

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: VID1373/2019  
File Title: EDMUND HOW FEN YONG v WESTPAC BANKING CORPORATION  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 10/07/2020 4:26:51 PM AEST

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

Registrar

### Important Information

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

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Form 33  
Rule 16.32

## Defence

No. VID1373 of 2019

Federal Court of Australia  
District Registry: Victoria  
Division: General

### EDMUND HOW FENG YONG

Applicant

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

Respondent

Unless otherwise indicated, the defined terms used in the Amended Statement of Claim (**ASOC**) filed 15 May 2020 have the same meaning in this Defence. The respondent (**Westpac**) does not admit any factual assertions contained in or implied by the use of those defined terms. Headings are used for convenience only and do not form part of the Defence.

#### A INTRODUCTION

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

1 In answer to paragraph 1, Westpac:

- (a) admits that the applicant purports to bring this proceeding as a representative proceeding under the provisions of Part IVA of the *Federal Court of Australia Act 1976* (Cth);
- (b) admits that the group members on whose behalf the applicant brings these proceedings are said to be those described in paragraph 1;
- (c) denies that the applicant or the group members have suffered loss or damage by reason of the alleged conduct of Westpac;
- (d) otherwise does not know and therefore cannot admit paragraph 1.

2 Westpac does not know and therefore cannot admit paragraph 2.

3 In answer to paragraph 3, Westpac:

Filed on behalf of (name & role of party)	Westpac Banking Corporation, Respondent
Prepared by (name of person/lawyer)	Richard Harris
Law firm (if applicable)	Gilbert + Tobin
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- (a) repeats paragraphs 1(a) to (c) above;
- (b) otherwise does not know and therefore cannot admit paragraph 3.

## **A.2 The Respondent**

### **A.2.1 Introduction**

4 In answer to paragraph 4, Westpac:

- (a) in answer to subparagraph (a):
  - (i) says it was incorporated pursuant to the *Bank of New South Wales Act 1850* (NSW);
  - (ii) admits that it is capable of being sued;
  - (iii) otherwise denies subparagraph (a);
- (b) admits subparagraphs (b) to (d).

## **B WESTPAC'S BUSINESS**

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

5 In answer to paragraph 5, Westpac:

- (a) admits that, at all times material to the allegations made in the proceedings, it provided financial services which included retail, business and institutional banking, superannuation, life insurance, general insurance, broking services and finance services including in Australia, New Zealand and the Pacific Region;
- (b) otherwise denies paragraph 5.

6 In answer to paragraph 6, Westpac:

- (a) admits that it does, and that at all times material to the allegations made in the proceedings it did, prepare and present consolidated financial statements for it and its subsidiaries in accordance with the requirements of Australian Accounting Standard AASB 10 (Consolidated Financial Statements) as in force from time to time; and
- (b) otherwise denies paragraph 6.

7 Westpac admits paragraph 7.

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

8 In answer to paragraph 8, Westpac:

- (a) admits that during part or all of the Relevant Period:
  - (i) it had correspondent banking relationships as defined under section 5 of the AML/CTF Act with the parent entity of Bank A, a subsidiary of Bank G, and Banks B, C, D, E, F, H, I, J, K, L, M, N, O, and P (referred to below as the **Correspondent Banks**);

(ii) each of these correspondent banking relationships involved the provision by Westpac of banking services that involved a vostro account to each of the Correspondent Banks because:

- (A) Westpac and each of the Correspondent Banks were banks;
- (B) Westpac carried out an activity or business at or through a permanent establishment in Australia;
- (C) each of the Correspondent Banks carried out an activity at or through a permanent establishment in another country;
- (D) the relationship related, in whole or in part, to those permanent establishments;
- (E) the relationship was not of a kind specified in the AML/CTF Rules;
- (F) the relationship involved a vostro account, being an account Westpac held for each of the Correspondent Banks in Australian dollars for the purpose of facilitating the settlement of international transactions on behalf of the Correspondent Bank's customers;

(b) otherwise denies paragraph 8.

9 In answer to paragraph 9, Westpac:

- (a) repeats paragraph 8(a) above;
- (b) otherwise denies paragraph 9.

10 In answer to paragraph 10, Westpac:

- (a) repeats paragraph 8(a) above;
- (b) admits that:
  - (i) it had ACM Arrangements with Banks A, B, C, D, E and F. These arrangements were ceased on 12 November 2018 for Bank A, 31 January 2019 for Bank D, 28 February 2019 for Bank E and 31 January 2019 for Bank F;
  - (ii) it had OSBSB Arrangements with Banks B and J which were ceased on 30 September 2019 for Bank B and on 10 January 2020 for Bank J;
- (c) otherwise denies paragraph 10.

11 In answer to paragraph 11, Westpac:

- (a) repeats paragraphs 8(a) and 10(b) above;
- (b) says that the ACM Arrangements with Banks A, B, C, D, E and F operated under various models and offerings which enabled customers (payers) of Banks A, B, C, D, E and F to make payments to multiple beneficiaries (payees) through a single communication channel;
- (c) otherwise denies paragraph 11.

12 In answer to paragraph 12, Westpac:

- (a) repeats paragraphs 8(a) and 10(b) above;
- (b) says that the OSBSB Arrangements with Banks B and J:
  - (i) allowed Banks B and J to use Westpac infrastructure to process payments for their overseas and domestic customers through the Australian payments system in that:
    - (A) only Banks B and J (through their authorised signatories) were authorised to direct a transfer of money out of each settlement account held with Westpac;
    - (B) Banks B and J could also transfer money into and out of the settlement account held with Westpac in their own right;
  - (ii) did not allow Bank B's or Bank J's customers to directly transact on the OSBSB settlement account held with Westpac;
  - (iii) did not facilitate payable-through services;
- (c) otherwise denies paragraph 12.

13 Westpac admits paragraph 13.

14 Westpac admits paragraph 14.

15 Westpac denies paragraph 15.

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

16 Westpac admits paragraph 16.

17 In answer to paragraph 17, Westpac:

- (a) admits paragraphs (a) to (g);
- (b) says that:
  - (i) Westpac was and is a party to an arrangement with the Bank of New York Mellon during the Relevant Period where the Bank of New York Mellon issued Westpac ADRs;
  - (ii) during the Relevant Period, the Bank of New York Mellon issued Westpac ADRs at a ratio of 1 Westpac ADR to 1 Westpac share; and
- (c) otherwise denies paragraph 17.

## **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 In answer to paragraph 18, Westpac:

- (a) repeats paragraph 8(a) above;
- (b) otherwise admits paragraph 18.

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

19 Westpac admits paragraph 19.

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

20 Westpac admits paragraph 20.

21 Westpac admits paragraph 21.

22 Westpac admits paragraph 22.

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

23 In answer to paragraph 23, Westpac:

- (a) admits subparagraphs (a) to (c);
- (b) says that it:
  - (i) had and maintained a joint anti-money laundering and counter terrorism financing program within the meaning of s 83 of the AML/CTF Act that applied to Westpac throughout the Relevant Period and at all material times; and
  - (ii) was required by s 82(1) of the AML/CTF Act to comply with Part A of its joint anti-money laundering and counter terrorism financing program as in place from time to time throughout the Relevant Period and at all material times; and
- (c) otherwise denies paragraph 23.

24 In answer to paragraph 24, Westpac:

- (a) repeats paragraph 23(b) above;
- (b) in respect of sub-paragraph (c)(ii)(D), says that from 4 June 2014 to 12 January 2018 rule 9.1.5 of the AML/CTF Rules required that Part A of the anti-money laundering and counter terrorism financing program be designed to "assess" the risks posed by the matters set out in sub-paragraphs (c)(ii)(D)(1)-(4);
- (c) otherwise admits paragraph 24.

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

25 In answer to paragraph 25, Westpac:

- (a) admits that Part A of Westpac's AML/CTF Program contained procedures for managing ML/TF Risk;
- (b) says that further procedures were set out in a standard called ML/TF Risk Assessment and Methodology Standard; and

(c) otherwise denies paragraph 25.

26 In answer to paragraph 26, Westpac:

- (a) admits subparagraphs (a) to (c); and
- (b) otherwise denies paragraph 26.

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

27 Westpac admits paragraph 27.

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

28 Westpac denies paragraph 28.

29 In answer to paragraph 29, Westpac:

- (a) admits that:
  - (i) the maximum penalty for a contravention of the statutory provisions referred to in subparagraphs (i) to (v) was the amounts set out in subparagraphs (vi) to (ix) in the periods identified;
  - (ii) Westpac may be exposed to the imposition by a Court of a pecuniary penalty if it contravened a statutory provision referred to in subparagraphs (i) to (v);
- (b) says that:
  - (i) the amount of any pecuniary penalty imposed for a particular contravention or contraventions of one or more of the statutory provisions referred to in subparagraphs (i) to (v) is a matter of discretion for the Court;
  - (ii) in making a judgment in a particular case as to the appropriate penalty, the Court must identify and balance using a process of intuitive synthesis all of the factors and circumstances relevant in the particular case including the factors set out in *Trade Practices Commission v CSR Limited* (1991) ATPR 41-076 and relevant principles such as the "course of conduct" principle explained in, among other decisions, *Construction, Forestry, Mining and Energy Union v Cahill* (2010) 269 ALR 1;
- (c) otherwise denies paragraph 29.

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

30 In answer to paragraph 30, Westpac:

- (a) says that it is the Westpac Board Risk and Compliance Committee (**BRCC**) that has the purpose of assisting the Board of Westpac on the matters set out in paragraph 30(a) to (e);
- (b) otherwise admits paragraph 30.

**B.4.1 The Chief Executive Officer**

31 Westpac admits paragraph 31.

32 In answer to paragraph 32, Westpac:

- (a) says in relation to subparagraph (a) that Mr Hartzler was the Group Chief Executive Officer of Westpac from 2 February 2015 to 1 December 2019;
- (b) says in relation to subparagraph (b) that Mr Hartzler was an executive director of Westpac from 2 February 2015 to 2 December 2019;
- (c) admits subparagraph (c); and
- (d) otherwise denies paragraph 32.

**B.4.2 The Chief Risk Officer**

33 In answer to paragraph 33, Westpac:

- (a) admits that at all material times it had a Chief Risk Officer who was responsible for risk management activities across the Group;
- (b) admits subparagraph (b); and
- (c) otherwise denies paragraph 33.

34 Westpac admits paragraph 34.

35 In answer to paragraph 35, Westpac says that:

- (a) Ms Holcomb ceased to be the Chief Risk Officer of Westpac effective 25 June 2018; and
- (b) otherwise admits paragraph 35 in respect of the period 1 August 2014 to 24 June 2018.

36 In answer to paragraph 26, Westpac:

- (a) says that Mr King was appointed the acting Chief Risk Officer of Westpac on 25 June 2018; and
- (b) otherwise admits paragraph 36.

37 Westpac admits paragraph 37.

**B.4.3 The Chairman**

38 Westpac admits paragraph 38.

**B.4.4 Non-executive directors**

39 In answer to paragraph 39, Westpac:

- (a) says that Mr Crouch was an independent director of Westpac from 1 February 2013 to 12 December 2019;
- (b) admits paragraph 39 in respect of the period 1 February 2013 to 12 December 2019;
- (c) otherwise denies paragraph 39.



40 Westpac admits paragraph 40.

41 Westpac admits paragraph 41.

42 Westpac admits paragraph 42.

43 Westpac admits paragraph 43.

44 Westpac admits paragraph 44.

45 Westpac admits paragraph 45.

46 Westpac admits paragraph 46.

47 Westpac admits paragraph 47.

48 Westpac admits paragraph 48.

49 Westpac admits paragraph 49.

50 Westpac admits paragraph 50.

51 Westpac admits paragraph 51.

52 Westpac admits paragraph 52.

53 In answer to paragraph 53, Westpac:

(a) says that Mr Cairns was from 8 July 2004 to 13 December 2013:

(i) an independent director of Westpac;

(ii) a member of Westpac's Risk and Compliance Committee;

(b) admits subparagraph (c) in respect of the period up to 13 December 2013; and

(c) otherwise denies paragraph 53.

**B.4.5 The Chief Compliance Officer**

54 In answer to paragraph 54, Westpac:

(a) says that the role of the Chief Compliance Officer included receiving reports from parts of Westpac responsible for managing the aspects of compliance relevant to the role of the Chief Compliance Officer; and

(b) otherwise denies paragraph 54.

55 In answer to paragraph 55, Westpac:

(a) says that Ms Lim was the General Counsel of Westpac from 1 December 2011;

(b) says Ms Lim became the Chief Compliance Officer on 1 November 2013;

(c) otherwise admits subparagraphs (a) and (b);

(d) denies subparagraph (c).

56 In answer to paragraph 56, Westpac:

(a) admits subparagraph (a);

(b) denies subparagraph (b).

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

57 Westpac denies paragraph 57.

58 Westpac denies paragraph 58.

**C. CONTINUOUS DISCLOSURE CONTRAVENTIONS**

**C.1 Westpac's knowledge**

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

59 In answer to paragraph 59, Westpac:

(a) denies that it failed to carry out regular preliminary risk assessments or due diligence assessments of the Correspondent Banks under either s 98(1) or 98(2) of the AML/CTF Act during the Relevant Period;

(b) says that:

(i) Westpac was required to, and did, carry out 47 risk assessments under s 98(1) of the AML/CTF Act during the Relevant Period with respect to the Correspondent Banks;

(ii) the assessments referred to in subparagraph (i) did not sufficiently assess some of the risks it may have reasonably faced that each of the relationships with the Correspondent Banks might (inadvertently or otherwise) involve or facilitate money laundering or financing of terrorism;

(iii) by reason of subparagraph (ii), Westpac contravened s 98(1) of the AML/CTF Act on 47 occasions during the Relevant Period;

(iv) Westpac carried out 47 due diligence assessments of the Correspondent Banks during the Relevant Period;

(v) the assessments referred to in subparagraph (iv) it did carry out did not always sufficiently address all of the requirements set out in paragraphs 3.1.4 and 3.1.2 of the AML/CTF Rules;

(vi) by reason of subparagraphs (ii) and (v), Westpac contravened s 98(2) of the AML/CTF Act on 47 occasions during the Relevant Period;

(c) otherwise denies paragraph 59.

60 Westpac denies paragraph 60.

**C.1.2 IFTI Reporting Failures Information**

**C.1.2.1 Incoming IFTIs**

61 In answer to paragraph 61, Westpac:

- (a) in answer to subparagraph (a), says that:
  - (i) from 5 November 2013 to 3 September 2018, Westpac received under the arrangements with four of the Correspondent Banks 19,428,039 IFTIs transmitted into Australia within the meaning of item 2 of the table in section 46 of the AML/CTF Act, totalling over \$11 billion;
  - (ii) the IFTIs referred to in subparagraph (i) were a subset of the IFTIs that Westpac received from the four Correspondent Banks from 5 November 2013 to 3 September 2018;
- (b) in answer to subparagraph (b):
  - (i) admits that from 3 October 2016 to 19 November 2018, Westpac received under the arrangement with one Correspondent Bank 61,717 IFTIs transmitted into Australia within the meaning of item 2 of the table in s 46 of the Act, totalling over \$100 million;
  - (ii) says that the IFTIs referred to in subparagraph (i) were a subset of the IFTIs received from the relevant Correspondent Bank in the period 3 October 2016 to 19 November 2018;
- (c) otherwise denies paragraph 61.

62 In answer to paragraph 62, Westpac:

- (a) says that the relevant number of IFTIs was 19,489,756;
- (b) admits that each IFTI referred to in subparagraph (a) was an IFTI within the meaning of item 2 of the table in section 46 of the AML/CTF Act;
- (c) otherwise denies paragraph 62.

63 In answer to paragraph 63, Westpac:

- (a) says that the relevant number of IFTIs was 19,489,756;
- (b) otherwise admits paragraph 63.

64 In answer to paragraph 64, Westpac:

- (a) says that:
  - (i) from 22 October 2018 to 20 September 2019, Westpac gave the AUSTRAC CEO reports of 19,428,039 IFTIs with the four Correspondent Banks for the period 5 November 2013 to 3 September 2018;
  - (ii) from 27 March 2019 to 20 September 2019, Westpac gave the AUSTRAC CEO reports of 61,717 IFTIs with the one Correspondent Bank for the period 3 October 2016 to 19 November 2018;

(b) otherwise denies paragraph 64.

65 Westpac denies paragraph 65.

66 Westpac denies paragraph 66.

**C.1.2.2 Outgoing IFTIs**

67 In answer to paragraph 67, Westpac:

- (a) in answer to subparagraph (a), admits that during the period 5 November 2013 to 1 February 2019, it was the sender of 10,771 Outgoing IFTIs totalling over \$707 million under arrangements with one Correspondent Bank;
- (b) in answer to subparagraph (b), admits that it was the sender of 2,314 Outgoing IFTIs during the period February 2017 to June 2019 using LitePay under arrangements with three Correspondent Banks; and
- (c) otherwise denies paragraph 67.

68 In answer to paragraph 68, Westpac:

- (a) admits that each IFTI referred to in paragraph 67 was an IFTI within the meaning of item 1 of the table in section 46 of the AML/CTF Act;
- (b) otherwise denies paragraph 68.

69 Westpac admits paragraph 69.

70 In answer to paragraph 70, Westpac:

- (a) in relation to subparagraph (a), says that:
  - (i) all of the IFTIs referred to in subparagraph (a) involved one Correspondent Bank;
  - (ii) Westpac's arrangement with that Correspondent Bank involved Westpac reporting transfers to a single settlement account that Westpac provided to the Correspondent Bank;
  - (iii) Westpac reported these transfers by sending an account statement in "BAI2 Statement Format" to the Correspondent Bank;
  - (iv) the "BAI2 Statement Format" is a standard format for account statements;
  - (v) prior to November 2018, Westpac's view was that statements in BAI2 Statement Format were account statements and did not constitute "instructions" for the purposes of the AML/CTF Act;
  - (vi) Westpac did not give the AUSTRAC CEO a report of each of the IFTIs referred to in subparagraph (a) within 10 days of sending it;
  - (vii) on 4 October 2019, Westpac gave the AUSTRAC CEO reports of each of the IFTIs referred to in subparagraph (a);
- (b) in relation to subparagraph (b), says that:

- (i) Westpac did not give the AUSTRAC CEO a report of each of the IFTIs referred to in subparagraph (b) within 10 days of sending it;
  - (ii) on 25 November 2019, Westpac gave the AUSTRAC CEO reports of each of the IFTIs referred to in subparagraph (b);
- (c) otherwise denies paragraph 70.

71 In answer to paragraph 71, Westpac:

- (a) repeats paragraphs 63, 64(a), 70(a) and 70(b) above;
- (b) otherwise denies paragraph 71.

72 In answer to paragraph 72, Westpac:

- (a) says that on or around 1 August 2018, the BRCC was informed:
  - (i) of an IFTI issue relating to a failure to report transactions in the Australian Cash Management Account where the Westpac Institutional Bank (**WIB**) had acted as intermediary for other global financial institutions to process predominantly low value, high volume transactions;
  - (ii) that the issue involved a significant number of payments over a nine year period; and
  - (iii) that it was intended that the issue would be voluntarily disclosed to AUSTRAC as soon as reasonably practicable once further clarity was obtained regarding the number and value of the transactions and the extent of the IFTI issue; and
- (b) otherwise denies paragraph 72.

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

73 In answer to paragraph 73, Westpac:

- (a) says that in the period 1 January 2014 to 3 February 2019, under the ACM arrangements with one Correspondent Bank, Westpac was the sender of 10,540 IFTIs transmitted out of Australia within the meaning of item 1 of the table in section 46 of the Act;
- (b) otherwise denies paragraph 73.

74 In answer to paragraph 74, Westpac:

- (a) admits that in respect of 8,140 of the IFTIs referred to in subparagraph 73(a):
  - (i) Westpac was the interposed institution in the funds transfer chain that passed on the instruction at or through its permanent establishment in Australia;
  - (ii) each IFTI was accepted by the ordering institution at or through a permanent establishment of the ordering institution in Australia;
  - (iii) some or all of the required transfer information was passed onto Westpac by another institution in the funds transfer chain;

- (iv) while Westpac included certain information in the BAI2 statements (including remitter name, lodgement reference, beneficiary account number, amount, date and a unique reference number assigned by Westpac), it did not include the payer account number, which is not a standard data field on bank statements, as it was required to do in order to comply with s 64(7)(f) of the AML/CTF Act;

(b) otherwise denies paragraph 74.

75 In answer to paragraph 75, Westpac:

- (a) admits that in respect of 2,400 of the IFTIs referred to in subparagraph 73(a):
  - (i) Westpac was the ordering institution in the funds transfer chain;
  - (ii) Westpac accepted the IFTIs at or through its permanent establishment in Australia;
  - (iii) Westpac had obtained the complete payer information for each IFTI;
  - (iv) before passing that instruction on to another institution in the funds transfer chain, Westpac did not include in the instruction the payer account number as it was required to do in order to comply with s 64(6) of the AML/CTF Act;

(b) otherwise denies paragraph 75.

76 In answer to paragraph 76, Westpac:

- (a) repeats paragraph 75(a);
- (b) otherwise denies paragraph 76.

77 Westpac denies paragraph 77.

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

78 In answer to paragraph 78, Westpac:

- (a) admits that during the period from January 2011 to 20 November 2019, Westpac participated in 3,516,238 funds transfer chains whereby:
  - (i) a Correspondent Bank that had non-SWIFT ACM arrangements with Westpac passed on to Westpac multiple-institution person-to-person electronic funds transfer instructions to which s 64 of the AML/CTF Act applied;
  - (ii) the Correspondent Bank was the ordering institution in the funds transfer chain;
  - (iii) Westpac was the interposed person in the funds transfer chain;
  - (iv) Westpac passed on the transfer instruction, at or through a permanent establishment in Australia, to another financial institution in the funds transfer chain;
  - (v) the transferred money was made available at or through a permanent establishment of the beneficiary institution in Australia;

- (vi) the Correspondent Bank passed on some or all of the required transfer information to Westpac;
  - (vii) the transfer instruction was accepted by the Correspondent Bank at or through a permanent establishment in a foreign country;
  - (viii) the transfer instruction was passed on to Westpac by a permanent establishment of the Correspondent Bank in a foreign country;
  - (ix) the transfer instruction received by Westpac included a reference number described as '[the Correspondent Bank] Direct Reference' number; and
  - (x) Westpac made a record of so much of the required transfer information as was passed on to Westpac by the Correspondent Bank; and
- (b) says that:
- (i) the funds transfer chains referred to in paragraph 78 were in respect of 325 structured files received by Westpac from the Correspondent Bank on the following dates:
    - (A) 15 March 2011 to 3 October 2012 (318 structured files and 3,367,453 transfer instructions);
    - (B) 1 April 2015 (1 structured file and 16,921 transfer instructions);
    - (C) 1 July 2015 to 2 July 2015 (2 structured files and 38,862 transfer instructions);
    - (D) 1 October 2015 and 2 October 2015 (2 structured files and 30,237 transfer instructions);
    - (E) 1 April 2016 (1 structured file and 27,220 transfer instructions);
    - (F) 1 July 2016 (1 structured file and 35,545 transfer instructions);
  - (ii) while Westpac retained a record of the Beneficiary BSB, the Beneficiary Account Number, Amount, Beneficiary Name, Lodgement Reference and Name of Remitter in respect of the transfer instructions passed onto it by the Correspondent Bank, it did not retain for seven years one component of the information passed on to it by the Correspondent Bank, being the '[Correspondent Bank] Direct Reference' number.

79 In answer to paragraph 79, Westpac:

- (a) repeats paragraph 78 above;
- (b) admits paragraph 79.

80 Westpac denies paragraph 80.

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

81 Westpac denies paragraph 81.

82 Westpac denies paragraph 82.

83 Westpac denies paragraph 83.

84 Westpac denies paragraph 84.

**C.1.6 Failure to Monitor Information**

85 In answer to paragraph 85, Westpac:

- (a) admits that on and from 20 November 2013, it did not sufficiently monitor 12 customers, identified in the AUSTRAC SOC as Customers 1-12, who had an account with Westpac with a view to identifying, mitigating and managing the child exploitation material (CEM) risk in respect of those customers; and
- (b) otherwise denies paragraph 85.

86 Westpac denies paragraph 86.

**C.1.7 The Systemic Failures Information**

87 Westpac denies paragraph 87.

88 Westpac denies paragraph 88.

**C.1.8 Child Exploitation Information**

89 Westpac denies paragraph 89.

90 Westpac denies paragraph 90.

**C.1.9 The Potential Penalty Information**

91 Westpac denies paragraph 91.

92 Westpac denies paragraph 92.

**C.2 Continuous Disclosure Contraventions**

**C.2.1 Systemic Failures Continuous Disclosure Contravention**

93 Westpac denies paragraph 93.

94 Westpac denies paragraph 94.

95 In answer to paragraph 95, Westpac:

- (a) repeats the denials to paragraph 93 and 94 above;
- (b) says that:
  - (i) from the commencement of and during the Relevant Period Westpac has disclosed to the ASX and the NZX that:
    - (A) Westpac's business was highly regulated and therefore could be adversely affected by:



- (1) the risk of failing to comply with legal and regulatory requirements including a failure to comply with the AML/CTF Act (compliance risk);
  - (2) the risk of loss arising from inadequate or failed internal processes, people and systems or from external events (operational risk);
- (B) if Westpac failed to comply with the legal and regulatory requirements that it was required to, it may be subject to fines and penalties which could adversely affect Westpac's business, reputation, prospects, financial performance or financial condition;
- (C) there can be no assurance that future developments will be in accordance with Westpac's expectations and actual results could differ materially from those expected depending on the outcome of various factors including:
- (1) the effectiveness of Westpac's risk management policies including internal processes, systems and employees (which have inherent limitations and may prove ineffective or inadequate); and
  - (2) regulatory investigations, litigation, fines and penalties;

#### **Particulars**

Westpac 2013 Interim Financial Report, 3 May 2013, pages 2, 8, 11 and 12.

Westpac 2013 Annual Report, 13 November 2013, pages 23, 37, 79, 105, 108, 109 and 114. Westpac 2014 Interim Financial Report, 5 May 2014, pages 2, 7, 8, 10, and 12.

Westpac 2014 Annual Report, 12 November 2014, pages 22, 85, 112, 115, 117 and 121.

Westpac 2015 Interim Financial Results, 4 May 2015, pages 38, 71, 72, 75, 77, 78 and 122.

Westpac 2015 Annual Report, 11 November 2015, pages 73, 99, 102, 103, 104 and 108.

Westpac 2016 Interim Financial Results, 2 May 2016, pages 38, 72, 73, 76, 78 and 127.

Westpac 2016 Annual Report, 9 November 2016, pages 69, 94, 98, 99 and 103.

Westpac 2017 Interim Financial Results, 8 May 2017, pages 70, 71, 75, 76 and 126.

Westpac 2017 Annual Report, 8 November 2017, 71, 97, 98, 99, 100, 103, 108 and 219.

Westpac 2018 Interim Financial Results, 7 May 2018, pages 70, 71, 75, 76, 77, 78, 79, 83, 84, 85 and 138.

Westpac 2018 Annual Report, 7 November 2018, pages 81, 109, 110, 111, 112, 116, 117 and 118.

Westpac 2019 Interim Financial Results, 6 May 2019, pages 90, 91, 92, 93, 94, 98, 99, 100 and 168.

Westpac 2019 Annual Report, 4 November 2019, pages 77, 103, 104, 105, 109, 116 and 255.

- (ii) on 5 November 2018, Westpac disclosed to the ASX and the NZX that:
- (A) Westpac had recently self-reported to AUSTRAC a failure to report a large number of IFTIs as required by the AML/CTF Act in relation to one WIB product relating to batch instructions received from 2009 until recently from a small number of correspondent banks for payments made predominantly to beneficiaries in Australia in Australian dollars, the majority of which were low value and made by Government pension funds and corporates;
  - (B) Westpac was investigating and working with AUSTRAC to remediate the failure to report the IFTIs;
  - (C) while the matter was reported as a contingent liability, no provision had been raised for this matter including in relation to any potential regulatory action;
  - (D) Westpac was giving increased attention to non-financial risks including financial crime;
  - (E) Westpac knew it had more to do to improve;
  - (F) Westpac was making a significant investment to improve its financial crime systems and processes;
  - (G) a failure to comply with financial crime obligations was a significant risk to Westpac;
  - (H) while Westpac had systems, policies, processes and controls in place that are designed to manage its financial crime obligations (including its reporting obligations), these may not always have been nor continue to be effective;
  - (I) if Westpac failed to comply with these obligations, it could face regulatory action such as litigation, fines, penalties and the revocation, suspension or variation of licence conditions;
  - (J) non-compliance could also lead to litigation commenced by third parties (including class action proceedings) and cause reputational damage;
  - (K) these actions could, either individually or in aggregate, adversely affect Westpac's business, prospects, reputation, financial performance or financial condition;

### Particulars

Westpac 2018 Full Year Financial Results, 5 November 2018, pages 70 and 109.

Westpac 2018 Annual Report, 5 November 2018, pages 11, 12, 21, 99, 111, 112 and 241.

- (iii) on 6 May 2019, Westpac disclosed to the ASX and NZX that:
- (A) Westpac had self-reported to AUSTRAC a failure to report a large number of IFTIs as required by the AML/CTF Act in relation to one WIB product;
  - (B) the majority of the IFTIs:
    - (1) related to batch instructions received by Westpac between 2009 and 2018 from a small number of correspondent banks for payments made predominantly to beneficiaries in Australia in Australian dollars;
    - (2) were low value and made by Government pension funds and corporates;
  - (C) Westpac was continuing to work with AUSTRAC to remediate the failure to report the IFTIs;
  - (D) AUSTRAC was investigating the matter and, over the previous six months, had issued a number of detailed notices requiring the production of documents and information;
  - (E) no provision had been raised for this matter including in relation to any potential regulatory enforcement action;
  - (F) the consequences of the failure to comply with financial crime obligations could include regulatory enforcement action by AUSTRAC or other regulators, including litigation resulting in fines and/or penalties;
  - (G) while Westpac had systems, policies, processes and controls in place that are designed to manage its financial crime obligations (including its reporting obligations), these may not always have been nor continue to be effective;
  - (H) if Westpac failed to comply with these obligations, it could face regulatory action such as litigation, fines, penalties and the revocation, suspension or variation of licence conditions;
  - (I) non-compliance could also lead to litigation commenced by third parties (including class action proceedings) and cause reputational damage;
  - (J) these actions could, either individually or in aggregate, adversely affect Westpac's business, prospects, reputation, financial performance or financial condition;
  - (K) Westpac continues to progress a program of work to improve its management of financial crime risk including a review of Westpac's

AML/CTF policies, the completeness of data feeding into its AML/CTF systems and its AML/CTF processes and controls;

- (L) Westpac had been regularly updating AUSTRAC on progress and had commenced implementing a number of improvements to its AML/CTF Program, governance, policies, systems and controls together with related remediation work in respect of certain reporting practices;
- (M) these efforts had related to matters such as customer on-boarding, ongoing customer due diligence, transaction monitoring and regulatory reporting (including in relation to IFTIs, SMRs and Threshold Transaction Reports (TTRs));

### **Particulars**

Westpac 2019 Interim Financial Results, 6 May 2019, pages 79, 80, 92 and 146.

- (iv) on 23 October 2019, Westpac disclosed to the ASX and NZX that:
  - (A) the contingent liability that had been disclosed on 5 November 2018 related to failure to report a large number of IFTIs as required under the AML/CTF Act which Westpac self-reported to AUSTRAC;
  - (B) the majority of the IFTIs:
    - (1) 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;
    - (2) were low value, recurring and made by foreign government pension funds and corporates;
  - (C) AUSTRAC had issued a number of detailed statutory notices over the last year:
    - (1) requiring information relating to Westpac's processes, procedures and oversight;
    - (2) which relate 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;
  - (D) Westpac had not yet received an indication from AUSTRAC about the nature of any enforcement action it may take;
  - (E) Westpac was continuing to work with AUSTRAC in relation to these matters;
  - (F) 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;

- (G) previous enforcement action by AUSTRAC against other institutions had resulted in a range of outcomes, depending on the nature and severity of the relevant conduct and its consequences;

**Particulars**

Westpac ASX Release dated 23 October 2019, pages 1 and 3.

- (v) on 4 November 2019, Westpac disclosed to the ASX and NZX that:
  - (A) the information existed which is set out in subparagraph (iv) above;
  - (B) as AUSTRAC was still investigating the issues referred to in subparagraph (iv)(C) above, any penalty could not be reliably estimated and accordingly no provision had been raised;
  - (C) the consequences of the failure to comply with financial crime obligations could include regulatory enforcement action by AUSTRAC or other regulators, including litigation resulting in fines and/or penalties;
  - (D) while Westpac had systems, policies, processes and controls in place that are designed to manage its financial crime obligations (including its reporting obligations), these may not always have been nor continue to be effective;
  - (E) if Westpac failed to comply with these obligations, it could face regulatory action such as litigation, fines, penalties and the revocation, suspension or variation of licence conditions;
  - (F) non-compliance could also lead to litigation commenced by third parties (including class action proceedings) and cause reputational damage;
  - (G) these actions could, either individually or in aggregate, adversely affect Westpac's business, prospects, reputation, financial performance or financial condition;
  - (H) Westpac was continuing to progress a program of work to improve its management of financial crime risks including a review of its AML/CTF policies, the completeness of data feeding into its AML/CTF systems and its AML/CTF processes and controls;
  - (I) Westpac had been regularly updating AUSTRAC on progress;
  - (J) Westpac continued to implement a number of improvements to its AML/CTF program, governance, policies, systems and controls together with related remediation work in respect of certain controls and reporting practices;
  - (K) these efforts related to matters such as customer on-boarding, customer and payment screening, ongoing customer due diligence, transaction monitoring and regulatory reporting (including in relation to IFTIs, SMRs and TTRs);

### Particulars

Westpac 2019 Full Year Financial Results, 4 November 2019, pages 78, 79 and 119.

Westpac 2019 Annual Report, 4 November 2019, pages 15, 104 and 255.

(c) says that because the Systemic Failures Information did not exist, it was not disclosed to the ASX or the NZX; and

(d) otherwise denies paragraph 95.

96 Westpac denies paragraph 96.

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

97 Westpac denies paragraph 97.

98 Westpac denies paragraph 98.

99 In answer to paragraph 99, Westpac:

(a) repeats the denials to paragraphs 97 and 98 above;

(b) repeats paragraph 95(b) above;

(c) says that because the Child Exploitation Information did not exist, it was not disclosed to the ASX or the NZX; and

(d) otherwise denies paragraph 99.

100 Westpac denies paragraph 100.

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

101 Westpac denies paragraph 101.

102 Westpac denies paragraph 102.

103 In answer to paragraph 103, Westpac:

(a) repeats the denials to paragraphs 101 and 102 above;

(b) repeats paragraph 95(b) above;

(c) says that because the Potential Penalty Information did not exist, it was not disclosed to the ASX or the NZX; and

(d) otherwise denies paragraph 103.

104 Westpac denies paragraph 104.

**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 Westpac admits paragraph 105.

106 Westpac admits paragraph 106.

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

107 Westpac admits paragraph 107.

108 Westpac admits paragraph 108.

109 Westpac admits paragraph 109.

110 Westpac admits paragraph 110.

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

111 Westpac admits paragraph 111.

112 Westpac admits paragraph 112.

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

113 Westpac admits paragraph 113.

114 Westpac admits paragraph 114.

115 Westpac admits paragraph 115.

116 Westpac admits paragraph 116.

117 Westpac admits paragraph 117.

118 Westpac admits paragraph 118.

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

119 Westpac admits paragraph 119.

120 Westpac admits paragraph 120.

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

121 Westpac admits paragraph 121.

122 Westpac admits paragraph 122.

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

123 Westpac admits paragraph 123.

124 Westpac admits paragraph 124.

125 In answer to paragraph 125, Westpac:

- (a) admits subparagraphs (a), (c), (d) and (e);
- (b) in response to subparagraph (b) says that the 2018 Annual Report records that batch instructions were received from 2009 until “recently” from a small number of Correspondent Banks for payments made predominantly to beneficiaries in Australia in Australian dollars; and
- (c) otherwise denies paragraph 125.

**D.1.8 2019 Compliance Statements**

126 Westpac admits paragraph 126.

127 Westpac admits paragraph 127.

128 Westpac admits paragraph 128.

129 Westpac admits paragraph 129.

130 Westpac admits paragraph 130.

131 Westpac admits paragraph 131.

132 Westpac admits paragraph 132.

133 In answer to paragraph 133, Westpac:

- (a) repeats paragraph 95(b) above;
- (b) says that each of the AML/CTF Compliance Statements:
  - (i) was a point in time disclosure;
  - (ii) was not required by law to be corrected, qualified or contradicted at any time after they were made;
- (c) denies paragraph 133.

**D.1.9 Westpac’s AML/CTF Compliance Representations**

134 Westpac denies paragraph 134.

135 Westpac denies paragraph 135.

136 Westpac denies paragraph 136.

137 Westpac denies paragraph 137.



**D.1.10 Misleading or deceptive conduct****D.1.10. First AML/CTF Compliance Representations****1**

138 Westpac denies paragraph 138.

139 Westpac denies paragraph 139.

140 Westpac denies paragraph 140.

141 Westpac denies paragraph 141.

142 Westpac denies paragraph 142.

**D.1.10. Second AML/CTF Compliance Representations****2**

143 Westpac denies paragraph 143.

144 Westpac denies paragraph 144.

145 Westpac denies paragraph 145.

146 Westpac denies paragraph 146.

147 Westpac denies paragraph 147.

**D.2 Westpac's statements about continuous disclosure****D.2.1 Market Disclosure Policy**

148 Westpac admits paragraph 148.

149 Westpac admits paragraph 149.

**D.2.2 2013 Continuous Disclosure Statements**

150 Westpac admits paragraph 150.

**D.2.3 2014 Continuous Disclosure Statements**

151 Westpac admits paragraph 151.

**D.2.4 Cleansing Notice**

152 Westpac admits paragraph 152.

153 Westpac admits paragraph 153.

154 In answer to paragraph 154, Westpac:

- (a) admits that on 8 November 2019, it published and lodged with the ASX an announcement which was entitled "Notice under section 708A(5)(e) of the Corporations Act as modified by ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73"; and

(b) otherwise denies paragraph 154.

155 Westpac admits paragraph 155.

156 In answer to paragraph 156, Westpac:

(a) repeats paragraph 95(b) above;

(b) says that each of the 2013, 2014 and 2019 Continuous Disclosure Statements:

(i) was a point in time disclosure;

(ii) was not required by law to be corrected, qualified or contradicted at any time after they were made;

(c) denies paragraph 156.

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

157 Westpac denies paragraph 157.

158 Westpac denies paragraph 158.

**D.2.6 Misleading or deceptive conduct**

159 Westpac denies paragraph 159.

160 Westpac denies paragraph 160.

161 Westpac denies paragraph 161.

**D.2.7 Defective Cleansing Notice**

162 Westpac denies paragraph 162.

163 Westpac denies paragraph 163.

164 Westpac denies paragraph 164.

165 Westpac denies paragraph 165.

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

**E.1 The 20 November 2019 Announcements**

166 Westpac admits paragraph 166.

167 Westpac admits paragraph 167.

168 In answer to paragraph 168, Westpac:

(a) admits that AUSTRAC made the statements and allegations referred to in paragraph 168; and

(b) relies on those statements and allegations for their full force and effect.

169 Westpac admits paragraph 169.

170 Westpac admits paragraph 170.

171 Westpac admits paragraph 171.

172 Westpac admits paragraph 172.

173 Westpac admits paragraph 173.

174 Westpac admits paragraph 174.

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

175 Westpac denies paragraph 175.

**F CONTRAVENING CONDUCT CAUSED LOSS**

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

176 Westpac denies paragraph 176.

177 Westpac does not know and therefore cannot admit paragraph 177.

178 Westpac denies paragraph 178.

179 Westpac denies paragraph 179.

179A Westpac denies paragraph 179A.

179B Westpac denies paragraph 179B.

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

180 Westpac admits paragraph 180.

181 In answer to paragraph 181, Westpac:

- (a) admits that the placement was undertaken at the placement price of \$25.32 per share; and
- (b) otherwise denies paragraph 181.

182 In answer to paragraph 182, Westpac:

- (a) says that on 28 November 2019 it published an offer to allow any person who applied for Westpac Shares under the SPP before AUSTRAC's 20 November 2019 announcement to withdraw their application;
- (b) admits paragraph 182.

183 In answer to paragraph 183, Westpac:

- (a) admits that the SPP was undertaken at the price of \$24.20 per share;

- (b) says that the price represented a 2% discount of the volume weighted average price of Westpac shares traded on the ASX on the five trading days up to and including 2 December 2019; and
- (c) otherwise denies paragraph 183.

184 Westpac repeats its response to paragraph 179 of the ASOC.

**F.3 Reliance**

185 Westpac denies paragraph 185.

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

186 In answer to paragraph 186, Westpac:

- (a) denies that it has committed any of the Market Contraventions;
- (b) says that if, which is denied, Westpac had committed any of the Market Contraventions, the matters pleaded in paragraphs 176 to 179A, 180 to 184 and 185 would not, even if established, constitute any causal nexus sufficient to support a claim for compensation pursuant to any of ss 1317HA, 1325 and 1041I of the Corporations Act, s 12GF of the ASIC Act or s 236 of the Australian Consumer Law in respect of such contraventions;
- (c) otherwise denies paragraph 186.

Date: 10 July 2020



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Signed by Richard Glenn Harris  
Lawyer for the Respondent

This pleading was prepared by James Arnott and settled by Matthew Darke SC.

### **Certificate of lawyer**

I Richard Glenn Harris certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 10 July 2020



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Signed by Richard Glenn Harris  
Lawyer for the Respondent