

FEDERAL COURT OF AUSTRALIA

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

File number: NSD 1355 of 2019

Judge: LEE J

Date of judgment: 19 October 2020

Catchwords: **BANKING AND FINANCIAL INSTITUTIONS** – *National Consumer Credit Protection Act 2009* (Cth) – prohibition under s 31 on holder of Australian Credit Licence from conducting business with an unlicensed person – obligation on licensee under s 47(1)(a) and (d) to do all things necessary to ensure authorised credit activities engaged in efficiently, honestly and fairly – NAB’s “spot and refer” programme – unlicensed “Introducers” received commission payments to “spot” prospective customers and “refer” them to bankers – admitted contraventions – where investigation by ASIC limited to very small segment of programme – where investigation and proceeding brought in relation to conduct self-reported by NAB – where declaratory relief sought – consideration of inutility of repetitive declarations sought by ASIC – pecuniary penalties – consideration of relevant principles – consideration of course of conduct principle and totality principle

Legislation: *Australian Securities and Investments Commission Act 2001* (Cth)
Corporations Act 2001 (Cth) s 912D
Evidence Act 1995 (Cth) ss 140, 191
Federal Court of Australia Act 1976 (Cth) s 21
Judiciary Act 1903 (Cth) s 39B(1A)(c)
National Consumer Credit Protection Act 2009 (Cth) ss 8, 9, 31, 38, 47(1), 166
Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019 (Cth)
National Consumer Credit Protection Regulations 2010 (Cth)

Cases cited: *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564
Australian Competition and Consumer Commission v

Australian Safeway Stores Pty Limited (No 3) [2002] FCA 1294; (2002) ATPR 41-901

Australian Competition and Consumer Commission v Coles Supermarkets Australia Pty Ltd [2015] FCA 330; (2015) 327 ALR 540

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

Australian Competition and Consumer Commission v Target Australia Pty Ltd [2001] FCA 1326; (2002) ASAL (Digest) 55-072

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

Australian Securities and Investments Commission v Westpac Securities Administration Ltd [2019] FCAFC 187; (2019) 373 ALR 455

Australian Securities and Investments Commission v AGM Markets Pty Ltd (in liq) (No 3) [2020] FCA 208; (2020) 143 ACSR 140

Australian Securities and Investments Commission v AMP Financial Planning Pty Ltd (No 2) [2020] FCA 69; (2020) 377 ALR 55

Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited [2018] FCA 155

Australian Securities and Investments Commission v Australian Lending Centre Pty Ltd (No 3) [2012] FCA 43; (2012) 213 FCR 380

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

Australian Securities and Investments Commission v The Cash Store Pty Ltd (in liq) (No 2) [2015] FCA 93

Australian Securities and Investments Commission v Westpac Banking Corporation [2019] FCA 2147

Briginshaw v Briginshaw (1938) 60 CLR 336

Chamberlain v The Queen (No 2) (1984) 153 CLR 521

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Australian Competition and Consumer Commission [2007] FCAFC 132; (2007) 162 FCR 466

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

Construction, Forestry, Mining and Energy Union v De Martin & Gasparini Pty Limited (No 3) [2018] FCA 1395

Dillon v RBS Group (Australia) Pty Ltd [2017] FCA 896;

(2017) 252 FCR 150

Forster v Jododex Australia Pty Limited (1972) 127 CLR 421

Ibeneweka v Egbuna [1964] 1 WLR 219

NW Frozen Foods Pty Ltd v Australian Competition and Consumer Commission [1996] FCA 1134; (1996) 71 FCR 285

Markarian v The Queen [2005] HCA 25; (2005) 228 CLR 357

Qantas Airways Ltd v Gama [2008] FCAFC 69; (2008) 167 FCR 537

Shepherd v The Queen (1990) 170 CLR 573

Trade Practices Commission v CSR Limited [1990] FCA 762; [1991] ATPR 41-076

Interim Report of the Financial Services Royal Commission

Date of hearing:	20 July 2020
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Sub-area:	Regulator and Consumer Protection
Category:	Catchwords
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Solicitor for the Applicant:	Australian Securities and Investments Commission
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Solicitor for the Respondent:	HWL Ebsworth Lawyers

ORDERS

NSD 1355 of 2019

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

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

JUDGE: **LEE J**

DATE OF ORDER: **19 OCTOBER 2020**

THE COURT ORDERS THAT:

1. On or by 26 October 2020, the parties provide to the Associate to Justice Lee an agreed minute of order to reflect these reasons or, failing agreement, the proposed orders the party contends reflect the reasons.

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

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OVERVIEW AND A PRELIMINARY OBSERVATION

1 A large retail bank put in place a programme whereby unlicensed “Introducers” would “spot” prospective customers and “refer” them to bankers; if the bank then advanced a loan, the Introducers were rewarded by a payment – the bigger the loan, the bigger the reward. There were no uniform processes for selection of the Introducers, no requirement that they have any particular training and no minimum level of due diligence; there was also no relevant formal training for “frontline” bankers, including as to the nature of the information the Introducer could lawfully provide. The programme at times resulted in the bank receiving information and documents about customers from financially interested third parties. At any one time there were hundreds to thousands of these untrained Introducers.

2 What could possibly go wrong?

- 3 The programme to which I refer was the “spot and refer” programme (**programme**) operated by National Australian Bank Limited (**NAB**). It generated a very large number of loans worth thousands of millions of dollars. NAB profited handsomely from the loans generated. It operated from at least 2000, lasting for around 19 years until it was, to use the NAB’s euphemistic term, “retired”.
- 4 At the outset, it is worth noting that this regulatory proceeding was filed relatively soon after the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* tabled its final report in February 2019. Since the Royal Commission, but prior to the hearing of this proceeding, Parliament enhanced the powers of the Australian Securities and Investments Commission (**ASIC**) including by increasing the size and scope of available penalties by the introduction of the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (Cth). Even though these higher penalties do not apply in the present case, at least at the time they were introduced, they reflected a shift in Parliament’s attitude to the conduct to which they relate, including conduct under the *National Consumer Credit Protection Act 2009* (Cth) (**National Credit Act**). This is made clear in the Second Reading Speech to the Bill introducing that legislation, which recognised it as “an essential part of rebuilding community trust in the financial services industry” because “some financial institutions have engaged in conduct that falls well short of community expectations”.
- 5 Prior to proceeding further, I consider it necessary to make a further preliminary but more specific observation: while during the period relevant to this case (23 August 2013 to 29 July 2016 (**Relevant Period**)) there were thousands of Introducers registered with NAB, this proceeding only concerns conduct engaged in by 25 of them. Further, as noted above, the programme operated as long ago as 2000 (although initially, of course, in the context of a quite different regulatory regime).
- 6 Although NAB has admitted that it engaged in conduct amounting to 260 contraventions of s 31 of the National Credit Act, which also involved 260 contraventions of s 47(1)(d) and at least one contravention of s 47(1)(a) of that Act, there is a high degree of artificiality in proceeding on the basis that I have been presented with anything like a full picture of what actually occurred in relation to the programme. This results from deliberate regulatory and forensic choices made by ASIC. It is not for me to gainsay these decisions of ASIC. It evidently has competing and heavy demands upon its finite resources. What became evident during the course of the hearing, however, is the very limited independent investigation as to

the true scope of what has occurred during the Relevant Period and the significant reliance by ASIC on the internal work done by NAB in its investigations (by its officers or by a professional services firm it had engaged) as to where the problems were located within NAB and what went wrong.

7 I must deal with the evidence adduced and put out of my mind speculation. I will fix penalties and make other orders on the basis of the issues as presented by the parties and what has been proved. But having said that, I have a nagging feeling of disquiet that the true picture of the extent of the problems with the programme has not been revealed because there was not a real regulatory desire to pursue a thorough investigation as to what in truth occurred.

8 It is both unnecessary and unsafe for me to speculate as to why these regulatory and forensic decisions have been made, including any attempt to prove actual harm to individual customers, but their consequence is to require me to fix penalties in circumstances where my understanding of the true scope of what occurred in relation to the general operation of the programme during the Relevant Period (let alone at earlier times to the extent it reflects on conduct during the Relevant Period) is incomplete.

9 I will address the matters that fall for consideration by reason of these breaches and contraventions of the National Credit Act under the following headings:

- A – Enforcement action by ASIC
- B – Agreed factual background
- C – Statutory framework
- D – Relevant statutory provisions
- E – Contested legal issues
- F – Relief
- G – Orders

A ENFORCEMENT ACTION BY ASIC

A.1 Pre-commencement Activity

10 Set out below is a brief overview of events leading up to the enforcement proceedings commenced by ASIC which are agreed between the parties, as set out in the Statement of

Agreed Facts (**SOAF**) at Appendix A to this judgment. I adopt the abbreviations used in the SOAF in this judgment and make findings in accordance with that document.

- 11 On 14 September 2015 and 15 October 2015, NAB received anonymous whistle-blower reports of possible misconduct by branch managers and bankers within branches in the Greater Western Sydney region (**GWS**) involving the programme: SOAF [133].
- 12 Between October 2015 and January 2019, NAB conducted its own internal investigations into the conduct identified in the whistle bower reports, concentrating on the GWS region: SOAF [134]–[164]; [190]–[204]. I will refer to this as “Stage 1” of NAB’s review. As part of this stage, NAB undertook various reviews and investigations including establishing a Task Force into the programme and an internal audit: SOAF [245].
- 13 On 11 December 2015, NAB engaged KPMG to undertake an investigation into the conduct identified and to report on its findings to NAB: SOAF [137], [245].
- 14 Stage 1 identified the following “persons of interest”: 13 bankers and 8 Introducers from the initial GWS Investigation (SOAF [136]); and 13 additional bankers and 33 additional Introducers identified by KPMG (SOAF [138]), bringing the total to 26 bankers and 41 Introducers.
- 15 On 21 December 2015, NAB first wrote to ASIC reporting its findings of banker fraud and “potential control breakdowns” in the programme in the GWS area, involving the loan origination and application process and income verification procedures for both personal loans and home loans. This was a voluntary communication: SOAF [233].
- 16 On 20 January 2016, NAB’s Significant Event Review Panel (**SERP**) received an internal report advising it that the issues with the programme were not isolated to GWS: SOAF [148]. At all material times the SERP had responsibility for determining whether there existed a significant breach or likely breach that NAB was *required* to report to ASIC pursuant to NAB’s obligations as a financial services licensee under s 912D of the *Corporations Act 2001* (Cth): SOAF [148]–[149].
- 17 On 3 February 2016, ASIC was first officially notified by NAB of relevant breaches of the National Credit Act in a breach report titled “National Australia Bank Limited: Banker Investigation: Western Sydney”. Its stated purpose was to update ASIC on the matter of banker investigations in the GWS area: SOAF [191(d)].

- 18 On 26 February 2016, ASIC commenced an enforcement investigation into the matters the subject of the GWS Investigation: SOAF [200(a)]. ASIC notified NAB that it had opened an investigation on 1 March 2016: SOAF [196(d)].
- 19 In the 2016 financial year, NAB undertook an expanded review into conduct beyond the GWS region. This was “Stage 2” of NAB’s review. In July 2016, a project investigating systemic factors contributing to the misconduct identified in the Stage 2 review also commenced: SOAF [158].
- 20 Stage 2 identified the following persons of interest: 44 additional retail bankers, selected primarily on the basis that they had the highest Introducer commissions. These individuals were located in New South Wales, the Australian Capital Territory and Victoria. The review focussed upon a review of six months of emails from those individuals from 1 December 2015 to 31 May 2016: SOAF [153]. 72 associated Introducers were also identified for review; and 91 business bankers from NAB’s Business and Private Banking division were also selected by applying a range of criteria including a sample of bankers who had received high incentive payments in connexion with loans referred by Introducers or who were associated with Introducers who had received high commission payments: SOAF [155]. This brought the number of individuals under investigation to 161 bankers and 113 Introducers.
- 21 On 31 August 2016, NAB sent a second breach report to ASIC reporting the results of additional reviews by NAB in other channels and regions: SOAF [193(c)]. This led to NAB expanding its review beyond only the GWS area into different regions and different business channels.
- 22 In or around October 2016, a new project was established to streamline the separate projects undertaken in Stages 1 and 2 and to review them under a single governance structure, given identified similarities in conduct identified: SOAF [164]. This was “Stage 3” of the review and it considered those persons of interest already identified.
- 23 On 21 December 2016, the SERP met and considered whether the findings of its expanded review constituted a continuance of the event breach reported to ASIC in August 2016, or whether another breach report was required. It was determined that a status update to ASIC would be sufficient.

- 24 Accordingly, in January 2017, NAB notified ASIC of the initial findings of the expanded Stage 3 review.
- 25 In or about February 2017, NAB commenced designing a remediation scheme in respect of the misconduct relating to Introducers. At a meeting with ASIC in July 2017, NAB committed to providing ASIC with a copy of the draft remediation scheme document that NAB was preparing, and it did so on 16 August 2017. ASIC and NAB met again on or about 13 November 2017, prior to NAB commencing customer contact pursuant to the proposed remediation scheme: SOAF [209]–[211].
- 26 The final remediation scheme involved (SOAF [213]) consideration of 60 employees who were suspected of having potentially breached one or more of NAB’s internal policies or procedures, selected from the NAB Bankers identified during Stage 1 and Stage 2, of which 44 were found to have engaged in misconduct deemed sufficiently serious to warrant the application of a “red compliance gate” or dismissal of employment. The review of all secured files of the 60 employees of interest and the determination of whether each loan reviewed required further consideration and, ultimately, whether remediation in respect of that loan was required.
- 27 In July 2018, separately from this proceeding, ASIC banned Mr Awad (who is one of the 16 bankers identified in the present proceeding, set out in Schedule C to the SOAF (**NAB Bankers**)) from engaging in credit activities and providing financial services for a period of seven years in relation to the admitted conduct. Mr Awad was found to have given NAB false payslips, letters of employment, and entered false referrer contact details in NAB’s lending systems in multiple home loan applications. A majority of the false documentation Mr Awad submitted to NAB was provided to him by a real estate agent who was previously registered as an Introducer (and is one of the 25 Introducers identified in the present proceeding (**Relevant Introducers**)): SOAF [232].
- 28 Between 16 January 2018 and 6 September 2019, NAB provided ASIC with bi-monthly reports regarding its remediation scheme arising out of its investigations: SOAF [220].
- 29 From time to time between November 2017 and September 2019, there was communication between ASIC and NAB about the remediation scheme. NAB provided such information as was sought by ASIC and accepted recommendations made by ASIC, including as to the scope of KPMG’s independent quality assurance review. NAB also provided ASIC with copies of all of the reports prepared by KPMG in connexion with its assurance reviews: SOAF [22].

A.2 Commencement of this proceeding

30 It is against this backdrop, including the discussions in early 2017 by which ASIC appears to have accepted that NAB and its consultants should be allowed to proceed to devise its own remediation scheme, that ASIC apparently took the regulatory decision not to take steps to undertake its own expanded investigation.

31 In *Australian Securities & Investments Commission v AMP Financial Planning Pty Ltd (No 2)* [2020] FCA 69, I noted (at [252]) that notwithstanding a large accounting firm would no doubt perform a role administering a remediation scheme conscientiously, it was “suboptimal” that the firm conducting the remediation scheme was selected by the contravenor “and not the Court” and said further:

This raises an issue in regulatory proceedings of more general importance. In my experience of a number of these cases, it has been common, quite early in the investigatory or enforcement stage, for large institutions to select professional services firms to provide advisory, investigative and implementation services. These are often vast exercises and involve the professional services firm being paid very large fees. Speaking generally, no doubt some selections are made with the knowledge and encouragement of a regulator. It is easy to understand why this occurs and speed of remediation is highly desirable, but the difficulty is that when the matter comes to Court, the judge hearing the case (and determining what orders should be made) is presented with what amounts to a *fait accompli*: so many costs have been expended, and so much work has been done, that the Court cannot practically fasten upon a new approach run by wholly independent professionals selected by the Court.

32 Of course, in this case the issue is somewhat different to that in *AMP Financial Planning Pty Ltd (No 2)* as ASIC does not seek any “forward-looking” orders or a Court-sanctioned remediation scheme. It is apparently satisfied with the scope of the programme devised and its operation. But it is worth noting that this has meant that the Court is not being asked to make compensatory orders because a regime of compensation has been designed, no doubt at very considerable expense, by the contravenor and a firm of accountants engaged by the contravenor.

33 In any event, eventually, ASIC commenced proceedings against NAB by way of Originating Application and Concise Statement filed on 23 August 2019 seeking, in summary:

- (1) pecuniary penalties in relation to alleged contraventions of s 31 of the National Credit Act in the Relevant Period relating to the involvement of unlicensed Introducers in Borrowers’ applications for residential mortgages from NAB contrary to s 29; and
- (2) declarations of contravention in relation to alleged contraventions of s 31 of the National Credit Act, and declarations of contravention of s 47(1)(a) and (d) of that Act

on the basis that the same conduct of NAB as constitutes the alleged contraventions of s 31 is also contrary to those provisions.

34 At the time the proceeding was commenced, ASIC identified 297 loans. ASIC did not press its allegations in respect of 37 of these loans.

35 ASIC's investigation, such as it was, involved the issuing of notices to produce to NAB and the review of this material (apparently in excess of 20,000 emails and attachments), in addition to its review of the reports and other information provided by NAB *in relation to the reported breaches*. But ultimately, the contraventions all arise from NAB's own self-reporting and ASIC's subsequent investigation into this conduct was based on this self-reporting, as was accepted by Senior Counsel for ASIC (at T15).

36 In the end, admissions were made:

- (1) that NAB engaged in 260 contraventions of s 31 of the National Credit Act which occurred in the Relevant Period;
- (2) the same conduct that constituted each of the 260 contraventions of s 31 also involved 260 contraventions of s 47(1)(d) of the National Credit Act; and
- (3) NAB failed to do all things necessary to ensure that the admitted contraventions did not occur and thereby contravened s 47(1)(a) of the National Credit Act.

(together, the **Admitted Contraventions**).

37 There remains some dispute about s 47(1)(a) of the National Credit Act. It is common ground that there was at least *one* contravention of s 47(1)(a). The dispute lies in whether there was just this one contravention or, as ASIC alleges, 260 contraventions. ASIC contends that the same conduct that constituted each of the 260 contraventions of s 31 also involved 260 contraventions of s 47(1)(a) of the National Credit Act. NAB disagrees, and says there was a single contravention of that provision in that it failed generally to do all things necessary to ensure that the Admitted Contraventions did not occur. For reasons I will explain, it is unnecessary for me to determine this aspect of the dispute.

38 Given these admissions, the proceeding was principally focused on a small number of factual disputes, the legal dispute described above and the amount of the penalty to be imposed and declarations made in respect of the Admitted Contraventions.

B FACTUAL BACKGROUND

B.1 Agreed factual background

39 As noted above, details about how the programme worked, the role of the Introducers and bankers and NAB's investigation of the misconduct and the actions it took, including as to remediation, are set out in my findings based on the agreement between the parties as reflected in the SOAF. Notwithstanding Annexure A sets out all relevant details, it is useful to provide a brief outline of important aspects of these findings below.

I The spot and refer programme

40 As noted above, the programme operated from at least 2000 including during the Relevant Period: SOAF [10]. Introducers would "spot" prospective customers and "refer" them to NAB Bankers with whom they had a relationship. An Introducer could be an individual or a company engaged in a business not ordinarily involving finance or lending. If NAB advanced a loan to a referred customer, Introducers were paid a commission: SOAF [11]. Critically, an Introducer did not hold an Australian Credit Licence (**ACL**).

41 The programme took advantage of an exception in the *National Consumer Credit Protection Regulations 2010* (Cth) (**National Credit Regulations**) without which the National Credit Act would have prohibited an Introducer's involvement completely: see ss 29, 31. By reason of r 25, Introducers who did not hold an ACL were permitted, *only*, to provide NAB with a prospective customer's name and contact details and a short description of the purpose for which the customer sought credit. A policy to this effect applied at NAB during the Relevant Period: SOAF [12]–[13]. Agreements between NAB and each Introducer also included these stipulations.

42 The programme operated in one of two ways: either, an Introducer was "on-boarded" by an individual banker who then generally maintained a relationship with that Introducer; or an Introducer was on-boarded by a National Referral Partner (**NRP**), who aggregated referrals on behalf of a number of affiliated individual Introducers for a commission and maintained a single relationship with a particular banker: SOAF [14]–[15]. The commission paid to the Introducer, including the NRPs, was calculated as a percentage of the total of the loan: SOAF [14], [23]. As I have already explained, while during the Relevant Period there were thousands of Introducers registered with NAB (SOAF at [95]), of course, this proceeding *only* concerns conduct engaged in by as little as 25 of them.

43 As part of the programme, either the banker or the NRP was required, among other things, to record the Introducer's details in NAB's systems, perform on-boarding verifications, arrange for the Introducer to enter into an agreement with NAB, establish an "introducer number" used to identify lending as being referred by that Introducer and establish payment authorities for the Introducer: SOAF [15]–[20]. The Introducer was also required to make a number of disclosures to the customer and to obtain consent: SOAF [201].

44 Once the Introducer referred a customer to NAB, the assigned banker was required to deal directly with the customer in respect of all aspects of the loan application process in accordance with NAB's lending policies (SOAF [20]), including an interview to assess the customer's situation, needs and objectives: SOAF [100]. In respect of the 16 bankers (**Bankers**) who dealt with these 25 Introducers, this did not happen, or did not consistently happen as required. The facts surrounding the precise details of how, in respect of each of the Admitted Contraventions, this transpired are complex and lengthy and I do not propose to set them out here; they have been detailed in the SOAF (at [97]–[114]).

45 While there is some dispute between the parties about the particulars of certain of this conduct, the parties agree (SOAF [65]), and I accept, that each of the Relevant Introducers:

- (1) dealt directly with the Borrower or the Borrower's agent; and
- (2) in the course of, as part of, or incidentally to:
 - (a) carrying on their Business; and
 - (b) the business carried on by NAB; and
 - (c) the business each Relevant Introducer conducted with NAB characterised by the payment of the Commission; and
- (3) in each case, acted as an intermediary between NAB and the Borrower wholly or partly for the purpose of securing the provision of credit under a credit contract for the Borrower with NAB; and
- (4) in some cases, also assisted the Borrower to either apply for a particular credit contract with NAB or an increase to the credit limit of a particular credit contract with NAB.

46 In the Relevant Period, the programme generated significant loan value, from which NAB profited. For example, in 2015, the value of loans drawn down exceeded \$8.3 billion. In that year, there were 5,250 Introducers who were paid total commissions of \$47,472,294: SOAF

[94]–[95]. While only a small subsection of these loans is the subject of this proceeding, the programme was big business for NAB. Continuing with 2015 as an example, the Admitted Contraventions relate to 1.011% of the loans generated by the programme for that year, representing \$105,120,700 in loan value in respect of which 1.176% of the commission described was paid: SOAF [96].

47 There appears to have been a focus on non-resident lending by Introducers and Bankers. The proportion of non-resident lending was 53% in April 2015 and 71% in April 2016: SOAF [104].

II Risk to Borrowers

48 The Borrowers were exposed to the risk that Bankers would rely on information and documents provided by unlicensed Introducers rather than dealing directly with the Borrower, and would not make their own inquiries about the Borrower’s requirements and objectives in relation to the loan, and would not take reasonable steps to assess the veracity of information and documents put forward in support of loan applications to determine whether loans were unsuitable: SOAF [101]. This necessarily exposed the Borrowers to the risk that loans would be unsuitable or calculations as to serviceability would be incorrect and to the risk of wrongful conduct and fraud: SOAF [205]. The parties disagree about whether, and the extent to which, these risks eventuated: SOAF [102], [207].

49 In three cases, fraudulent payslips were provided by an Introducer. Here, the parties expressly agree (and I find) that the Borrowers *were* exposed to the risk that the loan would be unsuitable to them: SOAF [106]. All instances of the provision of fraudulent payslips were isolated to one Introducer. Details are set out in the SOAF (at [66]–[83], [208]).

III The circumstances in which the Admitted Contraventions took place

50 Weaknesses in the following processes and controls during the Relevant Period included:

- (1) Introducer selection;
- (2) Introducer on-boarding;
- (3) Introducer monitoring;
- (4) banker training, particularly regarding the “spot and refer” requirement; and
- (5) controls to detect non-compliance by Introducers and bankers with NAB’s “spot and refer” policy: SOAF [115].

51 Details of each of these admitted deficiencies is set out in the SOAF (at [117]–[132]). Some I have already touched upon. In short, there were no requirements for Introducers to be from particular industries aligned with the provision of credit activities or to have any particular qualifications or training. There were no uniform processes for the “on-boarding” of Introducers and this was generally done by the individual bankers or the NRPs. There was no minimum level of due diligence required to be carried out by bankers and NRPs and no consequences for non-compliance. There was no formal training for frontline bankers regarding the programme including on what information the Introducer could provide. During the Relevant Period there was no single point of accountability for the programme across NAB. Investment in the systems and processes had not kept up with the growth of the programme, in that the last significant investment in the Introducer system had been made over 10 years prior to the discovery of the GWS conduct, notwithstanding the significant growth in the programme over that time. There were shortcomings in the controls used to ensure that NAB’s policies were followed and to detect conflicts of interest or fraud; there were database and information systems limitations; and inadequate monitoring and reporting of Introducer activity. Controls were not designed to identify instances of intentional misrepresentation of information effectively and consistently.

IV Termination of Introducers

52 NAB’s internal audit revealed that there was a lack of ongoing due diligence to check if active Introducers had become undesirable and the Introducer termination process was not documented: SOAF [165]–[166].

53 In the end, of the 60 bankers NAB investigated for potential misconduct and policy non-compliance in relation to the programme, 44 were found to have engaged in misconduct that was deemed sufficiently serious as to warrant a so-called “Red Conduct Gate” (whatever that is supposed to mean). The most common reason for a “Red Conduct Gate” being applied was suspicion of fraud. Of those 44 bankers, 20 resigned or were terminated. NAB applied an “Amber Gate” to nine employees. All of the 16 Bankers involved in this proceeding either resigned, were terminated and/or received “Red Conduct Gates”: SOAF [227]–[232].

V NAB’s corporate culture

54 During the Relevant Period, NAB had an incentive programme, known as the Star Sales Incentives (SSI) scheme. Under the SSI scheme, branch bankers and mobile bankers were

rewarded on the basis of the number of loans they sold. Branch Managers were rewarded based on the sales performance of those they managed. The same SSI was paid regardless of whether a loan was introduced to NAB through an Introducer or by another NAB employee. All Bankers the subject of this proceeding received SSI payments: SOAF [167]–[169].

55 Because of these financial incentives and inadequate controls, it was difficult for NAB to prevent and detect fraud from loan applications originating from the programme: SOAF [170]. NAB admits the possibility that “this increased the risk or incidence of unsuitable loans being made based on fraudulent or unverified information”, though as will be outlined below, there is some disagreement between the parties as to the extent to which this risk came home: SOAF [171]–[173].

56 NAB’s corporate culture and the effect of the SSI payments was the subject of internal investigation following the initial review of banker conduct at GWS and other identified misconduct: SOAF [174]–[183].

57 The contraventions were also a consequence of payments to Introducers, who received commissions for successful loan referrals. The total value of commissions received by the Relevant Introducers involved in this proceeding from the relevant 260 Credit Contracts was \$929,403.67. The commissions ranged between \$88.00 and \$29,700.00 with an average of approximately \$3,500.00. This provided an incentive to Introducers, which, as one would have thought was obvious from the outset, increased the risk of breaches of ss 29 and 31 of the National Credit Act.

VI Role of senior management

58 Twenty-six of the Admitted Contraventions of s 31 of the National Credit Act were the result of conduct of NAB Bank Managers. Otherwise, the direct dealings with Relevant Introducers that constituted the Admitted Contraventions of s 31 of the National Credit Act were engaged in by NAB Bankers at lower levels: SOAF [187]–[189].

59 During the Relevant Period, reports made to, or reviewed by, a number of NAB senior executives identified concerns regarding the conduct of some bankers involved in the programme, and largely, but not exclusively, related to investigations into conduct in the GWS region. Some details of these reports, and the information which NAB senior executives and the Board Risk Committee received from time-to-time during the Relevant Period are set out in the SOAF (at [191]–[196]). This included a memorandum dated 7 June 2016, prepared by

the Executive General Manager Retail and supported by the Group Executive Personal Banking that was submitted to the Group Risk Return Management Committee. The memorandum provided a summary of the high-level findings of three reviews into the Introducer channel, including a finding (at SOAF [192]) of:

[i]nconsistent and potentially ineffective application across the enterprise of ... regulatory requirements, due to varying levels of understanding (ie. operating under NCCP Exemption to provide brief customer details - ‘Spot & Refer’).” The memorandum also indicated that the initial findings “show that the Introducer channel is a viable and commercially solid source of business for NAB and one that will be strengthened by the actions resulting from the risk reviews undertaken.”

60 After the Relevant Period, further updates about NAB’s various internal investigations were provided to these executives and the outcomes they generated: SOAF [197]–[204]. This included the Board being informed, on 7 September 2016, that NAB had breach reported to ASIC in relation to the NAB Banker/Introducer behaviour uncovered between December 2015 to May 2016. During this time, there were various interactions between the Board, the Board Risk Committee and the newly formed Board Audit Committee.

VII NAB cooperation with the authorities

61 NAB cooperated with ASIC. Details are in the SOAF (at [233]–[243]). Further, NAB admitted to the contraventions the subject of this proceeding at the earliest available opportunity: SOAF [243].

VIII Loss and damage caused by the contraventions

Risk to Borrowers

62 By reason of the Introducers providing one or more income verification documents to a NAB Banker in support of a loan application, Borrowers were exposed to the risk of wrongful conduct or fraud by the Introducer. Additionally, control breakdowns in relation to the programme increased the risk of loans being provided to Borrowers that were unsuitable for them, the provision of false documentation to support loan applications and the use of incorrect figures in loan serviceability assessments. These risks, if they eventuated, may have exposed Borrowers to hardship and default: SOAF [205]–[208].

Remediation and cooperation with ASIC

63 Certain details about NAB’s investigations and the remediation scheme were contained in the affidavit of James Joshua Stafford affirmed on 27 May 2020, which was read without objection at the hearing. Mr Stafford is the Head of Customer Resolutions at NAB. I accept his evidence.

64 NAB’s remediation efforts, and its cooperation with ASIC, are set out in detail of the SOAF (at [209]–[243]). It suffices to set out a brief summary:

- (1) in or about February 2017, NAB commenced designing a remediation scheme in respect of NAB’s misconduct relating to Introducers; ASIC was informed about and had the opportunity to raise questions or concerns about NAB’s proposal;
- (2) the remediation scheme initially involved 60 employees of interest who were suspected of having potentially breached one or more of NAB’s internal policies or procedures but that scope was later expanded somewhat; disciplinary action was taken against certain of these individuals where misconduct was identified;
- (3) the loan files of these individuals were reviewed, and it was determined if any loss had been suffered by customers in relation to the loans; where possible, customers were contacted and offered the determined amount of compensation;
- (4) KPMG was engaged, including to conduct what was described as an “independent” assurance review of the remediation scheme (although I consider that the use of the term independent in this context is somewhat apt to mislead; with no intended disrespect to those involved in this review, to my mind, as a general proposition, it unduly strains the language to describe a reviewer as “independent” when the reviewer is paid by the person he is reviewing); and
- (5) ASIC asked or directed NAB to provide information about the remediation scheme from time-to-time.

IX Corrective measures and enhancements

65 In addition to the investigations into the programme, NAB also reviewed its processes and associated risks: SOAF [245]–[249]. NAB introduced various new controls. These were belatedly introduced between 2015 and around 2017 and included (adopting the jargon used) “tightening” the criteria for selection of Introducers, providing education and “upskilling” of retail sales “leaders” on Introducer policies, regulations, “engagement protocols” and monitoring. Most importantly, perhaps, was a change to the commission structure of the

programme for the bankers which placed less emphasis on loan sales volume: SOAF [250]–[272].

66 NAB terminated agreements with certain Introducers, conducted interviews into their conduct and took other actions. By April 2017, NAB had terminated around 3,700 Introducers: SOAF [273]–[275]. It also took action against employees, including by dismissing a number of bankers and taking managerial action against others. A number of NAB employees resigned: SOAF [276]–[281].

X Prior contraventions

67 As at 4 May 2020, NAB has not previously been found liable for any prior contraventions of the National Credit Act: SOAF [244].

XI Whether NAB is likely to engage in further contraventions

68 As noted above, effective 1 October 2019, NAB “retired” the programme, as it existed at the time of the Admitted Contraventions: SOAF [282]. Also on 1 October 2019, NAB replaced the programme with the “NAB Referral Program”, which operates in the same way as the revised programme, including having the same controls, except that NAB no longer pays commissions for successful referrals by Introducers: SOAF [284]–[285]. Details were contained in the affidavit of Thomas Mark Crowley affirmed 27 May 2020, which was read without objection at the hearing. Mr Crowley has the title “General Manager of Enablement” at NAB. I accept his evidence.

B.2 Disputed factual background

69 As noted above, the parties dispute the extent to which risks associated with the programme actually eventuated and the relevance of this fact: SOAF [102], [172], [207].

70 The issue of risk was canvassed extensively in written submissions, though perhaps the lack of focus on it in oral submissions is indicative of its secondary nature to any penalty determination. That it is unlikely to affect the penalty was recognised by ASIC in its written submissions (at [100]), and was noted by NAB in its submissions (at [55]). This is because, for the purposes of this proceeding, customer harm only relevantly manifests in the form of *exposure to a risk* of harm as a result of the contraventions. Now, ASIC accepts that there is in fact no evidence before me about *actual* harm to Borrowers, though Senior Counsel urged that this was “only [part] of the picture” (T30). While proof of harm would likely have been an

aggravating factor in determining the penalty imposed, it is not essential to establishing a contravention of s 31. To the extent that ASIC seeks to establish “manifestations” of these risks, this too is beyond the case ASIC actually ran.

71 Specifically, ASIC alleges (at [9] of its Concise Statement) that the contravening conduct “exposed the customers and NAB to *the risks of wrongful conduct by the introducer*, including possible fraud. It also exposed customers to *a risk that loans would be advanced to them that were unsuitable*” (emphasis added). I shall refer to these risks respectfully as “the wrongful conduct risk” and the “unsuitable loan risk”. It is the assessment of whether NAB’s conduct resulted in these risks arising that is of some relevance.

72 NAB accepted in its written submissions (at [47], [51]) that the Admitted Contraventions did give rise to certain risks (SOAF [100]–[101]), being the risks that: (a) NAB Bankers would, contrary to NAB policy, rely on information provided by the Introducer rather than dealing directly with the Borrower, without making their own inquiries about the Borrower’s requirements and objectives in relation to the loan and without taking reasonable steps to assess the veracity of information and documents regarding the Borrower’s financial situation put forward in support of loan applications to determine whether loans were unsuitable for that Borrower; and (b) that loans would therefore be made based on incorrect or fraudulent information.

73 NAB also accepts (at SOAF [50], [103], [106], [170]–[171], [205]–[207] and submissions at [51]) that there were:

(a) increases in risk and:

- i. that in relation to 202 of the contraventions there was an *increase in the risk* of Borrowers being exposed to wrongful conduct or fraud because it is possible that Introducers were responsible for causing or encouraging the use of fraudulent documents (though there is said to be no evidence of this in the cases the subject of this proceeding); if this did occur, it is “possible” the Introducer was incentivised to do so by the prospect of an Introducer fee;
- ii. that its reward structure had inadequate controls in respect of the programme that made it more difficult for NAB to prevent and detect fraud from loan applications originating through the programme which *may have increased the risk* or incidence of unsuitable loans made based on fraudulent or unverified information; and

- iii. the control breakdowns that occurred in relation to the programme *increased the risk* of loans being provided to Borrowers that were unsuitable, the provision of false documentation to support loan applications and the use of incorrect figures in loan serviceability assessments;
- (b) manifestations of risk and:
- i. insofar as Bankers received some documents from, or sent some documents to, Introducers in circumstances where they might otherwise have received those documents from, or sent them to, Borrowers directly, the relevant Banker did not deal directly with the Borrower in respect of the communication of those documents;
 - ii. that it is possible that, across the 260 contraventions, there were some instances where the Banker, contrary to policy, in fact relied on unverified information and failed to make direct contact with the customer or Borrower;
 - iii. the conduct in relation to 202 of the contraventions involved an Introducer providing one or more income verification documents to a Banker in support of a loan application, including payslips and rental appraisals and in these cases the Borrowers were exposed to the risk of wrongful conduct or fraud by the Introducer because payslips and rental appraisals are types of documents that can readily be falsified; and
 - iv. in the three cases where fraudulent payslips were presented, Borrowers were exposed to the possibility that the loans they sought would be unsuitable for them, in which case they might face difficulties in servicing the loans and therefore financial hardship.

74 I have been asked by ASIC to draw a number of inferences which are said to arise from NAB's admissions. But as one approaches the task urged by ASIC, difficulties arise.

75 *First*, I wish to clarify the language used to describe the admitted risk exposure by NAB. NAB does not admit that the contravening conduct gave rise to risks that Borrowers were exposed to "wrongful conduct" risk generally; rather, it accepts this only in respect of *certain types* of risks and the increase or manifestation thereof. I have summarised these above. The admissions therefore relate to exposure to types of wrongful conduct risk, but not all wrongful conduct risks. The inferences ASIC seeks that I draw relate to "manifestations" of types of wrongful

conduct risk not otherwise admitted to, being: (a) that at least on occasion, Bankers did not deal directly with customers in relation to the *content* of the documents exchanged with Introducers; and (b) that Bankers at least on occasion did not make their own independent inquiries, or take reasonable steps to verify information provided by Introducers. ASIC also says that this Court should find that the risk of Bankers not dealing directly with customers, for instance by face-to-face meetings, manifested in relation to some loans. As to the unsuitable loan risk, NAB accepts that the control breakdowns that occurred in relation to the programme increased the risk of loans being provided to Borrowers that were unsuitable for them, the risk that false documentation would be provided to support loan applications and the risk that incorrect figures would be used in loan serviceability assessments: SOAF [206]. This risk came home on three occasions. As a matter of logic, if the veracity of the information used to advance the loan cannot be assured, neither can the suitability of the resulting loan. This has the necessary consequence that Borrowers were exposed to the risk that loans would be advanced to them that were unsuitable. Therefore, and although NAB did not admit this directly, the admissions it did make nevertheless made out the unsuitable loan risk alleged. By reason of the contravening conduct, borrowers were exposed to the unsuitable loan risk.

- 76 The inferences that ASIC asks the Court to draw primarily relate to the wrongful conduct risk.
- 77 An inference is a tentative or final assent to the existence of a fact which the drawer of the inference bases on the existence of some other fact or facts. The quality of the facts established affect the inference which may be drawn; “[n]o greater cogency can be attributed to an inference based upon particular facts than the cogency that can be attributed to each of those facts”: *Chamberlain v The Queen (No 2)* (1984) 153 CLR 521 (at 599 per Brennan J), cited in *Shepherd v The Queen* (1990) 170 CLR 573 (at 583 per Dawson J). The inferences to be drawn must be established on the balance of probabilities: *Evidence Act 1995* (Cth) s 140.
- 78 The strength of the evidence necessary to establish a fact or facts on the balance of probabilities or the “degree of satisfaction that is required in determining that that standard has been discharged” varies according to the considerations listed in s 140(2) of the *Evidence Act 1995* (Cth): see *Qantas Airways Ltd v Gama* [2008] FCAFC 69; (2008) 167 FCR 537 (at 571 [110] per French and Jacobson JJ); see also *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Australian Competition and Consumer Commission* [2007] FCAFC 132; (2007) 162 FCR 466 (at 480 [30] per Weinberg, Bennett and Rares JJ). Here, the inferences sought are not determinative of

liability, and in all the circumstances, are unlikely to have any or any meaningful impact on penalty. However, the alleged contraventions are civil penalty provisions and hence are serious: see *Australian Competition and Consumer Commission v Australian Safeway Stores Pty Limited (No 3)* [2002] FCA 1294; [2002] ATPR 41-901 (at 45,414 [53] per Goldberg J).

79 NAB admits (at SOAF [103]) that Bankers “did not deal directly with the Borrower in respect of the *communication* of those documents” (emphasis added). ASIC seeks that the Court draw an inference that the Banker *also* did not deal directly with customers in relation to the *content* of the documents exchanged with Introducers. However, the fact that there was not direct communication about a document does not lead me to conclude that there was also no direct later communication about the document’s content. It seems entirely possible that in any particular case, the document’s content may have been dealt with by other means, for example, by way of telephone conversation not recorded in Schedule A. Given the way ASIC has run its case, despite suspicions I may have that the inference could be proved in a large number of cases, suspicion is not proof and it would be speculation to conclude that a Banker did not deal directly with customers in relation to the content of the documents exchanged with Introducers.

80 Similarly, ASIC seeks that the Court infer that NAB Bankers “did not make their own independent inquiries, or take reasonable steps to verify information provided by Introducers”. Again, I have not been provided with anything like a complete picture of the independent inquiries made by Bankers, or any particular banker. No Bankers or Introducers were called to give evidence and what I have before me are tables summarising the various loans, relevant parties and associated emails and attachments. There are around 4,309 documents which appear to be referenced in Schedules A, B and C. I have been referred to some of them briefly in Counsels’ submissions. From these, I cannot say, in any particular case, that on the balance of probabilities, I have a state of reasonable satisfaction that independent inquiries were not made whether by telephone or other means not recorded in these documents. I am also asked to draw this inference regarding reasonable steps not taken. What were the reasonable steps required to be taken? If it is face-to-face meetings with each Borrower, ASIC’s regulatory guidance during the Relevant Period included that a licensee can meet responsible lending obligations “using an online or face-to-face approach”. Proof that there was no face-to-face meeting cannot, in and of itself, establish unreasonableness.

81 As in *AMP Financial Planning Ltd (No 2)*, given ASIC’s forensic decision to eschew adducing any direct evidence as to these matters, I am left looking through a glass darkly (at 81 [88]).

Further, I also cannot say whether the involvement of the Introducer affected the integrity of the loan application and assessment process, or if the contravening conduct did or did not result in any actual unsuitable lending including whether any customers have suffered actual loss or damage. It may very well have done. I simply do not know.

82 Properly analysed, the inferences which ASIC seeks the Court to draw would not really have been about the *consequences* of the contravening conduct (in terms of customer harm) but would be evidence concerning separate alleged wrongdoing by the Bankers. This is not a case where it is alleged that any Banker, or NAB, breached the responsible lending requirements in the Act. NAB should not have to meet such a case by a side-wind. The decision by the regulator to run such a case on an opaque evidentiary foundation has deprived me (to use the words of Sir Owen Dixon) of the opportunity of feeling an *actual persuasion* of the absence of the relevant communications (*Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361) or, to put it another way, has prevented me forming a state of “reasonable satisfaction” on the preponderance of probabilities such as to sustain the relevant issue as ASIC submits: *Axon v Axon* (1937) 59 CLR 395 (at 403).

C STATUTORY FRAMEWORK

83 The National Credit Act was enacted to introduce a comprehensive licensing regime for engaging in a “credit activity”. Under this regime, those wishing to engage in a “credit activity” are required to apply for, be issued with, and hold, an ACL. The National Credit Act imposes entry standards for licensing and, once an ACL is granted, licensees must meet ongoing standards of conduct. ASIC has the power to suspend or cancel an ACL, or to ban individuals from engaging in a “credit activity”. The key aims of the licensing regime are to regulate credit industry participants and enhance consumer protection.

84 Section 27 provides a guide to Part 2-1 of the National Credit Act which makes this clear, comprising Division 2 – *Engaging in credit activities without a licence* (containing s 29) and Division 3 – *Other prohibitions relating to the requirement to be licenced* (containing s 31):

This Part is about the licensing of persons to engage in credit activities. In general, a person cannot engage in a credit activity if the person does not hold an Australian credit licence.

Division 2 prohibits a person from engaging in credit activities without an Australian credit licence. However, the prohibition does not apply to employees and directors of licensees or related bodies corporate of licensees, or to credit representatives of licensees.

Division 3 deals with other prohibitions relating to the requirement to be licensed and to credit activities. These prohibitions relate to holding out and advertising, conducting business with unlicensed persons, and charging fees for unlicensed conduct.

85 The National Credit Act also introduced industry-wide responsible lending conduct requirements for licensees. Those requirements aim to protect consumers (both from conduct of lenders and from consumers making poor borrowing decisions) by imposing standards of behaviour on licensees prior to and when entering into a credit contract. The conduct requirements apply only to persons who are licensed under the National Credit Act (that is, holders of an ACL). Relevantly, licensees are required to test the suitability of the proposed credit contract and assess the consumer's ability to meet their financial obligations under the proposed credit contract. To do so requires direct dealings between the lender and the putative borrower, hence the prohibition on an unlicensed intermediary.

86 Compliance with responsible lending conduct requirements is achieved by ASIC's ability to impose sanctions on licensees should they fall short of their obligations.

D RELEVANT STATUTORY PROVISIONS

87 I will now set out the relevant statutory provisions which exist within the framework above. Again, much has been agreed between the parties as to the application and interpretation to be given to these provisions, though that agreement is not total.

D.1 Section 29 of the National Credit Act

88 By s 29, the National Credit Act required NAB to hold a licence to conduct its credit activities including its retail mortgage business:

29 Prohibition on engaging in credit activities without a licence

Prohibition on engaging in credit activities without a licence

- (1) A person must not engage in a credit activity if the person does not hold a licence authorising the person to engage in the credit activity.

Civil penalty: 2,000 penalty units.

Offence

- (2) A person commits an offence if:

- (a) the person is subject to a requirement under subsection (1); and
- (b) the person engages in conduct; and
- (c) the conduct contravenes the requirement.

Criminal penalty: 200 penalty units, or 2 years imprisonment, or both.

D.2 Section 31 of the National Credit Act

89 NAB, by s 31, was prohibited from conducting business with an unlicensed person:

31 Prohibition on conducting business with unlicensed persons

Prohibition on conducting business with unlicensed persons

(1) A licensee must not:

- (a) engage in a credit activity; and
- (b) in the course of engaging in that credit activity, conduct business with another person who is engaging in a credit activity;

if, by engaging in the credit activity, the other person contravenes section 29 (which deals with the requirement to be licensed).

Civil penalty: 2,000 penalty units.

90 By s 31, the National Credit Act seeks to ensure that the overall objectives of the credit regime are not frustrated by licensees engaging with unlicensed persons to subvert its intent. In the present case, the relevant “credit activity” engaged in by each Introducer (the unlicensed person) in relation to each of the 260 occasions was providing “credit assistance” or acting as an “intermediary”.

D.3 Other relevant provisions of the National Credit Act

91 During the Relevant Period, “credit activity” was defined in s 6 of the National Credit Act. Relevantly, a person engages in a “credit activity” in relation to a “credit contract” if:

- (1) the person is a “credit provider” under a “credit contract”; or
- (2) the person carries on a business of providing credit, being credit the provision of which the National Credit Code applies; or
- (3) the person performs the obligations, or exercises the rights, of a “credit provider” in relation to a “credit contract” or proposed credit contract.

92 A person also engages in a “credit activity” if the person provides a “credit service”. “Credit services” are in turn defined in s 7 to mean: (a) providing “credit assistance” to a consumer; or (b) acting as an “intermediary”.

93 Section 8 of the National Credit Act defines the meaning of “credit assistance” in the following terms:

A person provides *credit assistance* to a consumer if, by dealing directly with the

consumer or the consumer's agent in the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the person or another person, the person:

- (a) suggests that the consumer apply for a particular credit contract with a particular credit provider; or

...

- (d) assists the consumer to apply for a particular credit contract with a particular credit provider; or

...

It does not matter whether the person does so on the person's own behalf or on behalf of another person.

94 Section 9 of the National Credit Act defines the meaning of "acts as an intermediary" in the following terms:

A person *acts as an intermediary* if, in the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the person or another person, the person:

- (a) acts as an intermediary (whether directly or indirectly) between a credit provider and a consumer wholly or partly for the purposes of securing a provision of credit for the consumer under a credit contract for the consumer with the credit provider; or
- (b) acts as an intermediary (whether directly or indirectly) between a lessor and a consumer wholly or partly for the purposes of securing a consumer lease for the consumer with the lessor.

It does not matter whether the person does so on the person's own behalf or on behalf of another person.

D.4 Section 47 of the National Credit Act

95 Section 47(1)(a) and (d) sets out general obligations for those who hold an ACL. These subsections are in the following terms:

47 General conduct obligations of licensees

General conduct obligations

- (1) A licensee must:
 - (a) do all things necessary to ensure that the credit activities authorised by the licence are engaged in efficiently, honestly and fairly; and
 - ...
 - (d) comply with the credit legislation.

96 Section 47 did not attract a civil penalty during the Relevant Period.

D.5 The National Credit Regulations

97 Regulation 25 of the National Credit Regulations exempts certain activities from the requirement to be licensed. Relevantly, r 25(5) provides:

25 Activities exempt from requiring a licence

...

- (5) A credit activity is exempted if:
- (a) a person (the *referrer*) engages in a credit activity on or after 1 October 2010 under an agreement with the licensee or registered person or a representative of the licensee or registered person; and
 - (b) the agreement:
 - (i) specifies the conduct in which the referrer can engage as conduct to which the exemption applies; and
 - (ii) is:
 - (A) in writing only; or
 - (B) based on an offer made in writing by the licensee, registered person or representative that has been accepted by the referrer; and
 - (c) the activity consists only of:
 - (i) the referrer informing another person (the *consumer*) that the licensee or registered person, or a representative of the licensee or registered person, is able to provide a particular credit activity or a class of credit activities; and
 - (ii) the referrer giving to the licensee, registered person or representative the consumer's name and contact details within 5 business days after informing the consumer; and
 - (iii) the referrer giving to the licensee, registered person or representative a short description of the purpose for which the consumer may want a provision of credit or a consumer lease (if the referrer knows the purpose); and
 - (d) the referrer is not banned from engaging in the credit activity under:
 - (i) a law of a State or Territory; or
 - (ii) Part 2-4 of the Act; and
 - (e) at the time the activity is engaged in, the referrer discloses to the consumer:
 - (i) any benefits, including commission, that the referrer, or an associate of the referrer, may receive in respect of the activity; and
 - (ii) any benefits, including commission, that the referrer, or an

associate of the referrer, may receive that are attributable to the activity; and

- (f) the referrer has not required the consumer to pay a fee to any person in relation to the referrer giving to the licensee, registered person or representative the consumer's name; and
- (g) the consumer has consented to the referrer giving to the licensee, registered person or representative the consumer's name; and
- (h) the referrer engages in the activity as a matter incidental to the carrying on of a business that is not principally making contact with persons for the purpose of giving their names or other details to another person; and
- (i) the referrer does not conduct a business as part of which the referrer contacts persons face-to-face from non-standard business premises.

E CONTESTED LEGAL ISSUES

98 As noted above, the principal contested legal issue concerns s 47(1)(a) and the number of times it was contravened by NAB. It is not disputed that it was contravened at least once. There is also a minor dispute about the meaning to be given to the term "particular credit contract" in s 8 of the National Credit Act. I deal with each below.

E.1 Section 47(1)(a) – General conduct obligations of licensees

99 ASIC contends that the conduct in relation to each of the 260 loans was a contravention of both s 47(1)(d), which is not disputed, and s 47(1)(a) of the National Credit Act, which is disputed. As to the latter, it is argued that there must be 260 contraventions when, by NAB's own policies and the terms of the Introducer Agreements, NAB failed to do all things necessary to ensure that the credit activities authorised by its ACL were engaged in "efficiently, honestly and fairly" in respect of *each* loan application. In taking this position, ASIC rejects NAB's assertion that there was instead a single, system wide failure constituting a single contravention of s 47(1)(a).

100 In support of its view, ASIC says that the requirement in s 47(1)(a) of the National Credit Act is analogous to that in s 912A of the *Corporations Act 2001* (Cth), which has received prior judicial consideration including recently in the decision in *Australian Securities and Investments Commission v AGM Markets Pty Ltd (in liq) (No 3)* [2020] FCA 208; (2020) 143 ACSR 140 (at 229–32 [505]–[528] per Beach J) and *Australian Securities and Investments Commission v Westpac Securities Administration Ltd* [2019] FCAFC 187; (2019) 373 ALR 455 (per Allsop CJ, Jagot and O'Bryan JJ).

101 As I will come to discuss below when considering whether to make the declarations urged by ASIC, I do not find it necessary to determine this issue. I accept NAB's admission that it has contravened s 47(1)(a) once because NAB failed to do all things necessary to ensure that the Admitted Contraventions did not occur: SOAF [4(d)]. I make no finding as to whether it also contravened s 47(1)(a) on 259 additional occasions. As matter of discretion, I will leave the question of whether the underlying conduct constituted one or many breaches of s 47(1)(a) of the National Credit Act to a future proceeding where something may turn on the determination of that matter and full submissions can be received – particularly as this is now a civil penalty provision. As it was not a civil penalty provision during the Relevant Period, nothing turns on it now. There is no impact on the penalty to be imposed.

E.2 Meaning of “particular credit contract”

102 This is a minor area of dispute and I will deal with it only briefly. The prohibition in s 31 of the National Credit Act prohibited NAB from engaging in a “credit activity” and, in the course of engaging in that “credit activity”, conducting business with another person who is engaging in a “credit activity” without a licence.

103 The issue arises as to whether, in the above context, certain of the 260 admitted instances of credit activity by a person who “acts as an intermediary” within the meaning of s 9 also involved the provision of “credit assistance” pursuant to s 8, which would also contravene s 31.

104 ASIC submits that, in addition to engaging in a credit activity under s 9, in some cases, Introducers also provided credit assistance within the meaning of s 8 (SOAF [65(d)]). It says, whether or not an Introducer was providing “credit assistance” turns in part on the interpretation given to the words “a particular credit contract” in s 8 of the National Credit Act. The degree of specificity which the word “particular” requires has not previously been the subject of judicial consideration. It is ASIC's position that the word “particular” in that context should require no more than identification of the general type of credit contract (e.g. the type or perhaps purpose of the loan) rather than an individual product feature (such as, for example, a fixed rate home loan or a variable rate home loan; or a loan of a precise amount for a precise period with the consequence that a slightly larger or slightly smaller loan be treated as a different contract). Such an interpretation is said not to be inconsistent with any Regulatory Guide issued by ASIC.

105 Were the Court to find that the words “particular credit contract” required that the Introducer assist the Borrower to apply for a home loan with NAB, then it says there are 171 instances of such conduct on the admitted facts, relating to 113 of the 260 loans. Even if the Court were to take a narrower view, it submits that the number of contraventions under s 31 would not be affected. Each Introducer was engaging in a “credit activity” without a licence to do so, whether they were acting as an “intermediary” only or acting as an “intermediary” and providing “credit assistance” in the particular instance.

106 But the meaning to be given to “a particular credit contract” in s 8 is not an issue that needs to be addressed in this case since NAB admits that the Introducers either provided “credit assistance” within the meaning of s 8 or “act[ed] as an intermediary” within the meaning of s 9. It also challenges ASIC’s assertion that there would be 171 instances of such conduct on the admitted facts based on a review of Schedule A and suggests an inconsistency with ASIC’s Regulatory Guide 203 (at [RG.203.64]). Again, there is no impact on penalty because there would not be more contraventions, simply the same conduct breaching the provision by way of a slightly different path. However, although it does not matter, it seems to me the preferable interpretation is likely to be that suggested by ASIC, that the words “particular credit contract” in s 8 of the National Credit Act in the above context only require the identification of the general type of credit contract rather than an individual product feature. I agree with ASIC that it would be odd if a person could suggest that a customer apply for a home loan with NAB without engaging in a credit activity (as opposed to some more general statement), but if they used the words “fixed” or “variable” in their suggestion, the provision would be engaged.

F RELIEF

F.1 Declarations

107 By the Originating Application filed on 23 August 2019, ASIC seeks a vast array of declarations.

108 Section 166(1) of the National Credit Act provides that, within six years of a person contravening a civil penalty provision, ASIC may apply to this Court for a declaration that the person contravened the provision. By s 166(2), the Court *must* make the declaration if it is satisfied that the person has contravened the provision. Section 31 is a civil penalty provision hence I am required to make the declarations sought if I am satisfied that contravention has occurred. This is not in dispute and I am so satisfied.

- 109 But as noted above, ASIC also seeks declarations that NAB contravened s 47(1)(d) of the National Credit Act on 260 occasions by failing to comply with credit legislation; and s 47(1)(a) of the National Credit Act on 260 occasions by failing to do all things necessary to ensure that the credit activities authorised by its ACL were engaged in efficiently, honestly and fairly.
- 110 Of course, the Court has power to make declarations pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth). In *AMP Financial Planning (No 2)* I accepted (at 93 [143]) that pursuant to s 21 the Court has a general power to make a binding declaration of right even where no consequential relief is claimed: *Australian Securities and Investments Commission v Australian Lending Centre Pty Ltd (No 3)* [2012] FCA 43; (2012) 213 FCR 380 (at 441 [271] per Perram J). But, as I said there (at 93 [144]), that does not mean they should be thrown around like confetti. Discretion and utility is key: see eg, *Australian Competition and Consumer Commission v Target Australia Pty Ltd* [2001] FCA 1326 (at [19] per Lee J). I must be satisfied that the making of each declaration is appropriate and utile: *Construction, Forestry, Mining and Energy Union v De Martin & Gasparini Pty Limited (No 3)* [2018] FCA 1395 (at [74] per Wigney J).
- 111 ASIC says that I should be so satisfied including because s 47(1)(a) and (d) are now civil penalty provisions and a declaration may be relevant to assessing any civil penalty sought against NAB in the future in respect of those provisions and any disciplinary sanctions under s 55 of the National Credit Act (suspension or cancellation of an ACL). ASIC also says that it has a real interest in obtaining declarations in respect of breaches of legislation over which it has a regulatory role: *Commonwealth Bank of Australia* (at [154] per Beach J). The declarations sought are said to both vindicate the regulator's claim and assist the regulator carry out its duties: *Westpac Banking Corporation* (at [251] per Wigney J). Accordingly, and despite what I said in *AMP Financial Planning (No 2)*, ASIC says there is utility given NAB itself is the holder of the ACL and engaged in the conduct comprising each breach of s 31.
- 112 I remain aporetic about making the "repetitive" declarations sought by the regulator. As with all discretionary remedies, if no good purpose will be served by granting it, it should be refused: see *Dillon v RBS Group (Australia) Pty Ltd* [2017] FCA 896; (2017) 252 FCR 150 (at 158 [39] per Lee J); *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 (at 582 per Mason CJ, Dawson, Toohey and Gaudron JJ). As NAB submits, the declarations sought add nothing in the quelling of this controversy. In circumstances such as this, the cautions recalled

in *Ibeneweka v Egbuna* [1964] 1 WLR 219 (at 224–5 per Viscount Radcliffe, Lord Guest and Lord Upjohn) become relevant: “declarations are not lightly to be granted. The power should be exercised ‘sparingly’, with ‘great care and jealousy’, with ‘extreme caution’, with ‘the utmost caution’”. Gibbs J in *Forster v Jododex Australia Pty Limited* (1972) 127 CLR 421 (at 438, with whom Walsh J agreed at 427, at 448 per Stephen J, at 450 per Mason J, and at 426 per McTiernan J), referring to *Ibeneweka* (at 225), said that “the undoubted truth” was “that the power to grant a declaration should be exercised with a proper sense of responsibility and a full realisation that judicial pronouncements ought not to be issued unless there are circumstances that call for their making.”

113 To accede to ASIC’s request in these circumstances would be to satisfy the “fetish”, as Gray J has described it, of certain regulators seeking, and the Court granting, declaratory relief simply because the Court finds that a contravention has occurred: *Australian Competition and Consumer Commission v Francis* [2004] FCA 487; (2004) 142 FCR 1 (at 36 [110]). There is simply no point. The declarations sought would have no impact on the penalty. Contrary to ASIC’s submission, it would also have no impact on any sanctions under s 55 of the National Credit Act because the relevant factor under that section is the contraventions themselves (s 55(1)(a)), not whether declarations have been made. Had it been relevant to any part of the National Credit Act, one would expect that a mandatory declaration, such as that found in s 166, would have been provided for – as is now the case. Rather, and as I said in *AMP Financial Planning (No 2)* (at [151]), the “reality is that both the Court’s disapproval of contravening conduct and clarification of the law is much more likely to emerge from a perusal of reasons than the bare terms of essentially repetitive declarations”.

F.2 Pecuniary penalties

114 The parties have agreed a number of facts relevant to the Court’s consideration of pecuniary penalties in the light of the Admitted Contraventions. These are set out in the SOAF (at [92]–[285]). The facts are complex and I do not propose to set out any summary of these facts beyond what I have already explained above.

I Section 167 of the National Credit Act

115 Section 167(1) of the National Credit Act provides that, within six years of a person contravening a civil penalty provision, ASIC may apply to this Court for an order that the person pay the Commonwealth a pecuniary penalty. Section 167(2) provides that, if a

declaration has been made under s 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.

116 Section 167 was in the following terms at the relevant time:

167 Court may order person to pay pecuniary penalty for contravening civil penalty provision

Application for order

- (1) Within 6 years of a person contravening a civil penalty provision, ASIC may apply to the court for an order that the person pay the Commonwealth a pecuniary penalty.

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 subsection (3)).

Determining amount of pecuniary penalty

- (3) The pecuniary penalty must not be more than:
- (a) if the person is a natural person—the maximum number of penalty units referred to in the civil penalty provision; or
 - (b) if the person is a body corporate, a partnership or multiple trustees—5 times the maximum number of penalty units referred to in the civil penalty provision.

Note: This Act treats partnerships and multiple trustees as if they were persons (see sections 14 and 15).

Recovery of penalty as a debt

- (4) The pecuniary penalty Application to s 31 may be recovered as a debt due to the Commonwealth.

117 The amount of the maximum pecuniary penalty changed during the Relevant Period. For each of the 113 contraventions of s 31, which occurred between 23 August 2013 and 28 July 2015, the maximum penalty is \$1,700,000; for each of the 147 contraventions of s 31, which occurred between 4 August 2015 and 29 July 2016, the maximum penalty is \$1,800,000. As ASIC pointed out, the theoretical maximum penalty for the 260 Admitted Contraventions is \$456.7 million.

II *Applicable principles*

118 ASIC made detailed submissions about the principles applicable to determining an appropriate penalty under the National Credit Act. NAB did not disagree with this statement of applicable principles, although it made its own further submissions clarifying certain aspects.

119 The general thrust of ASIC's submissions is that the 260 contraventions circumvent a fundamental tenet of the Australia's financial licensing regime requiring that persons engaging in credit activities be licensed. They therefore represent serious breaches of the National Credit Act. In these circumstances, it is said, a penalty must be imposed that reflects the seriousness of this conduct, which has regard to the size of NAB, the period of time over which the contraventions occurred, the time taken to suspend lending through the programme and the lack of effective compliance monitoring at NAB, and to ensure that the objective of deterrence is achieved. ASIC pointed to several cases it says are relevant to the determination of the penalty to be imposed including *Westpac Banking Corporation* (at [255]–[272] per Wigney J), *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2018] FCA 155 (per Middleton J) and *Commonwealth Bank of Australia* (at [65]–[79] per Beach J). It emphasised the fundamental objective of a pecuniary penalty, which is deterrence: *NW Frozen Foods Pty Ltd v Australian Competition and Consumer Commission* (1996) 71 FCR 285; *Westpac Banking Corporation* (at [255] per Wigney J). And while the process of quantifying pecuniary penalties is an inexact science (*AMP Financial Planning Pty Ltd (No 2)* at [159] per Lee J), the question of what amount constitutes an appropriate penalty in all the circumstances is a question for the Court.

120 In addition to the matters set out in s 167(3) of the National Credit Act, ASIC says that a number of other considerations have been identified as falling within the ambit of "all relevant matters". Such factors, which are not exhaustive and often overlap, are said to include those identified by French J in *Trade Practices Commission v CSR Limited* [1991] ATPR 41-076. Those factors can be categorised according to whether they relate to the objective nature and seriousness of the contravention or the particular circumstances of the contravenor in question: *Westpac Banking Corporation* (at [257] per Wigney J); *AMP Financial Planning Pty Ltd (No 2)* (at [160] per Lee J). As to the matter of how the Court should deal with numerous contraventions arising from separate acts, ASIC says that the starting point is that each contravention should ordinarily attract the imposition of a separate penalty: *Westpac Banking Corporation* (at [268] per Wigney J). However, it is also appropriate to consider whether, and the extent to which,

the contravening conduct should be regarded as a single course, or courses, of conduct due to some interrelationship between the legal and factual elements of multiple contraventions. Such an approach takes into account any single course of conduct and avoids double punishment. ASIC says that such an approach does not involve the Court fixing a single penalty for the multiple contraventions; rather, there is an adjustment of the individual penalties to take into account the single course of conduct: *Construction, Forestry, Mining and Energy Union v Cahill* [2010] FCAFC 39; (2010) 269 ALR 1; *Australian Competition and Consumer Commission v Yazaki Corporation* [2018] FCAFC 73; (2018) 262 FCR 243. ASIC warns against application of this approach at too high a level of abstraction. Here, while the introduction and implementation of a system with serious flaws might, at a high level, be construed as a single course of conduct, such an approach has a tendency to distract attention from the conduct amounting to each contravention. Because of this, there is not the same risk of double punishment. Finally, ASIC says that the totality principle should be applied last to ensure that the total or aggregate penalty is not unjust or disproportionate to the circumstances of the case and that the offender is not punished twice for the same conduct. It is said that the totality principle may be of greater utility here, as compared to applying a course of conduct analysis, given that the latter is dependent on the level of detail at which one considers the conduct.

121 On the other hand, while NAB does not dispute the theoretical maximum penalty, which is \$456.7 million, it submits that this figure is of very little assistance to the Court, referring to *Markarian v The Queen* [2005] HCA 25; (2005) 228 CLR 357 (at 371–5 [27], [31], [37] and [39] per Gleeson CJ, Gummow, Hayne and Callinan JJ). The theoretical maximum penalty is also said to be of particularly limited significance where it is the product of there being a relatively large number of contraventions: see *Commonwealth Bank of Australia* [2020] FCA 790 (at [65] and [137] per Beach J); *Australian Competition and Consumer Commission v Reckitt Benckiser (Australia) Pty Ltd* [2016] FCAFC 181; (2016) 340 ALR 25 (at 63–4 [156]–[157] per Jagot, Yates and Bromwich JJ). NAB accepts the correctness of the legal principles ASIC identified regarding the course of conduct principle, referring also to *Construction, Forestry, Mining and Energy Union v Cahill* [2010] FCAFC 39; (2010) 269 ALR 1 (at 12–13 [39]–[43] per Middleton and Gordon JJ) but says that the course of conduct approach does have utility here. NAB agrees that in determining the appropriate penalty, the totality principle should also be considered.

122 NAB pointed to further matters not outlined by ASIC that it says are relevant to calculating the penalty, including actual harm/extent of affection, involvement of senior management, cooperation with ASIC, compliance programmes, remediation, contrition and remorse as well as other matters called in aid in mitigation.

III What is the appropriate pecuniary penalty?

123 The parties made detailed written submissions about the appropriate pecuniary penalties to be imposed. I summarise these below.

ASIC's submissions

124 ASIC contends that a penalty in the order of \$15 million is appropriate, being a \$20 million headline figure, with a \$5 million discount applied. It does so for the following reasons.

125 *First*, it says that this is a figure reflective of NAB's size, profitability and the level of compliance and oversight failure within NAB. While accepting that the contraventions do not represent a sizeable proportion of loans originated, the programme generated substantial financial reward for NAB. In such circumstances, specific deterrence requires a significant penalty. This is so notwithstanding that the programme came to an end on 1 October 2019 – an identical programme, but for commission incentives, continues to operate – specific deterrence is therefore said to remain relevant.

126 In oral submissions, ASIC further reinforced its proposed penalty on the basis that NAB engaged in a course of conduct with insufficient systems, and while NAB may have remediated issues in relation to the programme, it had not addressed these systems issues more broadly. The penalty has to be high enough, it is said, to cause “the decision-making organs to ensure that proper systems are in place” (T34).

127 *Secondly*, the nature of the offences was objectively serious. By the contravening conduct, NAB undermined a fundamental part of the National Credit Act. In oral submissions, ASIC made the point that NAB did not simply provide information in a wrongful way, meaning this was not just a technical breach. ASIC recognises this has to be balanced with the absence of actual loss suffered by Borrowers (although they were exposed to various risks because of the contravening conduct). To this, NAB's remediation scheme paid over \$5 million in compensation. In these circumstances, ASIC submits that each of the subject loans demonstrates a degree of culpability in the middle of the range of a breach of s 31.

- 128 *Thirdly*, in assessing the conduct, and to the extent that the course of conduct analysis is useful, the Court may consider there to have been a course of conduct by each individual Banker in dealing with each respective Introducer, regardless of the number of loans that eventuated and whether they were to the same or multiple Borrowers – 26 Introducer/Banker relationships were identified in the SOAF (at [107]). While ASIC recognises that the Court is not limited in imposing the maximum penalty for each course of conduct, ASIC considers that the proposed approach avoids the risk of double punishment.
- 129 In oral submissions, it was also said that the scope of general deterrence should be broader than simply banks, rather, the penalty should seek to deter all those who hold an ACL.
- 130 In responding to NAB's submission on this point, ASIC argues that the starting proposition should be that each loan, as a separate credit contract on unique terms, involves a separate contravention of the National Credit Code, such that each loan attracts a separate penalty. In contrast, it said that the approach suggested by NAB, that for subsequent contraventions based on the same communications between an Introducer/Banker combination there should be a reduction in penalty of 75% for the second, third and fourth loans, is inappropriate for a number of reasons. These include that ASIC's proposed penalty already reflects a holistic figure; a 75% reduction of an already low figure would be plainly inappropriate in the light of the seriousness of the conduct, and the size and financial position of NAB. Such an approach would also not reflect that each loan involved a separate contravention of the National Credit Act, it would not reflect the fact that each of the credit contracts entered into for those subsequent loans was a distinct credit activity and it would not indicate the Court's disapproval. Finally, if the Court also adopted ASIC's proposed discount of 25% for contrition, cooperation and implementation of the remediation scheme, which discount NAB accepts as appropriate, that would leave the penalty for these subsequent loans in the order \$13,500. That is said to be plainly inadequate.
- 131 ASIC provided a table setting out the proposed penalties in relation to each banker and the total proposed penalty, to which it applies a discount of \$5 million:

NAB Banker	Relevant Introducer	Number of loan applications subject of the proceeding in which banker/ Introducer combination involved	Penalty
(Richard) Yinghan Yang	Qixia Ma	63	\$5 million
Lei Zhou	Yang Zhao	33	\$2.5 million
Adrian McVittie	Dragon Australia Pty Ltd	23	\$1.7 million
Lei Zhou	Wise Capital Pty Ltd	20	\$1.5 million
(Ryan) Yufeng Liu	John Ha	18	\$1.35 million
Swina Hardiman	Juliana Goutama	15	\$1.125 million
(Rebecca) Choon Lin Kow	Jalin Realty International Pty Ltd	13	\$975,000
Adrian McVittie	Jie Carol Mao	9	\$675,000
(Daniel) Kefu Jin	RH Global Pty Ltd	8	\$600,000
(Rebecca) Choon Lin Kow	Yarrabank Consultant Pty Ltd	7	\$525,000
(James) Zhengtao Yi	Tianyi Huang	5	\$375,000
(Linda) Woo-Yung Jung	Inline Business Consulting Pty Ltd	5	\$375,000
Min Yu	Black Capital Pty Ltd	5	\$375,000
(Emma) Zixu Zhao	Oriental land Investment Pty Ltd	4	\$300,000
(James) Zhengtao Yi	Haven Media Pty Ltd	4	\$300,000
Benjamin Chen	Ausco Pty Ltd	4	\$300,000
(Daniel) Don Suk Kim	SJ Global Pty Ltd	3	\$225,000
(Doris) YingYing Zhu	Aire Group Pty Ltd	3	\$225,000
(Doris) YingYing Zhu	(Robin) Libin Yang	3	\$225,000
(Emma) Zixu Zhao	Xujun Shi	3	\$225,000
Rabih Awad*	Zaia Dawood*	3*	\$450,000
(Daniel) Kefu Jin	Xinghui Investment Pty Ltd	2	\$150,000
(Daniel) Kefu Jin	SZ Money Trust	2	\$150,000
(Diana) Xiaozhou Zhou	Qixia Ma	2	\$150,000
(Diana) Xiaozhou Zhou	EMI International Pty Ltd	2	\$150,000
(Daniel) Don Suk Kim	Anggrekla Alex	1	\$75,000
TOTAL		260	\$20 million

132 ASIC provided various alternative analyses which might be available to the Court in calculating the penalty if the above methodology was not attractive to it, including by reference to the number of Borrowers (being 212). ASIC points out that if the Court were to impose a penalty

of \$100,000 for each identified Borrower/s, a similar penalty figure, of \$21.2 million, would be struck. Another available analysis, which considers the imposition of a penalty for each contravention (see *Westpac Banking Corporation* (at [268] per Wigney J), imposes a penalty of \$75,000 per contravention for 257 contraventions (excluding the three contraventions not involving fraud). The fraud justifies a penalty of \$150,000 per contravention, a total of \$19,725,000.

- 133 ASIC says that, having considered these alternative methods of calculation, an aggregate penalty appears to reflect more appropriately the degree of wrongfulness without risking either unduly low individual penalties or a disproportionate total penalty. A discount of around \$5 million (or around 25%) is said to be appropriate to reflect NAB's cooperation with ASIC, its admission of the contraventions and its remediation scheme.
- 134 Allowing for a degree of judgment, ASIC submits that a total penalty in the order of \$15 million is just and appropriate and not excessive having regard to the totality of the relevant contravening conduct. That reflects a mixture of the seriousness of the breaches, the twin objects of deterrence and the other identified factors, while allowing for NAB's cooperation all while accepting that the multiple breaches should not lead to a disproportionate penalty. While noting the importance of considering the particular circumstances of each case (*NW Frozen Foods Pty Ltd v Australian Competition and Consumer Commission* (1996) 71 FCR 285 (at 295 per Burchett and Kiefel JJ)), ASIC relies on the following cases in support of their proposed penalty: *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2018] FCA 155 (at [32]–[35] per Middleton J); *Australian Securities and Investments Commission v The Cash Store Pty Ltd (in liq) (No 2)* [2015] FCA 93 (per Davies J); *AMP Financial Planning Pty Ltd (No 2)* (at [230] per Lee J) and *Australian Securities and Investments Commission v Westpac Banking Corporation* [2019] FCA 2147 (per Wigney J).
- 135 Responding to NAB's submissions on *Commonwealth Bank of Australia* where Beach J imposed a penalty of \$5 million for 123 contraventions of multiple sections of the *Australian Securities and Investments Commission Act 2001* (Cth), ASIC says that the number of contraventions in that case was less than half the number in the present case – and the penalty of \$5 million must be considered in that context.

NAB's submissions

- 136 While NAB accepts that a substantial penalty is warranted, it considers that the figure of \$15 million proposed by ASIC does not take proper account of the course of conduct principle or the matters in mitigation. For those reasons, NAB submits that the \$15 million penalty proposed by ASIC is at the high point of the appropriate range, and that the Court should take into account the matters which NAB explains should result in the imposition of a lower penalty.
- 137 As to the course of conduct analysis, NAB argues that ASIC's proposed penalty does not have regard to the matters at [108]–[114] of the SOAF, and does not give effect to the principle in the penalties table (as extracted above). ASIC's approach of seeking a penalty of \$75,000 for each Admitted Contravention save for the three admitted instances of fraud, which attract a penalty of \$150,000, does not provide for any reduction in penalty where there are multiple contraventions. It says that ASIC's approach does not avoid double penalties.
- 138 To address these issues, NAB re-worked the penalties table proposed by ASIC, resulting in a total discount of approximately \$2.5 million to account for the courses of conduct, applying otherwise the same approach as ASIC proposes (set out at Annexure B to this judgment).
- 139 Finally, NAB dismisses ASIC's contention that "specific deterrence remains relevant" because the current programme involves no fee for referrers. It also says that an assessment of parity with penalties imposed in other cases may have relevance but notes that the authorities draw attention to the difficulty in conducting a comparison between penalties imposed in respect of different facts by a process of intuitive synthesis that cannot be fully explained in written reasons: *Commonwealth Bank of Australia* (at [77] per Beach J). NAB submits that case law broadly supports the view that \$15 million is at the upper limit of the appropriate range, referring in particular to the decisions of Beach J in *Australian and New Zealand Banking Group Limited* and *Commonwealth Bank of Australia*.
- 140 In oral submissions, Senior Counsel for NAB clarified that while, in written submissions, it was said that s 31 of the Act can be seen as having, in a sense, a secondary operation in the legislative scheme, that does not mean it should be seen as some sort of secondary law (T66). Rather, it was said that when it comes to contravention, there is a greater range of seriousness attached to ss 29 and 31 than contraventions of more substantive obligations because they can be breached, for example, accidentally and inconsequentially.

VI *A pecuniary penalty that the Court considers is appropriate*

- 141 Under s 167, the Court is to impose “a pecuniary penalty that the court considers is appropriate”. The relevant principles in pecuniary penalty cases are well known and have been repeated many times. As my summary of the submissions indicates, they were not substantively in dispute. As I observed in *AMP Financial Planning Pty Ltd (No 2)* (at [156]), the applicable principles of deterrence, the relevant factors generally, the role of “instinctive synthesis”, the relevance of the maximum penalty, the “course of conduct principle” and the application of the totality principle, have been set out in a slightly different context by Wigney J in *Westpac Banking Corporation* (at [255]–[272]), and I adopt his Honour’s summary for present purposes.
- 142 I would also repeat the three observations I made in *AMP Financial Planning Pty Ltd (No 2)* (at [158]–[160]):

First, and importantly in the present case, the principal object of a pecuniary penalty is to put a price on a contravention that is sufficiently high to deter both the contravenor (specific deterrence) and others who might be tempted to contravene (general deterrence); both specific and general deterrence are important: see *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 113; (2017) 254 FCR 68 at 88 [98] (Dowsett, Greenwood and Wigney JJ).

Secondly, the process of quantifying pecuniary penalties is an inexact science, not subject to rigidity in approach but guided by well-accepted factors and a large number of cases have identified the various factors or considerations usually relevant to the assessment of an appropriate pecuniary penalty.

Thirdly, those various considerations or factors can be conveniently categorised according to whether they relate to the objective nature and seriousness of the contravention or to the particular circumstances of the respondent in question, with the factors relating to the *objective* nature and seriousness of the contravention including: (a) the extent to which the contravention was the result of deliberate, covert or reckless conduct, as opposed to negligence or carelessness; (b) whether the contravention comprised isolated conduct, or was systematic or occurred over a period of time; (c) if the defendant is a corporation, the seniority of the officers responsible for the contravention; (d) the existence, within the corporation, of compliance systems and whether there was a culture of compliance at the corporation; (e) the impact or consequences of the contravention on the market or innocent third parties; and (f) the extent of any profit or benefit derived as a result of the contravention. While the factors that concern the *particular circumstances* of the respondent include: (a) the size and financial position of the contravening company; (b) whether the company has been found to have engaged in similar conduct in the past; (c) whether the company has improved or modified its compliance systems since the contravention; (d) whether the company (through its senior officers) has demonstrated contrition and remorse; (e) whether the company had disgorged any profit or benefit received as a result of the contravention, or made reparation; (f) whether the company has cooperated with and assisted the relevant regulatory authority in the investigation and prosecution of the contravention; and (g) whether the company has suffered any extra-curial punishment or detriment arising from the finding that it had contravened the law: see *Australian*

Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union at 89-90 [102]-[104].

143 In *AMP Financial Planning (No 2)* I observed (at [230]) that “when all is said and done, the purpose of a civil penalty is primarily, if not wholly, protective in promoting the public interest in compliance with the law, and penalties imposed ... must put a price on contraventions ... to deter repetition by those involved ... and by others who may be tempted to act in a similar manner”.

144 As to general deterrence, I accept ASIC’s broader approach as to the scope of general deterrence required. Those who should be deterred by the penalties imposed are banks, other financial institutions and superannuation providers who provide credit services under the National Credit Act as well as financial services and products more generally.

145 I now turn to the parties’ submissions regarding a number of subjective and objective factors said to be relevant to my determination of what pecuniary penalty is appropriate.

Subjective factors

146 Any penalty figure must take account of NAB’s size and profitability. Although the penalty cannot be so high as to punish, a civil penalty for a contravention of the law must be fixed with a view to ensuring that the penalty is not regarded as an acceptable cost of doing business. I observed during the hearing that ASIC seeks a pecuniary penalty “significantly less than one day’s net profit for the bank” (T14). ASIC says that the figure proposed nevertheless reflects the seriousness of the conduct because what is relevant is the profit generated by the programme itself. But these are two separate things. The whole point of the penalty is deterrence. What penalty is sufficient to deter NAB from engaging in this or similar conduct? It will be necessary to return to this point below.

147 But by way of summary, the subjective matters of importance can be shortly stated and are common ground: NAB has not previously been found liable for contravening conduct under the National Credit Act; there is evidence that NAB has improved its systems and training and NAB has also undertaken a remediation scheme with which ASIC has not raised any concerns; NAB cooperated with ASIC; and ASIC accepts that NAB should be given a discount to reflect its cooperation and its early admissions. I agree.

Objective factors

148 The conduct occurred over a number of years and went undetected until internal whistleblower reports brought it to light. But for this, the contravening may well have continued.

149 The profitability of the programme is also a relevant consideration. In *Australian Competition and Consumer Commission v Coles Supermarkets Australia Pty Ltd* [2015] FCA 330; (2015) 327 ALR 540 (at 562 [100]), Allsop CJ stated that, in the context of the Australian Consumer Law:

Specific deterrence demands that a penalty be imposed that bears a real relationship with the profit earned — even if it is difficult to identify a causal proportionate contribution to EBIT by the impugned phrases. Coles should understand that it will not profit by its conduct. The market should understand that also.

150 While it is true that there is no evidence before me of the actual profitability (as opposed to the value) of the loans associated with the contraventions, it was not contested that NAB profited from them. That those loans were, in a rising market, likely to be highly profitable to NAB was a racing certainty. I put this to Senior Counsel for the regulator at the hearing (T17); and it was not gainsaid by NAB. Contrary to NAB’s submission, the question is not whether NAB “profited” from the *involvement* of Introducers (to which, by the way, the answer seems certainly to be yes); why pay a commission to an Introducer if they did not generate profit to NAB? Rather, the question is whether NAB profited from the contravening conduct; that is, *from the loans* procured with the Introducers’ involvement. It is not to the point that the loans may, theoretically, have been entered into even without the Introducers. They were entered into via an Introducer, in a manner that contravened s 31, and they carry that taint. To say otherwise would be to undermine the seriousness of the conduct. The fact that there was a profit is a relevant one.

151 While it appears unlikely that NAB will engage in this same misconduct again in relation to s 31 of the National Credit Act, not least because the commission incentive has been removed, I am not satisfied that specific deterrence is not required. I hold this view notwithstanding the belated efforts of NAB to rectify the issues with the programme following the initial whistleblower reports, in expanding its investigations and in making other improvements. I accept the submission by NAB that “the bank recognised that it had made mistakes, *by its own reckoning*, in setting up the Introducer Program” (at [120]) and has shown contrition for its actions. Had these efforts not been made, I would have considered significantly greater penalties to be necessary than will be imposed.

152 Dealing more specifically with some of NAB’s submissions, although the imperative for a bank to avoid bad debts and “maintain[n] capital” because of the “significant pressure to ensure that its lending is responsible” is true so far as it goes, this does not lead to the conclusion that specific deterrence is unnecessary. I do not think it is unduly stretching the bounds of s 144 of the *Evidence Act 1995* (Cth) to remark that history would suggest otherwise. Indeed, it is NAB’s failure to recognise that specific deterrence is necessary that makes it particularly necessary in this instance. Most particularly is the troubling compliance systems failures which allowed the contravening conduct to proliferate during the Relevant Period, particularly in the GWS region. NAB’s remediation scheme only targeted the programme. Wider systems failings were not addressed. The penalty must be sufficiently high to deter NAB from further breaches, not just of s 31 of the National Credit Act but of contraventions more generally. The conduct engaged in by NAB as a corporate entity was not deliberate. But this means that the deterrence needs to be such as to motivate changes to the *systems* underlying the contravening conduct. By that I mean compliance reporting, governance structures and systems integrations. While there was no evidence of the involvement of senior members of the organisation participating in or having knowledge of the contravening conduct, it is also not the case that proactive steps were put in place, such as adequate training or systems, to prevent the conduct from occurring in the first place.

Consideration

153 Penalties are not conceived of in a vacuum: *Construction, Forestry, Mining and Energy Union v Cahill* [2010] FCAFC 39; (2010) 269 ALR 1 (at 13 [42] per Middleton and Gordon JJ). To achieve the purpose of deterrence they must be informed by all the relevant circumstances of the case.

154 As Wigney J explained in *Westpac Banking Corporation* (at [261]):

The fixing of a pecuniary penalty in respect of a contravention of a civil penalty provision in the Act involves the identification and balancing of all the factors relevant to the contravention and the contravenor, and the making of a value judgment as to what is the appropriate penalty in light of the protective and deterrent purpose of a pecuniary penalty. While there are undoubtedly differences between the criminal sentencing process and the process of fixing a pecuniary penalty (cf. *Commonwealth v Director, FWBII* at [56]-[57]), the fixing of a pecuniary penalty may, to an extent, be likened to the “instinctive synthesis” involved in criminal sentencing: *TPG Internet Pty Ltd v Australian Competition and Consumer Commission* (2012) 210 FCR 277 at 294; *Australian Competition and Consumer Commission v Reckitt Benckiser (Australia) Pty Ltd* [2016] FCAFC 181; 340 ALR 25 at [44]. Instinctive synthesis is the “method of sentencing by which the judge identifies all the factors that are relevant to the sentence, discusses their significance and then makes a value judgment as to what is the

appropriate sentence given all the factors of the case”: *Markarian v The Queen* [2005] HCA 25; 228 CLR 357 at [51] (per McHugh J). Or, as the plurality put it in *Markarian* (at [37], per Gleeson CJ, Gummow, Hayne and Callinan JJ) “the sentencer is called on to reach a single sentence which ... balances many different and conflicting features.”

155 However, as I observed in *AMP Financial Planning (No. 2)* (at 96 [162]):

One of these circumstances, of course, is whether the contraventions with which I am concerned comprised isolated conduct, or were systematic or occurred over a period of time. Needless to say, this contextual consideration must not be confused with improperly imposing a penalty for conduct which might be thought to be similar to the contravening conduct, but which is unpleaded and not found to be contravening conduct. My task is to assess penalty *only* for the contraventions the subject of the proceeding and established on the evidence.

156 As a starting point, I must consider what maximum penalty is permitted to be imposed under the National Credit Act. There is no dispute this is \$456.7 million, although the theoretical maximum penalty is of limited assistance. Here, the course of conduct principle gains importance.

157 Two important matters, in the present case, must therefore be teased out which are often confused: *first*, what role does the course of conduct principle have on the assessment of the penalty where there are a very large number of individual contraventions; and *secondly*, how should the totality principle be applied in a case such as this, while having regard to the maximum penalty imposed by the legislature? This is an issue which arises with increasing frequency; technological advances within corporations have made possible enormous numbers of contraventions in relatively short periods of time, particularly, it seems, where compliance systems have not kept pace with these advances. Even here, where the contravening conduct involved communications between Borrowers, Introducers and the Bankers, the vast numbers of active Introducers maintained in NAB’s systems, the ease with which email permitted communications between them and the limitations of the systems supporting the programme all contributed to the number of breaches.

158 Where there are numerous contraventions arising from separate acts, the starting point is that each contravention should ordinarily attract the imposition of a separate penalty: *Westpac Banking Corporation* (at [268] per Wigney J). However, it is also appropriate to consider whether, and the extent to which, the contravening conduct should be regarded as a single course, or courses, of conduct. But I am not bound to apply this approach. It is a tool of analysis to ensure the penalty is not disproportionate, though the maximum penalty does not become irrelevant. While ASIC suggests that the present case is not one where its application has utility, it does provide a useful tool of analysis, not least because some groupings of

contraventions involve *the very same communications* and the *very same credit assessment*; for example, where Borrowers sought a loan which was part fixed interest and part variable, resulting in multiple loans being created. I prefer NAB's submissions in this regard and consider there were, in effect, 216 separate courses of conduct or to use a somewhat inaccurate word in the circumstances, "transactions".

159 This is not to say that the fixing of the appropriate penalties should be approached as if there were 216 contraventions; there were 260 and separate penalties should be imposed in respect of each of the separate contraventions. Those penalties, however, should be adjusted to take into account that they arose out of 216 courses of conduct and there was a degree of overlap or interrelationship in the legal and factual elements of the conduct constituting the contraventions. That consideration must be taken into account to avoid double punishment.

160 Balancing and synthesising all relevant factors, it seems to me the imposition of a penalty for each of the contraventions placed into 216 courses of conduct is the preferable approach, fixed at a figure of \$100,000 per grouping of contraventions, save for a penalty to be imposed of \$200,000 for each of the three contraventions involving fraud. There is a degree of imprecision about this approach as the underlying conduct differs in seriousness between contraventions but, of course, in adjusting penalties to take into account the course of conduct principle and in fixing penalties generally, one does not approach the task as if it was simply a calculus. Needless to say, the penalties imposed for the non-fraudulent contraventions would have been greater if ASIC had taken efforts to prove (and had established) particular harm to individual customers or that the Banker did not deal directly with customers or make other enquiries in relation to the *content* of the documents exchanged with Introducers.

161 In any event, this leads to a "headline" figure of \$21,900,000 to which a discount of a little over 30% is appropriate to reflect NAB's cooperation, its early admissions and the adoption of a remediation scheme and the other mitigating factors to which I have made reference. This provides for a total penalty of \$15,000,000.

162 The final step is my consideration as to whether this total penalty is just and appropriate and not excessive having regard to the totality of the relevant contravening conduct. It is. It is an amount reflective of, and proportionate to, the seriousness of the contravening conduct and the necessity to serve as a deterrent. Any lesser aggregate penalty would not, in my judgment, achieve the appropriate deterrent effect.

G ORDERS

163 The parties should bring in short minutes of order to reflect these reasons within seven days.

I certify that the preceding one hundred and sixty-three (163) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Lee.

Associate:



Dated: 19 October 2020

ANNEXURE A – STATEMENT OF AGREED FACTS**NOTICE OF FILING**

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/05/2020 6:01:46 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Statement of Agreed Facts
File Number:	NSD1355/2019
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v NATIONAL AUSTRALIA BANK LIMITED ACN 004 044 937
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 4/05/2020 6:01:52 PM AEST

Registrar

Important Information

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

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



Federal Court of Australia
District Registry: NSW
Division: General

No. NSD1355 of 2019

Australian Securities and Investments Commission

Applicant

National Australia Bank Limited ACN 004 044 937

Respondent

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A. INTRODUCTION

1. The Applicant, the Australian Securities and Investments Commission (**ASIC**) and the Respondent, the National Australia Bank Limited (**NAB**), for the purposes of s 191 of the *Evidence Act 1995* (Cth), have agreed that the following facts and admissions are not, for the purposes of this proceeding only, to be disputed.
2. This statement of agreed facts relates to proceedings NSD 1355 of 2019 commenced by ASIC against NAB on 23 August 2019. By the proceedings, ASIC has sought declarations that NAB contravened particular provisions of the *National Consumer Credit Protection Act 2009* (Cth) (**National Credit Act**), and orders that NAB pay pecuniary penalties to the Commonwealth.
3. This document identifies the facts relevant to the contraventions as agreed between the parties and admitted by NAB for the purposes of the proceedings. The facts agreed to, and the admissions made, are agreed to and made solely for the purpose of the proceeding and do not constitute any admission outside of the proceeding.
4. In relation to the number of contraventions:
 - (a) the parties agree that NAB engaged in 260 contraventions of s 31 of the National Credit Act which occurred in the period from 23 August 2013 to 29 July 2016 (**Relevant Period**);
 - (b) the parties also agree the same conduct that constituted each of the 260 contraventions of s 31 also involved 260 contraventions of s 47(1)(d) of the National Credit Act;
 - (c) ASIC contends that the same conduct that constituted each of the 260 contraventions of s 31 also involved 260 contraventions of s 47(1)(a) of the National Credit Act;
 - (d) NAB:
 - (i) does not agree that the same conduct that constituted each of the 260 contraventions of s 31 also involved 260 contraventions of s 47(1)(a) of the National Credit Act; but
 - (ii) agrees that NAB failed to do all things necessary to ensure that the admitted contraventions did not occur and thereby contravened s 47(1)(a) of the National Credit Act.

- (e) ASIC and NAB further agree that:
 - (i) sections 47(1)(a) and 47(1)(d) of the National Credit Act were not civil penalty provisions during the time of the admitted contraventions; and
 - (ii) in any event, s 175 of the National Credit Act would prevent NAB being liable for more than one pecuniary penalty order in respect of the same conduct.

B. BACKGROUND

Parties

5. ASIC is and was at all material times:
 - (a) a body corporate established by s 8 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
 - (b) empowered to exercise the duties, functions and powers conferred upon it by the ASIC Act and the National Credit Act.
6. NAB is and was at all material times:
 - (a) registered as an Australian public company limited by shares; and
 - (b) licensed to carry on banking business in Australia.
7. Since 1 January 2011, NAB has held Australian Credit Licence (**ACL**) numbered 230686 granted under s 38 of the National Credit Act. NAB's ACL authorises it to engage in credit activities, including the provision of credit services in relation to credit contracts. As the holder of an ACL, NAB must comply with the obligations imposed on licensees by the National Credit Act.

Legislation

8. Section 31 of the National Credit Act provides that a licensee must not (a) engage in a credit activity, and (b) in the course of engaging in that credit activity, conduct business with another person who is engaging in a credit activity if, by engaging in the credit activity, the other person contravenes s 29 (which imposes the requirement to be licensed).

9. Section 47 of the National Credit Act sets out the general obligations of those who hold an ACL including the obligation under:
- (a) sub-section (1)(a) that a licensee must do all things necessary to ensure that the credit activities authorised by the licence are engaged in efficiently, honestly and fairly; and
 - (b) sub-section (1)(d) that a licensee must comply with credit legislation (which includes the National Credit Act).

Introducer Program

- 10. From at least 2000, NAB operated an "Introducer Program". By the Introducer Program, third parties (**Introducers**) could "spot and refer" potential customers to NAB.
- 11. An Introducer could be an individual or a company, who engaged in a business that did not ordinarily involve finance or lending. If NAB advanced a loan to a referred customer, Introducers were paid a commission. Introducers were not required to hold an ACL.
- 12. By operation of the National Credit Act and the *National Consumer Credit Protection Regulations 2010* (Cth) (**Regulations**), Introducers who did not hold an ACL were only permitted to provide NAB with a customer's name and contact details, and a short description of the purpose for which the customer may have sought credit.
- 13. At all material times, NAB had a detailed policy in relation to its Introducer Program. That policy provided that Introducers not holding an ACL were only allowed to provide NAB with a customer's name and contact details and were prohibited from having any further involvement in the loan application process. This was referred to as a "spot and refer" role. This policy of "spot and refer" was designed to operate under the exemptions of the National Credit Act and the Regulations.
- 14. The NAB policy provided for different arrangements with respect to on-boarding individual Introducers compared to Introducers affiliated with a National Referral Partner (**NRP**). An NRP entered into an arrangement with NAB under which it agreed to aggregate referrals on behalf of a number of affiliated individual Introducers for a commission. At the material times, NAB worked with three NRPs each of which is identified in these proceedings. The NRPs are Capital Growth Pty Ltd ABN 98 100 592 069 (**Capital Growth**), Nexus Partners Pty Ltd ABN 56 128 705 340 (**Nexus Partners**) and Tomorrow Finance Group Pty Limited ABN 81 141 534 269 (**Tomorrow Finance**).

15. The on-boarding of individual Introducers was initiated by bankers. To become an Introducer an individual or entity made an application, and undertook to:
 - (a) refer a minimum amount of \$2 million a year for personal lending or \$10 million a year for business lending;
 - (b) have and maintain an established reputation of integrity;
 - (c) have and maintain a solid financial position;
 - (d) have or acquire registration for the goods and services tax;
 - (e) have or acquire an Australian Business Number;
 - (f) complete a face-to-face interview with a banker, to confirm the above; and
 - (g) submit a "National Introducer Program Application eForm" for approval in accordance with the "New Application Checklist" (**Checklist**).
16. The Checklist required bankers to:
 - (a) record the Introducer's details in NAB systems;
 - (b) perform on-boarding verifications;
 - (c) arrange for the Introducer to enter an "Introducer Agreement" with NAB; and
 - (d) establish payment authorities for the Introducer.
17. Introducer Agreements were in a standard form. It was a term of the Introducer Agreements that Introducers who did not hold an ACL were not to provide NAB with information other than a potential customer's name and contact details.
18. On-boarding of Introducers affiliated with an NRP was the responsibility of the NRP. A banker who wished to receive referrals from an Introducer affiliated with an NRP was required, by NAB policy, to obtain written confirmation from the NRP that the NRP had successfully completed on-boarding procedures for the affiliated Introducer. In addition, NAB's policy provided that NAB's Third Party Payments team was to make independent inquiries to ensure that the affiliated Introducer:
 - (a) did not appear on ASIC's "banned and disqualified register";
 - (b) had no recorded history of adverse dealings with NAB; and

- (c) was not a broker (which would disqualify the individual from being an Introducer).
19. Introducers were expected to maintain a primary relationship with one banker. Each banker who accepted referrals from an Introducer was required to establish an "Introducer number". Introducer numbers were used to identify lending as being referred by a specific Introducer.
 20. Once an Introducer referred a customer to NAB, the assigned banker was required to deal directly with the customer in respect to all aspects of the loan application process, in accordance with NAB's lending policies.
 21. In addition to NAB's lending policies, prior to processing a loan application for a customer referred to NAB via an Introducer, a banker was required to:
 - (a) obtain the customer's written consent to disclose information about the progress of the customer's application to the associated Introducer;
 - (b) obtain the customer's written consent to pay commission to the associated Introducer; and
 - (c) inform the customer in writing of any commission to be paid to the associated Introducer.
 22. Once the loan application was processed and a decision was reached, the banker was required to notify the customer of the outcome. Bankers were not to rely upon Introducers to inform the customer of the outcome of the relevant application.
 23. Commission was paid to Introducers after the loan application was approved and drawn down, and a request for commission payment was processed and approved by the Introducer Program. The commission paid to the Introducer was calculated as a percentage of the total loan amount drawn down by the customer.

C. AGREED FACTS ON LIABILITY

The Agreed Schedules

24. The facts agreed on liability by ASIC and NAB are set out in the following three schedules:

Schedule B – Introducers

- (a) Schedule B - Introducers, sets out agreed facts about 25 persons who acted as Introducers under NAB's Introducer Program (**Relevant Introducers**), specifically:
- (i) at column A, the row number;
 - (ii) at column B, for each Relevant Introducer, the name of the individual and/or company and his, her or its Australian Business Number (**ABN**);
 - (iii) at column C, the document ID of the ABN extract for each Relevant Introducer, which is a hyperlink to a copy of that document;
 - (iv) at column D, a description of the business operated by the Relevant Introducer;
 - (v) at column E, the document ID of the document recording the description of the business operated by the Relevant Introducer, which is a hyperlink to a copy of that document;
 - (vi) at column F, for individual Relevant Introducers not affiliated with an NRP, the date the Relevant Introducer entered into an agreement with NAB;
 - (vii) at column G, the document ID of the agreement, between the Relevant Introducer and NAB, the date of which is referred to at column F, which is a hyperlink to a copy of that document;
 - (viii) at column H, for Relevant Introducers affiliated with an NRP, the name of the NRP;
 - (ix) at column I, the date that each NRP entered into an agreement with NAB;
 - (x) at column J, the document ID of the agreement, between the NRP and NAB, the date of which is referred to at column I, which is a hyperlink to a copy of that document;
 - (xi) at column K, the date that each affiliated Relevant Introducer entered into an agreement with the NRP;

- (xii) at column L, the document ID of the agreement, between the affiliated Relevant Introducer and the NRP, the date of which is referred to at column K, which is a hyperlink to a copy of that document;
- (xiii) at column M the email address of each Relevant Introducer; and
- (xiv) at column N, a Y/N indication of whether, at any material time, the Relevant Introducer listed in column B was a holder of an ACL under Part 2-2 of the National Credit Act, an authorised representative of an ACL holder under Part 2-3 of the National Credit Act, and/or a person registered to conduct a credit activity under the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cth) (**Transitional Act**).

Schedule C – Bankers

- (b) Schedule C - Bankers, sets out agreed facts about 16 current or former employees of NAB who had dealings with the Introducers (**NAB Bankers**), specifically:
 - (i) at column A, the row number;
 - (ii) at column B, the name of the NAB Banker;
 - (iii) at column C, the date of birth of the NAB Banker;
 - (iv) at column D, the email address of the NAB Banker;
 - (v) at column E, the name of the most recent position title held by the NAB Banker;
 - (vi) at column F, the date that the NAB Banker started his or her employment with NAB;
 - (vii) at column G, the date that the NAB Banker ceased his or her employment with NAB; and
 - (viii) at column H, the document ID of the employment records of the NAB Banker which ASIC relies upon, which is a hyperlink to a copy of those documents.

Schedule A – Consumer Loans and Correspondence

- (c) Schedule A – Consumer Loans and Correspondence, sets out agreed facts about certain communications between the NAB Bankers and the Relevant Introducers and "credit contracts" entered into by NAB within the meaning of s 5 of the National Credit Act (**Credit Contracts**), specifically:
- (i) at column A, the row number;
 - (ii) at columns B and C, the names of persons who entered into a Credit Contract with NAB and borrowed funds pursuant to that Credit Contract (**Borrowers**);
 - (iii) at column D, the Borrower's loan account number for the relevant Credit Contract;
 - (iv) at column E, the Borrower's loan application number for the relevant Credit Contract (**Credit Application**);
 - (v) at column F, the amount of the Borrower's loan application;
 - (vi) at column G, the date that the Borrower's loan under the relevant Credit Contract was first drawn down;
 - (vii) at column H, the amount by which the Borrower's loan was first drawn down under the relevant Credit Contract;
 - (viii) at column I, the purpose of the Borrower's loan under the relevant Credit Contract;
 - (ix) at column J, the name of the NAB Banker who processed the Borrower's loan under the relevant Credit Contract;
 - (x) at column K, the name of the Relevant Introducer who had dealings with the Borrower;
 - (xi) at column L, the amount of commission paid by NAB to the Relevant Introducer in respect of the Borrower's loan under the relevant Credit Contract;
 - (xii) at column M;

- (A) "Yes" appears where NAB admits that the Relevant Introducer listed in column K provided Credit Assistance and/or acted as an Intermediary in relation to the Credit Contract identified by the Loan Application Number in column E; and
- (B) "No" appears where NAB admits that the Relevant Introducer listed in column K acted as an Intermediary, but does not admit that conduct was in relation to the Credit Contract identified by the Loan Application Number in column E;
- (xiii) At column N, the date of emails exchanged between the NAB Banker and the Relevant Introducer;
- (xiv) at column O, the email address of the sender of each email;
- (xv) at column P, the email address of the recipient of each email;
- (xvi) at column Q, the document ID of each email, which is a hyperlink to a copy of that document;
- (xvii) at columns S, U, W, Y, AA, AC, AE, AG, AI, AK, AM, AO, AQ, AS, AU, AW, AY, BA, BC, BE and BF a description of each document attached to each email, and
- (xviii) at columns R, T, V, X, Z, AB, AD, AF, AH, AJ, AL, AN, AP, AR, AT, AV, AX, AZ, BB, BD and BG the document ID of each attachment to each email, which is a hyperlink to a copy of that document

Schedule B – Introducers

Introducer Agreements

- 25. The Relevant Introducers listed in column B at rows 7 to 25 of Schedule B – Introducers had written agreements with NAB, bearing the dates set out in the corresponding column F, copies of which can be accessed by the hyperlink in the corresponding column G (**NAB Introducer Agreements**).
- 26. Other than the agreement between NAB and Inline Business Consulting Pty Ltd dated 27 June 2007, the NAB Introducer Agreements were all substantially in the same form as the agreement which can be accessed by the hyperlink in column G at row 7 of Schedule B - Introducers, save that they provided for different commissions (expressed as exclusive of GST) to be paid to the Relevant Introducers.

27. The NAB Introducer Agreements with EMI International Pty Ltd, Inline Business Consulting Pty Ltd, Jie Carol Mao, John Ha T/A Ha Yeung & Co, Juliana Goutama T/A Yue & Goutama, Oriental and Investment Pty Ltd, Qixia Ma, SJ Global Pty Ltd, Jalin Realty International Pty Ltd, SZ Money Pty Ltd, Wise Figures Pty Ltd, Xujun Shi, Yang Zhao, Yarrabank Consultant Pty Ltd, Zala Dawood T/A M & L Global Investments (Column G at Rows 9, 11 to 19, 21 to 25 respectively of Schedule B - Introducers) provided for NAB to pay them a commission for referring a customer to a representative of NAB nominated by NAB of:
- (a) 0.40% of the approved limit for any home loan product other than a "NAB Flexiplus Mortgage, NAB Home Equity Line of Credit or NAB Portfolio Facility";
 - (b) 0.40% of 60% of the approved limit of a NAB Flexiplus Mortgage, NAB Home Equity Line of Credit or NAB Portfolio Facility;
 - (c) except where the customer referred was an existing customer of NAB, the above commissions were only payable if the total new lending was at least \$50,000 and were to be calculated as percentages of total new lending rather than the approved limit.
28. The NAB Introducer Agreements with Ausco Pty Ltd and Black Capital Pty Ltd (Column G at Rows 7 and 8 respectively of Schedule B - Introducers) provided for NAB to pay them a commission for referring a customer to a representative of NAB nominated by NAB of:
- (a) except in relation to an existing customer, 0.50% of the approved limit for any home loan product other than a "NAB Flexiplus Mortgage, NAB Home Equity Line of Credit or NAB Portfolio Facility";
 - (b) except in relation to an existing customer, 0.50% of 60% of the approved limit of a NAB Flexiplus Mortgage, NAB Home Equity Line of Credit or NAB Portfolio Facility;
 - (c) except where the customer referred was an existing customer of NAB, the above commissions were only payable if the total new lending was at least \$50,000 and were to be calculated as percentages of total new lending rather than the approved limit.
29. The NAB Introducer Agreements with Haven Media Pty Ltd and Tianyi Huang T/A Tianyi Corp (Column G at Rows 10 and 20 respectively of Schedule B - Introducers)

provided for NAB to pay them a commission for referring a customer to a representative of NAB nominated by NAB of:

- (a) except in relation to an existing customer, 0.60% of the approved limit for any home loan product other than a "NAB Flexiplus Mortgage, NAB Home Equity Line of Credit or NAB Portfolio Facility";
- (b) except in relation to an existing customer, 0.60% of 60% of the approved limit of a NAB Flexiplus Mortgage, NAB Home Equity Line of Credit or NAB Portfolio Facility;
- (c) except where the customer referred was an existing customer of NAB, the above commissions were only payable if the total new lending was at least \$50,000 and were to be calculated as percentages of total new lending rather than the approved limit.

National Referral Partner Agreements and Affiliate Agreements

- 30. The agreements NAB had with NRPs are set out in paragraphs 31, 35 and 41 below.
- 31. Capital Growth had an undated agreement with NAB (**Capital Growth Agreement**), a copy of which can be accessed by the hyperlink in the corresponding column J of row 6 of Schedule B - Introducers.
- 32. The Capital Growth Agreement provided for NAB to pay Capital Growth a commission for referring a customer to NAB of:
 - (a) 0.40% of the new limit for any National Branded Personal Products other than any National FlexiPlus Mortgage;
 - (b) 0.40% of 60% of the new limit of a National FlexiPlus Mortgage;
 - (c) 0.30% of the new limit of any "HomeSide Lending Branded Personal Product";
 - (d) for a referral for a variation to an existing "HomeSide Lending Branded Personal Product" other than a change that NAB classified as being of a minor nature, an additional commission of \$350 regardless of whether a new limit was granted; and
 - (e) 0.20% per annum trailer commission for any "HomeSide Lending Branded Personal Product".

33. Xinghui Investment Pty Ltd ABN 34 145 800 291 (referred to in column B of row 6 of Schedule B - Introducers) (**Xinghui**) had an agreement with Capital Growth dated 11 February 2016, a copy of which can be accessed by the hyperlink in column L of row 6 of Schedule B - Introducers (**Capital Growth Affiliate Agreement**).
34. The Capital Growth Affiliate Agreement provided for Capital Growth to pay Xinghui commission of 0.40% in respect of NAB home loans made to persons seeking finance referred to Capital Growth by Xinghui.
35. Arobcam Pty Ltd ACN 118 567 865 T/A Great Rate (**Arobcam**) had an agreement with NAB dated 6 May 2008 (**Arobcam Agreement**), a copy of which can be accessed by the hyperlink in the corresponding column J of row 5 of Schedule B - Introducers.
36. The Arobcam Agreement provided for NAB to pay Arobcam a commission for referring a customer to a representative of NAB nominated by NAB of:
 - (a) except in relation to an existing customer, 0.60% of the approved limit for any personal lending product other than a "NAB Flexiplus Mortgage, NAB Home Equity Line of Credit or NAB Portfolio Facility";
 - (b) except in relation to an existing customer, 0.60% of 60% of the approved limit of a "NAB Flexiplus Mortgage, NAB Home Equity Line of Credit or NAB Portfolio Facility";
 - (c) except where the customer referred was an existing customer of NAB, the above commissions were only payable if the total new lending was at least \$50,000 and were to be calculated as percentages of total new lending rather than the approved limit.
37. At all material times, Arobcam:
 - (a) had as its sole director, company secretary and shareholder, Andrew Robert Campbell; and
 - (b) together with C&K Campbell Pty Ltd, held the whole of the issued share capital of Nexus Partners.
38. Nexus Partners had an agreement with RH Global Pty Ltd ABN 51 602 756 267 and Tao Xuen (referred to in column B at row 5) (**Global and Xuen**), dated 9 December 2014, a copy of which can be accessed by the hyperlink in column L of row 5 of Schedule B - Introducers (**Nexus Partners Affiliate Agreement**).

39. The Nexus Partners Affiliate Agreement provided for Nexus Partners to pay Global and Xuen a commission of 0.50% of 60% of the approved limit of NAB "Residential Equity loans" made to persons seeking finance referred to Nexus Partners by Global and Xuen.
40. NAB and Andrew Robert Campbell communicated regarding the Nexus Partners Affiliate Agreement and the Arocam Agreement using the email address Andrew@nexuspartners.com.au.
41. Tomorrow Finance had an agreement with NAB dated 25 February 2010 (**Tomorrow Finance Agreement**), a copy of which can be accessed by the hyperlink in column J of row 1 of Schedule B - Introducers.
42. The Tomorrow Finance Agreement provided for NAB to pay Tomorrow Finance a commission for referring a customer to a representative of NAB nominated by NAB of:
 - (a) except in relation to an existing customer, 0.40% of the approved limit for any home loan product other than a "NAB Flexiplus Mortgage, NAB Home Equity Line of Credit or NAB Portfolio Facility";
 - (b) except in relation to an existing customer, 0.40% of 60% of the approved limit of a "NAB Flexiplus Mortgage, NAB Home Equity Line of Credit or NAB Portfolio Facility";
 - (c) except where the customer referred was already an existing customer of NAB the above commissions were only payable if the total new lending was at least \$50,000 and were to be calculated as percentages of total new lending rather than the approved limit.
43. The individuals and companies identified in column B at rows 1 to 4 of Schedule B - Introducers had agreements with Tomorrow Finance, bearing the dates set out in the corresponding column K, copies of which can be accessed by the hyperlink in the corresponding column L (**Tomorrow Finance Affiliate Agreements**).
44. The Tomorrow Finance Affiliate Agreements provided for a commission to be paid to the individuals and companies listed in column B at rows 1 to 4 of Schedule B - Introducers for referring a client to Tomorrow Finance, including by use of Tomorrow Finance's system for transmitting referrals of prospective loan applicants to credit providers, provided Tomorrow Finance received commission from the relevant credit provider.

Relevant Introducers

45. At all material times, none of the Relevant Introducers:
- (a) held ACLs, or
 - (b) were credit representatives of any person holding an ACL in accordance with ss 64 or 65 of the National Credit Act, or
 - (c) were persons registered to conduct a credit activity under the Transitional Act, or
 - (d) were credit representatives of any person registered to conduct a credit activity under the Transitional Act.
46. The Relevant Introducers did not engage in the conduct referred to below:
- (a) on behalf of another person who held an ACL; or
 - (b) as authorised credit representatives of the holder of an ACL, as set out in ss 64 or 65 of the National Credit Act.
47. Each Relevant Introducer carried on the business listed in the corresponding column D of Schedule B – Introducers in Australia (**their Business**).

Schedule C - Bankers

48. Each of the NAB Bankers was an employee of NAB from the date set out in the corresponding column F to the date set out in the corresponding column G of Schedule C - Bankers.
49. At all material times:
- (a) the NAB Bankers held the email addresses listed in column D of Schedule C - Bankers; and
 - (b) the last position held by the NAB Bankers is listed in column E of Schedule C - Bankers.
50. The records of each NAB Banker's employment which ASIC relies upon can be accessed by the hyperlink in the corresponding column H of Schedule C - Bankers.

Schedule A - Consumer Loans and Correspondence

51. On the dates referred to in Column N of Schedule A – Consumer Loans and Correspondence (**Schedule A**), NAB received the emails listed in column Q which were sent to the email addresses of the NAB Bankers identified in the corresponding column P (being emails other than those identified in paragraph 53 below), from the Relevant Introducers identified in the corresponding column K (**Introducer Emails**). Copies of the Introducer Emails can be accessed through the hyperlink in column Q.
52. On the dates referred to in Column N of Schedule A, NAB received the attachments to the Introducer Emails listed at columns S, U, W, Y, AA, AC, AE, AG, AI, AK, AM, AO, AQ, AS, AU, AW, AY, BA, BC, BE and BG (**Introducer Documents**). Copies of the Introducer Documents can be accessed through the corresponding hyperlinks in columns R, T, V, X, Z, AB, AD, AF, AH, AJ, AL, AN, AP, AR, AT, AV, AX, AZ, BB, BD and BF.
53. On the dates referred to in Column N of Schedule A, NAB sent the emails listed in column Q from email addresses ending "@nab.com.au" (**NAB Emails**) (being emails other than the Introducer Emails as identified in paragraph 51 above) to the Introducers identified in the corresponding column K. Copies of the NAB Emails can be accessed through the hyperlink in column Q.
54. On the dates referred to in Column N of Schedule A, NAB sent the attachments to the NAB Emails listed at columns S, U, W, Y, AA, AC, AE, AG, AI, AK, AM, AO, AQ, AS, AU, AW, AY, BA, BC, BE and BG (**NAB Documents**). Copies of the NAB Documents can be accessed through the corresponding hyperlinks in columns R, T, V, X, Z, AB, AD, AF, AH, AJ, AL, AN, AP, AR, AT, AV, AX, AZ, BB, BD and BF.
55. In each case marked with a "Yes" in column M of Schedule A one or more of the corresponding Introducer Emails, Introducer Documents, NAB Emails and/or NAB Documents was or were sent or received in connection with the corresponding Credit Application made by each of the Borrowers identified in column E of Schedule A, or Credit Contract identified in column D of Schedule A.
56. In all cases identified in Schedule A one or more of the Introducer Emails, Introducer Documents, NAB Emails and NAB Documents was sent or received wholly or partly for the purposes of securing a provision of credit for the Borrower under a credit contract for the Borrower with NAB.
57. In respect of the type of documents exchanged between NAB and the Relevant Introducers, the table below identifies (**Table 1**):

- (a) all of the document types identified in columns S, U, W, Y, AA, AC, AE, AG, AI, AK, AM, AO, AQ, AS, AU, AW, AY, BA, BC, BE and BG;
 - (b) a description of the documents captured by that "document type", which excludes all documents as otherwise defined; and
 - (c) calculations regarding the number of instances of each document listed in column Q.
58. The numbers in Table 1 in the column titled "Total" represent the number of times a particular document is referenced in Schedule A, including instances where an identical document is referenced two or more times.
59. The numbers in Table 1 in the column titled "Total (Unique)" represent the number of unique instances of each document referenced in Schedule A.

Table 1

Document Type	Description	Total	Total (Unique)
Bank Form	Correspondence and/or forms issued by any bank including, correspondence confirming lending approval and/or settlement instructions, correspondence containing account opening information, credit contracts, direct debit instructions, Introducer commission payment consent forms, lenders mortgages insurance forms and/or privacy consent forms.	601	427
Bank Statement	Bank account statements issued by any bank including, cheque, credit card, home loan, personal loan, savings and transaction account statements.	1089	551
Contract of Sale	A contract for sale/purchase of a property, or any part thereof.	295	215
Credit Report	A credit history report.	4	2
Draft Financial Agreement	A draft financial agreement under section 90C of the Family Law Act 1975.	1	1

Document Type	Description	Total	Total (Unique)
Email	An email (sent as an attachment).	4	4
File Note	Any document in the form of a file note which records information about the Borrower and/or their financial situation.	38	22
Financial Statement	All statements issued by an accountant.	30	25
Home Loan Application	A document that is either: (a) a complete or substantially complete home loan application form, whether signed or unsigned; (b) a partially complete home loan application form, or (c) part of a home loan application form.	171	136
Identification Documents	All forms of photo identification, drivers' licence, passport, Medicare card and documents recording citizenship, residency and/or visa status.	468	357
Insurance Documents	Any document issued by an insurer, including certificate of insurance and documents recording policy and premiums.	21	16
Lease	Any document recording a lease agreement.	74	66
Letter	A letter (other than a letter recording details of an employee's employment).	4	4
Letter or Contract of Employment	Any document issued by an employer which records details of the employee's employment.	185	137

Document Type	Description	Total	Total (Unique)
Other Employment Documents	Any document which records information about an employee and/or their employer and/or their employment, including an Australian company extract, an ABN extract or search, or a "screen-capture" of an employer's website.	50	43
Other Property Documents	Building plans, certificates of title, foreign investment approval documents, rental appraisal and schedule of works.	360	243
Payslip	Any document recording details of an employee's income, including PAYG statements, payslips and income statements.	634	429
Receipt	All receipts or invoices, including property deposit receipts and rental income invoices.	217	129
Statutory Declaration	A statutory declaration.	14	10
Tax Return	Tax return, notice of assessment and lodgement declarations.	125	99
Utilities, Bills, Rates	Any documents recording amounts owing for utilities and other household expenditure, including council rates, water, gas and electricity bills.	139	92
Valuation Documents	Any document recording the value of an asset.	12	9

60. In each case marked with a "Yes" in column M of Schedule A, one or more of the corresponding Introducer Emails or Introducer Documents (if any), was taken into account by NAB in processing the corresponding Credit Application and entering into the Credit Contracts with the corresponding Borrowers.
61. NAB entered into Credit Contracts with each of the Borrowers and subsequently provided credit to each of the Borrowers under each of the Credit Contracts by:

- (a) advancing the sums set out in the corresponding column H;
 - (b) on the dates set out in the corresponding column G; and
 - (c) for the purpose set out in the corresponding column I.
62. The credit NAB provided to the Borrowers under the Credit Contracts was provided, or intended to be provided, to the Borrowers wholly or predominately for:
- (a) personal, domestic or household purposes; or
 - (b) to purchase, renovate or improve residential property for investment purposes; or
 - (c) to refinance credit that had been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes.
63. NAB paid the amount set out in column L to the Relevant Introducer identified in the corresponding column K in respect of the credit provided under each corresponding Credit Contract (as set out in paragraph 61 above) (**Commission**).
64. In the circumstances set out above:
- (a) in each case marked with a "Yes" in column M of Schedule A, NAB was conducting business with the Relevant Introducers in relation to the corresponding Credit Applications and Credit Contracts; and
 - (b) in each case marked with a "No" in column M of Schedule A, NAB was conducting business with the Introducers by reason of the entry into Introducer Agreements, sending and receipt of Introducer Emails, Introducer Documents, NAB Emails and/or NAB Documents as applicable. NAB says that such conduct on the part of NAB did not relate to the corresponding Credit Applications and Credit Contracts.

Conduct

65. In the circumstances set out above, each of the Relevant Introducers:
- (a) dealt directly with the Borrower or the Borrower's agent; and
 - (b) in the course of, as part of, or incidentally to:
 - (i) carrying on their Business, and

- (ii) the business carried on by NAB; and
- (iii) the business each Relevant Introducer conducted with NAB characterised by the payment of the Commission; and
- (c) In each case, acted as an intermediary between NAB and the Borrower wholly or partly for the purpose of securing the provision of credit under a credit contract for the Borrower with NAB; and
- (d) In some cases, also assisted the Borrower to either apply for a particular credit contract with NAB or an increase to the credit limit of a particular credit contract with NAB.

False or Misleading Documents

Loan #1

- 66. On 18 February 2015, the Relevant Introducer identified at row 25, in column K, of Schedule A, Zaia Dawood, sent the email listed in row 25 column Q (**Dawood Email 1**) and the attachment listed at row 25 column S (**Dawood Documents 1**) to NAB. A copy of Dawood Email 1 can be accessed through the hyperlink in column Q. A copy of Dawood Documents 1 can be accessed through the hyperlink in column R.
- 67. The Dawood Email 1 and Dawood Documents 1 were sent to NAB by sending them to the email address of the NAB Banker identified in the corresponding column P.
- 68. The Dawood Email 1 and Dawood Documents 1 were sent to NAB in connection with the application for credit being made by the Borrowers identified in the corresponding columns B and C.
- 69. The Dawood Email 1 and Dawood Documents 1 were taken into account by NAB in processing the Credit Application identified by the loan application number in the corresponding column E.
- 70. The Dawood Documents 1 included:
 - (a) a one-page payslip headed "Lantana Palace Pty Limited" for the period ending "05/02/2015", listing a gross pay of "\$1,087.56" and a net pay of "\$874.56"; and
 - (b) a one-page payslip headed "Lantana Palace Pty Limited" for the period ending "12/02/2015", listing a gross pay of "\$1,087.56" and a net pay of "\$874.56".

(Dawood Payslips)

71. The Dawood Payslips were false documents as the named employee was not employed by Lantana Palace Pty Limited.

Loan #2

72. On 21 April 2015, the Relevant Introducer identified at row 44, column K of Schedule A, Zaia Dawood sent the email listed in row 44 column Q (**Dawood Email 2**) and the attachment listed at column S (**Dawood Documents 2**) to NAB. A copy of Dawood Email 2 can be accessed through the hyperlink in column Q. A copy of the Dawood Documents 2 can be accessed through the hyperlink in column R.
73. The Dawood Email 2 and Dawood Documents 2 were sent to NAB by sending them to the personal email address of the NAB Banker identified in the corresponding column P and forwarded from that email address to robbie.awad@nab.com.au.
74. The Dawood Email 2 and Dawood Documents 2 were sent to NAB in connection with the applications for credit being made by the Borrower identified in the corresponding column B.
75. The Dawood Email 2 and Dawood Documents 2 were taken into account by NAB in processing the Credit Application identified by the loan application number in the corresponding column E.
76. The Dawood Documents 2 consisted of:
- (a) a one-page payslip headed "Bada-Bing Sewing Services Pty Ltd ABN: 38 120 044 706" for the period "02/04/2015 – 08/04/2015", listing a base salary of "\$1,247.51" and a net pay of "979.51"; and
 - (b) a one-page payslip headed "Bada-Bing Sewing Services Pty Ltd A.B.N: 38 120 044 706" for the period "09/04/2015 – 15/04/2015", listing a base salary of "\$1,247.51" and a net pay of "979.51".
77. The Dawood Documents 2 were false documents as the named employee was not employed by Bada-Bing Sewing Services Pty Ltd.

Loan #3

78. On 20 March 2015, the Relevant Introducer identified at row 132, column K in Schedule A, Zaia Dawood, sent the email listed in row 132 column Q (**Dawood Email 3**) and the

attachment listed at column S (**Dawood Documents 3**) to NAB. A copy of Dawood Email 3 can be accessed through the hyperlink in column Q. A copy of Dawood Documents 3 can be accessed through the hyperlink in column R.

79. The Dawood Email 3 and Dawood Documents 3 were sent to NAB by sending them to the personal email address of the NAB Banker identified in the corresponding column P and forwarded from that email address to robbie.awad@nab.com.au.
80. The Dawood Email 3 and Dawood Documents 3 were sent to NAB in connection with the applications for credit being made by the Borrower identified in the corresponding column B.
81. The Dawood Email 3 and Dawood Documents 3 were taken into account by NAB in processing the Credit Application identified by the loan application number in the corresponding column E.
82. The Dawood Documents 3 consisted of:
 - (a) a one-page payslip headed "Elco Constructions Pty Ltd ABN: 12 151 045 304" for the period "27/02/2015 – 05/03/2015", listing a gross pay of "\$1,158.22" and a net pay of "\$920.22"; and
 - (b) a one-page payslip headed "Elco Constructions Pty Ltd ABN: 12 151 045 304" for the period "Pay Period 06/03/2015 – 12/03/2015", listing a gross pay of "\$1,158.22" and a net pay of "\$920.22".
83. The Dawood Documents 3 were false documents as the named employee was not employed by Elco Constructions Pty Ltd.

D. ADMITTED CONTRAVENTIONS

84. NAB has admitted to 260 contraventions of s 31 of the National Credit Act which occurred in the Relevant Period.
85. NAB also admits that the same conduct that constituted each of the 260 contraventions of s 31 also involved 260 contraventions of s 47(1)(d) of the National Credit Act.
86. In respect of s 47(1)(a):
 - (a) ASIC contends that the conduct constituting each contravention of s 31 of the National Credit Act was also a contravention of s 47(1)(a) of the National Credit Act, such that there are a total of 760 contraventions overall; and

- (b) NAB does not agree that the conduct constituting each contravention of s 31 of the National Credit Act was also a separate contravention of s 47(1)(a) of the National Credit Act, but agrees that it failed to do all things necessary to ensure that the admitted contraventions of s 31 of the National Credit Act did not occur and thereby contravened s 47(1)(a) of the National Credit Act.

87. At the time of the relevant conduct neither s 47(1)(a) nor s 47(1)(d) was a civil penalty provision.
88. ASIC seeks orders for pecuniary penalties in respect of the 260 admitted contraventions of s 31 of the National Credit Act.
89. ASIC also seeks declarations that:
- (a) NAB contravened s 47(1)(d) of the National Credit Act on 260 occasions by failing to comply with credit legislation; and
- (b) NAB contravened s 47(1)(a) of the National Credit Act on 260 occasions by failing to do all things necessary to ensure that the credit activities authorised by its ACL were engaged in efficiently, honestly and fairly.
90. For **each** of the 113 contraventions of s 31 of the National Credit Act which occurred between 23 August 2013 and 28 July 2015, the maximum penalty is \$1,700,000.
91. For **each** of the 147 contraventions of s 31 of the National Credit Act which occurred between 4 August 2015 and 29 July 2016, the maximum penalty is \$1,800,000.

E. AGREED FACTS RELEVANT TO PENALTY

Size of the contravening company

92. NAB is one of Australia's major banks. It provides a range of banking and financial products and services including consumer, business and institutional banking. NAB's consumer banking supports approximately five million customers.
93. NAB's Annual Financial Reports revealed its "net profit for the year" as follows:

Net profit for the year		
Year	Group \$m	Company \$m
2012	\$4,083	\$5,015
2013	\$5,460	\$5,038

2014	\$5,298	\$5,602
2015	\$6,392	\$5,940
2016	\$357	\$519 ¹
2017	\$5,288	\$4,975
2018	\$5,557	\$5,219

94. NAB profited from the Introducer Program.

95. In each year from 2013 to 2019, the number of loans drawn down which originated through the Introducer Program are set out in the following table. The table also identifies the total value of those loans, the amount of commission paid to Introducers and the total number of Introducers registered with NAB in the Introducer Program.

Year	No. of Loans	Value of loans \$	Commission Value \$	No. of registered Introducers
2013	6,797	2,829,026,005	14,636,731	Not documented
2014	11,119	5,433,940,748	29,206,696	4,808
2015	14,830	8,396,691,452	47,472,294	5,250
2016	13,214	7,378,954,109	42,914,918	7,826
2017	8,731	4,907,121,596	24,893,056	5,057 (at 15.01.17)
2018	6,616	3,708,257,376	18,056,877	1,424 (at 15.01.18)
2019	2,316	1,233,911,865	4,998,523	1,292 (at 07.01.19)

96. In each year from 2013 to 2016, the number of loans drawn down which originated through the Introducer Program and to which the admitted contraventions relate is shown in the table below. The table also identifies the total drawn down value of those loans and the amount of commission paid to Introducers in connection with those loans.

¹ This figure includes discontinued operations.

Year	No. of Loans to which Admitted Contraventions relate (total and %)	Draw down value of loans to which admitted contraventions relate (\$ and % of total loans)	Commission value of loans to which admitted contraventions relate (\$ and % of total commissions)
2013	10 (0.147%)	\$4,590,400 (0.162%)	\$20,197.76 (0.138%)
2014	29 (0.261%)	\$18,319,800 (0.337%)	\$82,367.12 (0.282%)
2015	150 (1.011%)	\$105,120,700 (1.252%)	\$558,370.01 (1.176%)
2016	71 (0.537%)	\$48,676,206 (0.660%)	\$268,468.78 (0.626%)

Nature and extent of the contravening conduct

97. The conduct giving rise to the breaches of s 31 and s 47 of the National Credit Act was also in contravention of NAB policy and the NAB Introducer Agreements.
98. The contraventions involved email communications between Relevant Introducers and NAB Bankers. There were 25 Introducers involved and 16 NAB Bankers involved.
99. Some examples of the conduct of the admitted contraventions the subject of these proceedings are set out below:
- (a) In relation to loan applications numbered AN00009953171 and AN00009953164 in Rows 2 and 3 of Schedule A, the Relevant Introducer Jie Carol Mao sent NAB Banker Adrian McVittie a completed Home Loan Application along with a covering email which identified that the consumer needed approval on an urgent basis to make an offer on a property.
 - (b) In relation to loan application numbered AN00009702950 in Rows 10 and 11 of Schedule A, the Relevant Introducer Yang Zhao sent NAB Banker Lei Zhou a completed, unsigned Home Loan Application, Payslip, Contract of Sale, Other

Property Documents, Receipt, Bank Statement/Utilities/Bills/Rates and Other Employment Documents. The email from the Introducer noted that the "signature page" for the Home Loan Application was missing and would be sent to the NAB Banker the following day;

- (c) In relation to loan application numbered RN00011005876, in Rows 64 and 65 of Schedule A, the Relevant Introducer Black Capital Pty Ltd provided NAB Banker Min Yu a completed Home Loan Application with a hand-written note on the covering page detailing additional information about the consumers and their financial position. The Relevant Introducer also sent via several emails to the NAB Banker a deposit receipt, a signed Contract of Sale, the signed signature page of a Bank Form, Payslips, a Bank Statement and Other Property Documents; and
- (d) In relation to loan applications numbered AN00010846625 and AN00010846633, in Rows 13 and 14 of Schedule A, the Relevant Introducer Yang Zhao sent to NAB Banker Lei Zhou a substantially completed Home Loan Application which included the loan requirements, the applicants' contact details, financial objectives, employment information and assets, but not their monthly income, and a completed Bank Form, Identification Documents, Utilities/Bills/Rates, Bank Statement, Contract of Sale, Tax Returns and Payslips;
- (e) In relation to loan application numbered AN00009886703, in Rows 115 and 116 of Schedule A, the NAB Banker Swina Hardiman sent via email to the Relevant Introducer Juliana Goutama ABN 33 285 788 731 T/A Yue & Goutama a request for the Introducer to provide the following information: Payslips, Other Employment Documents, Bank Statements, Utilities/Bills/Rates, Other Property Documents, Valuation Documents, a completed Home Loan Application and Identification Documents. The Introducer Juliana Goutama ABN 33 285 788 731 T/A Yue & Goutama subsequently sent via email to NAB Banker Swina Hardiman: Payslips, Other Employment Documents, Bank Statements, Utilities/Bills/Rates, Other Property Documents, a completed Home Loan Application and Identification Documents;
- (f) In relation to the loan applications referenced in column D of Rows 16, 17, 18, 104, 106, and 246 of Schedule A, the Relevant Introducer referenced in column K provided the NAB Banker referenced in column J with either a Contract of Sale or a transfer of land form. The same emailed document was relied upon in respect of the loan applications at Rows 16, 17 and 18;

- (g) in relation to the loan application referenced in column D of Row 42 of Schedule A, the NAB Banker referenced in column J provided the Relevant Introducer with a NAB "Customer Particulars Report" which is a document that records various information relating to a customer's Home Loan Application and requires the customer to sign an attestation that the information is correct;
- (h) In relation to loan applications referenced in column D of Rows 85, 108, 112, 142, 143 and 160 of Schedule A, the NAB Banker referenced in column J provided the Relevant Introducer with credit contract documents for the customer/s to sign as follows:
 - (i) in respect of the Credit Contract in Row 85: a letter containing an offer of credit titled "Acceptance of the credit offered by NAB", "Credit Contract Details – Home Loan", "Letter of Instruction – Loan Drawdown", "Mortgage", "Customer Particulars Report", "Direct Debit Request",
 - (ii) in respect of the Credit Contract in Row 108: "Letter of Instruction – Loan Drawdown", a letter containing an offer of credit titled "Acceptance of the credit offered by NAB", "Credit Contract Details – Home Loan", "Direct Debit Request", "Mortgage", "Irrevocable Authority to Complete – Off the Plan Purchase", "Customer Particulars Report",
 - (iii) in respect of the Credit Contract in Row 112: a letter containing an offer of credit titled "Acceptance of the credit offered by NAB", "Credit Contract Details – Home Loan", "Customer Particulars Report", "Mortgage", "National 100% Offset Application", "Direct Debit Request",
 - (iv) in respect of the Credit Contracts in Rows 142 and 143: a letter containing an offer of credit titled "Acceptance of the credit offered by NAB", "Credit Contract Details – Home Loan", "Letter of Instruction – Loan Drawdown", "Customer Particulars Report", "Mortgage", "Direct Debit Request",
 - (v) in respect of the Credit Contract in Row 160: a letter containing an offer of credit titled "Acceptance of the credit offered by NAB", "Credit Contract Details – Home Loan", "Letter of Instruction – Loan Drawdown", "Mortgage", "National 100% Offset Application", "Direct Debit Request", "Customer Particulars Report",

- (i) in relation to the loan application numbered RN00010688988, in Row 90 of Schedule A, the Relevant Introducer Yarrabank Consultant Pty Ltd ABN 30 146 579 142 sent an email to NAB Banker (Rebecca) Choon Lin Kow that stated:

"Client replied that he has no existing loan with NAB. The property with his father was sold this year"

In another email the Relevant Introducer requested:

"Please use account 14394-2652 as offset and repayment account for above client. Please set up the building insurance for owner occupied property for this client."

- (j) In relation to the loan applications referenced in column E of Rows 32, 70, 194 and 195 of Schedule A, the Relevant Introducer referenced in column K acted as an intermediary, and in one case provided credit assistance, to the customer/s referenced in columns B and C in relation to a prospective credit contract that NAB says was never entered into by the customer/s. Although NAB did enter into credit contracts with those customer/s (being the Credit Contracts referenced in column D) NAB does not admit that the Relevant Introducer's conduct in any of these cases related to those Credit Contracts.

100. NAB's policy during the Relevant Period was that once an Introducer referred a customer to NAB, the assigned banker was required to deal directly with the customer in respect to all aspects of the loan application. Its bankers were required to have an interview with any customer referred by an Introducer at which the customers' situation, needs and objectives were identified, and where applicable, a suitability assessment and lending application was commenced. They were also required to collect information and supporting documentation from the customer.
101. A number of the admitted contraventions exposed Borrowers to a risk that the relevant NAB Bankers would rely on information and documents provided by unlicensed Introducers rather than:
- (a) dealing directly with the Borrower, including meeting or interviewing him or her;
 - (b) making their own inquiries about the Borrower's requirements and objectives in relation to the loan, or their financial situation; and

- (c) taking reasonable steps to assess the veracity of information and documents regarding the Borrower's financial situation put forward in support of loan applications to determine whether loans were unsuitable for that Borrower.
102. The parties disagree about whether, and the extent to which, these risks eventuated. The parties may make submissions and lead evidence about the manifestation of risk.
 103. In these proceedings, insofar as NAB Bankers received some documents from, or sent some documents to, Introducers in circumstances where they might otherwise have received those documents from, or sent them to, Borrowers directly, NAB admits that the relevant NAB Banker did not deal directly with the Borrower in respect of the communication of those documents.
 104. On occasions, Relevant Introducers provided loan applications and supporting material, for non-resident lending. The proportion of non-resident lending made through the Introducer Program was high. The proportion of non-resident lending was 53% in April 2015 and 71% in April 2016.
 105. With respect to non-resident lending, it is generally more difficult for bankers to verify information regarding the income of foreign borrowers, where the circumstances require that information to be verified, than to verify the income of domestic borrowers. However there is no evidence that the involvement of Introducers in fact increased the difficulty of such verification in the cases the subject of this proceeding.
 106. In the three cases where fraudulent payslips were presented:
 - (a) Borrowers were exposed to the possibility that the loans they sought would be unsuitable for them, in which case they might face difficulties in servicing the loans and therefore financial hardship; and
 - (b) it is possible that Introducers were responsible for causing or encouraging the use of fraudulent payslips, but there is no evidence that this was so in the cases the subject of this proceeding; if this did occur, it is possible the Introducer was incentivised to do so by the prospect of an Introducer fee.

Distribution of contraventions

107. All of the admitted contraventions are accounted for by 26 Relevant Introducer / NAB Banker combinations, involving 16 NAB Bankers and 25 Relevant Introducers, as shown in the following table:

NAB Banker	Relevant Introducer	Number of loan applications subject of the proceeding in which banker / Introducer combination involved	Percentage	Cumulative percentage
(Richard) Yinghan Yang	Qixia Ma	63	24.23	24.23
Lei Zhou	Yang Zhao	33	12.69	36.92
Adrian McVittie	Dragon Australia Pty Ltd	23	8.85	45.77
Lei Zhou	Wise Capital Pty Ltd	20	7.69	53.46
(Ryan) Yufeng Liu	John Ha	18	6.92	60.38
Swina Hardiman	Juliana Goutama	15	5.77	66.15
(Rebecca) Choon Lin Kow	Jalin Realty International Pty Ltd	13	5.00	71.15
Adrian McVittie	Jie Carol Mao	9	3.46	74.62
(Daniel) Kefu Jin	RH Global Pty Ltd	8	3.08	77.69
(Rebecca) Choon Lin Kow	Yarrabank Consultant Pty Ltd	7	2.69	80.38
(James) Zhengtao Yi	Tianyi Huang	5	1.92	82.31
(Linda) Woo-Yung Jung	Inline Business Consulting Pty Ltd	5	1.92	84.23
Min Yu	Black Capital Pty Ltd	5	1.92	86.15
(Emma) Zixu Zhao	Oriental land Investment Pty Ltd	4	1.54	87.69
(James) Zhengtao Yi	Haven Media Pty Ltd	4	1.54	89.23
Benjamin Chen	Ausco Pty Ltd	4	1.54	90.77

NAB Banker	Relevant Introducer	Number of loan applications subject of the proceeding in which banker / Introducer combination involved	Percentage	Cumulative percentage
(Daniel) Don Suk Kim	SJ Global Pty Ltd	3	1.15	91.92
(Doris) YingYing Zhu	Aire Group Pty Ltd	3	1.15	93.08
(Doris) YingYing Zhu	(Robin) Libin Yang	3	1.15	94.23
(Emma) Zixu Zhao	Xujun Shi	3	1.15	95.38
Rabih Awad	Zaia Dawood	3	1.15	96.54
(Daniel) Kefu Jin	Xinghui Investment Pty Ltd	2	0.77	97.31
(Daniel) Kefu Jin	SZ Money Trust	2	0.77	98.08
(Diana) Xiaozhou Zhou	Qixia Ma	2	0.77	98.85
(Diana) Xiaozhou Zhou	EMI International Pty Ltd	2	0.77	99.62
(Daniel) Don Suk Kim	Anggrekla Alex	1	0.38	100.00
TOTAL		260	100	100

Cases where multiple loans were provided to the same Borrower/s

108. Annexure A to this Statement of Agreed Facts identifies, by reference to the rows in Schedule A, cases where more than one loan was made to the same Borrower or Borrowers (counting joint Borrowers as a single Borrower for this purpose and referring to them as Borrower/s) and a separate contravention has been admitted for each loan.
109. As recorded in Annexure A, 84 of the loans identified by ASIC in Schedule A are cases where:
- (a) the Borrower obtained two or more loans from NAB;

- (b) NAB has admitted contraventions in relation to each of the loans to the same Borrower/s; and
 - (c) ASIC relies on the same email correspondence in relation to each of the loans to the same Borrower/s.
110. As recorded in Annexure A, 10 of the 84 loans relate to cases where the Borrower/s obtained two loans in order to split a loan into fixed and variable interest facilities.
111. As recorded in Annexure A, 68 of the 84 loans relate to cases where the Borrower/s obtained two loans. Of those cases:
- (a) in 64 cases NAB considered the loans together in making an assessment as to whether the loans were unsuitable for the Borrower/s; and
 - (b) in 54 cases the Borrower/s applied for both loans through a single loan application (and NAB therefore considered the loans together in making an assessment as to whether the loans were unsuitable for the Borrower/s).
112. As recorded in Annexure A, 12 of the 84 loans relate to cases where the Borrower/s obtained three loans. In all 12 cases NAB considered the loans together in making an assessment as to whether the loans were unsuitable for the Borrower/s. In five of the 12 cases a Borrower applied for two or three loans through a single loan application (and NAB therefore considered the loans together in making an assessment as to whether the loans were suitable for the Borrower).
113. As recorded in Annexure A, four of the 84 loans relate to a case where the same Borrower obtained four loans. NAB considered the four loans together in making an assessment as to whether the loans were suitable for the Borrower. The Borrower applied for two of the loans through a single loan application (and NAB therefore considered the loans together in making an assessment as to whether the loans were suitable for the Borrower).
114. The total number of Borrower/s to whom loans connected with the 260 admitted contraventions of s 31 of the National Credit Act were made is 212.

Circumstances in which the admitted contraventions took place

Deficiencies in processes and controls for the Introducer Program

115. Weaknesses in the following processes and controls during the Relevant Period contributed to the admitted contraventions of the National Credit Act the subject of these proceedings:
 - (a) Introducer selection;
 - (b) Introducer on-boarding;
 - (c) Introducer monitoring;
 - (d) banker training, particularly regarding the "spot and refer" requirement; and
 - (e) controls to detect non-compliance by Introducers and bankers with NAB's "spot and refer" policy.
116. The deficiencies in processes and controls for the Introducer Program during the Relevant Period were identified by NAB and addressed by the measures identified between paragraphs 250 to 260 below.
117. Deficiencies in relation to Introducer on-boarding that contributed to the admitted contraventions were:
 - (a) There were no requirements for Introducers to be from particular industries, aligned with the provision of credit activities. All of the Relevant Introducers involved in the admitted contraventions except for two were from industries aligned with the provision of credit activities, such as real estate, accountancy and investment advisory. As to the two Relevant Introducers from non-aligned industries, one ran a computer shop and another's business was listed as "business service and architect". In addition, during the Relevant Period there was an Introducer who carried on business as a gymnasium and another Introducer who carried on business as a tailor (neither of whom were involved in the admitted contraventions the subject of these proceedings).
 - (b) There were no requirements that Introducers have any particular qualifications or training.
 - (c) There were no uniform processes for the "on-boarding" of Introducers and this was generally done by the individual bankers who expected to receive customer

referrals from them, meaning that there was no segregation of duties to protect against fraud and/or collusion and ensure adherence to legal and NAB policy requirements.

118. Each of the three NRPs NAB engaged was required, under its agreement with NAB, to perform due diligence on individual Introducers affiliated with it. However, there was no agreed minimum level of due diligence. Further there was limited oversight by NAB of the due diligence performed by NRPs, and no consequences for NRPs if due diligence was not performed effectively.
119. NAB policy required that Introducers who proposed to refer customers to multiple lenders or were not registered for GST be registered with an NRP. There was evidence to suggest that bankers were referring Introducers to NRPs due to their easier and quicker on-boarding processes and capability gaps. In the 2015 financial year 35% of NAB's Introducers were affiliated with an NRP.
120. KPMG provided a draft report to NAB dated 15 January 2016 in relation to an investigation into the conduct of certain bankers and associated Introducers in the Greater Western Sydney (**GWS**) local area market (**KPMG January 2016 Report**). It indicated that one of the control issues identified through the investigation involved bankers accepting applications and supporting information from Introducers and not meeting customers face-to-face.

Training provided to bankers regarding the Introducer Program

121. At the time of the admitted contraventions no formal training was provided to frontline bankers regarding the Introducer Program, and there was no oversight or monitoring to ensure that frontline staff understood the requirements of the program, including limitations on what information Introducers could provide.

Oversight of the Introducer Program

122. During the Relevant Period there was no single point of accountability for the Introducer Program across NAB. There was no centralised oversight for Introducer on-boarding, ongoing due diligence, relationship management or monitoring of Introducer or banker compliance with the legal and policy requirements of the Introducer Program. Although there was an "Introducer Channel Team" it did not have an end-to-end awareness of the processes applicable to the channel.
123. Investment in the systems and processes governing the Introducer Program had not kept up with the growth of the Program, in that the last significant investment in the

Introducer system had been made over 10 years prior to the discovery and reporting on conduct issues in GWS in December 2015 even though:

- (a) the Introducer Program had grown significantly between 2014 and 2015, including by 30% in 2015; and
 - (b) in the 2015 financial year, the Introducer Program contributed \$12.185b in drawdowns across the bank. In the retail sector, a contribution of \$6.545b was made, representing 27% of all drawdowns.
124. There were shortcomings in the controls used in respect of the Introducer Program to ensure that NAB's policies were followed and to detect conflicts of interest or fraud.
125. There was a lack of oversight of banker understanding of, and adherence to, introducer on-boarding and ongoing management requirements. Through investigations into the Introducer Program (detailed further below) NAB found that some bankers had taken action to work around NAB's policies and processes.
126. Oversight and monitoring of the Introducer Program was constrained by limitations with the Introducer database (such as the ability to only record one name per entity) and the lack of automated interfaces between data from key systems used for reporting. There were no formalised or documented validation controls or independent review processes.
127. There was inadequate monitoring and reporting of Introducer activity.
128. The back-office on-boarding process performed by the Enterprise Services and Transformation Commissions Team (**EST**) did not include checks on matters such as:
- (a) whether the required face-to-face interview with the Introducer was performed; and
 - (b) whether the commission rate was correct (rates varied between home lending, business lending products, and personal loans).
129. The oversight of interactions between bankers and Introducers was made more difficult by the fact that:
- (a) interactions between Introducers and bankers were often not recorded in NAB's lending systems; and
 - (b) consent forms for Introducers or customers were not held or were post-dated, undated or had date discrepancies.

130. The investigations undertaken by NAB in relation to loans generated through the Introducer channel revealed deficiencies with key controls including for the:
- (a) detection of fraud;
 - (b) management of conflicts of interest; and
 - (c) detection of non-compliant behaviour.
131. Existing monitoring and reporting procedures did not effectively feed-back to bankers where compliance improvements were required. In addition, at an enterprise level, monitoring and reporting was not used to build a holistic view to enable the early identification of emerging issues including those involving banker misconduct and fraud.
132. The design, operation and management of controls across the whole loan process was inadequate to prevent recurring misconduct and fraud events because overall control effectiveness was reliant on banker behaviour. Controls were not designed to effectively and consistently identify instances of intentional misrepresentation of information.

Identification of misconduct in 2015

133. On 14 September 2015 and 15 October 2015, NAB received separate whistle-blower reports regarding possible misconduct by bankers within branches in GWS. The first whistle-blower report referenced one branch manager and two bankers and the second whistle-blower report referenced six branch managers and five bankers.
134. In October 2015, following these anonymous calls, NAB's Forensic Services investigation team conducted an investigation in relation to the allegations. The investigation incorporated another open investigation by NAB Forensic Services that had been commenced after April 2015 when two Comprehensive Assurance Reviews into a NAB retail branch in GWS uncovered concerns relating to Introducer files and Star Sales Incentive discrepancies, involving a branch manager in GWS.
135. On 29 October 2015, NAB convened a Credit Investigation Working Group that began to meet twice a week to assess new evidence, discuss the outcomes of banker interviews and determine the application of appropriate consequence management.
136. These investigations initially encompassed 13 bankers (**13 GWS Bankers**) and eight Introducers from GWS (**GWS Investigation**).
137. By letter dated 11 December 2015, NAB engaged KPMG to conduct an investigation into allegations arising in relation to bankers and Introducers in GWS, which also initially

encompassed the 13 GWS Bankers and eight Introducers from GWS (**KPMG GWS Investigation**).

138. KPMG reported in the KPMG January 2016 Report that it had identified 11 additional bankers and 33 additional Introducers for potential further investigation in relation to their activities in the GWS local area market. Subsequently, KPMG's final report dated 6 June 2016 identified two additional bankers from GWS for further investigation, bringing the total number of additional GWS bankers to 13. The GWS Investigation was expanded in accordance with KPMG's recommendation.
139. By December 2015 NAB had determined through the GWS Investigation that, on occasions, the Introducers investigated had been going beyond the "spot and refer" role and the bankers investigated had accepted documents directly from Introducers. An internal NAB review identified instances in GWS where Introducers the subject of the GWS Investigation had performed broker or banker activities for and on behalf of clients, in breach of NAB policy.
140. Three of the loans that are the subject of these proceedings in respect of which NAB has admitted contraventions were processed by a NAB Banker who NAB investigated through the GWS Investigation.
141. In addition, a number of NAB senior executives were aware by December 2015 from a report prepared by the NAB Group Chief Risk Officer (**Group CRO**) in November 2015 that the GWS Investigation into suspect transactions in the GWS local area market had identified control breakdowns in Introducer procedures resulting in inappropriate or potentially fraudulent payments to Introducers and control breakdowns in income verification procedures for lending purposes. The report recorded that two bankers had been terminated, a branch manager had been suspended and investigations were continuing into six other bankers or branch managers. It was provided to the Group Risk Return Management Committee and Joint Principal Board Risk Committee / Remuneration Committee for meetings in December 2015.
142. The Group Risk Return Management Committee was NAB's highest management risk committee, sitting under the Board Risk Committee, and is an executive level Committee. Its members at the time included NAB's Group CEO, Group Treasurer, Group Executive Business Banking, Group Executive Finance and Strategy, Group Chief Risk Officer, Group Executive Product and Markets, Group Executive NAB Wealth, Group Executive, People, Communication and Governance, Group Executive Enterprise Services and Transformation, Group Executive Personal Banking.

143. An end-to-end diagnostic of the Introducer Channel completed in December 2015 by NAB's Business Improvement team found that the process for "on-boarding Introducers was deficient".
144. By December 2015, the task force set up by NAB's Personal Bank Risk function to investigate these issues (**Task Force**) had uncovered two additional cases in New South Wales and South Australia, respectively, involving bankers who had engaged in misconduct involving Introducers.
145. A memorandum dated 11 January 2016 prepared by NAB's Chief Risk Officer for Personal Banking for NAB's Personal Banking Risk Management Committee and Group Risk Return Management Committee (**January 2016 Risk Memorandum**) indicated that the GWS Investigations had revealed:
 - (a) *"The targeting, reporting and review process of on-boarding Introducers, monitoring their activities and commissions was found to be inadequate, across both Personal Bank and Business Bank, and had not been enhanced in line with the exponential growth in the channel."*
 - (b) *"the data quality of all relevant reports and the distribution of this information was not sufficiently robust to enable visibility and oversight by relevant stakeholders."*
 - (c) a localised systemic risk culture issue with some bankers colluding to take advantage of gaps in NAB's end-to-end loan process and the involvement of Introducers in that conduct; and
 - (d) that several bankers had engaged in inappropriate dealing with Introducers (including one non-registered Introducer) creating false documents and accepting cash payments from Introducers.
146. The January 2016 Risk Memorandum noted that similar risk management breakdowns had been investigated and found outside of the GWS area, in South Australia, Victoria and Queensland, but also noted that they did not appear material.
147. The members of the Personal Banking Risk Management Committee at the time included the Group Executive Personal Banking, Chief Risk Officer Personal Banking, the Executive General Manager Digital and Direct Banking, the Executive General Manager Consumer Lending, Executive General Manager Marketing, Executive General Manager Micro and Small Business, Executive General Manager Business Management, Executive General Manager Retail, Executive General Manager Growth

Partnerships, General Manager People, Personal Banking and General Manager Management Assurance.

148. A report to NAB's Significant Event Review Panel (**SERP**) dated 20 January 2016 stated that "some elements" of the conduct identified through the GWS investigation had been previously identified by the bank in relation to specific bankers and/or Introducers. The report referenced as an example the two unrelated cases identified in New South Wales and South Australia.
149. At all material times the SERP had responsibility for determining whether there existed a significant breach or likely breach that NAB was required to report to ASIC pursuant to NAB's obligations as a financial services licensee under s 912D of the *Corporations Act 2001* (Cth) (**Corporations Act**).
150. The GWS investigation also identified that some of the bankers involved lacked an understanding of, and the ability to assess, warning signs of possible fraudulent applications, such as inflated salaries, valuations or rental appraisals, and thus accepted loan applications and supporting documentation without regard for reasonableness.
151. The GWS investigation also identified that one banker had assisted to prepare false payslips.

Retail Assurance Review and Project Beacon

152. In the 2016 financial year, as a result of NAB's early findings regarding misconduct in connection with its Introducer Program, NAB's Retail Assurance team conducted a review for the purposes of identifying instances in which Introducers and bankers had failed to comply with the "spot and refer" model (**Retail Assurance Review**).
153. The Retail Assurance Review occurred around June to July 2016. The bankers the subject of the review were selected primarily on the basis of having the highest Introducer commission volumes. Twenty eight bankers were located in New South Wales / Australian Capital Territory and 16 bankers were located in Victoria. The review focussed upon six months of emails from 1 December 2015 to 31 May 2016 for each of the 44 bankers. All bankers tested had received emails from Introducers which were not consistent with the "spot and refer" model.
154. In July 2016, NAB's Retail Assurance team submitted a memorandum to NAB's Personal Bank Risk Management Committee which reported that all bankers tested in

the Retail Assurance Review had received emails from Introducers that were not consistent with the "spot and refer" model.

155. In around July 2016, as a result of the findings of the Retail Assurance Review, NAB's Business Bank Management Assurance Team initiated a review with the objective of determining whether similar instances of non-compliance with the "spot and refer" model that had been uncovered in the Retail Bank were also present in NAB's Business and Private Banking Division (**Business Assurance Review**) and whether Introducers who had been exited from the Retail Bank were now operating in the Business and Private Banking division. The Business Assurance Review involved 91 bankers from NAB's Business and Private Banking division who were selected by applying a range of criteria, including:
 - (a) bankers with high levels of introducer-related activity based on either the number or value of loans to customers referred to the banker by Introducers;
 - (b) bankers with 10 or more 'fraud alerts' issued on customers referred by Introducers;
 - (c) bankers connected to Introducers who had subsequently been terminated for breaching NCCP (e.g. "spot and refer" obligations) and therefore NAB's agreement;
 - (d) bankers from specific Business Banking Centres (**BBC**) nominated by Business Banking Management Assurance. Bankers from the nominated BBCs were selected based on high introducer activity or associations with a terminated introducer;
 - (e) bankers who had processed loan applications where the customer's address matched the introducer's address;
 - (f) bankers who had processed loan applications where the introducer was also the signatory on the customer's account;
 - (g) a sample of bankers who had received high incentive payments in connection with loans referred by Introducers (at least \$50k p.a.) or who were associated with Introducers who had received high commission payments (at least \$30k p.a.), and
 - (h) bankers who were identified progressively based on findings linking them with bankers who were already subject to the investigation.

156. The Business Assurance Review also identified instances of non-compliance with the "spot and refer" model by some of the bankers involved.
157. All of the NAB Bankers and Relevant Introducers identified in these proceedings, other than Rabih Awad (**Mr Awad**) (who had been identified through the GWS Investigation), were identified by either the Retail Assurance Review or Business Assurance Review.
158. In July 2016, in response to the findings of the Retail Assurance Review, NAB initiated an investigation known as "**Project Beacon**". It was primarily focused on identifying systemic factors contributing to the misconduct and identifying and implementing solutions to prevent their recurrence. An initial aspect of Project Beacon involved analysis of the conduct of the 44 retail bankers the subject of the Retail Assurance Review and 72 associated Introducers. This aspect of Project Beacon was later expanded to include analysis of the conduct of the 91 business bankers the subject of the Business Assurance Review and associated Introducers.
159. Project Beacon considered all but one of the NAB Bankers who originated the loans the subject of these proceedings.
160. A memorandum to the SERP dated 19 July 2016 (**July 2016 SERP Memorandum**) set out a summary of the findings of the Retail Assurance Review, including that:
 - (a) all of the 44 bankers the subject of the Retail Assurance Review had utilised their NAB email addresses in a way that was not aligned with NAB policy;
 - (b) 23 had initially been identified as higher concern due to consistent non-adherence to the NAB Information Security Policy and had been reviewed further;
 - (c) one banker had been terminated to date as a result of a separate investigation;
 - (d) in relation to 22 of these bankers:
 - (i) 19 bankers received verification documents from Introducers beyond the spot and refer model;
 - (ii) 11 sent confidential information to a third party;
 - (iii) 16 received identification documents from the Introducer relating to the application;

- (iv) 14 received signed application or consent documentation from an Introducer;
 - (v) seven sent contracts to be executed (including one with only the last page);
 - (vi) three received loan documents from an Introducer;
 - (vii) two received the signed pages of contracts from Introducer;
 - (e) further assessments were to occur of the remaining 21 bankers; and
 - (f) issues had been identified with 62 Introducers.
161. The memorandum to the SERP dated 19 July 2016 stated that NAB Personal Banking had established Project Beacon and was conducting further investigations into the issues identified, including whether there had been any impact to customers as a result of the sharing of documentation between bankers and Introducers.
162. Seventy four of the Introducers involved in dealings with the bankers investigated in Project Beacon had introduced \$1.59 billion of loans to NAB over the 12 months to June 2016, in the following areas: Sydney CBD \$397m (which represented 38% of NAB's total Introducer flow in that market); Inner West \$369m (28% of NAB's total Introducer flow in that market); Melbourne CBD \$192m (25% of NAB's total Introducer flow in that market); North Shore \$160m (25% of NAB's total Introducer flow in that market) and GWS \$67m (17% of NAB's total Introducer flow in that market).
163. Through Project Beacon, NAB continued to investigate instances of misconduct and policy non-compliance in the Introducer Program that occurred after July 2016 and take action against employees and Introducers. This resulted in further terminations of bankers and Introducers and the imposition of conduct gates on bankers (the significance of conduct gates is identified in paragraph 227).
164. As the GWS Investigation and Project Beacon each progressed, similarities between the investigations became clear. NAB established Project Winnow in around October 2016 to bring the GWS and Project Beacon investigations together under a single governance structure. The Outcome Statement for Project Winnow was "to make good to our customers where they have suffered loss as a result of secured consumer lending misconduct and have on-going confidence that we do not have systematic origination conduct issues across the Bank."

Termination of Introducers

165. NAB's internal audit of the Introducer Program in late 2015 to early 2016 also revealed that:
 - (a) there was a lack of ongoing due diligence to check if active Introducers become undesirable against the CARE List (a list of third parties NAB has elected not to do business with) or ASIC's banned and disqualified register; and
 - (b) the Introducer Program's termination processes were not defined and documented. The process to terminate Introducers was highly manual and there were instances where terminated Introducers were still listed as active in the Introducer database.
166. KPMG noted in the KPMG January 2016 Report that a deleted Introducer was able to re-register through Tomorrow Finance, one of the NRPs identified in these proceedings, immediately after deletion.

Whether NAB had a corporate culture conducive to compliance

Banker incentive payments

167. During the Relevant Period, NAB had an incentive program, known as the Star Sales Incentives (**SSI**) Plan or Scheme. Under the SSI Scheme branch bankers and mobile bankers were rewarded on the basis of the number of loans they sold. Branch Managers were rewarded based on the sales performance of those they managed.
168. In addition, bankers were paid the same SSI whether a loan was introduced to NAB through an Introducer or another NAB employee.
169. All of the NAB Bankers involved in these proceedings received payments under the SSI scheme.
170. In relation to the SSI scheme the combination of financial incentives and inadequate controls in respect of the Introducer Program made it more difficult for NAB to prevent and detect fraud from loan applications originating through the Introducer Program.
171. It is possible that this increased the risk or incidence of unsuitable loans being made based on fraudulent or unverified information.
172. The parties disagree about whether, and the extent to which, these risks eventuated. The parties may make submissions and lead evidence about the manifestation of risk.

173. The only evidence of fraud in respect of the loans the subject of these proceedings is that set out in paragraphs 66 to 83 above where the loan application was supported by fraudulent payslips.
174. A report dated November 2015 prepared by the Personal Banking Chief Risk Officer and Management Assurance team for the Personal Banking Risk Management Committee stated that:
- (a) the risk profile for the Personal Banking division had been impacted by concerns around a number of suspect transactions by a number of bankers in New South Wales;
 - (b) the issues had been highlighted by a whistle-blower, and the Personal Banking Risk team had initiated a Task Force to investigate potential collusion, fraud and banker conduct within a web of inter-related activities; and
 - (c) the Task Force would continue to investigate whether there is appropriate alignment of remuneration, incentives and risk outcomes.
175. In around late November to early-December 2015 the Task Force reported that one of the early insights from the review of the 12 bankers in Western Sydney subject of the Task Force's investigation was that the remuneration structure (SSI) was driving inappropriate behaviours. The report referred to "sales cultural issues potential duress and internalised behaviours."
176. An aspect of the KPMG GWS Investigation involved a review of the conduct issues identified in GWS to identify control weaknesses and possible enhancements. In the KPMG January 2016 Report, KPMG recommended that NAB review the metrics/KPIs which triggered payments under its incentive program.
177. Following a broader "Enterprise Performance and Rewards" review NAB implemented a new incentive program for bankers (and other staff) with a reduced focus on sales performance. This is addressed further in paragraph 270 below.
178. In around April 2016 as part of ongoing assurance activities NAB's Personal Bank Risk Performance and Insights team conducted a themed review (**Risk Culture Review**) to assess adherence to credit policy and quality of loans assessed by the top 30 performing bankers in NAB's Retail division. A report dated May 2016 to NAB's Personal Bank Risk Management Committee (**May 2016 Memorandum**) set out the following findings of the Risk Culture Review:

- (a) the majority of the applications (71%) had been re-processed three or more times, suggesting either gaps in banker capability or the loan submission being amended to generate a more favourable outcome;
 - (b) 30% of applications relied on overstated rental appraisals, suggesting a lack of responsibility in validating and verifying customer information. There were also several applications with discrepancies in the payslips held on file;
 - (c) there was a common lack of regard for credit assessor's decisions, demonstrated by bankers ignoring warnings and advice from the credit team and continuing to progress and escalate applications;
 - (d) four applications were stopped by NAB's Application Fraud Team requesting further identification and in these cases the bankers did not reply or appear to try and comply with the requests but cancelled the applications and took no further action; and
 - (e) the majority of the top performing bankers the subject of the review (73%) were Mobile Bankers with a large proportion of their business coming from higher risk channels and customer segments such as Introducer referrals and foreign applicants.
179. The May 2016 Memorandum concluded in relation to the cohort of bankers the subject of the Risk Culture Review that the review indicates and supports "the prioritisation of sales at the expense of sound risk management" as evidenced by the findings listed above. It also set out the following observations arising from the findings:
- "while these sales practices occur, not only do they increase the credit risk but also the potential risk of facilitating terrorism financing, money laundering or other criminal activities through false or misleading applications."*
180. The memorandum also noted:
- "Another credit observation is the rise in the number of applications escalated multiple times, which has been seen in both Retail and Broker Partnerships. The concerning factor is that some of these cases had serious and clear credit risks yet were still escalated through numerous channels and supported by Regional Executive Retail's and Retail Distribution Manager's. This again demonstrates a lack of regard for Credit and shows that sales is the focus at the expense of prudent lending."*

181. The Risk Culture Review related to risk culture issues across NAB's Retail / Personal Banking division generally. Further:
- (a) the only link made in the May 2016 Memorandum between the Introducer Program and the deficiencies identified in the Risk Culture Review is an observation that the majority of the top performing bankers the subject of the review were Mobile Bankers with a large proportion of their business coming from higher risk channels "such as" Introducer referrals; and
 - (b) Appendix 4 to the May 2016 Memorandum stated that nine of the 107 cases referred to involved a "Failure to apply all Introducer controls."
182. A report prepared in May 2016 by NAB's HO Operations and Credit Performance and the Chief Risk Officer for Personal Banking to the Personal Banking Risk Management Committee recommended that "In performance appraisals, equal weighting be given to prudent lending KPIs as is given to SSI points. This could involve scrapping the SSI scheme if it is felt that SSI continues to drive sub-optimal behaviours."
183. A memorandum dated 7 June 2016 to the Group Risk Return Management Committee summarised the findings from key reviews undertaken on the Introducer Channel, including that banker incentive and Introducer commission structures were "potentially not driving the right behaviours", with high individual rewards and 1:1 relationships with Introducers increasing the possibility of undesirable behaviour. It noted that one of the actions that was underway was to address banker incentives as part of the broader Enterprise Performance and Rewards review.

Introducer payments

184. The upfront commission NAB paid to an introducer was, in many cases, equivalent to the upfront commission NAB paid to a broker for referring the same type of loan. Generally, however, brokers also received trail commissions which meant that brokers received higher total commissions than Introducers. In the case of the NRP Capital Growth, the Capital Growth Agreement provided for trail commissions in the case of one loan product - "HomeSide Lending Branded Personal Products" - until 18 August 2014.
185. The total value of commissions received by the Relevant Introducers involved in these proceedings from the 260 Credit Contracts identified in Schedule A was \$929,403.67. The commissions ranged between \$29,700.00 and \$88.00 with an average of approximately \$3,500.

186. The existence of a commission based financial reward for providing potential customers' names and contact details to NAB Bankers, which could be substantial, provided an incentive to Introducers, which increased the risk of breaches of ss 29 and 31 the National Credit Act including as identified in these proceedings.

Whether the contraventions arose from the conduct of senior managers or at a lower level

NAB Employees processing loans the subject of these proceedings

187. Twenty six of the admitted contraventions of s 31 of the National Credit Act were the result of conduct of NAB Bank Managers. Of the NAB Bankers involved in these proceedings, one was a Business Banking Manager; one was a Private Client Manager; one was a Branch Manager and one was a Senior Business Banking Manager.
188. Otherwise, the direct dealings with Relevant Introducers that constituted the admitted contraventions of s 31 of the National Credit Act were engaged in by NAB Bankers at lower levels including Mobile Bankers and a Banking Adviser.
189. Consequence management was applied to the Regional Executive responsible for the GWS region to reflect his accountability as a leader of the region despite there being no evidence to implicate his involvement in the fraudulent or misconduct activity.

Senior executive and board knowledge of misconduct in the Introducer Program

190. Compliance with ACL conditions, including obligations under the National Credit Act, requires ongoing oversight by the board and senior management. There were deficiencies in such oversight in respect of the Introducer Program.
191. During the Relevant Period, reports to, or reviewed by, a number of NAB senior executives identified concerns regarding the conduct of some bankers involved in the Introducer Program, including that some NAB bankers were relying on some Introducers for more than just referring the names and contact details of prospective customers and a brief description of the purpose of the loan. These reports related to investigations regarding banker conduct in the GWS region, unless indicated otherwise below. In particular:
- (a) In around late November to early December 2015 the Task Force established by NAB's Personal Banking Risk team to assist with the GWS Investigation prepared a summary of its initial investigative findings relating to the conduct of 12 Bankers (who worked across eight locations in Western Sydney) in their

dealings with four associated Introducers (**December 2015 Task Force Summary**). The summary stated that the "introducers were performing banker/broker activities for and on behalf of clients".

- (b) the KPMG January 2016 Report regarding the KPMG GWS Investigation stated that "Introducer rules are not clearly known by bankers" and "Bankers accept applications and supporting information from introducers and do not meet customers face-to-face".
- (c) a memorandum dated 5 January 2016 for the SERP meeting to be held on 20 January 2016 (**January 2016 SERP Memorandum**) stated that the GWS Investigation was ongoing but that the outcomes to date had raised concerns about acceptance of documents directly from introducers;
- (d) NAB sent to ASIC a breach report dated 3 February 2016 that was signed by the Executive General Manager of NAB Retail (**February 2016 Breach Report**). The report was titled "National Australia Bank Limited: Banker Investigation: Western Sydney" and stated that its purpose was to update ASIC on the matter of banker investigations in GWS. The report stated that "while the investigation remains ongoing, the outcomes to date have identified concerns including possible collusion, fraudulent documentation, acceptance of documents directly from introducers or a non-paid referrer (instead of directly from customers only)".

- 192. In addition, during the Relevant Period a memorandum dated 7 June 2016, prepared by the Executive General Manager Retail and supported by the Group Executive Personal Banking, was submitted to the Group Risk Return Management Committee. The memorandum provided a summary of the high level findings of three reviews into the Introducer channel, including a finding of *"Inconsistent and potentially ineffective application across the enterprise of ... regulatory requirements, due to varying levels of understanding (ie. operating under NCCP Exemption to provide brief customer details - 'Spot & Refer')."* The memorandum also indicated that the initial findings *"show that the Introducer channel is a viable and commercially solid source of business for NAB and one that will be strengthened by the actions resulting from the risk reviews undertaken."*
- 193. After the Relevant Period, from around July 2016, reports to or reviewed by a number of NAB senior executives highlighted that the conduct issues relating to the Introducer Program were not confined to the GWS region and other isolated cases. The following reports to or reviewed by a number of NAB senior executives after the Relevant Period identified that some bankers outside of the GWS region were relying on some

Introducers for more than just referring the names and contact details of prospective customers and a brief description of the purpose of the loan:

- (a) a memorandum dated July 2016 to the Personal Bank Risk Management Committee summarised the findings of the Retail Assurance Review. The report noted that all 44 of the retail bankers tested had received emails from introducers that were not consistent with the "spot and refer" model;
- (b) the July 2016 SERP Memorandum described in paragraphs 160 and 161 above;
- (c) a second breach report NAB sent to ASIC dated 31 August 2016 and signed by the Chief Customer Officer, Consumer Banking and Wealth Management (**August 2016 Breach Report**) reported the results of the Retail Assurance Review generally in the terms set out in the July 2016 SERP Memorandum;
- (d) a presentation to the first meeting of the Project Winnow Steering Committee on 27 October 2016 (**October 2016 Project Winnow Presentation**) referred to inconsistent and ineffective application across the enterprise of Regulatory requirements due to varying levels of understanding (ie. operating under NCCP Exemption to provide brief customer details - "Spot & Refer").

- 194. The above reports, from late 2015 onwards, identified to a number of NAB senior executives a number of control breakdowns, governance gaps and lack of oversight in the Introducer Program. A number of senior executives were informed that bankers had varying levels of understanding, an inconsistent application of regulatory requirements, including the spot and refer policy targeted at ensuring compliance with s 31 of the National Credit Act. A number of NAB senior executives were also aware from these reports that there were bankers in GWS who had been taking advantage of the lack of controls in the Introducer Program.
- 195. The findings of NAB's investigations were considered on an almost monthly basis from December 2015 at the Personal Banking Risk Management Committee and Group Risk Return Management Committee. The Board Risk Committee also received a high-level summary of some findings and updates regarding the impact of the findings on NAB's risk appetite.
- 196. During the Relevant Period, the Board Risk Committee was informed:

- (a) by 4 November 2015, that an issue had been very recently identified relating to potentially fraudulent payments to Introducers and that further detail would be provided to the Committee in December;
- (b) by 15 December 2015, that:
 - (i) fraud investigations had been initiated via the NAB whistle-blower Program and NAB's Fraud Investigations team had engaged the Personal Banking Risk team to review suspect transactions within a local area market in NSW;
 - (ii) this joint activity had identified control breakdowns in Introducer procedures for personal and home loans, income verification procedures and inappropriate or potentially fraudulent payments to Introducers identified in the local area market;
 - (iii) the investigations to date had resulted in two bankers being terminated and one branch manager being suspended, with investigations continuing in relation to six other NAB employees;
 - (iv) sales incentives had been suspended for all bankers under investigation and the Regional Executive responsible for the region;
 - (v) the Group Chief Risk Officer had recommended that immediate consideration be given to creating a Task Force to investigate the initial concerns (this recommendation had in fact been implemented by the date the report was provided to the Board Risk Committee);
 - (vi) in other separate and unconnected matters, two Personal Banking staff (one in each of Victoria and South Australia) had been suspended and/or terminated as a result of potential fraud in relation to Introducers;
- (c) the potentially fraudulent payments referred to in subparagraph (a) related to the GWS local area market, and the "local area market in NSW" referred to in subparagraph (b) was the GWS local area market;
- (d) by 1 March 2016, that ASIC had notified NAB that it had opened an investigation into the GWS Introducer Program matter. The Board had been provided with a prior paper providing an overview of the events identified within the GWS local area market, noting that the investigation revealed that "several bankers were involved in inappropriate dealings with Introducers, which

included the creation of false documents and accepting cash payments from Introducers";

- (e) by 7 June 2016, that NAB's Second-line Risk function recommended expansion of the review of the Introducer Program issued in GWS to include other channels to come up with a review of sales and remuneration practices as well as lessons learned relating to weaknesses in the control environment.

197. After the Relevant Period, the Board Risk Committee was informed:

- (a) by 20 July 2016, in an update on the GWS Investigation, that there were 73 Introducers potentially under scrutiny; steps had been taken to strengthen the control environment; a decision had been made to cease lending to most foreign applicants and that there may be similar issues within the Introducer channel in the Business Bank;
- (b) by 2 August 2016, in an update on the GWS Investigations, that the investigation had identified 44 cases of suspected fraud with interviews being conducted with 23 bankers. Further, the Group CRO Report submitted to the Board Risk Committee referred to the fact that more than 40 bankers had been investigated for various types of policy breaches and that pressure to achieve sales targets, tightening of lending in certain markets (non-resident / high risk post codes) and commission arrangements were driving inappropriate behaviour and that there were cases of suspected collusion, circumventing NAB's internal controls and bullying of staff to act in a non-compliant manner. It also reported weaknesses in the appropriate application of consequence management framework;
- (c) by 1 May 2017, of an update on the progress of Project Winnow;
- (d) by 9 April 2018, that the weaknesses and inadequacies in the control environment were evident with the benefit of hindsight and changes had been made to the Introducer Program, with initiatives underway to significantly enhance the control environment. These included the creation of a banker conduct model using predictive high-risk indicators to target bankers more likely to have conduct issues and increased automation through prototyping of a fraud monitoring tool. There was also greater use of algorithms and analytics to identify potential fraud.

198. During the Relevant Period the Principal Board Audit Committee Internal Audit Report for the quarter ended 31 March 2016 noted issues of a lack of strategic clarity, channel

ownership and robustness of supporting controls and effectiveness of the operating model in relation to the Introducer Program.

199. After the Relevant Period the Principal Board Audit Committee Internal Audit Report for the quarter ended 31 March 2018 noted, in connection with an Introducer on-boarding review, that progress had been made in improving controls in Introducer performance and there had been a reduction of overall Introducer numbers.
200. After the Relevant Period the Board Audit Committee was informed:
 - (a) by 25 October 2016, in a Memorandum for the Joint Board and Board Audit Committee, that as a result of a whistle-blower report in October 2015, significant issues relating to mortgage lending in the GWS area had been identified, and included internal policy breaches, collusion of Introducer, banker and customer, fraudulent documentation and false allocation of customers to Introducers. ASIC commenced its enforcement investigation into the matters the subject of the GWS Investigation on 26 February 2016 and issued multiple notices;
 - (b) by 31 October 2017, in the Board Audit Committee Internal Audit Report for the quarter ended 30 September 2017, that an action recommended by the internal audit of the Introducer Program (**Stage 3 Audit Action**) was overdue due to delays in completing the reaccreditation of the back book of Introducers who remained active and that the delay exposed NAB to the risk of dealing with discredited Introducers;
 - (c) by 5 March 2018, in the Board Audit Committee Internal Audit Report for the quarter ended 31 December 2017, that the Stage 3 Audit Action had been closed following the completion of the termination of Introducers outside the target segment but that "confidence of delivery remains at medium" as the final action recommended by the internal audit (**Stage 4 Audit Action**) still required investment in a strategic reporting solution;
 - (d) by 30 April 2018, in the Board Audit Committee Internal Audit Report for the quarter ended 31 March 2018, that:
 - (i) the Stage 3 Audit Action was closed in February and recognised the progress made in improving controls in the Introducer Performance Unit and the reduction of overall Introducer numbers; and

- (ii) the Stage 4 Audit Action would focus on further enhancement of recently introduced controls and implementing the reporting solution for the channel but that the confidence rating remained at medium given the investment required.
- 201. The strategic reporting solution involved in the Stage Four Audit Action was subsequently delivered in around December 2018 and this final action recommended by the internal audit of the Introducer Program was deemed as complete in January 2019. Upon the completion of the action NAB's Internal Audit team concluded that no further actions were required as the risks in relation to the Introducer Program identified in previous reviews had been minimised.
- 202. The NAB Board received updates regarding the investigations being undertaken in respect of Introducer misconduct (including the GWS Investigation and Project Beacon) through minutes of the Board Risk Committee and Audit Committee as well as receiving some direct updates.
- 203. During the Relevant Period, on 2 May 2016, the Board was told by the Risk Committee Chairman that key areas discussed by the Committee on 2 May 2016 included an update on the internal fraud investigation regarding Introducers in GWS and that, other than endorsement of the mid-year Risk Appetite Statement, there were no decisions made by the Committee or requests made to management on corrective actions. The Board noted the update and acknowledged that it would see minutes of these Risk Committee meetings in a future Board cycle, once approved by the Risk Committee.
- 204. After the Relevant Period, the Board:
 - (a) on 7 September 2016, was informed that NAB had breach reported to ASIC in relation to the banker/Introducer behaviour uncovered over the period December 2015 to May 2016, stating that the behaviour was uncovered through a targeted review of communications between bankers and Introducers; and
 - (b) by 8 February 2017, was provided with an update on the investigations then known as Project Winnow.

Loss or damage caused by the contraventions

Risk to Borrowers

- 205. The conduct in relation to 202 of the admitted contraventions of s 31 of the National Credit Act involved an Introducer providing one or more income verification documents

to a NAB Banker in support of a loan application, including payslips and rental appraisals. In these cases:

- (a) the Borrowers were exposed to the risk of wrongful conduct or fraud by the Introducer because payslips and rental appraisals are types of documents that can readily be falsified; and
- (b) it is possible that Introducers were responsible for causing or encouraging the use of fraudulent documents and thus increasing the risk of Borrowers being exposed to wrongful conduct or fraud, but there is no evidence of this in the cases the subject of this proceeding.

206. The control breakdowns that occurred in relation to the Introducer Program increased the risk of:

- (a) loans being provided to Borrowers that were unsuitable for them;
- (b) the provision of false documentation to support loan applications; and
- (c) the use of incorrect figures in loan serviceability assessments.

207. These risks, if they had eventuated (noting the parties disagree about whether, and the extent to which, these risks eventuated) could have exposed Borrowers to hardship and default.

208. The only evidence of false documentation in respect of the loans the subject of these proceedings is that set out in paragraphs 66 to 83 above, where the loan application was supported by fraudulent payslips.

Remediation

209. In or about February 2017 NAB commenced designing a remediation scheme in respect of the misconduct by NAB relating to Introducers.

210. At a meeting with ASIC in July 2017 NAB committed to providing ASIC with a copy of the draft remediation scheme document that NAB was preparing, and it did so on 16 August 2017.

211. On or about 13 November 2017 NAB met with ASIC to finalise any outstanding questions or concerns that ASIC had before NAB commenced customer contact pursuant to the proposed remediation scheme. ASIC raised no objections to NAB commencing implementation of the remediation scheme and contacting its customers.

212. A key aim of the remediation scheme was to determine, and then compensate, customers to whom an unsuitable loan may have been provided, potentially in breach of the responsible lending provisions of the National Credit Act because, based on NAB's current understanding of the customer's financial position at loan origination, the customer would have been unable to comply with the customer's financial obligations under the contract, or would only have been able to comply with substantial hardship (**Remediation Event**).
213. The final remediation scheme involved:
- (a) reference to 60 employees of interest (bankers identified in the course of the GWS Investigation, Retail Assurance Review or Business Assurance Review) who were suspected of having potentially breached one or more of NAB's internal policies or procedures;
 - (b) further reference to 44 of the 60 employees of interest who were found to have engaged in misconduct deemed sufficiently serious to warrant the application of a red compliance gate or dismissal of employment;
 - (c) referral of all secured loan files originated by the 60 employees of interest in the following timeframes to an initial file review process:
 - (i) 1 January 2013 to 31 December 2015 for bankers identified through the GWS Investigation;
 - (ii) 1 July 2015 to 30 June 2016 for bankers identified through the Retail Assurance Review;
 - (iii) 1 October 2015 to 30 September 2016 for bankers identified through the Business Assurance Review;
 - (d) an initial file review, whereby the secured loan files originated by the 60 employees of interest were reviewed by NAB's Customer Engagement Team, including for the purposes of:
 - (i) identification of the information relied on by NAB to assess the loan application, including supporting documentation held on NAB's systems such as payslips, letters of employment, disclosed expenses and statements of assets and liabilities;
 - (ii) examination of the above documents for any indication of information that was incorrect or suspicious;

- (iii) comparison of signatures for any indication that signatures were suspicious; and
 - (iv) completion of an internal quality assurance review on selected files to ensure all relevant issues were identified and recorded;
- (e) assessment of each loan reviewed as falling into one of three categories, being "satisfactory – no further investigation needed", "further investigation required" and "file already in collections". Files placed within the latter two categories were treated as being in scope for remediation and referred for a second review;
- (f) a second review conducted to identify those customers who had been impacted by a Remediation Event, with customers so identified being contacted by the sending of an initial letter which notified the customer that he or she may be entitled to remediation and invited the customer to participate in the remediation scheme, with NAB following up customers who did not respond to the initial letter;
- (g) further reviews and meetings with the customer being carried out in the event that the customer responded to NAB's invitation, with NAB's Customer Engagement Team then making a determination, in accordance with guidelines, as to whether a Remediation Event had occurred, whether there was any evidence that the customer contributed to any loss suffered, and as to the costs incurred and benefits enjoyed by the customer as a result of having been provided with the loan;
- (h) determinations by NAB's Customer Engagement Team being recorded in Remediation Assessment Worksheets, which were then reviewed and signed off by a more senior reviewer; and
- (i) in the event that a Remediation Event was found to have occurred, a further process for calculation of the appropriate amount of compensation, and once compensation had been agreed or determined, payment of such compensation by NAB.
214. NAB commenced the process of engaging with customers who had been identified as subject to misconduct of Introducers and bankers in November 2017 after meeting with ASIC on 13 November 2017 and receiving confirmation that ASIC had no objection to NAB commencing the remediation scheme and contacting customers pursuant to that scheme.

215. In accordance with the above process, the original scope of the customer pool the subject of assessment for possible remediation was based on the file review of loans originated by the employees of interest. The scope of the review was expanded in a number of streams as follows:
- (a) NAB reviewed applications processed by bankers identified through the GWS Investigation prior to 1 January 2013. For each such banker, NAB reviewed applications in six month tranches until there was a three month period where no applications were flagged for further investigation. This was called the **"GWS Retro"** workstream.
 - (b) NAB also reviewed applications processed by bankers identified through the Retail Assurance Review and Business Assurance Review prior to 1 July 2015 and 1 October 2015 (as applicable). Again, for each such banker, NAB reviewed applications in six month tranches until there was a three month period where no applications were flagged for further investigation. This was called the **"Beacon Retro"** workstream.
 - (c) The loan parameters for the files that were reviewed were expanded to include all loans:
 - (i) written by employees of interest under a Branch Business unit identifier (**BUId**) rather than just the banker's own BUId; and
 - (ii) created by or processed by an employee of interest identified in one of the GWS Investigation, Retail Assurance Review and Business Assurance Review.

This was called the **"Expanded Scope"**.
216. Explanations of the Expanded Scope, GWS Retro and Beacon Retro workstreams were given to ASIC.
217. NAB engaged KPMG to review and comment on the methodology adopted by the NAB file review team in relation to files originating under Project Beacon, which had been undertaken to identify possible breaches of its responsible lending obligations and the suitability of the ratings assigned (Project Polar).
218. NAB also engaged KPMG to provide an independent assurance review of the remediation scheme. KPMG's scope of work included:

- (a) performing a periodic random audit of the compensation payments and commenting on the accuracy of the compensation calculations and compliance with the remediation scheme (Project Kodiak);
 - (b) conducting a sample review of customers entitled to participate in the remediation scheme, and comment on whether the customers were put through the remediation scheme in compliance with the procedures and stipulations set out in the remediation scheme including commentary on instances where a customer was put through the scheme but was ultimately assessed as not being entitled to any remediation (Project Aston);
 - (c) reviewing and commenting on the methodology adopted by the NAB file review team in relation to identifying possible breaches of its responsible lending obligations for the Expanded Scope group of customers (Project Andean – Phase 1);
 - (d) conducting a sample review of customers in the Expanded Scope and commenting on whether the customer was put through the remediation scheme in compliance with the procedures and stipulations set out in the remediation scheme (Project Andean – Phase 2);
 - (e) reviewing and commenting on the methodology adopted by the NAB file review team in relation to identifying possible breaches of its responsible lending obligations for the GWS and Beacon Retro groups of customers (Project Teddy – Phase 1); and
 - (f) reviewing and commenting on a sample of GWS and Beacon Retro workstream groups of customers put through the remediation scheme as to compliance with the procedures and stipulations set out in the remediation scheme (Project Teddy – Phase 2).
219. In the course of its independent quality assurance work KPMG recommended that further file reviews be undertaken in relation to Project Beacon, known as the "Beacon QA workstream". ASIC was informed of the Beacon QA workstream, which was then carried out.
220. NAB provided ASIC with bi-monthly reports regarding its remediation program arising out of the GWS investigation and Project Beacon between 16 January 2018 and 6 September 2019.

221. From time to time between November 2017 and September 2019 ASIC asked or directed NAB to provide information about the remediation scheme (including its scope and the manner in which compensation amounts were to be calculated), and its progress. In each instance NAB provided the information sought and accepted recommendations made by ASIC, including as to the scope of the KPMG independent quality assurance review. NAB also provided ASIC with copies of all of the reports prepared by KPMG in connection with its assurance reviews.
222. The report on 6 September 2019 (**September Report**) was the last remediation report received by ASIC and recorded the following outcomes for reviews within the original scope:

Category	Numbers in Bi-Monthly Report
Bankers of Interest	61
Files for Initial Review	11,055
Files Referred to Second Review	2,345 of 11,055
Completed Second Reviews	2,345 (100%)
Customers Contacted	2,101 (100%)
No Customer Response to NAB's communications	1,241 of 2,101
Customer Response – opt out of Remediation review	456 of 2,101
Customer Response – opt in to Remediation review	404 of 2,101
Customer Outcome - No Remediation required because Customer not impacted by Remediation Event	169 of 404
Customer Outcome – determined that customer impacted by Remediation Event and Remediation Offer accepted	46 of 404
Customer Outcome – determined that customer impacted by Remediation Event and Remediation Offer Sent	5 of 404

Category	Numbers in Bi-Monthly Report
Customer Outcome – Remediation process Not Proceeded because customer elected not to proceed with the Remediation Process	184 of 404
Customer Outcome - Compensation Paid	\$1,432,096
Customer Outcome - Compensation Pending	\$254,352

223. The September Report recorded the following outcomes for reviews within the Expanded Scope.

Category	Numbers in Bi-Monthly Report
Bankers of Interest	61
Files for Initial Review	4,708
Files referred for Customer Contact	1,697 (100%)
Customers Contacted	1,697 (100%)
No Customer Response to NAB's communications	944 of 1,697
Customer Response – opt out of Remediation review	334 of 1,697
Customer Response – opt in to Remediation review	419 of 1,697
Customer Outcome - No remediation required because Customer not impacted by Remediation Event	159 of 419
Customer Outcome – Remediation process Not Proceeded because customer elected not to proceed with the Remediation Process	211 of 419
Customer Outcome – determined that customer impacted by Remediation Event and Remediation Offer Accepted	40 of 419

Category	Numbers in Bi-Monthly Report
Customer Outcome – determined that customer impacted by Remediation Event and Remediation Offer Sent	7 of 419
Customer Outcome - Pending outcome	2 of 419
Customer Outcome - Compensation paid (offer accepted)	\$608,603

224. The September Report recorded the following outcomes for reviews within the GWS Retro workstream:

Category	Numbers in Bi-Monthly Report
Bankers of Interest	26
Files for Initial Review	2,818
Files referred for Customer Contact	748 of 2,818
Customers Contacted	748 (100%)
No Customer Response to NAB's communications	433 of 748
Customer Response – opt out of Remediation review	91 of 748
Customer Response – opt in to Remediation review	224 of 748
Customer Outcome - No remediation required because Customer not impacted by Remediation Event	72 of 224
Customer Outcome – Remediation process Not Proceeded because customer elected not to proceed with the Remediation Process	121 of 224
Customer Outcome – determined that customer impacted by Remediation Event and Remediation Offer Accepted	27 of 224

Category	Numbers in Bi-Monthly Report
Customer Outcome – determined that customer impacted by Remediation Event and Remediation Offer Sent	2 of 224
Customer Outcome - Pending outcome	2 of 224
Customer Outcome - Compensation paid (offer accepted)	\$565,438
Customer Outcome - Compensation pending (offer sent)	\$42,442

225. The September Report recorded the following outcomes for reviews within the Beacon Retro workstream:

Category	Numbers in Bi-Monthly Report
Bankers of Interest	35
Customers Contacted (prior to any file review)	7,408
No Customer Response to NAB's communication	4,368 of 7,408
Customer Response – opt out of Remediation review	1,040 of 7,408
Customer Response – opt in to Remediation review	2,000 of 7,408
Files for Initial Review	2,000 (100%)
Files referred for Customer Contact	742 of 2,000
Customer Outcome - No remediation required because Customer not impacted by Remediation Event	247 of 742
Customer Outcome – Remediation process Not Proceeded because customer elected not to proceed with the Remediation Process	416 of 742
Customer Outcome – determined that customer impacted by Remediation Event and Remediation Offer Accepted	52 of 742

Category	Numbers in Bi-Monthly Report
Customer Outcome – determined that customer impacted by Remediation Event and Remediation Offer Sent	16 of 742
Customer Outcome - Pending outcome	11 of 742
Customer Outcome - Compensation paid (offer accepted)	\$1,023,832
Customer Outcome - Compensation pending (offer sent)	\$367,731

226. The September Report recorded the following outcomes for reviews within the Beacon QA workstream:

Category	Numbers in Bi-Monthly Report
Total Customers Contacted	957
No Customer Response to NAB's communications	753
Customer Response – opt out of Remediation review	79
Customer Response – opt in to Remediation review	125
Customer Outcome - No remediation required because Customer not impacted by Remediation Event	31 of 125
Customer Outcome – Remediation process Not Proceeded because customer elected not to proceed with the Remediation Process	89 of 125
Customer Outcome – determined that customer impacted by Remediation Event and Remediation Offer Accepted	4 of 125
Customer Outcome – determined that customer impacted by Remediation Event and Remediation Offer Sent	1 of 125
Customer Outcome – Compensation paid (offer accepted)	\$176,395

Category	Numbers in Bi-Monthly Report
Customer Outcome – Compensation pending (offer sent)	\$2,000

Findings of misconduct by NAB employees

227. The action taken by NAB against employees who were investigated through the GWS Investigation and Project Beacon included, in some cases, reducing or removing their entitlement to performance bonuses or terminating their employment. When NAB took action in respect of employees' bonuses it referred to this as imposing a "conduct gate." Employees who received an Amber Non-reversible Conduct Gate had their performance incentives reduced by 25 per cent for a "full performance year." Employees who received a Red Conduct Gate could not receive any bonus and also forfeited any deferred equity from any prior performance years.
228. Of the 60 bankers investigated for potential misconduct and policy non-compliance in relation to the Introducer Program, 44 bankers were found to have engaged in misconduct that was deemed sufficiently serious as to warrant a Red Conduct Gate being applied as consequence management. The most common reason for a Red Conduct Gate being applied was suspicion of fraud. Of those 44 bankers, 20 bankers resigned or were terminated.
229. NAB applied an Amber Gate to nine employees. The most common reason for an Amber Gate was forwarding of documents to personal email addresses where there was no financial gain received by the employee.
230. As regards the 16 NAB Bankers who are involved in these proceedings, all of whom either resigned, were terminated and/or received Red Conduct Gates, the following types of misconduct were identified as supporting the application of a Red Conduct Gate:
- (a) Banker 1 received a warning and Red Conduct Gate for:
 - (i) failing to maintain arms-length relationship with Introducers as per policy;
 - (ii) receiving customer applications, verification documents and identification documents from Introducers; and
 - (iii) sending confidential customer information to Introducers.

- (b) Banker 2 was terminated for:
 - (i) receiving customer applications, verification documents and identification documents from Introducers;
 - (ii) sending confidential customer information to Introducers;
 - (iii) failing to meet customers face-to-face prior to entering into a credit contract;
 - (iv) sending and receiving confidential customer information to his personal email address; and
 - (v) creating the email address "nabapplications@gmail.com" to send and receive documents from Introducers.
- (c) Banker 3 received a warning and Red Conduct Gate for:
 - (i) receiving customer applications, verification documents and identification documents from Introducers;
 - (ii) on two occasions sending confidential customer information to Introducers;
 - (iii) on one occasion failing to meet the customer at any stage during the application; and
 - (iv) receiving a blank "Introducer Consent Form" signed by a customer.
- (d) Banker 4 resigned after NAB made findings that he had:
 - (i) failed to maintain arms-length relationship with Introducers as per policy;
 - (ii) received customer application, verification documents and identification documents from Introducers;
 - (iii) sent confidential customer information to Introducers (including, on one occasion, a customer's internet logon and password);
 - (iv) sent confidential information to an introducer and threatened legal action if the introducer disclosed that information to others; and
 - (v) received confidential customer information from Introducers to his personal email address.

- (e) Banker 5 received a warning and Red Conduct Gate for:
 - (i) on one occasion failing to meet the customers at any stage during their loan application;
 - (ii) on one occasion receiving confidential customer information from an unknown third party;
 - (iii) on one occasion receiving signed and undated "Introducer Consent Form/s" from an unknown third party; and
 - (iv) on one occasion receiving confidential customer information to her personal email address.
- (f) Banker 6 resigned after being made aware that NAB was investigating concerns that she had:
 - (i) received customer verification documents, identification documents and single signed pages from NAB forms from Introducers;
 - (ii) failed to maintain arms-length relationship with Introducers as per policy;
 - (iii) sent confidential customer information to Introducers;
 - (iv) failed to identify a fraudulent payslip despite being aware of the requirement to do an ABN check; and
 - (v) recorded false contact details for several Introducers.
- (g) Banker 7 received a warning and Red Conduct Gate for:
 - (i) receiving customer verification documents from Introducers;
 - (ii) failing to maintain arms-length relationship with Introducers as per policy;
 - (iii) sending confidential customer information to Introducers;
 - (iv) using her personal email address to send and receive confidential customer information to and from Introducers; and
 - (v) on one occasion using another banker's Introducer number.
- (h) Banker 8 resigned after being made aware that NAB was investigating concerns that he had:

- (i) received customer applications, verification documents and identification documents from Introducers;
 - (ii) failed to maintain arms-length relationship with Introducers as per policy;
 - (iii) sent and received confidential customer information to and from Introducers to his personal email address;
 - (iv) sent and received information to and from customers to his WeChat account; and
 - (v) falsely recorded a loan as being referred by an Introducer.
- (i) Banker 9 was terminated for:
- (i) sending and receiving confidential customer information to and from Introducers to his WeChat account;
 - (ii) receiving customer applications, verification documents and identification documents from Introducers and third parties;
 - (iii) sending and receiving confidential customer information to and from Introducers to his personal email address;
 - (iv) falsely recording a loan as being referred by an Introducer; and
 - (v) on one occasion manipulating loan application details to avoid the loan being manually reviewed.
- (j) Banker 10 resigned after being made aware that NAB was investigating concerns that she had:
- (i) received emails in relation to customer applications from a relative (Mr Cho) who was the principal of an Introducer;
 - (ii) failed to maintain arms-length relationships with Introducers as per policy;
 - (iii) sent confidential customer information to Mr Cho;
 - (iv) sent a customer's documentation to her personal email address; and
 - (v) failed to record a conflict of interest with an Introducer.
- (k) Banker 11 received a warning and Red Conduct Gate for:

- (i) falsely assigning loans to an Introducer that had been referred by a broker; and
 - (ii) receiving customer applications, verification documents and identification documents from Introducers and brokers.
- (l) Banker 12 was terminated for:
 - (i) sending confidential customer information to and from Introducers to his personal email address;
 - (ii) receiving customer verification documents from an Introducer; and
 - (iii) recording incorrect customer and referrer contact details on customer files.
- (m) Banker 13 resigned after being made aware that NAB had found, or was investigating concerns, that she had:
 - (i) sent and received confidential customer information to and from Introducers to her personal email address;
 - (ii) on one occasion falsely recorded loans as being referred by an Introducer;
 - (iii) colluded with Introducers to create false documents; and
 - (iv) processed loans supported by false documents.
- (n) Banker 14 received a warning and Red Conduct Gate for:
 - (i) failing to maintain arms-length relationship with Introducers as per policy;
 - (ii) sending confidential customer information to Introducers and third parties; and
 - (iii) sending and receiving confidential customer information to and from Introducers to his personal email address.
- (o) Banker 15 received a warning and Red Conduct Gate for:
 - (i) failing to maintain arms-length relationship with Introducers as per policy;

- (ii) receiving customer applications, verification documents and identification documents from Introducers; and
 - (iii) sending and receiving confidential customer information to and from Introducers.
- (p) Banker 16 was terminated for:
- (i) receiving loan referrals and customer verification documents from her partner;
 - (ii) failing to record a conflict of interest with a third party;
 - (iii) failing to record her position as a company secretary with a Hong Kong company;
 - (iv) obtaining a financial advantage from her position as a company secretary with a Hong Kong company;
 - (v) falsifying office credit vouchers; and
 - (vi) accessing her own Siebel profile in breach of policy (Siebel being a NAB system).

231. In taking action against the following NAB Bankers, NAB made specific reference to their conduct in relation to the following loans which are the subject of these proceedings:

Banker Name	Loan Application No.
Banker 1	RN00010759792
Banker 2	RN00010852285
Banker 6	RN00010954652
Banker 8	RN00010956405
Banker 8	AN00010820166
Banker 8	RN00010670058

Banker Name	Loan Application No.
Banker 9	AND0010846633
Banker 9	AND0010816174
Banker 11	RN00011005876

232. In July 2018, ASIC banned Mr Awad (who is one of the 16 NAB Bankers identified in the present proceedings) from engaging in credit activities and providing financial services for a period of seven years. Mr Awad was found to have given NAB false payslips, letters of employment, and entered false referrer contact details in NAB's lending systems in multiple home loan applications. A majority of the false documentation submitted to NAB by Mr Awad was provided to him by a real estate agent who was previously registered as an Introducer (and is one of the 25 Relevant Introducers identified in the present proceedings).

NAB co-operation with the authorities

233. On 21 December 2015, NAB first wrote to ASIC reporting its findings of banker fraud and "potential control breakdowns" in the NAB Introducer Program in the GWS area, involving the loan origination and application process and income verification procedures for both personal loans and home loans.
234. On 20 January 2016, the SERP met to consider whether the conduct identified in GWS should be breach reported to ASIC in accordance with s 912D of the Corporations Act.
235. On 3 February 2016, NAB formally reported to ASIC under s 912D of the Corporations Act in relation to matters identified by NAB through the GWS Investigation.
236. On 17 August 2016, the SERP met to consider the findings of the Retail Assurance Review. It noted the outcome of the review and that further assessments were continuing.
237. On 31 August 2016, NAB submitted a further breach report to ASIC under s 912D of the Corporations Act relating to the findings of the Retail Assurance Review.
238. An Enterprise Operational Risk and Compliance memorandum dated 14 December 2016 indicated that, as a result of the findings of the Retail Assurance Review, NAB's Business and Private Banking division had commenced a similar review of bankers in

that division (i.e. the Business Assurance Review) and it was apparent from the findings at that date that:

- (a) some Introducers who had forwarded information to NAB did not hold an ACL and were not authorised by an Australian Credit Licensee; and
- (b) in the majority of cases the Introducer also acted as a broker for NAB and did hold an ACL.

- 239. On 21 December 2016, the SERP met and considered whether the findings of the Business Assurance Review constituted a continuance of the event breach reported to ASIC in August 2016, or whether another breach report was required. The SERP determined that the activities were similar enough in nature to those already reported to ASIC in August 2016, and that the evidence of further activities should be provided by way of a status update to ASIC. In January 2017, NAB notified ASIC of the initial findings of the Business Assurance Review.
- 240. From 2016 to 2018, NAB provided periodic updates to ASIC regarding its investigations and remedial action taken in relation to the reported Introducer misconduct, including additional issues and possible contraventions of NAB policies and legal requirements identified during its investigations.
- 241. In relation to NAB's customer remediation scheme, NAB provided ASIC with drafts of its scheme plan before it implemented the scheme and then bi-monthly progress reports post-implementation.
- 242. Since the commencement of these proceedings, NAB has continued to work co-operatively with ASIC including through the production of documents.
- 243. NAB admitted to the contraventions the subject of the proceeding at the earliest available opportunity.

Prior contraventions

- 244. As at 4 May 2020 NAB has not previously been found liable for any prior contraventions of the National Credit Act.

Corrective measures and enhancement

Investigations and responsive action

245. NAB undertook several investigations throughout the Relevant Period into the Introducer Program, including the:
 - (a) Task Force into the Introducer Program, commenced in around September or October 2015, reported December 2015.
 - (b) internal audit into Introducer Program, reported March 2016 with interim progress updates in December 2015 and January 2016.
 - (c) KPMG GWS Investigation, which commenced 11 December 2015 and reported in January 2016 (draft report) and June 2016 (final report) (with these reports being in the same terms in relevant respects except for some minor changes in the latter report relating to KPMG's identification of two further bankers in the GWS region for investigation).
 - (d) Retail Assurance Review (which led to Project Beacon) occurred in around June to July 2016. Project Beacon concluded when investigations continued under the ambit of Project Winnow.
246. As part of NAB's Retail Assurance Program (first-line Risk) relating to Introducers for financial year 2016, enhancements were made to the assurance methodologies, including:
 - (a) deployment of new assurance methodologies to identify Introducers with potential conduct or compliance issues; and
 - (b) increased focus on existing Introducers who had introduced substantial volumes (greater than 50 loans).
247. The Project Winnow Steering Committee met roughly once a month from 27 October 2016 to December 2017. It was comprised of approximately 10 members from a range of areas of NAB, including senior executives from Broker Partnerships, Personal and Business Banking and the General Manager of the Introducer Channel.
248. A number of the processes NAB undertook between around October 2015 and June 2016 yielded numerous, and often overlapping, recommended actions to address, among other things, governance and control gaps in relation to the Introducer program. The recommendations were not all actioned at the time they were made. Rather, the

recommendations from these processes were considered and actioned through some of the work streams in Project Winnow after it was established in October 2016 (save for those already actioned, as identified above).

249. In late 2018, NAB Risk Performance was commissioned to undertake a "thematic review" of the Introducer Program to determine if the risk reward trade-off was within NAB's risk appetite and whether the Introducer Program provided sufficient customer benefit to justify ongoing management of the risk.

Improvement of controls applicable to the Introducer Program

250. From December 2015, NAB introduced a requirement that Introducers come from particular industries such as accountancy, financial planning, real estate and law. However, the termination of Introducers outside these industries was only completed by February 2018.
251. In January 2016, KPMG recommended to NAB that it introduce a reporting and compliance review process for current Introducers, allowing bankers and/or customers to report concerns about Introducers.
252. KPMG also recommended to NAB in January 2016 that it introduce an annual compliance sign off process by bankers for each of their Introducers including an annual or bi-annual meeting.
253. NAB addressed KPMG's recommendations set out in paragraphs 251 and 252 above by way of the measures described in subparagraphs 257(l) and 257(m) below, which NAB implemented through Project Winnow.
254. In mid-2016, NAB appointed a general manager with accountability for the Introducer Program across the organisation.
255. In June 2016, NAB ceased receiving referrals from Introducers of foreign loan applicants.
256. In around mid-July 2016, NAB ceased the on-boarding of further Introducers. On 2 November 2016, NAB re-opened its Introducer Program to new direct Introducers.
257. The following changes were made to the Introducer Program between late 2015 and late 2018:
 - (a) effective from about December 2015 the criteria applied to the selection of Introducers were tightened;

- (b) from about February 2016 provided education and upskilling of retail sales leaders on introducer policies, regulations and engagement protocols;
- (c) from April 2016 NAB performed a data matching review on a 6 monthly basis to identify possible conflicts of interest and situations that require a more detailed investigation in relation to lending referred via an Introducer. These reviews looked for similarities between Introducers and bankers - address and/or bank account details; and
- (d) from July 2016, the Personal Banking second line risk team commenced providing increased oversight over the Introducer channel, including by undertaking quarterly reviews of:
 - (i) selected Introducers to validate quality of loans; and
 - (ii) bankers with high numbers of loans referred by Introducers, including a continuation of prior assurance reviews of bankers with high sales incentive results;
- (e) by October 2016 had strengthened communication to frontline bankers explaining acceptable behaviour and clarity on what "spot and refer" means;
- (f) between late 2016 to early 2018, the on-boarding process and due diligence processes for Introducers were re-designed to ensure NAB better understood each Introducer and the origins of each of the referrals;
- (g) from late 2016, Introducers were required to hold a professional accreditation, operate in a professional industry with a natural link to financial services, have an ABN, operate from a commercial premises and have a legitimate website. Additional checks were also undertaken including AUSTRAC identity checking and confirmation;
- (h) NAB reviewed the on-boarding and due diligence practices of the three NRPs (Nexus Partners, Tomorrow Finance and Capital Growth) and in about October 2016 requested improvements to their existing processes;
- (i) between late 2016 to early 2018, NAB reviewed existing broker and Introducer arrangements to ensure they were operating within their statutory authorisation;
- (j) from November 2016 to December 2018 NAB implemented improvements to its internal reporting capabilities regarding the Introducer Program, including the following measures:

- (i) Introducer/banker monitoring reporting to uplift the detection of fraud and conflicts of interest between Introducers and bankers;
 - (ii) from October 2017, triangulated reporting to monitor changes in banker and Introducer performance and behaviour; and
 - (iii) a strategic reporting solution utilising dashboards and reports within NAB's customer relationship management database used for everyday management of the Introducer channel (known as Salesforce) and NAB's management reporting tool (known as Tableau) to demonstrate Introducer portfolio performance and trends and emerging issues with respect to loan referrals through the Introducer channel, including loan application volumes, settled loan volumes, arrears, churn rates (i.e. borrowers changing loan products), spikes in the volume of loans originated by specific Introducers or Introducer/banker combinations and fraud reporting. In January 2019 NAB's internal audit team signed off on the implementation of the reporting solution.
- (k) in late November 2016 NAB modified its Introducer agreements, including by:
- (i) ending the practice of self-referring (where an Introducer could be rewarded for introducing their own home loan);
 - (ii) introducing "claw-back" to allow NAB to claim back moneys where Introducers were determined to have engaged in misconduct; and
 - (iii) introducing attestation requirements so that each Introducer was required to attest that they understood their obligations and in particular the spot and refer exemption (in particular, that they were only exempt from credit counselling and advice requirements if they did no more than provide the name and phone number of a customer to an appropriate NAB banker);
- (l) from October 2017, NAB employed a team to monitor and review Introducers. The team conducted sample testing of introduced lending applications on a regular basis to monitor Introducers' conduct and followed-up customers to ensure that the customer was actually genuinely introduced to the bank by the introducer and that the application was in order.
- (m) from October 2017, NAB employed five new business development managers (one in Queensland, and two in each of Victoria and New South Wales) who were responsible for investigating potential compliance concerns identified by

the Introducer monitoring team and conducting annual on-site compliance reviews of Introducers; and

- (n) from about November 2017 NAB introduced a new mandatory Introducer "e-learn" unit for its bankers, with the first wave of due dates being 28 February 2018.

- 258. On 13 February 2017, NAB re-opened its Introducer Program to new Introducers via NRPs.
- 259. As a result of the above measures, including the narrower criteria for on-boarding Introducers and the termination of non-active Introducers, the number of direct and indirect Introducers was cut from a peak of about 8,000 to 1,398 as at March 2018. NAB terminated its contracts with around 7,000 of its former Introducers as at March 2018.
- 260. NAB moved responsibility for the on-boarding of Introducers away from individual bankers who were to be referred loans by these Introducers, to a separate team, by March 2018.

Change to training provided to bankers regarding the Introducer Program

- 261. The KPMG January 2016 Report recommended fraud awareness training for all bankers and teams engaged in approving applications and reviewing loan files.
- 262. By February 2016, NAB had undertaken education and upskilling of retail sales leaders on Introducer policies, regulation and engagement protocols.
- 263. The Chief Risk Officer's report for June 2016 suggests that "policy and control improvements had raised awareness by staff in identifying fraudulent documentation".
- 264. In November 2017, mandatory training for bankers engaged in the Introducer Program was introduced.

Monitoring of the Introducer Program

- 265. In the KPMG January 2016 Report, KPMG indicated that a potential control enhancement that NAB could consider was the use of data analytics to identify and review all loans reprocessed on multiple occasions (e.g. more than 5 times).
- 266. In March 2016, NAB moved the Personal Banking Introducer Assurance Testing framework from time specific (e.g. 6-months on book) to risk-based. This change in approach led to NAB implementing the Retail Assurance Review through which NAB

identified that the conduct issues relating to the Introducer Program were not confined to the GWS region and other isolated cases.

267. In June 2016 Senior Risk Executives within NAB's Personal Banking division recommended:
- (a) investigating new controls to be performed by EST customer services to include checking the veracity of documentation; and
 - (b) reviewing current and proposed future fraud detection capabilities.
268. The Root Cause Analysis that NAB performed throughout Project Winnow also concluded that new controls or a re-design of existing controls was required to address problems such as identification of fraudulent documentation, validation of inaccurate information and ensuring loan funds were used in accordance with the stated purpose.

Commission structure

269. On 1 October 2016, NAB replaced the SSI Scheme with the Customer Experience Incentive Program (**CXI**). CXI still provided for the payment of bonuses based on the value of loans sold.
270. Subsequently, NAB transitioned bankers, (excluding bankers employed as "Home Lending Specialists") and branch managers to the Group Short Term Incentive (**STI**) Plan whereby the variable pay component available to these employees is determined by the employee's individual performance scorecard. The scorecard places less emphasis on sales volumes and is assessed against various metrics across an employee's role description. This change took effect for branch managers on 1 October 2017 and for bankers on 1 October 2018.
271. On 1 October 2018 bankers employed as Home Lending Specialists (a title that applies to a small proportion of bankers involved in processing home loans) were transitioned from CXI to the "HLS Specialist Plan" whereby the variable pay component available to them is determined by an individual performance scorecard multiplied by a target incentive.
272. In January 2017, NAB introduced "Retail Customer Experience sales incentives monitoring" which focussed on reviewing the conduct of bankers with high sales volumes for misconduct, including the type the subject of these proceedings, with any concerns to be escalated to NAB Management Assurance for further investigation.

Termination of Introducers

273. By 20 January 2016, as a result of the findings of the GWS Investigation, NAB had terminated its agreements with two Introducers.
274. By 18 August 2016, as a result of the findings of Project Beacon, NAB had suspended the commission payments for the 74 Introducers involved and had taken the following action against its Introducers:
- (a) 41 were terminated immediately;
 - (b) 23 were given 30-day termination notifications;
 - (c) 3 were referred to their NRP for further investigation;
 - (d) 5 had been terminated prior to the commencement of Project Beacon; and
 - (e) 2 received warnings.
275. In November 2016, NAB commenced the process of terminating around 3,000 Introducers who were either dormant or not from preferred industries. By April 2017, NAB had terminated around 3,700 Introducers and 100 who were identified as being involved in misconduct identified within Project Beacon.

Action against employees

276. NAB took swift initial action against those identified as having engaged in misconduct through the GWS Investigation and Project Beacon.
277. By 21 December 2015, NAB had dismissed five bankers the subject of the GWS Investigation following investigation into suspected fraudulent loans referred through the Introducer Program, including a branch manager who had, on multiple occasions, accepted documents from an Introducer as verification to support lending applications rather than from the customer directly.
278. By 11 January 2016, as a result of the GWS Investigation, NAB had:
- (a) dismissed six bankers (including three Branch Managers), including Mr Awad, being one of the NAB Bankers identified in these proceedings;
 - (b) reduced the eligibility for sales incentives of four bankers, including the Regional Executive for GWS (to reflect his accountability as leader of the region) and two Branch Managers by applying an Amber Non-reversible Gate;

- (c) reduced the eligibility for sales incentives of two bankers, including another Branch Manager, by applying an Amber Reversible Gate.

279. In addition, by around August 2016, within approximately one month of commencing the Project Beacon investigations NAB had taken the following action against its employees:

- (a) 6 were dismissed;
- (b) 5 resigned;
- (c) 5 received Red Conduct Gates (the highest form of consequence management);
- (d) 3 received Amber Conduct Gates;
- (e) 2 were considered as not requiring further action; and
- (f) 1 remained to be interviewed.

280. By October 2016 an additional:

- (a) 1 banker was dismissed;
- (b) 4 received Red Conduct Gates;
- (c) 10 received Amber Conduct Gates;
- (d) 4 were considered as not requiring further action;
- (e) 4 remained to be finalised.

281. By April 2017, NAB was reporting to the Personal Risk Management Committee that the banker review related to the GWS Investigation and Project Beacon had been completed.

Whether NAB is likely to engage in further contraventions

282. On 25 March 2019, NAB announced that it would end its Introducer Program and cease making referral payments to Introducers, effective 1 October 2019.

283. NAB explained its decision to end the Introducer Program to ASIC as follows:

ANNEXURE B – NAB’S REVISED PENALTIES TABLE

Borrower (including joint borrowers)	Banker / Introducer Combination	Number of Loans	Schedule A - Row Numbers	Does ASIC rely on the same correspond ence in relation to each loan?	Did NAB consider the loans together when assessing whether they were not unsuitable for the Borrower?	Did the Borrower obtain more than one loan in order to split a loan between fixed and variable interest facilities?	ASIC's Total Penalty	NAB's Proposed Total Penalty to Account for Course of Conduct	Adjustment for Course of Conduct
Borrower 1	Lei Zhou & Yang Zhao	2	10, 11	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 2	Lei Zhou & Yang Zhao	2	13, 14	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 3	Lei Zhou & Yang Zhao	2	162, 163	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 4	Lei Zhou & Yang Zhao	2	33, 34	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 5	Lei Zhou & Yang Zhao	2	207, 208	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 6	Lei Zhou & Yang Zhao	2	222, 223	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 7	Lei Zhou & Yang Zhao	2	130, 131	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 8	Lei Zhou & Yang Zhao	2	188, 189	Yes	Yes	Yes	\$150,000.00	\$75,000.00	-\$75,000.00

Borrower (including joint borrowers)	Banker / Introducer Combination	Number of Loans	Schedule A - Row Numbers	Does ASIC rely on the same correspond ence in relation to each loan?	Did NAB consider the loans together when assessing whether they were not unsuitable for the Borrower?	Did the Borrower obtain more than one loan in order to split a loan between fixed and variable interest facilities?	ASIC's Total Penalty	NAB's Proposed Total Penalty to Account for Course of Conduct	Adjustment for Course of Conduct
Borrower 9	Lei Zhou & Yang Zhao	4	233, 234, 235, 236	Yes	Yes	No	\$300,000.00	\$131,250.00	-\$168,750.00
Borrower 10	(Ryan) Yufeng Liu & John Ha T/A as Ha Yeung & Co	3	67, 68, 69	Yes	Yes	No	\$225,000.00	\$112,500.00	-\$112,500.00
Borrower 11	(Ryan) Yufeng Liu & John Ha T/A as Ha Yeung & Co	2	152, 153	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 12	(Ryan) Yufeng Liu & John Ha T/A as Ha Yeung & Co	2	203, 204	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 13	(Ryan) Yufeng Liu & John Ha T/A as Ha Yeung & Co	3	98, 99, 100	Yes	Yes	No	\$225,000.00	\$112,500.00	-\$112,500.00
Borrower 14	(Ryan) Yufeng Liu & John Ha T/A as Ha Yeung & Co	2	40, 41	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 15	(Richard) Yinghan Yang & Qixia Ma	2	120, 121	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00

Borrower (including joint borrowers)	Banker / Introducer Combination	Number of Loans	Schedule A - Row Numbers	Does ASIC rely on the same correspond ence in relation to each loan?	Did NAB consider the loans together when assessing whether they were not unsuitable for the Borrower?	Did the Borrower obtain more than one loan in order to split a loan between fixed and variable interest facilities?	ASIC's Total Penalty	NAB's Proposed Total Penalty to Account for Course of Conduct	Adjustment for Course of Conduct
Borrower 16	(Richard) Yinghan Yang & Qixia Ma	2	122, 123	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 17	(Richard) Yinghan Yang & Qixia Ma	2	126, 127	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 18	(Richard) Yinghan Yang & Qixia Ma	2	59, 60	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 19	(Richard) Yinghan Yang & Qixia Ma	2	149, 150	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 20	Adrian McVittie & Dragon Australia Pty Ltd	2	35, 36	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 21	Adrian McVittie & Dragon Australia Pty Ltd	2	56, 57	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00

Borrower (including joint borrowers)	Banker / Introducer Combination	Number of Loans	Schedule A - Row Numbers	Does ASIC rely on the same correspond ence in relation to each loan?	Did NAB consider the loans together when assessing whether they were not unsuitable for the Borrower?	Did the Borrower obtain more than one loan in order to split a loan between fixed and variable interest facilities?	ASIC's Total Penalty	NAB's Proposed Total Penalty to Account for Course of Conduct	Adjustment for Course of Conduct
Borrower 22	Adrian McVittie & Dragon Australia Pty Ltd	2	102, 103	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 23	Adrian McVittie & Dragon Australia Pty Ltd	2	75, 76	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 24	Swina Hardiman & Juliana Goutama T/A Yue & Goutama	2	115, 116	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 25	Swina Hardiman & Juliana Goutama T/A Yue & Goutama	2	169, 170	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 26	Min Yu & Black Capital Pty Ltd	2	64, 65	Yes	Yes	Yes	\$150,000.00	\$75,000.00	-\$75,000.00
Borrower 27	Min Yu & Black Capital Pty Ltd	2	113, 114	Yes	Yes	Yes	\$150,000.00	\$75,000.00	-\$75,000.00

Borrower (including joint borrowers)	Banker / Introducer Combination	Number of Loans	Schedule A - Row Numbers	Does ASIC rely on the same correspond ence in relation to each loan?	Did NAB consider the loans together when assessing whether they were not unsuitable for the Borrower?	Did the Borrower obtain more than one loan in order to split a loan between fixed and variable interest facilities?	ASIC's Total Penalty	NAB's Proposed Total Penalty to Account for Course of Conduct	Adjustment for Course of Conduct
Borrower 29	(Doris) Yingying Zhu & (Robin) Libin Yang	2	253, 254	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 30	(Doris) Yingying Zhu & Aire Group Pty Ltd	3	4, 5, 6	Yes	Yes	No	\$225,000.00	\$112,500.00	-\$112,500.00
Borrower 31	(Diana) Xiaozhou Zhou & Qixia Ma	2	95, 96	Yes	Yes	Yes	\$150,000.00	\$75,000.00	-\$75,000.00
Borrower 32	(Diana) Xiaozhou Zhou & EMI International Pty Ltd	2	181, 182	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 33	(James) Zhengtao Yi & Tianyi Huang T/A Tianyi Corp	2	49, 50	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 34	(James) Zhengtao Yi & Haven Media Pty Ltd	2	167, 168	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00

Borrower (including joint borrowers)	Banker / Introducer Combination	Number of Loans	Schedule A - Row Numbers	Does ASIC rely on the same correspond ence in relation to each loan?	Did NAB consider the loans together when assessing whether they were not unsuitable for the Borrower?	Did the Borrower obtain more than one loan in order to split a loan between fixed and variable interest facilities?	ASIC's Total Penalty	NAB's Proposed Total Penalty to Account for Course of Conduct	Adjustment for Course of Conduct
Borrower 35	(Linda) Woo-Yung Jung & Inline Business Consulting Pty Ltd	2	229, 230	Yes	Yes	Yes	\$150,000.00	\$75,000.00	-\$75,000.00
Borrower 36	Lei Zhou & Wise Figures Pty Ltd	2	133, 134	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 37	(Rebecca) Choon Lin Kow & Jalin Realty International Pty Ltd	2	142, 143	Yes	Yes	No	\$150,000.00	\$93,750.00	-\$56,250.00
Borrower 38	(Rebecca) Choon Lin Kow & Yarrabank Consultant Pty Ltd	3	16, 17, 18	Yes	Yes	No	\$225,000.00	\$112,500.00	-\$112,500.00
							ASIC's Total	NAB's Total	Total Adjustment
							\$6,300,000.00	\$3,787,500.00	-\$2,512,500.00