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20-129MR CBA to pay \$5 million over the AgriAdvantage Plus Package – Royal Commission case study

The Federal Court of Australia has ordered CBA to pay a \$5 million penalty after the Court found that CBA had breached the ASIC Act and Corporations Act for failures of their AgriAdvantage Plus Package (AA+ Package). The Court also ordered CBA to publish a Corrective Notice in the form determined by the Court.

From May 2005 to December 2015, CBA sold customers the AA+ Package, which entitled them to benefits in the form of fee waivers, interest rate discounts and bonus interest on savings, in exchange for the payment of package fees on 22 CBA products.

ASIC commenced proceedings against CBA on 16 March 2020 ([20-063MR](#)).

ASIC alleged, and CBA admitted, that:

- a. contrary to the terms of the AA+ Package, CBA did not provide certain benefits to customers and, as a result, customers were overcharged fees and interest on loans and fees, and underpaid interest on savings. CBA also overcharged AA+ Package fees to certain customers.
- b. the causes of CBA's failures included the highly manual nature of CBA's systems by which the AA+ Package benefits were applied as well as CBA having no systems or processes in place to check whether customers were receiving benefits.
- c. a total of 8,659 customers were impacted by CBA's conduct on 131,542 occasions, in circumstances where CBA benefited from a total of \$8,087,276.23 in incorrectly charged fees and interest on loans, and underpaid interest on savings.

In his decision, Justice Beach found that:

- a. CBA had contravened each of ss12DA(1), 12DB(1)(e) and (g), 12DI(3) of the ASIC Act and 912A(1)(a) and (c) of the Corporations Act. In particular, that CBA breached its obligation to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly;
- b. the contraventions arose out of CBA's failure to establish and maintain systems and processes to ensure that it could provide the AA+ Package benefits in accordance with the AA+ Package terms and conditions. Although ASIC has sought only penalties and declarations as to CBA's contraventions during the penalty period, the seriousness of those contraventions is to be viewed in the context of CBA's failings for the broader period of over 10 years; and
- c. a pecuniary penalty of \$5 million is appropriate having regard to the number of contraventions, the prejudice to customers, the duration of the contraventions and the inadequacy of CBA's internal systems and processes. The penalty imposed recognises the gravity of the contraventions that occurred whilst taking into account the 'very substantial mitigating circumstances', including that the contravening conduct was not deliberate and that there has since been 'complete rectification and remediation'.

'ASIC considers that CBA's conduct in this matter, which was examined in detail during the Financial Services Royal Commission, was the result of inadequate systems and processes. Because of its conduct, CBA failed to deliver its AgriAdvantage package efficiently, honestly and fairly as it was obliged to do under s912A of the Corporations Act. As a result, over 8,000 customers were affected,' said ASIC Deputy Chair Daniel Crennan QC.

'As recognised by Justice Beach in his judgment, CBA took steps to address the harm that the conduct caused and, importantly, made admissions as to its contraventions of the law at the first possible opportunity in the litigation.'

'ASIC's expectation of the entities that it regulates is that, in appropriate circumstances, when ASIC issues proceedings against them, they ought to make admissions and engage in the penalties process at the earliest possible opportunity.'

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Background

CBA reported issues with the AgriAdvantage Plus Package in 2014 and ASIC then engaged with CBA in relation to the customer remediation process ([15-298MR](#)).

CBA's conduct was the subject of a case study by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – see [Vols 1 & 2 of the interim report](#). This court outcome is ASIC's second court outcome arising out of Royal Commission case studies. The first court outcome resulted in a 12 months' imprisonment, to be served by way of Intensive Corrections Order, against former NAB branch manager Mathew Alwan in connection with NAB's introducer program ([19-315MR](#)).

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