Chapter 3

Terms and conditions of rural loans

3.1 Small businesses involved in the primary production industries are frequently family enterprises centred on farming operations. The Office of the Australian Small Business and Family Enterprise Ombudsman explained that many involve inter-generational businesses.[1] Loans for farming operations tend to be below $5 million, and as such are not typically classified as small business loans by lending institutions.[2]

3.2 Access to credit to manage cash flows is critical in the farming sector, which is subject to considerable volatility of income due to multiple extrinsic factors. However, the committee received evidence suggesting that trends in rural lending are hampering farmers' ability to manage cash flows and survive through periods of financial hardship, which are far from unknown in the sector.

3.3 This chapter will look at the appropriateness of loan contract terms particular to the primary production industries, including provision of reasonable written notice, loan-to-value ratios, and penalty interest rates.

Adequacy of notice periods

3.4 There is currently no statutory requirement relating to the period of default notice credit providers may provide a small business borrower before proceeding to enforce rights under the credit contract.[3]

3.5 The Financial Ombudsman Service noted the limited period often provided to borrowers for compliance with a default notice:

> Where a default notice is served, there is usually only a short period of time given to comply with the notice. However, in most cases this follows a longer period of negotiation, where a range of options are usually explored.[4]

3.6 Further to this, small business loan contracts allow financial institutions to disregard prescribed notice periods, effectively allowing borrowers very little time to act on a breach of conditions. This in turn means that even a business in solid financial

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1 Australian Small Business and Family Enterprise Ombudsman, *Submission 17*, pp. 1–2.

2 Australian Small Business and Family Enterprise Ombudsman, *Submission 17*, p. 2. See also National Farmers Federation, *Submission 62*, p. 2.

3 Financial Ombudsman Service Australia, *Submission 9*, p. 10.

4 Financial Ombudsman Service Australia, *Submission 9*, p. 6.

standing could suddenly be subject to a loan default.[5] To address this, the Office of the Australian Small Business and Family Enterprise Ombudsman recommends:

- introducing a 30-business day notice period for all general restriction clauses and covenants (except for fraud and criminal actions); and
- introducing a longer notification timeframe (in excess of 90-business days) of a decision on rolling over a small business loan.[6]

3.7 In a similar vein, the Financial Ombudsman Service supported the findings of the review of the Banking Code of Practice that recommended:

> …small business customers with a credit facility below $5 million that the Code require signatory banks to provide 30 days' notice before beginning enforcement proceedings against a small business customer in default under a credit contract.[7]

Committee view

3.8 The committee supports each of these recommendations and makes the following related recommendation, which would require dialogue to commence between a lender and borrower at least six months prior to the expiry of a loan term.

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.**

5 For discussion see Australian Small Business and Family Enterprise Ombudsman, *Submission 17*, p. 2.

6 Australian Small Business and Family Enterprise Ombudsman, *Submission 17*, p. 2.

7 Financial Ombudsman Service Australia, *Submission 9*, p. 10.

Loan variations

3.11 The committee received evidence of very significant loan variations, initiated by various banks, which put rural borrowers in a highly disadvantageous position. For example, one witness who gave confidential evidence, explained that the radical change in the term of their loan when the loan book of their financial institution was acquired by a second financial institution:

> Within a few weeks of [unnamed financial institution] assuming that loan, they sent us a letter of offer, reducing our term of loan from 21 years to six months.[8]

3.12 This fundamental change occurred less than five years into the term of their loan.[9]

3.13 The same borrower gave evidence that their main interest rate, as well as their overdraft rate, had increased significantly and without justification, leading to an effective doubling of their monthly interest payments.[10]

Committee view

3.14 The committee finds these sorts of unilateral changes to the fundamentals of a borrower's loan arrangements to be wholly unacceptable. If these sorts of practices were replicated elsewhere in Australia, there would be defaults across the country and the economy would come to a standstill. The committee is of the view that the financial impact of such variations, if made in circumstances where the borrower is not at fault, should be borne by the relevant financial institution.

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.**

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8 *In camera witness*

9 *In camera witness.*

10 *In camera witness*. Penalty interest rates are discussed in more detail later in this chapter.

3.16 This recommendation is consistent with the nature of the recommendations of the Parliamentary Joint Committee on Corporations and Financial Services report into the *Impairment of Customer Loans*, which are supported by the Financial Ombudsman Service.[11]

Lending obligations for consumer credit

3.17 Responsible lending requires credit licensees to enquire into potential customers' objectives and their financial situation. Providing credit in the absence of such an enquiry and verification of financial status, risks the customer not meeting their financial obligations and incurring substantial financial hardship.[12]

3.18 The Australian Bankers' Association (ABA) informed the committee that banks are required to make responsible lending decisions and consider a number of factors when assessing a loan application or rollover of a credit facility. These include:

- Capacity: This looks at a businesses' ability to meet the loan obligations and repayments, including potential earnings and whether this is sufficient to meet repayments.
- Collateral: This considers the applicant's 'security' for the proposed loan. This would include assessment of the property's security through an independent valuation. This can include the debt-to-equity ratio to understand how much the lender is being asked to provide.
- Capital: The strength of the customer's financial position (e.g. amount of assets and liabilities)
- Character: This considers the applicant's reputation, including past repayment and credit history.
- Conditions of the loan: This looks at the lender's 'terms' for providing the loan, including the repayment schedule, pricing, conditions precedent (which must happen before funding) and duration of the loan.[13]

3.19 Evidence presented to the committee during the course of the inquiry suggests that some financial institutions have acted in a way that is not consistent with responsible lending practices.

3.20 For example, Legal Aid Queensland submitted that some banks clearly employed variable lending practices between different branches:

> FRLS [Farm and Rural Legal Service] recently had a client whose original application was declined by one branch but accepted by another branch of the same bank on the basis of the same information. Within one month of

11 Financial Ombudsman Service Australia, *Submission 9*, pp. 9–10.

12 See Parliamentary Joint Committee on Corporations and Financial Services report, *Impairment of Customer Loans*, May 2016, p. 28.

13 Australian Bankers' Association, *Submission 12*, p. 3.

> the loan being granted, the facility was in default. This is in our view an example of non-prudent lending.[14]

3.21 What protection from irresponsible lending currently exists is limited. The committee heard that new national laws were introduced in 2010 with the aim of regulating consumer lending, prior to which regulation only existed at the state level. The introduction of laws at the Commonwealth level established a higher responsible lending obligation, meaning that a financial lender is responsible for ensuring that consumers can afford the loan they are being provide with:[15]

> The lenders are required to make reasonable inquiries into a borrower's financial situation, and they have to take reasonable steps to verify the information that the borrower has provided to them. So there are two parts to it. They have to make the inquiries, and then they have to verify that information. So you can't have a situation where lenders are providing loans purely against the assets that are being secured for those loans. There has to be capacity within the borrower to service the debt that is being provided to the borrower. That has been in place since 2010 nationally for consumer credit.[16]

3.22 These laws do not, however, apply to all primary producer lending, and any lending that is for investment purposes (other than residential investment property)–business loans–is not included in the protections provided by those laws.[17]

Loan contract terms

3.23 According to information provided by the ABA, credit contracts include both monetary and non-monetary covenants (e.g. specific events and financial indictors), which if breached may foreshadow financial distress and in some circumstances give the bank the right to call in the loan.[18]

3.24 The ABA emphasised that there are legitimate reasons for specific event non-monetary defaults:

> While it has been recommended by the recent Small Business and Family Enterprise Ombudsman inquiry that the only form of default should be monetary or unlawful acts, there are legitimate reasons for specific non-event monetary defaults. For example, voluntary administration, fraud, significant changes in management, loss of trading licence and changes to

14 Legal Aid Queensland, *Submission 6*, p. 6.

15 Mr Michael Saadat, Senior Executive Leader, Deposit Takes, Credit and Insurers, Australian Securities and Investments Commission, *Committee Hansard*, 14 September 2017, p. 4.

16 Mr Michael Saadat, Senior Executive Leader, Deposit Takes, Credit and Insurers, Australian Securities and Investments Commission, *Committee Hansard*, 14 September 2017, p. 4.

17 Mr Michael Saadat, Senior Executive Leader, Deposit Takes, Credit and Insurers, Australian Securities and Investments Commission, *Committee Hansard*, 14 September 2017, p. 4.

18 Australian Bankers' Association, *Submission 12*, p. 4.

> the underlying security, each of which could impact on the viability of the business and its ability to meet future repayments.[19]

3.25 The committee heard that terms and conditions stipulated by small business loans enable financial institutions to 'legally pursue businesses for non-monetary default' if applicable loan covenants are breached.[20] Breaches include non-monetary defaults which may be due to:

> …loan-to-value ratios (LVR) dropping past the institutions' commercially acceptable appetite for risk, or other financial ratios and/or generalised 'material adverse change' clauses.[21]

3.26 To address this, the Office of the Australian Small Business and Family Enterprise Ombudsman recommended removing:

- clauses which allow banks to unilaterally invoke security asset valuation during the life of loan financial covenants; and
- catch-all 'material adverse change' clauses.[22]

3.27 The ABA informed the committee that it is currently in the process of revising the Code of Banking Practice (the code).[23] The revised code will reduce the number of non-monetary covenants in loan contracts and credit products for small business and agribusiness customers. The revisions will:

- remove all general adverse material change clauses.
- reduce the number of specific events of on-monetary default entitling enforcement action. This will be limited to:
  - unlawful behaviour;
  - insolvency, bankruptcy, administration or other creditor enforcement;
  - misrepresentation, use of the loan for non-approved purpose, dealing with loan security property improperly or without consent;
  - change in beneficial control of company except as permitted;
  - loss of licence or permit to conduct business; and
  - failure to provide proper accounts or to maintain insurance (after a reasonable period).
- remove financial indicator covenants as triggers for default.[24]

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19 Australian Bankers' Association, *Submission 12*, p. 4.

20 Australian Small Business and Family Enterprise Ombudsman, *Submission 17*, p. 2.

21 Australian Small Business and Family Enterprise Ombudsman, *Submission 17*, p. 2.

22 Australian Small Business and Family Enterprise Ombudsman, *Submission 17*, p. 2.

23 Further discussion on this matter can be found in Chapter 6 of this report.

24 Australian Bankers' Association, *Submission 12*, p. 5.

Committee view

3.28 Based on the preceding two sections, the committee is of the view that more must be done to protect primary producers from irresponsible lending practices and unfair contract terms.

3.29 The committee acknowledges the efforts of the Australian Bankers' Association in revising the Code of Banking Practice to reduce the number of non-monetary covenants in loan contracts and credit products for small business and agribusiness customers.

3.30 However, the committee urges the ABA to extend the responsible lending obligations and unfair contract term protections to primary production customers with business loans of less than $10 million.

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.

Loan document alteration without customers' knowledge

3.32 The committee is also aware of concerning allegations regarding loan documents which may have been tampered with:

> FRLS [Farm and Rural Legal Service] has observed that disputes can arise when the bank prepares the documents supporting the loan application or makes alterations to them after the documents have been provided/approved/seen by the farmers. Documents such as cash flows, livestock schedules, historical backgrounds etc. have occasionally been prepared by bank staff. The customers are not aware of the contents of these documents. There have been circumstances where the farmer has later obtained copies of this material (after disputes arise or defaults have occurred). Cash flows have been found to be completely wrong. It may incorrectly overstate income or understate expenses and living costs and

> over-estimate livestock on hand, calving rates, projected cattle sales and ongoing crop returns.[25]

3.33 Mr Denis McMahon, representing Legal Aid Queensland, confirmed that he has had clients who allege their documents have been altered without their knowledge:

> I say that there have been circumstances where the clients believe that that's occurred. I can say that we've had instances where clients have alleged that, yes, and it would appear to have been the case.[26]

3.34 In discussion with the committee, Mr McMahon elaborated:

> **Senator WILLIAMS**: Have you seen loan application forms that have had the figures, amounts or cash flows altered?
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> **Mr McMahon**: I have seen cash flows where there has been included in them income from sources—for example, a grazing enterprise having income for grain production in it—
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> **Senator WILLIAMS**: And they had no grain growing?
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> **Mr McMahon**: and I've seen cash flows where we've had cows having three calves in the first year—
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> **Senator WILLIAMS**: Really! That's a record!
>
> **Mr McMahon**: for the numbers to get up. But they're very rare. We've done many mediations over time, and, on rare occasions, we do see those sorts of instances.[27]

3.35 In such circumstances, there may be a large discrepancy between the financial information seen by a bank's internal credit section and the actual capacity of a business to meet its requirements. This can have very serious consequences:

> In extreme cases, cash flows have no resemblance to the financial performance of the business. On at least one occasion, clear mistakes made by the bank in preparing cash flows used to accompany the loan application were not noticed by the credit section despite the mistake being so basic as to completely compromise the financial performance and production of the business.[28]

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25 Mr Denis McMahon, Senior Lawyer, Farm and Rural Legal Service, Legal Aid Queensland, answers to questions on notice, 2 August 2017 (received 28 August 2017), p. 5.

26 Mr Denis McMahon, Senior Lawyer, Farm and Rural Legal Service, Legal Aid Queensland, *Proof Committee Hansard*, 2 August 2017, p. 15.

27 See discussion with Mr Denis McMahon, Senior Lawyer, Farm and Rural Legal Service, Legal Aid Queensland, *Proof Committee Hansard*, 2 August 2017, p. 15.

28 Legal Aid Queensland, *Submission 6*, p. 5.

Committee view

3.36 It is clear that ensuring that farmers are provided with an opportunity to verify information which then goes to a bank's internal credit section would be beneficial. The consequences of the bank making mistakes or altering loan documentation without the farmer being notified can have devastating impacts on the financial position and wellbeing of primary producers. Although it should go without saying that customers should know exactly what the bank is signing them up to, it would appear that this is not always the case. The committee is strongly of the view that steps must be taken to rectify this.

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.

3.40 On a related matter, the committee endorses the recommendation put forward by Legal Aid Queensland in regard to the preparation of financial documents and information provided by a primary producer to their financial institution.[29]

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

29 Mr Denis McMahon, Senior Lawyer, Farm and Rural Legal Service, Legal Aid Queensland, answers to questions on notice, 2 August 2017 (received 28 August 2017), p. 5.

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.

Appropriate loan categories

3.42 The committee considered evidence provided by individual farmers who allege they were given home loans to finance commercial farming endeavours.

3.43 In one example, Mr Craig and Mrs Moeroa Caulfield purchased a 110 acre cane farm in 2007, under a contract which contained a number of clauses pointing to their intentions to continue cane farming. The farm was located within a flood plain and zoned as sustainable cane land, with an agricultural rating applied by the council.[30]

3.44 The Caulfields sought and obtained finance from the Commonwealth Bank of Australia (CBA), and were approved for a $480 000 loan without providing pay slips or tax returns.[31] Not long thereafter they experienced financial hardship due to a number of factors. In 2010 they approached the CBA to apply for financial hardship, but were declined, as was their attempt to apply for farm debt mediation with the CBA:

> CBA has obligations under the Queensland Farm Finance Strategy (QFFS) to engage in FDM. CBA has consistently denied our requests for FDM on the basis we are not a farm…
>
> Based on documents we have since received, CBA describe the facility as a Home Loan. There is and was no house on the farm. We believe CBA denied us FDM because it would confirm they sold us the wrong loan.[32]

3.45 This refusal by the CBA came despite the Caulfields' status as farmers having been confirmed by government departments, legal aid and financial counselling services.[33]

3.46 The committee understands that this is not an isolated case.

3.47 Ms Natasha Keys purchased a tea-tree producing property in northern New South Wales, having notified the bank of her intention to commercially harvest the tea tree plantation when applying for a loan. In spite of this, the bank in question

30 Mr and Mrs Craig and Moeroa Caulfield, *Submission 55*, p. 1.

31 Mr and Mrs Craig and Moeroa Caulfield, *Submission 55*, p. 1.

32 Mr and Mrs Craig and Moeroa Caulfield, *Submission 55*, p. 2.

33 Mr and Mrs Craig and Moeroa Caulfield, *Submission 55*, p. 2.

approved Ms Keys for a home loan instead of a farm or business loan. The reasons for this, in Ms Keys' view, were clear:

> This allowed the Bank to lend a higher LVR% against the property and to avoid implications of costs associated with the Farm Debt Mediation Act.[34]

3.48 Ms Keys confirmed that her experience was not unique, submitting that she had come across many other farmers whose loans had been incorrectly classified as home loans:

> We are just one group who have not been able to refinance, nor access proper IDR [internal dispute resolution], EDR [external dispute resolution] or farm debt mediation simply because our lender provided an incorrect product for the purpose in which we sought that credit. There is no recognition of this issue in the current farm debt landscape.[35]

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.**

Penalty interest rates on default

3.50 Many submitters raised concerns about banks imposing penalty interest rates upon an initial loan default, often leading to crippling debt.

3.51 One such submitter, Mr Andrew McLaughlin, explained how significant penalty interest rates can be:

> The biggest problem with that [default followed by litigation] is the debt from the day of default continues to grow at that rate—and we're not talking 13.7 per cent that they indicate on their documentation; I've seen it as high as 18 and 22 per cent. On $1 million per year, that's $220,000 in interest; you go two years that's $440,000. If you have $10 million debt, that's another $3 million in interest—just in penalty interest. Forget about the normal interest that will be there.[36]

34 Ms Natasha Keys, *Submission 56*, p. 1.

35 Ms Natasha Keys, *Submission 56*, p. 1.

36 Mr Andrew McLaughlin, private capacity, *Proof Committee Hansard*, 11 August 2017, p. 3.

3.52 Mr Robert Yabsley, whom the NAB charged penalty interest averaging 14.5 per cent from 2002 until 2012, added that increasing penalty interest rates applied to customers who are already having difficulty meeting their financial obligations only serves to ensure their failure:

> The NAB continued to charge penalty interest from mid-2002 to when the property was taken from me in September 2012, at an average of 14.05 per cent. I will make a point here which is not particularly relevant to my issue. If a bank customer is having difficulty paying a particular interest rate, and the bank charge additional penalty interest, it is pretty obvious that this will do two things: (1) it ensures the failure of the customer, because if they could not meet the ordinary interest they are not going to be able to meet the additional interest; (2) it ensures increased profit for the bank through increased interest, when they determine to sell the secured asset.
>
> My office researched fully the difference to our bottom line when the property was seized at the existing interest rate—and I do not know what it was, but the average over 10 years was 14.05—which created the debt that gave them the opportunity to do what they did in the end. I make that point because I feel this was organised. It was not something that just happened. I feel that the NAB were very embarrassed about the fact that they could not complete the receivership in 2001. They had no option, basically, other than to give us the property back when we could do something, which we did, by giving them a few bob. The only other alternative they had was to go to court and ask for a court to rule that they could do this, and that was very expensive and it would have taken them a long time. If the debt had been an average of 10 per cent instead of 14.05, our debt would have been $5.573 million less. At eight per cent it would have been $7.5 million less—almost nothing.[37]

3.53 Mr Brian and Mrs Suellyn Webster recounted their bank's unwillingness to engage with and consider the financial ill-effects they were suffering as a result of circumstances beyond their control:

> We advised the bank of the problems these factors [the Live Cattle Trade suspension, drought and unwanted construction work through our pastures] posed for our interest payments, including our inability to sell cattle including one load worth $225,000. The bank was relentless in demanding that we meet our loan obligations regardless of the unique situations we were battling through no fault of our own and charged many hundreds of thousands of dollars in late penalty interest. This treatment again was contrary to the enforceable Code of Banking Practice.[38]

3.54 A confidential submission described the significance of the interest rate increase:

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37 Mr Robert Yabsley, private capacity, *Proof Committee Hansard*, 2 August 2017, p. 76.

38 Mr and Mrs Brian and Suellyn Webster, *Submission 57*, p. 1.

> Approximately 12 months into the loan, the bank put pressure on us to sell our investment property in [state] and increased interest rates by a 2% penalty rate… We repeatedly asked that these excessive rates be reduced as they were overbearing and unreasonable as put across the whole of the term loan, causing defaults on the overdraft account which caused a further 3% a total of 5%. This is nearly an 80 % increase in our interest rate of about 6.3%. We weren't aware that the interest rate increase would be over the whole term loan of $6.29M.[39]

Committee view

3.55 The committee views the imposition of penalty interest rates as a punitive mechanism that is more likely to send farmers in default further into financial difficulty. Their widespread use by banks is completely contradictory to the banks' evidence that their preference is to support struggling farmers to trade out of their financial problems. As witnesses rightly pointed out, the imposition of penalty 'ensures the failure of the customer, because if they could not meet the ordinary interest they are not going to be able to meet the additional interest'[40]

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.**

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39 *Confidential submission 66*, p. 1.

40 Mr Robert Yabsley, private capacity, *Proof Committee Hansard*, 2 August 2017, p. 76.

Corporate take-overs and loan books

3.58 The committee received a number of submissions which raised issues involving the ANZ takeover of the Landmark loan book.[41] The background to the Landmark loan book was described by the Parliamentary Joint Committee on Corporations and Financial Services in its report on the *Impairment of Customer Loans*:

> Landmark is a diversified rural merchandise business which, at the time it was acquired by ANZ, was a division of the Australian Wheat Board. Landmark Financial Services (LFS) was a division of Landmark that, at the time of its acquisition by ANZ, provided agribusiness lending of about $2.4 billion, had debenture (akin to deposit) accounts of about $300 million and had about 10,000 customers.[42]

3.59 ANZ acquired the Landmark loan book in March 2010, precipitating a number of complaints concerning the ensuing transition. Mr Ben Steinberg, representing ANZ, informed the committee that the bank was aware of the concerns, acknowledged shortcomings in the transition, and had sought to resolve outstanding issues:

> We've said to a previous parliamentary inquiry—specifically, the parliamentary inquiry into impaired loans—that ANZ could have and should have done a better job in terms of transitioning the Landmark portfolio under ANZ ownership. That said, we also agree with you that there have been a number of unsatisfied customers who are not happy with the way their loans were transitioned. We've met with a large number of those customers and we've heard their concerns and we've done everything that we've possibly been able to do to resolve them.[43]

3.60 Mr Steinberg did, however, acknowledge that a number of matters were still 'subject to discussions'. In response to the committee's concerns, he indicated ANZ would readily agree to meet with the customers and former customers in question, along with members of the committee, to work towards resolving any outstanding problems.[44]

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41 See for example Mr David and Mrs Elizabeth Browning, *Submission 81*; Mr Sam Sciacca, *Submission 4*; Mr William Axford, private capacity, *Proof Committee Hansard*, 19 July 2017, pp. 59–63.

42 Parliamentary Joint Committee on Corporations and Financial Services, *Impairment of Customer Loans*, May 2016, p. 144.

43 Mr Ben Steinberg, Head of Lending Services, Corporate and Commercial, ANZ, *Proof Committee Hansard*, 11 August 2017, p. 15.

44 Mr Ben Steinberg, Head of Lending Services, Corporate and Commercial, ANZ, *Proof Committee Hansard*, 11 August 2017, p. 15.

Committee view

3.61 The committee appreciates the ANZ's commitment to meet with former Landmark customers. Nevertheless, while there are ongoing issues to be resolved and further details to be gathered, the committee is of the view that a separate inquiry should be launched to shed more light on the implications of this significant corporate takeover.

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.**