



Australian Government

Australian Government response to the
Senate Committee on Legal and Constitutional Affairs
report:

Resolution of disputes with financial service providers
within the justice system

May 2024



Response to the recommendations

Recommendation 1

The committee recommends that the Australian Government establish an industry levy, to apply to the largest financial institutions on the ASX, that would raise funds for the legal assistance and financial counselling sectors to enable these sectors to provide assistance to consumers and small businesses that have disputes with financial service providers.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 2

The committee recommends that the Australian Government improve access to legal assistance services for small businesses.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 3

The committee recommends that the Australian Government require Australian Credit Licence holders to comply with model litigant obligations throughout the internal and external dispute resolution processes, as well as any proceedings in the courts.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 4

The committee recommends that the Australian Government immediately implement recommendation 4.11 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 5

The committee recommends that the Australian Government amend the Bankruptcy Act 1966 to prevent causes of action relating to consumer credit protections from vesting in the trustee in bankruptcy.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 6

The committee recommends that the Australian Government improve home repossession processes by requiring that creditors engage with customers at an earlier stage. This could involve:

- (a) establishing a new mediation section at the Australian Financial Complaints Authority (AFCA) to conduct farm debt mediations, and a new bank-initiated mediation stream for consumer and small business loans;
- (b) requiring banks to initiate a mediation through this new AFCA process before bringing repossession proceedings against a family home; and
- (c) requiring banks to give preference and due consideration to reasonable proposals put forward by customers to restructure debts, pay down parts of debts and/or trade out of temporary financial difficulty when a customer is in financial difficulty and a loan secured by or guaranteed by a family home is in default.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 7

The committee recommends that the Australian Government:

- increase the current compensation cap available to consumers through the Australian Financial Complaints Authority (AFCA) to \$2 million, including for credit, insurance and financial advice disputes; and
- remove the sub-limit on compensation available to consumers through AFCA for indirect financial loss and for non-financial loss.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 8

The committee recommends that the Australian Government extend the membership of the Australian Financial Complaints Authority to:

- debt management firms;
- registered Debt Agreement Administrators;
- 'buy now pay later' providers;
- FinTechs and emerging players;
- small business lenders; and
- professional indemnity insurers of financial service providers..

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 9

The committee recommends that the Australian Government consider extending the loan facility limits for small businesses and farmers who wish to make a claim through the Australian Financial Complaints Authority (AFCA), in consultation with AFCA and other relevant stakeholders.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 10

The committee recommends the establishment of a retrospective compensation scheme independent of the Australian Financial Complaints Authority to allow victims of alleged misconduct by banks who received a past external dispute resolution determination or court judgment that was manifestly unjust to apply to the scheme to have the matter reviewed with the consent of the bank.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.
