

[Oz] Banks sued for billions in 'illegal' fees

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Tide is turning on Parasitic Banks

MILLIONS of Australians are being urged to join a series of class actions against the nation's banks, seeking the return of up to \$5 billion in penalty and late fees that lawyers say have been illegally taken from customers.

The actions, potentially the biggest in Australian corporate history, will target the biggest four banks - ANZ, Commonwealth, National Australia and Westpac - and eight foreign and Australian regional banks.

The organisation behind the move, litigation funder IMF, said thousands of people had signed up within hours of the class actions being revealed on theage.com.au yesterday.

"It's been bedlam," IMF chief executive Hugh McLernon said. "The interest is huge because of the pent-up anger these fees generate."

IMF will bankroll the actions in an effort to claw back at least \$400 million from what its lawyers will say has been a systematic gouging of bank customers. The collective size of the claims could be much higher depending how many people join.

The move comes at a delicate time for the banks as politicians accuse them of exploiting their heightened market dominance after the global financial crisis to ratchet up fees and charges.

The action is targeting billions of dollars in various types of "exception fees", or penalty fees, charged by the banks.

They include honour fees (incurred when accounts are overdrawn and banks honour the payments), dishonour fees for bouncing cheques, late payment fees for credit cards and loans, and fees for overdrawing credit cards. These fees typically range between \$25 and \$60.

IMF will test the legal basis of the fees in its class actions. "Banks have made billions from these unfair charges," its website says. It urges anyone with at least one penalty fee over the past six years to sign up.

The central legal argument behind the claims is that one party to a contract, when it seeks damages from the other party for breaking a contractual term such as a late payment, can recover only a reasonable pre-estimate of its actual costs.

Because the fees charged by the banks are many times their actual costs, IMF is expected to argue the fees were not legally enforceable and customers are therefore be entitled to refunds.

The Reserve Bank last year revealed how much the banks were collecting in penalty fees - almost \$1.2 billion in the 2008 financial year.

No figures are available for previous years, but IMF estimates the fees could total more than \$5 billion over six years.

Claims against the banks will be for repayment of fees plus interest from the date of the deduction, dating back six years.

The case began yesterday with the launch of a website - financialredress.com.au - for customers to register claims.

Personal claims are expected to average about \$2000, while claims by businesses are expected to average about \$5000.

Some banks, including National Australia Bank, have recently abolished penalty fees, and others have reduced them. However, these banks will still be targeted for repayment of fees charged in previous years.

A spokeswoman for Westpac said the bank had already acted to lower "exception" fees. "We were the first bank to cut our exception fees down to \$9," she said. On the class actions, she said: "It is hard to make specific comment until we see the case."

A spokesman for National Australia Bank said: "We urge the other banks to follow NAB's lead to abolish the fees."

A spokesman for ANZ said the bank would not comment.

Federal Financial Services Minister Chris Bowen also declined to comment - despite having cleared the way for the case by recently overseeing a change in the rules on who can launch a class action.

Family First senator Steve Fielding welcomed the class action but said he was disappointed that it was needed after he tried unsuccessfully to have laws passed against the fees.

"It's high time we got our own back against the banks because they've got away with far too much for way to long," he said. "We're talking about millions of dollars which have been ripped out of families."

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