


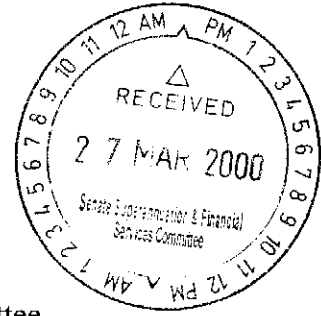
**Senate Select Committee on  
Superannuation and Financial Services**

**Main Inquiry  
Reference (a)**

**Submission No. 35**

**Submittor:** Mr Shawn Fracchia  
Westpac Customer  
22 Gundara Street  
ARANDA ACT 2614  
 - (02) 6251 5145

27 March 2000



**BY HAND**

The Secretary  
Senate Superannuation and Financial Services Select Committee  
Parliament House  
CANBERRA ACT 2600

Dear Sir/Madam,

**SUBMISSION BY WESTPAC CUSTOMER**

Please find attached my submission (in an individual capacity) to the Senate Superannuation and Financial Services Select Committee in regard to its inquiry into the prudential supervision and consumer protection for banking services.

Yours sincerely

A handwritten signature in cursive script that reads "Shawn Fracchia".

Shawn Fracchia  
Westpac Customer  
22 Gundara Street, Aranda  
Canberra ACT 2614  
Tel. (02) 6251 5145 (h); (02) 6216 1594 (w).

cc. Westpac Customer Relations Unit  
(Level 1, 50 Pitt Street, Sydney, NSW, 2000).

Australian Banking Industry Ombudsman Limited  
(Level 1, 607 Bourke Street, Melbourne, VIC, 3000).

### **List of Attachments**

- Attachment A:** Submission
- Attachment B:** My letter of 7 December 1999 to Westpac
- Attachment C:** Westpac letter of 15 December 1999 to me
- Attachment D:** Westpac letter of 25 January 2000 to me
- Attachment E:** My letter of 3 February 2000 to Banking Ombudsman
- Attachment F:** Banking Ombudsman letter of 21 February 2000 to me

## Submission to the Senate Select Committee on Superannuation and Financial Services

**Executive Summary:** I am a Westpac customer who in reliance on mistakes by Westpac have incurred administration costs and also believe that particular conduct engaged in by Westpac is inappropriate. Westpac has failed to address these issues to my satisfaction and the Banking Ombudsman has advised that due to the limitations of his terms of reference he cannot deal with my claim. The mistakes include:

- a representation by a Westpac representative which was false;
- the non-crediting of interest to accounts;
- failure to inform me of an account to which the non-crediting of interest occurred; and
- an incomprehensible 79 page response (with no explanation) to a request for all of my accounts to be checked for non-crediting of interest.

### Failure to provide redress

In reliance on the above-mentioned mistakes (which occurred in 1999 on the dates set out in letters attached) and in rectification of these mistakes, I have incurred administration (eg. visit to the Bank, dealing with the various units of Westpac in relation to the interest issue, telephone calls and other sundries).

As a matter of fairness and principle I sought from Westpac the same redress it has sought from me in the past and from customers generally when a customer makes a mistake (ie. a fee in lieu of administration). In other words, when a customer makes a mistake (eg. overdraws), Westpac doesn't just simply accept an apology from the customer but in lieu of the administration of a Westpac representative or system to deal with the matter, charges a fee (eg. \$15) - unless of course the fee is remitted.

In my circumstances, Westpac admitted mistakes leading to administration but has refused to apply the same treatment of customers to itself in this matter. Instead, it has sought to find ways to avoid that outcome - including offering an apology, a courtesy many customers attempt with banks but to no avail and the offer of free movie tickets.

Westpac has failed to provide the redress I have sought and a representative of the Banking Ombudsman's Office (see attached letter) has advised me that the Ombudsman's terms of reference do not permit it to deal with my claim.

### Conduct which I believe is inappropriate

- **On 24 January 2000 a senior Westpac representative offered me movie tickets to settle my case.**

I believe that it is improper for a Bank to be offering movie tickets to customers seeking redress as the Bank should be focussed on righting the wrong and providing fair redress. Customers (particularly younger members of the community) may be influenced to accept movie tickets at the expense of their entitlements.

The Code of Banking Practice fails to deal with issues such as these and focuses on practice issues (as it's name suggests) such as disclosure, privacy etc. Its objectives mention 'good practice and service' but fail to mention and in my view the more important elements, 'good behaviour and conduct'.

The latest version of the Code of Banking Practice sent to me on 23 February 2000 by the Australian Bankers' Association (ABA) has the publication date of '3 November 1993' on it's cover. I would appreciate knowing what steps the ABA has and has had in place over the last 7 years for keeping the Code at pace with best practice. A plethora of corporations and agencies have long adopted Customer Charters. For example, the Taxpayers Charter which came into force 3 years ago provides that you can expect that we treat you fairly and reasonably and that we are accountable for what we do (paraphrasing).

- **On 24 January 2000 a senior Westpac representative sought to impose a condition of settlement in my circumstances that I make no further claim in any future like cases.** The subsequent settlement letter from Westpac dated 25 January 2000 attempts to confirm the verbal statement *"Please bear in mind that it is not usual Bank practice to compensate for these situations and any further requests for reimbursement will be declined."*

I believe that it is improper for a Bank to attempt to bind customers (like myself) in respect of future situations that may arise. If the Bank behaves on a different occasion in the future in a way where it is appropriate to seek redress again, I believe it is improper and a restrictive consumer practice to bind customers against seeking redress on the merits of the particular situation.

## **Main Points to the Committee**

### First point

I believe that this submission demonstrates the need to review prudential supervision and consumer protection in relation to banking services. My experience is not only confined to my own bank accounts but extends to those of my family and friends.

My mother was until recently with the same Bank as me. She left the Bank after she showed me her bank statements and I calculated that she incurred \$60 in bank fees in a year whilst only receiving \$2.77 in interest. She didn't even know this until I told her. Disappointedly, I have since discovered that there are many Australians in this same predicament. My experience in relation to my mother's financial statements, made me realise that the Banks spend millions of dollars producing all these different types of mailouts for customers (from preferred Olympic ticket promos to Y2K reassurances) yet they don't even have a simple system in place for sending a letter to someone like my mother letting her know the situation (it's pretty grave when bank fees for the year are more than 20 times the interest).

### Second point

I also believe that the extremely narrow terms of reference of the Banking Ombudsman's Office and the ambit of the Code of Banking Practice (ABA) should be reviewed.

At the very least, both need to keep pace with the types of complaints being made by bank customers and developments in banking. A direct financial loss limitation is a throwback to traditional banking. One is left with the question as to who is accountable for the strategic understanding of the effect of new market developments (eg. growth in bank fees and delivery of advice through telephone banking) on the consumer protection system and instigating change where appropriate ?

If the Ombudsman is to be referred to as the 'Banking Ombudsman' then he should in fact be a Banking Ombudsman. I believe that the reasonable expectation in the minds of the public would be that a Banking Ombudsman can deal with all matters pertaining to banking perhaps with the exception of a very few limited matters. This is not the present case. A representative of the Banking Ombudsman has advised me that he cannot deal with any of the issues I have raised in this submission.

I would be pleased to elaborate further on the points I have made in this submission and have sent copies to relevant parties.

Attachment  
B

7th December 1999

**URGENT**

The Manager  
Westpac Banking Corporation (ARBN 007 457 141)  
(delivered by hand to Manager, Canberra Branch of Westpac)

Dear Manager,

**CLAIM FOR FEE IN LIEU OF ADMINISTRATION**

I write to claim a fee in lieu of the administration incurred by me in reliance on a representation by a Westpac representative on 3rd December 1999 which was false.

On 3 December 1999 at approximately 11.00am I rang Westpac Telephone Banking (132032) and spoke with a representative called [REDACTED]

The reason for my call was that I wanted to go into the Bank and set up a temporary periodic debit arrangement to a credit union but only if there were no fees attached.

[REDACTED] informed me that there were no fees attached to this arrangement. I was surprised by this and asked her at least one more time to which she confirmed her original statement. In reliance on this statement, I went into the Bank later that day only to be told by the teller (and the Branch Manager) that such a statement (if made) was false and that there was a \$4 charge for each debit. I have no doubt whatsoever regarding the representation made by [REDACTED] to me and on which I relied. I provided the Bank representatives with a filenote of my conversation with [REDACTED] (the note was noted and returned by the representatives).

I also claim a fee in lieu of the administration incurred by me in relation to the non-crediting of interest in respect of a closed Westpac account (see attached letter from Westpac).

Westpac has consistently represented to me that fees are in lieu of the administration incurred by the Bank in relation to customers. One such fee for \$15 was debited to my account on 27 March 1998 (copy attached).

I have been a loyal Westpac customer for many years, having kept significant personal business with Westpac savings accounts. I have recently withdrawn a significant amount from my accounts pending resolution of the interest discrepancies associated with my Westpac accounts and will be looking to take out my first home loan post GST.

I believe, as a matter of principle, that if Westpac charges me a fee in lieu of administration costs associated with a mistake (eg. overdrawing), the customer should be entitled to make the same claims as Westpac. Accordingly, I claim \$15 for each Westpac mistake in lieu of the administration costs I have incurred (eg. visit to the Bank, dealing with the various units of Westpac in relation to the interest issue, telephone calls and other sundries).

I believe strongly in this claim and the consistent application of one's principles.

Yours sincerely,



Shawn Fracchia  
Westpac Customer

[Redacted]

[Redacted]

[Redacted]

[Redacted]





Official Partner  
of the 2000  
Olympic Games

Attachment C!  
**Westpac Banking Corporation**

ARBN 007 457 141  
First Bank in Australia

CAIRNS, 63 - 65 LAKE STREET  
63 - 65 LAKE STREET  
CAIRNS QLD 4870

Telephone: 07 40515633  
Facsimile: 07 40519241  
Our Ref: ras/csm  
Your Ref:

Mr S Fracchia  
[REDACTED]  
[REDACTED]

15 December 1999

Dear Mr Fracchia,

**RE: Your Letter dated 7th December 1999.**

We refer to your letter dated 7 December 1999, and thank you for bringing your concerns to our attention as it is through feedback that we are able to improve our services and products to the benefit of all our customers.

At the outset I would like to apologise for any inconvenience you may have experienced as a result of incorrect information provided to you regarding Periodical Payment fees. We have today reminded all of our Representatives of the fees involved with this service.

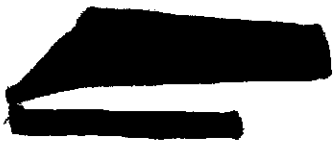
I confirm there is a fee of \$4-00 for Periodical Payments crediting an account with another Financial Institution (including Credit Union). Periodical Payments are fee free when they are within Westpac personal accounts. If you wish to establish such a payment, this can be arranged at any of our Branches, with the \$4-00 fee applying upon each remittance.

I can understand your confusion regarding your interest recalculation on your Bonus Saver Account recently. The small discrepancies of \$0.01 in your favour and \$1-00 in the banks favour results from computer based calculations compared to that of manually based calculations. Re-calculations are done manually causing small differences.

I am sorry that you feel certain measures need to be taken to raise your concerns and assure you that we appreciate all feedback. We have given strong consideration to your request for a refund of \$15-00 and as an act of goodwill have today re-credited your Classic Account with this amount.

I trust we have addressed your concerns to your satisfaction and look forward to your future relationship with Westpac.

Yours faithfully,

A large black rectangular redaction box covers the signature area, obscuring the name and any handwritten notes.

Customer Service Manager.

'WITHOUT PREJUDICE'

NSW Customer Relations Unit  
Level 1, 50 Pitt Street  
SYDNEY NSW 2000  
Ph: (02) 9220 4110  
Fx: (02) 9220 4177  
25<sup>th</sup> January 2000

MR S C FRACCHIA  
[REDACTED]  
[REDACTED]

Dear Mr Fracchia

I refer to our recent telephone conversations and your letter of 7<sup>th</sup> December to the Manager of our Petrie Plaza branch. Your letter and our conversations raised several concerns and I would like to address each one individually.

I will not comment further on the issue regarding the Periodical Payment fee due to the fact that you have already received a credit of \$15 to your account in relation to this matter.

You were concerned with a letter from [REDACTED], Customer Service Representative at our Queensland Banking Operations Centre, which fails to mention which account the interest adjustment refers to. As we discussed, [REDACTED] has done an interest recalculation on account 034167 178586. She has pointed out that there was no Bonus interest adjustment required for the period April to August, however, no interest was paid to your account on the final closing balance. Interest was recalculated at the base rate of 0.10% for the period up until the closure of the account on 10<sup>th</sup> August. Interest was not paid to this date due to the fact that a Customer Service Officer has waived the outstanding fees/charges/interest on your account when closing. The interest adjustment was made to your account 034167 146402 as confirmed in [REDACTED] letter and was described clearly in the Description of Transaction section of your statement as being an interest adjustment which related to her letter to you.

A similar situation has occurred when your accounts 732167 575191 and 732719 518541 were closed. I understand that you believed that you had a fee waiver in place and for the purpose of resolving this matter, I will not argue the Bank's position on this issue. I have arranged for a deposit of \$0-40 to your account 734167 544942, which represents credit interest waived when the above accounts were closed. I acknowledge that you felt that this waiver was a matter of principle and have discussed the waiver's use with the staff involved in your account closures.

You have requested the reason for interest not being credited to your account upon closure. I believe that the Customer Service Officer felt that she was acting in your best interests in doing so. We apologise for any inconvenience caused by this action.

I have spoken with the staff member who forwarded the pages of interest calculations to you following your request to have your interest adjusted. The young lady has asked me pass on her apologies as she thought that you required proof of how the recalculation was made. We regret that the covering letter did not contain a full explanation of the calculations.

Mr Fracchia, I understand that you have been distressed and inconvenienced by this situation. During our last discussion, you asked that we provide a second payment of \$15-00 in recognition of the time that it has taken to resolve your concerns. In the interest of finalising this matter, I have agreed to deposit these funds to your savings account upon acceptance of this offer. Please bear in mind that it is not usual Bank practice to compensate for these situations and any further requests for reimbursement will be declined. We would like to continue the banking relationship, but do not feel that each time you have a banking concern, we can continue to compensate you as a matter of course.

Please advise by return mail if you would like to accept the above \$15-00 payment to your account and I will arrange this deposit immediately. This payment will represent full and final settlement of the issues that you have raised. I would appreciate if you could sign the attached duplicate and return it at your earliest convenience.

Yours sincerely

  
Customer Relations Manager

I hereby accept the above offer as full and final settlement in relation to my concerns with the Bank.

.....  
/ /2000

3 February 2000

**BY COURIER**

The Banking Ombudsman  
GPO Box 3A  
Melbourne VIC 3001

Dear Sir/Madam,

**WESTPAC BANKING CORPORATION ARBN: 007 457 141**

On 7th December 1999 I wrote to Westpac Banking Corporation claiming a fee in lieu of the administration incurred by me in reliance on a representation by a Westpac representative on 3rd December 1999 which was false. I also claimed a fee in lieu of the administration incurred by me in relation to the non-crediting of interest in respect of a closed Westpac account (see attached correspondence).

On 24th January 2000, [REDACTED], Customer Relations Manager, Westpac telephoned me and offered me movie tickets in satisfaction of my claim. I rejected this offer and was subsequently met with an offer agreeing to my claim that:

- Westpac apologise in writing for its mistakes:
  1. The non-crediting of interest in respect of several bank accounts;
  2. The representation by a Westpac representative on 3rd December 1999 in relation to fees which was false and on which I relied;
  3. The response of 79 pages of internal financial gobbledygook (that I couldn't understand) from [REDACTED], Customer Service Officer to a request by me for Westpac to check my other accounts for non-crediting of interest - the correspondence included no explanation whatsoever; and
  4. The failure to inform me in the letter from [REDACTED], Customer Service Representative, Westpac of 2 November 1999 (which admits to the non-crediting of interest) of the account in respect of which the non-crediting occurred. Soon after I received the letter admitting to the non-crediting of interest, Westpac informed me that it would cost \$60 per hour for other accounts to be checked. This position was subsequently reversed.

I have incurred administration in resolving these mistakes (viz. visit to the Bank, dealing with the various units of Westpac in relation to the interest issue, telephone calls and other sundries).

I point out that [REDACTED] and I had a disagreement in relation to a fee waiver issue (I will discuss this issue later in this letter).

- Westpac provide an additional \$15 in satisfaction of my letter of 7 December 1999 and that the previously paid \$15 be expressed for the purpose of satisfying my letter of 7 December 1999.

In other words, I felt strongly in relation to my original letter and wanted a written acceptance from Westpac of it.

#### Issue #1

On 1 February 2000 I received a letter from [REDACTED] (attached) that purports to fulfil her undertaking on behalf of the Bank. As the letter does not fulfil her undertaking I write to you to notify you of this and to explore with you what assistance and remedies you may provide to seek redress in this situation.

#### Issue #2

I also believe it is improper for a Bank to offer movie tickets in these circumstances as the Bank should be focussed on righting the wrong and providing fair redress. Customers (particularly younger members of the community) may be influenced to accept movie tickets at the expense of their entitlements. I do not have a copy of the Banking Code of Practice but would be interested in receiving a copy of it.

#### Issue #3

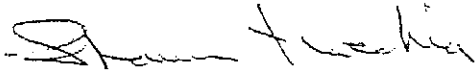
[REDACTED] indicated to me that the offer would be conditional on me not making any further claim for reimbursement in these types of matters. The letter from Westpac dated 25 January 2000 states "*Please bear in mind that it is not usual Bank practice to compensate for these situations and any further requests for reimbursement will be declined.*" I believe that it is improper for a Bank to attempt to bind me or other customers in respect of future situations that may arise. If the Bank behaves on a different occasion in the future in a way where it is appropriate to seek redress again, I believe it is improper and a restrictive consumer practice to bind customers against seeking redress on the merits of the particular situation.

#### Issue #4

In relation to the fee waiver issue, no Bank fees affect the non-crediting of interest by Westpac as a waiver was provided by the Canberra branch of Westpac (corner of Petrie Plaza and City Walk). The issue that [REDACTED] raises was not mentioned in the letter from [REDACTED] when Westpac admitted that interest was not credited so it came as a surprise when [REDACTED] raised it. I felt and indicated this to [REDACTED] on 1 February 2000 that the comments inserted in the letter from Westpac dated 25 January 2000 relating to the fee waiver issue detracted from the unequivocal apology I was seeking.


I have prepared this letter promptly as I have been informed that correspondence to your Office is generally dealt with on a first in, first served basis and will promptly forward any additional matters to you.

Yours sincerely



Shawn Fracchia  
Westpac Customer



cc.  Westpac Customer Relations Unit  
(Level 1, 50 Pitt Street, Sydney, NSW, 2000).

Attachment 1

**Australian Banking Industry Ombudsman Limited**

A.C.N. 050 070 034

Level 1, 607 Bourke Street, Melbourne, 3000

PO Box 14240, Melbourne City Mail Centre, Melbourne, 8001

Telephone: (03) 9613 7373 Toll Free: 1 800 337 444 Facsimile: (03) 9613 7345

Please Quote Case No: 38380

21 February 2000

Mr S Fracchia  
[REDACTED]  
[REDACTED]

Dear Mr Fracchia

**Westpac Banking Corporation**

I refer to your letter of complaint and our telephone conversation on 11 February 2000 regarding Westpac Banking Corporation ("the bank").

**Complaint**

You have raised a number of matters:

- The bank did not credit interest to an interest bearing account held by you;
- A bank officer gave you incorrect information about a fee which you relied on and which caused you to spend time in resolving the matter;
- When you requested information on other accounts in order to check the interest the bank sent you 79 pages of incomprehensible financial material without any explanation;
- The bank failed to inform you in a letter of the account in which the non-crediting of interest occurred;
- You received letters from the bank which did not properly address issues you raised;
- You think that the bank's offer of movie tickets in regard to your complaint is improper, and that the bank should be offering fair redress;





- The bank, in its letter dated 25 January 2000, in offering to waive a \$15.00 fee, also states that " any further requests for reimbursement will be declined". You believe that it is a restrictive consumer practice to bind customers against seeking redress on the merits of a particular situation;
- You think that the comments in the bank's letter of 25 January 2000 in regard to the fee waiver matter detracted from the unequivocal apology you had sought in relation to the non-crediting of interest.

You have requested that the bank pay you a fee in lieu of administrative duties you have had to perform to resolve the matter of the non-crediting of interest.

### **Banking Ombudsman Scheme**

The Banking Ombudsman Scheme ("Scheme") was established to provide an independent dispute resolution service as an alternative to the courts for bank customers with specific types of complaints.

The Ombudsman's principal powers are to consider disputes related to the provision of banking services by banks that are members of the Scheme, and, if appropriate, to award compensation for losses incurred by a customer as a result of a bank error.

### Loss of Interest

I understand, from our telephone conversation, that the bank has agreed to reimburse you for the loss of interest.

You have said that when you receive a statement on your account you will examine it to see if the correct amount of interest has been credited to your account. You will write to this office if the bank has made an error in recalculating the interest.

The Ombudsman may only consider this aspect of your complaint if there is a direct financial loss to you.

## Terms of Reference

In regard to your claim for a fee in lieu of administrative duties performed by you I provide the following information:

The Banking Ombudsman Scheme operates under Terms of Reference which define the complaints we can consider.

Under the Terms of Reference, the Ombudsman may make an award of a monetary sum up to \$150,000 which is:

*“in the opinion of the Ombudsman . . . appropriate to compensate the applicant for direct loss or damage suffered by him by reason of the acts or omissions of the bank . . .”*

## Non Financial Loss

Non financial loss and damage may constitute a direct loss or damage to a complainant. However, it is only in exceptional circumstances that compensation is considered for non financial damage such as inconvenience, anxiety and disappointment and an award for such damage is unlikely to be substantial.

## *Complainant's Resilience*

In assessing whether an award may be made for such damage, complainants are expected:

1. To be moderately robust in the way in which they deal with a problem;
2. To take responsibility for ensuring that their financial affairs are in order in the ordinary course of the transactions concerned;
3. To bear the ordinary and normal degree of inconvenience associated with correcting an unexpected problem; and
4. To take reasonable steps to minimise the inconvenience suffered.

### *Simple Inconvenience*

Claims for simple inconvenience are not sufficiently substantial to warrant compensation.

The information provided by you indicates that the circumstances of your complaint would not qualify for non-financial loss. You have been robust in your efforts to rectify the error and it appears that you have been successful.

### Bank Policy

The Terms of Reference exclude matters that concern general policies or practices of a bank which do not in themselves give rise to a breach of any obligation or duty owed by the bank to a customer.

I note your objections to the bank's offer of movie tickets. However, such a practice is a matter of bank policy and is not a breach of any specific obligation or duty owed by the bank to you.

It is more appropriate to bring matters of that nature to the attention of the bank itself.

### Code of Banking Practice

I suggest you contact the Australian Bankers' Association to obtain a copy of the Code of Banking Practice. This organisation may be contacted by writing to:

Australian Bankers Association  
Level 3  
56 Pitt Street  
SYDNEY NSW 2000


or telephone; 02 8298 0417

### **Further Action**

As discussed I will keep your file provisionally open. Please provide any further information within one month. If I do not hear from you by 21 March 2000 your file with this office will be closed.

I enclose, for your information, a copy of the Terms of Reference of the Scheme and a copy of the most recent Annual Report.

Yours faithfully

A large black rectangular redaction box covering the signature of the Case Officer.A small black rectangular redaction box covering the first part of the name.  

Case Officer

enc