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### Details of Filing

Document Lodged:	Concise Statement
File Number:	NSD1914/2019
File Title:	CHIEF EXECUTIVE OFFICER OF THE AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE v WESTPAC BANKING CORPORATION ACN 007 457 141
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Dated: 20/11/2019 8:59:04 AM AEDT

Registrar

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Form NCF1

## CONCISE STATEMENT

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: COMMERCIAL AND CORPORATIONS

NO NSD OF 2019

CHIEF EXECUTIVE OFFICER OF THE AUSTRALIAN  
TRANSACTION REPORTS AND ANALYSIS CENTRE

Applicant

WESTPAC BANKING CORPORATION

ACN 007 457 141

Respondent

### A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

#### Westpac's correspondent banking relationships and cross-border movements of money

1. Westpac Banking Corporation (**Westpac**) has numerous correspondent banking relationships with financial institutions that carry on activities and business in countries other than Australia (**correspondent banks**). Westpac holds deposits for those correspondent banks and provides payment and other services to the correspondent banks and their customers in Australia.
2. Correspondent banking relationships involve higher money laundering and financing of terrorism (**ML/TF**) risks. These include the inherent risks associated with cross border movements of funds, risks associated with dealing with banks in high risk jurisdictions, risks arising from doing business with banks which themselves do business in, or with, sanctioned or high risk countries and risks arising from having limited information about the identity and source of funds of customers of the correspondent banks.
3. Westpac's oversight of the banking and designated services provided through its correspondent banking relationships was deficient. Westpac's oversight of its Anti-Money Laundering and Counter-Terrorism Financing (**AML/CTF**) Program, intended to identify, mitigate and manage the ML/TF risks of its designated services, was also deficient. These failures in oversight resulted in serious and systemic non-compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the **Act**). Westpac failed to:
  - a. appropriately assess and monitor the ongoing ML/TF risks associated with correspondent banking relationships and with the movement of money into and out of Australia;
  - b. carry out appropriate due diligence on customers sending money to the Philippines and South East Asia for known child exploitation risks;

Filed on behalf of the Applicant, the Chief Executive Officer of  
the Australian Transaction Reports and Analysis Centre

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- c. report millions of international funds transfer instructions (**IFTIs**) to AUSTRAC;
  - d. pass on information about the source of funds to other banks in the transfer chain;
  - e. keep records relating to the origin of some of these international funds transfers.
4. Westpac contravened the Act on over 23 million occasions. These contraventions are the result of systemic failures in its control environment, indifference by senior management and inadequate oversight by the Board. They stemmed from Westpac's failure to properly resource the AML/CTF function, to invest in appropriate IT systems and automated solutions and to remediate known compliance issues in a timely manner. They have occurred because Westpac adopted an ad hoc approach to ML/TF risk management and compliance.

#### **Payment services Westpac offers to correspondent banks**

- 5. Westpac entered into arrangements with correspondent banks to allow for the cheaper and faster transfer of funds from overseas locations to Australia. The arrangements are called 'Australasian Cash Management' (**ACM**) arrangements. The ACM arrangements allow correspondent banks to use Westpac's infrastructure to process payments for their overseas customers through the Australian payments system. Correspondent banks 'batch' funds transfer instructions from multiple payers to multiple payees. The batched instructions are sent to Westpac via channels that are not governed by the Society for Worldwide Interbank Financial Telecommunication (**SWIFT**). These non-SWIFT instructions did not always include full information about the payer and payee.
- 6. Billions of dollars have entered Australia through the ACM arrangements over the last 6 years alone. Initially, these arrangements were developed to facilitate global pension payments. Due to their lower costs, they are extensively used by global business, including multinationals, payment processors, and other corporates. However, with a significant number of payments processed under these arrangements, Westpac did not and does not know where the funds originate.
- 7. Westpac also offers a low cost international payment service to its customers and certain correspondent banks, known as LitePay. The LitePay platform facilitates low value international transfers out of Australia, including to higher risk foreign jurisdictions.
- 8. Westpac offers agency or 'Off-system BSB' (**OSBSB**) arrangements to correspondent banks that do not have direct access to the Australian payments system. This payment service allows the correspondent bank to open an account with Westpac through which its offshore and domestic customers operate virtual accounts. This enables the correspondent bank to process payments through the Australian payments system relying upon Westpac's infrastructure. Westpac has limited visibility over the virtual customers.

#### **The contraventions of the Act**

##### **IFTI reporting failures – over 19.5 million contraventions of s 45**

- 9. From November 2013 to September 2018, Westpac received 19,427,710 incoming IFTIs with a total value over \$11 billion under four of its correspondent banking relationships. Westpac failed to give AUSTRAC a report of each of these instructions within 10 business days of their receipt, as required by s 45 of the Act. These IFTIs represented over 72% of all incoming IFTIs received by Westpac during this period. Westpac did not report these IFTIs until the period 22 October 2018 to 20 September 2019.
- 10. From October 2016 to November 2018, Westpac received 61,717 incoming IFTIs with a total value of over \$100 million under the arrangements it had with an ordering institution. Westpac

failed to give AUSTRAC a report of each of these instructions within 10 business days of their receipt. Westpac did not report these IFTIs until the period 27 March 2019 to 20 September 2019.

11. From November 2013 to February 2019, Westpac was the sender of 10,771 outgoing IFTIs with a total value of over \$707 million under the arrangements it had with a correspondent bank. Westpac failed to give AUSTRAC a report of each of these instructions within 10 business days after each was sent. Westpac did not report these IFTIs until 4 October 2019.
12. From February 2017 to June 2019, Westpac sent 2,314 outgoing IFTIs through its LitePay platform. Westpac has never given AUSTRAC a report of each of these instructions.

#### **Origin of international funds transfers – over 10,500 contraventions of Part 5 of the Act**

13. Under s 64 of the Act, electronic funds transfer instructions, including IFTIs, must include information about the origin of transferred money before they are passed on to another financial institution for processing. From 1 January 2014 to 2019, Westpac passed on 10,521 outgoing IFTIs through one of its correspondent banking relationships without including this information in the instruction. The value of these IFTIs totalled just under \$694 million. In each case, the overseas financial institution was denied information to trace the origin of these funds and to appropriately manage its own ML/TF risks.

#### **Records of origin of international funds transfers – over 3.5 million contraventions of s 115**

14. Westpac also failed to retain records of the origin of funds of certain IFTIs as required by s 115 of the Act. From January 2011, Westpac received 3,516,238 incoming IFTIs to be passed on to other Australian banks for payment. Westpac initially retained a record of the correspondent bank's 'unique reference number' for each payment instruction. However, due to poor oversight of its data retention systems, Westpac did not retain records of this information for 7 years as required. The significant majority of these records were deleted in 2011 and 2012.

#### **Failure to comply with correspondent banking obligations – 94 contraventions of s 98**

15. Westpac did not carry out an appropriate preliminary assessment of the risks it may reasonably face that the services facilitated by each of the correspondent banking relationships might (inadvertently or otherwise) involve or facilitate money laundering or financing of terrorism, as required by s 98(1) of the Act. Westpac did not:
  - a. identify and assess the inherent ML/TF risks of the banking services facilitated through its correspondent banking relationships;
  - b. assess the impact of all known higher ML/TF risks upon those banking services, such as the risks posed by a correspondent bank having nested arrangements, payable-through accounts or relationships with sanctioned countries;
  - c. identify and assess the inherent ML/TF risks of transactions over which it had limited or no visibility of the source of funds or purpose;
  - d. appropriately identify and assess jurisdictional ML/TF risks in some cases;
  - e. appropriately consider and assess risk mitigation factors.
16. Each of the correspondent banking relationships involved higher ML/TF risks that required a more detailed due diligence assessment. Contrary to s 98(2) of the Act, Westpac did not regularly assess the nature of each correspondent bank's ongoing business relationship, including its products and customer base, the types of transactions carried out as part of that relationship and

any changes to the relationships. Nor did it regularly assess the adequacy of each correspondent bank's AML/CTF controls and internal compliance practices. For example, Westpac:

- a. failed to implement appropriate automated monitoring on its Vostro accounts;
- b. did not appropriately monitor the sale of new products to correspondent banks;
- c. did not have processes to identify transactions facilitated by correspondent banks on behalf of payment processors, remitters or sanctioned entities;
- d. did not appropriately monitor and action risk triggers; and
- e. did not consider and assess the adequacy of controls over higher ML/TF risks such as nested arrangements, payable-through accounts and dealings with higher risk and sanctioned jurisdictions.

17. This is in spite of a number of correspondent banks disclosing higher ML/TF risks, such as themselves having correspondent banking relationships with high risk or sanctioned countries including Iraq, Lebanon, Ukraine, Zimbabwe, and Democratic Republic of the Congo. Some correspondent banks who had disclosed such relationships had been fined by overseas regulators for sanctions or AML/CTF breaches resulting from inadequate controls. The risk posed to Westpac was that these high risk or sanctioned countries may have been able to access the Australian payment system through these nested arrangements, unbeknownst to Westpac.

**AML/CTF Program failures - unquantifiable and significant contraventions of s 81**

18. Westpac is required to have an AML/CTF Program (the **Part A Program**), the primary purpose of which is to identify, mitigate and manage the ML/TF risks reasonably faced by providing designated services. Under the Part A Program, Westpac must:
- a. carry out ML/TF risk assessments of its designated services and the channels through which they are delivered. It must also have appropriate risk-based systems and controls to mitigate and manage the ML/TF risks identified by these risk assessments;
  - b. have a risk-based transaction monitoring program to monitor the transactions of customers and to identify suspicious matters for the purposes of s 41 of the Act;
  - c. have appropriate systems and controls designed to ensure IFTI reports are given to AUSTRAC.
19. Westpac contravenes s 81 of the Act on each occasion it provides a designated service where it does not have a compliant Part A Program in place. These contraventions are too voluminous to quantify and are ongoing.

*Failure to identify, mitigate and manage ML/TF risks*

20. 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 reasonably faced by Westpac and that met the requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)* (the **Rules**): ss 85(2)(a) and 85(2)(c) of the Act.
21. Westpac's approach to risk assessments and risk-based controls was inconsistent across the Group. The risk assessment process did not require consideration of all relevant risks and controls from an ML/TF perspective. Product and channel risk assessments were not updated on a periodic basis nor centrally located. New product and channel methodologies were rolled out in mid-2018. By October 2018, executive committees were advised that Westpac's 'maturity status

in managing financial crime had moved from 'ad hoc' to 'reactive', but that sustainable solutions over a 3 to 5 year timeframe were required to build a comprehensive strategic approach.

22. These systemic risk management failures were reflected in the failure to appropriately identify, mitigate and manage the ML/TF risks of the ACM and OSBSB arrangements. The designated services provided through these arrangements each involve higher ML/TF risks that Westpac has failed to appropriately assess. These higher risks include cross-border movements of funds (including from higher risk jurisdictions), limited information about the payer or payee, limited or no visibility over the source of funds or purpose of transactions (including from overseas and higher risk jurisdictions), no limits on volume or value of transactions and acceptance of cash deposits from unverified sources. Westpac has placed undue reliance on its correspondent banking due diligence as a mitigating control with respect to these risks and failed to introduce appropriate risk-based controls to mitigate and manage these risks as required by its Part A Program.

*Failure to implement a risk-based transaction monitoring program*

23. Westpac failed to include an appropriate risk-based transaction monitoring program in its Part A Program to monitor the transactions of its customers and to identify suspicious matters, as required by Chapter 15 of the Rules and s 85(2)(c) of the Act. As Westpac has failed to appropriately and consistently assess the ML/TF risks of its products and channels, its transaction monitoring program does not include detection scenarios to appropriately monitor all risks reasonably faced. A number of product systems and channels were outside the scope of the transaction monitoring program, including those relating to international payments. The suite of detection scenarios are largely retail and cash-based and designed to detect activity at the retail rather than institutional level. It was not until August 2017 that Westpac started to introduce some automated monitoring on Vostro accounts, but these detection scenarios do not identify all ML/TF risks reasonably faced and do not enable Westpac to understand the nature of its ongoing correspondent banking relationships. The failure to appropriately monitor international payment flows was compounded by Westpac's decision not to apply sanctions screening to most ACM arrangements until 2017/2018. The limited information Westpac held about payers and payees in relation to the ACM and OSBSB arrangements also limited its ability to appropriately monitor transactions.
24. Since at least 2013, Westpac was aware of the heightened child exploitation risks associated with frequent low value payments to the Philippines and South East Asia, both from AUSTRAC guidance and its own risk assessments. In June 2016, senior management within Westpac was specifically briefed on these risks with respect to the LitePay channel.
25. Westpac's transaction monitoring program was required to have the purpose of identifying transactions that appeared to be suspicious for the purposes of s 41 of the Act, including child exploitation offences. Automated solutions are available to 'red flag' suspicious patterns of frequent low value transactions to these jurisdictions. Westpac's own policies required it to have regard to advice from AUSTRAC and law enforcement in developing and maintaining these automated detection scenarios. However, it was not until June 2018 that Westpac implemented an appropriate automated detection scenario to monitor for known child exploitation risks through its LitePay platform. Westpac still has not implemented appropriate automated detection scenarios to monitor for the known child exploitation risks through other channels. As a result, Westpac has failed to detect activity on its customers' accounts that is indicative of child exploitation.

*Failure to have appropriate systems and controls to ensure IFTI reporting*

26. Westpac's Part A Program did not include appropriate systems and controls designed to ensure compliance with its obligation to report IFTIs to AUSTRAC under s 45 as required by r 9.9.1(2) of the Rules and s 85(2)(c) of the Act. The IT system used by Westpac for IFTI reporting was not fit for purpose. Westpac had inadequate end-to-end understanding, documentation and monitoring over IFTI reporting. Westpac failed to identify all source systems that create payment instructions that required reporting under s 45. Westpac's assurance processes failed to identify significant and longstanding non-compliance with s 45. Significantly, these processes failed to detect that 72% of incoming IFTIs for the period November 2013 to September 2018 had not been reported to AUSTRAC. Senior management failed to prioritise resolution of IFTI reporting issues and were aware of longstanding non-compliance.

**Ongoing customer due diligence failures – child exploitation – contraventions of s 36 of the Act relating to 12 customer accounts**

27. Westpac has failed to carry out appropriate due diligence on 12 of its customers, with a view to identifying, mitigating and managing known child exploitation risks. Over a number of years, there were repeated patterns of frequent low value transactions on accounts held by each of these 12 customers that were indicative of child exploitation risks. Since at least 2013, Westpac was aware of the heightened child exploitation risks associated with these patterns of transactions.
28. In spite of this awareness, Westpac did not implement appropriate automated detection scenarios for the LitePay channel until June 2018 and is yet to implement appropriate automated detection scenarios across other international payment channels. Had Westpac been applying appropriate automated detection scenarios across all channels, this highly suspicious activity would have been identified sooner. Some of the undetected transactions involved payments to alleged or suspected child exploitation facilitators. One customer opened a number of Westpac accounts after serving a custodial sentence for child exploitation offences. Westpac promptly identified activity on one account that was indicative of child exploitation, but failed to promptly review activity on other accounts. This customer continued to send frequent low value payments to the Philippines through channels that were not being monitored appropriately.

**B. THE RELIEF SOUGHT FROM THE COURT**

29. The Applicant seeks the following relief from the Court:
- a. Declaratory relief under s 21 of the *Federal Court of Australia Act 1976* (Cth).
  - b. Orders for civil pecuniary penalties under s 175 of the Act.
  - c. Costs.

**C. THE PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT**

30. As detailed above, Westpac has contravened the Act on over 23 million occasions, each contravention attracting a civil penalty between \$17 million and \$21 million.

**D. THE ALLEGED HARM SUFFERED**

31. As a result of the failure to file the IFTIs on time, AUSTRAC, the Australian Taxation Office and other law enforcement agencies have been deprived of information relating to over \$11 billion in international payments for up to 6 years. Late reporting delays and hinders law enforcement efforts. Further, as Westpac did not always obtain full information about payers and payees, the ability to identify possible suspicious or unlawful conduct has been compromised or lost.

32. As a result of the failure to pass on information about the origin of transferred money in relation to one correspondent banking relationship, Westpac has denied this institution information to which it was entitled to understand and manage its own ML/TF risks. In the case of another correspondent banking relationship, Westpac failed to retain certain records relating to the origin of incoming international funds transfer instructions. Each of these failures undermine the reputation, integrity and security of the Australian payments system.
33. The correspondent banking relationships allowed foreign institutions to operate within Westpac's banking environment and within the Australian payments system. These relationships involved higher ML/TF risks, including limited or no visibility over the source of funds, and should have been subject to appropriate risk-based due diligence, monitoring and oversight. Westpac's failure to do so has exposed Westpac and the Australian payments system to unacceptable and longstanding ML/TF risks.
34. It is essential to the integrity of the Australian financial system that a major bank such as Westpac has compliant and appropriate risk-based systems and controls in place to detect, deter and disrupt financial crime when providing designated services. Westpac's failure to include appropriate risk-based procedures in its AML/CTF Program, and to follow its own risk-based procedures, has exposed the Australian financial system to unacceptable risks, including with respect to possible child exploitation, tax offences, money laundering and terrorism financing.
35. In particular, financial service providers play an important role in combating financial crime, including child exploitation. Through transaction monitoring programs and ongoing customer due diligence, financial service providers are able to target, identify and stop financial transactions associated with the sexual exploitation of children.
36. Low value payments do not always involve inherently low ML/TF risks and can carry very high risks. The payment of low value pensions or other income streams must be transparent and reported under the Act for the purposes of monitoring compliance with taxation and other laws. Further, low value income streams cannot be assumed to be low risk pensions if their source is not known to Westpac. AUSTRAC and other authorities have long documented serious risks involving low value payments, including terrorism financing, child exploitation, tax offences, online crime, and online trade-based laundering. It is incumbent upon reporting entities to take these risks seriously and to implement systems and controls to identify, mitigate and manage them.

#### **CERTIFICATE OF LAWYER**

I, Sonja Marsic, certify to the Court that, in relation to the concise statement 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: 20 November 2019



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Sonja Marsic  
AGS Lawyer  
for and on behalf of the Australian Government Solicitor  
Lawyer for the Applicant