

## ANNEXURE A

### NOTICE TO GROUP MEMBERS

#### AUSTRALIAN RETIREMENT GROUP PTY LIMITED & ANOR V COMMONWEALTH BANK OF AUSTRALIA SUPREME COURT OF NEW SOUTH WALES PROCEEDING NO. 2016/86790

##### TO: The Group Members in Proceedings 2016 / 86790

The Supreme Court of New South Wales has ordered that this notice be provided to Group Members in the above proceeding, being those persons who fall within the definition of "Group Member" in the proceeding and who have not previously opted out of the proceeding.

You may have previously received a notice in relation to this proceeding in December 2022 or January 2023.

This notice is being provided to you because you may be a Group Member. You are a Group Member in this proceeding if you fall within the definition of "Group Member" in paragraph 2 of the Plaintiffs' Second Further Amended Statement of Claim, which is as follows:

- (i) borrowers, who fall within the definition of "small business" customers contained in the Banking Code of Conduct, and who entered into facility agreements with BankWest prior to 19 December 2008, and whose loan facilities were the subject of a Review by BankWest after 19 December 2008, and that were subsequently placed into the Credit Asset Management (CAM) division of BankWest but were not subsequently rehabilitated; or
- (ii) guarantors under the said facility agreements where entered into with BankWest prior to 19 December 2008.

If you do not fall within the above definition, you are not a group member for the purposes of this proceeding and this notice does not apply to you. If you are unsure as to whether or not you are a Group Member, you should contact the lawyers for the Plaintiffs in this class action, Hall Partners, whose contact details are set out above, or alternatively seek your own legal advice

If you are a Group Member, this notice contains important information about the proceeding and your right to opt out of the proceeding. If there is anything in this notice that you do not understand, you should seek legal advice. Any questions you have concerning the matters contained in this notice should not be directed to the Court.

#### **Proposed discontinuance and settlement terms**

The Plaintiffs, the Defendant, and Hall Partners (representatives of the Plaintiffs) have agreed that the proceeding should be discontinued with no admission of liability on the part of the Defendant.

The discontinuance is proposed on the basis of the following terms:

- the Plaintiffs, on their own behalf and on behalf of the Group Members, will release the Defendant from their claims in the proceeding; and
- the Defendant will not take further steps to enforce any claim which it may have as against the Plaintiffs or any Group Member pursuant to any loan facility provided by Bankwest which is the subject of the Proceeding (including in relation to guarantees of those facilities provided by Group Members).

CBA continues to deny any liability as alleged in the proceeding and has agreed to enter into the settlement in order to bring the proceeding to an end. However, as part of the settlement terms, CBA has agreed to pay (inclusive of GST, if applicable):

- \$375,000 to the Plaintiffs on account of their costs to date;
- an amount up to but not exceeding \$75,000 (including all disbursements) as agreed or assessed to the Plaintiffs on account of their costs of obtaining Court approval of the settlement;
- \$20,000 to Mr Walsh in recognition of his role as a representative party in the Proceeding.

CBA has also agreed, as part of the settlement, that it will not rely on the expiry of a limitation period as a complete defence to a claim in any new proceeding which is commenced by a Group Member who has opted out (or will opt out) of this proceeding, provided that: (a) the claim relates to the subject matter of this proceeding; (b) the new proceeding is commenced in an Australian court within 90 days of approval of the settlement terms; and (c) the applicable limitation period had not yet expired as at the commencement of this proceeding.

If you wish to clarify the proposed terms of the discontinuance and settlement, you should seek your own legal advice or contact Hall Partners as soon as possible.

### **What you must do**

#### *Option 1: Do nothing*

If you do nothing in response to this notice, if the proceeding is discontinued in the manner proposed above, you will be bound by and have the benefit of the settlement terms upon the Court making orders to that effect. However, you will also among other things be prohibited from bringing a further claim against the Defendant (including BankWest) in relation to the subject matter of this proceeding, or anything anything related to the subject matter of the proceedings, that relates in any way to any loan facility of a type described in the plaintiffs' Statement of Claim.

#### *Option 2: Opt out and cease to be an Group Member*

If you do not wish to remain a Group Member in this proceeding and do not wish to be bound by or have the benefit of the settlement terms, you must opt out of the proceeding by:

- completing the Opt Out Notice that is annexed to this Notice; and
- submitting your Opt Out Notice to the Sydney Registry of the Supreme Court of New South Wales either by email to SC Email Filings <sc.emailfiling@justice.nsw.gov.au> or by post directed to the Registrar, Supreme Court of NSW, GPO Box 3, Sydney NSW 2001; and
- serving a copy of that Opt Out Notice on the solicitors for the Plaintiffs (Hall Partners) by sending a copy either by email to admin@hallpartners.com.au or by post to Hall Partners, Shop 6, 172-176 Parramatta Road, Homebush NSW 2140.

If you opt out of the proceeding, you will:

- not be affected by any orders made in the proceeding after that time;
- retain any entitlement you have to commence separate legal proceedings against the Defendant in relation to the matters the subject of the proceeding on your own behalf if you so wish;

- if the matter does not resolve in the manner proposed above, not be permitted to participate in any other outcome of the proceedings; and
- not be bound by or have the benefit of the settlement terms between the Plaintiffs, Group Members and the Defendant. You will not be prohibited from bringing a separate claim against the Defendant in relation to the subject matter of this proceeding. Similarly, the Defendant will not be precluded from bringing a claim against you in relation to the subject matter of this proceeding.

*Option 3: Object to the orders*

If you wish to object the orders of the Supreme Court of New South Wales made or proposed to be made in relation to the matters above, you must provide written notice to before 4pm on 31 October 2023 to Hall Partners stating the reasons for your objection. Any notice received by Hall Partners after this time will have no effect.

You may be required to attend the Supreme Court of New South Wales at a later date in order to have your objection heard and decided by the Court.

**Will you be liable for legal costs?**

You will not become liable for legal costs simply by opting out of the proceeding or doing nothing in response to this notice.

**Questions**

If you have any other questions regarding this proceeding, you should contact Hall Partners at [admin@hallpartners.com.au](mailto:admin@hallpartners.com.au). Alternatively, you can seek legal advice from other solicitors.

## ANNEXURE B

Form 115 (version 2)  
UCPR 58.2

### OPT OUT NOTICE

#### COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity Division
List	Commercial List
Registry	Sydney
Case number	2016/86790

#### TITLE OF PROCEEDINGS

<b>First Plaintiff</b>	<b>Australian Retirement Group Pty Limited ACN 097 623 704</b>
<b>Second Plaintiff</b>	<b>Peter Gower Walsh</b>
<b>Defendant</b>	<b>Commonwealth Bank of Australia ACN 123 123 124</b>

#### FILING DETAILS

Filed for	<b>[name]</b> , person opting out of representative proceedings
#Legal representative	[solicitor] [firm]
#Legal representative reference	[reference number]
Contact name and telephone	[name] [telephone]
Contact email	[email address]

#### OPT OUT NOTICE

Name of person opting out  
Address of person opting out

I, a group member in these representative proceedings, opt out of the proceedings.

I understand that in opting out:

1. I forego the right to share in any relief obtained by the representative parties in the representative proceedings, including pursuant to the provisions of any Deed of Settlement entered into by those parties on behalf of group members;
2. I am not entitled to receive any further notification about the conduct or disposition of the proceedings; and
3. to the extent that I have a claim against the defendant, any limitation period suspended by the commencement of the representative proceedings has recommenced to run.

## SIGNATURE

#Signature of legal representative

#Signature of or on behalf of person  
opting out if not legally represented

Capacity [eg solicitor, authorised officer of person opting out, person  
opting out]

Date of signature

## NOTICE TO PERSON OPTING OUT

You must, within the time specified in the notice to group members:

- 1 file this form in the registry of the court at the address below, or in the manner provided in the notice to group members; and
- 2 serve a copy of this form on the representative party at the address, or in the manner provided, in the notice to group members.

## REGISTRY ADDRESS

Street address	Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272