

# AUSTRAC v CBA

## Statement of Agreed Facts & Admissions



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- Admissions by CBA
- Summary of key allegations by AUSTRAC
- Doesn't outline proposed \$\$ amounts for each contravention
- Jointly written, so reads accordingly
- Not much "why" something happened



## IDM Risk Assessment - \$180M

- \$180M - breaching S82(1) 14 times
- Failing to comply with AML Program 2012-2017
- Failure to undertake periodic risk assessments - 2012-17
- Failure to introduce “sufficient risk based systems and controls to mitigate and manage ML/TF risks” - 2012-17
- No Risk assessment prior to IDM introduction & insufficient controls
- No risk assessment after SMRs lodged and evidence of ML
- Risk assessment in July 2015 - no new controls despite high inherent ML risk
- No risk assessment after AUSTRAC ATM Methodologies Briefing
- Risks not finally mitigated until April 2018



## Customer Due Diligence - \$170M

- \$170M for breaching S36(1) for 80 customers - 12/2011 - 2/2018
- Failed to follow Part A - OCDD / ECDD 12/2011 - **2/2018**
- “Insufficient risk based steps to monitor customers or undertake ECDD in spite of warnings indicating high ML/TF risk”
- Warning signs - Law Enforcement; TM alerts; internal analysis
- On occasions alerts raised but slow or no investigation
- Insufficient consideration to terminate relationship
- 30 days notice to terminate allowed further actual and potential ML
- Failed to terminate account after TF suspicion
- Failure to monitor / undertake ECDD meant failure to identify / report SMRs



## Late TTR - \$125M

- \$125M - breaching S43(2) on 53,506 occasions
- 11/2012 - 9/2015 failed to submit 53,506 TTRs within 10 business days
- Coding error
- Identified by AUSTRAC data match SMR to TTR in August 2015
- No “course of conduct” in the SoAF
- \$2,336.19 per breach



## Failure to Monitor Accounts - \$100M

- \$100M for breaching S82(1)
- Failure to monitor 778,370 accounts - 10/2012-10/2015
- Coding error arising from merging two systems
- Failed to comply with Part A TMP
- An unknown number of unmonitored transactions
- Lack of quality assurance / ongoing monitoring to detect issue
- Bank accounts are “high risk” so should be monitored accordingly
- “Impeded the efforts of .... by depriving them of intelligence that the ... Act intends be supplied”



## **Failure to report SMRs - \$95M**

- Breach of S41
- Failed to lodge SMRs - structuring indicative of ML “despite having identified it”
- Failed to lodge SMRs - “notifications by LE of unlawful activity ... were not appropriately actioned”
- Failure to lodge SMRS in relation to identity fraud - although SMRs lodged for transactional activity
- Deliberate decision to implement “3 month” policy - i.e. not submit SMR if reported previously within 3 months
- Due to a “misapprehension” - CBA should understand its obligations
- Does this clarify when a suspicion arises - when law enforcement provide information?



## **Minor Issues \$30M & Legal Costs \$2.5M**

- \$15M - account opening
- \$15M - other errors
- \$2.5M - Australian Government Solicitor



## Mitigation

- AML Program in place supported by Group Standards, Standard Operating Proceeds, Use Guides
- Training program in place
- Breaches not deliberate
- Program enhancements
- Co-operation “At all times, CBA has invested in building a productive, cooperative and transparent relationship with AUSTRAC”
- Spent \$400M on AML compliance since 2010
- Adjusted reporting lines and improved the quality of AML/CTF information being circulated in order to enhance governance and reporting processes



## What the Statement does not cover

- Why the failings happened, especially risk assessments
- Accountabilities of Board and Senior Management
- “CBA acknowledges that there were deficiencies in oversight, accountabilities and resources in respect of its AML/CTF compliance and risk management functions.”



## What Next in AUSTRAC v CBA?

- Submissions on proposed approval
- Judicial approval (or not)
- 20th June
- Class action(s)?
- Overseas regulatory action?



## Learnings

- Risk assessments vitally important
- Coding errors are costly
- Linkages - legal, compliance, risk, projects, development teams
- AUSTRAC data matching SMRs to TTRs
- A misunderstanding of law no defence - understand your obligations
- Report everything or not?
- Respond to law enforcement enquiries
- Investigate quickly
- Close accounts promptly if appropriate
- Identify problems then fix them



## Action

- Review / revise risk assessment processes
- Transaction Monitoring Program and responding to alerts
- Revisit your interpretation of the AML Act
- Review accountabilities and reporting



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