

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/11/2019 8:48:00 AM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application - Form 15 - Rule 8.01(1)
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
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



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

Dated: 20/11/2019 8:58:51 AM AEDT

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.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 15
Rules 8.01(1), 8.04(1)

ORIGINATING APPLICATION

**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

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

TIME AND DATE FOR HEARING:

PLACE:

Law Courts Building
Queens Square, Sydney, New South Wales

Date:

.....
Signed by an officer acting with
the authority of the District Registrar

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

Prepared by: Sonja Marsic
AGS lawyer within the meaning of s 551 of the *Judiciary Act*
1903

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DETAILS OF CLAIM

On the grounds stated in the Statement of Claim, the Applicant claims:

Correspondent banking - paragraphs 13 to 17 of the Statement of Claim

1. A declaration that the Respondent (**Westpac**) contravened s 98(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**Act**) on 47 occasions by failing to carry out regular assessments of the risks it may reasonably face that 16 of its correspondent banking relationships might (inadvertently or otherwise) involve or facilitate money laundering or financing of terrorism.
2. A declaration that Westpac contravened s 98(2) of the Act on 47 occasions by failing to carry out regular assessments of the matters required by rules 3.1.4(1), 3.1.2(1), 3.1.2(6), 3.1.4(3) and 3.1.4(4) of the *Anti-Money Laundering and Counter Terrorism Financing Rules Instrument 2007 (No 1)* (Cth) (**Rules**) with respect to 16 of its correspondent banking relationships.

Incoming IFTIs - the ACM arrangements with the correspondent banks – paragraphs 20 to 28 of the Statement of Claim

3. A declaration that Westpac contravened s 45(2) of the Act on 19,427,710 occasions because it did not give the AUSTRAC CEO a report of 19,427,710 international funds transfer instructions (**IFTIs**) transmitted into Australia in the period 5 November 2013 to 3 September 2018, within 10 business days of Westpac receiving these instructions.
4. A declaration that when, in 2018, Westpac gave the AUSTRAC CEO a report of the IFTIs referred to in paragraph 3, 2,732,892 of the reports did not contain all such information as required by rr 16.3(1) and 16.3(3)(a)(i) of the Rules and s 45(3) of the Act, in contravention of s 45(2) of the Act.

Incoming IFTIs - the arrangements with an ordering institution - paragraphs 29 to 36 of the Statement of Claim

5. A declaration that Westpac contravened s 45(2) of the Act on 61,717 occasions because it did not give the AUSTRAC CEO a report of 61,717 IFTIs transmitted into Australia in the period 3 October 2016 to 19 November 2018, within 10 business days of Westpac receiving these instructions.

Outgoing IFTIs - the ACM arrangements - paragraphs 37 to 44 of the Statement of Claim

6. A declaration that Westpac contravened s 45(2) of the Act on 10,771 occasions because it did not give the AUSTRAC CEO a report of 10,771 IFTIs that it transmitted out of Australia in the period 5 November 2013 to 1 February 2019, within 10 business days after sending these instructions.

Outgoing IFTIs - the LitePay platform - paragraphs 45 to 52 of the Statement of Claim

7. A declaration that Westpac contravened s 45(2) of the Act on 2,314 occasions because it did not give the AUSTRAC CEO a report of 2,314 IFTIs that it transmitted out of



Australia in the period February 2017 to June 2019, within 10 business days of sending those instructions.

Origin of transferred money - contraventions of s 64(7)(f) of the Act - paragraphs 53 to 58 of the Statement of Claim

8. A declaration that in the period 1 January 2014 to 2019, Westpac as the interposed institution in the funds transfer chain failed to pass on some or all of the required transfer information to another institution in relation to 7,639 IFTIs Westpac transmitted out of Australia, in contravention of s 64(7)(f) of the Act.

Origin of transferred money - contraventions of s 64(6) of the Act - paragraphs 59 to 64 of the Statement of Claim

9. A declaration that in the period 1 January 2014 to 2019, Westpac as the ordering institution in the funds transfer chain failed to pass on complete payer information to another institution in relation to 2,882 IFTIs, in contravention of s 64(6) of the Act.

Retention of records about electronic funds transfer instructions - paragraphs 65 to 69 of the Statement of Claim

10. A declaration that on 3,516,238 occasions from January 2011, Westpac failed to retain records relating to the origin of the transferred money with respect to instructions to which s 115(1) applied, for 7 years after each instruction was passed on by Westpac, in contravention of s 115(2) of the Act.

Failure to identify, mitigate and manage money laundering and terrorism financing risks - contraventions of s 81 of the Act - paragraphs 76 to 81 of the Statement of Claim

11. A declaration that on each occasion that Westpac commenced to provide a designated service to a customer on and from 20 November 2013, Westpac contravened s 81(1) of the Act because Part A of its Joint Anti-Money Laundering and Counter-Terrorism Financing (**AML/CTF**) Program (**Joint Program**) was not a Program that:
- a. had the primary purpose of identifying, mitigating and managing the risk that Westpac may reasonably face that the provision of designated services at or through a permanent establishment in Australia might (whether inadvertently or otherwise) involve or facilitate money laundering or financing of terrorism as required by s 85(2)(a) of the Act; and
 - b. complied with the requirements that were specified in Chapters 9 and 15 of the Rules for the purposes of s 85(2)(c) of the Act, in so far as the rules required risk-based systems and controls to be put in place, and
 - c. provided for appropriate risk assessment and management of the money laundering and terrorism financing risks reasonably faced with respect to Westpac's products and channels, as required by s 85(2)(a) of the Act and the rules made for the purposes of s 85(2)(c) of the Act.



Transaction monitoring program contraventions – contraventions of s 81 of the Act paragraphs 82 to 86

12. A declaration that on each occasion Westpac commenced to provide a designated service to a customer on and from 20 November 2013, Westpac contravened s 81(1) of the Act because the transaction monitoring program in its Part A Joint Program has not included appropriate risk-based systems and controls to monitor the transactions of customers and to identify transactions that may be suspicious for the purposes of s 41 of the Act, as required by rr 15.5, 15.6 and 15.7 of the Rules and s 85(2)(c) of the Act.

Failure to ensure IFTI reporting - contraventions of s 81 of the Act - paragraphs 87 to 91

13. A declaration that on each occasion Westpac commenced to provide a designated service to a customer on and from 20 November 2013, Westpac contravened s 81(1) of the Act because its Part A Program did not include appropriate systems and controls designed to ensure compliance with the obligation to report IFTIs under s 45 of the Act, as required by r 9.9.1(2) of the Rules and s 85(2)(c) of the Act.

Ongoing customer due diligence - contraventions of s 36 of the Act - paragraphs 92 to 115

14. A declaration that, for periods on and from November 2013, Westpac contravened s 36(1) of the Act by failing to monitor 12 customers in relation to the provision of designated services:
- a. with a view to identifying, mitigating and managing the child exploitation risks that Westpac reasonably faced
 - b. in accordance with Chapter 15 of the Rules.

Other orders

15. An order that Westpac pay the Commonwealth a pecuniary penalty pursuant to s 175(1) of the Act.
16. Costs.
17. Such other orders as the Court thinks fit.

APPLICANT'S ADDRESS

The Applicant's address for service is:

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The Australian Government Solicitor's telephone, facsimile, and document exchange numbers are:

Tel: 02 9581 7505

Fax: 02 9581 7650

DX 444 Sydney

The Applicant's address is:

Level 7, Tower A, Zenith Centre 821 Pacific Highway

Chatswood NSW 2067

SERVICE ON THE RESPONDENT

It is intended to serve this application on the Respondent.

Date: 20 November 2019

A handwritten signature in blue ink, appearing to read 'SM', is written over a horizontal dotted line.

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