

Dear External Dispute Resolution Review Team,

On 5 May 2016, the Minister for Small Business and Assistant Treasurer, the Hon Kelly O'Dwyer MP, announced the establishment of an independent expert panel to lead the review into the financial system's external dispute resolution and complaints framework.

The review invited submissions from the public and consulted with a range of stakeholders, including consumers and industry, and issued a Report on 3 April 2017.

The Report makes 11 recommendations, representing what is said to be an integrated package of reforms that will see the EDR framework well placed to address current problems and to ensure that it is designed to withstand the challenges of a rapidly changing financial system.

It is stated that the Panel received 187 submissions in response to its Issues Paper and Interim Report, and that the Panel also met with many stakeholders representing a wide range of interests at each stage of the consultation process. It is said that in many cases, the individuals involved shared their quite distressing personal experiences.

The Panel has made the following recommendations:

- (i). in relation to consumer disputes, (and small business disputes, other than credit facility disputes), the new body should commence operations with a monetary limit of \$1 million, (an increase of 100 per cent relative to the current limit), and a compensation cap of no less than \$500,000, (an increase of 62 per cent relative to the current cap);
- (ii). Prior to commencement, there should be consultation on whether disputes relating to certain products, (including mortgages and general insurance products), should move immediately to a compensation cap of \$1 million; and
- (iii). in relation to small business credit facility disputes, small businesses should be able to bring a claim where the credit facility is of an amount up to \$5 million, (an increase of 250 per cent relative to the current limit), and the body should operate a compensation cap of \$1 million, (an increase of 224 per cent relative to the current cap);
- (iv). Within 18 months of the single EDR body commencing its operations, an independent review should be undertaken to determine what impact. (if any). the higher compensation cap has had on competition and consumer outcomes.

I respectfully observe the following difficulties with the Ramsay Review and the Panels Recommendation:

### **Difficulties**

The Establishment of the new body appears to suffer the following deficiencies:

- (i). there appears no facility to look back at previously dealt with cases, where financial institutions have engaged in misconduct, and no mechanism at all to exceed monetary limits where exceeding \$5 million for clients of financial services institution(s);
- (ii). any capping at \$1 million will deprive any new body of capacity to deal with a dispute where the amount at issue exceeds the value of a very ordinary house located on the outskirts of inner western Sydney;
- (iii). The new body appears to have no capacity to deal with allegations of systemic misconduct by financial institutions, for example in the cases of ANZ and Landmark, Bankwest and the CBA, and other conduct by Suncorp Metway, where aspects of commercial loan books were identified as "target "assets and from which those institutions wished to delete segments of those asset portfolios, from their loan books;
- (iv). The practices of financial institutions to act in the manner alleged, (in order to divest themselves of entire aspects of their loan books), involves considerations coming well outside the parameters of the financial

institution and the customer concerned, and involves the universal application of practices that are unfair practices in that they have involved the bringing down of performing customer loans where there is no monetary default in respect of a customer's individual facility;

(v). often the guiding considerations in respect of treatment of a customer facilities are guided in cases such as these, **NOT** by issues having anything to do with the banking customer relationship; but by a non disclosed consideration, having more to do with the application of international banking standards, and capital adequacy and that then had real ramifications for individual borrowers, about which they were never informed and never told;

(vi). these practices and these processes are often subject of separate actuarial or professional advice from international firms of advisers, (including firms such as McKinsey and Associates), who give advice as to how financial institutions may be benefited and how they may achieve multi billion savings, but without reference to the downstream effect on customers whose facilities may well be, (and illegally), taken down.

**Considerations:**

Can you please, therefore, consider that customers of financial institutions in such circumstances are left entirely without redress in these circumstances, and even were the recommendations of the Ramsay review all implemented and become part of Australian law, all persons who have been so effected will remain disenfranchised by the "new" system?

Yours faithfully,

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