St Vincent de Paul Society
NATIONAL COUNCIL
good works

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Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
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Dear Secretary

INQUIRY INTO AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (FAIR BANK AND CREDIT FEES) AMENDMENT BILL 2007

Introduction

The National Council of the St Vincent de Paul Society welcomes the opportunity to make a submission to the Senate Standing Committee on Economics regarding the Inquiry into the *Australian Securities and Investments Commission (Fair Bank and Credit Fees) Amendment Bill 2007* ("the Bill").

Background

The St Vincent de Paul Society ("the Society") provides assistance to Australians on a person to person basis. Our 40,000 members and volunteers visit Australians in their homes every day that are struggling to make their limited financial resources meet their needs. Some Australians struggle as a result of limited opportunity to obtain the necessary skills to budget, but the majority are excellent managers of their limited resources who simply do not have sufficient income to meet required expenses. Australian Bureau of Statistics Australian Social Trends data 4102.0, released on 7 August 2007, demonstrated that in 2003–04, the mean weekly equivalised disposable household income for low economic resources households was $262, while for the same period, the mean weekly equivalised household expenditure on goods and services for low economic resources households was $309.

Penalty Fees

It is popular to target banks. The Society does not wish to repeat the record profits made in the banking sector or the grossly disproportionate wages and 'bonuses' paid to banking executives. The Society simply seeks to confirm that penalty fees are disproportionate to any cost to the bank and are financially and morally unsustainable.

Penalty Fees if Customer cannot control Liability - 12FA

The Society regularly experiences people who have incurred penalty fees for events outside of their control. Such scenarios include:

- income (including statutory income) is delayed in payment, leaving insufficient funds to clear establish direct debit payments (such direct debits are becoming more common after deregulation of utilities, where utilities now offer competition savings by using direct debit and then charge additional penalties for failed direct debits);
- income (including statutory income) varies in amount leaving the person little ability to manage finances to ensure sufficient balance to meet direct debits (such direct debits often also varying in amount, again commonly utility bills);
- ATM allows customer to withdraw amount beyond balance of account, such accounts not even being credit facilities;
- credit card "limit" does not actually limit the use of the card, allowing the person to exceed limit with purchases;
- bank has not cleared funds which are included in the balance, meaning that withdrawal or transfer exceeds cleared balance, even though the customer believes such funds exist and in all likelihood, such funds do exist;
- increased, unscheduled or unknown bank fees reduce balance below zero; and
- presentation of a cheque in good faith which is then dishonoured.

While there is a place for greater financial education, even a highly educated money manager can fall prey to existing traps in the banking industry. Banks must be encouraged to increase Australia's status as a smart country by finding technological solutions to prevent such events as ATM's authorising withdrawals beyond known bank balances, bank balances showing uncleared funds or credit card "limits" being exceeded. Advances in such areas will be slowed until banks are prohibited from obtaining penalty fees from events where customers cannot control liability.

The Society supports the proposed section 12FA.

Penalty Fees to be a Reasonable Estimate of Loss

Not all events are fully or partially the fault of the bank. Where such events are solely the fault of the customer the fee must be in line with the cost to the bank. If the fee exceeds the actual cost to the bank, then it bears no resemblance to a commercial fee, but takes the form of a punishment. The courts administer punishment, but have difficulty administering even the smallest of fines on offences of poverty such as begging, seeking instead rehabilitation. Banks do not seem to suffer the same legal and ethical difficulties punishing poverty. Australia should not allow banks to punish the poor.

The Society is now called upon to provide emergency financial assistance to low income households suffering financial hardship as they failed to budget for a penalty fee in the order of $25 to $50 when a bank account may have been overdrawn by as little as $1. Such a penalty fee does not reflect the cost of the customer's error, it does not reflect the interest attracted on the overdrawn amount and in the present example it grossly exceeds the overdrawn amount. The Society is particularly concerned about the practice of banks applying multiple penalties for the same or similar conduct, for example, penalty fees for failing to make the minimum payment required on a credit card and also exceeding the limit, or dishonor fee on presentation of cheque and referral fee. Multiple fees should only be allowed where the bank has separate losses.

Banks should be able to recover the reasonable costs of a customer's error from the customer, but nothing more, including the cost of other customer's errors of a similar nature. Mindful of the wording of the Bill, the Society supports the bank being able to use an "estimate" of the loss, but such estimate must be, as stated in the Bill, with reference to "the conduct by which the consumer incurs the penalty fee", not the cost of the conduct to the bank by such breaches generally. A customers breach should not be used as an opportunity by the bank to recover general losses.

The Society supports the proposed section 12FB.

Enforceable Undertaking

The Society supports enforceable undertakings as a means to allow ASIC to advocate on behalf of low income households adversely impacted by penalty fees. The Society is genuinely concerned that low income households are most at risk of penalty fees, as a result of negative household budgets, minimum balance levels and a need for credit. The Society is equally concerned that low income households are least positioned in a commercial environment to negotiate with the bank for a refund of a penalty fee.

An enforceable undertaking is a practical measure to ensure compliance given the failure of the banking industry to heed warnings made by the Federal Treasurer as early as May 2005. While the ANZ has reduced penalties just days before this Senate Inquiry, sadly they remain in the minority. Given the market failure to self regulate with regard to penalty fees, greater enforcement powers must be provided to ASIC to ensure compliance.

The Society supports the proposed section 12FC.

Conclusion

The St Vincent de Paul Society supports prohibiting penalty fees imposed on failed transactions in circumstances beyond the knowledge or control of customers, ensuring penalty fees reflect the actual cost of administering the customer's breach, and enabling ASIC to enforce undertakings from financial institutions with respect to penalty fees. Accordingly the St Vincent de Paul Society supports the Bill.

Dr John Falzon
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