



NATIONAL AUSTRALIA BANK SUBMISSION

Consultation on the review into dispute
resolution and complaints framework

31 January 2017

Overview

National Australia Bank (NAB) welcomes the opportunity to provide feedback to the consultation on the interim report of the review into the financial system's external dispute resolution (EDR) and complaints framework (the Ramsay Review). As a member of the Australian Bankers' Association (ABA), NAB has also contributed to and is supportive of its submission to this Consultation.

This submission is in addition to NAB's earlier submission in response to the Issues Paper from 7 October 2016 (NAB's October 2016 submission) and should be read as such. Where NAB's views have changed from this earlier submission, this change is noted.

As stated in October 2016, NAB believes having access to EDR forums that are accessible, efficient and effective for consumers – which come at no cost to the consumer – is a cornerstone of the financial system. The review similarly found that the 'existing industry ombudsman schemes are a cornerstone of the EDR framework'.¹

This submission focuses on sections of the Interim Report where NAB's views and experience will be of most value to the review panel.

Response to draft recommendations

Draft recommendation 1: There should be a single industry ombudsman scheme for financial, credit and investment disputes (other than superannuation disputes) to replace FOS and CIO.

NAB supports this recommendation. As stated in NAB's October 2016 submission, 'the creation of a single EDR scheme and ombudsman for all complaints (other than those dealt with by the Superannuation Complaints Tribunal) would provide customers with a simpler experience, further ensuring the consistency of decision making and providing for economies of scale benefits.'

As also stated in NAB's October 2016 submission, and noted by the Review Panel in their interim report, NAB believes there is no compelling policy reason for the existence of two industry funded schemes.² Consolidation to one entity would continue the consolidation of schemes which has occurred over the past 15 years. NAB believes a single scheme will provide consumers with a more uniform and enhanced experience.

Draft recommendation 2: The new industry ombudsman scheme for financial, credit and investment disputes should provide consumers with monetary limits and compensation caps that are higher than the current arrangements, and that are subject to regular indexation.

Draft recommendation 3: The new industry ombudsman scheme for financial, credit and investment disputes should provide small business with monetary limits and compensation caps that are higher than the current arrangements, and that are subject to regular indexation.

NAB supports both these recommendations in principle. NAB supports the expansion of monetary limits and compensation caps for small business through an appropriate increase in the current FOS monetary thresholds to better cover small business. As stated in October 2016, NAB believes small business customers have not always had access to appropriate EDR forums.

¹ Interim Report, Review of the financial system external dispute resolution and complaints framework, 6 December 2016, p2.

² Interim Report, Review of the financial system external dispute resolution and complaints framework, 6 December 2016, p101.

In considering what the appropriate higher thresholds should be NAB urges caution against the adoption of thresholds for small business which have the unintended consequence of capturing disputes with medium to large businesses. In particular, adopting a notably higher monetary limit would likely attract more complex types of complaints, which would be better addressed by the judicial system. NAB believes the proposed new small business credit facility claim limit by FOS, of \$2 million (up from the current \$500,000) is too high. NAB supports the ABA's proposal that small business should be able to bring complaints up to \$1 million and FOS should be able to make awards of up to \$1 million.

In considering this issue, NAB would also encourage the review panel to have regard for the current lack of a uniform definition of a small business among the banking industry. There are also various definitions across state and federal government, along with various government agencies and statutory bodies.

In relation to consumers, NAB would also encourage any increase to compensation caps and monetary limits to be appropriate. In October 2016, NAB stated that the "existing monetary limits for determining jurisdiction are appropriate for consumer disputes". NAB though is open to appropriate higher thresholds for consumers as it believes there are benefits in adopting the same, or similar, monetary limits and compensation caps for consumers along with small businesses. This would enhance consumers' understanding about their eligibility for an ombudsman scheme and assist with the ombudsman's operation of the scheme. With this in mind, NAB supports the ABA's proposal for both a monetary limit and compensation cap of \$1 million for consumers, in line with the above proposal for small business.

Overall, NAB believes that compensation caps and monetary limits for consumers and small businesses should be fit-for-purpose over time. NAB supports a review of the increased thresholds after 12 months of operation to assess their effectiveness. Any subsequent proposal to increase these thresholds by an ombudsman scheme (either after this review or in the future) should first require consultation with all industry participants before any changes are enacted.

NAB supports indexing both monetary limits and compensation caps for consumers and small businesses to account for inflation and maintain the real value of these thresholds over time. An annual indexation process would be optimal to limit complexity from regular, small changes to the thresholds, along with rounding figures up to the nearest thousand.

Draft recommendation 4: The Superannuation Complaints Tribunal (SCT) should transition into an industry ombudsman scheme for superannuation disputes.

While NAB acknowledges the factors that informed this recommendation, NAB does not support an industry ombudsman scheme for superannuation disputes as a replacement for the existing Superannuation Complaints Tribunal (SCT) structure which has developed over time with commensurate expertise.

NAB recognises the current challenges facing the SCT and agrees with the Interim Report that the current time taken to resolve disputes is unacceptable for consumers. NAB is open to other ways in which the handling of superannuation complaints can be improved. As stated in NAB's October 2016 submission, NAB supports a statutory scheme for the SCT given the compulsory nature of superannuation, the technicalities of many of the complaints and the legislative complexity of superannuation.

NAB believes that in addition to the one-off additional \$5.2 million funding provided by the Federal Government in the 2016-17 budget, further measures should be considered to improve the SCT's operation. These could include:

- Assessing and upgrading the SCT's systems to improve their case management capability (this may involve leveraging technology used by similar bodies);
- Better aligning the current statutory funding with the number of complaints lodged;
- Adoption of a case prioritisation system to potentially fast-track 'simpler' cases; and

- Exempting the SCT from further whole of Government efficiency dividends in the near future.

If the SCT is transitioned to an industry funded ombudsman scheme, NAB encourages an appropriate transition period so that disputes already being considered are not delayed, and to allow the industry time to implement new processes. In this circumstance, NAB supports an industry ombudsman scheme specifically for superannuation – given the significant legislative and regulatory framework which differentiates superannuation – rather than a single ombudsman scheme to manage all external disputes in the financial system.

Draft recommendation 5: The superannuation industry should develop a superannuation code of practice.

NAB does not support this recommendation given the extensive prudential legislative and regulatory framework attached to superannuation already provides a strong framework governing the industry.

As noted in the Interim Report, the current development of a Life Insurance Code of Practice by major superannuation industry peak bodies is aimed at improving claims management processes across the industry. This work includes a specific review of group superannuation insurance. In addition, work via the Australian Taxation Office's SuperStream initiative is setting standards for the timing of superannuation payments, transfers and intra-industry efficiencies including, over time, better connection of members to their superannuation and lost accounts.

NAB believes that, given the significant resources already being allocated to these two initiatives, their completion should be prioritised. Along with the existing requirements, these two initiatives will, in effect, form part of a superannuation code of practice that the Interim Report is recommending. NAB has concerns that a separate all-encompassing Superannuation Code of Practice would be duplicative and could inadvertently create confusion, or, potentially even conflict with, the substantial existing framework.

Draft recommendation 8: The new industry ombudsman schemes should consider the use of panels for resolving complex disputes. Users should be provided with enhanced information regarding under what circumstances the schemes will use a panel to resolve a dispute.

NAB supports this recommendation. NAB has found mediation to be a useful way to resolve some disputes, particularly those which are complex and or long-running. For parties seeking to resolve their dispute at the lowest possible cost, greater use of ombudsman initiated panels to review cases may be useful.

Draft recommendation 9: Financial firms should be required to publish information and report to ASIC on their IDR activity and the outcomes consumers receive in relation to IDR complaints. ASIC should have the power to determine the content and format of IDR reporting.

NAB supports this recommendation. NAB currently provides similar information on its internal dispute resolution (IDR) activity to the Code Compliance Monitoring Committee (CCMC). Also providing this information on IDR activity to ASIC would extend NAB's existing reporting obligations and oversight to non-subscribers. NAB believes the design of additional reporting obligations should take into account, and seek to utilise where possible, the existing reporting to the CCMC.

Observation

The Panel is of the view that there is considerable merit in introducing an industry-funded compensation scheme of last resort.

NAB is an active participant in the industry's evaluation of a prospective, mandatory last resort compensation scheme for consumers who receive poor financial advice and have not been paid a determination awarded by an ASIC-approved EDR scheme. More information on the progress of this evaluation is detailed in the ABA's submission.

Information requests

Should the national consumer credit protection (NCCP) law be extended to small businesses?

NAB does not support the extension of NCCP to small business and believes it may have unintended consequences. The current responsible lending obligations under NCCP (which asks whether a loan or variation is not unsuitable for a consumer and assesses serviceability) are not always appropriate measures for lending to small businesses. This is particularly the case for lending to newer small businesses which may require capital for expansion. Banks, from time to time, lend against a small business' cash flow. Extending NCCP requirements to small business could impact on the appetite and availability of credit by banks to small businesses, particularly if restrictions were introduced to restrict debit interest in advance (not arrears) and to impose stricter requirements on the types of assets that could be taken as security against small business lending.

NAB also believes that the NCCP extension should be considered in the context of recent legislative changes and existing requirements. The introduction of unfair contract term (UCT) protections for small businesses, which commenced on 12 November 2016, is a significant change for small businesses and NAB has reviewed large volumes of contracts and supporting documents as part of implementing these requirements.

Similarly, the Code of Banking Practice (COBR) creates a contractual obligation on banks to comply with all relevant laws relating to banking services. Based on case law from two recent cases,³ the COBR also creates a contractually enforceable regime regarding its provisions. As part of the April 2016 six ABA initiatives, the COBR is currently being independently reviewed by Phil Houry.

NAB does not believe it is appropriate or required to extend NCCP to small business as other legislative protections and legal requirements already exist. In particular, access to credit is an important issue for small businesses and NAB is concerned that extending NCCP to small business could impact this access, and, by extension, the broader Australian economy.

³ 2015 Victorian Supreme Court, *National Australia Bank v. Rice (and Rose)*; and 2014-2015 Victorian Supreme Court *Commonwealth Bank of Australia v. Doggett*.