

NAB hit with \$200m class action over builder Walton collapse

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National Australia Bank faces claims worth more than \$200 million in a class action brought by subcontractors who allege the bank breached Australian Consumer Law by allowing Queensland builder Walton Group to trade while insolvent ahead of its collapse in 2013.

Documents served on NAB last week claim nearly \$80 million in unsecured debts to some 1400 creditors, interest and consequential damages – losses arising from the non-payment of debts to the subcontractors at the time – and could top \$200 million, the claimants' lawyer Robert Armstrong said.

The case hinges around actions NAB, the builder's main funder, took to ensure Walton Group was able to repay some \$16 million it owed before the company went into administration in early October 2013.



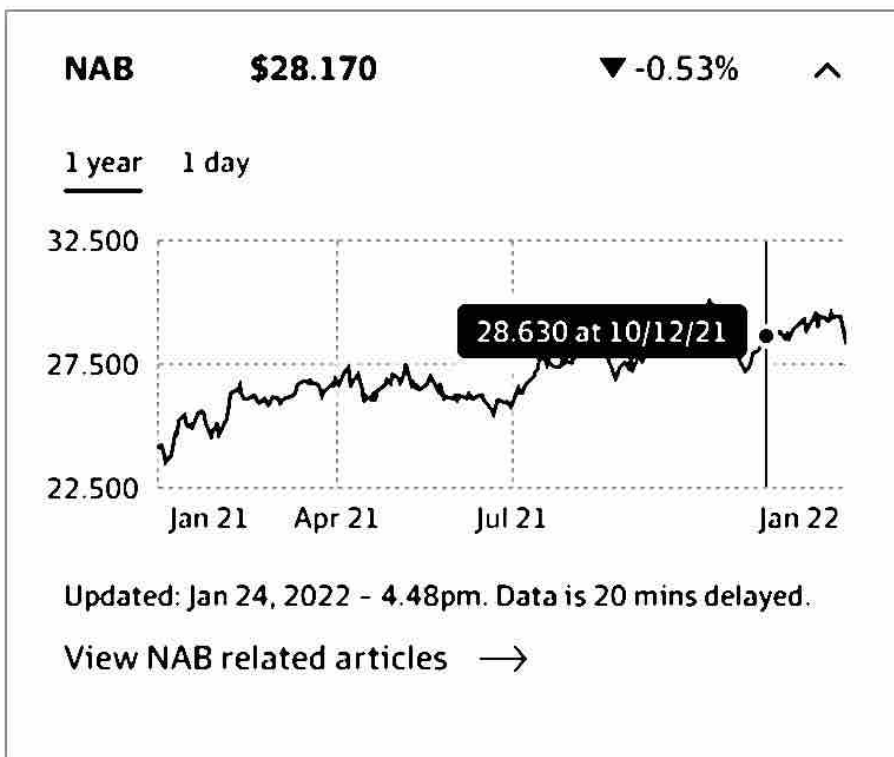
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“NAB managed things so they had time to secure their loans and recover those and as soon as they had done that, they liquidated it,” Mr Armstrong told *The Australian Financial Review*.

“[Walton] ought to have called in a receiver. Instead, what they did was appoint a restructuring group on the strong recommendation of the NAB. It allowed them 6 months to delay putting in receivership while they secured and recovered their funds. Almost the next day it went into receivership.”

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NAB declined to comment.

It is an opening claim and any substantial court hearing could be two years away. A first case management hearing will only take place next month. The federal court case against NAB is being funded by an unidentified US-based litigation funder.

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— Industry veteran John Murray

The case could prevent banks stepping into failing companies and restructuring them to take out money, a move Mr Armstrong said was "something that happens regularly".

But even if the subcontractors successfully prosecute a claim against NAB, it may not be precedent-setting, as any future case would likely depend on its individual circumstances, said John Murray, the author of a 2017 federal government review into security of payments for subcontractors.

"It's a pretty long, tortuous, expensive route to try and have your case heard and secure payment for work carried out," Mr Murray told the *Financial*



Review on Monday.



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True change would only come if state governments enacted cascading statutory trusts – a policy the federal Labor Party said it would support at its annual conference last year – which would stop banks from being able to take a security over the cash payments made to builders for work completed and owed mostly to subcontractors, Mr Murray said.

“What that will mean is that banks will become more vigilant in their dealings with builders and the loans that they give because the banks will want to be satisfied the builder has the capacity to trade and meet obligations without relaying on cashflow as working capital,” he said.

Walton was a large builder, with annual turnover between \$150 million and \$500 million. At the time it was placed into administration in October 2013, cost blowouts from the Queensland company's expansion into the NSW commercial construction market were seen as part of the problem.





The subcontractors' case is strengthened by a separate Federal Court judgment that in 2018 found the failing building company's management appointed Mawson Restructure and Workouts and that the consultancy's restructuring work was "for the purposes of advancing the interests of the National Australia Bank".



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"What emerged was that the 'restructuring' services provided by Mawson were for the purposes of advancing the interests of the National Australia Bank, which was the major secured creditor, and limiting the exposure of [company director] Mr [Craig] Walton and others associated with him pursuant to guarantees which had been provided to the Bank," the court found.

The aftermath of the company's collapse has already revealed problems with the wind-up process. In July 2014, the full bench of the Federal Court ordered the removal of liquidators from firm Lawler Draper Dillon, or LDD (later known as PKF Lawler) – appointed by restructurer Mawson.

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The company's failure also prompted the introduction last year of statutory trust accounts, a measure to ring fence payments to subcontractors, starting with public projects and expanding this year to the private sector.

“Walton had a big impact in Queensland and because of its big impact, the Queensland government moved forward,” Mr Murray said.

“That’s the only state government that has moved forward in addressing that issue.”

Les Williams, the founder of Gold Coast-based Subcontractors Alliance and a member of the litigation management committee representing the claimants said he was pleased the action against NAB was going ahead.

The first statement of claim against the bank was filed in 2019, which gave the subcontractors time to seek a funder to back the action without any time limit on claims expiring.

“We are pleased that we have been able to secure the backing of a major US funder who is committed to supporting this legal action on our behalf and which has allowed trade creditors and subcontractors who have been adversely affected by the conduct of the NAB and wish to pursue rightful restitution in the matter,” Mr Williams said.