

Financial Redress

30 April 2009

Dear Sir/Madam

Submission re COAG Proposed Unfair Contract Terms Legislation

We are a recently incorporated legal practice, specialising in financial product mis-selling and/or excess/unlawful charging. Our initial focus has been to assist consumers and businesses recover penalty charges from financial services providers. Our central contention is that these charges are legally unenforceable as penalties. In due course, we will examine other onerous products/contract terms emanating from financial institutions.

These penalty charges include honour and dishonour fees, over credit limit fees and late payment fees. In each case, we contend that the financial services providers have charged a fee that is many times more than a genuine pre-estimate of the loss suffered by the provider. The true cost to the provider of a simple data entry on a statement may be no more than a few cents, whereas the cost levied on the customer can be over \$50.

Since launching in early March 2009, we have been simply inundated with claims. We act for clients who range from customers on income support to successful business people. So far, our claims, which can go back up to six years, range in size from a few hundred dollars to over \$40,000. The level of anger that consumers feel about these charges is communicated to us on a daily basis.

These are turbulent economic times. The role of the major banks and the pressure they have exerted on Australian consumers and small business has been well documented in recent months. The penalty charges to which we refer are blatantly unfair, and amongst the most pernicious charges levied by the banks, often causing immense hardship to customers.

We therefore warmly welcome the proposed introduction of Unfair Contract Terms Legislation in the expectation that penalty charges will fall within its ambit.

We should add that the treatment of customers by their banks when it comes to a customer complaint about penalty charges is also very confusing and arbitrary. We have evidence of some customers being given refunds of their charges, when other customers of the same banks are rejected. This breaches all principles of equality of treatment.

We have followed the progress of the UK Office of Fair Trading case, through to a unanimous Court of Appeal ruling in its favour, with interest. We would counsel, however, that this UK test case has been widely perceived as a mechanism that has simply delayed the inevitable, to the consumers' detriment. In reality, the current stay has simply delayed by two years the refunding of hundreds of millions of pounds to customers which was already taking place.

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We sincerely hope that the new legislation is robust enough to withstand a similar tortuous process in Australia. This will only frustrate consumers further in their long overdue request for fairness, and redress, in relation to bank/credit card penalty charges.

Many of our clients have also expressed surprise, bordering on dismay, that they have not been able to obtain advice or help from the Financial Ombudsman Service on this topic. FOS currently excludes penalty fee disputes from its ambit, if the bank or credit card fee has been properly disclosed to the client. We respectfully submit that disclosure, (albeit in the small print and non negotiable) is simply irrelevant. What is in dispute is how much is being charged by the financial services providers under the guise of fees, when in fact they are penalties. Our discussions with FOS suggest that FOS might currently require a test case on bank penalty charges to run its course before it will consider the subject. In our submission, this is misguided and unhelpful.

There is currently nowhere else that a customer can take its complaint except to court. Many of our clients will do so, but for many customers, this represents a drastic step. We therefore hope that, following the introduction of the new legislation, FOS will be change its current position, which seems to us, representing consumers and businesses, to be anomalous with its role, at least in the eyes of the public. The position of FOS is also quite different from the role of its counterpart in the UK.

We thank you for considering our submission.

Yours Sincerely,

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