

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 8/08/2017 8:36:04 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Concise Statement
File Number: VID879/2017
File Title: GUY ABRAHAMS v COMMONWEALTH BANK OF AUSTRALIA
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 8/08/2017 4:45:30 PM AEST

Registrar

A handwritten signature in blue ink, reading 'Warwick Soden'.

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form NCF1

Concise Statement

Federal Court of Australia
District Registry: Victoria
Division: General

No. VID of 2017

Guy Abrahams (and another)

Applicants

Commonwealth Bank of Australia (ABN 48 123 123 124)

Respondent

A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

Parties

1. At all material times, the Respondent (**CBA**) was, and remains: a public company incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**); a corporation listed on a financial market operated by the Australian Securities Exchange (**ASX**); and the issuer of ordinary shares which were, and are, traded on the ASX under the designation “CBA”.
2. On or about 15 August 2016 (the date of CBA’s “2016 Annual Report to Shareholders” (**2016 Annual Report**)), the Applicants held ordinary shares in CBA; since that date, the Applicants have continued to hold ordinary shares in CBA.

Application of Part 2M.3 of the *Corporations Act*

Financial Report

3. At all material times, s 292(1)(b) of the *Corporations Act* required CBA to prepare a financial report (**Financial Report**) for each financial year.

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4. At all material times, s 295 of the *Corporations Act* required that the Financial Report consist of, among other things, the financial statements for the year and the notes to the financial statements.
5. At all material times, s 297 of the *Corporations Act* required that the financial statements and notes for a financial year contained in the Financial Report give a true and fair view of the financial position and performance of CBA.

Directors' Annual Report

6. At all material times, ss 292(1)(b) and 298(1) of the *Corporations Act* required CBA to prepare a directors' report (**Directors' Annual Report**) for each financial year.
7. At all material times, s 298(1AA) of the *Corporations Act* required that the Directors' Annual Report include, among other things, the information required by s 299A of the *Corporations Act*.
8. At all material times, s 299A(1) of the *Corporations Act* required that the Directors' Annual Report contain information that members of CBA (**CBA's Members**) would reasonably require to make an informed assessment of: the operations of CBA; the financial position of CBA; and the business strategies, and prospects for future financial years, of CBA.

CBA's business

9. CBA is, and was at all material times, engaged in the business of providing finance and a range of banking and financial services in Australia and elsewhere to individuals, corporations and various business, financial or commercial entities (**CBA's Customers**).

Climate change as a major or material risk to CBA's business

10. At all material times, there has existed a significant likelihood that the climate is changing, and will continue to change, as the result of anthropogenic influences (**Climate Change**).

11. Climate Change is likely to include, or result in, changes including: higher mean and maximum temperatures; higher minimum temperatures; decreases in precipitation; increases in the severity of droughts; decreases in relative humidity; increases in the intensity of rainfall; increases in the intensity of cyclones and storms; and increases in the mean sea level (the **Climate Change Impacts**).
12. At all material times and, in particular, during and since the 2016 financial year, there was information that:
 - a. the Australian and international body of scientific knowledge has recognised the existence of Climate Change and the likelihood of the Climate Change Impacts; and
 - b. Climate Change and the Climate Change Impacts have posed, and will increasingly continue to pose, material or major risks to: the business and financial position of many of CBA's Customers; the business and financial position of entities in which CBA has a financial interest; the operations, financial position, business strategies and prospects for future financial years of CBA; and the financial position, business strategies and prospects of businesses that were the same kind of businesses carried on by CBA's customers and/or by CBA (**CBA's Climate Change Business Risks**).
13. At all material times, CBA knew, or ought to have known about:
 - a. the information set out in [12];
 - b. CBA's Climate Change Business Risks.
14. By reason of the matters in [10] to [13] above, at all material times:
 - a. CBA knew, or ought to have known, that CBA's Climate Change Business Risks might have a material or major impact on the operations, financial position, and prospects for future financial years of CBA's business and CBA's Customers;
 - b. CBA had, or ought to have had, one or more business strategies to manage CBA's Climate Change Business Risks; and
 - c. CBA's Members would reasonably require, in order to make an informed assessment of the operations, financial position, business strategies, and prospects for future financial years, of CBA: a summary of CBA's Climate Change Business Risks and of the business strategies employed by CBA to manage those risks (including whether it had any strategy or strategies to manage those risks) (**CBA's Management of its Climate Change Risks**).

15. At all material times: the Adani Carmichael coal mine project in Queensland (**Carmichael**), and whether it was being or would be funded by CBA, was a matter of substantial controversy and concern in Australia; and CBA knew or ought to have known of that controversy and concern and that the provision by CBA of any form of financial assistance or funding for Carmichael posed, and continues to pose, material or major risks (including reputational risks) to its business (the **Carmichael Risks**).

C. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

Contraventions of the *Corporations Act*

16. The 2016 Annual Report included CBA's Financial Report for the 2016 financial year and CBA's Directors' Annual Report for the 2016 financial year.
17. In the 2016 Annual Report, CBA outlined (at pp 137 to 160) its "Risk Management Framework", but did not in CBA's Directors' Annual Report, in CBA's Financial Report or in any other part of the 2016 Annual Report, report on CBA's Climate Change Business Risks, the Carmichael Risks, CBA's Management of its Climate Change Risks or CBA's management of the Carmichael Risks.
18. By reason of the above matters:
 - a. CBA contravened ss 292(1)(b), 295 and 297 of the *Corporations Act* by failing to give a true and fair view of the financial position and performance of CBA in CBA's Financial Report for the 2016 financial year.
 - b. CBA contravened ss 292(1)(b), 298(1) and (1AA) and 299A(1) of the *Corporations Act* by failing to include in CBA's Directors' Annual Report for the 2016 financial year information that CBA's Members would reasonably require to make an informed assessment of: the operations of CBA; the financial position of CBA; and the business strategies, and prospects for future financial years, of CBA.
19. CBA threatens and intends to continue to fail to report in CBA's 2017 Annual Report on CBA's Climate Change Risks, the Carmichael Risks, CBA's Management of its Climate Change Risks and CBA's management of its Carmichael Risks (including on whether CBA had any strategy or strategies in respect of managing those risks).

D. RELIEF SOUGHT BY THE APPLICANTS

20. The Applicants seek:

- a. a declaration that CBA, by failing to report on CBA's Climate Change Risks, the Carmichael Risks, CBA's Management of its Climate Change Risks and CBA's management of the Carmichael Risks in the 2016 Annual Report contravened ss 292(1)(b), 295, 297, 298(1) and (1AA), and 299A(1) of the *Corporations Act*;
- b. an injunction under s 1324(1) of the *Corporations Act*:
 - i. restraining CBA from continuing to fail to report on the risks set out in sub-paragraph a, and on CBA's management of those risks, in CBA's Annual Reports; alternatively
 - ii. requiring CBA to report on the risks set out in sub-paragraph a, and on CBA's management of those risks, in CBA's Annual Reports;
- c. such further or other orders as to the Court seem appropriate;
- d. such orders as to costs as to the Court seem appropriate.

Date: 7 August 2017

This Concise Statement was settled by Ron Merkel QC, Emrys Nekvapil and Sarah Zeleznikow.



Environmental Justice Australia

Solicitors for the Applicants

Certificate of lawyer

I, David Barnden, certify to the Court that, in relation to the Concise Statement filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 7 August 2017

A handwritten signature in black ink, appearing to be 'DBO' followed by a horizontal line.

Signed by David Barnden

Lawyer for the Applicants