

2 October 2025

Westpac New Zealand Limited
16 Takutai Square
Auckland 1010

Attention: [REDACTED]

By email only: [REDACTED]

Copy to: [REDACTED]

Dear [REDACTED]

Warning from the Commerce Commission for potential breach of the Fair Trading Act 1986

1. The Commerce Commission (the Commission) has completed an investigation into Westpac New Zealand Limited (Westpac) for potential breaches of the Fair Trading Act 1986 (FT Act) and the Credit Contracts and Consumer Finance Act 2003 (CCCF Act).
2. This investigation considered whether Westpac's failure to apply the benefits of its Work Hard Play Hard (WHPH) promotional campaign to its customers' credit card accounts breached the FT Act and/or the CCCF Act (the investigation).
3. After fully considering the relevant information received, the Commission considers that Westpac's conduct may amount to a breach of section 13(i) of the FT Act.
4. In this instance, the Commission has decided the appropriate enforcement response is to issue Westpac with a warning, rather than issuing legal proceedings. The Commission notes that only a Court can determine whether there has been a contravention of the FT Act.
5. The purpose of this warning is to inform you of the reasons for the Commission reaching this view and to encourage future compliance. Legal action remains available to the Commission in future if the conduct continues or is repeated.

Details of the Commission's investigation

6. The Commission investigated issues self-reported by Westpac in relation to the application of its WHPH credit card promotion.

7. During the investigation, the Commission obtained and considered the following information:
 - 7.1 Information supplied to the Commission by Westpac via its self-report on 18 July 2023.
 - 7.2 Information supplied to the Commission by Westpac on a voluntary basis on 2 July 2024, 8 October 2024, 25 October 2024, 22 November 2024, 19 December 2024, and 7 April 2025. This information included example customer files.
 - 7.3 Information supplied to the Commission during the compulsory interviews of Westpac staff on 26 and 27 November 2024.

Details of the relevant law

8. The FT Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.
9. Section 13(i) of the FT Act states that no person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services, make a false or misleading representation concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy, including (to avoid doubt) in relation to any guarantee, right, or remedy available under the Consumer Guarantees Act 1993.

The Commission's view

10. As a result of its investigation, the Commission's view is that there is sufficient evidence to issue legal proceedings against Westpac for a breach of section 13(i) of the FT Act. It has, however, reached the preliminary view that a warning is the appropriate enforcement response for the breach for the reasons set out below.
11. Key facts established:
 - 11.1 Westpac offered a WHPH promotion which provided that Westpac would waive the annual account fee for specified business credit card customers as long as those customers kept both their corresponding consumer and business credit cards open. The promotion was intended to encourage customers to hold both a business and personal credit card.
 - 11.2 The WHPH promotion was communicated through a number of channels, including a specific form which was an invitation, promotional displays in branches and advertising on Westpac's website. Due to manual process failures, the waiver was not applied to all eligible customers. The annual account fee was charged to customer accounts and appeared on customer account statements. This issue impacted up to 2,336 customers over an eight-year period from 1 May 2014 to 1 December 2022.

- 11.3 A subset of Westpac customers applied for their business credit card(s) through a specific form (invitation) which expressly referenced the fee waiver. Therefore, these customers had a contractual right to have their account fees waived as long as they held both cards:
- 11.3.1 “The current annual fee for a Business*PLUS*MasterCard is \$100 (\$50.00 billed half yearly) including hotpoints. If you already have a personal Westpac Gold or Titanium card, you will not be charged the Business*PLUS*MasterCard annual fee for as long as you keep your personal Westpac Gold or Titanium card account open.”
- 11.3.2 “The current annual account fee for an Airpoints Business MasterCard is \$145.00 (\$72.50 billed half yearly). If you already have a personal Airpoints Platinum MasterCard, you will not be charged the Airpoints Business MasterCard annual account fee for as long as you keep your personal Westpac Airpoints Platinum MasterCard account open.”
- 11.4 Westpac has been unable to identify how many of the impacted customers applied using the invitation due to record keeping limitations. However, Westpac estimates that no more than 2% of customers (estimated to be 46 customers) applied through an invitation during the period 1 July 2020 to 1 December 2022.
- 11.5 Westpac has remediated the overcharge, with a use of money component, totalling \$1,432,023.34 to at least 2,336 impacted customers.
- 11.6 After identifying the issue, Westpac took action to rectify it. It introduced a control report to identify business credit cards eligible for the annual fee waiver and ultimately closed the WHPH offer and removed all references to the promotion from its website and other materials. This was completed in December 2022.
- 11.7 The root cause of the issue was a reliance on a manual process to apply the fee waiver to eligible accounts. There was no routine training and inadequate guidance to staff on when to apply the fee waiver. No monitoring or oversight controls were in place to ensure the manual process was followed.
12. For impacted customer accounts, including where the customer had applied through the invitation, account statements showed annual account fees for the business credit card being charged.
13. The Commission’s view is that the inclusion of the account fees on the account statements of customers who received the invitation may have been a misrepresentation by Westpac as to its right to charge the annual account fees and the right to have the fee waived.
14. In making the above misrepresentation, the Commission is of the view that Westpac may have made a false or misleading representation concerning the existence of a

right in connection with the supply of goods or services in contravention of section 13(i) of the FT Act.

15. The Commission considered whether any of the defences under section 44 of the FT Act would potentially be available to Westpac in the facts and circumstances of this case. The Commission's view is that no such defences would have a reasonable prospect of succeeding.

Response from Westpac

16. The Commission's letter dated 3 September 2025, also provided Westpac with a final opportunity to comment on the Commission's intention to issue a warning, provide any additional relevant information and identify any information that was incorrect.
17. The Commission received a response from Westpac on 17 September 2025 that, while not formally admitting that the conduct was a breach:
 - 17.1 acknowledged the risk of the Court making a finding in relation to the sub-set of customers, due to the inclusion of the account fees on their business credit card account statements;
 - 17.2 explained that where Westpac believed its conduct may have fallen short of requirements or expectations, it took steps to address it, taking a "customer-centric" remediation approach. This meant that, in this instance, it may have remediated customers who did not expect to receive or did not believe they had been offered a fee waiver. The remediation details are set out in paragraphs [11.5] to [11.6] in this letter; and
 - 17.3 noted that it did not object to a warning letter for this matter, but highlighted the small number of customers to whom any potential misrepresentation may have been made, and raised the limitation provisions in the FT Act in the context of conduct prior to September 2020.
18. Having considered this response, the Commission's final view remains that there is sufficient evidence to suggest that Westpac may have breached section 13(i) of the FT Act.

Enforcement action for breaching the Act

19. Where the Commission considers that a person or business may have breached the FT Act there are a range of potential enforcement responses available.
20. Following the investigation and considering all the available information, the Commission has decided the appropriate enforcement response is to issue Westpac with a warning, rather than issuing legal proceedings.
21. In deciding on the appropriate enforcement response in this case, the Commission has considered the extent of the harm, the seriousness of the conduct, and the public interest, based on the views reached as expressed above. The Commission has also considered the remediation paid to impacted consumers and the level of

cooperation and engagement by Westpac throughout the investigation, including the self-report. Finally, the Commission has considered all matters raised by you in response to our letter dated 3 September 2025.

22. The Commission reiterates that its view is based on the information collected during the investigation and your response, and that only a court can determine whether there has been a breach of the Act. A court can impose penalties where it finds the law has been broken.
23. A company that breaches the FT Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
24. Further detail on the Commission's approach to making enforcement decisions is contained in the Commission's 'Enforcement Response Guidelines', available on the Commission website (www.comcom.govt.nz).

Consequences of this Warning

25. This warning represents the Commission's view that the conduct in which Westpac has engaged may have breached the FT Act and that legal action remains available to the Commission in future if the conduct continues or is repeated.
26. The Commission may draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Westpac.
27. The Commission may also take this warning into account in the event of continued or repeated similar conduct by Westpac.

Publication

28. This warning is public information and will be published on the case register on the Commission website. The Commission may decide to redact some details from the published version, such as personal information.
29. The Commission may also make public comment about our investigations and conclusions, including issuing a media release, making comment to media or otherwise publicising the outcome (such as on our social media forums).

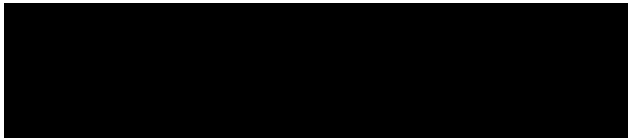
Further information

30. Please note that this letter is not legal advice. The Commission encourages Westpac to regularly review its compliance procedures and policies and seek legal advice about the application of the FT Act to its business.
31. The Commission has published a series of fact sheets and other resources to help businesses comply with the legislation we enforce. These are available on the Commission website at www.comcom.govt.nz. The Commission encourages Westpac to visit the Commission website to better understand its obligations and the Commission's role in enforcing the FT Act.
32. The FT Act and other legislation can also be viewed at www.legislation.co.nz.

Review of our decision

33. Westpac is entitled to request a review of our decision to issue this warning only if it identifies relevant material that was not considered as part of our original decision. Westpac must request a review within 1 month of this warning being issued. Any review will be handled in accordance with the Commissions complaints process and conducted by an independent reviewer. Please submit any review request to contact@comcom.govt.nz.

Yours sincerely



Head of Credit Investigations and Compliance
Competition, Fair Trading and Credit Branch