



8 April 2016

Andrew Thorburn
Chief Executive Officer
National Australia Bank
800 Bourke Street
MELBOURNE VIC 3000

Dear Mr Thorburn

Bank fees class action settlement

I refer to the settlement of the representative proceeding *Farey v National Australia Bank Ltd* approved by the Federal Court of Australia this week (the NAB bank fees class action).

For a number of years Consumer Action Law Centre campaigned on bank penalty fees and we welcomed NAB's decision to abolish or reduce its penalty fees in 2010. This issue was a priority for Consumer Action because we were concerned that bank penalty fees fell largely on marginalised Australians who were unable to manage their bank transactions effectively, or were pushed to the limits of their credit card. It was our experience that vulnerable consumers were those who were likely to be charged such fees repeatedly, reducing their financial capacity.

I note that as part of the settlement of the class action, NAB will pay a settlement sum of \$6.6 million. I also note that orders previously made in November 2014 had the effect that unless an affected customer registered with Financial Redress Pty Ltd, they were precluded from participating in any settlement of the proceeding.

Our concern is that many otherwise eligible customers missed out on participating in the settlement because they were unaware of, or unable to, take steps to register with Financial Redress. In this light, we ask that NAB take steps to identify such customers and provide them with a refund or remedy.

Such a goodwill gesture would recognise research which has found that disadvantaged people are significantly more likely to take no action in response to their legal problems.ⁱ These research findings align with our casework experience supporting vulnerable and disadvantaged consumers. It is our view that the more disadvantaged NAB customers will not have responded to newspaper advertising alerting them of the class action and have, through no fault of their own, missed out on participating in the settlement.

NAB will have records of all customers who have been charged a fee that was subject of the class action. Given this, it is open that NAB could contact affected customers and provide them a refund. Alternatively, NAB could consider an alternative 'cy pres' type arrangement for funds not returned

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through the class action settlement. This type of an arrangement could involve NAB applying funds for the benefit of those consumers who are too marginalised to seek a refund for themselves.

I would be happy to discuss these issues with you or your team further.

Yours sincerely

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink that reads "Gerard Brody". The signature is written in a cursive, flowing style.

Gerard Brody
Chief Executive Officer

ⁱ Law and Justice Foundation of NSW, 2016, "How people solve legal problems: level of disadvantage and legal Capability", available at:
[http://www.lawfoundation.net.au/ljf/site/articleIDs/4752B67A5D6A030FCA257F6A0004C3C5/\\$file/JI_23_Disadvantage_legal_capability.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/4752B67A5D6A030FCA257F6A0004C3C5/$file/JI_23_Disadvantage_legal_capability.pdf)