
Settlement Agreement

Between the Commerce Commission and Westpac New Zealand Limited

Settlement agreement dated 22 August 2025

Parties

Commerce Commission, a body corporate established under section 8 of the Commerce Act 1986 (the **Commission**); and

Westpac New Zealand Limited, a duly incorporated company having its registered office at Westpac On Takutai Square, 16 Takutai Square, Auckland (**Westpac**).

(collectively, the **Parties**).

1 Introduction

- 1.1 On 4 March 2022, Westpac self-reported to the Commission (the **Self Report**) that:
 - (a) it had identified some borrowers and some guarantors, who may not have been provided with the required disclosure under the Credit Contracts and Consumer Finance Act 2003 (**Act**); and
 - (b) it had identified a failure to apply previously agreed interest rates to certain customers' home loans when those loans moved from fixed to floating interest rates, or floating to discounted floating rates,

(together, the **Issues**).
- 1.2 In September 2022, and subsequently, Westpac provided the Commission with more detail on the nature of the Issues and the causes of each.
- 1.3 The Commission conducted an investigation into Westpac for potential breaches of the Act in relation to the matters referred to in the Self Report (**Investigation**).
- 1.4 The Commission intends to file a Proceeding in the High Court alleging that Westpac breached s 9C(1) of the Act by failing to comply with the lender responsibility principles outlined in s 9C(2)(a)(ii)–(iii) of the Act.
- 1.5 The breaches arise principally from Westpac's failures to have systems and processes in place to ensure that customers were provided with the required disclosure and the applicable discounts. The failures meant that, in certain circumstances, some borrowers and guarantors did not receive the required disclosure, and some borrowers were charged more in interest than what had been agreed previously.
- 1.6 The Parties have reached a settlement regarding the matters arising out of the Self Report and Investigation, and to be determined in the Proceeding, on the terms set out in this Agreement.

- 1.7 After the release of the Penalty Judgment, this Agreement may be made public by the Commission (including on the Commission's website) as the Commission sees fit.

2 Interpretation

2.1 For the purposes of this Agreement:

- (a) **Act** means the Credit Contracts and Consumer Finance Act 2003;
- (b) **Admitted Causes of Action** means the causes of action in the Statement of Claim;
- (c) **Agreed Recommended Penalty** means the pecuniary penalty set out in clause 4.4(a);
- (d) **Agreement** means this settlement agreement and the schedules attached to it;
- (e) **Commission** means the Commerce Commission;
- (f) **Court** means the High Court of New Zealand or, on appeal, the Court of Appeal of New Zealand or the Supreme Court of New Zealand;
- (g) **Defaulting Party** has the meaning as set out in clause 8.1;
- (h) **Default Notice** means a written notice issued under clause 8.3 by one Party giving notice that the other Party is in breach of the Agreement;
- (i) Dollar amounts stated are in New Zealand dollars;
- (j) **Information** includes all information, documents, material and evidence of any kind whatsoever, including all oral, written and electronic material in relation to the Proceeding;
- (k) **Investigation** means the investigation initiated by the Commission following the Self Report;
- (l) **Notice of Admissions** means the notice of admissions attached as **Schedule 2** to this Agreement;
- (m) **Notifying Party** has the meaning set out in clause 8.1;
- (n) **Party** means any party to this Agreement;
- (o) **Penalty Hearing** means the hearing or fixture in the Proceeding at which the Commission and Westpac will ask the Court to approve the order set out in clause 4.4;
- (p) **Penalty Judgment** means a judgment of the Court determining the pecuniary penalty payable by Westpac in the Proceeding (whether such judgment is delivered orally or in writing; and includes a results judgment issued with reasons to follow). Where a Penalty Judgment of a particular Court is specified, it is the judgment of that Court;

- (q) **Person** extends to non-natural persons and includes any association of persons whether incorporated or not;
- (r) **Proceeding** means the civil proceeding commenced on filing the Statement of Claim by the Commission in the High Court of New Zealand against Westpac, and includes any appeals from that proceeding;
- (s) **Self Report** means the self report by Westpac to the Commission dated 4 March 2022 and updated on several occasions subsequently;
- (t) **Statement of Claim** means the statement of claim attached as **Schedule 1** to this Agreement;
- (u) **Westpac** means Westpac New Zealand Limited; and
- (v) **Working Day** has the definition set out in r 1.3 of the High Court Rules.

3 Resolution

- 3.1 The Parties have reached a full and final settlement of:
 - (a) the claims against Westpac made in the Statement of Claim and the Proceeding; and
 - (b) any claims that could have been made by the Commission against Westpac, or any current or former officer, employee or director of Westpac, under the Act in relation to or arising from matters referred to in the Self Report and/or disclosed to the Commission during the Investigation.
- 3.2 The Parties agree to resolve the Investigation and Proceeding by:
 - (a) the Commission filing the Statement of Claim within one Working Day of the execution of this Agreement;
 - (b) the next Working Day, Westpac filing the Notice of Admissions together with the joint memorandum provided for in clause 4.1;
 - (c) Westpac paying any pecuniary penalty in accordance with clause 4; and
 - (d) otherwise on the basis set out in this Agreement.
- 3.3 The admissions made by Westpac are made only for the purposes, and in respect, of resolving the Proceeding, and are not made for the purposes, or in respect, of any other claims, actions, proceedings or investigations.
- 3.4 The Commission will close its Investigation upon the execution of this Agreement and will not commence, or continue further proceedings against Westpac or any current or former officer, employee or director of Westpac, in connection with matters that are subject of the Proceeding, Investigation and Self Report.

- 3.5 For the avoidance of doubt, nothing in this Agreement shall be construed as:
- (a) resolving any past, continuing, or future contraventions of the Act of which the Commission does not have reasonable notice; or
 - (b) preventing the Commission from commencing or continuing any civil or criminal proceedings against Westpac or any other person in respect of the matters described in clause 3.5(a).

4 Imposition of the Agreed Recommended Penalty

Progression to Penalty Hearing

- 4.1 At the same time as it files the Notice of Admissions, Westpac will file a joint memorandum of the Parties requesting that a Penalty Hearing be fixed for the first available date which is at least 30 Working Days after the date of filing of the joint memorandum, subject to the availability of counsel.
- 4.2 The Parties will co-operate and use all reasonable endeavours to ensure that the Penalty Hearing proceeds on the first available date proposed by the Court.

Consultation on penalty submissions

- 4.3 The Commission and Westpac will:
- (a) circulate to the other a draft of any submissions or memorandum they propose to file in relation to the Agreed Recommended Penalty at least 10 Working Days before that party is to file the submissions or memorandum with the Court;
 - (b) provide any comments on a submission or memorandum received in accordance with clause 4.3(a) not more than 5 Working Days after receiving those submissions or that memorandum; and
 - (c) consider in good faith any comments that the other Party may have in connection with the submission or memorandum.

Agreed Recommended Penalty and content of penalty submissions

- 4.4 The Commission and Westpac agree and undertake that:
- (a) the Agreed Recommended Penalty for the Admitted Causes of Action is a final penalty of \$3.64 million;
 - (b) the Agreed Recommended Penalty is an appropriate pecuniary penalty in view of the conduct and the circumstances;
 - (c) in their written and oral submissions, the parties will indicate as follows regarding the range that is appropriate for a starting point:
 - (i) the Commission will submit that an appropriate starting point is in the range of \$5.2 million–\$5.5 million; and

- (ii) Westpac will submit that the appropriate starting point is the lowest end of that range, being \$5.2 million;
 - (d) they will make written and oral submissions recommending to the Court that it adopt a starting point of \$5.2 million, being the point of agreement arising from their respective submissions on the starting point;
 - (e) they will make written and oral submissions recommending to the Court that it apply a discount of 30 per cent to the starting point for all mitigating factors;
 - (f) they will otherwise support the Agreed Recommended Penalty before the Court; and
 - (g) they will ask the Court that there be no order as to costs.
- 4.5 The Parties agree that all material facts for the purposes of the Proceeding are:
- (a) the matters described in the Statement of Claim; and
 - (b) the following matters, which are not included in the Statement of Claim but which may properly be the subject of submissions by either Party:
 - (i) that the Investigation commenced as a self-report;
 - (ii) Westpac has cooperated with the Commission throughout the Investigation; acknowledged and accepted at the earliest possible stage that it had contravened the Act, and agreed to settle the Proceeding on terms acceptable to the Commission;
 - (iii) the work involved in Westpac's remediation and rectification;
 - (iv) the cost to Westpac of carrying out that work.

5 Payment of penalty

- 5.1 If the High Court imposes the Agreed Recommended Penalty in the Penalty Judgment, Westpac will pay the amount of the Agreed Recommended Penalty in cleared funds into the bank account nominated by the Commission within 15 Working Days of the Penalty Judgment.
- 5.2 If the High Court does not impose the Agreed Recommended Penalty in the Penalty Judgment, then Westpac will pay into the bank account nominated by the Commission any pecuniary penalty ordered by the High Court within 15 Working Days of the date of the Penalty Judgment unless, prior to the expiration of that period, a stay of the Penalty Judgment pending determination of an appeal is granted.
- 5.3 If a Penalty Judgment is issued by an appellate Court, Westpac or the Commission, as applicable, shall pay to the other any difference between the amount paid by Westpac in accordance with clause 5.2 and the amount ordered by the appellate Court, together with any costs awarded by the appellate Court,

into the other's nominated bank account. The payment will be made within the time period specified by the appellate judgment, or if no time is specified, within 15 Working Days of the date the appellate judgment is issued.

- 5.4 If a stay of the Penalty Judgment is granted pending determination of an appeal, Westpac agrees to pay interest as prescribed by the Interest on Money Claims Act 2016 on any amount it has to pay to the Commission under clause 5.3. Interest will accrue from the date of the Penalty Judgment until payment is made in full.
- 5.5 For the avoidance of doubt, if the Commission is required to refund any amount under clause 5.3, the only interest to be paid is that actually earned, if any, on the amount to be refunded.

6 Appeals from the Penalty Judgment

- 6.1 If the Court imposes the Agreed Recommended Penalty, no party may appeal or apply to recall or set aside that Penalty Judgment on the basis that the Agreed Recommended Penalty should not have been imposed.
- 6.2 If, following submissions from the Parties consistent with clause 4.4, the Court imposes a penalty that differs from the Agreed Recommended Penalty, any Party may appeal the Penalty Judgment.
- 6.3 In the event that an appeal is brought under clause 6.2:
- (a) the terms of this Agreement will remain binding on the Parties, including, for the avoidance of doubt, clause 4.4; and
 - (b) the Parties will each bear their own costs on any appeal (subject to any order from the Court directing otherwise), and shall not apply for, or otherwise seek, costs to be ordered against the other.

7 Public statements

- 7.1 Subject to clauses 7.2, 7.3 and 7.4 below, any Party may issue a public statement at any time after the Statement of Claim is filed regarding the Investigation, this Agreement, the Proceeding, the Statement of Claim, the Admissions and/or the Penalty Judgment. Any such statement will be made in good faith.
- 7.2 Prior to the release of the Penalty Judgment, no Party will make any public statement regarding the matters set out in clause 4.4.

- 7.3 Westpac will not issue a public statement under clause 7.1 until after the Commission has issued the first public statement after the Statement of Claim has been filed. When the Penalty Judgment is issued Westpac will not issue a public statement regarding the Penalty Judgment until the earlier of the Commission issuing a public statement regarding the Penalty Judgment, or 12 hours after the Penalty Judgment has been released.
- 7.4 No Party will issue any public statement that is inconsistent with this Agreement, the Statement of Claim, the Admissions or the Penalty Judgment.
- 7.5 The Commission will give Westpac one hour of prior notice before issuing its first public statement in this matter as well as its first public statement following the Penalty Judgment. The prior notice will be effected by the Commission providing Westpac with an advance copy of the public statement that it proposes at that time to issue, but the Commission will not be obligated to consider or accept any comments on the proposed statement made by Westpac.
- 7.6 Other than as provided for in clause 7.5 above, nothing in clauses 7.1 to 7.3 above requires either Party to provide advance notice of any public statement to the other Party.

8 Non-compliance with Agreement

Default Notice for breaches of the Agreement

- 8.1 If any Party (the **Notifying Party**) suspects or believes that the other party (the **Defaulting Party**) is in breach of the Agreement, or will in the future breach the Agreement, the Notifying Party must notify the Defaulting Party in writing:
- (a) of the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will likely occur; and
 - (b) that the Notifying Party is contemplating issuing a Default Notice.
- 8.2 After notifying the Defaulting Party, the Notifying Party must:
- (a) give the Defaulting Party a reasonable opportunity to:
 - (i) respond to the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will occur;
 - (ii) take steps to remedy any breach of the Agreement that has occurred or would otherwise occur; and
 - (b) have regard to the Defaulting Party's response, the nature of the suspected breach and the remedial action taken, if any.
- 8.3 If the Notifying Party has followed the process in clauses 8.1 and 8.2, and the Defaulting Party fails to comply with any term of this Agreement, the Notifying Party may give written notice that the Defaulting Party is in breach of the Agreement (a **Default Notice**).

- 8.4 Following service of a Default Notice, the Notifying Party may:
- (a) take any further steps in or relating to the Proceeding, including taking steps in accordance with clause 6 applying to set aside or appeal the Penalty Judgment;
 - (b) take any steps to enforce the obligations outlined in this Agreement;
 - (c) seek an award of costs in respect of the matter giving rise to the Default Notice; and/or
 - (d) terminate the Agreement.
- 8.5 The Parties agree that it shall not constitute a breach of this Agreement for either of them to make submissions in any Court, in any other proceedings, with respect to the relevance, weight or precedent value to be attributed to the Penalty Judgment.

Breach of obligation to pay pecuniary penalty

- 8.6 If a Party fails to make all or part of the payments referred to in clause 5 within the time specified, after first providing seven Working Days for the Party to rectify that breach, the other Party (the **Enforcing Party**) is:
- (a) entitled to enforce the Penalty Judgment;
 - (b) entitled to claim interest as prescribed by the Interest on Money Claims Act 2016 on the balance payable until the penalty, or difference owing or any costs awarded under clause 5 are paid in full; and
 - (c) entitled to its costs, including its legal costs on a solicitor-client basis, arising from the failure to comply with clause 5.
- 8.7 Nothing in clause 8.6 limits the ability of the Enforcing Party to also issue a Default Notice.

9 General

Entire Agreement

- 9.1 This Agreement constitutes the entire understanding and agreement between the Parties in relation to the Self-Report, Investigation and the Proceeding, and fully supersedes any and all prior agreements, arrangements, representations or understandings (whether orally or in writing) between the Parties pertaining to the Self-Report, Investigation and the Proceeding.

- 9.2 The Parties represent and agree that:
- (a) no oral contracts, arrangements, understandings, agreements or promises contrary to the terms of this Agreement exist;
 - (b) they have carefully read and fully understand all of the provisions of this Agreement, including the Schedules; and
 - (c) they are each voluntarily entering into this Agreement after having received independent legal advice.

Use and disclosure of information

- 9.3 The Commission acknowledges that Westpac's information may be confidential and/or commercially sensitive and/or subject to privilege.
- 9.4 The Commission may use Information provided by Westpac for the purpose of carrying out the Commission's functions or obligations under any enactment, but may not disclose such Information to any third party other than in accordance with clause 9.5 below.
- 9.5 The Commission may disclose such Information provided by Westpac in the following circumstances:
- (a) with Westpac's prior written consent; or
 - (b) as required by law (including, for the avoidance of doubt, to comply with a request made under the Official Information Act 1982 or the Privacy Act 1993); or
 - (c) pursuant to section 99AA of the Commerce Act 1986.
- 9.6 The Commission agrees that, if it receives a request pursuant to the Official Information Act 1982 that covers or might cover and/or record or reveal all or some of the information Westpac has provided to the Commission in relation to this Proceeding, including voluntarily or under compulsion, it will notify Westpac of that request and consult with Westpac as to whether there are grounds for the requested material to be withheld under Part 1 of the Official Information Act 1982. The Commission will notify Westpac at least 5 Working Days before responding to the request, if notwithstanding such consideration, it determines no grounds exist on which it may refuse to comply with the request.

Amendments in writing

- 9.7 No amendment to this Agreement will be effective unless it is in writing and signed by all Parties.

Authorities

- 9.8 Each person executing this Agreement warrants that they have the full authority to enter into this Agreement and bind the party for which they purport to enter into this Agreement.

Severance

- 9.9 Any provision in this Agreement that is unlawful will be severed and the remaining provisions remain enforceable, but only if the severed provision is not material to the purpose of this Agreement.

Governing law

- 9.10 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.

Further Assurances

- 9.11 The Parties agree to make all applications, execute all documents and do all acts and things as may be necessary to give effect to its obligations under this Agreement.

No waiver

- 9.12 Failure by a Party to enforce any provision of this Agreement at any time will not operate as a waiver of that provision in respect of that act or omission or any other act or omission.

Counterparts

- 9.13 The Parties may enter into this Agreement by signing any number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single, binding and enforceable Agreement.

10 Communications

10.1 Any notice or communication pursuant to this Agreement will be delivered as follows:

- (a) if addressed to the Commission, by hand delivery or email to the following address:

Commerce Commission
Level 12, 55 Shortland Street,
PO Box 105-222,
Auckland

Attention: Hillary Walker, Chief Legal Counsel – Credit
Email: Hillary.walker@comcom.govt.nz

Copy to:
Meredith Connell
Level 7, MC Centre, 8 Hardinge Street,
Auckland

Attention: Andy Luck
Email: [REDACTED]

- (b) If addressed to Westpac, by hand delivery or email to the following address:

Westpac New Zealand Limited
Westpac On Takutai Square
16 Takutai Square
Auckland 1010

Attention: Stefania Esposito, General Counsel
Email: [REDACTED]

Copy to:
Russell McVeagh
Level 24, NTT Tower
157 Lambton Quay
Wellington 6011

Attention: Emmeline Rushbrook
Email: [REDACTED]

Execution

Signed on behalf of the
Commerce Commission by:



Authorised signatory

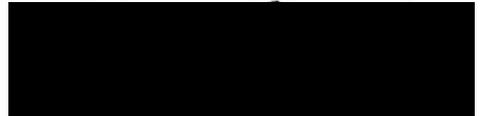
Anne Marie Callinan

.....
Name

In the presence of:

Witness Name: *Marethe Morrissey*

Witness Address:

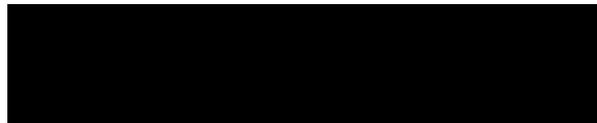


Witness Occupation: *Solicitor*

Signed on behalf of
Westpac New Zealand Limited by:



.....
Authorised signatory



Name

In the presence of:

Witness Name: *MATTHEW BROWN*

Witness Address:



Witness Occupation: *SOLICITOR*

Schedule 1: Statement of claim

**In the High Court of New Zealand
Auckland Registry**

**I Te Kōti Matua o Aotearoa
Tāmaki Makaurau Rohe**

CIV-2025-404-

Under Credit Contracts and Consumer Finance Act 2003

Between **Commerce Commission** a body corporate established under section 8 of the Commerce Act 1986 having its offices at level 6, 44-52 The Terrace, Wellington
Plaintiff

And **Westpac New Zealand Limited** a duly incorporated company having its registered office at Westpac On Takutai Square, 16 Takutai Square, Auckland
Defendant

Statement of claim

22 August 2025

Statement of claim

The plaintiff by its solicitor says:

1 The parties

- 1.1 The plaintiff, the Commerce Commission (**Commission**), is a body corporate established under s 8 of the Commerce Act 1986 (**Commerce Act**). Its functions include enforcement of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**).
- 1.2 The defendant, Westpac New Zealand Limited (**Westpac**):
 - (a) is a duly incorporated company having its registered office at Westpac On Takutai Square, 16 Takutai Square, Auckland;
 - (b) was incorporated on 14 February 2006;
 - (c) is a subsidiary of Westpac New Zealand Group Limited and Westpac Banking Corporation, the latter being a publicly-listed company registered in Australia;
 - (d) is a registered bank under s 70 of the Banking (Prudential Supervision) Act 1989;
 - (e) is New Zealand's fourth-largest bank by total assets, having total assets of \$123,196,000,000 for the financial year ending 30 September 2024; and
 - (f) for the financial year ended 30 September 2024 reported a net profit of \$1,055,000,000.
- 1.3 Throughout the relevant period, Westpac has carried on business, including as a creditor under consumer credit contracts.
- 1.4 Since 6 June 2015, all creditors under consumer credit contracts have been required to comply with the lender responsibility principles set out in s 9C of the CCCFA.

2 The Loan Maintenance issues

Background

- 2.1 Throughout the relevant period, Westpac offered home loans and personal loans. These included consumer credit contracts for the purposes of the CCCFA.

- 2.2 Westpac had two systems which were available to be used by staff to process changes to home loans and personal loans:
- (a) One system, called "New Zealand Loan Origination" (the **NZLO System**), which was Westpac's primary system used to effect changes to loans; and
 - (b) Another workflow tool, called "Loan Maintenance" (the **LM System**), which:
 - (i) was first in use from the latter part of 2007; and
 - (ii) allowed certain staff in Westpac's frontline and lending services teams to make certain changes to loans.
- 2.3 The LM System was accessible to staff through a system referred to as "Sales Customer". The LM System appeared as one of several screens available within Sales Customer.
- 2.4 Westpac's frontline staff are those who are public-facing and deal directly with customers. Among other things, Westpac's lending services team make changes to loans based on requests by frontline staff, and do not interact directly with customers.
- 2.5 Consistently with its obligations under the CCCFA, including the requirement for it to exercise the care, diligence, and skill of a responsible lender, Westpac was required to provide disclosure to borrowers when changes were made to their loans. Such disclosure:
- (a) was required for each of the four changes pleaded in the balance of Part 2 below (referred to as the Issue 1-4 Changes, respectively, and as separately defined below); and
 - (b) in each case, included a requirement to provide full particulars of the relevant changes.
- 2.6 The LM System:
- (a) was intended to be used for administrative activities required to be carried out on loans;
 - (b) was not intended for the purpose of making changes to consumer credit contracts of a kind that would trigger the need for Westpac to provide disclosure (except in limited circumstances, and in those circumstances there was a process in place for disclosure to be provided manually); but
 - (c) nonetheless contained the functionality for staff to make changes of a kind that would require disclosure (those being all such changes, other than the limited exceptions referred to in subparagraph (b) above).

- 2.7 When processing changes to loans:
- (a) the NZLO System would automatically produce customers with the disclosure required by the CCCFA; but
 - (b) the LM System did not automatically provide the required disclosure.
- 2.8 Customers who had changes to their loans processed only through the LM System accordingly:
- (a) did not receive the required disclosure automatically through the LM System; and
 - (b) would not receive the required disclosure at or about the time of the change unless the staff member processing the change provided the disclosure manually.
- 2.9 In the situations pleaded below, as described, a number of customers did not receive the required disclosure at all prior to Westpac's identification of the issue.

Westpac's awareness of the issues and self-reporting

- 2.10 Westpac's failures to provide disclosure occurred from at least 6 June 2015.
- 2.11 On 4 March 2022, Westpac advised the Commission that it had identified customers who had changes to their loans processed through the LM System and who may not have been provided with the required disclosure.
- 2.12 In September 2022, and subsequently, Westpac provided the Commission with more detail on the nature of the issues and the causes of each.

The first Loan Maintenance issue: home loan interest rate changes

- 2.13 Throughout the relevant period, the terms of certain Westpac customers' home loans were changed such that the interest rate moved from:
- (a) a fixed interest rate or capped rate to a floating interest rate; and/or
 - (b) one floating interest rate to a different floating interest rate.
- (together, as applicable, the Issue 1 Changes)
- 2.14 Westpac's frontline and lending services staff were able to make the Issue 1 Changes through the LM System or the NZLO System.

- 2.15 Where the Issue 1 Changes were made through the LM System:
- (a) customers would not automatically receive the required disclosure; and
 - (b) a number of customers did not receive the required disclosure at all (the **Affected Issue 1 Customers**).
- 2.16 Westpac's failure to ensure the required disclosure was provided to the Affected Issue 1 Customers was the result of:
- (a) the fact that its systems were set up in such a way that the Issue 1 Changes were able to be made through a process – the LM System – which would not automatically provide the required disclosure; and/or
 - (b) the fact that the LM System was not set up to provide the required disclosure automatically; and/or
 - (c) the fact that Westpac failed to direct staff, or to adequately direct staff, to only process the Issue 1 Changes through the NZLO System; and/or
 - (d) the fact that Westpac failed to inform staff, or to adequately inform staff, that the NZLO and LM Systems differed in terms of how the required disclosure was to be dealt with; and/or
 - (e) the fact that Westpac relied on the staff member who processed the Issue 1 Change to themselves recognise the need to provide disclosure; and/or
 - (f) the fact that Westpac did not, or did not adequately, train, or provide guidance to, staff on:
 - (i) the need to provide disclosure, generally, when making changes to a loan through the LM System; and/or
 - (ii) the need to provide disclosure when making the Issue 1 Changes through the LM System; and/or
 - (g) the fact that Westpac's training materials regarding the LM System did not, or did not adequately:
 - (i) refer to the need for staff to provide disclosure in accordance with the CCCFA generally; and/or
 - (ii) refer to the need for staff to manually provide disclosure when making the Issue 1 Changes through that system; and/or
 - (h) to the extent the guidance on the LM System was available to staff in the relevant period, the fact that Westpac did not adequately ensure that staff:
 - (i) were aware of that guidance; and/or

- (ii) made the Issue 1 Changes in accordance with it; and/or
 - (i) the fact that there were no other systems, or no other adequate systems, in place within the bank to ensure that customers received the required disclosure in circumstances where the changes to their loan had been effected through the LM System; and/or
 - (j) the fact that Westpac did not have processes and/or controls, or adequate processes and/or controls, in place to check whether customers received the required disclosure in respect of Issue 1 Changes processed through the LM System; and/or
 - (k) the fact that Westpac failed to identify the issue for a period of years.
- 2.17 Westpac could have and should have taken the steps pleaded at paragraph 2.16(a)-(j) above from at least 6 June 2015, but did not.
- 2.18 After identifying the issue:
- (a) on or about 15 December 2021, Westpac directed staff to only process the Issue 1 Changes through the NZLO System;
 - (b) in or about September 2022, Westpac amended its instructions to staff to provide guidance on the changes that Westpac required to be processed only through the NZLO System; and
 - (c) in or about September 2022, Westpac introduced a webform-based system known as the lending services maintenance request form for loan maintenance requests to be sent to lending services.

Harm

- 2.19 The failings in respect of the Issue 1 Changes were such that:
- (a) in the period from 6 June 2015 to 15 December 2021, there were up to 3,473 Affected Issue 1 Customers, holding up to 4,336 loan accounts, to whom Westpac is finalising remediation payments totalling \$562,626; and
 - (b) in the period from 20 December 2019 to 15 December 2021, there were up to 1,281 Affected Issue 1 Customers, holding up to 1,578 loan accounts, to whom Westpac is finalising remediation payments totalling \$207,522.

First cause of action: breach of s 9C of the CCCFA

- 2.20 The Commission repeats Part 1 and paragraphs 2.1 to 2.19 above.
- 2.21 In the period from 20 December 2019 to 15 December 2021, Westpac failed to ensure disclosure of the Issue 1 Changes was provided to the Affected Issue 1 Customers.

- 2.22 Westpac's failure to ensure the required disclosure was provided to those customers was the result of the failings pleaded at paragraphs 2.16 and 2.17 above.
- 2.23 The failings pleaded at paragraphs 2.16 and 2.17 above:
- (a) each separately constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a borrower in relation to a consumer credit contract, contrary to s 9C(2)(a)(iii) of the CCCFA; and further, or alternatively
 - (b) in combination constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a borrower in relation to a consumer credit contract, contrary to s 9C(2)(a)(iii) of the CCCFA.

Wherefore the Commission seeks:

- (A) A declaration that, in respect of the Affected Issue 1 Customers, Westpac breached ss 9C(1) and 9C(2)(a)(iii) of the CCCFA in the period from 20 December 2019 to 15 December 2021;
- (B) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2019 to 19 December 2020; and
- (C) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2020 to 15 December 2021.

The second Loan Maintenance issue: changes to repayment and limit reduction frequency

- 2.24 A number of Westpac's home loans had repayment amounts determined on a table basis (the **Table Home Loans**).

Particulars of paragraph 2.24

- (a) The reference to loans being set on a "table basis" has the meaning ordinarily used by mortgage lenders, and refers to loans with a regular repayment structure and regular payment amounts which stay the same (unless the borrower's interest rate changes during the loan term).
- 2.25 Westpac's **Table Home Loans** were typically set up in such a way that there was both a regular repayment amount and a regular credit limit reduction, with each to occur at the same frequency. The effect of this is that both the credit limit and the loan balance would both reach zero by the end of the loan term.
- 2.26 Throughout the relevant period, the terms of certain Westpac customers' **Table Home Loans** were changed such that the frequency of the customer's repayments and/or limit reductions were altered (the **Issue 2 Changes**).

- 2.27 Certain Westpac frontline and lending services staff were able to make the Issue 2 Changes through the LM System or the NZLO System, unless that change occurred in conjunction with another change of a kind that could only be made through the NZLO System.
- 2.28 Frontline staff were not able to process changes specifically from fortnightly to monthly limit reductions in the LM System. Instead, they could either be processed as a loan restructure application in the NZLO system or by sending a request to lending services staff, who, in turn, would effect the change in the LM System.
- 2.29 Where the Issue 2 Changes were made through the LM System:
- (a) customers would not automatically receive the required disclosure; and
 - (b) a number of customers did not receive the required disclosure at all (the **Affected Issue 2 Customers**).
- 2.30 Westpac's failure to ensure the required disclosure was provided to the Affected Issue 2 Customers was the result of:
- (a) the fact that its systems were set up in such a way that the Issue 2 Changes were able to be made through a process – the LM System – which would not automatically provide the required disclosure; and/or
 - (b) the fact that the LM System was not set up to provide the required disclosure automatically; and/or
 - (c) the fact that Westpac failed to direct staff, or to adequately direct staff, to only process the Issue 2 Changes through the NZLO System; and/or
 - (d) the fact that Westpac failed to inform staff, or to adequately inform staff, that the NZLO and LM Systems differed in terms of how the required disclosure was to be dealt with; and/or
 - (e) the fact that Westpac relied on the staff member who processed the Issue 2 Change to themselves recognise the need to provide disclosure; and/or
 - (f) the fact that Westpac did not, or did not adequately, train or provide guidance to its staff on:
 - (i) the need to provide disclosure, generally, when making changes to a loan through the LM System; and/or
 - (ii) the need to provide disclosure when making the Issue 2 Changes through the LM System; and/or

- (g) the fact that Westpac's training materials regarding the LM System did not, or did not adequately:
 - (i) refer to the need for staff to provide disclosure in accordance with the CCCFA generally; and/or
 - (ii) refer to the need for staff to manually provide disclosure when making the Issue 2 Changes through that system; and/or
- (h) to the extent the guidance on the LM System was available to staff in the relevant period, the fact that Westpac did not adequately ensure that staff:
 - (i) were aware of that guidance; and/or
 - (ii) made the Issue 2 Changes in accordance with it; and/or
- (i) the fact that there were no other systems, or no other adequate systems, in place within the bank to ensure that customers received the required disclosure in circumstances where the changes to their loan had been effected through the LM System; and/or
- (j) the fact that Westpac did not have processes and/or controls, or adequate processes and/or controls, in place to check whether customers received the required disclosure in respect of Issue 2 Changes processed through the LM System; and/or
- (k) the fact that Westpac failed to identify the issue for a period of years; and/or

2.31 Westpac could have and should have taken the steps pleaded at paragraph 2.30(a)-(j) above from at least 6 June 2015, but did not.

2.32 After identifying the issue:

- (a) on or about 15 December 2021, Westpac directed staff to only process the Issue 2 Changes through the NZLO System;
- (b) in or about September 2022, Westpac amended its instructions to staff to provide guidance on the changes that Westpac required to be processed only through the NZLO System; and
- (c) in or about September 2022, Westpac introduced a webform-based system known as the lending services maintenance request form for loan maintenance requests to be sent to lending services.

Harm

2.33 The failings in respect of the Issue 2 Changes were such that:

- (a) in the period from 6 June 2015 to 15 December 2021, there were up to 72 Affected Issue 2 Customers, holding up to 88 loan accounts, to whom Westpac is finalising remediation payments totalling \$11,664; and

- (b) in the period from 20 December 2019 to 15 December 2021, there were up to nine Affected Issue 2 Customers, holding up to 11 loan accounts, to whom Westpac is finalising remediation payments totalling \$1,458.

Second cause of action: breach of s 9C of the CCCFA

- 2.34 The Commission repeats Part 1 and paragraphs 2.1 to 2.12 and 2.24 to 2.33 above.
- 2.35 In the period from 20 December 2019 to 15 December 2021, Westpac failed to ensure disclosure of the Issue 2 Changes was provided to the Affected Issue 2 Customers.
- 2.36 Westpac's failure to ensure the required disclosure was provided to those customers was the result of the failings pleaded at paragraphs 2.30 and 2.31 above.
- 2.37 The failings pleaded at paragraphs 2.30 and 2.31 above:
 - (a) each separately constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a borrower in relation to a consumer credit contract, contrary to s 9C(2)(a)(iii) of the CCCFA; and further, or alternatively
 - (b) in combination constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a borrower in relation to a consumer credit contract, contrary to s 9C(2)(a)(iii) of the CCCFA.

Wherefore the Commission seeks:

- (A) A declaration that, in respect of the Affected Issue 2 Customers, Westpac breached ss 9C(1) and 9C(2)(a)(iii) of the CCCFA in the period from 20 December 2019 to 15 December 2021;
- (B) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2019 to 19 December 2020; and
- (C) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2020 to 15 December 2021.

The third Loan Maintenance issue: temporary limit increases

- 2.38 Throughout the relevant period, the terms of certain Westpac customers' home loans were changed such that there was a temporary increase to the lending limit on the customer's existing loan (the **Issue 3 Changes**).

- 2.39 The circumstances where a temporary limit increase may have been loaded include where the customer required the increase for a deposit or bridging finance where a property was pending settlement and before any new lending arrangements were implemented.
- 2.40 Certain Westpac frontline staff were able to make the Issue 3 Changes through the LM System or the NZLO System. Permanent limit increase requests could only be processed through the NZLO System.
- 2.41 Where the Issue 3 Changes were made through the LM System:
- (a) customers would not automatically receive the required disclosure; and
 - (b) a number of customers did not receive the required disclosure at all (the **Affected Issue 3 Customers**).
- 2.42 Westpac's failure to ensure the required disclosure was provided to the Affected Issue 3 Customers was the result of:
- (a) the fact that its systems were set up in such a way that the Issue 3 Changes were able to be made through a process – the LM System – which would not automatically provide the required disclosure; and/or
 - (b) the fact that the LM System was not set up to provide the required disclosure automatically; and/or
 - (c) the fact that Westpac failed to direct staff, or to adequately direct staff, to only process the Issue 3 Changes through the NZLO System; and/or
 - (d) the fact that Westpac failed to direct staff, or to adequately direct staff, to provide short-term financing through temporary overdrafts (which were processed in NZLO) rather than through temporary limit increases; and/or
 - (e) the fact that Westpac failed to inform staff, or to adequately inform staff, that the NZLO and LM Systems differed in terms of how the required disclosure was to be dealt with; and/or
 - (f) the fact that Westpac relied on the staff member who processed the Issue 3 Change to themselves recognise the need to provide disclosure; and/or
 - (g) the fact that Westpac did not, or did not adequately, train or provide guidance to staff on:
 - (i) the need to provide disclosure, generally, when making changes to a loan through the LM System; and/or
 - (ii) the need to provide disclosure when making the Issue 3 Changes through the LM System; and/or

- (h) the fact that Westpac's training materials regarding the LM System did not, or did not adequately:
 - (i) refer to the need for staff to provide disclosure in accordance with the CCCFA generally; and/or
 - (ii) refer to the need for staff to manually provide disclosure when making the Issue 3 Changes through that system; and/or
- (i) to the extent the guidance on the LM System was available to staff in the relevant period, the fact that Westpac did not adequately ensure that staff:
 - (i) were aware of that guidance; and/or
 - (ii) made the Issue 3 Changes in accordance with it; and/or
- (j) the fact that there were no other systems, or no other adequate systems, in place within the bank to ensure that customers received the required disclosure in circumstances where the changes to their loan had been effected through the LM System; and/or
- (k) the fact that Westpac did not have adequate processes and/or controls, in place to check whether customers received the required disclosure in respect of Issue 3 Changes processed through the LM System; and/or
- (l) the fact that Westpac failed to identify the issue for a period of years.

2.43 Westpac could have and should have taken the steps pleaded at paragraph 2.42(a)-(k) above from at least 6 June 2015, but did not.

2.44 After identifying the issue:

- (a) on or about 15 December 2021, Westpac directed staff to only process the Issue 3 Changes through the NZLO System;
- (b) in or about September 2022, Westpac amended its instructions to staff to provide guidance on the changes that Westpac required to be processed only through the NZLO System; and
- (c) in or about September 2022, Westpac introduced a webform-based system known as the lending services maintenance request form for loan maintenance requests to be sent to lending services.

Harm

2.45 The failings in respect of the Issue 3 Changes were such that:

- (a) in the period from 6 June 2015 to 15 December 2021, there were up to 350 Affected Issue 3 Customers, holding up to 354 loan accounts, to whom Westpac has paid remediation totalling \$56,700; and

- (b) in the period from 20 December 2019 to 15 December 2021, there were up to 55 Affected Issue 3 Customers, holding up to 55 loan accounts, to whom Westpac has paid remediation totalling \$8,910.

Third cause of action: breach of s 9C of the CCCFA

- 2.46 The Commission repeats Part 1 and paragraphs 2.1 to 2.12 and 2.38 to 2.45 above.
- 2.47 In the period from 20 December 2019 to 15 December 2021, Westpac failed to ensure disclosure of the Issue 3 Changes was provided to the Affected Issue 3 Customers.
- 2.48 Westpac's failure to ensure the required disclosure was provided to those customers was the result of the failings pleaded at paragraphs 2.42 and 2.43 above.
- 2.49 The failings pleaded at paragraphs 2.42 and 2.43 above:
 - (a) each separately constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a borrower in relation to a consumer credit contract, contrary to s 9C(2)(a)(iii) of the CCCFA; and further, or alternatively
 - (b) in combination constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a borrower in relation to a consumer credit contract, contrary to s 9C(2)(a)(iii) of the CCCFA.

Wherefore the Commission seeks:

- (A) A declaration that, in respect of the Affected Issue 3 Customers, Westpac breached ss 9C(1) and 9C(2)(a)(iii) of the CCCFA in the period from 20 December 2019 to 15 December 2021;
- (B) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2019 to 19 December 2020;
- (C) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2020 to 15 December 2021.

The fourth Loan Maintenance issue: personal loan changes

- 2.50 Throughout the relevant period, Westpac customers' personal loans were varied as a result of changes made to:
- (a) terms of the customer's repayments, including the amount of each, the repayment frequency and the repayment date;
 - (b) the customer's loan term and/or expiry date;
 - (c) the customer's loan limit; and/or
 - (d) the customer's interest rate.
- (together, as applicable, the **Issue 4 Changes**).
- 2.51 Certain Westpac frontline and lending services staff were able to make the Issue 4 Changes through the LM System or the NZLO System.
- 2.52 Where the Issue 4 Changes were made through the LM System:
- (a) customers would not automatically receive the required disclosure; and
 - (b) a number of customers did not receive the required disclosure at all (the **Affected Issue 4 Customers**).
- 2.53 Westpac's failure to ensure the required disclosure was provided to the Affected Issue 4 Customers was the result of:
- (a) the fact that its systems were set up in such a way that the Issue 4 Changes were able to be made through a process – the LM System – which would not automatically provide the required disclosure; and/or
 - (b) the fact that the LM System was not set up to provide the required disclosure automatically; and/or
 - (c) the fact that Westpac failed to direct staff, or to adequately direct staff, to only process the Issue 4 Changes through the NZLO System; and/or
 - (d) the fact that Westpac failed to inform staff, or to adequately inform staff, that the NZLO and LM Systems differed in terms of how the required disclosure was to be dealt with; and/or
 - (e) the fact that Westpac relied on the staff member who processed the Issue 4 Change to themselves recognise the need to provide disclosure; and/or
 - (f) the fact that Westpac did not, or did not adequately, train or provide guidance to staff on:
 - (i) the need to provide disclosure, generally, when making changes to a loan through the LM System; and/or

- (ii) the need to provide disclosure when making the Issue 4 Changes through the LM System; and/or
 - (g) the fact that Westpac's training materials regarding the LM System did not, or did not adequately:
 - (i) refer to the need for staff to provide disclosure in accordance with the CCCFA generally; and/or
 - (ii) refer to the need for staff to manually provide disclosure when making the Issue 4 Changes through that system; and/or
 - (h) to the extent the guidance on the LM System was available to staff in the relevant period, the fact that Westpac did not adequately ensure that staff:
 - (i) were aware of that guidance; and/or
 - (ii) made the Issue 4 Changes in accordance with it; and/or
 - (i) the fact that there were no other systems, or no other adequate systems, in place within the bank to ensure that customers received the required disclosure in circumstances where the changes to their loan had been effected through the LM System; and/or
 - (j) the fact that Westpac did not have processes and/or controls, or adequate processes and/or controls, in place to check whether customers received the required disclosure in respect of Issue 4 Changes processed through the LM System; and/or
 - (k) the fact that Westpac failed to identify the issue for a period of years.
- 2.54 Westpac could have and should have taken the steps pleaded at paragraph 2.53(a)-(j) above from at least 6 June 2015, but did not.
- 2.55 After identifying the issue:
- (a) on or about 10 February 2022, Westpac directed staff to only process the Issue 4 Changes through the NZLO System;
 - (b) in or about September 2022, Westpac amended its instructions to staff to provide guidance on the changes that Westpac required to be processed only through the NZLO System; and
 - (c) in or about September 2022, Westpac introduced a webform-based system known as the lending services maintenance request form for loan maintenance requests to be sent to lending services.

Harm

- 2.56 The failings in respect of the Issue 4 Changes were such that:
- (a) in the period from 6 June 2015 to 25 November 2021, there were up to 1,106 Affected Issue 4 Customers, holding up to 1,109 loan accounts, to whom Westpac is finalising remediation payments totalling \$179,172; and
 - (b) in the period from 20 December 2019 to 25 November 2021, there were up to 255 Affected Issue 4 Customers, holding up to 256 loan accounts, to whom Westpac is finalising remediation payments totalling \$41,310.

Fourth cause of action: breach of s 9C of the CCCFA

- 2.57 The Commission repeats Part 1 and paragraphs 2.1 to 2.12 and 2.50 to 2.56 above.
- 2.58 In the period from 20 December 2019 to 10 February 2022, Westpac failed to ensure that disclosure of the Issue 4 Changes was provided to the Affected Issue 4 Customers.
- 2.59 Westpac's failure to ensure the required disclosure was provided to those customers was the result of the failings pleaded at paragraphs 2.53 and 2.54 above.
- 2.60 The failings pleaded at paragraphs 2.53 and 2.54 above:
- (a) each separately constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a borrower in relation to a consumer credit contract, contrary to s 9C(2)(a)(iii) of the CCCFA; and further, or alternatively
 - (b) in combination constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a borrower in relation to a consumer credit contract, contrary to s 9C(2)(a)(iii) of the CCCFA.

Wherefore the Commission seeks:

- (A) A declaration that, in respect of the Affected Issue 4 Customers, Westpac breached ss 9C(1) and 9C(2)(a)(iii) of the CCCFA in the period from 20 December 2019 to 10 February 2022;
- (B) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2019 to 19 December 2020; and
- (C) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2020 to 10 February 2022.

3 The Guarantor Disclosure issues

- 3.1 Throughout the relevant period, Westpac:
- (a) offered home loans, some of which were consumer credit contracts for the purposes of the CCCFA; and
 - (b) took guarantees under those home loans.
- 3.2 Consistently with its obligations under the CCCFA, including the requirement for it to exercise the care, diligence, and skill of a responsible lender, Westpac was required to provide disclosure to guarantors. Such disclosure:
- (a) was required for each of the three changes pleaded in the balance of Part 3 below (referred to as the GD1-3 Changes, respectively, and as separately defined below); and
 - (b) included a requirement for Westpac to provide disclosure of the guarantee, or the changes to the guarantee, as applicable.
- 3.3 The NZLO System (as defined at paragraph 2.2(a) above) was configured to automatically provide disclosure to guarantors in cases where the loan was changed to increase the credit limit or extend the loan term.
- 3.4 The NZLO System:
- (a) was capable of being configured to automatically provide disclosure in circumstances, other than those referred to in paragraph 3.3 above, where disclosure was required; but
 - (b) had not in fact been configured to provide disclosure in those other circumstances.
- 3.5 Westpac required its staff to manually provide guarantor disclosure in the circumstances where NZLO would not provide the required disclosure automatically.
- 3.6 There was no prompt within the NZLO System to alert staff to the need to provide disclosure manually.
- 3.7 The guarantor would accordingly not receive the required disclosure at all unless the staff member processing the change provided the disclosure manually.
- 3.8 In the situations pleaded below, a number of customers did not receive the required disclosure at all.

Westpac's awareness of the issues and self-reporting

- 3.9 Westpac's failures to provide guarantor disclosure occurred from at least 6 June 2015.
- 3.10 On 4 March 2022, Westpac advised the Commission that it had identified situations where guarantors may not have been provided with the required disclosure.

- 3.11 In September 2022, and subsequently, Westpac provided the Commission with more detail on the nature of the issues and the causes of each.

The first guarantor disclosure issue: home loan interest rate increases

- 3.12 On many occasions throughout the relevant period, in respect of home loan accounts that a guarantor had guaranteed, the terms of Westpac customers' home loans were changed by varying the customer's interest rate (the **GD1 Changes**).
- 3.13 Westpac was required to provide disclosure of the GD1 Changes in accordance with the CCCFA.
- 3.14 The NZLO System would not automatically provide disclosure to a guarantor of the GD1 Changes. As such:
- (a) affected guarantors would only receive the required disclosure if a Westpac staff member manually provided the disclosure; and
 - (b) in a number of instances, guarantors were not provided with the required disclosure in respect of the GD1 Changes at all (the **Affected GD1 Guarantors**).
- 3.15 The guarantees given by the Affected GD1 Guarantors were each "relevant guarantees" as that term is defined in s 9B(1) of the CCCFA.
- 3.16 Westpac's failure to ensure disclosure was provided to the Affected GD1 Guarantors (the **GD1 Issue**) was the result of:
- (a) the fact that it had not configured NZLO to provide disclosure automatically in respect of the GD1 Changes; and/or
 - (b) the fact that there was no prompt for staff within Westpac's systems, either within NZLO or otherwise, to alert and/or remind staff of the need to manually provide disclosure of the GD1 Changes; and/or
 - (c) the fact that Westpac relied on the staff member who processed the interest rate increase to themselves recognise the need to provide disclosure of the GD1 Changes; and/or
 - (d) the fact that Westpac did not adequately, direct staff to provide disclosure of the GD1 Changes where that was required; and/or
 - (e) the fact that Westpac did not, or did not adequately, train staff on the need to manually provide disclosure to guarantors when making the GD1 Changes; and/or
 - (f) the fact that the process documents and/or guidance available for reference by staff did not adequately, refer to:
 - (i) the fact that NZLO would not automatically produce disclosure to guarantors in certain circumstances; and/or

- (ii) the need to manually provide guarantors with disclosure of the GD1 Changes; and/or
 - (g) the fact that there were no other systems, or no other adequate systems, in place within the bank to ensure that guarantors received the required disclosure of the GD1 Changes; and/or
 - (h) the fact that Westpac did not have processes and/or controls, or adequate processes and/or controls, in place to check whether guarantors had been provided with the required disclosure of the GD1 Changes; and/or
 - (i) the fact that Westpac failed to identify the issue for a period of years.
- 3.17 Westpac could have and should have taken the steps pleaded at paragraph 3.16(a)-(h) above from at least 6 June 2015, but did not.
- 3.18 On or about 9 November 2023, Westpac configured the NZLO system to automatically provide guarantor disclosure for all GD1 Changes.

Harm

- 3.19 The GD1 Issue was such that:
- (a) in the period from 6 June 2015 to 9 November 2023, there were up to 768 Affected GD1 Guarantors, who gave up to 734 affected guarantees; and
 - (b) in the period from 20 December 2019 to 9 November 2023, there were up to 403 Affected GD1 Guarantors, who gave up to 393 affected guarantees.

Fifth cause of action: breach of s 9C of the CCCFA

- 3.20 The Commission repeats Part 1 and paragraphs 3.1 to 3.19 above.
- 3.21 In the period from 20 December 2019 to on or about 9 November 2023, Westpac failed to ensure that disclosure of the GD1 Changes was provided to the Affected GD1 Guarantors.
- 3.22 Westpac's failure to ensure the required disclosure was provided to those customers was the result of the failings pleaded at paragraphs 3.16 and 3.17 above.
- 3.23 The failings pleaded at paragraphs 3.16 and 3.17 above:
- (a) each separately constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a guarantor in relation to a relevant guarantee, contrary to s 9C(2)(a)(iii) of the CCCFA; and further, or alternatively

- (b) in combination constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a guarantor in relation to a relevant guarantee, contrary to s 9C(2)(a)(iii) of the CCCFA.

Wherefore the Commission seeks:

- (A) A declaration that, in respect of the Affected GD1 Customers, Westpac breached ss 9C(1) and 9C(2)(a)(iii) of the CCCFA in the period from 20 December 2019 to 9 November 2023;
- (B) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2019 to 19 December 2020;
- (C) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2020 to 19 December 2021;
- (D) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2021 to 19 December 2022; and
- (E) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2022 to 9 November 2023.

The second guarantor disclosure issue: new loans

- 3.24 Throughout the relevant period, there were instances where:
- (a) a borrower with an existing Westpac home loan(s) obtained a new loan;
 - (b) the new loan had a new guarantee provided on an "all obligations" basis; and
 - (c) the guarantor, by virtue of the wording of the guarantee on the new loan, was liable for all of the borrower's lending, including on the earlier loan(s);
- (the **GD2 Changes**).
- 3.25 Westpac was required to provide disclosure of the GD2 Changes in accordance with the CCCFA. That disclosure was required to include the details of the borrower's existing lending over which the "all obligations" guarantee would extend ("the **Existing Lending**").
- 3.26 Where applications involving the GD2 Changes were sent to Westpac's lending services team, lending services would manually prepare the required disclosure of the Existing Lending and attach it to the application.

- 3.27 Certain frontline staff (distinct from lending services) were given an authorisation limit, which was an authority level given to staff members which allowed them to approve a security without a second-level check from another staff member. Each staff member's authorisation limit which was set by reference to the particular staff member's knowledge and experience in lending.
- 3.28 Where a new loan was within a frontline staff member's authorisation limit the staff member was able to generate loan documentation, including the relevant disclosures, and send those documents directly to the guarantor and/or the guarantor's solicitor without the application first being sent to lending services, meaning that lending services would not manually prepare the required disclosure at that point.
- 3.29 The NZLO system:
- (a) would alert lending services to the need to produce guarantor disclosure for all new borrowing in circumstances where the application was received by them before being sent to the guarantor and/or guarantor's solicitor; but
 - (b) would not do so for GD2 Changes in circumstances where a frontline staff member acting within their authorisation limit directly sent loan documentation to the guarantor and/or the guarantor's solicitor and the application only later came to lending services, prior to drawdown.
- 3.30 In the circumstances referred to in paragraphs 3.27, 3.28 and 3.29(b) above (together, the **Relevant Circumstances**):
- (a) affected guarantors would:
 - (i) receive disclosure that provided the details of the new lending, specifically; but
 - (ii) not receive disclosure referring to the existing lending, over which the "all obligations" guarantee would extend (the **Omitted GD2 Disclosure**); and
 - (b) affected guarantors would only receive the required disclosure of the borrower's existing lending if a Westpac staff member manually provided that disclosure; and
 - (c) in a number of instances, guarantors were not provided with the required disclosure in respect of the borrowers' existing lending at all (the **Affected GD2 Guarantors**).
- 3.31 The guarantees given by the Affected GD2 Guarantors were each "relevant guarantees" as that term is defined in s 9B(1) of the CCCFA.

- 3.32 Westpac's failure to ensure the Omitted GD2 Disclosure was provided to the Affected GD2 Guarantors in the Relevant Circumstances (the **GD2 Issue**) was the result of:
- (a) the fact that it had not configured NZLO to automatically ensure lending services would provide that disclosure; and
 - (b) the fact that, in the Relevant Circumstances, there was no prompt for staff within Westpac's systems, either within NZLO or otherwise, to alert and/or remind staff of the need to manually provide that disclosure; and/or
 - (c) the fact that Westpac relied on staff members to themselves recognise the need to provide that disclosure; and/or
 - (d) the fact that Westpac did not adequately, direct staff to provide that disclosure where that was required; and/or
 - (e) the fact that Westpac not adequately, train staff on the need to manually provide that disclosure to guarantors when making the GD2 Changes; and/or
 - (f) the fact that the process documents and/or guidance available for reference by staff did not, or did not adequately, refer to the need to manually provide guarantors with that disclosure at drawdown if it had not already been provided; and/or
 - (g) the fact that there were no other systems, or no other adequate systems, in place within the bank to ensure that guarantors received the required disclosure for the GD2 Changes; and/or
 - (h) the fact that Westpac did not have processes and/or controls, or adequate processes and/or controls, in place to check whether guarantors had been provided with the required disclosure for the GD2 Changes; and/or
 - (i) the fact that Westpac failed to identify the issue for a period of years.
- 3.33 Westpac could have and should have taken the steps pleaded at paragraph 3.32(a)-(h) above from at least 6 June 2015, but did not.
- 3.34 On or about 31 March 2023, Westpac configured the NZLO system to prompt manual guarantor disclosure for all GD2 Changes.

Harm

- 3.35 The GD2 Issue was such that:
- (a) in the period from 6 June 2015 to 31 March 2023, there were up to 1,569 Affected GD2 Guarantors, who gave up to 2,320 affected guarantees; and

(b) in the period from 20 December 2019 to 31 March 2023, there were up to 431 Affected GD2 Guarantors, who gave up to 669 affected guarantees.

3.36 Westpac has confirmed that it has not, and will not seek to, enforce the guarantees given by the Affected GD2 Guarantors, insofar as the guarantees relate to lending which was not disclosed to those guarantors.

Sixth cause of action: breach of s 9C of the CCCFA

3.37 The Commission repeats Part 1 and paragraphs 3.1 to 3.11 and 3.24 to 3.36 above.

3.38 In the period from 20 December 2019 to on or about 31 March 2023, Westpac failed to ensure that the Omitted GD2 Disclosure was provided to the Affected GD2 Guarantors.

3.39 Westpac's failure to ensure the required disclosure was provided to those customers was the result of the failings pleaded at paragraphs 3.32 and 3.33 above.

3.40 The failings pleaded at paragraphs 3.32 and 3.33 above:

- (a) each separately constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender before taking a relevant guarantee, contrary to s 9C(2)(a)(ii) of the CCCFA; and further, or alternatively
- (b) in combination constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender before taking a relevant guarantee, contrary to s 9C(2)(a)(ii) of the CCCFA.

Wherefore the Commission seeks:

- (A) A declaration that, in respect of the Affected GD2 Customers, Westpac breached ss 9C(1) and 9C(2)(a)(ii) of the CCCFA in the period from 20 December 2019 to 31 March 2023;
- (B) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2019 to 19 December 2020;
- (C) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2020 to 19 December 2021; and
- (D) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2021 to 31 March 2023.

The third guarantor disclosure issue: changes to contracts

- 3.41 Throughout the relevant period, changes were made to the terms of certain Westpac customer's home loans which were secured by a guarantee such that:
- (a) the loan term was reduced;
 - (b) there was a change to the loan limit reduction cycle; and/or
 - (c) the loan was restructured from requiring payments of principal and interest, to requiring payments of interest only;
- (as applicable, the **GD3 Changes**).
- 3.42 Westpac was required to provide disclosure of the GD3 Changes to guarantors in accordance with the CCCFA.
- 3.43 The NZLO System would not automatically provide disclosure to a guarantor of the GD3 Changes. As such:
- (a) affected guarantors would only receive the required disclosure if a Westpac staff member manually provided the disclosure; and
 - (b) in a number of instances, guarantors were not provided with the required disclosure in respect of the GD3 Changes at all (the **Affected GD3 Guarantors**).
- 3.44 The guarantees given by the Affected GD3 Guarantors were each "relevant guarantees" as that term is defined in s 9B(1) of the CCCFA.
- 3.45 Westpac's failure to ensure disclosure was provided to the Affected GD3 Guarantors (the **GD3 Issue**) was the result of:
- (a) the fact that it had not configured NZLO to provide disclosure automatically in respect of the GD3 Changes; and/or
 - (b) the fact that there was no prompt for staff within Westpac's systems, either within NZLO or otherwise, to alert and/or remind staff of the need to manually provide disclosure of the GD3 Changes; and/or
 - (c) the fact that Westpac relied on the staff member who processed the relevant change to themselves recognise the need to provide disclosure of the GD3 Changes; and/or
 - (d) the fact that Westpac did not adequately, direct staff to provide disclosure of the GD3 Changes where that was required; and/or
 - (e) the fact that Westpac did not adequately, train staff on the need to manually provide disclosure to guarantors when making the GD3 Changes; and/or
 - (f) the fact that the process documents and/or guidance available for reference by staff did not, or did not adequately, refer to:

- (i) the fact that NZLO would not automatically provide disclosure to guarantors in certain circumstances; and/or
 - (ii) the need to manually provide guarantors with disclosure of the GD3 Changes; and/or
 - (g) the fact that there were no other systems, or no other adequate systems, in place within the bank to ensure that guarantors received the required disclosure for the GD3 changes; and/or
 - (h) the fact that Westpac did not have processes and/or controls, or adequate processes and/or controls, in place to check whether guarantors had been provided with the required disclosure for the GD3 changes; and/or
 - (i) the fact that Westpac failed to identify the issue for a period of years.
- 3.46 Westpac could have and should have taken the steps pleaded at paragraph 3.45(a)-(h) above from at least 6 June 2015, but did not.
- 3.47 On or about 31 March 2023, Westpac configured the NZLO system to automatically provide guarantor disclosure for all GD3 Changes.

Harm

- 3.48 The GD3 Issue was such that:
- (a) in the period from 6 June 2015 to 31 March 2023, there were up to 675 Affected GD3 Guarantors, who gave up to 715 affected guarantees; and
 - (b) in the period from 20 December 2019 to 31 March 2023, there were up to 101 Affected GD3 Guarantors, who gave up to 111 affected guarantees.

Seventh cause of action: breach of s 9C of the CCCFA

- 3.49 The Commission repeats Part 1 and paragraphs 3.1 to 3.11 and 3.41 to 3.48 above.
- 3.50 In the period from 20 December 2019 to on or about 31 March 2023, Westpac failed to ensure that disclosure of the GD3 Changes was provided to the Affected GD3 Guarantors.
- 3.51 Westpac's failure to ensure the required disclosure was provided to those customers was the result of the failings pleaded at paragraphs 3.45 and 3.46 above.

- 3.52 The failings pleaded at paragraph 3.45 and 3.46 above:
- (a) each separately constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a guarantor in relation to a relevant guarantee, contrary to s 9C(2)(a)(iii) of the CCCFA; and further, or alternatively
 - (b) in combination constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a guarantor in relation to a relevant guarantee, contrary to s 9C(2)(a)(iii) of the CCCFA.

Wherefore the Commission seeks:

- (A) A declaration that, in respect of the Affected GD3 Customers, Westpac breached ss 9C(1) and 9C(2)(a)(iii) of the CCCFA in the period from 20 December 2019 to 31 March 2023;
- (B) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2019 to 19 December 2020;
- (C) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2020 to 19 December 2021; and
- (D) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2021 to 31 March 2023.

4 The floating rate discount issue

Background: floating rate discounts

- 4.1 Throughout the relevant period, Westpac offered home loans on floating interest rates. These included home loans that were consumer credit contracts for the purposes of the CCCFA.
- 4.2 Customers applying for, or seeking to vary the terms of, a floating rate home loan were able to negotiate and agree a discount on the interest rate payable on the loan (a **Floating Rate Discount**).
- 4.3 Where the customer had a floating interest rate:
 - (a) any Floating Rate Discount would be applied as a deduction from Westpac's relevant advertised floating interest rate; and
 - (b) the customer's Floating Rate Discount would be recorded in the customer's loan agreement as a negative margin in the formula for calculating the annual floating interest rate.

Particulars of paragraph 4.3(b)

- (c) The formula in the loan agreement was: (the Base Rate x the Modifier (if any)) plus the [Floating Rate Discount] (if any); where:
- (i) the 'Base Rate' was Westpac's relevant advertised floating interest rate; and
 - (ii) the 'Modifier' was any adjustment to that advertised floating rate, not including the Floating Rate Discount.

- 4.4 The loan agreements for the customers who held Floating Rate Discounts recorded that:
- (a) whenever the customer was not on an annual fixed interest rate or an annual capped interest rate, the annual floating interest rate would apply; and
 - (b) Westpac could vary the customer's Floating Rate Discount from time to time, or in accordance with the applicable terms and conditions for the home loan.

The issue

- 4.5 Westpac uses NZLO to record the rate agreed with a customer as part of an application or variation process. Prior to 1 June 2016, if Westpac and the customer agreed a Floating Rate Discount, that discount was automatically applied whenever the customer's home loan was on a floating interest rate.
- 4.6 From 1 June 2016, Westpac introduced a new pricing system for managing agreements on home loan interest rates, called "Nomis Deal Manager" (NDM).
- 4.7 When processing a new loan or variation in NZLO, Westpac staff members used NDM to record the agreed interest rate.
- 4.8 After NDM was in use, when Westpac and a customer agreed a new fixed interest rate or an annual capped interest rate, NDM populated into NZLO both:
- (a) the details of the new fixed interest rate or annual capped interest rate as agreed with the customer; and
 - (b) a Floating Rate Discount of zero;
- 4.9 The effect of NDM populating a Floating Rate Discount of zero meant that:
- (a) any previously agreed Floating Rate Discount was not applied to a customer's loan if that customer subsequently moved from an agreed rate to a floating rate; and
 - (b) those customers accordingly did not receive the Floating Rate Discounts that Westpac had earlier agreed to provide them with (those customers being the **Affected FRD Customers**).

- 4.10 Prior to the expiry of the fixed rate or annual capped rate period, Westpac sent the Affected FRD Customers letters which:
- (a) notified the customer that their current interest rate period was expiring;
 - (b) in most cases, referred to the subsequent floating interest rate which would apply; but
 - (c) did not communicate that Westpac had removed the customer's Floating Rate Discount.
- 4.11 Westpac did not act with the care, diligence, and skill required of a responsible lender in all subsequent dealings with the Affected FRD Customers, on account of:
- (a) the fact that it brought the Affected FRD Customers' Floating Rate Discounts to an end without necessarily intending to; and/or
 - (b) the fact that it failed to check, at or before the time the NDM system was implemented, whether that system was capable of applying previously agreed Floating Rate Discounts; and/or
 - (c) the fact that it failed to check, following the implementation of the NDM system, whether that system was applying Floating Rate Discounts; and/or
 - (d) the fact that it failed to have systems and/or controls in place, or adequate systems and/or controls in place, to ensure that:
 - (i) the Floating Rate Discounts previously agreed with the Affected FRD Customers were honoured; and/or
 - (ii) customers were being charged interest at the agreed interest rates; and/or
 - (e) the fact that it failed to communicate to the Affected FRD Customers, or to adequately communicate to those customers, that it was no longer providing them with the Floating Rate Discounts; and/or
 - (f) the fact that it failed to identify the issue for a period of years.

Westpac's response to the issue

- 4.12 On or about 14 July 2022, Westpac put in place a daily automated process to identify customers whose loans were moving to a new fixed interest rate period, and to reload the Floating Rate Discounts on those loans. The effect of it doing so was that the discount would apply upon the customer reverting to an annual floating interest rate.

- 4.13 Subsequently, Westpac:
- (a) updated its loan agreements and customer communications to provide that, after a customer moved to an annual fixed interest rate, the customer would no longer be entitled to a Floating Rate Discount in any subsequent loan period; and
 - (b) once the change referred to in subparagraph (a) had been made, ceased conducting the automated process referred to in paragraph 4.12 above.

Self-report

- 4.14 On 4 March 2022, Westpac advised the Commission that it had identified that previously negotiated discounts had not been applied when customers' loans moved from fixed to floating interest rates.
- 4.15 In September 2022, and subsequently following further investigation, Westpac provided the Commission with more detail on the nature of the issue and the causes of it.

Harm

- 4.16 The Floating Rate Discount Issue was such that:
- (a) in the period from 1 June 2016 to 14 July 2022, there were 6,397 Affected FRD Customers, holding 7,084 accounts, who were overcharged by \$1,708,881; and
 - (b) in the period from 20 December 2019 to 14 July 2022, there were 4,988 Affected FRD Customers, holding 5,505 accounts, who were overcharged by \$1,553,542.
- 4.17 Westpac has since remediated the Affected FRD Customers by refunding the amounts overcharged and paying additional compensation, in the form of use of money interest, of:
- (a) \$155,127 to the Affected FRD Customers in the period from 1 June 2016 to 14 July 2022; and
 - (b) \$141,396 to the Affected FRD Customers in the period from 20 December 2019 to 14 July 2022.

Eighth cause of action: breach of s 9C of the CCCFA

- 4.18 The Commission repeats Part 1 and paragraphs 4.1 to 4.17 above.
- 4.19 In the period from on or about 1 June 2016 to on or about 14 July 2022, Westpac failed to provide the Floating Rate Discounts to the Affected FRD Customers.

4.20 The failings pleaded at paragraph 4.11 above:

- (a) each separately constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a borrower in relation to a consumer credit contract, contrary to s 9C(2)(a)(iii) of the CCCFA; and further, or alternatively
- (b) in combination constitute a failure by Westpac to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a borrower in relation to a consumer credit contract, contrary to s 9C(2)(a)(iii) of the CCCFA.

Wherefore the Commission seeks:

- (A) A declaration that, in respect of the Affected FRD Customers, Westpac breached ss 9C(1) and 9C(2)(a)(iii) of the CCCFA in the period from 20 December 2019 to 14 July 2022;
- (B) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2019 to 19 December 2020;
- (C) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2020 to 19 December 2021; and
- (D) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2021 to 14 July 2022.

This statement of claim is filed on behalf of the Plaintiff by its solicitor **Andrew David Luck** of the firm Meredith Connell, whose address for service is at the offices of MC, Level 7, 8 Hardinge Street, Auckland 1010.

Documents for service on the Plaintiff may be:

- (a) emailed to [REDACTED]; or
- (b) if email is not practical:
 - (i) posted to PO Box 90750, Victoria Street West, Auckland 1142 (attn. Andy Luck); or
 - (ii) sent to the address for service (attn. Andy Luck).

Schedule 2: Notice of Admissions

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE

CIV-2025-404-

UNDER the Credit Contracts and Consumer Finance Act
2003

BETWEEN **COMMERCE COMMISSION** a body corporate
established under section 8 of the Commerce Act
1986 having its offices at level 6, 44-52 The Terrace,
Wellington

Plaintiff

AND **WESTPAC NEW ZEALAND LIMITED** a duly
incorporated company having its registered office at
Westpac On Takutai Square, 16 Takutai Square,
Auckland

Defendant

NOTICE OF ADMISSIONS
22 AUGUST 2025

Russell
McAugh

E J Rushbrook | M C Kavanagh
P [REDACTED]
F [REDACTED]
PO Box 10-214
DX SX11189
Wellington

THE DEFENDANT BY ITS SOLICITOR SAYS:

For the purposes of rules 15.15 and 15.16 of the High Court Rules 2016, and only for the purposes of this proceeding, the Defendant admits the facts pleaded and the causes of action in the statement of claim dated [X] August 2025.

Dated 22 August 2025

E J Rushbrook | M C Kavanagh
Counsel for the defendant

This document is filed by **Emmeline Julie Rushbrook**, solicitor for the defendant, of Russell McVeagh. The address for service of the defendant is Level 24, NTT Tower, 157 Lambton Quay, Wellington 6011.

Documents for service may be left at that address or may be:

- (a) emailed to the solicitor at [REDACTED] and [REDACTED]; or
- (b) posted to the solicitor at PO Box 10-214, Wellington 6011; or
- (c) left for the solicitor at a document exchange for direction to SX11189.