

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

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23 – 24 February 2011

Question No: AET 145

Topic: Bank Fees

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Senator Corman asked:

Senator CORMANN—It may assist you if I clarify the question. Obviously my interest is in the context of fees imposed by banks on residential mortgage holders and residential bank customers. How often, if ever— and I would be interested if you ever have taken action—have you taken action against any bank for imposing unconscionable fees or unfair contract terms on residential bank customers?

Mr D'ALOSIO—I cannot answer that this morning. From memory, I do not think so, but I would have to check that for you.

Answer:

ASIC's jurisdiction in relation to the *National Consumer Credit Protection Act 2009* (NCCP Act) (unconscionable fees and charges) and the Australian Consumer Law (ACL) regime (unfair contract terms) substantively commenced on 1 July 2010.

Since 1 July 2010, ASIC has examined or is examining six instances where a fee or charge may be unconscionable or unfair in relation to bank or credit fees and charges.

In particular, ASIC published Media Release 11-12AD *ASIC obtains changes to contract terms under new consumer law* on 20 January 2011, in relation to a negotiated outcome with debt manager My Budget Pty Ltd (MyBudget).

In one of the first actions of its type under the ACL, ASIC raised concerns about a number of potentially unfair terms in the MyBudget Terms of Agreement, including in relation to post-termination administration fees and a direct debit penalty fee if the client authorises a creditor to debit its MyBudget account. The MyBudget Agreement was amended to address the concerns about post-termination administration fees and to remove the direct debit penalty fees.

ASIC is currently undertaking a national project reviewing whether early termination fees for residential loans (excluding break fees on fixed rate loans) are unconscionable or unfair. ASIC has selected a cross-section of twenty lenders for our

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review, including both authorised deposit-taking institutions (ADIs) and non-ADIs. This may bring to light potential unconscionable or unfair fee breaches. We expect to publish the results of our findings in due course.

Generally, individual consumer banking and credit complaints to ASIC, including in relation to unconscionable or unfair fees and charges, are referred to the External Dispute Resolution (EDR) Services (the Financial Ombudsman Service or the Credit Ombudsman Services Ltd). EDR Services are required to assess consumer complaints independently and at no cost to the consumer. Since 1 July 2010, ASIC has received approximately 230 complaints about bank or credit fees and charges.