

From  
Robert Lunnon

I would like to make a submission to the Committee on two (related) issues Unfair bank fees, and the TPA Unconscionable conduct definition.

I read somewhere that you are currently conducting an enquiry regarding - Unfair Bank Fees particularly related to the establishment of unauthorised credit and dishonour fees on dishonoured periodic payment electronic transfers. I also note that in the past the Committee has reviewed the concept of Unconscionable conduct in the TPA which could also go some way toward controlling this behaviour except that the way I read it the Senates recommendations would not necessarily control these unfair "Dishonour Fees". To do so I believe Unconscionable conduct should specifically include.

- A.) Charging for a non-service or not doing something, like not processing an electronic transfer.
- B.) Creating of an unauthorised liability to the larger party from a smaller party.
- C.) Conditions that advantage the larger party at "no or trivial value" to the smaller party.

The Credit Code is enacted in the states but it should be strengthened to ensure that Banks are not able to create credit without the approval of the customer under any circumstances without a separate credit contract. This would prevent the creation of circumstances under which the banks apply the fees. The bank would have to contact the customer prior to making the debit, with the added benefit of the bank being unable to create a debt through the application of an unexpected fee, and have to collect the debt like any other company rather than being able to unilaterally extract money at their whim from a customers bank account using any feeble excuse at hand. Eg by sending an invoice and waiting for a payment of the fee. The need to enact a credit contract may by my reading already exist in QLD, and the fees may therefore already be illegitimate in QLD.

With respect to the provision of non-services, this contract term might already be invalid as there is no consideration in exchange for the payment, what benefit does the consumer get for the bank dishonouring the transaction. What does he/she get in exchange for his/her \$30. Codifying this behaviour out within the banking code probably doesn't change things other than the banks needing to proactively stop using the illegitimate condition in their contracts, and thereby absolving the community of the cost of reclaiming these charges from the bank.

The Banking Code might also be adjusted to compel banks to offer similar transactions with similar terms. For example there is no difference between an ATM transaction to Transfer a mortgage payment from my savings account and a periodic payment to do the same thing, other than the storage of the regular request. However the fee regime is substantially different because in one case the balance is pre-tested and the transaction not processed if the balance is insufficient in the

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other case it is not. Obviously it is technically possible to pre-test balances, since they do so with ATM transactions every day. Both of these transaction should have the same treatment and conditions, other than the storage of the information, that could for example attract a data storage charge. Clearly however the application of overdraft and dishonour charges relates to the transfer transaction and not to the storage of the customers instruction. In addition it should be spelled out in the code that the customer must at least have the option to instruct the bank to pre-test balances and process debits conditionally upon sufficient balance being available (IE opt out of the regime that allows the charges to occur).

While this last single "Right" would allow customers to take charge of these fees, I still believe the other reforms here-in would improve regulation generally and provide consumers with appropriate choices at appropriate times with regard to the creation of debts.

Regards

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