SUBMISSION 7

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

INQUIRY INTO COMPETITION IN THE BANKING AND NON BANKING SECTORS

Submission by Financial Ombudsman Service Limited ("FOS")

Introduction

This is the submission by FOS to the Inquiry into Competition in the Banking and Non Banking Sectors that the House of Representatives Standing Committee on Economics commenced in June 2008 (the "Inquiry"). The submission has been prepared by the office of FOS and does not necessarily represent the views of the board of FOS.

Information about FOS

FOS commenced operations on 1 July 2008. It is an independent dispute resolution scheme that has been formed through the consolidation of three schemes – the Banking and Financial Services Ombudsman ("BFSO"), the Financial Industry Complaints Service and the Insurance Ombudsman Service. FOS provides an alternative to litigation.

Replacing the schemes previously operated by its three predecessors, FOS now provides free, fair and accessible dispute resolution for consumers unable to resolve disputes with financial services providers that are members of FOS. FOS is approved as an external dispute resolution scheme by the Australian Securities and Investments Commission ("ASIC"). Membership of FOS is open to any financial services provider carrying on business in Australia including providers not required to join a dispute resolution scheme approved by ASIC.

It is estimated that FOS covers up to 80% of banking, insurance and investment disputes in Australia. As well as its functions in relation to dispute resolution, FOS has powers to identify and resolve systemic issues and obligations to make certain reports to ASIC.

FOS is led by Mr Colin Neave as Chief Ombudsman and governed by an independent board of consumer representatives and financial services industry representatives.

This submission draws on the experience of the Banking & Finance Division of FOS (which was formerly the BFSO) in dealing with disputes concerning home mortgage products and facilities that may be linked with those products.

The Banking & Finance Division considers and seeks to resolve disputes between Australian financial services providers that are members of FOS and their individual and small business customers. The members include Australian banks and their related corporations, Australian subsidiaries of foreign banks, foreign banks with Australian operations and other Australian financial services providers.

The aim of the Banking & Finance Division is to provide an independent and prompt resolution of disputes having regard to:

- the law;
- applicable industry codes or guidelines;
- good industry practice; and
- fairness in all the circumstances.

The Banking & Finance Division operates under published Terms of Reference. The Terms of Reference permit the Ombudsman to consider certain disputes that have been notified within specified time limits where the amount in dispute does not exceed $280,000. Disputes considered by the Banking & Finance Division involve claims, for example, of:

- breach of contract, including the contractual duty to provide services with due care and skill;
- misleading or deceptive conduct;
- unconscionable conduct;
- breach of the provisions of the Consumer Credit Code;
- breach of the Code of Banking Practice;
- inappropriate allocation of liability for an unauthorised electronic funds transfer under the Electronic Funds Transfer Code; and
- breach of an obligation of confidentiality.

Summary of Submission

FOS is able to provide information about cases, including investigated disputes, relating to home mortgage products and facilities that may be linked with those products, such as credit cards. However, for reasons that are explained below, FOS is not well placed to comment on the issues referred to in the Inquiry's Terms of Reference. The main substance of this submission is, therefore, information about cases relating to certain credit products.

Information about Cases Including Investigated Disputes

Set out below is information about cases within the Banking & Finance Division's categories "housing finance" and "consumer finance" that were closed in the year from 1 July 2007 to 30 June 2008. Records of cases within the two categories are separate. There are no records of relationships between products. If, for example, a credit card account were established as part of a home loan package, the records would not indicate that.

Housing Finance

The "housing finance" category has three subcategories:

- variable rate home loan;

- fixed interest home loan; and
- investment property loan.

1663 housing finance cases were closed. Of the 92 housing finance disputes that were investigated, 70 related to variable rate home loans, 17 related to fixed interest home loans and 15 related to investment property loans.

The following table shows the number of cases closed and the most common problems in the three subcategories within the "housing finance" category.

	Number of cases closed	Most common problems
Variable rate home loan	1310	Delay* – 300 cases Fee excessive, inappropriate or wrong – 119 cases
Fixed interest home loan	229	Delay* – 46 cases Contractual breach or written instruction not carried out – 36 cases
Investment property loan	142	Delay* – 28 cases Contractual breach or written instruction not carried out – 25 cases

* "Delay" refers to delays in, for example, loan approval, receiving funds or settlements.

Consumer Finance

The "consumer finance" category has the following subcategories:

- credit or debit card;
- equity finance;
- interest free finance;
- hire purchase or lease;
- margin lending;
- personal loan; and
- line of credit or personal overdraft.

2625 consumer finance cases were closed. Of the 94 consumer finance disputes that were investigated, 64 related to credit or debit cards, 13 related to lines of credit or personal overdrafts and 13 related to personal loans.

The following table shows the number of cases closed and the most common problems in the three largest subcategories within the "consumer finance" category.

	Number of cases closed	Most common problems
Credit or debit card	2058	Unauthorised fraudulent transaction – 319 cases Fee excessive, inappropriate or wrong – 248 cases
Personal loan	408	Maladministration in granting loan – 53 cases Request for indulgences or variations to loan repayments – 53 cases
Line of credit or personal overdraft	93	Maladministration in granting loan – 16 cases Request for indulgences or variations to loan repayments – 14 cases

Issues Referred to in the Inquiry's Terms of Reference

The Banking & Finance Division of FOS has experience in dealing with disputes relating to home mortgage products and facilities that may be linked with those products. As noted above, however, FOS is not well placed to comment on the issues referred to in the Inquiry's Terms of Reference.

When dealing with a dispute about a product or service, the Banking & Finance Division does not necessarily gain any insight into how or why the product or service was acquired or any constraints on the acquisition process. We also note that the Banking & Finance Division's Terms of Reference prevent the Ombudsman from considering certain disputes that might raise issues relevant to competition, including:

- disputes that relate solely to a financial services provider's commercial judgment in decisions about lending or security; and
- disputes that relate to a practice or policy of the financial services provider, such as a fees and charges policy

Through its dispute resolution activities, the Banking & Finance Division does not necessarily become aware of current or recent developments in banking or likely drivers of future change. This is because there is usually a lag time between the acquisition of a product or service and the date when the consumer raises a dispute in relation to the product or service. There could in fact be years between the acquisition and the referral to FOS. The Banking & Finance Division's Terms of Reference impose a six year time limit. It prevents the Ombudsman from considering a dispute if the event giving rise to the dispute occurred more than six years before the disputant first gave the financial services provider written notice of the dispute. In particular circumstances, the Ombudsman could even consider disputes not notified within this time limit.