pty Ltd (ACN 136 062 970)
- (c) in respect of St George-branded cards:
 - (i) ACM Group Pty Limited (ACN 127 181 097) (only for Penalty Period);

- (ii) Baycorp Collections PDL (Australia) Pty Limited (ACN 119 478 778);
- (iii) Credit Corp Services Pty Ltd (ACN 082 928 872);
- (iv) Lion Finance Pty Ltd (ACN 095 926 766), also referred to as Collections House;
- (v) Panthera Finance Pty Ltd (ACN 147 634 482); and
- (vi) Pioneer Credit Solutions Pty Ltd (ACN 136 062 970),

together, the **Debt Purchasers**.

32. The terms governing the purchase of debts were recorded in the Debt Sale Agreements. The parties agree to tender unredacted copies of the Debt Sale Agreements at the hearing of this matter. [EXHIBIT: WBA.0094.0001.0002, WBA.0054.0001.0740 and WBA.0064.0001.0012]
33. The Debt Sale Agreements relevantly included terms to the effect that Westpac agreed to:
 - (a) assign to the Debt Purchaser, on payment of the Purchase Price, all its legal and beneficial rights, title and interest in respect of each customer account, debt and Customer Credit Contract as at the Date of the Debt Sale; and
 - (b) provide information and documentation, including bank statements and Customer Credit Contracts, about the accounts and debts which were assigned.
34. From March 2011, pursuant to the relevant Debt Sale Agreements, Westpac was required to provide Debt Purchasers with information in respect of each of the Westpac-branded card and loan debts that it sold, including Sale Files.
35. From March 2010, Westpac provided Debt Purchasers with information in respect of each of the St George branded-card debts it sold, including Sale Files, and was required to provide account balance and interest rate information, including Sale Files, from at least December 2012, pursuant to the relevant Debt Sale Agreements.

C.2 The Sale Files

Westpac-branded cards and loans

36. From 17 March 2011 to the end of the Pre-penalty Period:

- (a) Westpac provided Debt Purchasers with 148 Sale Files which included information for 737 Impacted Customers' Westpac-branded cards and loans;
- (b) In the case of 469 of those Impacted Customers, a low interest rate applied which was a Promotional Interest Rate, but which was not included in the Sale Files;
- (c) In the case of 180 of those Impacted Customers, a low interest rate applied which was a concessionary interest rate but which was not included in the Sale Files.

37. During the Penalty Period:

- (a) Westpac provided Debt Purchaser with 98 Sale Files which included information for 3,639 Impacted Customers' Westpac-branded cards and loans;
- (b) In the case of 731 of those Impacted Customers, a low interest rate applied which was a Promotional Interest Rate but which was not included in the Sale Files;
- (c) In the case of 508 of those Impacted Customers, a low interest rate applied which was a concessionary interest rate but which was not included in the Sale Files.

38. From 17 March 2011 to 10 May 2018:

- (a) Those Sale Files included, amongst other fields, the following data fields in respect of each debt sold to the Debt Purchaser:
 - (i) 'CURRENT_BALANCE' – which recorded the total account balance owed on the account as at the Date of Debt Sale;
 - (ii) 'INTEREST_RATE PURCHASE' – which purported to record the interest rate applicable to 'purchases' as at the Date of Debt Sale; and
 - (iii) 'INTEREST_RATE CASH' – which purported to record the interest rate applicable to 'cash advances' as at the Date of Debt Sale;
- (b) the Sale Files did not contain data fields that:
 - (i) recorded any other applicable interest rates, such as a concessional, promotional, honeymoon, or balance transfer rates; or
 - (ii) identified the portions of the account balance that the various interest rates applied to (such as balance transfer, concessional, promotional or honeymoon amount, cash advance balance and purchases balance), if multiple interest rates applied to an account; or

(iii) identified if a concessional or zero interest rate applied to the whole or any part of the account balance;

(c) the Sale Files were compiled and sent to Debt Purchasers as follows:

(i) by an automated software process:

1. Westpac's core financial management software platform (known as VisionPlus) identified Westpac Write-off Accounts;
2. the VisionPlus system then transferred some customer information, in respect of those Westpac Write-Off Accounts, into the Tallyman system;
3. the Tallyman system then generated a Sale File in respect of the Westpac Write-Off Accounts including the customer information transferred from VisionPlus;

(ii) then, a consultant from Westpac's Unsecured Recoveries team:

1. conducted certain pre-defined checks in respect of the Sale File generated by the Tallyman system, which were recorded in a Debt Sale Checklist. However, none of those checks related to checking the interest rate information or the balances within the account to which the various interest rates may have applied for each Westpac Write-Off Account in the Sale File or a sample of them; and
2. following those checks, was authorised to send and sent the Sale File to the relevant Debt Purchaser.

39. In providing the Sale Files to the Debt Purchasers, Westpac made a representation to the Debt Purchasers in respect of each Impacted Customer's Westpac-branded loan that the percentage rate set out in the "Interest_rate cash" field in the Sale Files was the interest rate that applied to the balance owing on the Westpac-branded loan as at the Date of Debt Sale.

40. Pursuant to the Customer Credit Contracts for the Westpac-branded loans included in the Sale Files, as at the Date of the Debt Sale, in respect of 28 Impacted Customers during the Pre-Penalty Period, and 162 Impacted Customers during the Penalty Period, the interest rate that Westpac / the Debt Purchaser was entitled to charge on the balance owing on the Westpac-branded loan was lower than the interest rate that Westpac represented in the Sale File was the interest rate that applied as at the Date of the Debt Sale. In respect of 26

of those Impacted Customers during the Pre-Penalty Period and 143 of those Impacted Customers during the Penalty Period there was a lower concessionary interest rate that applied that was not included in the Sale File.

41. In providing the Sale Files to the Debt Purchasers, Westpac made the following representations to the Debt Purchasers in respect of each Impacted Customer's Westpac-branded card that the Sale Files referred to:
 - (a) where a percentage rate was set out in the "Interest_rate purchase" field, that was the interest rate that applied to the customer's purchase balance at the Date of the Debt Sale;
 - (b) where a percentage rate was set out in the "Interest_rate cash" field, that was the interest rate that applied to the customer's cash advance balance at the Date of the Debt Sale; and
 - (c) that no other interest rates (namely, promotional, balance transfer, honeymoon or concessional rates) applied to the customer's account.
42. Pursuant to the Customer Credit Contracts for the Westpac-branded cards included in the Sale Files as at the Date of the Debt Sale:
 - (a) in respect of 87 Impacted Customers during the Pre-Penalty Period, and 2,381 Impacted Customers during the Penalty Period, the interest rate that Westpac / the Debt Purchaser was entitled to charge on the customer's purchase balance (and in some instances also the cash advance balance) was lower than the interest rate in the Sale File that Westpac represented was the interest rate that applied to the customer's purchase balance (and in some instances also the cash advance balance);
 - (b) in respect of 154 Impacted Customers during the Pre-Penalty Period, and 365 Impacted Customers during the Penalty Period, there was a lower concessionary interest rate that applied to the whole of the account balance, that was not included in the Sale File;
 - (c) in respect of 468 Impacted Customers during the Pre-Penalty Period, and 731 Impacted Customers during the Penalty Period there was a lower Promotional Interest Rate that applied to part of the customer's account balance (or the whole of the account balance), that was not included in the Sale File.

43. The application of the interest rate(s) supplied by Westpac to the Debt Purchasers in the Sale Files would result in each of the Impacted Customers referred to in paragraphs 39 to 42 above being charged more interest than Westpac / the Debt Purchaser was entitled to charge pursuant to the relevant Customer Credit Contract.
44. Having been provided with the incorrect interest rate information by Westpac as set out in paragraphs 39 to 42 above, the Debt Purchasers were misled into believing that higher rate(s) of interest applied to the Impacted Customers' debts and accounts and that they were entitled to pursue the Westpac-branded loan and card debts purchased from Westpac in reliance upon those higher rates.
45. The Debt Purchasers charged a higher total interest amount to the accounts of the Impacted Customers referred to in paragraphs 39 to 42 above than the interest that they were entitled to charge pursuant to the Customer Credit Contracts.
46. At all material times during the Relevant Period, Westpac had available to it, within its various electronic software systems, the correct interest rate(s) for the Impacted Customers, and the correct account balances to which those various interest rates applied.
47. Had Westpac or its employees or agents checked:
- (a) the nature of the data extracted or to be extracted in the automated process before it was implemented;
 - (b) the data extracted in the Sale Files before they were sent;
 - (c) the data fields set out in the Debt Sale Agreements before they were executed,
- it would have been apparent that the data fields provided or to be provided were inadequate to give the Debt Purchaser all the information required concerning the customer accounts sold in relation to the applicable interest rates and account balances and to avoid making false and misleading and misleading and deceptive representations as to the applicable interest rates and balances as at the date of the Debt Sale for each account contained in the Sale Files.
48. Westpac ought to have conducted, but failed to conduct, a proper audit of its data extraction process in respect of debt sales for Westpac-branded cards and Westpac-branded loans prior to providing Sale Files to Debt Purchasers.

St George-branded cards

49. During the Pre-penalty Period:
- (a) Westpac provided Debt Purchasers with 148 Sale Files, including for 7,290 Impacted Customers in respect of St George-branded cards.
 - (b) In the case of 173 of those Impacted Customers, a low interest rate applied which was a concessionary interest rate.
50. From 1 December 2015 to 19 March 2018:
- (a) Westpac provided Debt Purchasers with 79 Sale Files, including for 4,869 Impacted Customers in respect of St George-branded cards.
 - (b) In the case of 512 of those Impacted Customers, a low interest rate applied which was a concessionary interest rate
51. From 1 March 2010 to 19 March 2018:
- (a) those Sale Files included, amongst other fields, the following data fields in respect of each St George-branded card debt sold to the Debt Purchaser:
 - (i) 'mat_owed' – which recorded the total account balance owed on the account;
and
 - (ii) 'mat_pre_jud_int' – which identified a single interest rate.
 - (b) the interest rate provided by Westpac in the Sale File for each St George-branded card was a blended interest rate, being an algorithmic derivation of the interest rate across the various balance types applicable to the account but not reflecting the actual interest rate applicable to any balance within the account and which could have been, and was in many cases, higher than the interest rate applicable to particular balances, or all balances, within a customer account as at the Date of Debt Sale;
 - (c) the balance owing included only a single account balance, rather than balances within the account for cash advance, purchases, balance transfer, promotional, honeymoon or concessionary amounts;
 - (d) the Sale Files did not contain data fields that:
 - (i) recorded any other applicable interest rates, such as a promotional, honeymoon, balance transfer, cash advance or purchases rates; or

- (ii) identified the portions of the account balance that the various interest rates applied to (such as balance transfer, concessional, promotional or honeymoon amount, cash advance balance and purchases balance), if multiple interest rates applied to an account; or
 - (iii) identified if a concessional or zero interest rate applied to the whole or any part of the account balance;
- (e) the Sale Files were compiled and sent to the Debt Purchasers as follows:
 - (i) pursuant to an automated software process involving multiple software platforms (known as VisionPlus, The Collections System, GDW, Collections Write-Off System, AIMS, Outsell and TO10):
 - 1. St George Write-Off Accounts were identified, and certain information in respect of those accounts was extracted and collated as an 'upload file';
 - 2. then, where multiple interest rates applied to a St George Write-Off Account, the GDW system 'blended' the interest rates information to derive a single interest rate for each St George Write-Off Account; and
 - 3. then, Outsell generated a 'Sale File', which included the 'blended' interest rate information from GDW, and no other interest rate information where multiple interest rates applied to a St George Write-Off Account; and
 - (ii) then, a consultant from Westpac's Unsecured Recoveries team:
 - 1. conducted certain pre-defined checks in respect of the Sale File, which were recorded in a Debt Sale Checklist. However, none of the checks related to the interest rate information or the balances within the account to which the various interest rates may have applied for each St George Write-Off Account in the Sale File; and
 - 2. following those checks, was authorised to send and sent the Sale File to the relevant Debt Purchaser.

52. In providing the Sale Files to the Debt Purchasers Westpac made the following representations to the Debt Purchasers in respect of each Impacted Customer's St George-branded card that the Sale Files referred to:
- (a) that the single interest rate supplied was the interest rate that applied to the whole of the Impacted Customer's account as at the Date of the Debt Sale; and
 - (b) that no other interest rates (namely, purchase, cash, promotional, balance transfer, honeymoon or concessional rates) applied to the Impacted Customer's account.
53. Pursuant to the Customer Credit Contracts for the St George-branded cards included in the Sale Files as at the Date of the Debt Sale:
- (a) in respect of 450 Impacted Customers during the Pre-Penalty Period, and 532 Impacted Customers during the Penalty Period, the single interest rate that applied to the customer's account balance was lower than the single interest rate included in the Sale File;
 - (b) in respect of 6,840 Impacted Customers during the Pre-Penalty Period, and 4,337 Impacted Customers during the Penalty Period, there were two or more interest rates that applied to different parts of the customer's account balance, and the single interest rate included in the Sale File was higher than the lowest interest rate that applied to part of the customer's account balance.
54. The application of the single interest rate supplied by Westpac to the Debt Purchasers in the Sale Files would result in each of the Impacted Customers referred to in paragraphs 52 and 53 being charged more interest than Westpac / the Debt Purchaser were entitled to charge pursuant to the Customer Credit Contracts:
- (a) in respect of the Impacted Customers referred to in paragraph 53(a), on their entire account balance;
 - (b) in respect of the Impacted Customers referred to in paragraph 53(b), on that part of their account balance to which the lower interest rate not included in the Sale File applied. They would also be charged less interest on that part of their account balance to which a higher interest rate applied under their Customer Credit Contracts. However all of these Impacted Customers were assessed by Westpac

during its remediation programme as being detrimentally impacted by the application of the incorrect interest rate and were therefore remediated.

55. Having been provided with the incorrect interest rate information by Westpac as set out in paragraphs 52 and 53 above, the Debt Purchasers were misled into believing that a higher rate of interest applied to at least part of the account balance of the Impacted Customers and that they were entitled to pursue the St George-branded card debts purchased from Westpac in reliance upon that higher rate.
56. The Debt Purchasers charged a higher interest rate to the balances of the accounts of the Impacted Customers, as set out in paragraph 54 above, than the interest that they were entitled to charge pursuant to the Customer Credit Contracts, such that the Impacted Customers were found by Westpac to be entitled to be remediated.
57. At all material times during the Relevant Period, Westpac had available to it, within its various electronic software systems, the correct interest rate(s) for the St George-branded cards, and the correct account balances to which those various interest rates applied.
58. Had Westpac or its employees or agents checked:
 - (a) the nature of the data extracted or to be extracted in the automated process before it was implemented;
 - (b) the data extracted in the Sale Files before it was sent;
 - (c) the data fields set out in the Debt Sale Agreements before they were executed,it would have been apparent that the data fields provided or to be provided were inadequate to give the Debt Purchaser all the information required concerning the customer accounts sold in relation to the applicable interest rates and account balances and to avoid making false and misleading and misleading and deceptive representations as to the applicable interest rates and balances as at the Date of Debt Sale for each account contained in the Sale Files.
59. Westpac ought to have conducted, but failed to conduct, a proper audit of its data extraction process in respect of debt sales for St George-branded cards prior to providing Sale Files to Debt Purchasers.

D. ADMISSIONS OF CONTRAVENTIONS

60. Each of the Representations were made:

- (a) in trade or commerce;
 - (b) in connection with the supply or possible supply of financial services, and in relation to financial services, because Westpac's disposal to Debt Purchasers of its rights to pursue outstanding debts under the Customer Credit Contracts involved the provision of financial services, by dealing in (which includes disposing of) a financial product (which includes a credit facility) (ss 12BAB(1)(b) and (7) and 12BAA(7)(k) of the ASIC Act).
61. Each of the Westpac Loan Representations were false and misleading and misleading and deceptive for the reasons set out in paragraph 40.
62. Each of the Westpac Card Representations were false and misleading and misleading and deceptive for the reasons set out in paragraph 42.
63. Each of the St George Representations were false and misleading and misleading and deceptive for the reasons set out in paragraphs 53.
64. Westpac admits that in making the Representations during the Pre-penalty Period on 8,027 occasions, and during the Penalty Period on 8,508 occasions, it:
- (a) made a false and misleading representation in connection with the supply or possible supply of financial services that the financial services were of a particular value, and contravened s 12DB(1)(a) of the ASIC Act on each occasion; and
 - (b) made a false and misleading representation in connection with the supply or possible supply of financial services, concerning the existence or effect of a right or remedy, and contravened what was s12DB(1)(g) of the ASIC Act up to 31 December 2010 and s 12DB(1)(i) of the ASIC Act from 1 January 2011 on each occasion; and
 - (c) engaged in conduct in relation to financial services that was misleading or deceptive conduct, or conduct that was likely to mislead or deceive, and contravened s 12DA(1) of the ASIC Act on each occasion.
65. Westpac admits that by its conduct in contravention of s 12DA(1), s12DB(1)(a) and s12DB(1)(i) of the ASIC Act, Westpac breached its obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act.

E. THE CONSEQUENCES

E.1 Value of the debt sale business

66. Westpac sold the Westpac Write-Off Accounts and the St George Write-Off Accounts because it was in its financial interest to do so. The debt sales realised cash up-front on sale and reduced the administrative burden and cost of managing non-performing assets and cleared them from its balance sheet. Westpac also avoided the risk that recoveries from customers subsequently bankrupted or subject to arrangements or agreements under the Bankruptcy Act were lesser than the amount for which individual debts were sold.
67. Westpac received a total of \$19,874,963.71 from the Debt Purchasers in respect of the sale of 8,508 Impacted Customer accounts contained in 177 Sale Files during the Penalty Period.

E.2 Damage to Westpac customers

68. By reason of the misrepresentation of interest rates on the balances of 8,508 customer accounts during the Penalty Period and 8,027 customer accounts during the Pre-penalty Period, Impacted Customers were remediated in the following amounts:
- (a) for Westpac-branded loans:
 - (i) during the Penalty Period – \$463,994.68 in Balance Adjustments and \$7,573.55 in Interest Refunds;
 - (ii) during the Pre-penalty Period – \$121,396.72 in Balance Adjustments and \$11,165.96 in Interest Refunds; and
 - (b) for Westpac-branded cards:
 - (i) during the Penalty Period – \$3,575,555.54 in Balance Adjustments and \$218,840.18 in Interest Refunds;
 - (ii) during the Pre-penalty Period – \$3,348,002.09 in Balance Adjustments and \$340,621.81 in Interest Refunds; and
 - (c) for St George-branded cards:
 - (i) during the Penalty Period – \$3,641,484.08 in Balance Adjustments and \$341,581.70 in Interest Refunds;

- (ii) during the Pre-penalty Period – \$4,719,117.22 in Balance Adjustments and \$930,828.51 in Interest Refunds; and

all of the Impacted Customers' accounts sold by Westpac during the Penalty Period and Pre-penalty Period, were impacted by the misleading higher interest rates and the failure to tie the correct interest rates to the associated account balances.

- 69. The number of Impacted Customers for whom the Debt Purchasers charged an interest rate that was higher than the lowest interest rate applicable to a balance on the customer's account during the Penalty Period were 8,508, comprising:
 - (a) 3,639 Westpac-branded loan and card customers; and
 - (b) 4,869 St George-branded card customers.
- 70. In addition, in reliance on the account data for 404 Impacted Customers during the Penalty Period, the Debt Purchasers took action against the customers to recover debts that included interest charges that were higher than the customer was contractually obliged to pay due to the misrepresentations as follows:
 - (a) sued 206 Impacted Customers for the recovery of the debt (including interest charges);
 - (b) proved in the bankruptcy of 86 Impacted Customers and of those 86, was the petitioning creditor of 1 Impacted Customer;
 - (c) of those bankrupted customers, 37 had concessionary interest rates applied to their accounts by reason of financial hardship;
 - (d) required 112 customers to enter into, or proved in, Part IX or Part X agreements under the Bankruptcy Act.
- 71. Further, adverse credit ratings reports for a presently unknown number of Impacted Customers were made by Debt Purchasers to ratings agencies. It may be inferred that this action, as well as the Impacted Customer's poor payment history prior to any debt sale, would have been likely to impact the ability of customers to obtain credit at all or to obtain credit on favourable terms.
- 72. The customers impacted by Westpac's conduct, were likely to be customers who could least afford to be overcharged with interest and faced financial hardship, including because

their repayments were in excess of 180 days late and some had already been granted hardship concessionary interest rates.

73. During the Penalty Period, Westpac sold to Debt Purchasers:

- (a) in respect of 3,639 Westpac-branded loans and card customers, debts totalling \$34,961,718.44; and
- (b) in respect of 4,869 St George-branded card customers, debts totalling \$48,651,361.06; and
- (c) in aggregate, for 8,508 customers, debts totalling \$83,613,079.50.

F. OPPORTUNITIES TO MITIGATE IMPACT ON CUSTOMERS AND REMEDIATION

F.1 Westpac knowledge of errors and missed opportunities to mitigate impact to customers

74. On or around 26 February 2016, a Debt Purchaser, Panthera Finance Pty Ltd (**Panthera Finance**), raised a query with Westpac staff about apparent discrepancies between interest rates provided in Sale Files for St George-branded cards and those recorded on customer account statements. [EXHIBIT - WBA.0018.0005.4032]
75. On or around 28 February 2017, Panthera Finance raised a further query with Westpac staff about whether the interest rates provided for St George-branded cards were correct, following complaints from customers. [EXHIBIT - WBA.0022.0005.6723]
76. On or around 4 May 2017, another Debt Purchaser, Lion Finance Pty Ltd (**Lion Finance**), requested Westpac staff to confirm applicable interest rates for St George-branded cards, following queries from customers. [EXHIBIT - WBA.0017.0001.4149]
77. On or around 4 August 2017, Lion Finance raised a further query with Westpac staff about apparent discrepancies between the interest rates provided for St George-branded cards in Sale Files and the multiple interest rates on customers statements. [EXHIBIT - WBA.0017.0001.4147]
78. On or around 1 February 2018, Westpac recorded an incident regarding customer interest rates recorded in Sale Files for St George-branded cards in its incident management system, JUNO.

79. In about mid-April 2018, a Westpac internal investigation identified issues with customer interest rate data in Sale Files regarding Westpac-branded cards and loans.
80. From about May 2018 until 31 August 2018, Westpac temporarily ceased selling St-George Write-Off Accounts and Westpac Write-Off Accounts, and resumed selling the St-George Write-Off Accounts and Westpac Write-Off Accounts around September 2018 at 0%.
81. Between 26 July 2018 and 29 August 2018, Westpac informed the Debt Purchasers of issues with interest rate information in Debt Sale Files. [EXHIBIT - WBA.5000.0003.0002; WBA.5000.0003.0001; WBA.0020.0001.0025; WBA.0020.0001.0029; WBA.0020.0001.0026; WBA.0020.0001.0027; WBA.0020.0001.0030; WBA.0020.0001.0032]
82. On or around 1 June 2019, Westpac ceased selling Westpac-branded cards and loan debt and St George-branded cards debt and, as at the date of this SAFA, those sales have not re-commenced.
83. Westpac did not request Debt Purchasers to stop pursuing outstanding debts, despite Westpac's knowledge that the Debt Purchasers could have been applying incorrect interest rates to existing debts. Until around April 2020, the Debt Purchasers continued to collect, from Impacted Customers, the outstanding debts.

F.2 Customer remediation

84. Westpac has conducted a remediation exercise that includes 16,535 Impacted Customers for the Pre-penalty Period and the Penalty Period. Pursuant to that remediation process, Westpac (in conjunction with Debt Purchasers) has paid or credited to the affected customers \$1,850,611.72 in refunds and \$15,869,550.33 in balance adjustments (which included interest for the time that had passed).
85. The first remediation payments commenced in or around April 2020 and the last remediation payment was made in or around June 2021.
86. In conjunction with Debt Purchasers, the remediation approach taken by Westpac was as follows:
 - (a) if the remediation amount was less than the account balance the Debt Purchaser would adjust the account balance by the remediation amount (referred to as a **Balance Adjustment**);

- (b) if the remediation amount was greater than or equal to the account balance, the Debt Purchaser would adjust the account balance to \$0 and close the account. If the amount was greater than the account balance, Westpac would pay the customer the difference (referred to as an **Interest Refund**) plus compensatory interest;
- (c) if the customer had paid the debt in full, Westpac would pay the customer the Interest Refund plus compensatory interest;
- (d) where the Debt Purchaser had applied a debt waiver to the customer's account, if the remediation amount was less than the amount waived then no further action would be taken. If the remediation amount was greater than the waived amount, Westpac would pay the customer the Interest Refund plus compensatory interest;
- (e) Other remedial measures taken were:
 - (i) if the Debt Purchaser was pursuing legal proceedings against the customer, Westpac would request the Debt Purchaser to discontinue or amend those legal proceedings;
 - (ii) if the Debt Purchaser was actively taking steps to enforce a judgment against the customer, Westpac would request the Debt Purchaser to cease enforcement of the judgment;
 - (iii) if the customer was subject to bankruptcy, Westpac would request the Debt Purchaser to relinquish its proof of debt;
 - (iv) if the customer was subject to an active Part IX or Part X arrangement, Westpac would request the Debt Purchaser to relinquish its claim; and
 - (v) if the Debt Purchaser had previously placed a credit default listing after the account information had been received, Westpac would request the Debt Purchaser to adjust the listing to reflect the remediation outcome.

- 87. Westpac received confirmation from the Debt Purchasers that they had completed all remediation actions requested by Westpac, with Westpac undertaking checks on a sample of accounts as part of the assurance phase of its remediation project.
- 88. The following table summarises certain information concerning remediation during the Penalty Period:

Remediation Type	Number of affected customer accounts		
	Total	Westpac - branded loans and cards	St George - branded cards
Interest rate adjustment	8,508	3,639	4,869
Balance Adjustment (only)	5,096	3,391	1,705
Balance Adjustment and Interest Refund	156	52	104
Interest Refund (only)	612	196	416
Discontinued or amended legal proceedings	17	6	11
Ceased enforcement of judgment (including setting judgment aside)	41	14	27
Repurchase and waiver of debt (only)	116	105	11
Relinquished proof in bankruptcy	42	22	20
Relinquished claim in Part IX, Part X	86	12	74
Adjusted credit listing	444	214	230

89. In Westpac's opinion, the remediation that was paid to 5,865 Impacted Customers during the Penalty Period, may, in some cases, have overcompensated some customers due to the combination of assumptions that Westpac intended to be beneficial in calculating the remediation amount. Those assumptions related to the amount of interest charged, the amount of interest that could be charged under the Customer Credit Contracts and Variation Letters, the balance applying through the period and fees charged.
90. Additionally, for Impacted Customers who were the subject of enforcement steps (where the Debt Purchaser was actively taking steps to enforce a judgment against the customer or had a claim in a customer's active bankruptcy or Part IX or X arrangement), Westpac asked the Debt Purchasers to waive the entire debt owed by the customer even where the error was less than the entire debt, and Westpac then compensated the Debt Purchaser for the waiver.

F.3 Systems changes

91. Westpac says it has made a series of changes to its business practices commencing in May 2018 to avoid the potential risk of passing on incorrect interest rates, which has included applying a 0% interest rate to all the new accounts being sold from around September

2018 or ceasing to sell debts for credit card and Flexi Loans from around June 2019. However, during that period the Debt Purchasers continued applying incorrect interest rates to the purchased debts.

92. In May 2018, Westpac temporarily ceased its debt sale process for Westpac-branded cards and loans, and St George branded cards. Westpac is developing a debt placement model in which Westpac maintains ownership of the relevant customer accounts. Westpac has advised ASIC that processes are in train.

G. OTHER MATTERS RELEVANT TO PECUNIARY PENALTY

G.1 Length, nature and seriousness of conduct and remedies

93. The misrepresentations in respect of customer account interest rates on Westpac Write-Off Accounts and St George Write-Off Accounts occurred over an extended period of time, since at least 17 March 2011 to 10 May 2018 for Westpac Write-Off Accounts and 1 March 2010 to 19 March 2018 for St George Write-Off Accounts, and impacted a large number of customers who were already in financial distress.
94. Westpac says that it deeply regrets the impact of its conduct on customers, and that all Impacted Customers have effectively been remediated, with some unclaimed remediation payments being sent to ASIC's unclaimed money or charities. As part of its remediation project, Westpac sent letters to customers at their last known address in which it apologised to customers for overcharging interest.
95. Westpac did not act dishonestly in providing incorrect interest rate information to Debt Purchasers.
96. In addition, there was no commercial motivation on the part of Westpac in relation to the relevant misrepresentations regarding interest rates. While the differences in interest rates on the sale of debt were one factor in pricing, the discrepancy between the incorrect interest rate provided to Debt Purchasers and the interest rate Westpac was contractually entitled to charge did not result in a corresponding increase in the amounts paid by Debt Purchasers to Westpac.
97. In addition to temporarily ceasing the relevant debt sales, Westpac has put in place the following measures to mitigate the risk of repetition of any misrepresentations in respect of interest rates on Westpac Write-Off Accounts and St George Write-Off Accounts:

- (a) Westpac reviewed upcoming debt sales for other products (including Westpac personal loans and St.George auto loans) to ensure those products were not impacted by the same issue;
- (b) Westpac has reviewed and updated its hardship letters;
- (c) Westpac conducted a review of upcoming debt sales for other products to identify any other potential issues in relation to hardship arrangements; and
- (d) Westpac is developing a debt placement model, referred to at 92 above. Westpac may consider a debt sale model in the future if certain system limitations can be resolved.

G.3 Prior contraventions

98. Westpac has previously been found to have:

- (a) contravened various provisions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), including for having inadequate systems and controls to ensure compliance with its reporting obligations: *Chief Executive Officer of the Australian Transaction Reports and Analysis Centre v Westpac Banking Corporation* [2020] FCA 1538, (2020) 148 ACSR 247. Westpac was ordered to pay a pecuniary penalty of \$1.3 billion.
- (b) contravened section 912A(1)(a), (c), (ca) and (f) of the Corporations Act and section 12CC of the ASIC Act in contested proceedings in which it was found that it engaged in manipulative trading in the Bank Bill Market:: see *Australian Securities and Investments Commission v Westpac Banking Corporation (No 2)* (2018) 266 FCR 147 [2018] FCA 751. Westpac was ordered to pay a pecuniary penalty of \$3.3 million in respect of its contraventions of 12CC of the ASIC Act: *Australian Securities and Investments Commission v Westpac Banking Corp (No 3)* [2018] FCA 1071, (2018) 131 ACSR 585.
- (c) contravened sections 912A(1)(a) and (c) and 961K(2) of the Corporations Act for the failure to comply with the best interests duties by a Westpac financial planner: *Australian Securities and Investments Commission v Westpac Banking Corporation* [2019] FCA 2147. Westpac was ordered to pay a pecuniary penalty of \$9.15 million in respect of its contraventions of 961K Corporations Act.

99. Wholly owned subsidiaries of Westpac, BT Funds Management Limited and Asgard Capital Management Limited were found to have contravened section 12DB(1)(g) and 12DA(1) ASIC Act and 1041H Corporations Act for misrepresentations made to customers, that no adviser fees were being charged to customers when such fees were being charged: *Australian Securities and Investments Commission v BT Funds Management Limited* [2021] FCA 844. Each defendant was ordered to pay a pecuniary penalty of \$1.5 million in respect of the s12DB(1)(g) contraventions.
100. Wholly owned subsidiaries of Westpac, Westpac Securities Limited and BT Funds Management Limited were found to have contravened ss 912A(1)(b), 912A(1)(c), 946A, 961B(1) and 961K(2) of the Corporations Act, for failing to comply with the ‘best interests obligations’ when providing personal advice concerning financial products to retail customers: *Australian Securities and Investments Commission v Westpac Securities Administration Ltd* (2019) 272 FCR 170, [2019] FCAFC 187; *Westpac Securities Administration Ltd v Australian Securities and Investments Commission* [2021] HCA 3, (2021) 95 ALJR 149, (2021) 387 ALR 1. They were ordered to pay pecuniary penalties of \$7.5 million and \$3 million respectively in respect of the contraventions of section 961K(2) of the Corporations Act: *Australian Securities and Investments Commission v Westpac Securities Administration Limited, in the matter of Westpac Securities Administration Limited* [2021] FCA 1008.
101. In March 2017, ASIC accepted an enforceable undertaking by Westpac in connection with its spot foreign exchange business between 1 January 2008 and 30 June 2013. Under the enforceable undertaking, Westpac was required to develop changes to its existing systems, controls, monitoring and supervision of employees within its spot foreign exchange business to prevent inappropriate trading and disclosure of confidential information.
102. In September 2014, ASIC issued and Westpac paid two penalty infringement notices for \$10,200 each for misleading statements in a Product Disclosure Statement and other promotional material.

G.4 Financial metrics

103. Refer to paragraph 11 and Annexure C for Westpac’s financial metrics.

G.5 Knowledge or involvement of senior management

104. (*Sales process*) Westpac senior management were not involved in the debt sales process. Westpac staff members tasked with extracting the customer data were not asked to confirm

the accuracy of the interest rate data which was automatically generated from the systems, and there were no processes set up to monitor the accuracy of the interest rates provided to Debt Purchasers.

105. *(Identification and response)* Westpac was first alerted to potential errors in its data for St.George-branded cards in February 2016, as a result of enquiries made by a Debt Purchaser to a Westpac staff member. Westpac's collections team did not commence an internal review until March 2017, following a second Debt Purchaser query.
106. Issues with interest rates provided in the debt sale process were formally escalated in October 2017 to Westpac's Collections Leadership Team, including the Head of Group Collections. However, no action was taken by the Collections Leadership Team, including the Head of Group Collections, until early 2018 when the Head of Group Collections instructed the collections team to complete an investigation before reporting to the Westpac Executive Team. During these investigations, around mid-April 2018, Westpac became aware that, in addition to customers who had held St George-branded cards, customers who had held Westpac-branded cards and loans were also affected by misstatements in customer interest rate data given to Debt Purchasers.
107. In April 2018, the Head of Group Collections received a further briefing about issues with interest rates provided to Debt Purchasers, along with other members of Westpac leadership. In May 2018, the Chief Compliance Officer and other executives were informed. In June 2018 Westpac lodged its s 912D breach report.

G.5 Degree of co-operation

108. Throughout ASIC's investigation there have been instances where Westpac did not produce documents required by ASIC under compulsory notices which were subsequently located or obtained from third parties. Westpac also produced detailed customer data in response to a compulsory notice which contained errors, causing inefficiencies and delay in ASIC's investigation. ASIC has spent significant time identifying errors in the information and data produced by Westpac and liaising with Westpac to correct the same.
109. ASIC acknowledges that the provision of information and data for Westpac has been challenging given the extensive period of time, volume of customers and complexity of extracting the data from Westpac's underlying systems. ASIC also acknowledges that Westpac worked diligently in more recent responses to produce data and source information, including providing information on a voluntary basis and sourcing it from third parties, to assist ASIC's investigation.

H. AGREED RELIEF

110. The parties have agreed upon the proposed terms of the declaratory relief, the amount of the pecuniary penalty and orders as to costs, subject to the Court's approval. The proposed terms of the orders, subject to the approval of the Court, are set out in **Annexure D**.
111. The parties agree that declarations of contravention ought to be made for:
- (a) the Pre-penalty Period pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) (the **FCA Act**) and s 1101B of the Corporations Act, being the period prior to the earliest day within the 6-year limitation period prescribed by section 12GBC of the ASIC Act; and
 - (b) the Penalty Period pursuant to s 21 of the FCA Act and s 1101B of the Corporations Act, being the period from the earliest day within the 6-year limitation period prescribed by section 12GBC of the ASIC Act.
112. The parties agree that pecuniary penalty orders should be made in respect of the contraventions of s12DB of the ASIC Act during the Penalty Period pursuant to section 12GBA of the ASIC Act. Subject to the approval of the Court, the parties have agreed that an appropriate pecuniary penalty is the amount of \$12,000,000.
113. The parties have also agreed that Westpac should pay ASIC's costs of and incidental to the Proceedings.



Signed on behalf of Westpac

Name: Andrew Floro

Position: Partner, Gilbert + Tobin, Solicitor for Westpac

Date: 26 November 2021



Signed on behalf of ASIC

Name: Nicolette Beamp

Position: Litigation Counsel, ASIC, Solicitor for ASIC

Date: 29 November 2021

Party (1)	Party (2)	Ringtail ID	Commencement Date	End Date	Execution Date
Westpac Banking Corporation ABN 33 007 457 141	Credit Corp Services Pty Limited ABN 95 082 928 872	WBA.0088.0001.2281	01-Jun-10	31-May-11	N/A
Westpac Banking Corporation ABN 33 007 457 141	Lion Finance Pty Ltd ABN 51 095 926 766	WBA.0088.0001.2111	01-Jun-10	31-May-11	30-Apr-10
Westpac Banking Corporation ABN 33 007 457 141	Lion Finance Pty Ltd ABN 51 095 926 766	WBA.0088.0001.1588	01-Jun-11	31-May-12	14-Jun-11
Westpac Banking Corporation ABN 33 007 457 141	ACM Group Limited ABN 86 127 181 097	WBA.0100.0001.0073	01-Jun-11	31-May-12	14-Jun-11
Westpac Banking Corporation ABN 33 007 457 141	Baycorp Collections PDL (Australia) Pty Ltd ABN 58 119 478 778	WBA.0088.0001.1017	01-Jun-11	31-May-12	14-Jul-11
Westpac Banking Corporation ABN 33 007 457 141	Baycorp Collections PDL (Australia) Pty Ltd ABN 58 119 478 778	WBA.0088.0001.0331	01-Jun-12	31-May-13	15-Jun-12
Westpac Banking Corporation ABN 33 007 457 141	ACM Group Limited ABN 86 127 181 097	WBA.0100.0001.0221	01-Jun-12	31-May-13	15-Jun-12
Westpac Banking Corporation ABN 33 007 457 141	Panthera Finance ABN 99 147 634 482	WBA.0054.0001.0662	01-Jun-13	31-May-14	17-May-13
Westpac Banking Corporation ABN 33 007 457 141	Credit Corp Services Pty Limited ABN 95 082 928 872	WBA.0100.0001.0395	01-Jun-13	31-May-14	22-May-13
Westpac Banking Corporation ABN 33 007 457 141	Lion Finance Pty Ltd ABN 51 095 926 766	WBA.0088.0001.0703	01-Jun-13	31-May-14	06-Jun-13
Westpac Banking Corporation ABN 33 007 457 141	Credit Corp Services Pty Limited ABN 95 082 928 872	WBA.0088.0001.0259	01-Sep-13	31-May-14	10-Sep-13
Westpac Banking Corporation ABN 33 007 457 141	Great Western Asset Management Pty Ltd ABN 119 211 317	WBA.0100.0001.0577	01-Jun-14	31-May-15	29-May-14
Westpac Banking Corporation ABN 33 007 457 141	Pioneer Credit Acquisition Services Pty Ltd ABN 44 103 003 505	WBA.0088.0001.0669	01-Jun-14	31-May-15	06-Jun-14
Westpac Banking Corporation ABN 33 007 457 141	Lion Finance Pty Ltd ABN 51 095 926 766	WBA.0064.0001.0046	01-Jun-14	31-May-15	06-Jun-14
Westpac Banking Corporation ABN 33 007 457 141	Panthera Finance ABN 99 147 634 482	WBA.0100.0001.0255	01-Jun-14	31-May-15	06-Jun-14
Westpac Banking Corporation ABN 33 007 457 141	Panthera Finance ABN 99 147 634 482	WBA.0100.0001.0430	01-Jun-15	31-May-16	11-May-15
Westpac Banking Corporation ABN 33 007 457 141	Great Western Asset Management Pty Ltd ABN 119 211 317	WBA.0064.0001.0011	01-Jun-15	31-May-16	01-Jun-15
Westpac Banking Corporation ABN 33 007 457 141	Lion Finance Pty Ltd ABN 51 095 926 766	WBA.0064.0001.0196	01-Jun-15	31-May-16	01-Jun-15
Westpac Banking Corporation ABN 33 007 457 141	Pioneer Credit Acquisition Services Pty Ltd ABN 44 103 003 505	WBA.0069.0001.0001	01-Jun-15	31-May-16	01-Jun-15
Westpac Banking Corporation ABN 33 007 457 141	Lion Finance Pty Ltd ABN 51 095 926 766	WBA.0009.0001.0717	01-Jun-16	31-May-18	21-Jun-16
Westpac Banking Corporation ABN 33 007 457 141	Pioneer Credit Solutions Pty Ltd ABN 49 136 062 970	WBA.0059.0001.0119	01-Jun-16	31-May-18	21-Jun-16
Westpac Banking Corporation ABN 33 007 457 141	Baycorp Collections PDL (Australia) Pty Ltd ABN 58 119 478 778	WBA.0060.0001.4027	01-Jun-16	31-May-18	30-Jun-16
Westpac Banking Corporation ABN 33 007 457 141	Baycorp Collections PDL (Australia) Pty Ltd ABN 58 119 478 778	WBA.0063.0001.0209	01-Jun-16	31-May-18	30-Jun-16
Westpac Banking Corporation ABN 33 007 457 141	Panthera Finance ABN 99 147 634 482	WBA.0088.0001.0514	01-Mar-17	31-Mar-17	14-Mar-17
Westpac Banking Corporation ABN 33 007 457 141	Credit Corp Services Pty Limited ABN 95 082 928 872	WBA.0100.0001.0757	01-Mar-17	31-Mar-17	28-Mar-17
Westpac Banking Corporation ABN 33 007 457 141	Lion Finance Pty Ltd ABN 51 095 926 766	WBA.0088.0001.1623	01-Jul-17	31-May-18	20-Jul-17
Westpac Banking Corporation ABN 33 007 457 141	Panthera Finance ABN 99 147 634 482	WBA.0088.0001.1516	01-Jul-17	31-May-18	03-Aug-17
Westpac Banking Corporation ABN 33 007 457 141 (Variation Deed varies agreement in row 22 with ringtail barcode WBA.0059.0001.0119)	Pioneer Credit Solutions Pty Ltd ABN 49 136 062 970	WBA.0059.0001.0155	10-Jul-17	31-May-18	10-Jul-17

Party (1)	Party (2)	Ringtail ID	Commencement Date	End Date	Execution Date
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Credit Corp Services Pty Limited ABN 95 082 928 872	WBA.0088.0001.1301	01-Nov-10	31-May-11	27-Oct-10
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	ACM Group Limited ABN 86 127 181 097	WBA.0063.0001.0070	01-Nov-10	31-May-11	27-Oct-10
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Pioneer Credit Acquisition Services Pty Ltd ABN 49 136 062 970	WBA.5000.0011.0088	01-Nov-10	30-Nov-11	27-Oct-10
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	ACM Group Limited ABN 86 127 181 097	WBA.0094.0001.0001	01-Dec-11	30-Nov-12	24-Nov-11
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Credit Corp Services Pty Limited ABN 95 082 928 872	WBA.0094.0001.0037	01-Dec-11	30-Nov-12	24-Nov-11
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Lion Finance Pty Ltd ABN 51 095 926 766	WBA.0094.0001.0076	01-Dec-11	30-Nov-12	24-Nov-11
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Credit Corp Services Pty Limited ABN 95 082 928 872	WBA.0088.0001.0365	01-Dec-12	30-Nov-13	08-Nov-12
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Baycorp Collections PDL (Australia) Pty Ltd ABN 58 119 478 778	WBA.0100.0001.0183	01-Dec-12	30-Nov-13	08-Nov-12
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Lion Finance Pty Ltd ABN 51 095 926 766	WBA.0064.0001.0234	01-Dec-13	30-Nov-14	27-Nov-13
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Credit Corp Services Pty Limited ABN 95 082 928 872	WBA.0088.0001.0219	01-Dec-13	30-Nov-14	10-Dec-13
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Panthera Finance ABN 99 147 634 482	WBA.0088.0001.0546	01-Dec-13	30-Nov-14	10-Dec-13
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Credit Corp Services Pty Limited ABN 95 082 928 872	WBA.0100.0001.0001	01-Dec-14	30-Nov-15	N/A
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Baycorp Collections PDL (Australia) Pty Ltd ABN 58 119 478 778	WBA.0063.0001.0101	01-Dec-14	30-Nov-15	N/A
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Panthera Finance ABN 99 147 634 482	WBA.0009.0001.0640	01-Dec-14	30-Nov-15	N/A
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141 (Variation Deed)	Baycorp Collections PDL (Australia) Pty Ltd ABN 58 119 478 778	WBA.0063.0001.0247	12-Nov-15	01-Dec-16	23-Nov-15
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Panthera Finance ABN 99 147 634 482	WBA.0054.0001.0613	12-Nov-15	01-Dec-16	23-Nov-15
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141 (Variation Deed)	Credit Corp Services Pty Limited ABN 95 082 928 872	WBA.0100.0001.0427	15-Nov-15	01-Dec-16	23-Nov-15
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Panthera Finance ABN 99 147 634 482	WBA.0054.0001.0740	01-Dec-16	30-Nov-17	14-Dec-16
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Lion Finance Pty Ltd ABN 51 095 926 766	WBA.0064.0001.0084	01-Dec-16	30-Nov-17	15-Dec-16
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Pioneer Credit Solutions Pty Ltd ABN 49 136 062 970	WBA.0009.0001.0600	01-Dec-16	30-Nov-17	N/A
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Lion Finance Pty Ltd ABN 51 095 926 766	WBA.0088.0001.0442	01-Dec-17	30-Nov-18	20-Dec-17
St.George Bank - A division of Westpac Banking Corporation ABN 33 007 457 141	Credit Corp Services Pty Limited ABN 95 082 928 872	WBA.0100.0001.0105	01-Dec-17	30-Nov-18	20-Dec-17

SAFA ANNEXURE C – Westpac Metrics

Month	Annual turnover ¹ for the 12 month period ending each month from December 2015 to May 2018	Total volume for Westpac-branded consumer cards for the 12-month period ending each month from December 2015 to May 2018 ²	Total volume for Westpac-branded Flexi Loans for the 12-month period ending each month from December 2015 to May 2018 ³	Total volume for St. George-branded consumer cards for the 12-month period ending each month from December 2015 to May 2018 ⁴
Paragraph	11(a)	11(c)	11(d)	11(e)
December 2015	\$21,611m	1,918,041	187,698	755,573
January 2016	\$21,744m	1,918,174	188,811	762,204
February 2016	\$21,936m	1,915,045	190,044	768,056
March 2016	\$22,044m	1,909,555	191,065	765,930
April 2016	\$21,976m	1,905,344	191,996	772,534
May 2016	\$21,997m	1,902,836	192,845	771,737
June 2016	\$21,806m	1,900,641	193,440	773,273
July 2016	\$21,863m	1,900,431	193,538	776,359
August 2016	\$21,902m	1,899,490	193,376	773,344

¹ The measure of revenue and turnover for Westpac is "Net operating income before operating expenses and impairment charges".

² The numbers in this column represent the total volume of active Westpac-branded consumer card accounts for the 12-month period ending each month from December 2015 to May 2018.

³ The numbers in this column represent the total volume of active Westpac Flexi Loans for the 12-month period ending each month from December 2015 to May 2018.

⁴ The numbers in this column represent the total volume of active St. George-branded consumer card accounts for the 12-month period ending each month from December 2015 to May 2018.

SAFA ANNEXURE C – Westpac Metrics

Month	Annual turnover ¹ for the 12 month period ending each month from December 2015 to May 2018	Total volume for Westpac-branded consumer cards for the 12-month period ending each month from December 2015 to May 2018 ²	Total volume for Westpac-branded Flexi Loans for the 12-month period ending each month from December 2015 to May 2018 ³	Total volume for St. George-branded consumer cards for the 12-month period ending each month from December 2015 to May 2018 ⁴
September 2016	\$20,841m	1,899,047	192,668	761,367
October 2016	\$21,034m	1,898,287	192,132	749,791
November 2016	\$21,091m	1,847,546	191,030	734,924
December 2016	\$21,299m	1,847,264	189,844	789,995
January 2017	\$21,159m	1,848,936	188,438	792,617
February 2017	\$21,101m	1,846,672	186,623	793,897
March 2017	\$21,163m	1,842,862	184,452	792,547
April 2017	\$21,281m	1,837,851	182,693	790,783
May 2017	\$21,250m	1,836,076	180,647	790,038
June 2017	\$21,374m	1,834,949	178,964	810,588
July 2017	\$21,393m	1,831,702	177,039	812,815
August 2017	\$21,584m	1,826,398	175,280	813,666
September 2017	\$21,650m	1,821,593	173,675	813,048

SAFA ANNEXURE C – Westpac Metrics

Month	Annual turnover ¹ for the 12 month period ending each month from December 2015 to May 2018	Total volume for Westpac-branded consumer cards for the 12-month period ending each month from December 2015 to May 2018 ²	Total volume for Westpac-branded Flexi Loans for the 12-month period ending each month from December 2015 to May 2018 ³	Total volume for St.George-branded consumer cards for the 12-month period ending each month from December 2015 to May 2018 ⁴
October 2017	\$21,727m	1,818,871	172,036	811,359
November 2017	\$21,736m	1,814,503	170,882	813,666
December 2017	\$21,655m	1,810,426	169,919	819,817
January 2018	\$21,718m	1,806,071	168,949	806,086
February 2018	\$21,961m	1,803,559	167,729	808,531
March 2018	\$22,041m	1,797,172	166,365	810,755
April 2018	\$22,094m	1,788,858	164,977	811,909
May 2018	\$22,042m	1,784,533	163,359	812,011

Approximate market share of Westpac among other ADIs for		
Paragraph	11(b)	
(i) Unsecured personal loans	24.60%	
(ii) Credit cards	Spot ⁵	21.90%
	IBB ⁶	20.80%

Other financial information (\$m) for year ended:

Paragraph 11(f)

Metrics	30/09/2015	30/09/2016	30/09/2017	30/09/2018	30/09/2019	30/09/2020	30/09/2021
Total assets	812,156	839,202	851,875	879,592	906,626	911,946	935,877
Net assets	53,915	58,181	61,342	64,573	65,507	68,074	72,092
Revenue ⁷	21,508	20,841	21,650	22,007	20,649	20,183	21,222
Profit after tax	8,012	7,445	7,990	8,095	6,784	2,290	5,458

⁵ "Spot" means total outstanding balances at the end of the month.

⁶ "IBB" means "Interest Bearing Balances" and is the proportion of those balances that attract interest at the end of the month.

⁷ The measure of revenue and turnover for Westpac is "Net operating income before operating expenses and impairment charges".

Other financial information (\$m) for half year ended:													
Paragraph 11(f)													
Metrics	31/03/2015	30/09/2015	31/03/2016	30/09/2016	31/03/2017	30/09/2017	31/03/2018	30/09/2018	31/03/2019	30/09/2019	31/03/2020	30/09/2020	31/03/2021
Total assets	795,961	812,156	831,760	839,202	839,993	851,875	871,855	879,592	891,062	906,626	967,662	911,946	889,459
Net assets	50,317	53,915	57,981	58,181	59,372	61,342	62,665	64,573	63,935	65,507	67,646	68,074	72,101
Revenue ⁸	9,941	11,567	10,477	10,364	10,799	10,851	11,190	10,817	9,979	10,670	10,604	9,579	10,686
Profit after tax	3,609	4,403	3,701	3,744	3,907	4,083	4,198	3,897	3,173	3,611	1,190	1,100	3,443
													2,015

⁸ The measure of revenue and turnover for Westpac is "Net operating income before operating expenses and impairment charges".

Month	Westpac-branded consumer cards for the period from December 2015 to May 2018 ⁹		Westpac-branded Flexi Loans for the period from December 2015 to May 2018 ¹⁰		St.George-branded consumer cards for the period from December 2015 to May 2018 ¹¹	
	Total Face Value	Total Purchase Price	Total Face Value	Total Purchase Price	Total Face Value	Total Purchase Price
Paragraph	11(g)(i)	11(g)(ii)	11(g)(i)	11(g)(ii)	11(g)(i)	11(g)(ii)
December 2015	\$9,459,949.29	\$2,153,650.63	\$5,083,837.19	\$1,042,186.62	\$3,117,877.01	\$747,454.82
January 2016	\$13,551,042.52	\$3,084,644.14	\$6,722,640.98	\$1,378,141.40	\$5,064,456.64	\$1,214,734.81
February 2016	\$11,068,790.41	\$2,529,823.83	\$5,606,566.78	\$1,149,346.19	\$6,602,815.76	\$1,582,846.08
March 2016	\$10,345,242.98	\$2,355,873.98	\$5,946,286.57	\$1,218,988.75	\$7,207,512.26	\$1,728,605.83
April 2016	\$13,781,872.64	\$3,137,582.27	\$7,057,449.90	\$1,446,777.23	\$3,725,765.66	\$893,813.57
May 2016	\$12,673,410.86	\$2,884,889.78	\$6,547,371.93	\$1,342,211.25	\$8,362,996.94	\$2,004,917.58
June 2016	\$8,963,889.91	\$2,281,232.54	\$6,790,927.20	\$1,582,286.04	\$5,012,829.04	\$1,202,077.30
July 2016	\$17,529,868.48	\$4,465,242.98	\$8,331,880.91	\$1,941,328.25	\$6,151,997.53	\$1,475,803.30
August 2016	\$11,207,494.91	\$2,853,314.82	\$6,224,628.53	\$1,450,338.45	\$6,095,193.87	\$1,462,279.80

⁹ The numbers in this column represent the amounts outstanding and owing to Westpac and the amounts paid by Debt Purchasers to Westpac for Westpac-branded consumer card accounts for a given month based on the Tender of document (WBA.5000.0012.0004).

¹⁰ The numbers in this column represent the amounts outstanding and owing to Westpac and the amounts paid by Debt Purchasers to Westpac for Westpac-branded flexi loan accounts for a given month based on the Tender of document (WBA.5000.0012.0004).

¹¹ The numbers in this column represent the amounts outstanding and owing to Westpac and the amounts paid by Debt Purchasers to Westpac for St.George-branded consumer card accounts for a given month based on the Tender of document (WBA.5000.0012.0004).

SAFA ANNEXURE C – Westpac Metrics

Month	Westpac-branded consumer cards for the period from December 2015 to May 2018 ⁹		Westpac-branded Flexi Loans for the period from December 2015 to May 2018 ¹⁰		St.George-branded consumer cards for the period from December 2015 to May 2018 ¹¹	
	Total Face Value	Total Purchase Price	Total Face Value	Total Purchase Price	Total Face Value	Total Purchase Price
September 2016	\$14,992,405.79	\$3,816,744.29	\$7,721,123.51	\$1,799,021.78	\$5,233,139.96	\$1,255,511.38
October 2016	\$11,096,169.11	\$2,826,705.99	\$6,459,520.08	\$1,505,068.18	\$5,381,530.16	\$1,290,313.61
November 2016	\$9,557,759.20	\$2,433,703.65	\$5,872,263.25	\$1,368,237.34	\$4,690,486.28	\$1,060,193.83
December 2016	\$13,831,441.01	\$3,521,891.35	\$6,725,912.58	\$1,567,137.63	\$4,422,735.79	\$999,619.92
January 2017	\$11,449,857.84	\$2,914,939.45	\$6,283,716.55	\$1,464,105.96	\$3,496,734.41	\$790,296.08
February 2017	\$11,460,781.63	\$2,918,593.05	\$7,160,282.45	\$1,668,345.81	\$6,849,927.12	\$1,548,008.37
March 2017	\$11,182,131.90	\$2,847,398.48	\$5,845,992.79	\$1,362,116.32	\$6,475,336.09	\$1,463,786.23
April 2017	\$85,300,104.24	\$5,318,120.56	\$7,165,855.36	\$1,669,644.30	\$4,110,370.30	\$929,245.39
May 2017	\$11,621,179.72	\$2,959,651.64	\$7,180,680.89	\$1,673,098.65	\$13,254,666.59	\$2,995,361.44
June 2017	\$14,638,892.64	\$3,725,096.55	\$8,229,572.66	\$1,917,490.43	\$8,648,598.24	\$1,954,307.47
July 2017	\$9,203,501.48	\$2,312,391.21	\$4,814,861.00	\$842,600.68	\$6,467,863.34	\$1,461,692.19
August 2017	\$15,478,310.84	\$3,886,189.62	\$6,081,246.86	\$1,064,218.20	\$6,382,047.00	\$1,442,354.84
September 2017	\$10,331,818.59	\$2,595,289.78	\$8,712,819.66	\$1,524,743.44	\$6,189,988.93	\$1,398,878.30

SAFA ANNEXURE C – Westpac Metrics

Month	Westpac-branded consumer cards for the period from December 2015 to May 2018 ⁹		Westpac-branded Flexi Loans for the period from December 2015 to May 2018 ¹⁰		St.George-branded consumer cards for the period from December 2015 to May 2018 ¹¹	
	Total Face Value	Total Purchase Price	Total Face Value	Total Purchase Price	Total Face Value	Total Purchase Price
October 2017	\$10,645,710.10	\$2,672,433.18	\$5,555,465.72	\$971,862.37	\$7,263,492.29	\$1,641,818.33
November 2017	\$11,253,774.06	\$2,825,461.94	\$5,155,850.02	\$902,273.75	\$5,680,189.30	\$1,280,298.99
December 2017	\$9,506,445.69	\$2,388,291.46	\$5,259,747.48	\$920,455.81	\$4,205,277.37	\$947,843.34
January 2018	\$10,748,435.47	\$2,699,438.42	\$6,128,484.71	\$1,072,484.82	\$5,911,912.11	\$1,332,527.89
February 2018	\$9,439,760.60	\$2,370,982.18	\$4,484,279.94	\$784,748.99	\$4,763,160.57	\$1,073,613.42
March 2018	\$8,611,486.05	\$2,162,928.78	\$4,729,940.03	\$827,739.51	\$4,308,679.11	\$971,167.19
April 2018	\$11,097,499.03	\$2,785,308.35	\$5,854,401.84	\$1,024,520.32	\$6,530,778.18	\$1,472,024.71
May 2018	\$11,237,316.62	\$2,823,284.53	\$6,130,132.46	\$1,072,773.18	\$5,969,461.14	\$1,220,566.34

ANNEXURE D TO STATEMENT OF AGREED FACTS AND ADMISSIONS

Federal Court of Australia

District Registry: New South Wales

Division: General

No. NSD 2021

IN THE MATTER OF WESTPAC BANKING CORPORATION ACN 007 457 141

Australian Securities and Investments Commission

Plaintiff

and

Westpac Banking Corporation ACN 007 457 141

Defendant

ORDER

JUDGE:

DATE OF ORDER:

WHERE MADE: Sydney

DEFINITIONS

In these orders:

- (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.

THE COURT DECLARES THAT:

Westpac-branded cards

1. 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 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. 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. Between 17 March 2011 and 10 May 2018, by reason of the conduct described in the 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. 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. 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. Between 1 October 2013 and 10 May 2018, by reason of the conduct described in the the declarations in paragraphs 4 and 5 above, Westpac breached its obligation to comply with financial services laws in contravention of s 912A(1)(c) of the Corporations Act.

St George-branded cards

- 7. 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. 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 12DB(1)(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. Between 1 March 2010 and 19 March 2018, by reason of the conduct described in the the declarations in paragraphs 7 and 8 above, Westpac breached its obligation to comply with financial services laws in contravention of s 912A(1)(c) of the Corporations Act.

THE COURT ORDERS THAT:

10. 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 this order, Westpac pay to the Commonwealth of Australia a pecuniary penalty in the sum of \$12,000,000 in respect of Westpac's declared contraventions set out in paragraphs 2, 5 and 8 above.
11. Westpac pay the Plaintiff's costs of and incidental to these proceedings.