

# Chapter 3

## Conclusions

3.1 The Committee is not able to support the passage of the ASIC (Fair Bank Fees and Charges) Bill 2008. In reaching this conclusion the Committee took into account the following issues raised by its inquiry into the bill.

### **Drafting and legal considerations**

3.2 The bill raises difficult legal questions that could not be resolved by the Committee's inquiry.

3.3 The Committee's principal concern is that the bill as drafted might be ineffective if the financial institutions chose to describe the charges that are the subject of the bill as fees for service. By so doing the institutions might be able to avoid the intent of the bill. The definitions contained in Clause FAA are therefore of concern. Possible solutions to this problem are also problematic, for example, if the definitions were broadened genuine service fees might come within the scope of the bill and this would amount to price control, which the Committee cannot support. In any event, evidence from the ABA confirmed that the passage of the bill could be expected to lead to expensive and protracted litigation.

### **Regulation of consumer credit**

3.4 The bill if passed would introduce an element of regulation in a relatively small segment of the consumer credit market. Default charges are not unique to the financial institutions. Many industries, including telecoms and utilities, impose charges for customer default. It would be better public policy if default charges were dealt with in total rather than industry by industry.

3.5 While it might be argued that this would effectively leave problems unaddressed, this is unlikely. Regulation of consumer credit is both topical and is a dynamic area. The Government now has before it a major report of the Productivity Commission, which recommended that there should be a new national generic consumer law that, among other things, addresses unfair contract terms. Firstly, the Commission has listed several features that should be taken into consideration in defining and applying unfair contracts.

3.6 Secondly, the Government has produced a policy Green Paper on financial services and credit reform and COAG has very recently agreed that the federal government should take over the regulation of consumer credit. If the bill were passed it could be inconsistent with the wider legislative framework being developed by the Government.

## Market for Default charges

3.7 From 2000 or earlier till mid-2007, the incidence and quantum of the charges covered by the bill increased significantly. This, together with consumers' initial assumptions that they would not default on their contracts with the financial institutions and their associated ignorance of the default charges they would incur as a result of any default, suggests that there was not a competitive market in relation to default charges.

3.8 In the time since mid-2007, which was when CHOICE and the Consumer Action Law Centre launched a 'Fair Fees' consumer campaign, there has been some movement toward fewer and lower default charges. Some new products have been developed; most institutions have ceased to impose one of the most egregious default charges (the inwards cheque dishonour fee); and charges overall have been reduced.

3.9 The above changes suggest that at least some financial institutions may consider that they will be able to achieve a competitive advantage by reducing default charges or by introducing products that enable customers to avoid or minimise the charges.

3.10 Despite the record of Australia's financial institutions for most of this decade, but in the light of more recent developments, it could be argued that for the parliament to move now to regulate default charges would be premature. A competitive market may be developing but existing and future products need to be better marketed and promoted to their target demographic.

3.11 The Committee and other interested parties would be in a better position to make a judgement that the market is operating efficiently if more data were available. In particular, the Reserve Bank of Australia could collect and publish detailed information on the charges that are covered by the bill and the Committee will so recommend.

## Recommendation

**3.12 The Reserve Bank of Australia should collect and publish annually in its monthly bulletin detailed data on the incidence and quantum of default charges.**

## Social considerations

3.13 Although it is unable to support the bill, the Committee is concerned about the social effects of default fees on consumers, particularly on those on low incomes and on welfare recipients. There was strong anecdotal evidence that in some cases at least the impost of high default fees is marginalising people who are already struggling to feel they belong in Australian society. The Committee would be most concerned if the apparent past indifference of institutions which themselves benefit from a strong regulatory environment were to continue.

**Senator Annette Hurley**

**Chair**