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### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
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A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

### Important Information

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Form 17  
Rule 8.05(1)(a)

**AMENDED STATEMENT OF CLAIM**

No. 1373 of 2019

Federal Court of Australia  
District Registry: Victoria  
Division: General

**EDMUND HOW FEN YONG**

Applicant

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

Respondent

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## **A. INTRODUCTION**

### **A.1 The Applicant and the Group Members**

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the Applicant on its own behalf and on behalf of all persons who or which:

(a) during the period:

(i) between 16 December 2013 and 19 November 2019 (inclusive) (Relevant Period), acquired an interest in:

(A) fully paid ordinary shares in Westpac Banking Corporation (**Westpac Shares**); and/or

(B) American Depositary Receipts that represent Westpac Shares  
(**Westpac ADRs**); and/or,

(ii) between 16 December 2013 to 19 November 2019 (inclusive),  
alternatively, 12 March 2014 to 19 November 2019 (inclusive) (**Swaps  
Relevant Period**), acquired an interest in long exposure to Westpac  
Shares by entering into equity swap confirmations in respect of the  
Westpac Shares (**Westpac Swaps**),

(together, **Westpac Securities**), ~~during the period between 16 December 2013  
and 19 November 2019 (inclusive) (**Relevant Period**);~~

- (b) have suffered loss or damage by reason of the conduct of the Respondent (**Westpac**) pleaded in this Statement of Claim; and
- (c) were not during any part of the Relevant Period, and are not as at the date of this Statement of Claim, any of the following:
  - (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of Westpac;
  - (ii) a related body corporate (as defined by s 50 of the *Corporations Act*) of Westpac;
  - (iii) an associated entity (as defined by s 50AAA of the *Corporations Act*) of Westpac;
  - (iv) an officer or a close associate (as defined by s 9 of the *Corporations Act*) of Westpac; and
  - (v) a judge or the Chief Justice of the Federal Court of Australia or a Justice or the Chief Justice of the High Court of Australia;
  - (vi) an officer or employee of, or other legal practitioner engaged by, Phi Finney McDonald Pty Ltd in relation to this proceeding; or
  - (vii) an expert or consultant engaged in relation to this proceeding,

**(Group Members).**

2. The Applicant:

- (a) is and was at all material times a resident of the State of New South Wales; and

- (b) acquired an interest in Westpac Shares during the Relevant Period.

### Particulars

- i) *Details of the particular acquisitions of Westpac Shares by the Applicant are set out below:*

<b>Date</b>	<b>Transaction type</b>	<b>Number of Westpac Shares</b>	<b>Price</b>
20/11/15	Acquisition on ASX	73	\$25.50
4/5/17	Acquisition on ASX	8,000	\$34.00

3. Immediately prior to the commencement of this proceeding, the group, on whose behalf this proceeding is brought, comprised more than seven persons.

## A.2 The Respondent

### A.2.1 Introduction

4. Westpac is and at all material times was:
- (a) incorporated pursuant to the Corporations Act and capable of being sued;
  - (b) a person within the meaning of s 1041H of the Corporations Act;
  - (c) a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
  - (d) a person within the meaning of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**), as applicable pursuant to:
    - (i) s 131 of the CCA;
    - (ii) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT);
    - (iii) s 28 of the *Fair Trading Act 1987* (NSW);
    - (iv) s 8 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);
    - (v) s 16 of the *Fair Trading Act 1989* (Qld);

(vi) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);

(vii) s 19 of the *Fair Trading Act 2010* (WA);

(viii) s 14 of the *Fair Trading Act 1987* (SA); and/or

(ix) s 27 of the *Consumer Affairs and Fair Trading Act* (NT),

as in force after 1 January 2011 (individually, or together, the **Australian Consumer Law**).

## **B. WESTPAC'S BUSINESS**

### **B.1 Westpac's Business**

5. At all material times, Westpac carried on business as a provider of integrated financial services, including retail, business and institutional banking, superannuation, life insurance, general insurance, broking services and finance services, including in Australia, New Zealand and the Pacific Region.
6. Westpac is and at all material times was the consolidated reporting entity for Westpac and its subsidiaries, within the meaning of Australian Accounting Standard AASB127 (Consolidated and Separate Financial Statements) (**Westpac Group**).
7. Westpac is and was at all material times:
  - (a) licensed to carry on banking business in Australia under the *Banking Act 1959* (Cth);
  - (b) authorised under the *Banking Act 1959* (Cth) to take deposits from customers, as an Authorised Deposit-Taking Institution (**ADI**) under the *Banking Act 1959* (Cth);
  - (c) subject to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (the **AML/CTF Act**) and the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007* (Cth) (**AML/CTF Rules**), and:
    - (i) a "person" and "reporting entity" within the meaning of s 5 of the AML/CTF Act; and
    - (ii) a provider of designated services to customers within the meaning of s 6 of the AML/CTF Act.

### Particulars

*Westpac provides, among others, the following designated services as identified in s 6 of the AML/CTF Act:*

- i) Item 1, Table 1 – in the capacity of account provider, opening an account, where the account provider is an ADI.*
- ii) Item 2, Table 1 – in the capacity of account provider for a new or existing account, allowing a person to become a signatory to the account, where the account provider is an ADI.*
- iii) Item 3, Table 1 – in the capacity of account provider for an account, allowing a transaction to be conducted in relation to the account, where the account provider is an ADI.*
- iv) Item 29, Table 1 – in the capacity of an ordering institution, accepting an electronic funds transfer instruction from the payer.*
- v) Item 30, Table 1 – in the capacity of a beneficiary institution, making money available to a payee as a result of an electronic funds transfer instruction.*

#### **B.1.1 Westpac's correspondent banking relationships and LitePay**

8. At all material times, Westpac had entered into correspondent banking relationships (within the meaning of section 5 of the AML/CTF Act and Part 3.2 of the AML/CTF Rules with a number of financial institutions (**Correspondent Banks**) that carry on activities or business at or through permanent establishments in countries other than Australia (**Correspondent Banking Relationships**).

### Particulars

- i) Westpac had Correspondent Banking Relationships with 16 foreign banks. The Applicant refers to and repeats the particulars to paragraph [7] and [8] of the Statement of Claim filed on 20 November 2019 by AUSTRAC in Federal Court of Australia proceeding no. NSD1914/2019 (**AUSTRAC SOC**).*
9. The banking services provided by Westpac to some or all of the Correspondent Banks in the course of facilitating the Correspondent Banking Relationships involved a Vostro account, namely an account held by Westpac for the relevant Correspondent Bank.

### Particulars



- i) *Vostro accounts were provided by Westpac to the Correspondent Banks described in the AUSTROC SOC (at [7]) as Banks A-P inclusive.*
  - ii) *Further particulars may be provided after discovery.*
- 10. At all material times, Westpac, as part of the Correspondent Banking Relationships, had arrangements with some or all its Correspondent Banks which included:
  - (i) Australasian Cash Management arrangements (**ACM Arrangements**);  
and
  - (ii) Off-system BSB arrangements (**OSBSB Arrangements**).
- 11. At all material times, ACM Arrangements:
  - (a) allowed Correspondent Banks to use Westpac's infrastructure to process payments for their overseas and domestic customers through Australian or New Zealand domestic payment systems;
  - (b) generally involved:
    - (i) initiation by the customer of the Correspondent Bank using the Correspondent Bank's platform;
    - (ii) the Correspondent Bank then sending the instructions to Westpac;
  - (c) for a number of ACM Arrangements, the Correspondent Banks using 'batch' funds transfer instructions from multiple payers to multiple payees and sending the instructions to Westpac in a single structured data file, via channels outside of the Society for Worldwide Interbank Financial Telecommunication (**SWIFT**) network (**non-SWIFT ACM Arrangements**).
- 12. At all material times, OSBSB Arrangements:
  - (a) allowed Correspondent Banks to use Westpac's infrastructure to process payments for their overseas and domestic customers through the Australian payments system;
  - (b) involved:

- (i) the relevant Correspondent Bank opening a Westpac settlement account which is allocated an off-system BSB;
  - (ii) the relevant Correspondent Bank maintaining customer accounts on its own ledger using the off-system BSB; and
  - (iii) each of the customer accounts mirroring a virtual account or a subaccount of the Correspondent Bank's account with Westpac.
13. At all material times on and from August 2016, Westpac provided a technology platform that facilitated low value international payments from Australia to other countries known as LitePay (**LitePay**).

#### **Particulars**

- i) *Litepay is a low value payments channel (for payments up to \$3,000) which was designed to provide customers with a low-cost solution for transferring money to a range of countries with a fixed fee of \$5 per transfer.*
14. At all material times, Westpac as a provider of designated services, was exposed to the risk that the provision by Westpac of designated services might (whether inadvertently or otherwise) involve or facilitate money laundering or the financing of terrorism (**ML/TF Risk**).

#### **Particulars**

- i) *Money laundering is defined in section 5 of the AML/CTF Act to include conduct that amounts to an offence under Division 400 of the Criminal Code.*
- ii) *Division 400 of the Criminal Code creates an offence if a person deals with money or other property and either: (a) the money or property is, and the person believes it to be, proceeds of crime; or (b) the person intends that the money or property will become an instrument of crime; or (c) either the money or property is proceeds of crime or there is a risk that the money or property will become an instrument of crime; and the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime; or (d) either the money or property is proceeds of crime or there is a risk that the money or property will become an*

*instrument of crime; and the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime; or (e) it is reasonable to suspect that the money or property is proceeds of crime.*

- ii) *'deals with money or other property' has the following definition in section 400.2 of the Criminal Code: " a person deals with money or other property if the person (a) receives, possesses, conceals or disposes of money or other property; (b) imports money or other property into Australia; (c) exports money or other property from Australia; (d) engages in a banking transaction relating to money or other property"*
- iii) *'Instrument of crime' has the following definition in section 400.1 of the Criminal Code: "money or other property is an instrument of crime if it is used in the commission of, or used to facilitate the commission of, an offence against a law of the Commonwealth, a State, a Territory or a foreign country that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence)."*
- iv) *'proceeds of crime' has the following definition in section 400.1 of the Criminal Code: "means any money or other property that is wholly or partly derived or realised, directly or indirectly, by any person from the commission of an offence against a law of the Commonwealth, a State, a Territory or a foreign country that may be dealt with as an indictable offence..."*
- v) *Money laundering includes money used in the commission of, or to facilitate, child exploitation.*
- vi) *AUSTRAC's 'Typologies and cases studies report 2013' reported case studies (19 and 22) where suspects conducted outgoing internal fund transfer instructions to the Philippines for the purposes of child exploitation. The report stated that 'indicators' of child exploitation included: multiple low-value international fund transfers to a high-risk jurisdiction; and multiple international fund transfers sent to the same beneficiary.*

15. At all material times, the ACM Arrangements, OSBSB Arrangements and LitePay had an inherent and higher level of ML/TF Risk due to, among other things:

- (a) the risks with cross border movements of funds;
- (b) jurisdictional risk;
- (c) limited transparency as to the identity and source of funds of customers of the Correspondent Banks;
- (d) nested arrangements and relationships with other correspondent banks in sanctioned or high-risk jurisdictions;
- (e) significant regulatory action by overseas regulators; and
- (f) high risk customers.

## **B.2 The market disclosure regime governing Westpac**

16. Westpac is, and was at all material times, included in the official list of the financial markets operated by the Australian Securities Exchange (**ASX**) and New Zealand's Exchange (**NZX**), and by reason thereof, Westpac Shares are:
- (a) ED securities for the purpose of s 111AE of the Corporations Act, and quoted ED securities within the meaning of s 111AM of the Corporations Act; and
  - (b) able to be purchased and sold by investors and potential investors in Westpac Shares (**Affected Market**) on the financial markets operated by the ASX and NZX.
17. Westpac is and was at all material times:
- (a) a public company within the meaning of s 9 of the Corporations Act;
  - (b) a listed disclosing entity within the meaning of s 111AC(1) of the Corporations Act;
  - (c) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;
  - (d) subject to and bound by the Australian Stock Exchange Listing Rules (**ASX Listing Rules**);
  - (e) subject to and bound by the NZX Listing Rules (**NZX Listing Rules**);

- (f) deemed by NZX Listing Rules 1.7.1 and 1.7.2 to satisfy and comply with the NZX Listing Rules as long as it, among other things:
  - (i) remained listed on the ASX;
  - (ii) complied with the ASX Listing Rules; and
  - (iii) NZX Listing Rule 1.7.2(a);
- (g) obliged by:
  - (i) ss 111AP(1) and/or 674(1) of the Corporations Act and/or ASX Listing Rule 3.1 to, once it is, or becomes aware of, any information concerning Westpac that a reasonable person would expect to have a material effect on the price or value of Westpac Shares, tell the ASX that information immediately (unless the exceptions in ASX Listing Rule 3.1A apply); and/or
  - (ii) NZX Listing Rule 1.7.2(a) to release through the NZX's nominated market announcement platform at the same time as, or promptly and without delay after, any information or notice it has provided to the ASX that is made public, and any additional information NZX requests from time to time, in the manner and form NZX prescribes from time to time;

**(Continuous Disclosure Obligations);**

- (h) a party to an arrangement with the Bank of New York Mellon pursuant to which the Bank of New York Mellon issues Westpac ADRs (at a ratio of 1 Westpac ADR to 5 Westpac Shares) which are traded on the New York Stock Exchange in the United States of America under the ticker "WBK".

**B.3 The Anti-Money Laundering and Counter-Terrorism Financing regime governing Westpac**

***B.3.1 Westpac's ML/TF Preliminary Risk Assessment and Due Diligence Assessment obligations***

18. At all material times:

- (a) Westpac was obliged by s 98(1) of the AML/CTF Act (a civil penalty provision) to carry out regular assessments of the risk it may reasonably face that each of its Corresponding Banking Relationships might (inadvertently or otherwise) involve

or facilitate money laundering or financing of terrorism (that is, the ML/TF Risk) **(ML/TF Preliminary Risk Assessment)**;

- (b) if warranted by the risk identified in an assessment carried out in accordance with subsection 98(1) of the AML/CTF Act, Westpac was obliged by s 98(2)(a) of the AML/CTF Act (a civil penalty provision) and the AML/CTF Rules to carry out regular assessments of:
  - (i) the nature of the Correspondent Bank's businesses, including its products and customer base (rules 3.1.4(1) and 3.1.2(1) of the AML/CTF Rules);
  - (ii) the adequacy of the Correspondent Bank's controls and internal compliance practices in relation to anti-money laundering and counter-terrorism financing (rules 3.1.4(1) and 3.1.2(6) of the AML/CTF Rules);
  - (iii) the nature of the Correspondent Bank's ongoing business relationship with Westpac, including the types of transactions carried out as part of that relationship (rule 3.1.4(3) of the AML/CTF Rules); and
  - (iv) any material changes in the nature of the Correspondent Bank's ongoing business relationship with Westpac, including in respect of the types of transactions carried out as part of that relationship (rule 3.1.4(4) of the AML/CTF Rules),

**(Due Diligence Assessment)**; and

- (c) Westpac was obliged by s 98(2)(b) of the AML/CTF Act to prepare a written record of each assessment it undertook in accordance with s 98(2)(a) of the AML/CTF Act as soon as practicable after the completion of that assessment.

### ***B.3.2 Westpac's IFTI reporting obligations***

19. At all material times:

- (a) if Westpac was the sender of an international funds transfer instruction (within the meaning of s 46 of the AML/CTF Act) **(IFTI)** transmitted out of Australia **(Outgoing IFTI)**, Westpac was obliged by ss 45(1)(a)(i) and (2) of the AML/CTF Act (s 45(2) being a civil penalty provision) to within 10 business days of sending that instruction, give the Australian Transaction Reports and Analysis Centre **(AUSTRAC)** CEO a report about that instruction;

- (b) if Westpac was the recipient of an international funds transfer instruction (within the meaning of s 46 of the AML/CTF Act) transmitted into Australia (**Incoming IFTI**), Westpac was obliged by ss 45(1)(a)(ii) and (2) of the AML/CTF Act (s 45(2) being a civil penalty provision) to within 10 business days of sending that instruction, give the AUSTRAC CEO a report about that instruction; and
- (c) s 45(3) of the AML/CTF Act and rule 16.3(1) and (3)(a)(i) of the AML/CTF Rules required a report about an IFTI within the meaning of item 2 of the table in s 46 of the AML/CTF Act, to contain:
  - (i) the name of the payer; and
  - (ii) for an instruction within the meaning of paragraphs 70(b) or 70(c) of the AML/CTF Act, one of the following:
    - (A) the payer's full business or residential address (not being a post box address);
    - (B) a unique identification number given to the payer by the Commonwealth or an authority of the Commonwealth (for example, an Australian Business Number or an Australian Company Number);
    - (C) a unique identification number given to the payer by the government of a foreign country;
    - (D) the identification number given to the payer by the ordering institution; and
    - (E) if the payer is an individual—the payer's date of birth, the country of the payer's birth and the town, city or locality of the payer's birth.

### ***B.3.3 Westpac's Record Obligations***

20. At all material times, if Westpac was an interposed institution in a funds transfer chain (within the meaning of s 64(2) of the AML/CTF Act) and:
- (a) the transfer instruction was passed on by Westpac at, or through, its permanent establishment in Australia (within the meaning of s 64(7)(a) and 64(7)(b)(ii) of the AML/CTF Act); and

- (b) the transfer instruction is accepted by the ordering institution (within the meaning of ss 64(2) and 64(7)(c)(i) of the AML/CTF Act) at, or through, a permanent establishment of the ordering institution in Australia; and
- (c) some or all of the required transfer information (within the meaning of s 70 of the AML/CTF Act) was passed on to Westpac by another institution in the funds transfer chain (within the meaning of ss 64(2) and 64(7)(d) of the AML/CTF Act), then,

before passing on the transfer instruction to another institution in the chain, Westpac was obligated by s 64(7)(f) of the AML/CTF Act to ensure that the instruction includes so much of the required transfer information as was passed on to Westpac as pleaded in subparagraph (c) above.

- 21. At all material times, if Westpac was the ordering institution in a funds transfer chain (within the meaning of s 64(2) of the AML/CTF Act) and the transfer instruction was accepted by Westpac at or through a permanent establishment of Westpac in Australia (within the meaning of s 64(6)(b) of the AML/CFT Act), then, before passing on the transfer instruction to another person in the chain, Westpac was obligated by s 64(6) of the AML/CTF Act to ensure that the instruction included the required transfer information (within the meaning of s 70 of the AML/CTF Act).
- 22. At all material times, if in a multiple-institution person-to-person electronic funds transfer instruction (within the meaning of s 64(2) of the AML/CTF Act) to which s 64 of the AML/CTF Act applied:
  - (a) Westpac was in the funds transfer chain (within the meaning of s 64(2) of the AML/CTF Act); and
  - (b) Westpac was an interposed person (within the meaning of s 64(2) of the AML/CTF Act); and
  - (c) Westpac passed on a transfer instruction, at or through a permanent establishment in Australia to another financial institution; and
  - (d) the transferred money was made available at or through a permanent establishment of the beneficiary institution in Australia; and
  - (e) some or all of the required transfer information (within the meaning of s 70 of the AML/CTF Act) was passed on to Westpac; and



- (f) the transfer instruction was accepted by the ordering institution (within the meaning of s 64(2) of the AML/CTF Act) by a permanent establishment of the ordering institution in a foreign country; and
  - (g) the transfer instruction was passed on to Westpac by a permanent establishment of the ordering institution, or of another person, in a foreign country,
- then, Westpac was obligated by s 115(2) of the AML/CTF Act (a civil penalty provision) to:
- (h) make a record of so much of the required transfer information as was passed on to Westpac as pleaded in subparagraph (e) above; and
  - (i) retain that record, or a copy of the record, for 7 years after the transfer instruction was passed on to the person.

***B.3.4 Westpac's anti-money laundering and counter terrorism financing program obligations***

23. At all material times:

- (a) Westpac was obligated by s 81 of the AML/CTF Act (a civil penalty provision) to not commence to provide a designated service to a customer if Westpac:
  - (i) had not adopted; and
  - (ii) did not maintain;

an anti-money laundering and counter terrorism financing program that applies to Westpac;
- (b) by section 83 of the AML/CTF Act, an anti-money laundering and counter terrorism financing program included a joint anti-money laundering and counter-terrorism financing program;
- (c) by section 85(1), (2)(a) and (c) of the AML/CTF Act a joint anti-money laundering and counter-terrorism financing program is a written program that:
  - (i) applies to each reporting entity that from time to time belongs to a particular designated business group;
  - (ii) is divided into Part A (general) and Part B (customer identification), where Part A is a part:

- (A) with the primary purpose to identify, mitigate, and manage, the risk Westpac may reasonably face that the provision by Westpac of designated services at or through a permanent establishment of Westpac in Australia might (whether inadvertently or otherwise) involve or facilitate money laundering or financing of terrorism; and
  - (B) that complies with the AML/CTF Rules;
- (d) Westpac purported to adopt and maintain a joint anti-money laundering and counter-terrorism financing program that applied to Westpac (**Westpac's AML/CTF Program**); and
- (e) by reason of the matters pleaded in subparagraph (d) above, Westpac was obligated by s 82 of the AML/CTF Act (this being a civil penalty provision) to comply with Part A of Westpac's AML/CTF Program.

#### **Particulars**

- i) *As to the matters pleaded in subparagraph (d) above, the Part A of Westpac's AML/CTF Program comprised:*
    - A) *version 3.3 effective from 22 May 2013 to 10 February 2015;*
    - B) *version 4.0 effective from 11 February 2015 to 26 January 2016;*
    - C) *version 4.1 effective from 27 January 2016 to 6 March 2018;*
    - D) *version 1.0 effective from 7 March 2018 to 7 March 2018;*
    - E) *version 1.1 effective from 8 March 2018 to 1 May 2018;*
    - F) *version 1.2 effective from 2 May 2018 to 13 August 2018; and*
    - G) *version 1.3 effective on and from 14 August 2018.*
24. At all material times, by reason of the matters pleaded in paragraph 23 above, Westpac was obliged by:
- (a) rule 9.1.3 of the AML/CTF Rules to ensure that in determining and putting in place appropriate risk-based systems and controls, Part A of Westpac's AML/CTF Program must have regard to the following factors in relation to each reporting entity in the designated business group:
    - (i) the nature, size and complexity of business; and

- (ii) the type of ML/TF risk that might be reasonably faced;
- (b) 9.1.4 of the AML/CTF Rules to ensure that in identifying the ML/TF risk, Part A of Westpac's AML/CTF Program must take account of the risk posed by the following factors in relation to each reporting entity in the designated business group:
  - (i) the customer types, including any politically exposed persons;
  - (ii) the types of designated services provided;
  - (iii) the methods by which designated services are delivered; and
  - (i) the foreign jurisdictions dealt with;
- (c) rule 9.1.5 of the AML/CTF Rules to ensure that Part A of Westpac's AML/CTF Program is designed to enable Westpac to:
  - (i) prior to 4 June 2014:
    - (A) assess the ML/TF risk posed by the following:
      1. all new designated services prior to introducing them to the market;
      2. all new methods of designated service delivery prior to adopting them; and
      3. all new or developing technologies used for the provision of a designated service prior to adopting them;
  - (ii) following 4 June 2014:
    - (A) understand the nature and purpose of the business relationship with its customer types, including, as appropriate, the collection of information relevant to that understanding; and
    - (B) understand the control structure of non-individual customers;
    - (C) identify significant changes in ML/TF risk for the purposes of the group's Part A and Part B programs, including:

1. risks identified by consideration of the factors in rule 9.1.4 of the AML/CTF Rules; and
  2. risks arising from changes in the nature of the business relationship, control structure or beneficial ownership of its customers; and
- (D) identify, mitigate and manage any ML/TF risk arising from:
1. all new designated services prior to introducing them to the market;
  2. all new methods of designated service delivery prior to adopting them;
  3. all new or developing technologies used for the provision of a designated service prior to adopting them; and
  4. changes arising in the nature of the business relationship, control structure or beneficial ownership of its customers;
- (d) rule 9.9.1(2) of the AML/CTF Rules to ensure that Part A of Westpac's AML/CTF Program contained appropriate systems and controls designed to ensure compliance with the reporting obligations of the reporting entity;
- (e) rule 15.4 of the AML/CTF Rules to include a transaction monitoring program in Part A of Westpac's AML/CTF Program;
- (f) rule 15.5 of the AML/CTF Rules to ensure that the transaction monitoring program must include appropriate risk-based systems and controls to monitor the transactions of customers;
- (g) rule 15.6 of the AML/CTF Rules to ensure that the transaction monitoring program have the purpose of identifying, having regard to ML/TF risk, any transaction that appears to be suspicious within the terms of section 41 of the AML/CTF Act; and
- (h) rule 15.7 of the AML/CTF Rules to ensure that the transaction monitoring program should have regard to complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or visible lawful purpose.

### **B.3.5 Westpac's AML/CTF Program**

25. At all material times:

- (a) Part A of Westpac's AML/CTF Program contained procedures for managing ML/TF Risk which included procedures for ML/TF Preliminary Risk Assessments; and
- (b) for the purposes of Part A of Westpac's AML/CTF Program, further procedures were set out in the Westpac Group ML/TF Preliminary Risk Assessment Methodology Standard, as amended from time to time,

**(Part A Assessment Procedures).**

#### **Particulars**

- i) *Section 6 of Part A of versions 3.3 and 4.0, Section 7 of Part A of version 4.1, Section 4 of versions 1.0. 1.1, 1.2 and 1.3 of Part A of Westpac's AML/CTF Program.*
- ii) *Further particulars may be provided following discovery.*

26. At all material times, Part A of Westpac's AML/CTF Program included a transaction monitoring program (**Transaction Monitoring Program**) whereby:

- (a) the details and scope of Westpac's transaction monitoring program was set out in the Westpac Australia AML/CTF Transaction Monitoring Program Standard and various Transaction Monitoring Program Procedures developed by Westpac's business units;
- (b) customer transactions were monitored using the Detica (Westpac's financial crimes monitoring software) automated transaction monitoring system among other processes;
- (c) Westpac's transaction monitoring system used a set of targeted rules, referred to as detection scenarios, designed to identify transactions that may be suspicious for the purposes of s 41 of the Act, including transactions that appear to be complex, unusually large transactions and unusual patterns of transactions without any apparent economic or visible lawful purpose; and

- (d) Vostro accounts were not subject to the Transaction Monitoring Program, and Westpac did not apply transaction monitoring to Vostro accounts until August 2017.

**Particulars**

- i) *Paragraph 7.5.1 of Section 7 of Part A of versions 3.3 and 4.0; paragraph 8.5.1 of Section 8 of Part A of version 4.1. and paragraph 5.2 of Section 5 of versions 1.0, 1.1, 1.2 and 1.3 of the Part A of Westpac's AML/CTF Program.*
- ii) *Further particulars may be provided following discovery.*

**B.3.6 Westpac's Monitoring Obligations**

27. At all material times Westpac was obliged by:

- (a) s 36(1) of the AML/CTF Act (a civil penalty provision) to monitor its customers in relation to the provision of designated services with a view to identifying, mitigating and managing ML/TF Risk;
- (b) rule 15.5 of the AML/CTF Rules to ensure that the transaction monitoring program include appropriate risk-based systems and controls to monitor the transactions of customers;
- (c) rule 15.8 of the AML/CTF Rules to include an enhanced customer due diligence program in Part A of Westpac's AML/CTF Program;
- (d) rule 15.9 of the AML/CTF Rules to apply the enhanced customer due diligence program when, among other things:
  - (i) it determines under its risk-based systems and controls that the ML/TF Risk is high; or
  - (ii) a suspicion has arisen for the purposes of section 41 of the AML/CTF Act; and
- (e) s 41(2) of the AML/CTF Act (a civil penalty provision) to report to AUSTRAC "suspicious matters" as described within s 41(1) of the AML/CTF Act within the time specified in s 42(2).

### **B.3.7 Westpac's exposure to reputational risk and civil penalties**

28. At all material times in the Relevant Period, Westpac was subject to:

- (a) reputational risk arising from negative perception on the part of customers, counterparties, shareholders, investors, debt holders, market analysts and regulators, with adverse reputational risk outcomes flowing from the failure to manage other types of risk (including compliance risk); and
- (b) the risk of loss of reputation if it failed to comply with its obligations under the AML/CTF Act, the objects of which included the combating of money laundering and financing of terrorism.

#### **Particulars**

- i) *Westpac's 2017 Annual Report*), pp 97-100, 103-105, 108-110.
- ii) *Westpac's US Disclosure 30 September 2017 (2017 US Disclosure)*, pp 33-34, 119-122, 125-126, 132-134.
- iii) *Westpac's 2018 Annual Report*, pp 108-113, 116-120.
- iv) *Westpac's US Disclosure 30 September 2018 (2018 US Disclosure)*, pp 40-41, 129-133, 137-141, 148.
- v) *Westpac's 2019 Annual Report*, pp 102-106, 109-113.
- vi) *Westpac's US Disclosure 30 September 2019 (2019 US Disclosure)*, pp 33, 120-124, 127-131, 134-136.

29. Further, at all material times in the Relevant Period:

- (a) Westpac would be potentially liable to civil penalties if it did not:
  - (i) carry out regular ML/TF Preliminary Risk Assessments and Due Diligence Assessments in contravention of s 98 of the AML/CTF Act;
  - (ii) provide the AUSTRAC CEO with Outgoing IFTI and Incoming IFTI reports within 10 business days in contravention of s 45(2) of the AML/CTF Act;
  - (iii) adopt and maintain an anti-money laundering and counter terrorism financing program (within the meaning of ss 81, 83 and 85 of the AML/CTF Act) in contravention of s 81 of the AML/CTF Act;

- (iv) comply with Part A of Westpac's AML/CTF Program in contravention of s 82 of the AML/CTF Act;
- (v) monitor its customers in relation to the provision of designated services with a view to identifying, mitigating and managing ML/TF Risk in contravention of s 36(1) of the AML/CTF Act),

in the amount of up to 100,000 penalty units per contravention, being at relevant times:

- (vi) \$11,000,000, between 1 June 2008 and 27 December 2012;
  - (vii) \$17,000,000, between 28 December 2012 and 30 July 2015;
  - (viii) \$18,000,000, between 31 July 2015 and 30 June 2017;
  - (ix) \$21,000,000, on and after 1 July 2017;
- (b) Anti-money laundering and counter-terrorism financing compliance had been the subject of increasing regulatory change and enforcement, and if Westpac failed to comply with the requirements of such regulations, it may become subject to significant regulatory fines, regulatory sanctions and suffer material financial loss or loss of reputation. Further, the increasing volume, complexity and global reach of such regulatory requirements, and the increased propensity for sanctions and the level of financial penalties for breaches of requirements exacerbated the severity of this risk.

#### **Particulars**

- i) As to subparagraph (a), AML/CTF Act, s 175(4); Crimes Act 1914 (Cth), s 4AA.*
- ii) As to sub-paragraph (b), the Applicant refers to:*
  - A) Westpac's 2013 Annual Report pp 105-106; 109-110;*
  - B) Westpac's 2014 Annual Report pp 112-113, 117;*
  - C) Westpac's 2015 Annual Report pp 99-100, 104;*
  - D) Westpac's 2016 Annual Report pp 94-95, 99;*



- E) *Westpac's 2017 Annual Report, pp 97-100;*
- F) *Westpac's 2018 Annual Report, pp 21, 108-112; and*
- G) *Westpac's 2019 Annual Report pp 15, 102-105.*

#### **B.4 Directors and officers of Westpac**

30. At all material times, Westpac had a Risk and Compliance Committee which was tasked to assist the Board of Westpac to:

- (a) consider and approve Westpac's overall risk management framework for managing financial and non-financial risks;
- (b) oversee the risk profile and set risk appetite for material risks;
- (c) approve Westpac's Risk Management Framework, Risk Management Strategy and Group Risk Appetite Statement;
- (d) make its annual declaration to APRA on risk management; and
- (e) oversee compliance management within Westpac.

#### **Particulars**

- i) Westpac's Board Risk & Compliance Committee Charter.
- ii) Further particulars may be provided after discovery.

##### **B.4.1 The Chief Executive Officer**

31. Ms Gail Kelly (**Ms Kelly**) was:

- (a) from 1 February 2008 to 1 February 2015, the Group Chief Executive Officer and Managing Director of Westpac;
- (b) from 1 February 2008 to 1 February 2015, an executive director of Westpac; and
- (c) at all material times until 1 February 2015, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

32. Mr Brian Hartzler (**Mr Hartzler**) was:

- (a) from 1 February 2015 to 2 December 2019 the Group Chief Executive Officer of Westpac;
- (b) from 2 February 2015 to the date of the commencement of this proceeding, an executive director of Westpac; and
- (c) at all material times from 1 February 2015, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

#### **B.4.2 The Chief Risk Officer**

33. At all material times, Westpac had a Chief Risk Officer who:

- (a) is responsible for risk management and compliance activities across the Group; and
- (b) is delegated the oversight of Westpac's risk management framework and its implementation by Westpac's Board; .

34. Mr Greg Targett (**Mr Targett**) was:

- (a) from 2 July 2009 to 31 July 2014, the Chief Risk Officer of Westpac; and
- (b) at all material times until 31 July 2014, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

35. Ms Alexandra Holcomb (**Ms Holcomb**) was:

- (a) from 1 August 2014 to 25 June 2018, the Chief Risk Officer of Westpac; and
- (b) at all material times from 1 August 2014 to 25 June 2018, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

36. Mr Peter King (**Mr King**) was:

- (a) from 26 June 2018 to 30 September 2018, the acting Chief Risk Officer of Westpac; and
- (b) at all material times from 26 June 2018 to 30 September 2018, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

37. Mr David Stephen (**Mr Stephen**) was:
- (a) from 1 October 2018 to the date of the commencement of this proceeding, the Chief Risk Officer of Westpac; and
  - (b) at all material times from 26 June 2018 to the date of the commencement of this proceeding, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

#### ***B.4.3 The Chairman***

38. Mr Lindsay Philip Maxsted (**Mr Maxsted**) was:
- (a) from 1 March 2008 to the date of the commencement of this proceeding, an independent director of Westpac;
  - (b) from 14 December 2011 to the date of the commencement of this proceeding, the Independent Chairman of Westpac;
  - (c) from on or around 1 March 2008 to the date of the commencement of this proceeding, a member of Westpac's Risk and Compliance Committee; and
  - (d) at all material times, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

#### ***B.4.4 Non-executive directors***

39. Mr Ewen Graham Wolseley Crouch (**Mr Crouch**) was:
- (a) from 1 February 2013 to the date of the commencement of this proceeding, an independent director of Westpac;
  - (b) from on or around 1 February 2013 to the date of the commencement of this proceeding, a member of Westpac's Risk and Compliance Committee, and
  - (c) at all material times, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
40. Mr Peter Ralph Marriott (**Mr Marriott**) was:
- (a) from 1 June 2013 to the date of the commencement of this proceeding, an independent director of Westpac;

- (b) from on or around 22 July 2013 to the commencement of the proceeding, a member of Westpac's Risk and Compliance Committee; and
  - (c) at all material times, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
41. Ms Catriona Alison Deans (**Ms Deans**) was:
- (a) from 1 April 2014 to the date of the commencement of this proceeding, an independent director of Westpac;
  - (b) from on or around 1 April 2014 to the commencement of the proceeding, a member of Westpac's Risk and Compliance Committee; and
  - (c) at all material times from 1 April 2014, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
42. Mr Craig William Dunn (**Mr Dunn**) was:
- (a) from 1 June 2015 to the date of the commencement of this proceeding, an independent director of Westpac;
  - (b) from on or around 5 June 2015 to the commencement of the proceeding, a member of Westpac's Risk and Compliance Committee; and
  - (c) at all material times from 1 June 2015, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
43. Mr Peter Stanley Nash (**Mr Nash**) was:
- (a) from 7 March 2018 to the date of the commencement of this proceeding, an independent director of Westpac;
  - (b) from on or around 7 March 2018 to the commencement of the proceeding, a member of Westpac's Risk and Compliance Committee; and
  - (c) at all material times from 7 March 2018, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
44. Ms Nerida Frances Caesar (**Ms Caesar**) was:

- (a) from 1 September 2017 to the date of the commencement of this proceeding, an independent director of Westpac;
- (b) from on or around 28 September 2017 to the commencement of the proceeding, a member of Westpac's Risk and Compliance Committee; and
- (c) at all material times from 1 September 2017, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

45. Ms Yuen Mei Anita Fung (**Ms Fung**) was:

- (a) from 1 October 2018 to the date of the commencement of this proceeding, an independent director of Westpac;
- (b) from on or around 1 October 2018 to the commencement of the proceeding, a member of Westpac's Risk and Compliance Committee; and
- (c) at all material times from 1 October 2018, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

46. Mr Steven John Harker (**Mr Harker**) was:

- (a) from 1 March 2019 to the date of the commencement of this proceeding, an independent director of Westpac; and
- (b) at all material times from 1 March 2019, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

47. Ms Margaret Leone Seale (**Ms Seale**) was:

- (a) from 1 March 2019 to the date of the commencement of this proceeding, an independent director of Westpac; and
- (b) at all material times from 1 March 2019, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

48. Mr Peter John Oswin Hawkins (**Mr Hawkins**) was:

- (a) from 1 December 2008 to 12 December 2018, an independent director of Westpac;

- (b) from on or around 1 December 2008 to 12 December 2018, a member of Westpac's Risk and Compliance Committee; and
  - (c) at all material times until 12 December 2018, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
49. Mr Robert George Elstone (**Mr Elstone**) was:
- (a) from 1 February 2012 to 8 December 2017, an independent director of Westpac;
  - (b) from on or around 6 March 2012 to 8 December 2017, a member of Westpac's Risk and Compliance Committee; and
  - (c) at all material times until 8 December 2017, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
50. Ms Elizabeth Blomfield Bryan (**Ms Bryan**) was:
- (a) from 6 November 2006 to 9 December 2016, an independent director of Westpac;
  - (b) from on or around 7 May 2007 to 9 December 2016, a member of Westpac's Risk and Compliance Committee; and
  - (c) at all material times until 9 December 2016, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
51. Ms Ann Darlene Pickard (**Ms Pickard**) was:
- (a) from 1 December 2011 to 12 December 2014, an independent director of Westpac;
  - (b) from on or around 6 March 2012 to 12 December 2014, a member of Westpac's Risk and Compliance Committee; and
  - (c) at all material times until 12 December 2014, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
52. Mr John Simon Curtis (**Mr Curtis**) was:
- (a) from 1 December 2008 to 25 April 2014, an independent director of Westpac;

- (b) from on or around 1 December 2008 to 25 April 2014, a member of Westpac's Risk and Compliance Committee; and
- (c) at all material times until 25 April 2014, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

53. Mr Gordon McKellar Cairns (**Mr Cairns**) was:

- (a) From 8 July 2004 to 13 December 2014, an independent director of Westpac;
- (b) from 7 May 2007 to 13 December 2014, a member of Westpac's Risk and Compliance Committee; and
- (c) at all material times until 13 December 2014, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

#### ***B.4.5 The Chief Compliance Officer***

54. At all material times, Westpac had a Chief Compliance Officer whose role included, inter alia, the receipt of compliance function reports from business line management responsible for managing compliance.

55. Ms Rebecca Lim (**Ms Lim**) was:

- (a) From November 2011 to the date of the commencement of this proceeding, the General Counsel of Westpac;
- (b) from 2013 to October 2017, the Chief Compliance Officer of Westpac; and
- (c) at all material times until 13 December 2013, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

56. Mr Jamie Kelly (**Mr Kelly**) was:

- (a) from October 2017 to the date of the commencement of this proceeding, the Chief Compliance Officer of Westpac; and
- (b) at all material times from October 2017, an officer of Westpac within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12

**B.5 The knowledge of the officers of Westpac is the knowledge of Westpac**

57. By reason of the matters pleaded in paragraphs 31 and 32, and 38 to 53, any information of which any or all of:

- (a) Ms Kelly;
- (b) Mr Hartzler;
- (c) Mr Maxsted;
- (d) Mr Crouch;
- (e) Mr Marriott;
- (f) Ms Deans;
- (g) Mr Dunn;
- (h) Mr Nash;
- (i) Ms Caesar;
- (j) Ms Fung;
- (k) Mr Harker;
- (l) Ms Seale;
- (m) Mr Hawkins;
- (n) Mr Elstone;
- (o) Ms Bryan;
- (p) Ms Pickard;
- (q) Ms Curtis; and
- (r) Mr Cairns,

(together, **Westpac Board**) became aware, or which ought reasonably to have come into his or her possession in the course of the performance of his or her respective



duties as an officer of Westpac, was information of which Westpac was aware (as awareness is defined in ASX Listing Rule 19.12).

58. By reason of the matters pleaded in paragraphs 34 to 37, and 55 to 56 any information of which any or all of:

- (a) Mr Targett;
- (b) Ms Holcomb;
- (c) Mr King;
- (d) Mr Stephen;
- (e) Ms Lim; and
- (f) Mr Kelly,

(together, **Westpac Officers**) became aware, or which ought reasonably to have come into his or her possession in the course of the performance of his or her respective duties as an officer of Westpac, was information of which Westpac was aware (as awareness is defined in ASX Listing Rule 19.12).

## **C. CONTINUOUS DISCLOSURE CONTRAVENTIONS**

### **C.1 Westpac's knowledge**

#### ***C.1.1 The Deficient Risk Assessment Information***

59. On and from 20 November 2013, Westpac failed to:

- (a) carry out regular ML/TF Preliminary Risk Assessments for each of the Correspondent Banking Relationships in contravention of section 98(1) of the AML/CTF Act; and/or
- (b) carry out regular Due Diligence Assessments for each of the Correspondent Banking Relationships, despite the assessments being warranted by the risks identified in Westpac's previous ML/TF Preliminary Risk Assessments, in contravention of s 98(2) of the AML/CTF Act,

(together and severally, the **Deficient Risk Assessment Information**).

## **Particulars**

*As to the matters in subparagraph (a) above, the Applicant relies on the following matters:*

- i) The Applicant refers to and repeats the particulars to paragraph [13] of the AUSTRAC SOC.*
- ii) Without limitation to sub-paragraph (i) above, the Applicant relies upon the following matters:*
- iii) On and from 20 November 2013 to 20 November 2019, Westpac carried out 47 assessments with respect to 16 Correspondent Banks, but at no time did Westpac carry out an appropriate assessment of the inherent risks it may reasonably face that the banking services provided through each of the Correspondent Banking relationships might (inadvertently or otherwise) involve or facilitate money laundering or financing of terrorism.*
- iv) Westpac did not identify the banking services and transactions it facilitated through its Correspondent Banking Relationships, accordingly, the inherent ML/TF risks reasonably faced by Westpac with respect to these banking services and transactions were therefore not assessed.*
- v) Westpac did not assess the impact of higher ML/TF risks upon the banking services provided by Westpac to the Correspondent Banks, including by reason that a number of Correspondent Banks disclosed to Westpac that:*
  - A) they provided services through nested arrangements, or downstream correspondent banking.*
  - B) they had relationships with banks in sanctioned countries, and subsidiaries in sanctioned countries.*
- vi) Some banking services, including those facilitated through the non-SWIFT ACM arrangements, involved payments that were not fully transparent.*
- vii) In a number of instances, Westpac did not appropriately assess the jurisdictional risks of a Correspondent Banking Relationship.*
- viii) Where Westpac identified significant regulatory action against a Correspondent Bank for AML/CTF and sanctions failures, it did not*

*assess whether those failures impacted upon the inherent risk of the banking services provided by Westpac to the Correspondent Bank.*

- ix) Westpac did not carry out an appropriate assessment of the likelihood and impact of the inherent ML/TF risks it reasonably faced with respect to each Correspondent Banking Relationship.*
- x) Further particulars may be provided after discovery.*

*As to the matters in subparagraph (b) above, the Applicant relies on the following matters:*

- i) The Applicant refers to and repeats the particulars to paragraph [16] of the AUSTRAC SOC.*
- ii) Without limitation to sub-paragraph (i) above, the Applicant relies upon the following matters:*
- iii) Westpac did not regularly assess the nature of each Correspondent Bank's business, including its products and customer base: r 3.1.4(1) and r 3.1.2(1) of the AML/CTF Rules.*
- iv) Westpac did not regularly assess the adequacy of each Correspondent Bank's controls and internal anti-money laundering and counter-terrorism compliance practices: r 3.1.4(1) and r 3.1.2(6) of the AML/CTF Rules.*
- v) Westpac did not regularly assess the nature of each Correspondent Bank's ongoing business relationship with Westpac, including the types of transactions carried out as part of that relationship: r 3.1.4(3) of the AML/CTF Rules.*
- vi) Westpac did not regularly assess any material changes to the ongoing business relationship with each Correspondent Bank, including in respect of the types of transactions carried out as part of that relationship: r 3.1.4(4) of the Rules.*

60. From a date presently unknown to the Applicant, but not later than 16 December 2013, alternatively 31 August 2017, Westpac was aware (within the meaning of ASX Listing Rule 19.12) of the Deficient Risk Assessment Information.

### **Particulars**

- i) *Senior executives within Westpac's risk and compliance function actually knew from no later than mid 2013 that Westpac was not applying transaction monitoring to Vostro accounts, despite the fact that it was becoming industry practice to apply automated transaction monitoring to Vostro accounts.*
- ii) *It is to be inferred that Mr Targett (by reason of his role as Chief Risk Officer) and/or Ms Lim (by reason of her role as Chief Compliance Officer) had the same knowledge of those senior executives within the risk and compliance function as specified in sub-paragraph (i) above.*
- iii) *Mr Targett and/or Ms Lim ought reasonably to have known that the failure to apply transaction monitoring to Vostro accounts meant that Westpac was not in compliance with, inter alia, r3.1.2(1) and r3.1.4(3) of the AML/CTF Rules, and sections 98(1) and/or (2) of the AML/CTF Act;*
- iv) *It follows from the matters set out in sub-paragraphs (i) to (iii) above that Mr Targett and/or Ms Lim ought reasonably to have been aware of the Deficient Risk Assessment Information by no later than 16 December 2013.*
- v) *Additionally, the Westpac Board as constituted from time to time ought reasonably to have been aware of the Deficient Risk Assessment Information on and from 16 December 2013, because Mr Targett, his successors in title as Chief Risk Officer, and/or Ms Lim ought to have advised the Westpac Board of the Deficient Risk Assessment Information, having regard to, inter alia, the seriousness nature of the obligations imposed by sections 98(1) and (2) of the AML/CTF Act.*
- vi) *Further and in the alternative, it is to be inferred that Ms Holcomb (by reason of her role as Chief Risk Officer) and Ms Lim (by reason of her role as Chief Compliance Officer and General Counsel) were actually aware of the Deficient Risk Assessment Information on and from 31 August 2017, by reason that at around this time:*
  - (A) *A review of Westpac's AML/CTF control environment identified systemic issues with its ML/TF risk management models and risk-based controls;*

- (B) *A WIB Financial Crime Deep Dive Assessment identified incomplete product assessments and the need to enhance the risk assessment framework across product, channel and customer; and*
  - (C) *Westpac commenced applying transaction monitoring to Vostro accounts.*
- vii) *Further and in the alternative, it can be inferred that Westpac was actually aware of the Deficient Risk Assessment Information on and from around 31 August 2017, by reason:*
  - A) *of the fact that In Westpac’s media release dated 24 November 2019 and entitled ‘Westpac Announces Response Plan’, Westpac stated:*
    - I) *“...over the past two years Westpac has recognised the need for uplift and has taken a number of steps to substantially improve the monitoring of financial crime and other serious crime”*
    - II) *“Westpac has identified the need to improve financial crime management, based on issues identified by its business, financial crime and internal audit teams over a number of years.”; and/or*
  - B) *the matters in particular vi) above.*
- viii) *Additionally, the Westpac Board as constituted from time to time ought reasonably to have been aware of the Deficient Risk Assessment Information on and from 31 August 2017, because Ms Holcomb, her successors in title as Chief Risk Officer, and/or Ms Lim ought to have advised the Westpac Board of the Deficient Risk Assessment Information, having regard to, inter alia, the matters set out in subparagraph (vi) above, and the serious nature of the obligations imposed by sections 98(1) and (2) of the AML/CTF Act.*
- ix) *Further particulars may be provided after discovery.*

## **C.1.2 IFTI Reporting Failures Information**

### **C.1.2.1 Incoming IFTIs**

61. During the period 5 November 2013 to 19 November 2018, Westpac was the recipient of 19,489,427 Incoming IFTIs from Correspondent Banks, totalling \$11.239 billion, of which:
- (a) 19,427,710 Incoming IFTIs were received during the period 5 November 2013 to 3 September 2018 under non-SWIFT ACM Arrangements and had a total value of \$11.138 billion; and
  - (b) 61,717 Incoming IFTIs were received during the period 3 October 2016 to 19 November 2018 and had a total value of \$101,333,384.
62. Each of the 19,489,427 Incoming IFTIs pleaded in paragraph 61 above:
- (a) involved the customer (the payer) instructing the ordering institution to transfer money controlled by the payer to a third person (the payee);
  - (b) involved the acceptance of an instruction by the ordering institution at or through a permanent establishment of the ordering institution in a foreign country; and
  - (c) involved the transferred money being made available to the payee at or through a permanent establishment of the beneficial institution in Australia.
63. By reason of s45(1)(a)(ii) and (2) of the AML/CTF Act, and subparagraphs 61 and 62, Westpac was required to give the AUSTRAC CEO a report of each of the 19,489,427 Incoming IFTIs within 10 business days after the date the instruction was received by Westpac.
64. In respect of:
- (a) 19,427,710 Incoming IFTIs Westpac received during the period 5 November 2013 to 3 September 2018, Westpac did not give the AUSTRAC CEO a report of those Incoming IFTIs until the period 22 October 2018 to 20 September 2019; and
  - (b) 61,717 incoming IFTIs Westpac received during the period 3 October 2016 to 19 November 2018, Westpac did not give the AUSTRAC CEO a report of those Incoming IFTIs until the period 27 March 2019 to 20 September 2019,

and as such, the 19,489,427 reports were lodged significantly late (**Late Incoming IFTI Reports**).

65. Of the Late Incoming IFTI Reports:

- (a) 19,378,512 were not lodged on time, at least in part, because of Westpac's failure to:
  - (i) ensure that the 19,378,512 incoming IFTIs were exported to the system Westpac used for IFTI reporting; and
  - (ii) implement and maintain an assurance process in place to detect this failure;
- (b) 12,947 were not lodged on time, at least in part, because a systems error that prevented IFTI processes from running to completion on non-banking days was not detected,

(individually and together, the **IFTI Systems Problems**).

66. 2,732,892 of the Late Incoming IFTI Reports did not contain all information required by s 45(3) of the AML/CTF Act and rule 16.3(1) and (3)(a)(i) of the AML/CTF Rules in that:

- (a) 2,732,686 Late Incoming IFTI Reports, concerning incoming IFTIs to a value of \$1,478,817,172 named the payment processor as the payer, instead of the actual payer, and Westpac is unable to identify the payer with respect to each of these instructions; and
- (b) 206 Late Incoming IFTI Reports, concerning incoming IFTIs to a value of \$28,563, included a series of numbers as the 'payer' name, and Westpac is unable to identify the payer with respect to each of these instructions

(the **IFTI Reports Deficiency**).

#### *C.1.2.2 Outgoing IFTIs*

67. During the period 5 November 2013 to 1 February 2019, Westpac was the sender of 13,085 Outgoing IFTIs to a single Correspondent Bank, totalling over \$707,409,296, of which:

- (a) 10,771 Outgoing IFTIs were received during the period 5 November 2013 to 1 February 2019 under non-SWIFT ACM Arrangements totalling \$707,409,296; and
  - (b) 2,314 Outgoing IFTIs were received during the period February 2017 to June 2019 using LitePay.
68. Each of the 13,085 Outgoing IFTIs:
- (a) involved the customer (the payer) instructing Westpac to transfer money controlled by the payer to a third person (the payee), on the basis that the transferred money would be made available to the payee by a beneficiary institution;
  - (b) involved the acceptance of an instruction by Westpac at or through a permanent establishment of the ordering institution in a foreign country; and
  - (c) involved the transferred money being made available to the payee at or through a permanent establishment of the beneficial institution in a foreign country.
69. By reason of section 45(1)(a)(i) and (2) of the AML/CTF Act, and subparagraphs 67 and 68, Westpac was required to give the AUSTRAC CEO a report of each of the 13,085 Outgoing IFTIs within 10 business days after the date the instruction was sent by Westpac.
70. In respect of:
- (a) 10,771 Outgoing IFTIs received during the period 5 November 2013 to 1 February 2019, Westpac did not give the AUSTRAC CEO a report of those Outgoing IFTIs until 4 October 2019 and as such, the 10,771 Outgoing IFTIs were lodged significantly late (**Late Outgoing IFTI Reports**); and
  - (b) 2,314 Outgoing IFTIs received during the period February 2017 to June 2019, Westpac has not given AUSTRAC CEO any report (the **LitePay IFTI Reporting Failure**).
71. By reason of:
- (a) the Late Incoming IFTI Reports;
  - (b) the IFTI Systems Problems;



- (c) the IFTI Reports Deficiency;
- (d) the Late Outgoing IFTI Reports; and/or
- (e) the LitePay IFTI Reporting Failure,

(together and in any combination), at all material times from 20 November 2013 Westpac failed, on 19,502,512 occasions, to comply with its reporting obligations under ss 45(1)(a)(i) and (2) of the AML/CTF Act (the **IFTI Reporting Failures Information**).

72. By no later than 16 December 2013, alternatively, 31 August 2018, and at all material times thereafter, Westpac was aware (within the meaning of ASX Listing Rule 19.12) of the IFTI Reporting Failures Information insofar as, and to the extent that, it existed at those times.

#### **Particulars**

- i) At all material times, the IFTI Reporting Failures Information existed insofar as, and to the extent that, a number of the 19,502,512 instances of failures by Westpac to comply with its reporting obligations as pleaded in paragraph 19 above had already occurred by that time. The timing of the occurrence of each of the 19,502,512 such instances is presently unknown to the Applicant.*
- ii) Mr Targett and/or Ms Lim ought reasonably to have been aware of the IFTI Reporting Failures Information (in so far as it existed on 16 December 2013) on and from 16 December 2013 in the course of the performance of their duties as Chief Risk Officer and Chief Compliance Officer/General Counsel respectively.*
- iii) The Westpac Board as constituted from time to time ought reasonably to have been aware of the IFTI Reporting Failures Information on and from 16 December 2013, because Mr Targett, his successors in title as Chief Risk Officer, and/or Ms Lim ought to have advised the Board of the IFTI Reporting Failures Information, having regard to, inter alia, the serious nature of the obligations section 45 of the AML/CTF Act.*
- iv) In August 2018 Westpac reported some or all of the IFTI Reporting Failures Information to the AUSTRAC CEO.*
- v) on 5 November 2018 in its 2018 Full Year Financial Results, Westpac announced that: 'The Group has recently self-reported to AUSTRAC a*

*failure to report a large number of International Funds Transfer Instructions (IFTIs) (as required under Australia's AML/CTF Act) in relation to one WIF product... The Group is investigating and working with AUSTRAC to remediate the failure to report IFTIs..." (p. 70).*

- vi) On or about 7 November 2018 Westpac disclosed in its 2018 Annual Report that Westpac had self-reported to AUSTRAC a failure to report a large number of IFTIs (as required under the AML/CTF Act).*
- vii) It is to be inferred from sub-paragraphs (iv) to (vi) above that Mr Stephen, Mr King, Ms Lim and the Westpac Board was actually aware of the IFTI Reporting Failures Information (in so far as it existed) on and from 31 August 2018.*
- viii) Further particulars may be provided after discovery.*

### **C.1.3 Transfer Origin Failure Information**

- 73. During the period 1 January 2014 to no later than 20 November 2019, Westpac was the sender of 10,521 Outgoing IFTIs under non-SWIFT ACM Arrangements with a Correspondent Bank totalling \$693,975,961.
- 74. 7,639 of the Outgoing IFTIs pleaded in paragraph 73 above totalling \$590,178,866 involved:
  - (a) the acceptance of an instruction by the ordering institution at or through a permanent establishment of the ordering institution in Australia;
  - (b) Westpac as an interposed institution in a funds transfer chain (within the meaning of s 64(2) of the AML/CTF Act);
  - (c) Westpac passing on an instruction at or through its permanent establishment in Australia;
  - (d) some or all of the required transfer information (within the meaning of s 70 of the AML/CTF Act) being passed on to Westpac by another institution in the funds transfer chain; and
  - (e) a failure by Westpac to include the required transfer information it had received in the Outgoing IFTIs it sent, as it was obliged by reason of the matters pleaded in paragraph 20 above.

75. 2,882 of the Outgoing IFTIs pleaded in paragraph 73 above totalling \$103,797,095 involved:
- (a) Westpac as the ordering institution in a funds transfer chain (within the meaning of s 64(2) of the AML/CTF Act);
  - (b) the acceptance of an instruction by Westpac at or through a permanent establishment of the ordering institution in Australia;
  - (c) Westpac passing on an instruction at or through its permanent establishment in Australia;
  - (d) Westpac receiving the complete required transfer information (within the meaning of s 70 of the AML/CTF Act); and
  - (e) a failure by Westpac to include the required transfer information it had received in the Outgoing IFTIs it sent.
76. By reason of the matters pleaded in paragraphs 74 and 75 above, Westpac failed, on 10,521 occasions, to comply with section 64(6) of the AML/CTF Act (the **Transfer Origin Failure Information**).
77. By no later than 1 January 2014, and at all material times thereafter, Westpac was aware (within the meaning of ASX Listing Rule 19.12) of the Transfer Origin Failure Information insofar as, and to the extent that, it existed at those times.

#### **Particulars**

- i) *At all material times, the Transfer Origin Failure Information existed insofar as, and to the extent that, a number of the 10,521 instances of failures by Westpac to comply with its reporting obligations as pleaded in paragraph 21 above had already occurred by that time. The timing of the occurrence of each of the 10,521 such instances is presently unknown to the Applicant.*
- ii) *Mr Targett and his successors in title as Chief Risk Officer, and/or Ms Lim, and/or on and from October 2017 Mr Kelly, ought reasonably to have become aware of the Transfer Origin Failure Information, in the course of the performance of their duties as Chief Risk Officer and Chief Compliance Officer respectively.*

- iii) *The Westpac Board ought reasonably to have become aware of the Transfer Origin Information because the Chief Risk Officer and/or the Chief Compliance Officer in office from time to time ought to have advised the Westpac Board of the Transfer Origin Information, having regard to, inter alia, the serious nature of the obligations in section 64(6) of the AML/CTF Act.*
- iv) *Further particulars may be provided after discovery.*

#### **C.1.4 Record Retention Failure Information**

78. During the period from January 2011 to 20 November 2019, Westpac participated in 3,516,238 funds transfer chains (within the meaning of s 64(2) of the AML/CTF Act) whereby:
- (a) a Correspondent Bank that had non-SWIFT ACM arrangements with Westpac passed on to Westpac multiple-institution person-to-person electronic fund transfer instructions;
  - (b) the Correspondent Bank was the ordering institution in the funds transfer chain (within the meaning of s 64(2) of the AML/CTF Act);
  - (c) Westpac was the interposed person in the funds transfer chain (within the meaning of s 64(2) of the AML/CTF Act);
  - (d) Westpac passed on the transfer instruction, at or through a permanent establishment in Australia, to another financial institution in the funds transfer chain;
  - (e) the transferred money was made available at or through a permanent establishment of the beneficiary institution in Australia;
  - (f) the Correspondent Bank passed on some or all of the required transfer information (within the meaning of s 70 of the AML/CTF Act) to Westpac;
  - (g) the transfer instruction was accepted by the Correspondent Bank at or through a permanent establishment in a foreign country;
  - (h) the transfer instruction was passed on to Westpac by a permanent establishment of the Correspondent Bank in a foreign country;

- (i) Westpac received from the Correspondent Bank the required transfer information (within the meaning of ss 70 and 72 of the AML/CTF Act), namely, the unique transaction reference number in each original payment instruction;
- (j) Westpac made a record of the required transfer information (within the meaning of ss 70 and 72 of the AML/CTF Act) by keeping a copy of each original payment instruction; and
- (k) Westpac failed to retain a copy of the required transfer information (within the meaning of ss 70 and 72 of the AML/CTF Act), namely, the unique transaction reference number in each original payment instruction, for 7 years after each transfer instruction was passed on to Westpac by the Correspondent Bank (the **Record Retention Failure**).

#### **Particulars**

- i) *The Correspondent Bank is the bank described as Bank A in paragraphs 66 to 69 of the AUSTRAC SOC and particulars thereto.*

79. By reason of the matters pleaded in paragraph 78 above, Westpac failed to comply with section 115(2) of the AML/CTF Act (the **Record Retention Failure Information**).
80. By no later than 13 November 2013, and at all material times thereafter, Westpac was aware (within the meaning of ASX Listing Rule 19.12) of the Record Retention Failure Information insofar as, and to the extent that, it existed at those times.

#### **Particulars**

- i) *At all material times, the Record Retention Failure Information existed insofar as, and to the extent that, a number of the 3,516,238 instances of failures by Westpac to comply with its record obligations as pleaded in paragraph 22 above had already occurred by that time. The timing of the occurrence of each of the 3,516,238 such instances is presently unknown to the Applicant.*
- ii) *Mr Targett and his successors in title as Chief Risk Officer, and/or Ms Lim, and/or on and from October 2017 Mr Kelly, ought reasonably to have become aware of the Record Retention Failure Information, in the course of the performance of their duties as Chief Risk Officer and Chief Compliance Officer respectively.*

- iii) *The Westpac Board ought reasonably to have become aware of the Record Retention Failure Information because the Chief Risk Officer and/or the Chief Compliance Officer in office from time to time ought to have advised the Westpac Board of the Record Retention Failure Information, having regard to, inter alia, the serious nature of the obligations in section 115(2) of the AML/CTF Act.*
- iv) *Further particulars may be provided after discovery.*

### **C.1.5 Deficient Part A Program Information**

81. At all material times from 20 November 2013, Part A of Westpac's AML/CTF Program was not, as required by sections 85(2)(a) and (c) of the AML/CTF Act, a program that:
- (a) had the primary purpose of identifying, mitigating and managing ML/TF Risk; and
  - (b) complied with the requirements that were specified in the ML/TF Rules, insofar as they required risk-based systems and controls to be put in place.

#### **Particulars**

- i) *The Applicant refers to and repeats the particulars to paragraph [76] of the AUSTRAC SOC.*
  - ii) *Without limitation to sub-paragraph (i) above, the applicant relies on the following matters:*
  - iii) *The ML/TF risk assessment procedures in Westpac's Part A Program did not include appropriate risk-based systems and controls that had the primary purpose of identifying, mitigating and managing the ML/TF risks reasonable faced by Westpac.*
  - iv) *The Part A Program did not comply with the following provisions in the AML/CTF Rules: r 9.1.3, 9.1.4, 9.1.5, and rules 15.4 to 15.7 inclusive.*
  - v) *Further particulars may be provided after discovery.*
82. Further to paragraph 81 above, at all material times from 20 November 2013, Westpac did not maintain a Part A AML/CTF Program, as required by s85(2)(a) of the AML/CTF Act, that identified, mitigated, and managed the ML/TF Risk of ACM arrangements, and identified, mitigated, and managed the ML/TF Risk of OSBSB arrangements.

#### **Particulars**

- i) *The applicant refers to and repeats the particulars to paragraphs 77 and 78 of the AUSTRAC SOC.*
- ii) *Further particulars may be provided after discovery.*

83. Further to paragraphs 81 and 82 above, at all material times from 20 November 2013,:

- (a) Part A of Westpac's AML/CTF Program did not, as required by rules 15.4-15.7 of the AML/CTF Rules contain a transaction monitoring program that included appropriate risk-based systems and controls to monitor the transactions of customers and to identify transactions that may be suspicious for the purposes of s 41 of the AML/CTF Act;
- (b) by reason of the matters pleaded at (a) above, comply with s 85(2)(c) of the AML/CTF Act;
- (c) by reason of the matters pleaded at paragraph (b) above Westpac failed to adopt and maintain an AML/CTF Program within the meaning of s 81 of the AML/CTF Act;
- (d) by reason of the matters pleaded at (a) to (c) above, Westpac commenced to provide designated services in contravention of s 81(1) of the AML/CTF Act; and
- (e) Part A of Westpac's AML/CTF Program did not include appropriate systems and controls designed to ensure compliance with the obligation to report international funds transfer instructions under s 45 of the AML/CTF Act,

(the matters in paragraphs 81 to 83 are, together and in any combination, the **Deficient Part A Program Information**).

#### **Particulars**

- i) *The applicant refers to and repeats the particulars to paragraphs 83 to 88 of the AUSTRAC SOC.*
- ii) *Further particulars may be provided after discovery.*

84. By no later than 16 December 2013, alternatively 31 August 2017, Westpac was aware (within the meaning of ASX Listing Rule 19.12) of the Deficient Part A Program Information.

#### **Particulars**

- i) *Senior executives within Westpac's risk and compliance function actually knew from no later than mid 2013 that Westpac was not applying transaction monitoring to Vostro accounts, despite the fact that it was becoming industry practice to apply automated transaction monitoring to Vostro accounts.*
- ii) *It is to be inferred that Mr Targett (by reason of his role as Chief Risk Officer) and/or Ms Lim (by reason of her role as Chief Compliance Officer) had the same knowledge of those senior executives within the risk and compliance function as specified in sub-paragraph (i) above.*
- iii) *Mr Targett and/or Ms Lim ought reasonably to have known that the failure to apply transaction monitoring to Vostro accounts meant that Westpac was not in compliance with, inter alia, sections 85(2)(a) and (b) of the AML/CTF Act.*
- iv) *It follows from the matters set out in sub-paragraphs (i) to (iii) above that Mr Targett and/or Ms Lim ought reasonably to have been aware of the Deficient Part A Program Information by no later than 16 December 2013.*
- v) *Additionally, the Westpac Board as constituted from time to time ought reasonably to have been aware of the Deficient Part A Program Information on and from 16 December 2013, because Mr Targett, his successors in title as Chief Risk Officer, and/or Ms Lim ought to have advised the Westpac Board of the Deficient Part A Program Information, having regard to, inter alia, the serious nature of the obligations imposed by sections 85(2)(a) and (b) of the AML/CTF Act.*
- vi) *Further and in the alternative, it is to be inferred that Ms Holcomb (by reason of her role as Chief Risk Officer) and Ms Lim (by reason of her role as Chief Compliance Officer and General Counsel) were actually aware of the Deficient Part A Program Information on and from 31 August 2017, by reason that at around this time:*
  - (A) *A review of Westpac's AML/CTF control environment identified systemic issues with its ML/TF risk management models and risk-based controls;*
  - (B) *A WIB Financial Crime Deep Dive Assessment identified incomplete product assessments and the need to enhance the risk*



*assessment framework across product, channel and customer;  
and*

*(C) Westpac commenced applying transaction monitoring to Vostro accounts.*

*vii) Additionally, the Westpac Board as constituted from time to time ought reasonably to have been aware of the Deficient Part A Program Information on and from 31 August 2017, because Ms Holcomb, her successors in title as Chief Risk Officer, and/or Ms Lim ought to have advised the Westpac Board of the Deficient Part A Program Information, having regard to, inter alia, the matters set out in sub-paragraph (vi) above, and the serious nature of the obligations imposed by sections 85(2)(a) and (b) of the AML/CTF Act.*

*viii) Further and in the alternative, it can be inferred that Westpac was actually aware of the Deficient Part A Program Information on and from around 31 August 2017, by reason:*

*A) of the fact that In Westpac’s media release dated 24 November 2019 and entitled ‘Westpac Announces Response Plan’, Westpac stated:*

*I) “...over the past two years Westpac has recognised the need for uplift and has taken a number of steps to substantially improve the monitoring of financial crime and other serious crime”*

*II) “Westpac has identified the need to improve financial crime management, based on issues identified by its business, financial crime and internal audit teams over a number of years.”; and/or*

*B) the matters in particular vi) above.*

*ix) Further particulars may be provided after discovery.*

### **C.1.6 Failure to Monitor Information**

85. On and from 20 November 2013, Westpac failed to monitor certain customers who held an account with Westpac and were conducting ongoing transactions on the account with a view to identifying, mitigating and managing the ML/TF Risk it

reasonably faced, in accordance with its obligations under section 36 of the AML/CTF Act, and the AML/CTF Rules (**Failure to Monitor Information**).

#### **Particulars**

- i) *The Applicant refers to and repeats paragraphs 92-115 of the AUSTRAC SOC, and the particulars thereto.*
- ii) *Without limiting sub-paragraph (i) above, in relation to the accounts held with Westpac by customers described as Customers 1-11 inclusive in the AUSTRAC SOC:*
  - A) *There were repeated patterns of frequent low value transactions that were consistent with child exploitation typologies.*
  - B) *Multiple transactions were conducted on those accounts in the period from November 2013 to August 2019.*
  - C) *It was not until March 2018 at the earliest, and in some cases as late as August 2019, that Westpac first identified activity on those accounts as indicative of child exploitation typologies.*
  - D) *Had Westpac been applying appropriate detection scenarios for child exploitation typologies and/or appropriately monitoring for frequent low value transactions consistent with child exploitation typologies, this activity would have been identified earlier.*
- iii) *Further, without limiting sub-paragraph (i) above, in relation to the account held with Westpac by the customer described as Customer 12 in the AUSTRAC SOC:*
  - A) *On 7 June 2019 Westpac became aware that Customer 12 had a prior conviction for child exploitation offences.*
  - B) *Having identified higher ML/TF risks, Westpac was required by rule 15.9(1) to conduct enhanced customer due diligence, however failed to do so.*
  - C) *Customer 12 continued to send low value transfers to the Philippines in the period 10 June 2019 to 19 August 2019 which were consistent with child exploitation typologies, through another account.*
  - D) *The transfers referred to in sub-paragraph C) above were not subject to automated monitoring for these known risks.*

- iv) *In relation to the customers described as Customers 1-12 inclusive in the AUSTRAC SOC, Westpac failed to comply with Rules 15.5 and 15.9 of the Rules.*

86. By no later than 16 December 2013, alternatively, 31 March 2018, Westpac was aware (within the meaning of ASX Listing Rule 19.12) of the Failure to Monitor Information.

#### **Particulars**

- i) *At all material times, the Failure to Monitor Information was information which Westpac had insofar as, and to the extent that, a number of instances of failures by Westpac to comply with its monitoring obligations as pleaded in paragraph 27 above had already occurred by that time. The timing of the occurrence of each such instance is presently unknown to the Applicant.*
- ii) *Mr Targett and his successors in title as Chief Risk Officer, and/or Ms Lim, and/or on and from October 2017 Mr Kelly, ought reasonably to have become aware of the Failure to Monitor Information, in the course of the performance of their duties as Chief Risk Officer and Chief Compliance Officer respectively.*
- iii) *The Westpac Board ought reasonably to have become aware of the Failure to Monitor Information because the Chief Risk Officer and/or the Chief Compliance Officer in office from time to time ought to have advised the Westpac Board of the Failure to Monitor Information, having regard to, inter alia, the serious nature of the obligations in section 36 of the AML/CTF Act.*
- iv) *Further particulars may be provided after discovery.*

#### **C.1.7 The Systemic Failures Information**

87. By reason of:

- (a) the Deficient Risk Assessment Information (the matters pleaded in paragraph 59 above);
- (b) the IFTI Reporting Failures Information (the matters pleaded in paragraph 71 above);

- (c) the Transfer Origin Failure Information (the matters pleaded in paragraph 76 above);
- (d) the Record Retention Failure Information (the matters pleaded in paragraph 79 above);
- (e) the Deficient Part A Program Information (the matters pleaded in paragraphs 81 to 83 above); and
- (f) the Failure to Monitor Information (the matters pleaded in paragraph 85 above),  
  
(together, and in any combination), on and from 16 December 2013, and at all material times throughout the Relevant Period, Westpac:
- (g) had systemic faults and failures in its systems for identifying and managing ML/TF Risk; and
- (h) was in serious and systemic non-compliance with its AML/CTF obligations,  
  
(together and in any combination, the **Systemic Failures Information**).

**Particulars**

- i) *The Applicant refers to and repeats the matters pleaded in paragraphs 14, 15, 59, 71, 76, 79, 81 to 83 and 85 and the particulars thereto.*

88. At all material times from 16 December 2013, alternatively 31 August 2017, Westpac was aware (within the meaning of ASX Listing Rule 19.12) of the Systemic Failures Information.

**Particulars**

- i) *Mr Targett and his successors in title as Chief Risk Officer, and/or Ms Lim, and/or on and from October 2017 Mr Kelly, ought reasonably to have become aware of the Systemic Failures Information, in the course of the performance of their duties as Chief Risk Officer and Chief Compliance Officer respectively.*
- ii) *The Westpac Board ought reasonably to have become aware of the Systemic Failures Information because the Chief Risk Officer and/or the Chief Compliance Officer in office from time to time ought to have advised the Westpac Board of the Systemic Failures Information,*

*having regard to, inter alia, the serious nature of the obligations imposed upon Westpac by the AML/CTF Act.*

iii) *Further and in the alternative, it is to be inferred that Ms Holcomb (by reason of her role as Chief Risk Officer) and Ms Lim (by reason of her role as Chief Compliance Officer and General Counsel) were actually aware of the Systemic Failures Information on and from 31 August 2017, by reason that at around this time:*

*(A) A review of Westpac’s AML/CTF control environment identified systemic issues with its ML/TF risk management models and risk-based controls;*

*(B) A WIB Financial Crime Deep Dive Assessment identified incomplete product assessments and the need to enhance the risk assessment framework across product, channel and customer; and*

*(C) Westpac commenced applying transaction monitoring to Vostro accounts.*

iv) *Additionally, the Westpac Board as constituted from time to time ought reasonably to have been aware of the Systemic Failures Information on and from 31 August 2017, because Ms Holcomb, her successors in title as Chief Risk Officer, and/or Ms Lim ought to have advised the Westpac Board of the Systemic Failures Information, having regard to, inter alia, the matters set out in sub-paragraph (vi) above, and the serious nature of the obligations imposed upon Westpac by the AML/CTF Act.*

v) *Further and in the alternative, it can be inferred that Westpac was actually aware of the Systemic Failures Information on and from around 31 August 2017, by reason:*

*A) of the fact that In Westpac’s media release dated 24 November 2019 and entitled ‘Westpac Announces Response Plan’, Westpac stated:*

*l) “...over the past two years Westpac has recognised the need for uplift and has taken a number of steps to substantially improve the monitoring of financial crime and other serious crime”*

- II) *“Westpac has identified the need to improve financial crime management, based on issues identified by its business, financial crime and internal audit teams over a number of years.”; and/or*
- B) *the matters in particular iii) above.*
- vi) *Further particulars may be provided after discovery.*

### **C.1.8 Child Exploitation Information**

89. On and from 16 December 2013, and at all material times throughout the Relevant Period, one of the consequences of the Systemic Failures Information was that Westpac failed to monitor certain customers transacting on accounts held with Westpac in a manner generally accepted to be indicative of child exploitation typologies, including transfers to beneficiaries in the Philippines with suspected links to child exploitation (the **Child Exploitation Information**).

#### **Particulars**

- i) *The Applicant refers to and repeats the particulars to paragraph 83 above.*
90. At all material times from 16 December 2013, alternatively 31 March 2018, alternatively 30 June 2018, alternatively the earliest date on which Westpac lodged one or more suspicious matters reports with AUSTRAC in relation to the 12 customers referred to in paragraphs 92-114 of the AUSTRAC SOC (the date of which is presently unknown to the Applicant), Westpac was aware (within the meaning of ASX Listing Rule 19.12) of the Child Exploitation Information.

#### **Particulars**

- i) *Mr Targett and his successors in title as Chief Risk Officer, and/or Ms Lim, and/or on and from October 2017 Mr Kelly, ought reasonably to have become aware of the Child Exploitation Information, in the course of the performance of their duties as Chief Risk Officer and Chief Compliance Officer respectively.*
- ii) *The Westpac Board ought reasonably to have become aware of the Child Exploitation Information because the Chief Risk Officer and/or the Chief Compliance Officer in office from time to time ought to have advised the Westpac Board of the Child Exploitation Information,*

*having regard to, inter alia, the serious nature of the obligations in section 64(6) of the AML/CTF Act.*

- iii) *In or about March 2018 Westpac first identified activity indicative of child exploitation typologies on the account held by Westpac by the customer described as Customer 4 in the AUSTRAC SOC. Westpac identified further activity indicative of child exploitation typologies on the accounts of the customers described as customers 2, 7 and 8 in the AUSTRAC SOC in June 2018.*
- iv) *Further particulars may be provided after discovery.*

### **C.1.9 The Potential Penalty Information**

91. On and from 16 December 2013, Westpac was potentially exposed to enforcement action by AUSTRAC in respect of allegations of serious and systemic non-compliance with the AML/CTF Act, which might result in Westpac being ordered to pay a substantial civil penalty (**Potential Penalty Information**).

#### **Particulars**

- i) *The Deficient Risk Assessment Information could be characterised as an allegation of serious non-compliance with the AML/CTF Act.*
- ii) *the IFTI Reporting Failures Information could be characterised as an allegation of serious non-compliance with the AML/CTF Act.*
- iii) *the Transfer Origin Failure Information could be characterised as an allegation of serious non-compliance with the AML/CTF Act.*
- iv) *the Record Retention Failure Information could be characterised as an allegation of serious non-compliance with the AML/CTF Act.*
- v) *the Deficient Part A Program Information could be characterised as an allegation of serious non-compliance with the AML/CTF Act.*
- vi) *the Failure to Monitor Information could be characterised as an allegation of serious non-compliance with the AML/CTF Act.*
- vii) *The precise quantum of the potential civil penalty would be assessed on a basis which took into account the number of contraventions of the AML/CTF Act (which was numbered in the millions, having regard to the Deficient Risk Assessment Information, IFTI Reporting Failures Information, Transfer Origin Failure Information, Record Retention*

*Failure Information, Deficient Part A Program Information and Failure to Monitor Information).*

- viii) *In assessing the amount of the potential civil penalty Westpac was not entitled to assume that the Court would (either in principle or on the facts) treat the contraventions of the AML/CTF Act as a single course of conduct, rather the Court would take into account:*
- A) the number of contraventions of the AML/CTF Act (which was numbered in the millions, having regard to the IFTI Reporting Failures Information Information);*
  - B) the period of time over which the contraventions extended;*
  - C) the circumstances in which the contraventions took place;*
  - D) the deterrent nature of the civil penalty; and*
  - E) the systemic nature of the contraventions.*
- ix) *The Applicant also refers to and relies on AUSTRAC's Enforcement Strategy 2012 – 14, AUSTRAC's Intelligence Strategy 2012 – 14, and AUSTRAC's Supervision Strategy 2012 - 14 (which was publicly available), which described AUSTRAC's enforcement priorities as including non-compliance with transaction reporting obligations, non-compliance with AML/CTF program obligations, and injunctions and civil penalty orders.*

92. On and from 16 December 2013, alternatively, 31 August 2017, Westpac was aware (within the meaning of ASX Listing Rule 19.12) of the Potential Penalty Information.

#### **Particulars**

- i) *Mr Targett and his successors in title as Chief Risk Officer, and/or Ms Lim, and/or on and from October 2017 Mr Kelly, ought reasonably to have become aware of the Potential Penalty Information, in the course of the performance of their duties as Chief Risk Officer and Chief Compliance Officer respectively.*
- ii) *The Westpac Board ought reasonably to have become aware of the Potential Penalty Information because the Chief Risk Officer and/or the Chief Compliance Officer in office from time to time ought to have advised the Westpac Board of the Potential Penalty Information,*



*having regard to, inter alia, the serious nature of the obligations imposed upon Westpac by the AML/CTF Act.*

- iii) *Further and in the alternative, it is to be inferred that Ms Holcomb (by reason of her role as Chief Risk Officer) and/or Ms Lim (by reason of her role as Chief Compliance Officer and General Counsel) were actually aware of the Potential Penalty Information on and from 31 August 2017, by reason that at around this time:*
  - (A) *A review of Westpac's AML/CTF control environment identified systemic issues with its ML/TF risk management models and risk-based controls;*
  - (B) *A WIB Financial Crime Deep Dive Assessment identified incomplete product assessments and the need to enhance the risk assessment framework across product, channel and customer; and*
  - (C) *Westpac commenced applying transaction monitoring to Vostro accounts.*
- iv) *Additionally, the Westpac Board as constituted from time to time ought reasonably to have been aware of the Potential Penalty Information on and from 31 August 2017, because Ms Holcomb, her successors in title as Chief Risk Officer, and/or Ms Lim ought to have advised the Westpac Board of the Potential Penalty Assessment Information, having regard to, inter alia, the matters set out in sub-paragraph (iii) above, and the seriousness nature of the obligations imposed upon Westpac by the AML/CTF Act.*
- v) *Further and in the alternative, Ms Holcomb (by reason of her role as Chief Risk Officer), and/or Ms Lim (by reason of her role as Chief Compliance Officer and General Counsel, and/or the Westpac Board as constituted from time to time, ought reasonably to have been aware of the Potential Penalty Information by reason of the fact that on 3 August 2017, AUSTRAC commenced civil penalty proceedings against CBA for what it described as "serious and systemic non-compliance" with the AML/CTF legislation in respect of significantly fewer breaches (around 700,000).*
- vi) *Further particulars may be provided after discovery.*

## C.2 Continuous Disclosure Contraventions

### C.2.1 Systemic Failures Continuous Disclosure Contravention

93. As at, and from, 16 December 2013, alternatively 31 August 2017, the Systemic Failures Information was information that:

- (a) was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and
- (b) a reasonable person would expect to have a material effect on the price or value of Westpac within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

#### Particulars

- i) *On 3 August 2017, AUSTRAC commenced civil penalty proceedings against CBA for what it described as “serious and systemic non-compliance” with the AML/CTF legislation in respect of significantly fewer breaches (around 700,000).*
- ii) *Following the announcement of the civil penalty proceedings referred to in i) above, CBA’s share price dropped substantially:*
  - A) *On 3 August 2017, the opening price of CBA’s shares was \$84.09, and increased to an intraday high of \$84.69 (reached at 12.44PM). The price of CBA’s shares at 1.00PM was \$84.58, and the price thereafter declined to a closing price of \$83.97. The total traded volume was 2,372,029 shares.*
  - B) *On 4 August 2017, CBA’s shares opened at \$82.51 and closed at \$80.72, on a traded volume of 9,239,819 shares.*
  - C) *The decline in the price of CBA’s shares between 1.00PM on 3 August and the close of market on 4 August was \$3.86 (being 4.56% as against the price as at 1.00PM on 3 August 2017).*
  - D) *On 7 August 2017, the price of CBA’s shares opened at \$80.11, being a further decline against the closing price on 4 August 2017.*

E) *Between 7 August 2017 and 7 September 2017, the price of CBA's shares further declined to a closing price on 7 September 2017 of \$73.98.*

iii) *Further particulars may be provided after discovery, and with the service of expert evidence.*

94. By reason of the Continuous Disclosure Obligations, the matters pleaded in paragraph 93, and/or the First AML/CTF Compliance Representations and the Second AML/CTF Compliance Representations pleaded in paragraphs 133 and 135 below, on and from 16 December 2013, alternatively 31 August 2017, Westpac became obliged immediately to tell the ASX and/or NZX the Systemic Failures Information.
95. Westpac did not inform the ASX and/or NZX of the Systemic Failures Information immediately on 16 December 2013, alternatively 31 August 2017, or at all.
96. By reason of the matters pleaded in paragraphs 88, and 93 to 95, Westpac contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act and/or NZX Listing Rule 1.7.2 (**Systemic Failures Continuous Disclosure Contravention**).

### **C.2.2 Child Exploitation Continuous Disclosure Contravention**

97. As at, and from, 16 December 2013, alternatively 31 March 2018, alternatively 30 June 2018, alternatively the earliest date on which Westpac lodged one or more suspicious matters reports with AUSTRAC in relation to the 12 customers referred to in paragraphs 92-114 of the AUSTRAC SOC (the date of which is presently unknown to the applicant), the Child Exploitation Information was information that:
- (a) was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and
- (b) a reasonable person would expect to have a material effect on the price or value of Westpac within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.
98. By reason of the Continuous Disclosure Obligations and the matters pleaded in paragraph 97, on and from 16 December 2013, alternatively 31 March 2018, alternatively 30 June 2018, alternatively the earliest date on which Westpac lodged one or more suspicious matters reports with AUSTRAC in relation to the 12 customers referred to in paragraphs 92-114 of the AUSTRAC SOC (the date of which is presently

unknown to the applicant), Westpac became obliged immediately to tell the ASX and/or NZX the Child Exploitation Information.

99. Westpac did not inform the ASX and/or NZX of the Child Exploitation Information immediately on 16 December 2013, alternatively 31 March 2018, alternatively 30 June 2018, alternatively the earliest date on which Westpac lodged one or more suspicious matters reports with AUSTRAC in relation to the 12 customers referred to in paragraphs 92-114 of the AUSTRAC SOC (the date of which is presently unknown to the applicant), or at all.
100. By reason of the matters pleaded in paragraphs 90, and 97 to 99 Westpac contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act and/or NZX Listing Rule 1.7.2 (**Child Exploitation Continuous Disclosure Contravention**).

### **C.2.3 Potential Penalty Continuous Disclosure Contraventions**

101. As at, and from, 16 December 2013, alternatively 31 August 2017, the Potential Penalty Information was information that:
- (a) was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and
  - (b) a reasonable person would expect to have a material effect on the price or value of Westpac within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

#### **Particulars**

- i) *The particulars to paragraph 93 are repeated.*
102. By reason of the Continuous Disclosure Obligations and the matters pleaded in paragraph 101, on and from 16 December 2013, alternatively 31 August 2017, Westpac became obliged immediately to tell the ASX and/or the NZX the Potential Penalty Information.
103. Westpac did not inform the ASX and/or the NZX of the Potential Penalty Information immediately on 16 December 2013, alternatively 31 August 2017, or at all.
104. By reason of the matters pleaded in paragraphs 92 and 101 to 103, Westpac contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act and/or NZX Listing Rule 1.7.2 (**Potential Penalty Continuous Disclosure Contravention**).

## D. WESTPAC'S AML/CTF COMPLIANCE STATEMENTS AND CONTINUOUS DISCLOSURE STATEMENTS

### D.1 Westpac's statements about AML/CTF Act compliance

#### D.1.1 AML/CTF Policy

105. At all material times in the Relevant Period, Westpac published on its website an "AML/CTF – Westpac Group Policy" (**AML/CTF Policy**).

#### Particulars

- i) <https://www.westpac.com.au/about-westpac/westpac-group/corporate-governance/aml-counter-terrorism/aml-group-policy/>

106. In the AML/CTF Policy, Westpac made the following statements (**AML/CTF Compliance Statements**):

- (a) there is a risk of Westpac products and services being used to launder money and finance terrorism. Australian law and applicable local laws in the jurisdictions in which Westpac operates, requires Westpac to put training, processes and systems in place to identify, manage and mitigate this risk. Westpac does this to protect the Westpac Group's reputation, to comply with relevant laws and to be a good corporate citizen. Failure to do so may result in social harm, significant penalties, including legal and regulatory action;
- (b) Westpac Group's 5 key AML/CTF principles:
  - (i) Comply with AML/CTF legislation in the countries we operate in;
  - (ii) Strive to fulfil international standards as detailed in the recommendations of the Financial Action Task Force (FATF);
  - (iii) Work in conjunction with the Australian Government and the governments of the countries we operate in, and support their objectives in relation to the prevention, detection and control of ML/TF;
  - (iv) Westpac may decide not to provide products or services based upon decisions guided by ML/TF Risk appetite and corporate social responsibility;

- (v) Maintain and comply with an AML/CTF program, as required by Australian AML/CTF legislation.
- (c) Westpac's Board of Directors (the Board) and Senior Management have ongoing oversight of Westpac's AML/CTF policy and procedures. All permanent and temporary employees must comply with these, attend training specific to their role, and report suspicious matters or behaviours.
- (d) Westpac has a dedicated AML/CTF Officer (the Group Money Laundering Reporting Officer - MLRO), responsible for monitoring the status and effectiveness of the Group's AML/CTF risk management and compliance and reporting it to Westpac's Executive team.
- (e) The MLRO also leads a Group AML/CTF team, which maintains Westpac Group's AML/CTF policy framework, and provides subject matter expertise and advice to our businesses.
- (f) Westpac Group's AML/CTF program:
  - (i) The design and implementation of the program was tailored to Westpac's ML/TF Risk profile, applying specific systems and controls, including:
    - (A) ML/TF Risk assessment;
    - (B) Employee training;
    - (C) Employee and customer due diligence;
    - (D) Transaction monitoring.
- (g) Westpac also reports the following information to AUSTRAC, Australia's AML/CTF regulator:
  - (i) Transactions with a cash component of AUD10,000 or more;
  - (ii) Electronic transfers of funds into or out of Australia;
  - (iii) Any transactions or other activities regarded as suspicious.

### **D.1.2 2013 Compliance Statements**

107. On 4 November 2013, Westpac published and lodged with the ASX its Full Year Financial Results for 2013 (**2013 Financial Results**).

108. In the 2013 Financial Results, Westpac made the following statements (**AML/CTF Compliance Statements**):

- (a) Regulatory Change - Significant capabilities delivered in Second Half 2013 include: – Enhanced process for identification and verification of new customers introduced during Second Half 2013 providing an improved customer experience, whilst satisfying AML/Counter Terrorism Financing (CTF), FATCA and other legal requirements;

#### **Particulars**

- i) *FY2013 Financial Results, pp 30.*

109. On 13 November 2013, Westpac published and lodged with the ASX its 2013 Annual Report (**2013 Annual Report**).

110. In the 2013 Annual Report, Westpac made the following statements (**AML/CTF Compliance Statements**):

- (a) Anti-money laundering regulation and related requirements – Australia - Westpac has a Group-wide program to manage its obligations under the Anti-Money Laundering and Counter- Terrorism Financing Act 2006. We continue to actively engage with the regulator, AUSTRAC, on our activities;
- (b) Compliance Management Framework - Westpac's Compliance Management Framework sets out our approach to managing compliance and mitigating compliance risk, in order to achieve our compliance objectives. To proactively manage our compliance risks, we must:
  - (i) comply with both the letter and 'spirit' of the law while being attentive to the needs of our clients;
  - (ii) embed the requirements of our regulators into how we do business, how we conduct ourselves and how our systems and processes are designed and operate;

- (iii) maintain a compliance culture where everyone in every part of the Westpac Group has responsibility for compliance.

The mechanisms we use to implement our approach include:

- (i) maintaining a strong governance environment;
  - (ii) identifying obligations, developing and maintaining Compliance Plans and implementing change;
  - (iii) developing, implementing and testing compliance controls; and monitoring and reporting incidents, issues and risks.
- (c) As with other forms of risk, business line management is primarily responsible for managing compliance. This is supported by a dedicated Compliance function covering the Group and each area of the business. The Compliance function reports to the Chief Compliance Officer. Regular reports are provided to the Operational Risk & Compliance Committee and the Board Risk Management Committee on the status of compliance across the Group.

#### **Particulars**

- i) *2013 Annual Report, pp 24, 38*

#### **D.1.3 2014 Compliance Statements**

111. On 12 November 2014, Westpac published and lodged with the ASX its 2014 Annual Report (**2014 Annual Report**).
112. In the 2014 Annual Report, Westpac made the following statements (**AML/CTF Compliance Statements**):
- (a) Anti-money laundering regulation and related requirements – Australia - Westpac has a Group-wide program to manage its obligations under the Anti-Money Laundering and Counter- Terrorism Financing Act 2006. We continue to actively engage with the regulator, AUSTRAC, on our activities;
  - (b) Board Risk & Compliance Committee - The Board Risk & Compliance Committee comprises all of Westpac's independent, Non-executive Directors and is chaired by Elizabeth Bryan ... From the perspective of specific types of risk, the Board Risk & Compliance Committee role includes:



- (i) compliance risk;
  - (ii) reviewing compliance processes and our compliance with applicable laws, regulations and regulatory requirements, discussing with management and the external auditor any material correspondence with regulators or government agencies and any published reports that raise material issues, and reviewing complaints and whistleblower concerns.
- (c) Compliance Management Framework - Westpac's Compliance Management Framework sets out our approach to managing compliance and mitigating compliance risk, in order to achieve our compliance objectives. To proactively manage our compliance risks, we must:
- (i) comply with both the letter and 'spirit' of the law while being attentive to the needs of our clients;
  - (ii) embed the requirements of our regulators into how we do business, how we conduct ourselves and how our systems and processes are designed and operate;
  - (iii) maintain a compliance culture where everyone in every part of the Westpac Group has responsibility for compliance.

The mechanisms we use to implement our approach include:

- (iv) maintaining a strong governance environment;
  - (v) identifying obligations, developing and maintaining Compliance Plans and implementing change;
  - (vi) developing, implementing and testing compliance controls; and monitoring and reporting incidents, issues and risks;
  - (vii) monitoring and reporting incidents, issues and risks
- (d) As with other forms of risk, business line management is primarily responsible for managing compliance. This is supported by a dedicated Compliance function covering the Group and each area of the business. The Compliance function reports to the Chief Compliance Officer. Regular reports are provided to the Operational Risk & Compliance Committee and the Board Risk Management Committee on the status of compliance across the Group.

### Particulars

- i) *2014 Annual Report, pp 23, 35, 38.*

#### **D.1.4 2015 Compliance Statements**

- 113. On 4 May 2015, Westpac published and lodged with the ASX its 2015 Interim Financial Results (**2015 Interim Financial Results**).
- 114. In the 2015 Interim Financial Results, Westpac made the following statements (**AML/CTF Compliance Statements**):
  - (a) Regulatory change programs reflected commitments to address requirements by Governments and regulators globally. Spend for First Half 2015 of \$108 million included the delivery of initiatives within major programs such as Stronger Super, Financial Claims Scheme, FATCA and AML. In addition to fulfilling compliance requirements, many of these programs were able to implement new functionality and enhanced capabilities including a single view of the customer across all brands.

### Particulars

- i) *2015 Interim Financial Results, p 25.*

- 115. On 2 November 2015, Westpac published and lodged with the ASX its Full Year 2015 Financial Result (**2015 Full Year Financial Results**).
- 116. In the 2015 Full Year Financial Results, Westpac made the following statements (**AML/CTF Compliance Statement**):
  - (a) Regulatory change programs address requirements by Governments and regulators globally. Spend for Second Half 2015 of \$152 million, included the delivery of initiatives across a number of regulations such as Anti Money Laundering, Future of Financial Advice reforms, Financial Claims Scheme and Stronger Super. In addition to fulfilling compliance requirements, many of these programs implemented new functionality and enhanced capabilities.

### Particulars

- i) *2015 Interim Financial Results, p 25.*

- 117. On 11 November 2015, Westpac published and lodged with the ASX its 2015 Annual Report (**2015 Annual Report**).

118. In the 2015 Annual Report, Westpac made the following statements (**AML/CTF Compliance Statements**):

- (a) Anti-money laundering regulation and related requirements – Australia - Westpac has a Group-wide program to manage its obligations under the Anti-Money Laundering and Counter- Terrorism Financing Act 2006. We continue to actively engage with the regulator, AUSTRAC, on our activities;
- (b) The CEO and Executive Team are responsible for implementing our risk management strategy and frameworks, and for developing policies, controls, processes and procedures for identifying and managing risk in all of Westpac's activities. Westpac adopts a Three Lines of Defence approach to risk management which reflects our culture of 'risk is everyone's business' and that all employees are responsible for identifying and managing risk and operating within the Group's desired risk profile. Effective risk management enables us to:
  - (i) accurately measure our risk profile and balance risk and reward within our risk appetite, increasing financial growth opportunities and mitigating potential loss or damage;
  - (ii) protect Westpac's depositors, policyholders and investors by maintaining a strong balance sheet;
  - (iii) embed adequate controls to guard against excessive risk or undue risk concentration; and
  - (iv) meet our regulatory and compliance obligations.

#### **Particulars**

- i) *2015 Annual Report, pp 27, 171.*

#### **D.1.5 2016 Compliance Statements**

119. On 9 November 2016, Westpac published and lodged with the ASX its 2016 Annual Report (**2016 Annual Report**).

120. In the 2016 Annual Report, Westpac made the following statements (**AML/CTF Compliance Statements**):

- (a) Anti-money laundering regulation and related requirements – Australia - Westpac has a Group-wide program to manage its obligations under the Anti-

Money Laundering and Counter- Terrorism Financing Act 2006. We continue to actively engage with the regulator, AUSTRAC, on our activities;

- (b) The Group's Operational Risk Management Framework and Compliance Management Framework assists all divisions to achieve their objectives through the effective identification, assessment, measurement, management, monitoring, reporting, control and mitigation of their risks. The Operational Risk Management Framework defines the organisational and governance structures, roles and responsibilities, principles, policies, processes and systems that we use to manage operational risk. The Compliance Management Framework sets out the approach of Westpac Group to managing compliance obligations and mitigating compliance risk, in order to achieve our compliance objective.

#### **Particulars**

- i) *2016 Annual Report, pp 23, 103*

#### **D.1.6 2017 Compliance Statements**

- 121. On 8 November 2017, Westpac published and lodged with the ASX its 2017 Annual Report (**2017 Annual Report**).
- 122. In the 2017 Annual Report, Westpac made the following statements (**AML/CTF Compliance Statements**):

- (a) Anti-money laundering regulation and related requirements – Australia - Westpac has a Group-wide program to manage its obligations under the Anti-Money Laundering and Counter- Terrorism Financing Act 2006. We continue to actively engage with the regulator, AUSTRAC, on our activities. Our Anti-Money Laundering and Counter-Terrorism Financing Policy (AML/CTF Policy) sets out how the Westpac Group complies with its legislative obligations. The AML/CTF Policy applies to all business divisions and employees (permanent, temporary and third party providers) working in Australia, New Zealand and overseas.

#### **Particulars**

- i) *2017 Annual Report, pp 24*

#### **D.1.7 2018 Compliance Statements**

- 123. On 7 November 2018, Westpac published and lodged with the ASX its 2018 Annual Report (**2018 Annual Report**).

124. In the 2018 Annual Report, Westpac made the following statements (**AML/CTF Compliance Statements**):

- (a) Anti-money laundering regulation and related requirements – Australia - Westpac has a Group-wide program to manage its obligations under the Anti-Money Laundering and Counter- Terrorism Financing Act 2006. We continue to actively engage with the regulator, AUSTRAC, on our activities. Our Anti-Money Laundering and Counter-Terrorism Financing Policy (AML/CTF Policy) sets out how the Westpac Group complies with its legislative obligations. The AML/CTF Policy applies to all business divisions and employees (permanent, temporary and third party providers) working in Australia, New Zealand and overseas.

**Particulars**

- i) *2018 Annual Report, p 30.*

125. In the 2018 Annual Report, Westpac also stated that:

- (a) it had recently self-reported to AUSTRAC a failure to report a large number of IFTIs (as required under the AML/CTF Act) in relation to one WIB product (**WIB IFTI Failures**);
- (b) the IFTIs related to batch instructions received from 2009 until 2018 from a small number of Correspondent Banks for payments made predominantly to beneficiaries in Australia in Australian dollars;
- (c) through the WIB product, Westpac facilitates payments on behalf of clients of certain of its Correspondent Banks, and the majority of the payments are low value and made by Government pension funds and corporates;
- (d) Westpac is investigating and working with AUSTRAC to remediate the failure to report IFTIs; and
- (e) no provision had been raised for this matter including in relation to any potential regulatory action.

**Particulars**

- i) *2018 Annual Report, pp 238 241.*

### **D.1.8 2019 Compliance Statements**

126. On 6 May 2019, Westpac published and lodged with the ASX an announcement entitled 'Westpac 1H19 2019 Interim Financial Results Announcement' (**2019 Interim Results**).
127. In the 2019 Interim Results, Westpac stated:
- (a) Westpac has self-reported to AUSTRAC the WIB IFTI Failures;
  - (b) the majority of the IFTIs concern batch instructions received by Westpac through one WIB product between 2009 and 2018 from a small number of Correspondent Banks for payments made predominantly to beneficiaries living in Australia in Australian dollars;
  - (c) through the product, Westpac facilitates payments on behalf of clients of certain of its Correspondent Banks;
  - (d) the majority of the payments were low value, recurring and made by Government pension funds and corporates;
  - (e) as reported in the 2018 Annual Report, Westpac was continuing to work with AUSTRAC to remediate the WIB IFTI Failures;
  - (f) AUSTRAC was investigating this matter and, over the last six months, had issued a number of detailed notices requiring the production of documents and information; and
  - (g) no provision had been raised for this matter including in relation to any potential regulatory action.

#### **Particulars**

- i) *2019 Interim Results, pp. 79, 80, and 146.*
128. On 4 November 2019, Westpac published and lodged with the ASX its 2019 Annual Report (**2019 Annual Report**).
129. In the 2019 Annual Report, Westpac made the following statements (**AML/CTF Compliance Statements**):

- (a) Anti-money laundering regulation and related requirements – Australia - Westpac has a Group-wide program to manage its obligations under the Anti-Money Laundering and Counter- Terrorism Financing Act 2006. We continue to actively engage with the regulator, AUSTRAC, on our activities. Our Anti-Money Laundering and Counter-Terrorism Financing Policy (AML/CTF Policy) sets out how the Westpac Group complies with its legislative obligations. The AML/CTF Policy applies to all business divisions and employees (permanent, temporary and third party providers) working in Australia, New Zealand and overseas.

#### **Particulars**

- i) *2019 Annual Report, p 24.*

130. In the 2019 Annual Report, Westpac also stated that:

- (a) As reported in Westpac's 2018 Annual Report, Westpac self-reported to AUSTRAC the WIB IFTI Failures (as required under the AML/CTF Act);
- (b) Under the AML/CTF Act, the 'sender' financial institution of an IFTI transmitted out of Australia, or the 'recipient' financial institution of an IFTI transmitted into Australia, is required to report the IFTI to AUSTRAC within 10 business days of the instruction being sent or received;
- (c) the majority of the IFTIs which are the subject of Westpac's engagement with AUSTRAC, concern batch instructions received by Westpac through one WIB product between 2009 and 2018 from a small number of Correspondent Banks for payments made predominantly to beneficiaries living in Australia in Australian dollars, on behalf of clients of those correspondent banks. The majority of the payments were low value, recurring and made by foreign government pension funds and corporates;
- (d) AUSTRAC had issued a number of detailed statutory notices over the last year requiring information relating to Westpac's processes, procedures and oversight;
- (e) These notices related to a range of matters including the IFTI reporting failures and associated potential failings related to record keeping and obligations to obtain and pass on certain data in funds transfer instructions, as well as correspondent banking due diligence, risk assessments and transaction monitoring;

- (f) Westpac had not yet received an indication from AUSTRAC about the nature of any enforcement action it may take;
- (g) Westpac was continuing to work with AUSTRAC in relation to these matters; and
- (h) Any enforcement action against Westpac may include civil penalty proceedings and result in the payment of a significant financial penalty, which Westpac is currently unable to reliably estimate. Previous enforcement action by AUSTRAC against other institutions has resulted in a range of outcomes, depending on the nature and severity of the relevant conduct and its consequences.

### **Particulars**

- i) *2019 Annual Report, p 15.*

- 131. On 23 October 2019, Westpac published and lodged with the ASX a Release 'Westpac details 2H19 notable items and releases its 2019 Full Year Financial Results Template' **(23 October Release)**.
- 132. In the 23 October Release Westpac made the following statements:
  - (a) Westpac had not taken a provision in 2019 full year results for the WIB IFTI Failures, which were reported as a significant development and contingent liability in the 2018 full year results and 2019 interim results;
  - (b) AUSTRAC has issued a number of detailed statutory notices over the last year requiring information relating to Westpac's processes, procedures and oversight, and relate to a range of matters including the WIB IFTI Failures and associated potential failings related to record keeping and obligations to pass on certain data in funds transfer instructions, as well as correspondent banking due diligence, risk assessments and transaction monitoring; and
  - (c) any enforcement action against Westpac may include civil penalty proceedings and result in the payment of a significant financial penalty, which Westpac is currently unable to reliably estimate. Previous enforcement action by AUSTRAC against other institutions has resulted in a range of outcomes, depending on the nature and severity of the relevant conduct and its consequences.
- 133. Save for the statements pleaded in paragraphs 125, 127, 130, and 132 Westpac did not, at any time prior to 20 November 2019 make any statement which corrected, qualified or contradicted the AML/CTF Compliance Statements.



### **D.1.9 Westpac's AML/CTF Compliance Representations**

134. By the matters pleaded in paragraphs 105 to 122, between 16 December 2013 and 6 November 2018, Westpac represented to the Affected Market throughout the Relevant Period that:

- (a) Westpac had in place effective policies, procedures and systems for ensuring compliance by Westpac with relevant regulatory requirements (including the AML/CTF Act);
- (b) Westpac was in fact in compliance with AML/CTF requirements; and/or
- (c) Westpac's risk management systems had ensured, and would continue to ensure appropriate monitoring and reporting of compliance activities (including compliance with the AML/CTF Act),

**(First AML/CTF Compliance Representations).**

#### **Particulars**

- i) *The First AML/CTF Compliance Representations are express and to be implied from:*
  - A) *the AML/CTF Compliance Statements from the dates they were made; and*
  - B) *the absence of any correction or qualification to the AML/CTF Compliance Statements.*

135. The First AML/CTF Compliance Representations were a continuing representation throughout the Relevant Period until 6 November 2018.

#### **Particulars**

- i) *The First AML/CTF Compliance Representations were of their nature likely to be continuing unless and until information was published to the Affected Market information which corrected or qualified them.*

136. By the matters pleaded in paragraphs 105 to 132, between 7 November 2018 and 19 November 2019, Westpac represented to the Affected Market throughout the Relevant Period that:

- (a) Westpac had in place effective policies, procedures and systems for ensuring compliance by Westpac with relevant regulatory requirements (including the AML/CTF Act);
- (b) to the extent that Westpac had identified necessary improvements to its AML/CTF policies, systems and controls together with related remediation work in respect of certain reporting practices, this was due to an environment of ongoing legislative reform, regulatory change and increased industry focus, rather than due to any systemic flaws or deficiencies in Westpac's AML/CTF policies, systems and controls or in its compliance with its AML/CTF obligations;
- (c) while Westpac had now identified and reported to AUSTRAC the WIB IFTI Failures, other than the WIB IFTI Failures, Westpac was in compliance with its AML/CTF obligations;
- (d) Westpac had publicly disclosed all matters likely to materially impact on the amount of any financial penalty which Westpac was required to pay as a result of these compliance failures,

**(Second AML/CTF Compliance Representations).**

**Particulars**

- i) *The Second AML/CTF Compliance Representations are:*
  - A) *express and to be implied from:*
    - I) *the AML/CTF Compliance Statements from the dates they were made;*
    - II) *the statements pleaded in paragraphs 125, 127, 130, and 132.*
  - B) *Implied as a matter of law by operation of sections 297 and 305 of the Corporations Act 2001, and by the Directors' declaration in the 2018 Annual Report and 2019 Annual Report that, in the Directors' opinion, the annual financial statement or interim financial statement (as the case may be) gives a true and fair view of Westpac's financial position as at the final day of the period the subject of that report.*

137. The Second AML/CTF Compliance Representations were a continuing representation throughout the Relevant Period from 7 November 2018.

### Particulars

- i) The Second AML/CTF Compliance Representations were of their nature likely to be continuing unless and until information was published to the Affected Market which corrected or qualified them.*

#### **D.1.10 Misleading or deceptive conduct**

##### *D.1.10.1 First AML/CTF Compliance Representations*

138. By reason of the matters pleaded in paragraphs 59, 71, 76, 79, 81 to 83, 85, 87, 89 and/or 91 on and from at least 16 December 2013, in making the First AML/CTF Compliance Representations, Westpac engaged in conduct which was misleading or deceptive, or likely to mislead or deceive.
139. Further or alternatively, by reason of the matters pleaded in paragraphs 59, 71, 76, 79, 81 to 83, 85, 87, 89 and/or 91 on and from at least 16 December 2013 until 6 November 2018, in maintaining and/or failing to correct or qualify the First AML/CTF Compliance Representations, Westpac engaged in conduct which was misleading or deceptive, or likely to mislead or deceive.
140. The conduct pleaded in paragraphs 105 to 134, and 138 and/or 139 (including the making of the First AML/CTF Compliance Representations) was conduct engaged in by Westpac:
- (a) in relation to financial products (being Westpac Securities), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
  - (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and
  - (c) in trade or commerce, within the meaning of s 18 of the ACL.
141. By reason of the matters pleaded in paragraphs 140 and 139, on and from at least 16 December 2013, Westpac contravened:
- (a) s 1041H of the Corporations Act;

(b) s 12DA(1) of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law,

(each being a **AML/CTF Compliance Misleading Representation Contravention**).

142. By reason of the matters pleaded in paragraphs 139 and 139, on and from at least 30 November 2013, Westpac contravened:

(a) s 1041H of the Corporations Act;

(b) s 12DA(1) of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law,

(each being a **AML/CTF Compliance Misleading Silence Contravention**).

*D.1.10.2 Second AML/CTF Compliance Representations*

143. By reason of the matters pleaded in paragraphs 59, 71, 76, 79, 81 to 83, 85, 87, 89 and/or 91 on and from 7 November 2018, in making the Second AML/CTF Compliance Representations, Westpac engaged in conduct which was misleading or deceptive, or likely to mislead or deceive.

144. Further or alternatively, by reason of the matters pleaded in paragraphs 59, 71, 76, 79, 81 to 83, 85, 87, 89 and/or 91 on and from 7 November 2018, in maintaining and/or failing to correct or qualify the Second AML/CTF Compliance Representations, Westpac engaged in conduct which was misleading or deceptive, or likely to mislead or deceive.

145. The conduct pleaded in paragraphs 105 to 132, and 143 and/or 144 (including the making of the Second AML/CTF Compliance Representations) was conduct engaged in by Westpac:

(a) in relation to financial products (being Westpac Securities), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and

(c) in trade or commerce, within the meaning of s 18 of the ACL.

146. By reason of the matters pleaded in paragraphs 145 and 143, on and from at least 7 November 2018, Westpac contravened:

- (a) s 1041H of the Corporations Act;
- (b) s 12DA(1) of the ASIC Act; and/or
- (c) s 18 of the Australian Consumer Law,

(each being a **AML/CTF Compliance Misleading Representation Contravention**).

147. By reason of the matters pleaded in paragraphs 145 and 144 on and from at least 7 November 2018, Westpac contravened:

- (a) s 1041H of the Corporations Act;
- (b) s 12DA(1) of the ASIC Act; and/or
- (c) s 18 of the Australian Consumer Law,

(each being a **AML/CTF Compliance Misleading Silence Contravention**).

## **D.2 Westpac's statements about continuous disclosure**

### **D.2.1 Market Disclosure Policy**

148. At all material times in the Relevant Period, Westpac published on its website a "Westpac Banking Corporation Market Disclosure Policy" (**Market Disclosure Policy**).

#### **Particulars**

- i) *[https://www.westpac.com.au/content/dam/public/wbc/documents/pdf/aw/Market\\_disclosure\\_policy.pdf](https://www.westpac.com.au/content/dam/public/wbc/documents/pdf/aw/Market_disclosure_policy.pdf)*

149. In the Market Disclosure Policy, Westpac stated that:

- (a) it would make public disclosures of any information that a reasonable person would expect to have a material effect on the price or value of Westpac Securities unless an exception applies under the ASX Listing Rules or other applicable regulatory requirements;

- (b) it was committed to making this disclosure immediately consistent with ASX Listing Rule 3.1, and the ASX's guidance on the meaning of "immediately" in this context is that it means promptly and without delay,

**(Continuous Disclosure Statements).**

#### ***D.2.2 2013 Continuous Disclosure Statements***

150. In the 2013 Annual Report, Westpac made the following statements (**2013 Continuous Disclosure Statements**):

- (a) We maintain a level of disclosure that seeks to provide all investors with equal, timely, balanced and meaningful information. Consistent with these standards the Westpac Group maintains a Board approved Market Disclosure Policy, which governs how we communicate with our shareholders and the investment community.
- (b) The policy reflects the requirements of the ASX, NZX and other offshore stock exchanges where we have disclosure obligations, as well as relevant securities and corporations legislation. Under our policy, information that a reasonable person would expect to have a material effect on the price or value of our securities must first be disclosed via the ASX unless an exception applies under regulatory requirements.
- (c) Our Disclosure Committee is responsible for determining what information should be disclosed publicly under the policy, and for assisting employees in understanding what information may require disclosure to the market on the basis that it is price sensitive. The Disclosure Committee is comprised of the CEO, the Executive Team, the Group General Counsel and the General Manager, Corporate Affairs and Sustainability.
- (d) The Chief Operating Officer is the Disclosure Officer. The Disclosure Officer is ultimately responsible for all communication with relevant stock exchanges and notifying regulators in any jurisdiction as a result of market disclosure.
- (e) Once relevant information is disclosed to the market and available to investors, it is also published on our website.

#### **Particulars**

- i) *2013 Annual Report, p. 35*

### **D.2.3 2014 Continuous Disclosure Statements**

151. In the 2014 Annual Report, Westpac made the following statements (**2014 Continuous Disclosure Statements**):

- (a) We maintain a level of disclosure that seeks to provide all investors with equal, timely, balanced and meaningful information. Consistent with these standards the Westpac Group maintains a Board approved Market Disclosure Policy, which governs how we communicate with our shareholders and the investment community.
- (b) The policy reflects the requirements of the ASX, NZX and other offshore stock exchanges where we have disclosure obligations, as well as relevant securities and corporations legislation. Under our policy, information that a reasonable person would expect to have a material effect on the price or value of our securities must first be disclosed via the ASX unless an exception applies under regulatory requirements.
- (c) Our Disclosure Committee is responsible for determining what information should be disclosed publicly under the policy, and for assisting employees in understanding what information may require disclosure to the market on the basis that it is price sensitive. The Disclosure Committee is comprised of the CEO, the Executive Team, the Chief Compliance Officer & Group General Counsel and the General Manager, Corporate Affairs and Sustainability.
- (d) The Chief Operating Officer is the Disclosure Officer. The Disclosure Officer is ultimately responsible for all communication with relevant stock exchanges and notifying regulators in any jurisdiction as a result of market disclosure.
- (e) Once relevant information is disclosed to the market and available to investors, it is also published on our website. This includes investor discussion packs, presentations on and explanations about our financial results. Our website information also includes Annual Review and Sustainability Reports, Annual Reports, results announcements, CEO and executive briefings (including webcasts, recordings or transcripts of all major events), notices of meetings and key media releases.

#### **Particulars**

- i) *2014 Annual Report, p. 34*

#### **D.2.4 Cleansing Notice**

152. On 4 November 2019, Westpac published and lodged with the ASX an announcement entitled 'Westpac Launches \$2.5 billion capital raising' (**Westpac 4 November Announcements**).
153. By the Westpac 4 November Announcement, Westpac announced it:
- (a) had launched a capital raising, comprising:
    - (i) a fully underwritten \$2 billion institutional share placement (**Placement**); and
    - (ii) a non-underwritten share purchase plan under which Westpac targeted to raise approximately \$500 million (**SPP**),
  - (b) The Placement would be undertaken at a fixed price of \$25.32 per new share (**Placement Price**), representing a:
    - (i) 6.5% discount to the adjusted last close price on ASX of \$27.08 on 1 November 2019; and
    - (ii) 8.1% discount to the adjusted five-day VWAP on ASX of \$27.56 to the close of trade on 1 November 2019.
  - (c) The Placement would result in approximately 79 million new shares being issued, representing approximately 2.3% of Westpac's existing issued capital.
  - (d) Under the SPP, each eligible Westpac shareholder would have the opportunity to apply for up to \$30,000 of new fully paid Westpac Shares without incurring brokerage or transaction costs.
  - (e) The issue price per Westpac Share issued pursuant to the SPP would be the lesser of:
    - (i) the Placement Price; and
    - (ii) the VWAP of Westpac shares traded on the ASX during the five trading days up to, and including, the SPP closing date (expected to be 2 December 2019), less a 2% discount, rounded to the nearest cent.



154. On 8 November 2019, Westpac published and lodged with the ASX an announcement entitled 'Cleansing Notice' under s 708A(5)(e) of the Corporations Act (**Cleansing Notice**).
155. By the Cleansing Notice, Westpac stated, among other things (**2019 Continuous Disclosure Statements**):
- (a) as at the date of the notice, Westpac had complied with:
    - (i) the provisions of Chapter 2M of the Corporations Act as they apply to Westpac; and
    - (ii) section 674 of the Corporations Act; and
  - (b) as at the date of the notice, there was no 'excluded information' of the type referred to in sections 708A(7) and 708A(8) of the Corporations Act that is required to be set out in the notice under section 708A(6)(e) of the Corporations Act.
156. Westpac did not, at any time prior to 20 November 2019 make any statement which corrected, qualified or contradicted the 2013, 2014 and 2019 Continuous Disclosure Statements.

#### ***D.2.5 Westpac Continuous Disclosure Compliance Representation***

157. By the matters pleaded in paragraphs 148 to 156, Westpac continuously represented to the Affected Market throughout the Relevant Period that:
- (a) it had policies, procedures and systems in place to ensure that material matters were reported to its CEO and then notified to the ASX, and
  - (b) it had complied with, and would continue to comply with, its Continuous Disclosure Obligations (**Continuous Disclosure Compliance Representation**).

#### **Particulars**

- i) *The Continuous Disclosure Compliance Representation was partly express and partly implied.*
- ii) *To the extent it was express, the Applicant refers to the statements in the Cleansing Notice pleaded in paragraph 155 above;*

- iii) *To the extent it was implied, it is to be implied from:*
- A) *at all times, Westpac's listing on the ASX which required adherence to ASX Listing Rule 3.1,*
  - B) *the statements in the Cleansing Notice pleaded in paragraph 155 above, from the date they were made;*
  - C) *the Continuous Disclosure Statements from the dates they were made; and*
  - D) *the absence of any correction or qualification to the statements referred to in (B) to (C) above.*

158. The Continuous Disclosure Compliance Representation was a continuing representation throughout the Relevant Period.

#### **Particulars**

- i) The Continuous Compliance Disclosure Representation was of its nature likely to be continuing unless and until information was published to the Affected Market information which corrected or qualified them.*

#### **D.2.6 Misleading or deceptive conduct**

159. The conduct pleaded in paragraphs 148 to 158 (including the making of the Continuous Disclosure Compliance Representation) was conduct engaged in by Westpac:

- (a) in relation to financial products (being Westpac Securities), within the meaning of ss 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and
- (c) in trade or commerce, within the meaning of s 18 of the Australian Consumer Law.

160. By reason of the matters pleaded in:

- (a) paragraphs 87 and 93 to 96;
- (b) paragraphs 89 and 97 to 100;
- (c) paragraphs 91 and 101 to 104,

on and from 16 December 2013, in making, maintaining and/or failing to correct or qualify the Systemic Failures Information, the Child Exploitation Information, and/or the Potential Penalty Information, Westpac engaged in conduct which was misleading or deceptive, or likely to mislead or deceive.

161. By reason of the matters pleaded in paragraphs 159 and 160, on and from 16 December 2013, Westpac contravened:

- (a) s 1041H of the Corporations Act;
- (b) s 12DA(1) of the ASIC Act; and/or
- (c) s 18 of the Australian Consumer Law,

(each such contravention of such provisions being a **Continuous Disclosure Compliance Misleading Conduct Contravention**).

#### ***D.2.7 Defective Cleansing Notice***

162. Further or alternatively, by reason of the fact that the Cleansing Notice did not contain the:

- (a) Systemic Failures Information;
- (b) Child Exploitation Information; and/or
- (c) Potential Penalty Information,

the Cleansing Notice:

- (d) was false or misleading in a material particular; and/or
- (e) had omitted from it a matter or thing, the omission of which rendered the notice misleading in a material respect.

163. By reason of the matters set out in paragraph 162 above, the Cleansing Notice was defective within the meaning of s 708A(10) of the Corporations Act.

164. Westpac was or became aware of the defects in the Cleansing Notice within 12 months after the securities were issued under the Placement, but did not, within a reasonable time after becoming aware of the defects, give the ASX a notice that set out the information necessary to correct the defects.

### Particulars

- i) *The Applicant refers to and repeat paragraphs 88, 90 and 92.*
- ii) *Under the Placement, Westpac Shares were placed by Westpac with investors on 4 and 5 November 2019, with shares issued and available for trading on 8 November 2019.*

165. By reason of the matters set out in paragraphs 163 and 164 above, Westpac contravened ss 708A(6) and (9) of the Corporations Act (**Cleansing Notice Contravention**).

## E. THE 20 NOVEMBER 2019 DISCLOSURES AND DISCLOSURES IMPACT

### E.1 The 20 November 2019 Announcements

166. On 20 November 2019, AUSTRAC published a media release entitled “AUSTRAC applies for civil penalty orders against Westpac” (**AUSTRAC 20 November Statement**).

### Particulars

- i) *The media release is to be found at <https://www.austrac.gov.au/about-us/media-release/civil-penalty-orders-against-westpac>*

167. The AUSTRAC 20 November Statement, inter alia, stated that:

- (a) AUSTRAC had that day initiated civil penalty proceedings in the Federal Court against Westpac for civil penalty orders against Westpac (**AUSTRAC Proceeding**);
- (b) The civil penalty orders relate to systemic non-compliance with the AML/CTF Act);
- (c) AUSTRAC alleges Westpac contravened the AML/CTF Act on over 23 million occasions;
- (d) AUSTRAC Chief Executive Officer, Nicole Rose, says that AUSTRAC’s decision to commence civil penalty proceedings was made following a detailed investigation into Westpac’s non-compliance;
- (e) AUSTRAC alleged that Westpac’s oversight of the banking and designated services provided through its correspondent banking relationships was deficient.

Westpac's oversight of its AML/CTF Program, intended to identify, mitigate and manage the money laundering and terrorism financing risks of its designated services, was also deficient. These failures in oversight resulted in serious and systemic non-compliance with the AML/CTF Act;

- (f) Westpac failed to:
  - (i) appropriately assess and monitor the ongoing money laundering and terrorism financing risks associated with the movement of money into and out of Australia through correspondent banking relationships. Westpac has allowed correspondent banks to access its banking environment and the Australian Payments System without conducting appropriate due diligence on those correspondent banks and without appropriate risk assessments and controls on the products and channels offered as part of that relationship.
  - (ii) report over 19.5 million International Funds Transfer Instructions (IFTIs) to AUSTRAC over nearly five years for transfers both into and out of Australia. The late incoming IFTIs received from four correspondent banks alone represent over 72% of all incoming IFTIs received by Westpac in the period November 2013 to September 2018 and amounts to over \$11 billion dollars. IFTIs are a key source of information from the financial services sector that provides vital information into AUSTRAC's financial intelligence to protect Australia's financial system and the community from harm.
  - (iii) pass on information about the source of funds to other banks in the transfer chain. This conduct deprived the other banks of information they needed to understand the source of funds to manage their own AML/CTF risks.
  - (iv) keep records relating to the origin of some of these international funds transfers.
  - (v) carry out appropriate customer due diligence on transactions to the Philippines and South East Asia that have known financial indicators relating to potential child exploitation risks. Westpac failed to introduce appropriate detection scenarios to detect known child exploitation typologies, consistent with AUSTRAC guidance and their own risk assessments.

168. The AUSTRAC 20 November Statement contained a link to a Concise Statement filed in the Federal Court in the AUSTRAC Proceeding (**Concise Statement**), and a link to the Statement of Claim filed in the Federal Court in the AUSTRAC Proceeding (that is, the AUSTRAC SOC):
- (a) which stated, inter alia, that Westpac contravened the AML/CTF Act on over 23 million occasions as a result of systemic failures in its control environment, indifference by senior management and inadequate oversight by the Board; and
  - (b) the allegations and particulars thereto are otherwise repeated.
169. On 20 November 2019 at about 9.28am, Westpac published and lodged to the ASX an announcement entitled "*Westpac acknowledges civil proceedings by AUSTRAC*" (**First Westpac 20 November Statement**).
170. By the First Westpac 20 November Statement, Westpac stated:
- (a) Westpac Group has this morning received a statement of claim from AUSTRAC, commencing civil proceedings in relation to the alleged contraventions of Westpac's obligations under the Anti-Money Laundering and Counter-Terrorism Financing Act.
  - (b) Westpac is currently reviewing AUSTRAC's statement of claim and will issue a further statement to the ASX once it has been assessed.
171. On 20 November 2019 at about 12:17pm, Westpac published and lodged to the ASX an announcement entitled "*Westpac responds to AUSTRAC's Statement of Claim*" (**Second Westpac 20 November Statement**).
172. By the Second Westpac 20 November Statement, Westpac stated:
- (a) Westpac Group acknowledges the civil proceedings commenced by AUSTRAC today in relation to alleged contraventions of its obligations under the Anti-Money Laundering and Counter- Terrorism Financing Act.
  - (b) The civil proceedings relate to these issues and allege failings in relation to correspondent banking, risk assessments, customer due diligence, transaction monitoring, record keeping and the passing on of certain data in funds transfer instructions.

- (c) Westpac Group's Chief Executive Officer, Brian Hartzler said: "We recognise these are very serious and important issues. We are committed to assisting AUSTRAC and law enforcement agencies to stop financial crime.
  - (d) "These issues should never have occurred and should have been identified and rectified sooner. It is disappointing that we have not met our own standards as well as regulatory expectations and requirements.
  - (e) "As part of this we are also taking very seriously AUSTRAC's concerns around appropriate customer due diligence on transactions to the Philippines and South East Asia, including reviewing relevant processes.
173. On 22 November 2019 at about 3.46pm, Westpac published and lodged to the ASX an announcement entitled "*Westpac Board unreservedly apologises*" (**Westpac 22 November Statement**).
174. By the Westpac 22 November Statement, Westpac stated:
- (a) The Westpac Board of Directors today met to further discuss the issues raised by AUSTRAC in its statement of claim and the urgent response plan which has commenced.
  - (b) Westpac's Chairman, Lindsay Maxsted, said:
    - (i) "As a Board, and as individuals, we are devastated by the issues raised by AUSTRAC in its recent statement of claim".
    - (ii) "The notion that any child has been hurt as a result of any failings by Westpac is deeply distressing and we are truly sorry. The Board unreservedly apologises".
    - (iii) "Our Board, CEO, and management team are fully committed to fixing these issues and we are taking all steps necessary to urgently close any remaining gaps and fix our policies and procedures so that this can never happen again".

## **E.2 The price impact of the 20 and 22 November 2019 disclosures**

175. Following the publication of the 20 November AUSTRAC Statement, Concise Statement, AUSTRAC SOC, First Westpac 20 November Statement, Second Westpac

20 November Statement, and Westpac 22 November Statement, the price of Westpac Securities-Shares and Westpac ADRs declined substantially.

### Particulars

- i) *In relation to Westpac Shares traded on the ASX:*
  - A) *On 20 November 2019, the price of Westpac Shares declined by \$0.88 (3.31%) from \$26.55 to \$25.67.*
  - B) *On 21 November 2019, the price of Westpac Shares declined by \$0.51 (1.99%) from \$25.67 to \$25.16.*
  - C) *On 22 November 2019, the price of Westpac Shares declined by \$0.39 (1.55%) from \$25.16 to \$24.77.*
  - D) *On 25 November 2019, the price of Westpac Shares declined by \$0.33 (1.33%) from \$24.77 to \$24.44.*
  
- ii) *In relation to Westpac Shares traded on the NZX:*
  - A) *On 20 November 2019, the price of Westpac Shares declined by NZD\$0.74 (2.63%) from NZD\$28.15 to NZD\$27.41.*
  - B) *On 21 November 2019, the price of Westpac Shares declined by NZD\$0.78 (2.85%) from NZD\$27.41 to NZD\$26.63.*
  - C) *On 22 November 2019, the price of Westpac Shares declined by NZD\$0.33 (1.24%) from NZD\$26.63 to NZD\$26.30.*
  - D) *On 25 November 2019, the price of Westpac Shares declined by NZD\$0.49 (1.86%) from NZD\$26.30 to NZD\$25.81.*
  
- iii) *In relation to Westpac ADRs:*
  - A) *On 20 November 2019, the price of Westpac ADRs declined by USD\$0.80 (4.46%) from USD\$17.85 to USD\$17.15.*
  - B) *On 21 November 2019, the price of Westpac ADRs declined by USD\$0.24 (1.40%) from USD\$17.15 to USD\$16.91.*
  - C) *On 22 November 2019, the price of Westpac ADRs declined by USD\$0.24 (1.42%) from USD\$16.91 to USD\$16.67.*
  - D) *On 26 November 2019, the price of Westpac ADRs declined by USD\$0.07 (0.42%) from USD\$16.67 to USD\$16.60.*



## F. CONTRAVENING CONDUCT CAUSED LOSS

### F.1 Market-based causation (On-Market Acquisitions)

176. The Applicant and Group Members acquired an interest in Westpac Shares in a market of investors or potential investors in Westpac Shares:
- (a) operated by the ASX and/or the NZX;
  - (b) regulated by, inter alia, ss 674(2) and 674(3) of the Corporations Act and ASX Listing Rule 3.1 and/or NZX Listing Rule 1.7.2;
  - (c) where the price or value of Westpac Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with ss 674(2) and 674(3) of the Corporations Act and ASX Listing Rule 3.1 and/or NZX Listing Rule 1.7.2;
  - (d) where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of Westpac Shares (namely the information the subject of the Systemic Failures Continuous Disclosure Contravention, the Child Exploitation Continuous Disclosure Contravention, and the Potential Penalty Continuous Disclosure Contravention (together, the **Contravening Omissions**));
  - (e) where misleading or deceptive conduct had occurred, namely the conduct the subject of the AML/CTF Compliance Misleading Representation Contravention, the AML/CTF Compliance Misleading Silence Contravention, and the Continuous Disclosure Compliance Misleading Conduct Contravention, (or any of them) (together **Other Contravening Conduct**), that a reasonable person would expect to have a material effect on the price or value of Westpac Shares insofar as, if the representations the subject of the Other Contravening Conduct had not been made, no investors or potential investors in Westpac Shares would have been in a position to read or rely upon them.
177. During the Relevant Period, the price at which Westpac ADRs traded on the New York Stock Exchange in the United States of America reflected the price of Westpac Shares and the exchange rate between Australian Dollars and United States Dollars.
178. During the Relevant Period, each or a combination of:

- (a) the Systemic Failures Continuous Disclosure Contravention;
- (b) the Child Exploitation Continuous Disclosure Contravention;
- (c) the Potential Penalty Continuous Disclosure Contravention;
- (d) the AML/CTF Compliance Misleading Representation Contravention;
- (e) the AML/CTF Compliance Misleading Silence Contravention;
- (f) the Continuous Disclosure Compliance Misleading Conduct Representation Contravention; and
- (g) the Cleansing Notice Contravention,

(each being a **Market Contravention**) caused or materially contributed to the market price of Westpac ~~Securities~~ Shares and Westpac ADRs being greater than their true value and/or the market price that would have prevailed but for the Market Contraventions, from the respective dates that those Market Contraventions commenced, as pleaded in this Statement of Claim.

#### **Particulars**

- i) *The extent to which the Market Contraventions caused the market price for Westpac ~~Securities~~ Shares and Westpac ADRs to be greater than their true value and/or the market price that would otherwise have prevailed (that is, inflated) during the Relevant Period is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence in the proceeding.*

179. The decline in the price of Westpac ~~Securities~~ Shares and Westpac ADRs in paragraph 175 above:

- (a) was caused or materially contributed to by:
  - (i) the market's reaction to the information communicated to the Affected Market in 20 November AUSTRAC Statement, Concise Statement, AUSTRAC SOC, First Westpac 20 November Statement, Second Westpac 20 November Statement, and Westpac 22 November Statement in the context of what had been communicated to the Affected Market prior to those announcements; and

- (ii) the Market Contraventions; and
- (b) would, to the extent it removed inflation from the price of Securities, have occurred, or substantially occurred, earlier if:
  - (i) Westpac had disclosed to the Affected Market the information that was the subject of Contravening Omissions; and/or
  - (ii) Westpac had not engaged in the Other Contravening Conduct.

**Particulars**

- i) *The extent to which inflation was removed from the price of Westpac ~~Securities~~Shares and Westpac ADRs, and would have been removed at earlier points in time during the Relevant Period is a matter for evidence, particulars of which will be served immediately following the Applicant filing expert evidence.*

179A. During the Relevant Period, the market for Westpac Swaps was a market that traded on the basis that the market for Westpac Shares had the features pleaded in paragraph 176 above.

179B. By reason of the matters pleaded in paragraphs 176 to 179A above, at all times during the Relevant Period when Group Members entered into Westpac Swaps, they did so at a time when:

- (a) the market price of Westpac Shares was substantially greater than their true value and/or substantially greater than the market price that would have prevailed but for the Market Contraventions, from the respective dates that those Market Contraventions commenced, as pleaded in this Statement of Claim;
- (b) the Westpac Swaps had been defined by reference to the price of Westpac Shares which had the features described in sub-paragraph (a);
- (c) by reason of the matters pleaded in sub-paragraphs (a) and (b), the value of the future cashflows to be received by the equity amount receiver pursuant to the Westpac Swaps by reference to the performance of Westpac Shares was diminished and/or the value of the cashflows to be paid by the equity amount receiver in return was inflated.

**Particulars**

- i) Particulars will be provided at the time of service of the Applicant's opinion evidence in chief, and/or prior to the trial of the individual

*claims of Group Members following the determination of the common questions.*

## **F.2 Market-based causation (Capital Raising Acquisitions)**

180. Between 4 November 2019 and 5 November 2019, Westpac conducted the Placement whereby 78,988,941 new Westpac Shares were issued to certain sophisticated and professional investors.

### **Particulars**

- i) *Announcement published and lodged by Westpac with the ASX entitled 'Westpac successfully completes \$2 Billion Institutional Placement' dated 5 November 2019.*
- ii) *Cleansing Notice.*

181. The Placement was undertaken:

- (a) at the Placement Price, being an offer price of \$25.32 per new Westpac Share, being a price fixed by reference to the market price of Westpac Shares, which traded in a market with the features pleaded in paragraphs 176 and 178; and
- (b) at a price which, by reason of the matters pleaded in sub-paragraph (a):
  - (i) would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) of the Corporations Act and ASX Listing Rule 3.1 (and by s 708A of the Corporations Act in respect of share issues such as the Placement);
  - (ii) was set in circumstances where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of Westpac Shares (namely the information the subject of the Contravening Omissions); and
  - (iii) was set in circumstances where the Other Contravening Conduct had occurred, being conduct involving making, and failing to correct or qualify representations that a reasonable person would expect to have a material effect on the price or value of Westpac Shares (namely the First AML/CTF Compliance Representations, the Second AML/CTF Compliance

Representations and the Continuous Disclosure Compliance Representation), in that if they had not been made no investors or potential investors in Westpac Shares would have been in a position to read or rely upon them.

### Particulars

- i) *The extent to which the Market Contraventions caused the offer price for Westpac Shares under the Placement to be substantially greater than their true value and/or the price that they would have been offered had they been set by reference to the market price that would otherwise have prevailed (that is, inflated) is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence in the proceeding.*

182. Between 12 November 2019 and 2 December 2019, Westpac conducted the SPP and issued new Westpac Shares to certain retail investors.

183. The SPP was undertaken:

- (a) at the price of \$24.20 per new Westpac Share, being a price fixed by reference to the market price of Westpac Shares, which traded in a market with the features pleaded in paragraphs 176 and 178; and
- (b) at a price which, by reason of the matters pleaded in sub-paragraph (a):
  - (i) would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) of the Corporations Act and ASX Listing Rule 3.1 (and by s 708A of the Corporations Act in respect of share issues such as the SPP);
  - (ii) was set in circumstances where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of Westpac Shares (namely the information the subject of the Contravening Omissions); and
  - (iii) was set in circumstances where the Other Contravening Conduct had occurred, being conduct involving making, and failing to correct or qualify representations that a reasonable person would expect to have a material

effect on the price or value of Westpac Shares (namely the First AML/CTF Compliance Representations, the Second AML/CTF Compliance Representations, and the Continuous Disclosure Compliance Representation), in that if they had not been made no investors or potential investors in Westpac Shares would have been in a position to read or rely upon them.

#### **Particulars**

- i) *The extent to which the Market Contraventions caused the offer price for Westpac Shares under the SPP to be substantially greater than their true value and/or the price that they would have been offered had had they been set by reference to the market price that would otherwise have prevailed (that is, inflated) is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence in the proceeding.*

184. Paragraph 179 is repeated.

#### **F.3 Reliance**

185. Further, or in the alternative to paragraphs 176 to ~~179A~~179 and/or 180 to 184:

- (a) the Applicant and some Group Members would not have entered into the transactions pursuant to which they acquired an interest in Westpac Securities if they had known the information the subject of the Contravening Omissions; and/or
- (b) the Applicant and some Group Members relied on some or all of the Other Contravening Conduct in entering into the transactions pursuant to which they acquired an interest in Westpac.

#### **Particulars**

- i) *The Applicant would not have entered into the transactions pursuant to which it acquired an interest in Westpac Shares had it known the information the subject of the Contravening Omissions and, it relied upon the Other Contravening Conduct.*
- ii) *The identities of all those Group Members which or who would not have entered into the transactions pursuant to which they acquired an*

*interest in Westpac Securities, had they known of any or all of the information that was the subject of the Contravening Omissions and/or which or who relied on any or all of the Other Contravening Conduct are not known within the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

#### **F.4 Loss or damage suffered by the Applicant and Group Members**

186. By reason of the matters pleaded in paragraphs 176 to ~~179~~<sup>179A</sup>, and/or 180 to 184, and/or 185 the Applicant and Group Members have suffered loss and damage by and resulting from the Market Contraventions (or any one or combination of them).

##### **Particulars**

- i) *The loss suffered by the Applicant will be calculated by reference to:*
  - A) *the difference between the price at which Westpac ~~Securities~~ Shares were acquired by the Applicant during the Relevant Period and the true value of that interest; or*
  - B) *the difference between the price at which the Applicant acquired Westpac ~~Securities~~ Shares and the market price that would have prevailed had the Market Contraventions not occurred; or*
  - C) *alternatively, the days during the Relevant Period where the traded price of Westpac ~~Securities~~ Shares fell as a result of the disclosure information which had not previously been disclosed because of the Market Contraventions, and the quantum of that fall; or*
  - D) *alternatively, the days after the Relevant Period when the traded price of Westpac ~~Securities~~ Shares fell as a result of the disclosure of information which had not previously been*

*disclosed because of the Market Contraventions, and the quantum of that fall;*

- E) *alternatively, the difference between the price at which Westpac ~~Securities~~ Shares were acquired by the Applicant and the price in left in hand.*
- ii) *Further particulars in relation to the Applicant's losses will be provided after the service of evidence in chief.*
- iii) *Particulars of the losses of Group Members are not known within the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims; those instructions will be obtained (and particulars of the losses of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*
- iv) *For those Group Members who applied for Westpac Shares pursuant to the SPP and who withdrew from the SPP pursuant to the withdrawal offer announced by Westpac on 28 November 2019), the losses suffered by those Group Members will include the losses occasioned by the loss of use of their application monies.*

Date: ~~16 December 2019~~ 12 May 2020



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Signed by Tim Finney  
Lawyer for the Applicant

This pleading was prepared by E.A. Collins of senior counsel and D.J. Fahey of counsel



### Certificate of lawyer

I, Tim Finney, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~16 December 2019~~ 12 May 2020



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Signed by Tim Finney  
Lawyer for the Applicant

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