

Important Legal Notice

Australian Retirement Group & Anor v Commonwealth Bank of Australia

What is this Notice?

This notice contains important information about a class action filed against Commonwealth Bank of Australia Limited ('CBA') on behalf of certain customers of BankWest who held a commercial loan with Bankwest prior to its acquisition by CBA in December 2008.

You should read this notice carefully. You should not direct any questions about any of the matters in this notice to the Court. Instead, if there is anything in this notice you do not understand, you should seek independent legal advice.

Alternatively, you may wish to contact the lawyers for the plaintiffs in this class action, Hall Partners, at the contact details below:

Hall Partners

Shop 6, 172-176 Parramatta Road
HOMEBUSH NSW 2140
Tel: (02) 9233 3353
Email: trevor@hallpartners.com.au

Why am I receiving this notice?

On 20 March 2016, the plaintiffs commenced a class action in the Supreme Court of New South Wales Commonwealth Bank of Australia Limited. On 26 August 2022 the Court made orders requiring this notice to be published for the information of persons who may be members of the group on whose behalf the actions is brought. You are receiving this notice because you may be a group member.

Am I a Group Member of the Australian Retirement Group Class Action?

You are a "Group Member" in this proceeding if you fall within the definition of "Group Member" in paragraph 2 of the Plaintiffs' Further Amended Statement of Claim filed on 13 July 2016, 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; or
- (ii) guarantors under the said facility agreements where entered into with BankWest prior to 19 December 2008.

If you are a Group Member (as defined in the Statement of Claim), you may have received a notice of default from BankWest, after December 2008, in connection with a loan facility, of which you were a borrower or guarantor.

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 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.

What is a class action?

A class action is an action that is brought by the “Plaintiffs” (in this case Australian Retirement Group and Mr Peter Walsh) on their own behalf and on behalf of group members (in this case, who may include you) against the “Defendant”, (in this case, Commonwealth Bank of Australia). The Plaintiffs bring this claim on behalf of themselves and the Group Members because they contend that the Plaintiffs and Group Members have similar claims against the defendant.

Group Members in a class action will be bound by any judgment or settlement entered into in that class action, unless they have “opted out” of the proceedings (ceasing to be a Group Member). This means that:

- 1 if the class action is successful, Group Members may be eligible for a share of any settlement monies or Court-awarded damages;
- 2 if the class action is unsuccessful, Group Members will be bound by the result; and
- 3 regardless of the outcome of the class action, Group Members will not be able to pursue their claim against the Defendant in separate legal proceedings unless they have opted out.

Group Members in a class action are not individually responsible for the legal costs associated with bringing the class action insofar as it concerns the issues common to the Group (**Common Questions**). In a class action, only the plaintiff is responsible for the costs of the Common Questions. If the Plaintiffs were to succeed in respect of the Common Questions, then there may need to be a second stage of the hearing involving individual claims by each Group Member.

In order to participate in that second stage, you may be required to take steps to bring forward your individual claim and may be liable to pay the Defendant’s costs if that claim was ultimately not successful.

What is the Australian Retirement Group Class Action about?

In summary, the Plaintiffs allege that:

- 1 Between approximately 2001 to 2003, ARG acquired and became the registered proprietor of land known as Lots 49, 51, 101, 105 and 106 McGilvray Road, Bonny Hills, NSW,
- 2 ARG had a Development Approval to construct 102 independent living units for persons aged 55 and over;
- 3 On or about 5 October 2006, ARG and Bank of Western Australia Ltd (BankWest) entered into a facility agreement by which BankWest agreed to loan ARG the sum of \$9,000,000 in order to fund early development costs relating to the Carnegie

Cove development;

- 4 BankWest conducted a review of ARG's facilities after its purchase by CBA and decided to bring them to an end in circumstances in which they had not been in default;
- 5 The same review was carried out across customers whose facilities were on the Commercial Loan Book of BankWest prior to its acquisition by CBA, and their facilities were brought to an end under arrangements that are alleged to have been unconscionable or in breach of Code of Banking Practice.

The Defendant denies the allegations against it and is defending the Australian Retirement Group Class Action. The Defendant's position is that:

- A review of performing loans was conducted in about May and June 2010 for the purpose of ensuring that Bankwest had accurate and up to date information on its commercial loan portfolio and that appropriate risk gradings and provisions were applied to that portfolio.
- The Plaintiffs' loan was not part of that review and the Plaintiff does not fall within the Group Member definition.
- Further, contrary to the Plaintiffs' allegations, there was no breach of the Code of Banking Practice, nor was there any unconscionable conduct by Bankwest with respect to the Plaintiffs' loan facility.
- Even if the alleged Common Questions are decided in the Plaintiffs' favour, in view of the nature of the claims advanced by the Plaintiffs, it would still be necessary for the specific issues relevant to each Group Member's claim to be determined in a separate trial according to the individual circumstances of each Group Member.

You can access copies of key documents filed in connection with the Australian Retirement Group Class Action on the website of the Supreme Court of New South Wales at: https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/aust-retirement-group-class-action.aspx

What is "Opt Out"?

Group Members can cease to be Group Members by opting out of the class action. By orders of the Court made on 7 November 2022, the deadline for you to Opt Out of the Australian Retirement Group Class Action has been set at 4:00 pm at 10 February 2023 (the "Opt-Out Deadline"). Unless you opt out before this deadline, you will remain a Group Member and so you will be bound by any outcome reached in the Australian Retirement Group Class Action.

What should I do if I WANT to be a Group Member in the Australian Retirement Group Class Action?

You do not need to do anything in response to this notice if you want to remain a Group Member. You will remain a Group Member, and so will continue to be a part of this case, if you meet the criteria outlined above, unless you follow the steps in the next section and "opt out" of the class action.

You do not need to register as a Group Member, but you may do so by emailing trevor@hallpartners.com.au or phoning (02) 9233 3353. Registration as a Group Member will ensure that you continue to be informed about the progress of the class action.

What should I do if I DO NOT WANT to be a Group Member in the Australian Retirement Group Class Class Action?

If you do not want to be a Group Member of the Australian Retirement Group Class Action, **you need to sign and submit an Opt-Out Notice.**

The Opt-Out Notice is set out at Schedule A to this Notice.

You can also get a copy of the Opt Out Notice:

- 1 online at <https://www.supremecourt.justice.nsw.gov.au/>
- 2 by emailing trevor@hallpartners.com.au
- 3 by writing to PO Box 1236 Strathfield NSW 2135

You can submit your opt-out notice by:

- 1 emailing your completed copy of the Opt-Out Notice to the Sydney Registry of the Supreme Court of New South Wales (which is [insert email address]); **or**
- 2 posting your completed copy of the Opt-Out Notice to the Sydney Registry of the Supreme Court of New South Wales (at the address shown on the Opt-Out Notice).

If you have a legal representative (that is, a solicitor/lawyer), you can ask your legal representative to sign and submit the form on your behalf.

Any Opt Out Notice must be submitted and received by the Supreme Court by one of the methods set out above on or before the Opt-Out Deadline 4:00 pm AEST on 10 February 2023.

Opt Out Notices received after this time will not be accepted, and any person who sends an Opt-Out Notice that is received after this time will remain as a Group Member in the BankWest Class Action.

If you opt out of the Australian Retirement Group Class Action:

- (a) you will not be affected by any orders made in the Australian Retirement Group Class Action;
- (b) you will not be permitted to participate in the distribution of any damages awarded or settlement outcome (you will not receive any compensation) in the Australian Retirement Group Class Action; and
- (c) it will be open to you to commence separate legal proceedings in relation to the matters the subject of the Australian Retirement Group Class Action on your own behalf if you so wish, subject to any limitation period that might apply.

What happens if I do nothing?

As explained above, if you do nothing in response to this notice, you will remain a Group Member, provided you meet the criteria outlined above. As a Group Member, you will be bound by any judgment or settlement entered into in that class action.

Who pays the lawyers?

The Plaintiffs' lawyers are Hall Partners. A company called Just Kapital was funding the class action. However, Just Kapital is no longer funding the proceedings.

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SCHEDULE "A"

Form 115 (version 2)
UCPR 58.2

OPT OUT NOTICE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2021/88654

TITLE OF PROCEEDINGS

First plaintiff	Australian Retirement Group Pty Limited, ACN 097 623 704
Second plaintiff	Peter Gower Walsh
Defendant	The Commonwealth Bank of Australia Limited

FILING DETAILS

Filed for	Peter Gower Walsh AND Australian Retirement Group Pty Limited, CAN 097 623 704
Legal representative	Trevor Hall, Hall Partners
Contact name and telephone	Trevor Hall (02) 9233 3353
Contact email	trevor@hallpartners.com.au

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 party in the representative proceedings;
- 2 I am not entitled to receive any further notification about the conduct, progress or outcome 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 Group Member (if not legally represented)

Signature of Group Member's legal representative (if 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