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Minister for Revenue and Financial Services

The Hon Michael McCormack MP
Minister for Small Business

Media Release

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CARNELL REPORT INTO BANKING PRACTICES RELEASED

The Turnbull Government today released the report of the Australian Small Business and Family Enterprise Ombudsman, Kate Carnell AO, into the small business lending practices of the major banks and other lenders.

The Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP, and the Minister for Small Business, the Hon Michael McCormack MP, thanked Ms Carnell for her important work on this matter.

Minister O'Dwyer said the report makes 15 recommendations, four of which are for Government, and the remaining 11 directed to the banking industry itself.

The Inquiry was commissioned by the Government on 31 August 2016 to examine a selection of the most egregious cases that were presented to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the 'Impairment of Customer Loans'.

In total, the Inquiry considered the submissions of 23 affected customers, and conducted a 'deep dive' forensic analysis of six of those. The cases date from 2008 until more recently, and represent various industries.

Of the cases considered, the Inquiry found that a third were a result of poor business decisions; another third were a result of both poor business decisions and poor bank practices; and the final third were representative of poor bank practices and possible unconscionable conduct on the part of the banks involved.

A key focus of the recommendations for Government include access to an affordable, efficient and binding, out-of-court dispute resolution service for small business lending customers, with access to compensation in appropriate cases.

In August 2016, the Government commissioned the expert review of the financial system's external dispute resolution (EDR) framework (Ramsay Review). The Ramsay Review provides an ideal opportunity to examine what changes to Australia's EDR framework are necessary in order to deliver more effective outcomes for bank customers.

“I note that the Ombudsman’s report provides further support for the establishment of a one-stop-shop EDR scheme to provide speedy, low cost and binding access to redress for small businesses and retail consumers of financial products and services. The Ombudsman’s recommendations complement the draft recommendations in the Ramsay Review’s interim report, released in December last year, and will also form part of the Ramsay Review’s final report,” Minister O’Dwyer said.

The Government has committed to putting in place a one-stop-shop for consumer complaints that will provide speedy access to justice, have the power to make binding determinations and to provide compensation.

In respect of the recommendations for the banking industry, the Minister for Revenue and Financial services said, “The Government expects the banking industry to give the highest priority to careful consideration of the 11 recommendations that focus on changes to the way banks deal with their small business customers. The Government will expect the banking industry to provide a considered response to the report, and a proposed plan of action to address the issues of concerns raised in the report, by no later than the next House of Representatives Standing Committee on Economics public hearings commencing on 3 March 2017.”

“An independent review of the Code of Banking Practice was initiated by the banking industry on 7 July 2016, and is currently underway. Ms Carnell’s recommendations should certainly feed into that industry-led process of review.”

The recommendations for Government include:

Recommendations 11 and 13: external dispute resolution (EDR)

Two of the Ombudsman’s recommendations are about enhancing small business access to external dispute resolution (EDR), including:

- the establishment of an EDR one-stop shop with a dedicated small business unit that has appropriate expertise to consider disputes involving a credit facility limit of up to \$5 million; and
- that the relevant EDR scheme be expanded to include disputes with third parties, such as valuers, investigating accountants and receivers.

“I have written to the Ramsay Review panel to ask that they take particular account of these recommendations as they develop their final report, which will be delivered to Government by the end of March 2017,” Minister O’Dwyer said.

In addition, the Ombudsman’s report suggests that there may be merit in developing a specific approach to providing access to redress for affected individuals that have been unable to have their case considered under the existing EDR system.

“I have today strengthened the Ramsay Review terms of reference to allow the expert panel to make recommendations, rather than observations, on the merits and potential design of a last resort compensation scheme, and to consider the merits and issues involved in providing access to redress for past disputes. The panel will consult with stakeholders and will produce an additional report, with recommendations on a possible compensation scheme, by the end of June this year,” Minister O’Dwyer said.

Recommendation 15: ASIC to establish a Small Business Commissioner

The Report also recommends that ASIC establish a Small Business Commissioner.

The Government agrees it is important that small business issues are a key focus area of ASIC's work.

"We will ask ASIC to provide advice to Government on the current allocation of responsibility for small business regulatory matters at the Commissioner level, and will consider this recommendation in the context of that advice along with the Government's current initiatives on ASIC's performance and focus," Minister O'Dwyer said.

Recommendation 14: farm debt mediation

Finally, the report recommends that a nationally consistent approach to farm debt mediation be introduced.

The Minister for Agriculture and Water Resources has been consulting with his state and territory counterparts to assess the best way to implement a nationally consistent approach, given that each state and territory has its own farm debt mediation scheme.

"The Turnbull Government remains committed to ensuring that all customers of financial institutions are provided with the most appropriate avenue for resolving complaints and disputes with the institution as quickly and effectively as possible, and I thank Ms Carnell for her important contribution," Minister O'Dwyer said.

This report follows a series of actions the Government has been taking on improving the banking system, including strengthening the resources and powers of ASIC, introducing legislation to the Parliament to lift the professional, educational, and ethical standards of financial advisers, introducing legislation to the Parliament to ensure that retail client monies are protected where financial firms become insolvent, and enacting reforms to eradicate unfair contract terms and to regulate credit card surcharging, to name a few.

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ATTACHMENT A - List of Recommendations made in the Small Business Loans Inquiry

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.
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.
3. For all loans before \$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 1 July 2017.
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.
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.
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.
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.
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 1 March 2017.
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.
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.
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.

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.
13. External dispute resolution schemes must be expanded to include disputes with third parties that have been appointed by the bank, such as valuers, investigative accountants and receivers, and to borrowers who have previously undertaken farm debt mediation.
14. A nationally consistent approach to farm debt mediation must be introduced.
15. The Australian Securities and Investments Commission must establish a Small Business Commissioner.