

MEDIA RELEASE (23-258MR)

NAB penalised \$2.1 million for unconscionable conduct over account fees

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The Federal Court has ordered National Australia Bank Ltd (NAB) pay a \$2.1 million penalty for unconscionable conduct by continuing to charge periodic payment fees even though NAB knew it was wrongfully overcharging customers.

ASIC Deputy Chair Sarah Court said, 'NAB continued to charge fees when it knew it lacked any entitlement to do so and omitted to tell its customers of that wrongful charging. It took NAB over two years to stop charging these incorrect fees, which was clearly unacceptable.

'The Court concluded that the central cause of NAB's wrongful charging was the bank's inability to manage its own computer systems and its unwillingness to apply sufficient resources to remedy the problem in a timely manner.

'An unconscionable conduct ruling, penalty and resulting remediation program demonstrates the consequences that come from not resolving an issue in a timely way. If systems have let customers down, we expect all financial institutions, especially our banks, to act quickly to reduce consumer harm,' concluded Ms Court.

The Court found that between January 2017 and July 2018, NAB engaged in unconscionable conduct by continuing to charge periodic payment fees when it knew it had no contractual entitlement to do so (22-304MR). NAB wrongfully charged periodic payment fees on 74,593 occasions totalling \$139,845 to 2,888 personal banking customers and 513 business banking customers.

Justice Derrington found NAB 'unjustifiably advanced its self interest whilst knowing that its customers were oblivious to the wrongful charging that was taking place. It deliberately and cynically took advantage of its customers' unawareness, and was prepared to allow the overcharging to continue whilst it searched, admittedly in good faith, but without any great diligence, for a solution. Such moral dereliction would seem to reflect an inherent sense of entitlement, possibly precipitated by a view that no real harm would come to the bank even if its conduct was detected. It is, perhaps, also a product of a corporate culture that places a low priority on the observance of the law and on respect for its customers' legal rights.'

In imposing the penalty, Justice Derrington noted that the maximum penalty for the single contravention was applied, noting 'the only penalty that can appropriately be imposed is \$2.1 million. That is, without question, woefully insufficient in the circumstances. However, some solace can be taken in the fact that, in the time that has passed since the contravening conduct in this case occurred, the relevant provisions of the ASIC Act have been updated to permit the imposition of a substantially higher penalty.'

In addition to the \$2.1 million penalty, NAB has paid approximately \$9 million in remediation to affected customers who incurred incorrect periodic payment fees from 1 August 2001.

Justice Derrington also ordered NAB to publish an adverse publicity notice on its website and pay ASIC's costs.

Background

The penalty for unconscionable conduct in breach of the ASIC Act, for conduct that occurred after March 2019, is at least \$15.65 million.

 **DOWNLOAD**

Judgment (PDF)

(<https://download.asic.gov.au/media/jc4awqx/23-258mr-judgment-asic-v-national->

Between at least 20 July 2007 and 22 February 2019, NAB's terms and conditions stated NAB would charge \$1.80 for periodic payments to other accounts within NAB and \$5.30 for periodic payments to accounts at another bank.

NAB's terms also stated that customers would be entitled to exemptions from periodic payment fees for certain transactions, such as payments to NAB home loans, NAB personal loans, certain NAB savings accounts and certain NAB service packages.

During this period, NAB charged some customers a periodic payment fee of:

- \$1.80 or \$5.30 when they were entitled to an exemption under NAB's terms and conditions; or
- \$5.30 when the correct fee was \$1.80.

NAB ceased charging all periodic payment fees to customers on 22 February 2019.

[australia-bank-limited-no-2-2023-fca-1118.pdf](#)

Order (PDF)

(<https://download.asic.gov.au/media/a1skg-csp/23-258mr-order-asic-v-nab.pdf>)

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