# NOTICE OF FILING

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## Details of Filing

| | |
|---|---|
| Document Lodged: | Statement of Claim - Form 17 - Rule 8.06(1)(a) |
| File Number: | VID1085/2017 |
| File Title: | ZONIA HOLDINGS PTY LTD v COMMONWEALTH BANK OF AUSTRALIA LIMITED |
| Registry: | NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA |


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## Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 17
Rule 8.05(1)(a)

**THIRD FURTHER AMENDED STATEMENT OF CLAIM**

No. VID1085 of 2017

Federal Court of Australia

District Registry: Victoria

Division: General

**ZONIA HOLDINGS PTY LTD (ACN 008 565 286)**

Applicant

**COMMONWEALTH BANK OF AUSTRALIA (ACN 123 123 124)**

Respondent

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Filed on behalf of: Zonia Holdings Pty Ltd (Applicant)

Prepared by: Ronald Koo, Maurice Blackburn

Tel: (03) 9605 2769 Fax (03) 9258 9600

Email RKoo@mauriceblackburn.com.au

Address for service: Level 21, 380 La Trobe Street Melbourne Vic 3000

## A. INTRODUCTION

### A.1 The Applicant and the Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the Applicant on its own behalf and on behalf of all persons who or which:

   (a) acquired an interest in fully paid ordinary shares in Commonwealth Bank of Australia (**CBA Shares**) during the period between 16 June 2014 and 1.00PM on 3 August 2017 (**Relevant Period**);

(b) suffered loss or damage by reason of the conduct of the Respondent (**CBA**) pleaded in this Statement of Claim;

(c) were not during any part of the Relevant Period, and are not as at the date of this Statement of Claim, any of the following:

(i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth)) of CBA;

(ii) an officer or a close associate (as defined by s 9 of the Corporations Act) of CBA;

(iii) a judge or the Chief Justice of the Federal Court of Australia or a Justice or the Chief Justice of the High Court of Australia; or

(iv) an officer or employee of, or other legal practitioner engaged by, Maurice Blackburn Pty Ltd in relation to this proceeding; and

(d) are not Philip Anthony Baron, Joanne Baron or any persons who, as at 15 February 2019, were "Group Members" as defined in the Statement of Claim filed on 29 June 2018 in proceeding NSD1158 of 2018 in this Court (*Philip Anthony Baron & Anor v Commonwealth Bank of Australia*),

(**Group Members**).

2. The Applicant:

(a) is incorporated pursuant to the *Corporations Act* 2001 (Cth) (**Corporations Act**) and capable of suing in its corporate name and style;

(b) acquired interests in CBA Shares during the Relevant Period.

**Particulars**

*Details of the particular acquisitions of CBA Shares by the Applicant are set out below.*

| Date | Transaction type | Number of shares | Price |
|---|---|---|---|
| 18/09/2015 | Acceptance of entitlements | 718 | $71.50 |

3. Immediately prior to the commencement of this proceeding, the group, on whose behalf this proceeding is brought, comprised more than seven persons.

## A.2 The Respondent

### *A.2.1 Introduction*

4. CBA is and at all material times was:

   (a) incorporated pursuant to the Corporations Act and capable of being sued;

   (b) a person within the meaning of s 1041H of the Corporations Act;

   (c) a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);

   (d) a person within the meaning of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act* 2010 (Cth), as applicable pursuant to:

      (i) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT);

      (ii) s 28 of the *Fair Trading Act 1987* (NSW);

      (iii) s 12 of the *Australian Consumer Law and Fair Trading Act* 2012 (Vic);

      (iv) s 16 of the *Fair Trading Act 1989* (Qld);

      (v) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas)*;*

      (vi) s 19 of the *Fair Trading Act 2010* (WA);

      (vii) s 14 of the *Fair Trading Act 1987* (SA); and/or

      (viii) s 27 of the *Consumer Affairs and Fair Trading Act* (NT),

      as in force after 1 January 2011 (individually, or together, the **ACL**).

### *A.2.2 CBA's business and brand*

5. At all material times, CBA carried on business as a provider of integrated financial services, including retail, business and institutional banking, funds management, superannuation, life insurance general insurance, broking services and finance company activities, primarily in Australia, New Zealand and the Asia Pacific Region.

6. CBA is and at all material times was the consolidated reporting entity for CBA and its subsidiaries, within the meaning of Australian Accounting Standard AASB127 (Consolidated and Separate Financial Statements) (**CBA Group**).

### *A.2.3 The market disclosure regime governing CBA*

7. CBA is and at all material times was included in the official list of the financial market operated by the Australian Securities Exchange (**ASX**), and by reason thereof:

   (a) CBA Shares are:

      (i) ED securities for the purposes of s 111AE of the Corporations Act; and

      (ii) able to be acquired and disposed of by investors and potential investors in CBA Shares (**Affected Market**) on the financial market operated by ASX;

   (b) CBA is and at all material times was:

      (i) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;

      (ii) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**); and

      (iii) obliged by ss 111AP(1) and/or 674(1) and (2) of the Corporations Act and/or ASX Listing Rule 3.1 to, once it is, or becomes aware of, any information concerning CBA that a reasonable person would expect to have a material effect on the price or value of CBA Shares, tell the ASX that information immediately (unless the exceptions in ASX Listing Rule 3.1A apply) (**Continuous Disclosure Obligations**).

### *A.2.4 The Anti-Money Laundering and Counter-Terrorism Financing regime governing CBA*

8. At all material times, CBA was:

   (a) licensed to carry on banking business in Australia, and authorized to take deposits from customers, as an Authorised Deposit-Taking Institution (**ADI**) under the *Banking Act 1959* (Cth);

(b) subject to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (the **AML/CTF Act**) and the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007* (Cth) (**AML/CTF Rules**), and:

(i) a "person" and "reporting entity" within the meaning of s 5 of the AML/CTF Act; and

(ii) a provider of designated services to customers within the meaning of s 6 of the AML/CTF Act.

**Particulars**

*CBA provides, among others, the following designated services:*

*i) Item 1, Table 1 – in the capacity of account provider, opening an account, where the account provider is an ADI.*

*ii) Item 2, Table 1 – in the capacity of account provider for a new or existing account, allowing a person to become a signatory to the account, where the account provider is an ADI.*

*iii) Item 3, Table 1 – in the capacity of account provider for an account, allowing a transaction to be conducted in relation to the account, where the account provider is an ADI.*

*iv) Item 29, Table 1 – in the capacity of an ordering institution, accepting an electronic funds transfer instruction from the payer.*

9. At all material times, the object of the AML/CTF Act included to address matters of international concern, including the need to combat money laundering and financing of terrorism.

**Particulars**

*AML/CTF Act, s 3(1)*

10. At all material times:

(a) CBA was obliged by ss 81, 82 and 83 of the AML/CTF Act and rule 1.2.1 of the AML/CTF Rules to adopt and maintain an anti-money laundering and counter terrorism financing program that applies to CBA, and comply with Part A of that program (this being a civil penalty provision);

(b) CBA was obliged by rule 9.1.5 of the AML/CTF Rules to design Part A of its program to enable CBA to identify significant changes in the risk that a reporting entity may reasonably face that the provision by the reporting entity of designated

services might (whether inadvertently or otherwise) involve or facilitate money laundering or the financing of terrorism (**ML/TF Risk**) for the purposes of CBA's Part A and Part B programs.

(c) CBA had a Joint Anti-Money Laundering and Counter-Terrorism Financing Program (**CBA's AML/CTF Program**), Part A of which contained procedures for managing ML/TF Risk.

11. At all material times, CBA was obliged by:

(a) s 41(2) of the AML/CTF Act (a civil penalty provision) to report to the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) "suspicious matters" as described within s 41(1) of the AML/CTF Act within the time specified in s 42(2);

(b) s 43(2) of the AML/CTF Act to report to AUSTRAC "threshold transactions" (being transactions involving the transfer of physical currency in the amount of $10,000 or more) within 10 business days after the transaction occurred (this being a civil penalty provision); and

(c) s 36(1) of the AML/CTF Act (a civil penalty provision) to monitor its customers in relation to the provision of designated services with a view to identifying, mitigating and managing ML/TF Risk.

12. At all material times in the Relevant Period, CBA was subject to:

(a) reputational risk arising from negative perception on the part of customers, counterparties, shareholders, investors, debt holders, market analysts and regulators, with adverse reputational risk outcomes flowing from the failure to manage other types of risk (including compliance risk); and

(b) the risk of loss of reputation if it failed to comply with its obligations under the AML/CTF Act, the objects of which included the combating of money laundering and financing of terrorism.

**Particulars**

*i) CBA's Annual Report for the financial year ended 30 June 2015 (**2015 Annual Report**), pp.136-137.*

*ii) CBA's US Disclosure Document for the Full Year ended 30 June 2015 (**2015 US Disclosure**), pp. 17, 21*

*iii) CBA's Annual Report for the financial year ended 30 June 2016 (**2016 Annual Report**), pp.139-140.*

*iv) CBA's US Disclosure Document for the Full Year ended 30 June 2016 (**2016 US Disclosure**), pp. 17, 21*

13. Further, at all material times in the Relevant Period:

(a) CBA would be potentially liable to civil penalties if it did not comply with:

(i) Part A of CBA's AML/CTF Program in contravention of s 82 of the AML/CTF Act;

(ii) s 41(2) of the AML/CTF Act;

(iii) s 43(2) of the AML/CTF Act; and/or

(iv) s 36(1) of the AML/CTF Act,

in the amount of up to 100,000 penalty units per contravention, being at relevant times:

(v) $11,000,000, between 1 June 2008 and 27 December 2012;

(vi) $17,000,000, between 28 December 2012 and 30 July 2015;

(vii) $18,000,000, between 31 July 2015 and 30 June 2017; and

(b) Anti-money laundering and counter-terrorism financing compliance had been the subject of increasing regulatory change and enforcement, and if CBA failed to comply with the requirements of such regulations, it may become subject to significant regulatory fines, regulatory sanctions and suffer material financial loss or loss of reputation. Further, the increasing volume, complexity and global reach of such regulatory requirements, and the increased propensity for sanctions and the level of financial penalties for breaches of requirements exacerbated the severity of this risk.

**Particulars**

*i) As to subparagraph (a), AML/CTF Act, s 175(4); Crimes Act 1914* (Cth), s 4AA.

*ii) As to sub-paragraph (b), the Applicant refers to:*

*A) the 2015 US Disclosure, p.17;*

*B) the 2016 US Disclosure, p.17.*

## A.3 Directors and officers of CBA

### *A.3.1 The Chief Executive Officer*

14. Mr Ian Narev (**Narev**) was:

(a) from 1 December 2011, Managing Director and Chief Executive Officer of CBA; and

(b) at all material times in the Relevant Period, an officer of CBA within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

### *A.3.2 The Chief Risk Officer and other Group Executives*

15. Mr Alden Toevs (**Toevs**) was:

(a) from 2008 to 30 June 2016, Group Chief Risk Officer of CBA;

(b) from 1 July 2016 to the end of the Relevant Period, Chief Risk Officer Emeritus and Board Risk Adviser of CBA; and

(c) at all material times in the Relevant Period, an officer of CBA within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

16. Mr David Cohen (**Cohen**) was:

(a) from 2008 to 30 June 2016, Group General Counsel and Group Executive (Group Corporate Affairs); and

(b) from 1 July 2016 to the end of the Relevant Period, Group Chief Risk Officer of CBA; and

(c) at all material times in the Relevant Period, an officer of CBA within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

16A. Mr Matthew Comyn (**Comyn**) was:

(a) from 2012 to 8 April 2018, the Group Executive for Retail Banking Services of CBA (**RBS**); and

(b) at all material times in the Relevant Period, an officer of CBA within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

16B. Mr David Craig (**Craig**) was:

(a) from September 2006 to 30 June 2017, the Group Executive for Financial Services and the Chief Financial Officer of CBA; and

(b) at all material times in the Relevant Period, an officer of CBA within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

### *A.3.3 The Chairman*

17. Mr David Turner (**Turner**) was:

(a) from August 2006 to 31 December 2016, a director of CBA;

(b) from February 2010 to 31 December 2016, Chairman of CBA;

(c) from the beginning of the Relevant Period to 31 December 2016, a member of the Risk Committee of CBA; and

(d) at all material times in the Relevant Period prior to 31 December 2016, an officer of CBA within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

18. Ms Catherine Livingstone AO (**Livingstone**) was:

(a) from 1 March 2016, a director of CBA;

(b) from 1 January 2017, Chairman of CBA;

(c) from 1 January 2017, a member of the Risk Committee of CBA; and

(d) at all material times in the Relevant Period since 1 March 2016, an officer of CBA within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

### *A.3.4 The Non-Executive Directors*

19. Ms Jane Hemstritch (**Hemstritch**) was:

(a) from October 2006 to 31 March 2016, a non-executive director of CBA;

(b) from the beginning of the Relevant Period to 31 March 2016, a member of the Risk Committee of CBA; and

(c) at all material times in the Relevant Period prior to 31 March 2016, an officer of CBA, within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

20. Mr Harrison Young (**Young**) was:

(a) from February 2007, a non-executive director of CBA;

(b) throughout the Relevant Period, a member of the Risk Committee of CBA; and

(c) at all material times in the Relevant Period, an officer of CBA, within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

21. Sir John Anderson (**Anderson**) was:

(a) from March 2007 to 9 November 2016, a non-executive director of CBA;

(b) from the beginning of the Relevant Period to 9 November 2016 a member of the Risk Committee of CBA; and

(c) at all material times in the Relevant Period prior to 9 November 2016, an officer of CBA, within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

22. Mr Andrew Mohl (**Mohl**) was:

(a) from July 2008, a non-executive director of CBA;

(b) throughout the Relevant Period, a member of the Risk Committee of CBA; and

(c) at all material times in the Relevant Period, an officer of CBA, within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

23. Mr Brian Long (**Long**) was:

(a) from September 2010, a non-executive director of CBA;

(b) throughout the Relevant Period, a member of the Risk Committee of CBA; and

(c) at all material times in the Relevant Period, an officer of CBA, within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

24. Ms Launa Inman (**Inman**) was:

(a) from March 2011, a non-executive director of CBA;

(b) at all material times in the Relevant Period, an officer of CBA, within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

25. Mr Shirish Apte (**Apte**) was:

(a) from June 2014, a non-executive director of CBA; and

(b) throughout the Relevant Period, a member of the Risk Committee of CBA; and

(c) at all material times in the Relevant Period, an officer of CBA, within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

26. Sir David Higgins (**Higgins**) was:

(a) from 1 September 2014, a non-executive director of CBA;

(b) from 1 April 2016, a member of the Risk Committee of CBA; and

(c) at all material times in the Relevant Period from 1 September 2014, an officer of CBA, within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

27. Ms Wendy Stops (**Stops**) was:

(a) from 9 March 2015, a non-executive director of CBA; and

(b) at all material times in the Relevant Period, an officer of CBA from 9 March 2015, within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

28. Ms Mary Padbury (**Padbury**) was:

(a) from 14 June 2016, a non-executive director of CBA; and

(b) at all material times in the Relevant Period from 14 June 2016, an officer of CBA, within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

### *A.3.5 The knowledge of the officers of CBA is the knowledge of CBA*

29. By reason of the matters pleaded in paragraphs 14 to 28, any information of which ~~each~~ any of:

(a) Narev;

(b) Toevs, ~~and~~ Cohen, Comyn, and Craig;

(c) Turner, Hemstritch, Young, Anderson, Mohl, Long, Inman, and Apte (together, **2014 NEDs**);

(ca) Higgins and Stops (together, **2015 NEDs**); or

(d) Livingstone and Padbury (together, **2016 NEDs**),

became aware, or which ought reasonably to have come into his or her possession in the course of the performance of his or her respective duties as an officer of CBA, was information of which CBA was aware (as awareness is defined in ASX Listing Rule 19.12).

## B. THE 3 AUGUST DISCLOSURES AND THEIR IMPACT

### B.1 The 3 August announcements

30. On 3 August 2017 at approximately 12.26PM, AUSTRAC published:

(a) a tweet that stated that "@AUSTRAC today initiated civil penalty proceedings against CBA for serious non-compliance with AML/CTF Act";

(b) a media release entitled "AUSTRAC seeks civil penalty orders against CBA" (which was linked through to from the tweet),

(**3 August AUSTRAC Statement**).

**Particulars**

*i) the tweet is to be found at https://twitter.com/austrac/status/892934753967513600, in the Twitter feed of "@AUSTRAC";*

*ii) the media release is to be found at http://www.austrac.gov.au/media/media-releases/austrac-seeks-civil-penalty-orders-against-cba*

31. The 3 August AUSTRAC Statement, inter alia, stated that:

(a) AUSTRAC had that day initiated civil penalty proceedings in the Federal Court against CBA for serious and systemic non-compliance with the AML/CTF Act (**AUSTRAC Proceeding**);

(b) the action followed an investigation by AUSTRAC into CBA's compliance, particularly regarding its use of intelligent deposit machines (**IDMs**);

(c) the AUSTRAC Proceeding alleged 53,700 contraventions of the AML/CTF Act; and

(d) In summary, the AUSTRAC Proceeding alleged:

(i) CBA did not comply with its own AML/CTF program, because it did not carry out any assessment of the money laundering and terrorism financing (ML/TF) risk of IDMs before their rollout in 2012, and took no steps to assess the ML/TF risk until mid-2015 - three years after they were introduced.

(ii) For a period of three years, CBA did not comply with the requirements of its AML/CTF program relating to monitoring transactions on 778,370 accounts.

(iii) CBA failed to give 53,506 threshold transaction reports (**TTRs**) to AUSTRAC on time for cash transactions of $10,000 or more through IDMs from November 2012 to September 2015.

(iv) These late TTRs represent approximately 95 per cent of the threshold transactions that occurred through CBA's IDMs from November 2012 to September 2015 and had a total value of around $624.7 million.

(v) The bank failed to report suspicious matters either on time or at all involving transactions totalling over $77 million;

(vi) Even after CBA became aware of suspected money laundering or structuring on CBA accounts, it did not monitor its customers to mitigate and manage ML/TF risk, including the ongoing ML/TF risks of doing business with those customers.

32. The 3 August AUSTRAC Statement contained a link to a Concise Statement filed in the Federal Court in the AUSTRAC Proceeding, which inter alia stated:

(a) In May 2012, CBA had rolled out IDMs, a type of ATM that accepts deposits by both cash and cheque, which are automatically counted and credited instantly to the nominated recipient account, the funds then being available for immediate transfer to other accounts both domestically and internationally: [1];

(b) CBA's IDMS could accept up to 200 notes per deposit (that is, up to $20,000 per cash transaction), and CBA did not limit the number of IDM transactions a customer can make a day: [2];

(c) IDMs facilitate anonymous cash deposits. Although a card must be entered to activate and make a deposit through an IDM, the card could be from any financial institution and if it was not a CBA card, the cardholder details were not known to CBA: [3];

(d) There was significant growth in CBA IDM use since their roll-out; in the six months from January to June 2016, cash deposits through IDMs grew to about $5.81 billion, and in May and June 2016 over $1 billion in cash was deposited each month through CBA IDMs: [4];

(e) CBA had not complied with a number of the procedures in CBA's AML/CTF Program on and from May 2012: [5];

(f) CBA did not carry out a ML/TF Risk assessment:

(i) prior to rolling out IDMs;

(ii) in response to the exponential rise in cash deposits through IDMs;

(iii) in response to alerts raised by internal transaction monitoring systems:

(iv) in response to identification by law enforcement of significant instances of money laundering through IDMs;

(v) until mid-2015, three years after IDMs were introduced (and after about $8.91 billion in cash had been deposited through CBA IDMs),

[6];

(g) CBA had not, at any stage and even after mid-2015, introduced appropriate risk-based systems and controls to mitigate and manage the higher ML/TF Risks it reasonably faced by providing designated services through IDMS: [7];

(h) CBA did not comply with the requirements of its transaction monitoring program (part of CBA's AML/CTF Program) at various times between about 20 October 2012 to 27 September 2016 with respect to 778,370 accounts, none of which were subject to transaction monitoring at the "account level" at various times, and some were not subject to "customer level" transaction monitoring: [8];

(i) CBA was required to report to AUSTRAC "threshold transactions" (being transactions involving the transfer of physical currency in the amount of $10,000 or more) within 10 business days after the transaction occurred: [9];

(j) CBA failed to give TTRs on time for 53,506 cash transactions of $10,000 or more processed through IDMs from 5 November 2012 to 8 ~~1~~ September 2015 (**Late TTRs**): [10]

(k) In respect of the Late TTRs:

(i) the Late TTRs represented 95% of threshold transactions that occurred through IDMs; and

(ii) the Late TTRs had a total value of $624.7 million;

(iii) 1,640 of the Late TTRs (totalling about $17.3 million) related to transactions with money laundering syndicates being investigated by the Australian Federal Police or accounts connected with those investigations;

(iv) 6 of the Late TTRs related to 5 customers who CBA had assessed as posing a potential risk of terrorism or terrorism financing,

[10];

(l) CBA lodged 2 of the Late TTRs with AUSTRAC on 24 August 2015, and the remaining 53,504 late TTRs on 24 September 2015: [10];

(m) CBA repeatedly failed to give suspicious matter reports (**SMRs**) to AUSTRAC either at all, or within the time required by s 41 of the AML/CTF Act, in some cases because it had adopted a policy of not submitting SMRs if the same type of suspicious behaviour had been reported any time within the 3 months prior and in some cases because no transaction monitoring alert had been raised, alerts had not been reviewed, CBA only partially notified its suspicions, or notifications by law enforcement of unlawful activity were ignored: [12]

(n) CBA failed to monitor its customers with a view to identifying, mitigating and managing ML/TF Risk, including:

(i) because in some instances no transaction monitoring alerts were raised for suspicious activity, and when alerts were raised they were not reviewed in a timely manner having regard to ML/TF risk (in many instances, not being reviewed for months after they were raised): [13];

(ii) because even after suspected money laundering or structuring on CBA accounts had been brought to CBA's attention (by law enforcement or through internal analysis), CBA often looked no further than whether or not to submit an SMR, and did not carry out mandatory enhanced due diligence as required (including terminating accounts), and when accounts were terminated customers were given 30 days' notice and permitted to transact on the accounts in the meantime: [14];

(o) CBA's failure to file TTRs and SMRs on time, or at all, had deprived AUSTRAC and other law enforcement and designated agencies of information, which delays and hinders law enforcement efforts, resulting in lost intelligence and evidence, further money laundering and lost proceeds of crime: [43];

(p) It was essential to the integrity of the Australian financial system that a major bank such as CBA had compliant and appropriate risk-based systems and controls in place to deter money laundering and terrorism financing, and the effect of CBA's conduct had exposed the Australian community to serious and ongoing financial crime: [44]

**Particulars**

*i) http://www.austrac.gov.au/sites/default/files/20170803-concise-statement-cba-s.pdf*

33. On 3 August 2017 at about 1.00PM, CBA published a media release on its website entitled "*Commonwealth Bank Response to AUSTRAC Civil Proceedings*" (**3 August CBA Statement**).

**Particulars**

*i) The 3 August CBA Statement contains source coding on the webpage indicating that the page was published at 1.00PM, and later modified at 1.28PM*

34. The 3 August CBA Statement inter alia stated that:

(a) CBA acknowledged that civil proceedings had been brought by AUSTRAC, which related to deposits made through CBA's IDMs from 2012;

(b) CBA had been in discussions with AUSTRAC for an extended period and had cooperated fully with AUSTRAC's requests, and over the same period CBA had worked to continuously improve CBA's compliance and had kept AUSTRAC abreast of those efforts; and

(c) CBA was reviewing the nature of the AUSTRAC Proceeding and would have more to say on the specific claims in due course.

35. On 3 August 2017 between 1.47PM and 2.02PM, Reuters released 4 alerts in relation to the AUSTRAC Proceeding "*Commonwealth Bank Response to AUSTRAC Civil Proceedings*".

**Particulars**

*i) 03-Aug-2017 01:47:41 PM - AUSTRAC SAYS LAUNCHES CIVIL PROCEEDINGS AGAINST COMMONWEALTH BANK CBA.AX FOR BREACHES OF ANTI-MONEY LAUNDERING RULES;*

*ii) 03-Aug-2017 01:49:37 PM - AUSTRAC SAYS ACTION FOLLOWS INVESTIGATION INTO CBA'S COMPLIANCE;*

*iii) 03-Aug-2017 01:50:51 PM - AUSTRAC SAYS ALLEGES OVER 53,700 CONTRAVENTIONS OF ANTI-MONEY LAUNDERING RULES;*

*iv) 03-Aug-2017 02:02:43 PM – AUSTRALIA'S MONEY-LAUNDERING WATCHDOG LAUNCHES CIVIL LAWSUIT AGAINST CBA.*

36. On 4 August 2017 at 12:09PM, CBA published to the ASX an announcement entitled "Commonwealth Bank response to media reports regarding AUSTRAC civil proceedings", in which CBA stated that it noted the media coverage of the AUSTRAC Proceeding, and that it was currently reviewing the claim and would file a defence.

### B.2 The price impact of the 3 August announcements

37. After about 1.00PM on 3 August 2017, following the publication of the 3 August AUSTRAC Statement and the 3 August CBA Statement (together **3 August Corrective Disclosure**), CBA's share price declined substantially.

**Particulars**

*i) On 3 August 2017, the opening price of CBA Shares was $84.09, and increased to an intraday high was $84.69 (reached at 12.44PM). The price of CBA Shares at 1.00PM was $84.58, and the price thereafter*

*declined to a closing price of $83.97. The total traded volume was 2,372,029 shares.*

*ii) On 4 August 2017, CBA Shares opened at $82.51 and closed at $80.72, on a traded volume of 9,239,819 shares.*

*iii) The decline in the price of CBA Shares between 1.00PM on 3 August and the close of market on 4 August was $3.86 (being 4.56% as against the price as at 1.00PM on 3 August 2017).*

*iv) On 7 August 2017, the price of CBA Shares opened at $80.11, being a further decline against the closing price on 4 August 2017.*

*v) Between 7 August 2017 and 7 September 2017, the price of CBA Shares further declined to a closing price on 7 September 2017 of $73.98*

## C. CBA'S KNOWLEDGE PRIOR TO 3 AUGUST 2017

### C.1 CBA's IDMs

38. Prior to the Relevant Period, in May 2012 CBA had commenced rolling ~~rolled~~ out IDMs which had the following features (**IDM Features**):

(a) CBA's IDMs were a type of ATM that accepts deposits by both cash and cheque, which are automatically counted and credited instantly to the nominated recipient account, the funds then being available for immediate transfer to other accounts both domestically and internationally;

(b) CBA's IDMs~~S~~ could accept up to 200 notes per deposit (that is, up to $20,000 per cash transaction);

(c) CBA did not limit the number of IDM transactions a customer could make per day; and

(d) CBA's IDMs facilitated anonymous cash deposits, in that although a card must be entered to activate and make a deposit through an IDM, the card could be from any financial institution and if it was not a CBA card, the cardholder details were not known to CBA.

39. Prior to and during the Relevant Period, the number of CBA's IDMs and cash deposits received through CBA's IDMs grew substantially (**IDM Channel Growth**).

**Particulars**

*i) Between June 2012 and November 2012, a total of approximately $89.1 million in cash was deposited through CBA's IDMs.*

*ii) As at 30 June 2013, CBA had 132 IDMs in operation, and about 20% of deposits made at CBA branches that had IDMs were made using IDMs*

*iii) As at 30 June 2014, CBA had 255 IDMs in operation, and about 37% of deposits made at CBA branches that had IDMs were made using IDMs.*

*iv~~i~~) Between January 2015 and June 2015, a total of approximately $3.35 billion in cash was deposited through CBA's IDMs.*

*v ~~iii~~) By June 2015, a total of approximately $8.91 billion in cash had been deposited through CBA's IDMs.*

~~*iv) As at 30 June 2013, CBA had 132 IDMs in operation, and about 20% of deposits made at CBA branches that had IDMs were made using IDMs.*~~

*vi) As at 16 October 2015, CBA had 507 IDMs in operation, out of a fleet of 3,466 CBA branded ATM devices, and over 50% of deposits made at CBA branches that had IDMs were made using IDMs.*

**C.2 The Late TTR Information**

40. ~~In relation to transactions occurring: (a) prior to the Relevant Period, from~~ From around November 2012 to 16 June 2014:

(a) ~~(i)~~ CBA had failed to give TTRs ~~on time~~ for approximately 14,000 ~~tens of thousands of~~ cash transactions of $10,000 or more processed through IDMs following the introduction of IDMs (**June 2014 Late TTRs**);

(b) ~~(ii)~~ the June 2014 Late TTRs represented between approximately 80% and 95% ~~the vast majority~~ of threshold transactions that occurred through CBA's IDMs during the period from around November 2012 to June 2014;

(c) ~~(iii)~~ the June 2014 Late TTRs had a total value of approximately $163.5 million ~~in excess of hundreds of millions of dollars~~;

~~(iv) the June 2014 Late TTRs were lodged significantly late;~~

(d) ~~(v)~~ the June 2014 Late TTRs had not been ~~were not~~ lodged ~~on time~~, at least in part because of a systems error which had occurred in or around November 2012; and

(e) the cause of the June 2014 Late TTRs had not been rectified,

(the **June 2014 Late TTR Information**).

~~(vi) there was a material risk or likelihood that some of the transactions the subject of the June 2014 Late TTRs related to money laundering or terrorism financing; and~~

~~(b) from November 2012 to September 2015:~~

~~(i) CBA had failed to give TTRs on time for 53,506 cash transactions of $10,000 or more processed through IDMs following the introduction of IDMs (**September 2015 Late TTRs**);~~

~~(ii) the September 2015 Late TTRs represented the vast majority of threshold transactions that occurred through CBA's IDMs during the period from November 2012 to September 2015;~~

~~(iii) the September 2015 Late TTRs had a total value in excess of $500 million;~~

~~(iv) the September 2015 Late TTRs were lodged significantly late;~~

~~(v) the September 2015 Late TTRs were not lodged on time, at least in part because of a systems error which occurred in or around November 2012; and~~

~~(vi) there was a material risk or likelihood that some of the transactions the subject of the September 2015 Late TTRs related to money laundering or terrorism financing; and~~

~~((a) and (b) are together and separately, **Late TTR Information**).~~

**Particulars**

*i) The Applicant refers to and repeat the particulars <u>i) to iii)</u> subjoined to paragraph 39 above.*

*ii) The Applicant refers to and relies upon CBA's publication to the ASX on 9 August 2017 entitled "Statement from the Commonwealth Bank of Australia Chairman of the Board (**9 August Announcement**), which stated, inter alia that "the alleged issues relating to Threshold Transaction Reporting (TTRs) in the Intelligent Deposit Machines (IDMs) were brought to Board's attention" in "the second half of 2015".*

*iii) The reference to "the alleged issues" is to the allegations in the Statement of Claim filed on 3 August 2017 by AUSTRAC in the AUSTRAC Proceeding.*

*iv) The Applicant also refers to and <u>relies</u> ~~rely~~ upon CBA's Amended Concise Statement in Response filed in the AUSTRAC Proceeding on 23 February 2018 (**CBA's Concise Response in AUSTRAC Proceeding**), in particular paragraphs 17 to 18, and CBA's Amended Defence filed in the AUSTRAC Proceeding on 23 February 2018 (**CBA's Defence in AUSTRAC Proceeding**), in particular paragraphs 29 to 36.*

v) *Further particulars may be provided prior to trial and following completion of interlocutory processes.*

40A From around November 2012 to 11 August 2015:

(a) CBA had failed to give TTRs for approximately 51,000 cash transactions of $10,000 or more processed through IDMs following the introduction of IDMs (**August 2015 Late TTRs**);

(b) the August 2015 Late TTRs represented between approximately 80% and 95% of threshold transactions that occurred through CBA's IDMs during the period from November 2012 to August 2015;

(c) the August 2015 Late TTRs had a total value of approximately $595 million dollars;

(d) the August 2015 Late TTRs had not been lodged, at least in part because of a systems error which occurred in or around November 2012; and

(e) the cause of the August 2015 Late TTRs had not been rectified,

(the **August 2015 Late TTR Information**).

**Particulars**

i) *The Applicant refers to and repeat the particulars iv) to v) subjoined to paragraph 39 above, and the particulars to paragraph 40 above.*

ii) *Further particulars may be provided prior to trial and following completion of interlocutory processes.*

40B From around November 2012 to 8 September 2015:

(a) CBA had failed to give TTRs on time for approximately 53,506 cash transactions of $10,000 or more processed through IDMs following the introduction of IDMs (**September 2015 Late TTRs**);

(b) the September 2015 Late TTRs represented between approximately 80% and 95% of threshold transactions that occurred through CBA's IDMs during the period from November 2012 to September 2015;

(c) the September 2015 Late TTRs had a total value of approximately $624.7 million dollars;

(d) the September 2015 Late TTRs had not been lodged, at least in part because of a systems error which occurred in or around November 2012,

(the **September 2015 Late TTR Information**).

**Particulars**

*i) The Applicant refers to and repeat the particulars iv) to v) subjoined to paragraph 39 above, and the particulars to paragraph 40 above.*

*ii) Further particulars may be provided prior to trial and following completion of interlocutory processes.*

41. From ~~a date presently unknown to the Applicant, but not later than at least~~ around 16 June 2014 or shortly thereafter, ~~or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015,~~ CBA was aware (within the meaning of ASX Listing Rule 19.12) of the June 2014 Late TTR Information.

**Particulars**

*i) From around 16 June 2014 or shortly thereafter, Toevs ought reasonably to have come into possession of the June 2014 Late TTR Information in the course of the performance of his duties as Chief Risk Officer and a Group Executive of CBA as follows:*

*(A) Under the version of CBA's AML/CTF Program in force as at 16 June 2014, Toevs, as Chief Risk Officer, was responsible for reporting to the Group Risk Committee on various matters relating to AML/CTF compliance, including 'all significant incidents', 'emerging issues' and 'material findings from audit reports and other independent reviews': see Section 3, part 2.1.2 (COM.100.001.8441 at .8469).*

*(B) Under the version of CBA's AML/CTF Program in force as at 16 June 2014, Toevs, as a Group Executive, was responsible for CBA's AML/CTF Program and "delivering effective compliance": see Section Three, Part 2.1.3 (COM.100.001.8441 at .8470).*

*(C) The June 2014 Late TTRs resulted from CBA having introduced, in around November 2012, a new transaction code 5000, that was not incorporated into the TTR generation process in the Group Data Warehouse, a central repository of data used for reporting and data analysis (COM.100.669.5843 at .5847). As a result, all transactions allocated to transaction code 5000 were omitted from the TTR generation and reporting process.*

*(D) Toevs received a Group-wide AML/CTF internal audit report on 17 December 2013 which:*

*(1) Reported weaknesses in CBA's AML/CTF governance model, and that an assessment had not been completed to verify that all systems/products were appropriately captured within the Group Data Warehouse (COM.101.620.2065);*

(2) *Rated CBA's "Control Environment" as "unsatisfactory" being the lowest rating available and indicated that "Controls are not appropriate for the risks being managed. There are a significant number of issues that require immediate attention" (at .2073);*

(3) *Rated CBA's "Management Awareness & Actions" as "unsatisfactory" being the lowest rating available and indicated that "Management has a poor understanding of the risks and controls relevant to their business, and/or were not performing testing of the controls to assess their operating effectiveness. Alternatively, management were not aware of the material issues and/or were not taking appropriate and timely action to resolve and escalate." (at. 2073); and*

(4) *As a result of those ratings, provided an overall report rating of 'red'.*

(E) *Toevs received or ought to have received the CBA Group-wide AML/CTF internal audit 'Issues Log' (COM.101.620.2036) dated 16 December 2013 which identified that:*

(1) *A holistic view of AML/CTF compliance was not readily available in CBA's operational risk tool, RiskInSite. As a result, known AML/CTF risks and issues were "not being properly managed and monitored" (.2044);*

(2) *CBA's Group Operational Risk & Compliance team (**GORC**) "was aware that inadequate monitoring and assurance is performed by the Business Unit AML and Compliance teams" (at. 2047);*

(3) *"A complete view of whether all required customer and transactional-based systems in the Bank interface into Group Data Warehouse…for the purposes of AML/CTF transaction monitoring and High Risk customer screening could not be provided to Internal Audit" and as a result GORC would need to work with Business Unit Teams to "perform and document a complete reconciliation to identify that all required customer and transactional-based bank systems are subject to AML/CTF transaction monitoring and High Risk customer screening, either via GDW or alternative methods" (at .2051); and*

(4) *"There [was] no centralised repository for technical AML/CTF advice provided to the business units and AML assessments" and that as a result some AML assessments could not be located (at .2056); and*

(5) *There were weaknesses in the AML/CTF governance model, which increased the risk that AML/CTF issues would not be effectively identified and escalated. (at .2046)*

(F) *The report referred to above at paragraph (E) above recorded the accountable CBA executive as Gary Dingley (**Dingley**), Chief Operational Risk Officer, who reported to Toevs.*

*(G) The Applicant relies upon and repeats the particulars in paragraph ii)(A) to (C) and (E) below.*

*(H) Prior to 16 June 2014, CBA ought reasonably to have adopted and further or alternatively, Toevs ought reasonably have caused CBA to adopt, a data reconciliation process which reconciled, in a given period, the number of transactions above the threshold amount of $10,000 (as recorded by the IDMs themselves or in the Group Data Warehouse), against the number of TTRs generated and submitted to AUSTRAC, with any discrepancies that arose from that reconciliation being flagged for investigation and resolution (**Data Reconciliation Process**).*

*(I) Had CBA adopted the Data Reconciliation Process, that process would have identified the June 2014 Late TTRs, and as a result thereof, Toevs ought reasonably to have come into possession of the June 2014 Late TTR Information.*

*(J) The June 2014 Late TTR Information was very serious in that:*

*(1) Section 43(2) of the AML/CTF Act required CBA to report to AUSTRAC "threshold transactions" (being transactions involving the transfer of physical currency in the amount of $10,000 or more) within 10 business days after the transaction occurred (this being a civil penalty provision).*

*(2) CBA would be liable in the amount of up to 100,000 penalty units per contravention of s 43(2) of the AML/CTF Act.*

*ii) Further or alternatively, from around 16 June 2014 or shortly thereafter, Comyn ought reasonably to have come into possession of the June 2014 Late TTR Information in the course of the performance of his duties as Group Executive of RBS as follows:*

*(A) The RBS business unit was responsible for the IDM channel.*

*(B) Comyn, as Group Executive for RBS, had ultimate responsibility and oversight for the RBS business unit.*

*(C) Under the version of CBA's AML/CTF Program in force as at 16 June 2014, Comyn was, as a Group Executive, responsible for "delivering effective compliance" with CBA's AML/CTF Program: see Section Three, Part 2.1.3 (COM.100.001.8441 at .8470).*

*(D) The Applicant relies upon and repeats the particulars in paragraph i)(A) to (F) and (H) above.*

*(E) Prior to 16 June 2014, CBA ought reasonably to have adopted and further or alternatively, Comyn ought reasonably to have caused CBA to adopt the Date Reconciliation Process.*

*(F) Had CBA adopted the Data Reconciliation Process, that process would have identified the June 2014 Late TTRs, and as a result thereof, Comyn ought reasonably to have come into possession of the June 2014 Late TTR Information.*

*(G) The Applicant relies upon and repeats the particulars in paragraph i)(J) above.*

*iii) Further to i) and/or ii), from around 16 June 2014 or shortly thereafter, the 2014 NEDs and/or Narev ought reasonably to have come into possession of the June 2014 Late TTR Information in the course of*

carrying out their duties as officers of CBA to whom Toevs and/or Comyn reported.

~~i) As to the Late TTR Information referred to in sub-paragraphs 40(a)(i) and 40(b)(i):~~

~~(A) At all material times on and from no later than 16 June 2014, or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015, this was information of which Toevs ought reasonably to have become aware in the course of carrying out his duties as Group Chief Risk Officer of CBA.~~

~~(B) On and from a date unknown to the Applicant with its present state of knowledge, but prior to 24 September 2015 (the **Board Knowledge Date**) each of Narev, the 2014 NEDs, and the 2015 NEDs in office as at that time had actual knowledge of this information, and the Applicant repeats the particulars to paragraph 40.~~

~~(BA) Alternatively, at all material times on and from no later than 16 June 2014, or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015, this was information the 2014 NEDs ought reasonably to have become aware in the course of carrying out their duties as directors to whom Toevs reported.~~

~~(C) This was information of which Cohen ought reasonably to have become aware on and from 1 July 2016, in the course of taking over the duties of Chief Risk Officer from Toevs and in the course of carrying out the duties of Chief Risk Officer.~~

~~(D) This was information of which each of the 2015 NEDs and the 2016 NEDs ought reasonably to have become aware of on and from a date shortly after the dates of their respective appointments, by familiarising themselves with the previous records of the board of CBA.~~

~~ii) As to the Late TTR Information referred to in sub-paragraphs 40(a)(ii) and (iii), and 40(b)(ii) and (iii):~~

~~(A) These were matters of which Toevs, the 2014 NEDs, and the 2015 NEDs ought reasonably to have become aware in the light of the knowledge they ought reasonably to have had, or had, as referred to in sub-paragraph (i) above.~~

~~(B) Further, these matters which were known to Narev, the 2014 NEDs, and the 2015 NEDs in office as at that time on and from the Board Knowledge Date, and the Applicant repeats the particulars to paragraph 40.~~

~~(C) This was information of which Cohen ought reasonably to have become aware on and from 1 July 2016, in the course of taking over the duties of Chief Risk Officer from Toevs and in the course of carrying out the duties of Chief Risk Officer.~~

~~(D) This was information of which each of the 2015 NEDs and the 2016 NEDs ought reasonably to have become aware of on and from a date shortly after the dates of their respective appointments, by familiarising themselves with the previous records of the board of CBA. , or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015, this was~~

~~*information of which Toevs ought reasonably to have become aware in the course of carrying out his duties as Group Chief Risk Officer of CBA.*~~

~~*iii) As to the Late TTR Information referred to in sub-paragraphs 40(a)(iv) and (v), and 40(b)(iv) and (v):*~~

~~*(A) At all material times on and from no later than 16 June 2014, or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015, this was information of which Toevs ought reasonably to have become aware in the course of carrying out his duties as Group Chief Risk Officer of CBA*~~

~~*(B) These were matters which were known by Narev, the 2014 NEDs, and the 2015 NEDs in office as at that time on and from the Board Knowledge Date, and the Applicant repeats the particulars to paragraph 40.*~~

~~*(BA) Alternatively, at all material times on and from no later than 16 June 2014, or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015, this was information the 2014 NEDs ought reasonably to have become aware in the course of carrying out their duties as directors to whom Toevs reported.*~~

~~*(C) This was information of which Cohen ought reasonably to have become aware on and from 1 July 2016, in the course of taking over the duties of Chief Risk Officer from Toevs and in the course of carrying out the duties of Chief Risk Officer.*~~

~~*(D) This was information of which each of the 2015 NEDs and the 2016 NEDs ought reasonably to have become aware of on and from a date shortly after the dates of their respective appointments, by familiarising themselves with the previous records of the board of CBA.*~~

~~*iv) As to the Late TTR Information referred to in sub-paragraphs 40(a)(vi) and 40(b)(vi), given the purpose of s 42(2) of the AML/CTF Act was to ensure that cash transactions which might facilitate money laundering or terrorism financing were reported to AUSTRAC so that they could detect money laundering and terrorism financing, it was statistically probable that some number of the 53,306 Late TTRs related to that subject matter, and*~~

~~*(A) This was information of which a reasonable person in the position of Toevs, Narev, the 2014 NEDs, and the 2015 NEDs who had, or ought reasonably to have had the information in paragraphs 38, 40(a)(i) to (v), and 40(b)(i) to (v) thereby ought reasonably to have known from the time they had, or ought reasonably to have had that information.*~~

~~*(B) This was information of which Cohen ought reasonably to have become aware on and from 1 July 2016, in the course of taking over the duties of Chief Risk Officer from Toevs and in the course of carrying out the duties of Chief Risk Officer.*~~

~~*(C) This was information of which each of the 2015 NEDs and the 2016 NEDs ought reasonably to have become aware of on and from a date shortly after the dates of their respective appointments, by familiarising themselves with the previous records of the board of CBA.*~~

~~*v) By the end of FY14, about 6% of CBA's ATM devices (including Bankwest-branded ATM devices) were IDMs, and 37% of deposits at CBA branches which had an IDM were transacted on IDMs.*~~

~~*vi) The late TTRs represented approximately 95% of the threshold transactions that occurred through CBA's IDMs from November 2012 to September 2015, which had a total value of around $624.7 million.*~~

~~*vii) On 11 August 2015, AUSTRAC contacted CBA regarding two threshold transactions made through IDMs that were referred to in an SMR submitted by CBA to the AUSTRAC CEO on 7 August 2015, in circumstances where AUSTRAC could not find two corresponding TTRs being given by CBA. In investigating this inquiry, CBA identified that TTRs were potentially not being reported automatically in the case of threshold transactions involving certain cash deposits through IDMs: Statement of Agreed Facts and Admissions filed by the parties in the AUSTRAC Proceeding (**Agreed Facts in AUSTRAC Proceeding**), paragraph 45.*~~

~~*viii) During the period 15 December 2011 to 1 February 2018 (to the extent relevant to information arising prior to 24 September 2015), the Board of CBA received reports from senior management in relation to AML/CTF compliance, which contained input from personnel with direct responsibility for and oversight of the AML/CTF function, and CBA's senior management received reports in relation to AML/CTF compliance from personnel engaged in direct responsibility and oversight of the AML/CTF function and oversaw a range of measures directed to enhancing its AML/CTF function: Agreed Facts in AUSTRAC Proceeding, paragraphs 85 and 98.*~~

41A. Further or alternatively, from around 11 August 2015 or shortly thereafter, CBA was aware (within the meaning of ASX Listing Rule 19.12) of the August 2015 Late TTR Information.

**Particulars**

*i) From around 11 August 2015 or shortly thereafter, Toevs had or ought reasonably to have come into possession of the August 2015 Late TTR Information in the course of the performance of his duties as Chief Risk Officer and a Group Executive of CBA as follows:*

*(A) Under the version of CBA's AML/CTF Program in force as at 11 August 2015, Toevs, as Chief Risk Officer, was responsible for reporting to the Group Risk Committee on various matters relating to AML/CTF compliance, including 'all significant incidents', 'emerging issues' and 'material findings from audit reports and other independent reviews': see Section 3, part 2.1.2 (COM.100.001.8513 at .8550).*

*(B) Under the version of CBA's AML/CTF Program in force as at 11 August 2015, Toevs, as a Group Executive, was responsible for CBA's AML/CTF Program and "delivering effective compliance": see Section Three, Part 2.1.3 (COM.100.001.8513 at .8550).*

*(C) The August 2015 Late TTRs resulted from CBA having introduced, in around November 2012, a new transaction code 5000, that was not incorporated into the TTR generation process in the Group Data*

*Warehouse, a central repository of data used for reporting and data analysis (COM.100.669.5843 at .5847). As a result, all transactions allocated to transaction code 5000 were omitted from the TTR generation and reporting process;*

*(D) The Applicant relies upon and repeats the particulars in paragraph 41(i)(D) to 41(i)(F), above;*

*(E) On 19 August 2014, Toevs received a report titled 'Project Alpha: Root cause analysis of the identified Group wide AML/CTF issues' (COM.100.001.6348), which identified that:*

*(1) the AML/CTF operating framework was not consistently understood across CBA Group and this result in limited escalation and oversight by GORC (at .6354 and .6363);*

*(2) there was an under-investment in specialised AML/CTF resources and training and that relative to peer financial institutions in Australia and globally, CBA has a small number of AML/CTF specialists of limited seniority. This resulted in CBA's AML/CTF specialists being "reactionary rather than strategic or focused on testing and assurance" (at .6355);*

*(3) there were no formal mechanisms used by CBA to (i) assign ownership of assurance of AML/CTF policy and implementation (ii) ensure that AML/CTF assurance results were reported to and acted upon by relevant stakeholders and known compliance deficiencies in relation to CBA's AML/CTF Program were not supported by positive assurance that obligations were being met (at .6365);*

*(4) AML/CTF risks had not been consistently recorded in CBA's operational risk tool, RiskInSite, by the relevant Business Units and this hampered the 'holistic view' of such risks as required by GORC, the AML Compliance Officer, and other AML/CTF stakeholders at CBA (.6366);*

*(5) CBA had not subjected its transaction monitoring program to independent review in areas such as data assurance and validation of testing rules or an in-depth review to assess whether:*

*I. "rules are well aligned to identify potential suspicious transactions;*

*II. required data is reviewed as part of transaction monitoring; and*

*III. all required transactions (including threshold transactions) are reported." (at .6373).*

*(F) On 5 September 2014, APRA issued to Toevs its prudential review report of CBA's compliance risk management framework (COM.120.222.4926) by which APRA:*

*(1) reported that it had observed 'significant weaknesses in CBA's AML/CTF and Sanctions monitoring' and that key systems were overdue for upgrading;*

(2) *noted that concerns with CBA's ability to manage these risks have been raised by CBA's internal audit and other external regulators (at .4930 and .4933);*

(3) *observed that CBA had not undertaken, since 2010, verification to confirm that all systems and products were captured through central AML/CTF processing controls, and APRA expected such verifications to take place more frequently (at .4933);*

(4) *informed CBA that APRA considered it critical for CBA to address the identified deficiencies promptly and completely (at .4930);*

(5) *informed CBA that as a result of its findings, it had determined to impose the following "requirements" that CBA:*

I. *develop an overall plan to enhance its AML/CTF compliance (at .4934);*

II. *clearly define and document roles and responsibilities in regard to AML/CTF (at .4934); and*

III. *undertake an audit of the effectiveness of its AML/CTF systems to verify the extent to which all systems and products were captured for the purpose of AML/CTF processing (at .4934); and*

(6) *noted that where APRA had determined to impose a "requirement" on an entity, that entity "must undertake specific action to address the associated matter" and that typically such matters "will relate to either the entity's failure to comply with legislation or prudential standards, or a fundamental deficiency in the entity's risk management and/or governance practices".*

*(G) Toevs received or ought to have received a Group-wide Sanctions internal audit issues log dated 29 January 2015 (COM.120.226.1584), which recorded that:*

(1) *An end to end review of systems and data flows remained outstanding for all Business Units other than Wealth Management (at .1589);*

(2) *Customer data used for Sanctions screening in the Financial Crimes Platform (**FCP**) was not reconciled for completeness and accuracy (at .1589);*

(3) *There were no integrity checks to ensure that all daily customer data from the GDW and other data feeds was complete and accurate. An example was cited that Enterprise Services did not perform a check of record count or hash controls of files or customer numbers (at .1590); and*

(4) *There was no reconciliation performed of customer data stored in the relevant FCP database and "source systems" (at .1590).*

*(H) Toevs received a Group-wide Sanctions internal audit report dated 30 January 2015 which gave an 'overall report rating' of 'amber' and identified that many of the gaps in CBA's AML and Sanctions governance and oversight highlighted in this report were consistent with issues previously raised by CBA's internal audit as part of its Group-wide Sanctions audit (February 2013) and Group-wide AML/CTF audit (December 2013): COM.101.468.7607.*

*(I) On 28 May 2015, Toevs received a report concerning an internal audit of CBA's AML/CTF systems (COM.101.470.7196), which:*

*(1) Reported that "all relevant systems and products are not captured in transaction monitoring processes" and that "controls have not been embedded across the Group to validate the completeness and accuracy of data flows between source systems and those used for centralised AML/CTF screening (at .7196);*

*(2) Reported two high rated issues: (i) unclear end-to-end ownership and governance of AML/CTF processes; and (ii) the lack of end-to-end assurance of the completeness and accuracy of transactional data used for AML/CTF screening: COM.101.470.7196 at 7199;*

*(3) Rated CBA's "Control Environment" as "unsatisfactory," being the lowest rating available, which indicated that "Controls are not appropriate for the risks being managed. There are a significant number of issues that require immediate attention" (at .7196, .7209);*

*(4) Rated CBA's "Management Awareness & Actions" as "marginal" which indicated that "Management has shown some understanding of the significant risks and controls relevant to their business; however they were not performing regular testing of the controls to assess their operating effectiveness. Alternatively, management was not aware of all material issues and/or was not taking appropriate and timely action to resolve and escalate." (at. 7196, .7209); and*

*(5) As a result of those ratings, provided an overall report rating of 'red'.*

*(J) The Applicant relies upon and repeats the particulars in paragraphs ii)(A) to ii)(C) and ii)(E), below.*

*(K) Prior to 11 August 2015,CBA ought reasonably to have adopted and further or alternatively, Toevs ought reasonably to have caused CBA to adopt the Data Reconciliation Process.*

*(L) Had Toevs caused CBA to adopt the Data Reconciliation Process, that process would have identified the August 2015 Late TTRs, and as a result thereof, Toevs ought reasonably to have come into possession of the August 2015 Late TTR Information.*

*(M) Further or alternatively:*

*(1) on 11 August 2015, AUSTRAC contacted CBA regarding two threshold transactions made through IDMs that were referred to in an SMR submitted by CBA to the AUSTRAC*

*CEO, in circumstances where AUSTRAC could not find two corresponding TTRs being given by CBA (Statement of Agreed Facts and Admissions filed by the parties in the AUSTRAC Proceeding (**Agreed Facts in AUSTRAC Proceeding**) at paragraph 45 and COM.141.022.7240).*

(2) *Toevs ought reasonably to have made enquiries as to the issue raised by AUSTRAC, and had he done so would have come into possession of the August 2015 Late TTR Information*

(3) *The substance of the communication from AUSTRAC was or ought reasonably to have been reported to Toevs.*

*(N) The August 2015 Late TTR Information was very serious in that:*

*(1) Section 43(2) of the AML/CTF Act required CBA to report to AUSTRAC "threshold transactions" (being transactions involving the transfer of physical currency in the amount of $10,000 or more) within 10 business days after the transaction occurred (this being a civil penalty provision).*

*(2) CBA would be liable in the amount of up to 100,000 penalty units per contravention of s 43(2) of the AML/CTF Act.*

*ii) Further or alternatively, from around 11 August 2015 or shortly thereafter, Comyn had or ought reasonably to have come into possession of the August 2015 Late TTR Information in the course of the performance of his duties as Group Executive of RBS as follows:*

*(A) The RBS business unit was responsible for the IDM channel.*

*(B) Comyn, as Group Executive for RBS, had ultimate responsibility and oversight for the RBS business unit.*

*(C) Under the version of CBA's AML/CTF Program in force as at 11 August 2015, Comyn was, as a Group Executive, responsible for "delivering effective compliance" with CBA's AML/CTF Program: see Section Three, Part 2.1.3 (COM.100.001.8513 at .8550).*

*(D) The Applicant relies upon and repeats the particulars in paragraph i)(A) to (I), (K) and (M) above.*

*(E) Prior to 11 August 2015, CBA ought reasonably to have adopted and further or alternatively, Comyn ought reasonably to have caused CBA to adopt the Date Reconciliation Process;*

*(F) Had CBA adopted the Data Reconciliation Process, that process would have identified the August 2015 Late TTRs, and as a result thereof, Comyn ought reasonably to have come into possession of the August 2015 Late TTR Information.*

*(G) The Applicant relies upon and repeats the particulars in paragraph i)(N) above.*

*iii) Further to i) and/or ii), from around 11 August 2015 or shortly thereafter, the 2014 NEDs, the 2015 NEDs, and/or Narev ought reasonably to have come into possession of the August 2015 TTR Information in the course of carrying out their duties as officers of CBA to whom Toevs and/or Comyn reported.*

41B. Further or alternatively, from around 8 September 2015 or shortly thereafter, CBA was aware (within the meaning of ASX Listing Rule 19.12) of the September 2015 Late TTR Information.

**Particulars**

*i) From around 8 September 2015 or shortly thereafter, Toevs had or ought reasonably to have come into possession of the September 2015 Late TTR Information in the course of the performance of his duties as Chief Risk Officer and a Group Executive of CBA as follows:*

*(A) Under the version of CBA's AML/CTF Program in force as at 8 September 2015, Toevs, as Chief Risk Officer, was responsible for reporting to the Group Risk Committee on various matters relating to AML/CTF compliance, including 'all significant incidents', 'emerging issues' and 'material findings from audit reports and other independent reviews': see Section 3, part 2.1.2 (COM.100.001.8513 at .8550).*

*(B) Under the version of CBA's AML/CTF Program in force as at 8 September 2015 Toevs, as a Group Executive, was responsible for CBA's AML/CTF Program and "delivering effective compliance": see Section Three, Part 2.1.3 (COM.100.001.8513 at .8550).*

*(C) The September 2015 Late TTRs resulted from CBA having introduced, in around November 2012, a new transaction code 5000, that was not incorporated into the TTR generation process in the Group Data Warehouse, a central repository of data used for reporting and data analysis (COM.100.669.5843 at .5847). As a result, all transactions allocated to transaction code 5000 were omitted from the TTR generation and reporting process;*

*(D) The Applicant relies upon and repeats the particulars at paragraphs 41A(i)(D) to 41A(i)(I), above.*

*(E) On 18 August 2015, Dingley was aware of the fact that RBS had determined that large cash deposits made through IDMs were not feeding into the TTR process information, and did report or ought to have reported this information to Toevs (COM.101.378.1330).*

*(F) On 19 August 2015, Dingley, and Cassandra Williams (**Williams**) (Chief Compliance Officer, Risk Management), were informed of the 'emerging issue' that initial investigations had determined that threshold transactions via IDMs were not being captured in the TTR generation process, and did report or ought to have reported this information to Toevs: COM.101.378.1330.*

*(G) On 20 August 2015, Toevs received an email from Dingley informing him that deposits through the IDM channel were not being reported to AUSTRAC, and that as a worst case scenario the issue 'could go back to 2010': COM.101.472.4058.*

*(H) On 21 August 2015, Fiona Larnach (**Larnach**), who was the Chief Risk Officer of RBS, was aware that cash deposit transaction code 5000 on IDMs was not linked to TTR reporting and this may date back to the time since IDMs were installed, and did report or ought to have reported this information to Comyn and/or Toevs: COM.101.472.4385.*

*(I) On 23 August 2015, Toevs received an email reporting that investigations had shown that TTRs had not been generated for cash deposits made via IDMs: COM.101.472.4385.*

*(J) On 27 August 2015, Toevs and Comyn received an email reporting that CBA's investigations had shown that TTRs had not been submitted in respect of 51,637 IDM deposits between November 2012 and 18 August 2015, and this was caused by a coding error with respect to the introduction of the transaction code 5000: COM.101.472.4697.*

*(K) On 4 September 2015, Toevs received a briefing paper that quantified the number of missed TTRs at 51,637 for the period from November 2012 to 18 August 2015, and that the transactions represented approximately 2.5% of total reportable transactions: COM.101.472.5533.*

*(L) On 8 September 2015, Toevs sent a letter to AUSTRAC notifying them of the TTR reporting breach. The letter specified the duration of the breach (November 2012 to 18 August 2015), the number of missed TTRs (51,637), noted that the missed TTRs represented 2.3% of overall TTR volume, and reported that the error was as a result of a coding error with respect to transaction code 5000: COM.141.022.7240*

*(M) The Applicant relies upon and repeats the particulars at paragraphs ii)(A) to ii)(C) and ii)(E), below.*

*(N) Prior to 8 September 2015, CBA ought reasonably to have adopted and further or alternatively Toevs ought reasonably to have caused CBA to adopt the Data Reconciliation Process.*

*(O) Had Toevs caused CBA to adopt the Data Reconciliation Process, that process would have identified the September 2015 Late TTRs, and as a result thereof, Toevs ought reasonably to have come into possession of the September 2015 Late TTR Information.*

*(P) Further or alternatively, prior to 8 September 2015, Toevs ought reasonably to have made enquiries as to the reasons why threshold transactions had not been subject to corresponding TTRs and, had he done so, he would have come into possession of the September 2015 Late TTR Information.*

*(Q) The September 2015 Late TTR Information was very serious in that:*

*(1) Section 43(2) of the AML/CTF Act required CBA to report to AUSTRAC "threshold transactions" (being transactions involving the transfer of physical currency in the amount of $10,000 or more) within 10 business days after the transaction occurred (this being a civil penalty provision).*

*(2) CBA would be liable in the amount of up to 100,000 penalty units per contravention of s 43(2) of the AML/CTF Act.*

*ii) Further or alternatively, from around 8 September 2015 or shortly thereafter, Comyn had or ought reasonably to have come into possession of the September 2015 Late TTR Information in the course of the performance of his duties as Group Executive of RBS as follows:*

*(A) The RBS business unit was responsible for the IDM channel.*

(B) *Comyn, as Group Executive for RBS, had ultimate responsibility and oversight for the RBS business unit.*

(C) *Under the version of CBA's AML/CTF Program in force as at 8 September 2015, Comyn was, as a Group Executive responsible for "delivering effective compliance" with CBA's AML/CTF Program: see Section Three, Part 2.1.3 (COM.100.001.8513 at .8550).*

(D) *The Applicant relies upon and repeats the particulars in paragraph i)(A) to i)(L) and i)(N) above.*

(DA) *On 6 September 2015, Comyn emailed Narev a copy of the escalation report on the "IDM cash structuring issue" and noted that CBA had "found an issue a few weeks ago with threshold transaction reports (>$10k) where changes that were made to the Banking Payments Hub resulted in breaking the link to the automated TTR reporting, dating back to November 2012. The full extent of that issue is still be [sic] investigated": COM.101.452.8197 at .8198.*

(E) *Prior to 8 September 2015, CBA ought reasonably to have adopted and further or alternatively Comyn ought reasonably to have caused CBA to adopt the Data Reconciliation Process.*

(F) *Had Comyn caused CBA to adopt the Data Reconciliation Process, that process would have identified the September 2015 Late TTRs, and as a result thereof, Comyn ought reasonably to have come into possession of the September 2015 Late TTR Information.*

(G) *Further or alternatively, prior to 8 September 2015, Comyn should have made enquiries as to the reasons why threshold transactions had not been subject to corresponding TTRs. Had he done that he would have come into possession of the September 2015 Late TTR Information.*

(H) *The Applicant relies upon and repeats the particulars in paragraph i)(Q) above.*

iii) *Further to i) and/or ii), from around 8 September 2015 or shortly thereafter, the 2014 NEDs, the 2015 NEDs, and/or Narev ought reasonably to have come into possession of the September 2015 Information in the course of carrying out their duties as officers of CBA to whom Toevs and/or Comyn reported.*

iv) *Further to i), ii) and/or iii) above, from around 8 September 2015 Narev had come into the possession of the September 2015 Information after having been informed by Comyn and Toevs (COM.101.452.8197 at .8198 and COM.101.472.5573).*

41C. Further or alternatively, as at 24 April 2017, CBA was aware (within the meaning of ASX Listing Rule 19.12) of the September 2015 Late TTR Information.

**Particulars**

i) *As at 24 April 2017, Toevs had come into possession of the September 2015 Late TTR Information in the course of the performance of his duties as Chief Risk Officer and a Group Executive of CBA as follows:*

(A) The Applicant relies upon and repeats the particulars to paragraph 41A at (i)(D) to (i)(E), and paragraph 41B at (i)(G) to (i)(I) above.

(B) On 24 September 2015, the September 2015 Late TTRs were submitted to AUSTRAC.

(C) On 7 October 2015, Toevs received a report on the September 2015 Late TTRs: COM.101.473.0001_E at .0033.

(D) On 12 October 2015, Toevs received a letter from AUSTRAC which queried the following discrepancy: "In the CBA's letter of 8 September 2015 it stated that 51,637 TTRs had not been given to AUSTRAC for the period November 2012 until 18 August 2015. The email from the CBA on 24 September 2015 states that 53,506 TTRs relating to the non-compliance outlined in the 8 September 2015 letter had been uploaded": COM.120.180.0210 at .0210.

(E) On 26 October 2015, Toevs sent a letter to AUSTRAC which clarified a discrepancy between the 51,637 late TTRs first notified to AUSTRAC on 8 September 2015 and the 53,506 ultimately reported on 24 September 2015 as being due to" the subset of relevant transactions that occurred between the date at which the coding issue was identified (18 August 2015) and the date at which the coding error was rectified (8 September 2015)": COM.141.022.7240 at .7241, COM.100.010.0479 at .0479 and COM.100.010.0483 at .0483.

ii) Further or alternatively, as at 24 April 2017, Comyn had come into possession of the September 2015 Late TTR Information in the course of the performance of his duties as Group Executive of RBS as follows:

(A) The Applicant relies upon and repeats the particulars to paragraph 41B at (ii)(DA) above.

(B) The meeting pack for the Executive Committee meeting held on 8 October 2015, which was attended by Narev, Craig, Cohen, Comyn and others (COM.120.881.0102), included a 'Flash Report' (COM.101.473.0001_E at .0033) which stated:

(1) "Incident: Following an investigation undertaken by the Bank into two unreported TTRs to AUSTRAC, it has been identified that TTRs linked to IDMs from November 2012 to 18 August 2015 were unreported to AUSTRAC": COM.101.473.0001_E at .0033.

(2) "Impact: As a result of the incident, 51,637 TTRs linked to IDMs were unreported to AUSTRAC (representing approximately 2.3% of the overall volume of TTRs reported by CBA over the same period). The breach has been reported to AUSTRAC, together with details of a remediation program to address the issue": COM.101.473.0001_E at .0033.

(3) "Root Cause: The root cause has been identified as being due to a change implemented in November 2012 to one of the IDM transaction type codes which was mapped to automated TTR reporting. The change involved the division of transactions between the existing transaction code which was mapped to TTR reporting and a new transaction code which wasn't mapped to TTR reporting. As a result of the change, the cash

*component of transactions of $10,000 or more mapped to the new transaction code, were not reported." COM.101.473.0001_E at .0033.*

*(C) A copy of the letter referred to in the particulars at i)(D) above was sent to Comyn on 12 October 2015 (COM.120.180.0207, attaching COM.120.180.0210).*

*iii) Further or alternatively, as at 24 April 2017, Craig and/or Cohen had come into possession of the September 2015 Late TTR Information in the course of the performance of their duties and the Applicant relies on and repeats the particulars at ii)(B) above.*

*iv) Further or alternatively to I), ii) and/or iii), as at 24 April 2017, the 2014 NEDs, the 2015 NEDs, and/or Narev had come into possession of the September 2015 Information in the course of carrying out their duties as officers of CBA as follows;*

*(A) the Applicant relies on and repeats the particulars at ii)(B) above.*

*(B) The meeting pack for the Board meeting held on 12 and 13 October 2015, attended by the 2014 NEDs, the 2015 NEDS and Narev, included a report which stated the following:*

> *"As a result of the incident, 51,637 TTRs linked to IDMs were unreported to AUSTRAC (representing approximately 2.3% of the overall volume of TTRs reported by CBA over the same period). The breach has been reported to AUSTRAC, together with details of a remediation program to address the issue. The root cause has been identified as being due to a change implemented in November 2012 to one of the IDM transaction type codes which was mapped to automated TTR reporting. The change involved the division of transactions between the existing transaction code which was mapped to TTR reporting and a new transaction type code introduced which wasn't mapped to TTR reporting. As a result of the change, the cash component of transactions of $10,000 or more mapped to the new transaction code, were not reported. The coding error which gave rise to the issue was rectified on 9 September 2015. The Bank engaged with AUSTRAC and lodged the unreported transactions on 24 September 2015. Work is underway within the Bank to determine whether coding error also impacts other channels, this is expected to be determined within the next few weeks": COM.120.380.2885_E at .2966, see also .2931 and .2958.*

*(C) The signed minutes of the Meeting of the Board of Directors of 12 and 13 October 2015, and attended by the 2014 NEDs, the 2015 NEDS and Narev dated 12 and 13 October 2015, record the following:*

*(1) "The AUSTRAC issue reported in the paper was discussed with the Group CRO commenting on possible reactions from the regulator": COM.120.871.0478 at .0482.*

*(2) "Following discussion on interactions with AUSTRAC the Board agreed that it would be beneficial for it to meet with the AUSTRAC CEO": COM.120.871.0478 at .0484.*

(3) *'Following consideration and discussion the Board noted the regulatory activities for the period from 17 July 2015 to 16 September 2015": COM.120.871.0478 at .0484.*

(D) *The meeting pack for the Executive Committee meeting held on 24 April 2017, which was attended by Narev, Craig, and Cohen (COM.120.012.7263), included an 'AUSTRAC Update' which, inter alia, stated:*

(1) *"In August 2015, AUSTRAC advised CBA that they were unable to locate TTRs relating to transactions that had been reported to AUSTRAC in SMRs where it appeared that a TTR obligation would also arise": COM.120.078.2527_E at .2677.*

(2) *"A resulting investigation identified that, between November 2012 and August 2015, CBA failed to submit ~ 51,000 TTRs to AUSTRAC. These TTRs were related to cash transactions undertaken through CBA's intelligent deposit machines. CBA self-reported this breach to AUSTRAC on 8 September 2015": COM.120.078.2527_E at .2677*

*v) Further to i), ii), iii) and/or iv) above, from around 8 September 2015 Narev had come into the possession of the September 2015 Information after having been informed by Comyn and Toevs (COM.101.452.8197 at .8198 and COM.101.472.5573).*

### C.3 The IDM ML/TF Risk Assessment Non-Compliance Information

42. CBA failed, prior to the roll-out of CBA's IDMs in May 2012, and in the period between the roll-out of CBA's IDMs in May 2012 and July 2015, to carry out any assessment of ML/TF Risk in relation to or including the provision of designated services through CBA's IDMs as required to comply with CBA's AML/CTF Program~~, notwithstanding the IDM Features, the IDM Channel Growth and the high and obvious ML/TF Risk that IDMs posed, and thereby failed to comply with its own AML/CTF program (**IDM ML/TF Risk Assessment Non-Compliance Information**)~~.

**Particulars**

*i) CBA's "Risk Identification and Assessment" Group Standard (**CBA's Group Standard**) dated 29 July 2010 and approved by Tony Byrne (Group Head of AML/CTF and Sanctions) (**Byrne**), Part 2.2.1 required CBA to identify and assess the risk impact of new technologies and channels. (COM.100.001.5313 at .5321).*

*ii) CBA's AML/CTF Program in force at all material times between 28 October 2010 and as at July 2015, at Section Two, Part 2.2 required it to assess the ML/TF risks of each new designated service or technology prior to adopting it: (COM.100.001.8441 at .8461-.8462 and COM.100.001.8513 at .8540).*

*iii) CBA's AML/CTF Program in force at all material times between 28 October 2010 and as at July 2015, at Section Two, Part 2.1.3 required it to conduct periodic reviews (at a minimum every two years), using the Group's ML/TF Risk Assessment Methodology, of the overall inherent ML/TF risk faced by the Group and its members in order to*

*identify new and significant changes in inherent ML/TF risk: (COM.100.001.8441 at .8461 and COM.100.001.8513 at .8539-.8540).*

*iv) CBA did not conduct an assessment of ML/TF Risk before rolling out CBA's IDMs, notwithstanding the IDM Features.*

*vii) CBA did not conduct an assessment of ML/TF Risk in relation to the provision of designated services through its IDMs ~~thereafter~~ prior to July 2015, notwithstanding the IDM Features, IDM Channel Growth, the high and obvious ML/TF Risk that IDMs posed, and the fact that in and from March 2014 CBA submitted SMRs to AUSTRAC relating to suspicions that money laundering was occurring though its IDMs.*

*viii) CBA did not undertake an assessment of ML/TF Risk of its IDMs prior to July 2015 notwithstanding that in and from March 2014 CBA submitted SMRs to AUSTRAC relating to suspicions that money laundering was occurring though its IDMs.*

*vii) CBA failed to comply with CBA's AML/CTF Program in force at all material times between May 2012 and July 2015 at Section Two, Part 2.1.3, and Part 2.2: (COM.100.001.8441 at .8461-.8462 and COM.100.001.8513 at .8539-.8540).*

*viii) CBA failed to comply with CBA's Group Standard Part 2.2.1: COM.100.001.5313 at .5321.*

*(ix) The Applicant also refers to and relies ~~rely~~ upon:*

*A ~~iv~~) the Amended Statement of Claim filed on 14 December 2017 by AUSTRAC in the AUSTRAC Proceeding, in particular paragraph 20;*

*B ~~v~~) CBA's Defence in AUSTRAC Proceeding, in particular paragraph 20;*

*C ~~vi~~) CBA's Concise Response in AUSTRAC Proceeding, in particular paragraph 14; and*

*D)~~vii~~ Agreed Facts in AUSTRAC Proceeding, in particular paragraphs 27 and 39.*

42A. Further, or alternatively, CBA did not at any time after July 2015 carry out any review of the assessment of ML/TF Risk in relation to or including the provision of designated services through CBA's IDMs that followed the procedures in, and/or complied with the requirements of, CBA's AML/CTF Program.

**Particulars**

*i) CBA's AML/CTF Part A Program in force at all material times between July 2015 and 17 January 2017 required it to conduct periodic reviews (at a minimum every two years), using the Group's ML/TF Risk Assessment Methodology, of the overall inherent ML/TF risk faced by the Group and its members in order to identify new and significant changes in inherent ML/TF risk.*

*(A) Joint Anti-Money Laundering & Counter Terrorism Financing Program, Part A, Version 5.5 (in force from 26 June 2014 – 31*

*December 2015), Section Two, Part 2.1.3 (COM.100.001.8513 at .8539 - .8540)*

(B) *Joint Anti-Money Laundering & Counter Terrorism Financing Program, Part A, Version 6.0 (in force from 1 January 2016 – 15 June 2016), Part 2.1.3 (COM.120.231.5859 at .5874 - .5875)*

(C) *Joint Anti-Money Laundering & Counter Terrorism Financing Program, Part A, Version 7.0 (in force from 15 June 2016 to around June 2017), Part 2.1.3 (COM.141.017.0691 at .0706 - .0707)*

(D) *Joint Anti-Money Laundering & Counter Terrorism Financing Program, Part A, Version 8.0 (in force from around June 2017), Part 2.1 (COM.120.144.1588 at .1595), incorporating by reference Global Financial Crime Risk Identification and Assessment Methodology Group Standard, Version 2.0 (in force from 18 January 2017 to a date unknown to the Applicant), Part 8 (COM.141.017.0645 at .0657-.0658) (requiring review of "financial crime risk assessments", which include ML/TF risk assessments, "at least once every two years")*

*(these requirements the **Risk Assessment Program Obligations**).*

ii) *CBA failed to comply with the Risk Assessment Program Obligations.*

iii) *The review should have been conducted in May 2014 at a minimum, and (if it had occurred in May 2014) again in May 2016 at a minimum.*

iv) *On 14 July 2015, a risk assessment was conducted for IDMs for the first time, whereby IDMs were assigned high risk scores: COM.120.009.0172 (**July 2015 Deficient Risk Assessment**). However, the July 2015 Deficient Risk Assessment failed to comply with the procedures set out in CBA's AML/CTF Program: Agreed Facts in AUSTRAC Proceeding, paragraph 32.*

43. From ~~a date presently unknown to the Applicant, but not later than at least~~ around 16 June 2014, or shortly thereafter ~~alternatively 24 September 2015~~, CBA was aware (within the meaning of ASX Listing Rule 19.12) of the **June 2014 IDM ML/TF Risk Assessment Non-Compliance Information,** namely that CBA had failed in the period prior to the roll-out of CBA's IDMs in May 2012 or at any time since May 2012 to carry out any assessment of ML/TF Risk in relation to or including the provision of designated services through CBA's IDMs, as required to comply with CBA's AML/CTF Program.

**Particulars**

i) *The Applicant repeats the particulars to paragraph 42 insofar as they relate to matters as at around 16 June 2014.*

ii) *From around 16 June 2014 or shortly thereafter, Toevs had or ought reasonably to have come into possession of the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information in the course of the performance of his duties as Chief Risk Officer and a Group Executive of CBA as follows:*

*(A) Under CBA's AML/CTF Program in force as at 16 June 2014, Toevs, as Chief Risk Officer, was responsible for reporting to the Group Risk Committee on various matters relating to AML/CTF compliance, including 'all significant incidents', 'emerging issues' and 'material findings from audit reports and other independent reviews': see Section Three, part 2.1.2 (COM.100.001.8441 at .8470).*

*(B) Under the version of CBA's AML/CTF Program in force as at 16 June 2014, Toevs, as a Group Executive, was responsible for CBA's AML/CTF Program and "delivering effective compliance": see Section Three, Part 2.1.3 (COM.100.001.8441 at .8470).*

*(C) Under CBA's AML/CTF Program in force as at 16 June 2014, Section Two, Part 2.2, CBA's business units were required to assess the "inherent ML/TF risk" posed by: (i) "each new designated service prior to introducing it to the market"; (ii) "each new method of designated service delivery prior to adopting it"; and (iii) "each new or developing technology used for the provision of a designated service prior to adopting it" (COM.100.001.8441 at .8461-.8462). IDMs comprised a new method of designated service delivery and/or a new or developing technology used for the provision of a designated service, within the meaning of the Program.*

*(D) CBA's AML/CTF Program in force as at 16 June 2014 also required CBA to "conduct periodic reviews" of the "overall inherent ML/TF risk faced by the Group and its members in order to identify new and significant changes in inherent ML/TF risk": see Section 2, part 2.1.3 (COM.100.001.8441 at .8461).*

*(E) Prior to 16 June 2014, CBA ought reasonably to have conducted and further or alternatively Toevs ought reasonably to have caused CBA to conduct regular monitoring and reporting of the IDM Channel Growth, and risk assessments of IDMs following their roll out (**IDM Risk Assessments**) that complied with CBA's AML/CTF Program.*

*(F) Had CBA conducted IDM Risk Assessments in compliance with CBA's AML/CTF Program, or made inquiries to be made as to whether IDM Risk Assessments had been conducted in compliance with CBA's AML/CTF Program, Toevs ought reasonably to have come into possession of the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information.*

*(G) The June 2014 IDM ML/TF Risk Assessment Information was very serious in that:*

*(1) CBA was obliged by s 82 of the AML/CTF Act to comply with Part A of its AML/CTF Program; and*

*(2) CBA would be liable in the amount of up to 100,000 penalty units per contravention of s 82 of the AML/CTF Act.*

*iii) Further or alternatively, from around 16 June 2014 or shortly thereafter, Comyn had or ought reasonably to have come into possession of the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information in the course of the performance of his duties as Group Executive of RBS as follows*

(A) The RBS business unit was responsible for the IDM channel.

(B) Comyn, as Group Executive for RBS, had ultimate responsibility and oversight for the RBS business unit and was a member of the RBS Risk Committee.

(C) Under the version of CBA's AML/CTF Program in force as at 16 June 2014, Comyn, as a Group Executive, was responsible for "delivering effective compliance" with CBA's AML/CTF Program: see Section Three, Part 2.1.3 (COM.100.001.8441 at .8470).

(D) Prior to 14 June 2014, CBA ought reasonably to have conducted and further or alternatively Comyn ought reasonably to have caused CBA to conduct IDM Risk Assessments that complied with CBA's AML/CTF Program.

(E) Had CBA conducted IDM Risk Assessments in compliance with CBA's AML/CTF Program, or had Comyn caused inquiries to be made as to whether IDM Risk Assessments had been conducted in compliance with CBA's AML/CTF Program, Comyn would have come into possession of the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information.

(F) The Applicant relies upon and repeats the particulars in paragraph ii)(G) above.

iv) Further to ii) and/or iii), from around 16 June 2014 or shortly thereafter, the 2014 NEDs and/or Narev ought reasonably to have come into possession of the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information in the course of carrying out their duties as officers of CBA to whom Toevs and/or Comyn reported.

~~i) The IDM ML/TF Risk Assessment Non-Compliance Information was information of which Toevs ought reasonably to have become aware in the course of carrying out his duties as Group Chief Risk Officer of CBA (in the course of which he ought also reasonably to have been aware of the IDM Features and the IDM Channel Growth) by no later than the roll-out of CBA's IDMs in May 2012, alternatively 16 June 2014, or alternatively the time when the ML/TF Risk Assessment of IDMs occurred for the first time in mid-2015 (being no later than 1 July 2015)~~

~~ii) The IDM ML/TF Risk Assessment Non-Compliance Information was information of which Cohen ought reasonably to have become aware on and from 1 July 2016, in the course of taking over the duties of Chief Risk Officer from Toevs and in the course of carrying out the duties of Chief Risk Officer;~~

~~iii) The IDM ML/TF Risk Assessment Non-Compliance Information was information of which Narev, the 2014 NEDs, and the 2015 NEDs ought reasonably to have become aware in the course of their duties as directors to whom Toevs reported (or upon assuming those duties, by familiarising themselves with the previous records of the board of CBA, as the case may be) by no later than the roll-out of CBA's IDMs in May 2012, alternatively 16 June 2014, or alternatively the time when the ML/TF Risk Assessment of IDMs occurred for the first time in mid-2015 (being no later than 1 July 2015).~~

~~iv) On and from the Board Knowledge Date, Narev, the 2014 NEDs, and the 2015 NEDs had actual knowledge of the IDM ML/TF Risk Assessment Non-Compliance Information, or alternatively ought~~

~~*reasonably to have had knowledge of it, by reason of their position as directors of CBA, in that:*~~

~~*(A) after the Board Knowledge Date, the Board of CBA were aware that its systems had failed to give 53,306 TTRs on time (and failed to detect the late giving of the Late TTRs for a considerable period);*~~

~~*(B) after the Board Knowledge Date, the Board of CBA progressed a program of action for:*~~

~~*(I) promptly fixing the coding error relating to the IDM TTRs;*~~

~~*(II) changing senior leadership in the key roles overseeing financial crimes compliance, compliance more broadly and operational risk;*~~

~~*(III) recruiting more than 15 financial crime compliance professionals;*~~

~~*(IV) upgrading financial crime technology used to monitor accounts and transactions for suspicious activity (which upgrade was still incomplete as at 9 August 2017, and was expected "to be fully delivered over the next twelve months");*~~

~~*(V) commencing the upgrade of additional fraud monitoring technology;*~~

~~*(see 9 August Announcement)*~~

~~*(C) the scale of the remedial program of action described in (B) indicated the seriousness of the deficiencies in CBA's systems for assessing and monitoring ML/TF Risk in relation to IDMs, and generally, and the potential that those deficiencies affected the assessment and monitoring of a very large number of customer transactions (and thereby customer accounts).*~~

~~*v) During the period 15 December 2011 to 1 February 2018 (to the extent relevant to information arising prior to 24 September 2015), the Board of CBA received reports from senior management in relation to AML/CTF compliance, which contained input from personnel with direct responsibility for and oversight of the AML/CTF function, and CBA's senior management received reports in relation to AML/CTF compliance from personnel engaged in direct responsibility and oversight of the AML/CTF function and oversaw a range of measures directed to enhancing its AML/CTF function: Agreed Facts in AUSTRAC Proceeding, paragraphs 85 and 98.*~~

43A. Further or alternatively, from 11 August 2015, or shortly thereafter, CBA was aware (within the meaning of ASX Listing Rule 19.12) of the **August 2015 IDM ML/TF Risk Assessment Non-Compliance Information**; namely that CBA had failed:

(a) in the period prior to the roll-out of CBA's IDMs in May 2012, and between May 2012 and July 2015, to carry out any assessment of ML/TF Risk in relation to or including the provision of designated services through CBA's IDMs, as required to comply with CBA's AML/CTF Program; further or alternatively,

(b) in the period since July 2015, to carry out an assessment of ML/TF Risk in relation to or including the provision of designated services through CBA's IDMs that followed the procedures in, and/or complied with the requirements of, CBA's AML/CTF Program.

**Particulars**

*i) The Applicant repeats particulars i), ii), iv), v), vi) and viii) to x) to paragraph 42.*

*ii) The Applicant repeats the particulars to paragraph 42A.*

*iii) From around 11 August 2015 or shortly thereafter, Toevs had or ought reasonably to have come into possession of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information in the course of the performance of his duties as Chief Risk Officer and a Group Executive of CBA as follows:*

*(A) Under the version of CBA's AML/CTF Program in force as at 11 August 2015, Toevs, as Chief Risk Officer, was responsible for reporting to the Group Risk Committee on various matters relating to AML/CTF compliance, including 'all significant incidents', 'emerging issues' and 'material findings from audit reports and other independent reviews': see Section 3, part 2.1.2 (COM.100.001.8513 at .8550).*

*(B) Under the version of CBA's AML/CTF Program in force as at 11 August 2015, Toevs, as a Group Executive, was responsible for CBA's AML/CTF Program and "delivering effective compliance": see Section Three, Part 2.1.3 (COM.100.001.8513 at .8550).*

*(C) Under CBA's AML/CTF Program in force at all times between 28 October 2010 and 11 August 2015, CBA's business units were required to assess the "inherent ML/TF risk" posed by: (i) "each new designated service prior to introducing it to the market"; (ii) "each new method of designated service delivery prior to adopting it"; and (iii) "each new or developing technology used for the provision of a designated service prior to adopting it" (COM.100.001.8441 at .8461-.8462 and COM.100.001.8513 at .8539-.8540). IDMs comprised a new method of designated service delivery and/or a new or developing technology used for the provision of a designated service, within the meaning of the Program.*

*(D) CBA's AML/CTF Program in force as at 11 August 2015 also required CBA to "conduct periodic reviews" of the "overall inherent ML/TF risk faced by the Group and its members in order to identify new and significant changes in inherent ML/TF risk": see Section 2, part 2.1.3 (COM.100.001.8441 at .8461 and COM.100.001.8513 at .8539).*

*(E) Particular (iv) to paragraph 42A is repeated. The July 2015 Deficient Risk Assessment itself did assign high risk scores to IDMs, but was not a risk assessment which followed the procedures in, and/or complied with the requirements of, CBA's AML/CTF Program.*

(F) *Prior to 11 August 2015, CBA ought reasonably to have conducted and further or alternatively Toevs ought reasonably to have caused CBA to conduct IDM Risk Assessments that complied with CBA's AML/CTF Program, and to ensure that the July 2015 Deficient Risk Assessment was not deficient.*

(G) *Had CBA conducted IDM Risk Assessments in compliance with CBA's AML/CTF Program, or made inquiries as to whether IDM Risk Assessments had been conducted in compliance with CBA's AML/CTF Program, Toevs ought reasonably to have come into possession of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information.*

(H) *The August 2015 IDM ML/TF Risk Assessment Information was very serious in that:*

(1) *CBA was obliged by s 82 of the AML/CTF Act to comply with Part A of its AML/CTF Program; and*

(2) *CBA would be liable in the amount of up to 100,000 penalty units per contravention of s 82 of the AML/CTF Act.*

iv) *Further or alternatively, from around 11 August 2015 or shortly thereafter, Comyn had or ought reasonably to have come into possession of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information in the course of the performance of his duties as Group Executive of RBS as follows:*

(A) *The particulars at iii)(A), (B) and (D) to paragraph 43 are repeated.*

(B) *Under the version of CBA's AML/CTF Program in force as at 11 August 2015, Comyn was, as a Group Executive, responsible for "delivering effective compliance" with CBA's AML/CTF Program: see Section Three, Part 2.1.3 (COM.100.001.8513 at .8550).*

(C) *On 14 July 2015, a risk assessment was conducted for IDMs for the first time, whereby IDMs were assigned high risk scores: COM.120.009.0172. However, the July 2015 Deficient Risk Assessment failed to comply with the procedures set out in CBA's AML/CTF Program: Agreed Facts in AUSTRAC Proceeding, paragraph 32.*

(D) *Prior to 11 August 2015, CBA ought reasonably to have conducted and further or alternatively Comyn ought reasonably to have caused CBA to conduct IDM Risk Assessments that complied with CBA's AML/CTF Program.*

(E) *Had CBA conducted IDM Risk Assessments in compliance with CBA's AML/CTF Program, or had Comyn made inquiries as to whether IDM Risk Assessments had been conducted in compliance with CBA's AML/CTF Program, Comyn would have come into possession of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information.*

(F) *The Applicant relies upon and repeats the particulars at paragraph iv)(H) above,*

vi) *Further to v) and/or vi), from around 11 August 2015 or shortly thereafter, the 2014 NEDs, the 2015 NEDs and/or Narev ought reasonably to have come into possession of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information in the course of*

*carrying out their duties as officers of CBA to whom Toevs and/or Comyn reported.*

43B. Further or alternatively, from 8 September 2015, or shortly thereafter, CBA was aware (within the meaning of ASX Listing Rule 19.12) of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information.

**Particulars**

*i) The Applicant repeats particulars i), ii), iv), v), vi) and viii) to x) to paragraph 42.*

*ii) The Applicant repeats the particulars to paragraph 42A.*

*iii) CBA failed to comply with CBA's AML/CTF Program in force as at 8 September 2015 at Section Two, Part 2.1.3 and Section 2, Part 2.2 of CBA's AML/CTF Program as in force at all times between 28 October 2010 and 26 June 2014: (COM.100.001.8441 at .8461-.8462 and COM.100.001.8513 at .8539-.8540).*

*iv) From around 8 September 2015 or shortly thereafter, Toevs ought reasonably to have come into possession of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information in the course of the performance of his duties as Chief Risk Officer and a Group Executive of CBA as follows:*

*(A) Under the version of CBA's AML/CTF Program in force as at 8 September 2015, Toevs, as Chief Risk Officer, was responsible for reporting to the Group Risk Committee on various matters relating to AML/CTF compliance, including 'all significant incidents', 'emerging issues' and 'material findings from audit reports and other independent reviews': see Section 3, part 2.1.2 (COM.100.001.8513 at .8550).*

*(B) Under the version of CBA's AML/CTF Program in force as at 8 September 2015, Toevs, as a Group Executive, was responsible for CBA's AML/CTF Program and "delivering effective compliance": see Section Three, Part 2.1.3 (COM.100.001.8513 at .8550).*

*(C) Under CBA's AML/CTF Program in force at all times between 28 October 2010 and 8 September 2015, CBA's business units were required to assess the "inherent ML/TF risk" posed by: (i) "each new designated service prior to introducing it to the market"; (ii) "each new method of designated service delivery prior to adopting it"; and (iii) "each new or developing technology used for the provision of a designated service prior to adopting it" (COM.100.001.8441 at .8461 and COM.100.001.8513 at .8540). IDMs comprised a new method of designated service delivery and/or a new or developing technology used for the provision of a designated service, within the meaning of the Program.*

*(D) CBA's AML/CTF Program in force as at 8 September 2015 also required CBA to "conduct periodic reviews" of the "overall inherent ML/TF risk faced by the Group and its members in order to identify*

*new and significant changes in inherent ML/TF risk": see Section 2, part 2.1.3 (COM.100.001.8441 at .8461 and COM.100.001.8513 at .8539-.8540).*

*(E) Particular (iv) to paragraph 42A is repeated. The July 2015 Deficient Risk Assessment itself did assign high risk scores to IDMs, but was not a risk assessment which followed the procedures in, and/or complied with the requirements of, CBA's AML/CTF Program.*

*(F) On 1 September 2015, Larnach, the Chief Risk Officer for RBS, informed Toevs and Comyn of an Escalation Report relating to the use of IDMs by five professional money laundering syndicates to conduct money laundering by cash structuring (COM.101.841.7119).*

*(G) Prior to 8 September 2015, CBA ought reasonably to have conducted and further or alternatively Toevs ought reasonably to have caused CBA to conduct IDM Risk Assessments that complied with CBA's AML/CTF Program.*

*(H) Had CBA conducted IDM Risk Assessments in compliance with CBA's AML/CTF Program, or made inquiries as to whether IDM Risk Assessments had been conducted in compliance with CBA's AML/CTF Program, Toevs ought reasonably to have come into possession of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information.*

*(I) The August 2015 IDM ML/TF Risk Assessment Information was very serious in that:*

*(1) CBA was obliged by s 82 of the AML/CTF Act to comply with Part A of its AML/CTF Program; and*

*(2) CBA would be liable in the amount of up to 100,000 penalty units per contravention of s 82 of the AML/CTF Act.*

*v) Further or alternatively, from around 8 September 2015 or shortly thereafter, Comyn ought reasonably to have come into possession of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information in the course of the performance of his duties as Group Executive of RBS as follows:*

*(A) The particulars at iii)(A), (B) and (D) to paragraph 43 and particular iv)(G) above are repeated;*

*(B) Under the version of CBA's AML/CTF Program in force as at 8 September 2015, Comyn was, as a Group Executive, responsible for "delivering effective compliance" with CBA's AML/CTF Program: see Section Three, Part 2.1.3 (COM.100.001.8513 at .8550).*

*(C) Particular (iv) to paragraph 42A is repeated. The July 2015 Deficient Risk Assessment itself did assign high risk scores to IDMs, but was not a risk assessment which followed the procedures in, and/or complied with the requirements of, CBA's AML/CTF Program.*

*(D) Prior to 8 September 2015, CBA ought reasonably to have conducted and further or alternatively Comyn ought reasonably to*

*have caused CBA to conduct IDM Risk Assessments that complied with CBA's AML/CTF Program.*

(E) *Had CBA conducted IDM Risk Assessments in compliance with CBA's AML/CTF Program, or had Comyn made inquiries as to whether IDM Risk Assessments had been conducted in compliance with CBA's AML/CTF Program, Comyn would have come into possession of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information.*

(F) *The Applicant relies upon and repeats the particulars at paragraph iv)(G) above.*

*vi) Further to iv) and/or v), from around 8 September 2015 or shortly thereafter, the 2014 NEDs, the 2015 NEDs and/or Narev ought reasonably to have come into possession of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information in the course of carrying out their duties as officers of CBA to whom Toevs and/or Comyn reported.*

43C. Further or alternatively, as at 24 April 2017, or shortly thereafter, CBA was aware (within the meaning of ASX Listing Rule 19.12) of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information.

**Particulars**

*i) The Applicant repeats particulars i), ii), iv), v), vi) and viii) to x) to paragraph 42.*

*ii) The Applicant repeats the particulars to paragraph 42A.*

*iii) As at 24 April 2017, Comyn had come into possession of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information in the course of the performance of his duties as Group Executive of RBS as follows: on 13 October 2015, Comyn was briefed by Walker to the effect that the RBS AML/Sanctions team was unable to find an ML/TF risk assessment carried out on IDMs. COM.101.162.3986*

*iv) Further or alternatively, as at 24 April 2017, Narev had come into possession of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information in the course of the performance of his duties as Managing Director and Chief Executive Officer of CBA as follows:*

(A) *On 9 March 2017, Narev received an email from [Philippa] Watson reporting on a meeting with AUSTRAC officers on 7 March 2017. The email stated that AUSTRAC's specific concerns included that CBA's "approach to rolling out IDMs and the Financial Crime Risk Assessment process during the deployment of these machines was different to and inferior to the other banks". COM.101.456.8734.*

(B) *On 21 March 2017, Narev and Livingstone attended a meeting (COM.100.044.1180) whereby they were informed that among AUSTRAC's concerns was that CBA had failed to "undertake a proper risk assessment on IDMs on their introduction (COM.500.001.0125).*

(C) *On 25 March 2017, Narev received a draft of a letter to AUSTRAC that was ultimately sent on 27 March 2017. COM.101.456.9408, COM.101.456.9409. Among other things, the letter:*

(1) *stated that because the Bank considered that "IDMs were an extension of existing ATM functionality", a "specific IDM risk assessment was not undertaken"; and*

(2) *noted the indication of the AUSTRAC CEO that CBA should have re-evaluated reliance on the ATM risk assessment "as the significance of activities through IDMs increased over time".*

iv) *Further or alternatively, as at 24 April 2017, Livingstone had come into possession of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information in the course of the performance of her duties as follows:*

(A) *On 30 January 2017, Livingstone was informed that AUSTRAC had identified that CBA's risk assessment of IDMs, once one had been done, was "poor", and that there was a slow response to that risk assessment. COM.500.001.0004.*

(B) *The Applicant relies upon and repeats the particulars at iii)(B) above.*

## C.4 The Account Monitoring Failure Information

44. From at least 20 October 2012 to ~~12~~ 14 October 2015, CBA failed to conduct account level monitoring with respect to hundreds of thousands of accounts ~~(**Account Monitoring Failure Information**~~).

**Particulars**

i) *On 16 June 2014, CBA ~~had~~ identified a 'systems error' ~~on 16 June 2014~~ which had subsisted for a period of 1 year and 8 months ~~in relation to transaction monitoring on up to 778,370 accounts, which had subsisted for a period of at least 1 year and 8 months (from 20 October 2012).~~*

ii) *Although the 'systems error' was corrected by approximately 19 September 2014 such that it no longer affected new accounts, it took until approximately 14 ~~12~~ October 2015 to substantially complete the process of populating the 'account type description' field in the affected accounts, and the account level monitoring on existing accounts did not operate correctly until the populating of the missing field had occurred.*

iii) *The systems error affected transaction monitoring on up to 778,370 accounts.*

45. From ~~a date presently unknown to the Applicant, but not later than at least~~ around 16 June 2014 or shortly thereafter, ~~or alternatively 24 September 2015,~~ CBA was aware (within the meaning of ASX Listing Rule 19.12) that from at least 20 October 2012 CBA had failed to conduct account level monitoring with respect to approximately 676,000 accounts ~~of~~ (the **June 2014 Account Monitoring Failure Information**).

**Particulars**

*i) From around 16 June 2014 or shortly thereafter, Toevs had or ought reasonably to have come into possession of the June 2014 Account Monitoring Failure Information in the course of the performance of his duties as Chief Risk Officer and a Group Executive of CBA as follows:*

*(A) Under the version of CBA's AML/CTF Program in force as at 16 June 2014, Toevs, as Chief Risk Officer, was responsible for reporting to the Group Risk Committee on various matters relating to AML/CTF compliance, including 'all significant incidents', 'emerging issues' and 'material findings from audit reports and other independent reviews': see Section 3, part 2.1.2 (COM.100.001.8441 at .8469).*

*(B) Under the version of CBA's AML/CTF Program in force as at 16 June 2014, Toevs, as a Group Executive, was responsible for CBA's AML/CTF Program and "delivering effective compliance": see Section Three, Part 2.1.3 (COM.100.001.8441 at .8470).*

*(C) The account monitoring failures were caused by a data reconciliation error between two systems. Account data stored in Associate Web, which was used to identify employee accounts, was transferred to the FCP without carrying over the account type designation as either 'personal' or 'commercial'. A coding error resulted in that field being populated with a null value. Many of the automated transaction monitoring rules relied on by CBA were targeted at either personal or commercial accounts, and accounts with a null value in the account type designation were not subject to any of those transaction monitoring rules.*

*(D) As a result of the reconciliation errors, as at around 16 June 2014, approximately 676,000 accounts were left with a null value in their account types and were not subject to the intended transaction monitoring rules for a period ranging from less than one month to 1 year and 8 months.*

*(E) Toevs received or ought to have received a report titled 'Transaction Monitoring Program Final Report' dated 25 February 2011 (COM.100.002.3353) which identified that:*

*(1) There were no reconciliations of data extracted from source systems to the Transaction Monitoring Program (**TMP**) and as a result it was not possible to tell whether all data that should have entered the TMP had done so and been processed as expected (at .3360);*

*(2) There was a lack of any documented, up to date end-to-end process with clear accountabilities for transaction monitoring, which contributed to the risk that the TMP could contain incomplete data (at .3360);*

*(3) There was a lack of any clear overarching accountability for transaction monitoring which had led to system upgrades and technological changes being undertaken without consulting all relevant stakeholders (at .3360); and*

*(4) CBA should enhance its governance framework for transaction monitoring, conduct reconciliations to ensure*

*completeness of data in automated processes and conduct ongoing reviews of the TMP, especially after upgrades, to ensure completeness of data and integrity of monitoring processes. Further, if interim arrangements or upgrades to the TMP were not reviewed there was "a risk that systemic failure in the monitoring processes could exist and not be identified immediately" (at .3360 - .3361).*

*(F) The particulars at i)(D) to (F) to paragraph 41 are repeated.*

*(G) The particulars at i) to iii) to paragraph 44 are repeated.*

*(H) On 16 June 2014 or shortly thereafter, the fact that several gaps had been identified in the FCP data (COM.102.027.5505), which was relied on for transaction monitoring, did or ought to have prompted CBA to conduct investigations into the gaps identified in the data, and the results of those investigations were or ought to have been reported to Toevs.*

*(I) On 16 June 2014 or shortly thereafter, CBA ought reasonably to have conducted, and further or alternatively Toevs ought reasonably to have caused CBA to conduct inquiries as to the matters in (H) and had that occurred, the inquiries would have led to the identification of the June 2014 Account Monitoring Failure Information, which would have led Toevs to have come into possession of the June 2014 Account Monitoring Failure Information.*

*(J) The applicant relies upon and repeats the particulars in paragraph ii)(A) to (C) and (E) below.*

*(K) Prior to 16 June 2014, CBA ought reasonably to have conducted and further or alternatively Toevs ought reasonably to have caused CBA to conduct reconciliation audits to ensure completeness of data in automated processes and conduct ongoing reviews, especially after upgrades, to ensure completeness of data and integrity of monitoring processes (**Reconciliation Audit**).*

*(L) Had CBA conducted a Reconciliation Audit, Toevs ought reasonably to have come into possession of the June 2014 Account Monitoring Failure Information.*

*(M) The June 2014 Account Monitoring Information was very serious in that:*

*(1) Under Part A of the version of CBA's AML/CTF Program in force as at 16 June 2014, CBA was required to determine whether to adopt automated transaction monitoring for products/services designated for Priority Monitoring (COM.100.001.8441 at .8485).*

*(2) As a result of the reconciliation error, CBA's automated transaction monitoring was not functioning as intended for products/services that had been identified for automated transaction monitoring, in contravention of Part A of CBA's AML/CTF Program.*

*(3) CBA was obliged by s 82 of the AML/CTF to comply with Part A of its AML/CTF Program.*

*(4) CBA would be liable in the amount of up to 100,000 penalty units per contravention of s 82 of the AML/CTF Act.*

*(5) CBA was obliged by s 36(1) of the AML/CTF Act to monitor its customers in relation to the provision of designated services with a view to identifying, mitigating and managing ML/TF Risk; and*

*(6) CBA would be liable in the amount of up to 100,000 penalty units per contravention of s 36(1) of the AML/CTF Act.*

*ii) Further or alternatively, from around 16 June 2014 or shortly thereafter, Craig had or ought reasonably to have come into possession of the June 2014 Account Monitoring Failure Information in the course of the performance of his duties as Group Executive for Financial Services and the Chief Financial Officer of CBA as follows:*

*(A) Craig held ultimate responsibility for the Group Security division (COM.120.262.6982 at .6988), the division with central responsibilities for CBA's transaction monitoring, which included developing and publishing a transaction monitoring rule governance framework in March 2014 (COM.120.033.6548, COM.120.033.6553).*

*(B) Under the version of CBA's AML/CTF Program in force as at 16 June 2014, Craig was, as a Group Executive, responsible for "delivering effective compliance" with CBA's AML/CTF Program: see Section Three, Part 2.1.3 (COM.100.001.8441 at .8470);*

*(C) CBA ought reasonably to have conducted and further or alternatively, Craig ought reasonably to have caused CBA to conduct data reconciliation audits and quality assurance processes to occur in respect of CBA's transaction monitoring system*

*(D) The Applicant relies upon and repeats the particulars in paragraph i)(A) to (I) and (K) above.*

*(E) Prior to 16 June 2014, CBA ought reasonably to have conducted and further or alternatively, Craig ought reasonably to have caused CBA to conduct Reconciliation Audits.*

*(F) Had CBA conducted a Reconciliation Audit, Craig ought reasonably to have come into possession of the June 2014 Account Monitoring Failure Information.*

*(G) Further or alternatively, when CBA identified a 'systems error' on 16 June 2014 in relation to transaction monitoring, this information ought to have been reported to Craig which would have put Craig on a train on inquiry which would have led to him coming into possession of the June 2014 Account Monitoring Failure Information.*

*(H) The Applicant relies upon and repeats the particulars at paragraph i)(M) above.*

*iii) Further to i) and ii), from around 16 June 2014 or shortly thereafter, the 2014 NEDs and/or Narev ought reasonably to have come into possession of the June 2014 Account Monitoring Failure Information in the course of carrying out their duties as officers of CBA to whom Toevs and/or Craig reported.*

~~*i) The Account Monitoring Failure Information was information of which Toevs ought reasonably to have become aware in the course of carrying out his duties as Group Chief Risk Officer of CBA by no later than 16 June 2014, or alternatively the time when CBA took steps to update its Financial Crimes Platform in response to identification of the systems error, or alternatively from mid-2015 when CBA undertook a program of action to upgrade the financial crime technology used to monitor accounts and transactions for suspicious activity: 9 August Announcement.*~~

~~*ii) The Account Monitoring Failure Information was information of which Cohen ought reasonably to have become aware on and from 1 July 2016, in the course of taking over the duties of Chief Risk Officer from Toevs and in the course of carrying out the duties of Chief Risk Officer in continuing to oversee the implementation of the program of action referred to in (i) above.*~~

~~*iii) The Account Monitoring Failure Information was information of which Narev, the 2014 NEDs, and the 2015 NEDs ought reasonably to have become aware in the course of their duties as directors to whom Toevs reported, from no later than 16 June 2014, alternatively the time when CBA took steps to update its Financial Crimes Platform in response to identification of the systems error, or alternatively from the second half of 2015 when CBA undertook a program of action to upgrade the financial crime technology used to inter alia monitor accounts and transactions for suspicious activity (as described in the 9 August Announcement).*~~

~~*iv) On and from the Board Knowledge Date, Narev, the 2014 NEDs, and the 2015 NEDs had actual knowledge of the Account Monitoring Failure Information, or alternatively ought reasonably to have had knowledge of it, by reason of their position as directors of CBA, in that:*~~

~~*(A) after the Board Knowledge Date, the Board of CBA were aware that its systems had failed to give 53,306 TTRs on time (and failed to detect the late giving of the Late TTRs for a considerable period);*~~

~~*(B) after the Board Knowledge Date, the Board of CBA progressed a program of action for:*~~

~~*(I) promptly fixing the coding error relating to the IDM TTRs;*~~

~~*(II) changing senior leadership in the key roles overseeing financial crimes compliance, compliance more broadly and operational risk;*~~

~~*(III) recruiting more than 15 financial crime compliance professionals;*~~

~~*(IV) upgrading financial crime technology used to monitor accounts and transactions for suspicious activity (which upgrade was still incomplete as at 9 August 2017, and was expected "to be fully delivered over the next twelve months");*~~

~~*(V) commencing the upgrade of additional fraud monitoring technology;*~~

~~*(see 9 August Announcement)*~~

~~*(C) the scale of the remedial program of action described in (B) indicated the seriousness of the deficiencies in CBA's systems for assessing and monitoring ML/TF Risk in relation to IDMs, and generally, and the potential that those deficiencies affected the assessment and monitoring of a very large number of customer transactions (and thereby customer accounts).*~~

~~*(v) During the period 15 December 2011 to 1 February 2018 (to the extent relevant to information arising prior to 24 September 2015), the Board of CBA received reports from senior management in relation to AML/CTF compliance, which contained input from personnel with direct responsibility for and oversight of the AML/CTF function, and CBA's senior management received reports in relation to AML/CTF compliance from personnel engaged in direct responsibility and oversight of the AML/CTF function and oversaw a range of measures directed to enhancing its AML/CTF function: Agreed Facts in AUSTRAC Proceeding, paragraphs 85 and 98.*~~

45AA. From around 11 August 2015 or shortly thereafter, CBA was aware (within the meaning of ASX Listing Rule 19.12) that from at least 20 October 2012 to 11 August 2015, CBA failed to conduct account level monitoring with respect to 778,370 accounts (the **August 2015 Account Monitoring Failure Information**).

**Particulars**

*i) From around 11 August 2015 or shortly thereafter, Toevs had or ought reasonably to have come into possession of the August 2015 Account Monitoring Failure Information in the course of the performance of his duties as Chief Risk Officer and a Group Executive of CBA as follows:*

*(A) Particulars i)(C) and (E) to (I) to paragraph 45 are repeated.*

*(B) Particulars i)(E) to (I) to paragraph 41A are repeated.*

*(C) Under the version of CBA's AML/CTF Program in force as at 11 August 2015, Toevs, as Chief Risk Officer, was responsible for reporting to the Group Risk Committee on various matters relating to AML/CTF compliance, including 'all significant incidents', 'emerging issues' and 'material findings from audit reports and other independent reviews': see Section 3, part 2.1.2 (COM.100.001.8513 at .8550).*

*(D) Under the version of CBA's AML/CTF Program in force as at 11 August 2015, Toevs, as a Group Executive, was responsible for CBA's AML/CTF Program and "delivering effective compliance": see Section Three, Part 2.1.3 (COM.100.001.8513 at .8550).*

*(E) As a result of the reconciliation errors, as at around 11 August 2015, 778,370 accounts were or had been left with a null value in their account types and as a result were not subject to the intended transaction monitoring rules for a period ranging from less than one month to 2 years and 10 months.*

(F) *The Applicant relies upon and repeats the particulars in paragraphs (ii)(A), (B) and (D), below.*

(G) *Prior to 11 August 2015, CBA ought reasonably to have conducted and further or alternatively Toevs ought reasonably to have caused CBA to conduct a Reconciliation Audit.*

(H) *Had CBA conducted a Reconciliation Audit, Toevs ought reasonably to have come into possession of the August 2015 Account Monitoring Failure Information.*

(I) *The August 2015 Account Monitoring Information was very serious in that:*

(1) *Under Part A of the version of CBA's AML/CTF Program in force as at 11 August 2015, CBA was required to determine whether to adopt automated transaction monitoring for products/services designated for Priority Monitoring (COM.100.001.8513 at .8572).*

(2) *As a result of the reconciliation error, CBA's automated transaction monitoring was not functioning as intended for products/services that had been identified for automated transaction monitoring, in contravention of Part A of CBA's AML/CTF Program.*

(3) *CBA was obliged by s 82 of the AML/CTF to comply with Part A of its AML/CTF Program.*

(4) *CBA would be liable in the amount of up to 100,000 penalty units per contravention of s 82 of the AML/CTF Act.*

(5) *CBA was obliged by s 36(1) of the AML/CTF Act to monitor its customers in relation to the provision of designated services with a view to identifying, mitigating and managing ML/TF Risk; and*

(6) *CBA would be liable in the amount of up to 100,000 penalty units per contravention of s 36(1) of the AML/CTF Act*

ii) *Further or alternatively, from around 11 August 2015 or shortly thereafter, Craig had or ought reasonably to have come into possession of the August 2015 Account Monitoring Failure Information in the course of the performance of his duties as Group Executive for Financial Services and the Chief Financial Officer of CBA as follows:*

(A) *the particulars at ii)(A) to paragraph 45 above are repeated.*

(B) *Under the version of CBA's AML/CTF Program in force as at 11 August 2015, Craig was, as a Group Executive, responsible for "delivering effective compliance" with CBA's AML/CTF Program: see Section Three, Part 2.1.3 (COM.100.001.8513 at .8550);*

(C) *The Applicant relies upon and repeats the particulars in paragraph i)(A) to (E) and (G) above.*

(D) *Prior to 11 August 2015, CBA ought reasonably to have conducted and further or alternatively Craig ought reasonably to have caused CBA to conduct Reconciliation Audits.*

(E) *Had CBA conducted a Reconciliation Audit, Craig ought reasonably to have come into possession of the August 2015 Account Monitoring Failure Information.*

*(F) The Applicant relies upon and repeats the particulars at paragraph i)(I) above.*

*iii) Further to i) and/or ii), from around 11 August 2015 or shortly thereafter, the 2014 NEDs, the 2015 NEDs and/or Narev ought reasonably to have come into possession of the August 2015 Account Monitoring Information in the course of carrying out their duties as officers of CBA to whom Toevs and/or Craig reported.*

45AB. From around 8 September 2015 or shortly thereafter, CBA was aware (within the meaning of ASX Listing Rule 19.12) that from at least 20 October 2012 to 8 September 2015, CBA failed to conduct account level monitoring with respect to 778,370 accounts (the **September 2015 Account Monitoring Failure Information**).

**Particulars**

*i) From around 8 September 2015 or shortly thereafter, Toevs had or ought reasonably to have come into possession of the September 2015 Account Monitoring Failure Information in the course of the performance of his duties as Chief Risk Officer and a Group Executive of CBA as follows:*

*(A) Particulars i)(C) and (E) to (I) to paragraph 45 are repeated.*

*(B) Particulars i)(E) to (I) to paragraph 41A are repeated.*

*(C) Under the version of CBA's AML/CTF Program in force as at 8 September 2015, Toevs, as Chief Risk Officer, was responsible for reporting to the Group Risk Committee on various matters relating to AML/CTF compliance, including 'all significant incidents', 'emerging issues' and 'material findings from audit reports and other independent reviews': see Section 3, part 2.1.2 (COM.100.001.8513 at .8550).*

*(D) Under the version of CBA's AML/CTF Program in force as at 8 September 2015, Toevs, as a Group Executive, was responsible for CBA's AML/CTF Program and "delivering effective compliance": see Section Three, Part 2.1.3 (COM.100.001.8513 at .8550)*

*(E) As a result of the reconciliation errors, as at around 8 September 2015, 778,370 accounts were or had been left with a null value in their account types and as a result were not subject to the intended transaction monitoring rules for a period ranging from less than one month to 2 years and 11 months.*

*(F) The Applicant relies upon and repeats the particulars in paragraphs ii)(A), (B) and (D) below.*

*(F) Prior to 8 September 2015, CBA ought reasonably to have conducted and further or alternatively Toevs ought reasonably to have caused CBA to conduct a Reconciliation Audit*

(G) Had CBA conducted a Reconciliation Audit, Toevs ought reasonably to have come into possession of the September 2015 Account Monitoring Failure Information.

(H) The September 2015 Account Monitoring Information was very serious in that:

(1) Under Part A of the version of CBA's AML/CTF Program in force as at 8 September 2015, CBA was required to determine whether to adopt automated transaction monitoring for products/services designated for Priority Monitoring (COM.100.001.8513 at .8572).

(2) As a result of the reconciliation error, CBA's automated transaction monitoring was not functioning as intended for products/services that had been identified for automated transaction monitoring, in contravention of Part A of CBA's AML/CTF Program.

(3) CBA was obliged by s 82 of the AML/CTF to comply with Part A of its AML/CTF Program.

(4) CBA would be liable in the amount of up to 100,000 penalty units per contravention of s 82 of the AML/CTF Act.

(5) CBA was obliged by s 36(1) of the AML/CTF Act to monitor its customers in relation to the provision of designated services with a view to identifying, mitigating and managing ML/TF Risk; and

(6) CBA would be liable in the amount of up to 100,000 penalty units per contravention of s 36(1) of the AML/CTF Act.

ii) Further or alternatively, from around 8 September 2015 or shortly thereafter, Craig had or ought reasonably to have come into possession of the September 2015 Account Monitoring Failure Information in the course of the performance of his duties as Group Executive for Financial Services and the Chief Financial Officer of CBA as follows:

(A) the particulars at ii)(A) to paragraph 45 above are repeated.

(B) Under the version of CBA's AML/CTF Program in force as at 8 September 2015, Craig was, as a Group Executive, responsible for "delivering effective compliance" with CBA's AML/CTF Program: see Section Three, Part 2.1.3 (COM.100.001.8513 at .8550);

(C) The Applicant relies upon and repeats the particulars in paragraphs i)(A) to (E) and (F) above.

(D) Prior to 8 September 2015, CBA ought reasonably to have conducted and further or alternatively Craig ought reasonably to have caused CBA to conduct Reconciliation Audits.

(E) Had CBA conducted a Reconciliation Audit, Craig ought reasonably to have come into possession of the September 2015 Account Monitoring Failure Information.

(F) The Applicant relies upon and repeats the particulars at paragraph i)(H) above.

*iii) Further to i) and/or ii), from around 8 September 2015 or shortly thereafter, the 2014 NEDs, the 2015 NEDs and/or Narev ought reasonably to have come into possession of the September 2015 Account Monitoring Information in the course of carrying out their duties as officers of CBA to whom Toevs and/or Craig reported.*

45AC. Further or alternatively, from around 24 April 2017 or shortly thereafter, CBA was aware (within the meaning of ASX Listing Rule 19.12) of the September 2015 Account Monitoring Failure Information.

**Particulars**

*i) From around 24 April 2017 or shortly thereafter, Cohen had come into possession of the September 2015 Account Monitoring Failure Information in the course of the performance of his duties as follows:*

*(A) On 24 April 2017, Cohen received an email attaching a document titled 'CEO Regulatory and Operational Risk Report.' (COM.120.498.1085);*

*(B) The attachment to the email included a section under the heading 'AUSTRAC and Financial Crime Compliance', which reported that 'on 13 April 2017, CBA responded to a further request for information in respect of 778,370 accounts employee related accounts [sic] that were not subject to all transaction monitoring in the Financial Crimes Platform during the period between 20 October 2012 and 30 November 2015' (COM.120.498.1086 at .1099).*

## C.5 The ML/TF Risk~~s~~ Systems Deficiency ~~Information~~

### *C.5.1 Late TTRs*

45A. The Applicant repeats paragraph<u>s</u> 40<u>, 40A and 40B</u>.

45B The Late TTRs<u>:</u>

(a) were caused by an error in CBA's TTR process (being a configuration error which prevented TTRs from being issued for transactions with a certain transaction code);

(b) that error~~which~~ arose in approximately November 2012<u>;</u>~~,~~

(c) that error ~~and~~ was not detected until approximately August 2015<u>; and</u>

(d) that error was not rectified by or at any time prior to 8 September 2015.

45C. At all material times until 8 September 2015 ~~prior to the Relevant Period~~, CBA's systems for assessing, monitoring and managing ML/TF Risk and reporting transactions which may be affected by ML/TF Risk (**CBA's ML/TF Systems**) ought to have:

(a) given TTRs on time for all cash transactions of $10,000 or more processed through IDMs; and

(b) identified that TTRs were not being given for certain cash transactions of $10,000 or more processed through IDMs much earlier than some years after the configuration error arose in November 2012,

and those systems were deficient in that respect.

### *C.5.2 ML/TF Risk Assessment of IDMs*

45D. The Applicant repeats paragraphs 42 and 42A.

45E. CBA's ML/TF Systems ought to have:

(a) caused CBA to undertake an assessment of ML/TF Risk of IDMs ~~in the period prior to the Relevant Period~~ prior to the roll out of IDMs in May 2012;~~,~~ and ~~ought to have~~

(b) led CBA to consider whether to impose and/or to impose transaction limits on IDMs,

and those systems were deficient in those respects.

45F. In relation to the Relevant Period, although CBA undertook the July 2015 Deficient Risk Assessment, that assessment did not follow the procedures set out in CBA's AML/CTF Program, and throughout the Relevant Period CBA failed to undertake an assessment of the ML/TF Risk of IDMs in accordance with CBA's AML/CTF Program and failed to consider to impose and/or to impose any restrictions or limits on deposits through IDMs, notwithstanding being on notice since at least July 2015 that IDMs were being used for money laundering.

**Particulars**

*i) In July 2015, CBA undertook an assessment of the inherent ML/TF Risk of IDMs but did not follow the procedures set out in CBA's AML/CTF Program and did not introduce daily limits notwithstanding that in July*

*2015 it had identified instances of money laundering of several millions of dollars through IDMs: Agreed Facts in AUSTRAC Proceeding, paragraph 32.*

*ii) On or about 18 December 2015, CBA received a confidential Methodologies Brief regarding ATM deposits from AUSTRAC that identified a "significant vulnerability" of IDMs being used for money laundering having regard to the ability to deposit cash anonymously and in the absence of daily cash deposit limits, but CBA did not take any further steps as a result to assess ML/TF Risk of IDMs.*

*iii) In approximately July 2016, CBA undertook an assessment of ML/TF Risk of IDMs but did not follow the procedures set out in CBA's AML/CTF Program and did not introduce daily limits at that time. CBA did not commence introducing daily limits until approximately November 2017 and did not complete doing so until approximately April 2018.*

45G. In relation to the matters referred to in paragraph 45F, CBA's ML/TF Systems ought to have ensured that an assessment was carried out of the ML/TF Risk of CBA's IDMs in accordance with CBA's AML/CTF Program, and ought to have led CBA to consider whether to impose and/or to impose transaction limits on IDMs, and those systems were deficient in that respect.

### *C.5.3 Transaction monitoring on accounts*

45H. The Applicant repeats paragraph 44 and 45.

45I. At all material times:

(a) between approximately 20 October 2012 and 16 June 2014, CBA's ML/TF Systems ought to have detected the 'systems' error in relation to transaction monitoring on hundreds of thousands of accounts as pleaded in paragraph 44, and CBA's ML/TF Systems were deficient in that respect; and

(b) between approximately 20 October 2012 and 14 October 2015, ~~prior to the Relevant Period,~~ CBA's ML/TF Systems were deficient in that account level monitoring was not operating correctly for a very large number of accounts.

### *C.5.4 Suspicious Matter Reports*

45J. Between approximately 28 August 2012 and the end of the Relevant Period, CBA adopted an approach of:

(a) not providing SMRs if CBA had already submitted an SMR in relation to the relevant customer within the previous 3 months about a similar pattern of activity on the same account; and

(b) not providing SMRs where CBA had received information from a law enforcement body, on the misapprehension that such information did not need to be reported to AUSTRAC.

45K. The matters referred to in paragraph 45J amounted to a deficiency in CBA's ML/TF Systems, in that these approaches should not have been adopted and the relevant SMRs should have been provided to AUSTRAC.

### *C.5.5 Customer Monitoring and Management*

45L. By s36(1) of the AML/CTF Act, CBA was obliged to monitor its customers with a view to identifying, mitigating and managing the risk it reasonably faced that the provision of a designated service might involve or facilitate money laundering or terrorism financing, and to do so in accordance with the AML/CTF Rules.

45M. In the period from 2011 until the end of the Relevant Period, CBA's ML/TF Systems were deficient, in that:

(aa) insufficient automated transaction monitoring alerts were generated by CBA, in circumstances where there were transactions which were unusually large, complex, had an unusual pattern, or had no apparent economic or visible lawful purpose;

(a) CBA's review of transaction monitoring alerts, and review of concerns raised by CBA employees about suspicious transactions, operated too slowly (and in many cases not at all) to give timely suspicious matter reports to AUSTRAC, or to reduce or prevent money laundering or terrorism financing by restricting or terminating customers' accounts, whereas CBA's ML/TF Systems should have ensured that suspicious matter reports were generated and provided promptly;

(b) in cases where transaction monitoring alerts had been generated in respect of an account, CBA's ML/TF Systems frequently did not ensure that CBA took timely steps to:

i. verify the identity of the customer; or

ii. verify whether the customer had a legitimate reason for depositing cash amounts or transferring such deposits out of the CBA,

whereas CBA's ML/TF Systems should have ensured that timely steps were taken in these respects.

(c) in cases where CBA had information suggesting that the customer may be involved in money laundering or terrorism financing, CBA's ML/TF Systems frequently did not ensure that CBA took timely steps to consider whether to restrict transactions on the account or terminate the account and to take either of those actions where appropriate, whereas CBA's ML/TF Systems should have ensured that timely steps were taken in that regard;

(b) where CBA decided to terminate a customer's account for suspected money laundering or terrorism financing, CBA gave the customer 30 days' notice and permitted ongoing transactions on the account in the meantime, including cash deposits and international transfers, and that policy was a deficiency in CBA's ML/TF Systems because it permitted suspected money laundering and terrorism financing to continue unchecked for a further 30 days.

### *C.5.6 Computing coding errors*

45N. From at least 20 October 2012 to 12 October 2015, a 'systems error' or 'computer coding error' (**October 2012 Systems Error**) occurred and subsisted, through the merging of data from two systems, in relation to transaction monitoring on ~~up to~~ ~~778,370~~ CBA customer accounts.

**Particulars**

*i) On 16 June 2014, CBA had identified the October 2012 Systems Error, which at that time had subsisted for 1 year and 8 months;*

*ii) Although the October 2012 Systems Error was corrected by approximately 19 September 2014 such that it no longer affected new accounts, it took until approximately 14 October 2015 to substantially complete the process of populating the 'account type description' field in the affected accounts, and the account level monitoring on existing accounts did not operate correctly until the populating of the missing field had occurred.*

*iii) The systems error affected transaction monitoring on up to 778,370 accounts on 16 June 2014 ~~in relation to transaction monitoring on up to 778,370 accounts, which had subsisted since at least 20 October 2012~~.*

*iv) The Applicant refers to and relies ~~rely~~ upon:*

*i) CBA's Concise Response in AUSTRAC Proceeding, in particular paragraph 15; and*

*ii) CBA's Defence in AUSTRAC Proceeding, in particular paragraph 24.*

v) *The Applicant also refers to and repeats paragraphs ~~44 and 45~~ above.*

45O. The October 2012 Systems Error:

~~(a) affected transactions on hundreds of thousands of customer accounts from at least 20 October 2012;~~

(b) had the result that the 'account type description' field (which indicated whether the account was personal or commercial) was not ~~being~~ populated within CBA's Financial Crime Platform and so account-level automated transaction monitoring rules did not operate as intended in respect of the affected customer accounts;

(c) was not identified until 16 June 2014;

(d) was not rectified by or at any time prior to 8 September 2015 ~~was not remedied until 12 October 2015 or alternatively 27 September 2016;~~

~~(e) could have been identified and remedied earlier, had CBA had appropriate backup or failsafe systems.~~

**Particulars**

*The Applicant refers to and rely upon:*

*i) CBA's Concise Response in AUSTRAC Proceeding, in particular paragraph 15;*

*ii) CBA's Defence in AUSTRAC Proceeding, in particular paragraph 24;*

*iii) The Agreed Facts in AUSTRAC Proceeding, in particular paragraphs 51 to 53.*

45P. From at least 5 November 2012 to 8 September 2015, an additional 'systems error' or 'computer coding error' (**November 2012 Systems Error**) occurred and subsisted, through changes to transaction codes used for deposits on CBA's IDMs, in relation to the automatic generation of TTRs for threshold transactions on the IDMs.

**Particulars**

*i) CBA identified the November 2012 Systems Error ~~on a day unknown to the Applicant~~ on or about 25 August 2015 (COM.120.179.3590), following notification it received from AUSTRAC on 11 August 2015 of two TTRs CBA had not made on IDMs.*

*ii) The Applicant refers to and relies~~y~~ upon the Agreed Facts in AUSTRAC Proceeding, paragraphs 44 to 45.*

45Q. The November 2012 Systems Error:

~~(a) affected the generation of TTRs for threshold transactions on CBA's IDMs from at least November 2012;~~

~~(b) should have been identified and remedied by no later than 16 June 2014, had CBA had appropriate backup or failsafe systems;~~

(a) had the result that transactions allocated to transaction code 5000 were omitted from the TTR generation and reporting process;

(b) was identified by CBA on or about 25 August 2015;

(c) was not rectified by or at any time prior to 8 September 2015 ~~was not identified and remedied until a date unknown to the Applicant in August or September 2015~~.

**Particulars**

*The Applicant refers to and rely upon the Agreed Facts in AUSTRAC Proceeding, paragraphs 44 to 45.*

### *C.5.7 Systems Deficiencies*

46. By reason of:

(a) the matters identified in paragraphs 45A to 45C;

(b) the matters identified in paragraphs 45D and 45E; and/or

(c) the matters identified in paragraphs 45H and 45I,

CBA's ML/TF Systems had been, or were, deficient prior to the commencement of the Relevant Period (**Pre-16 June 2014 Systems Deficiencies**).

46A By reason of.

(a) the matters identified in paragraphs 45F and 45G;

(b) the matters identified in paragraphs 45J and 45K; ~~and/or~~

(c) the matters identified in paragraphs 45L and 45M;

(d) the matters identified in paragraphs 45N and 45O; and/or

(e) the matters identified in paragraphs 45P and 45Q,

CBA's ML/TF Systems were deficient prior to and during the Relevant Period (**Ongoing Systems Deficiencies**).

~~47 From a date presently unknown to the Applicant, but not later than at least 16 June 2014, or alternatively 24 September 2015, CBA was aware (within the meaning of ASX Listing Rule 19.12) of the Pre-16 June 2014 Systems Deficiencies and the Ongoing Systems Deficiencies (together the **ML/TF Risk Systems Deficiency Information**).~~

~~**Particulars**~~

~~(i) *At all times in the Relevant Period, the ML/TF Risk Systems Deficiency Information was information of which Toevs ought reasonably to have become aware in the course of carrying out his duties as Group Chief Risk Officer of CBA from no later than 16 June 2014, or alternatively 24 September 2015.*~~

~~(ii) *On and from the Board Knowledge Date, each of Narev and the 2014 NEDs, and the 2015 NEDs had actual knowledge of this information, or alternatively ought reasonably to have had knowledge of by reason of their position as directors of CBA, in that:*~~

~~*(A) after the Board Knowledge Date, the board was aware that its systems had failed to lodge 53,306 TTRs on time (and failed to detect the late lodgement of the Late TTRs for a considerable period);*~~

~~*(B) after the Board Knowledge Date, the board progressed a program of action for:*~~

~~*(I) promptly fixing the coding error relating to the IDM TTRs;*~~

~~*(II) changing senior leadership in the key roles overseeing financial crimes compliance, compliance more broadly and operational risk;*~~

~~*(III) recruiting more than 15 financial crime compliance professionals;*~~

~~*(IV) upgrading financial crime technology used to monitor accounts and transactions for suspicious activity (which upgrade was still incomplete as at 9 August 2017, and was expected "to be fully delivered over the next twelve months");*~~

~~*(V) commencing the upgrade of additional fraud monitoring technology,*~~

~~*(see 9 August Announcement);*~~

~~*(C) the scale of the remedial program of action indicated the seriousness of the deficiencies in CBA's systems for assessing and monitoring ML/TF Risk in relation to IDMs, and generally, and the potential that those deficiencies affected*~~

~~*the assessment and monitoring of a very large number of customer transactions (and thereby customer accounts)*~~

(iii) ~~*Further or alternatively, the ML/TF Risk Systems Deficiency Information was information of which Narev and the 2014 NEDs and the 2015 NEDs ought reasonably to have become aware in the course of their duties as directors to whom Toevs reported, and of which they became actually aware at a time in the Relevant Period which is unknown to the Applicant with its present state of knowledge.*~~

(iv) ~~*Further or alternatively, the ML/TF Risk Systems Deficiency Information was information of which each of the 2015 NEDs and the 2016 NEDs ought reasonably to have become aware of on and from a date shortly after the dates of their respective appointments, by familiarising themselves with the previous records of the board of CBA.*~~

~~*During the period 15 December 2011 to 1 February 2018 (to the extent relevant to information arising prior to 24 September 2015), the Board of CBA received reports from senior management in relation to AML/CTF compliance, which contained input from personnel with direct responsibility for and oversight of the AML/CTF function, and CBA's senior management received reports in relation to AML/CTF compliance from personnel engaged in direct responsibility and oversight of the AML/CTF function and oversaw a range of measures directed to enhancing its AML/CTF function: Agreed Facts in AUSTRAC Proceeding, paragraphs 85 and 98.*~~

~~*Further or alternatively, each member of the Board of CBA and/or the Chief Risk Officer of the CBA Group had actual knowledge, or alternatively ought reasonably to have had knowledge, of this information by reason of the following matters recounted in the Australian Prudential Regulation Authority report 'Prudential Inquiry into the Commonwealth Bank of Australia' dated April 2018:*~~

~~*(A) CBA's ML/TF Risk systems were the subject of 'red' audit reports in 2013, 2015 and September 2016 (to the extent relevant to information arising prior to 24 September 2015), which identified weaknesses in ML/TF Risk management and processes, and some such issues arose repeatedly: pp 15 – 16;*~~

~~*(B) The later reports identified that ML/TF Risks management and process issues identified in earlier reports had not been remediated or addressed, and where they had been, had been reopened due to inadequacies in remediation. Successive remediation programs were slow to address underlying failings in the ML/TF Risk control framework. These remediation failures arose due to lack of ownership in CBA of ML/TF Risk management processes and inadequate implementation of action plans: pp 15 – 16, 23;*~~

~~*(C) An internal audit report in December 2014 showed that five ML/TF Risk control weaknesses had been identified as requiring remediation, and four of those issues had been closed without fully addressing the risk: p 41;*~~

~~*(D) Senior executives at several business units of CBA had identified material concerns with ML/TF Risk management from 2014 to 2016*~~

~~*(to the extent relevant to information arising prior to 24 September 2015)and raised those concerns with CBA's Group Risk function: pp 23, 60;*~~

~~*(E) There was a lack of accountability by heads of business units for the ML/TF Risk generated by the products and services they offered: p 60;*~~

~~*(F) At all levels, the degree of attention and priority afforded to the governance and management of non-financial risks in CBA, including ML/TF Risk, was not to the standard expected in a domestic systemically important bank: p 11;*~~

~~*(G) An internal audit in 2015 identified ML/TF Risk as one of the top ten risk areas or control concerns for CBA, but management decided, upon considering that report, not to alter its budget for control remediation: p 52;*~~

~~*By November 2016 (to the extent relevant to information arising prior to 24 September 2015), AML-CTF compliance was rated internally as the top-rated operational risk facing CBA: p 19.*~~

**C.6 The Potential Penalty Information**

48. From ~~a date presently unknown to the Applicant, but not later than at least~~ around 16 June 2014 or shortly thereafter, or alternatively 11 August 2015 or shortly thereafter, or alternatively ~~24~~ 8 September 2015 or shortly thereafter, or alternatively 24 April 2017 or shortly thereafter, CBA was potentially exposed to enforcement action by AUSTRAC in respect of allegations of serious and systemic non-compliance with the AML/CTF Act, which might result in CBA being ordered to pay a substantial civil penalty (**Potential Penalty Information**)

**Particulars**

*i) The June 2014 Late TTR Information, August 2015 Late TTR Information, and September 2015 Late TTR Information could be characterised as an allegation of serious and systemic non-compliance with the AML/CTF Act.*

*ii) The June 2014 IDM ML/TF Risk Assessment Non-Compliance Information, and August 2015 IDM ML/TF Risk Assessment Non-Compliance Information, could be characterised as an allegation of serious non-compliance with the AML/CTF Act.*

*iii) The June 2014 Account Monitoring Failure Information, August 2015 Account Monitoring Failure Information, and September 2015 Account Monitoring Failure Information could be characterised as an allegation of serious and systemic non-compliance with the AML/CTF Act.*

~~*iv) The ML/TF Risk Systems Deficiency Information could be characterised as an allegation of serious and systemic non-compliance with the AML/CTF Act.*~~

iv) *The precise quantum of the potential civil penalty would be assessed on a basis which took into account (A) the number of contraventions of the AML/CTF Act (which was numbered in the tens of thousands, having regard to the June 2014 Late TTR Information, the August 2015 Late TTR Information, and the September 2015 Late TTR Information and the number of accounts the subject of the June 2014 Account Monitoring Failure Information, the August 2015 Account Monitoring Failure Information and the September 2015 Account Monitoring Failure Information), and (B) the seriousness of the contraventions, having regard to the failure to conduct risk assessments of IDMs, the subject of the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information and the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information.*

v) *In assessing the amount of the potential civil penalty CBA was not entitled to assume that the Court would (either in principle or on the facts) treat the contraventions of the AML/CTF Act as a single course of conduct, rather the Court would take into account:*

*(A) the number of contraventions of the AML/CTF Act (which was numbered in the tens of thousands, having regard to the June 2014 TTR Information, the August 2015 Late TTR Information, and the September 2015 Late TTR Information);*

*(B) the period of time over which the contraventions extended;*

*(C) the circumstances in which the contraventions took place;*

*(D) the deterrent nature of the civil penalty; and*

*(E) the systemic nature of the contraventions.*

vi) *The Applicant also refers to and relies ~~rely~~ on CBA's Concise Response in AUSTRAC Proceeding, in particular paragraphs 14, 15, 18, 19, 21, 22, 25, 26, 28, 31 and 32.*

vii) *The Applicant also refers to and relies ~~rely~~ on AUSTRAC's Enforcement Strategy 2012 – 14 (which was publicly available), which described AUSTRAC's enforcement priorities as including non-compliance with transaction reporting obligations, non-compliance with AML/CTF program obligations, and injunctions and civil penalty orders.*

49. From ~~a date presently unknown to the Applicant, but not later than at least~~ around 16 June 2014 or shortly thereafter, or alternatively 11 August 2015 or shortly thereafter, or alternatively ~~24~~ 8 September 2015 or shortly thereafter, or alternatively 24 April 2017 or shortly thereafter, CBA was aware (within the meaning of ASX Listing Rule 19.12) of the Potential Penalty Information.

**Particulars**

***Particulars as at 16 June 2014***

*i) From around 16 June 2014 or shortly thereafter, Toevs ought reasonably to have come into possession of the Potential Penalty Information in the course of the performance of his duties as Chief Risk Officer and a Group Executive of CBA as follows:*

*(A) The particulars at i) to Paragraph 41 are repeated.*

*(B) The particulars at ii) to Paragraph 43 are repeated.*

*(C) The particulars at i) to Paragraph 45 are repeated.*

*(D) Under the version of CBA's AML/CTF Program in force as at 16 June 2014, Toevs, as Chief Risk Officer, was responsible for reporting to the Group Risk Committee on various matters relating to AML/CTF compliance, including 'all significant incidents', 'emerging issues' and 'material findings from audit reports and other independent reviews': see Section 3, part 2.1.2 (COM.100.001.8441 at .8469).*

*(E) Further, as a Group Executive, Toevs was responsible for CBA's AML/CTF Program and "delivering effective compliance": see Section Three, Part 2.1.3 (COM.100.001.8441 at .8470).*

*(F) Accordingly, Toevs was aware, or ought reasonably to have been aware, of the civil penalty provisions that applied to contraventions of the AML/CTF Act and Rules.*

*(G) Further, Toevs was aware, or ought reasonably to have been aware, of AUSTRAC's Enforcement Strategy 2012 – 14 (which was publicly available), which described AUSTRAC's enforcement priorities as including non-compliance with transaction reporting obligations, non-compliance with AML/CTF program obligations, and injunctions and civil penalty orders.*

*(H) By no later than 16 December 2013, Dingley as Chief Operational Risk Officer of the GORC division of the Risk Management business unit, became aware that a CBA Internal Audit had identified several issues with CBA's AML/CTF compliance, several of which were stated to have the "implication" of "regulatory penalties and remediation" (COM.100.002.3025 at .3025, .3026, .3027, .3037). Issues with information missing from Suspicious Transaction Reports leading to a failure to report SMRs had the "implication" of "the Bank being liable for severe penalties" (COM.100.002.3025 at .3046). Dingley did or ought to have reported this information to Toevs, his direct superior.*

*ii) From around 16 June 2014 or shortly thereafter, Comyn ought reasonably to have come into possession of the Potential Penalty Information in the course of the performance of his duties as Group Executive of RBS as follows:*

*(A) The particulars at ii) to Paragraph 41 are repeated.*

*(B) The particulars at iii) to Paragraph 43 are repeated.*

*(C) Further, as a Group Executive, Comyn was responsible for CBA's AML/CTF Program and "delivering effective compliance": see Section Three, Part 2.1.3 (COM.100.001.8441 at .8470).*

*(D) Accordingly, Comyn was aware, or ought reasonably to have been aware, of the civil penalty provisions that applied to contraventions of the AML/CTF Act and Rules.*

*(E) Further, Comyn was aware, or ought reasonably to have been aware, of AUSTRAC's Enforcement Strategy 2012 – 14 (which was publicly available), which described AUSTRAC's*

*enforcement priorities as including non-compliance with transaction reporting obligations, non-compliance with AML/CTF program obligations, and injunctions and civil penalty orders.*

*iii) From around 16 June 2014 or shortly thereafter, Craig ought reasonably to have come into possession of the Potential Penalty Information in the course of the performance of his duties as Group Executive of Financial Services as follows:*

*(A) The particulars at ii) to paragraph 45 are repeated.*

*(B) Further, as a Group Executive, Craig was responsible for CBA's AML/CTF Program and "delivering effective compliance": see Section Three, Part 2.1.3 (COM.100.001.8441 at .8470).*

*(C) Accordingly, Craig was aware, or ought reasonably to have been aware, of the civil penalty provisions that applied to contraventions of the AML/CTF Act and Rules.*

*(D) Further, Craig was aware, or ought reasonably to have been aware, of AUSTRAC's Enforcement Strategy 2012 – 14 (which was publicly available), which described AUSTRAC's enforcement priorities as including non-compliance with transaction reporting obligations, non-compliance with AML/CTF program obligations, and injunctions and civil penalty orders.*

*iv) Further to i) and/or ii) and/or iii), from around 16 June 2014 or shortly thereafter, the 2014 NEDs and/or Narev ought reasonably to have come into possession of the Potential Penalty Information in the course of carrying out their duties as officers of CBA to whom Toevs and/or Comyn and/or Craig reported.*

***Particulars as at 11 August 2015***

*v) From around 11 August 2015 or shortly thereafter, Toevs had or ought reasonably to have come into possession of the Potential Penalty Information in the course of the performance of his duties as Chief Risk Officer and a Group Executive of CBA as follows:*

*(A) The particulars at i) to Paragraph 41A are repeated.*

*(B) The particulars at iii) to Paragraph 43A are repeated.*

*(C) The particulars at i) to Paragraph 45AA are repeated.*

*(D) The particulars at i)(D) to (H) to Paragraph 49 are repeated.*

*(E) By no later than 19 August 2014, Toevs had provided "final review comments" (see COM.120.222.0442) on a PricewaterhouseCoopers external audit report entitled "Project Alpha: Root cause analysis of the identified Group-wide AML/CTF issues" (COM.100.001.6348). This report identified the Australian "AML/CTF regulatory landscape" following the "Financial Action Task Force (FATF) in August 2014" is "expected to increase the potential for regulatory action by Australia's AML/CTF regulator…(AUSTRAC)." (COM.100.001.6348 at .6354).*

*(F) On 5 September 2014 Toevs received an email (COM.120.222.4925) including an APRA Report sent to CBA which noted "one area of particular concern was the identified*

*gaps within the bank's AML/CTF and Sanctions controls and monitoring processes…It is critical that CBA address the deficiencies that have been identified..." which was noted to be of "increasing importance given the recent large fines levied overseas for breaches of AML regulations and Sanctions."*

*(G) On 13 November 2014, Toevs attended an Executive Committee Meeting, during which it was noted that "Failure to comply with AML/CTF obligations could lead to regulatory action financial loss and/or reputational damage" and that "In addition financial crimes erode the integrity of financial institutions, and have far-reaching impacts on our customers and communities. Globally, the regulatory consequences of AML/CTF non-compliance have increased substantially." (**13 November 2014 Executive Committee Meeting**) COM.141.312.4243.*

*(H) On 22 July 2015, AUSTRAC announced the commencement of Federal Court Proceedings against Tabcorp;*

*(I) On 30 July 2015, Byrne (Head of Regulatory Engagement & Escalated Matters) attended a meeting with AUSTRAC representatives where a file note produced in respect of that meeting noted "As an overarching comment JM [AUSTRAC] stated that on the face of it, the CBA APRA Systems Internal Audit Report is very concerning and is raising questions internally within AUSTRAC, in these circumstances AUSTRAC would potentially consider if enforcement action would be necessary" COM.141.316.3239. At all relevant times up to 11 August 2015, Byrne reported to Williams, who in turn reported to Dingley who, in turn reported to Toevs. This information was or ought to have been reported to Toevs.*

*(J) On 3 August 2015, in an email exchange between Dingley and Toevs regarding a Group Financial Crimes team (the team that reported to Byrne) meeting with AUSTRAC, it was noted that APRA and AUSTRAC had met and shared CBA internal audit report on AML systems which AUSTRAC considered raises "serious concerns" and that in such circumstances "AUSTRAC may consider enforcement action." These concerns related to gaps in "IFTI, TTR and SMR reporting" and the "fact that the business didn't understand what was reportable…systems not generating alerts and…issues with the High Risk Customer model…the systems haven't been looked at since 2009.": COM.101.471.7952.*

*vi) From around 11 August 2015 or shortly thereafter, Comyn ought reasonably to have come into possession of the Potential Penalty Information in the course of the performance of his duties as Group Executive, RBS as follows:*

*(A) The particulars at ii)(C) to (E) to Paragraph 49 are repeated.*

*(B) The particulars at ii) to Paragraph 41A are repeated.*

*(C) The particulars at iv) to Paragraph 43A are repeated.*

*(D) on 13 November 2014, Comyn attended the 13 November 2014 Executive Committee Meeting.*

*vii) From around 11 August 2015 or shortly thereafter, Craig ought reasonably to have come into possession of the Potential Penalty Information in the course of the performance of his duties as Group Executive, Financial Services as follows:*

*(A) The particulars at iii)(C) to (E) to Paragraph 49 are repeated.*

*(B) The particulars at ii) to Paragraph 45AA are repeated.*

*(C) on 13 November 2014, Craig attended the 13 November 2014 Executive Committee Meeting (COM.120.378.0578_E, COM.120.879.1669).*

*viii) Further to v) and/or vi) and/or vii), from around 11 August 2015 or shortly thereafter, the 2014 NEDs, the 2015 NEDs and/or Narev ought reasonably to have come into possession of the Potential Penalty Information in the course of carrying out their duties as officers of CBA to whom Toevs and/or Comyn and/or Craig reported.*

***Particulars as at 8 September 2015***

*ix) From around 8 September 2015 or shortly thereafter, Toevs had the Potential Penalty Information, or ought reasonably to have come into possession of the Potential Penalty Information in the course of the performance of his duties as Chief Risk Officer and a Group Executive of CBA as follows:*

*(A) The particulars at v)(D) to (J) to Paragraph 49 are repeated.*

*(B) The particulars at i) to Paragraph 41B are repeated.*

*(C) The particulars at iv) to Paragraph 43B are repeated.*

*(D) The particulars at i) to Paragraph 45AB are repeated.*

*(E) On 20 August 2015, Dingley informed Toevs that deposits through IDMs were apparently "not reflected in the cash transaction report that is submitted to" AUSTRAC. Dingley noted that the issue could "go back to 2010". He opined that, if the TTR issue were a "systemic issue", it "may just tip the balance" on CBA's negotiations with AUSTRAC regarding the Group Audit Report relating to the ongoing systems review, such that "it could be a tough ride" with AUSTRAC: COM.101.472.4058.*

*(F) On 27 August 2015, Toevs received an email which indicated the confirmed number of missed TTRs was 51,637 and that Walker had "recommended to Group that they should engage Larissa Shafir in legal to determine an appropriate notification and remediation strategy before they go to regulators" COM.101.472.4697.*

*(G) On 7 September 2015 an email exchange between Toevs, Dingley and Larnach stated that a briefing note was being prepared by Byrne for Narev in respect of "the AUSTRAC Reporting Matter", referring to the TTR issue. This document noted that the issue has a "value at stake" of "failure to comply with this obligation can result in reputational damage and regulatory enforcement including fines and remedial action." COM.101.842.0091. Toevs confirmed he "…talked [Narev] through several points in it." COM.101.472.5573*

*(H) On 8 September 2015 Toevs caused a letter to be sent to AUSTRAC notifying it of the TTR reporting breach. The letter specified the duration of the breach (November 2012 to August 2015), the number of missed TTRs (51,637), and noted that the missed TTRs represented 2.3% of overall TTR volume. The letter also advised AUSTRAC that a system fix had been designed and would be tested and implemented by 11 September 2015 indicating that the TTR issue would be remediated from then with the inference that prior to that time the system was not remediated. COM.141.022.7240.*

*x) From around 8 September 2015 or shortly thereafter, Comyn ought reasonably to have come into possession of the Potential Penalty Information in the course of the performance of his duties as Group Executive, RBS as follows:*

*(A) The particulars at ii)(C) to (E) and vi)(D) to Paragraph 49 are repeated.*

*(B) The particulars at ii) to Paragraph 41B are repeated.*

*(C) The particulars at v) to Paragraph 43B are repeated.*

*xi) From around 8 September 2015 or shortly thereafter, Craig ought reasonably to have come into possession of the Potential Penalty Information in the course of the performance of his duties as Group Executive, Financial Services as follows:*

*(A) The particulars at vii)(A) and (C) to Paragraph 49 are repeated.*

*(B) The particulars at ii) to Paragraph 45AB are repeated.*

*xii) From around 8 September 2015 or shortly thereafter, Narev had the Potential Penalty Information, or ought reasonably to have come into possession of the Potential Penalty Information in the course of the performance of his duties as CEO of CBA as follows: on 7 September 2015, Narev was briefed by Toevs on the contents of a briefing note prepared by Byrne in respect of "the AUSTRAC Reporting Matter", referring to the TTR issue. This document noted that the issue has a "value at stake" of "failure to comply with this obligation can result in reputational damage and regulatory enforcement including fines and remedial action." COM.101.842.0091. Toevs confirmed he "…talked [Narev] through several points in it." COM.101.472.5573*

*xiii) Further to ix) and/or x) and/or xi), from around 8 September 2015 or shortly thereafter, the 2014 NEDs, the 2015 NEDs and/or Narev ought reasonably to have come into possession of the Potential Penalty Information in the course of carrying out their duties as officers of CBA to whom Toevs and/or Comyn and/or Craig reported.*

***Particulars as at 24 April 2017***

*xiv) As at 24 April 2017, Toevs had the Potential Penalty Information in the course of the performance of his duties as Chief Risk Officer and a Group Executive of CBA as follows:*

*(A) By no later than 12 October 2015, Toevs was aware that regulatory action had been taken against Tabcorp for AML/CTF breaches (**Tabcorp Proceeding**), in that he had received and had*

*reviewed a Risk Committee paper to that effect (COM.101.472.8113)*

(B) *On 27 April 2016, Craig prepared a board paper that reported that AUSTRAC had commenced the Federal Court action against Tabcorp, and that the CEO of AUSTRAC, Paul Jevtovic, had a "strong law enforcement background and was expected to mark a change in AUSTRAC's regulatory approach" (COM.120.133.5316). That board paper was provided to Narev, Toevs, Comyn, Cohen, Craig, the 2014 NEDs, the 2015 NEDs and the 2016 NEDs.*

(C) *On 22 June 2016, AUSTRAC sent CBA a Notice (**June 2016 Notice**) issued under s 167 of the AML/CTF Act (a **s 167 Notice**), requiring the giving of information and the production of documents by CBA in respect of AML/CTF compliance (COM.100.001.4871)*

(D) *On 23 June 2016 Craig, Toevs, and Comyn each received an email stating that AUSTRAC had issued the June 2016 Notice, which email summarised the notice, stated that information collected under it "could be used by AUSTRAC in civil penalty proceedings against [CBA]", and noted that a "Project Team" called Project Concord had been established "to assist in maintaining confidentiality and legal privilege" (COM.120.043.5030 and COM.120.134.5877).*

(E) *On 2 September (COM.100.003.0785) and 14 October 2016 (COM.100.004.2985), AUSTRAC sent CBA further s 167 Notices the latter of which was amended on 4 November 2016 (COM.150.002.0048).*

(F) *On 21 November 2016 Craig authored an update to CBA's Executive Committee stating that "regulatory scrutiny has increased, with AUSTRAC issuing the Group with three Enforcement Notices relating to the threshold transaction reporting (TTR) issue from 2015", and that "Group Audit has re-confirmed its 2013 "unsatisfactory" rating of the Group's Anti-Money Laundering (AML) compliance framework" (COM.120.075.2687). The update was provided at a meeting of the Executive Committee on 21 November 2016 attended by Comyn, Toevs, Cohen, Craig and Narev.*

(G) *On 16 March 2017, the Federal Court approved the $45m penalty payable by Tabcorp in the Tabcorp Proceeding.*

*xv) Further or alternatively, as at 24 April 2017 or shortly thereafter, Craig had come into possession of the Potential Penalty Information in the course of the performance of his duties as Group Executive for Financial Services and the Chief Financial Officer of CBA as follows:*

(A) *The Applicant relies upon and repeats the particulars at xiv)(B),(D) to (G) above, and xviii) (C) and (D) below.*

(B) *On 13 July 2016, Craig, Cohen, Comyn and Narev each received an email regarding the June 2016 Notice, which email summarised the notice, noted that "collected under this notice could be used by AUSTRAC in civil penalty proceedings against [CBA]", and which identified if such a proceeding was lodged*

*"there will be reputational impacts" and that the "maximum penalty that could potentially be applied by a Court is $18 million per breach," and that the "management actions" that had been taken by CBA included engaging external lawyers (COM.101.119.8141 and COM.101.455.8156).*

(C) *On 30 January 2017 Livingstone attended a meeting with Jevtovic regarding "the IDM issue" (COM.101.456.5952). Livingstone briefed Narev, Craig and Cohen on that meeting. Narev sought Livingstone's views on "how, if at all, you [Livingstone] believe we [CBA] can engage with them [AUSTRAC] in advance of the final determination to influence it" (COM.101.456.6212).*

(D) *On 7 February 2017 Craig and Comyn received an email attaching the communication plan developed for the Project Concord project in respect of "public dialogue from AUSTRAC on the TTR matter" (COM.101.316.1281). Craig and Comyn's attention was drawn specifically to the element of the plan dealing with "an announcement by AUSTRAC with no prior warning to CBA", and it was noted that the plan "contains media analysis" of the Tabcorp Proceeding and that the plan would be brought to the attention of Narev.*

(E) *On 14 February 2017, Craig received an email describing discussions between AUSTRAC and CBA, which email noted that Jevtovic had "declined two invitations to meet with the CBA Board", that his "latest update" to Livingstone was that "I will let you know soon", and that the action that could be taken included "civil penalties following Court proceedings" (COM.120.140.7329).*

(F) *On 16 February 2017, Tabcorp announced that it had entered into an agreement to pay a $45 million penalty to AUSTRAC (subject to Court approval). In respect of that announcement:*

a. *Comyn and Cohen received an email about it that day (COM.120.141.0110);*

b. *Comyn commented "Jeez, that's a lot of money" in respect of the size of the penalty, and indicated that "I hope [the nature of the breach in that case is] much more severe than us?" (COM.120.141.0110);*

c. *Comyn received an email that noted comments by Jevtovic in a media release that Tabcorp's non-compliance was "extensive, significant and systemic" and are "serious and reflect a systemic pattern of non-compliance over a number of years" (COM.120.141.0123);*

d. *Cohen expressed the view that the penalty "will potentially embolden AUSTRAC in its issue with us" (COM.120.495.7643).*

(G) *On 7 March 2017, Keaney and Watson met with representatives of AUSTRAC (Peter Clarke and Angela Jameison). At the meeting, according to an email sent by Watson to Craig the next day, representatives of AUSTRAC described "the TTR and associated matters as 'serious, significant and systemic'", that*

*CBA's "failure to immediately and proactively tell them [AUSTRAC] about these and other problems (here they were talking about control weaknesses over multiple years, etc) is a show of bad faith which leads them to wonder what else is broken across CBA's financial crime landscape" and that "they [AUSTRAC] have not made a determination but it isn't far off." In the email sent by Watson to Craig, she noted that "Legal" is preparing a draft defence outline in respect of the "civil penalty scenario in particular", and that she "didn't get any sense of them [AUSTRAC] being interested in us putting an EU [enforceable undertaking] to them" (COM.120.141.7978). As to that email:*

a. *On 8 March 2017, Craig described the contents of that email as "predictable" (COM.120.077.1599), in an email he sent to Narev, which forwarded those contents;*

b. *On 8 March 2017, Narev described the contents of that email as "not good news" and "not surprising", and that "this will be their [AUSTRAC's] moment in the sun", in emails to Livingstone (COM.101.456.8700);*

c. *On 8 March 2017, Watson's email was provided to Cohen (COM.120.077.1600);*

d. *On 8 March 2017, Watson's email was provided to Comyn (COM.120.141.8099) by Craig, who noted that AUSTRAC "looks like making a big issue of IDMs", in response to which Comyn noted that it "doesn't sound good" (COM.120.191.3945).*

*(H) On 8 March 2017, by way of a further email from Watson to Craig (copying Comyn), Watson noted that a communications plan had been drafted and that "Legal are working on the defence to determine how we would feel about our response under a civil penalty outcome" (COM.120.141.8109).*

*(I) On 27 March 2017, Watson met with representatives of AUSTRAC (COM.120.007.2749). On 28 March 2017 she sent an email to Craig regarding the meeting, which noted that "time will tell what next steps AUSTRAC takes" and that "we have seconded a fin crime lawyer in Freehills to start work on litigation preparation" (COM.120.143.0027). The email was provided to Livingstone and Narev.*

*(J) The Applicant relies upon and repeats the particulars at xviii)(C) below.*

*xvi) Further or alternatively, from around 24 April 2017 or shortly thereafter, Comyn had come into possession of the Potential Penalty Information in the course of the performance of his duties as Group Executive of RBS. The Applicant relies upon and repeats the particulars at xiv)(B),(D) and (G) above, and xv)(B),(D), (G) to (H) above.*

*xvii) From around 24 April 2017 or shortly thereafter, Cohen had come into possession of the Potential Penalty Information in the course of the performance of his duties. The Applicant relies upon and repeats the particulars at xiv)(B),(F) to (G) above, xv)(B), (F), and (G) above, and xviii)(C) below.*

*xviii) Further or alternatively, from around 24 April 2017 or shortly thereafter, Narev had come into possession of the Potential Penalty Information in the course of the performance of his duties as follows:*

*(A) The Applicant relies upon and repeats the particulars at xiv)(B), (C), (F) to (G) above, xv)(B) to (D), (F), (G), and (I) above.*

*(B) On 10 and 11 October 2016, there was a meeting of CBA's board attended by Turner, Narev, Anderson, Apte, Higgins, Inman, Livingstone, Long, Mohl, Padbury, Stops and Young. Williams and Dingley presented a regulatory report to the Board and noted the s 167 Notices (COM.120.871.0261). Livingstone challenged this report as it did not accord with her understanding of AUSTRAC. Livingstone did not believe she received an adequate response to her challenge, and that this confirmed a developing concern she had that management of CBA did not have the capacity to respond to what was, in her view, an escalating, significant and serious systemic control challenge, and further that this firmed up her view that she had no faith in management in their dealings with her about the AUSTRAC issues (transcript of Livingstone's evidence to the Financial Services Royal Commission on 21 November 2018, at 6727 and 6756).*

*(C) On 9 March 2017, Watson emailed Narev about the meeting on 7 March 2017. That email noted that Peter Clarke and Angela Jameison noted that AUSTRAC was concerned "about serious, significant and systemic breaches by CBA, which speak to poor management of financial crime risk, and insufficient transparency with AUSTRAC in terms of positively reporting on the bank's arrangements", that CBA's "approach to rolling out IDMs and the Financial Crimes Risk Assessment process during the deployment of those machines was different to and inferior to the other banks", that CBA's actions in this respect had "weakened the ability of law enforcement to intervene to stem the criminal activity" undertaken on IDMs, that AUSTRAC "had not made a determination but were close", and that the determination "would reflect their [AUSTRAC's] view that this is a serious and systemic problem" (COM.120.141.8788). That email was provided by Narev to Livingstone on 9 March 2017 (COM.101.456.8734).*

*(D) On 9 March 2017, Narev received an email noting that Livingstone had requested that Narev provide an update to the Board regarding "the AUSTRAC matter" and that Livingstone had requested that Craig and Cohen be in attendance for that meeting (COM.101.456.8780). The matter was discussed by the Board at a meeting on 13 March 2017, attended by Craig, Cohen, Livingstone, Narev, Mohl, Inman, Young, Padbury, Long, Apte, Stops, and Higgins (COM.120.871.0205), with Narev identifying the matter as a "big deal" and "serious / systemic" (COM.500.011.0072).*

*(E) On 14 March 2017, Narev prepared a "high level script" for a forthcoming meeting with Jevtovic, which script was recorded in an email sent by Narev to recipients including Craig and Cohen. The script focused on the "partnership" between CBA and AUSTRAC, noted that this partnership "must exist alongside Austrac being, and being seen to be, a tough regulator," and noted*

*that CBA accepted "there must be clear consequences" for the AML/CTF breaches. The script concluded by seeking, as an alternative to AUSTRAC commencing a civil penalty proceeding unilaterally, that CBA and AUSTRAC engage "heavily now, in good faith, prior to any formal action, in discussions that would result, within a month, in an agreed path that involves acknowledgement for our part of weaknesses, a clear commitment to remediation, and a monetary fine…it would involve an announcement by Austrac that it is commencing proceedings, accompanied by a clear statement that Austrac and CBA are already working constructively towards a solution (COM.120.142.1416).*

*(F) On 21 March 2017, Narev and Livingstone attended a meeting with Jevtovic (COM.100.044.1180). Jevtovic indicated that AUSTRAC was considering options including applying to the Federal Court for a civil penalty, or appointing an external auditor to assess CBA's compliance with the AML/CTF Act (COM.120.192.2772).*

*(G) On 3 August 2017, Narev sent an email to Mohl, Inman, Young, Padbury, Long, Apte, Stops, and Higgins (copied to Livingstone) noting that AUSTRAC had commenced a proceeding against CBA, that "we had anticipated this, and were prepared with a statement", and that "AUSTRAC's claims seem exactly as expected*

*xix) Further or alternatively, from around 24 April 2017 or shortly thereafter, the 2014 NEDs, and/or the 2015 NEDs came into possession of the Potential Penalty Information in the course of carrying out their duties. The Applicant relies upon and repeats the particulars at xiv)(B) and (G) above, and xviii)(B), (D), and (G) above.*

~~*i) The Potential Penalty Information was information which ought reasonably to have been known by any reasonable person who knew or ought reasonably to have been aware of the Late TTR Information and/or the IDM ML/TF Risk Assessment Non-Compliance Information and/or the Account Monitoring Failure Information and/or the ML/TF Risks Systems Deficiency Information, having regard particularly to the number and value of transactions the subject of the Late TTRs and the issues with the IDMs the subject of the Late TTRs.*~~

~~*ii) Further, any reasonable person who knew or ought reasonably to have been aware of the Late TTR Information ought reasonably to have been aware that the lodgement in bulk of tens of thousands of Late TTRs would result in AUSTRAC further investigating CBA.*~~

~~*iii) The Applicant also refers to the fact that as at August 2017, CBA had been in discussions with AUSTRAC for "an extended period" (and refers to the 3 August CBA Statement).*~~

~~*iv) The Applicant also refers to and rely on AUSTRAC's Enforcement Strategy 2012 – 14 (which was publicly available), which described AUSTRAC's enforcement priorities as including non-compliance with transaction reporting obligations, non-compliance with AML/CTF program obligations, and injunctions and civil penalty orders.*~~

~~*v) During the period 15 December 2011 to 1 February 2018 (to the extent relevant to information arising prior to 24 September 2015),*~~

~~*the Board of CBA received reports from senior management in relation to AML/CTF compliance, which contained input from personnel with direct responsibility for and oversight of the AML/CTF function, and CBA's senior management received reports in relation to AML/CTF compliance from personnel engaged in direct responsibility and oversight of the AML/CTF function and oversaw a range of measures directed to enhancing its AML/CTF function: Agreed Facts in AUSTRAC Proceeding, paragraphs 85 and 98.*~~

### C.7 Continuing Omission to disclose information

50. CBA did not, at any time prior to 3 August 2017 make any statement which disclosed to the Affected Market:

(a) the June 2014 Late TTR Information;

(aa) the August 2015 Late TTR Information;

(ab) the September 2015 Late TTR Information;

(b) the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information;

(ba) the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information;

(c) the June 2014 Account Monitoring Failure Information;

(ca) the August 2015 Account Monitoring Failure Information;

(cb) the September 2015 Account Monitoring Failure Information;

~~(d) the ML/TF Risk Systems Deficiency Information; and/or~~

(e) the Potential Penalty Information.

## D. CBA'S STATEMENTS PRIOR TO 3 AUGUST 2017

### D.1 CBA's statements about AML/CTF Act compliance

51. At all material times in the Relevant Period, CBA published on its website an "Anti-Money Laundering and Counter-Terrorism Financing Disclosure Statement" (CBA's **AML/CTF Disclosure Statement**).

52. In the AML/CTF Disclosure Statement**,** CBA made the following statements (**AML/CTF Compliance Statements**)**:**

(a) CBA was subject to, and complies with Australian law, including the AML/CTF Act;

(b) CBA had implemented the requirements of the AML/CTF Act within the specified timeframes;

(c) CBA had adopted internal policies, procedures and controls to ensure that it complied with existing legislation, and had adopted an AML/CTF Program that reasonably identified, mitigated and managed the risk of Money Laundering or Terrorism Financing (that is ML/TF Risk) in the provision of services designated by legislation;

(d) CBA's AML/CTF Program involved inter alia:

(i) Customer due diligence / Know Your Customer;

(ii) Monitoring of suspicious activities or transactions through a risk-based approach;

(iii) Reports of suspicious transactions, in that CBA was required to report suspicious customer activities or transactions to AUSTRAC and had internal policies and procedures in place to ensure compliance with the applicable legislation and regulatory requirements;

(iv) Reports of significant account and non-account based cash transactions and all IMTs, in that CBA was required to report cash transactions of $10,000 or more to AUSTRAC, and had internal policies and procedures in place to ensure compliance with the applicable legislation and regulatory requirements;

(e) CBA's auditors and internal compliance departments conducted programs of audits and compliance testing of all CBA's operational policies and procedures including those applicable to AML, the frequency and scope of which were determined through a risk-based approach where higher risks were audited and tested more frequently;

(f) CBA had not been the subject of any anti-money laundering or terrorist financing-related proceedings, investigations, sanctions or punitive actions.

53. CBA did not, at any time prior to 3 August 2017 make any statement which corrected, qualified or contradicted the AML/CTF Compliance Statements.

**D.1A CBA's 2014 statements**

53A On 18 August 2014, CBA published and lodged with the ASX its Annual Report for the financial year ended 30 June 2014 (that is, the 2014 Annual Report)**.**

53B**.** In the 2014 Annual Report, CBA made the following statements (**2014 Compliance Statements**):

(a) CBA made significant progress during the year on its aspiration to become a global leader in the application of technology to financial services, and having successfully completed its major platform replacement project, it was the only major bank in Australia which provided all its customers with a 24 hour, 7 days a week real time banking experience (p 7);

(b) Integrity was one of CBA's core values and in December 2013 the Board approved an updated Anti-Bribery and Corruption Policy which was then communicated broadly across the CBA Group; the Policy clearly stated a zero tolerance to bribery, corruption and facilitation payments across all areas and levels of the business, and the employees, service providers and suppliers were encouraged to seek advice and report concerns about unethical behaviour and corruption via a wide range of internal mechanisms (p 32);

(c) A strategic and operational priority CBA had was achieving and maintaining a leadership position in technology and innovation for the CBA Group (p 32);

(d) CBA was committed to ensuring that its policies and practices reflect a high standard of corporate governance, and the CBA Board had adopted a comprehensive framework of Corporate Governance Guidelines (p.42), with a link to the CBA Corporate Governance Statement which stated, *inter alia*:

(i) CBA's Guidelines for Communication between Bank and Shareholders set out processes to ensure that shareholders and the market are provided with full and timely information about CBA's activities in compliance with continuous disclosure requirements;

(ii) continuous disclosure policy and processes are in place throughout CBA to ensure that all material matters which may potentially require

disclosure are promptly reported to the CEO via established reporting lines or as part of the deliberations of CBA's Executive Committee;

(e) throughout the 2014 financial year, CBA's governance arrangements were consistent with the Corporate Governance Principles and Recommendations (3rd edition) published by the ASX Corporate Governance Council (p.42);

(f) CBA's Risk Committee oversees CBA's Risk Management Framework, reviews regular reports from management on the measurement of risk and the adequacy of CBA's risk management and internal controls systems and monitored the health of CBA's risk culture (via both formal reports and through its dialogues with the risk leadership team and executive management), and reports any significant issues to the Board (p.140);

(g) a material risk for CBA was "compliance risk", being the risk of legal or regulatory sanctions, material financial loss or loss of reputation that the CBA Group may suffer as a result of its failure to comply with "Compliance Obligations", being formal requirements that may arise from various sources including but not limited to laws, regulations, legislation, industry standards, rules, codes or guidelines which risk CBA managed with its Group Operational Risk Management Framework, the "Compliance Risk Management Framework", and the Compliance Incident Management Group Policy with the key management forum being the Executive Committee and the Data Governance Committee (p.141);

(h) CBA had a Compliance Risk Management Framework that provided for the assessment of compliance risks, implementation of controls, monitoring and testing of framework effectiveness and the escalation, remediation and reporting of compliance incidents and control weaknesses (pp 141-2).

53C. On 29 August 2014, CBA published the 2014 US Disclosure, in which CBA stated *inter alia* that:

(a) CBA's banking, funds management and insurance activities were subject to extensive regulation, including those relating to capital levels, liquidity levels, solvency, provisioning, insurance policy terms and conditions, accounting and reporting requirements, taxation, remuneration, consumer protection, competition, anti-bribery and bribery and corruption, anti-money laundering and counter-terrorism financing. CBA's business and earnings were also affected

by the fiscal or other policies that are adopted by various regulatory authorities of the Australian and New Zealand governments and the governments and regulators of the other jurisdictions in which it conducts business (p 18);

(b) Various issues may give rise to reputational risk and cause harm to CBA's business and prospects, including inappropriately dealing with potential conflicts of interest and legal regulatory requirements (such as money laundering, trade sanctions and privacy laws), and failure to address these issues could also give rise to additional legal risk, subjecting CBA to regulatory enforcement actions, fines and penalties, or harm CBA's reputation and integrity among its customers, investors and other stakeholders (p 21).

(c) CBA was subject to compliance risks, identified as the risk of legal or regulatory sanctions, material financial loss, or loss of reputation that it may suffer as a result of its failure to comply with the requirements of relevant laws, regulatory bodies, industry standards and codes; it managed that risk by Compliance Risk Management Framework Minimum Group Standards, Risk Management Obligations Register and Guidance Notes that detail specific requirements / accountabilities for each Business Unit, Business Unit compliance frameworks, and Support from compliance professionals embedded across CBA (p 95);

(d) continuous disclosure policy and processes were in place throughout CBA to ensure that all material matters which may potentially require disclosure were promptly reported to the CEO (p.113);

(e) CBA believed it was very important for its shareholders to make informed decisions about their investment in CBA (p.113);

(f) All price sensitive information would be released to the ASX in a timely manner (p.113).

53D. CBA did not, at any time prior to 3 August 2017 make any statement which corrected, qualified or contradicted the 2014 Compliance Statements.

**D.2 CBA's 2015 statements**

54. On 12 August 2015 prior to the opening of trading on the ASX, CBA published and lodged with the ASX a number of announcements (together, **12 August 2015 Announcements**), including:

(a) an announcement entitled “Trading Halt”, which stated that CBA Shares would be placed in trading halt pending the release of an announcement by CBA, and would remain in trading halt until the commencement of normal trading on 17 August 2015;

(b) an announcement entitled “2015 Annual Results Profit Announcement” (**2015 Appendix 4E**);

(c) an announcement entitled “2015 Annual Results and Capital Update Media Release” (**2015 Media Release**);

(d) an announcement entitled “2015 Full Year and Capital Update Analyst Slides” (**2015 Investor Presentation**);

(e) an announcement entitled “2015 Annual Results Media Presentation Slides”;

(f) an announcement entitled “Cleansing Notice” (**2015 Cleansing Notice**).

55. In the 12 August 2015 Announcements, CBA announced it was undertaking a capital raising through an pro rata renounceable entitlement offer, pursuant to which CBA would offer entitlements to CBA ordinary shares pro rata to all eligible shareholders which could be exercised to buy 1 new share for every 23 shares held on the record date for the offer at an offer price of $71.50 per new share, which represented a 10.5% discount to the dividend adjusted closing price of CBA Shares on the ASX on 11 August 2015 (**Entitlement Offer**), comprising:

(a) An accelerated institutional offer to be completed by 14 August 2015; and

(b) A retail offer to be conducted in the period from 24 August 2015 to 8 September 2015.

**Particulars**

*i) 2015 Investor Presentation, p.69, 71*

*ii) 2015 Retail Entitlement Offer Booklet, p.22*

56. In the 12 August 2015 Announcements, CBA also made the following statements:

(a) Its 2015 Annual Results Profit Announcement should be read in conjunction with the 30 June 2015 Annual Financial Report of CBA (that is, the 2015 Annual Report) and any public announcements made in the period by CBA Group in

accordance with the continuous disclosure requirements of the Corporations Act and ASX Listing Rules (2015 Appendix 4E, p.2); and

(b) As at 12 August 2015:

(i) CBA had complied with s 674 of the Corporations Act; and

(ii) there was no excluded information of the type referred to in s 708AA(8) and 708AA(9) of the Corporations Act that was required to be set out in the Cleansing Notice by s 708AA(7) of the Corporations Act,

(**2015 Cleansing Notice Compliance Statement**) (2015 Cleansing Notice, p.1); and

(c) CBA had an integrated risk management approach, whereby it actively managed major categories of risk, and its approach to risk management including governance, management, material business risks, and policies and procedures were described in the Notes to the Financial Statements in the 30 June 2015 Annual Report of CBA Group (that is, the 2015 Annual Report) (2015 Appendix 4E, p.80).

**Particulars**

*i) 2015 Appendix 4E, p.2, 80*

*ii) 2015 Cleansing Notice, p.1*

57. On 17 August 2015, CBA published and lodged with the ASX:

(a) its Annual Report for the financial year ended 30 June 2015 (that is, the 2015 Annual Report); and

(b) an ASX Announcement entitled "Commonwealth Bank of Australia Retail Entitlement Offer Booklet", which attached a document entitled "Retail Entitlement Offer Booklet" dated 17 August 2015 (**2015 Entitlement Offer Booklet**).

58. In the 2015 Annual Report, CBA made the following statements (**2015 Compliance Statements**):

(a) CBA Group had undertaken an extensive review of its culture over the last 12 months. Integrity, transparency and trust were clear ingredients of "ethics", and

the task of ensuring that behaviour mirrors excellence in all of these characteristics was an ongoing task with management's full attention, which was central to the conduct of CBA Group's business (p.2);

(ba) CBA considered the social and economic impacts and influences of its activities, and integrity was one of CBA's core values (p.32);

(b) CBA was committed to ensuring that its policies and practices reflect a high standard of corporate governance, and the CBA board had adopted a comprehensive framework of Corporate Governance Guidelines (p.43);

(c) Throughout the 2015 financial year, CBA's governance arrangements were consistent with the Corporate Governance Principles and Recommendations (3rd edition) published by the ASX Corporate Governance Council (p.43), with a link to the CBA Group's Corporate Governance Statement which stated inter alia:

(i) CBA Group's Guidelines for Communication between Bank and Shareholders set out processes to ensure that shareholders and the market are provided with full and timely information about the Group's activities in compliance with continuous disclosure requirements;

(ii) Continuous disclosure policy and processes are in place throughout the Group to ensure that all material matters which may potentially require disclosure are promptly reported to the CEO via established reporting lines or as part of the deliberations of the Group's Executive Committee;

(d) CBA's Risk Committee oversees the CBA Group's Risk Management Framework, reviews regular reports from management on the measurement of risk and the adequacy of the CBA Group's risk management and internal controls systems, monitors the health of the CBA Group's risk culture, and reports any significant issues to the Board (p.134);

(e) A material risk for CBA was "compliance risk", being the risk of legal or regulatory sanctions, material financial loss or loss of reputation that the group may suffer as a result of its failure to comply with requirements of relevant laws, regulatory bodies, industry standards and codes, which risk CBA managed with its "Compliance Risk Management Framework", with the key management forum being the Executive Committee (p.136);

(f) CBA's "key" approaches to compliance risk included:

(i) a structured hierarchy of committees and forums across the group, each with specified accountabilities, primarily undertaken at the business unit level;

(ii) maintaining pro-active relationships with CBA's regulators at all times;

(iii) establishing appropriate policies, processes and procedures;

(iv) employing appropriate management, monitoring and reporting of compliance activities,

(p.136).

**Particulars**

*2015 Annual Report, pp. 43, 134, 136*

59. In each of the 12 August 2015 Announcements and the 2015 Entitlement Offer Booklet, CBA made the following statements (also **2015 Compliance Statements**):

(a) CBA managed risks relating to legal and regulatory requirements, sales, trading and advisory practices, potential conflicts of interest, money laundering laws, foreign exchange controls, trade sanctions laws, privacy laws, ethical issues and conduct by companies in which CBA holds strategic investments, which may cause harm to its reputation amongst customers and investors (pp.138, 22);

(b) Failure to appropriately manage some of these risks could subject CBA to litigation, legal and regulatory enforcement actions, fines and penalties (pp.128, 22).

**Particulars**

*i) 2015 Investor Presentation, p.138.*

*ii) 2015 Retail Entitlement Offer Booklet, p.22.*

60. On 28 August 2015, CBA published the 2015 US Disclosure Document, in which CBA made the following statements (also **2015 Compliance Statements**):

(a) One of the principal risk factors that could materially affect CBA's business was that CBA Group was subject to extensive regulation which could impact its results, including in that:

(i) anti-money laundering and counter-terrorism financing had been the subject of increasing regulatory change and enforcement in recent years;

(ii) if CBA Group failed to comply with the requirements of such regulations, it may become subject to significant regulatory fines, regulatory sanctions and suffer material financial loss or loss of reputation, and the increasing volume, complexity and global reach of such regulatory requirements, and the increase propensity for sanctions and the level of financial penalties for breaches of requirements, could exacerbate the severity of this risk,

(p.17);

(b) reputational damage could harm CBA Group's business and prospects, which could include breaching legal and regulatory requirements (such as money laundering laws), and non-compliance with internal policies and procedures, and failure to address these issues appropriately could also give rise to additional legal risk, subjecting the CBA Group to regulatory enforcement actions, fines and penalties, or harm the CBA Group's reputation and integrity among the Group's customers, investors and other stakeholders (p.21)

(c) CBA's Risk Committee oversees the CBA Group's Risk Management Framework, reviews regular reports from management on the measurement of risk and the adequacy of the CBA Group's risk management and internal controls systems and monitors the health of the CBA Group's risk culture, and reports any significant issues to the Board (p.87);

(d) A principal risk for CBA was Compliance Risk being the risk of legal or regulatory sanctions, material financial loss or loss of reputation that the group may suffer as a result of its failure to comply with requirements of relevant laws, regulatory bodies, industry standards and codes, which risk CBA managed with its "Compliance Risk Management Framework", with the key management forum being the Executive Committee (p.89); and

(e) CBA's "key" approaches to compliance risk included:

(i) a structured hierarchy of committees and forums across the group, each with specified accountabilities, primarily undertaken at the business unit level;

(ii) maintaining pro-active relationships with CBA's regulators at all times;

(iii) establishing appropriate policies, processes and procedures;

(iv) employing appropriate management, monitoring and reporting of compliance activities,

(p.89).

(f) continuous disclosure policy and processes were in place through CBA to ensure that all material matters which may potentially require disclosure were promptly reported to the CEO (p.110);

(g) CBA believed it was very important for its shareholders to make informed decisions about their investment in CBA (p.110);

(h) All price sensitive information would be released to the ASX in a timely manner (p.111).

61. CBA did not, at any time prior to 3 August 2017 make any statement which corrected, qualified or contradicted the 2015 Cleansing Notice Compliance Statement, and the 2015 Compliance Statements.

**D.3 CBA's 2016 statements about regulatory compliance**

62. On 15 August 2016, CBA published and lodged with the ASX its Annual Report for the financial year ended 30 June 2016 (that is, the 2016 Annual Report)**.**

63. In the 2016 Annual Report, CBA made the following statements (**2016 Compliance Statements**):

(aa) CBA considered the social and economic impacts and influences of its activities, and integrity was one of CBA's integral values (pp.2, 3, 6, 33, 35);

(a) CBA was committed to ensuring that its policies and practices reflect a high standard of corporate governance, and the CBA board had adopted a comprehensive framework of Corporate Governance Guidelines (p.46), with a link to the Corporate Governance Statement which stated, inter alia:

(i) CBA Group's Guidelines for Communication between Bank and Shareholders set out processes to ensure that shareholders and the market are provided with full and timely information about the Group's activities in compliance with continuous disclosure requirements;

(ii) Continuous disclosure policy and processes are in place throughout the Group to ensure that all material matters which may potentially require disclosure are promptly reported to the CEO via established reporting lines or as part of the deliberations of the Group's Executive Committee;

(b) Throughout the 2016 financial year, CBA's governance arrangements were consistent with the Corporate Governance Principles and Recommendations (3rd edition) published by the ASX Corporate Governance Council (p.46);

(c) CBA's Risk Committee oversees the CBA Group's Risk Management Framework, reviews regular reports from management on the measurement of risk and the adequacy of the CBA Group's risk management and internal controls systems and monitors the health of the CBA Group's risk culture (via both formal reports and through its dialogues with the risk leadership team and executive management), and reports any significant issues to the Board (p.137);

(d) CBA regarded risk culture (being the collection of values, ideas, skills and habits that equip group employees and directors to see and talk about risks, and make sound judgments in the absence of definitive rules, regulations or market signals) as an aspect of overall culture, and the CBA Group's risk culture flourished within an organisational context that emphasised and rewarded integrity, accountability, collaboration, service and excellence (p.137);

(e) CBA had Risk Policies & Procedures which provided guidance to the business on the management of each material risk, and supported CBA Group's Risk Management Framework by, inter alia, outlining a process for monitoring, communicating and reporting risk issues, including escalation procedures for the reporting of material risks (p.137).

(f) A material risk for CBA was "compliance risk", being the risk of legal or regulatory sanctions, material financial loss or loss of reputation that the group may suffer as a result of its failure to comply with "Compliance Obligations", being formal requirements that may arise from various sources including but not limited to laws, regulations, legislation, industry standards, rules, codes or guidelines which risk CBA managed with its Group Operational Risk Management Framework, the "Compliance Risk Management Framework", and the Compliance Incident Management Group Policy with the key management forum being the Executive Committee and the Data Governance Committee (p.139).

**Particulars**

*2016 Annual Report, pp.46, 137, 139*

64. On 26 August 2016, CBA published the 2016 US Disclosure Document, in which CBA made the following statements (also 2016 Compliance Statements):

(a) One of the principal risk factors that could materially affect CBA's business was that CBA Group was subject to extensive regulation which could impact its results, including in that:

(i) anti-money laundering and counter-terrorism financing had been the subject of increasing regulatory change and enforcement in recent years;

(ii) if CBA Group failed to comply with the requirements of such regulations, it may become subject to significant regulatory fines, regulatory sanctions and suffer material financial loss or loss of reputation, and the increasing volume, complexity and global reach of such regulatory requirements, and the increase propensity for sanctions and the level of financial penalties for breaches of requirements could exacerbate the severity of this risk,

(p.17);

(b) reputational damage could harm CBA Group's business and prospects, which could include breaching legal and regulatory requirements (such as money laundering laws), and non-compliance with internal policies and procedures, and failure to address these issues appropriately could also give rise to additional legal risk, subjecting the CBA Group to regulatory enforcement actions, fines and penalties, or harm the CBA Group's reputation and integrity among the Group's customers, investors and other stakeholders (p.21);

(c) CBA had engaged in significant spend on risk and compliance projects implementing systems to assist in satisfying new regulatory obligations, including Anti-Money Laundering (p.34);

(d) CBA's Risk Committee oversees the CBA Group's Risk Management Framework, reviews regular reports from management on the measurement of risk and the adequacy of the CBA Group's risk management and internal controls systems and monitors the health of the CBA Group's risk culture (via both formal reports and through its dialogues with the risk leadership team and executive management), and reports any significant issues to the Board (p.86);

(e) CBA regarded risk culture (being the collection of values, ideas, skills and habits that equip group employees and directors to see and talk about risks, and make sound judgments in the absence of definitive rules, regulations or market signals) as an aspect of overall culture, and the CBA Group's risk culture flourished within an organisational context that emphasised and rewarded integrity, accountability, collaboration, service and excellence (p.86);

(f) CBA had Risk Policies & Procedures which provided guidance to the business on the management of each material risk, and supported CBA Group's Risk Management Framework by, inter alia, outlining a process for monitoring, communicating and reporting risk issues, including escalation procedures for the reporting of material risks (p.88);

(g) A major risk class for CBA was "compliance risk", being the risk of legal or regulatory sanctions, material financial loss or loss of reputation that the group may suffer as a result of its failure to comply with "Compliance Obligations", being formal requirements that may arise from various sources including but not limited to laws, regulations, legislation, industry standards, rules, codes or guidelines which risk CBA managed with its Group Operational Risk Management Framework, the "Compliance Risk Management Framework", and the Compliance Incident Management Group Policy with the key management forum being the Executive Committee and the Data Governance Committee (p.88);

(h) continuous disclosure policy and processes were in place through CBA to ensure that all material matters which may potentially require disclosure were promptly reported to the CEO (p.111);

(i) CBA believed it was very important for its shareholders to make informed decisions about their investment in CBA (p.111);

(j) All price sensitive information would be released to the ASX in a timely manner (p.111).

65. CBA did not, at any time prior to 3 August 2017 make any statement which corrected, qualified or contradicted the 2016 Compliance Statements.

### D.4 CBA's Compliance Representations

66. By the matters pleaded in paragraphs 51 to 65, CBA represented to the Affected Market throughout the Relevant Period that:

(a) CBA had in place effective policies, procedures and systems for ensuring compliance by CBA with relevant regulatory requirements (including the AML/CTF Act); and/or

(b) CBA's risk management systems had ensured, and would continue to ensure appropriate monitoring and reporting of compliance activities (including compliance with the AML/CTF Act),

(**Compliance Representations**).

**Particulars**

*i) The Compliance Representations are to be implied from:*

*A) the AML/CTF Compliance Statements;*

*AB) the 2014 Compliance Statements, from the dates they were made; and*

*B) the 2015 Compliance Statements, from the dates they were made; and*

*C) the 2016 Compliance Statements, from the dates they were made; and*

*D) the absence of any correction or qualification to the statements referred to in (A) to (C).*

**D.5 CBA's Continuous Disclosure Representation**

67. By the matters pleaded in paragraphs 54 to 65, CBA continuously represented to the Affected Market throughout the Relevant Period that:

(a) it had policies, procedures and systems in place to ensure that material matters were reported to its CEO and then notified to the ASX, and

(b) it had complied with, and would continue to comply with, its Continuous Disclosure Obligations (**Continuous Disclosure Representation**).

**Particulars**

*i) The Continuous Disclosure Representation was partly express and partly implied.*

*ii) To the extent it was express, the Applicant refers to the statements in the 2015 Cleansing Notice pleaded in sub-paragraph 56(b);*

*iii) To the extent it was implied, it is to be implied from:*

*A) at all times, CBA's listing on the ASX which required adherence to ASX Listing Rule 3.1,*

*B) the statements in the 2015 Cleansing Notice pleaded in sub-paragraph 56(b), from the date they were made;*

*BA) the 2014 Compliance Statements pleaded in sub-paragraphs 53B(d)(i) and (ii) from the dates they were made; and*

*C) the 2015 Compliance Statements pleaded in sub-paragraphs 58(c)(i) and (ii), from the dates they were made; and*

*D) the 2016 Compliance Statements (as pleaded in sub-paragraph 63(a)(i) to (ii)), from the dates they were made; and*

*E) the absence of any correction or qualification to the statements referred to in (B) to (D) above,*

**D.6 Continuing Representations**

68. Each of the Compliance Representations and the Continuous Disclosure Representation was a continuing representation throughout the Relevant Period.

**Particulars**

*i) The Compliance Representations and the Continuous Disclosure Representation were of their nature likely to be continuing unless and until information was published to the Affected Market information which corrected or qualified them;*

*ii) Paragraphs 61 and 65 are repeated.*

**D.7 Defective Cleansing Notice**

68A. Further or alternatively, by reason of the fact that the Cleansing Notice did not contain: ~~the~~

(a) the June 2014 Late TTR Information;

(aa) the August 2015 Late TTR Information;

(b) the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information;

(ba) the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information;

(c) the June 2014 Account Monitoring Failure Information;

(ca) the August 2015 Account Monitoring Failure Information;

~~(d) the ML/TF Risk Systems Deficiency Information; and/or~~

(e) the Potential Penalty Information; and/or~~,~~

(ea) any correction or qualification to the Compliance Representations to the extent they arose by reason of the AML/CTF Compliance Statements, the 2014 Compliance Statements and the 2015 Compliance Statements,

the Cleansing Notice:

(f) was false or misleading in a material particular; and/or

(g) had omitted from it a matter or thing, the omission of which rendered the notice misleading in a material respect.

68B. By reason of the matters set out in paragraph 68A above, the Cleansing Notice was defective within the meaning of s 708AA(11) of the Corporations Act.

68C. CBA was or became aware of the defects in the Cleansing Notice within 12 months after the securities were issued under the Entitlement Offer, but did not, within a reasonable time after becoming aware of the defects, give the ASX a notice that set out the information necessary to correct the defects.

**Particulars**

*i) The Applicant refers to and repeat paragraphs 41, 41A, 43, 43A, 45, 45AA, ~~47,~~ and 49.*

*ii) Under the Entitlement Offer, CBA Shares were issued by CBA to institutional investors on 26 August 2015 and to retail investors on 18 September 2015.*

68D. By reason of the matters set out in paragraphs 68B and 68C above, CBA contravened s 708AA(10) of the Corporations Act (**Cleansing Notice Contravention**).

## E. CBA'S CONTRAVENING CONDUCT

### E.1 Continuous Disclosure Contraventions

#### *E.1.1 Late TTR Continuous Disclosure Contraventions*

69. As at, and from~~, at least 16~~ June 2014 or shortly thereafter, ~~or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015,~~ the June 2014 Late TTR Information was information that a reasonable person would expect to have a material

effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

69A. Further or alternatively, as at, and from 11 August 2015 or shortly thereafter, the August 2015 Late TTR Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

69B. Further or alternatively, as at, and from 8 September 2015 or shortly thereafter, the September 2015 Late TTR Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

69C. Further or alternatively, as at, and from 24 April 2017 or shortly thereafter, the September 2015 Late TTR Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

70. By reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 69 on and from ~~at least~~ 16 June 2014 or shortly thereafter, ~~or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015~~ CBA became obliged immediately to tell the ASX the June 2014 Late TTR Information.

70A Further or alternatively, by reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 69A on and from 11 August 2015 or shortly thereafter, CBA became obliged immediately to tell the ASX the August 2015 Late TTR Information.

70B Further or alternatively, by reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 69B on and from 8 September 2015 or shortly thereafter, CBA became obliged immediately to tell the ASX the September 2015 Late TTR Information.

70C Further or alternatively, by reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 69C on and from 24 April 2017 or shortly thereafter, CBA became obliged immediately to tell the ASX the September 2015 Late TTR Information.

71. CBA did not inform the ASX of the June 2014 Late TTR Information immediately on 16 June 2014 or shortly thereafter, ~~or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015,~~ or at all in the Relevant Period, and the Affected

Market did not become aware of that information until 3 August 2017, and sub-paragraph 50(a) is repeated.

71A. Further or alternatively, CBA did not inform the ASX of the August 2015 Late TTR Information immediately on 11 August 2015 or shortly thereafter, or at all in the Relevant Period, and the Affected Market did not become aware of that information until 3 August 2017, and sub-paragraph 50(aa) is repeated.

71B. Further or alternatively, CBA did not inform the ASX of the September 2015 Late TTR Information immediately on 8 September 2015 or shortly thereafter, or at all in the Relevant Period, and the Affected Market did not become aware of that information until 3 August 2017, and sub-paragraph 50(ab) is repeated.

71C. Further or alternatively, CBA did not inform the ASX of the September 2015 Late TTR Information immediately on 24 April 2017 or shortly thereafter, or at all in the Relevant Period, and the Affected Market did not become aware of that information until 3 August 2017, and sub-paragraph 50(ab) is repeated.

72. By reason of the matters pleaded in paragraphs:

(a) 41, ~~and~~ 69, 70 and ~~to~~ 71;

(b) further or alternatively, 41A, 69A, 70A, and 71A;

(c) further or alternatively, 41B, 69B, 70B, and 71B; and/or

(d) further or alternatively, 41C, 69C, 70C, and 71C,

CBA contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act (**Late TTR Continuous Disclosure Contravention**s).

### *E.1.2 IDM ML/TF Risk Assessment Non-Compliance Continuous Disclosure Contraventions*

73. As at, and from, ~~at least~~ 16 June 2014 or shortly thereafter, ~~or alternatively 24 September 2015~~, the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

73A. Further or alternatively, as at, and from, 11 August 2015 or shortly thereafter, the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

73B. Further or alternatively, as at, and from, 8 September 2015 or shortly thereafter, the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

73C. Further or alternatively, as at, and from, 24 April 2017 or shortly thereafter, the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

74. By reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 73 on and from ~~at least~~ 16 June 2014 or shortly thereafter, ~~or alternatively 24 September 2015,~~ CBA became obliged immediately to tell the ASX the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information.

74A. Further or alternatively, by reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 73A on and from 11 August 2015 or shortly thereafter, CBA became obliged immediately to tell the ASX the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information.

74B. Further or alternatively, by reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 73B on and from 8 September 2015 or shortly thereafter, CBA became obliged immediately to tell the ASX the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information.

74C. Further or alternatively, by reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 73C on and from 24 April 2017 or shortly thereafter, CBA became obliged immediately to tell the ASX the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information.

75. CBA did not inform the ASX of the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information immediately on ~~at least~~ 16 June 2014 or shortly thereafter, ~~or alternatively 24 September 2015,~~ or at all in the Relevant Period and the Affected Market did not become aware of that information until 3 August 2017, and sub-paragraph 50(b) is repeated.

75A. Further or alternatively, CBA did not inform the ASX of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information immediately on 11 August 2015 or shortly thereafter, or at all in the Relevant Period and the Affected Market did not become aware of that information until 3 August 2017, and sub-paragraph 50(ba) is repeated.

75B. Further or alternatively, CBA did not inform the ASX of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information immediately on 8 September 2015 or shortly thereafter, or at all in the Relevant Period and the Affected Market did not become aware of that information until 3 August 2017, and sub-paragraph 50(ba) is repeated.

75C. Further or alternatively, CBA did not inform the ASX of the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information immediately on 24 April 2017 or shortly thereafter, or at all in the Relevant Period and the Affected Market did not become aware of that information until 3 August 2017, and sub-paragraph 50(bb) is repeated.

76. By reason of the matters pleaded in paragraphs:

(a) 43, ~~and~~ 73, 74 ~~to~~ and 75;

(b) further or alternatively, 43A, 73A, 74A and 75A;

(c) further or alternatively, 43B, 73B, 74B and 75B; and/or

(d) further or alternatively, 43C, 73C, 74C and 75C,

CBA contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act (**IDM ML/TF Risk Assessment Non-Compliance Continuous Disclosure Contravention**s).

### *E.1.3 Account Monitoring Failure Continuous Disclosure Contraventions*

77. As at, and from, ~~at least~~ 16 June 2014 or shortly thereafter, ~~or alternatively 24 September 2015~~, the June 2014 Account Monitoring Failure Information was

information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

77A. Further or alternatively, as at, and from, 11 August 2015 or shortly thereafter, the August 2015 Account Monitoring Failure Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

77B. Further or alternatively, as at, and from, 8 September 2015 or shortly thereafter, the September 2015 Account Monitoring Failure Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

77C. Further or alternatively, as at, and from, 24 April 2017 or shortly thereafter, the September 2015 Account Monitoring Failure Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

78. By reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 77, on and from ~~at least~~ 16 June 2014 or shortly thereafter, ~~or alternatively 24 September 2015~~ CBA became obliged immediately to tell the ASX the June 2014 Account Monitoring Failure Information.

78A. Further or alternatively, by reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 77A, on and from 11 August 2015 or shortly thereafter, CBA became obliged immediately to tell the ASX the August 2015 Account Monitoring Failure Information.

78B. Further or alternatively, by reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 77B, on and from 8 September 2015 or shortly thereafter, CBA became obliged immediately to tell the ASX the September 2015 Account Monitoring Failure Information.

78C. Further or alternatively, by reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 77C, on and from 24 April 2017 or shortly thereafter,

CBA became obliged immediately to tell the ASX the September 2015 Account Monitoring Failure Information.

79. CBA did not inform the ASX of the June 2014 Account Monitoring Failure Information immediately on ~~at least~~ 16 June 2014 or shortly thereafter, ~~or alternatively 24 September 2015,~~ or at all in the Relevant Period, and the Affected Market did not become aware of that information until 3 August 2017, and sub-paragraph 50(c) is repeated.

79A. Further or alternatively, CBA did not inform the ASX of the August 2015 Account Monitoring Failure Information immediately on 11 August 2015 or shortly thereafter, or at all in the Relevant Period, and the Affected Market did not become aware of that information until 3 August 2017, and sub-paragraph 50(ca) is repeated.

79B. Further or alternatively, CBA did not inform the ASX of the September 2015 Account Monitoring Failure Information immediately on 8 September 2015 or shortly thereafter, or at all in the Relevant Period, and the Affected Market did not become aware of that information until 3 August 2017, and sub-paragraph 50(cb) is repeated.

79C. Further or alternatively, CBA did not inform the ASX of the September 2015 Account Monitoring Failure Information immediately on 24 April 2017 or shortly thereafter, or at all in the Relevant Period, and the Affected Market did not become aware of that information until 3 August 2017, and sub-paragraph 50(cb) is repeated.

80. By reason of the matters pleaded in paragraphs:

(a) 45, ~~and~~ 77, 78, ~~to~~ and 79;

(b) further or alternatively, 45AA, 77A, 78A and 79A;

(c) further or alternatively, 45AB, 77B, 78B and 79B; and/or

(d) further or alternatively, 45AC, 77C, 78C and 79C,

CBA contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act (**Account Monitoring Failure Continuous Disclosure Contraventions**).

~~***E.1.4 ML/TF Risks Systems Deficiency Continuous Disclosure Contraventions***~~

~~81. As at, and from, at least 16 June 2014, or alternatively 24 September 2015, the ML/TF Risk Systems Deficiency Information was information that a reasonable person would~~

~~expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.~~

~~82. By reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 81, on and from at least 16 June 2014, or alternatively 24 September 2015CBA became obliged immediately to tell the ASX the ML/TF Risk Systems Deficiency Information.~~

~~83. CBA did not inform the ASX of the ML/TF Risk Systems Deficiency Information immediately on at least 16 June 2014, or alternatively 24 September 2015, or at all in the Relevant Period, and the Affected Market did not become aware of that information until 3 August 2017, and sub-paragraph 50(d) is repeated.~~

~~84. By reason of the matters pleaded in paragraphs 47 and 81 to 83, CBA contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act (**ML/TF Risk Systems Deficiency Continuous Disclosure Contravention**).~~

### *E.1.5 Potential Penalty Continuous Disclosure Contraventions*

85. As at, and from~~, at least~~ 16 June 2014 or shortly thereafter, or alternatively 11 August 2015 or shortly thereafter, or alternatively ~~24~~ 8 September 2015 or shortly thereafter, or alternatively 24 April 2017, the Potential Penalty Information was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

86. By reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 85, on and from ~~at least~~ 16 June 2014 or shortly thereafter, or alternatively 11 August 2015 or shortly thereafter, or alternatively ~~24~~ 8 September 2015 or shortly thereafter, or alternatively 24 April 2017, CBA became obliged immediately to tell the ASX the Potential Penalty Information.

87. CBA did not inform the ASX of the Potential Penalty Information immediately on ~~at least~~ 16 June 2014 or shortly thereafter, or alternatively 11 August 2014 or shortly thereafter, or alternatively ~~24~~ 8 September 2015 or shortly thereafter, or alternatively 24 April 2017, or at all, and the Affected Market did not become aware of that information until 3 August 2017, and sub-paragraph 50(e) is repeated.

88. By reason of the matters pleaded in paragraphs 49 and 85 to 87, CBA contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act (**Potential Penalty Continuous Disclosure Contravention**).

### *E.1.6 Combined Continuous Disclosure Contraventions*

89. Further or alternatively to paragraphs 69 to 72, 73 to 76, 77 to 80, ~~81 to 84~~ and 85 to 88, any combination of two or more items of the following information:

(a) the June 2014 Late TTR Information;

(b) the June 2014 IDM ML/TF Risk Assessment Non-Compliance Information;

(c) the June 2014 Account Monitoring Failure Information; and/or

~~(d) the ML/TF Risk Systems Deficiency Information; and/or~~

(e) the Potential Penalty Information as at 16 June 2014 or shortly thereafter,

was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

89A. Further or alternatively to paragraphs 69 to 72, 73 to 76, 77 to 80, and 85 to 88, any combination of two or more items of the following information:

(a) the August 2015 Late TTR Information;

(b) the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information;

(c) the August 2015 Account Monitoring Failure Information;

(d) the Potential Penalty Information as at 11 August 2015 or shortly thereafter,

was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

89B. Further or alternatively to paragraphs 69 to 72, 73 to 76, 77 to 80, and 85 to 88, any combination of two or more items of the following information:

(a) the September 2015 Late TTR Information;

(b) the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information;

(c) the September 2015 Account Monitoring Failure Information;

(d) the Potential Penalty Information as at 8 September 2015 or shortly thereafter,

was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

89C. Further or alternatively to paragraphs 69 to 72, 73 to 76, 77 to 80, and 85 to 88, any combination of two or more items of the following information:

(a) the September 2015 Late TTR Information;

(b) the August 2015 IDM ML/TF Risk Assessment Non-Compliance Information;

(c) the September 2015 Account Monitoring Failure Information;

(d) the Potential Penalty Information as at 24 April 2017,

was information that a reasonable person would expect to have a material effect on the price or value of CBA Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

90. By reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 89, on and from ~~at least~~ 16 June 2014 or shortly thereafter, ~~or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015~~ CBA became obliged immediately to tell the ASX any combination of two or more items of the information referred to in paragraph 89.

90A. Further or alternatively, by reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 89A, on and from 11 August 2015 or shortly thereafter, CBA became obliged immediately to tell the ASX any combination of two or more items of the information referred to in paragraph 89A.

90B. Further or alternatively, by reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 89B, on and from 8 September 2015 or shortly thereafter, CBA became obliged immediately to tell the ASX any combination of two or more items of the information referred to in paragraph 89B.

90C. Further or alternatively, by reason of CBA's Continuous Disclosure Obligations and the matters pleaded in paragraph 89C, on and from 24 April 2017 or shortly thereafter, CBA became obliged immediately to tell the ASX any combination of two or more items of the information referred to in paragraph 89C.

91. CBA did not inform the ASX of any combination of two or more items of the information referred to in paragraph 89 immediately on ~~at least~~ and from 16 June 2014 or shortly thereafter, ~~or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015~~, or at all, and the Affected Market did not become aware of that information until 3 August 2017, and paragraph 50 is repeated.

91A. Further or alternatively, CBA did not inform the ASX of any combination of two or more items of the information referred to in paragraph 89A immediately on and from 11 August 2015 or shortly thereafter, or at all, and the Affected Market did not become aware of that information until 3 August 2017, and paragraph 50 is repeated.

91B. Further or alternatively, CBA did not inform the ASX of any combination of two or more items of the information referred to in paragraph 89B immediately on and from 8 September 2015 or shortly thereafter, or at all, and the Affected Market did not become aware of that information until 3 August 2017, and paragraph 50 is repeated.

91C. Further or alternatively, CBA did not inform the ASX of any combination of two or more items of the information referred to in paragraph 89C immediately on and from 24 April 2017 or shortly thereafter, or at all, and the Affected Market did not become aware of that information until 3 August 2017, and paragraph 50 is repeated.

92. By reason of the matters pleaded in paragraphs:

(a) 41, 43, 45, ~~47~~ and/or 49 and 89, 90 and ~~to~~ 91,

(b) further or alternatively, 41A, 43A, 45AA, and/or 49 and 89A, 90A and 91A;

(c) further or alternatively, 41B, 43B, 45AB, and/or 49, and 89B, 90B and 91B; and/or

(d) further or alternatively, 41C, 43C, 45AC, and/or 49, and 89C, 90C and 91C,

CBA contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act (**Combined Continuous Disclosure Contraventions**).

## E.2 Misleading or deceptive conduct

### *E.2.1 Compliance Representations*

93. The conduct pleaded in paragraphs 51 to 66 (including the making of the Compliance Representations) was conduct engaged in by CBA:

(a) in relation to financial products (being CBA Shares), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and

(c) in trade or commerce, within the meaning of s 18 of the ACL.

94. By reason of the matters pleaded (insofar as they existed at the dates below) in:

(a) ~~sub-~~paragraphs 40, 42, 44, 46 to 46A, and/or 48, on and from at least 16 June 2014 or shortly thereafter;~~,~~

(b) further or alternatively, paragraphs 40A, 42, 44, 46 to 46A and/or 48, on and from at least ~~or alternatively~~ 11 August 2015 or shortly thereafter;~~,~~

(c) further or alternatively, paragraphs 40B, 42, 44, 46 to 46A and/or 48, on and from at least ~~24~~ 8 September 2015 or shortly thereafter;

(d) further or alternatively, paragraphs 40B, 42, 44, 46 to 46A and/or 48, on and from at least 24 April 2017 or shortly thereafter,

in making, maintaining and/or failing to correct or qualify the Compliance Representations, CBA engaged in conduct which was misleading or deceptive, or likely to mislead or deceive.

95. By reason of the matters pleaded in paragraphs 93 to 94, on and from ~~at least~~ 16 June 2014 or shortly thereafter, or alternatively 11 August 2015 or shortly thereafter, or alternatively ~~24~~ 8 September 2015 or shortly thereafter, or alternatively 24 April 2017 or shortly thereafter, CBA contravened s 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and/or s 18 of the ACL (**Compliance Misleading Conduct Contravention**).

### *E.2.2 Continuous Disclosure Representation*

96. The conduct pleaded in paragraphs 54 to 65 and 67 (including the making of the Continuous Disclosure Representation) was conduct engaged in by CBA:

(a) in relation to financial products (being CBA Shares), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and

(c) in trade or commerce, within the meaning of s 18 of the ACL.

97. By reason of the matters pleaded in:

(a) paragraphs 40 and 69, 70, 71 and ~~to~~ 72(a);

(b) paragraphs ~~42~~ 43 and 73, 74, 75 and ~~to~~ 76(a);

(c) paragraphs ~~44~~ 45 and 77, 78, 79 and ~~to~~ 80(a);

~~(d) paragraphs 46 to 46A, and 81 to 84;~~

(e) paragraphs 48 and 85 to 88; and/or

(f) paragraphs 40, ~~42~~ 43, ~~44~~ 45, ~~46 to 46A~~, and/or 48 and paragraphs 89, 90, 91 and ~~to~~ 92(a),

on and from ~~at least~~ 16 June 2014 or shortly thereafter, ~~or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 September 2015,~~ in making, maintaining and/or failing to correct or qualify the Continuous Disclosure Representation, CBA engaged in conduct which was misleading or deceptive, or likely to mislead or deceive.

97A By reason of the matters pleaded in:

(a) paragraphs 40A and 69A, 70A, 71A and 72(b);

(b) paragraphs 43A and 73A, 74A, 75A, and 76(b);

(c) paragraphs 45AA and 77A, 78A, 79A, and 80(b);

(d) paragraphs 48 and 85 to 88; and/or

(e) paragraphs 40A, 43A, 45AA, and/or 48 and paragraphs 89A, 90A, 91A and 92(b),

on and from 11 August 2015 or shortly thereafter, in making, maintaining and/or failing to correct or qualify the Continuous Disclosure Representation, CBA engaged in conduct which was misleading or deceptive, or likely to mislead or deceive.

97B By reason of the matters pleaded in:

(a) paragraphs 40B and 69B, 70B, 71B and 72(c);

(b) paragraphs 43B and 73B, 74B, 75B, and 76(c);

(c) paragraphs 45AB and 77B, 78B, 79B, and 80(c);

(d) paragraphs 48 and 85 to 88; and/or

(e) paragraphs 40B, 43B, 45AB, and/or 48 and paragraphs 89B, 90B, 91B and 92(c),

on and from 8 September 2015 or shortly thereafter, in making, maintaining and/or failing to correct or qualify the Continuous Disclosure Representation, CBA engaged in conduct which was misleading or deceptive, or likely to mislead or deceive.

97C By reason of the matters pleaded in:

(a) paragraphs 40C and 69C, 70C, 71C and 72(d);

(b) paragraphs 43C and 73C, 74C, 75C, and 76(d);

(c) paragraphs 45AC and 77C, 78C, 79C, and 80(d);

(d) paragraphs 48 and 85 to 88; and/or

(e) paragraphs 40C, 43C, 45AC, and/or 48 and paragraphs 89C, 90C, 91C and 92(d),

on and from 24 April 2017 or shortly thereafter, in making, maintaining and/or failing to correct or qualify the Continuous Disclosure Representation, CBA engaged in conduct which was misleading or deceptive, or likely to mislead or deceive.

98. By reason of the matters pleaded in paragraphs:

(a) 96 to 97, on and from ~~at least~~ 16 June 2014 or shortly thereafter;

(b) further or alternatively, 96 and 97A, on and from 11 August 2015 or shortly thereafter;

(c) further, or alternatively 96 and 97B, on and from 24 8 September 2015 or shortly thereafter;

(d) further or alternatively, 96 and 97C, on and from 24 April 2017 or shortly thereafter,

CBA contravened s 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and/or s 18 of the ACL, (**Continuous Disclosure Misleading Conduct Contravention)**.

## E.3 Continuing nature of CBA's contraventions

99. Each of:

(a) the Late TTR Continuous Disclosure Contraventions;

(b) the IDM ML/TF Risk Assessment Non-Continuous Disclosure Contraventions;

(c) the Account Monitoring Failure Continuous Disclosure Contraventions;

~~(d) the ML/TF Risk Systems Deficiency Continuous Disclosure Contravention;~~

(e) the Potential Penalty Continuous Disclosure Contravention; and/or

(f) the Combined Continuous Disclosure Contraventions,

was a continuing contravention, which of its nature continued from and after 16 June 2014 or shortly thereafter, or alternatively 11 August 2015 or shortly thereafter, or alternatively 24 8 September 2015 or shortly thereafter, or alternatively 24 April 2017 during the Relevant Period until 3 August 2017 and the publications pleaded in paragraphs 30 to 36 ~~such time as the Late TTR Information, the IDM ML/TF Risk Assessment Non-Compliance Information, the Account Monitoring Failure Information, and/or the Potential Penalty Information was disclosed to the Affected Market on 3 August 2017~~.

**Particulars**

*i) Paragraphs 50, 71, 71A, 71B, 71AC, 75, 75A, 75B, 75C, 79, 79A, 79B, 79C, ~~83,~~ 87, ~~and~~ 91, 91A, 91B and 91C are repeated*

100. Each of:

(a) the Compliance Misleading Conduct Contravention; and/or

(b) the Continuous Disclosure Misleading Conduct Contravention; and/or

(c) the Cleansing Notice Contravention,

was a continuing contravention, which:

(d) in the case of the Compliance Misleading Conduct Contravention and/or Continuous Disclosure Misleading Conduct Contravention, of its nature continued from ~~and after~~ 16 June 2014 or shortly thereafter, or alternatively 11 August 2015 or shortly thereafter, or alternatively ~~24~~ 8 September 2015 or shortly thereafter, or alternatively 24 April 2017 or shortly thereafter; and

(e) in the case of the Cleansing Notice Contravention, of its nature continued from and after 12 August 2015 or shortly thereafter, or alternatively ~~24~~ 8 September 2015,

during the Relevant Period until such time as the misleading nature of the representations or defects were revealed to the Affected Market on 3 August 2017 by the publications pleaded in paragraphs 30 to 36 d~~isclosure of the Late TTR Information, the IDM ML/TF Risk Assessment Non-Compliance Information, the Account Monitoring Failure Information, the ML/TF Risk Systems Deficiency Information and/or the Potential Penalty Information on 3 August 2017~~.

**Particulars**

*i) Paragraphs 68, 71, 71A, 71B, 71C, 75, 75A, 75B, 79C, 79, 79A, 79B, 79C, ~~83,~~ 87, ~~and~~ 91, 91A, 91B, and 91C are repeated.*

## F. CONTRAVENING CONDUCT CAUSED LOSS

### F.1 Market-based causation (On-Market Acquisitions)

101. The Applicant and Group Members acquired an interest in CBA Shares in a market of investors or potential investors in CBA Shares:

(a) operated by the ASX;

(b) regulated by, inter alia, sections 674(2) of the Corporations Act and ASX Listing Rule 3.1 (and by s 708AA of the Corporations Act in respect of rights issues such as the Entitlement Offer);

(c) where the price or value of CBA Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) of the Corporations Act and ASX Listing Rule 3.1;

(d) where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of CBA Shares (namely the information the subject of the contraventions of s 674(2) and s708AA of the Corporations Act pleaded in this Statement of Claim (or any of them) (together, the **Contravening Omissions**);

(e) where misleading or deceptive conduct had occurred, namely the conduct the subject of the Compliance Misleading Conduct Contraventions and the Continuous Disclosure Misleading Conduct Contraventions (together **Other Contravening Conduct**), that a reasonable person would expect to have a material effect on the price or value of CBA Shares, in that if the misleading or deceptive conduct had not occurred ~~they had not been made~~ no investors or potential investors in CBA Shares could or would have ~~been in a position to~~ read or relied ~~y~~ upon it ~~them~~; and

(f) in which during the Relevant Period each or a combination of:

(i) the Late TTR Continuous Disclosure Contraventions;

(ii) the IDM ML/TF Risk Assessment Non-Continuous Disclosure Contraventions;

(iii) the Account Monitoring Failure Continuous Disclosure Contraventions;

~~(iv) the ML/TF Risk Systems Deficiency Continuous Disclosure Contravention;~~

(v) the Potential Penalty Continuous Disclosure Contravention;

(vi) the Combined Continuous Disclosure Contraventions;

(vii) the Compliance Misleading Conduct Contraventions (or any of them);

(viii) the Continuous Disclosure Misleading Conduct Contraventions (or any of them); and/or

(ix) the Cleansing Notice Contravention,

(each being a **Market Contravention**) caused or materially contributed to the market price of CBA Shares to be substantially greater than their true value and/or the market price that would have prevailed but for the Market Contraventions, from the respective dates that those Market Contraventions commenced, as pleaded in this Statement of Claim.

**Particulars**

*The extent to which the Market Contraventions caused the market price for CBA Shares to be substantially greater than their true value and/or the market price that would otherwise had prevailed (that is, inflated) during the Relevant Period is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence in the proceeding.*

102. The decline in the price of CBA Shares pleaded in paragraph 37 above:

(a) was caused or materially contributed to by:

(i) the market's reaction to the information communicated to the Affected Market in the 3 August Corrective Disclosure, in the context of what had been communicated to the Affected Market prior to those announcements; and

(ii) the Market Contraventions;

(b) would, to the extent ~~they~~ it removed inflation from the price of CBA Shares, have occurred, or substantially occurred, earlier if:

(i) CBA had disclosed to the Affected Market the information that was the subject of Contravening Omissions; and/or

(ii) CBA had not engaged in the Other Contravening Conduct.

**Particulars**

*The extent to which inflation was removed from the price of CBA Shares, and would have been removed at earlier points in time during the Relevant Period is a matter for evidence, particulars of which will be served immediately following the Applicant filing expert evidence.*

## F.2 ~~Market-based c~~Causation (Capital Raising Acquisitions)

103. Between 12 August and 8 September 2015, CBA conducted the Entitlement Offer and:

(a) between 12 and 17 August 2015 invited eligible institutional shareholders to acquire CBA Shares, with such new CBA Shares being issued on 26 August 2015; and

(b) between 24 August and 8 September 2015, invited eligible retail shareholders to acquire CBA Shares, with such new CBA Shares issued on 18 September 2015.

**Particulars**

*i) On 12 August 2015, CBA published and lodged with the ASX the 12 August 2015 Announcements, announcing the Entitlement Offer, and paragraphs 54, 55 and 57(b) are repeated*

*ii) Announcement entitled "Commonwealth Bank of Australia Retail Entitlement Offer – Communication to shareholders", which attached a copy of a postcard sent that day to all CBA shareholders in Australia and New Zealand, which stated inter alia that:*

*A) Eligible shareholders could purchase 1 new Commbank ordinary share for every 23 ordinary shares they hold on the record date (7:00PM (Sydney time) on 17 August 2015); and*

*B) Eligible retail shareholders could exercise their entitlements until the offer closed on 8 September 2015;*

*iii) On 17 August 2015, CBA published and lodged with ASX an ASX Announcement entitled "Entitlement Offer", which stated that:*

*A) CBA had successfully completed the institutional component of the Entitlement Offer;*

*B) The institutional entitlement offer and institutional bookbuild had raised approximately $2.1 billion, with approximately 90% of entitlements exercised by eligible institutional shareholders, and had occurred at a clearing price of $78.00 per new share (being the offer price of $71.50 per share plus $6.50 per entitlement);*

*C) New shares to be issued as part of the institutional entitlement offer (including those subject to the institutional bookbuild) were expected to be issued on Wednesday 26 August 2015, and commence trading on ASX on the same day;*

*D) CBA ordinary shares would resume trading on ASX from the open of market on 17 August 2015; and*

*E) the retail component of the Entitlement Offer would open on Monday 24 August 2015 and close at 5:00PM (Sydney time) on Tuesday 8 September 2015.*

*iv) On 14 September 2015, CBA published and lodged with ASX an ASX Announcement entitled "Entitlement Offer", which stated that:*

*A) CBA had successfully completed the bookbuild for the retail component of the Entitlement Offer;*

*B) The retail entitlement offer when combined with the institutional entitlement offer had raised $5.1 billion, and had occurred at a clearing price of $73.50 per New Share (being the offer price of $71.50 per share, plus $2.00 per entitlement);*

*C) New shares to be issued as part of the retail entitlement offer (including those subject to the retail bookbuild) were expected to be issued on Friday 18 September 2015 and to commence trading on ASX on Monday 21 September 2015.*

104. The Entitlement Offer was undertaken:

(a) at an offer price of $71.50 per new CBA Share, being a price fixed by reference to the market price of CBA Shares, which traded in a market with the features pleaded in paragraph 101; and

(b) at a price which, by reason of the matters pleaded in sub-paragraph (a):

(i) would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) of the Corporations Act and ASX Listing Rule 3.1 (and by s 708AA of the Corporations Act in respect of rights issues such as the Entitlement Offer);

(ii) was set in circumstances where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of CBA Shares (namely the information the subject of the Contravening Omissions); and

(iii) was set in circumstances where the Other Contravening Conduct had occurred, being conduct involving making, and failing to correct or qualify representations that a reasonable person would expect to have a material effect on the price or value of CBA Shares (namely the Compliance Representations and the Continuous Disclosure Representation), in that if they had not been made no investors or potential investors in CBA Shares would have been in a position to read or rely upon them.

**Particulars**

*i) The Offer Price was fixed at a 10.5% discount to the dividend-adjusted closing price on 11 August 2015 (and a 10.1% discount to the dividend-adjusted theoretical share price adjusted for the Offer ("TERP")).*

*ii) The Board of CBA delegated authority to Narev to settle the pricing of the Entitlement Offer, conditionally upon the CFO and Group Treasurer being satisfied with the Final DDC Confirmation of the Due Diligence Committee: COM.141.386.4063 at 4087-4089.*

*iii) The Due Diligence Committee's Final Report (COM.141.386.1829) annexed the report of PricewaterhouseCoopers Securities Ltd dated 12 August 2015 (COM.141.386.1885), which found that the discount of the offer price of $71.50 to the last closing price and the TERP as at 11 August 2015 was correctly calculated.*

(c) in a way that enabled eligible shareholders to exercise and take up Entitlements by:

(i) in the case of eligible institutional shareholders, applying and paying application monies (being the number of Entitlements applied for multiplied by the Offer Price) during the trading halt period between 12 and 13 August 2015, with an institutional shortfall bookbuild being conducted between 14 and 17 August 2015;

(ii) in the case of eligible retail shareholders, applying and paying application monies (being the number of Entitlements applied for multiplied by the Offer Price) during the period between 24 August 2015 and 5:00PM on 8 September 2015, with a retail shortfall bookbuild being conducted between 14 and 17 September 2015,

such amounts paid being "**Application Monies**").

**Particulars**

*i) Eligible institutional shareholders could exercise Entitlements during the trading halt of 12 and 13 August 2015 if eligible to take up entitlements, or otherwise through the institutional shortfall bookbuild, according to the process instituted by the joint lead managers, being UBS, Morgan Stanley, Goldman Sachs and CBA Equities Limited. Further particulars may be provided prior to trial and following completion of interlocutory processes.*

*ii) Eligible retail shareholders could exercise Entitlements prior to 5:00PM on 8 September 2015, by either: (1) completing and returning a personalised "Entitlement and Acceptance Form" to CBA's share registry with a cheque or money order; (2) completing the "Entitlement and Acceptance Form" online at www.commsec.com.au and paying*

*application monies online; or (3) paying application monies by BPay by following the instructions on their personalised "Entitlement and Acceptance Form" without returning that form.*

105. Paragraph 102 is repeated.

105A. By reason of the matters pleaded in paragraphs 103 to 105, had the Market Contraventions not occurred, or ceased prior to the commencement of the Entitlement Offer, the Entitlement Offer would have been conducted at a lower price than the Offer Price, and the Applicant and Group Members who participated in the Entitlement Offer would have either acquired the same number of CBA Shares for a lower total consideration, or alternatively a greater number of CBA Shares for the same total consideration.

105B. Further, or alternatively, had the Market Contraventions ceased prior to the commencement of the Entitlement Offer, or during the offer period of the Entitlement Offer, then CBA would have:

(a) immediately:

(i) cancelled or withdrawn the Entitlement Offer;

(ii) alternatively, suspended the Entitlement Offer, pending the making of supplementary disclosure to:

(A) disclose the material information which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of CBA Shares (namely the information the subject of the Contravening Omissions);

(B) correct or qualify representations that a reasonable person would expect to have a material effect on the price or value of CBA Shares (namely the Compliance Representations and the Continuous Disclosure Representation, the subject of the Other Contravening Conduct),

and a sufficient period of time to elapse to enable eligible institutional and retail shareholders to consider that supplementary disclosure.

**Particulars**

*i) CBA's decision to do (i) or (ii) would have been either voluntary and unilateral, or made following consultation and direction of the Australian Securities and Investments Commission.*

*ii) If CBA decided to suspend the Entitlement Offer (subparagraph (b)), the duration of that suspension would have been determined by the amount of time that it took to (1) take advice from consultants including lawyers and financial advisors who consulted in relation to the Entitlement Offer (Herbert Smith Freehills and Pricewaterhouse Securities Ltd), conduct further management questionnaires, and further due diligence; (2) determine the form and content of such supplementary disclosure; (3) and determine whether it was still in the best interests of CBA to proceed with the Entitlement Offer.*

(b) alternatively to (a)(i) but further to (a)(ii), after a period of time if it did not cancel or withdraw the Entitlement Offer following the period of its suspension, varied the Entitlement Offer, or substituted for it a new entitlement offer (an **Altered Entitlement Offer**), which repriced the Offer Price to a price which was fixed by reference to the lower market price which would have prevailed by reason of the cessation of the Market Contraventions.

**Particulars**

*i) If CBA decided to substitute an Altered Entitlement Offer, the amount of time it would have taken CBA so to do would have been determined by the amount of time that it took to (1) take advice from consultants including lawyers and financial advisors who consulted in relation to the Entitlement Offer (Herbert Smith Freehills and Pricewaterhouse Securities Ltd), conduct further management questionnaires, and further due diligence; (2) determine the form and content of such supplementary disclosure, including the revised pricing; (3) and determine whether it was in the best interests of CBA to proceed with such an Altered Entitlement Offer;*

*ii) The price which would have prevailed under an Altered Entitlement Offer would have been substantially less than the Offer Price and the market price that in fact prevailed, the extent of the difference (that is, the inflation) being a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence in the proceeding.*

105C. Further to 105B(a), above, if CBA either withdrew or suspended the Entitlement Offer part way through the offer period:

(a) if it withdrew the Entitlement Offer as pleaded in paragraph 105B(a)(i), CBA would have refunded Application Monies paid for entitlements taken up to date;

(b) if it suspended the Entitlement Offer to make supplementary disclosure as pleaded in paragraph 105B(a)(ii) (including pending consideration of whether it would promulgate an Altered Entitlement Offer as pleaded in paragraph 105B(b)), CBA would have:

(i) offered eligible institutional or retail shareholders the opportunity to withdraw any acceptance of the Entitlement Offer to date; and/or

(ii) held Application Monies paid for entitlements taken up to date pursuant to the Entitlement Offer in trust or escrow pending consideration of whether supplementary disclosure would necessitate promulgation of an Altered Entitlement Offer at different pricing (and consideration of whether, if so, any Application Monies needed to be refunded in whole or part).

(c) if it promulgated an Altered Entitlement Offer as pleaded in paragraph 105B(b) CBA would have:

(i) offered eligible institutional or retail shareholders the opportunity to withdraw any acceptance of the earlier Entitlement Offer, and not participate in the Altered Entitlement Offer, and have their Application Monies refunded; and/or

(ii) held Application Monies paid for entitlements taken up pursuant to the Entitlement Offer by persons who were content to have them applied to entitlements offered pursuant to the Altered Entitlement Offer in trust or escrow pending application of that amount to entitlements offered under the Altered Entitlement Offer at different pricing (pursuant to which some such persons would have acquired the same number of CBA Shares as they earlier subscribed for under the unvaried Entitlement Offer for a lower total consideration and receive a refund of the surplus of Application Monies already paid).

**F.3 Reliance**

106. Further, or in the alternative to paragraphs 101 to 102 and/or 103 to 105C, in the decision to acquire an interest in CBA Shares:

(a) the Applicant and some Group Members would not have acquired interests in CBA Shares if they had known the information the subject of Contravening Omissions; and/or

(b) the Applicant and some Group Members relied directly on some or all of:

(i) the representations the subject of the Other Contravening Conduct (namely, the Compliance Representations and the Continuous Disclosure Representation); and/or

(ii) the absence of any correction or qualification to the representations the subject of the Other Contravening Conduct (namely, the Compliance Representations and the Continuous Disclosure Representation).

**Particulars**

*i) The Applicant would not have acquired an interest in CBA Shares in the Entitlement Offer had it known the information the subject of the Contravening Omissions or had the representations the subject of the Other Contravening Conduct (namely, the Compliance Representations and the Continuous Disclosure Representation) been corrected or qualified prior to his acquisition.*

*ia) Further and alternatively, the Applicant and the Group Members would have made alternative investment decisions had it known the information the subject of the Contravening Omissions or had the representations the subject of the Other Contravening Conduct (namely, the Compliance Representations and the Continuous Disclosure Representation) been corrected or qualified prior to his acquisition.*

*ii) The identities of all those Group Members which or who would not have acquired an interest in CBA Shares, or made alternative investment decisions, had they known of any or all of the information that was the subject of the Contravening Omissions and/or which or who relied directly on any or all of the Other Contravening Conduct are not known with the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicants' claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

**F.4 Loss or damage suffered by the Applicant and Group Members**

107. By reason of the matters pleaded in paragraphs 101 to 102 and/or 103 to 105C and/or 106, the Applicant and Group Members have suffered loss and damage by and resulting from the Market Contraventions (or any one or combination of them).

**Particulars**

*i) The loss suffered by the Applicant in respect of CBA Shares acquired in the Entitlement Offer will be calculated by reference to:*

*A. the difference between the price at which CBA Shares were acquired by the Applicant during the Relevant Period and the true value of ~~that interest~~ the CBA Shares; or*

*B. the difference between the price at which the Applicant acquired an interest in CBA Shares and the Entitlement Offer Price that would have applied, being a price set by reference to the market price that would have prevailed had the Market Contraventions not occurred; or*

*C. alternatively, the days during the Relevant Period where the traded price of CBA Shares fell as a result of the disclosure information which had not previously been disclosed because of the Market Contraventions, and the quantum of that fall; or*

*D. alternatively, the days after the Relevant Period when the traded price of CBA Shares fell as a result of the disclosure of information which had not previously been disclosed because of the Market Contraventions, and the quantum of that fall;*

*E. alternatively, the difference between the price at which CBA Shares were acquired by the Applicant and the price in left in hand.*

*ii) Further particulars in relation to the Applicant's losses will be provided after the service of evidence in chief.*

*iii) Particulars of the losses of Group Members are not known with the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the losses of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

Date: ~~16 July 2019~~ 25 June 2021

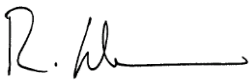
Signed by ~~Brooke Dellavedova~~ Rebecca Gilsenan
Lawyer for the Applicant

This pleading was prepared by W.A.D. Edwards of counsel and D.J. Fahey of counsel, and settled by ~~C.A. Moore~~ Matthew Darke of senior counsel.

## Certificate of lawyer

I, Rebecca Gilsenan certify to the Court that, in relation to the third further amended statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 25 June 2021



Signed by Rebecca Gilsenan
Lawyer for the Applicant

## SCHEDULE A (DEFINED TERMS)