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## "CHANGE IS OVERDUE AND THE BANKS ARE ON NOTICE"

This is the confronting title of a report into the adequacy of the law and practices governing financial lending to small businesses released today by Kate Carnell, the Australian Small Business and Family Enterprise Ombudsman. By way of background, in September 2016, the Minister for Small Business Michael McCormack asked the ASBFEO to undertake this inquiry which involved public hearings with executives from the four major banks and it also heard evidence from bank customers.

### REPORT RECOMMENDATIONS

The [report](#) makes 15 recommendations designed to address gaps in the existing regulatory environment and with the practices of industry participants. These recommendations relate to businesses which borrow less than \$5m.

What do these recommendations actually mean for small business borrowers, how will the banks respond and will anything change anyway? Here's theBankDoctor's take .....

### More Breathing Space and Protection.

Banks would be required to:

- Remove any loan conditions which allow banks to unilaterally trigger a default based on revaluing assets during the life of the loan and invoking financial covenants or catch-all 'material adverse change' clauses. That is, as long as the borrower is meeting repayments and is acting lawfully, the bank can't trigger a default.
- Provide a minimum 30-business day notice period to all changes to loan conditions and covenants.

- Provide borrowers with decisions on roll over at least 90 business days before loans mature.

### **Greater Understanding & Transparency.**

Banks would be required to:

- Put in place a new small business standard form contract that is short and written in plain English.
- Provide a one-page summary of the clauses and covenants that may trigger a default or other detrimental outcomes for borrowers.
- Provide borrowers with a choice of valuer, a copy of the instructions and the valuation report. And borrowers would be provided with a copy of any instruction given to investigating accountants as well as the subsequent report;

### **Better Dispute Resolution Procedures.**

- 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.
- Banks must establish a customer advocate to consider small business complaints and disputes that may or may not have been subject to internal dispute resolution.
- External dispute resolution schemes must be expanded to include disputes with third parties that have been appointed by the bank, such as valuers, investigating accountants and receivers.

### **ONE SIGNIFICANT OMISSION**

It was a little surprising not to see any reference to the critical issue of open access to client data. More needs to be done to ensure banks provide open access to customer data so that borrowers can use their data to get the best deal possible and they are able to change banks more easily. To date the banks have been, at best, cautious and, at worst, uncooperative in addressing this issue. The slower the banks are to respond to customer expectation the more difficult it will be to hold onto them. We used to talk about banks “owning” customers but this is changing. Failing to embrace open access to data will not help banks retain customers in the longer term.

### **HOW WILL THE BANKS RESPOND?**

The banks have responded to the constant adverse public exposure by conducting their own reviews and marketing campaigns. Only last week the Australian Bankers Association on behalf of the banks announced a raft of commitments to make banking better under the heading of “we hear you”.

**“As a business owner  
I need to be flexible.  
My bank should be too.”**



We know people want to see improvements in Australian banking. That's why we're making changes for the better. From better products and services, to having the right culture in banks, our goal is to earn your confidence again.

The strength and stability of Australia's banks is the envy of the world. Our support and investment in the economy ensures a successful future for all Australians. But it all starts with our customers. That's why we're listening to your concerns, and taking action.

**WE'RE MAKING  
BANKING  
BETTER  
FOR AUSTRALIA**

These newly announced [initiatives](#) include:

- A renewed commitment to support customers in financial difficulty.
- Providing more support to small businesses and farmers by introducing new best practice standards on valuation practices and how banks appoint receivers.
- Developing financial literacy resources and tools for small businesses.
- Helping customers better understand how they can switch accounts.

To their credit, the banks are at least saying the right things, they get that the loss of trust is a major issue which threatens their livelihoods especially as new, more flexible and user friendly alternatives are becoming more accessible. But will they actually follow through and how long is this all going to take? And who is going to hold them accountable?

### **ACCOUNTABILITY & FOLLOW UP.**

Kate Carnell will do all in her power to hold the banks to account.

“Frankly, the banks take ‘kicking the can down the road’ to new levels. This is no longer acceptable and I’m determined the recommendations we’ve made are adopted as quickly as possible. This report is a living document; it’s only the beginning of our work in this area,” she said.

She didn’t hold back when she added that “the banks have consistently failed to implement changes to address persistent problems”.

To ensure accountability the ASBFEO will publish six monthly scorecards on the progress banks are making in response to the recommendations contained in the report.

The report also recommends the ABA's undertakings are carried out by requiring the publishing of individual bank implementation plans including key milestones and deliverables with outcomes against these plans.

A Royal Commission would take years to lead to change in our banking system. Last year's Parliamentary Inquiry provided good reality TV entertainment as a diverse group of politicians prosecuted their own agendas against the defensive and well scripted bank CEOs. But the ASBFEO inquiry, this report and its on-going engagement with bank leaders represents the best chance yet to drive much needed change in bank practices in the SME sector.

Interested in your comments or feedback.



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theBankDoctor  
5 Talbot Street  
Hampton  
Melbourne, Vic 3188  
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