

FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v National Australia Bank [2025] FCA 947

File number(s): VID 1253 of 2024

Judgment of: NESKOVCIN J

Date of judgment: 13 August 2025

Catchwords: **BANKING AND FINANCIAL INSTITUTIONS** – alleged contraventions of s 72(4) of the *National Credit Code*, being Schedule 1 to the *National Consumer Credit Protection Act 2009* (Cth) – failure to provide a written response to hardship notices given by customers within the statutory timeframe under s 72(5) of the Code – admitted contraventions – where parties jointly proposed agreed declarations of contravention, a pecuniary penalty and adverse publicity notice – whether penalty appropriate – respondents ordered to pay a pecuniary penalty of \$15.5 million

Legislation: *Australian Securities and Investments Commission Act 2001* (Cth) ss 12GBCM, 12GLB(1)(a)
Competition and Consumer Act 2010 (Cth) s 76
Competition and Consumer Act 2010 (Cth), Sch 2, *Australian Consumer Law* s 224
Corporations Act 2001 (Cth) ss 1101B(1), 1317QA
Evidence Act 1995 (Cth) s 191
Federal Court of Australia Act 1976 (Cth) s 21, 43
Insurance Contracts Act 1984 (Cth) s 75R
National Consumer Credit Protection Act 2009 (Cth) ss 3, 166, 167, 175A, 182
National Consumer Credit Protection Act 2009 (Cth), Sch 1, *National Credit Code* ss 72(4), 72(5)
National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009 (Cth) Sch 8, Pt 2, s 3
Treasury Law Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019 (Cth)
National Credit Protection Bill 2009 (Cth) (Pt 4) [8.2], [8.159]–[8.162]

Cases cited: *Australian Building and Construction Commissioner v*

Pattinson (2022) 274 CLR 450; [2022] HCA 13

Australian Competition & Consumer Commission v Australian Safeway Stores Pty Ltd (1997) 145 ALR 36

Australian Competition and Consumer Commission v Cement Australia Pty Ltd (2017) 258 FCR 312; [2017] FCAFC 159

Australian Competition and Consumer Commission v Cryosite (2019) 135 ACSR 231; [2019] FCA 116

Australian Competition and Consumer Commission v Get Qualified Australia Pty Ltd (in liq) (No 3) [2017] FCA 1018

Australian Competition and Consumer Commission v Hillside (Australia New Media) Pty Ltd trading as Bet365 (No 2) [2016] FCA 698

Australian Competition and Consumer Commission v Reckitt Benckiser (Australia) Pty Ltd (2016) 340 ALR 25; [2016] FCAFC 181

Australian Competition and Consumer Commission v TPG Internet Pty Ltd (2013) 250 CLR 640; [2013] HCA 54

Australian Competition and Consumer Commission v Yazaki Corporation (2018) 262 FCR 243; [2018] FCAFC 73

Australian Securities and Investments Commission v AGM Markets Pty Ltd (In Liq) (No 4) (2020) 148 ACSR 511; [2020] FCA 1499

Australian Securities and Investments Commission v Allianz Australia Insurance Limited [2021] FCA 1062

Australian Securities and Investments Commission v AMP Financial Planning [2022] FCA 1115; (2022) 164 ACSR 64

Australian Securities and Investments Commission v AustralianSuper Pty Ltd [2025] FCA 102

Australian Securities and Investments Commission v Aware Financial Services Australia Ltd [2022] FCA 146

Australian Securities and Investments Commission v Colonial First State Investments Limited [2021] FCA 1268

Australian Securities and Investments Commission v Commonwealth Bank of Australia [2020] FCA 790

Australian Securities and Investments Commission v Commonwealth Bank of Australia (No 2) [2021] FCA 966

Australian Securities and Investments Commission v Membo Finance Pty Ltd (No 2) [2023] FCA 126

Australian Securities and Investments Commission v National Australia Bank Limited [2020] FCA 1494

Australian Securities and Investments Commission v National Australia Bank Limited [2021] FCA 1013

Australian Securities and Investments Commission v National Australia Bank Limited (2022) 164 ACSR 358; [2022] FCA 1324

Australian Securities and Investments Commission v National Australia Bank Limited (No 2) [2023] FCA 1118

Australian Securities and Investments Commission v Noumi Ltd (No 3) [2024] FCA 862

Australian Securities and Investments Commission v Statewide Superannuation Pty Ltd [2021] FCA 1650

Australian Securities and Investments Commission v Vanguard Investments Australia Ltd (No 2) [2024] FCA 1086

Commonwealth v Director, Fair Work Building Industry Inspectorate (2015) 258 CLR 482; [2015] HCA 46

Construction, Forestry, Mining and Energy Union v Cahill (2010) 269 ALR 1; [2010] FCAFC 39

Forster v Jododex Australia Pty Ltd (1972) 127 CLR 421; [1972] HCA 61

Singtel Optus Pty Ltd v Australian Competition and Consumer Commission (2012) 287 ALR 249; [2012] FCAFC 20

SunshineLoans Pty Ltd v Australian Securities and Investments Commission (2025) 308 FCR 474; [2025] FCAFC 34

Trade Practices Commission v TNT Australia Pty Ltd (1995) ATPR 41-375

Volkswagen Aktiengesellschaft v Australian Competition and Consumer Commission (2021) 284 FCR 24; [2021] FCAFC 49

Division:	General Division
Registry:	Victoria
National Practice Area:	Commercial and Corporations
Sub-area:	Regulator and Consumer Protection
Number of paragraphs:	94
Date of hearing:	13 June 2025
Counsel for the Applicant:	J S Graham and F S Shand
Solicitor for the Applicant:	Maddocks
Counsel for the Respondents:	D F C Thomas and J Findlay

Solicitor for the
Respondents:

King & Wood Mallets

ORDERS

VID 1253 of 2024

BETWEEN: **AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION**
Applicant

AND: **NATIONAL AUSTRALIA BANK LIMITED (ACN 004 044 937)**
First Respondent

AFSH NOMINEES PTY LTD ACN 143 937 437
Second Respondent

ORDER MADE BY: **NESKOVCIN J**

DATE OF ORDER: **13 AUGUST 2025**

In these Orders, the following definitions apply:

- (a) **AFSH** means the Second Respondent, AFSH Nominees Pty Ltd (ACN 143 937 437).
- (b) **AFSH hardship notice** means a hardship notice within the meaning of s 72(1) of the Code received by AFSH, and **AFSH hardship notices** means the AFSH hardship notices identified in Schedule B of these Orders.
- (c) **ASIC** means the Applicant, the Australian Securities and Investments Commission.
- (d) **Code** means the National Credit Code, being Schedule 1 to the Credit Act.
- (e) **Credit Act** means the *National Consumer Credit Protection Act 2009* (Cth).
- (f) **NAB** means the First Respondent, National Australia Bank Limited (ACN 004 044 937).
- (g) **NAB hardship notice** means a hardship notice within the meaning of s 72(1) of the Code received by NAB, and **NAB hardship notices** means the NAB hardship notices identified in Schedule A of these Orders.
- (h) **Response notice** means a notice within the meaning of s 72(4)(a) or (b) of the Code.

THE COURT DECLARES THAT:

1. Pursuant to s 166(2) of the Credit Act:
 - (a) between 16 November 2018 and 14 October 2023, NAB contravened s 72(4) of the Code on 282 occasions by failing to give the debtor a Response notice

in respect of the NAB hardship notices, within the time required by s 72(5) of the Code;

- (b) further, in respect of 262 NAB hardship notices received by NAB on or after 13 March 2019 (as identified in Schedule A of these Orders), by operation of s 175A of the Credit Act, NAB contravened s 72(4) of the Code on the day after it contravened s 72(4) and on each day thereafter until the date in column (f) of Schedule A of these Orders, by failing to give the debtor a Response notice before the end of the period required by s 72(5) of the Code;
- (c) between 9 January 2019 and 20 September 2023, AFSH contravened s 72(4) of the Code on 63 occasions by failing to give the debtor a Response notice in respect of the AFSH hardship notices, within the time required by s 72(5) of the Code; and
- (d) further, in respect of 58 AFSH hardship notices received by AFSH on or after 13 March 2019 (as identified in Schedule B of these Orders), by operation of s 175A of the Credit Act, AFSH contravened s 72(4) of the Code on the day after AFSH contravened s 72(4) and on each day thereafter until the date in column (f) of Schedule B of these Orders, by failing to give the debtor a Response notice before the end of the period required by s 72(5) of the Code.

AND THE COURT ORDERS THAT:

- 2. Pursuant to s 167(2) of the Credit Act:
 - (a) within 28 days of the date of this order, NAB pay to the Commonwealth of Australia a pecuniary penalty in the amount of \$13 million in respect of the contraventions of s 72(4) of the Code referred to in paragraphs 1(a) and 1(b); and
 - (b) within 28 days of the date of this order, AFSH pay to the Commonwealth of Australia a pecuniary penalty in the amount of \$2.5 million in respect of the contraventions of s 72(4) of the Code referred to in paragraphs 1(c) and 1(d).
- 3. Pursuant to s 182(1) of the Credit Act, within 30 days of this order, NAB and AFSH publish, at their own expense, a written adverse publicity notice in the terms set out in the Annexure to these Orders (**Written Notice**), according to the following procedure:
 - (a) NAB and AFSH will cause the Written Notice to be published on the

following webpages maintained by each of them respectively:

- (i) <https://www.nab.com.au/>
- (ii) <https://www.news.nab.com.au/>
- (iii) <https://www.advantedge.com.au/>

(the **websites**);

- (b) NAB and AFSH will ensure that each notice:
 - (i) appears on the landing page of the websites as a tile on the websites under the heading, “Adverse publicity order”; and
 - (ii) is maintained on the websites for a period of no less than 90 days from the date of these orders;
- (c) NAB will send a copy of the Written Notice to the last known email or postal address of each person who gave a NAB hardship notice as set out in Schedule A of these Orders; and
- (d) AFSH will send a copy of the Written Notice to the last known email or postal address of each person who gave an AFSH hardship notice as set out in Schedule B of these Orders.

- 4. The respondents pay the applicant’s costs of and incidental to this proceeding, as agreed or assessed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

SCHEDULE A

NAB Credit Contracts

(a) Ref number (per ASIC notice NTC2425793)	(b) Type of credit contract	(c) Date of credit contract	(d) Date NAB hardship notice received	(e) Date NAB response notice was due	(f) Date NAB response provided	(g) Number of days no NAB response notice provided (where s 175A applies)
N2	Personal loan	29 July 2013	5 April 2019	26 April 2019	13 December 2024 11 February 2025	2116
N4	Credit card	14 October 2016	19 March 2020	9 April 2020	11 February 2025	1767
N5	Credit card	29 June 2016	30 June 2020	21 July 2020	11 February 2025	1664
N6	Personal loan	2 July 2015	11 December 2018	2 January 2019	11 February 2025	Ongoing contravention not alleged
N7	Home loan	13 November 2015	11 September 2019	2 October 2019	13 December 2024 11 February 2025	1957
N8	Personal loan	29 January 2018	31 May 2019	21 June 2019	11 February 2025	2060
N9	Home loan	9 September 2014	15 August 2019	5 September 2019	13 December 2024	1924
N10	Personal loan	17 October 2019	20 March 2020	14 April 2020	20 December 2024	1709
N12	Home loan	3 October 2014	16 June 2020	7 July 2020	20 December 2024	1625
N13	Home loan	21 May 2015	11 February 2020	3 March 2020	13 December 2024	1744
N14	Home loan	12 November 2013	21 March 2023	11 April 2023	13 December 2024	610
N15	Home loan	25 November 2014	1 April 2020	22 April 2020	13 December 2024	1694
N16	Home loan	3 July 2015	24 March 2023	14 April 2023	20 December 2024	614
N17	Home loan	6 November 2014	28 March 2021	19 April 2021	13 December 2024	1332

N18	Home loan	21 October 2015	6 May 2019	27 May 2019	20 December 2024	2032
N19	Home loan	4 December 2015	12 May 2021	2 June 2021	20 December 2024	1295
N20	Home loan	2 June 2016	26 August 2021	16 September 2021	13 December 2024	1182
N23	Home loan	12 February 2016	10 September 2021	1 October 2021	13 December 2024	1167
N27	Home loan	23 April 2014	11 November 2021	2 December 2021	13 December 2024	1105
N28	Home loan	6 December 2016	12 March 2020	2 April 2020	20 December 2024	1721
N29	Home loan	1 May 2013	19 March 2021	9 April 2021	13 December 2024	1342
N30	Home loan	11 February 2014	21 February 2019	14 March 2019	13 December 2024	Ongoing contravention not alleged
N33	Home loan	21 February 2017	25 July 2023	15 August 2023	13 December 2024	484
N34	Home loan	1 May 2017	8 July 2019	29 July 2019	13 December 2024	1962
N35	Home loan	1 May 2017	22 February 2019	15 March 2019	13 December 2024	Ongoing contravention not alleged
N37	Home loan	22 February 2017	2 August 2021	23 August 2021	20 December 2024	1213
N38	Home loan	31 May 2017	11 November 2019	2 December 2019	13 December 2024	1836
N39	Home loan	13 June 2017	27 May 2019	17 June 2019	13 December 2024	2004
N40	Home loan	7 July 2017	1 July 2019	22 July 2019	13 December 2024	1969
N41	Home loan	5 June 2017	8 October 2020	29 October 2020	13 December 2024	1504
N42	Home loan	24 April 2015	21 February 2022	15 March 2022	13 December 2024	1002
N43	Home loan	19 December 2013	19 August 2021	9 September 2021	13 December 2024	1189
N44	Home loan	17 July 2017	27 September 2021	18 October 2021	20 December 2024	1157

N45	Home loan	14 June 2017	20 March 2020	14 April 2020	13 December 2024	1702
N46	Home loan	31 July 2017	3 April 2023	24 April 2023	13 December 2024	597
N47	Home loan	8 August 2017	22 June 2023	13 July 2023	13 December 2024	517
N48	Home loan	5 September 2017	29 January 2021	19 February 2021	20 December 2024	1398
N50	Home loan	1 September 2017	13 October 2020	4 November 2020	13 December 2024	1498
N51	Home loan	28 October 2013	28 February 2022	21 March 2022	13 December 2024	996
N52	Home loan	16 May 2016	8 May 2023	29 May 2023	13 December 2024	562
N53	Home loan	17 June 2015	10 December 2020	31 December 2020	13 December 2024	1441
N54	Personal loan	23 December 2016	6 January 2020	28 January 2020	13 December 2024	1779
N55	Personal loan	23 November 2015	18 December 2018	8 January 2019	20 December 2024	Ongoing contravention not alleged
N56	Personal loan	13 December 2016	14 November 2018	5 December 2018	13 December 2024	Ongoing contravention not alleged
N57	Personal loan	26 September 2017	13 June 2023	4 July 2023	20 December 2024	533
N59	Home loan	21 August 2014	21 January 2019	11 February 2019	13 December 2024 11 February 2025	Ongoing contravention not alleged
N61	Personal loan	28 June 2016	30 March 2020	20 April 2020	13 December 2024	1696
N62	Home loan	9 October 2014	21 June 2022	12 July 2022	13 December 2024	883
N64	Home loan	16 October 2017	1 September 2022	26 September 2022f	13 December 2024	807
N66	Personal loan	18 June 2015	23 March 2020	14 April 2020	13 December 2024	1702
N67	Credit card	13 January 2014	14 December 2020	4 January 2021	20 December 2024	1444

N69	Personal loan	8 January 2016	26 May 2021	16 June 2021	13 December 2024	1274
N70	Personal loan	28 November 2017	27 February 2019	20 March 2019	13 December 2024	Ongoing contravention not alleged
N71	Home loan	30 September 2013	1 November 2021	22 November 2021	13 December 2024	1115
N72	Credit card	7 December 2013	26 March 2020	16 April 2020	13 December 2024	1700
N73	Credit card	9 December 2014	27 March 2020	17 April 2020	13 December 2024	1699
N74	Home loan	19 December 2017	23 May 2023	13 June 2023	20 December 2024	554
N75	Credit card	15 December 2014	9 February 2021	2 March 2021	13 December 2024	1380
N76	Credit card	25 September 2017	1 April 2020	22 April 2020	13 December 2024	1694
N77	Credit card	19 May 2014	25 October 2018	15 November 2018	20 December 2024	Ongoing contravention not alleged
N78	Credit card	17 February 2014	3 January 2019	24 January 2019	13 December 2024	Ongoing contravention not alleged
N79	Credit card	25 March 2014	30 March 2020	20 April 2020	13 December 2024	1696
N80	Home loan	4 January 2018	20 March 2020	14 April 2020	20 December 2024	1709
N81	Credit card	30 June 2014	13 July 2020	3 August 2020	13 December 2024	1591
N82	Credit card	26 November 2015	26 August 2019	16 September 2019	13 December 2024	1913
N83	Credit card	29 January 2014	20 March 2020	14 April 2020	13 December 2024	1702
N88	Personal loan	7 February 2018	25 February 2019	18 March 2019	13 December 2024	Ongoing contravention not alleged
N89	Home loan	15 December 2017	3 August 2021	24 August 2021	13 December 2024	1205
N90	Credit card	12 September 2017	19 March 2020	9 April 2020	13 December 2024	1707

N91	Personal loan	27 April 2015	19 November 2019	10 December 2019	13 December 2024	1828
N92	Home loan	23 September 2014	17 March 2023	11 April 2023	13 December 2024	610
N93	Credit card	5 March 2015	8 January 2020	29 January 2020	13 December 2024	1778
N95	Credit card	9 April 2015	8 May 2019	29 May 2019	13 December 2024	2023
N96	Credit card	9 February 2017	31 August 2020	21 September 2020	13 December 2024	1542
N97	Credit card	1 August 2014	2 April 2020	23 April 2020	13 December 2024	1693
N99	Credit card	30 November 2013	1 May 2019	22 May 2019	13 December 2024	2030
N101	Home loan	29 August 2016	24 February 2022	17 March 2022	13 December 2024	1000
N102	Credit card	27 November 2014	27 March 2020	17 April 2020	13 December 2024	1699
N103	Home loan	4 December 2013	13 October 2022	3 November 2022	13 December 2024	769
N104	Home loan	6 April 2018	13 July 2021	3 August 2021	13 December 2024	1226
N105	Credit card	2 September 2016	14 March 2019	4 April 2019	13 December 2024	2078
N106	Home loan	22 March 2018	26 February 2019	19 March 2019	13 December 2024	Ongoing contravention not alleged
N107	Home loan	17 February 2017	21 September 2021	12 October 2021	13 December 2024	1156
N108	Personal loan	4 May 2017	31 July 2019	21 August 2019	13 December 2024	1939
N109	Home loan	16 December 2014	13 March 2021	6 April 2021	13 December 2024	1345
N110	Credit card	17 December 2014	21 March 2020	14 April 2020	20 December 2024	1709
N111	Credit card	9 August 2016	19 March 2019	9 April 2019	20 December 2024	2080
N112	Credit card	26 October 2016	26 July 2021	16 August 2021	13 December 2024	1213

N113	Credit card	19 April 2016	30 March 2020	20 April 2020	13 December 2024	1696
N114	Home loan	4 May 2018	17 May 2023	7 June 2023	13 December 2024	553
N115	Credit card	3 December 2014	30 March 2021	20 April 2021	13 December 2024	1331
N116	Flexiplus mortgage	24 December 2014	22 September 2021	13 October 2021	13 December 2024	1155
N117	Credit card	6 January 2014	2 March 2020	23 March 2020	13 December 2024	1724
N118	Home loan	9 May 2018	12 April 2023	3 May 2023	13 December 2024	588
N119	Home loan	28 July 2016	23 February 2022	16 March 2022	13 December 2024	1001
N120	Credit card	11 May 2016	3 September 2019	24 September 2019	13 December 2024	1905
N121	Credit card	13 June 2017	26 March 2020	16 April 2020	13 December 2024	1700
N122	Personal loan	7 July 2015	2 May 2019	23 May 2019	13 December 2024	2029
N124	Credit card	13 May 2016	17 April 2020	8 May 2020	13 December 2024	1678
N125	Credit card	3 March 2016	3 October 2019	24 October 2019	13 December 2024	1875
N126	Home loan	4 May 2016	11 November 2021	2 December 2021	13 December 2024	1105
N127	Credit card	1 September 2014	23 April 2019	14 May 2019	13 December 2024	2038
N128	Home loan	21 June 2018	22 April 2022	13 May 2022	13 December 2024	943
N129	Home loan	25 January 2016	3 April 2023	24 April 2023	13 December 2024	597
N130	Personal loan	17 December 2014	21 September 2020	12 October 2020	13 December 2024	1521
N131	Credit card	12 December 2013	4 January 2019	25 January 2019	13 December 2024	Ongoing contravention not alleged
N132	Credit card	9 August 2013	19 January 2021	9 February 2021	13 December 2024	1401

N133	Flexiplus mortgage	12 February 2018	4 September 2019	25 September 2019	13 December 2024	1904
N134	Home loan	13 September 2016	13 May 2023	5 June 2023	13 December 2024	555
N135	Credit card	8 August 2016	17 February 2020	10 March 2020	13 December 2024	1737
N136	Home loan	19 July 2017	23 February 2023	16 March 2023	13 December 2024	636
N137	Personal loan	29 June 2018	17 July 2019	7 August 2019	13 December 2024	1953
N138	Home loan	28 June 2018	19 March 2020	9 April 2020	13 December 2024	1707
N139	Personal loan	20 July 2018	19 March 2020	9 April 2020	13 December 2024	1707
N140	Home loan	20 July 2018	6 September 2021	27 September 2021	20 December 2024	1178
N141	Credit card	21 July 2017	19 March 2019	9 April 2019	13 December 2024	2073
N142	Credit card	31 May 2018	7 November 2019	28 November 2019	13 December 2024	1840
N143	Personal loan	2 December 2016	19 September 2019	10 October 2019	16 December 2024	1892
N144	Credit card	2 March 2018	31 July 2020	21 August 2020	13 December 2024	1573
N145	Personal loan	12 December 2016	2 September 2020	23 September 2020	13 December 2024	1540
N146	Credit card	21 July 2017	29 August 2020	21 September 2020	13 December 2024	1542
N147	Credit card	15 June 2018	18 June 2019	9 July 2019	13 December 2024	1982
N148	Credit card	15 August 2018	21 December 2020	11 January 2021	13 December 2024	1430
N149	Personal loan	7 September 2018	2 September 2022	26 September 2022	13 December 2024	807
N150	Credit card	29 June 2018	15 March 2021	6 April 2021	13 December 2024	1345
N151	Home loan	31 August 2018	8 July 2019	29 July 2019	13 December 2024	1962

N152	Credit card	22 March 2014	18 January 2021	8 February 2021	13 December 2024	1402
N153	Credit card	3 December 2014	29 November 2022	20 December 2022	13 December 2024	722
N154	Credit card	4 September 2017	6 April 2020	27 April 2020	13 December 2024	1689
N155	Personal loan	24 July 2017	13 November 2018	4 December 2018	13 December 2024	Ongoing contravention not alleged
N156	Credit card	7 March 2013	3 September 2021	27 September 2021	13 December 2024	1171
N157	Credit card	9 October 2017	23 March 2020	14 April 2020	13 December 2024	1702
N158	Personal loan	28 September 2018	15 September 2021	6 October 2021	13 December 2024	1162
N161	Credit card	11 September 2013	17 April 2021	10 May 2021	13 December 2024	1311
N162	Credit card	2 May 2016	8 May 2020	29 May 2020	13 December 2024	1657
N163	Home loan	18 March 2014	29 March 2023	19 April 2023	13 December 2024	602
N164	Personal loan	21 July 2016	28 December 2018	18 January 2019	13 December 2024	Ongoing contravention not alleged
N165	Personal loan	25 May 2017	8 July 2019	29 July 2019	13 December 2024	1962
N166	Credit card	9 September 2014	9 June 2020	30 June 2020	13 December 2024	1625
N167	Credit card	30 March 2015	16 September 2021	7 October 2021	13 December 2024	1161
N168	Home loan	5 September 2018	28 February 2020	20 March 2020	13 December 2024	1727
N169	Credit card	22 March 2016	18 July 2019	8 August 2019	13 December 2024	1952
N170	Credit card	12 April 2018	15 September 2021	6 October 2021	13 December 2024	1162
N171	Credit card	18 October 2018	3 November 2021	24 November 2021	13 December 2024	1113
N172	Personal loan	4 January 2018	23 April 2019	14 May 2019	13 December 2024	2038

N173	Credit card	15 July 2015	24 April 2019	15 May 2019	13 December 2024	2037
N174	Credit card	29 October 2015	3 April 2019	24 April 2019	13 December 2024	2058
N175	Credit card	8 September 2016	15 February 2019	8 March 2019	13 December 2024	Ongoing contravention not alleged
N176	Home loan	20 February 2018	11 February 2019	4 March 2019	13 December 2024	Ongoing contravention not alleged
N177	Home loan	23 October 2018	17 December 2019	7 January 2020	13 December 2024 20 December 2024	1807
N178	Home loan	23 December 2014	10 January 2019	31 January 2019	13 December 2024 11 February 2025	Ongoing contravention not alleged
N179	Home loan	14 February 2014	23 August 2021	13 September 2021	13 December 2024	1185
N180	Home loan	22 August 2017	7 October 2019	28 October 2019	13 December 2024	1871
N181	Home loan	2 January 2019	24 July 2019	14 August 2019	20 December 2024	1953
N182	Credit card	14 July 2016	1 February 2019	22 February 2019	13 December 2024	Ongoing contravention not alleged
N183	Personal loan	25 July 2017	4 February 2019	25 February 2019	13 December 2024	Ongoing contravention not alleged
N184	Credit card	4 July 2014	28 August 2020	18 September 2020	13 December 2024	1545
N185	Home loan	1 November 2017	13 February 2019	6 March 2019	20 December 2024	Ongoing contravention not alleged
N186	Credit card	25 January 2017	21 February 2023	14 March 2023	13 December 2024	638
N187	Home loan	28 September 2018	23 February 2021	16 March 2021	13 December 2024	1366
N188	Credit card	14 January 2019	29 January 2020	19 February 2020	13 December 2024	1757
N189	Home loan	27 February 2017	25 March 2019	15 April 2019	13 December 2024	2067

N190	Credit card	15 December 2015	19 March 2019	9 April 2019	13 December 2024	2073
N191	Credit card	29 November 2014	26 September 2019	17 October 2019	13 December 2024	1882
N192	Interest only home loan	11 May 2017	28 March 2019	18 April 2019	13 December 2024	2064
N193	Home loan	8 September 2017	1 April 2019	23 April 2019	13 December 2024	2059
N194	Home loan	23 July 2013	26 April 2019	17 May 2019	13 December 2024	2035
N195	Home loan	6 March 2019	21 December 2022	11 January 2023	13 December 2024	700
N196	Personal loan	14 February 2019	23 April 2019	14 May 2019	13 December 2024	2038
N198	Home loan	24 December 2014	1 May 2019	22 May 2019	13 December 2024	2030
N199	Home loan	11 April 2019	11 August 2022	1 September 2022	13 December 2024	832
N200	Home loan	15 April 2019	21 March 2023	11 April 2023	13 December 2024	610
N201	Credit card	10 September 2018	28 May 2019	18 June 2019	20 December 2024	2010
N202	Home loan	18 March 2016	14 November 2019	5 December 2019	13 December 2024	1833
N203	Home loan	19 October 2018	1 November 2019	22 November 2019	13 December 2024	1846
N204	Home loan	30 July 2013	10 July 2019	31 July 2019	13 December 2024	1960
N205	Credit card	27 March 2013	27 November 2019	18 December 2019	13 December 2024	1820
N206	Credit card	30 December 2015	5 May 2020	26 May 2020	20 December 2024	1667
N207	Credit card	3 May 2019	24 March 2020	14 April 2020	13 December 2024	1702
N208	Credit card	28 June 2019	7 May 2020	28 May 2020	13 December 2024	1658
N209	Home loan	16 August 2016	9 September 2022	30 September 2022	13 December 2024	803

N210	Personal loan	31 July 2019	8 September 2021	29 September 2021	13 December 2024	1169
N211	Personal loan	7 May 2015	23 June 2020	14 July 2020	13 December 2024	1611
N212	Home loan	20 August 2019	12 April 2023	3 May 2023	13 December 2024	588
N213	Credit card	29 September 2017	16 June 2020	7 July 2020	20 December 2024	1625
N214	Home loan	14 November 2013	5 October 2021	26 October 2021	20 December 2024	1149
N215	Credit card	28 June 2019	7 April 2020	28 April 2020	20 December 2024	1695
N216	Personal loan	12 September 2019	13 November 2019	4 December 2019	13 December 2024	1834
N217	Home loan	11 October 2016	16 October 2019	6 November 2019	13 December 2024	1862
N218	Home loan	9 September 2014	30 December 2019	20 January 2020	13 December 2024	1787
N219	Home loan	18 September 2018	29 October 2019	19 November 2019	13 December 2024	1849
N220	Credit card	23 August 2017	3 November 2019	25 November 2019	13 December 2024	1843
N221	Home loan	5 January 2018	7 November 2019	28 November 2019	13 December 2024	1840
N222	Credit card	22 January 2016	30 April 2020	21 May 2020	13 December 2024	1665
N223	Home loan	22 October 2018	5 November 2019	26 November 2019	13 December 2024	1842
N224	Personal loan	27 September 2017	2 January 2020	23 January 2020	13 December 2024	1784
N225	Home loan	25 June 2014	21 March 2020	14 April 2020	13 December 2024	1702
N226	Home loan	2 September 2014	29 November 2019	20 December 2019	13 December 2024	1818
N227	Credit card	30 October 2019	3 July 2020	24 July 2020	13 December 2024	1601
N228	Personal loan	11 February 2019	2 December 2019	23 December 2019	13 December 2024	1815

N229	Home loan	16 July 2019	17 January 2023	7 February 2023	13 December 2024	673
N230	Home loan	3 July 2014	10 December 2019	31 December 2019	13 December 2024	1807
N231	Personal loan	11 June 2019	25 March 2020	15 April 2020	13 December 2024	1701
N232	Credit card	5 December 2016	13 December 2019	3 January 2020	13 December 2024	1804
N233	Home loan	13 April 2016	14 December 2019	6 January 2020	13 December 2024	1801
N234	Interest only home loan	19 April 2016	27 December 2019	17 January 2020	13 December 2024	1790
N235	Home loan	30 May 2019	13 January 2020	3 February 2020	13 December 2024	1773
N236	Home loan	23 October 2018	6 June 2022	27 June 2022	13 December 2024	898
N237	Credit card	4 July 2016	1 August 2023	22 August 2023	13 December 2024	477
N238	Home loan	30 January 2020	12 June 2023	3 July 2023	13 December 2024	527
N239	Home loan	11 August 2015	19 March 2020	9 April 2020	13 December 2024	1707
N240	Home loan	14 February 2020	12 August 2021	2 September 2021	13 December 2024	1196
N241	Home loan	27 March 2015	16 March 2020	6 April 2020	13 December 2024	1710
N242	Home loan	20 June 2017	19 March 2021	9 April 2021	13 December 2024	1342
N243	Flexiplus mortgage	17 August 2018	30 March 2020	20 April 2020	13 December 2024	1696
N244	Home loan	24 September 2019	20 March 2020	14 April 2020	13 December 2024	1702
N245	Personal loan	10 August 2016	23 March 2020	14 April 2020	11 February 2025	1762
N246	Home loan	16 March 2020	23 December 2021	13 January 2022	13 December 2024	1063
N247	Credit card	13 February 2015	27 March 2020	17 April 2020	13 December 2024	1699

N248	Credit card	1 April 2014	1 April 2020	22 April 2020	13 December 2024	1694
N249	Personal loan	19 August 2015	30 March 2020	20 April 2020	13 December 2024	1696
N250	Flexiplus mortgage	28 February 2019	21 April 2020	12 May 2020	13 December 2024	1674
N251	Home loan	25 March 2013	23 July 2021	13 August 2021	13 December 2024	1216
N252	Home loan	19 October 2015	1 August 2023	22 August 2023	13 December 2024	477
N253	Home loan	23 September 2015	7 August 2021	30 August 2021	13 December 2024	1199
N254	Home loan	29 July 2015	19 July 2021	9 August 2021	13 December 2024	1220
N255	Home loan	11 February 2019	2 December 2020	23 December 2020	11 February 2025	1509
N256	Home loan	1 April 2020	19 January 2021	9 February 2021	13 December 2024	1401
N257	Home loan	22 August 2014	29 March 2021	19 April 2021	13 December 2024	1332
N258	Home loan	7 July 2016	5 July 2021	26 July 2021	20 December 2024	1241
N259	Home loan	26 March 2013	21 October 2022	11 November 2022	13 December 2024	761
N260	Home loan	19 June 2020	4 August 2021	25 August 2021	13 December 2024	1204
N261	Home loan	25 June 2015	6 September 2022	27 September 2022	13 December 2024	806
N262	Home loan	10 June 2014	16 October 2020	6 November 2020	13 December 2024	1496
N263	Home loan	28 September 2020	3 March 2023	24 March 2023	20 December 2024	635
N264	Home loan	9 November 2020	18 August 2023	8 September 2023	13 December 2024	460
N265	Home loan	4 December 2020	2 August 2021	23 August 2021	20 December 2024	1213
N266	Home loan	8 December 2020	20 June 2023	11 July 2023	13 December 2024	519

N267	Home loan	22 December 2020	2 November 2022	23 November 2022	13 December 2024	749
N268	Home loan	24 June 2019	27 January 2022	17 February 2022	13 December 2024	1028
N269	Home loan	16 December 2020	10 August 2023	31 August 2023	13 December 2024	468
N270	Home loan	2 March 2020	20 June 2023	11 July 2023	13 December 2024	519
N271	Home loan	2 December 2013	31 March 2021	21 April 2021	13 December 2024	1330
N272	Credit card	12 January 2021	27 May 2022	17 June 2022	13 December 2024	908
N273	Home loan	13 May 2021	19 June 2023	10 July 2023	13 December 2024	520
N274	Personal loan	26 July 2017	30 July 2021	20 August 2021	13 December 2024	1209
N275	Home loan	10 May 2016	29 July 2021	19 August 2021	20 December 2024	1217
N276	Home loan	9 July 2021	15 August 2023	5 September 2023	13 December 2024	463
N277	Home loan	12 July 2021	25 March 2022	19 April 2022	13 December 2024	967
N278	Home loan	19 November 2015	12 August 2021	2 September 2021	13 December 2024	1196
N279	Home loan	20 November 2020	11 May 2023	1 June 2023	13 December 2024	559
N280	Home loan	5 July 2021	3 November 2022	24 November 2022	13 December 2024	748
N281	Home loan	1 September 2014	26 August 2021	16 September 2021	13 December 2024	1182
N282	Credit card	17 February 2020	28 August 2021	20 September 2021	13 December 2024	1178
N283	Personal loan	22 June 2021	14 June 2022	5 July 2022	13 December 2024	890
N284	Personal loan	14 December 2020	4 October 2021	25 October 2021	13 December 2024	1143
N285	Home loan	13 September 2021	10 August 2023	31 August 2023	13 December 2024	468

N286	Home loan	15 October 2021	8 April 2022	29 April 2022	13 December 2024	957
N287	Home loan	28 February 2020	21 March 2023	11 April 2023	13 December 2024	610
N288	Home loan	9 November 2021	4 March 2022	25 March 2022	13 December 2024	992
N290	Credit card	8 June 2021	11 April 2022	2 May 2022	13 December 2024	954
N291	Personal loan	3 February 2022	9 June 2022	30 June 2022	13 December 2024	895
N292	Credit card	11 January 2022	10 February 2023	3 March 2023	13 December 2024	649
N293	Home loan	18 May 2021	4 March 2022	25 March 2022	20 December 2024	999
N294	Home loan	4 March 2022	9 August 2023	30 August 2023	13 December 2024	469
N295	Home loan	14 March 2022	23 May 2023	13 June 2023	13 December 2024	547
N296	Home loan	11 May 2022	19 June 2023	10 July 2023	13 December 2024	520
N297	Personal loan	22 September 2021	16 June 2022	7 July 2022	13 December 2024	888
N298	Personal loan	4 May 2017	2 August 2022	23 August 2022	13 December 2024	841
N299	Credit card	17 March 2022	9 August 2023	30 August 2023	13 December 2024	469
N300	Personal loan	2 September 2022	29 September 2022	20 October 2022	13 December 2024	783
N301	Home loan	8 September 2022	1 June 2023	22 June 2023	13 December 2024	538
N302	Home loan	20 October 2022	22 September 2023	13 October 2023	13 December 2024	425
N303	Personal loan	30 June 2022	21 November 2022	12 December 2022	13 December 2024	730
N304	Home loan	22 March 2013	18 July 2023	8 August 2023	13 December 2024	491
N305	Home loan	30 April 2019	28 June 2023	19 July 2023	13 December 2024	511

N306	Home loan	24 May 2022	19 April 2023	10 May 2023	13 December 2024	581
N307	Home loan	29 March 2022	28 April 2023	19 May 2023	13 December 2024	572
N308	Home loan	12 May 2021	15 May 2023	5 June 2023	13 December 2024	555
N309	Home loan	19 June 2013	19 November 2019	10 December 2019	13 December 2024	1828
N311	Home loan	24 November 2021	26 July 2023	16 August 2023	13 December 2024	483
N312	Home loan	24 November 2021	16 August 2023	6 September 2023	13 December 2024	462
Total 282	353910					

SCHEDULE B

AFSH Credit Contracts

(a) Ref number (per ASIC notice NTC2425790)	(b) Type of credit contract	(c) Date of credit contract	(d) Date AFSH hardship notice received	(e) Date AFSH response notice was due	(f) Date AFSH response notice provided	(g) Number of days no AFSH response notice provided (where s 175A applies)
A1	Advantage home loan	20 October 2015	8 December 2022	29 December 2022	13 December 2024	713
A2	Advantage interest only home loan	23 October 2014	18 December 2018	8 January 2019	12 December 2024	Ongoing contravention not alleged
A3	Advantage interest only home loan	9 September 2014	2 February 2022	23 February 2022	12 December 2024	1021
A4	Advantage home loan	2 March 2015	14 October 2019	4 November 2019	12 December 2024	1863
A5	Advantage home loan	20 April 2015	20 October 2021	10 November 2021	20 December 2024	1134
A6	Advantage home loan	5 June 2015	6 March 2023	27 March 2023	12 December 2024	624
A7	Advantage home loan	4 July 2013	4 May 2023	25 May 2023	20 December 2024	573
A8	Advantage home loan	6 June 2013	1 April 2020	22 April 2020	12 December 2024 16 December 2024	1697

A9	Advantage home loan	27 May 2015	14 October 2019	4 November 2019	12 December 2024	1863
A10	Advantage home loan	4 November 2016	1 December 2021	22 December 2021	12 December 2024	1084
A11	Advantage home loan	13 February 2017	13 May 2022	3 June 2022	12 December 2024	921
A12	Advantage interest only home loan	27 March 2017	27 November 2019	18 December 2019	12 December 2024	1819
A13	Advantage home loan	4 July 2017	20 May 2022	10 June 2022	12 December 2024	914
A14	Advantage home loan	16 October 2015	27 September 2022	18 October 2022	12 December 2024	784
A15	Advantage home loan	12 January 2017	6 February 2019	27 February 2019	12 December 2024	Ongoing contravention not alleged
A16	Advantage home loan	4 March 2015	17 February 2022	10 March 2022	12 December 2024	1006
A17	Advantage home loan	10 October 2016	29 August 2022	19 September 2022	12 December 2024	813
A18	Advantage home loan	21 October 2016	7 July 2022	28 July 2022	12 December 2024	866
A19	Advantage home loan	12 April 2018	24 February 2020	16 March 2020	13 December 2024	1731
A20	Advantage home loan	20 April 2017	31 January 2022	21 February 2022	11 February 2025	1084
A21	Advantage home loan	20 April 2017	8 April 2022	29 April 2022	11 February 2025	1017

A22	Advantage home loan	2 May 2018	16 August 2021	6 September 2021	12 December 2024	1191
A23	Advantage home loan	16 October 2017	7 October 2022	28 October 2022	12 December 2024	774
A24	Advantage home loan	14 December 2017	19 March 2020	9 April 2020	12 December 2024	1706
A25	Advantage home loan	22 May 2015	3 February 2022	24 February 2022	20 December 2024	1028
A26	Advantage home loan	7 February 2018	2 January 2019	23 January 2019	12 December 2024	Ongoing contravention not alleged
A27	Advantage home loan	6 December 2017	9 October 2019	30 October 2019	20 December 2024	1876
A28	Advantage home loan	4 October 2016	7 September 2021	28 September 2021	20 December 2024	1177
A29	Advantage home loan	28 October 2016	19 December 2019	9 January 2020	12 December 2024	1797
A30	Advantage home loan	16 June 2016	11 August 2021	1 September 2021	12 December 2024	1196
A31	Advantage home loan	20 September 2017	10 October 2019	31 October 2019	12 December 2024	1867
A32	Advantage home loan	4 May 2018	13 December 2022	3 January 2023	13 December 2024	708
A33	Advantage home loan	27 January 2017	22 February 2022	15 March 2022	12 December 2024	1001
A34	Advantage home loan	16 October 2017	4 October 2019	25 October 2019	12 December 2024	1873

A35	Advantage home loan	13 April 2017	10 January 2023	31 January 2023	20 December 2024	687
A36	Advantage home loan	2 June 2017	15 May 2019	5 June 2019	12 December 2024	2015
A37	Advantage home loan	19 January 2017	15 January 2019	5 February 2019	13 December 2024	Ongoing contravention not alleged
A38	Advantage home loan	14 August 2018	27 August 2021	17 September 2021	12 December 2024	1180
A39	Advantage home loan	10 December 2018	19 March 2020	9 April 2020	12 December 2024	1706
A40	Advantage interest only home loan	16 January 2019	24 March 2020	14 April 2020	20 December 2024	1709
A41	Advantage home loan	8 April 2019	20 October 2021	10 November 2021	13 December 2024	1127
A42	Advantage home loan	1 May 2019	5 July 2023	26 July 2023	12 December 2024	503
A43	Advantage home loan	19 August 2019	15 August 2023	5 September 2023	12 December 2024	462
A44	Advantage home loan	31 October 2019	25 November 2022	16 December 2022	12 December 2024	725
A45	Advantage home loan	24 January 2020	3 April 2023	24 April 2023	12 December 2024	596
A46	Advantage home loan	19 February 2020	20 May 2021	10 June 2021	12 December 2024	1279
A47	Advantage home loan	14 April 2020	9 March 2022	30 March 2022	12 December 2024	986

A48	Advantage home loan	26 June 2020	6 October 2022	27 October 2022	12 December 2024	775
A49	Advantage home loan	20 October 2020	25 January 2022	15 February 2022	12 December 2024	1029
A50	Advantage home loan	5 May 2021	27 January 2022	17 February 2022	12 December 2024	1027
A51	Advantage home loan	16 August 2021	4 November 2022	25 November 2022	12 December 2024	746
A52	Advantage home loan	3 September 2021	14 April 2022	5 May 2022	12 December 2024	950
A53	Advantage home loan	8 November 2021	11 August 2022	1 September 2022	12 December 2024	831
A54	Advantage home loan	22 February 2022	1 February 2023	22 February 2023	12 December 2024	657
A55	Advantage home loan	7 March 2022	22 August 2023	12 September 2023	13 December 2024	456
A56	Advantage home loan	17 March 2022	6 December 2022	28 December 2022	12 December 2024	713
A57	Advantage home loan	19 April 2022	23 March 2023	13 April 2023	12 December 2024	607
A58	Advantage home loan	3 June 2022	14 June 2023	5 July 2023	12 December 2024	524
A59	Advantage home loan	22 June 2022	23 January 2023	13 February 2023	12 December 2024	666
A60	Advantage home loan	27 October 2022	29 August 2023	19 September 2023	12 December 2024	448

A61	Advantage home loan	16 October 2017	14 January 2019	4 February 2019	12 December 2024	Ongoing contravention not alleged
A62	Advantage home loan	5 April 2022	21 June 2023	12 July 2023	12 December 2024	517
A63	Advantage home loan	27 June 2022	3 February 2023	24 February 2023	12 December 2024	655
Total 63	61,297					

THE ANNEXURE: WRITTEN NOTICE

The Written Notice shall contain the following text:

ADVERSE PUBLICITY NOTICE

Ordered by the Federal Court of Australia

The Federal Court of Australia has ordered National Australia Bank Limited (NAB) and its wholly owned subsidiary AFSH Nominees Pty Ltd (AFSH) to publish this adverse publicity notice.

On 13 August 2025, Justice Neskovic of the Federal Court ordered NAB and AFSH to pay penalties totalling \$15.5 million to the Commonwealth for failing to provide written response notices to customers' hardship notices within the required time frame between November 2018 and October 2023.

The failures by NAB and AFSH to provide written response notices concerned 282 hardship notices given by NAB customers and 63 hardship notices given by AFSH customers, being notices that those customers considered they were, or would be, unable to meet their obligations under a credit contract. The Court found that these failures by NAB and AFSH constituted breaches of section 72(4) of the *National Credit Code*, being Schedule 1 to the *National Consumer Credit Protection Act 2009* (Cth). The Court ordered that NAB pay a penalty of \$13 million, and AFSH pay a penalty of \$2.5 million.

The failures resulted (with a few limited exceptions) from the incorrect use by NAB staff of a particular functionality in its internal system used to manage hardship notices. The causes have since been identified and NAB has taken steps to address those causes.

Since ASIC commenced court proceedings, NAB and ASFH have provided affected customers with a response to their hardship notice and conducted a remediation program which included remediation payments and the correction of repayment history information for some affected customers.

Further information

For further information about the conduct, see the following links:

- Statement of facts agreed between the parties [hyperlink];
- Supplementary statement of facts agreed between the parties (regarding penalty) [hyperlink];
- Justice Neskovic's judgment [hyperlink]; and
- ASIC media release [hyperlink].

REASONS FOR JUDGMENT

NESKOVICIN J:

- 1 National Australia Bank (**NAB**), the first respondent, is a major Australian bank. AFSH Nominees Pty Ltd (**AFSH**), the second respondent, is part of the NAB Group. NAB and AFSH each hold an Australian Credit Licence.
- 2 The applicant, the Australian Securities and Investments Commission (**ASIC**), commenced this proceeding pursuant to ss 166 and 167 of the *National Consumer Credit Protection Act 2009* (Cth) (**Credit Act**) seeking declarations, payment of pecuniary penalties and other relief arising from contraventions by NAB and AFSH of s 72(4) of the National Credit Code (**Code**), being Schedule 1 to the *Credit Act*. ASIC alleged that NAB and AFSH contravened s 72(4) of the Code by failing to provide a written response to hardship notices given by customers within the statutory timeframe prescribed by s 72(5) of the Code.
- 3 NAB and AFSH admitted that:
 - (a) during the period 16 November 2018 to 14 October 2023, on 282 occasions, NAB contravened s 72(4) of the Code by failing to give a written response to hardship notices submitted by NAB customers within the statutory timeframe prescribed by s 72(5) of the Code;
 - (b) in respect of 262 hardship notices received by NAB on or after 13 March 2019, by operation of s 175A of the Credit Act, NAB contravened s 72(4) of the Code on each day after the contraventions referred to in paragraph (a) above by its continuing failure to give a written response to the hardship notices (resulting in a further 353,910 contraventions up until 10 February 2025);
 - (c) during the period 9 January 2019 to 20 September 2023, on 63 occasions, AFSH contravened s 72(4) of the Code by failing to give a written response to hardship notices submitted by AFSH customers within the statutory timeframe prescribed by s 72(5) of the Code; and
 - (d) in respect of 58 hardship notices received by AFSH on or after 13 March 2019, by operation of s 175A of the Credit Act, AFSH contravened s 72(4) of the Code on each day after the contraventions referred to in paragraph (c) above by its continuing

failure to give a written response to the hardship notices (resulting in a further 61,297 contraventions up until 10 February 2025).

4 The parties filed and relied on:

- (a) Statements of Agreed Facts and Admissions setting out the facts agreed between the parties pursuant to s 191 of the *Evidence Act 1995* (Cth) and NAB and ASFH's formal admissions of contravention; and
- (b) Joint Submissions on liability and relief.

5 The parties agreed to orders by way of relief in the proceeding, including the imposition of pecuniary penalties. The parties jointly sought declarations of contravention, an order that NAB pay a pecuniary penalty of \$13 million in respect of its contraventions of s 72(4) of the Code, an order that AFSH pay a pecuniary penalty of \$2.5 million in respect of its contraventions of s 72(4) of the Code, an order in relation to a written adverse publicity notice and an order that NAB and AFSH pay ASIC's costs of and incidental to the proceeding.

6 For the reasons that follow, I consider the proposed relief to be appropriate in all the circumstances, including the proposed pecuniary penalty, and I am satisfied that it is appropriate to make the orders proposed by the parties.

BACKGROUND

7 NAB and AFSH each hold an Australian Credit Licence which authorises them to engage in credit activities under s 6 of the Code and provide credit under credit contracts to which the Code applies. The proceeding concerns contracts for the provision of credit entered into on various dates after 1 March 2013 and before the commencement of the proceeding.

8 Under the Code, customers can advise their lender of their inability to meet their obligations under a credit contract, referred to as a '**hardship notice**'.

9 Relevantly, NAB entered into contracts for the provision of credit (the **NAB credit contracts**) with 345 customers whose claims are relevant to the proceeding (**NAB customers**). Further, the NAB customers gave NAB, and NAB received, a hardship notice within the meaning of s 72(1) of the Code (**NAB hardship notice**).

- 10 Furthermore, AFSH entered into contracts for the provision of credit (the **AFSH credit contracts**) with 63 customers whose claims are relevant to the proceeding (**AFSH customers**). The AFSH customers gave AFSH, and AFSH received, a hardship notice within the meaning of s 72(1) of the Code (**AFSH hardship notice**).
- 11 The NAB and AFSH credit contracts were contracts to which the Code applied.
- 12 NAB handled all aspects of the hardship process via its NAB Assist team (a team at NAB dedicated to managing collections, hardship and deceased estate functions for personal and business banking) on behalf of AFSH and NAB.
- 13 At all relevant times since about 2016, NAB Assist used the PowerCurve system for managing hardship notices received from customers. 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 hardship notice from a customer.
- 14 The failure to provide responses to the NAB and AFSH hardship notices was 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 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.
- 15 From around April 2023, ASIC examined the policies, practices and procedures of credit providers, including NAB, in relation to financial hardship. In that context, in the course of responding to information requests and follow up questions from ASIC in relation to hardship and credit reporting data during 2023, NAB identified numerous instances where it had not responded to a hardship notice within the required timeframe.
- 16 On 11 October 2023, NAB notified ASIC of a reportable situation by way of a breach report. The breach report informed ASIC of the failures to provide responses to hardship notices due to the incorrect use of the Activity within PowerCurve.

17 On 29 October 2024, NAB produced data to ASIC during its investigation which indicated that there was a total of 746 instances where the Activity had been used incorrectly between October 2016 and 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. NAB has since taken various corrective measures to address the issue, which are mentioned below.

THE STATUTORY FRAMEWORK

18 The Code has effect as a law of the Commonwealth pursuant to s 3 of the Credit Act. It provides a consumer protection framework for consumer credit and related transactions, including setting out debtors' rights to seek changes to credit contracts on the grounds of hardship: Explanatory Memorandum, *National Credit Protection Bill 2009* (Cth) (part 4) [8.2], [8.159]–[8.162].

19 Section 72 of the Code governs aspects of the communications between a credit provider and a debtor where the debtor is facing hardship meeting their obligations under a credit contract entered into on or after 1 March 2013.

20 The relevant parts of the process under s 72 are as follows:

- (a) If a debtor considers that he or she is, or will be, unable to meet their obligations under a credit contract to which the Code applies, the debtor may give the credit provider notice under s 72(1) of the Code, orally or in writing, of their inability to meet their obligations (namely, a hardship notice).
- (b) Within 21 days after the day of receiving the debtor's hardship notice, the credit provider may give the debtor notice under s 72(2) of the Code, orally or in writing, requiring the debtor to give the credit provider specified information within 21 days. If such notice is given, the debtor must comply with the requirement (s 72(3)).
- (c) The credit provider must give the debtor a written notice which complies with the requirements in s 72(4)(a) or (b) (as applicable) before the end of the period identified in the table set out at s 72(5) of the Code, which provides as follows:

Period for giving notice		
	If:	The period is:
1	The credit provider does not require information under subsection (2)	21 days after the day of receiving the hardship notice
2	The credit provider requires information under subsection (2) but does not receive any information in compliance with the requirement	28 days after the stated date of the notice under subsection (2)
3	The credit provider requires information under subsection (2) and receives information in compliance with the requirement	21 days after the day of receiving the information

As noted in the table above, if the credit provider does not require the debtor to provide information under s 72(2), the period specified is 21 days after the day of receiving the hardship notice.

- 21 Subsection 72(4) of the Code is a civil penalty provision, which enlivens the Court’s powers to make a declaration of contravention and order the payment of a pecuniary penalty for contravention of that section: ss 166 and 167 of the Credit Act
- 22 The current version of s 72(4) of the Code came into effect on 1 March 2013. Save for an increase in penalty units from 2,000 to 5,000 (from 13 March 2019), the amendments to s 72 of the Code during the contravening period were minor and/or of no present relevance.
- 23 Section 175A of the Credit Act is entitled “Continuing contraventions of civil penalty provisions” and it provides:
- (1) If an act or thing is required under a civil penalty provision to be done:
 - (a) within a particular period; or
 - (b) before a particular time;
 then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).
 - (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
 - (a) within a particular period; or
 - (b) before a particular time;
 commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant pecuniary penalty order is made or any later day).

24 Section 175A of the Credit Act was introduced as part of the *Treasury Law Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019 (Cth)* (**Strengthening Penalties Act**) and commenced on 13 March 2019. That Act introduced near identical continuing contravention provisions in s 1317QA of the *Corporations Act 2001 (Cth)* (**Corporations Act**), s 12GBCM of the *Australian Securities and Investments Commission Act 2001 (Cth)* (**ASIC Act**) and s 75R of the *Insurance Contracts Act 1984 (Cth)*.

25 The Explanatory Memorandum to the Strengthening Penalties Act provides, at [1.113] (emphasis added):

Contravening a civil penalty provision does not relieve the person of their obligations under the provision. If an act or thing is required to be done, the obligations continue until the act or thing is done. This means that **if the act or thing is not done, the civil penalty provision is initially contravened, and a separate contravention is then committed each day until the act or thing is done.**

26 Thus, s 175A of the Credit Act provides that the credit provider's obligation to give a written notice under s 72(4) of the Code continues until that act is done (s 175A(1)) and a credit provider who contravenes s 72(4) of the Code commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant pecuniary penalty order is made or any later day) (s 175A(2)). The transitional provisions of the Strengthening Penalties Act provide that s 175A applies in relation to a contravention of s 72(4) of the Code if the conduct constituting the contravention of the provision occurs wholly on or after the commencement date, being 13 March 2019: *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009 (Cth)*, Schedule 8, Part 2, s 3.

27 The parties did not refer to any authorities in relation to the transitional provisions of the Strengthening Penalties Act. They did, however, refer to *Australian Securities and Investments Commission v AustralianSuper Pty Ltd* [2025] FCA 102 (Hespe J), where AustralianSuper admitted that between 1 July 2013 to 19 June 2022 it failed to establish rules as required by s 108A of the *Superannuation Industry (Supervision) Act 1993 (Cth)*. ASIC sought civil penalties under s 912A(1)(a) and (5A) of the Corporations Act for failures that occurred between 13 March 2019 to 30 June 2022. Section 912A(5A), which was introduced with effect from 13 March 2019, provides that a contravention of s 912A(1)(a) is a contravention of s 912A(5A), which is a civil penalty provision.

28 Justice Hespe said, at [164]:

It is only conduct occurring wholly on or after the commencement date which results in the contravention of s 912A(5A) and which attracts the civil penalty provision. However, the fact that contravening conduct commenced occurring prior to the commencement date and continued after the commencement date does not prevent a determination of a contravention in respect of the conduct that occurred after the commencement date. Such an outcome is consistent with the approach adopted in *Australian Securities and Investments Commissioner v Westpac Banking Corporation* [2022] FCA 515 at [409]–[412] (Beach J) and in *Australian Securities and Investments Commission v Macquarie Bank Limited* [2024] FCA 416 at [69] (Wigney J).

29 Finally, the analogous substantive provision, s 1317QA of the Corporations Act, was considered in *Australian Securities and Investments Commission v **Statewide Superannuation** Pty Ltd* [2021] FCA 1650 at [88]–[89] (Besanko J) and *Australian Securities and Investments Commission v **Noumi** Ltd (No 3)* [2024] FCA 862 at [49]–[50] (Jackman J). In *Statewide Superannuation*, the respondent had failed to lodge a written breach report with ASIC within the statutory timeframe in s 912D of the Corporations Act. Besanko J accepted that there was a separate contravention on each day that the defendant failed to lodge the written report. In *Noumi*, the respondent had failed to notify the ASX of relevant information and contravened the continuous disclosure obligations under s 674(2) of the Corporations Act. Jackman J accepted that, by operation of s 1317QA of the Corporations Act, the contraventions were continuing contraventions, with a separate contravention occurring on each trading day in the relevant periods.

NAB AND AFSH'S CONTRAVENTIONS OF SECTION 72(4)

30 NAB and AFSH admit that:

- (a) each of the NAB customers and the AFSH customers gave NAB or AFSH respectively a hardship notice;
- (b) NAB and AFSH each did not give their respective customers, within 21 days after receiving the hardship notice, any notice under s 72(2) of the Code requiring their customer to provide specified information;
- (c) pursuant to s 72(4) and (5), NAB and AFSH were each required to give their respective customers a notice in accordance with s 72(4)(a) or (b) (**response notice**) before the end of the period comprising 21 days after the day it received the hardship notice;

- (d) NAB and AFSH did not give their respective customers a response notice at any time before commencement of this proceeding; and
- (e) since commencement of this proceeding, NAB and AFSH have each given their respective customers a response notice (with the exception of one NAB customer since deceased).

31 The parties having agreed the facts which establish each of the elements of a contravention of s 72(4) of the Code, I am satisfied that:

- (a) during the period 16 November 2018 to 14 October 2023, NAB contravened s 72(4) on 282 occasions; and
- (b) during the period 9 January 2019 to 20 September 2023, AFSH contravened s 72(4) on 63 occasions

(Initial Contraventions).

32 The parties submit that, in respect of NAB's and AFSH's admitted continuing failures to give a response notice to a hardship notice received after 13 March 2019, the Court can be satisfied that, in addition to the Initial Contraventions, after 13 March 2019:

- (a) NAB contravened s 72(4) on 353,910 occasions up until 10 February 2025; and
- (b) AFSH contravened s 72(4) on 61,297 occasions up until 10 February 2025,

(Continuing Contraventions).

33 I am satisfied that, in addition to the Initial Contraventions, the Continuing Contraventions arise on or after 13 March 2019 by operation of s 175A of the Credit Act. The parties submitted, and I accept, that:

- (a) The transitional provisions of the Strengthening Penalties Act apply to s 175A of the Credit Act.
- (b) The relevant enquiry is whether the continuing obligation and failure to give a response notice under s 72(4) by the timeframes prescribed by s 72(5) occurred wholly each day on or after 13 March 2019. That approach is consistent with *AustralianSuper* at [164] (Hespe J).
- (c) By operation of s 175A, a separate contravention of s 72(4) of the Code occurred each day on or after 13 March 2019 that NAB or AFSH contravened s 72(4) of the Code

until NAB or AFSH gave the relevant customer a response notice: s 175A(2) of the Credit Act; *Statewide Superannuation* at [88]–[89] (Besanko J); *Noumi* at [49]–[50] (Jackman J) .

DECLARATORY RELIEF

34 ASIC seeks declarations pursuant to s 21 of the *Federal Court of Australia Act* 1976 (Cth) (**Federal Court Act**) and s 166(2) of the Credit Act. The terms of the declaration were agreed between the parties.

35 The language of s 166(2) of the Credit Act is mandatory. Once the Court finds that a person has contravened the Credit Act, the Court must give a declaration to that effect.

36 For the purpose of s 21 of the Federal Court Act, the parties directed the Court to the considerations which generally apply to the making of declarations, as outlined in *Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 421; [1972] HCA 61 at 437–8 (Gibbs J). That is, that it is necessary for the Court to be satisfied before making a declaration that:

- (a) the question is a real and not a hypothetical one;
- (b) the applicant has a real interest in raising the question; and
- (c) there is a proper contradictor, that is a person who has a true interest to oppose the declaration sought.

37 The proposed declarations relate to conduct that contravenes the Code and the Credit Act.

38 I am satisfied that ASIC has a real interest in seeking declarations of contravention in this proceeding. Declarations record the Court’s disapproval of the relevant conduct and vindicate the regulator’s claim that a party has contravened the law. Declarations sought by regulators serve an important deterrent effect, by warning others of the risk of engaging in conduct giving rise to similar contraventions: *Australian Competition and Consumer Commission v Cryosite* (2019) 135 ACSR 231; [2019] FCA 116 at [40] (Beach J); *Australian Securities and Investments Commission v Allianz Australia Insurance Limited* [2021] FCA 1062 at [121] (Allsop CJ).

39 NAB and AFSH are proper contradictors, even in circumstances where they have made admissions as to the contravening conduct and agreed to the proposed orders: *Cryosite* at

[39]; *Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2020] FCA 790 at [155] (Beach J).

40 I am satisfied that it is appropriate to make the declarations in the form of the declarations in the proposed orders.

PECUNIARY PENALTIES

The statutory power to impose a pecuniary penalty

41 The Court has power to order that NAB and AFSH pay a pecuniary penalty under s 167(1) and (2) of the *Credit Act*: *SunshineLoans Pty Ltd v Australian Securities and Investments Commission* (2025) 308 FCR 474; [2025] FCAFC 34 at [111] (Perram, Bromwich and Colvin JJ).

42 Section 167(2) of the *Credit Act* provides:

Court may order person to pay pecuniary penalty

(2) If a declaration has been made under section 166 that the person has contravened the provision, the court may order the person to pay to the Commonwealth a pecuniary penalty that the court considers is appropriate (but not more than the amount specified in section 167A).

43 Section 167(3) of the *Credit Act* provides that, in determining the pecuniary penalty, the Court must take into account all relevant matters, including:

- (a) the nature and extent of the contravention; and
- (b) the nature and extent of any loss or damage suffered because of the contravention; and
- (c) the circumstances in which the contravention took place; and
- (d) whether the person has previously been found by a court (including a court in a foreign country) to have engaged in similar conduct.

Approach where the parties have agreed a pecuniary penalty

44 The practice and approach to making orders proposed by agreement in a civil penalty proceeding was explained by the High Court in *Commonwealth v Director, Fair Work Building Industry Inspectorate* (2015) 258 CLR 482; [2015] HCA 46. The plurality (French CJ, Kiefel, Bell, Nettle and Gordon JJ) stated, at [58], that it is consistent with principle and highly desirable in practice for the Court to accept the parties' proposal as to an agreed penalty, subject to the Court being sufficiently persuaded of the accuracy of the

parties' agreement as to facts and consequences, and that the penalty proposed is "an appropriate remedy in the circumstances".

45 In considering whether the proposed agreed penalty is an appropriate penalty, the Court should generally recognise that the agreed penalty is most likely the result of compromise and pragmatism on the part of the regulator, and can be expected to reflect, amongst other things, the regulator's considered estimation of the penalty necessary to achieve deterrence and the risks and expense of the litigation had it not been settled: *Volkswagen Aktiengesellschaft v Australian Competition and Consumer Commission* (2021) 284 FCR 24; [2021] FCAFC 49 at [129] (Wigney, Beach and O'Bryan JJ), referring to *Fair Work* at [109] (Keane J).

Applicable principles

46 The civil penalty regime in the Credit Act is similar in form to the civil penalty regimes in other Commonwealth statutes including the ASIC Act and the *Competition and Consumer Act 2010* (Cth) (CCA) (s 76) and the *Australian Consumer Law* (being Schedule 2 to the CCA) (s 224). The principles relevant to the interpretation of those provisions were recently summarised by O'Bryan J in *Australian Securities and Investments Commission v Vanguard Investments Australia Ltd (No 2)* [2024] FCA 1086 at [33]–[37], which I gratefully adopt and repeat insofar as they are relevant to this proceeding.

47 *First*, the Court may impose a penalty in respect of each act or omission that constitutes a contravention, subject to the maximum penalty which is stated to apply to each act or omission.

48 *Second*, the penalty to be imposed is a penalty that the Court considers appropriate. In that regard, the principal object of imposing a pecuniary penalty is deterrence; both the need to deter repetition of the contravening conduct by the contravener (specific deterrence) and to deter others who might be tempted to engage in similar contraventions (general deterrence): *Singtel Optus Pty Ltd v Australian Competition and Consumer Commission* (2012) 287 ALR 249; [2012] FCAFC 20 at [62]–[63] (Keane CJ, Finn and Gilmour JJ); *Australian Competition and Consumer Commission v TPG Internet Pty Ltd* (2013) 250 CLR 640; [2013] HCA 54 at [65] (French CJ, Crennan, Bell and Keane JJ); *Fair Work* at [55] (French CJ, Kiefel, Bell, Nettle and Gordon JJ) and at [110] (Keane J); *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450; [2022] HCA 13 at [15] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ).

49 *Third*, in determining the appropriate penalty, the Court must take into account all relevant matters, including the specific matters referred to in s 167(3) of the Credit Act. Other factors that are relevant to the assessment of the appropriate penalty, and which were the subject of agreed facts in this proceeding, are:

- (a) the deliberateness of the contravention;
- (b) whether the contravention arose out of the conduct of senior management or at a lower level;
- (c) the size and financial position of the contravening company;
- (d) corrective measures taken in response to an acknowledged contravention; and
- (e) whether the company has shown a disposition to cooperate with the authorities responsible for the enforcement of the law in relation to the contravention.

50 *Fourth*, in considering the sufficiency of a proposed civil penalty, regard must ordinarily be had to the maximum penalty. The maximum penalty provides a “yardstick”, to be taken and balanced with all other relevant factors: *Pattinson* at [53]–[54]; *Australian Competition and Consumer Commission v Reckitt Benckiser (Australia) Pty Ltd* (2016) 340 ALR 25; [2016] FCAFC 181 at [155]–[156] (Jagot, Yates and Bromwich JJ).

51 *Fifth*, in determining the appropriate penalty for a multiplicity of civil penalty contraventions, the Court may have regard to two common law principles that originate in criminal sentencing, the “course of conduct” principle and the “totality” principle: *Australian Competition and Consumer Commission v Yazaki Corporation* (2018) 262 FCR 243; [2018] FCAFC 73 at [226] (Allsop CJ, Middleton and Robertson JJ) .

52 Under the “course of conduct” principle, the Court determines whether it is appropriate that a “concurrent” or single penalty should be imposed for the contraventions by considering whether the contravening acts or omissions arise out of the same course of conduct or the one transaction: *Yazaki Corporation* at [234]. Whether multiple contraventions should be treated as a single course of conduct is a question of fact and degree: *Construction, Forestry, Mining and Energy Union v Cahill* (2010) 269 ALR 1; [2010] FCAFC 39 at [39] (Middleton and Gordon JJ). The application of the principle requires an evaluative judgement in respect of the relevant circumstances: *Australian Competition and Consumer Commission v Cement Australia Pty Ltd* (2017) 258 FCR 312; [2017] FCAFC 159 at [425] (Middleton, Beach and Moshinsky JJ). The “course of conduct” principle guards against the risk that the

respondent is punished twice in respect of multiple contravening acts or omissions that should be evaluated, for the purposes of assessing an appropriate penalty, as a lesser number of acts of wrongdoing: *Cahill* at [39].

- 53 The “totality” principle operates as a “final check” to ensure that the penalties to be imposed on a wrongdoer, considered as a whole, are just and appropriate and that the total penalty for related offences does not exceed what is proper for the entire contravening conduct in question: *Trade Practices Commission v TNT Australia Pty Ltd* (1995) ATPR 41–375 at 40,169 (Burchett J); *Australian Competition & Consumer Commission v Australian Safeway Stores Pty Ltd* (1997) 145 ALR 36 at 53 (Goldberg J).

Maximum penalty

- 54 Prior to 13 March 2019, the maximum penalty applying to a corporation under s 167(3)(b) of the Credit Act (from 1 March 2013) was 5 times the maximum number of penalty units referred to in the civil penalty provision (which was 2,000 penalty units).
- 55 The Strengthening Penalties Act introduced the following amendments relevant to determining the maximum penalty (from 13 March 2019):
- (a) the maximum number of penalty units for a contravention of s 72(4) of the Code increased to 5,000 penalty units;
 - (b) s 175A of the Credit Act was introduced; and
 - (c) the maximum pecuniary penalty for a body corporate became the greatest of the penalty specified for the civil penalty provision, multiplied by 10, or the alternative calculations specified in s 167B(2) of the Credit Act.
- 56 From 13 March 2019, s 167B(2) has provided as follows:

The ***pecuniary penalty applicable*** to the contravention of a civil penalty provision by a body corporate is the greatest of:

- (a) the penalty specified for the civil penalty provision, multiplied by 10; and
- (b) if the court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3; and
- (c) either:
 - (i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the

body corporate contravened, or began to contravene, the civil penalty provision; or

- (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

57 The parties agreed that s 167B(2)(c) is applicable in determining the maximum pecuniary penalty in this proceeding. Further, s 167B(2)(c)(ii) is applicable, because 10% of the “annual turnover” (within the meaning of s 5 of the Credit Act) of the NAB Group (which includes AFSH) in each 12-month period since 13 March 2019 is greater than an amount equal to 2.5 million penalty units.

58 In the result, the parties agreed the following maximum pecuniary penalties during the relevant contravention period up until 10 February 2025:

Period of contravention	Maximum per s167B(2)(c)
16 November 2018 to 12 March 2019	N/A
13 March 2019 to 30 June 2020	\$525 million
1 July 2020 to 31 December 2022	\$555 million
1 January 2023 to 30 June 2023	\$687.5 million
1 July 2023 to 6 November 2024	\$782.5 million
7 November 2024 to 10 February 2025	\$825 million

59 In this proceeding, the maximum pecuniary penalties that may be imposed are so high as to be “practically meaningless”. Nevertheless, the large number of contraventions and theoretical maximum penalties highlight the seriousness of the conduct in question: *Australian Securities and Investments Commission v AGM Markets Pty Ltd (In Liq) (No 4)* (2020) 148 ACSR 511; [2020] FCA 1499 at [110] (Beach J); *Australian Competition and Consumer Commission v Get Qualified Australia Pty Ltd (in liq) (No 3)* [2017] FCA 1018 at [32] (Beach J).

Consideration of relevant factors

Nature and extent of contravening conduct

60 Section 72 of the Code provides a process by which debtors can notify credit providers if they are experiencing hardship and, as such, it provides an important formal mechanism to protect

consumers who may be experiencing hardship: *Australian Securities and Investments Commission v Membo Finance Pty Ltd (No 2)* [2023] FCA 126 at [29] (Yates J).

61 The total number of admitted contraventions of s 72(4) is high, indicating the significant scope – and thereby the seriousness – of the contravening conduct.

62 There is a reasonable inference available that the admitted contraventions involved customers who considered themselves to be experiencing financial difficulty at the time they gave NAB or AFSH a hardship notice and who considered themselves unable to meet their loan obligations. The reasons for experiencing hardship provided by NAB and AFSH customers at the time of lodging their hardship notices included medical issues or emergencies, bereavement, family violence, family breakdown, the pandemic, business failure or downturn, natural disaster, redundancy, underemployment/reduced hours and unemployment.

63 The Initial Contraventions occurred over a period of almost five years, from 16 November 2018 to October 2023, and continued until 10 February 2025. ASIC submitted that it was relevant that NAB reported to ASIC that the incorrect use of the Activity occurred as early as October 2016. The incorrect use of the Activity came to light as a result of ASIC’s information requests to NAB, in 2023, following which NAB took action in relation to the matter including breach reporting the matter to ASIC. ASIC further submitted that it can be inferred that, but for ASIC’s involvement, the contravening conduct may have continued, which NAB and AFSH rejected. It is evident that the contraventions occurred over a number of years before they were discovered and reported to ASIC following ASIC’s information requests. There is a reasonable inference available that the incorrect use of the Activity may have continued if it were not for ASIC’s involvement.

The nature and extent of any loss or damage suffered

64 The parties agreed that there was no ascertained loss suffered by customers as a result of the contraventions. However, 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 the NAB and AFSH hardship notices 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.

65 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 their rights under the AFCA scheme). These impacts may have been avoided if NAB had provided the affected NAB customers and the AFSH customers with the required notices in response to their hardship notices within the prescribed timeframes.

The circumstances in which the conduct took place, including deliberateness

66 The circumstance giving rise to the contraventions was the incorrect use by NAB staff of the Activity in NAB's internal system for managing hardship notices received by NAB and AFSH, with the exception of six NAB customers.

67 NAB and AFSH did not deliberately engage in the contraventions.

Whether NAB and AFSH have previously been found by a Court to have engaged in any similar conduct

68 Neither NAB nor AFSH have previously been found by a Court to have contravened the hardship provisions of the Code. However, the parties referred the Court to the following occasions in which NAB has previously been found by a Court to have contravened a civil penalty provision of the Credit Act, the ASIC Act or the Corporations Act.

69 In 2020, NAB was found to have contravened ss 31 and 47(1)(a) and (d) of the Credit Act as a result of a programme whereby unlicensed 'introducers' were engaging in credit activities without an Australian Credit Licence: *Australian Securities and Investments Commission v National Australia Bank Limited* [2020] FCA 1494 (Lee J). NAB admitted to conduct amounting to 260 contraventions of s 31 of the Credit Act, which also involved 260 contraventions of s 47(1)(d) and a contravention of s 47(1)(a) of that Act, during the period 23 August 2013 to 29 July 2016. NAB was ordered to pay a total penalty of \$15 million, after applying a 30% discount for NAB's cooperation, early admissions, adoption of a remediation scheme and other mitigating factors.

70 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: *Australian Securities and*

Investments Commission v National Australia Bank Limited [2021] FCA 1013 (Davies J). NAB was ordered to pay pecuniary penalties of \$18.5 million in respect of the contraventions of ss 962P and 962S of the Corporations Act and s 12DB(1)(a) and (g) of the ASIC 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 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.

71 In 2023, NAB was found to have contravened s 12CB of the ASIC Act (unconscionable conduct), in the period from January 2017 to July 2018, as a result of continuing to charge certain fees to customers in circumstances where 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) 164 ACSR 358; [2022] FCA 1324 (Derrington J) and *Australian Securities and Investments Commission v National Australia Bank Limited (No 2)* [2023] FCA 1118 (Derrington J) (***ASIC v NAB (No 2)***). In the relevant period, NAB had wrongfully charged periodic payment fees on 74,593 occasions to personal and business banking customers totalling \$139,845.90: *ASIC v NAB (No 2)* at [97]. Derrington J found that there was only one contravention of s 12CB of the ASIC Act: *ASIC v NAB (No 2)* at [87]. NAB was ordered to pay penalties of \$2.1 million in respect of the single contravention, which was the maximum penalty at the time: *ASIC v NAB (No 2)* at [2].

72 As Derrington J observed in *ASIC v NAB (No 2)* at [144], whether or not a contravenor can be said to have engaged in “similar conduct” in the past must involve a relatively broad and impressionistic inquiry. The phrase “similar conduct”, taken in isolation, cannot be

understood as necessitating that the conduct in question constituted a contravention of the same statutory provisions, or even provisions within the same statute. I observe that the relevant similarities between the present case and *ASIC v NAB (No 2)* are that they both involved contraventions of consumer protection provisions arising out of NAB's failure to have effective systems in place.

Whether the contravention arose out of the conduct of senior management or at a lower level

- 73 The failures by NAB and AFSH to provide response notices to the NAB and AFSH hardship notices did not involve senior management of NAB or AFSH.

The size and financial position of NAB and AFSH and deterrence

- 74 NAB is a public company and a major Australian bank. AFSH is part of the NAB Group, the ultimate holding company of which is, and was at all relevant times, NAB.

- 75 NAB is one of the five largest listed companies by market capitalisation in Australia. As at 30 September 2024, the NAB Group's total net assets were \$62.2 billion. As at close of market on 1 May 2025, NAB's market capitalisation was approximately \$110.25 billion.

- 76 The NAB Group's revenue, profit before income tax and net profit for each year ended 30 September 2019 to 30 September 2024 were 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

- 77 The total proposed penalty of \$15.5 million represents 0.22% of NAB's net profit for the 2024 financial year.

78 In light of the very substantial financial resources of NAB, it is necessary that the proposed penalty is significant, to achieve specific deterrence. There is also the need for general deterrence, noting that s 72 has general application to all credit providers, including banks and other financial institutions, who provide credit services to consumers under the Code. The proposed penalty of \$15.5 million is substantial and ought not be regarded by NAB (or a comparably sized business) as an “acceptable cost of doing business”, and it can be expected to deter any potential wrongdoer from engaging in similar contravening conduct: *Singtel Optus* at [68] (Keane CJ, Finn and Gilmour JJ); *TPG Internet* at [64] (French CJ, Crennan, Bell and Keane JJ).

Corrective measures and remediation taken in response to an acknowledged contravention

79 NAB and AFSH have taken various corrective measures to remedy the cause of the failures the subject of this proceeding, which has included the implementation of various controls. These steps were taken in September and October 2023, before the proceeding was commenced. NAB conducted an internal audit of the new controls and has found the steps taken to be effective.

80 Since the commencement of this proceeding, in addition to sending response notices to the affected customers, NAB and AFSH have undertaken a remediation program under which a subset of affected customers who had experienced collections activity were assessed for any financial or non-financial impact. As a result of this program:

- (a) 60 customers (relating to 41 instances the subject of this proceeding) have received or will receive payments totalling approximately:
 - (i) \$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
 - (ii) \$28,500 for non-financial impact (an average payment of \$475 per customer).
- (b) 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 proceeding) that otherwise may not have been recorded had their hardship notices been assessed within the prescribed timeframes.

81 Following commencement of this proceeding, NAB apologised to the NAB and AFSH customers who are the subject of this proceeding. NAB and AFSH also apologised to the Court for their contraventions of the Code.

Whether NAB has shown a disposition to cooperate

82 NAB has shown a disposition to cooperate with ASIC in this matter. Following ASIC's Initial Requests Hardship Review Project, in 2023, NAB notified ASIC of a reportable situation by way of breach report submitted on 11 October 2023. NAB and AFSH cooperated with ASIC in the course of its Initial Requests and Hardship Review Project and subsequent investigation, and admitted the contraventions the subject of this proceeding at the earliest available opportunity.

83 NAB has demonstrated contrition through its cooperation with ASIC, and its apology to, and remediation of, affected customers.

Multiple contraventions and course of conduct

84 The application of the “course of conduct” principle and the “totality” principle does not convert multiple separate contraventions into a limited number of contraventions, nor does it constrain the available maximum penalty or otherwise displace the imposition of a significant penalty: *Reckitt Benckiser* at [141], citing *Australian Competition and Consumer Commission v Hillside (Australia New Media) Pty Ltd trading as Bet365 (No 2)* [2016] FCA 698 at [24]–[25] (Beach J); *Yazaki Corporation* at [227], [229]–[235]. The principal objective is to ensure that the penalties imposed are of appropriate deterrent value having regard to the actual, substantive wrongdoing.

85 The course of conduct principle should not be afforded much significance in assessing the appropriate penalty in this case. As Moshinsky J observed in *Australian Securities and Investments Commission v AMP Financial Planning* [2022] FCA 1115; (2022) 164 ACSR 64 at [122]:

[T]he ‘course of conduct’ principle does not have paramountcy in the process of assessing an appropriate penalty. It cannot operate as a de facto limit on the penalty to be imposed for contraventions of civil penalty provisions of (in this case) the ASIC Act. The present case is one where, even if the conduct can be described as a single ‘course of conduct’, the contravening conduct affected a large number of members and involved the wrongful deduction of (in total) a substantial sum of money. In my view, in the circumstances of this case, the preferable approach is to have regard to the nature and extent, and the circumstances, of the contravening conduct, including

its common features, rather than determining whether the conduct constitutes a single ‘course of conduct’.

Conclusion in respect of the pecuniary penalty

86 The parties have agreed that the total penalty should be \$15.5 million and that it should be apportioned such that NAB pays \$13 million and AFSH pays \$2.5 million. The Court is not bound by that agreement, and it must impose the penalty it determines is appropriate having regard to all relevant matters. However, the fact that the parties have agreed and jointly proposed a penalty is “plainly a relevant and important matter which the Court must have regard to in determining an appropriate penalty”: *Volkswagen* at [131] (Wigney, Beach and O’Byrne JJ).

87 I am satisfied that the agreed penalty of \$15.5 million is just and appropriate having regard to the nature and extent and circumstances of the contravening conduct and the need to achieve the appropriate deterrent effect. The proposed apportionment as between NAB and AFSH also is appropriate – it reflects that almost 82% of the hardship notices were lodged by NAB customers. In addition, it is appropriately weighted more heavily towards NAB given that NAB handled all aspects of the hardship process on behalf of NAB and AFSH and it is the parent company of the NAB Group.

ADVERSE PUBLICITY ORDERS

88 The agreed orders include an adverse publicity order that requires NAB and AFSH to disclose to the affected customers a written adverse publicity notice (by mail or email), as well as to publish that notice on their respective websites.

89 Section 182(1) of the Credit Act gives the Court power to make adverse publicity orders against a person who has contravened a civil penalty provision. An adverse publicity order is defined in s 182(2) of the Credit Act as follows:

- (2) An adverse publicity order is an order that:
 - (a) requires a person to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; or
 - (b) requires a person to publish, at the person’s expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.

90 Analogous powers are contained in s 12GLB(1)(a) of the ASIC Act, and s 1101B(1) of the Corporations Act. The Court has a broad discretion as to whether to make such orders. The

purpose of adverse publicity orders is both punitive and protective, in the sense of dispelling incorrect or false impressions and/or alerting the public and customers to the fact of contravening conduct: *Australian Securities and Investments Commission v Aware Financial Services Australia Ltd* [2022] FCA 146 at [35] (Moshinsky J), referring to *Australian Securities and Investments Commission v Commonwealth Bank of Australia (No 2)* [2021] FCA 966 at [7]–[17] (Lee J).

91 It is not uncommon for the Court to order that corrective notices or adverse publicity notices be mailed or emailed directly to affected persons and also be published on the contravener’s website — doing so is more likely to bring the notice to the affected person’s attention than doing so solely via the contravener’s website: *Australian Securities and Investments Commission v Colonial First State Investments Limited* [2021] FCA 1268 at [86(d)] (Murphy J).

92 I am satisfied that the proposed adverse publicity order is appropriate to alert the public and NAB’s and AFSH’s customers to the fact of the contravening conduct.

COSTS

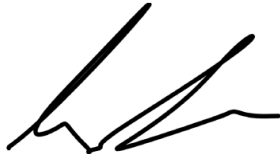
93 The Court has power to award costs pursuant to s 43 of the *Federal Court Act*. The parties have agreed that NAB and AFSH should pay ASIC’s costs of, and incidental to, the proceeding. I will make an order in the terms sought.

CONCLUSION

- 94 I am satisfied that it is appropriate to make the orders agreed by the parties and will make orders substantially in the terms sought.

I certify that the preceding ninety-four (94) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Neskovicin.

Associate:

A handwritten signature in black ink, consisting of several fluid, connected strokes.

Dated: 13 August 2025