

Dear Sir,

I attach a document which includes some additional changes that should be made via legislation to the way in which financial institutions currently conduct their activities.

By going to any of the banks' websites you will see that their terms and conditions booklets, in conjunction with their letters of offer, purport to give themselves the right to increase fees, charges and interest rates on credit card accounts by as much as they like, and impose new fees and charges, including illegal penalty ones, whenever they like, without the consent of, and with little or notice to, the cardholder. To be a legal, enforceable contract, any contract must have "sufficient certainty of terms". A contract that can be varied as described above has almost NO certainty of terms and is thus illegal. Many of their other credit accounts (personal loans, mortgages, business loans etc.) and cheque and savings accounts have similarly illegal and lop-sided terms and conditions in the contracts.

The General Manager of the Federal Treasury, Chris Legg Esq. agreed with me, see his letter below, especially para 3, para 4 last clause, and para 6.

http://banksarethieves.org/Treasury_23-11-07.html

My attitude to banking is briefly this; that whilst there is obviously a need for financial institutes to make a profit, it should be made wholly legally, and the banking industry should not be allowed to operate as a cartel, which it currently does, setting rates, terms and conditions with little variation across the whole industry sector, that allow it to make much larger net profits in relation to its operating profits than any other legal industry, (always assuming that you regard banking as a legal industry, many, myself being one, do not). It has amply demonstrated that it is unwilling to conduct its business in a legal and responsible manner, therefore legislation that compels it to so do must be introduced and imposed.

As for banks arguing that penalty fees are not illegal, and that they are more correctly known as "exception fees", the case of O'Dea v Allstates Leasing (WA) P/L, a unanimous decision of five judges in the appellate division of the High Court of Australia on 17/2/83 gives the definitive ruling of what can be defined as liquidated damages (legal) and what as a penalty (illegal). Any lawyer, including Mr. Peter Costello who referred to this very thing in the Australian Financial Review on 29/10/07 p 59, knows this, as did the lawyers who some years ago elected to draft contracts for the banks that included these illegal fees. On every occasion that a financial institution deducts these fees from accounts, it commits fraud, a civil and criminal offence.

On another point, only courts can impose fines, or penalty fees. Banks and other Financial Institutes are not courts of law; they therefore do NOT have this power.

I further wish to draw your attention to the fact that the imposition of illegal penalty fees, and the use of illegal contracts due to "insufficiency certainty of terms" both breach many sections/subsections of the ASIC Act 2001, from section 12CC to 12GM amongst

others. These breaches carry penalties of up to \$220,000 for an individual, and \$1.1 million for a corporation. At this point the Criminal Code Act 1995 comes into play with custodial sentences where appropriate; please see 11.2(2-5) and 11.5(1-5), as examples.

To give an illustration of the powers that the banks and other financial institutions seek to have customers believe they have with respect to contracts, I quote from Citibank Credit Card Terms and Conditions published 04/04 page 18, paragraph 21. **Variation**

(a) Citibank may:

- (i) vary any of the Terms and Conditions; and/or
- (ii) make changes to the Annual Percentage Rate; or the amount or frequency of payment of a fee, charge or the Total Payment Due; and/or
- (iii) introduce a new fee or charge.

(b) Any variation shall be binding on You and any Additional Cardholder or Signatory (as applicable).

Yours Faithfully,

John Curtis.