



FINANCIAL COUNSELLORS
ASSOCIATION OF QUEENSLAND INC.
- Without Conflict of Interest -

18th April 2008

Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

economics.sen@aph.gov.au

Dear Sir/Madam,

RE: Inquiry into the Australian Securities and Investment Commission (Fair Bank & Credit Card Fees) Amendment Bill 2008

I submit this submission on behalf of the Financial Counsellors Association of Queensland (FCAQ).

FCAQ is the peak body for the Financial Counselling sector in Queensland. The association has 40 members located from Cairns in the north to the Gold Coast in the south.

Our membership's client base (depending on funding agreements) ranges from farmers and fishermen to wage/salary earners, gamblers, and welfare recipients. Financial Counsellors provide support to individuals or families experiencing financial difficulties. Support is tailored to each client and includes advocacy, budgeting, education, and empowerment.

This submission is allowed to be put on the public domain, with case studies being a general representation of the clients seen by Financial Counsellors.

FCAQ supports the general thrust of this amendment and would like to make comment on the following from the proposed legislation:

- 1) 12FC Fees when consumer default results from a third party default.
- 2) 12FF ASIC to produce copy of information.
- 3) Other issues.

1. We are in agreement with the concept of consumers not being penalised for the presentation of a dishonoured check. The consumer is being penalised twice, once by the third party not paying them and then the consumer's bank penalises them for not being paid. Third parties who write checks with insufficient funds should be held responsible for their intent to not pay the recipient.
2. In our experience compliance with good corporate practices and law is generally paramount to senior management. From time to time lower staff levels at financial institutions, when dealing with consumers, do not follow, or comply with The Banking Code of Practice or the intent of senior management. It is only when these issues are raised through an Ombudsman or ASIC that poor work practices are changed. Therefore we are in agreement with the requirement for ASIC to produce information showing breaches or poor compliance in this area.
3. A number of case studies follow to demonstrate how fees can impact on hardworking individuals or families due to intolerance of financial institutions.
 - a. Some of our membership were involved in disaster recovery in the floods of Central Queensland earlier this year. A number of people coming through the recovery centres told stories of banks not "believing" them about there being a flood and that they had not been able to get to work for two weeks and may not be able to for another week. The worst story related was one of the "big four" telling a family that they would be sold up unless they made their payments, and it didn't matter even if they had "six feet of water through their home". This family had to endure the Australia Day weekend with this threat until a Financial Counsellor could contact that Institution's

contact from the BFSO website. This family's breadwinner was a contractor and had not had work for 2 weeks and it would be a further 4-5 weeks before it would be dry enough for him to work. Financial Counsellor was able to get an arrangement that allowed deferred payments for the following two months. The charging of fees without listening to the "facts" of an individual consumer is a continuing and common scene among the clients seen by Financial Counsellors. Although fees were not charged in the above case study, it demonstrates the intolerance and contempt shown by major financial institutions toward hard working families.

- b. In another case the opposite happened: a creditor's collection agent would not accept that drought is a legitimate reason for reduced income. The client concerned worked for the largest grower of a particular crop in Australia. With reduced irrigation water, rather than sack staff, the employer had reduced the hours of his employees from 60 hours per week to 25 hours per week. As a result the client had stopped renting and was boarding with a family member. The debt involved was \$1700 on a credit card. For a period of 3 months the Financial Counsellor tried to get an arrangement of a moratorium until it rained or the new irrigation year started in three months time. The counsellor lost contact with the client as he could not afford to recharge his prepaid phone and decided it was not "worth the effort" trying to get an arrangement. This client was getting fees added to his debt because of non payment. In three months the debt was increased by approximately \$120 plus interest. Again this case study shows the lack of acceptance of genuine hardship.
- c. Creditors rarely inform customers of their rights under the UCCC. The hardship provision is often refused in the early part of the loan based on creditor saying they 'don't/can't/won't enact the hardship provision in the first 12 months of the loan'. By the time the customers become aware of the provisions of Section 66, they have been struggling for so long that they will rarely take the matter to court. No money to make the payments equals no money to take the matter to court. Fees add to and compound this dilemma.

Our membership believes the number of bankruptcies could be lower if banks and/or their collection agents were open to true negotiation rather than a "take our offer or go bankrupt" approach. Fees certainly add to the hardship being experienced by our

clients. It is not just the initial debt that is pursued but that debt plus the fees as well as the collection fees. Banks would make a profit on these debts that are normally written off.

- d. A pay day lender was able to withdraw their payment despite the customer's account going over its limit. The creditors who allowed the account to go into deficit then added further penalty costs.
- e. Clients with direct debits who are going bankrupt are told to open a new account before doing so, to ensure they do not gain another debt from direct debits still happening after informing the bank to cancel them, as well as the fees that accumulate due to insufficient funds.

In closing we are not against a business whether it is a financial institution or other from imposing fees when a customer has not honoured the contract between them. However from our experience a consumer in financial hardship is placed under further hardship by the use of fees. If a consumer cannot afford the payments before, how can they afford the payments as well as the fee/s?

Yours Sincerely,

David Lawson
FCAQ