

FEDERAL COURT OF AUSTRALIA

CLASS ACTION

Westpac

and

Storm Financial

1. Why is this notice important?

A class action has been commenced in the Federal Court of Australia by John and Glenda Lee against Westpac Banking Corporation (“**Westpac**”). The action arises out of the collapse of Storm Financial Ltd (“**Storm**”) and lending by Westpac to certain clients of Storm.

The Federal Court has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the action is brought and may be affected by the action.

If you were a client of Storm and took out a loan (or increased your borrowings) with Westpac on Storm’s advice between 22 October 2004 and 31 October 2008, in order to invest in index share funds recommended by Storm, you should read this notice carefully.

Any questions you have concerning the matters contained in this notice should not be directed to the Court. If there is anything in it that you do not understand, you should seek legal advice.

2. What is a class action?

A class action is an action that is brought by one or a small number of people (“**Applicant**” or “**Applicants**” – in this case John and Glenda Lee) on their own behalves and on behalf of a class of people (“**class members**” – this may include you) against another person (“**Respondent**” – in this case Westpac) in circumstances in which the Applicant and the class members have similar claims against the Respondent.

Class members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicant is responsible for the costs.

Class members are bound by any judgment or settlement entered into in the class action unless they have opted out of the proceeding. A binding result can happen in two ways being either a judgment following a trial, or a settlement at any time. If there is a judgment or a settlement of a class action class members will not be able pursue the same claims and may not be able to pursue similar or related claims against the respondent in other legal proceedings. Class members should note that:

- (a) in a judgment following trial, the Court will decide various factual and legal issues in respect of the claims made by the applicant and class members. Unless those decisions are successfully appealed they bind the applicant, class members and the respondent. Importantly, if there are other proceedings between a class member and the respondent, it is likely that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.
- (b) where a settlement of a class action provides compensation to class members, class members may not be able to obtain additional compensation from the respondent in relation to rights which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you consider that you have claims against a respondent which are based on your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action before the deadline for opting out (see below).

3. What is 'Opt Out'?

The Applicant in a class action does not need to seek the consent of class members to commence a class action on their behalf or to identify a specific class member. However, class members can cease to be class members by opting out of the class action. An explanation of how class members are able to opt out is found below in the section headed "How can you opt out of the proceeding".

4. What is this class action?

This class action, the Westpac/Storm Financial class action, is brought by John and Glenda Lee ("**the Applicants**") on their own behalves and on behalf of all persons who are "class members" as defined in the proceeding.

The Applicants allege in the further amended statement of claim in Federal Court proceeding QUD 211/2013 that Storm's clients were induced by Storm through misleading representations to take out more debt than they could afford, and that they have lost money and property as a result. The Applicants say that this was a breach of the agreements that Storm had with its clients.

The Applicants say that Westpac was responsible for some of these losses for three reasons.

The first reason is that, according to the Applicants, Westpac breached its contractual obligations to its Storm-referred clients by lending them more money than they could afford to repay.

Second, the Applicants say that between about 1999 and 31 October 2008, there was an arrangement between Storm and Westpac, whereby clients of Storm were regularly referred

by Storm to Westpac in order to obtain loans. The Applicants say that this means that Westpac was responsible for Storm's misrepresentations to its clients, because it was a "linked credit provider" of Storm.

Finally, the Applicants say that Westpac knew that Storm was misleading its clients, but decided to lend money to Storm's clients anyway, which the Applicants allege was "unconscionable conduct".

The Respondent to the class action is Westpac. The Respondent denies the allegations and is defending the class action.

5. Are you a class member?

You are a class member if you:

- (a) borrowed money from Westpac or increased your existing borrowings from Westpac between 22 October 2004 and 31 October 2008, to invest in the index share funds that Storm recommended;
- (b) lost money or property because Storm misrepresented the risks to you of borrowing to invest in managed funds; and
- (c) have not previously settled your claim against Westpac.

If you are unsure whether or not you are a class member, you should contact Levitt Robinson Solicitors on 02 9286 3133, email info@levittrobinson.com or seek your own legal advice without delay.

6. Will you be liable for legal costs?

You will **not become liable for any legal costs** simply by remaining as a class member for the determination of the common questions. However:

- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Levitt Robinson Solicitors or other lawyers to do that work for you. A copy of the terms on which Levitt Robinson Solicitors are acting in the class action may be obtained from them on their website, www.levittrobinson.com, or by calling 02 9286 3133 or emailing info@levittrobinson.com;
- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicants in running the class action but which are not able to be recovered from the Respondent; and

(c) class actions are often settled out of court. If this occurs in the class action, you may be able to claim from the settlement amount without retaining a lawyer.

7. What will happen if you choose to remain a class member?

Unless you opt out, you will be bound by the outcome of the class action. If the class action is successful (and assuming you do not opt out), you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicants and class members. In some cases you may have to satisfy certain conditions before your entitlement arises. If the action is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceedings.

8. How can you remain a class member?

If you wish to remain a class member there is **nothing you need to do** at the present time. The Applicants will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of the Applicants and the class members. **However, you are invited to contact the Applicants' lawyers, Levitt Robinson Solicitors, on the number/email address below and register as a class member so that future notices about the class action can be sent to your preferred address.**

9. How can you opt out of the class action?

If you do not wish to remain a class member you must opt out of the class action. If you opt out, you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you will be at liberty to bring your own claim against the Respondent, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the Respondent, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.

If you wish to opt out of the class action you **must** do so by completing a "**Opt out notice**" in the form shown below (Form 21 of the Court's approved forms), then returning it to the Registrar of the Federal Court of Australia at the address on the form. **IMPORTANT: the Notice must reach the Registrar by no later than 28 February 2017**, otherwise it will not be effective.

You should submit the opt out notice if you qualify as a class member and you wish to opt out of the class action.

Each class member seeking to opt out should fill out a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

10. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the further amended originating application, the further amended statement of claim and the defence, may be obtained by:

- (a) downloading them from www.levittrobinson.com;
- (b) inspecting them between 9am and 5pm at the offices of Levitt Robinson Solicitors, contact details for which are available from www.levittrobinson.com or by calling 02 9286 3133 or emailing info@levittrobinson.com;
- (c) by contacting a District Registry of the Federal Court (contact details are available at www.fedcourt.gov.au) and paying the appropriate inspection fee; or
- (d) where appropriate arrangements have been made with the Court, inspecting them on the Federal Court website at <http://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions>.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Levitt Robinson Solicitors on 02 9286 3133 or info@levittrobinson.com or seek your own legal advice. **You should not delay in making your decision.**

Disclosure of class member legal costs/litigation funding terms

Federal Court of Australia
District Registry: Queensland
Division: General

No. 211 of 2013

John Charles Lee and another
Applicants

Westpac Banking Corporation
Respondent

1. **Retainer agreement with Applicants' lawyers**

- 1.1 A copy of the standard terms on which the Applicants' lawyers are conducting the class action on behalf of class members is attached as Annexure A to this disclosure document, with confidential elements masked.
- 1.2 A complete but confidential copy of the standard terms of the retainer agreement (including costs disclosure statement) can be obtained from the Applicants' lawyers by calling 02 9286 3133 or emailing info@levittrobinson.com.

2. **Litigation Funding agreement**

- 2.1 This class action is not subject to a litigation funding agreement.

Date: 12 December 2016

Costs Disclosure and Conditional Costs Agreement

OUR REF:	SAL:BRI:90390
DATE:	17 November 2016
TO:	Group Members Levitt Robinson Solicitors
FROM	Levitt Robinson, Solicitors Ground Floor, 162 Goulburn Street SYDNEY (EAST) NSW 2010

This document, together with our General Terms of Business which are annexed to this Conditional Costs Agreement, sets out the terms of our offer to provide legal services to you and constitutes our costs agreement and disclosure pursuant to the *Legal Profession Uniform Law (NSW)*.

You confirm that you have hereby been informed of your right to obtain independent legal advice before entering into this Conditional Costs Agreement (**'Agreement'**).

In this Agreement, a reference to "**Storm**" is a reference to Storm Financial Limited (in liquidation), and to its predecessors, as promoters of Storm financial products and services.

1. Scope of Work

1.1. You have instructed us:

- (a) to prosecute representative proceedings, on your behalf in your capacity as group member, against Westpac Banking Corporation (**'Westpac'**) for damages suffered as a result of your investment in Storm-Badged Index Funds (**'Storm Funds'**) with the proceeds from loan(s) obtained from Westpac (**'the Class Action Proceedings'**); and also,

■ [REDACTED]

1.2. We expect to complete the work described above as soon as practicable. The time to complete the work is subject to the description of the work which you require us to undertake and to the nature of the response from all parties with whom we may be required to deal.

2. Group Membership

- 2.1. If you do not fulfil the below definition of a “Group Member” you should not become a party to this Agreement.
- 2.2. You are a group member in the Class Action Proceedings if you were a client of Storm Financial Limited who:
- (a) borrowed money from Westpac in the period between on or after 22 October 2004 and 31 October 2008 (the ‘**Relevant Period**’), or who increased your borrowings from Westpac during the Relevant Period, to invest in one or more of the Storm Funds; and
 - (b) suffered loss and damage as a result of:
 - i. Storm’s breaches of contract and/or alternatively,
 - ii. Storm’s misrepresentations; and
 - (c) you have not settled your claims, made in these proceedings, with Westpac, (**‘Group Member’**).

3. Funding Model

- 3.1. The Class Action Proceedings are to be funded, and have been partially funded to date, by the voluntary contributions of the Group Members.
- 3.2. We will periodically raise voluntary levies, which we will ask you to pay and which will be used to pay solicitors (ourselves), Senior and Junior Counsel, experts, Court fees, conduct money and witness expenses, software, license and service fees, transcript charges and all necessary disbursements, to have commenced and to [REDACTED]
[REDACTED]
- 3.3. By entering into this Conditional Costs Agreement, you will not be under any obligation to meet our costs or disbursements, or to contribute to the payments of the levies unless and until such time as there is a Successful Outcome of the matter, as defined in Clause 4 below.

4. Successful Outcome of the matter

- 4.1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- 4.2. Subject to Federal Court approval, upon the occurrence of a Success Event, you hereby authorise us to debit you and to pay to ourselves or on your behalf, the balance of levies paid or payable to us and to third parties, as per this Conditional Costs Agreement, notwithstanding that your decision to pay these levies has been entirely voluntary and that no legal action will be taken by us to enforce such payment, absent the result of a Success Event.
- 4.3. You agree that, upon the occurrence of a Success Event, you will incur an enforceable legal liability to the extent of any unpaid levies, to meet our legal costs and to pay disbursements. This liability will crystalize upon the occurrence of a Success Event, namely to make up and pay any unpaid balance of the total aggregate of the levies declared and requested by us from time to time in respect of this matter. You further agree that any shortfall in the levies paid by you, may be adjusted, deducted or appropriated by us from such monies to which you may become entitled through our acting for you in these matters, to pay towards our legal costs and disbursements, with Federal Court approval.
- 4.4. Notwithstanding any clause to the contrary, in the event that we, in our absolute sole discretion, pay a disbursement without securing the disbursement amount in trust and/or do not invoice you for, or pass onto to you, the disbursement prior to the successful outcome of this matter, the disbursement will form part of our legal costs under this Agreement.

5. Interest on Paid Levies

- 5.1. In the event that there is a successful outcome of the matter, we will ask the Federal Court to award the Funding Group Members interest at the pre-judgment rates permitted under the Federal Court Rules (usually 7 - 8%) on the levies that they have paid, from the date of payment. The award of any such interest will be dependent on Court approval.

6. Acceptance

- 6.1. You will be taken to have accepted this offer if:
- (a) you sign and return this document to us;
 - (b) you pay a levy declared or requested pursuant to this Agreement; or
 - (c) you continue to instruct us to act for you in relation to the Class Action Proceedings.
- 6.2. If you accept this offer, you will be regarded as having entered into a Conditional Costs Agreement. This means that you will be bound by the terms and conditions set out in this document, including your being billed in accordance with this Agreement.
- 6.3. Before accepting our offer to continue to act on this matter for you, you should understand:
- (a) The nature and extent of the work that we are going to perform.

- (b) Our probable costs in the matter.
- (c) The possible expenses for which you may become liable including our fees and disbursements and also the fees and disbursements of other parties that you may be required to bear.
- (d) The method by which you are to be charged for our services.
- (e) The time at which you are required to pay our accounts.
- (f) The appropriate avenues for expressing any dissatisfaction with our performance.

7. Professional Fees

7.1. We will charge you professional fees for the work we do based on hourly rates. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Currently, our staff, hold the following positions:

- Stewart Levitt - Senior Partner
- Chrystalla Georgiou - Partner
- Brett Imlay - Special Counsel
- Stephanie Carmichael, Louise Cassar and Tamara Rabadi - Senior Associates
- Benjamin Brady, Joshua Kangisser and Daniel Meyerowitz-Katz – Associates
- Krista MacPherson and Anastasia Stomo – Solicitors
- Nazli Hocaoglu and Jason Pham - Student Clerks

7.2. We confirm that Stewart Levitt, Senior Partner, will be responsible for the work, together with Brett Imlay, Special Counsel and Daniel Meyerowitz-Katz, Associate, who will work with him on your matter. Nonetheless, Mr Levitt may allocate other solicitors employed by this firm to work on the matter from time to time.

- 7.3. We reserve the right to promote any of our staff, which would have the effect of increasing their individual charge-out rate, without notice to you.
- 7.4. You will be proportionately charged for work performed in periods of less than an hour. Our charges are structured in 6 minute units. For example, the time charged for an attendance of up to 6 minutes will be 1 unit and the time charged for an attendance between 6 and 12 minutes will be 2 units.
- 7.5. All attendances (including telephone attendances) are charged. Time will be recorded for all activities by all personnel taking part in the conduct of your file, including but not necessarily limited to incoming and outgoing phone calls, incoming and outgoing letters and documents, research, travel and all other attendances.
- 7.6. Our rates are reviewed on a regular basis and may change during the course of your matter. If protracted, this may impact upon our cost estimates (which may be revised accordingly). You will be given 30 days' notice in writing of any changes to the charge-out rates for our legal personnel.

8. Disbursements and Administrative Expenses

Disbursements

- 8.1. We will either charge you or pass on to you for payment, all out-of-pocket expenses which we incur. This could include such things as State and Federal duty, Government fees, stamp duty, agent's fees, barristers' fees, courier and filing fees, postage and other delivery charges, searches and travelling costs where applicable. You authorise us to pay from trust monies held on your behalf, expenses which we have incurred for your benefit or to reimburse ourselves for such outlays in advance of our accounting to you.

Administrative Expenses

- 8.2. We will also charge you for photocopying, facsimiles, telephone charges and law stationer's fees at our standard rates. These rates are currently:

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██████████		
██████	██████	

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		

8.3. If it is necessary to recover files from outside storage, any costs incurred are payable by you.

9. Estimate of Professional Fees, Internal Expenses and Disbursements

9.1. On our present instructions, we estimate the *further* cost of the work (costs and disbursements already incurred but unpaid and estimated costs and disbursements to be incurred) to be:

[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Variables

9.2. Some of the variables which may impact on the reliability of our costs estimate include but are not limited to:

- (a) the number and duration of telephone calls or other communications;
- (b) your prompt and efficient response to requests for information or instructions;
- (c) whether your instructions are varied;
- (d) whether documents have to be revised in light of varied instructions;
- (e) the conduct of our opponents or correspondents;
- (f) changes in the law; and

(g) the complexity or uncertainty of legal issues affecting your matter.

9.3. **Please note that this is an estimate only and not a fixed quote.** The total costs may exceed the estimate. While the estimate is based on present information and instructions and our current understanding from you as to what services are required, our costs may exceed the estimate if further information becomes available or circumstances change which affect these matters. In this event we will provide you with a revised estimate as soon as practicable. Where there is a significant change in your matter then as far as possible we will advise the impact of the change on the legal costs.

10. Goods and Services Tax

10.1. All pricing and costing information provided in this agreement is exclusive of GST, unless expressly otherwise stated.

10.2. We will bill you for GST, if applicable, when we send you a tax invoice.

10.3. You agree to supply us with your Australian Business Number (ABN) when requested by us.

10.4. With regard to items that may be GST exempt (eg court filing fees), if these are paid directly by you, you will not be liable to pay GST on the supply of those items. Where we outlay the GST from our own funds for you, then we will be entitled to recoup the GST from you.

11. Payments

Payments to Levitt Robinson can be made:-

11.1. Directly to this office by cash or cheque; or

11.2. By making a deposit into our trust account. The details of our trust account are as follows:

Name:	Levitt Robinson Trust Account
Bank:	St George Bank Limited
Swift No:	SGBLAU2S (international clients only)
BSB:	112-879
Account No:	027-217-541

If you deposit monies directly into our office or trust account, please fax or mail us a copy of the bank deposit receipt addressed to our Accounts Department so that we know which deposit relates to your file. Failure to do this will result in us being unaware of your deposit and may prevent us from taking action or taking other steps on your behalf; or

- 11.3. By credit card or charge card. Please contact our Chief Financial Officer (currently Ms Rosemary Tomasella) by telephone, attend our office or complete the below credit card debt authority and forward it to us.

Credit Card Debit Authority

credit card (MasterCard or Visa):		
card number:		Expiry Date: ____/____
card holder:		Signature: _____
amount due:		\$
please quote reference (i.e. <i>your matter number</i>):		

- 11.4. You acknowledge that the *Financial Transaction Reports Act 1988* (Cth) places an obligation on us to report certain cash transactions, namely a cash transaction involving the transfer in Australia of currency (i.e. coin and paper money of Australia or of a foreign currency) of the equivalent of \$10,000.00 or more.
- 11.5. By continuing to instruct us, you accept responsibility for all costs and disbursements billed to you prior to the date of this Conditional Costs Agreement and waive the right to have those costs and disbursements assessed.
- 11.6. Funds paid by you pursuant to our levies, will not be refundable, except to the extent that they become refundable pursuant to a settlement distribution scheme or Court order.
- 11.7. We do not propose to charge interest on unpaid levies, costs or disbursements, unless we are charged interest by third party service providers, in which case we will be entitled to pass on their interest charges to you and you agree to be responsible for them, subject to Clause 4.

12. Termination

- 12.1. Without limiting the operation of the foregoing provisions of this Agreement, we reserve our rights to terminate this Conditional Costs Agreement and will not continue to do work for you:
- (a) if we receive an insufficient payment of voluntary levies to meet the professional costs and disbursements of maintaining the Class Action Proceedings;
 - (b) if you fail to pay our bills in whole or in part;

- (c) if after a 'success event' as defined in clause 4, you fail to pay our levies as requested by us;
- (d) if you fail to provide us with adequate instructions within a reasonable time;
- (e) if you give instructions that are deliberately false or intentionally misleading;
- (f) if you fail to accept an offer of settlement which we think is reasonable;
- (g) if you fail to accept advice we give you;
- (h) if you indicate to us or we form the view that you have lost confidence in us;
- (i) if there are any ethical grounds which we consider require us to cease acting for you, for example a conflict of interest;
- (j) if you engage another lawyer to advise you on this matter, without our consent;
- (k) if we believe on reasonable grounds, that we may have a conflict of interest;
- (l) for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe;
- (m) if in our sole discretion we consider it is no longer appropriate to act for you; or
- (n) for any other just cause.

12.2. We will give you reasonable written notice of the termination of our ceasing to act for you.

12.3. You may terminate this Agreement at any time by notice in writing but doing so will not affect such accrued liabilities to us and to third parties as you may have under this Agreement.

13. Progress Reports

13.1. If reasonably requested by you, we will:

- (a) provide you with a progress report for each matter which you are involved in funding (for which we may charge you at our usual rates); and
- (b) provide you with a written report on the legal costs which you have incurred to date or since the date of our last bill.

14. Joint and Several Liability

14.1. If this agreement is made with more than one person then you agree that the liability of each person and/or corporation in respect of the work shall be joint and several.

15. Your entitlement to costs from other parties or your liability for costs to other parties, subject to outcome of litigation

- 15.1. Even if you are successful in proceedings and have a costs order in your favour it is unlikely that you will recover all of the legal costs you must pay us from another party. If you do have a costs order in your favour, it may still be necessary to seek to enforce such costs order. This can be time consuming and costly. The possible costs associated with such potential enforcement proceedings are not covered in this document, but will be advised to you should the relevant circumstances arise. It is also possible that you cannot recover the costs or the judgment and/or settlement amount from the other party (for example, if the party goes into liquidation or becomes bankrupt); nonetheless you will still have to pay us our costs and the amount recovered (if any) may be applied towards satisfaction of our charges and expenses.

16. Trust Monies

Withdrawal of Trust Monies to pay us:

- 16.1. You hereby give us your standing instructions and authority to withdraw from any funds which we are holding on trust for you, including judgment monies, settlement monies or any other monies drawn in our favour or deposited into our trust account to hold for you, an amount up to the sum shown as due and payable to us in a written request by us for payment, which may include a bill, addressed to you, referring to the proposed withdrawal and stating the sum claimed as being due and payable to us or to a third party. Our request for payment must be first delivered to you, by hand or post or transmitted to you, by facsimile or email; and
- 16.2. your standing instruction and authority, as per Clause 16.1 (above), is acknowledged by you to have been given by your signing this agreement or by your continuing to instruct us after having received this agreement, and to constitute your instructions and authority to us to make a withdrawal from trust monies held on your account, pursuant to Rule 42 (4) of the *Legal Profession Uniform General Rules 2015* (NSW).

17. Failure to Pay Accounts

- 17.1. Subject to Clauses 3 and 4 of this Agreement, in the event that any of our accounts remain wholly or partly unpaid for in excess of thirty (30) days of our account being rendered or any part of funds that are requested by us are not forthcoming, Levitt Robinson, Solicitors may choose not to continue to act for you. We have adopted this practice in order to ensure prompt payment of accounts and continuity of service. In some matters our decision not to continue to act for you may lead to costs or other detriment being incurred by you for which you understand and agree that we shall not be held responsible by you.

18. Litigation Funding

- 18.1. We reserve the right to introduce a Commercial Litigation Funder to replace you as the person responsible for future funding under this Conditional Costs Agreement, subject to your agreement.

19. Warrant of Authority

- 19.1. Where the client is a corporation, body corporate or partnership, you agree that you sign this Conditional Costs Agreement for and on behalf of that corporation, body corporate or partnership and that you will personally be jointly and severally liable for payment as principal debtor of all the client's Legal Costs and disbursements in this matter and you shall not claim the law of surety as a defence to avoid such liability or in any way to delay or abrogate such liability. You further warrant that you have the requisite authority to enter into this Conditional Costs Agreement on behalf of the client and that both the client and you agree to be bound by the terms and conditions of this Conditional Costs Agreement.

20. Engagement of Another Lawyer

- 20.1. It may be necessary for us to engage, on your behalf, the services of a barrister, being junior or senior Counsel or to ask another firm to act as our agent, particularly if your matter is being heard 'out of town'. We will consult you as to the terms of that barrister's or agent's engagement but you may be asked to enter into a costs agreement directly with such other lawyer. Any other lawyer engaged by us will disclose costs in a similar manner to the way in which we have disclosed our costs to you and we will relay such disclosure to you.

21. Cooling off period

- 21.1. If you wish to terminate this Conditional Costs Agreement, you may do so within five (5) clear business days of signing it. The "cooling off" period ends at 5 pm on the fifth business day after the day on which this Conditional Costs Agreement was signed. If you terminate within the cooling off period, we shall only charge you the costs (excluding the uplift) incurred for work done that was performed on your instructions and with your knowledge up to termination.

If you have any concerns whatsoever about the matters set out or contained in this Conditional Costs Agreement or our General Terms of Business, please telephone us immediately to discuss those matters. We are always ready and willing to discuss any matters or concerns.

.....
For Stewart A Levitt
Senior Partner
Levitt Robinson, Solicitors
Dated: 24 November 2016

.....
Client signature:

Client Name:

Dated:

General Terms of Business – Conditional Costs Agreement

1 Billing Arrangements

A tax invoice for our professional fees and internal expenses will be issued on the successful outcome of the matter.

However, if we, on reasonable grounds, consider that you have unreasonably rejected a reasonable offer of compromise contrary to our advice, then payment is not conditional on the successful outcome of the matter and all costs for any legal services provided will become immediately due and payable, after we give notice to that effect to you.

All tax invoices are payable immediately upon the occurrence of a Success Event, unless we have agreed to other arrangements in writing, notwithstanding that the *Legal Profession Uniform Law 2015* (NSW) (“**the Uniform Law**”) provides that we can only take action to recover any outstanding fees thirty (30) days after delivery of the tax invoice. You consent to us sending our tax invoices to you electronically at your usual email address or mobile phone number.

2 Amended Accounts

We reserve the right to issue you with an amended account at any time where we have made an error or omission with regard to the charging of our fees and/or other charges and disbursements (including but not necessarily limited to GST).

3 Discounts Reversible

Any discount extended to you by us while we have been acting for you may be reversed at our sole discretion in the event that you do not pay any account rendered by us in accordance with these terms, as varied in writing from time to time.

4 Interest Charges

Interest at the maximum rate prescribed in Rule 75 of the *Legal Profession Uniform General Rules 2015* (NSW) (“**Uniform General Rules**”) (being the Cash Rate Target set by the Reserve Bank of Australia plus 2%) may be charged on any amounts unpaid after the expiry of 30 days after a tax invoice is given to you. Our tax invoices will specify the interest rate to be charged.

5 Recovery of Costs

The Uniform Law provides that we cannot take action for recovery of legal costs until 30 days after a tax invoice (which complies with the Uniform Law) has been given to you.

6 Your Rights

It is your right to:

- (a) negotiate a costs agreement with us;
- (b) negotiate the method of billing (e.g. task based or time based);

- (c) request and receive an itemised bill within 30 days after a lump sum bill or partially itemised bill is payable;
- (d) seek the assistance of the designated local regulatory authority (the NSW Commissioner) in the event of a dispute about legal costs;
- (e) be notified as soon as is reasonably practicable of any substantial change to any matter affecting costs;
- (f) accept or reject any offer we make for an interstate costs law to apply to your matter; and
- (g) notify us that you require an interstate costs law to apply to your matter.

If you request an itemised bill and the total amount of the legal costs specified in it exceeds the amount previously specified in the lump sum bill for the same matter, the additional costs may be recovered by us only if:

- (i) when the lump sum bill is given, we inform you in writing that the total amount of the legal costs specified in any itemised bill may be higher than the amount specified in the lump sum bill, and
- (ii) the costs are determined to be payable after a costs assessment or after a binding determination under section 292 of the Uniform Law.

Nothing in these terms affects your rights under the Australian Consumer Law.

7 Your Rights in relation to a Dispute concerning Costs

If you have a dispute in relation to any aspect of our legal costs you have the following avenues of redress:

- (a) in the first instance we encourage you to discuss your concerns with us so that any issue can be identified and we can have the opportunity of resolving the matter promptly and without it adversely impacting on our business relationship;
- (b) you may apply to the Manager, Costs Assessment located at the Supreme Court of NSW for an assessment of our costs. This application must be made within 12 months after the bill was provided or request for payment made or after the costs were paid.

8 Authorisation to Transfer Money from Trust Account

You irrevocably authorise us to receive directly into our trust account any judgment or settlement amount, or money received from any source in furtherance of your work, and to pay our professional fees, any uplift fee, internal expenses and disbursements in accordance with the provisions of Rule 42 of the Uniform General Rules. A trust statement will be forwarded to you upon completion of the matter.

9 Retention of Your Documents

On completion of your work, or following termination (by either party) of our services, we will retain your documents for

7 years. Your agreement to these terms constitutes your authority for us to destroy the file after those 7 years. The authority does not relate to any documents which are deposited in safe custody which will, subject to agreement, be retained on your behalf indefinitely. We are entitled to retain your documents while there is money owing to us for our costs.

Original documents and instruments (such as wills and certificates of title) will be retained, subject to your instructions, unless otherwise advised.

You will be liable for the cost of storing and retrieving documents in storage and our professional fees in connection with this.

10 Lien

Without affecting any lien to which we are otherwise entitled at law over funds, papers and other property of yours:

- (a) we shall be entitled to retain by way of lien any funds, property or papers of yours, which are from time to time in our possession or control, until all costs, disbursements, interest and other moneys due to the firm have been paid; and
- (b) our lien will continue notwithstanding that we will cease to act for you.

11 Privacy

We will collect personal information from you in the course of providing our legal services. We may also obtain personal information from third party searches,

other investigations and, sometimes, from adverse parties.

We are required to collect the full name and address of our clients by Rule 93 of the Uniform General Rules. Accurate name and address information must also be collected in order to comply with the trust account record keeping requirements of Rule 47 of the Uniform General Rules and to comply with our duty to the courts.

Your personal information will only be used for the purposes for which it is collected or in accordance with the *Privacy Act 1988* (Cth). For example, we may use your personal information to provide advice and recommendations that take into account your personal circumstances.

If you do not provide us with the full name and address information required by law we cannot act for you. If you do not provide us with the other personal information that we request our advice may be wrong for you or misleading.

Depending on the nature of your matter the types of bodies to whom we may disclose your personal information include the courts, the other party or parties to litigation, experts and barristers, the Office of State Revenue, PEXA Limited, the Land and Property Information Division of the Department of Lands, the Registrar General and third parties involved in the completion or processing of a transaction.

We do not disclose your information overseas unless your instructions involve dealing with parties located overseas. If your matter involves parties overseas we may disclose select personal information to

overseas recipients associated with that matter in order to carry out your instructions.

We manage and protect your personal information in accordance with our privacy policy [which can be found on our firm website or a copy of which we shall provide at your request]. Our privacy policy contains information about how you can access and correct the personal information we hold about you and how you can raise any concerns about our personal information handling practices. For more information, please contact us in writing.

12 Confidentiality

At all times we will seek to maintain the confidentiality of your information. However, we may be permitted or required by law to disclose confidential information. We may also, on a confidential basis, provide your information to third parties where we consider it is appropriate for the proper conduct of your matter.

13 Sending Material Electronically

We are able to send and receive documents electronically. However, as such transmission is not secure it may be copied, recorded, read or interfered with by third parties while in transit. If you ask us to transmit any document electronically, you release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document, for any delay or non-delivery of any document and for any damage caused to your system or any files.

14 GST

Where applicable, GST is payable on our professional fees and expenses and will be clearly shown on our tax invoices. By accepting these terms you agree to pay us an amount equivalent to the GST imposed on these charges.

15 Limited Liability

The firm's liability is limited by a scheme approved under Professional Standards Legislation.

16 Governing Law

The law of New South Wales governs these terms and legal costs in relation to any matter upon which we are instructed to act.

Form 21
Rule 9.34

Opt out notice

Federal Court of Australia
District Registry: Queensland
Division: General

No. 211 of 2013

John Charles Lee and another
Applicants

Westpac Banking Corporation
Respondent

To: The Registrar
Federal Court of Australia
Queensland District Registry
Level 6, Harry Gibbs Commonwealth Law Courts Building
119 North Quay
Brisbane QLD 4000

.....
[Name of class member – please print], a class member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that he/she/it is opting out of the class action.

Date:

Signed:

.....
Name (please print):

Capacity (delete as appropriate): class member/legal representative of class member