

*Setting the direction for dispute resolution*

Banking and Financial Services Ombudsman

Annual Report 2002-2003



# Mission Statement

The Banking and Financial Services Ombudsman Scheme resolves complaints between banks and their customers.

We are all committed to being the best alternative dispute resolution service in the finance sector as demonstrated by our independence, integrity and efficiency.

## Values

- Commitment to providing a high quality complaint resolution service
- Excellence in decision making with regard to fairness, the law and good banking practice
- Commitment to raising industry and consumer awareness
- Growth and development of our staff



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## Highlights

- In August 2003, the members of the Scheme approved a major change to our Constitution enabling non-banks to become members of the Scheme.
- To reflect the broadening of the member base of the Scheme, the name has been changed from the Australian Banking Industry Ombudsman Limited to the Banking and Financial Services Ombudsman Limited ('BFSO').
- The BFSO website underwent a major upgrade during the year. Consumers are now able to obtain direct referral details for member banks' internal dispute resolution services, check whether their disputes are within BFSO's jurisdiction and lodge written disputes on-line. The BFSO website statistics were enabled on 9 January 2003. From 9 January 2003 to 30 June 2003 there were 18,838 hits to the BFSO website.
- 87.0 per cent of cases were resolved promptly by the banks without the need for any significant involvement by BFSO.
- Of the cases requiring investigation during the year, the median number of days before cases were allocated to case managers was 22. This was a significant decrease in the median waiting time from the previous reporting period which was 59 days.
- This year, 168 cases were resolved after BFSO facilitated a settlement between the parties and 37 cases were resolved after a conciliation conference was conducted by the Ombudsman. This represents an increase in negotiated outcomes for the parties on the previous year, where 140 cases were resolved through a facilitated settlement and 14 cases were resolved after a conciliation conference.
- The establishment of the Banking Insurance Investment Assist joint telephone referral centre at the end of the previous reporting year has resulted in a more efficient BFSO telephone service, with an increase in the number of calls answered immediately of 20.1 per cent from the previous year.
- BFSO has been actively involved in the consultation process with the Australian Bankers' Association and other stakeholders regarding the implementation of the new Code of Banking Practice.
- BFSO conducted its fourth annual members' conference. 140 delegates attended the conference where the Ombudsman, his staff and guest speakers provided participants with up-to-date information about changes, trends and issues affecting the industry and dispute resolution in particular. Delegates participated in a number of case studies and discussed the various approaches of the office of the Ombudsman in resolving these matters.

# Chairman's Message

On 13 August 2003, the members of the Scheme approved a significant change to our Constitution enabling non-banks to become members of the Scheme.

In line with the broadening of the member base of the Scheme, the name of the Scheme has been changed from the Australian Banking Industry Ombudsman Limited to the Banking and Financial Services Ombudsman Limited. I am delighted that these important changes have been approved.

In the year to 30 June 2003, it could be said that the Scheme has been through a period of consolidation followed by the commencement of a strategic review process.

That review is being conducted at a time when the Scheme has completed 13 years of operation, has a sound reputation, good infrastructure and has been formally approved under the Financial Services Reform legislation by the Australian Securities & Investments Commission.

In that regard, the Scheme is due for a review by consultants engaged by the Board but subject to ASIC requirements, during 2004. The Board believes its present strategic review process will enable the Scheme to respond appropriately to the changing financial services environment and to prepare it well to undertake the 2004 review.

I am looking forward to being able to report in next year's Annual Report on the projects conducted in the context of our strategic review and on the effect of broadening the membership of the Scheme.

In last year's Annual Report, the Acting Chairman of the Scheme, Mr Don Armstrong, AM, thanked the inaugural Chairman of the Board of the Scheme, Sir Edward Woodward, AC OBE QC, for his service to the Scheme. I would also like to record my thanks to him. Upon taking office as Chairman in September 2002, I came to appreciate the work that Sir Edward had performed first as Chairman of the Council and then as inaugural Chairman of the Board. I would also like to thank Don Armstrong who acted as Chairman of the Board between the time that Sir Edward retired as Chairman and when I took office.

During the year, Mr Rob Mathie, a Director nominated by member banks, retired. I would like to thank him for his service to the Scheme.

Mr Jeremy Griffith was appointed a Director to replace Mr Mathie. We have also welcomed Ms Su Mahalingham, Director, Consumer Credit Legal Service (WA) to the Board as a new consumer representative. Both new Directors of the Board have an important role to play in the future and have already made contributions to the affairs of the Scheme. I thank all the Directors for the commitment and support they bring to the Board.

On behalf of the Board, I wish to take this opportunity to thank the Ombudsman, Colin Neave, and his staff for their dedication and outstanding efforts during the year. We look forward to a dynamic and exciting year ahead.



Ms Jillian Segal  
Chairman

A handwritten signature in red ink that reads "Jillian Segal". The signature is written in a cursive, flowing style.

Ms Segal was appointed Chairman of the BFSO Board in September 2002. She is also a Non-executive Director of the Australian Stock Exchange, a Director of the Audit Standards Oversight Board for Pricewaterhouse Coopers and is on the Australia Council's Major Performing Arts Board. She has previously been a member of the Dawson Committee, which reviewed the Trade Practices Act, a Commissioner and Deputy Chair of ASIC, and has worked as a corporate lawyer.

## BFSO Board Members June 2003



**Ms Deborah Batten**  
Member  
Representative

Ms Batten is General Manager – Strategy and Revitalisation, Financial Services Australia of the National Australia Bank. She was appointed to the BFSO Board in June 2002.

**Ms Jill Lester**  
Member  
Representative

Ms Lester was appointed to the BFSO Board in September 2001. She is currently Head of Group Corporate Relations of the Commonwealth Bank of Australia.

**Mr Jeremy Griffith**  
Member  
Representative

Mr Griffith is the General Manager Corporate Relations of St George Bank Limited. Mr Griffith was appointed to the BFSO Board in May 2003.

**Ms Carolyn Bond**  
Consumer  
Representative

Ms Bond is the Manager of the Consumer Credit Legal Service in Melbourne. She was appointed to the BFSO Board in December 2001.

**Ms Su Mahalingham**  
Consumer  
Representative

Ms Mahalingham is the Director of the Consumer Credit Legal Service in Perth. She was appointed a Board Member of the BFSO in September 2002.

**Mr Donald Armstrong AM**  
Small Business  
Representative

Mr Armstrong took up his appointment in April 1998, on the then ABIO Council. He is a former member of the Australian Federal Government's National Advisory Council on Consumer Affairs and Deputy Chairman of the Small Business Coalition.

The statistical summary of the number of cases dealt with by the Scheme in the year to 30 June 2003 shows that the number of new cases received declined by 13.3 per cent.

This reduction in the number of cases received is pleasing as it indicates that banks themselves are dealing more effectively with their customers and taking steps to avoid escalation of disputes which require assistance from our office.

Once again, the Scheme has this year contributed to policy development at an industry level. BFSO has been actively involved in the consultation process with the Australian Bankers' Association and other stakeholders regarding the implementation of the new Code of Banking Practice.

The Ombudsman's office held its fourth annual conference during the year for member banks. In excess of 140 delegates attended the conference, continuing a growing trend in the number of participants. During these two days, I, the staff of the office and guest speakers provided participants with up-to-date information about changes, trends and issues affecting the industry and dispute resolution in particular. Delegates participated in a number of case studies and discussed the various approaches of BFSO in resolving these matters.

For the second year running, an exchange of staff was organised with international dispute resolution services. This year, Diane Carmody, the General Manager of BFSO, spent time working in the Office of the Banking Adjudicator in South Africa. In exchange, BFSO welcomed Jacques Louwrens, an investigator with, and the company secretary of, the Banking Adjudicator's Office. Exchange programmes such these are of great value to our Scheme as they allow for the exchange of different ideas regarding dispute resolution and case management. They also allow for on-going working ties to be established between the schemes and for the continual flow of information and ideas.

During the year, the Scheme welcomed the appointment of Jillian Segal as Chairman of the Board. I would like to take this opportunity to recognise the outstanding contributions made by Ms Segal and other Board members who have provided me and the staff of the Scheme, with an exceptional level of support and encouragement over the year. As a result of that support, as well as the efforts of staff, we are able to maintain the high quality of the work done by the Scheme. We are also able to uphold the excellent reputation that the Ombudsman's office enjoys within the financial services industry and the broader community.

In August 2003, following extensive consultation and discussion throughout the year, the bank members of the Scheme agreed to admit non-banks to membership of the Scheme. They also agreed to a change of name from the Australian Banking Industry Ombudsman Limited to the Banking and Financial Services Ombudsman Limited. The renaming of the Scheme is an appropriate measure to reflect the broadening of the membership base.

This has been one of the most significant developments for the Scheme in the last 13 years and I am very pleased that these changes have occurred.

As a consequence of the change in name and broadening of the Scheme, at a planning day later this year, the staff will review and re-write the mission statement and values, so that they appropriately reflect the broadened nature of our work.

Support for these two important initiatives is evidence of the consumer groups and banks' trust of and commitment to the Scheme over the last 13 years. It is also evidence of the continued co-operation of the banks that are associated with the Ombudsman's office.

Over the last few years we have seen ourselves as an organisation not simply dealing with complaints, but as a cost-effective dispute resolution service for banks, their customers and the other schemes in the financial services sector.

It seems especially relevant for me to take this opportunity to thank the staff of the Ombudsman's office for a wonderful year of commitment and activity. Given the broadening of the role of the Scheme, the challenges that will be presented in the future will be very different from those faced by us in the past.



Colin Neave  
Ombudsman



# Our People and What We Do

BFSO employs 44 staff, who undertake a variety of jobs within the organisation. Staff members contribute, on a number of levels, to the resolution of disputes between consumers and members.

## **Administrative Support (4)**

The administrative support staff provide personal assistant services to the Ombudsman and reception, mail and file maintenance services for the Scheme. They contribute to case management by documenting all incoming correspondence to the office on the Scheme's case management database.

## **Banking Advisor (1)**

The banking advisor is responsible for providing a level of banking expertise to supplement the skills of the staff and to enhance the quality of service delivered. The banking advisor provides advice to the Ombudsman and staff on banking practice standards, technical knowledge of banking and banking procedures and systems.

## **Case Managers (13)**

Case managers are responsible for resolving disputes between members and their customers. They investigate disputes and resolve them through the production of written findings, facilitating negotiation between the parties as well as convening conciliation conferences so that resolution is reached within reasonable time frames.

## **Case Officers (14)**

Case officers provide the telephone service to the public in which they offer information about BFSO jurisdiction and procedures and provide callers with appropriate referral to members of the Scheme. Case officers classify and summarise written disputes as well as investigating some disputes not resolved by members.

## **Communication Systems Manager (1)**

The communication systems manager ensures the provision of quality telephone services through the management of call flow traffic, the review and improvement of telephone processes, including the Banking Insurance and Investment Assist ('BIIA') service. He is also responsible for the maintenance of the website, the electronic communication within BFSO, as well as technical support for special projects.

## **Finance Manager and Company Secretary (1)**

The finance manager and company secretary is responsible for the preparation of the Scheme's annual budget and arranging the funding of the Scheme from members. Other responsibilities include the maintenance of all finance records and the company register, and the preparation of the Scheme's financial statements.

## **General Manager (1)**

The general manager contributes to BFSO policy direction, case management quality assurance as well as the management of internal and external relationships.

## **Information Systems Manager (1)**

The information systems manager has responsibility for the information technology infrastructure of the office of BFSO. The information systems manager undertakes the statistical reporting for the performance of the Scheme within the BFSO office as well as to members, the BFSO Board and other stakeholder groups.

## **Legal Counsel (3)**

The legal counsel group, which includes the general counsel, provides legal advice to the Ombudsman. The group also provides legal advice and quality assurance services to case managers and case officers to ensure all relevant legal principles and jurisdictional issues are considered during dispute resolution. The legal counsel group also contributes to the education of BFSO stakeholders and the training of BFSO staff.

## **Ombudsman (1)**

The Ombudsman is the chief executive officer of BFSO and his principal powers and duties are to consider disputes within the Scheme's Terms of Reference and to facilitate the satisfaction, settlement or resolution of such disputes.

## **Policy Advisor (1)**

The policy advisor is part of the team which develops internal and external policy. The policy advisor is responsible for the management of systemic issues, ensuring that all systemic issues are registered centrally for reporting purposes and reporting quarterly to ASIC on such issues. The policy advisor also coordinates the publication of BFSO materials, including writing the Scheme's annual report, and the development of the Scheme's website.

## BFSO Organisational Chart 2003

### Privacy Officer

Responsibility for privacy issues is undertaken by one of our case managers. The privacy officer formulates policy on privacy issues and monitors compliance with the Scheme's legal obligations.

### Referral Centre Enquiries Officers (2)

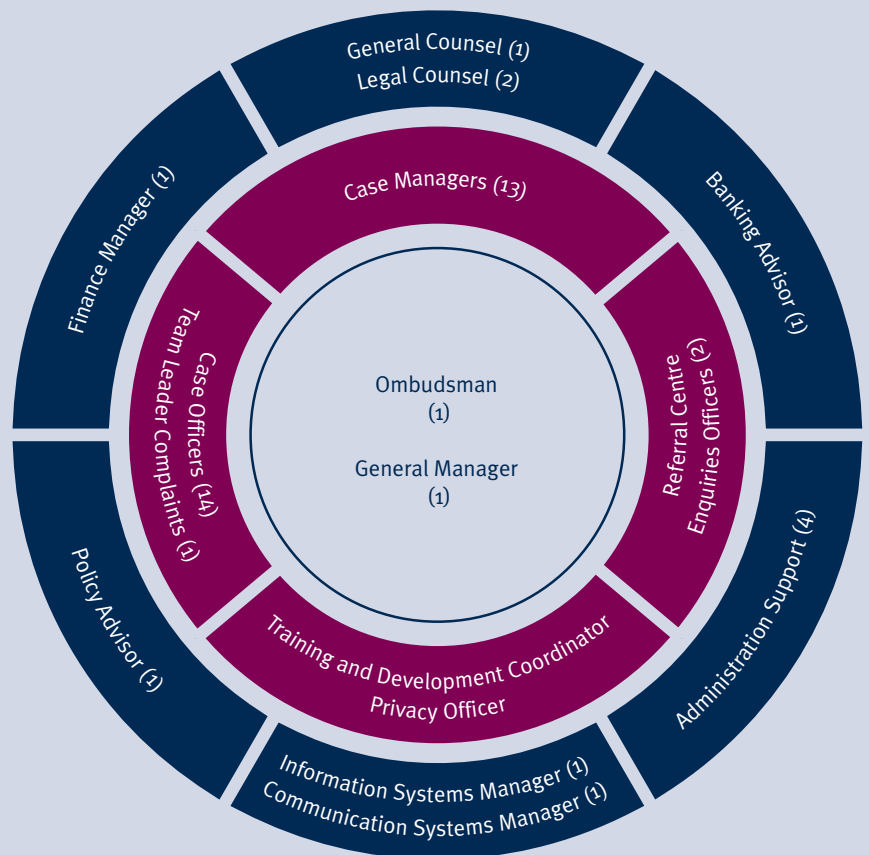
The referral centre enquiries officers are responsible for answering all calls received by the BIIA service. The referral centre enquiries officers direct callers through to the participating scheme with the most appropriate jurisdiction or to other more appropriate organisations.

### Team Leader – Complaints (1)

The team leader – complaints provides leadership and case management support to case officers, in addition to producing assessments of disputes and monitoring case officers' caseloads.

### Training & Development Coordinator

Responsibility for training and development of BFSO staff is undertaken by one of our case officers as part of her task allocation. The training and development coordinator identifies training needs and in conjunction with the legal counsel group and the banking advisor, coordinates training programs on new and emerging legal and banking issues and other relevant areas of professional development for the continuing education of BFSO staff.



# Industry and Community Involvement

BFSO contributes to the development of government and industry policy in the financial services sector. It also promotes good industry practice and the development of community awareness of issues in the banking and financial services sector.

We have done this by providing submissions to government reviews such as that conducted by Consumer Affairs Victoria on 'Debt Collection and the Fair Trading Act: Draft Guidelines for Debt Collectors'. We have also been actively involved in the consultation process with the Australian Bankers' Association and other stakeholders regarding the implementation of the new Code of Banking Practice.

We have provided input to bank projects and product development, published our own policy and approach to issues in our quarterly Bulletins and given presentations and conducted training workshops. Presentations to the banks have included 'Compensation: When and How Much?' and 'Electronic Funds Transfer and Card Issues'.

In the year in review, BFSO has been involved in 46 presentations or training workshops.

Presentations on the role of BFSO were made to a number of groups including:

- Australasian Institute of Banking and Finance
- Melbourne Rotary
- Victorian Conveyancers Association
- Alternative Dispute Resolution Forum
- South Australian Financial Counsellors' Association Inc. Conference
- Credit and Debt Education Seminar, Macarthur Legal Centre
- La Trobe University
- Kangan Batman TAFE
- University of Western Sydney
- Centrelink Financial Information Service, Melbourne
- Commonwealth Bank of Australia Recoveries Department & Loans Processing

Presentations were also made throughout the year to industry, government and consumer groups such as Department of Fair Trading, Consumer Credit Legal Service, Consumer Affairs Victoria, and to 'The Shifting Sands of Consumer Credit' Conference.



Other topics addressed throughout the year included:

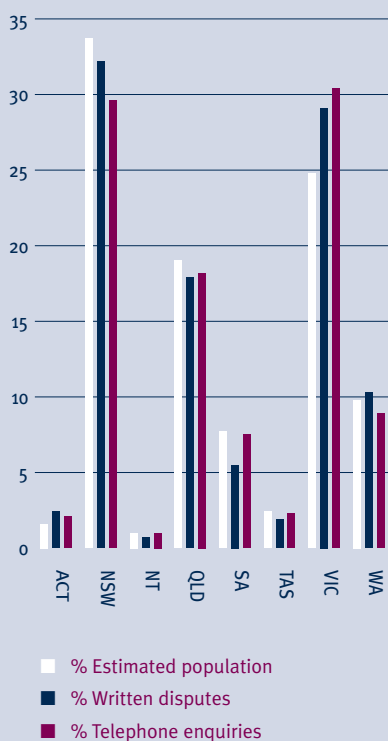
- 'Emerging Issues in Electronic Banking Dispute Resolution' discussion forum, which was hosted by Mallesons Stephen Jacques, in Sydney and Melbourne (photo on right);
- 'Access to Justice Through an Outsourced Body' at the Annual Conference of the Australian Institute of Judicial Administration, Brisbane;
- 'Alternative Dispute Resolution and Industry Ombudsmen: The Cost Effective Alternative' at the Law Society of the Australian Capital Territory;
- 'Industry Funded Alternative Dispute Resolution and Voluntary Codes of Practice' at the Faculty of Law, Australian National University;
- 'Strategies for Case Management' at Victorian Lawyers RPA Ltd;
- 'The BFSO Approach to the Fair Trading Act and Trade Practices Act' to the delegation from a Singapore Study Tour;
- 'Guarantees and the New Code of Banking Practice' to the Law Council of Australia, Law Institute of Victoria Seminar; and
- 'Corporate Governance and Dispute Resolution Schemes' to the Victorian Branch of Chartered Secretaries Australia, Melbourne.



# Users of the Scheme

BFSO is committed to providing a readily accessible Scheme for all consumers. BFSO offers a free service to both individuals and small businesses.

All Users (%)



Consumers throughout Australia can contact BFSO for the cost of a local call. They can discuss their particular problem with a case officer and obtain referral details for the customer relations department of their financial institution.

The BFSO website was upgraded during the year. Some of its features include general information regarding the Scheme, a 'jurisdiction checker' to help users determine whether their dispute is within the Terms of Reference, information on how to lodge a dispute with the Scheme and copies of BFSO publications.

The BFSO brochure 'How to Resolve Your Dispute' is available in Arabic, Chinese, Greek, Italian, Serbian, Turkish and Vietnamese on the Scheme's website or by telephoning the office to request a copy.

Our TTY number allows callers with speech or hearing impairments to converse with BFSO via text. Interpreting services are provided for callers whose first language is not English and arrangements can also be made for written material to be translated into English.

BFSO's arrangements with Vision Australia to present quarterly talk-back segments on Radio for the Print Handicapped have continued throughout the last year.

## Summary of Users of Scheme and the Percentage of the Population in Each State

Comparison of the number of users of the Scheme and the percentage of the adult population in each state continues to show a similar pattern to previous years. There was an over-representation of telephone enquiries and disputes in Victoria and the Australian Capital Territory, proportional representation in the Northern Territory, Tasmania and Western Australia and an under-representation of disputes in New South Wales, Queensland and South Australia.

Reflective of the nation-wide service BFSO provides, the percentage of disputes from each state continues to more closely reflect the population spread.

## Rural Users

Rural users of the Scheme are those consumers living in the non-capital city statistical divisions identified by the Australian Bureau of Statistics.<sup>1</sup>

This year there has again been an over representation of disputes from consumers in rural areas of the Australian Capital Territory, Queensland and Victoria compared to the population in these regions. Last year in Western Australia there was an over representation of disputes from consumers in rural areas, however this year, there was proportional representation from rural consumers in that state together with those in the Northern Territory and Tasmania. The rural users of the Scheme were once again under-represented in New South Wales and South Australia compared to the rural population.

In these areas, priority will be given to the provision of information about the Scheme during the forthcoming year.

## Small Business

The relative proportion of individual and small business consumers using the Scheme was similar to the previous two years, with 7.5 per cent of telephone enquiries and 12.5 per cent of written disputes from small businesses.

## Rural Users (%)

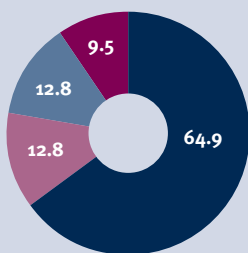


### Users of the Scheme

	Individuals	Incorporated Businesses	Unincorporated Businesses
Phone Enquiries	92.5%	4.6%	2.9%
Written Disputes	87.5%	7.5%	5.0%

1. Australian Demographic Statistics 3101.0 – December quarter 2002.

## Telephone Calls Received (%)



- New enquiries within Terms of Reference
- New enquiries outside Terms of Reference
- Follow-up calls on open cases
- Administrative calls not related to cases

## Telephone Calls Answered ('000)



The launch of the Banking Insurance and Investment Assist telephone referral centre in June 2002, has seen a more efficient allocation of BFSO resources in handling telephone enquiries from consumers during the last year.

### Banking Insurance Investment Assist

Banking Insurance and Investment Assist ('BIIA') is a cooperative venture between BFSO, Financial Industry Complaints Service Limited and Insurance Enquiries and Complaints Limited. BIIA provides consumers with a single access number for assistance with enquiries covered by the three schemes and the Credit Union Dispute Resolution Centre.

For the reporting period, BIIA answered a total of 142,409 telephone calls. A further 7,819 calls were handled by the automated answer service. The percentage of calls answered immediately by BIIA staff was 94.1 per cent with an abandonment rate of 0.7 per cent. Of the calls answered, 29.1 per cent were directed to BFSO staff. 13.0 per cent of BIIA callers were provided with referral details to organisations other than the schemes participating in BIIA.

### The Year in Review

During the last year, BFSO case officers answered a total of 44,304 calls. This was a decrease of 31.2 per cent compared to the 64,365 calls answered in the previous reporting period. It was the first time since 1995 that the number of calls answered decreased.

A major reason for the decrease in the number of calls answered by BFSO case officers was the filtering of calls by the BIIA enquiries officers. BIIA handled a majority of administrative enquiries that were previously dealt with by BFSO case officers and directed calls, previously directed to BFSO, to more appropriate forums. This has resulted in a more efficient allocation of BFSO case

officers' time as they are dealing with fewer calls that are outside the Ombudsman's jurisdiction.

Another factor that has impacted on the BFSO call volume was the upgrading of the BFSO website during the reporting period. BFSO publications are now available on-line and other features include an on-line jurisdiction checker, on-line dispute lodgment service, referral information for member banks' internal dispute resolution services and links to other industry and consumer help organisations. From 19 December 2002 to the end of the reporting period, BFSO processed 562 complaints lodged via the website.

The performance figures once again met BFSO targets for waiting times and abandonment rates:

- For the period 1 July 2002 to 30 April 2003, of the calls answered, 78.4 per cent were answered immediately, with the remainder transferred to an 'on hold' information message. This was an increase from 65.3 per cent of calls answered immediately in the previous year;
- From 1 May 2003, the performance measure for the BFSO enquiries area was the average speed of answer of all calls, rather than the number of calls answered immediately. From 1 May 2003 to 30 June 2003, the average speed of answer was 27 seconds;
- The average monthly abandonment rate for the reporting period was 2.8 per cent, which is an improvement from 4.8 per cent in the last reporting year.

# New Disputes and Work In Progress

## New Disputes

Ten years ago, in the Scheme's 1993 Annual Report, the Ombudsman stated:

“When the Scheme was announced in 1989, it was hoped that the existence of the Ombudsman Scheme, would, over time, lead to an increase in banks resolving complaints to the satisfaction of consumers without the need for the Ombudsman to intervene so that eventually consumers would need to make less use of the Ombudsman's office.”

Now in 2003, for the first time in many years, the number of new disputes lodged with the Scheme fell. BFSO received 6,930 new cases during the year, a decrease of 13.3 per cent from the previous year.

The decrease suggests that there may be a reduced need for consumers to contact BFSO as an external dispute resolution body. These results may also indicate the following possibilities:

- consumers are finding the internal dispute resolution service within the banks more easily; and/or
- a greater willingness by banks to resolve disputes with customers.

The number of hits to the BFSO website between January and June 2003 was 18,838. The improvements to the website during the reporting year included a 'jurisdictional checker' for use as a guide prior to lodging a written dispute with the Scheme. Those consumers whose disputes did not meet 'jurisdictional checker' criteria may have been less likely to lodge a written dispute.

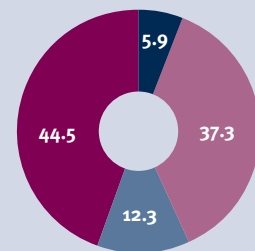
The graph on the right shows the decrease in the volume of written disputes this year when compared to the increases over the past five years.

## Work in Progress

At year's end, there were 1,402 open cases distributed as follows:

Cases received but not classified ('Preliminary' stage)	83	5.9%
Cases referred to the bank and awaiting response ('With Bank' stage)	523	37.3%
Cases under investigation by BFSO ('Investigation' stage)	172	12.3%
Cases provisionally closed, pending acceptance of appeal of BFSO's assessment ('Provisionally Closed' stage)	624	44.5%

## Distribution of Cases (%)

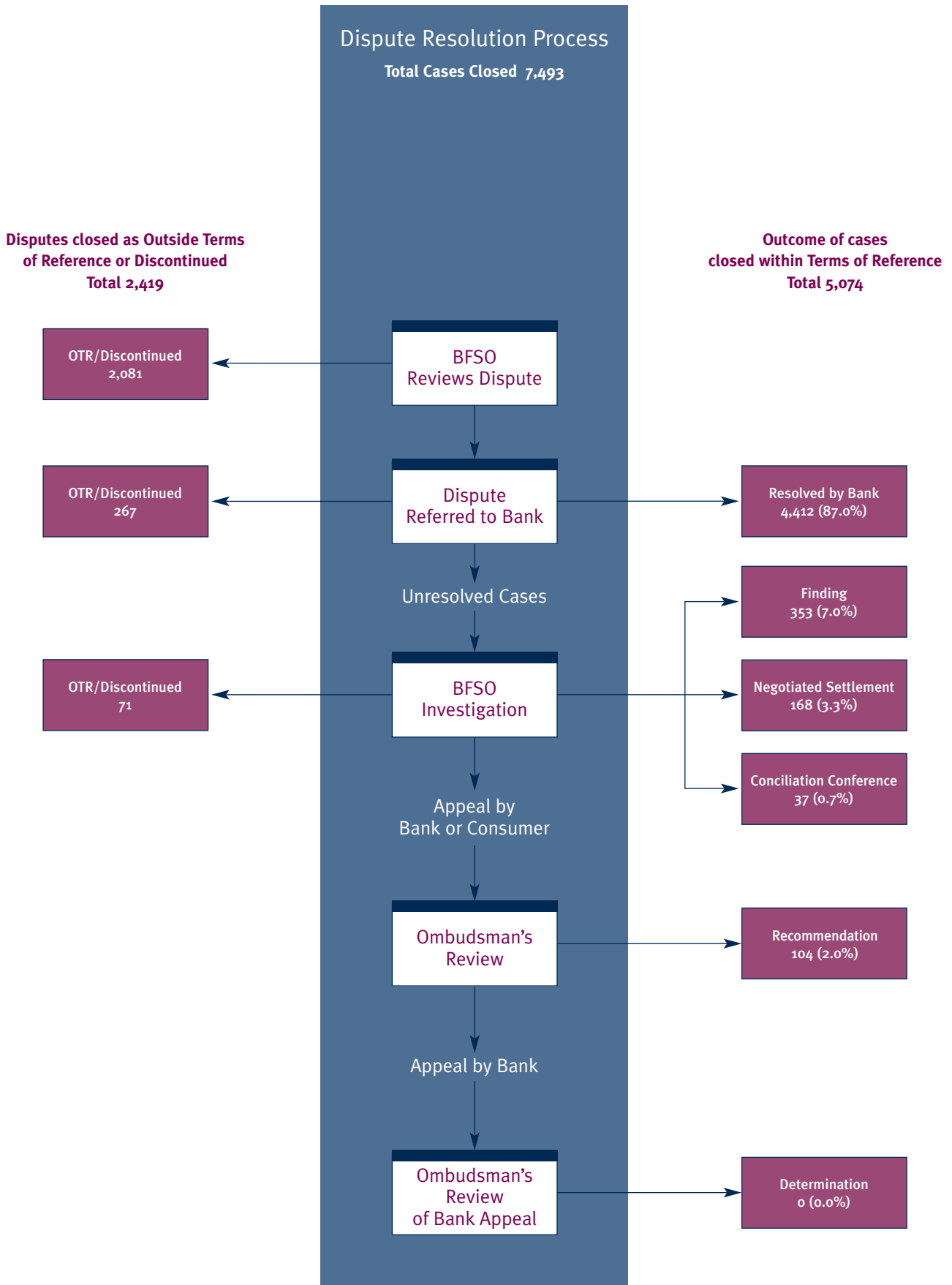


- Preliminary (not yet processed)
- With Bank
- Investigation
- Provisionally Closed

## New Cases Received ('000)



# Dispute Resolution Process and Outcome of Closed Cases



# Closed Cases

A total of 7,493 cases were closed during the year, a decrease of 7.8 per cent from the previous year. 2,419 cases were either discontinued or classified as outside BFSO's jurisdiction, and 5,074 cases were within jurisdiction.

The lower number of closed cases reflects the decreased number of new cases lodged with the Ombudsman.

Of the 5,074 cases that were considered to be within Terms of Reference, 87.0 per cent were resolved promptly after referral to the bank without significant involvement by BFSO. This was comparable to the last reporting period where 88.8 per cent of cases within jurisdiction were resolved after referral to the bank.

Despite the overall reduction in the number of cases closed this year, the number of closed investigations was 733, only six fewer than last year. Of these, 71 cases were determined to be outside the Terms of Reference or discontinued by the consumer.

For cases within Terms of Reference, there are various options for resolving disputes after an investigation has taken place, and the method chosen will depend largely on the complexity of the issues raised, the expectations of the parties and their willingness to negotiate.

This year, 168 cases were resolved after BFSO facilitated a settlement between the parties and 37 cases were resolved after a conciliation conference was conducted by the Ombudsman. This represents an increase in negotiated outcomes for the

parties on the previous year, where 140 cases were resolved through a facilitated settlement and 14 cases were resolved after a conciliation conference. This year, 353 cases were closed after the parties were provided with a Finding, which is a written assessment of the merits of the dispute by a case manager.

Where the consumer or member rejects a Finding, the dispute is referred to the Ombudsman for his consideration. The Ombudsman then issues a Recommendation about how the dispute should be resolved. This year, 104 cases were closed after a Recommendation.

Where a Recommendation is not accepted by a member, the Ombudsman has the power to bind the member by issuing a Determination. However, this year, as with previous years, all disputes were resolved without the need for a Determination.

The Case Studies section of this report provides examples of these various methods of dispute resolution being applied to disputes.

## Outcome of Closed Cases

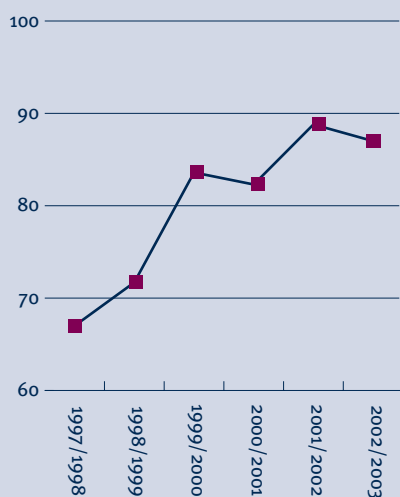
The outcome of the 662 cases within Terms of Reference that were closed after an investigation by BFSO, was as follows:

- The member's actions were considered correct in 41.1 per cent of cases;
- The consumer's claim was upheld in 28.1 per cent of cases; and
- In 30.8 per cent of cases, the outcome was a compromise benefiting both parties.

Cases Closed ('000)



## Early Resolution Rate (%)



## Case Resolution Time

The resolution time is the period of time between the date the dispute is referred to the member and the date it is closed. This includes the 30 day appeal period during which the case is said to be provisionally closed. Of the cases referred to members this year, 44.3 per cent were closed within 60 days, a slight improvement on the previous year's figure of 40.9 per cent. 77.5 per cent of cases were closed within 120 days. Most of these were those that were resolved after referral to members without significant involvement by BFSO.

13.9 per cent of cases, however, took over 181 days to close. These cases were unresolved disputes which required investigation by BFSO. These cases continue to be increasingly complex and

considerable work is required by BFSO to gather and assess information, analyse legal and banking practice issues and formulate appropriate recommendations for the resolution of disputes.

Whilst our commitment to thorough investigation of disputes and high quality dispute resolution is unwavering, we were able to improve our timeliness in the investigation of unresolved disputes this year. Of the cases requiring investigation during the year, the median number of days before cases were allocated to case managers was 22. This was a significant decrease in the median waiting time from the previous reporting period which was 59 days. There is continued emphasis on achieving improved efficiency in the investigation process.

### Case Resolution Times for Cases Within Terms of Reference

	2001	2002	2003
0 to 60 days	42.0%	40.9%	44.3%
61 to 90 days	22.8%	27.8%	24.0%
91 to 120 days	10.3%	10.9%	9.2%
121 to 150 days	4.6%	5.0%	4.8%
151 to 180 days	2.7%	2.8%	3.8%
181 days & over	17.6%	12.6%	13.9%
<b>Total Cases</b>	<b>4487</b>	<b>5512</b>	<b>5074</b>
<b>Median Days - All Cases Sent to Bank</b>	<b>69</b>	<b>68</b>	<b>65</b>

## Member Bank Statistics

The table on the right sets out dispute resolution statistics for each member for the year in review. The provision of this information reflects BFSO's ongoing commitment to independence and transparency.

Readers should keep the following very important points in mind to avoid forming inaccurate views about the dispute resolution performance of any member:

- Members have vastly different market shares. A large number of disputes lodged against a particular member may reflect these differences in customer base size rather than the member's performance; and
- Some figures will include disputes lodged against a member's related bodies corporate, which have fallen within the jurisdiction of the Scheme since 11 March 2002. Some members, however, have few or no related bodies corporate.

The table on the right has two columns which show:

- The number of written disputes received by BFSO for each member, closed during the year in review; and
- The percentage of disputes resolved by each member after referral from BFSO. These disputes did not require significant intervention by BFSO.

The table lists members in alphabetical order.

### Cases Closed – By Bank

Bank	Total Cases Closed*	% Resolved Without Investigation by BFSO
Adelaide Bank Limited	47	83.0
AMP Bank Limited	32	93.8
ANZ Banking Group Limited	887	89.3
Arab Bank Australia Ltd	1	100.0
Bank of China	0	0.0
Bank of Queensland Limited	48	83.3
BankSA, a division of St George Bank Limited	36	88.9
Bank of Western Australia Limited	103	79.6
Bendigo Bank Limited	59	91.5
Citibank Pty Limited	142	83.8
Commonwealth Bank of Australia	1,390	89.6
HSBC Bank Australia Limited	32	100.0
ING Bank (Australia) Limited	31	87.1
Macquarie Bank Limited	9	88.9
Members Equity Pty Ltd	4	75.0
National Australia Bank Limited	794	85.5
St George Bank Limited	246	86.6
Suncorp-Metway Limited	170	84.1
Westpac Banking Corporation	1,043	83.7
	<b>5,074</b>	<b>87.0</b>

\*Within Terms of Reference

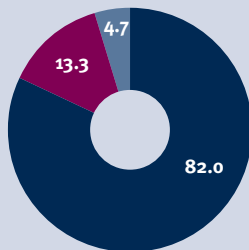
# Types of Disputes

BFSO classifies all cases according to:

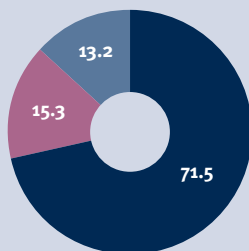
- The product or service obtained by the consumer; and
- The problem with the product or service, as reported by the consumer.

Analysis of the product categories of closed cases this year was the same as in the previous three years, with disputes about Consumer Finance (29.3 per cent), Housing Finance (21.2 per cent) and Deposit Accounts (18.1 per cent) representing the majority of cases.

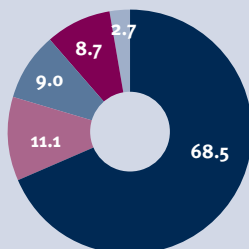
## Types of Disputes (%)



Consumer Finance	No. of Cases:	1697
Credit Cards	82.0%	
Personal Loan	13.3%	
Other	4.7%	
Personal Overdraft	2.1%	
Equity Loans	1.9%	
Margin Lending	0.7%	

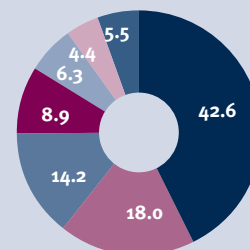


Housing Finance	No. of Cases:	1227
Home Loan - Variable Rate	71.5%	
Investment Property Loan	15.3%	
Home Loan - Fixed Rate	13.2%	

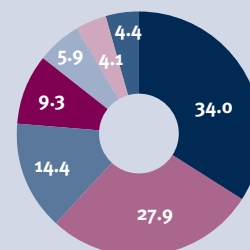


Deposit Account	No. of Cases:	1049
Statement Savings Account	68.5%	
Personal Cheque Account	11.1%	
Term Deposit	9.0%	
Passbook	8.7%	
Other	2.7%	
Cash Management	1.8%	
Mortgage Offset	0.6%	
Foreign Currency Account	0.3%	

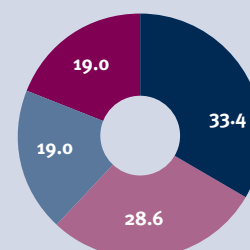
<b>Payment Systems</b>	<b>No. of Cases:</b>	<b>950</b>
ATM	42.6%	
Periodical Payments, Direct Debits	18.0%	
Cheques (inc. 3rd Party)	14.2%	
Telegraphic Transfers	8.9%	
Computer Banking	6.3%	
EFTPOS	4.4%	
Other	5.5%	
Bank Cheque	2.1%	
Telephone Banking	2.0%	
Currency Exchange/Travellers Cheques	1.4%	



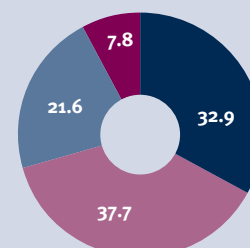
<b>Business Facility</b>	<b>No. of Cases:</b>	<b>680</b>
Merchant Facility	34.0%	
Business Cheque Account	27.9%	
Business Loan - Variable	14.4%	
Business Overdraft	9.3%	
Lease	5.9%	
Business Loan - Fixed	4.1%	
Other	4.4%	
Commercial Bill	2.1%	
Bank Guarantee	1.2%	
Trade Finance	0.7%	
Cash Flow Lending	0.3%	
Hedging	0.1%	



<b>Financial Planning</b>	<b>No. of Cases:</b>	<b>21</b>
Managed Funds	33.4%	
Superannuation	28.6%	
Shares/Bonds	19.0%	
Life Insurance	19.0%	



<b>Other Products or Services</b>	<b>No. of Cases:</b>	<b>167</b>
Holding Title Deeds	32.9%	
Other Products or Services	37.7%	
Insurance	21.6%	
Safe Custody	7.8%	



The main product complained about in the Consumer Finance category continues to be the credit card account. Disputes about this product have decreased slightly from 1,481 last year to 1,392 this year. The main problems identified with credit cards were unauthorised transactions and incorrect debits to the account.

As in previous years, the majority of disputes involving credit cards and other Consumer Finance products such as personal loans and overdrafts, were resolved promptly by member banks and did not require significant intervention by BFSO.

This year, disputes about Consumer Finance products represented 30.2 per cent of all cases that were resolved by the members promptly after referral to the bank, but only 23.4 per cent of investigations.

Disputes about Housing Finance comprised 19.5 per cent of cases resolved by members after referral to them. Fewer disputes about Housing Finance products were resolved by the members directly and consequently, Housing Finance was the main category investigated during the year in review, representing 31.5 per cent of all investigations.

The table below shows a comparison of the product groups that were the subject of a BFSO investigation, compared to the types of disputes readily resolved by members.

Of the investigations into Housing Finance disputes, the majority were about variable interest rate home loan products. A smaller proportion was about investment home loan products but of these disputes, 33.8 per cent were about maladministration in granting the loan.

Disputes concerning Deposit Accounts (including savings accounts, personal cheque accounts, term deposits and passbooks) comprised 18.1 per cent of complaints made by consumers. Most disputes were about incorrect fees, incorrect debiting and crediting of the account and unauthorised transactions.

The table on the right shows a breakdown of the main products complained about and the problems with the products, as described by consumers.

### Cases Resolved by Bank - V - BFSO Investigation

Product Group	% of Cases: Resolved by Bank	% of Cases: BFSO Investigation	All Cases
Consumer Finance	30.2%	23.4%	29.3%
Housing Finance	19.5%	31.5%	21.2%
Deposit Account	18.9%	13.1%	18.1%
Payment System	16.8%	14.2%	16.4%
Business Facility	11.2%	15.2%	11.7%
Financial Planning	0.4%	0.2%	0.4%
Other Products or Services	3.0%	2.4%	2.9%
	100.0%	100.0%	100.0%

Product Group	Major Products	Main Problems	%
Consumer Finance	Credit Cards	Unauthorised transactions	22.1
		Withdrawal or deposit errors	8.1
	Personal Loan	Reporting to credit reporting agency	9.5
		Inappropriate debt collection activity	7.8
	Equity Finance	Failure to reply to correspondence or enquiry	11.4
		Rejection of application, or withdrawal of facility	9.1
Housing Finance	Home Loan - Variable Rate	Delays (eg, loan approval, settlement)	22.2
		Fee excessive, inappropriate or wrong	7.0
	Investment Property Loan	Delays (eg, loan approval, settlement)	16.3
		Maladministration in granting loan	11.2
	Home Loan - Fixed Rate	Fee excessive, inappropriate or wrong	15.4
		Delays (eg, loan approval, settlement)	11.5
Deposit Account	Statement Savings Account	Fee excessive, inappropriate or wrong	17.9
		Withdrawal or deposit errors	11.1
	Personal Cheque Account	Fee excessive, inappropriate or wrong	21.5
		Unauthorised transactions	10.7
	Term Deposit	Product/service advice	12.5
		Contractual breach, written instruction not carried out	11.7
Payment System	ATM	Unauthorised transactions	53.9
		Withdrawal or deposit errors	32.5
	Periodical Payments, Direct Debits	Contractual breach, written instruction not carried out	23.3
		Fee excessive, inappropriate or wrong	16.5
	Cheques (inc. 3rd Party)	Dishonoured transactions	23.4
		Lost funds	13.3
Business Facility	Credit Card Merchant Facility	Dishonoured transactions	49.4
		Unauthorised transactions	8.9
	Business Cheque Account	Withdrawal or deposit errors	14.0
		Contractual breach, written instruction not carried out	13.6
	Business Loan – Variable	Guarantees	12.9
		Contractual misunderstanding	12.2
Financial Planning	Managed Funds	Investment advice	37.5
		Fee excessive, inappropriate or wrong	12.5
	Superannuation	Fee excessive, inappropriate or wrong	14.3
		No, or wrong information given about fees/charges	14.3
	Life Insurance	Unilateral bank action	40.0
		Contractual misunderstanding	20.0
Other Products or Services	Holding Title Deeds	Lost documents/safe custody items	46.7
		Delays	21.7
	Other	Delays	13.5
		Other	13.5
	Insurance	Contractual breach, written instruction not carried out	15.9
		Product/service advice	13.6

# Disputes Outside Terms of Reference

The Terms of Reference sets out the Ombudsman's jurisdiction to consider disputes.

There are certain categories of dispute that the Ombudsman is unable to consider. These include disputes about:

- Bank policy – such as levels of interest rates or fees or branch closures; and
- Commercial decisions – such as decisions not to provide finance, where there is no pre-existing obligation to lend.

## The Year In Review

This year, a total of 12.8 per cent of telephone enquiries answered were considered to be outside the Ombudsman's Terms of Reference ('OTR') compared to 18.7 per cent in the last reporting period. The percentage of closed written decisions that were OTR also decreased from 16.6 per cent last year to 10.7 per cent this year.

This downward trend, which has continued over the last five years, can be attributed to factors including:

- The BIIA joint telephone referral centre which directs callers through to the participating scheme with the most appropriate jurisdiction;
- Consumers' increasing use of the telephone to make enquiries about the Scheme's jurisdiction before lodging written disputes;
- Consumers' increasing use of the Scheme's website and the 'jurisdiction checker'; and
- The expansion of the Scheme's jurisdiction on 11 March 2002, which has resulted in more consumers gaining access to the Scheme.





## Main OTR Categories

The tables below show the main OTR categories for disputes from both individuals and small businesses this year.

Disputes from individual consumers about bank policy were the largest category, being 21.8 per cent of OTR disputes. It is notable that this year, BFSO was of the view that 18.5 per cent of OTR cases were more appropriately dealt with in another jurisdiction. In relation to telephone enquiries that were OTR, 23.1 per cent involved non bank financial institutions, a significant decrease from 51.7 per cent

the previous year. The decrease may be explained by the work of the BIIA in directing calls about non-bank financial institutions to the appropriate forum.

In relation to small business complaints, the main reasons such cases were OTR last year was because they involved a trustee company. However, as a result of the less restrictive definition of 'small business' in the new Terms of Reference, which became operative on 11 March 2002, companies acting as trustees can now lodge disputes with the Ombudsman.

### Individuals

Closed Cases		Telephone Enquiries	
Bank Policy	21.8%	Non Bank Financial Institution	23.1%
Non Bank Financial Institution	19.1%	Bank Policy	18.4%
Other Jurisdiction More Appropriate	18.5%	General Complaint Only	17.3%
Commercial Decision	13.2%	Commercial Decision	13.5%

### Small Business

Closed Cases		Telephone Enquiries	
Commercial Decision	18.8%	Bank Policy	22.3%
Bank Policy	14.4%	No Financial Service	19.1%
No Financial Service	13.5%	Commercial Decision	18.4%
Trustee Company	12.5%	General Complaint Only	9.6%

BFSO has continued to focus on systemic issues during the year in review. Significant emphasis has been placed on identifying problems that have affected or have the potential to affect a large number of consumers in addition to those who have complained to BFSO.

A total of 18 systemic problems were identified and investigated during the year and all were rectified to the Ombudsman's satisfaction by the year's end.

The following are examples of some systemic problems BFSO has considered over the past year.



## Case Studies

### Technical problem with bank's credit card payment facility

We received one dispute about a facility offered to a member bank's customers to enable regular automatic payments to be made to their credit card accounts. The facility is designed to deduct a set amount each month from the customer's savings account and to credit that amount to the cardholder's credit card account. In the event that the required minimum monthly payment exceeds the set monthly amount, the system should allow for the required minimum monthly payment to be deducted.

However, in early 2002, there was a problem with the system and the amount withdrawn from cardholders' savings accounts was not increased when the required minimum payment exceeded the set minimum monthly amount.

The member advised that 174 customers were adversely affected by the problem and the matter was resolved with the member agreeing to refund the late payment fees charged to the 174 customers, with an interest component.

### Charging of fees not provided for in Terms & Conditions

We received one dispute which illustrated that a member bank had been charging annual fees, rewards points fees and additional cardholder fees to credit card accounts that were exempt from these fees because they were linked to a particular home loan package.

The problem occurred because the member only placed the fee waivers on credit cards that were opened after customers took out the home loan package. The member failed to place waivers on credit card accounts that had been in existence before customers took out the package.

Approximately 4,000 customers were incorrectly charged and the matter was resolved with the member agreeing to make refunds of the fee, together with interest, to all affected customers.

The total amount refunded to customers exceeded \$600,000.

### Delay in processing deposits to accounts

We identified a systemic problem with a member bank's 'Express Deposit Facility'. The terms and conditions for the facility indicated that funds should be credited to the account on the same day as the deposit was made, however, this did not always occur.

The member advised us that there had been 53 other complaints about this matter in a four month period. It appeared that the problem stemmed from the fact that the member was using external agents to process the express deposits and if there was any type of discrepancy with the deposit, the agents would have to refer the matter back to the member which caused delays.

The member agreed to rectify the problem by changing its procedures for processing express deposits and no longer using external agents. The member also agreed to compensate those who complained to the member about the matter, and who incurred a financial loss.

### Overdrawn account fees charged to high reliability customers

At one member bank, customers who were considered to be of high reliability status had an indicator placed on their accounts allowing them to draw on uncleared funds. As a result, when a cheque was deposited to the account, the ATM receipt showed that the funds were available and could be drawn on. If the funds were withdrawn, however, and the account became overdrawn, an overdrawn account fee of \$25 was charged.

The member advised that this was a systems error and it had not been intended for the overdrawn account fee to be charged in these circumstances. The bank agreed to change its systems so that the fee was not charged.

### Misleading credit card statements

One dispute indicated that the format of a member bank's credit card statement was causing confusion amongst its customers. The section of the statement that advised of the 'minimum payment due' did not include any arrears owed to the member bank. Information regarding the arrears was included elsewhere on the credit card statement.

We formed the view that the format of these statements could cause customers to be confused about the amount that was required to be paid.

The matter was rectified by the member agreeing to change the format of its credit card statements and to reimburse any customers who claimed that they had been misled by the format of the statements.



The case studies selected for this report include cases that are illustrative of the legal and banking practice issues raised in disputes, the investigation process and different types of resolution. The case studies relate to single cases or a group of cases about the same issue.

## Travel Agent Chargebacks

During the reporting year the Ombudsman concluded an investigation into the banking industry practice of charging back disputed credit card transactions when an airline company failed to provide the service booked by travel agents. The investigation was requested by The Australian Federation of Travel Agents Limited ('AFTA') on behalf of its members.

As the Ombudsman can only consider a dispute between a member bank and its customer, AFTA was asked to advise its own members that met the small business test set out in the Terms of Reference, to write directly to the Scheme. The Ombudsman received 102 separate disputes from travel agents, involving seven member banks.

### Issue

After the collapse of Ansett Airlines, many consumers who purchased pre-paid tickets using a credit card claimed a refund from their bank and the refund was processed on the basis that the service they purchased was not provided. Consumers' banks claimed the refund from the merchants' banks, under the credit card scheme rules. The merchant banks in turn claimed the refund from the merchant under the terms of the merchant agreement. This process is called a 'chargeback'. Where the travel agent had used its own merchant facility to process the payment, the chargeback was to their account.

AFTA said that its members suffered substantial losses as a result of the chargebacks following the collapse of Ansett and other airlines following the events on 11 September 2001.

In summary, AFTA said that:

- the banks were unilaterally charging back disputed credit card transactions to travel agents, when they had already passed on the funds to the failed entity; and
- the travel agents were bearing the loss even though the consumer had a claim against the failed travel entity, under a travel insurance policy or in some cases the Travel Compensation Fund.

In general, the bank response was:

- The card schemes (Visa, MasterCard and Bankcard) determined that the right of chargeback rests with the cardholder's bank or the consumer;
- The chargeback does not prevent the merchant from seeking payment directly from the purchaser; and
- The merchant agreement between the bank and the travel agent entitles a bank to chargeback a disputed credit card transaction if the cardholder disputes a transaction 'for any reason'.

### Investigation and Resolution

The first question considered was what was supplied in return for the payment made by credit card. Was it travel or was it a ticket? The second question was, even if what was supplied was a ticket rather than air travel, was the chargeback nevertheless able to be passed on by the bank to the travel agent under the merchant agreement?

There are respectable arguments either way as to whether a ticket or travel was purchased but, on balance, our view was that the service provided and the supply involved in the transaction was the provision of a ticket. Travel is provided by the airline under a separate contract of carriage.

Therefore, it was BFSO's view that the cardholder, if a ticket was issued, or accommodation booked, received a service from the travel agent. The chargeback reason given did not therefore apply so far as the travel agent was concerned. The cardholder was unable to travel because of the failure of the airline.

The chargeback rights and requirements are identified in the operating rules of the various card schemes (Visa, MasterCard and Bankcard). Because the card schemes are not members of BFSO the Ombudsman has no jurisdiction over them. Further, at the time of this investigation, BFSO was unable to refer to and rely on the full text of the relevant chargeback rules because they were confidential as between the card schemes and the member financial institutions. Neither the cardholder nor the merchant has any direct contractual agreement with the card schemes.

The travel agents' obligations and the banks' rights in relation to credit card transactions processed through the credit card merchant facilities are set out in the merchant agreement between the merchant and the bank.

In each of the seven merchant agreements reviewed it was concluded that the bank was entitled to chargeback invalid or disputed transactions 'if the cardholder disputes liability for the transaction for any reason'. It was concluded, in the majority of cases, that the banks were entitled to chargeback the disputed credit card transactions to the travel agents.

It was also concluded that in passing on a chargeback under the terms of the merchant agreement a bank is denying the travel agent payment under the credit card payments system, but is not denying the merchant the right to seek payment in other ways. The terms of the merchant agreement do not impact on a merchant's contractual rights and obligations in relation to third parties, including any right to be paid for goods or services supplied. It is a matter for the travel agent (and its legal advisors) as to whether action is taken to seek payment and against whom.





### Failure to Register Transfer of Land

In August 2001 Mr & Mrs B purchased an apartment in Queensland which was mortgaged to the bank. Approximately one year later, the disputants made plans to erect a pergola on the terrace and lodged plans with the local council. Mr & Mrs B made plans to travel to Queensland to attend to building the pergola.

The council rejected the disputants' plans on the basis that submission was required to be made by the registered owner.

Mr & Mrs B became aware that at the time the property was purchased and the mortgage was drawn, the bank did not transfer the title into their names and the title remained in the name of previous owners.

Mr & Mrs B alerted the bank to the problem and advised the bank that it was urgent that the situation was rectified as they were planning travel to Queensland. The bank confirmed that the title had not been transferred and said that it would attend to it.

Mr & Mrs B departed for Queensland by car. When they arrived they attended the council with multiple documents to show they were the true owners of property. The council still rejected the plans. Mr & Mrs B telephoned the bank several times to advise it of the current status and to request that the bank move quickly on the problem. Five days later, when title still had not been transferred to Mr & Mrs B's name, they returned home from Queensland.

Mr & Mrs B claimed \$3,600 in loss, comprised of annual leave, accommodation, vehicle expenses, phone calls, copies of documents and meals resulting from the wasted trip to Queensland.

BFSO referred Mr & Mrs B's dispute to the bank. The bank rejected Mr & Mrs B's claim for costs but agreed to offer \$2,000 in recognition that the bank's actions contributed to Mr & Mrs B's situation.

### Resolution

The disputants called the case officer to discuss the bank's offer. Mr & Mrs B decided to make a counter offer to the bank of \$2,600. The bank agreed to pay Mr & Mrs B \$2,600. The case was closed at a Case Resolved level.

## Early Termination of Fixed Interest Rate Loan

Mr & Mrs S applied to the bank for a loan, through a mobile lender. The application was approved, but they were unsure whether to take a fixed or variable interest rate. Mr & Mrs S say they were told not to worry, because they would receive a 'free switch voucher' which would allow them to switch from one type of loan to another free of charge, within the first two years. They took a three year fixed interest rate loan.

One year later, Mr & Mrs S wanted to consolidate their home loan with a student loan in Mrs S's name, and do some renovations. They went to the bank with their voucher, but were told that they would need to pay approximately \$5,000 to switch by refinancing to a variable rate loan. This was an early termination interest adjustment ('ETIA') fee. They did not refinance, but complained to BFSO that they had been misled.

The bank said that, as the voucher stated that the ETIA might be payable when switching from a fixed rate loan, it was not misleading. However, the voucher said that the holder could 'switch to another loan free' and the normal switching fee would be waived. There was no mention in the loan agreement of any switching fee. The bank said that there was no specific switching fee applicable when the voucher was given. Hence, it appeared not to waive anything.

The case manager's finding was that any explanation offered by the lending consultant would be vital to a customer's understanding of what the voucher offered and its limitations.

Mr & Mrs S, and their parents said that the voucher had been described as being 'worth gold' by the lending consultant. The consultant could not recall if those words had been used or not.

Mrs & Mrs S said that no mention was made of an ETIA being payable if the loan were paid out during the fixed rate period. The consultant said that he told them that if they paid more than \$500 to the loan at a time, they would incur a fee. The case manager found that this was not sufficient to alert Mr & Mrs S of the fact that 'switching' from fixed to variable rate meant paying out the entire loan, and an ETIA would be payable and could be significant, despite the voucher.

### Investigation and Resolution

The case manager found that the voucher was worth little, if anything, and Mr & Mrs S would have taken more care in choosing their loan, had they not been misled about the limitations of the voucher. They were unsure what product they would have taken, but thought that they would not have locked themselves into a three year fixed rate. The Finding was that they would more likely have taken a two year rate, and the loan was recalculated on that basis. Mr & Mrs S paid out the loan after 22 months, incurring almost \$2,500 in ETIA. With a two year fixed rate, they would have incurred an ETIA, but it would only have been \$150. The bank refunded the difference.

## An Upset Holiday

This dispute concerned a mistaken withdrawal of \$1,924.34 from Mrs C's savings account whilst she was overseas on holiday. Mrs C said that as a result of the mistake, she could not complete the remaining 28 days of her holiday and had to return to Australia.

Mrs C claimed \$5,583 in compensation, including the cost of accommodation, visas and train tickets that were not used and the cost of a return flight to complete the trip.

In response to the dispute, the bank said that the problem could have been rectified had Mrs C contacted the local branch by telephone. The bank had no record of Mrs C attempting to contact it. The bank said that it acknowledged that Mrs C's husband had called at one of its branches to discuss the situation but it did not have authority to speak to him about the account. The bank said that when it was made aware of the error upon Mrs C's return it was rectified immediately.

The bank made an offer of \$712, which it increased to \$1,000.

### Resolution

The case was resolved by negotiation between the parties conducted by the Ombudsman. The bank agreed to pay Mrs C an amount of \$2,000 in full and final settlement of the dispute.

### Transfer to Wrong Account

Ms K's brother went to his bank to transfer \$10,000 to Ms K's account. Five days later the transfer had not been credited to Ms K's account and her brother's bank put a trace on the transfer.

The account number given by Ms K's brother to his bank was an eight digit number. Ms K's bank operated with nine digit account numbers. In this case the seventh number in the sequence was missing.

Ms K made phone calls to her bank to try and locate the money and was informed that as the account number only had eight digits, the bank added a zero to the front of the account number to create a valid account number. As a consequence, the \$10,000 was transferred to another of the bank's customers.

The sum of \$6,967.95 was recovered from the recipient and repaid to Ms K. The recipient had spent the balance of the transfer and Ms K was owed \$3,032.05. The bank indicated to Ms K that she would have to accept the balance in instalments from the recipient.

Ms K wrote to the Ombudsman and said the payment was made as a result of a bank error and that the bank ought to refund the balance owing to her, with the bank being responsible for the collection of instalments from the recipient.

In its response to the Ombudsman, the bank said that it processes transactions in accordance with the Procedures for Bulk Electronic Clearing System ('the BECS Procedures') published by the Australian Payments Clearing Association Limited ('APCA'). There is nothing in those procedures requiring it to check the account name and number prior to processing a voucher of this type. In addition the BECS Procedures state that the receiving institution is only required to use the BSB and account number in processing the credit. The bank also noted, however, that this specific transaction did not fall under the BECS Procedures.

The bank agreed that it added a zero to the front of the account number given by Ms K's brother to his bank. The bank said that its account numbers must contain nine characters and that adding a zero to the front did not alter the validity of the account number.

#### Investigation and Resolution

The case manager found that the members of APCA, which includes the bank, have agreed between themselves to abide by the BECS Procedures when processing electronic transactions. The procedures are a contractual arrangement made between industry participants and bank customers are not a party to them. Therefore, the BECS Procedures were not part of the contract between the bank and Ms K and they could not be relied upon by the bank in a dispute between the bank and its customer.

The case manager also found that upon the receipt of the eight digit number, the bank had intervened and added a ninth digit, being a zero, to the front of the account number. The processing operator assumed that the number was missing a zero from the front, whereas the missing number was in fact the seventh digit. Even if the BECS Procedures could be relied upon, in processing the transaction by adding a zero to the front of the eight digit number provided by Ms K's brother, the bank did not use 'only' the BSB and account number given to it.

The case manager's view was that the bank did not comply with its contractual obligation pursuant to its terms and conditions.

The bank's terms and conditions stated that the bank 'may' not use the account name to validate the transaction. The case manager found that the use of the word 'may' indicated that use of the account name is in the discretion of the bank. The case manager concluded that because the account number was incomplete or obviously wrong, the bank ought to have used the account name to validate the transaction. Alternatively, the bank should have returned the transaction to the sender for further instructions.

The case manager also found that if the bank's terms and conditions operated to exclude the liability of the bank, then the operation of that clause of the terms and conditions was in breach of the implied statutory warranty to render due care and skill found in Section 12ED of the ASIC Act.

The case manager formed the view that the bank had not exercised 'due care and skill' or the care and skill of a reasonable banker nor had it engaged in good banking practice by adding a zero to the eight digit number. The bank ought to have matched the number with the account name before processing the transaction. Alternatively, it ought to have sought further information from the sender or returned the transfer back to the sending bank.

The case manager found that the bank should pay Ms K the balance of funds that were not recovered from the recipient, being the sum of \$3,032.05. The parties accepted the Finding.

## Instructions Not Followed

Mr I was residing in a correctional facility when he learned that his ATM card, which he had left with his defacto, had been acquired by a third party. With the help of counsellors at the correctional facility, Mr I faxed a letter to his bank branch advising it to cancel his ATM card because he was concerned that the card was in the hands of an unauthorised party.

At the same time, Mr I was expecting a deposit of about \$18,000 to his account, which was the proceeds from his deceased mother's estate.

Mr I did not receive a response and faxed the bank's branch several more times. The bank would not accept Mr I's instructions and advised him that he must attend the branch or sign an Authority and Indemnity form.

Some time passed while Mr I, with the assistance of the counsellors, attended to the bank's request. During this time, the account remained open and operational and \$18,400 was electronically withdrawn with Mr I's card and PIN for that card, without his authority.

Mr I wrote to the Ombudsman to dispute the bank's actions and appointed a counsellor to act as his agent. The dispute was referred to the bank. When the bank did not respond to BFSO by the due date, the case officer sent a reminder fax to the bank, outlining that the central issue for consideration was the failure to put a stop on Mr I's card.

## Resolution

Soon after the bank wrote to Mr I advising him that it had completed its investigation and that his account was to be reimbursed with \$18,400 together with fees and interest as appropriate. The case was closed at Case Resolved.





### Progress Payment to Builder

Mr & Mrs Y engaged a construction company to build their home. Before the building was completed, provisional liquidators were appointed to manage the financial affairs of the construction company. Mr & Mrs Y complained to the Ombudsman that the bank made a payment to the provisional liquidators for the 'lock-up' stage, when the house was not at this stage. They said that the bank should have inspected the property before making the payment because the house was in such a state that it had to be demolished due to defective workmanship.

In its response, the bank said that it is the customer's responsibility to ensure that building works have been completed to their satisfaction when there are progressive payments to a builder. The bank said that there was no requirement or obligation on it to inspect the property and it made the payment in accordance with the authority signed by Mr & Mrs Y.

### Investigation and Resolution

To determine if there was a legal requirement or obligation on the bank to inspect the property before releasing the payment for the lock-up stage, the case manager examined the bank's policy for progress payment inspections, the terms and conditions of the contract and the bank's practice, both generally and in this case.

The bank's policy did not require inspections for residential housing projects under \$1million. Its practice in this case was consistent with the policy, in that no inspections had been made before progress payments were made.

There was no allegation that the bank represented that it would inspect the building at the various stages of construction and it did not contribute to Mr & Mrs Y's mistaken belief that the bank would inspect the building.

The terms and conditions of the contract absolved the bank from a contractual liability to the borrowers to inspect the building before releasing a payment. As Mr & Mrs Y authorised the payment to the provisional liquidators, the bank was entitled to release the payment. The case was closed after the Finding expressed the view that there was no payment to be made by the bank.

## Adverse Credit Listing

Mr R used his credit card a number of times during September and October 1997 to make purchases. He went away to a remote area of Australia for approximately two months to work, returning in December 1997. From October to December 1997, Mr R made no payments to the account causing it to fall into arrears.

The bank sent arrears notices to Mr R's address. He acknowledged having read them when he returned home but did not make any immediate payment to the account.

In late January 1998, Mr R made a payment to the account, and Mr R continued to use his card. The account was still operating in 2002.

Between February 1998 and May 2002, Mr R applied for one home loan and eight personal loans, all of which were rejected by the various lenders he approached. In May 2002, he was informed by a lender that his application was rejected on the basis of a credit report. He obtained a copy of his credit file and saw that the bank had listed the debt as a 'clearout', or 'serious credit infringement'. This type of listing indicates to other lenders that a debtor has fraudulently obtained credit, evaded his obligations or exhibited an intention to no longer comply with his obligations in relation to the credit card account. Mr R then contacted the bank about the listing and the bank removed it.

Mr R wrote to the Ombudsman, saying that the listing had prevented him from obtaining loans over a significant period of time.

### Investigation and Resolution

The case manager found that it was unclear whether the clearout listing had been made in error or intentionally. The credit listing had, however, been updated to show that the debt had been paid in late January 1998, but the clearout listing was not removed or amended at this time.

The case manager also found that Mr R's account had been in default in January 1998, and the bank would have been justified in placing a default listing on his file. Nevertheless, it would not have been justified in listing him as a clearout, as he had not been given prior warning of such a listing, and, had the bank taken sufficient steps to determine Mr R's whereabouts in late 1997, it would have been aware that he had not 'cleared out'.

The case manager also concluded that existence of the clearout listing was disclosed to the lenders whom Mr R approached over the following four years, but it could not be determined that the loans for which he applied would have been approved, even in the absence of the listing. However, it was likely to have impacted on the decision of the lenders he approached.

The Finding was that the bank should pay Mr R \$2,000 as compensation for distress and inconvenience. Mr R and the bank accepted the Finding.

### Maladministration in Granting Credit

Mr P applied for a credit card without stipulating a preferred credit limit. Mr P's application was assessed using the bank's credit scoring system and he was offered a credit card with a limit of \$8,000. The entire amount was spent by Mr P, who then had difficulties repaying the debt.

Mr P was 22 years of age and had only been in employment for six weeks with his current employer at the time of the application. The application showed that he had previously been employed for a three month period elsewhere. The pay slips provided by Mr P to the bank did not support that he was employed on a full-time basis, as the hours worked by Mr P varied substantially from week to week.

Further, although Mr P's current income (shown from the payslips provided) was sufficient to service the proposed limit of \$8,000, the information on the application indicated that Mr P had no previous borrowing history and no savings were evident.

When assessing disputes about maladministration in the granting of credit, BFSO takes into account the following:

- Assessing the ability to repay is to be made in accordance with the Uniform Consumer Credit Code ('the UCCC') and according to what is good banking practice. One consideration in the UCCC is whether, at the time of entering into the contract, the credit provider knew or could have ascertained by reasonable inquiry of the debtor that the debtor could not pay the debt in accordance with the terms of the contract or without substantial hardship; and
- A diligent and prudent bank should rely on all of the information known to the bank and seek up to date information from its customer before forming an opinion about the capacity to repay.

### Investigation and Resolution

The case manager formed the view that she could not be satisfied that the bank's credit scoring process as applied in this case was sufficient to satisfy the bank's obligation under the UCCC or to satisfy the reasonable banker test. The case manager also concluded that although it was arguable that Mr P should not have been granted the credit at all, against that, he clearly had use of the funds.

The bank agreed to make the following offer to Mr P:

- to reduce the outstanding debt to \$4,000;
- to waive all future fees and interest charges;
- repayment to be made in increments of \$85 per month for 47 months, with a residual of \$5 payable at the 48th month, to finalise the debt; and
- Mr P could choose to repay the debt earlier if preferred.

The offer was put to Mr P by this office, who then responded with a counter-offer to repay \$2,000 over a period of 30 months with minimum monthly repayments of \$66, as a final resolution to the dispute. This was accepted by the bank and the matter was resolved.

## Unsolicited Credit Card Increase

In 1997 Ms D applied for a credit card with a credit limit of \$2,000. The facility was approved. At the time, Ms D was employed.

In 1998 Ms D left work to have a baby and started to receive a sole parent's benefit.

In 2001 Ms D received an invitation from the bank to increase her credit limit to \$4,000. Later the same year, the bank offered to increase her credit limit from \$4,000 to \$10,000. Each time, she was simply required to return a signed request form to accept the limit increase.

At the time of writing to this office, Ms D's credit card balance was at the limit. She asked whether the bank should have increased the limit to \$10,000 when she was receiving a sole parent's benefit. She pointed out that the sole parent's benefit has always been paid to her savings account with the same bank. She was having great difficulty paying the interest on the credit card debt in addition to her normal living expenses. She was considering bankruptcy, as she did not feel she could service the credit card debt any longer.

### Resolution

Following referral of this dispute to the bank, the bank wrote to Ms D and offered to reduce her credit card debt and credit limit from \$10,000 to \$4,000. Ms D accepted the bank's offer and the file was closed at Case Resolved level.

## Credit Card Fraud

In December 2000, Mr M applied for an 'on-line eCommerce merchant facility', which was approved by the bank, subject to the bank's usual terms and conditions.

Mr M set up a website, which offered various products for sale. He was contacted by e-mail by a person from Indonesia who requested goods advertised on the website. Mr M agreed to sell the goods and instructed the customer, who wished to pay by credit card, to use the secure 'gateway' service to which Mr M subscribed. This service took the card number and expiry date quoted by the customer and sought authorisation for the transaction from the cardholder's financial institution.

When Mr M was notified that the transaction had been authorised, the goods were dispatched to the customer in Indonesia. Some weeks later, Mr M was contacted by an American man, who said that the card number used was his, but that he had not ordered any goods from Mr M. The man's bank processed a chargeback to Mr M's account.

Mr M had no doubt that his business had been the victim of fraud, but said that his business should not bear the cost, because the bank had been negligent in authorising the transaction and had not warned merchants of 'high risk countries'. He also complained that the bank's systems for obtaining authorisations permitted fraud.





### Investigation and Resolution

The case manager examined the Merchant Agreement and Operating Guide provided to Mr M when the facility was established, and found that:

- The guide made clear that internet sales carried an increased rate of fraud;
- The fact that a card number was quoted gave no assurance that the card was being used by the cardholder;
- Authorisation at the point of sale meant only that the cardholder's bank had verified that the card was not reported lost or stolen and that sufficient credit remained in the account to cover the transaction;
- If the cardholder did not authorise the transaction, the bank could charge it back to the merchant's account.

The case manager issued a Finding which was that Mr M bore the risk of fraud in this case, and the bank should not be required to refund any of the amount charged back. Mr M rejected the Finding, saying that the bank did not take sufficient steps to protect merchants from fraud.

The Ombudsman reviewed the Finding and Mr M's response and determined that the bank had warned the disputant of the risks inherent in internet transactions. The Ombudsman recommended that no compensation be paid.

The Ombudsman, nevertheless, recommends that merchants' banks do not use the word 'authorisation' when referring to verification that the card has not been reported lost or stolen and the account has sufficient funds. It is too easily confused with cardholder authorisation for the transaction.

## Definition of Terms

### **ASIC**

Australian Securities and Investments Commission.

### **BFSO**

Banking and Financial Services Ombudsman Limited, formerly called Australian Banking Industry Ombudsman Limited.

### **BIIA**

Banking Insurance and Investment Assist telephone referral centre, a co-operative venture between the Banking and Financial Services Ombudsman, Financial Industry Complaints Service Limited and Insurance Enquiries and Complaints Limited.

### **Case Manager**

Investigates unresolved disputes.

### **Case Officer**

Takes telephone calls from the public, processes new disputes and investigates some unresolved disputes.

### **Case Resolved**

A dispute that is resolved after referral to the financial institution.

### **Conciliation Conference**

A case conference conducted by the Ombudsman.

### **Customer**

An individual or small business user of financial services.

### **Determination**

A written decision issued by the Ombudsman if the member rejects a Recommendation. A determination is binding on the member.

### **Directors**

The Directors of the BFSO Board.

### **Discontinued**

Disputes sent to BFSO for our information without a request to investigate, and disputes subsequently withdrawn by the disputant.

### **Disputant**

An individual or small business bringing a dispute before the Ombudsman.

### **Dispute**

A written request for assistance to resolve a disagreement between a financial services provider and a customer.

### **Enquiry**

A telephone enquiry from a person.

### **Financial Institution**

A member bank or a related body corporate of a member bank.

### **Finding**

A written assessment of the merits of a dispute after investigation of the dispute by BFSO staff.

### **Guidelines**

A manual published by BFSO which explains the clauses of the Terms of Reference. New Guidelines were published on 11 March 2002 when the new Terms of Reference became effective.

### **Member**

A bank that has agreed to participate in the Scheme (see Appendix B).

### **Negotiated Settlement**

An investigation that is resolved by way of a settlement that is acceptable to both parties. Usually a case manager will facilitate the settlement.

### **OTR**

(Outside Terms of Reference) A dispute that is outside the Ombudsman's jurisdiction.

### **Problem**

The term used by BFSO to describe the nature or description of the dispute that the disputant has about a financial service.

### **Product**

The term used by BFSO to categorise the various financial products, services, accounts or facilities available to customers from banks.

### **Provisionally Closed**

The status of a case for the 30 day period between BFSO seeking confirmation of the resolution of the case and the date when the appeal period expires and the case is closed.

### **Recommendation**

A decision made by the Ombudsman if either the bank or disputant reject a case manager's Finding, or where resolution cannot be reached at a Conciliation Conference.

### **Related Body Corporate**

A company that belongs to the same group of companies as a member bank.

### **Scheme**

Banking and Financial Services Ombudsman Limited.

### **Small Business**

**For events occurring prior to 6 July 1998:**  
An unincorporated business.

**For events occurring between 6 July 1998 and 10 March 2002:**

An incorporated or unincorporated business with less than 15 employees and a turnover of less than \$1 million, which is independently owned and managed.

**For events occurring on or after 11 March 2002:**

An incorporated or unincorporated business that employs less than 100 full time equivalent employees if the business is manufacturing, and less than 20 employees if the business is of another nature.

### **Serious Misconduct**

A broad term that includes fraudulent conduct, grossly negligent or inefficient conduct, and wilful or flagrant breaches of relevant laws and codes of practice. BFSO is obliged to report cases of serious misconduct to ASIC.

### **Systemic Issue**

An issue which has been raised in a dispute or several disputes to BFSO which will affect a class of people in addition to those who have complained to the Scheme. BFSO is obliged to report systemic issues to ASIC.

### **Terms of Reference**

A written document setting out the powers, duties and obligations of BFSO.

### **The Board**

The governing body of the Scheme comprising an independent chair, two consumer and one small business representative, and three bank representatives.

## Members

As at 30 June 2003, the following banks were members of the BFSO Scheme:

- Adelaide Bank Limited
- AMP Bank Limited
- ANZ Banking Group Limited
- Arab Bank Australia Limited
- Bank of China
- Bank of Cyprus
- Bank of Melbourne, a division of Westpac Banking Corporation
- Bank of Queensland Limited
- BankSA, a division of St George Bank Limited
- Bank of Western Australia Limited
- Bendigo Bank Limited
- Challenge Bank, a division of Westpac Banking Corporation
- Citibank Pty Limited
- Commonwealth Bank of Australia
- Elders Rural Bank
- HSBC Bank Australia Limited
- ING Bank (Australia) Limited
- Macquarie Bank Limited
- Members Equity Pty Ltd
- National Australia Bank Limited
- Rabobank Australia Limited
- St George Bank Limited
- Suncorp-Metway Limited
- United Overseas Bank Limited
- Westpac Banking Corporation

The Scheme can also consider disputes about any related bodies corporate of the above members provided that the dispute relates to an act or omission that first occurred on or after 11 March 2002. During the year, the Scheme has considered disputes involving the following related bodies corporate:

- ANZ Funds Management
- Commonwealth Bank Finance Corporation Limited
- Commonwealth Securities (ComSec)
- Commonwealth Insurances
- Commonwealth Financial Services
- Esanda Finance Corporation Limited
- Homepath Pty Ltd
- HSBC Building Society
- Super Members Home Loans Ltd
- National Australia Funds Management
- Westpac Financial Services Limited

# Summary Financial Statements

Australian Banking Industry Ombudsman Limited  
(now known as Banking and Financial Services Ombudsman Limited)

ACN 050 070 034

## Statement Of Financial Performance

For the year ended 31 March 2003

	31 March 2003 \$	31 March 2002 \$
<b>Revenue from ordinary activities</b>	<b>4,484,797</b>	<b>4,132,850</b>
Employee benefits expense	(3,190,476)	(2,796,781)
Depreciation and amortisation expense	(148,194)	(175,301)
Borrowing costs expense	92	1,116
Occupancy costs	(238,685)	(216,787)
Technology costs	(241,769)	(178,703)
Telephone expense	(140,474)	(130,950)
Directors fees	(123,474)	(144,046)
Travel and accommodation expenses	(71,557)	(58,239)
Promotion and information expenses	(50,216)	(107,149)
Auditor's remuneration	(6,329)	(6,028)
Other expenses from ordinary activities	(333,589)	(441,628)
<b>Profit (loss) from ordinary activities before income tax expense</b>	<b>(59,874)</b>	<b>(121,646)</b>
Income tax expense relating to ordinary activities	–	–
<b>Profit (loss) from ordinary activities after income tax expense</b>	<b>(59,874)</b>	<b>(121,646)</b>
<b>Total changes in equity</b>	<b>(59,874)</b>	<b>(121,646)</b>

# Summary Financial Statements *continued*

Australian Banking Industry Ombudsman Limited  
(now known as Banking and Financial Services Ombudsman Limited)

ACN 050 070 034

## Statement Of Financial Position

As at 31 March 2003

	31 March 2003 \$	31 March 2002 \$
<b>Current Assets</b>		
Cash assets	1,605,185	833,980
Other	47,803	291,331
<b>Total Current Assets</b>	<b>1,652,988</b>	<b>1,125,311</b>
<b>Non-Current Assets</b>		
Plant and equipment	334,230	458,115
<b>Total Non-Current Assets</b>	<b>334,230</b>	<b>458,115</b>
<b>Total Assets</b>	<b>1,987,218</b>	<b>1,583,426</b>
<b>Current Liabilities</b>		
Payables	785,213	441,076
Interest bearing liabilities	–	16,871
Provisions	388,200	288,900
<b>Total Current Liabilities</b>	<b>1,173,413</b>	<b>746,847</b>
<b>Non-Current Liabilities</b>		
Payables	250,000	250,000
Provisions	117,000	79,900
<b>Total Non-Current Liabilities</b>	<b>367,000</b>	<b>329,900</b>
<b>Total Liabilities</b>	<b>1,540,413</b>	<b>1,076,747</b>
<b>Net Assets</b>	<b>446,805</b>	<b>506,679</b>
<b>Accumulated Funds</b>	<b>446,805</b>	<b>506,679</b>

Audited Financial Statements and Directors' Report for Australian Banking Industry Ombudsman Limited (now known as Banking and Financial Services Ombudsman Limited) have, in accordance with legal requirements, been lodged with ASIC and are available for public scrutiny.

## Thank You BFSO

I would like to thank you personally as I feel you went beyond your everyday routine to solve my issues with the bank. I found you to be professional, understanding and patient. I believe that without your professional assistance this case would have remained unresolved.

“You must feel very satisfied that you are playing an extremely important role in the community. Thank you for your involvement.”

I wish to thank you for your efficiency, interest and assistance in this matter, and I feel that I owe to you the positive outcome in this case.

*“I am very happy with the bank’s response to my problem. I could not have asked for a better outcome. May I convey my most grateful thanks to you. Thanking you once again very, very much.”*

“I believe your file in this matter can be closed, I express my satisfaction on witnessing the influence of your office and I am pleased that institutions in our community can cause institutions as large and as important as the bank to toe the line. I thank you for your intervention and for the results quickly obtained.”

“My sincere thanks to you and your staff for a very positive result with my dispute with the bank. You have lifted a great load off my shoulders. Once again, many, many thanks.”

*Thank you The result exceeded my expectations.  
The cheque is in my bank.*

“I wish to thank you most sincerely for your efficient handling of this situation. I had been told by a friend, who suggested I contact you, that this would be the case.”

*It is due to your intervention that this matter has been settled to our satisfaction, and for this I am truly grateful. Many thanks for your care in this matter.*

“I am very happy to tell you that our complaint against the bank has been resolved to our complete satisfaction. All in all we could now not be happier that the matter has been resolved. I could not have done it without the Ombudsman.”

Banking and Financial Services Ombudsman

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Monday-Friday 9am-5pm

TTY: 03 9613 7344

Fax: 03 9613 7345

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