# NAB view on recommendations from the House of Representatives Standing Committee on Economics' Inquiry into the Major Banks – first report

| Recommendation | NAB response |
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| 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 Complaints Tribunal.<br><br>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. | NAB supports an external dispute resolution (EDR) scheme which makes it easier for customers to have their issues resolved quickly. NAB believes having access to EDR forums that are accessible, efficient, and effective for consumers, at no cost, is a cornerstone of the financial system.<br><br>NAB believes the best way of achieving this is via a single industry funded EDR scheme for financial, credit and investments disputes, which was recommended by the interim Ramsay Review report into EDR schemes, released in December 2016. The report recommended higher compensation caps and monetary limits for small business and consumer complaints, which NAB supports. NAB believes EDR schemes should be able to award up to $1 million in compensation and consider disputes up to $1 million for both small businesses and consumers (the current monetary limit is $500,000 with a compensation cap of $309,000).<br><br>More information about NAB's views on EDR schemes is available in NAB's January 2017 submission in response to the interim report. NAB looks forward to the publication of the final report.<br><br>NAB supports the Ramsay Review process and notes its interim report did not recommend the creation of a Banking and Financial Sector Tribunal. |
| 2. 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.<br><br>This report should include:<br><br>• a description of the breach and how it occurred;<br>• the steps that will be taken to ensure that it does not occur again;<br>• the names of the senior | NAB supports measures aimed at keeping senior executives accountable and does this internally though performance frameworks, compliance gateways and measures like clawbacks. NAB believes the existing framework under s912D of the Corporations Act, which requires proactive reporting of significant breaches to ASIC within 10 days of becoming aware of the breach, is most appropriate.<br><br>In relation to the Committee's proposal, some breaches will have factors that require confidentiality. For many breaches, it would be challenging to report on remediation and consequence management outcomes within five days of ASIC notification. Public reporting may also act as a disincentive to report breaches unless strictly required, or may encourage a "legalistic" view on what is reported. Reporting within five days would likely need to be on a worse-case scenario, which risks causing unnecessary customer concern if the scenario does not eventuate.<br><br>To promote enhanced transparency and public awareness, NAB suggests another approach would be for ASIC to publish summary reports on a periodic basis with information on the |

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| executives responsible for the team/s where the breach occurred; and<br>• the consequences for those senior executives and, if the relevant senior executives were not terminated, why termination was not pursued. | volume, nature and customer impacts of reported breaches.<br><br>NAB also notes the ongoing ASIC Enforcement Review Taskforce, which will report to the Government in 2017. Part of its work is to examine "the adequacy of the frameworks for notifying ASIC of breaches of law, including the triggers for the obligation to notify; the time in which notification is required to be made; and whether the obligation to notify breaches should be expanded to a general obligation". NAB is committed to working with the Taskforce in reviewing the breach reporting framework and supporting ASIC as a strong regulator. |
| 3. 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.<br><br>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. | NAB supports competition and believes the Australian banking sector is competitive. With regard to the specific mechanism by which competition is monitored in the sector, NAB notes that the Government has already accepted recommendation 30 from the Financial System Inquiry (FSI) to review competition in the financial system periodically and as appropriate, initially via a Productivity Commission review. We welcome that inquiry. |
| 4. 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.<br><br>The Government should also amend the *Corporations Act 2001* to introduce penalties for non-compliance. | In principle NAB supports the sharing of customer's data subject to the correct protocols and security regimes being in place. As previously outlined to the Committee, moving to an open data regime without appropriate safeguards and requirements could raise significant security concerns for customers.<br><br>NAB is pursuing several streams of work related to open APIs, including launching an API Developer Portal in December 2016. The portal makes two NAB APIs (containing branch and ATM locations and NAB foreign exchange rates) publicly available for third parties to connect with. We are currently planning the release of further API's in this developer environment, including a number within our 'secure' environment in the coming months. NAB's work also includes partnering with third parties to offer innovative solutions via APIs. This includes partnerships with cloud based accounting providers Xero and MYOB, US based start-up Demyst Data and Melbourne based start-up Medipass Solutions.<br><br>The Productivity Commission (PC) inquiry into 'Data Availability and Use' is currently examining issues related to data sharing. NAB supports the PC's draft recommendation (6.2) that the private sector "is likely to be best placed to determine sector specific standards for its data sharing |

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| | between firms". NAB urges caution against the adoption of mandatory data sharing requirements due to the potential impact on existing industry work and innovation, the likely cost incurred and the importance of ensuring security. More information on NAB's view in relation to data sharing is available in NAB's submission in response to the Productivity Commission's draft report.<br><br>NAB would prefer to see the outcome of the PC's Inquiry, and allow for its recommendations to be fully considered, before any policy decision is made on this subject.<br><br>If mandatory data sharing standards were adopted, NAB encourages the use of specific definitions of consumer data; restrictions on third party data use; an appropriate liability regime; and use limits. |
| 5. The Committee recommends that the Government, following the introduction of the New Payments Platform (NPP), consider whether additional account switching tools are required to improve competition in the banking sector. | NPP will introduce unique account identifiers for customers, which will enable them to link a unique piece of data (e.g. their email address, mobile number or ABN) to their preferred bank account. This will significantly enhance the ability of customers to switch between banks.<br><br>NAB will host a 'switching roundtable' on 9 March 2017, as part of a new Australian Bankers' Association (ABA) initiative designed to identify customers' underlying concerns and how banks can make it easier to switch accounts. The roundtable will include participants from the banking industry, consumer groups, card schemes, the payments industry, regulators and government. |
| 6. The Committee recommends that by the end of 2017:<br>• 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;<br>• 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<br>• APRA improve the transparency of its processes in assessing and granting a banking licence. | The current 15 per cent threshold for substantial shareholding in ADIs does not impact on NAB. The appropriate ownership structure for banks is a policy question best directed to the Government, the Reserve Bank of Australia (RBA) or the Australian Prudential Regulation Authority (APRA). |

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| 7. 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. | The prudential regulator APRA already requires significant and regular review of banks' risk management frameworks. This is a thorough interrogation of an institution's risk framework.<br><br>APRA Prudential Standard CPS 220 requires banks to have at least annual reviews of risk management frameworks by internal and or external audit. The standard also requires a comprehensive independent review of risk management frameworks at least every three years. We believe the current prudential requirement is significant and should remain. A further independent review would duplicate this existing regulatory requirement. |
| 8. 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:<br>• enable ASIC to identify institutions that may not be complying with IDR scheme requirements and take action where appropriate; and<br>• enable ASIC to determine whether changes are required to its existing IDR scheme requirements.<br><br>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. | NAB supports this recommendation. NAB currently provides similar information on its internal dispute resolution (IDR) activity for Code of Banking Practice related disputes to the Code Compliance Monitoring Committee (CCMC). NAB believes the design of further reporting obligations should take into account, and seek to utilise where possible, the existing reporting to the CCMC. NAB notes the alignment of this recommendation to draft recommendation nine of the interim Ramsay Review report. |
| 9. 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:<br>• the overall quality of the financial advice industry;<br>• misconduct in the provision of financial advice by Australian | NAB believes that it is important that consumers have confidence in the wealth advice and that industry is transparent; however NAB does not support the reporting regime as proposed by this recommendation.<br><br>Extending a report beyond settled prosecutions is procedurally unfair if cases are still being heard or considered by regulators. NAB believes that qualitative terms such as 'quality of advice' and 'misconduct' are not sufficiently defined metrics for the regulator to report on.<br><br>As an alternative, NAB suggests an annual report on AFSL data |

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| Financial Services Licence (AFSL) holders, their representatives, or employees (including their names and the names of their employer); and<br>• 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.<br><br>The committee further recommends that ASIC report this information on an industry and individual service provider basis. | such as complaints, levels of compensation, EDR statistics and the number of banned or formally sanctioned advisers. NAB believes this reporting would complement the existing six monthly enforcement reports already published by ASIC.<br><br>If the Committee's recommendation was to be adopted, NAB would suggest restricting the report to ASIC's successful prosecutions. These are currently notified by ASIC on their website and captured in the Financial Adviser Register (FAR).<br><br>NAB also notes frameworks are being developed by the ABA to broaden Reference Checking & Information Sharing Protocols beyond financial advisers to other employees. |
| **10.** 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. | NAB supports initiatives that will build trust and transparency in the wealth advice industry. NAB believes that deciding on whether to contact all clients should be assessed on a case by case basis, applying standard remediation protocols and ASIC regulatory guidance. Factors which influence the extent of client contact include the nature of the misconduct, the extent of any compliance breakdown and the type of clients involved. For example, writing to customers where there has been a serious breach and there has been customer impact.<br><br>NAB supports a requirement for licensees to take appropriate steps to contact all clients where an advisor has been banned by ASIC. Clients are advised when an adviser leaves the licensee to ensure that the client is aware that a new licensee is responsible for ongoing advice. |

# NAB view on recommendations from the Australian Small Business & Family Enterprise Ombudsman's Inquiry into Small Business Loans

| Recommendation | NAB position |
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| 1. The ABA'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. | NAB supports this initiative as it promotes greater transparency on an individual bank's progress on the six point plan. NAB notes that, as independent reviewer, Mr McPhee will determine the content of each report published. |
| 2. The revised Code of Banking Practice (the Code) 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. | NAB supports increasing consumer confidence in the independence and transparency of the Code through having ASIC approval. NAB believes that the independent Code Compliance Monitoring Committee (CCMC) or its equivalent (post-CCMC review) should continue to monitor the Code.<br>NAB agrees that the redrafted Code should be in plain English and have a dedicated section for small business. |
| 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:<br>value existing security assets during the life of the loan<br>invoke financial covenants or catch-all 'material adverse change' clauses.<br>Implementation by 1 July 2017. | NAB agrees that it needs to be simpler for customers to understand their loan contracts and the circumstances under which they may be in default.<br>Non-monetary/financial covenants are used by NAB to assist customers facing financial distress. They act as 'early warning signs', which provides the opportunity for early customer engagement to work through the issues to help them avoid monetary default (for example, by renegotiating existing loans). This provides the customer with the opportunity to refinance to another bank at a time when it is not in monetary default.<br>Non-monetary covenants are also a critical tool in identifying and managing emerging risk issues across a business that may lead to monetary defaults. They enable banks to manage their credit risk on an individual and portfolio basis in accordance with prudential requirements and bank risk policy.<br>For example, the customer may be meeting current interest and debt payments but is in financial distress:<br>• the customer may be impacted by an unexpected event (e.g. loss of key contract, volatility in commodity price/exchange rates, regulatory change etc.) that will impact future cash flow, operational liquidity and profitability;<br>• deteriorating cash flows and fall in security values will require risk ratings to be downgraded that will have capital holding implications. Banks need to be able to manage risk and capital and be able to take remedial action in response to |

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| | increasing risk;<br>• security values are required to remain up to date and current (i.e. less than three years) taking into account positive and negative factors across the business cycle; and as indicated by financial covenants (e.g. deterioration in working capital, interest coverage, inventory levels, operational losses, etc.) which impact cash flow that could lead to payment default and/or insolvency.<br>The proposed $5m loan amount in this recommendation (which also applies to others) is different to APRA's standards for small business lending. If implemented, this amount would capture businesses that are not small and have increasing levels of complexity. |
| 4. A minimum 30-business day notice period to all changes to general restriction clauses and covenants (except for fraud and criminal actions) are added to give borrowers more time to respond and react to a potential breach of conditions. Implementation by 1 July 2017. | The Code and NAB's terms and conditions generally allow a shorter notice period (immediate, or a reasonable period of at least 10 business days) for unilateral changes to general restriction clauses and covenants.<br>NAB supports this recommendation as in practice NAB is already providing 30-40 calendar days' now for most unilateral changes to terms and conditions. |
| 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. | NAB is supportive of providing customers with sufficient time to arrange alternative finance once a decision has been made not to renew a loan, but believe a 90 calendar day notice period is appropriate.<br>NAB acknowledges that there may be some more complex businesses that may need more time to find alternative finance, however we would need to give further consideration as to what type of businesses would be considered 'complex' and what an appropriate time frame would be. We would consider maximum period of six months would be sufficient for these complex businesses. |
| 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. | NAB is supportive of a summary that indicates the important terms and conditions of loan; although it will be difficult to capture accurately the necessary information in one page. To achieve this outcome, it is suggested that the summary should direct the customer's attention to the clause and page numbers that contain the loan covenants and the events of default. This would also encourage customers to read the loan terms and conditions rather than to rely on a brief and incomplete summary. |
| 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. | Small business customers utilise a range of lending products. NAB is supportive of a plain English standard small business contract being implemented for simple loans. |
| 8. All banks must provide borrowers with a choice of valuer, a full copy | NAB agrees that customers should be able to choose a valuer and currently offers a choice of three valuers to customers for non- |

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| of the instructions given to the valuer and a full copy of the valuation report. Implementation by 1 March 2017. | residential properties.<br><br>NAB supports the copy of instructions and valuation being provided to customers for valuations paid for by customers, for non-residential properties and whilst a loan is performing.<br><br>Where enforcement action is being undertaken, the valuation and the instructions given to the valuer should be kept confidential until the sale process has been finalised. Thereafter, the valuation and the instructions could be made available to the customer. Should the Government adopt the Committee's recommendation, NAB suggests that a transition period of 3 months be implemented to take into account existing matters and the time required to change current service agreements with its panel valuers. |
| 9. Every borrower must receive an identical copy of the instructions given to the investigating accountant (IA) by the bank and the final report provided by the investigative accountant to the bank. Implementation by 1 July 2017. | NAB supports providing identical instructions to both the investigating accountant and the customer. NAB also supports providing the investigative accountant's report to the customer; however the report should be modified so as not to include any security assessment undertaken or any recommendations.<br><br>Security assessments need to be kept confidential if a sale process is underway to maintain a level playing field. Additionally, they may also be used to identify possible fraud or illegal activity. |
| 10. Banks must implement procedures to reduce the perceived conflict of interest of IA 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. | NAB agrees that increasing transparency in this process will avoid any perception that there is a conflict of interest. NAB looks to appoint investigative accountants with the requisite industry skill and expertise to assist customers in difficult circumstances (e.g. operational improvements, cash flow management, financial analysis and reporting). In the event insolvency does arise, usually these individuals are best placed to try and preserve the business as a going concern and this will ensure that value is maintained for the customer, employees, suppliers to the business and the bank.<br><br>We have existing procedures in place that are considered effective in managing conflicts between IAs being subsequently appointed as receivers. These processes are regularly reviewed and also give consideration to concentration risk to any one firm or individual. Conduct and behaviour of professional firms is closely scrutinised in any appointment.<br><br>The intent of the recommendation is understood. We will review processes and procedures with this in mind. At this point, we are not aware of any matters involving NAB customers and a potential conflict of interest in the appointment of a receiver. |
| 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. | NAB supports the recommendation that the banking industry funds an external dispute resolution (EDR) scheme, as is presently done. We note that this issue is currently subject to the Ramsay Review and we are awaiting the review's findings.<br><br>Our position is that there should be an increase in the current thresholds for small business. NAB agrees with the ABA's proposal that small business should able to bring complaints to an EDR of |

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| | up to $1 million in value (currently $500,000) and an EDR scheme should be able to make awards of up to $1 million.<br><br>NAB does not support resolving disputes of up to $5m through EDR. A $3 million threshold is appropriate. |
| 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. | NAB agrees with this recommendation, having established an independent customer advocate in 2016. The mandate of NAB's independent customer advocate includes retail, micro and small business customers. |
| 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. | NAB believes that the scope of EDR schemes will be considered as part of the Ramsay Review, due to report to Government by the end of March 2017. NAB notes that currently FOS administers the Code, to which third parties are not signatories. It will be a matter for Government to determine how EDR schemes are expanded to require third party participation. |
| 14. A nationally consistent approach to farm debt mediation must be introduced | NAB strongly supports and continues to advocate for a consistent approach to farm debt mediation nationally. NAB believes that the best models to adopt nationally would be either the NSW or VIC mediation schemes. |
| 15. The Australian Securities and Investments Commission must establish a Small Business Commissioner. | NAB believes there is potential for duplication with state based small business commissioners, and that any federal authority would need to consider the existing framework to ensure there is not duplication. NAB is concerned to ensure that both banks and customers have a timely and cost effective framework for the resolution of disputes. |