

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 7/04/2021 4:37:43 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	NSD300/2021
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v WESTPAC BANKING CORPORATION ACN 007 457 141
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Dated: 7/04/2021 5:17:24 PM AEST

Registrar

Important Information

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

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

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



Form 2 Originating process

(rules 2.2 and 15A.3)

No. of 2021

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

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

Australian Securities and Investments Commission

Plaintiff

Westpac Banking Corporation (ACN: 007 457 141)

Defendant

A. DETAILS OF APPLICATION

This application is made under sections 12GBA(1), 12GJ(1) and 12GLB(1)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), section 1101B(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and sections 19 and 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) and the inherent or implied jurisdiction of the Court for civil penalties, declarations of contravention by the Defendant of sections 12DB and 12DM of the ASIC Act and sections 912A(1)(a) and 912A(1)(c) of the Corporations Act, adverse publicity orders and costs.

On the facts stated in the Concise Statement filed in these proceedings and served with this Originating Process, the Plaintiff claims:

Declarations

- 1. A declaration that, during the period 7 April 2015 to 28 July 2015, Westpac Banking Corporation (**Westpac**), failed to do all things necessary to ensure that the financial services covered by its Australian Financial Services Licence Number 233714 were provided efficiently, honestly and fairly, and thereby contravened section 912A(1)(a) of the Corporations Act, in that Westpac:

Filed on behalf of (name & role of party) Australian Securities and Investments Commission, Plaintiff
Prepared by (name of person/lawyer) Conrad Gray, Solicitor for the Plaintiff
Law firm (if applicable) N/A
Tel (02) 9911 2313 Fax
Email Conrad.gray@asic.gov.au / Kirsty.magee@asic.gov.au
Address for service Level 5, 100 Market Street
(include state and postcode) SYDNEY NSW 2000



- (a) supplied to 384 customers consumer credit insurance (**CCI**), to which each such customer had not agreed (**Affected Customers**); and
 - (b) debited to the account of each Affected Customer one or more amounts as premiums for the CCI, which amounts the Affected Customer was not liable to pay and Westpac was not entitled to deduct.
2. A declaration that, during the period 7 April 2015 to 28 July 2015, Westpac in trade or commerce asserted on one or more occasions to 304 of the Affected Customers to whom it had supplied the CCI called Credit Card Repayment Protection a right to payment of an amount for the premium, and by each such assertion contravened section 12DM(1) of the ASIC Act in that Westpac issued monthly statements for the Affected Customer's credit card account which:
 - (a) stated "If you have elected to take out Credit Card Repayment Protection the amount of the monthly premium debited to the credit card account is shown in the transaction details".; and
 - (b) listed a monthly debit in the running balance for a transaction described as "Credit Card Repayment Protection" or "Credit insurance premium"; and
 - (c) did not disclose that the Affected Customer was not liable to pay the debit referred to in the preceding paragraph.
3. A declaration that, during the period 7 April 2015 to 24 July 2015, Westpac in trade or commerce asserted on one or more occasions to 83 of the Affected Customers to whom it had supplied the CCI called Flexi Loan Repayment Protection a right to payment of an amount for the premium and by each such assertion contravened section 12DM(1) of the ASIC Act, in that Westpac issued monthly statements for the Affected Customer's Flexi Loan account which:
 - (a) stated words to the effect that if the consumer had elected to take out Flexi Loan Repayment Protection the amount of the monthly premium would be included in the transaction history and it might be subject to interest charges; and
 - (b) listed a monthly debit in the running balance for a transaction described as either "Flexi Loan Repayment Protection" or "Credit Insurance premium"; and
 - (c) did not disclose that the Affected Customer was not liable to pay the debit referred to in the preceding paragraph.
4. A declaration that, by reason of the matters set out in Declarations 2 and 3 above, Westpac in connection with the supply of financial services made a false or misleading representation to each of the 384 Affected Customers that the customer had agreed to acquire the CCI, and by each such representation contravened section 12DB(1)(b) of the ASIC Act.
5. A declaration that, by reason of the matters set out in Declarations 2 and 3 above, Westpac in connection with the supply of financial services made a false or misleading



representation to each of the 384 Affected Customers that the customer was liable to pay for the CCI and that Westpac had a right to debit amounts for premiums, and by each such representation thereby contravened section 12DB(1)(g) of the ASIC Act.

6. A declaration that, by reason of the matters set out in Declarations 2 and 3 above, Westpac in connection with the supply of financial services made a false or misleading representation to each of the 384 Affected Customers concerning the existence of Westpac's right to charge the premium, and by each such representation thereby contravened section 12DB(1)(i) of the ASIC Act .
7. A declaration that, by reason of the matters set out in Declarations 2, 3, 4, 5 and 6 above, Westpac failed to comply with the financial services law and thereby contravened section 912A(1)(c) of the Corporations Act.
8. Orders pursuant to s 12GBA(1) of the ASIC Act that Westpac pay to the Commonwealth a pecuniary penalty in respect of each declared civil penalty contravention, in such amount as the Court determines to be appropriate.
9. An order pursuant to s 43 of the FCA Act that Westpac pays the Plaintiff 's costs of the proceeding.
10. Orders pursuant to s 12GLB(1)(a) of the ASIC Act and/or s 1101B(1) of the Corporations Act that Westpac disclose information about the above contraventions and publish an advertisement in the terms specified by the Court.
11. Such further or other order as the Court thinks fit.

Date: 7 April 2021

A handwritten signature in blue ink, appearing to read 'Conrad King'.

.....
*Signature of plaintiff or
plaintiff's legal practitioner*

This application will be heard by at Commonwealth Law Courts, Queens Square, Sydney, NSW 2000 at *am/*pm on2021.



B. NOTICE TO DEFENDANT(S) (IF ANY)

TO:

Westpac Banking Corporation
C/- WESTPAC GROUP SECRETARIAT
WESTPAC PLACE, Level 18, 275 Kent Street
SYDNEY NSW 2000

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

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

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

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

C. FILING

Date of filing: 7 April 2021

.....

Registrar

This originating process is filed by the plaintiff.

D. SERVICE

The plaintiff's address for service is Level 5, 100 Market Street, Sydney 2000.

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