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EDR Review Secretariat
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Dear Sir / Madam

Review of External Dispute Resolution & Complaints Schemes.

The Westpac Group (**Westpac**) appreciates the opportunity to provide comments to the Government's Review of the external dispute resolution framework (**Review**) and to respond to the Issues Paper released on 9 September 2016 (**Issues Paper**).

Westpac welcomes the Review's terms of reference, including the examination of opportunities to improve the provision of dispute resolution for customers.

Westpac has also contributed to, and supports, the submission made by the Australian Bankers' Association (**ABA**).

1. Westpac's commitment to doing the right thing

Westpac considers that our banking licences are a privilege (Australian Credit Licence (**ACL**) and Australian Financial Services License (**AFSL**)). Customers have a legitimate expectation that bankers adhere to the highest standards of practice and behaviour. Westpac, and the banking industry more broadly, has a responsibility to earn and maintain the trust of our customers and community by dealing with people fairly and honestly.

Westpac continues to focus on improving our standards to provide better customer service. We have a clear vision to be one of the world's great service companies, helping our customers, communities and people to prosper and grow. This vision is underpinned by a commitment to doing the right thing by our customers, including our approach to resolving customer complaints and issues. This commitment is reflected in:

- Our *Code of Conduct* which governs the behaviour of our people and enshrines the principle of listening and acting on customer complaints;

- Our *Principles for Doing Business* which forms the foundation of our commitment to corporate responsibility and sustainable business practice. These principles include an ongoing commitment to offering banking solutions that are simple, practical and ethical for our customers. We continue to be committed to solving issues fairly and quickly;
- Our *Principles of Responsible Lending* which govern the extension of customer and business credit;
- Our *Service Promise* which supports our focus on improving standards of service and putting the customers at the centre of what we do. This includes a model of empowerment for our people to make decisions deemed to be in the customers' interests; and
- Our core values.

2. The existing dispute resolution framework

Westpac considers that an accessible, effective, timely and efficient system for dispute resolution is central to the trust and confidence of customers in the banking system. Customers must have adequate forums to have their complaint heard and appropriate avenues for appeal.

As an ACL and AFSL holder, we support the two elements of the current dispute resolution regime, as prescribed in the Australian Securities and Investments Commission's (**ASIC**) *Regulatory Guide 165: Internal and external dispute resolution (RG165)* and agree that both an effective internal dispute resolution (**IDR**) and external dispute resolution (**EDR**) mechanism is required.

In addition, we consider the current dispute resolution framework appropriately encompasses:

1. A strong regulator in the form of the Australian Securities and Investments Commission (ASIC); and
2. The Australian court system.

While the overarching architecture of dispute resolution is appropriate, Westpac considers there are opportunities for improvements to the way EDR currently operates. We also remain committed to ensuring our own IDR processes are operating at the highest standards.

a) **IDR**

A number of specific initiatives have been undertaken within Westpac to deliver improvements in our standards of practice, service to customers and the management of complaints.

Our existing IDR approach is underpinned by our Complaint Management Policy and our recently enhanced Consequence Management Framework. Our Complaint Management Policy is designed to ensure that all complaints received are dealt with genuinely, promptly, fairly and consistently.

All incidents with a compliance impact, whether identified via External Dispute Resolution (EDR), Internal Dispute Resolution (IDR) or any other identification source, follow the bank's incident management procedures.

Westpac considers that customer complaints are an important source of information to allow proactive opportunities for changes to be identified and effected. We endeavour to identify the cause of each customer complaint to improve the experience for all our customers. This focus on root cause identification and remediation has delivered a significant reduction in customer complaints (over 70% in the last four years). In the last three months (July – September 2016),

Westpac Group has received four times as many compliments as complaints.

In addition, as part of our commitment to the Australian Bankers' Association (ABA) Six Point Plan (announced on 21 April 2016), Westpac will establish an Independent Customer Advocate (Advocate). Westpac is currently finalising this appointment.

The Advocate will ensure retail and small business customers have an independent voice, complaints are appropriately escalated and the resolution of complaints is made easier. The Advocate will review and make binding decisions on Westpac about individual complaints where a customer is not satisfied with the resolution of their concern through IDR and has the authority to overturn decisions made by our IDR process.

In addition to the appointment of the Advocate, Westpac will continue to make customers aware they have access to External Dispute Resolution avenues if they are not satisfied with our internal processes, including the decision of the Advocate. In addition the customer has recourse to the Court system.

b) ASIC as a strong regulator

Westpac supported the Government's announcement in April 2016 that industry will contribute to the funding of ASIC. This funding will ensure ASIC continues to be appropriately resourced to investigate matters brought to their attention.

In addition, Westpac engaged in ASIC's consultation process on *Regulatory Guide 256: Client review and remediation conducted by advice licensees (RG256)*. Westpac is building the key principles of RG256 into our internal policies and procedures for the advice business, and the application of these principles is being extended to the wider Westpac business.

c) EDR

Our commitment to the current EDR regime under ASIC RG165 is further supported by clause 37 and 38 of the Code of Banking Practice.

As noted by the Issues Paper there are currently three key EDR bodies which handle complaints from the financial services sector:

1. the Financial Ombudsman Service (**FOS**);
2. the Credit and Investments Ombudsman (**CIO**); and
3. the Superannuation Complaints Tribunal (the **SCT**).

Westpac considers this Review provides an appropriate process to assess the suitability of current EDR arrangements and whether these can be improved upon by the proposals contained in the Issues Paper.

3. Westpac comments on the EDR Issues Paper

The Issues Paper contains alternative proposals for the operation of existing EDR schemes, including:

- a) The creation of a single entry point for complaints to all three EDR schemes (a triage centre/ concierge service);

- b) Establishing another forum or 'tribunal' in addition to the three existing schemes (including an appeal body); and
- c) Combining/ amalgamating some or all of the three existing EDR bodies e.g. the creation of a single EDR body.

Westpac offers the following high level comments on these proposals:

- Any improvements to the existing infrastructure of EDR should be tested against the following principles: independence, fairness, accessibility, accountability, efficiency, effectiveness, timely resolution of matters and simplicity (consumer understanding and awareness).
- It is appropriate that the Review consider the amalgamation of existing EDR schemes as an option.
- A proposed merger of FOS, CIO and SCT may create a streamlined process both administratively and ensure ease of access by customers through the creation of a 'one stop shop'. Westpac notes there is a natural overlap of issues considered by FOS and CIO, however the issues considered by the SCT differ considerably to credit and banking disputes. The inclusion of SCT in any proposed merger will therefore need to be considered carefully. It is essential that appropriate expertise and capabilities within EDR schemes are maintained i.e. that specialist teams are retained to deal with complaints within respective product segments e.g. banking, credit, superannuation, insurance etc.
- However, the existing framework should not be further complicated through the addition of another layer of dispute resolution (e.g. a tribunal) on top of the existing schemes. Westpac notes that determinations by the CIO and FOS are binding on the bank, however customers can appropriately appeal the decision. In addition, the Court system provides an important avenue for appeal for customers.
- Ensuring that customers understand the operation of IDR, EDR and their interaction with the existing legal and Court system is essential. The opportunities for customer confusion should be limited.
- Increasing the access of customers to EDR, where the Court process is not appropriate or affordable for customers, is an important consideration. Westpac supports an increase in the existing eligibility thresholds and monetary limits for FOS. Specific recommendations are outlined further below. Any increase to thresholds and eligibility will require an increase in funding and the capabilities of schemes (for example, to examine more complex business lending matters).
- Westpac considers the current level of regulatory oversight of the FOS and CIO is appropriate.
- Westpac notes that FOS has made extensive improvements, including communication processes, responsiveness and implementation of FOS Fast Track.

4. FOS Terms of Reference –Eligibility Threshold & Compensation Limits

Westpac supports the underlying principle that FOS should be accessible to retail and small business customers and deliver meaningful compensation where appropriate. We note that FOS is particularly important where customers do not have the resources to utilise the Court process.

Westpac supports an increase to FOS's existing eligibility thresholds and monetary limits (including compensation). However, Westpac does not consider the following changes proposed are appropriate:

- A prohibition of debt recovery proceedings in respect of credit facilities up to \$10 million while a dispute is being considered by FOS; and
- An increase of the monetary limit threshold for a Small Business Credit Facility (SBCF) dispute to \$10 million.

As noted above, any increase to eligibility thresholds and monetary limits will require an increase in funding and the capabilities of EDR schemes (for example, to examine more complex small business lending matters).

a) Small Business Credit Facility Disputes

i. Definition of Small Business

We note there are a number of definitions of "small business" that are currently utilised by the Government, regulators (including ASIC, the Australian Prudential Regulation Authority, the Reserve Bank of Australia) and other bodies (the Australian Taxation Office). These define a "small business" according to various attributes including employee numbers, annual turnover, and contract size.

Westpac characterises a small business on the basis of total credit exposure - as an entity or group of related entities with total credit exposure below \$3 million. However, Westpac also complies with its legislative and regulatory reporting obligations in accordance with the applicable definition of small business contained in the relevant legal or regulatory instrument. For example, the definition of a small business standard form contract for the purposes of extending unfair contract terms legislation to small business under the Australian Consumer Law. Accordingly, the definition of a 'small business' differs, even within Westpac, across these differing legal and regulatory obligations.

Westpac considers FOS's current definition of "small business" (insofar as it focuses solely on employee numbers) is problematic. For example, staff numbers of small businesses may fluctuate so a business could fall in and out of the definition during the relevant period. Westpac would support a more holistic approach to categorisation of small businesses, specifically the inclusion of metrics involving credit exposure and revenue, which are more determinative characteristics of a small business. This definition could be used consistently across Government, regulators and the industry.

Westpac proposes that a business be defined on an exclusionary basis i.e. if it is "too big" on the basis of key attributes being met. Westpac recommends the following definition in line with the Australian Bankers' Association submission:

A business is not a small business if one of the following conditions is met:

- The number of employees is 20 people or more, or 100 people or more if the business is or includes the manufacture of good (full-time equivalent); or
- Annual business turnover is \$5 million or more; or
- Size of loan for business purposes is \$3 million or more; or
- Total credit exposure of the business group, including related entities, to all credit providers is \$3 million or more.

This definition will ensure that larger businesses are appropriately excluded from the definition of small business. For example, we do not consider a large corporate borrower who employs all of its staff via a separate standalone services company, and yet has, potentially billions of dollars of assets should be regarded as a small business.

Westpac recommends the FOS TOR should be established in line with this definition i.e. to determine whether an applicant's credit dispute should be considered by the scheme in accordance with its TOR.

b) Proposed definition of 'small business credit facility'

We note that, while FOS proposes to define "Small Business Credit Facility", it has not included a proposed definition in the consultation paper. We also note there is no proposal in the Consultation Paper to amend the definition of "small business". Westpac therefore assumes the following definition of "small business credit facility" is being proposed:

- Small business limb: a business that, at the time of the act or omission by the FSP that gave rise to the dispute:
 - had less than 100 employees (if the business is or includes the manufacture of goods);
 - otherwise, had less than 20 employees.
- Credit facility limb: "Credit Facility" of a "Small Business" (noting that this is not currently defined by FOS nor is it defined in the National Credit Code (Schedule 1 of the National Consumer Credit Protection Act 2009) or the *Corporations Act 2001*).

In line with the comments above, Westpac does not consider the current FOS definition of 'small business' (based solely on an employee metric) is appropriate.

In addition, Westpac does not support replacing "credit contract" (which aligns with the definition in the National Credit Code with "credit facility" in paragraph 5.1c of the TOR (Proposal 2.1 of the Consultation Paper). The Consultation Paper does not explain the basis of the proposed change nor provide a definition for "credit facility" (Proposal 2.1). Westpac supports the ABA's request for further clarification of the reason for the proposed change.

If "credit contract" is replaced with "credit facility", this term will require definition – either within the TOR or by reference to statute or instrument. We note that "credit facility" is:

- not currently defined in the National Credit Code (however, does contain a definition of "consumer credit product" which includes any form of facility for the provision of credit); and
- is described by a non-exhaustive list of financial products and service under the Corporations Regulations 2001 (Cth).

In addition, it is unclear why FOS is unable to deal with situations of financial hardship under both regulated and unregulated credit contracts, or why the existing TOR requires change.

The redrafting of TOR 9.1b may have significant impact and Westpac supports the ABA's request for further clarification of proposal 2.1 to better determine the potential impact of the proposal.

c) Monetary Limits

Westpac recommends the following monetary limits are increased for a SBCF dispute:

- Increase jurisdiction claim limits from \$500,000 to \$2 million (for direct financial loss);
- Compensation caps for claims from \$309,000 per claim to \$2 million; and

- Credit facility limit for a debt related SBCF dispute (in line with the proposed definition of small definition above) i.e. \$3 million loan facility or \$3 million total credit exposure (increased from current cap of \$2 million).

5. Statutory Compensation Scheme of Last Resort

We are committed to ensuring that customers are protected and treated fairly across the financial services industry. Westpac notes that insolvency of members of FOS has resulted in a significant amount of money still owed by to victims from awards issued.

Westpac therefore supports the establishment of a Last Resort Compensation Scheme for certain uncompensated losses. We consider such a scheme will improve customer confidence in financial services, enhance the existing consumer protection framework and ensure clients have access to remediation and compensation.

The design of such a scheme needs to be carefully considered to avoid any unintended consequences. For example, the objective should be to effectively cover fraudulent or materially poor behaviour, not be a substitute for lack of (or inadequate) Professional Indemnity insurance. We also expect that licensees will be required to be adequately capitalised, based on their relative risk.

Westpac supports the design principles contained in the ABA submission, including:

- Limited liability scheme – capped compensation should be paid where Professional Indemnity (PI) insurance is insufficient to meet claims;
- Priority of claims – the scheme should be a 'last resort' arrangement;
- Industry-wide and mandatory as a condition of an AFS license; and
- Prospective.

Westpac appreciates the opportunity to participate in this Review and would welcome the opportunity to discuss these issues and our recommendations further. Should you require any further information or to respond to this submission, please contact Jade Clarke on (02) 8253 8492 or by email at jadecclarke@westpac.com.au.