

NOTICE OF FILING

Details of Filing

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File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v NATIONAL AUSTRALIA BANK LIMITED ACN 004 044 937 & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.



**Supplementary Statement of Agreed Facts as to relief agreed
between the Applicant and the Respondents**

No. VID 1253 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

Australian Securities and Investments Commission
Applicant

National Australia Bank Limited (ACN 004 044 937) and another
Respondents

A. INTRODUCTION

1. This Supplementary Statement of Agreed Facts (**Supplementary SAFA**) as to relief is made jointly by the Applicant (**ASIC**) and the Respondents (**NAB** and **AFSH**) pursuant to section 191 of the *Evidence Act 1995* (Cth), in relation to proceedings commenced by ASIC against the Respondents on 15 November 2024 (**Proceedings**).
2. The facts are agreed to solely for the purpose of the Proceedings and do not constitute any admission outside of the Proceedings.
3. The defined terms used in this Supplementary SAFA are the same as those defined and used in the Statement of Agreed Facts and Admissions dated 18 March 2025 (**SAFA**).

B. FURTHER MATTERS

The financial position of the Respondents

4. As at the date of filing, NAB is one of the five largest listed companies by market capitalisation in Australia. As at close of market on 1 May 2025, NAB's market capitalisation was approximately \$110.25 billion.
5. The NAB Group's financial statements are reported on a consolidated basis and state the financial position of NAB together with its controlled entities such as AFSH. As at 30 September 2024, the NAB Group's total net assets were \$62,213,000,000.
6. The NAB Group's revenue, profit before income tax and net profit for each year ended 30 September 2019 to 30 September 2024 was as follows:

Year	Net Interest Income (\$m)	Other Income (\$m)	Profit before income tax (\$m)	Net Profit for the year (\$m)
2019	\$13,558	\$4,373	\$7,177	\$4,801
2020	\$13,877	\$3,384	\$5,163	\$2,563
2021	\$13,793	\$2,936	\$9,068	\$6,367
2022	\$14,840	\$3,730	\$9,744	\$6,891
2023	\$16,807	\$3,841	\$10,450	\$7,419
2024	\$16,757	\$3,889	\$9,879	\$6,978

7. The NAB Group's annual turnover (within the meaning of section 5 of the Credit Act) in each 12-month period since 13 March 2019 has been sufficiently high that 10% of that figure is greater than an amount equal to 2.5 million penalty units.

Circumstances of the contraventions

8. At all relevant times, NAB handled all aspects of the hardship process on behalf of the Respondents including via its NAB Assist team (a team at NAB dedicated to managing collections, hardship and deceased estate functions for personal and business banking).
9. At all relevant times since about 2016, NAB Assist used the PowerCurve system for managing hardship notices. This included NAB Assist staff applying certain activities or functionalities within PowerCurve, for example, to approve or decline a hardship arrangement in response to a NAB hardship notice or AFSH hardship notice from a customer.
10. The failures to provide responses to the hardship notices referred to in paragraphs 13 to 16 of the SAFA were as a result of NAB Assist staff using the "reject hardship request" activity (**Activity**) in PowerCurve in response to a hardship notice in circumstances where, with the exception of six NAB customers, the reasons for the use of the Activity did not fall within any of its intended uses. The Activity had the effect of removing the relevant NAB or AFSH customer's account from the hardship workflow so that the NAB Assist team did not send a NAB response notice or AFSH response notice, or any other written communication related to the hardship notice to the relevant NAB or AFSH customers, with the exception of one NAB customer who was sent a letter confirming their hardship application had been withdrawn at their request.

11. The failures to provide NAB response notices and AFSH response notices to the hardship notices referred to in paragraphs 13 to 16 of the SAFA did not involve senior management of the Respondents.
12. The Respondents did not deliberately engage in the contraventions referred to in paragraphs 13 to 16 of the SAFA.

Prior conduct

13. Neither NAB nor AFSH have been previously found to have contravened the hardship provisions of the Code.
14. However, in 2020 NAB was found to have contravened ss 31 and 47(1)(a) and (d) of the Credit Act as a result of conducting business with 'introducers' engaging in a credit activity without an Australian credit licence: *Australian Securities and Investments Commission v National Australia Bank Limited* [2020] FCA 1494.
15. Further, since 2021 NAB has also been found to have engaged in conduct in contravention of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and *Corporations Act 2001* (Cth) (**Corporations Act**) as follows:
 - 15.1 In 2021, NAB was found to have contravened ss 12DA, 12DB(1)(a) and (g) of the *ASIC Act* and ss 912A(1), 962P, 962S and 1041H of the *Corporations Act*. The contraventions arose from NAB:
 - (a) failing to give fee disclosure statements to a number of financial planning clients with ongoing service program customer agreements, and by charging ongoing fees to those clients when it was not entitled to do so because of the breach of the disclosure obligations;
 - (b) making false or misleading representations to clients in fee disclosure statements, which contained incorrect information about ongoing fees paid by clients and/or services provided to them; and
 - (c) failing to establish and maintain documented policies, procedures and systems that were adequate to identify whether it had provided review services to clients in accordance with ongoing service agreements and fee disclosure statements, and whether it was prohibited from charging any particular client ongoing fees: *Australian Securities and Investments Commission v National Australia Bank Limited* [2021] FCA 1013.

- 15.2 In 2023, NAB was found to have contravened s 12CB of the ASIC Act, in the period from January 2017 to July 2018, as a result of continuing to charge certain fees to customers in circumstances when it knew that it had no contractual entitlement to do so and omitting to inform its customers as to the wrongful charging or suggest that they review any such fees debited to their accounts: *Australian Securities and Investments Commission v National Australia Bank Limited* [2022] FCA 1324; (2022) 164 ACSR 358 and *Australian Securities and Investments Commission v National Australia Bank Limited (No 2)* [2023] FCA 1118; (2013) 171 ACSR 176.

Contrition

16. Following the commencement of these Proceedings, NAB apologised to customers the subject of the Proceedings in its ASX announcement of 18 November 2024. The ASX announcement provided, *inter alia*:

“NAB Group Executive, Customer & Corporate Services, Sharon Cook said NAB disclosed the issue to ASIC in October 2023.

‘We’re sorry that this happened when a number of our customers were in difficult situations and needed us to be there for them,’ Ms Cook said.

‘We are focussed on ensuring these customers receive the support they need.’”

17. NAB also apologised to customers the subject of the Proceedings at its annual general meeting held on 18 December 2024.
18. By this Supplementary SAFA, NAB and AFSH also apologise to the Court for their contraventions of the Code.

Cooperation with ASIC

19. From around April 2023, ASIC requested information from NAB regarding their hardship practices, along with hardship and credit reporting data (**Initial Requests**). In August 2023, ASIC commenced a project examining credit providers’ policies, practices and procedures relating to financial hardship including those of NAB (**Hardship Review Project**). NAB cooperated with ASIC during the Initial Requests and the Hardship Review Project by providing information and data to ASIC, including in response to statutory notices requiring responses to questions, production of documents (including in relation to hardship case studies), and production of application-level hardship data.

20. In the course of the Initial Requests, the Hardship Review Project and follow up questions from ASIC relating to the responses and data provided, NAB identified numerous instances where it had not responded to a hardship notice within the required time.
21. NAB first notified ASIC of a reportable situation by way of breach report submitted on 11 October 2023. The breach report advised ASIC of the failures to provide responses to hardship notices due to the use of the Activity within PowerCurve referred to in paragraph 10 above. The breach report noted that NAB had identified 71 instances from its review of uses of the Activity in the previous two-year period, where hardship notices may not have been responded to appropriately. The breach report also noted that its investigation was ongoing, and NAB subsequently provided ASIC with periodic updates on its investigation.
22. On 29 October 2024, NAB produced data to ASIC during its investigation which indicated that there were a total of 746 instances where the Activity had been used incorrectly in the period from October 2016 to October 2023. This incorrect use of the Activity represented a rate of about 6% of the approximately 12,600 rejected hardship notices reviewed by NAB.
23. The Respondents have cooperated with ASIC and have admitted the contraventions the subject of the Proceedings at the earliest available opportunity, by way of filing the SAFA.

Corrective measures and enhancements

24. As stated at paragraph 10 above, the failures to provide responses to the hardship notices referred to in paragraphs 13 to 16 of the SAFA concerned the use by staff of the Activity within PowerCurve which had the effect of removing the customer's account from the hardship workflow. The causes have since been identified and NAB has taken steps to address those causes. In particular:
 - 24.1 on 14 September 2023, following the identification of this issue, NAB circulated a communication to NAB Assist employees to direct that they immediately cease the use of the Activity and send any future requests to use that activity to their People Leader (a supervisor responsible for overseeing a NAB employee);
 - 24.2 from 10 October 2023, NAB implemented a control, to:
 - (a) generate a daily report identifying the instances of use of the Activity;
 - (b) review each use of the Activity listed in the daily report. This is undertaken daily by an analyst within the NAB Assist team; and

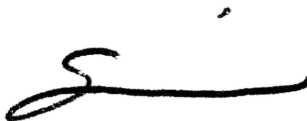
- (c) determine whether use of the Activity recorded in the daily report is incorrect, and if so, the hardship notice is re-entered into PowerCurve and actioned appropriately by close of business on the same day;
- 24.3 from 13 October 2023, the use of the Activity within PowerCurve was restricted to senior NAB Assist employees; and
- 24.4 from 13 October 2023, work instructions for NAB Assist staff regarding the use of the Activity within PowerCurve were updated to ensure it was sufficiently clear as to when the Activity should be used by NAB Assist staff.
- 25. Control Performance, a team within NAB's Risk Division, internally tested the controls referred to above for the period 10 October 2023 to 20 October 2024, and found them to be effective.

Customer losses and customer remediation

- 26. There is a reasonable inference available that the NAB customers and AFSH customers considered themselves to be experiencing financial difficulty at the time they gave NAB or AFSH a hardship notice and considered themselves unable to meet their loan obligations. Further, there is a reasonable inference available that the failure to respond to the NAB customers and AFSH customers' hardship applications may have compounded any financial difficulty those customers considered themselves to be under and any associated distress from not having their hardship notice responded to in a timely fashion or at all. Customers were also not made aware by NAB of the reasons why their hardship notice had not been responded to, or the options available to them as a result of the failure to respond to their hardship application (including the name, details, and rights under the AFCA scheme). These impacts may have been avoided if NAB had provided the affected NAB customers and the AFSH customers with response notices in response to their hardship notices within the prescribed timeframes.
- 27. Since the commencement of these Proceedings, in addition to sending the response notices referred in paragraphs 9.6 and 12.6 of the SAFA, the Respondents undertook a remediation program under which:
 - 27.1 NAB undertook a review of all uses of the Activity and assessed whether they were 'correct' or 'incorrect' uses. A further review was undertaken of incorrect uses to identify whether a response notice was sent within the required timeframe.

- 27.2 If no response notice was sent within the required timeframe, a further review was undertaken of data held in PowerCurve to determine the impact on relevant customers of the use of the Activity.
- 27.3 NAB reviewed the records of NAB customers and AFSH customers to determine whether they were subject to collections activity, with the exception of 262 customers who NAB and AFSH considered had subsequently withdrawn their hardship notice, and six customers in respect of whom NAB and AFSH considered that the Activity had been correctly used by NAB Assist staff.
- 27.4 Customers who experienced collections activity were assessed for any financial impact or non-financial impact and, as a result, 60 customers (relating to 41 instances the subject of the Concise Statement) have received or will receive payments totalling approximately:
- (a) \$3,831 for financial impact such as the charging of fees and interest on the relevant account which may not have occurred had their hardship notice been assessed within the prescribed timeframes (an average payment of approximately \$64 per customer); and
 - (b) \$28,500.00 for non-financial impact (an average payment of \$475 per customer).
- 27.5 Any incorrect repayment history information and default notice credit reporting was reviewed and, as a result, repayment history information has been corrected on three customers' credit reporting files (relating to 3 instances the subject of the Concise Statement) that otherwise may not have been recorded had their hardship notices been assessed within the prescribed timeframes.
- 27.6 Where a customer had experienced collection activity, they were invited to contact NAB if they believed they had incurred any other costs or losses as a result of NAB's error.

2 May 2025



Signed by Gina Wilson
Lawyer for the Applicant



Signed by Amanda Jane Engels
Lawyer for the Respondents