

## Originating application

No. \_\_\_\_\_ of 2024

Federal Court of Australia  
District Registry: Victoria  
Division: General

### Australian Securities and Investments Commission

Applicant

**National Australia Bank Limited (ACN 004 044 937)** and another named in the schedule  
Respondents

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** 305 William Street, Melbourne, VIC, 3000

The Court ordered that the time for serving this application be abridged to

Date:

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of (name & role of party)	Applicant, Australian Securities and Investments Commission
Prepared by (name of person/lawyer)	Gina Wilson
Law firm (if applicable)	Maddocks
Tel	+61 3 9258 3005
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Email	Gina.Wilson@maddocks.com.au
<b>Address for service</b> (include state and postcode)	Gina Wilson, Maddocks, Collins Square Tower Two, Level 25, 727 Collins Street, Melbourne VIC 3008

**Details of claim**

For the purposes of this application:

**AFSH** means the Second Respondent, AFSH Nominees Pty Ltd (ACN 143 937 437).

**AFSH hardship notice** has the same meaning as in the Concise Statement.

**ASIC** means the Applicant, the Australian Securities and Investments Commission.

**Code** means the *National Credit Code* (being Schedule 1 to the Credit Act).

**Concise Statement** means the Concise Statement dated 15 November 2024 accompanying this originating application.

**Credit Act** means the *National Consumer Credit Protection Act 2009* (Cth).

**Federal Court Act** means the *Federal Court of Australia Act 1976* (Cth).

**NAB** means the First Respondent, National Australia Bank Limited (ACN 004 044 937).

**NAB hardship notice** has the same meaning as in the Concise Statement.

**Response notice** means a notice within the meaning of s 72(4)(a) or (b) of the Code.

**Schedule A** and **Schedule B** mean Schedule A and Schedule B to the Concise Statement.

This application is made by ASIC under ss 166, 167 and 182 of the Credit Act and s 21 of the Federal Court Act to obtain the declarations, payment of pecuniary penalties and other relief sought below, arising from the contraventions by NAB and AFSH of s 72(4) of the Code.

On the grounds stated in the Concise Statement, ASIC seeks the following relief:

**Declarations**

The following declarations pursuant to s 166(2) of the Credit Act and/or s 21 of the Federal Court Act.

1. A declaration that, in respect of each of the NAB hardship notices identified in Schedule A, NAB contravened s 72(4) of the Code by failing to give the debtor a Response notice within the time identified under s 72(5) of the Code.
2. A declaration that, in respect of each of the NAB hardship notices received by NAB on or after 13 March 2019 as identified in column (e) of Schedule A, by operation of s 175A of the Credit Act, NAB contravened s 72(4) of the Code on the day after NAB contravened s 72(4) as referred to in paragraph 1 above and on each day thereafter, by failing to give the debtor a Response notice at any time after the time identified under s 72(5) of the Code.

3. A declaration that, in respect of each of the AFSH hardship notices identified in Schedule B, AFSH contravened s 72(4) of the Code by failing to give the debtor a Response notice within the time identified under s 72(5) of the Code.
4. A declaration that, in respect of each of the AFSH hardship notices received by AFSH on or after 13 March 2019 as identified in column (e) of Schedule B, by operation of s 175A of the Credit Act, AFSH contravened s 72(4) of the Code on the day after AFSH contravened s 72(4) as referred to in paragraph 3 above and on each day thereafter, by failing to give the debtor a Response notice at any time after the time identified under s 72(5) of the Code.

### **Pecuniary penalties**

5. An order pursuant to s 167(2) of the Credit Act, that NAB pay to the Commonwealth within 28 days of the order a pecuniary penalty fixed at an amount that the Court determines to be appropriate in respect of the contraventions of s 72(4) of the Code the subject of the declarations in paragraphs 1 and 2 above.
6. An order pursuant to s 167(2) of the Credit Act, that AFSH pay to the Commonwealth within 28 days of the order a pecuniary penalty fixed at an amount that the Court determines to be appropriate in respect of the contraventions of s 72(4) of the Code the subject of the declarations in paragraphs 3 and 4 above.

### **Other orders**

7. An adverse publicity order, pursuant to s 182(1) of the Credit Act, that requires NAB to:
  - a. disclose to persons specified in the order the declarations of contravention and pecuniary penalty order referred to in paragraphs 1, 2 and 5 above and such other information as determined by the Court; and
  - b. publish, at its expense and in the way specified in the order, an advertisement in the terms as determined by the Court.
8. An adverse publicity order, pursuant to s 182(1) of the Credit Act, that requires AFSH to:
  - a. disclose to persons specified in the order the declarations of contravention and pecuniary penalty order referred to in paragraphs 3, 4 and 6 above and such other information as determined by the Court; and
  - b. publish, at its expense and in the way specified in the order, an advertisement in the terms as determined by the Court.
9. Costs.
10. Such further or other orders as the Court thinks fit.

**Applicant's address**

The Applicant's address for service is:

Place:

Gina Wilson

Maddocks

Collins Square Tower Two, Level 25

727 Collins Street, Melbourne VIC 3008

Email: Gina.Wilson@maddocks.com.au

**Service on the Respondents**

It is intended to serve this application on all Respondents.

Date: 15 November 2024

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Signed by Gina Wilson  
Lawyer for the Applicant

**Schedule**

No. of 2024

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Respondents**

Second Respondent: AFSH Nominees Pty Ltd (ACN 143 937 437)

Date: 15 November 2024