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20-247MR NAB ordered to pay \$15 million for dealing with unlicensed home loan Introducers: Royal Commission case study

The Federal Court of Australia has today ordered National Australia Bank (NAB) pay a civil penalty in the amount of \$15 million for contravening section 31(1) of the *National Consumer Credit Protection Act 2009* (National Credit Act).

This matter marks the first time ASIC has brought proceedings for contravening s31(1) of the National Credit Act, which prohibits credit licensees from conducting business with persons engaging in credit activity without an Australian credit licence (ACL).

The Court also declared that NAB breached the National Credit Act 260 times by engaging in a credit activity with 'Introducers' who did not have an ACL and were engaging in a credit activity, namely by assisting NAB customers enter into home loans.

ASIC's investigation revealed that between 3 September 2013 and 29 July 2016, 16 NAB bankers accepted information and documents in support of at least 260 consumer loan applications from 25 third party Introducers who were not licensed to engage in credit activity.

ASIC Deputy Chair Daniel Crennan QC said 'The penalty imposed by the Court reflects the serious contraventions by NAB and is an important result for ASIC's first civil action alleging contraventions of s31(1) of the National Credit Act.'

In arriving at the penalty to be imposed, the Court took into account NAB's cooperation with ASIC and admissions of contravention of the law.

Download the full judgment [here](#).

Background

One of the key objectives of the National Credit Act's licensing regime is consumer protection. The imposition of a licensing regime was intended to address concerns that third-party referrers (including brokers and Introducers) may misrepresent consumers' financial details to ensure loans are approved, and their commissions are paid, in circumstances where the consumers' true financial position means that the loan should not be made.

Since at least 2000, NAB operated the credit industry's largest referral program, known as the 'Introducer Program', whereby a third-party Introducer could 'spot and refer' a potential customer to NAB in exchange for commission if the customer entered into a loan with NAB.

Introducers referring customers through the Introducer Program were only to provide NAB with the potential customer's name, contact details and a short description of the purpose for which the customers were seeking credit. In order for an Introducer to provide NAB with further information or documents, the law required that the Introducer be authorised under an ACL.

ASIC's investigation uncovered that NAB bankers overstepped the 'spot and refer' requirement by accepting information and documentation from the 25 unlicensed Introducers, including completed home loan applications, payslips, copies of customer identification documents and more. This behaviour can pose a serious risk to consumers, as ASIC also identified that in some instances the documents provided to NAB by the unlicensed Introducers were false.

[The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Interim Report Volume 2: Case Studies](#) detailed a range of misconduct in relation to the NAB Introducer Program (page 1-16).

On 1 October 2019, NAB terminated the Introducer Program.

In addition to ASIC's case against NAB, ASIC has also taken the following actions against four individuals involved in this conduct:

- In 2018, ASIC permanently banned two former NAB employees, Danny Merheb and Samar Merjan (also known as Samar Awad), from engaging in credit activities and providing financial services following an ASIC investigation into NAB bank staff in the greater western Sydney area who were accepting false documents in support of loan applications: [18-205MR](#).
- In 2019, ASIC banned former NAB branch manager, Rabih Awad, from engaging in credit activities and providing financial services for seven years: [18-211MR](#).
- ASIC permanently banned and then commenced criminal action against former NAB branch manager Mathew Alwan. Late in 2019, Mr Alwan was sentenced to 12-months' imprisonment to be served as an Intensive Corrections Order: [19-315MR](#).

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