

# Commonwealth Bank Response to the Review of the Major Four Banks First Report

## Recommendation (2.1)

*The committee recommends that the Government amend or introduce legislation, if required, to establish a Banking and Financial Sector Tribunal by 1 July 2017. This Tribunal should replace the Financial Ombudsman Service, the Credit and Investments Ombudsman and the Superannuation and Complaints Tribunal.*

### Commonwealth Bank Response

- We broadly support a 'one-stop shop' approach to dealing with external dispute resolution that is fast, customer-friendly and cost-effective.
- We note that the Ramsay Review is currently underway and recommend that the Government response should consider the overall architecture of EDR in its response to the review (due March 17). As such, we see the 1 July 17 start date as unlikely to be realistic.

## Recommendation (2.2)

*The Government should also, if necessary, amend relevant legislation and the planned industry funding model for the Australian Securities and Investments Commission, to ensure that the costs of operating the Tribunal are borne by the financial sector.*

### Commonwealth Bank Response

- We broadly support this in the context of overall Ramsay Review recommendations.
- We note that costs will need to be borne in an appropriate way right across the industry and should be subject to detailed consultation with Government on the overall ASIC funding model.

## Recommendation (3.1)

*The committee recommends that, by 1 July 2017, the Australian Securities and Investments Commission (ASIC) require Australian Financial Services License holders to publicly report on any significant breaches of their licence obligations within five business days of reporting the incident to ASIC, or within five business days of ASIC or another regulatory body identifying the breach.*

### Commonwealth Bank Response

- We support the principles of accountability and transparency.
- Consideration should be given to allowing adequate time for investigations and appropriate disclosure to customers.
- A five day timeframe is neither practical nor adequate to thoroughly investigate issues to a level of confidence appropriate for public reporting. Depending on the nature of the public notification it could create concern among customers where none was warranted.
- The expert taskforce the Government established in October 2016 to examine ASIC's enforcement powers has this issue in its Terms of Reference and would appear an appropriate forum for the detail of this issue to be considered.

### **Recommendation (3.2)**

*This report should include a description of the breach and how it occurred; the steps that will be taken to ensure that it does not occur again; the names of the senior executives responsible for the team/s where the breach occurred; and the consequences for those senior executives and, if the relevant senior executives were not terminated, why termination was not pursued.*

#### **Commonwealth Bank Response**

- We support the principles of accountability and transparency.
- We do not support this recommendation in its current form.
- We believe it could be a breach of natural justice to 'name and shame' individuals before taking adequate time to properly investigate the alleged breaches.
- We recommend further dialogue between Government and Industry on an appropriate disclosure regime and any enhancements needed to current disclosure provisions.
- The expert taskforce the Government established in October 2016 to examine ASIC's enforcement powers has this issue in its Terms of Reference and would appear an appropriate forum for the detail of this issue to be considered.

### **Recommendation (4.1)**

*The committee recommends that the Australian Competition and Consumer Commission, or the proposed Australian Council for Competition Policy, establish a small team to make recommendations to the Treasurer every six months to improve competition in the banking sector.*

#### **Commonwealth Bank Response**

- We support measures that encourage further competition.
- We broadly support an inquiry into competition, and note the Government has committed to tasking the Productivity Commission with examining the state of competition in the financial sector in 2017.
- We encourage the Government to bring forward this inquiry.

### **Recommendation (4.2)**

*If the relevant body does not have any recommendations in a given period, it should explain why it believes that no changes to current policy settings are required.*

#### **Commonwealth Bank Response**

- We support the intent of reviewing competition, but recommend that the Productivity Commission should proceed with its review to consider the institutional framework and that Government consider these findings in full before considering further changes.

### **Recommendation (5.1)**

*The committee recommends that Deposit Product Providers be forced to provide open access to customer and small business data by July 2018. ASIC should be required to develop a binding framework to facilitate this sharing of data, making use of Application Programming Interfaces (APIs) and ensuring that appropriate*

*privacy safe guards are in place. Entities should also be required to publish the terms and conditions for each of their products in a standardised machine-readable format.*

### **Commonwealth Bank Response**

- Open data presents opportunities to improve service quality and competition for customers, provided the security and privacy of customer data and finances are maintained.
- We are committed to using data to make it easier to switch banks, as well as to give customers greater visibility over quality of service metrics, including at a granular level.
- In relation to open APIs we believe much activity is already underway and Commonwealth Bank has initiated data sharing arrangements with Xero, MYOB and Airtasker.
- We note this is a key area on which the Productivity Commission is currently consulting (due March 2017), and recommend that the Government consider this report's findings in full before finalising decisions in this area.
- As per with our submission the Productivity Commission, we support a process that is largely industry led, noting it will be a complex and expensive process to establish, as demonstrated by overseas experience.
- We note that the UK has set a deadline for implementation of July 2018, but believe in the Australian context this would not allow sufficient time to resolve the complex regulatory and cyber security issues required to protect consumers.
- We support a phased implementation in Australia where industry, regulators, consumer groups and fintechs have the opportunity to collaborate on a safe and sustainable framework, and learn from other jurisdictions.

### **Recommendation (5.2)**

*The Government should also amend the Corporations Act 2001 to introduce penalties for non-compliance.*

### **Commonwealth Bank Response**

- We support greater data sharing.
- We believe the Government should consider the findings of the Productivity Commission review in full before finalising decisions in this area.

### **Recommendation (5.38)**

*The committee recommends that the Government, following the introduction of the New Payments Platform, consider whether additional account switching tools are required to improve competition in the banking sector.*

### **Commonwealth Bank Response**

- We support greater ease of switching and are committed to bringing this about, including through making more of our data available.
- We note that the recommendations of the Productivity Commission on open data will also be relevant.
- Any government policies in this area should be technology neutral and subject to thorough cost benefit analysis.

### **Recommendation (6.1)**

*The committee recommends that by the end of 2017:*

- *the Government review the 15 per cent threshold for substantial shareholders in Authorised Deposit-taking Institutions (ADIs) imposed by the Financial Sector (Shareholdings) Act 1998 to determine if it poses an undue barrier to entry;*
- *the Council of Financial Regulators review the licensing requirements for ADIs to determine whether they present an undue barrier to entry and whether the adoption of a formal 'two-phase' licensing process for prospective applicants would improve competition; and*
- *APRA improve the transparency of its processes in assessing and granting a banking licence.*

### **Commonwealth Bank Response**

- We broadly support this recommendation and note it is a decision for Government, looking at what is in the interests of the industry as a whole.
- We recommend this be considered by the Productivity Commission review into competition.
- Any change should be subject to maintenance of Australia's high prudential and consumer protection standards.
- We also note relevant work ASIC currently has underway on a 'regulatory sandbox' to encourage innovation and new market entrants.

### **Recommendation (7.1)**

*The committee recommends that the major banks be required to engage an independent third party to undertake a full review of their risk management frameworks and make recommendations aimed at improving how the banks identify and respond to misconduct. These reviews should be completed by July 2017 and reported to ASIC, with the major banks to have implemented their recommendations by 31 December 2017.*

### **Commonwealth Bank Response**

- Independent reviews of our current risk management frameworks, which include various elements covering misconduct, are already mandated by APRA.
- Every three years banks are required to have an independent party conduct a comprehensive review of the appropriateness, adequacy and effectiveness of their risk management frameworks and provide the report to APRA.
- Further, our risk management frameworks are also subject to third party independent reviews in accordance with ASIC requirements and other regulation.

### **Recommendation (8.1)**

*The committee recommends that the Government amend relevant legislation to give the Australian Securities and Investments Commission (ASIC) the power to collect recurring data about Australian Financial Services licensees' Internal Dispute Resolution (IDR) schemes to:*

- *enable ASIC to identify institutions that may not be complying with IDR scheme requirements and take action where appropriate; and*

- *enable ASIC to determine whether changes are required to its existing IDR scheme requirements.*

### **Commonwealth Bank Response**

- We broadly support this recommendation.
- The industry is strengthening internal dispute resolution mechanisms through the industry reform initiatives, including through the appointment of dedicated customer advocates.
- Commonwealth Bank complies with ASIC regulatory guides – RG 165.
- Regulatory Guide 165 should be subject to the establishment of consistent frameworks for data collection.

### **Recommendation (8.2)**

*The committee further recommends that ASIC respond to all alleged breaches of IDR scheme requirements and notify complainants of any action taken, and if action was not taken, why that was appropriate.*

### **Commonwealth Bank Response**

- We support a requirement that banks' internal dispute resolution mechanisms be robust and demonstrably so.
- We support the current framework, where ASIC is responsible for:
  - a) setting or approving standards for IDR procedures; and
  - b) approving and overseeing the effective operation of EDR schemes.
- We support and are engaged in the review the Government has established in to external dispute resolution measures in financial services ('the Ramsay review') and recommend the Government consider the findings of this review in full prior to finalising any changes to current arrangements.

### **Recommendation (9.1)**

*The committee recommends that the Australian Securities and Investments Commission (ASIC) establish an annual public reporting regime for the wealth management industry, by end-2017, to provide detail on:*

- *the overall quality of the financial advice industry;*
- *misconduct in the provision of financial advice by Australian Financial Services Licence (AFSL) holders, their representatives, or employees*
- *(including their names and the names of their employer); and*
- *consequences for AFSL holders' representatives guilty of misconduct in the provision of financial advice and, where relevant, the consequences for the AFSL holder that they represent.*

### **Commonwealth Bank Response**

- We broadly support the goal, noting that this is a recommendation for the Government to respond to.
- If implemented, this will require detailed discussions with Government on specific additional reporting requirements, and the scope of the review.

- ASIC already reports banning orders and has an industry register for banned or disqualified advisers.

### **Recommendation (9.2)**

*The committee further recommends that ASIC report this information on an industry and individual service provider basis.*

### **Commonwealth Bank Response**

- We broadly support the goal of this recommendation.
- We already advise clients of an adviser under certain circumstances. This requires further detailed discussion with Government on proposed scope.
- We believe that reporting on minor breaches could cause confusion and negatively impact confidence in the system. Important to ensure that this applies to breach of legal obligation that could lead to poor customer outcomes.

### **Recommendation (9.21)**

*The committee recommends that, whenever an Australian Financial Services Licence (AFSL) holder becomes aware that a financial advisor (either employed by, or acting as a representative for that licence holder) has breached their legal obligations, that AFSL holder be required to contact each of that financial advisor's clients to advise them of the breach.*

### **Commonwealth Bank Response**

- We broadly support this recommendation's goal of transparency.
- We already advise clients of an adviser under certain circumstances.
- We believe this requires further detailed discussion with Government on proposed scope. Do not support for minor breaches, which could cause confusion and further impact confidence in the system. Important to ensure that this applies to breach of legal obligation that could lead to poor customer outcomes.

# Commonwealth Bank Response to the Inquiry into Small Business Loans

## Recommendation 1

*The Australian Bankers' Association's six-point plan must be strengthened by publishing individual bank implementation plans, including key milestones and deliverables. Outcomes against these plans must be published. Implementation by 1 July 2017.*

### Commonwealth Bank Response

- We broadly support the objective of this recommendation however believe consideration needs to be given to implementation.
- The industry has an independent expert assessor (Ian McPhee) reporting publicly on progress. This process holds banks to account.
- Progress reports going forward will report more on specific bank actions and include an assessment using objective, quantifiable success measures.
- The success measures will be an enduring, objective assessment of the impact of the initiatives that will extend post the wrap up of the six point plan.
- There are adequate opportunities to seek updates from individual banks including the House of Representative hearings (which has the plan in its terms of reference).
- There will be some commercial sensitivities and competition sensitivities around the implementation of some initiatives which should not be made public (e.g. changes to incentive arrangements).

## Recommendation 2

*The revised Code of Banking Practice 2017 be approved and administered by the Australian Securities and Investments Commission under Regulatory Guide 183. The Code must be written in plain English and include a dedicated section on small business clarifying how breaches will be enforced. Implementation by December 2017.*

### Commonwealth Bank Response

- We support this recommendation and are working with the industry to implement it.
- Banks support the Code being written in plain English and including a dedicated section on small business.
- We also note work is underway on how the Code can be approved by ASIC.
- We note that under current arrangements if the Code was approved by ASIC it would still be "enforced" by the Code Compliance Management Committee, not by ASIC.

## Recommendation 3

*For all loans below \$5 million, where a small business has complied with loan payment requirements and has acted lawfully, the bank must not default a loan for any reason. Any conditions must be removed where banks can unilaterally:*

- *value existing security assets during the life of the loan*

- *invoke financial covenants or catch-all 'material adverse change' clauses. Implementation by 1 July 2017.*

#### **Commonwealth Bank Response**

- We support elements of this recommendation and have committed to making changes, however we have concerns with the threshold of \$5m and believe the recommendation does not logically apply to all classes of loan product or conditions.
- We recognised at the Carnell hearing that for <\$1m loans to small businesses financial covenants should be removed and this change will be implemented by July 1 2017.
- We are looking at ways we might be able to lift this threshold without at the same time lifting risk to levels that would reduce our willingness to lend (such as looking at total customer exposure rather than facility size).
- In our view the \$5 million threshold is not be appropriate as it would capture loans to very large businesses with complex needs for which non-payment related clauses are legitimately required.
- Some products require other triggers for default than missing a payment of breaking the law; for example products that don't require regular interest payments (loans for property construction, overdrafts); or due to events, for example a publican losing their license; creditors taking action, insolvency, or loans used for other than the business purpose.
- We agree 'material adverse change' clauses deserve more attention and are looking at these.

#### **Recommendation 4**

*A minimum 30-business day notice period to all changes to general restriction clauses and covenants (except for fraud and criminal actions) be added to give borrowers more time to respond and react to a potential breach of conditions. Implementation by 1 July 2017.*

#### **Commonwealth Bank Response**

- We broadly support and are working to implement, noting there may be some exceptions, like where the assets held as security against the loan are at imminent risk.

#### **Recommendation 5**

*For loans below \$5 million, banks must provide borrowers with decisions on roll over at least 90 business days before loans mature, so borrowers can organise alternative financing. A longer period of time should be given for rural properties and complex businesses that would take longer to sell or refinance. Implementation by 1 July 2017.*

#### **Commonwealth Bank Response**

- We support routinely giving customer notice 3-4 months' notice that expiry is imminent and will implement this by 1 July 2017.
- We support giving 90 business days' notice from the time the lender takes a decision to exit the loan and will implement this by 1 July 2017 (noting this is not equivalent to a requirement to make the decision on rollover 90 days prior



to the expiry of the term in every instance, which would reduce flexibility considerably for the customer);

- However, as indicated in response to a previous recommendation, we believe a \$5 million threshold would not be appropriate as it would capture loans to very large businesses.
- We think there is ambiguity on the recommendations on rural and complex businesses which would need to be clarified and worked through.

### **Recommendation 6**

*For loans below \$5 million, banks must provide a one-page summary of the clauses and covenants that may trigger default or other detrimental outcomes for borrowers. Implementation by 1 July 2017.*

#### **Commonwealth Bank Response**

- We support the objective of this recommendation, but question whether this change will achieve it, as customers are not typically focused on default terms going in to the loan. (As above, we do not believe the \$5m threshold is appropriate.)
- We question if this might not be better done through simplifying existing terms (rec.7).

### **Recommendation 7**

*For loans below \$5 million, banks must put in place a new small business standard form contract that is short and written in plain English. Implementation by December 2017.*

#### **Commonwealth Bank Response**

- We support in part this recommendation. (As above, we do not believe the \$5m threshold is appropriate.)
- We have made changes for unfair contract terms and we are looking at how language can be made simpler across the board.
- We do not support a standardised contract across industry, which would be anti-competitive and could work to stifle positive innovation.

### **Recommendation 8**

*All banks must provide borrowers with a choice of valuer, a full copy of the instructions given to the valuer and a full copy of the valuation report. Implementation by 1 March 2017.*

#### **Commonwealth Bank Response**

- We support elements of this recommendation.
- Providing a choice of valuer might be more effectively implemented as an option for the borrower to request a different valuer from a panel in instances where they have concerns;
- We support providing the valuation report to the customer where they request it and have paid for it, with some exceptions, for example where this could interfere with a sale process (for example where an associate of the customer is likely to buy the business and their knowing the valuer's recommendation could result in a lower price being realised).

- ABA is preparing guidelines on the use of valuers.

### **Recommendation 9**

*Every borrower must receive an identical copy of the instructions given to the investigating accountant by the bank and the final report provided by the investigative accountant to the bank. Implementation by 1 July 2017.*

### **Commonwealth Bank Response**

- We support the objective of this recommendation and our current practices already incorporate it in part as the factual basis of the report is shared.
- We note there are sensitivities to be managed where sharing the full report with the customer may unnecessarily aggravate the situation, noting that the report is only one input into the decision of the lender and may not be determinative in all instances.
- We believe implementation should be subject to discussions with industry.

### **Recommendation 10**

*Banks must implement procedures to reduce the perceived conflict of interest of investigating accountants subsequently appointed as receivers. This can be achieved through a competitive process to source potential receivers and by instigating a policy of not appointing a receiver who has been the investigating accountant to the business.*

### **Commonwealth Bank Response**

- We broadly support this objective and the industry through the ABA is working on guidelines to implement it.
- We note that investigative accountants have obligations and procedures around managing conflicts of interest.
- We also note that using the investigating accountant (IA) as the receiver can have benefits for the customer in reducing cost and a requirement not to use the IA could add to cost and delays.
- ABA will prepare guidelines on the appointment of receivers

### **Recommendation 11**

*The banking industry must fund an external dispute resolution one-stop-shop with a dedicated small business unit that has appropriate expertise to resolve disputes relating to a credit facility limit of up to \$5 million.*

### **Commonwealth Bank Response**

- We broadly support a 'one-stop shop' approach to dealing with external dispute resolution that is fast, customer-friendly and cost-effective.
- While it is ultimately a matter for Government to implement, we support the Government's inquiry into external dispute resolution (Ramsay review).
- However, we believe lifting the threshold to \$5m could tie up the ombudsman's time with very complex matters, to the detriment of smaller customers.

### **Recommendation 12**

*Banks must establish a customer advocate to consider small business complaints and disputes that may or may not have been subject to internal dispute resolution.*

#### **Commonwealth Bank Response**

- We broadly support this recommendation. The initial focus of our customer advocate has been retail customers and vulnerable customers in particular.
- We are open to looking at how its remit could be extended to small businesses.
- In our view the customer advocate should only consider complaints and disputes that have been subject to internal dispute resolution, so as to avoid the customer advocate becoming a duplicate of existing internal dispute practices, which would limit the function's effectiveness, in our view.

#### **Recommendation 13**

*External dispute resolution schemes must be expanded to include disputes with third parties that have been appointed by the bank, such as valuers, investigating accountants and receivers, and to borrowers who have previously undertaken farm debt mediation.*

#### **Commonwealth Bank Response**

- We note it is not a matter for banks if external dispute resolution is extended to third parties, as long as there is no shared liability and banks are not required to fund it.
- We question if farmers should be able to access external dispute resolution after they have been through farm debt mediation – since in a core principle of arbitration is that it has a binding outcome.

#### **Recommendation 14**

*A nationally consistent approach to farm debt mediation must be introduced.*

#### **Commonwealth Bank Response**

- We support this recommendation and have already taken steps to facilitate farm debt mediation in our own business.

#### **Recommendation 15**

*The Australian Securities and Investments Commission must establish a Small Business Commissioner.*

#### **Commonwealth Bank Response**

- We note this a matter for Government to implement.