



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1239/2021

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

WESTPAC BANKING CORPORATION (ABN 33 007 457 141)

Defendant

ORDER

JUDGE: JUSTICE BEACH

DATE OF ORDER: 21 April 2022

WHERE MADE: Melbourne

DEFINITIONS

In these orders:

- (i) ***ASIC Act*** means the *Australian Securities and Investments Commission Act 2001* (Cth).
- (ii) ***Corporations Act*** means *the Corporations Act 2001* (Cth).
- (iii) ***Debt Purchaser*** means Baycorp Collections PDL (Australia) Pty Limited (ACN 119 478 778), Credit Corp Services Pty Ltd (ACN 082 928 872), Panthera Finance Pty Ltd (ACN 147 634 482), ACM Group Pty Limited (ACN 127 181 097), Credit Corp Acceptance Pty Limited (ACN 119 211 317) (then known as Great Western Asset Management Pty Ltd), Lion Finance Pty Ltd (ACN 095 926 766), and/or Pioneer Credit Solutions Pty Ltd (ACN 136 062 970).
- (iv) ***FCA Act*** means the *Federal Court of Australia Act 1976* (Cth).
- (v) ***St George-branded cards*** means St George-branded consumer credit cards, Bank SA-branded consumer credit cards and Bank of Melbourne-branded consumer credit cards.
- (vi) ***Westpac-branded cards*** means Westpac-branded consumer credit cards.



(vii) *Westpac-branded loans* means Westpac-branded Flexi Loans.

THE COURT DECLARES THAT:

Westpac-branded cards

1. Between 17 March 2011 and 30 November 2015, the Defendant (Westpac):
 - (a) in trade and commerce and in connection with the supply of financial services, on 709 occasions represented to a Debt Purchaser that one or more interest rates applied to a customer's corresponding Westpac-branded card account balance and that no other interest rates applied to the customer's account, when in fact the interest rate or rates that Westpac (and then the Debt Purchaser) was entitled to charge the customer on either a portion of the account balance, or the whole of the account balance, was lower than the lowest interest rate that Westpac provided to the Debt Purchaser; and
 - (b) thereby, on each occasion, in contravention of ss 12DB(1)(a) and (i) of the ASIC Act, Westpac made false and misleading representations, and in contravention of s 12DA(1) of the ASIC Act, made misleading and deceptive representations.

2. Between 1 December 2015 and 10 May 2018, Westpac:
 - (a) in trade and commerce and in connection with the supply of financial services, on 3,477 occasions represented to a Debt Purchaser that one or more interest rates applied to a customer's corresponding Westpac-branded card account balance and that no other interest rates applied to the customer's account, when in fact the interest rate or rates that Westpac (and then the Debt Purchaser) was entitled to charge the customer on either a portion of the account balance, or the whole of the account balance, was lower than the lowest interest rate that Westpac provided to the Debt Purchaser; and
 - (b) thereby, on each occasion, in contravention of ss 12DB(1)(a) and (i) of the ASIC Act, Westpac made false and misleading representations, and in contravention of s 12DA(1) of the ASIC Act, made misleading and deceptive representations.



3. Between 17 March 2011 and 10 May 2018, by reason of the conduct described in the declarations in paragraphs 1 and 2 above, Westpac failed to comply with financial services laws in contravention of s 912A(1)(c) of the Corporations Act.

Westpac-branded loans

4. Between 10 October 2013 and 30 November 2015, Westpac:
 - (a) in trade and commerce and in connection with the supply of financial services, on 28 occasions represented to a Debt Purchaser that an interest rate applied to the customer's Westpac-branded loan account balance and that no other interest rates applied to the customer's account, when in fact the interest rate that Westpac (and then the Debt Purchaser) was entitled to charge on the whole of the account balance was lower than the interest rate that Westpac provided to the Debt Purchaser; and
 - (b) thereby on each occasion, in contravention of ss 12DB(1)(a) and (i) of the ASIC Act, made false and misleading representations; and, in contravention of s 12DA(1) of the ASIC Act, made misleading and deceptive representations.
5. Between 1 December 2015 and 10 May 2018, Westpac:
 - (a) in trade and commerce and in connection with the supply of financial services, on 162 occasions represented to a Debt Purchaser that an interest rate applied to the customer's Westpac-branded loan account balance and that no other interest rates applied to the customer's account, when in fact the interest rate that Westpac (and then the Debt Purchaser) was entitled to charge on the whole of the account balance was lower than the interest rate that Westpac provided to the Debt Purchaser; and
 - (b) thereby on each occasion, in contravention of ss 12DB(1)(a) and (i) of the ASIC Act, made false and misleading representations; and in contravention of s 12DA(1) of the ASIC Act, made misleading and deceptive representations.



6. Between 1 October 2013 and 10 May 2018, by reason of the conduct described in the declarations in paragraphs 4 and 5 above, Westpac breached its obligation to comply with financial services laws in contravention of s 912A(1)(c) of the Corporations Act.

St George-branded cards

7. Between 1 March 2010 and 30 November 2015, Westpac, in trade and commerce and in connection with the supply of financial services, represented to a Debt Purchaser that one single interest rate applied to a customer's St George-branded card account balance and that no other interest rates applied to the customer's account, when in fact:

- (a) on 450 occasions, the interest rate that Westpac (and then the Debt Purchaser) was entitled to charge on the whole of the account balance was lower than the single interest rate that Westpac provided to the Debt Purchaser; and
- (b) on 6,840 occasions, two or more interest rates applied to different parts of the customer's account balance and the interest rate that Westpac (and then the Debt Purchaser) was entitled to charge the customer on a part of the account balance was lower than the single interest rate that Westpac provided to the Debt Purchaser,

thereby on each occasion, in contravention of ss 12DB(1)(a) and 12DB(1)(g) (from 10 March 2010 to 31 December 2010) and 12DB(1)(i) (from 1 January 2011) of the ASIC Act, made false and misleading representations; and in contravention of s 12DA(1) of the ASIC Act, made misleading and deceptive representations.

8. Between 1 December 2015 and 19 March 2018, Westpac, in trade and commerce and in connection with the supply of financial services, represented to a Debt Purchaser that one single interest rate applied to a customer's St George-branded card account balance and that no other interest rate applied to the customer's account, when in fact:

- (a) on 532 occasions, the interest rate that Westpac (and then the Debt Purchaser) was entitled to charge on the whole of the account balance was lower than the single interest rate that Westpac provided to the Debt Purchaser; and



(b) on 4,337 occasions, two or more interest rates applied to different parts of the customer's account balance and the interest rate that Westpac (and then the Debt Purchaser) was entitled to charge the customer on a part of the account balance was lower than the single interest rate that Westpac provided to the Debt Purchaser,

thereby on each occasion, in contravention of ss 12DB(1)(a) and 12DB(1)(i) of the ASIC Act, made false and misleading representations; and in contravention of s 12DA(1) of the ASIC Act, made misleading and deceptive representations.

9. Between 1 March 2010 and 19 March 2018, by reason of the conduct described in the declarations in paragraphs 7 and 8 above, Westpac breached its obligation to comply with financial services laws in contravention of s 912A(1)(c) of the Corporations Act.

AND THE COURT ORDERS THAT:

10. Pursuant to s 12GBA and s 12GBC of the ASIC Act (as in force prior to 13 March 2019) that, within 14 days of the date of this order, Westpac pay to the Commonwealth of Australia a pecuniary penalty in the sum of \$12,000,000 in respect of Westpac's declared contraventions set out in paragraphs 2, 5 and 8 above.

11. Westpac pay the Plaintiff's costs of and incidental to these proceedings.

Date that entry is stamped: 21 April 2022

Sia Lagos
Registrar