

NON-NEGOTIABLE

VERIFIED CARDHOLDER BILLING ERROR DISPUTE FORM

DATE: 7th March 2012



REGISTERED POST ID: 505007112010

Westpac Banking Corporation
ACN: 33 007 457 141

Attn: Ms Gail Kelly
Managing Director & Chief Executive Officer:
275 Kent Street
Sydney, NSW 2000
CC: Collections Team
CC: Financial Ombudsman

ACCOUNT IN DISPUTE: 

Good morning Ms Kelly,

I am writing concerning billing errors on my account. The monthly statements are inaccurate because they reflect several errors:

- 1) A bank liability (money owed to me), and not a debt.
- 2) Debits on my account related to unauthorized transactions, including overdrawn fees related to those transactions

These accounting errors were not apparent in the monthly statements or otherwise disclosed to me, and thus no notice was given. However, the statements are a reflection of an underlying in-house error and thus subject to correction. No request for authorization was received for the unauthorized debits, and thus no approval was given.

I am requesting that these errors be corrected, and that any finance and other charges related to the disputed amounts be credited, to properly reflect the transactions that occurred. These billing errors are limited to your: 1) failure to credit my account for credits received, 2) debiting my account without my authority, for amounts that created overdrafts, and fees related to those transactions. Details are explained herein, and are not to be construed as alleging anything else.

IMPORTANT NOTICE

THIS IS NOT A REQUEST FOR COPIES OF MONTHLY STATEMENTS, A COPY OF A SIGNED APPLICATION, OR A COPY OF THE CURRENT CARDHOLDER AGREEMENT. THIS IS A REQUEST THAT YOU MAKE APPROPRIATE CORRECTIONS TO THE ACCOUNT, OR IN THE ALTERNATIVE, THAT YOU PROVIDE A COMPLETE WRITTEN EXPLANATION REPORT AS TO WHY YOU BELIEVE THAT THE STATED BILLING ERROR IS INCORRECT (INCLUDING THE PRODUCTION OF DOCUMENTATION EVIDENCE COMMENSURATE WITH THE DISPUTE).

Please note: THIS BILLING ERROR DISPUTE DOES NOT INVOLVE:

- A complaint about undelivered goods and services or an overcharge by a merchant
- A dispute with a merchant or a dispute about a specific item of goods or services
- A complaint about the quality of the goods or services
- A complaint about alleged fraudulent and deceptive bank practices
- A complaint about alleged claims regarding perpetration of fraud
- A complaint about an unlawful extension of credit or creating credit instead of money
- A complaint about fraudulent creation of the account or an invalid agreement
- A refusal to pay, or if I made changes to the account
- A complaint about whether I accepted the terms and conditions and benefited
- A preconditioning of my obligation to repay the party that funded the capital for money loaned

ANY RESPONSE REGARDING THESE BILLING ERRORS SHALL BE LIMITED TO THE ERRORS ASSERTED AND MAY NOT EXTEND TO MATTERS WHICH THIS DISPUTE DOES NOT INVOLVE.

After these accounting errors are corrected, I would be happy to settle any financial obligation I might lawfully owe, as soon as I have received the following documentation from you:

1. Validation of the debt (the actual accounting) – including an itemised statement of the account clearly specifying the following, accordance with ACCC/ASIC DCG Part2, Section 10(e):
 - a. the amount of the debt and how it was calculated
 - b. details of all payments made and all amounts (including principal, interest, fees and charges) owing
2. Verification of your claim against me - a sworn affidavit or a hand signed invoice in accordance with The Bills of Exchange Act 1909 – Sects 8(1) & 8(3)(b);
3. A copy of the contract signed by both parties and therefore binding both parties.
4. Reversal of the unauthorised transactions and related fees

CONDITION FOR WITHDRAWAL OF THE DISPUTE:

I will be happy to withdraw this Billing Error Dispute if Westpac Banking Corporation verifies the following statements under oath:

1. That their actions in this case did not follow either Australia’s Generally Accepted Accounting Principles (hereinafter “GAAP”), the Reserve Bank Of Australia’s Policies and Procedures of Transparency and Accountability or the IMF’s Code of Good Practices Part 8: Accountability and assurances of integrity

2. That they did not create any new credits from my signed promises to pay, receipts, notes or other similar instruments, and use said new credit to pay for the charges to the account;
3. That they used their own assets or other depositor's money to fund the charges on the account;
4. That I am not entitled to have the account credited for any form of payment that they accept as money and/or assets under GAAP, or otherwise; and
5. That the foregoing was disclosed to me on the specified date in a document that is attached and incorporated into the affidavit.
6. That they debited my account for unauthorized amounts, contravening their Terms and Conditions, which caused the account to be overdrawn, including overdrawn fees, related to these unauthorized debits

I hereby give you ten (10) days to reply to this notice from the above date with a notice sent using recorded post and signed under full commercial liability and penalties of perjury, assuring and promising me that all of the replies and details given to the above requests are true and without deception, fraud or mischief. Your failure to provide the aforementioned documentation within ten (10) days, from the above date, to validate the debt, will constitute your agreement to the following terms:

1. That the debt did not exist in the first place;

OR

2. It has already been paid in full;

AND

3. That any damages I suffer, you will be held culpable;
4. That any negative remarks made to a credit reference agency will be removed;
5. You will no longer pursue this matter any further.
6. You agree to pay all fee schedules.

Failure to verify the above seven (7) statements under oath shall constitute additional proof that the stated Billing Error is correct.

WHEREFORE, I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

THIS NOTICE CONSTITUTES A NOTICE TO CEASE TELEPHONE COMMUNICATION

Yours faithfully,

Signature

Date: _____

**NOTICE TO THE PRINCIPLE IS NOTICE TO THE AGENT
AND NOTICE TO THE AGENT IS NOTICE TO THE PRINCIPLE**

APPENDIX A:

This Verified Billing Error Dispute Notice establishes prima facie evidence as the assertions made herein to the principles of "truth-in-lending" (as the basis of consumer credit legislation in Australia), The Uniform Consumer Credit Code, ACCC/ASIC Debt Collection Guidelines, the Australian Code of Banking Practice, the National Consumer Credit Code Sect 38 *et seq.*, Fair Trading Act and Trade Practices Act, Australian Consumer Law, FOS Terms of Reference and Australian Securities & Investments Commission Sect12

POINTS & AUTHORITIES

1. Federal Reserve Bank of Chicago's publication – *Modern Money Mechanics*, page 6:
“... (the banks) do not really pay out loans from the money they receive as deposits. If they did this, no additional money would be created. What they do when they make loans is to accept promissory notes in exchange for credits to the borrower's transaction accounts.”
2. ‘Sources of Money’ in the ‘Bank of New South Wales Review’, October 1978
“... When a banker grants a customer credit by overdraft (or loan), the bank ‘opens an account’ in its books and gives the client the right to draw funds without first having to put money into the account.”
2. Account Ledger:
Westpac Banking Corporation/VISA accepted my signed promises to pay, receipts, notes or other similar instruments as bank money, creating and issuing new credits to my account that resulted in a bank liability (money owed to me).
3. Payments to merchants and other financial institutions:
Westpac Banking Corporation/VISA used my new credits to pay merchants or other financial institutions for charges to the account
4. Monthly Statements:
Westpac Banking Corporation/VISA failed to enter the new credits on my monthly statements.
5. Additional payments:
Westpac Banking Corporation/VISA received additional payments, interest and other financial fees, which should have been posted as additional credits to the account, resulting in a bank liability.
6. Unauthorised debits:
Westpac Banking Corporation/VISA debited my account for unauthorised transactions that caused the credit limit to be exceeded, in direct contradiction to WBC's existing Consumer Conditions Of Use, including overdrawn fees related to those transactions

APPENDIX B:

ACCC, ASIC and UCCC Requirements:

1. An acknowledgement of the dispute within fourteen (14) days. s. 34(1) (b), s. 34(2), UCCC; and ACCC & ASIC Debt Collection Guide Part 2, Sect 10(a), (b), (c), (g) & (i)
2. If the error is not corrected, a written explanation report following a reasonable investigation, including the production of documentation evidence, within ninety (90) days. s.36(1), UCCC; ACCC & ASIC Debt Collection Guide for collectors and Creditors Part 2, Sect 12 (d); NCCC - Sect 38 (1) & (2); Code of Banking Practice cl. 11.2(c), cl. 24.3, cl. 35.2 & 35.3 and
3. No restrictions or adverse actions on the account, pending resolution. ACCC & ASIC Debt Collection Guide Part 2 Sects 9(e), 11(c), 12(b) & 19(i).

ACCC, ASIC and UCCC VIOLATIONS. Failure to follow the rules pending resolution:

1. Relinquishment of the right to collect any alleged debt on the account. ACCC/ASIC DCG Part 2, Sects 10(h), 10(j), 12(a), (c) & (e); FOS Terms of Reference Para 13
2. Exposure to liability for actual damages plus twice the amount of the finance charges. ACCC/ASIC DCG Part 2, Section 4(i); Fair Trading Act 1992 (ACT) s. 26(2)(b); Fair Trading Act 1999 (Vic.) s21(2)(b); Section 60 Trade Practices Act; Trade Practices Act, Part IV A (a), (b) & (c); Trade Practices Act, Sect 51AB; Code Of Banking Practice: 40 – Definitions; Section 12DJ ASIC Act; and
3. Potential criminal liability for willful and knowing violation of the ACL and other Truth In Lending provisions. Trades Practices Act: Sects ss. 6(6), 51(1) & 75AZN; ASIC Act: Sects 12DA(1), 12gb(1)