

Article Information

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AUSTRAC is back: You can run but you can't hide

AUSTRAC has taken another bank to the cleaners, announcing an agreed \$1.3 billion settlement with Westpac over 23 million alleged breaches of the AML/CTF Act.

We all know that distant cousin that is never present at family gatherings, sometimes we forget they are part of the family. Then occasionally out of the blue, they show up at a family wedding or your grandma's 80th birthday and are the life of the party.

AUSTRAC is proving itself to be the fun cousin regulator to ASIC and APRA, surfacing to issue some of the biggest penalties Australia has ever seen and quickly becoming grandma's favourite, despite ASIC showing up to every gathering.

On 24 September 2020, Westpac and AUSTRAC reached a \$1.3 billion deal to settle Westpac's 23 million alleged breaches of the AML/CTF Act and if approved by the Federal Court, will be the largest penalty in Australian corporate history. Shareholders and superannuation funds are not the only casualties of Westpac's deficiencies, with the scandal leading to the resignation of former chief executive Brian Hartzler and the retirement of chairman, Lindsay Maxsted.

The 23 million contraventions include an additional 76,000 contraventions to what was alleged in the original statement of claim, relating to information that came to light after the fact concerning international funds transfer instructions (**IFTI**) reporting failures, failures to reasonably monitor possible child exploitation transactions, and two further failures to assess the ML/TF risks associated with correspondent banking relationships.[\[1\]](#)

The Westpac announcement trumps the week prior's announcement on 16 September 2020 that AUSTRAC issued a \$1.24 million infringement notice to State Street Bank and Trust Company for failing to report IFTIs on 99 occasions.

Unlike some of its bigger penalties, AUSTRAC had opted for an infringement notice, which is like the parking ticket your cousin got parking in a no parking zone when running late for the ceremony. There is no admission of wrongdoing, but may serve as an incentive for reporting entities to start paying more attention to their AML/CTF reporting obligations.

Compared to some of AUSTRAC's penalties in recent years (Tabcorp's \$45 million penalty, CBA's \$700 million penalty and today's announcement for Westpac), this seems relatively insignificant. However, this infringement notice appears indicative of AUSTRAC's change in enforcement approach in the past 18 months.

Prior to the Banking Royal Commission, AUSTRAC's penalties were few and far between, but they were by no means insignificant. Recently however, we have seen a string of smaller penalties issued to smaller entities concerning deficiencies in their AML/CTF reporting obligations.

Similar to recent statements by Westpac[\[2\]](#) and NAB[\[3\]](#), State Street announced that it had self-reported the IFTI reporting deficiencies to AUSTRAC, and was working closely with the regulator to address its reporting weaknesses. Taking a leaf out of Tabcorp's book, these entities recognise the benefit of working proactively with AUSTRAC to reduce the size of the penalty payable.

These penalties should be a reminder that no entity is immune from the fun cousin coming to eat their slice of the birthday cake. Keep on top of your AML/CTF Program (that means following through on what is on paper), and come speak to us if you need advice on whether you are correctly complying with the reporting obligations under the AML/CTF Act. Not only can your actions (or inactions) lead to a significant enforcement bill, but they can also lead to the real and significant consequence of facilitating terrorism financing and money laundering in Australia.

[\[1\] AUSTRAC and Westpac agree to proposed \\$1.3bn penalty](#)

[\[2\] 2018 Westpac Annual Report \(PDF\)](#)

[\[3\] NAB Annual Financial Report 2019 \(PDF\)](#)