

List of recommendations

Recommendation 3.1

3.72 In light of the evidence that international observers are misinterpreting the level of capital held by Australian banks due to the Australian Prudential Regulation Authority's (APRA) requirements, the committee recommends that APRA:

- ensures it initiates consultation on the common disclosure template developed by the Basel Committee in early 2013;
- in the interim before the common disclosure template is adopted, facilitates the publication of headline capital ratios for Australian ADIs that are calculated according to the Basel Committee's standard methodology and are therefore easier to compare internationally; and
- be more active in promoting internationally that Australian banks are well-capitalised.

Recommendation 3.2

3.73 That APRA review its approach to how internet-based accounts should be treated under the Basel III liquidity requirements.

Recommendation 3.3

3.74 That APRA addresses, without further delay, the unique issues Basel III may pose for mutual ADIs as a result of their corporate structure and that it publishes a document which sets out how these problems have been addressed.

Recommendation 5.1

5.10 Inconsistencies between the taxation arrangements applying to interest earned by individuals on deposits held in authorised deposit-taking institutions compared to other methods of saving should be addressed.

Recommendation 5.2

5.27 That interest withholding tax applying to financial institutions be abolished as fiscal circumstances permit.

Recommendation 5.3

5.39 To enhance investor demand for Australian securitisation, the committee recommends that the government encourage central banks in other jurisdictions to accept Australian asset-backed securities denominated in foreign currencies for repurchase agreements in the foreign jurisdiction.

Recommendation 6.1

6.35 That the Reserve Bank of Australia conducts, on a quarterly basis, a dedicated senior loan officer survey and publishes the results of these surveys.

Recommendation 8.1

8.57 That the Australian Taxation Office (ATO) investigates allegations that GST revenue was not handled appropriately by banks and receivers and that, if necessary, the ATO makes recommendations to the Australian government about legislative changes in this area.

Recommendation 9.1

9.8 That a voluntary code of conduct for small business lending, developed by the Australian Bankers' Association, be established. The code should, at a minimum, require that:

- changes to facility terms must be accompanied by a document that clearly explains the changes to the borrower;
- initial valuation reports associated with the purchase of a small business should be relied on by the bank for a reasonable amount of time, such as for the first two years of the loan, unless a major defined shock or event occurs;
- borrowers be automatically provided with copies of valuation reports that they have paid for or which the bank intends to rely on to demonstrate that the borrower is in default, and that all instructions given by banks to valuers be provided to the borrower on request;
- notices of demand include a minimum deadline of 14 days for repayment, but that a further reasonable period of time should also be available to allow for the finalisation of necessary contracts if refinancing has been secured, or to allow negotiations to continue if an offer of finance is reasonably likely;
- banks cooperate with any reasonable requests for information made by the borrower that would assist the borrower secure refinance; and
- how default interest rates will be determined should always be clearly specified in the facility terms, not linked to other documentation.

Recommendation 9.2

9.9 That the Australian government takes any necessary action to facilitate the establishment of the code of conduct for small business lending referred to in recommendation 9.1.

Recommendation 9.3

9.11 That the terms of reference for the Financial Ombudsman Service (FOS) be amended so that:

- FOS may consider disputes from small business applicants where the value of the claim is up to \$2 million; and
- the cap on the maximum compensation that FOS can award be increased to \$2 million when the dispute relates to a small business.

Recommendation 9.4

9.12 That the terms of reference for the Financial Ombudsman Service (FOS) be amended so that FOS may consider disputes from small business applicants that relate to matters from 1 July 2008 onwards under the new caps outlined in recommendation 9.3. The staffing levels and funding of FOS should be reviewed to ensure it has sufficient resources available to perform this function.

Recommendation 9.5

9.15 That the code of conduct for small business lending referred to in recommendation 9.1 stipulates that lenders may not appoint receivers to a small business unless:

- a notice of demand to the small business has been issued by the lender and the 14 day period of time outlined in recommendation 9.1 has elapsed; and
- if the lender is a member of the Financial Ombudsman Service (FOS), the notice of demand clearly states that the borrower may apply to have a dispute related to the lender considered by FOS, but that FOS would be unable to review claims related to the actions of a validly appointed receiver. Disputes lodged under such circumstances should be treated as urgent and the dispute handling process expedited by FOS.

Recommendation 9.6

9.16 That receivers be required to cooperate with all requests from the Financial Ombudsman Service (FOS) that relate to a dispute between the bank and the borrower that FOS is considering.

Recommendation 9.7

9.19 That when a business is placed in receivership, the receiver is required to demonstrate to the borrower that they have considered every unconditional offer when exercising a power of sale in respect of a property.

9.20 If the borrower can demonstrate that an unconditional offer has been made by a party interested in purchasing a property and the receiver instead sells the property by a process that achieves a price that is less than that offer,

the burden of proof should be on the receiver to demonstrate that their actions were in accordance with section 420A of the *Corporations Act 2001*.

Recommendation 9.8

9.21 That receivers be required to cooperate with any reasonable requests for information made by the borrower that would assist the borrower secure refinance.

Recommendation 9.9

9.22 That the code of conduct for small business lending referred to in recommendation 9.1 requires that if a bank has appointed a receiver to the small business, then the bank must regularly inform the borrower about the costs and fees associated with the receivership. The bank must also take all reasonable care to ensure the costs and fees are reasonable.

Recommendation 9.10

9.24 An early priority of the Australian Small Business Commissioner should be to examine burdens for small businesses in pursuing litigation against banks and receivers and to report their findings and recommendations to the Australian government.

Recommendation 9.11

9.25 That, following the Australian Small Business Commissioner's appointment becoming effective, the Small Business Commissioner provide an annual report to the Senate on small business finance issues. In preparing this report, the Small Business Commissioner should receive any necessary support from relevant government departments and agencies.

Recommendation 10.1

10.29 That an independent and well-resourced root and branch inquiry into the Australian financial system be established.