Family First

Dissenting Report

Inquiry into the Australian Securities and Investments Commission (Fair Bank and Credit Card Fees) Amendment Bill 2008

Families have nowhere to turn when they are slugged by outrageous bank penalty fees, which is why Family First wants to ensure penalty fees are for cost recovery rather than a blatant profit grab. The Rudd Government has done nothing to help families struggling to pay bank penalty fees of up to $50 a pop.

That's why Family First proposed new laws that would:

- Restrict penalty fees to cost recovery, to stop banks charging penalty fees which are up to 92 times the cost of processing the customer's mistake;
- Give the Australian Securities and Investments Commission (ASIC) the power to ensure penalty fees reflect costs and investigate customer complaints and issues referred by the Treasurer;
- Outlaw inward cheque dishonour fees;
- Stop penalty fees being charged because another bank charge has pushed the customer over or under the necessary bank balance;
- Prevent penalty fees for customers exceeding their credit card limit, where the bank does not give customers the option of a solid maximum credit limit; and,
- Ban charging multiple fees for the same mistake.

Bank penalty fees can cost families as much as $50 for each dishonoured transaction, with some paying multiple fees for the one mistake.

The inquiry heard evidence these fees are still rising. There is not effective competition between banks to protect families from this fee gouging.

Low income families are particularly and disproportionately hit hard by penalty fees that may be as much as 20% of their weekly income.

Family First has an action plan that the Rudd Government should take up, with amendment if necessary, to protect families from outrageous bank penalty fees.

Bank penalty fees

Bank penalty fees range up to $50 a hit[1] and charge customers for a number of mistakes, such as not having enough funds to cover a cheque or a direct debit and going over a credit card limit. Some customers pay multiple fees for the same mistake.

Choice and the Consumer Action Law Centre pointed out that:

> In its 2007 Bulletin on banking fees, the Reserve Bank of Australia (RBA) showed that total fee income earned from household deposit and credit card accounts was over $4 billion in 2006. That represented a ten per cent increase on 2005 fee income. Between 2002 and 2006 fee income increased by 45% on deposit accounts and a massive 140% on credit card accounts. The RBA, however, does not collect data on income derived specifically from penalty fees. The RBA did observe the steady growth in some category of fees. In the case of credit card over limit fees, these fees did not exist in 2000 and now average $30 each (and can be as high as $35).[2]

Further, the Consumer Action Law Centre and Choice said that the cost to families of each penalty fee has increased rapidly in recent years:

> Since 2005 Westpac's transaction account penalties have increased by 25-33% and its credit card penalties by 16-40%. During this time St George credit card penalty fees increased by 40-50%. ANZ recently reduced its dishonour fee from $45 to $35 but increased its overdrawn account fee from $29.50 to $35.[3]

Rates have increased faster than inflation or other measures that might have explained a change in costs to banks:

> … rates just keep going up. They bear no relation to costs. They go up way faster than the CPI; they go up way faster than the change in the volume of banking business; they go up way faster than changes in wages. When fees are going up 15 to 40 per cent over a two-year period, when new fees are invented and rise from nothing to $50 over four or five years, competition works to this effect: each bank jumps on board and says, 'We can charge that kind of fee as well,' but it does not work to the benefit of the consumers.[4]

Bank penalty fees are clearly a significant cost to families and those costs have skyrocketed in recent years.

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1 Australian Bankers Association, *Fact Sheet: Exception Fees September 2008*, 11 September 2008. Page 4.

2 Consumer Action Law Centre and Choice, submission 18, page 4

3 Consumer Action Law Centre and Choice, submission 18, page 5-6

4 Mr Renouf, Choice, Committee Hansard, 12 June 2008, page 8.

Direct debit dishonour fees

There is a range of types of bank penalty fees, from cheque dishonour fees to credit card over the limit fees, but the Committee heard that direct debit dishonour fees, which cost up to $50,[5] may be the most outrageous:

> That is an automatic, electronic hit that happens. There is no person taking any step in that process. Some banks choose to send a letter to the customer to tell the customer that they have denied that transaction, but in those circumstances it hardly costs the bank anything at all. In circumstances where the person who gets hit with the fee has no money in their account, they are substantially worse off. Fairly regularly we find circumstances where they get hit with multiple fees.[6]

Direct debit dishonour fees are becoming more difficult to avoid, with increasing numbers of businesses asking for this sort of payment, which requires families to closely monitor their balance against automatic deductions:

> More and more businesses—not banks but other businesses—are requiring consumers to have relationships with them which depend on direct credit and direct debit payments. Instead of having maybe one or two direct payments coming out of your account a month and one, your salary, going in, you now have a myriad of payments going out of your account on a fortnightly basis, a four-weekly basis, a monthly basis, a three-monthly basis—we charge our customers three-monthly; so do a lot of businesses—or an annual basis. Once you start getting a dozen or 20 regular payments coming out, it is much harder for consumers to keep track. If you are on a tight budget, which perhaps 50 per cent of Australian families are, it is very easy to make a mistake and not have enough money in, particularly when it is one of those monthly payments that are out of cycle with your wages.[7]

The Combined Pensioners and Superannuants Association argued that the increased use of direct debits shifts increasing levels of risk from businesses and financial institutions to customers:

> … customers are penalised for hiccups in the electronic payment system, with penalties set at seemingly arbitrary levels without a thought for whether the cause of such hiccups, mostly defaults, could have been avoided by customers. [8]

There is a much higher level of risk from direct debit penalty fees for low income families:

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5 Australian Bankers Association, *Fact Sheet: Exception Fees September 2008*, 11 September 2008. Page 4.

6 Mr Slade, Law Council of Australia, Committee Hansard, 12 June 2008, page 33.

7 Mr Renouf, Choice, Committee Hansard, 12 June 2008, page 11.

8 Combined Pensioners and Superannuants Association of NSW Inc, submission 16, page 1.

> It is a lot more difficult for disadvantaged, low-income consumers to access internet banking and things like that. The main problem that we see is the requirement to pay by direct debit. It is not illegal for the bank to require payment by certain methods. The theory is that, if you do not like the payment options, you talk with your feet. The reality is quite often different.[9]

The Brotherhood of St Laurence said that many low income people, who may not have access to Internet banking, have to consider other costly ways to try to keep track of their account:

> We have many clients who do not want to check their balance at ATMs because, depending on the account, the cost can be $2 for checking. This means that they tend to play Russian roulette and just pray that their withdrawal of funds will not overdraw their account.[10]

The Smith Family commented "the most common charges that are of concern are direct debit fees."[11]

Direct debit dishonour fees are clearly a problem for people across the board, but have a particularly big impact on lower income families.

Multiple fees

Choice and the Consumer Action Law Centre pointed out the significant problem with "multiple fees charged on successive days for the same breach, multiple dishonour fees charged on the same day and fees charged because another bank charge has pushed the consumer's balance over or under the relevant limit."[12]

The St Vincent de Paul Society highlighted the difficulty its clients face with multiple fees:

> Exceeding a credit limit on a small credit card will attract one fee while, at the same time, failing to make the monthly payment will attract another fee. By not addressing a credit card debt for a number of months, they can be consecutively hit with multiple fees that far exceed both the interest to the bank, which is already high on the credit card, and any costs in trying to deal with the small credit card debt. This pushes people further to the edges and marginalises many Australians financially.[13]

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9 Ms Pidgeon, Consumer Credit Legal Service of WA, Committee Hansard, 12 June 2008, page 71-72.

10 Ms Wakeford, Brotherhood of St Laurence, Committee Hansard, 12 June 2008, page 43.

11 The Smith Family, submission 10, page 2

12 Choice and the Consumer Action Law Centre, submission 10 to the Inquiry into the Australian Securities and Investment Commission (Fair bank and Credit Card Fees) Amendment Bill 2007.

13 Mr Campton, St Vincent de Paul Society, Committee Hansard, 12 June 2008, page 23-24.

When asked about customers hit by multiple bank penalty fees for the one mistake, the Australian Bankers Association displayed an amazing lack of awareness of the reality of penalty fees, saying "I am struggling to think of an example where that might occur … banks would not want that situation to occur."[14]

But these situations do occur and are among the reasons for Family First's bill.

Cost of failed transactions to banks

It is difficult to determine the exact cost of failed transactions to banks, but the evidence is that banks may be charging penalty fees which are up to 92 times the value of what it costs them:

> The report, Unfair fees: a report into penalty fees charged by Australian banks (the Rich Report), estimated the extent to which penalty fees relate to cost … Considering the data … [in the submission] … , the institutions with the lowest dishonour fees (CBA, Westpac and ANZ), could be charging nearly six times the cost to process. BankWest (with the highest dishonour fee) could be charging over eight times what it costs to process a dishonoured cheque … the CBA, Westpac and ANZ (with the lowest direct debit dishonour fee) could be charging over 64 times cost, and BankWest (with the highest direct dishonour fee) over 92 times of what it costs them to process a direct debit dishonour..[15]

In the Committee hearing the Australian Bankers Association indicated that bank penalty fees do not just cover costs and that there is a profit margin in penalty fees.[16]

Family First's legislation would require banks to give details of the cost of transactions that trigger a penalty fee to the Australian Securities and Investments Commission, which the Australian Bankers Association claimed it would be "… an enormous exercise which, of itself, would be very costly … the issue is allocating those costs to particular services and products. There may not necessarily be a science behind it".[17] This admission shows bank penalty fees bear no relation to the cost of a transaction to banks.

The banks also admitted they had not done any analysis of what a fair level of fee would be:

> No, we have not [done any independent analysis on a fair level of bank penalty fees]. In fact, there is no collection of any information in relation to exception fees and there has been no analysis done.[18]

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14 Mr Bell, Australian Bankers Association, Committee Hansard, 12 June 2008, page 64.

15 Consumer Action Law Centre and Choice, submission 18, page 6

16 Committee Hansard, 12 June 2008, pages 51-52.

17 Mr Bell, Australian Bankers Association, Committee Hansard, 12 June 2008, page 63.

18 Mr Bell, Australian Bankers Association, Committee Hansard, 12 June 2008, page 66.

Choice and the Consumer Action Law Centre stated:

> We have come to the conclusion that the fees are excessive and out of all proportion to the loss incurred by the financial institution. We submit that given the sensitive nature of information about costs, that only an independent regulator will be in a position to obtain and review this information.[19]

Family First's plan would establish ASIC as the independent regulator to determine bank costs and a fair level of bank penalty fees for cost recovery.

Low income families

Low income families are particularly and disproportionately hit by bank penalty fees[20] and a number of welfare groups made submissions to the inquiry to point this out.

Dr Falzon from the St Vincent de Paul Society explained why his organisation had made a submission to the inquiry:

> There was a very strong, in fact unanimous, indication from all of those who were involved in financial or budget counselling that the people that they were assisting were disproportionately impacted upon by the prevalence of bank penalty fees.[21]

The Brotherhood of St Laurence explained the practical effect of bank penalty fees on low income households:

> Being on a tight budget means that low-income people have very limited discretionary expenditure. The standard penalty fee for dishonoured direct debits ranges from $35 to $50 and when low-income people are charged these fees, they struggle with other important spending needs such as food, rent and bills. For instance, a Brotherhood customer was recently charged several penalty fees because of a misunderstanding of the direct debit system. He said '$50 is food for a whole week for my kids. That little extra $50 that they have charged, it's just shattered me. To someone on a disability pension, $50 is a fortune.'[22]

The Smith Family described the impact on its clients:

> The experiences of participants in our financial literacy courses are consistent with research that indicates they are unfairly penalised by financial fees and charges. In some cases these can constitute as much as 20% of their weekly income. The unfairness of bank fees and penalties is a key theme consistently expressed by participants in our financial literacy courses. The most common charges that are of concern are direct debit fees.

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19 Consumer Action Law Centre and Choice, submission 18, page 7

20 Dr Falzon, St Vincent de Paul Society, Committee Hansard, 12 June 2008, page 22.

21 Dr Falzon, St Vincent de Paul Society, Committee Hansard, 12 June 2008, page 26.

22 Brotherhood of St Laurence, submission 13, page 1

> Our families are particularly concerned about the double penalty of an overdrawn fee from the bank (typically $45-60) coupled with a dishonour fee from the merchant ($25-$60).[23]

Families can find it hard to pull themselves out of debt when they are slugged with a penalty fee:

> We also regularly see many genuine people struggling to repay debts to financial institutions only to be hit with additional fees eg credit card over the limit or late fees. These fees can cause additional stress and anxiety for people who are earnestly trying to repay their debts.[24]

It does not make much sense to continue to hit families in financial difficulties with exorbitant penalty fees:

> … during our 25 years of financial counselling, we can say that it is primarily financial difficulties that cause people to go over their credit limit or make a late payment on their credit cards. These fees penalise those who can least afford them.[25]

The banks claimed that fees are falling and there are more products available that are low fee products.[26]

But the effect of any of these changes do not appear to have been felt on the ground:

> We see over 1,000 people a year. We run an advice line which is free to all Western Australian consumers and they can just ring in and get advice. People calling about bank fees is a significant pressure on our service. I do not think that has significantly changed in the last year.[27]

Choice and the Consumer Action Law Centre put the case that:

> Reduced rates for the most disadvantaged members of our community are a very welcome initiative. However, not all institutions have taken this step, and the fact remains that penalty fees for the majority of consumers have increased.[28]

Banks should make particular efforts to help lower income families to avoid penalty fees, but they also have an obligation to the rest of the community to not charge exorbitant fees.

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23 The Smith Family, submission 10, page 2

24 The Salvation Army, submission 28

25 Port Phillip Community Centre, submission 34.

26 Mr Bell, Australian Bankers Association, Committee Hansard, 12 June 2008, page 49.

27 Ms Pidgeon, Consumer Credit Legal Service of WA, Committee Hansard, 12 June 2008, page 70.

28 Consumer Action Law Centre and Choice, submission 18, page 5

Helping families avoid penalty fees

Banks that are serious about helping families avoid penalty fees can do a lot to help fix the problem:

> There are a range of steps institutions could take, a few of which are set out below. Some have adopted some of these ideas.
>
> - offer customers the choice whether or not their credit cards will have a hard limit (to avoid fees) or a soft limit (fees will be charged) [now offered on some ANZ products]
>
> - provide a free ‘safety net’ on transaction accounts [offered by BankWest]
>
> - provide real time notification to customers of the danger of missing a payment. For example an email or SMS advising a payment is due tomorrow but there are currently not enough funds available. The low costs of such a service could be passed on to consumers who elect to take it up. [St George offers an SMS notification service][29]

The St Vincent de Paul Society also stated that banks could do more:

> 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.[30]

Some banks have argued that people appreciate being able to overdraw their credit card so they are not embarrassed when trying to purchase something, but one welfare group says many people would appreciate the assurance they cannot overdraw:

> … we would say that a lot of the people we are dealing with do not eat in restaurants and they are not going to get embarrassed; they would prefer not to have that facility where they have the capacity to overdraw their accounts.[31]

There is plenty of scope for banks to do more to assist families to avoid bank penalty fees, rather than just blame their customers.

29 Consumer Action Law Centre and Choice, submission 18, page 9-10

30 St Vincent de Paul Society, submission 32, page 3

31 Ms Wakeford, Brotherhood of St Laurence, Committee Hansard, 12 June 2008, page 46.

Current regulation

Regulation of financial services in Australia is focused on disclosing fees, but according to the Australian Securities and Investments Commission (ASIC), bank penalty fees are not among those things banks must disclose:

> The principal regulatory measure in relation to fees for financial services, both at state and federal level, is the mandating of disclosure. … Many financial products (for example, insurance and superannuation) are regulated by the Corporations Act and require a product disclosure statement (PDS) … [but] … the financial products and services the subject of the current public debate on default fees (that is, basic deposit products and credit cards) do not require a PDS. For such products, ASIC's jurisdiction is limited to its ASIC Act role of ensuring that product providers do not engage in misleading, deceptive or unconscionable conduct, either by act or omission.[32]

Banks generally detail their fees, including bank penalty fees, in booklets they produce on fees and charges. The Consumer Action Law Centre and Choice argue that even if penalty fees are detailed in bank publications, "disclosure, alone, does not mean that a fee is fair or legal."[33]

But if families have a dispute with a bank over penalty fees, there is no easy option for them to pursue that dispute. Customers with deep pockets can take banks to court, but there is no dispute resolution in place, with ASIC favouring light touch regulation and the Banking and Financial Services Ombudsman not responsible:

> The Banking and Financial Services Ombudsman has declared that it is not able to take on such disputes. It has decided that its terms of reference do not allow it to look at the specific issue of the level of the penalty fee. Taking out the option of going to an external dispute resolution scheme means that consumers are left to go to the courts if they want to pursue action on the level of the fees that they have been charged. This is quite a costly and high-risk exercise for consumers.[34]

Family First's plan for regulation of bank penalty fees is to give ASIC the power to take an active role in ensuring bank penalty fees are for cost recovery only. Family First's bill covers banks, building societies, credit unions and other institutions that offer credit cards.

Competition

The improved regulation detailed in Family First's plan is important because there is not effective competition in the bank penalty fee market:

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32 Australian Securities and Investments Commission, submission 12, page 1-2.

33 Consumer Action Law Centre and Choice, submission 18, page 9

34 Miss Freeman, Choice, Committee Hansard, 12 June 2008, page 6.

> … the crux of the problem is that market forces do not and cannot work to solve this problem. Where features of a product do not appear to be relevant to a consumer at the time they are making a decision on whether or not to choose that product, then the market is not going to work to control the prices. For the most part, when a consumer chooses a banking product they do not intend to incur a default fee. They do not intend not to have funds in their account when a payment is due. They do not intend to spend more on their credit card than their limit. They do not intend to make their payments late. So, as a consequence, a bank cannot gain a market advantage by offering a product which has lower fees than its rivals. If it is going to reduce its costs or its revenue, it is much better off doing that on its interest rate or its up-front fees where there is more competition. So this is not a market failure which is an information problem; it is not that consumers lack the information about the products they are choosing. The issue is that the amount of a penalty fee is not a relevant consideration for most consumers when choosing the product.[35]

There is also little scope for customers to negotiate with a bank on penalty fees charged before they sign up for an account – it is take it or leave it:

> … small consumers take contracts as they are given to them. They do not have the opportunity to make adjustments. The proposition that a bank enters into negotiations with a small retail customer, a household customer, about the nature of their banking arrangements is not based in reality.[36]

An indication of the lack of competition in bank penalty fees was the banks were able to quote their interest margins falling from "… roughly four per cent to less than two per cent over the last decade", but they were not able to quote their margins on bank penalty fees. [37]

The Australian Bankers Association claimed market forces are reducing penalty fees[38], but seemed to be confusing market forces with political pressure and public outrage. In this the banks want to have it their own way, with a high degree of regulation protecting their place in the market, but with less regulation protecting the interests of families against exorbitant bank penalty fees.[39]

But despite the banks' claims of lower penalty fees, it was pointed out to the Committee that only some fees are lower, while "… penalty fees for the majority of customers have increased."[40]

35 Mr Renouf, Choice, Committee Hansard, 12 June 2008, page 2.

36 Miss Freeman, Choice, Committee Hansard, 12 June 2008, page 14.

37 Mr Bell, Australian Bankers Association, Committee Hansard, 12 June 2008, page 50, 53.

38 Mr Bell, Australian Bankers Association, Committee Hansard, 12 June 2008, page 53.

39 Mr Bell, Australian Bankers Association, Committee Hansard, 12 June 2008, page 54-58.

40 Consumer Action Law Centre and Choice, submission 18, page 5

Conclusion

Families have nowhere to turn when they are slugged by outrageous bank penalty fees, which is why Family First wants to ensure bank fees are for cost recovery rather than a blatant profit grab. The Rudd Government has done nothing to help families struggling to pay bank penalty fees of up to $50 a pop.

That's why Family First proposed new laws that would make the Australian Securities and Investments Commission (ASIC) responsible for monitoring fees and ensuring they are for cost recovery only.

Family First has a plan that the Rudd Government should take up, with amendment if necessary, to protect families from outrageous bank penalty fees.

Senator Steve Fielding
Leader of Family First