

Australian Banking Industry Ombudsman

Annual Report 2001-2002





Mission Statement

The Australian Banking Industry 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 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

- 7,992 new cases were received for the year, an increase of 12.5 per cent on the previous year.
- 8,130 cases were closed, an increase of 18.3 per cent on the previous year.
- A total of 64,365 phone calls were answered during the year, an increase of 4.3 per cent on the previous year.
- 88.8 per cent of cases were resolved promptly by banks without the need for any significant involvement by ABIO. This is an increase from the previous year and illustrates the continuing improvement of the banks' internal dispute resolution mechanisms.
- To coincide with the commencement of the new Terms of Reference, ABIO also published two new manuals: Guidelines to the Terms of Reference and ABIO Policies and Procedures.
- ABIO adopted new Terms of Reference on 11 March 2002 which increased the Scheme's jurisdiction. The Scheme now has the ability to consider disputes about the whole banking group, and privacy disputes. The definition of 'small business' disputant has been expanded, as have the Scheme's decision making criteria and the Ombudsman's powers to resolve disputes.
- In September 2001 ASIC approved ABIO pursuant to its policy statement 139 as an external dispute resolution mechanism.
- In accordance with the requirements of the Financial Services Reform legislation and guidelines issued by the Australian Securities and Investments Commission ('ASIC'), ABIO started to report systemic issues and cases of serious misconduct to ASIC on a quarterly basis.
- The governing body of the Scheme was changed from a dual Council and Board structure to a single Board structure.
- ABIO entered into a co-operative venture with the Financial Industry Complaints Service and Insurance Enquiries and Complaints Scheme Limited, with the launch of a joint telephone referral centre. The centre provides consumers with a single access number for assistance with enquiries covered under the jurisdiction of the three schemes.

Chairman's Message

The Scheme's activities this year have been marked by changes within the financial services sector. In particular, the Financial Services Reform legislation, which came into effect on 11 March 2002, impacted on the Scheme in a number of ways.

The legislation places a requirement on alternative dispute resolution schemes in the financial services sector to be approved by the Australian Securities and Investments Commission ('ASIC'). The Scheme took part in an assessment process in 2001 and approval was granted by ASIC on 21 September 2001.

As an approved ADR Scheme, ABIO is now obliged to comply with various guidelines issued by ASIC, including the requirement to provide a statistical report and a report about systemic issues and cases of serious misconduct to ASIC each quarter. Two reports have been provided to ASIC to date and the new regime is working well.

The Board welcomes the involvement of ASIC in the Scheme's activities and looks forward to continuing the co-operative relationship which has developed.

Another development during the year was the change to the governing structure of the Scheme which took place on 1 September 2001. The former Council and Board structure was replaced with a single Board of Directors comprising an independent Chair, two consumer,

one small business and three bank representatives. I welcome the move to a single structure as it will assist in streamlining administrative matters. This will be in the interests of both consumers and members of the Scheme.

The Board thanks the members of the former Council and Board for their commitment and contribution to the Scheme.

I also take this opportunity to thank Sir Edward Woodward, who was Chair of the former Council from April 1997 to 1 September 2001, and then the inaugural Chairman of the new Board. After five years overseeing the Scheme, Sir Edward retired in April 2002. He performed his duties with great distinction and developed an excellent working relationship with the Scheme's stakeholders. His considerable contributions will have a long lasting effect and his years of service will be remembered as a significant part of the history of the Scheme.

During the year, Deborah Batten, Jill Lester and Robert Mathie joined the Board to represent the interests of banks in the Scheme.

I also note the resignation of Mr Michael Funston and Dr Josephine Tiddy who both provided a valuable contribution to the work of the Board. Dr Tiddy used her previous experience as the Commissioner for Equal Opportunity in South Australia to great effect during her term, first as a Council member, then as a member of the inaugural Board.

We have recently welcomed Ms Carolyn Bond, Manager, Consumer Credit Legal Service (Vic), as the Board's new consumer representative.

The Board thanks the Ombudsman, Colin Neave, and the staff of the ABIO for their dedication and efforts over the year. We look forward to an active twelve months ahead.



Mr Don Armstrong AM
Acting Chairman

ABIO Board Members
June 2002



Mr Don Armstrong AM
Acting Chairman
Small Business Representative



Dr Josephine Tiddy
Consumer Representative



Ms Jill Lester
Bank Representative
Commonwealth Bank of Australia



Mr Robert Mathie
Bank Representative
St George Bank Limited



Ms Carolyn Bond
Consumer Representative



Ms Deborah Batten
Bank Representative
National Australia Bank Limited



Mr Graeme Ludecke
Company Secretary

Numerous developments in the financial services sector this year have altered the environment in which the Scheme operates. Legislative reform and review of industry codes have led to some important changes.

The Financial Services Reform legislation resulted in the Australian Securities and Investments Commission ('ASIC') becoming more involved in the regulation of dispute resolution schemes.

As the Acting Chairman has stated in his message, this led to the governing structure of the Scheme being changed from a dual structure to a single Board, and the Scheme being approved by ASIC on 21 September 2001.

The changes in the legislative and regulatory environment, together with a review of the Scheme conducted by the former Board also led to the adoption of new Terms of Reference on 11 March 2002 which broadened the Scheme's jurisdiction to consider disputes.

The *Privacy Amendment (Private Sector) Act 2000* (Cth) also impacted on the Scheme's activities. Not only was considerable focus placed on ensuring the Scheme itself complied with the requirements of the Act, but measures were also put in place for dealing with disputes raised by consumers against banks under the Act.

The Scheme's approach to disputes about electronic banking will now take into account the revised Electronic Funds

Transfer Code of Conduct which became effective on 1 April 2002. The new Code extends to disputes about phone banking and internet banking as well as card and PIN transactions.

A very important initiative for the year in review was the development of a number of joint ventures with the Financial Industry Complaints Service Limited and Insurance Enquiries & Complaints Limited. This co-operation has, to date, resulted in the development of a joint telephone referral centre for the three schemes, housed in and managed by the office of the Banking Ombudsman.

The referral centre enables callers with a financial services enquiry or complaint to be connected to the most appropriate scheme able to deal with that matter. It is anticipated that there will be more co-operative undertakings between the three large schemes and further sharing of resources. This is a cost effective initiative that will lead to a further reduction of unit costs for all the schemes.

The Scheme has continued in the year in review to make contributions to policy development by Government, ASIC and the Australian Bankers' Association.

Examples of two projects include a contribution to ASIC's *'Guide to Good Transaction Fee Disclosure for Bank Transaction Accounts'* and to the Association's project which led to the completion of a new Code of Banking Practice.

I visited South Africa this year to participate in a conference organised by the equivalent of the Banking Ombudsman in South Africa, the Banking Adjudicator, following conferences of international Ombudsmen and adjudicators in Australia in 1997 and 1999.

The exchange of views with a variety of participants, including the Canadian Banking Ombudsman, the Ombudsman designate for Botswana and the Financial Services Ombudsman for the United Kingdom, was of great value to all participants in the conference. It is anticipated that a further conference will be held in September 2003 in the United Kingdom to be attended by those responsible for the resolution of financial services complaints in a variety of jurisdictions from all parts of the world.

During the visit I also addressed a conference in Johannesburg organised by the Banking Council of South Africa on

the way in which the Scheme operates, especially highlighting our strong emphasis on mediating disputes between banks and their customers.

The Scheme welcomed visitors to its offices from a number of overseas delegations during the year. The Bankers' Association of Singapore sent a group to study how alternative dispute resolution schemes operate in Australia. Also, a working party, established by the Government of Papua New Guinea, visited during the year in review, as did a representative of banks based in Fiji. Numerous requests for information about how the Scheme operates were received from overseas residents and also many bodies interested in the establishment of industry funded schemes in Australia. An exchange of staff was organised with the Banking Ombudsman for New Zealand and the manager of investigations from the Office of the South African Banking Adjudicator spent time with us examining our dispute resolution processes and case management.

Several other meetings were held, for example, with consultants advising the Victorian Government on the establishment of an Ombudsman to adjudicate in relation to public transport disputes.

The Chairman of the former Council of the Scheme and the inaugural Chairman of the new Board, the Hon Sir Edward Woodward, AC OBE QC retired in April 2002. I would like to record my appreciation of his very significant contribution to the affairs of the Scheme and for his support, guidance and friendship to me during his term as Chairman of the Council then as inaugural Chairman of the new Board.

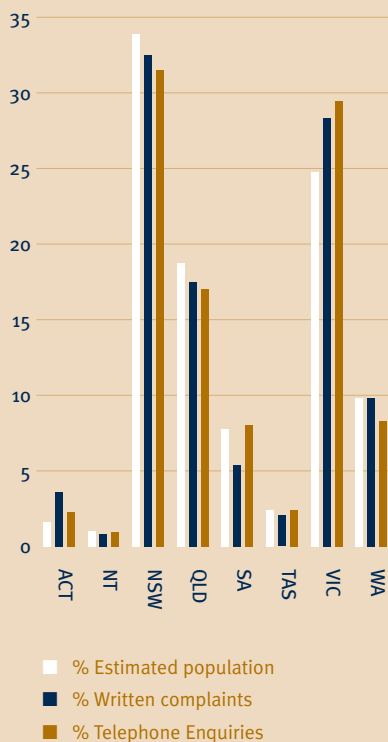
Colin Neave

Colin Neave
Ombudsman



ABIO is committed to providing equitable access to its services, and continually strives to reduce the barriers faced by people due to their geographical location, their physical or intellectual disability, or their language difficulties.

All Users (%)



ABIO offers a free service to both individuals and small businesses. Consumers from across the country can contact ABIO on a toll free number to discuss their problem with a case officer.

A TTY number allows callers with a speech or hearing impairment to converse via text. An interpreting service is provided for callers whose first language is not English, and arrangements can also be made for written material to be translated into English.

During the year, ABIO also entered into an arrangement with Vision Australia to present quarterly information segments on Print Radio (RPH). Arrangements are also underway to have brochures available in large print.

Summary of users of Scheme and the percentage of population in each state

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

Comparison with 10 years ago

A comparison of this year's figures with those of 10 years ago shows the effect of the Ombudsman's nationwide education programs and the increasing membership of the Scheme to cover all states:

- In 1992, NSW was under-represented, with approximately 34 per cent of the population, but only 26 per cent of written disputes. In 2002, NSW still represents around 34 per cent of the country's population, but disputes from NSW now comprise 32 per cent of ABIO's caseload.
- Similarly, Queensland, with around 18 per cent of the population had only 10 per cent of written disputes in 1992, but this has risen to 18 per cent this year.
- Victoria, with around 25 per cent of the population, accounted for nearly half of the disputes received in 1992, but in 2002, this has fallen to 28 per cent.

The percentage of disputes received from each state now reflects the population spread more closely. This illustrates that ABIO has developed into a truly nationwide service, and has overcome the geographical limitations that existed when the Scheme was first set up in Melbourne.

Rural Users

Promotion of ABIO in rural areas continued to be a priority for the Ombudsman during the year. He visited Aboriginal communities in the Northern Territory in July and conducted community forums in Bunbury, Coffs Harbour, Toowoomba and Whyalla throughout the year.

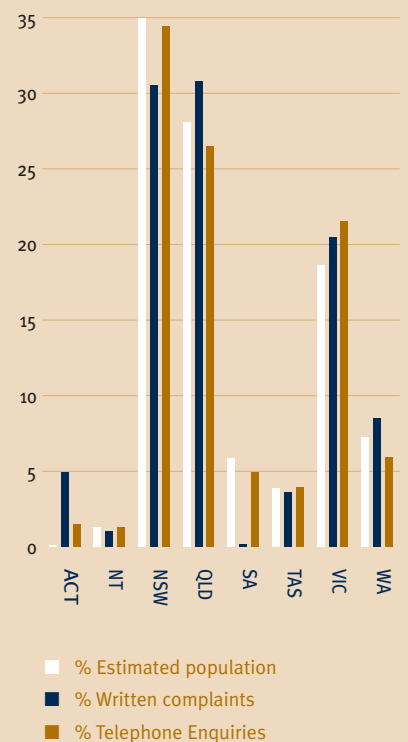
This campaign to promote the Scheme to rural Australians has operated for several years now, and appears to have increased rural communities' contact with the Scheme. In particular, there has been an over representation of disputes from consumers in rural areas of the ACT, Queensland, Victoria, Western Australia, compared to the population in these regions. However, in New South Wales and South Australia, the rural users of the Scheme were once again under-represented compared to the rural population.



Small Business

The relative proportion of individual and small business consumers using ABIO's services was similar to the previous year, with 7.1 per cent of telephone enquiries and 13.1 per cent of written disputes from small businesses.

Rural Users (%)

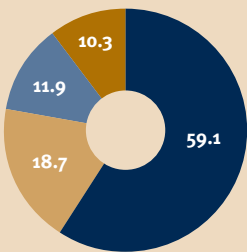


	Individuals	Incorporated Businesses	Unincorporated Businesses
Phone Enquiries	92.9%	3.6%	3.5%
Written Disputes	86.9%	7.4%	5.7%

Telephone Service

On 21 June 2002, ABIO entered into a co-operative venture with the Financial Industry Complaints Service Limited and Insurance Enquiries and Complaints Limited with the launch of a joint telephone referral centre.

Telephone Calls Received (%)

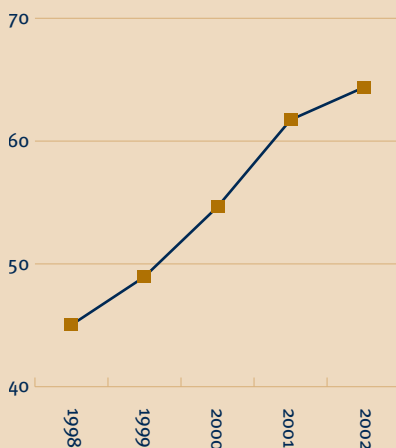


- New enquiries within Terms of Reference
- New enquiries outside Terms of Reference
- Follow-up calls on open cases
- Administrative calls not related to cases



Colin Neave, the Hon Peter Costello MP, Ms Alison Maynard (FICS) and Mr Sam Parrino (IEC) at the launch of the referral centre.

Telephone Calls Answered (%)



The centre provides consumers with a single access number for assistance with enquiries covered under the jurisdiction of the three schemes.

From 21 June 2002, all calls to the participating schemes were answered by the referral centre. In the five day period from 21 June to year's end, 4,105 calls were received by the referral centre, with 33 per cent being directed to ABIO.

The profile of telephone calls received by ABIO will change in the future with the majority of administrative and follow-up enquiries being handled by the referral centre, resulting in an increasing percentage of calls to ABIO case officers being new enquiries.

The Year in Review

A total of 64,365 calls were answered by ABIO case officers during the year in review, an increase of 4.3 per cent compared to the last reporting period. These calls comprised a mixture of new enquiries (within and outside our jurisdiction), follow-up calls on open cases, and administrative queries not related to particular cases.

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

- Of the calls answered, 65.25 per cent were answered immediately, with the remainder transferred to an 'on hold' information message; and
- The average monthly abandonment rate was 4.8 per cent, which is an improvement from 6.6 per cent in the previous year.

New Disputes and Work in Progress

ABIO received 7,992 new cases during the year, an increase of 12.5 per cent over the previous year.

New Disputes

The number of new disputes lodged with the Scheme continued to rise this year. ABIO received 7,992 new cases during the year, an increase of 12.5 per cent over the previous year. The graph below shows the continued increase in the volume of written disputes over the past five years, with the number increasing by 70 per cent since 1998.

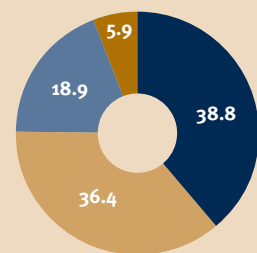


Work in Progress

At year's end, there were 1,942 open cases distributed as follows:

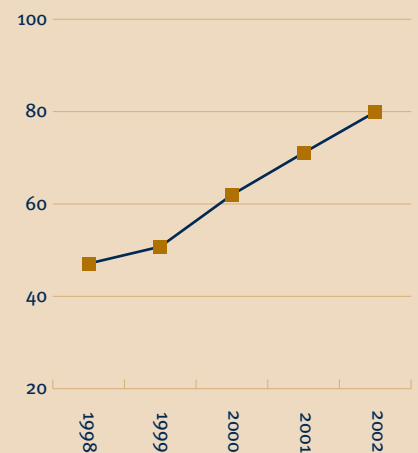
Cases received but not classified ('preliminary stage')	114	5.9%
Cases referred to the bank and awaiting response ('with bank stage')	707	36.4%
Cases under investigation by ABIO ('investigation stage')	368	18.9%
Cases provisionally closed, pending acceptance or appeal of ABIO's assessment ('provisionally closed stage')	753	38.8%

Distribution of New Cases (%)

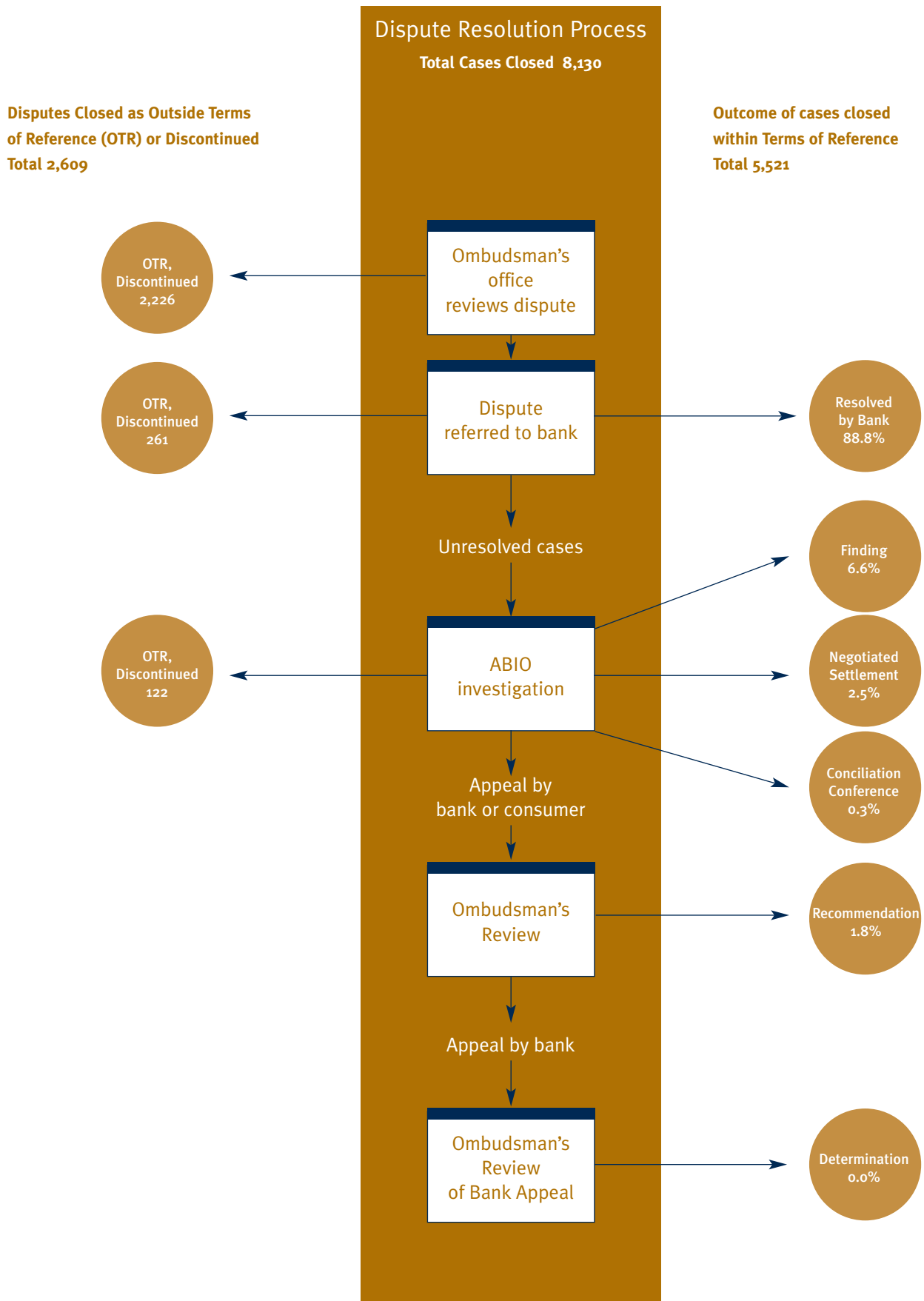


- Provisionally Closed
- With Bank
- Investigation
- Preliminary

New Disputes ('00)



Dispute Resolution Process and Outcome of Closed Cases



Closed Cases

A total of 8,130 cases were closed during the year, an increase of 18.3 per cent from the previous year. 2,609 cases were either discontinued or classified as outside ABIO's jurisdiction, and 5,521 cases were within jurisdiction.

Of the 5,521 cases that were considered to be within the Terms of Reference, 88.8 per cent were resolved promptly after referral to the bank without significant involvement by ABIO.

The 617 cases that were not resolved by the bank at this early stage were investigated by ABIO. 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, 140 cases were resolved after ABIO facilitated a settlement between the parties and 14 cases were resolved after a conciliation conference was conducted by the Ombudsman. 363 cases were closed after the parties were provided with a Finding, which is a written assessment of the merits of the dispute.

Where the consumer or the bank 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. 100 cases were closed after a Recommendation.

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

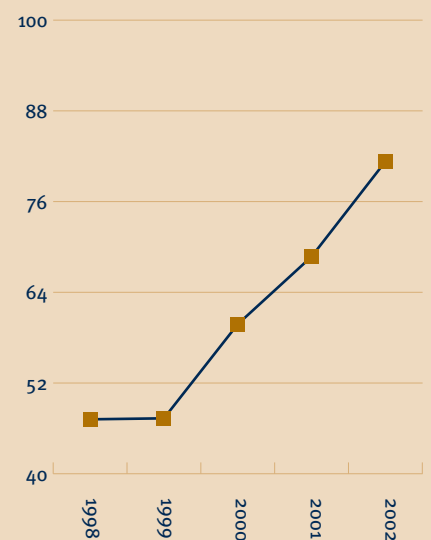
The Case Studies section of this report provides examples of these various methods of dispute resolution being applied to disputes.

Outcome of Closed Cases

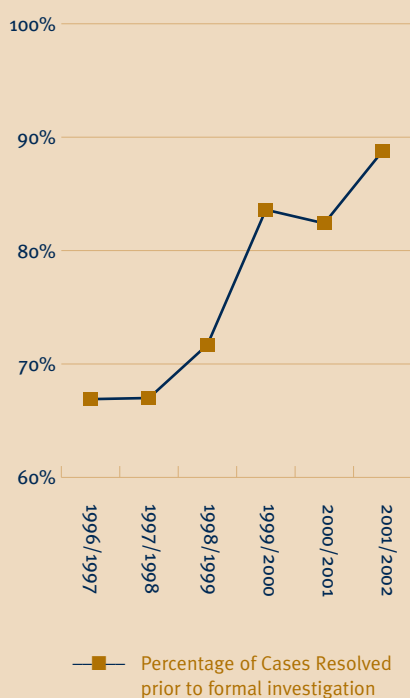
The outcome of the 617 cases closed after an investigation by ABIO was as follows:

- The bank's action was considered correct in 43.9 per cent of cases;
- The consumer's claim was upheld in 22.4 per cent of cases; and
- In 33.7 per cent of cases, the outcome was a compromise benefiting both parties.

Closed Cases ('00)



Early Resolution Rate (%)



Case Resolution Time

The resolution time is the period of time between the date the dispute is referred to the bank 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 the bank this year, 40.8 per cent were closed within 60 days, a slight improvement on the previous year's figure. 79.5 per cent of cases were closed within 120 days. Most of these cases were those that were resolved after referral to the bank without significant involvement by ABIO.

12.6 per cent of cases, however, took over 181 days to close. The vast majority of these cases were unresolved disputes which required investigation by ABIO. These cases are becoming increasingly complex, and considerable work is required by ABIO to gather and assess information, analyse legal and banking practice issues and formulate appropriate recommendations for the resolution of disputes. Achieving improved efficiencies in the investigation process continues to be a challenge and focus for ABIO.

Median Days – Closed Cases

Cases within Terms of Reference

	2000	2001	2002
0 to 60 days	38.0%	40.3%	40.8%
61 to 90 days	26.2%	24.0%	27.8%
91 to 120 days	11.4%	10.5%	10.9%
121 to 150 days	6.3%	4.6%	5.1%
151 to 180 days	3.4%	2.8%	2.8%
181 days & over	14.7%	17.8%	12.6%
Total Cases	4,057	4,427	5,521
Median Days - All Cases Sent to Bank	70	69	68

Member Bank Statistics

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

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

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

The table below has two columns which show:

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

The table lists banks in alphabetical order.

Bank	Total Cases Closed*	% resolved without investigation by ABIO
Adelaide Bank Limited	71	78.9
AMP Bank Limited	30	90.0
ANZ Banking Group Limited	1,032	87.8
Bank of China	1	0.0
Bank of Queensland Limited	32	78.1
Bank of Western Australia Limited	89	70.8
Bank SA a division of St George Bank Limited	44	95.5
Bendigo Bank Limited	61	91.8
Citibank Limited	168	83.9
Commonwealth Bank of Australia	1,486	92.3
HSBC Bank Australia Limited	14	85.7
ING Bank	21	95.2
Macquarie Bank Limited	9	88.9
Members Equity Pty Ltd	3	100.0
National Australia Bank Limited	903	87.9
St George Bank Limited	331	91.8
Suncorp-Metway Ltd	133	89.5
Westpac Banking Corporation	1,093	87.6
All Members	5,521	88.8

*Within Terms of Reference

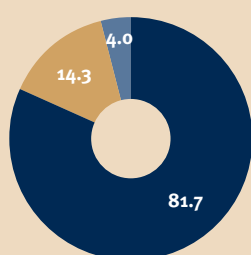
Types of disputes

ABIO classifies all cases according to:

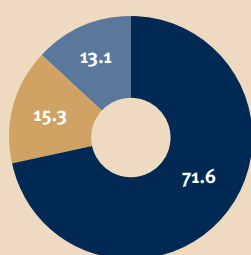
- The product or service obtained by the consumer; and
- The problem with the service, as reported by the consumer.

The product categories most complained about this year were the same as in the previous two years, with complaints about Consumer Finance (28.4 per cent), Housing Finance (22.5 per cent) and Deposit Accounts (22.5 per cent) representing the bulk of disputes.

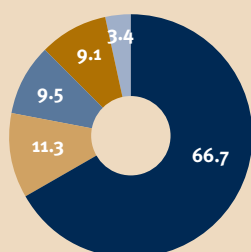
Types of Disputes (%)



Consumer Finance		No. of Cases:	1812
Credit Cards		81.7%	
Personal Loan		14.3%	
Other		4.0%	
Personal Overdraft		1.7%	
Equity Loans		1.6%	
Margin Lending		0.7%	

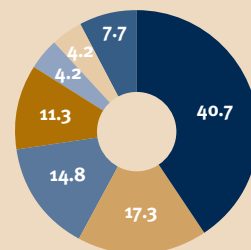


Housing Finance		No. of Cases:	1439
Home Loan - Variable Rate		71.6%	
Home Loan - Fixed Rate		15.3%	
Investment Property Loan		13.1%	

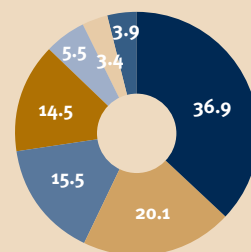


Deposit Account		No. of Cases:	1439
Statement Savings Account		66.7%	
Personal Cheque Account		11.3%	
Term Deposit		9.5%	
Passbook		9.1%	
Other		3.4%	
Cash Management		2.4%	
Mortgage Offset		0.8%	
Foreign Currency Account		0.2%	

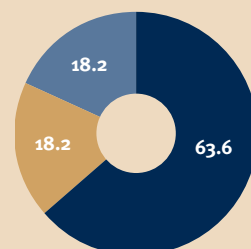
Payment Systems	No. of Cases:	910
ATM	40.7%	
Periodical Payments, Direct Debits	17.3%	
Cheques (inc. 3rd Party)	14.8%	
Telegraphic Transfers	11.3%	
Computer Banking	4.2%	
EFTPOS	4.2%	
Other	7.7%	
Bank Cheque	2.7%	
Currency exchange/travellers cheques	2.6%	
Telephone Banking	2.4%	



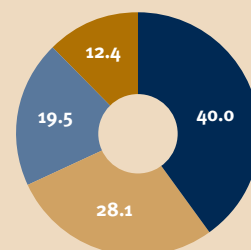
Business Facility	No. of Cases:	586
Business Cheque Account	36.9%	
Business Loan - Variable	20.1%	
Business Overdraft	15.5%	
Merchant Facility	14.5%	
Lease	5.5%	
Business Loan - Fixed	3.4%	
Other	3.9%	
Bank Guarantee	1.5%	
Trade Finance	1.4%	
Commercial Bill	0.7%	
Cash Flow Lending	0.3%	



Financial Planning	No. of Cases:	11
Shares/Bonds	63.6%	
Managed Funds	18.2%	
Superannuation	18.2%	



Other products or services	No. of Cases:	185
Holding Title Deeds	40.0%	
Other products or services	28.1%	
Insurance	19.5%	
Safe Custody	12.4%	



Types of Disputes

ABIO classifies all cases according to:

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

The product categories most complained about this year were the same as in the previous two years, with complaints about Consumer Finance (28.4 per cent), Housing Finance (22.5 per cent) and Deposit Accounts (22.5 per cent) representing the bulk of disputes.

The main product complained about in the Consumer Finance category continues to be the credit card account. Complaints about this product have increased from 952 last year to 1,481 this year. The main problems identified

with credit cards were unauthorised transactions and incorrect debits to the account. The majority of disputes involving credit cards and other Consumer Finance products, such as personal loans and overdrafts, are resolved promptly after referral to the banks, and do not require significant intervention by ABIO.

This year, disputes about Consumer Finance represented 29.6 per cent of all cases that were resolved promptly after referral to the bank, but only 20.8 per cent of investigations.

Fewer complaints about Housing Finance products were resolved by the banks directly because the issues are complex and the loss claimed is often in the tens of thousands. As a result, Housing Finance was the main category investigated during the year in review, representing 31.4 per cent of all

investigations. Most complaints investigated were about variable interest rate home loan products, and the main problem described by consumers was that the bank had breached the terms of the contract.

There were as many disputes about Deposit Accounts (including statement savings accounts, personal cheque accounts, term deposits and passbooks) as there were about Housing Finance. Consumers mainly complained about incorrect fees, incorrect debiting and crediting of the account, and unauthorised transactions.

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

Product Group	% of Cases Resolved by Bank	% of Cases ABIO Investigation	All Cases
Consumer Finance	29.6%	20.8%	28.4%
Deposit Account	23.1%	18.6%	22.5%
Housing Finance	21.2%	31.4%	22.5%
Payment System	14.7%	10.9%	14.3%
Business Facility	8.4%	14.7%	9.2%
Financial Planning	0.1%	0.4%	0.2%
Other Products or Services	2.9%	3.2%	2.9%

Product Group	Major Products	Main Problems	%
Consumer Finance	Credit Cards	Unauthorised Transactions	18.9
		Withdrawal or Deposit errors	10.4
	Personal Loan	Breach of oral instruction/agreement	8.5
		Calculation errors	8.2
	Personal Overdraft	Cancellation or rejection of application	16.3
		Unilateral bank action	14.0
Housing Finance	Home Loan - Variable rate	Delays (eg, loan approval, settlement)	21.1
		Contractual breach, written instruction not carried out	8.3
	Home Loan - Fixed rate	Fee excessive, inappropriate or wrong	15.2
		No, or wrong information provided about fees and charges	11.6
	Investment Property Loan	Delays (eg, loan approval, settlement)	16.1
		Breach of oral instruction/agreement	7.7
Deposit Account	Statement Savings account	Fee excessive, inappropriate or wrong	16.1
		Withdrawal or Deposit errors	13.3
	Personal Cheque account	Fee excessive, inappropriate or wrong	15.6
		Unauthorised Transactions	13.2
	Term Deposit	Interest rate inappropriate or wrong	12.7
		Contractual breach, written instruction not carried out	11.0
Payment System	ATM	Unauthorised Transactions	39.5
		Withdrawal or Deposit errors	33.5
	Periodical Payments, Direct Debits	Contractual breach, written instruction not carried out	27.4
		Withdrawal or Deposit errors	15.6
	Cheques (inc. 3rd party)	Dishonoured transactions	20.3
		Lost funds	12.0
Business Facility	Business Cheque Account	Withdrawal or Deposit errors	13.3
		Fee excessive, inappropriate or wrong	12.0
	Business Loan - Variable	Delays (eg, loan approval, settlement)	11.4
		Guarantees	7.8
	Business Overdraft	Fee excessive, inappropriate or wrong	14.9
		Cancellation or rejection of application	10.8
Other products or services	Holding Title Deeds	Lost documents/safe custody items	50.0
		Delays	20.0
	Insurance	Product/service advice	15.4
		Contractual breach, written instruction not carried out	15.4

Disputes Outside Terms of Reference

The Terms of Reference set out the Ombudsman's jurisdiction to consider disputes. This jurisdiction was broadened during the year, with the introduction of new Terms of Reference on 11 March 2002.

The key changes are:

- The test for determining whether a business is eligible to lodge a dispute with the Scheme has been simplified to a single test, based on the type of business and the number of employees;
- The Ombudsman has jurisdiction to consider disputes about the whole banking group, rather than just the bank itself; and
- The Ombudsman can consider disputes about breaches of the National Privacy Principles by banks.

There are, however, still 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.

Consumers can telephone the Scheme to discuss whether their dispute is within the Ombudsman's jurisdiction. The Scheme's website will also be improved in the coming year, and will include a 'Jurisdiction Checker' for consumers to use as a guide prior to lodging a dispute with the Scheme.

The Year in Review

This year, a total of 18.7 per cent of telephone enquiries answered were considered to be outside the Ombudsman's jurisdiction ('OTR'). This is a reduction from 23.8 per cent last year. The percentage of closed written disputes that were outside the Terms of Reference also declined from 19.2 per cent in the previous year to 16.6 per cent this year.

This downward trend, which has continued for the last 4 years, can be attributed to factors including:

- Consumers' increasing use of the telephone to make enquiries about the Scheme's jurisdiction before lodging written disputes; and
- The expansion of the Scheme's jurisdiction, which has resulted in more consumers gaining access to the Scheme.



Main OTR Categories

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

The profile of disputes classified as OTR is expected to change substantially in the coming year with the broadened jurisdiction under the new Terms of Reference. In particular, the introduction of a less restrictive definition of 'small business' disputant and the acceptance of companies acting as trustees, should result in far fewer disputes being classified as OTR under the categories 'Trustee Company' and 'Large business – incorporated'.



Individuals

Closed Complaints

Bank Policy	17.2%
Non Bank Financial Institution	17.1%
Commercial Decision	12.5%
No Financial Service	12.5%

Telephone Enquiries

Non Bank Financial Institution	51.7%
General Complaint Only	9.5%
Bank Policy	9.4%
No Financial Service	8.7%

Small Business

Closed Complaints

Trustee Company	22.5%
No Financial Service	13.4%
Other Jurisdiction More Appropriate	11.8%
Large Business (Incorporated)	11.5%

Telephone Enquiries

Commercial Decision	16.9%
Large Business (Incorporated)	15.0%
No Financial Service	14.8%
Bank Policy	14.3%

ABIO has always played an important role in investigating problems in the financial services sector that affect the community at large, or certain sections of the community.

This role has been reinforced during the year with the introduction of ASIC's *Policy Statement 139 Approval of External Complaints Resolution Schemes* which sets out guidelines ABIO must follow when dealing with systemic issues and cases of serious misconduct. According to these guidelines, ABIO must:

- Identify systemic issues and cases of serious misconduct that arise from the consideration of disputes;
- Refer these matters to the bank for response and action; and
- Report information about systemic issues and serious misconduct to ASIC.

ASIC's requirements have led to a greater organisational focus on systemic issues, with the appointment of a Systemic Issues Manager, the development of a Systemic Issues Register and the expansion of the case management database to capture relevant information. Guidelines for systemic issues have also been developed, and included in the new Guidelines to the Terms of Reference which were published on 11 March 2002.

As at 30 June, ABIO had provided ASIC with two reports about systemic issues.

Statistical Information

Since our reporting obligations commenced on 12 September 2001, we have identified 24 possible systemic issues. No cases of serious misconduct have been identified.

The possible systemic issues have been referred to senior staff for consideration, and the results of their investigations, as at 30 June 2002 are as follows:

- 5 issues were considered to be isolated incidents, and therefore, not systemic in nature;
- Investigations are continuing into 12 issues, and conclusions have not been reached about whether the cases raise systemic problems; and
- 7 issues were found to be systemic in nature. Details of some of these systemic issues are provided here.

Case Studies

Poor disclosure of the meaning of the term 'cash advance'

One disputant had been on holiday on a cruise ship and had purchased a 'Cruise Ship SmartCard' with a limit of \$500 with his BankCard. The SmartCard was used to make purchases on the ship. After the cruise, the disputant received his BankCard statement which showed that the purchase of the SmartCard had been categorised as a 'cash advance' rather than a purchase, and as a result, he had not received an interest free period on the advance.

When we investigated the dispute, we found that the Conditions of Use for the BankCard did not contain any definition of 'cash advance'. Therefore,

we advised the bank that it had not adequately disclosed the meaning of the term to its customers, and recommended that a definition of the term should be included in the Conditions of Use.

The bank accepted our view and advised that it would insert a new definition into its terms and conditions. We were satisfied with the bank's actions.

Inaccurate Reporting to Credit Reporting Agency

One disputant complained that he had applied to a bank for a credit card with a limit of \$1,000, but when the application was declined, and he obtained a copy of his Individual Credit Report, it recorded that he had applied for a \$15,000 limit. The bank concerned explained that it was standard practice to report to the credit reporting agency the maximum credit card limit of \$15,000 for all credit card applications because:

- The bank does not ask credit card applicants to request a particular limit because the bank's credit scoring system ascertains the maximum amount the bank will offer to the applicant; and
- The report is made during the credit scoring process, before the credit limit to be applied to the application has been ascertained.

ABIO advised the bank that this practice did not satisfy its credit reporting obligations under the Privacy Act and the Credit Reporting Code of Conduct.

The bank accepted this view and agreed to report credit card applications as being made for unspecified amounts.

This office was satisfied that the change to the bank's practice was in accordance with the requirements set out in the *Privacy Act* and the Credit Reporting Code of Conduct.

Misleading Media Release

One dispute related to a media release about a credit card that was linked to a rewards points program. The media release stated that the interest rate would be reduced for a period of time, but this did not occur.

We advised the bank that we considered this to be a systemic problem. Before we had recommended an appropriate course of action for the rectification of the problem, the bank advised that it had made adjustments to the accounts of all affected customers by applying the interest rate quoted in the media release. We were satisfied that this resolved the systemic issue, and there was no need for any further intervention from our office.

Account Transfers Performed at ATMs

Another single dispute illustrated that where funds are transferred electronically from one account to a credit card account

at a particular bank's ATMs, the funds are not credited to the nominated account until the following business day. Customers were not given any warning about this delay and, in some circumstances, depending on the timing of the payment, it could take between one and five days for the payment to be credited to the account. This resulted in some payments being treated as late, and additional interest being charged.

We conducted a survey of 9 banks with differing market shares to establish the industry norm for the time taken to process account transfers performed at ATMs. The survey indicated that the bank's system was out of step with the services offered generally across the banking industry.

We also formed the view that in circumstances where the reasonable expectation of customers would be that ATM transfers from other accounts to credit card accounts would be effected on the same day, the bank was obliged to provide some disclosure to customers of the delays associated with its ATM transfers.

The bank agreed to rectify the systemic problem by taking the following steps:

- Upgrading its card system within 9 – 12 months;
- In the meantime, making changes to the existing system to ensure that

funds transferred prior to 5.45pm will be treated as having been credited to the card accounts on the same day, ensuring that the correct amount of interest (if any) is charged to the accounts; and

- Whilst the transferred funds will not be available for withdrawal until the following business day, customers will be advised of this in a message that appears on credit card statements.

The case studies selected for this report include cases that are illustrative of the legal and banking practice issues raised in complaints, the investigation process and different types of resolution.

Unsolicited Credit Limit Increase

Ms S complained about a \$7,211 unauthorised transaction made with her credit card without her knowledge or consent.

The issue for the case manager's consideration was whether Ms S had disputed the transaction within the timeframe set out in the bank's Conditions of Use for Credit Cards.

After the case manager issued a Finding stating that Ms S was liable for the transaction because she had not disputed the transaction within the required time frame, Ms S appealed and introduced a new argument: that she should not be liable for the unauthorised transaction because the bank did not assess her ability to repay the amount of credit when it offered her extensions of credit.

Investigation

The case manager investigated this new aspect of the claim and noted that:

- Ms S had been employed by the bank in 1994 when it approved a credit card with a limit of \$2,000. She had, however, ceased working 13 months later to look after her children. She never returned to work and the only income she received was approximately \$6,000 per year in government benefits;
- Despite this, over the next six years, the bank offered Ms S six unsolicited increases in her credit limit which were accepted. This saw her credit limit rise from the original \$2,000 to \$10,000; and

- At no stage was Ms S required to advise the bank of her financial details. (The bank said that offers for increases in the credit limit were based on the bank's assessment of the good conduct of the account.)

The view of the Ombudsman's Banking Adviser was that a limit of \$2,000 was the maximum that could be justified based on Ms S's financial position.

Resolution

The case manager summarised the banking advice in a letter to the bank and the matter was subsequently resolved by negotiation between the parties, facilitated by the case manager. The bank agreed to refund the amount of the disputed transaction and interest, and Ms S agreed to have her credit card cancelled.

Inadequate Insurance Policy

Mr and Mrs C had operated a home loan with the bank for many years. The bank suggested to them that they should change the loan to a newer product that offered more benefits. Mr and Mrs C agreed to change the loan over, provided that the same death and disability insurance was available with the new product. The bank officer indicated that this could be arranged and accordingly, Mr and Mrs C entered into a new loan contract.

When the new loan was drawn down Mr and Mrs C received a refund for an insurance premium. When they questioned this they were advised that their old insurance policy could not be transferred to the new loan because it was no longer offered by the bank. The new insurance policy did not offer cover for temporary disability.

Mr and Mrs C wrote to ABIO stating that they would never have taken out the new loan if they had known that their insurance policy could not be transferred.

Resolution

After discussions were held between the parties, the bank agreed to establish an insurance policy under the same terms as the original policy. The bank agreed to underwrite the insurance policy itself, as the insurance arm of the bank no longer offered the product. The bank also refunded the \$600 application fee.

Merchant's EFTPOS Facility

The disputants ran a small business as a partnership selling giftware. One partner had been in business since it started and the other had bought her share about a year before the dispute arose, after one partner retired. All of the documentation relating to the EFTPOS facility used by the business had been signed by the partner who had retired.

A customer of the business frequently telephoned the store over a period of five weeks to order gift hampers. To process the telephone orders, the disputants keyed the customer's card number into their EFTPOS terminal. At no time did they swipe the card or obtain a signature, nor did the customer ever come into the shop. By keying in the card using the 'off-line' system, the disputants were by-passing the electronic system which prevented transactions over the \$100 floor limit from being accepted when the cardholder's account did not have sufficient funds.

The cardholder's bank subsequently sought to reverse the transactions, which amounted to approximately \$16,000. The chargeback request was made on the basis that the transactions were not authorised.

The case manager reviewed the merchant agreement and noted that the disputants' bank was entitled to charge back transactions which were not valid, including transactions not processed in accordance with the relevant procedures.

It was found that the disputants had contravened the procedures by:

- Processing the transactions 'off-line' at times when the electronic system was functioning. (The process should only have been used when the electronic system was down);
- Failing to seek authorisation for transactions above the floor limit; and
- Failing to take reasonable care to detect unauthorised use of the card. (The case manager considered that the size, frequency and nature of the transactions should have given rise to a suspicion of fraud).

The disputants argued that they were not bound by the merchant agreement because neither had signed it personally. However, a review of the partnership agreements and partnership legislation led the case manager to conclude that the original partner who had signed the agreement bound the continuing partner, that on dissolution of that partnership the continuing partner assumed liability under the merchant agreement, and that the new partner had agreed to assume equal liability for debts of the business and had adopted by conduct the terms and conditions of the merchant agreement.

The case was closed after a Finding was issued which stated that the bank could rely on its merchant agreement and charge back all of the transactions.



Property Purchase by Bank Officer

Mrs A was selling her home through a real estate agent. A loans manager (S) employed by Mrs A's bank was, however, interested in buying the property without the involvement of the estate agent.

S contacted Mrs A on four occasions and made offers by telephone, all of which were rejected. He eventually bought the property at auction.

Mrs A said that the approaches from S were unwelcome and amounted to harassment. She said that he had accessed her loan file and used the information to try to persuade her to accept a lower figure than she was asking. She said that she was traumatised and intimidated by S's actions, and that she had sold the property for a lower figure than she wanted due to the actions of S. She sought compensation of \$35,000.

Investigation

S admitted that he had contacted Mrs A to discuss buying her house. Whilst he denied obtaining Mrs A's telephone number from her account details, the case manager found that this was the most likely explanation for his knowledge of her telephone number. He admitted accessing her loan file but said that Mrs A had given him permission to do so.

The case manager found that S's use of the account was inappropriate because it did not arise from the banker/customer relationship, but was rather, for S's private purposes.

It was also found that S may have used the information about Mrs A's home loan as a private bargaining tool. However, the lapse in time between the access and the auction, and the fact that the property was sold at auction meant that it could not be concluded that S obtained a financial advantage by his actions.

Resolution

In light of the distress caused, and the inappropriateness of S's actions, compensation of \$1,500 was viewed as appropriate.

A Finding was issued, but was rejected by Mrs A. The Ombudsman then issued a Recommendation stating that \$1,500 was an appropriate amount of compensation. Mrs A rejected the Recommendation also, and therefore, ABIO was unable to assist further.

Disputed ATM Withdrawals

Mr B and Ms C disputed a large number of ATM withdrawals, totalling \$27,000, made from their line-of-credit account over a three-year period with their debit cards. They acknowledged receiving monthly statements, but said they were only concerned with the closing balance. They only made a detailed check when they noticed that the home loan was not reducing as quickly as they had expected. They provided a detailed list of disputed transactions to the bank, but conceded that some of the withdrawals would have been their own. They claimed that access to their account could have been gained internally by the bank, or via a hacker on the internet.

The bank declined to make any refund. It said it was not clear why some transactions were disputed and others were not. It also noted that Mr B and Ms C had not disputed any transactions on their credit card account, yet on some days, valid credit card purchases occurred in the same suburb as disputed debit card withdrawals.

Facts that came up during the investigation included that: both debit cards were used, but most of the disputed withdrawals were made with Mr B's card; both cards had bank-generated PINs; on two occasions it seemed that disputed ATM withdrawals had been used to make payments to the credit card account; on one occasion a disputed withdrawal was followed by a valid withdrawal only one minute later; and on at least one occasion there was a disputed cash withdrawal using a debit card on the same day that one of the disputants used a credit card to purchase goods in the same shopping centre.

The case manager found that there was nothing to support the contention that account access was gained internally by the bank or via a hacker on the internet. There was also no information to support a possibility that an unauthorised third party had gained access to the cards and PINs. On the weight of information, the case manager concluded that the most probable explanation for the disputed transactions was that they had been made by the disputants themselves. The bank was not asked to compensate the disputants.



Disability – Protective Measure Fails

Mrs D's son suffered from schizophrenia. To help him save and to protect him from the effects of a gambling problem, she and her son opened a passbook account and a term deposit account. The accounts required both to sign for any withdrawals.

Mrs D contributed about a third of the funds in the savings account and her son contributed the rest from income from his part time job. As funds built up in the savings account, they were transferred into the term deposit.

In 2000, the bank allowed Mrs D's son to withdraw all the funds in both accounts, about \$20,000, via telephone banking. Mrs D believed that the funds were spent in gambling venues. The error occurred because the operating authority information from the original applications was not transferred when the accounts were converted to a new format. Although telephone banking is generally not available for accounts which must be jointly operated, the accounts did not have the required restriction placed on the system.

After ABIO commenced an investigation, the bank made an offer to resolve the dispute by making a payment of \$10,000 in full and final settlement. The offer was accepted and Mrs D requested that the funds be placed in a trust account in her name to be held on her son's behalf.

A Hasty Return

Mr and Mrs S went to Europe for their honeymoon. They intended to stay for one month, but after two days, their credit card stopped working and they decided to cut short their holiday and return to Australia.

Mr and Mrs S lodged a dispute with ABIO, claiming that the bank should compensate them for their loss of enjoyment of their holiday.

When ABIO referred the dispute to the bank for its consideration, it offered an ex-gratia payment of \$3,000. Mr and Mrs S did not accept this offer, and it was subsequently withdrawn by the bank.

Investigation

The information provided by the bank did not establish why the credit card had stopped working. However, it was the case manager's view that as the bank represents to customers that the particular type of card can be used in most countries, the bank would be potentially liable for losses resulting from the failure of the card to work.

The case manager then investigated whether, according to the Ombudsman's guidelines for assessing non-financial loss, Mr and Mrs S were entitled to any compensation from the bank.

The case manager noted that:

- Mr and Mrs S did not contact the bank to try to rectify the problem with the credit card; and

- Whilst the credit card did not work, they could still have accessed alternative funds by using Mr S's ATM card. This would have allowed them to make EFTPOS purchases and ATM withdrawals of up to \$A800 per day, which appeared to be more than adequate for their travelling needs.

Resolution

The case manager concluded that Mr and Mrs S acted with extreme haste in deciding to return to Australia. As they had not given the bank an opportunity to resolve the matter, and did not take any reasonable steps to minimise the inconvenience they were suffering, the case manager found that it was not reasonable for Mr and Mrs S to expect to be compensated by the bank.



Maladministration in Granting Loan

Mr S was a self employed builder. In July 1999 he approached the bank about an organic fruit and vegetable business he was considering purchasing.

Mr S was provided with a loan of \$125,000 which he used to purchase the business for \$120,000, with the additional \$5,000 being for working capital. The bank also provided lease finance of \$39,000 for a new van for deliveries and a bank guarantee for \$7,950 in relation to the rental of the business premises. Security was provided by a mortgage over Mr S's investment property which was vacant at the time with a renovation about 75% completed.

At the time, Mr S's existing debts included a loan in relation to the investment property, a loan in relation to a property he had purchased jointly with his girlfriend and a credit card debt.

It soon became apparent that Mr S could not meet his monthly commitments from the returns of the new business. In December 1999 he placed the business (including the van) on the market for \$125,000. The business was ultimately sold over twelve months later for \$35,000.

Mr S subsequently complained to this office claiming that the bank should not have granted him the loans because he did not have the capacity to meet the repayments.

Investigation

ABIO obtained the bank's lending file for Mr S which included loan applications and supporting documents, internal notes about the applications, and assessment documentation. After reviewing this information, the case manager formed the view that the bank had not acted prudently, and its decision to lend to Mr S constituted maladministration because:

- The bank provided 100% finance plus working capital and a lease for a business in which Mr S had no prior experience. According to the bank's internal lending guidelines, Mr S ought to have had at least 2 years experience in the industry to demonstrate '*satisfactory management experience*'.
- Assessment of capacity to service the loans was based on incomplete and out of date financials. The bank relied entirely on vendor financial statements and did not request accountant prepared cash flow forecasts. The vendor's financial statements indicated that the net profit of the business apparently increased by 300% from 1996/97 to 1997/98. Given this significant and unexplained improvement, the bank ought to have undertaken further analysis to satisfy itself about the sustainability of the 1998 results.



- Serviceability relied on rental income from Mr S's investment property. That property was, however, undergoing renovation and was not in a habitable state. Therefore, rental income should not have been taken into account.

Resolution

A conference was held with the parties and the Ombudsman, and further negotiations took place over subsequent weeks. The dispute was settled with the bank reducing Mr S's outstanding debt by \$90,000. This represented a 75% reduction in the debt.

Progress Payment to Builder

Mr & Mrs Y engaged a building firm to construct their home. They entered into a loan contract with the bank to finance the construction whereby progress payments to the builder were made at five defined stages. Mid-way through the construction the builders went into liquidation. Mr & Mrs Y disputed the payment made by the bank to the provisional liquidators at the 'lock-up' stage because they said the construction was not at that stage and in fact, the house had to be demolished due to defective workmanship.

Mr & Mrs Y acknowledged signing the authorisation to pay the provisional liquidators at 'lock-up' stage but argued that the bank owed a duty to them and should not have paid the invoice without inspecting the property.

The case manager issued a Finding on the merits of the dispute after considering the bank's policy for progress payment inspections, the bank's building payment practice and the Ombudsman's legal counsel's review of the relevant terms and conditions of the loan contract.

The Finding concluded that the bank's policy did not require it to make inspections of the building of a

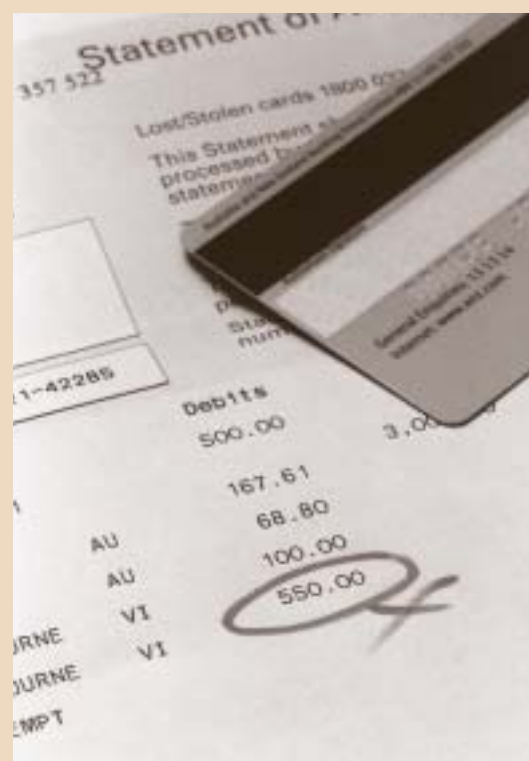
residential home where the contract price was less than \$1 million and that it was not the bank's practice to inspect constructions prior to releasing a payment authorised by the owner. In this case the first two progress payments had been released without a bank inspection of the construction.

There had been no allegation that the bank represented to the disputants that it would inspect the property at each of the stages before releasing the payment to the builder. Furthermore, the loan contract specifically absolved the bank for any contractual liability to the borrowers to inspect before releasing a payment. The case manager also considered that Mr & Mrs Y's written authorisation meant that the bank was entitled to release the payment and was a representation to the bank that they were satisfied that the payment could be made. Taking all these factors into consideration, the case was closed after the Finding confirmed that the bank had acted appropriately in releasing the payment to the provisional liquidators.

Unauthorised Credit Card Transaction

D applied for a credit card but says the application was declined and he never received the card. Some time later, D was contacted to make payments on a debt of \$1,000 owing on the credit card account. Although D did not believe he was responsible for the debt, he became nervous when the bank threatened to list the default with a credit reporting agency. He reluctantly agreed to repay \$50 per month towards the debt.

D then received a letter from a collection agency demanding repayment of the full amount of the debt. D contacted the bank



A Frozen Account

to ask how the account could have been opened in his name when his application was declined. He requested copies of the identification that had been shown when the account was opened, but he was advised that he would have to pay a fee for the information.

A default listing was subsequently entered against D's name and when this was discovered, D wrote to ABIO requesting assistance.

The dispute was referred to the bank for its consideration. The bank conducted an investigation into the matter and advised that its records showed that the credit card application had, in fact, been approved but that it was not able to confirm that D had received the card. The bank accepted that the card may have been used fraudulently by a third party, and the dispute was promptly resolved with the bank agreeing to extinguish D's liability for the debt and remove the default listing.

Ms X and Ms Y operated a pet supplies business as a partnership. The partnership had several facilities with the bank including an EFTPOS machine, a business credit card and a business trading account. Either proprietor was authorised to operate the accounts.

The partners became involved in a financial dispute and ceased to operate the business together. Ms Y continued to trade as a sole proprietor, and the relevant change of ownership forms for the registered business name were lodged.

Ms Y's dispute with the bank arose when she deposited funds she had earned as a sole proprietor into the partnership account, and drew cheques against these funds. As soon as the bank became aware of the partnership dispute, it froze the account and dishonoured the cheques Ms Y had issued. Ms Y said that she was unable to continue to trade and was forced to close the business.

Ms Y argued that the bank should not have frozen the account when it had been a bank officer who had advised her to continue to use the partnership account. The bank officer concerned denied giving Ms Y this advice.

Issue

The main issue for the case manager's consideration was whether the bank officer had advised Ms Y that she could continue to operate the partnership account. It was difficult to determine this issue because there was no documentation recording the nature of the discussion between Ms Y and the bank officer.

Resolution

The Ombudsman considered that a conciliation conference was an appropriate method of trying to resolve the matter. The dispute was resolved at the conference, with the bank agreeing to pay Ms Y \$9,000. The early conciliation conference avoided the need for a long and difficult investigation.

Reports to Credit Reporting Agency

D's dispute related to two default listings that had been reported to a credit reporting agency by the bank.

D conducted two business related cheque accounts with the bank. Both accounts were in overdraft. One account had an approved temporary overdraft limit, the other operated in overdraft from time to time without the specific approval of the bank. D failed to reach an agreement with the bank to regularise the overdraft and also exceeded the temporary limit on the other account. After appropriate warnings, the bank listed the defaults to repay the overdrafts with a credit reporting agency. The default listings were made to D's consumer (individual) file.

D argued that the default listings should not have been made to her consumer file when the accounts had been used for business purposes.

Legal Advice

The file was referred to the Ombudsman's legal counsel for advice. It was legal counsel's view that a default on a business cheque account should not be listed on an individual's consumer credit file because 'credit', as defined in the *Privacy Act*, has not been extended to that individual. However, a business default listing could be made to a person's commercial file.

Resolution

A Finding was made that as the listings to D's consumer file had been made in error, they ought to be removed. The Finding also dealt with D's claim that the wrongful listing had prevented her from obtaining credit elsewhere, and that she should be compensated.

It was found that D was in default of her obligations to repay the overdrawn funds and, as a result, suffered no loss because of the listings to the consumer file. This was because the default listings could have been made to D's commercial file. D required further credit to fund the business and had the listings been made to the commercial file, this would have prevented D from obtaining such credit. Therefore the listing to the consumer file, although in breach of the *Privacy Act*, left D in the same financial position she would have been in had the default listings been made to the commercial file.

D and the bank accepted the Finding. The bank removed the default listings on the consumer file. As the debts had been repaid, no listing was made to the commercial file.

Definition of Terms

ABIO

The Australian Banking Industry Ombudsman Limited.

ASIC

The Australian Securities and Investments Commission.

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 a financial services provider.

Determination

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

Directors

The Directors of the ABIO Board.

Discontinued

Disputes sent to ABIO 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 ABIO staff.

Guidelines

A manual published by ABIO 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 ABIO to describe the nature or description of the dispute that the disputant has about a financial service.

Product

The term used by ABIO 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 ABIO 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.

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. ABIO 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 ABIO which will affect a class of people in addition to those who have complained to the Scheme.

ABIO is obliged to report systemic issues to ASIC.

Telephone Dispute

Details of a dispute recorded by a case officer and referred directly to the bank by ABIO.

Terms of Reference

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

The Board

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

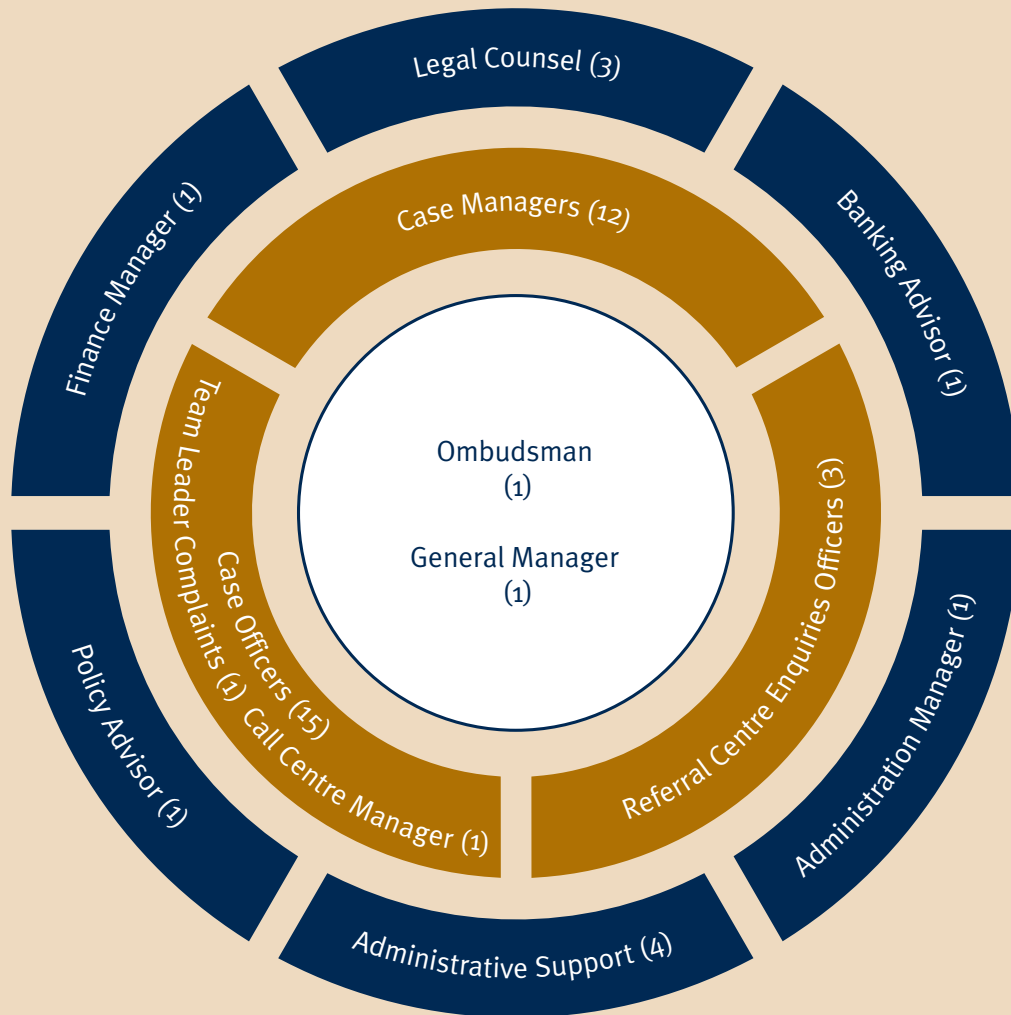
Member Banks

As at 30 June 2002, the following banks were members of the ABIO Scheme:

- Adelaide Bank Limited
- AMP Bank Limited
- Arab Bank Australia Limited
- ANZ Banking Group 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
- BNP Paribas
- Challenge Bank, a division of Westpac Banking Corporation
- Citibank Limited
- Commonwealth Bank of Australia
- HSBC Bank Australia Limited
- ING Bank
- Macquarie Bank Limited
- Members Equity Pty Ltd
- National Australia Bank Limited
- Primary Industry Bank of Australia Limited
- St George Bank Limited
- SUNCORP-METWAY 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.

ABIO Organisational Chart



Summary Financial Statements

The Australian Banking Industry Ombudsman Limited

ACN 050 070 034

Statement of Financial Performance

For the year ended 31 March 2002

	Note	31 March 2002 \$	31 March 2001 \$
Revenue from ordinary activities	1	4,132,850	4,333,441
Employee benefits expense		(2,796,781)	(2,421,671)
Depreciation and amortisation expense		(175,301)	(168,283)
Borrowing costs expense		1,116	(6,469)
Other expenses from ordinary activities	1	(1,283,530)	(1,319,020)
Profit (loss) from ordinary activities before income tax expense		(121,646)	417,998
Income tax expense relating to ordinary activities		–	–
Profit (loss) from ordinary activities after income tax expense		(121,646)	417,998
Total changes in equity		(121,646)	417,998

The Statement of Financial Performance should be read in conjunction with the accompanying note.

The Australian Banking Industry Ombudsman Limited

ACN 050 070 034

Statement of Financial Position

As at 31 March 2002

	31 March 2002 \$	31 March 2001 \$
Current Assets		
Cash assets	833,980	707,738
Other	291,331	268,206
Total Current Assets	1,125,311	975,944
Non-Current Assets		
Plant and equipment	458,115	591,313
Total Current Assets	458,115	591,313
Total Assets	1,583,426	1,567,257
Current Liabilities		
Payables	441,076	340,257
Interest bearing liabilities	16,871	8,794
Provisions	288,900	233,000
Total Current Liabilities	746,847	582,051
Non-Current Liabilities		
Payables	250,000	250,000
Interest bearing liabilities	–	16,881
Provisions	79,900	90,000
Total Non-Current Liabilities	329,900	356,881
Total Liabilities	1,076,747	938,932
Net Assets	506,679	628,325
Accumulated Funds	506,679	628,325

The Statement of Financial Position should be read in conjunction with the accompanying note.

The Australian Banking Industry Ombudsman Limited

ACN 050 070 034

Note to the Financial Statements

For the year ended 31 March 2002

	31 March 2002 \$	31 March 2001 \$
1. Operating Profit		
Operating profit is determined after including:		
Operating Revenue:		
Member contributions	4,131,600	4,330,549
Proceeds from sale of plant and equipment	1,250	2,892
	4,132,850	4,333,441
Selected other expenses from ordinary activities:		
Operating lease rentals	120,993	102,477
Loss on sale of plant and equipment	761	15,985
Motor vehicles	5,900	5,689
Promotion and information expenses	107,149	45,867
Travel and accommodation	53,239	36,775
Auditor's remuneration	6,028	5,528

Audited Financial Statements and Directors Report for the Australian Banking Industry Ombudsman Limited have, in accordance with legal requirements, been lodged with ASIC and are available for public scrutiny.

Thank You ABIO

'I would just like to thank you for your help with my case. If you ever wanted to make a difference you have – to my life. Thank-you.'

The compassion and care shown to me in all the dealings I had with your department are much appreciated and I am grateful for your consideration.

'Thank you for your help. It appeared to be the stimulus which promoted a human response rather than a computer response.'

Many many thanks for getting the resolution process started with the bank and I have agreed to a \$750 refund. I have no illusion that without your help I would not have done so well.

'Thank you once again for giving me the faith I now have in banks, knowing that if I can't get satisfaction from them I can turn to the ABIO for help.'

'I have read your Finding and I must advise, I am quite satisfied.... I accept the finding in your report, and thank you for your efforts and patience. You have represented your office to me professionally and courteously throughout our communications on this matter, and I appreciate it immensely.'

'I thank you for your interest in my claim and I am sure that without your office I would not have had such rapid results.'

I wish to sincerely thank you for all your hard work throughout this investigation. I believe you have done an extremely thorough investigation and have come up with a fair finding. The length of the investigation was longer than I expected, and a little exhausting, but nevertheless worth persevering. Thanks again for your hard work.

'We are surprised and delighted by this outcome, which is beyond our expectations, and we are writing to thank you for all you have done to assist us. We are only beginning to comprehend the impact this outcome will have on our day to day life, and can't begin to express our appreciation of your efforts on our behalf. This decision by the bank means that we are no longer under the threat of bankruptcy and that we will now be in a position to honour other commitments. Without your intervention, our financial future would be looking very different to the way it looks today.'

Australian Banking Industry Ombudsman

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