House of Representatives Standing Committee on Economics – Review of the Four Major Banks (Second Report)

Response to Request for Information

In response to Mr Coleman's letter of 15 February 2017, and to assist the Committee's deliberations, Westpac is pleased to provide the following responses to the recommendations of:

- The Committee's Review of the Four Major Banks: First Report; and
- The Australian Small Business and Family Enterprise Ombudsman's (ASBFEO) Inquiry into small business loans.

Review of the Four Major Banks: First Report

Recommendation 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.

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.

We support the establishment of new arrangements for external dispute resolution in the financial services sector.

The interim report of the Ramsay Review of External Dispute Resolution Schemes was released in December 2016, with a final report due March 2017. The recommendation in the interim report was to combine the Financial Ombudsman Service (FOS) and Credit & Investments Ombudsman (CIO) but keep the Superannuation Complaints Tribunal (SCT) separate and change it from a tribunal to an Ombudsman service. Ramsay did not see the need for a new statutory tribunal.

Westpac supports the recommendations of the interim report. We believe the proposed structure could be enhanced with an overarching body to act as a single entry point for customers, who would then be triaged into the two different schemes. In addition, we believe there should be an appeal mechanism from any of the schemes to the overarching body.

The financial services sector currently funds external dispute resolution schemes and we expect this arrangement to continue under any new model.

Recommendation 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.

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.**

We support additional public clarity on senior executive accountability in relation to misconduct.

The ASIC Enforcement Review Taskforce, established by the Minister for Revenue and Financial Services in October 2016, has been asked to examine "the adequacy of the frameworks for notifying ASIC of breaches of law, including the triggers for the obligation to notify; [and] the time in which notification is required to be made". Westpac suggests that the Committee's recommendation could be considered as part of the Taskforce's review.

By way of context, Westpac notes that existing legal and regulatory frameworks in Australia set out individual and corporate liability in a wide range of circumstances. In addition, banks are also required to demonstrate that key employees are fit to assume and remain in their roles. This process is overseen by APRA or ASIC, depending on the role.

We also note the current breach notification regime for Australian Financial Services Licence (AFSL) holders in s 912D of the Corporations Act. Under this regime, AFSL holders must notify ASIC of any 'significant' breach (or likely breach) within 10 business days after becoming aware of the breach or likely breach. Westpac also voluntarily discloses issues and incidents to ASIC (and other regulators) where we believe it would assist the regulator.

Westpac suggests that any additional requirements are considered in light of existing frameworks. For example, additional clarity on the expectations of senior executives should be considered in light of APRA's and ASIC's existing powers and regulatory frameworks, including APRA prudential standards. Practical considerations also need to be considered – for example, under s912D, a licensee cannot delay notification on the basis of incomplete information. Therefore a new requirement to publicly report within 15 business days of becoming aware of a breach will not necessarily allow a licensee to have established relevant facts within that timeframe. As part of the development of an enhanced executive accountability regime, appropriate reporting requirements should be established.

The principles of natural justice and procedural fairness also need to be considered in relation to reporting of individual accountability for specific actions or inaction before the relevant facts have been gathered.

Recommendation 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.

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.

In response to the Financial System Inquiry (FSI), the Government indicated it would take the following actions to respond to the FSI's recommendation on competition review and monitoring:

> *The Government agrees to implement periodic reviews of competition in the financial sector.*
>
> *We will task the Productivity Commission to review the state of competition in the financial system by the end of 2017, three years after the completion of the Inquiry. Subsequent periodic reviews will be undertaken as appropriate.*
>
> *We support inclusion of competition in ASIC's mandate and we will develop legislation to introduce an explicit reference to consideration of competition in ASIC's mandate in the second half of 2016.*

These actions should be implemented by the Government before considering other options.

Recommendation 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.

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

Westpac strongly supports the development of an enhanced data-sharing regime in Australia. Data, when used effectively, provides immense value to consumers, business and the government and will ultimately help ensure Australia's global competitiveness through an innovative and productive economy. We consider Westpac and the Committee have a shared objective of increasing trust and confidence in data sharing.

A significant data breach under any new open data regime could result in large scale identity theft and the loss of trust in payment system integrity. Recent data breaches globally have continued to impact Australian consumer confidence in data sharing. While a customer can be compensated for fraud losses, a customer cannot be compensated for the harm or anxiety of a stolen identity.

In addition, both the frequency and sophistication of cybersecurity attacks has increased which has resulted in compensated and uncompensated fraud losses for customers across the financial system. The ability to effectively secure APIs continues to be one of the most difficult problems for cybersecurity experts, as documented in a number of well-publicised API attacks over recent years.

We understand that one model being examined is that being rolled out in the UK. However, to date the privacy, security, liability and fraud issues associated with the sharing of personal financial information directly with third parties have not yet been fully resolved in the UK. While solutions are being actively considered, it is likely the real risks associated with identity theft, customer impersonation and breaches of data held by third parties will only become clear once the UK regime is established and operational.

It is therefore essential that any move towards open data occurs in a manner that adequately protects customers' data and financial assets and mitigates the introduction of systemic risk into the Australian financial and payments system; both key components of the nation's critical infrastructure.

Westpac considers that a phased, risk-based approach to open data and APIs is necessary. This will ensure Australia can monitor and apply key lessons from the UK regime e.g. weaknesses in cyber-security and identity protocols and the rise of shadow banking (including from foreign government-owned entities).

Mindful of these challenges, Westpac recommends the following next steps towards 'open data':

1. Industry development of a set of common API standards and controls to ensure the integrity of any open API system is maintained. The current work in the UK can be leveraged for this purpose.
2. The Government should require authorised deposit-taking institutions (ADIs) and credit providers to publish product reference data (e.g. pricing, eligibility criteria and terms and conditions) via an open API platform. This aligns with the UK 'open data' requirement and enables use of this data by third parties, which will improve transparency for customers and increase competition.
3. Require those organisations to provide additional product-based, customer-specific data (e.g. interest and fees paid) in a standardised, machine readable format. This data should only be provided directly to the customer who can then elect to pass that data to third parties such as comparison websites or another financial services provider. This mandate should be technology neutral to allow for future innovation.

In combination, these proposals provide real value to customers, address specific customer pain points, and balance a number of key policy objectives. For example, it will enable more informed evaluation of products by customers, reduces barriers to product switching, and foster innovation in the market.
At the same time, these proposals mitigate some of the more significant risks associated with the provision of a customer's personal financial information directly to third parties via an API or online banking, where experience shows consumers are often unaware of the risks they take with their personal data when they provide permission to third parties.

We support appropriate timelines being set for implementation. However, given the issues that need to be resolved, we do not support the Committee's recommended July 2018 timeline, which we believe is unfeasible. Members of the UK Implementation Entity suggest that the January 2018 deadline set by the Competition and Markets Authority (CMA) for sharing of individual transaction data will be extremely challenging.

Finally the cost of moving towards an API platform will be considerable. The Committee report has cited a

figure of £1 million per institution in the UK for the 'development of an API framework from scratch'. This has come from a report by the UK Open Data Institute (ODI) and reflects the cost of the development of the policy.uk data portal which shares de-identified, aggregated data through the website e.g. crime statistics. This is significantly different to the sharing of identifiable, individual data through an open API. We estimate the cost to Westpac of implementing an open API platform will be significantly higher, in the order of $170 million. This is in line with the estimates of the UK banks. In addition, mandating APIs would restrict the potential for future technology options not currently foreseen.

Recommendation 5

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.

Westpac supports this recommendation.

In addition, the banking sector is taking further action on this now. On 9 March 2017, the Australian Bankers Association is holding a switching summit with consumer groups, government representatives, and the credit card schemes. This will explore what practical steps can be taken to address current perceptions about switching but also add to existing tools to make switching easier for customers.

Recommendation 6

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.**

Westpac supports the recommendation. We agree that it is appropriate to review market entry rules from time to time. Any review would need to consider how we balance ease of entry to the market with consumer protection and stability objectives.

Recommendation 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.

We support regular reviews of bank risk management frameworks to ensure they are effective. Under APRA's CPS 220 Risk Management, banks are required to:

- ensure the compliance with, and the effectiveness of, its risk management framework is subject to review by internal and/or external audit at least annually; and
- ensure that the appropriateness, effectiveness and adequacy of its risk management framework are subject to a comprehensive review by operationally independent, appropriately trained and competent persons (this may include external consultants) at least every three years.

APRA sets minimum expectations on the scope of these reviews.

We believe that the Committee's recommendation to undertake an independent review of bank's risk management frameworks leading to recommendations on how banks can improve the identification and response to misconduct, could be undertaken on the back of the assurance work conducted as part of the independent review of the bank's risk management frameworks as required by CPS 220.

Recommendation 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:

- **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.**

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.

We support this recommendation. We do not believe that legislative amendment is required to implement this recommendation. ASIC already has the power to collect data on IDR arrangements and take action where an institution is not complying with ASIC's requirements.

This recommendation could be implemented through an ASIC "health check" of IDR schemes across the industry.

Recommendation 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:

- **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.**

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

We support this recommendation. A report on the wealth management industry, which presents reliable and comparable information based on standardised reporting templates and definitions, will improve transparency on any issues in the sector and enable comparison between participants.

Recommendation 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.

We support this recommendation. Where a Westpac Group adviser's conduct has breached their obligations (and is responsible for monetary or non-monetary losses for clients), Westpac engages the relevant clients of the adviser to establish possible impacts and address these for clients.

In implementing this recommendation, it would be important to set an appropriate materiality threshold that would trigger a requirement for notification to the client. We do not believe that clients would wish to be notified of administrative breaches that do not adversely impact on the quality of advice they received.

Inquiry into small business loans

The Westpac Group considers that Government and industry has a shared interest in supporting the small business sector as a core component of Australia's future economic prosperity and success.

Westpac agrees that improvements can be made to the way small business customers are serviced across the industry. However, we must ensure any reforms are appropriately considered and implemented. It is in no-one's interest for regulatory requirements to result in reduced lending to Australian small businesses. We have a shared objective to make small business stronger and this relies on continued access to credit and maintaining strength in the banking system.

Overall, Westpac supports the majority of the recommendations in full. In addition, Westpac is already compliant with a number of recommendations, including the appointment of our retail and business customer advocate in November 2016.

Other recommendations, including Recommendation 3 will require an appropriate balance between the policy objective of increasing customer certainty and transparency and reducing the risk that credit appetite will be impacted. This could be achieved through appropriate thresholds being set and requirements taking into account the operation of different small business lending products.

Appropriate timeframes for the implementation of ASBFEO recommendations will need to be set in consultation with industry and small business stakeholders. An appropriate definition of small business will also be required to ensure that large businesses are carved out from relevant protections.

Recommendation 1

The Australian Bankers' Associations' 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.

As a member of the Australian Bankers' Association (ABA), Westpac supports the industry's commitments under the ABA Six Point Plan. The initiatives are designed to ensure high standards of conduct across the industry.

The Independent Governance Expert, Mr Ian McPhee AO, is overseeing the implementation of the industry initiatives. Westpac provides an update to Mr McPhee each quarter on our progress against each of the initiatives. We are committed to independence and accountability throughout this process and this could be enhanced by the publication of our implementation plan, including key milestones and deliverables.

Westpac could implement this by the ASBFEO's suggest deadline of 1 July 2017.

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.

Westpac believes the Code of Banking Practice ('the Code') is an important component of the consumer protection regime in Australia. As a tool of self-regulation it continues to play a significant role in the broader regulatory framework. The Code is contractually binding on banks through our terms and conditions with our retail and small business customers and their guarantors. The binding and enforceable nature of the Code has been reinforced by recent Court rulings and in determinations by the Financial Ombudsman Service (FOS).

Under the ABA Six Point Plan, the industry brought forward the independent review of the Code. Westpac supports the recommendation of the review that renewed plain-English standard should be applied to the redrafting of the Code. In addition, for appropriate clauses, we consider separate sections for retail and small business customers could help make banks' obligations and customers' rights clearer.

The existing Code Compliance Monitoring Committee (CCMC) is an independent body. It has the power to name banks that are non-compliant and have breached the Code. This is a significant sanction with direct impact on a subscribing bank's reputation. Under Regulatory Guide 183 (RG183), ASIC can approve the Code. Approval does not mean ASIC would 'administer' the Code. We support ASIC approval of the Code as this ensures the Code satisfies an externally recognised standard, provides an additional level of independence and will also support changes to the sanctions available to the CCMC, which is also a recommendation of the recent Code review. For example, under RG183 ASIC will review reporting by the CCMC and results of the independent review of the Code.

The last review process of the Code took over six years, including a 12 month transition period. Under the ABA Six Point Plan we have committed to redrafting the Code by December 2017. A transition period to implement changes will be required. The level of expected changes to systems, processes, policies and staff training suggests a 12 month implementation period will be required, with compliance by December 2018.

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 changes" clauses**

Implementation by 1 July 2017.

Westpac supports the intent of this recommendation to increase certainty for customers about events of default. It should be clear to customers what may cause them to be in default – including non-monetary events of default. We think there is an opportunity to enhance transparency through our loan contracts.

In principle we support the intent of reducing the number of possible events of default. However, default events cannot be restricted to 'monetary events of default'. Other non-monetary events of default will need to be retained e.g. death of a director, loss of licence, bankruptcy, fraud. These are broader than the 'illegal activities' carve out suggested by the ASBFEO e.g. voluntary administration by directors of a business is not an unlawful act.

Rather than wholesale restrictions on contractual covenants and rights, implementation of the recommendation will need to take into account different forms of lending, product operation (including loan terms) and risk profiles. One example is the difference between real-property secured loans as distinct from property development loans.

Financial covenants such as Loan to Valuation Ratio (LVR) are required for property development loans where there are no scheduled repayments until the maturity of the facility or sale of asset. Ensuring the asset value and cashflow is sufficient at all times reduces the risk of needing to call upon Directors Guarantees/ Guarantors for any shortfall. A restriction on the use of financial covenants and the ability to revalue security in property development could essentially cut off the supply of credit to this segment. In addition, Australian Prudential Standard (APS) 220 requires a 'current' assessment of the value of collateral held.

Furthermore, an appropriate threshold for implementation will need to be set. Westpac recommends a cap of $3 million total credit exposure.

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.

Westpac agrees that appropriate notice should be given to borrowers of changes in terms and conditions.

Banks require the ability to make changes to the terms of a contract. For example, this was required to implement the Unfair Contract Terms regime.

In addition, where a customer breaches a term of their contract (including a covenant), the customer should have a period of time to remedy the breach before further enforcement action is taken under the terms of the contract.

The minimum notice period should be 30 calendar days rather than business days due to a lack of consistency in public holidays across states and territories.

In addition to the carve-outs identified by the ASBFEO for fraud and criminal actions, other carve-outs are required. There may be scenarios which require immediate action. For example, animal welfare considerations, or an event of voluntary administration whereby the bank must appoint an insolvency practitioner preserve assets. A notice period should not be required where the customer is already in monetary default.

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.

Westpac supports the policy intent of this recommendation, namely to give customers an adequate opportunity to refinance with another financial institution and reduce the likelihood that the customer will be in a position of monetary default at the end of their loan term.

In practice, a credit decision regarding rollover is not made 90 days before the maturity of a facility. Such an obligation would require the bank to commence the decision-making process approximately 120 days before maturity for the credit approval process to be undertaken.

Rather, Westpac recommends for loan facilities that have a loan term longer than 90 days, that a 'maturity notice' is issued 90 calendar days before the facility matures. A decision on rollover should not be included. Rather, if we decline to rollover the facility, we should provide customers 90 days to refinance. This should not be required if the customer has a pre-existing monetary default prior to the maturity of the facility.

The recommended implementation date of 1 July 2017 is impractical. We will require a longer transition

period to make the relevant system, process and training upgrades.

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.

Westpac supports the development of a one page summary for small business loan facility agreements. This will provide greater clarity on events of default under the terms of the contract.

To ensure the summary sheet is effective, we recommend that testing is completed by Treasury's behavioural economics unit. It is important that customer's receive the information they need, in an appropriate format and at the most effective point in time during the loan origination process.

An implementation date of 1 July 2018 will be required.

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.

Westpac supports a review of loan documentation to ensure small business facility agreements are as short as possible and a plain-English standard is applied.

Westpac has committed to remove non-monetary covenants, including both financial covenants (e.g. loan-to-value ratio (LVR), interest coverage ratio (ICR)) and non-financial covenants (e.g. regular financial reporting requirement), from real-property secured small business loans up to $1 million total credit exposure (TCE). In addition, in line with our segmentation of small business customers up to $3 million TCE, we are currently reviewing our facility agreements. These will be redrafted to ensure they are as short as possible, apply a plain-English standard and make amendments to key clauses e.g. material adverse clauses.

The current project will take until December 2018 for the review of the full suite of documents to be completed across our brands. This is 12 months after the implementation date recommended by the ASBFEO.

Westpac does not support the standardisation of the loan contract itself. Documentation is an area of competitive differentiation for the banking industry. A competitive banking and financial services sector should continue to be a key priority for the Government.

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.

Westpac agrees that the valuation process and findings could be more transparent to customers.

Westpac supports borrowers being provided with a choice of valuer from a panel of expert valuers. This aligns with current practice, through consultation with the customer before the final appointment is made. It

is important to recognise situations where choice may be limited. For example, due to the requirement for specialised regional or business knowledge.

Westpac agrees borrowers should be provided with the instructions to a valuer and the full copy of the valuation report where they have paid for this directly. Appropriate exceptions will need to be determined. For example, when the business is in receivership and third party security is involved.

If a company is in Receivership, the Receiver is the agent of the company and the directors do not have legal standing to require copies of the valuations of company owned property assets. For third party security provided by directors to support guarantees, the bank could provide a copy but it would need to have the agreement of the valuer and security providers and include relevant qualifications, as it has been prepared under bank instructions and for bank purposes.

Some outstanding issues will need to be addressed, including legal issues around valuation reliance, professional indemnity insurance and the impact on section 420A under the Corporations Act 2001 (controller's duty of care in exercising power of sale). For example, the setting of reserves for the sale of real property.

In addition, Westpac supports the development of industry guidelines and consumer materials to better explain the valuation process. These are currently being developed by the ABA.

An appropriate implementation timeline will need to be set, given the proposed compliance date has expired.

Recommendation 9

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

Investigative accountant ('IA') reports are an important source of information for customers. Westpac currently provides IA reports to customers to fact check and validate the information.

Westpac supports providing borrowers with an identical copy of instructions and the final report. However, the bank should be entitled to remove introductory or concluding remarks where fraud, malpractice or illegal behaviour is suspected and this suspicion is included.

Westpac supports the ABA working with the accounting industry on improving disclosure arrangements.

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.

Westpac agrees that the industry should work with the insolvency practitioners industry to reduce any perceived conflict of interest. Westpac is working with the ABA to develop best-practice guidelines.

A conflict of interest cannot be automatically assumed from an IA subsequently being appointed as a receiver.

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 up to $5 million.

Westpac supports a one-stop-shop external dispute resolution ('EDR') scheme for retail and small business customers to ensure a more streamlined process. Specialist capabilities will need to be retained to allow the scheme to deal with business versus consumer credit and credit versus superannuation and insurance matters.

We support broadening EDR schemes so more small businesses have access to them if needed. This includes increasing the monetary limit on the claims that the can be assessed and on the amount of compensation it can award.

Westpac supports increased terms of reference for the Financial Ombudsman Service, including:

- increase jurisdiction claim limit from $500k to $2 million (direct financial loss)
- Increase compensation claim from $309,000 to $2 million
- credit facility limit $3 million loan facility or $3 million total credit exposure (increased from current cap of $2 million).

The timeliness, efficiency and access to EDR for retail and small business consumers should not be reduced by weighing EDR schemes down in complex matters that should appropriately be litigated through the Court system.

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.

Westpac supports this recommendation and is compliant.

Under the ABA Six Point plan, we appointed a Customer Advocate for retail and small business customers in November 2016. He will conduct an independent review and make binding decisions about individual complaints that have previously gone through the internal dispute resolution process. He has the authority to overturn decisions made by our internal dispute resolution process and will recommend how our existing complaint handling process can be improved and other improvements to broader business practices and policies.

Recommendation 13

External disputes 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.

The handling of customer complaints is a major factor in customer trust in their financial institution. It is important that customers have adequate forums to have their voices heard. This includes complaints about third parties and insolvency practitioners.

Westpac recommends the Government consult with relevant professional bodies to determine the most appropriate structure. For example, given existing liability and indemnity regimes and the agency relationship between a receiver & manager and the company under receivership. It is also important that no additional backlog is created in existing external dispute resolution schemes.

On occasions customers may disagree with a valuation. However, it may not be appropriate for valuation disputes to be managed by an EDR scheme due to the inherent nature of valuations which necessitates subjective judgements, for example, cap rate and comparable sales.

In relation to receiverships, customers have the protection of Section 420A under the Corporations Act 2001 which places a statutory obligation on insolvency practitioners to take reasonable steps to obtain the best possible sale price for assets. It is important that no additional backlog is created in existing external dispute resolution schemes.

Recommendation 14

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

Westpac supports a nationally consistent approach to farm debt mediation.

Recommendation 15

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

Westpac supports a one-stop-shop for small business complaints. It is unclear the role this Commissioner would play given the existing state and federal ombudsmen. However, we note this is ultimately a decision for the Government to determine.