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EDR Review Secretariat  
Financial System Division  
Markets Group  
The Treasury  
Langton Crescent  
PARKES ACT 2600

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Dear Sir/ Madam

**Subject: CPA Australia response to recommendations made in the small business lending report of the ASBFEO**

CPA Australia represents the diverse interests of more than 160,000 members in 118 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders. Against this background and in the public interest, we provide this submission in response to recommendations from the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) report into small business lending that Minister O'Dwyer referred to the Panel.

Our comments are limited to the following recommendations that Minister O'Dwyer referred to the panel:

**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.**

We support this recommendation in principle and subject to further detail.

**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, investigative accountants and receivers, and to borrowers who have previously undertaken farm debt mediation.**

We do not support this recommendation.

Compelling a third party (a non-party to a dispute) to participate in external dispute resolution schemes would add to the costs of third parties (including higher professional indemnity insurance premiums and the cost of registering with an EDR scheme such as FOS) without any benefit for those bringing an action.

Instead, if a EDR scheme is of the opinion that the involvement of a third party would assist settlement discussions between a client and a financial services provider, they should approach the third party to seek their voluntary participation in negotiations. This type of approach is also consistent with the approach in FOS Fact Sheet *How we handle disputes involving insolvent individuals and small businesses*.<sup>1</sup>

It is our understanding that a FOS dispute resolution process cannot impose any outcome or remedial order against a non-party to a dispute. Expanding EDR schemes to cover disputes with third parties therefore appears to be of little value to the party lodging a complaint.

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<sup>1</sup> See

[http://fos.org.au/custom/files/docs/fact\\_sheet\\_how\\_we\\_handle\\_disputes\\_involving\\_insolvent\\_individuals\\_and\\_small\\_businesses.pdf](http://fos.org.au/custom/files/docs/fact_sheet_how_we_handle_disputes_involving_insolvent_individuals_and_small_businesses.pdf)

Further, we are of the view that there is insufficient evidence to suggest that such an expansion is warranted. For example, CPA Australia's professional indemnity insurance provider analysed the claims history of the members they cover and stated that claims matters represent 0.011 per cent of their accounts on an annual basis.

The insurer also stated that if EDR schemes are expanded to include disputes with third parties such as our members, underwriters may:

- increase their premiums to meet the new additional risk profile
- do nothing to extend their policies to meet the new requirements, or
- decide to pull out of the market

We would like to bring to the Panel's attention that members of CPA Australia are subject to a code of ethics and that compliance with that code as well as other professional standards is enforced through a disciplinary process. Further, members are subject to periodic quality assurance reviews and must undertake a minimum number of hours of professional development over a three year period as a condition of their membership of CPA Australia.

For members providing valuation services, they are required to abide by professional standard APES 225 Valuation Services. Members providing insolvency services are required to abide professional standard APES 330 Insolvency Services.

We also note that the broad powers conferred on insolvency practitioners upon their appointment are exercised subject to strict fiduciary and statutory duties owed by the insolvency practitioner. Liquidators and administrators must generally exercise their powers in the interests of creditors as a whole. Receivers exercise their powers in the interests of their appointor (secured creditor), while still owing the company equitable and statutory duties of good faith and reasonable care and diligence.

Creditor stakeholders (or any committee of inspection comprising select creditors) cannot direct how an insolvency practitioner performs their functions or exercises their powers.

Compelling insolvency practitioners to attend or participate in a dispute resolution process would impose additional cost burden on insolvency practitioners. As with all costs associated with the insolvency practitioner's conduct of an insolvency administration, these will be met out of what assets remain for the benefit of a distribution to creditors.

At present, FOS can ask insolvency practitioners to voluntarily become involved in negotiations to resolve a dispute. We see no reason to change this practice.

**Recommendation 14: A nationally consistent approach to farm debt mediation must be introduced.**

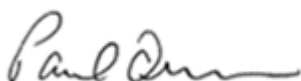
We support this recommendation in principle and subject to further detail.

**Recommendation 15: The Australian Securities and Investments Commission must establish a Small Business Commissioner.**

We note that ASIC has recently established an Office of Small Business. We therefore would not support ASIC establishing a Small Business Commissioner at this time.

If you have any questions regarding this submission, please do not hesitate to contact Gavan Ord, Manager – Business and Investment Policy of CPA Australia on (03) 9606 9695 or [gavan.ord@cpaaustralia.com.au](mailto:gavan.ord@cpaaustralia.com.au).

Yours faithfully



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