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Details of Filing

Document Lodged:	Statement of Agreed Facts
File Number:	NSD1240/2021
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v WESTPAC BANKING CORPORATION ACN 007 457 141 & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Dated: 29/11/2021 4:48:24 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.

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Form 1
Rule 2.1

STATEMENT OF AGREED FACTS AND ADMISSIONS

Federal Court of Australia
District Registry: NSW
Division: General

No. of 2021

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

WESTPAC BANKING CORPORATION (ACN 007 457 141)

First Defendant

MAGNITUDE GROUP PTY LIMITED (ACN 086 266 202)

Second Defendant

SECURITOR FINANCIAL GROUP PTY LIMITED (ACN 009 189 495)

Third Defendant

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A. INTRODUCTION

1. This Statement of Agreed Facts and Admissions (**SAFA**) is made jointly by the Plaintiff, the Australian Securities and Investments Commission (**ASIC**), and the Defendants, Westpac Banking Corporation (ACN 007 457 141) (**Westpac**), Magnitude Group Pty Limited (ACN 086 266 202) (**Magnitude**), and Securitor Financial Group Pty Limited¹ (ACN 009 189 495) (**Securitor**) (together, the **Advice Licensees**).
2. Parts C-I list the facts which are agreed by the parties for the purposes of this proceeding pursuant to s 191 of the *Evidence Act 1995* (Cth).
3. Parts J to L list the admissions made by the Advice Licensees for the purposes of this proceeding.
4. The agreement of the parties to the facts set out in this SAFA is an agreement that those facts are relevant to the issues before the Court. The facts agreed to, and the admissions made, are agreed and made for the purposes of these proceedings only.
5. 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.
6. This SAFA relates to failures by the Advice Licensees, and/or by their Authorised Representatives operating under their Australian Financial Services Licenses, to disclose or adequately disclose fees to be charged on contributions made to the superannuation and investment products of their clients, and to the charging of such fees.
7. This SAFA deals with the factual basis for contraventions by Westpac and/or Magnitude and/or Securitor (where applicable) of s 912A(1)(a) and (5A) of the *Corporations Act 2001* (Cth) (**Corporations Act**).

B. INTERPRETATION

8. In this SAFA:
 - 8.1 "**Remediation Period**" means 1 November 2011 to 30 June 2019 in the case of Westpac and to 30 September 2019 in the case of Securitor and Magnitude, being the period in respect of which the Advice Licensees are performing the remediation exercise described below in respect of "Ad Hoc Contribution Fees" and "Regular Contribution Fees" (as defined below); and
 - 8.2 "**Penalty Period**" means 13 March 2019 to 30 June 2019 in the case of Westpac and to 30 September 2019 in the case of Securitor and Magnitude; and
 - 8.3 "**Disclosure Documents**" means Statements of Advice, Records of Advice and statements required by s946B(3) of the *Corporations Act*.

C. PARTIES AND BACKGROUND

I. Legal framework

9. ASIC is and at all material times was:
 - 9.1 a body corporate under s 8(1)(a) of the ASIC Act;

¹ Formerly known as Securitor Financial Group Limited.

- 9.2 entitled to commence and maintain these proceedings in its corporate name under s 8(1)(d) of the ASIC Act; and
 - 9.3 entitled under s 1317J(1) of the Corporations Act to apply to the Court for a declaration of contravention and a pecuniary penalty.
10. Westpac is and at all material times was:
- 10.1 the holder of Australian Financial Securities Licence (**AFSL**) number 233714 (**Westpac Licence**), which authorised Westpac, among other activities, to provide financial product advice to retail clients; and
 - 10.2 carrying on a financial services business in Australia within the meaning of s 911D of the Corporations Act.
11. Magnitude is and at all material times was:
- 11.1 the holder of AFSL number 221557 (**Magnitude Licence**) which authorised Magnitude, among other activities, to provide financial product advice to retail clients;
 - 11.2 carrying on a financial services business in Australia within the meaning of s 911D of the Corporations Act; and
 - 11.3 a wholly owned subsidiary of Westpac.
12. Securitor is and at all material times was:
- 12.1 the holder of AFSL number 240687 (**Securitor Licence**) which authorises Securitor, among other activities, to provide financial product advice to retail clients;
 - 12.2 carrying on a financial services business in Australia within the meaning of s 911D of the Corporations Act; and
 - 12.3 a wholly owned subsidiary of Westpac.
13. During the Remediation Period, and the Penalty Period, Westpac carried on its financial services businesses in Australia, within the meaning of s 911D of the Corporations Act, including by providing financial product advice (within the meaning of s 766B of the Corporations Act) to retail clients (within the meaning of s 761G of the Corporations Act) through its employed advisers.
14. During the Remediation Period, and the Penalty Period, Magnitude and Securitor carried on their financial services businesses in Australia within the meaning of s 911D of the Corporations Act including by providing financial product advice (within the meaning of s 766B of the Corporations Act) to retail clients (within the meaning of s 761G of the Corporations Act) through authorised representatives (within the meaning of s 761A of the Corporations Act).
- II. Financial position of Westpac**
15. Westpac is a provider of financial services, including retail, business and institutional banking and wealth management products and services. Westpac is one of Australia's largest companies and is listed on the ASX.
16. Westpac had a market capitalisation as at 30 September 2020 of \$61 billion, with \$912 billion of total assets.

17. In the 2019-2020 financial year, Westpac reported a net profit after tax of \$2,290 million and its net profit before operating expenses and impairment charges was \$7,444 million.
18. From 1 October 2015 (FY 2015-2016) to 30 September 2020 (FY 2019-2020) (the most recent available published information), the statutory profit of Westpac was reported as:

Financial year	Reported net profit after tax
FY 2015-2016 ²	\$7,445 million ³
FY 2016-2017	\$7,990 million ⁴
FY 2017-2018	\$8,095 million ⁵
FY 2018-2019	\$6,784 million ⁶
FY 2019-2020 ⁷	\$2,290 million ⁸

III. Financial position of Magnitude and Securitor

19. Magnitude and Securitor are subsidiary companies ultimately owned by Westpac through a corporate structure. Each no longer operates its former business which is the subject of these proceedings.
20. During the period from FY2015-FY2020, Magnitude's profit was:

Financial year	Net profit after tax
FY 2015-2016	\$7,302,000 ⁹
FY 2016-2017	\$7,519,000 ¹⁰
FY 2017-2018	\$7,453,000 ¹¹
FY 2018-2019	\$1,198,045 ¹²
FY 2019-2020	\$(213,918) ¹³

21. During the period from FY2015-FY2020, Securitor's profit was:

Financial year	Net profit after tax
FY 2015-2016	\$10,029,000 ¹⁴
FY 2016-2017	\$9,471,000 ¹⁵
FY 2017-2018	\$7,748,000 ¹⁶
FY 2018-2019	\$1,640,550 ¹⁷
FY 2019-2020	\$(115,686) ¹⁸

² Commenced 1 October 2015.

³ WBC.700.054.0001 at .0004.

⁴ WBC.700.054.0277 at .0280.

⁵ WBC.700.054.0557 at .0560.

⁶ WBC.700.054.0861 at .0864.

⁷ Ended 30 September 2020.

⁸ WBC.700.054.1173 at .1176.

⁹ WBC.702.047.0001

¹⁰ WBC.702.048.0001

¹¹ WBC.702.047.0028

¹² WBC.702.047.0056

¹³ WBC.702.047.0106

¹⁴ WBC.702.047.0132

¹⁵ WBC.702.048.0026

¹⁶ WBC.702.047.0159

¹⁷ WBC.702.047.0186

¹⁸ WBC.702.047.0236

IV. Corporate structure

22. Westpac is, and at all relevant times, was, a provider of a range of financial services across different divisions, including a wealth management division.
23. From about 2002, Westpac's wealth management division was conducted through Westpac itself, as well as other entities within the BT Financial Group (**BTFG**), which included over time Magnitude and Securitor.
24. During the Remediation Period, and the Penalty Period, BTFG provided financial products and services in relation to investments, superannuation, retirement, insurance and private banking. One of the services provided was personal financial advice. The business unit that was responsible for the provision of financial advice services was known as BT Advice.
25. In the Remediation Period, and the Penalty Period, the BT Advice business unit included:
 - 25.1 BT Financial Advice (**BTFA**) which provided financial product advice services to clients through salaried advisers directly employed by Westpac and which operated under the Westpac Licence¹⁹; and
 - 25.2 a business unit known as BT Group Licensees (**BTGL**) which provided financial advice services through third-party self-employed financial advisers acting as Authorised Representatives or Corporate Authorised Representatives who operated under the Securitor Licence and the Magnitude Licence. Under the agreements between Magnitude and Securitor and their Authorised Representatives and Corporate Authorised Representatives:
 - 25.2.1 the Authorised Representatives were appointed to provide financial services on behalf of Magnitude and Securitor;
 - 25.2.2 Securitor and Magnitude provided support services and AFS licensing to their Authorised Representatives in return for a licensing fee;
26. While the way in which practice revenue was received varied over time during the Remediation Period and the Penalty Period, principally it was done in the following way:
 - 26.1 Magnitude and Securitor received (as principal on behalf of the Authorised Representative) practice revenue (comprising all brokerage/commission and advice fees payable to the Authorised Representative in connection with the provision of the financial services). The practice revenue was then passed on to the Authorised Representative subject to paragraphs 25.2.2 above and 26.2 below, and any other agreed arrangement between Magnitude/ Securitor and their Authorised Representatives; and
 - 26.2 the Authorised Representatives paid fees to Magnitude and Securitor including a revenue share fee calculated by reference to the previous annual revenue of the Authorised Representative.
27. Westpac operated a paraplanning model which was a service offered to BTFA advisers. Under this model, advisers would collect and record client information through a Client Profile Booklet. Requests could then be made of adviser support teams (**paraplanners**) within BTFG to produce Statements of Advice and Records of Advice based on the information collected and recorded by the advisers. This included the details of any fees that were to be charged to the client associated with the implementation of the advice.

¹⁹ BTFA was also known by other names during the Remediation Period, including 'Bank Financial Planning' and 'Westpac Financial Planning', among others.

28. The personal financial product advice provided by financial advisers included, among other things, recommendations to invest in financial products. That advice was required to be recorded in a Statement of Advice if the client had not previously received a Statement of Advice, or where the further advice provided to the client involved a significant change to the client's circumstances or goals, or the advice was significantly different from the initial advice. If the scope of the advice was not expanded, or there was not a significant change to the initial advice or the basis for the initial advice, a Record of Advice may have been provided.
29. If the client decided to proceed with the recommendations in the Statement of Advice (including to invest in certain financial products), the client was required to sign an Authority to Proceed which authorised the financial adviser to implement the recommendations contained in the Statement of Advice, and recorded the client's agreement to pay the fees and charges set out in the Statement of Advice.
30. The client could also, as part of the recommendations made by the financial adviser, enter into an ongoing fee arrangement with the financial adviser. These arrangements governed the basis upon which advice was provided, and paid for by the client.
31. In relation to BTGL, Authorised Representatives operating under the Securitor or Magnitude AFSLs were third-party advice practices or advisers. Those Authorised Representatives entered into advice agreements with their clients, to which Securitor and Magnitude were not a party. The Authorised Representatives were responsible for issuing Statements of Advice and Records of Advice under those arrangements.

VI. Closure of relevant businesses

32. Each of BTFA, Magnitude and Securitor has ceased operating its financial advice business, with BTFA ceasing on 30 June 2019, and Magnitude and Securitor ceasing on 30 September 2019.

D. DESCRIPTION OF CONTRIBUTION FEES

33. During the Remediation Period, and the Penalty Period, the Advice Licensees (and/or their representatives) received fees charged to certain clients which were calculated by reference to amounts contributed by those clients to investment or superannuation products (**Contribution Fees**). These Contribution Fees were charged:
 - 33.1 to retail clients to whom personal financial product advice had been provided by an employed financial adviser of Westpac or Authorised Representatives of Securitor or Magnitude;
 - 33.2 when the retail client made their own contribution (or arranged for a third party such as their employer to make a contribution) into the financial product which had been recommended to them in the personal financial product advice, being particularly superannuation and investment products; and
 - 33.3 typically as a percentage of the amount contributed by the client or on behalf of the client to the relevant product, on occasion when a contribution was made into the superannuation or investment account.
34. Contribution Fees can be distinguished from other fees, in particular:
 - 34.1 plan preparation fees, which are usually a flat fee charged for preparing the personal financial product advice;
 - 34.2 implementation fees, which could either have been a flat or percentage based fee charged in connection with the implementation of advice;

- 34.3 ongoing advice fees, which are usually charged on a monthly basis and are linked to ongoing advice services provided under an ongoing fee arrangement; and
 - 34.4 fees charged and retained by the product provider (for example, investment manager fees, account keeping fees, etc).
35. During the Remediation Period, and the Penalty Period, there were broadly three circumstances in which Contribution Fees were charged to retail clients:²⁰
- 35.1 **"Up Front Contribution Fees" or "Initial Contribution Fees"**: These were Contribution Fees charged on initial investments transferred from an existing product or directly deposited by clients into their new product account as recommended by the relevant Disclosure Document, and which were usually received into the client's account within the first 90 days (e.g., where clients made lump sum investment/s into the fund or transferred amounts previously invested in other product);
 - 35.2 **"Ad Hoc Contribution Fees"**: These were Contribution Fees charged on irregular contributions by clients (e.g., where a client chose to contribute an additional lump sum amount to the relevant product); and
 - 35.3 **"Regular Contribution Fees"**: These were Contribution Fees charged on regular contributions made by clients and/or their employer (e.g., where clients made regular monthly contributions to their superannuation product (such as salary sacrifice contributions) or arranged to have their Super Guarantee contributions from their employer directed to the relevant account).
36. The failures which are the subject of these proceedings relate specifically to Regular and Ad Hoc Contribution Fees. These were variously described using other terminology, such as "adviser contribution fees", "additional deposit fees", and "regular savings fees".
37. Regular or Ad Hoc Contribution Fees were generally charged to clients based on the contributions made by those clients into their superannuation or investment product. The charging of these fees was not linked to the provision of an ongoing advice or other service.
38. Regular or Ad Hoc Contribution Fees were administered by the product provider, who deducted the fees from the clients' funds and paid them to the relevant Advice Licensee. The arrangements with respect to distribution of these fees changed over time. From at least 1 December 2015, and in the Penalty Period:
- 38.1 Westpac retained the benefit of the Regular and Ad Hoc Contribution Fees it received (some of which it paid to its employed financial advisers in accordance with remuneration arrangements); and
 - 38.2 Magnitude and Securitor generally passed on some or all of the Regular and Ad Hoc Contribution Fees to their Authorised Representatives and retained the benefit of the remainder (if any) in accordance with practice revenue arrangements.

E. FEE DISCLOSURE REQUIREMENTS

- 39. The retail clients who were charged the Contribution Fees which are the subject of this proceeding were provided with personal financial product advice by Westpac salaried advisers or Authorised Representatives of Securitor or Magnitude.
- 40. In providing that personal financial product advice, Westpac as the "providing entity" or the Authorised Representatives as the "providing entity", pursuant to s 944A of the Corporations

²⁰ WBC.700.053.0185.

Act (**Providing Entity**), were required to comply with a number of disclosure obligations pursuant to the Corporations Act, including:

- 40.1 the provision of a disclosure document to the retail client – being a Statement of Advice, or in certain instances, such as where further advice was being provided which was not significantly different from previous advice given, a statement required by s946B(3); and
- 40.2 the requirement to keep a record of any Record of Advice.

Statements of Advice

- 41. During the Remediation Period, and the Penalty Period, pursuant to ss 947B (in the case of licensees) and 947C (in the case of Authorised Representatives) of the Corporations Act, Statements of Advice were required to include:
 - 41.1 the advice itself;
 - 41.2 the basis on which the advice was given;
 - 41.3 the name and details of the entity providing the advice (and, in the case of s 947C, the name and details of the authorising licensee and a statement that the Providing Entity is the authorised representative of that licensee);
 - 41.4 information about remuneration (including commissions) or other benefits that various entities were to receive that might reasonably be expected to be capable of influencing the entity providing the advice;
 - 41.5 information about interests, whether pecuniary or not and whether direct or indirect, of the Providing Entity or any associate of the Providing Entity;
 - 41.6 information about any associations or relationships between the Providing Entity or any associate of the Providing Entity, and issuers of financial products;
 - 41.7 any warning that the advice was based on incomplete or inaccurate information (where applicable); and
 - 41.8 any other information required by the regulations.
- 42. During the Remediation Period, and the Penalty Period, pursuant to s 947D (as modified by Regulation 7.7.10D), where advice is or includes a recommendation that the client dispose of, or reduce the client's interest in, all or part of a particular financial product and instead acquire all or part of, or increase the client's interest in, another financial product, the following additional information must be included in a Statement of Advice or Record of Advice, to the extent that the information is known to, or could reasonably be found out by, the Providing Party:
 - 42.1 any charges the client will or may incur in respect of the disposal or reduction;
 - 42.2 any charges the client will or may incur in respect of the acquisition or increase;
 - 42.3 any pecuniary or other benefits that the client will or may lose (temporarily or otherwise) as a result of taking the recommended action.
- 43. During the Remediation Period, and the Penalty Period, a Statement of Advice was defective for the purpose of Chapter 7, Division 7, Sub-division A, if:
 - 43.1 it contained a misleading or deceptive statement: s 952B(1)(b)(i); or

43.2 it omitted material required by ss 947B, 947C or 947D: s 952B(1)(b)(ii);

being a statement, or an omission, that is or would be materially adverse from the point of view of a reasonable person considering whether to act in reliance on the advice concerned.

Statements required by s946B(3) and Records of Advice

44. During the Remediation Period, and the Penalty Period, pursuant to s 946B(3) (as modified by Regulation 7.7.10AE), where further advice was given and a Statement of Advice was not required, then, at the same time or as soon as practicable after the further advice was given to the client, the client must be given a statement²¹ that contains the information that would, if a Statement of Advice were to be given, be required to be in the Statement by ss 947B(2)(d) and (e), or 947C(2)(e) and (f), as the case requires, and by s 947D, if applicable. During the Remediation Period and the Penalty Period, statements under s 946B(3) were contained in Records of Advice issued by Westpac and the Authorised Representatives of Magnitude and Securitor.

45. During the Remediation Period, and the Penalty Period, a statement required by s 946B(3) was defective if:

45.1 it contained a misleading or deceptive statement: s 952B(1)(b)(i); or

45.2 it omitted material required by s 946B(3): s 952B(1)(b)(iii);

being a statement, or an omission, that is or would be materially adverse from the point of view of a reasonable person considering whether to act in reliance on the advice concerned.

46. During the Remediation Period, and the Penalty Period, pursuant to s 946B(3A) (as modified by Regulation 7.7.10AE), the Providing Entity must keep a record of the further advice and, in doing so, must comply with any applicable requirements of regulations made for the purposes of this subsection.

47. During the Remediation Period, and the Penalty Period, pursuant to s 952B(1)(b), as modified by Regulation 7.7.10AG, a record of advice required by s 946B(3A) was 'defective' for the purpose of Chapter 7, Division 7, Sub-division A, if:

47.1 it contained a misleading or deceptive statement: s 952B(1)(b)(i); or

47.2 it omitted material required by s 946B(3A) or s 947D: s 952B(iiA);

being a statement, or an omission, that is or would be materially adverse from the point of view of a reasonable person considering whether to act in reliance on the advice concerned.

F. THE FAILURES BY THE ADVICE LICENSEES

48. The Advice Licensees admit that:

48.1 during the Penalty Period, clients were charged Regular and Ad Hoc Contribution Fees when a contribution was made into their superannuation or investment account in circumstances where that fee had not been disclosed or adequately disclosed to those clients in the Disclosure Documents (**Charging Failures**); and

48.2 the Advice Licensees engaged in the acts constituted by the Charging Failures in the Penalty Period in circumstances where Westpac and the Authorised Representatives, as Providing Entities in the provision of personal financial product advice, had not provided clients with Disclosure Documents which disclosed (or

²¹ The term 'statement' in Ch 7 includes matter that is not written but conveys a message: s.9.

which adequately disclosed) Regular and Ad Hoc Contribution Fees which were to be charged to those clients (e.g., in the context of a purported disclosure to the client of all relevant fees and charges, Regular and/or Ad Hoc fees were not disclosed at all, or were disclosed as 'nil', or the client was informed of the existence of such fees in general terms but not of any specified percentage or amount²²) (**Disclosure Failures**).

49. The Advice Licensees admit that in respect of the Disclosure Failures, there was non-compliance with:
- 49.1.1 s 947B and/or 947C in respect of Statements of Advice to the extent those Statements of Advice did not disclose or did not adequately disclose information about the remuneration, including commissions or other benefits, that relevant entities were to receive in relation to the Ad Hoc or Regular Contribution Fees; or
 - 49.1.2 s 946B(3) in respect of Records of Advice, to the extent those Records of Advice did not disclose or did not adequately disclose information about the remuneration, including commissions or other benefits, that relevant entities were to receive in relation to the Ad Hoc or Regular Contribution Fees.
50. The Advice Licensees admit that, where there were Disclosure Failures, the clients ought not to have been charged the Regular or Ad Hoc Contribution Fees.
51. The Advice Licensees admit that the charging of such fees in the Penalty Period in the absence of any or adequate disclosure amounted to a failure to provide financial services efficiently, honestly and fairly.
52. The Advice Licensees are unable to presently specify the exact number of clients who in the Penalty Period were affected by the Charging Failures and the Disclosure Failures. Due to the remediation approach which the Advice Licensees have taken in responding to their failures, as explained in further detail below (including where, in significant part, it would be more costly and time consuming to identify affected clients, rather than remediate potentially affected clients), the precise number of the clients affected by the failings of the Advice Licensees are not known. However, as part of this remediation process (referred to below), the Advice Licensees have undertaken a sampling exercise (referred to below) based on which they are satisfied that a significant number of clients in the Penalty Period were affected by the Charging and Disclosure Failures.
53. The Advice Licensees estimate that the number of accounts affected by one or more Disclosure Failures and/or Charging Failures was:
- 53.1 In respect of Ad Hoc Contribution Fees, at least:
 - (a) 7,603 accounts in the Remediation Period;²³
 - (b) 169 accounts in the Penalty Period.²⁴
 - 53.2 In respect of Regular Contribution Fees, at least:

²² For example, the client was only told regular contribution fees may be charged "Where you are making a regular investment or contribution these fees are payable with each contribution", without disclosure of the amount or percentage of those fees.

²³ Comprising 5,111 accounts in respect of Westpac, 750 accounts in respect of Magnitude, and 1,741 accounts in respect of Securitor.

²⁴ Comprising 79 accounts in respect of Westpac, 42 accounts in respect of Magnitude, and 49 accounts in respect of Securitor

- (a) 17,600 accounts in the Remediation Period;²⁵
 - (b) 768 accounts in the Penalty Period.²⁶
54. It is not currently possible for the Advice Licensees to estimate the total number of unique accounts that would have been affected by a Disclosure Failure and/or Charging Failure in the Penalty Period in respect of either (or both) of Ad Hoc or Regular Contribution Fees, as it is not currently possible to estimate the amount of double counting that would result due to the same accounts being affected by a Disclosure Failure and/or Charging Failure in respect of both Ad Hoc and Regular Contribution Fees. Accordingly, the number of accounts cannot simply be added (as this would involve double counting that cannot be quantified).
55. As explained in detail below, the methodology used to calculate the estimates of affected client accounts involved the review of a sample of customer accounts against the following criteria:
- 55.1 whether there was a Disclosure Document on the client file, and in the case of Ad-Hoc Contribution fees, the Disclosure Document was contemporaneous with the fee charged;
 - 55.2 whether the Contribution Fee was disclosed in both percentage and dollar terms using appropriate examples; and
 - 55.3 whether the Contribution Fee charged was equal to or less than the fee disclosed (**Remediation Criteria**),
- and then applying the rate at which the sample accounts had failed the Remediation Criteria to accounts where it is currently possible to determine the aggregate amount of Contribution Fees charged to those accounts (**Included Cohorts**)²⁷.
56. The Remediation Criteria were developed for the purposes of facilitating the refund of Contribution Fees that had been charged, regardless of whether those fees had been disclosed or inadequately disclosed.
57. The Advice Licensees admit that in many cases a Disclosure Failure and / or Charging Failure will have occurred in the Penalty Period where the Remediation Criteria have been met, and the application of the Remediation Criteria is presently the only means by which the Advice Licensees' can provide an *estimate* of the total number of Disclosure Failures and / or Charging Failures occurring in the Remediation Period, and the Penalty Period.

Ad Hoc Contribution Fees

58. To estimate the number of accounts affected by Disclosure Failures and/or Charging Failures relating to Ad Hoc Contribution Fees, the Advice Licensees undertook a sampling exercise that reviewed 4,979 accounts over the Remediation Period to which Ad Hoc Contribution Fees had been charged to confirm that those accounts met the Remediation Criteria.

²⁵ Comprising 11,088 accounts in respect of Westpac, 925 accounts in respect of Magnitude, and 5,587 accounts in respect of Securitor

²⁶ Comprising 505 accounts in respect of Westpac, 71 accounts in respect of Magnitude, and 191 accounts in respect of Securitor

²⁷ The Included Cohorts are accounts where it is currently possible to determine the aggregate amount of Contribution Fees charged to those accounts. The following cohorts of accounts were excluded from this pool (**Excluded Cohorts**) because the Advice Licensees do not yet have sufficient information to determine the aggregate amount of Contribution Fees in respect of those cohorts:

- (a) eWrap accounts on the Asgard platform;
- (b) accounts in respect of products provided by 30 external product providers; and
- (c) Legacy BT Superannuation Accounts

59. The Advice Licensees determined that 59.4% of the 4,979 accounts (2,960 accounts), accounting for 19.2% of the Ad-Hoc Contribution Fees charged across those specific accounts, failed to meet the Remediation Criteria.
60. As a result of the review described in paragraphs 58 to 59 above, the Advice Licensees admit that at least 2,960 accounts were charged Ad Hoc Contribution Fees in circumstances where those fees:
- 60.1 had not been disclosed or had been inadequately disclosed; and
- 60.2 ought not to have been charged.
61. The Advice Licensees do not know whether customer accounts beyond the 4,979 accounts in the sample group that were reviewed would meet the Remediation Criteria. However, they accept that it is likely that the rate of failure for those accounts against the Remediation Criteria in respect of Ad Hoc Contribution Fees would be approximately the same as for the sample group. They also accept that in many cases a Disclosure Failure and/or Charging Failure will have occurred where the Remediation Criteria have been met, and due to the way in which the Advice Licensees have responded to their failures, this is presently the only means by which an estimate of the total number of failures can be provided.
62. Based on the sampling review undertaken, the Advice Licensees admit that during the Penalty Period, a significant number of their clients were the subject of the Charging and Disclosure Failures in respect of the Ad Hoc Contribution Fee, though the precise number of clients so affected is presently unable to be ascertained.
63. The Advice Licensees admit that, during the Penalty Period, they did not have systems in place to monitor, review or ascertain whether the charging of the Ad Hoc Contribution Fees had been disclosed to clients or to ensure that clients were not charged Ad Hoc Contribution Fees unless they had been disclosed.

Regular contribution fees

64. To estimate the number of accounts affected by Disclosure Failures and/or Charging Failures relating to Regular Contribution Fees, the Advice Licensees reviewed a sample of 101 accounts to determine whether those accounts met the Remediation Criteria.
65. The Advice Licensees determined that 63.4% of the 101 accounts (64 accounts) accounting for 55% of the Regular Contribution Fees charged across those specific accounts, did not meet the Remediation Criteria.
66. As a result of the review described in paragraphs 64 to 65 above, the Advice Licensees admit that at least 64 accounts were charged Regular Contribution Fees in circumstances where those fees:
- 66.1 had not been disclosed or adequately disclosed; and
- 66.2 ought not to have been charged.
67. The Advice Licensees do not know whether customer accounts beyond the 101 accounts in the sample group that were reviewed would meet the Remediation Criteria. However, they accept it is likely that the rate of failure for those accounts against the Remediation Criteria in respect of Regular Contribution Fees would be approximately the same as for the sample group. They also accept that in many cases a Disclosure Failure and/or Charging Failure will have occurred where the Remediation Criteria have been met, and due to the way in which the Advice Licensees have responded to their failures, this is presently the only means by which an estimate of the total number of failures can be provided.

68. Based on the sampling review undertaken, the Advice Licensees admit that during the Penalty Period, a significant number of their clients were the subject the Charging and Disclosure Failures in respect of the Contribution Fee, though the precise number of clients so affected is presently unable to be ascertained.
69. The Advice Licensees admit that, during the Penalty Period, they did not have systems in place to monitor, review or ascertain whether the charging of the Regular Contribution Fees had been disclosed to clients or to ensure that clients were not charged Regular Contribution Fees unless they had been disclosed.
70. **Schedule A** sets out estimated Aggregate Regular and Ad Hoc Contribution Fees charged to the Included Cohorts by Westpac, Securitor and Magnitude in connection with these Charging and Disclosure Failures during the Remediation Period.

Worked examples of Charging and Disclosure Failures relating to Ad Hoc and Regular Contribution Fees

71. At **Schedule B** are some specific customer examples of Disclosure Failures and Charging Failures with respect to each Advice Licensee.

G. IDENTIFICATION OF CONCERNS WITH CONTRIBUTION FEES AND STEPS TAKEN IN RESPONSE

72. In the period from at least about 2017 to August 2018, persons internally within the Advice Licensees (and in particular, within Westpac) raised concerns, in an ad hoc manner, about the charging of Ad Hoc and Regular Contribution fees to customers, including as to whether they were a transparent fee and whether it was fair and reasonable to charge them to customers. Around this time, the business was looking at its fee charging and the circumstances in which such fees were being charged to customers was being considered²⁸. In August 2018, Westpac decided to stop charging Regular Contribution Fees to new and existing clients of BTFA with effect from 20 August 2018 (**WBC.700.013.0001**). This decision was endorsed by the BT Advice Pricing Committee and senior executives. By this time, industry practice was largely to no longer charge contribution fees²⁹.
73. Despite the consideration given to Contribution Fees in the context described above, and the decision being taken to stop charging Regular Contribution Fees within Westpac, as far as the Advice Licensees are presently aware, it was not identified as at August 2018 that, for a significant number of these clients, such fees either had not been adequately disclosed or never been disclosed in Disclosure Documents and in those circumstances ought not have been charged.
74. The decision to stop charging Regular Contribution Fees applied only to new and existing clients of BTFA, as the BTFA business could set the pricing structure for the business. Authorised Representatives of Securitor and Magnitude were able to set their own pricing structures within their businesses³⁰.
75. When the decision was made to stop charging Regular Contribution Fees to new and existing clients of BTFA, advisers were notified that Westpac would be instructing the Wrap and Asgard platforms to switch these fees off for any clients whose account was more than 3 months old (i.e., before 20 May 2018). For any clients less than 3 months old, a listing would be provided to the affected advisers and Regional Managers so that the advisers could manage the implementation of their advice and turn off any contribution based fees after the initial fee was collected³¹.

²⁸ Refer **WBC.700.022.0057; WBC.700.022.0046; WBC.700.022.2839; WBC.700.022.2906; WBC.702.037.0708**

²⁹ **WBC.702.037.0708; WBC.700.092.6816**

³⁰ **WBC.700.053.0185**

³¹ **WBC.700.023.1394**

76. The note included the following information for all staff:

'Effective today, the Client Pricing Policy has been enhanced to provide clarity on charging fees on investment and superannuation contributions. The Client Pricing policy did not specifically deal with any ongoing or regular contribution based fees, as it focused more on the Implementation Fees in general. In addition, the policy has been updated to ensure that any ongoing or regular contribution fees are not charged where you are not assisting the client in implementing that contribution, for example Superannuation Guarantee payment or any other client initiated contribution.

Specifically, the following material additions have been included:

- You must not charge an implementation fee or contribution fee on regular or ongoing super contributions and/or investment contributions*

*Note that Strategy Implementation fees may appear elsewhere in systems or on statements as a Contribution Fee, Implementation Fee, Initial Advice Fee or One-Off Advice Fee.

You should ensure any ongoing or regular contribution fees are not applied for any new client or new advice to existing client that you issue³²

77. On 29 August 2018, an internal investigation into the quality of advice and conduct of two BTFA advisers concluded. This investigation was initiated following a "business as usual" file review of 5 client files (which was expanded during the investigation to review 20 files). As part of this investigation, it was identified that Contribution Fees had been charged without disclosure in respect of six clients³³.
78. On 19 November 2018, an investigation (which began in June 2018) concluded in respect of a further BTFA adviser. That investigation found that two clients had been charged Contribution Fees in the sum of approximately \$30 which had not been disclosed in the Statement of Advice. An additional 19 clients (beyond the investigation sample) were also identified as having paid Regular Contribution Fees³⁴.
79. In the context of that investigation, on 19 October 2018, the Senior Investigations Manager (Acting), Capability and Conduct, BT Advice and Private Wealth, wrote to the Manager, Advice Investigations and the Advice Investigations Manager, copied to the National Manager, Conduct and Planner Risk Insights, Capability and Conduct, BTFG, the Senior Remediation Assurance Manager, and the Process Assurance Manager, Capability and Conduct, BTFG, noting, among other things, that:

As you know, contribution fees were highlighted in the ... investigation plan as an issue to investigate after referral from PRI.

For me, contribution fee concerns can arise from two perspectives:

1. Non-disclosure of fees - This can arise either from a failure to disclose ongoing regular contribution fees in the initial SoA, or in subsequent SoAs/RoAs provided to the client. Failure to disclose in an initial SoA is an obvious concern, however from a legal perspective I would also consider it a problem if the adviser fails to disclose ongoing regular contribution fees in subsequent advice documents to the client. The reason for this, is that regular contribution fees collected are a regular income stream paid to the adviser as a result of a client being invested in a certain existing product. This means it is conflict of interest - particularly when it comes to making a recommendation to the client (either directly or implicitly) that they maintain that platform. At the point in time of the review advice, that conflict of interest exists and must be disclosed to the client in the subsequent advice doc

³² WBC.700.001.0043

³³ WBC.700.021.5542; WBC.700.018.0776

³⁴ WBC.700.015.1601; WBC.700.017.1337; WBC.700.053.0185

under the law. Therefore, I consider that to properly analyse this issue, the period in which contribution fees were charged to the client needs to be confirmed, and then the initial SoA and each subsequent advice document in the relevant time period should be examined to determine if the fees were adequately disclosed.

2. Fees for no service - The regular contribution fee is typically held out in the initial SoA as an 'implementation fee' and disclosed in that section of the SoA. The word 'implementation' refers to the action taken by the adviser to 'process' the recommendations in the advice. However, for a non-ongoing advice service client, the only 'action' or 'processing' performed by an adviser with respect to implementation is the initial set up only. Therefore if there is nothing to be 'implemented' or transacted by the adviser with respect to future regular contributions made by the client, then it is unclear what the client receives for the regular contribution fee they are paying - given that the adviser is technically not processing or doing anything.'

80. In December 2018, during the course of investigating individual advisers within BTFA in respect of unrelated issues, BTFA identified that Regular Contribution Fees were still being charged to certain clients despite the decision to stop charging such Contribution Fees on 20 August 2018 described in paragraph 72 above³⁵. It was determined that it was "not possible" to turn off these fees in bulk as this was a manual process, and that the action to turn off the fees had not been taken for "priority and capacity" reasons (that is, a lack of capacity at the time within the product teams to manually to turn off the fees)³⁶. (For a number of clients, Westpac did not stop charging them with Regular Contribution Fees until it ceased providing financial services in June 2019.)
81. From February 2019, BTFA undertook an investigation to determine whether Westpac had breached any of its legal obligations or conditions of the Westpac Licence³⁷. At some time between 15 February and 25 February 2019, the Investigations Manager, Capability and Conduct, BTFG produced a report based on his review of 100 files where clients were charged Regular Contribution Fees between September 2018 and February 2019. That review identified that:
- 81.1 in 20% of files, there had been no disclosure of Regular Contribution Fees; and
- 81.2 in 25% of files, Regular Contribution Fees had not been disclosed in \$ or % terms, and that there was only a note under the implementation fee table which states "Where you are making a regular investment or contribution these Advice Fees are payable with each contribution".³⁸
82. On 11 March 2019, potential errors in the disclosure of Contribution Fees were entered as an incident into JUNO (which is Westpac's integrated Risk and Compliance Management system)³⁹.
83. On 19 March 2019, Westpac announced that it would exit the financial advice business⁴⁰.
84. On 16 May 2019, draft investigation reports were prepared for BTFA and Magnitude, following a review of a sample of 100 BTFA clients⁴¹, and 48 Magnitude clients⁴², concerning the disclosure of Contribution Fees. These reports identified:
- 84.1 In respect of BTFA:

³⁵ WBC.700.053.0185; WBC.700.022.0148

³⁶ WBC.700.022.0058, WBC.700.021.8878

³⁷ WBC.700.022.0148

³⁸ WBC.700.022.0179; WBC.700.022.0184

³⁹ WBC.700.001.0309

⁴⁰ WBC.700.010.0314

⁴¹ WBC.700.022.2789

⁴² WBC.700.022.2796

- (i) ongoing contribution fees were collected outside of the BTFA Customer Pricing Policy in some of the files sampled;
- (ii) ongoing contribution fees were collected despite the application form showing no fees to be charged and no disclosure of ongoing contribution fees in the SOA (3 clients);
- (iii) ongoing contribution fees were collected despite the application form showing no fees to be charged and disclosure of ongoing contribution fees in SOA was only via a (generic) note under the fee table and no disclosure of fees in dollar terms (2 clients);
- (iv) ongoing contribution fees were collected despite not having been disclosed in the initial advice document (17 clients);
- (v) ongoing contribution fees were collected despite disclosure of ongoing contribution fees in SOA only via note under fee table which said *"Note: Where you are making a regular investment or contribution these Advice Fees are payable with each contribution"* (23 clients);
- (vi) ongoing contribution fees collected were a higher % than was disclosed in the initial advice document (ie under-disclosed) (4 clients);
- (vii) ongoing contribution fees were collected but it could not be ascertained whether fees were disclosed as the original advice document was unable to be found (6 clients);
- (viii) the ongoing contribution fee was disclosed in the original advice document but failed to be disclosed in one or more subsequent advice documents (where the relevant product was in the scope of the advice being provided) (12 clients);

84.2 In respect of Magnitude:

- (i) ongoing contribution fees were collected despite application forms showing no fees to be charged and no disclosure of ongoing contribution fees in SOA (4 clients);
- (ii) ongoing contribution fees were collected despite not having been disclosed in the initial advice document (32 clients);
- (iii) the ongoing contribution fee was disclosed in the original advice document but failed to be disclosed in one or more subsequent advice documents (where the relevant product was in the scope of the advice being provided) (1 client)⁴³.

- 85. On 30 June 2019, Westpac ceased providing personal financial advice through salaried financial advisers to clients of BTFA.
- 86. On 30 September 2019, Magnitude and Securitor's licensed financial advisers ceased providing financial advice to clients.
- 87. In October 2019, the Advice Licensees commenced a project to remediate potentially affected clients⁴⁴. The remediation project is discussed further in Section I below.

⁴³ WBC.700.022.2936

⁴⁴ WBC.700.023.1394

88. On 23 October 2019, Westpac's Regulatory Disclosure Forum determined that Westpac and Magnitude should notify ASIC of the existence of the Disclosure Failures under s 912D of the Corporations Act, and that further investigation should be undertaken with respect to Securitor⁴⁵.
89. On 4 November 2019, the Regulatory Disclosure Forum determined that Securitor should notify ASIC of the existence of the Disclosure Failures under s 912D of the Corporations Act⁴⁶.
90. On 6 November 2019, the Advice Licensees provided notifications to ASIC pursuant to s 912D of the Corporations Act⁴⁷. The Advice Licensees have subsequently provided further written updates to ASIC in relation to the issue, including on 24 January 2020⁴⁸, 30 April 2020⁴⁹, 30 September 2020⁵⁰, 15 December 2020⁵¹, 5 February 2021⁵², 16 April 2021⁵³, 30 April 2021⁵⁴, 7 May 2021⁵⁵, 20 May 2021⁵⁶, 23 June 2021⁵⁷, 7 July 2021⁵⁸, 20 July 2021⁵⁹, 13 August 2021⁶⁰ and 27 August 2021⁶¹. They also provided updates in meetings on 12 February 2021⁶², 3 March 2021⁶³, 12 March 2021⁶⁴, 25 June 2021, 26 August 2021 and 23 September 2021.
91. The Advice Licensees have cooperated with ASIC throughout the course of ASIC's investigation.

H. IDENTIFIED CAUSES AND CONTRIBUTORS OF THE CONDUCT

I Overview

92. It has not been practicable for the Advice Licensees to identify, in respect of each instance of a Disclosure Failure and/or Charging Failure in the Penalty Period, what caused that Disclosure Failure and/or each Charging Failure.
93. However, the Advice Licensees have identified a number of failings in their systems and processes which they consider caused or contributed to Disclosure Failures, and/or the Charging Failures, in the Penalty Period.
94. Except as otherwise indicated, the conduct constituting each of the causes or contributors which have been identified by the Advice Licensees, and which are described below:
 - 94.1 applied to each of the Advice Licensees; and

⁴⁵ WBC.700.022.2991

⁴⁶ WBC.700.001.0317; WBC.700.001.0307

⁴⁷ WBC.700.022.0412

⁴⁸ WBC.700.053.0256

⁴⁹ WBC.700.004.0016

⁵⁰ WBC.700.053.0258

⁵¹ WBC.700.053.0358

⁵² WBC.700.053.0119

⁵³ WBC.700.053.0234

⁵⁴ WBC.700.053.0285

⁵⁵ WBC.700.053.0234

⁵⁶ WBC.700.053.0223

⁵⁷ WBC.700.053.0296

⁵⁸ WBC.700.053.0016

⁵⁹ WBC.700.053.0304

⁶⁰ WBC.700.053.0017

⁶¹ WBC.701.002.0001; WBC.700.053.0339

⁶² WBC.700.053.0115; WBC.700.053.0127

⁶³ WBC.700.053.0134; WBC.700.053.0183; WBC.700.053.0162

⁶⁴ WBC.700.053.0143; WBC.700.053.0162; WBC.700.053.0203

94.2 occurred, and was not rectified:⁶⁵

- (i) throughout the Remediation Period; and
- (ii) throughout the Penalty Period.

II Preparation of Disclosure Documents

95. The Advice Licensees provided insufficient guidance to their financial advisers that they should disclose the Regular and Ad Hoc Contribution Fees to be charged to clients in the Disclosure Documents provided to those clients. In summary, and as set out below, the Advice Licensees have identified that:
- 95.1 their policies with respect to advice documentation did not advise their financial advisers how to disclose in a Disclosure Document the Regular or Ad Hoc Contribution Fees which were to be charged to clients, and when this should have occurred (subject to some advice documentation policies in place at Westpac from around September 2018 discussed at paragraph 97 below);
 - 95.2 their training materials did not set out the step that would need to be followed by financial advisers to accurately disclose Regular or Ad Hoc Contribution Fees to their client, when this should have occurred; and
 - 95.3 at times, the financial advisers were provided with templates which were deficient in some circumstances for the preparation of disclosure documents, including where those templates were inconsistent as to whether they prompted the adviser to disclose to the client the regular contribution fees which the client was to be charged, when that should have occurred.
96. The Advice Licensees also failed to give guidance to their financial advisers as to Regular and Ad Hoc Contribution Fees generally, including whether (and if so, in what circumstances) the Advice Licensees considered it was appropriate to charge such fees to their clients.

Policy inadequacies concerning the preparation of Disclosure Documents

97. While the Advice Licensees had advice documentation policies in place,⁶⁶ those policies did not advise financial advisers of the detailed steps required to meet the fee disclosure obligations in relation to Disclosure Documents⁶⁷ (see WBC.702.037.0001).
98. The only exception to this was that, from about September 2018 for Westpac (but not Magnitude or Securitor), the advice documentation policies were changed to advise of the legally required content of Disclosure Documents (including, for example, that Disclosure Documents must contain details of remuneration of the adviser and of Westpac) (e.g., WBC.702.037.0026).

⁶⁵ However affected customers will be remediated. See Part I below in respect of the remediation program that the Advice Licensees are currently undertaking.

⁶⁶ The following policies were relevantly in place during the Remediation Period: For Westpac, refer to: *Advice Documentation & Implementation Policy* dated 29 March 2016 [WBC.702.037.0001]; *Advice Documentation & Implementation Policy* dated 21 November 2017 [WBC.702.037.0013]; *Advice Documentation & Implementation Policy* dated 22 June 2018 [WBC.702.037.0020]; *Advice Documentation & Implementation Policy* dated 12 September 2018 [WBC.702.037.0026]; For Magnitude and Securitor, refer to: *Advice & Disclosure Documentation Policy* dated 13 January 2016 [WBC.702.037.0100]; *Advice & Disclosure Documentation Policy* dated 24 November 2016 [WBC.702.037.0073]; *Advice & Disclosure Documentation Policy* dated 17 January 2017 [WBC.702.037.0046]; *Advice & Disclosure Documentation Policy* dated 17 February 2017 [WBC.702.037.0033]; *Advice & Disclosure Documentation Policy* dated 21 March 2017 [WBC.702.037.0059]; *Advice & Disclosure Documentation Policy* dated 1 October 2018 [WBC.702.037.0086].

⁶⁷ WBC.702.037.0001

99. Westpac had customer pricing policies and paraplanning policies in place during the Remediation Period, including throughout the Penalty Period. None of those policies addressed the legally required contents of a Disclosure Document for proper disclosure of Contribution Fees.⁶⁸

Training inadequacies concerning the preparation of Disclosure Documents

100. The Advice Licensees provided training materials to paraplanners and financial advisers in relation to the preparation of advice documents including statements of advice.⁶⁹
101. However, while the training materials included instructions for the completion of the Disclosure Documents (including, for instance, instructions for the addition of client objectives, investment and superannuation recommendations and reasons for those recommendations and instructions for the generation of the Disclosure Document), they did not set out the steps that would need to be followed to properly disclose Contribution Fees.
102. As a result, financial advisers and paraplanners operating under the Advice Licensees' respective AFSLs may not have been aware of the information in respect of fees such as Ad Hoc Contribution Fees or Regular Contribution Fees that were required to be included in Disclosure Documents, or if they were, how to properly disclose them.

Template deficiencies concerning the preparation of Disclosure Documents

103. Statements of Advice and Records of Advice were prepared using templates that could be populated and manually adjusted based on the specific client's needs. These template documents were amended over time including in relation to Contribution Fees.
104. Some of the templates for Statements of Advice and Records of Advice (**Templates**) provided by the Advice Licensees to their financial advisers (and paraplanning request forms used by BTFA advisers only) allowed the adviser to recommend ongoing contributions but did not prompt the adviser to disclose regular and/or ongoing Contribution Fees, if applicable⁷⁰.
105. Some templates did not refer to Regular Contribution Fees (by that or any other name)⁷¹, even though such fees were to be charged to clients.

III Preparation of application form and fee loading process

Inadequacies relating to preparation of application form and fee loading generally

106. The application form completion and fee loading processes used by financial advisers had the following inadequacies:
- 106.1 there was shared responsibility between financial advisers and their assistants for completing application forms, without a control, or process, to check the information in the application form against the fee disclosure provided to the client;
- 106.2 the training provided to data entry operators was insufficient to ensure that those operators understood how to transpose fees disclosed to the client in the disclosure document into the application form;

⁶⁸ Refer to: SGFP Customer Pricing Policy Version 7.0 dated 18 February 2015 [WBC.702.037.0146]; Mandated Paraplanning, Compliance Assurance Reviews (BT Assure) and Prevet Policy dated November 2017 [WBC.702.037.0110]; Mandated Paraplanning and Prevet Policy effective 12 June 2018 [WBC.702.037.0117]; Mandated Paraplanning and Prevet Policy effective 1 October 2018 [WBC.702.037.0113].

⁶⁹ Refer to: *Generating QuickPlan Statements of Advice: Self Paced Learner Guide* (April 2011 v1.0) [WBC.702.037.0322].

⁷⁰ E.g. WBC.702.006.7492; WBC.702.005.1353; WBC.702.013.5246

⁷¹ E.g. WBC.702.013.9432; WBC.702.013.5324; WBC.702.013.7778

- 106.3 there was not a clear delineation of responsibility for checking that the fees loaded and charged to the client matched the fees disclosed to clients in their disclosure documents; and
- 106.4 there was not a clear allocation of responsibility for turning off any "additional fees" that had been nominated in order to apply an "initial fee" to such contributions received after 90 days (as described in paragraph 110.3 below).
107. During the Remediation Period, and the Penalty Period, the Advice Licensees did not provide training to financial advisers or their assistants about how to check whether the application form was completed correctly and consistently with the fee disclosure in the Disclosure Document. The training materials for advisers should have, but did not, provide any guidance to ensure consistency between advice documents, application forms, and the fees charged.
108. There was also no control or process in place to confirm, following implementation of fee arrangements, that Contribution Fees were being charged correctly and consistently with the disclosure provided to the client in the corresponding Disclosure Document.

Inadequacy of training specific to BT Wrap product

109. The Advice Licensees also failed to provide sufficient training or instruction to ensure that financial advisers understood the consequences of certain aspects of their approach to completing the application form for one of the platforms with superannuation and investment products through which contributions were made (namely BT Wrap). BT Wrap was the platform through which most Regular Contribution Fees were administered during the Remediation Period and the Penalty Period.
110. In particular:
- 110.1 the BT Wrap application form contained sections enabling financial advisers to nominate an "initial fee", an "additional fee", and a "regular contribution fee"⁷². The "initial fee" was levied against any amounts received into the client's account within the first 90 days (other than regular contributions received during that time), the "additional fee" applied to additional contributions received after the first 90 days (apart from regular contributions), and the "regular contribution fee" applied to all regular contributions, no matter when they were made;
- 110.2 however, while regular payments made to the account via direct debit were deemed to be regular contributions and charged accordingly, all payments made by other methods beyond the first 90 days were treated as additional contributions and the "additional fee" was applied to them. That is, if a regular contribution was made other than by direct debit, the system levied the fee that had been nominated as the "additional fee" rather than the "regular contribution fee". This system anomaly could only be corrected manually by financial advisers and there is no evidence to indicate that financial advisers were made aware of this requirement;
- 110.3 in addition, on occasion the "initial fee" was charged in error upon additional or ad hoc contributions, due to a workaround implemented by some advisers directed at applying the "initial fee" where the initial contribution was not received within 90 days. That is, as noted above, the system operated such that the fee designated in the application form as the "initial fee" was only applied to contributions received within the first 90 days. Where the initial contribution was not received within 90 days, the system did not apply the agreed "initial fee" nominated in the application form. However, as a workaround, in order for the "initial fee" to be applied to initial contributions where they were to occur after 90 days, some financial advisers

⁷² The BT Wrap application form varied from time to time throughout the Remediation Period. By way of example, see **WBC.700.095.0023** and **WBC.700.095.0003**.

entered the amount of the "initial fee" into the "additional fees" section of the application form only to ensure that the fee was levied on the initial contributions received outside of the 90 days. On occasion, the fee was not subsequently turned off (due to adviser error), in which case any contribution deemed to be an additional contribution would have had the equivalent of the "initial fee" levied, potentially without the knowledge or intention of the client account owner or the financial adviser.

IV Failures in monitoring and supervision

111. The Advice Licensees also did not have adequate systems and processes in place in the Penalty Period:

111.1 to identify and respond appropriately to Disclosure Failures; and

111.2 to identify and respond appropriately to Charging Failures.

112. The Advice Licensees also did not retain adequate records of Disclosure Documents (or their contents) to enable the ready identification of what Ad Hoc and Regular Contribution Fees had been disclosed to clients in their Disclosure Documents.

Failure to stop charging after decision made by Westpac to that effect

113. Following a decision made by Westpac to switch off Regular Contribution Fees for new and existing clients effective 20 August 2018, it did not have in place during the Penalty Period a system or process to ensure that such fees were not charged to clients, and to ensure that such fees were not received and retained by Westpac and/or its financial advisers. Many clients continued to be charged such fees during the Penalty Period, and Westpac and/or its financial advisers continued to receive and retain such fees during the Penalty Period.

I. CLIENT IMPACT AND REMEDIATION

114. The Advice Licensees accept responsibility for the Disclosure Failures and Charging Failures and sincerely regret that they occurred and the effects that they have had on customers.

115. The Advice Licensees are currently undertaking a remediation program, which includes repayment (and interest) of the Contribution Fees to customers who may or may not have been affected by a Disclosure Failure and/or a Charging Failure. This remediation program is ongoing and has involved the application of customer beneficial assumptions.

116. Remediation is being carried out on the following basis:

116.1 all clients in the Included Cohorts who were charged:

- (i) Regular Contribution Fees, regardless of their amount; and
- (ii) Ad Hoc Contribution Fees that are less than \$450 in total⁷³,

will be reimbursed the total amount of those fees without review of whether those fees were or were not adequately disclosed (**Pay without Review**). It would be more time consuming and costly to review files and identify whether any of the relevant clients were or were not impacted by any Charging or Disclosure Failures, as compared with the clients being Paid Without Review. This will accelerate the remediation of these customer cohorts, compared with a review being conducted; and

⁷³ WBC.700.053.0296

- 116.2 in respect of clients in the Included Cohorts who were charged Ad Hoc Contribution Fees above \$450 (at the account level) in total, a review is being carried out to identify whether those fees were properly disclosed. Where, in respect of any such client, it is not possible to locate the relevant contemporaneous Disclosure Document, the client will be remediated upon the assumption that there was no disclosure of the fees. Clients who have been charged Ad Hoc Contribution Fees above \$450 will receive a refund of any Regular Contribution Fees they may have been charged without review of whether the Regular Contribution Fees were or were not adequately disclosed.
117. On around 3 August 2020, Westpac engaged BDO Services Pty Limited to provide independent assurance of Westpac's remediation processes and methodology. An Interim Independent Assurance Expert Report was issued by BDO on 20 July 2021 (**BDO Interim Report**), with a final report to be provided at the conclusion of the remediation. Westpac has liaised closely with ASIC in relation to the processes and methodology of the remediation, as well as its progress. ASIC was provided with a copy of the BDO Interim Report on 20 July 2021 and updated on the progress of the remediation most recently on 23 September 2021.
118. The remediation involves an analysis of revenue and product systems, including historic systems, to identify where Ad Hoc and Regular Contribution Fees have been charged, and the amount of Ad Hoc Contribution Fees in order to determine whether they will be Paid without Review, or subject to file review.
119. In respect of the remediation of the Included Cohorts, 33,516 clients are in scope for review. The Advice Licensees estimate that approximately 25,000 of these clients, or 74%, will be Paid Without Review. As at September 2021, approximately 5,500 of the files identified by the Advice Licensees for review had been reviewed.
120. The estimated remediation payments in respect of the Included Cohorts are set out in **Schedule C**.
121. As the remediation is not complete, it is not currently known how much money will be refunded to clients. As of 25 October 2021, WBC refunded \$12 million and it expects to have refunded a total of \$16 million by the end of December 2021 (i.e. including the \$12 million refunded as of 25 October 2021). An accounting provision of \$58 million has been made in respect of the remediation. This includes a provision of approximately \$22.2 million in respect of the estimated remediation of clients in the Included Cohorts as set out in **Schedule C**, some of which has already been paid as described above, and a provision of approximately \$35.8 million in respect of the estimated remediation of clients in the Excluded Cohorts. The provision is calculated upon assumptions that reflect estimates of the total amounts of Contribution Fees charged, the basis of the remediation set out above,⁷⁴ plus the time value of money. It is expected that the remediation process will be complete by March 2022.
122. As part of the remediation, the Advice Licensees are writing to clients who received a payment either on the basis of Pay without Review or following a review of their account, to inform them of the Charging and Disclosure Failures and to explain the reasons for the reimbursement of the Contribution Fees. In doing so, the Advice Licensees have acknowledged their obligation to ensure clients were properly informed about Contribution Fees and have apologised to the clients.

J. WESTPAC ADMITTED CONTRAVENTION

123. At all material times during the Penalty Period, as the holder of the Westpac Licence, Westpac was required pursuant to s 912A(1)(a) of the Corporations Act to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly.

⁷⁴ **WBC.700.053.0296**

124. Westpac admits that the Disclosure Failures and Charging Failures occurred in the context of 'financial services' being provided within the meaning of s 766A of the Corporations Act.
125. Westpac admits that during the Penalty Period:
- 125.1 a significant number of BT Financial Advice Clients (with the exact number of clients affected presently unknown to Westpac) were charged Ad Hoc Contribution Fees and Regular Contribution Fees for the benefit of Westpac and its employee advisers in circumstances where:
- (a) those fees were being charged in the Penalty Period without having been disclosed in Disclosure Documents, or without having been adequately disclosed in Disclosure Documents (in that in respect of these clients the amount and/or basis upon which the fees would be charged had not been identified in adequate or precise terms and/or with adequate information given as to the fees);
 - (b) Westpac admits that given the absence of disclosure or absence of adequate disclosure, those fees ought not to have been charged.
- 125.2 in the instances described in paragraph 125.1 above:
- (a) the Ad Hoc and Regular Contribution Fees were charged to the BT Financial Advice Clients by deducting those fees from the superannuation and investment accounts of those clients whenever those clients made contributions to those accounts, in circumstances where Westpac admits that it ought not to have charged those fees;
 - (b) Westpac (and/or its financial adviser employees) received and retained the Ad Hoc Contribution Fees and Regular Contribution Fees that were charged and deducted from the superannuation and investment accounts of those clients, in circumstances where Westpac admits that it ought not to have charged those fees.
- 125.3 Westpac did not maintain systems and process which:
- (a) in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees to be charged to BT Financial Advice Clients were disclosed to them in Disclosure Documents;
 - (b) in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees were not charged to BT Financial Advice Clients, in circumstances where those fees ought not to have been charged;
 - (c) in the Penalty Period, ensured that Westpac and/or its financial advisers did not receive or retain Ad Hoc and Regular Contribution Fees for their benefit, in circumstances where those fees ought not to have been received and retained;
 - (d) in the Penalty Period, in instances where there was a failure to disclose Ad Hoc and Regular Contribution Fees, provided to BT Financial Advice Clients information about the fees, in order to allow such clients to make an informed decision as to whether to agree to the deduction of those fees from their superannuation or investment account;
 - (e) in the Penalty Period, retained adequate records of Disclosure Documents (or their contents) to enable the ready identification of what Ad Hoc and Regular Contribution Fees had been disclosed to BT Financial Advice Clients in their Disclosure Documents;

- (f) in the Penalty Period, adequately trained staff as to the requirements to accurately disclose fees such as Contribution Fees to their BT Financial Advice Clients;
 - (g) in the Penalty Period, provided staff with appropriate templates for the preparation of Disclosure Documents; and
 - (h) in the Penalty Period, were capable of ensuring that the application and fee loading processes used by financial advisers in implementing the personal financial product advice accurately reflected the terms of Disclosure Documents.
126. In the premises of paragraph 125 above, Westpac admits that it did not do all things necessary to ensure that it provided financial services efficiently, honestly and fairly, in contravention of s 912A(1)(a) and (5A) of the Corporations Act during the Penalty Period.

K. MAGNITUDE ADMITTED CONTRAVENTION

127. At all material times during the Penalty Period, as the holder of the Magnitude Licence, Magnitude was required pursuant to s 912A(1)(a) of the Corporations Act to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly.
128. Magnitude admits that the Disclosure Failures and Charging Failures occurred in the context of 'financial services' being provided within the meaning of s 766A of the Corporations Act.
129. Magnitude admits that during the Penalty Period:
- 129.1 a significant number of retail clients (the **Magnitude Clients**) (with the exact number of clients affected presently unknown to Magnitude) were charged Ad Hoc Contribution Fees and Regular Contribution Fees for the benefit of Magnitude and its Authorised Representatives in circumstances where:
 - (a) those fees were being charged in the Penalty Period without having been disclosed in Disclosure Documents, or without having been adequately disclosed in Disclosure Documents (in that in respect of these clients the amount and/or basis upon which the fees would be charged had not been identified in adequate or precise terms and/or with adequate information given as to the fees);
 - (b) Magnitude admits that given the absence of disclosure or absence of adequate disclosure, those fees ought not to have been charged.
 - 129.2 in the instances described in paragraph 129.1(a)129.1 above, Magnitude admits:
 - (a) the Ad Hoc and Regular Contribution Fees were charged to the Magnitude Clients by deducting those fees from the superannuation and investment accounts of those clients whenever those clients made contributions to those accounts, in circumstances where Magnitude admits that it ought not to have charged those fees;
 - (b) Magnitude and/or Magnitude's Authorised Representatives received and retained the Ad Hoc Contribution Fees and Regular Contribution Fees that were charged and deducted from the superannuation and investment accounts of those clients, in circumstances where Magnitude admits that it ought not to have charged those fees.
 - 129.3 Magnitude did not maintain systems and process which:

- (a) in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees to be charged to Magnitude Clients were disclosed to them in Disclosure Documents;
- (b) in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees were not charged to Magnitude Clients, in circumstances where those fees ought not to have been charged;
- (c) in the Penalty Period, ensured that Magnitude and/or Magnitude's Authorised Representatives did not receive or retain Ad Hoc and Regular Contribution Fees for their benefit, in circumstances where those fees ought not to have been received and retained;
- (d) in the Penalty Period, in instances where there was a failure to disclose Ad Hoc and Regular Contribution Fees, provided to Magnitude Clients information about the fees, in order to allow such clients to make an informed decision as to whether to agree to the deduction of those fees from their superannuation or investment account;
- (e) in the Penalty Period, retained adequate records of Disclosure Documents (or their contents) to enable the ready identification of what Ad Hoc and Regular Contribution Fees had been disclosed to Magnitude Clients in their Disclosure Documents;
- (f) in the Penalty Period, adequately trained staff as to the requirements to accurately disclose fees such as Contribution Fees to the Magnitude Clients;
- (g) in the Penalty Period, provided staff with appropriate templates for the preparation of Disclosure Documents; and
- (h) in the Penalty Period, were capable of ensuring that the application and fee loading processes used by financial advisers in implementing the personal financial product advice accurately reflected the terms of Disclosure Documents.

130. In the premises of paragraph 129 above, Magnitude admits that it did not do all things necessary to ensure that it provided financial services efficiently, honestly and fairly, in contravention of s 912A(1)(a) and (5A) of the Corporations Act during the Penalty Period.

L. SECURITOR ADMITTED CONTRAVENTION

131. At all material times during the Penalty Period, as the holder of the Securitator Licence, Securitator was required pursuant to s 912A(1)(a) of the Corporations Act to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly.

132. Securitator admits that the Disclosure Failures and Charging Failures occurred in the context of 'financial services' being provided within the meaning of s 766A of the Corporations Act.

133. Securitator admits that during the Penalty Period:

133.1 a significant number of retail clients (the **Securitator Clients**) (with the exact number of clients affected presently unknown to Securitator) were charged Ad Hoc Contribution Fees and Regular Contribution Fees for the benefit of Securitator and its Authorised Representatives in circumstances where:

- (a) those fees were being charged in the Penalty Period without having been disclosed in Disclosure Documents, or without having been adequately disclosed in Disclosure Documents (in that in respect of these clients the

amount and/or basis upon which the fees would be charged had not been identified in adequate or precise terms and/or with adequate information given as to the fees);

- (b) Securitator admits that given the absence of disclosure or absence of adequate disclosure, those fees ought not to have been charged.

133.2 In the instances described in paragraph 133 above 133.1(a) 133.1 above, Securitator admits:


- (a) the Ad Hoc and Regular Contribution Fees were charged to the Securitator Clients by deducting those fees from the superannuation and investment accounts of those clients whenever those clients made contributions to those accounts, in circumstances where Securitator admits that it ought not to have charged those fees;
- (b) Securitator and/or Securitator's Authorised Representatives received and retained the Ad Hoc Contribution Fees and Regular Contribution Fees that were charged and deducted from the superannuation and investment accounts of those clients, in circumstances where Securitator admits that it ought not to have charged those fees.

133.2.2 Securitator did not maintain systems and process which:

- (a) in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees to be charged to Securitator Clients were disclosed to them in Disclosure Documents;
- (b) in the Penalty Period, ensured that Ad Hoc and Regular Contribution Fees were not charged to Securitator Clients, in circumstances where those fees ought not to have been charged;
- (c) in the Penalty Period, ensured that Securitator and/or Securitator's Authorised Representatives did not receive or retain Ad Hoc and Regular Contribution Fees for their benefit, in circumstances where those fees ought not to have been received and retained;
- (d) in the Penalty Period, in instances where there was a failure to disclose Ad Hoc and Regular Contribution Fees, provided to Securitator Clients information about the fees, in order to allow such clients to make an informed decision as to whether to agree to the deduction of those fees from their superannuation or investment account;
- (e) in the Penalty Period, retained adequate records of Disclosure Documents (or their contents) to enable the ready identification of what Ad Hoc and Regular Contribution Fees had been disclosed to Securitator Clients in their Disclosure Documents;
- (f) in the Penalty Period, adequately trained staff as to the requirements to accurately disclose fees such as Contribution Fees to the Securitator Clients;
- (g) in the Penalty Period, provided staff with appropriate templates for the preparation of Disclosure Documents; and
- (h) in the Penalty Period, were capable of ensuring that the application and fee loading processes used by financial advisers in implementing the personal financial product advice accurately reflected the terms of Disclosure Documents.

134. In the premises of paragraph 133 above, Securitor admits that it did not do all things necessary to ensure that it provided financial services efficiently, honestly and fairly, in contravention of s 912A(1)(a) and (5A) of the Corporations Act during the Penalty Period.

Date: 29 November 2021



Signed by Gina Wilson
Lawyer for the Plaintiff



Signed by Ian Bolster
Lawyer for the Defendants

Schedule A

Estimated Aggregate Contribution Fees charged to the Included Cohorts by Westpac, Securitor and Magnitude as a result of the Charging and Disclosure Failures

Westpac	\$5,071,513.29
Magnitude	\$591,170.48
Securitor	\$1,954,258.34

Schedule B

Customer examples of Disclosure Failures and Charging Failures with respect to each Advice Licensee

'Client A' – Westpac – No disclosure (Regular Contribution Fees)

1. Client A is a retail client for the purposes of Chapter 7 of the Corporations Act.
2. By SOA dated 6 May 2019, Client A received personal financial advice from a financial adviser employed by Westpac.⁷⁵ The SOA, among other things:
 - a. recommended that Client A sell down Client A's existing BT Portfolio Wrap Essentials and invest a lump sum into a new BT Wrap Open account, and continue with an existing regular contribution plan, with contributions to be deposited into their new account on a monthly basis;⁷⁶
 - b. did not disclose any fees associated with the advice provided or any of the contributions recommended in the SOA, and stated that there would be no contribution fees charged for additional investments;⁷⁷ and
 - c. purported to provide the client with a statement of all the fees and costs associated with the provision of the advice and its implementation, including the remuneration to be received by Westpac and/or the adviser.⁷⁸
3. Client A signed an Authority to Proceed to implement the recommendation in the SOA in full.⁷⁹
4. Shortly after 5 June 2019, a BT Wrap Open account was opened in Client A's name.
5. Client A made contributions into the BT Wrap Open account of \$416 on about 20 May 2019 and 20 June 2019. Client A was charged "Regular Savings Fees" on each such contribution (\$8.32 on 22 May 2019 and \$8.32 on 24 June 2019): see the Cash Account Statement for Client A's account.⁸⁰
6. These "Regular Savings Fees" were regular contribution fees which were not disclosed to the client and were charged to the client. In the absence of such disclosure, Client A ought not to have been charged these contribution fees.

'Client B' – Westpac – No disclosure (Regular Contribution Fees)

1. Client B is a retail client for the purposes of Chapter 7 of the Corporations Act.
2. By SOA dated 18 February 2015, Client B received personal financial advice from a financial adviser employed by Westpac.⁸¹ The SOA, among other things:
 - a. recommended that Client B transfer all regular contributions in the form of Super Guarantee contributions, which were expected to total \$9,371, and all Salary Sacrifice contributions, totalling \$12,000, to a new BT Portfolio SuperWrap PSP+ account;⁸²

⁷⁵ WBC.702.044.0178

⁷⁶ WBC.702.044.0178 at .0184 and .0185

⁷⁷ WBC.702.044.0178 at .0185 and .0193

⁷⁸ WBC.702.044.0178 at .0193

⁷⁹ WBC.700.056.2522

⁸⁰ WBC.702.046.2040 at .2064

⁸¹ WBC.702.026.4998

⁸² WBC.702.026.4998 at.5004 to.5006

- b. did not disclose any fees associated with future contributions into the account;⁸³ and
 - c. purported to provide the client with a statement of all the fees and costs associated with the provision of the advice and its implementation, including the remuneration to be received by Westpac and/or the adviser.⁸⁴
3. On 25 February 2015, Client B signed an Authority to Proceed to implement the recommendation in the SOA in full.⁸⁵
4. Shortly after 25 February 2015, a BT Portfolio SuperWrap+ PSP account was opened in Client B's name.
5. Subsequently, Client B was charged fees on regular contributions made into the account (including by way of both Super Guarantee and Salary Sacrifice payments). These fees were charged from 2 April 2015 to 2 July 2019, comprising 229 charges and a total of \$1,946.18 in fees: see the Cash Account Statement.⁸⁶ Of these fees, in the period from 13 March 2019, \$149.20 in fees was charged, over 16 occasions: see the Cash Account Statement.⁸⁷
6. These fees were contribution fees which were not disclosed to the client in the SOA and were charged to the client. In the absence of such disclosure, Client B ought not to have been charged these contribution fees.

'Clients C and Y' – Westpac – No disclosure (Ad Hoc Contribution Fees)

1. Client C is a retail client for the purposes of Chapter 7 of the Corporations Act.
2. By SOA dated 12 August 2013, Client C received personal financial advice from a financial adviser at Westpac.⁸⁸ The SOA, among other things:
 - a. recommended that Client C rollover the total proceeds of \$25,570 from their existing super funds into a single fund, accept a lump sum non-concessional contribution from Client Y and make a lump sum contribution into their super fund;
 - b. did not disclose any fees associated with future contributions into the account;⁸⁹ and
 - c. purported to provide the client with a statement of all the fees and costs associated with the provision of the advice and its implementation, including the remuneration to be received by Westpac and/or the adviser.⁹⁰
3. On 19 August 2013, Client C signed an Authority to Proceed to implement the recommendation in the SOA in full.⁹¹
4. Shortly after 19 August 2013, a BT Foundation Portfolio SuperWrap PSP account was opened in Client C's name.

⁸³ WBC.702.026.4998 at .5014 and .5015

⁸⁴ WBC.702.026.4998 at .5014 and .5015

⁸⁵ WBC.702.027.0756

⁸⁶ WBC.702.011.2157

⁸⁷ WBC.702.011.2157

⁸⁸ WBC.702.007.0085 at .0102

⁸⁹ WBC.702.007.0085 at .0153 - .0154

⁹⁰ WBC.702.007.0085 at .0112, .0153-.0154

⁹¹ WBC.702.007.0085 at .0096

5. On 9 March 2016, Clients C and Y were provided with an Ongoing Service Agreement letter which disclosed the ongoing advice costs expected for the next months. Client C signed the agreement letter on 14 March 2016.⁹² The Ongoing Service Arrangement did not disclose any contribution fees.
6. On about 11 March 2016, further advice was provided to Clients C and Y, and recorded in an ROA dated 23 March 2016.⁹³ This advice included, among other things, a recommendation for Client C to make a lump sum non-concessional (after tax) contribution of \$53,000 into their superannuation fund. The ROA:
 - a. did not disclose any applicable fees for the adviser in relation to this contribution; and
 - b. purported to provide the client with a statement of all the fees and costs associated with the provision of the advice and its implementation, including the remuneration to be received by Westpac and/or the adviser.⁹⁴
7. Following receipt of the ROA, Client C made a deposit of \$53,000 on 30 March 2016.⁹⁵ On 31 March 2016, Client C was charged an Adviser Contribution Fee of \$987.73 on this deposit.
8. This fee was a contribution fee which was not disclosed to the client in the ROA and was charged to the client. In the absence of such disclosure, Client C ought not to have been charged the contribution fee.

'Client D' – Westpac – No disclosure (Regular Contribution Fees)

1. Client D is a retail client for the purposes of Chapter 7 of the Corporations Act.
2. By SOA dated 2 May 2014, Client D received personal financial advice from a financial adviser at Westpac.⁹⁶ The SOA, among other things:
 - a. recommended that Client D rollover their existing UK based superannuation funds into a new BT Foundation Portfolio SuperWrap Personal Super Plan account. It also recorded the member's existing regular contributions and savings plans, which included employer contributions of approximately \$3,995 pa;
 - b. did not disclose any fees associated with future contributions into the account;⁹⁷
 - c. purported to provide the client with a statement of all the fees and costs associated with the provision of the advice and its implementation, including the remuneration to be received by Westpac and/or the adviser.⁹⁸
3. On 24 May 2014, Client D signed an Authority to Proceed to implement the recommendation in the SOA in full.⁹⁹
4. In or around 11 June 2014, a BT Foundation Portfolio SuperWrap PSP account was opened in Client D's name.

⁹² WBC.702.023.0650

⁹³ WBC.702.002.6230

⁹⁴ WBC.702.002.6230 at .6237

⁹⁵ WBC.702.002.2224 at .2241

⁹⁶ WBC.702.004.6169

⁹⁷ WBC.702.004.6169 at .6201

⁹⁸ WBC.702.004.6169 at .6174 and .6201-.6203

⁹⁹ WBC.702.026.6038

5. In addition to being charged an initial contribution fee, Client D was also charged an amount of \$42.08 on an employer contribution deposited into the account on 21 August 2014 within the first 3 months of the account being opened.¹⁰⁰
6. This fee was a contribution fee which was not disclosed to the client in the SOA and was charged to the client. In the absence of such disclosure, client D ought not to have been charged this fee.
7. In about December 2014, Client D sought further personal financial product advice from a financial planner at Westpac.
8. By SOA dated 16 March 2015, Client D was provided with the further advice sought.¹⁰¹ The SOA, among other things:
 - a. made a recommendation for Client D to rollover additional superannuation funds into their existing BT Foundation Portfolio SuperWrap PSP and that they continue to direct all superannuation contributions, by way of Super Guarantee, into the same account;
 - b. did not disclose any fees associated with future contributions into the account;¹⁰² and
 - c. purported to provide the client with a statement of all the fees and costs associated with the provision of the advice and its implementation, including the remuneration to be received by Westpac and/or the adviser.¹⁰³
9. On 21 March 2015, Client D signed an Authority to Proceed to implement the recommendation in the SOA in full.¹⁰⁴
10. Subsequently to the SOA, from 30 April 2015 to 28 June 2017, the client was charged fees on regular contributions into their superannuation account, made by way of Super Guarantee. This comprised 17 charges and a total of \$270.03 in fees: see the Cash Account Statement.¹⁰⁵
11. These fees were contribution fees which were not disclosed to the client in the SOA and were charged to the client. In the absence of such disclosure, Client D ought not to have been charged the contribution fee.

'Client E' – Magnitude – No Disclosure (Regular Contribution Fees)

1. Client E is a retail client for the purposes of Chapter 7 of the Corporations Act.
2. By SOA dated 27 November 2012, Client E received personal financial advice from a financial adviser that was an authorised representative of Magnitude.¹⁰⁶ The SOA, among other things:
 - a. recommended that Client E rollover the total proceeds of their existing superannuation account into a new BT Select Portfolio SuperWrap Personal Super Plan and direct all future contributions into the new superannuation account;¹⁰⁷

¹⁰⁰ WBC.702.004.6408

¹⁰¹ WBC.702.005.0224

¹⁰² WBC.702.005.0224 at.0246

¹⁰³ WBC.702.005.0224 at .00246-.0248

¹⁰⁴ WBC.702.026.5076

¹⁰⁵ WBC.702.004.6408

¹⁰⁶ WBC.702.012.2013

¹⁰⁷ WBC.702.012.2013 at .2026

- b. did not disclose any fees associated with future contributions into the account;¹⁰⁸ and
 - c. purported to provide the client with a statement of all the fees and costs associated with the provision of the advice and its implementation, including the remuneration to be received by Westpac and/or the adviser.¹⁰⁹
3. A signed Authority to Proceed to implement the recommendations in the SOA has not been able to be located.
4. The Cash Account Statement for this member's account¹¹⁰ outlined that Client E was charged additional contribution fees, made by way of Super Guarantee payments by their employer. These fees were charged from 5 June 2013 to 27 September 2019, comprising 48 charges and a total of \$974.74 in fees: see Cash Account Statement.¹¹¹ Of these fees, in the period from 13 March 2019, \$40.22 in fees was charged, over 2 occasions: see Cash Account Statement.¹¹²
5. These fees were contribution fees which were not disclosed to the client in the SOA and were charged to the client. In the absence of such disclosure, Client E ought not to have been charged these contribution fees.

'Clients F and G' – Magnitude – No Disclosure (Ad Hoc Contribution Fees)

1. Clients F and G are retail clients for the purposes of Chapter 7 of the Corporations Act.
2. By SOA dated 5 January 2017, Clients F and G received personal financial advice from a financial adviser at Busselton Financial Planning, as an authorised representative of Magnitude.¹¹³ The SOA, among other things:
 - a. recommended that Clients F and G establish a BT Select Portfolio Investment Wrap account and invest their surplus cash in line with their risk profile;¹¹⁴
 - b. did not disclose any fees associated with future contributions into the account;¹¹⁵ and
 - c. purported to provide Client F and G with a statement of all the fees and costs associated with the provision of the advice and its implementation, including the remuneration to be received by Busselton Financial Planning as an authorised representative of Magnitude.¹¹⁶
3. Shortly after 10 January 2017, a BT Select Portfolio Wrap account was opened in the joint names of Clients F and G.
4. A signed Authority to Proceed to implement the recommendations in the SOA has not been able to be located.

¹⁰⁸ WBC.702.012.2013 at .2018 and .2042-2043

¹⁰⁹ WBC.702.012.2013 at .2018 and .2042-2043

¹¹⁰ WBC.702.012.2559

¹¹¹ WBC.702.012.2559

¹¹² WBC.702.012.2559

¹¹³ WBC.701.002.0001

¹¹⁴ WBC.701.002.0001 at .0005

¹¹⁵ WBC.701.002.0001 at .0013

¹¹⁶ WBC.701.002.0001 at .0013 - .0014

5. On 20 May 2019, the same adviser met with Clients F and G, providing financial advice which was recorded in an ROA of the same date.¹¹⁷ Among other things, the ROA:
 - a. Recommended, amongst other things, that the Clients F and G transfer their surplus funds into their existing BT Select Portfolio account;
 - b. did not disclose any fees associated with accepting the financial advice;¹¹⁸
 - c. stated that there were no additional fees for this ROA as it was part of the clients' Ongoing Adviser Service Arrangement, referring to the fees associated with the advice in the ROA being part of an 'Ongoing Service Arrangement letter'.¹¹⁹ This letter dated 20 May 2019, referred to in the ROA, disclosed a flat fee of \$360 for the BT Select Portfolio but did not disclose any fees associated with future contributions into the account.¹²⁰ Clients F and G signed an acknowledgment of the service, fees and terms contained in the letter dated 20 May 2019 on 20 May 2019.¹²¹
6. On 21 June 2019, Clients F and G adopted the recommended financial advice and deposited \$30,000.00 into their BT Select Portfolio Cash Account, which incurred an "Additional Deposit Fee" of \$300.00 on 24 June 2019: see the Cash Account Statement.¹²²
7. This fee was a contribution fee which was not disclosed to the client in the SOA and was charged to the client. In the absence of such disclosure Clients F and G ought not to have been charged the contribution fee.

Client example – 'Clients H' – Magnitude – No Disclosure (Regular Contribution Fees)

1. Client H is a retail client for the purposes of Chapter 7 of the Corporations Act.
2. By SOA dated 5 November 2012, Client H and her partner received personal financial advice from a Certified Financial Planner, as an Authorised Representative of Magnitude.¹²³ The SOA, among other things:
 - a. recommended that Client H rollover the funds held within their CFS First Choice Employer Super account, and invest the total proceeds of \$41,393 into BT Select Administrator Essentials SuperWrap Personal Super Plan;
 - b. did not disclose any fees associated with any future contributions into the account;¹²⁴ and
 - c. purported to provide the client with a statement of all the fees and costs associated with the provision of the advice and its implementation, including the remuneration to be received by Westpac and/or the adviser, other than product fees.¹²⁵
3. On 19 November 2012, Client H signed an Authority to Proceed to implement the recommendation in the SOA in full.¹²⁶

¹¹⁷ WBC.702.042.0288

¹¹⁸ WBC.702.042.0288 at 0289

¹¹⁹ WBC.702.042.0288 at .0289

¹²⁰ WBC.700.066.1352

¹²¹ WBC.700.082.2495

¹²² WBC.702.045.0219 at .0240-.0241

¹²³ WBC.702.011.5624

¹²⁴ WBC.702.011.5624 at .5468

¹²⁵ WBC.702.011.5624 at .5646 to .5648

¹²⁶ WBC.702.028.5327

4. The member's new SuperWrap Essentials Personal Super Plan was created on or around 10 January 2013.¹²⁷
5. The Cash Account Statement for Client H's account¹²⁸ outlined that the member was charged fees on regular contributions made by their employer from 22 April 2013 to 30 September 2019, comprising 305 charges and a total of \$1,449.24: see Cash Account Statement.¹²⁹ Of these fees, in the period from 13 March 2019, \$85.64 in fees was charged, over 56 occasions: see Cash Account Statement.¹³⁰
6. These fees were contribution fees which were not disclosed to the client in the SOA and were charged to the client. In the absence of such disclosure, Client H ought not to have been charged these contribution fees.

'Client I' – Securitator – No Disclosure (Ad Hoc and Regular Contribution Fees)

1. Client I is a retail client for the purposes of Chapter 7 of the Corporations Act.
2. By SOA dated 1 April 2019, Client I received personal financial product advice from a financial adviser at Grasso Financial Services, as an authorised representative of Securitator.¹³¹ The SOA among other things:
 - a. recommended that Client I rollover all funds from the member's existing QSuper account to the member's existing BT Select Administrator SuperWrap account and maximise their personal deductible (concessional) contributions to their super by making a top-up contribution up to the maximum of \$25,000 per year with the specific amount to be discussed with the client's accountant each year;¹³²
 - b. did not disclose any fees associated with future contributions into the account;¹³³ and
 - c. purported to provide the client with a statement of all the fees and costs associated with the provision of the advice and its implementation, including the remuneration to be received by Westpac and/or the adviser.¹³⁴
3. On 23 April 2019, Client I signed an Authority to Proceed to implement the recommendation in the SOA in full.¹³⁵
4. On 2 May 2019, Client I adopted the recommended financial advice and deposited \$5,899.65 by way of superannuation rollover into their BT Select Cash Account,¹³⁶ which incurred an "Adviser Contribution Fee" of \$120.94 on 6 May 2019: see Cash Account Statement.¹³⁷ Client I also deposited a further \$20,000 contribution into the account on 24 June 2019, incurring a further Adviser Contribution Fee of \$615.00: see Cash Account Statement.¹³⁸

¹²⁷ WBC.702.011.7327

¹²⁸ WBC.702.011.7327

¹²⁹ WBC.702.011.7327

¹³⁰ WBC.702.011.7327

¹³¹ WBC.702.043.0279

¹³² WBC.702.043.0279 at .0282

¹³³ WBC.702.043.0279 at .0310

¹³⁴ WBC.702.043.0279 at .0310

¹³⁵ WBC.702.043.0279 at .0319

¹³⁶ WBC.702.043.0342

¹³⁷ WBC.702.043.0342

¹³⁸ WBC.702.043.0342

5. These fees were contribution fees which were not disclosed to the client in the SOA and were charged to the client. In the absence of such disclosure, Client I ought not to have been charged these contribution fees.

'Client J' – Securator – No Disclosure (Regular Contribution Fees)

1. Client J is a retail client for the purposes of Chapter 7 of the Corporations Act.
2. By SOA dated 3 December 2010, Client J received personal financial product advice from a financial adviser at Merics Wealth Management, as an authorised representative of Securator.¹³⁹ The SOA, among other things:
 - a. recommended that Client J rollover their existing super funds (approximately \$49,400 and \$271) into a new Asgard eWrap Superannuation account and to make self-employed concessional contributions of \$25,000 per annum into the new account;¹⁴⁰ and
 - b. purported to provide the client with a statement of all the fees and costs associated with the provision of the advice and its implementation, including the remuneration to be received by Westpac and/or the adviser.¹⁴¹
3. On 3 December 2010, Client J signed an Authority to Proceed to implement the recommendation in the SOA in full with the advice.¹⁴²
4. In around May 2011, an Asgard eWrap Superannuation account was opened in Client J's name.¹⁴³
5. On about 21 March 2019, further advice was provided to Client J, and recorded in an ROA dated 21 March 2019.¹⁴⁴ This advice included, among other things, a recommendation that the member maintain their existing superannuation arrangements, including contribution levels. The ROA:
 - a. specified that the contribution fees would be reduced to \$0;¹⁴⁵ and
 - b. purported to provide the client with a statement of the fees and costs associated with the provision of the advice and its implementation, including the remuneration to be received by Westpac and/or the adviser.¹⁴⁶
6. Following the ROA, Member Deducted contributions of \$3,000, \$2,000 and \$3,000 were made into the account on 22 March 2019, 10 June 2019 and 20 June 2019. Client J was charged "Adviser Fees" on of \$69.19, \$46.13 and \$69.19 respectively on each of these contributions: see the Annual Investor Report issued to Client J on 22 July 2019.¹⁴⁷
7. These "Adviser Fees" were contribution fees which were not disclosed to the client and were charged to the client. In the absence of such disclosure, Client J ought not to have been charged these contribution fees.

¹³⁹ WBC.700.086.6989

¹⁴⁰ WBC.700.086.6989 at 6992

¹⁴¹ WBC.700.086.6989 at .7023

¹⁴² WBC.700.086.6989 at .7036

¹⁴³ WBC.700.083.2808

¹⁴⁴ WBC.702.044.0803

¹⁴⁵ WBC.702.044.0803 at .0806

¹⁴⁶ WBC.702.044.0803 at .0806

¹⁴⁷ WBC.700.083.2880 at .2866

Schedule C

Estimated remediation payments for Included Cohorts

Westpac

	Contribution Fee refund	Time value of money	Total
Pay without review (Regular Contribution Fee)	\$5,027,293	\$3,822,900	\$8,850,193
Pay without review (Ad Hoc Contribution Fees below \$450)	\$258,041	\$144,545	\$402,586
<i>Sub-total (pay without review)</i>	\$5,285,334	\$3,967,445	\$9,252,779
Payments following file review (Ad Hoc Contribution Fees above \$450)	\$2,256,958	\$1,630,469	\$3,887,427
Total	\$7,542,292	\$5,597,914	\$13,140,206

Magnitude

	Contribution Fee refund	Time value of money	Total
Pay without review (Regular Contribution Fee)	\$612,181	\$410,879	\$1,023,060
Pay without review (Ad Hoc Contribution Fees below \$450)	\$44,913	\$31,341	\$76,254
<i>Sub-total (pay without review)</i>	\$657,094	\$442,220	\$1,099,314
Payments following file review (Ad Hoc Contribution Fees above \$450)	\$245,848	\$167,328	\$413,176
Total	\$902,942	\$609,547	\$1,512,489

Securitor

	Contribution Fee refund	Time value of money	Total
Pay without review (Regular Contribution Fee)	\$2,573,703	\$2,064,383	\$4,638,086
Pay without review (Ad Hoc Contribution Fees below \$450)	\$187,465	\$150,708	\$338,173
<i>Sub-total (pay without review)</i>	\$2,761,168	\$2,215,091	\$4,976,259

	Contribution Fee refund	Time value of money	Total
Payments following file review (Ad Hoc Contribution Fees above \$450)	\$502,729	\$371,190	\$873,919
Total	\$3,263,896	\$2,586,282	\$5,850,178