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UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B  
OF THE TRADE PRACTICES ACT 1974

BY

BANK OF WESTERN AUSTRALIA LTD  
ACN 050 494 454

**BACKGROUND**

1. Bank of Western Australia Ltd (*BankWest*) trading as BankWest, carries on business, in trade or commerce, inter alia, as a provider of banking products and financial services.
2. BankWest, as part of its business activities, provides a telephone Helpline service for consumers which includes referral to BankWest's Sales & Customer Management Unit (the *Lending Unit Service*). This Lending Unit Service is a selling unit and also provides financial information and advice regarding BankWest's home loans and other financial services.
3. The Australian Competition and Consumer Commission (the *Commission*) has investigated a complaint made by WA Home Loans Australia Pty Ltd regarding representations allegedly made by one or more employees or agents of BankWest on the Lending Unit Service between 12 July and 31 July 1996.
4. The Commission considers, and BankWest accepts, that representations were made by one or more BankWest employees or agents on the Lending Unit Service in relation to home loan products and financial services provided by non-bank lenders, that some non-bank lenders:
  - (a) did not refund establishment fees to consumers in the event home loan finance did not proceed;
  - (b) charged establishment fees which were excessive or which could not be financed by their inclusion in the home loan;
  - (c) did not accept early or additional repayments from consumers on home loans except by way of mailed cheques;
  - (d) did not credit early or additional repayments by consumers on home loans on a daily basis and instead only on the monthly or fortnightly due payment date;
  - (e) had seven year loyalty terms which would prevent consumers from paying out or refinancing their home loan in the first seven years or which required consumers to pay excessive penalties in the event they paid out or refinanced their home loan in the first seven years; and
  - (f) did not offer flexibility to consumers in connection with their home loans because of one or more of the following:
    - (i) non-bank lenders did not offer anything except home loans; and/or
    - (ii) non-bank lenders did not provide off-set accounts; and/or
    - (iii) non-bank lenders did not offer personal loans; and/or
    - (iv) non-bank lenders did not offer redraw facilities; and/or



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- (v) non-bank lenders did not allow second mortgages behind their first mortgage.
5. The Commission considers, and BankWest accepts, that each of the representations in the preceding paragraph was not correct in respect of some home loan products and financial services provided by one or more non-bank lenders at the time those representations were made.
6. The Commission considers that, in making the representations set out in paragraph 4 above, BankWest may have engaged in misleading or deceptive conduct in contravention of section 52 of the Trade Practices Act 1974 (the *Act*) and made false or misleading representations in contravention of sections 53(aa) and 53(c) and 53(g) of the *Act*.
7. Upon becoming aware of the conduct referred to at paragraph 4 above BankWest conducted an internal investigation to ascertain why the representations were made and, as a result, staff of the Lending Unit Service were appropriately counselled and retrained.
8. The Commission requested that BankWest conduct a review of its internal complaints handling procedure. The Commission acknowledges that BankWest had, at the time that the representations were made, and continues to have an adequate internal complaints handling procedure in place.

#### UNDERTAKINGS

9. BankWest on behalf of itself and any subsidiaries, agents or business entities which it controls gives the following undertakings to the Commission for the purposes of section 87B of the *Act*:
- (a) Neither BankWest nor its servants or agents or otherwise will make any representations which are false, misleading or deceptive concerning the home loan products and financial services provided by non-bank lenders.
- (b) BankWest will cause to be published, at its own expense, a display advertisement of three column width by 26 centimetres in height, in the terms agreed with the Commission in Attachment 1 to this Undertaking in both the Saturday edition of the West Australian and in the Sunday Times, within 14 days from the date of notification of the Commission's acceptance of this Undertaking and will take all reasonable steps to ensure that the advertisement appears on a right hand page within the first seven pages of each newspaper.
- (c) BankWest will endeavour to resolve promptly any claims for compensation for any financial loss incurred by consumers as a consequence of taking up home loan financial services with BankWest rather than a non-bank lender as a result of any representations made in contravention of the Trade Practices Act by BankWest, its employees or agents, to consumers regarding home loan products and financial services provided by non-bank lenders, provided such claims are made before 28 February 1997. BankWest will promptly refer to the Australian Banking Industry Ombudsman any matters that cannot be resolved between BankWest and such consumers.
- (d) BankWest will, within 90 days of notification of the Commission's acceptance of this Undertaking, review its internal trade practices compliance program in conjunction with the Commission's Consumer Protection Compliance Strategies Branch.
- (e) BankWest will continue its ongoing staff training program to inform its employees and agents about the current services and market practices of BankWest and BankWest's competitors, including non-bank lenders.
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- (f) BankWest will prepare a pamphlet based on the "Outline of Pamphlet Content" in Attachment 2 to this Undertaking. The wording of the pamphlet is to be agreed between BankWest and the Commission. The pamphlet will be a finished size of 17cm x 9.5cm and will have four folds and will be printed in at least two colours with copy in plain English. BankWest undertakes to print 50,000 pamphlets no later than one month after the wording of the pamphlet is agreed by BankWest and the Commission, provided that the wording is agreed no later than 31 May, 1997. Of these pamphlets, 10,000 will be distributed by BankWest to its Customer Service Centre network throughout Western Australia, the Ministry of Fair Trading and similar Government agencies. The remaining 40,000 will be delivered to the Commission for distribution by the Commission. BankWest undertakes to display the pamphlets in its Customer Service Centre network for three months from the date of distribution.

**ACKNOWLEDGMENTS**

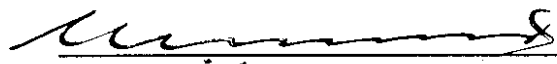
10. BankWest acknowledges the Commission's rights to make this undertaking available for public inspection.
11. BankWest acknowledges that the Commission will issue a media release which will be provided to BankWest for its comments, at least two business days prior to its release, and may from time to time publicly refer to this undertaking.
12. BankWest acknowledges and accepts that the undertaking in no way derogates from the rights and remedies available to any other person arising from the matter.

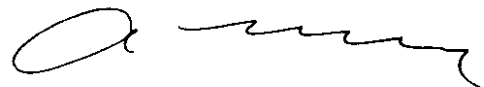
**IN WITNESS OF THIS UNDERTAKING**

This 11<sup>th</sup> day of DECEMBER 1996.

**EXECUTED** by **BANK OF WESTERN AUSTRALIA LTD** by its Attorney:- Warwick Gordon Kent its duly constituted Attorney under Power of Attorney No. G324234 dated 4th November 1996 who at the date hereof had no notice of revocation of such Power of Attorney in the presence of:

**BANK OF WESTERN AUSTRALIA LTD**  
by its Attorney:-

  
\_\_\_\_\_  
Managing Director

  
\_\_\_\_\_  
An officer of the Bank

**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974**

  
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Chairperson

This 16 day of December 1996.

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**IMPORTANT ANNOUNCEMENT FOR ALL BANKWEST CUSTOMERS**

Some customers using Bankwest's Sales & Customer Management Unit or referred by BankWest's Home Loan Helpline to that Unit, in July 1996, were given incorrect information about home loans offered by non-bank lenders.

The information given was that some, or all non-bank lenders:

- did not refund establishment fees if a home loan offer was not taken up;
- did not accept early/additional payments on home loans, or if they did, required the payments by mailed cheque;
- did not credit early/additional payments on home loans daily but only on the monthly/fortnightly due date;
- did not offer flexible products as they did not provide services such as personal loans, off set accounts or redraw facilities;
- did not roll establishment fees and loan set up costs into the principal amount of the home loan.
- tied borrowers to their home loans for a minimum of 7 years.

BankWest accepts that this information was not correct in respect of some home loan products and financial services provided by one or more non-bank lenders when that information was given.

BankWest will compensate any Bankwest customer who has suffered financial loss as a result of representations made in contravention of the Trade Practices Act and given in response to a telephone call to the Sales & Customer Management Unit, relating to the matters listed above. If you are in this position please write to us:

Ms Lisa Corlett  
Manager - Service Quality  
Bank of Western Australia  
Box 8093 - Stirling Street  
PERTH WA 6849

or contact us on FREECALL 1 800 811 822 between 8.30am and 5.00pm WST.

These arrangements for compensation will remain in place until 28 February 1997.

If a suitable solution cannot be reached the matter will be referred to the Australian Banking Industry Ombudsman for arbitration.

The Australian Competition and Consumer Commission (ACCC) has investigated this matter with the co-operation of BankWest. As soon as it became aware of the complaint, BankWest took steps to ensure that all information given in response to enquiries about non-bank lenders and its own services is correct and is not misleading.

BankWest has given legally enforceable undertakings to the ACCC that it will not engage in misleading or deceptive conduct concerning its competitors' activities or products, will compensate affected customers and review its internal compliance programme with the ACCC. BankWest has also undertaken to develop an information pamphlet containing information on bank and non-bank lenders' home loan products and arrange for its distribution to consumers through BankWest Customer Service Centres, the Ministry of Fair Trading and similar government agencies.

ACCC LOGO

BANKWEST LOGO



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## OUTLINE OF PAMPHLET CONTENT

### Pamphlet Format - As per Undertaking 9(f)

#### Pamphlet Content

The pamphlet is to contain information which will assist consumers in shopping for a home loan. That information will not include specific costs, repayments options etc in relation to products offered by home loan providers in Western Australia but will rather include generic statements which will point customers to areas which they should investigate when looking for a loan. Its intention will be to provide them with a means to ensure that they can make an informed choice about a home loan rather than provide a direct comparison between all the products currently available.

The pamphlet will contain the words "Sponsored by BankWest" on the front of the pamphlet and at the end of the text contained in the pamphlet.

The pamphlet should contain information such as the following:

- Definition of terms used by lenders, such as:
  - establishment fee
  - mortgage
  - offset account
  - redraw facility
  - etc
- Answers to questions such as:
  - Is there a cooling-off period on loan applications
  - What are the costs of establishment fees
  - Can establishment fees be included in home loans
  - Are establishment fees refundable if a home loan application does not proceed or is declined
  - Whether additional repayments may be made on home loans and, if so, on what sorts of conditions might they be made (e.g. minimum amounts, mode of payment, etc) and when they might be credited to the account (e.g. immediately, monthly, etc)
  - Whether a home may be refinanced at any time and, if so, what costs, charges, penalties, etc might be attracted
  - What other services might be offered by home loan lenders
  - The issue of priority in having more than one mortgage



- **Information concerning:**
  - **The role of the Banking Industry Ombudsman**
  - **Where to make a complaint about a home loan lender**
  - **Where to find more information about home loan lending**

