



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID704/2021

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Plaintiff

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

Defendant

**ORDER**

**JUDGE:** JUSTICE BEACH

**DATE OF ORDER:** 20 April 2022

**WHERE MADE:** Melbourne

**THE COURT DECLARES THAT:**

1. Pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) (FCA Act) and s 1317E of the *Corporations Act 2001* (Cth) (Corporations Act), Westpac Banking Corporation (Westpac) breached its obligation to do all things necessary to ensure the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened ss 912A(1)(a) and 912A(5A) of the Corporations Act, in that:

1.1 On and after 13 March 2019, Westpac knew that it did not have processes or controls in place:

1.1.1 to identify when a company holding a bank account with Westpac had been deregistered under the Corporations Act; or

1.1.2 to manage on an ongoing basis Westpac bank accounts held in the name of deregistered companies (Deregistered Company Accounts) in a manner consistent with funds in those accounts having vested in ASIC or the Commonwealth pursuant to s 601AD of the Corporations Act.

1.2 Despite this knowledge:



- 1.2.1 Westpac did not implement within its Westpac Institutional Bank division ongoing processes or controls to identify and manage Deregistered Company Accounts until, at the earliest, October 2019;
- 1.2.2 for all other divisions within Westpac:
  - 1.2.2.1 Westpac did not commence implementation of manual processes to identify and manage Deregistered Company Accounts until 27 October 2020;
  - 1.2.2.2 Westpac did not approve or provide adequate funding or resources to implement ongoing processes or controls to identify and manage Deregistered Company Accounts until October 2020; and
  - 1.2.2.3 Westpac did not implement ongoing processes or controls to identify and manage Deregistered Company Accounts until, at the earliest, 25 March 2021.
- 1.3 Further, between 13 March 2019 and 27 October 2020:
  - 1.3.1 Westpac did not place any blocks on withdrawals from approximately 4200 Deregistered Company Accounts which Westpac had identified in that period;
  - 1.3.2 Westpac staff removed withdrawal blocks from approximately 100 Deregistered Company Accounts which Westpac had previously identified; and
  - 1.3.3 Westpac did not have controls or adequate systems in place to prevent staff from removing blocks on withdrawals from Deregistered Company Accounts which had been identified and blocked.
- 1.4 Further:
  - 1.4.1 at all times after August 2019, Westpac knew that Deregistered Company Accounts for companies which had been deregistered before April 2017 remained open;
  - 1.4.2 however, Westpac did not take steps to manage or remediate those historical Deregistered Company Accounts, which totalled approximately 11,000 accounts, until, at the earliest, 25 March 2021.



- 1.5 By the above conduct in paragraphs 1.2 to 1.4, approximately 21,000 Deregistered Company Accounts held with Westpac (both accounts identified and not identified by Westpac), remained open or were reopened, and transactions could be carried out on those accounts, which included funds from those accounts being received by persons authorised by Westpac to operate the accounts and third parties, in circumstances where those funds in fact vested in ASIC or the Commonwealth.
- 1.6 In respect of the Deregistered Company Accounts in paragraph 1.5, Westpac:
  - 1.6.1 received payment of fees, interest, overdraft and loan repayments from funds held in the Deregistered Company Accounts (both accounts identified and not identified by Westpac) and made use of the funds in those accounts in the course of its business, in circumstances where the funds had vested in ASIC or the Commonwealth; and
  - 1.6.2 did not remit to ASIC or the Commonwealth funds from those accounts which had vested in ASIC or the Commonwealth. The total vested funds that could be, and in some instances were, withdrawn and / or paid to third parties on the instructions of persons who had previously been authorised by the now deregistered company to operate the accounts rather than remitted to ASIC or the Commonwealth, is estimated at a total of:
    - 1.6.2.1 in respect of deregistered companies which remained deregistered:
      - 1.6.2.1.1 approximately \$35.5 million calculated at the date that the company was deregistered; and
      - 1.6.2.1.2 approximately \$44.2 million calculated at the date that the company was identified by Westpac as deregistered; and
    - 1.6.2.2 approximately \$41 million in respect of companies that were subsequently reinstated or are in the process of being reinstated.
- 1.7 Despite having previously told ASIC that it was implementing an ongoing control or process to deal with Deregistered Company Accounts, at all times on and after



13 March 2019 until November 2020, Westpac did not tell ASIC that it had not implemented an ongoing control or process across its divisions.

**AND THE COURT ORDERS THAT:**

- 2 Pursuant to s 1317G of the Corporations Act, within 30 days of the date of this Order, Westpac pay to the Commonwealth of Australia a pecuniary penalty in the sum of \$20 million in respect of Westpac's conduct declared to be a contravention of s 912A(5A) of the Corporations Act.
- 3 Westpac pay ASIC's costs of and incidental to the proceeding.

Date that entry is stamped: 20 April 2022

*Sia Lagos*  
Registrar