

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/02/2021 1:30:20 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	QUD54/2021
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v NATIONAL AUSTRALIA BANK LIMITED ACN 004 044 937
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 24/02/2021 4:30:11 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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



Form 2  
Rules 2.2 and 15A.3

## ORIGINATING PROCESS

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: QUEENSLAND  
DIVISION: GENERAL

No. QUD of 2021

### IN THE MATTER OF NATIONAL AUSTRALIA BANK LIMITED

ACN: 004 044 937

### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

### NATIONAL AUSTRALIA BANK LIMITED

ACN 004 044 937

Defendant

### A. DETAILS OF APPLICATION

This application is made under ss 19 and 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), ss 12GBA(1), 12GJ(1) and 12GLB(1)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), and s 1101B of the *Corporations Act 2001* (Cth) (**Corporations Act**).

The Plaintiff seeks declarations of contraventions of the ASIC Act and the Corporations Act, pecuniary penalty orders, adverse publicity orders and ancillary orders, including costs.

In this originating process, terms which are defined in the Concise Statement dated 24 February 2021 have the same meaning as they do in that document.

On the facts stated in the accompanying Concise Statement, the Plaintiff seeks:

#### Declarations

1. A declaration under s 21 of the FCA Act, and s 1101B of the Corporations Act that, between 20 July 2007 and 22 February 2019 (**Relevant Period**), including on 195,305 occasions between 25 February 2015 and 22 February 2019 (**Penalty Period**), on each occasion of charging or notifying the customer of the charging of a PP Fee, and in doing so representing in trade or commerce that it had a contractual entitlement to do so when it did not, the Defendant (**NAB**) on each occasion it made a representation:



- 1.1. made false and/or misleading representations in connection with the supply or possible supply of financial services concerning the existence or effect of a condition, right or remedy in contravention of s 12DB(1)(i) of the ASIC Act;
  - 1.2. engaged in conduct in relation to financial services that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act; and
  - 1.3. breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act.
2. A declaration under s 21 of the FCA Act, and s 1101B of the Corporations Act that, by NAB's conduct from around January 2017 until July 2018 of:
- 2.1. continuing to charge PP Fees to customers in circumstances where it knew that it had no contractual entitlement to do so;
  - 2.2. additionally or alternatively, failing to inform its customers about the wrongful charging of PP Fees, or suggest that customers review the PP Fees charged to their accounts;
- NAB:
- 2.3. engaged in conduct in trade or commerce and in connection with the supply or possible supply of financial services that was, in all the circumstances, unconscionable in contravention of s 12CB(1) of the ASIC Act; and
  - 2.4. breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act.
3. A declaration under s 21 of the FCA Act, and s 1101B of the Corporations Act that by NAB's conduct:
- 3.1. during the Relevant Period of imposing PP Fees on customers when it had no contractual entitlement to do so;
  - 3.2. additionally or alternatively, during the Relevant Period of failing to have adequate systems and processes to:
    - 3.2.1. ensure that wrongful charging of PP Fees did not occur;
    - 3.2.2. detect wrongful charging of PP Fees when it did occur; and
    - 3.2.3. identify and remediate customers affected by wrongful charging of PP Fees;
  - 3.3. additionally or alternatively, during the period of around January 2017 to July 2018:
    - 3.3.1. continuing to charge PP Fees to customers in circumstances where it knew that it had no contractual entitlement to do so;



- 3.3.2. failing to inform its customers about the wrongful charging of PP Fees, or suggest that customers review the PP Fees charged to their accounts;

NAB breached its obligation to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

**Penalties**

- 4. An order pursuant to s 12GBA(1) of the ASIC Act that, within 30 days of the order, NAB pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of NAB’s conduct declared to be contraventions of ss 12DB(1) and 12CB(1) of the ASIC Act during the Penalty Period.

**Other orders**

- 5. An order pursuant to s 12GLB(1)(a) of the ASIC Act that, within 30 days of the order, NAB take all reasonable steps to cause to be published, at its own expense, a notice stating that it has been ordered to pay a pecuniary penalty because it has made false or misleading representations, and/or engaged in unconscionable conduct in a manner and form approved by the Court.
- 6. An order that the Defendant pay the Plaintiff’s costs of and incidental to the proceeding.
- 7. Such further or other orders as the Court considers appropriate.

Date: 24 February 2021

*J. Marshall*  
 .....  
 Jody Marshall  
 AGS lawyer  
 for and on behalf of the Australian Government Solicitor  
 Lawyer for the Plaintiff

This application will be heard by .....at the Harry Gibbs Commonwealth Law Courts Building, 119 North Quay Brisbane QLD 4000 at ..... \*am/\*pm on .....

**B. NOTICE TO THE DEFENDANT**

TO: National Australia Bank Limited  
 c/- Corrs Chambers Westgarth  
 Level 25, 567 Collins Street



Melbourne VIC 3000

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

*Note* Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

#### **D. FILING**

Date of filing:

*Registrar*

This originating process is filed by Jody Marshall for the Plaintiff.

#### **E. SERVICE**

The Plaintiff's address for service is:

Australian Government Solicitor  
Level 11, 145 Ann St, Brisbane, QLD 4000

Email: Jody.Marshall@ags.gov.au

The Australian Government Solicitor's telephone, facsimile, and document exchange numbers are:

Tel: 07 3360 5751

Fax: 07 3360 5795

DX 119 Brisbane

It is intended to serve a copy of this originating process on the Defendant.