

Fee gouging: banks face huge class action

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Australia's banks face the biggest class action in corporate history for overcharging their millions of customers about \$5 billion in penalty and late fees over the past six years. Leading litigation funder IMF Australia will pay for more than 10 class actions against the banks, including the big four - Commonwealth Bank, ANZ, Westpac and National Australia Bank - in an effort to claw back at least \$400 million in what its lawyers will claim is a systematic gouging of banking customers. The action comes at a delicate time for the banks as politicians accuse them of exploiting their heightened market dominance - in the aftermath of the global financial crisis - to ratchet up fees and charges to unreasonable levels. Besides the big four, another seven Australian banks are expected to be targeted for alleged wrongful and unfair overcharging. These include the Bank of Queensland, Bendigo and Adelaide Bank, Suncorp, HSBC and Citibank. For the first time, the Reserve Bank of Australia revealed last year that banks charged "exception fees" of almost \$1.2 billion in the 2008 financial year. No figures are available before 2008 for exception fees prior to this but IMF estimates they could total more than \$5 billion over six years. At \$1.2 billion, the exception fees are but a fraction of the \$10 billion plus that banks levy in fees and charges each year. Exception fees typically include four types of penalties for which customers are stung by the banks. These are honour fees (generally a penalty fee of \$40 incurred when a customer overdraws on a bank account or exceeds an agreed overdraft limit and the bank pays it out); dishonour fees for cheques that bounce; late payment fees for credit cards or loan accounts; and fees for overdrawing on a credit card. These fees typically range between \$25 and \$60 on each transaction. IMF, which has set up a [website www.financialredress.com.au](http://www.financialredress.com.au) to attract possible participants in the class action, will test the legal basis of these fees in its class action. "Banks have made billions from these unfair charges," the website says, urging anyone with at least one exception fee over the past six years to sign up. The central legal argument 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 only recover a reasonable pre-estimate of its actual costs. In the case of the fees being charged by the banks, which are many multiples of their actual cost, IMF is expected to contend that the fees were not legally enforceable and customers should therefore be entitled to a refund. Banks generally charge penalty interest as well as an exception fee, yet the bank often has security over the family home to cover the amount overdrawn. They also have the technology to stop customers from going over an agreed limit. Claims against the banks can go back six years and will involve repayment of those fees plus interest from the date of the deduction. IMF subsidiary Financial Redress will organise each class action. The case against the banks will begin this week with a dedicated website to register claims, after the government decided to carve shareholder class actions from managed investment schemes after a controversial Federal Court decision last October found they met the definition of MIS in the Corporations Act and needed to be registered. The decision stopped at least 10 class actions in their tracks, but these actions will now

proceed. Personal claims are expected to average \$2000, while business claims are likely to average \$5000. In recent months, some banks, including National Australia Bank, abolished these fees, while others have reduced them. From February 1, NAB launched an advertising campaign, "We're abolishing our most annoying business fees." In the advertisement it says: "It's just another way we give our business customers more." The Australian Bankers' Association said it had not heard that IMF was to take this action. "Ultimately, it is for the courts to decide the merits of the claim," acting chief executive Tony Burke said. A spokesperson for ANZ said: "We decline to comment." A spokeswoman for Westpac pointed out the bank had already taken action to lower its exception fees. "We were the first bank to cut our exception fees down to \$9," she said. As for the pending class action, she said: "It is hard to make specific comment until we see the case."