

Recommendations

Recommendation 1

3.9 The committee recommends that the Australian Bankers' Association revise the Code of Banking Practice to require authorised financial institutions to commence dialogue with a borrower at least six months prior to the expiry of a term loan.

Recommendation 2

3.10 The committee recommends introducing minimum 90 day notice periods for:

- all general restriction clauses and covenants (except for fraud and criminal actions);
- any decision with respect to the rolling over of a small business loan; and
- any decision to commence action against a small business customer for default under a credit contract.

Recommendation 3

3.15 The committee recommends that:

- financiers be prohibited from making fundamental, unilateral changes to the loan agreements where such changes are detrimental to the customer;
- provided that a customer is meeting all terms and conditions of a loan, financial institutions must be required to bear any costs associated with a variation of a loan term, if the variation is sought by the financial institution;
- should a customer suffer any detriment as a result of any unilateral change to a loan agreement by a financier, that the financier be liable to pay for those losses and damages.

Recommendation 4

3.31 The committee recommends that the Australian Bankers' Association Code of Banking Practice be revised to extend:

- the responsible lending obligations contained in the *National Consumer Credit Protection Act 2009*; and
- the unfair contract term protections for small businesses, as set out in the *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015*

to primary production loans of less than \$10 million.

Recommendation 5

3.37 The committee recommends that the Australian Bankers' Association Code of Banking Practice require that financial lending institutions provide farmers who obtain loans with full copies of signed loan applications and other relevant documents:

- prior to the submission of the loan application;
- prior to any final loan approval; and
- at any other time as reasonably requested by the farmer.

Recommendation 6

3.38 The committee recommends that compliance with the Australian Bankers' Association Code of Banking Practice be included as a term of any loan documentation.

Recommendation 7

3.39 The committee recommends that statutory time limits for legal proceedings be removed in circumstances where a bank or its agents have changed the details of loan documents without the customer's knowledge, or the bank or its agents have acted unethically in the course of the commercial dealings with the borrower.

Recommendation 8

3.41 The committee recommends that the Australian Bankers' Association ensure all financial documents provided to its members by a farmer (including but not limited to asset and liability position statements, cash flow projections, business plans, valuations, historical and other similar documentation provided for, or on behalf of, customers either in support of loan applications or at any time throughout the relationship and at times of review) be prepared, altered or updated only by the customer and/or their representatives, and not by the bank or financial institution.

Recommendation 9

3.49 The committee recommends that financial institutions' arrangements for categorising farmland be revised to ensure that agribusinesses are not financed through inappropriate loan categories. Recommended measures include:

- facilitating processes for internal or external dispute resolution of farm debt mediation; and/or
- introducing a civil penalty provision for incorrect categorisations by financiers and providing for corresponding compensation to the farmer.

Recommendation 10

3.56 The committee recommends that the Australian Bankers' Association ensures that penalty rates are imposed on customers:

- only in the most exceptional of circumstances; and
- not in the 12 months after an actual default by the customer of the loan agreement.

3.57 If the default arises from circumstances beyond the control of the farmer (e.g. natural disaster, market conditions, government regulation or otherwise as would be described as *force majeure*) then penalty interest only be imposed as follows:

- for the period commencing 12 months after the actual default and ending 24 months after the actual default—the interest rate at the time of the continuing default plus 1 per cent; and
- for the period commencing 24 months after the default and thereafter—the interest rate at the time of continuing default plus 2 per cent.

Recommendation 11

3.62 The committee recommends that the ANZ takeover of the Landmark loan book be subject to a review by the soon to be incorporated Australian Financial Complaints Authority (or equivalent existing regulatory body) and that such a body have the powers to review:

- all commercial documents regardless of any confidentiality clauses contained therein;
- any other matter which may otherwise be subject to limitation periods; and
- without limitations as to the amount.

Recommendation 12

4.30 The committee recommends that the government establish a nationally consistent compulsory farm debt mediation scheme, based on the NSW model, with a \$10 million limit on loan amounts that includes the following provisions:

- that heads of agreement reached at a farm debt mediation conducted in one state, which considered matters relating to the farmer's default under a farm mortgage secured over a farm proper in another state, is recognised by all jurisdictions;
- that the process provides that the mortgagee must produce all documents to the farmer before mediation relating to the loans and banking relationship including all documents required to be produced by the mortgagee/financier to either a court of law or the Australian Financial Complaints Authority should either of those institutions be required to consider farm debt matters; and

- that refusal by the mortgagee to attend mediation results in the mortgagee being prevented from enforcing its rights under the mortgage for a minimum 6 month period.

Recommendation 13

4.49 The committee recommends that the Australian Financial Complaints Authority be able to:

- consider disputes relating to loans of up to \$10 million and award compensation up to \$5 million, with these figures to be reviewed every 5 years;
- review a customer's complaint within a three year period after the completion of farm debt mediation if the customer provides reasonable grounds for review;
- issue new orders or make any other determination as it sees fit;
- subject to the provisions of the bill establishing the authority, hear and collate evidence both for its own use and the use in any court of law with jurisdiction to hear the complaint; and
- hear complaints about receiver's fees and charges where they are not justified on the degree of difficulty and complexity of the estate.

Recommendation 14

4.66 The committee recommends that the government commit funding to train rural counsellors in mediation (or existing mediators in rural practice) to ensure that all farmers have access to appropriately qualified and experienced representatives during farm debt mediation.

Recommendation 15

5.66 The committee recommends that:

- the government introduce higher standards of accountability and transparency for insolvency practitioners regarding the costs they incur while conducting receiverships;
- insolvency practitioners be required to disclose their estimate of costs of the receivership prior to being engaged;
- insolvency practitioners be required to account for all incurred fees and outlays and report these to both the lender and the borrower; and
- insolvency practitioners be required to provide monthly reports to the lender and the borrower on their farming management and fees incurred (including future plans).

Recommendation 16

5.70 The committee recommends in the strongest possible terms that the Australian Bankers' Association revise the Code of Banking Practice to stipulate that if an amicable agreement between bank and farmer cannot be reached through farm debt mediation and the bank needs to sell the family farm, then:

- receivers not be appointed; and
- instead the family (if willing) is to remain managing the property and be paid a wage to maintain it until it is sold.

5.71 However, in extenuating circumstances the banks can use their legal rights to enforce vacant possession of the land for sale.

Recommendation 17

5.76 The committee recommends that the Australian Restructuring Insolvency and Turnaround Association ensure receivers appointed to agribusiness cases must be appropriately qualified in agribusiness and have a strong background and demonstrated experience in rural management.

Recommendation 18

5.87 The committee recommends that the Australian Bankers' Association and the Australian Restructuring Insolvency and Turnaround Association implement policies to ensure that copies of bank or receiver-ordered valuations are provided promptly to farmers.

Recommendation 19

5.88 The committee recommends that the Australian Bankers' Association and the Australian Restructuring Insolvency and Turnaround Association ensure that banks and insolvency practitioners must only engage independent valuers to value agribusinesses with appropriate qualifications and demonstrated expertise and experience in the field.

Recommendation 20

5.109 The committee recommends that the Australian Bankers' Association revise its Code of Banking Practice and the Australian Restructuring Insolvency and Turnaround Association revise its Code of Professional Practice to stipulate that every effort be made by banks and receivers (in circumstances where they are appointed) to achieve the maximum sale price of an asset.

Recommendation 21

5.112 The committee recommends that the government establish a private right of action for breaches of section 420A of the *Corporations Act 2001*.

Recommendation 22

6.13 The committee recommends that the Australian Bankers' Association ensure that banks offer better training and more comprehensive supervision of bank frontline and management staff to ensure that they deal fairly and reasonably with farming customers and have a sound understanding of the unique characteristics of primary production enterprises.

Recommendation 23

6.21 The committee recommends that the Australian Bankers' Association adopt all relevant recommendations of this report when redrafting the Code of Banking Practice.

Recommendation 24

6.22 The committee recommends that the new Code of Banking Practice currently being drafted by the Australian Bankers' Association specifically recognise the operating environment of primary producers.

Recommendation 25

6.23 The committee recommends that the Australian Bankers' Association stipulate that banks must draw customers' attention to the Code of Banking Practice when establishing new loans.

Recommendation 26

6.31 The committee recommends that the government establish tailored initiatives that provide primary producers with guidance on financial literacy and business management, and resilience training.

Recommendation 27

6.37 The committee recommends that the newly established Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry fully consider the evidence published by this committee in the context of its inquiry.