HOUSE OF REPRESENTATIVES

COMMITTEES

Corporations and Financial Services Committee

Report

SPEECH

Thursday, 5 May 2016

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES
Mr VAN MANEN (Forde) (09:53): On behalf of the Parliamentary Joint Committee on Corporations and Financial Services I present the following reports: Impairment of customer loans and the report on the 2014-15 annual reports of bodies established under the ASIC Act.

Reports made parliamentary papers in accordance with standing order 39(e).

Mr VAN MANEN: by leave—The first report that I wish to speak to is the Impairment of customer loans. The terms of reference for this inquiry into the impairment of customer loans required the committee to consider the practices of banks towards borrowers' financial difficulty and the role of constructive or non-monetary defaults which include breaches of loan contract terms other than borrowers not meeting repayment requirements.

The committee is aware that the matters raised in this inquiry have been examined previously, and, despite previous examination, allegations continue to be raised. In order to ensure that the issues raised during the inquiry were thoroughly examined, the committee has:

conducted this inquiry over 11 months;
received and published 195 submissions;
considered more than 11,000 thousand pages of evidence;
held eight public hearings leading to more than 450 pages of transcribed evidence;
asked and received answers to over 300 written questions;

examined a number of cases in some detail to gain an understanding of the practices of banks.

The majority of the evidence received by the committee addressed small business and commercial loans. Many are small family businesses who may still have to borrow millions of dollars to achieve their commercial objectives yet be run by an individual, family or partnership that has significant personal exposure due to the use of personal assets such as the family home as security.

From the evidence it has received, the committee has been able to determine that there has been—albeit in a minority of cases—a persistent pattern of abuse of the almost complete asymmetry of power in the relationship between lender and borrower.

The committee has not been able to discover evidence that demonstrates that there was widespread or systematic illegal behaviour by banks or that there were deliberate impairments of loans motivated solely by clawbacks or warranties associated with acquisitions of banks. However, the committee does consider that there are four factors that create an environment in which small business borrowers are very vulnerable and that banks are able to exploit this vulnerability. These factors are:

the significant level of discretion and commercial judgement available to the banks for both initial lending and the management of loans in financial difficulty;

complex, non-negotiable loan contracts, coupled with gaps in existing legislation and regulations, give banks the power to behave in ways that—in relation to loans—are unethical, unreasonable and lack transparency;

in many cases, borrowers in financial difficulty are unable to pursue their rights though the courts because the process in either unaffordable, or they have lost control of their financial assets due to the appointment of receivers; and
there are significant gaps in the coverage of mediation and external dispute resolution schemes leaving borrowers without the means to have their disputes with banks tested.

The committee considers that to address the vulnerability of small business and commercial borrowers it is essential that a single body be empowered to:

lead and/or coordinate the implementation of the outcomes of this inquiry and recent government announcements that relate to small business in order to avoid the significant risk that major gaps and flaws in the protections for small business would remain;

bring together a team with expertise in financial services, ethics and education to establish standards for the conduct of bank management and their employees in relation to small business loans and to work with the banking industry to implement those standards and appropriate mediation and dispute resolution schemes;

work with the banking industry to develop nationally consistent standardised loan contracts; and

where gaps in the implementation of those standards and appropriate dispute resolution schemes remain, to act as a small business loans dispute resolution tribunal.

The committee considers that the most appropriate body to undertake this role is the Australian Small Business and Family Enterprise Ombudsman. The committee therefore recommends that the government bring forward legislation and other measures to give the Australian Small Business and Family Enterprise Ombudsman the relevant powers to carry out this role, and to do so retrospectively where appropriate.

The committee has made a number of other recommendations in relation to practices of banks, valuers and receivers.

I commend the report to the House.