FSU AUSTRALIA

10 February 2017

Committee Secretary
Parliamentary Joint Committee On
Corporations And Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Secretary

The Finance Sector Union thanks the Committee for the opportunity to make a submission to your inquiry into Inquiry into Whistleblower Protections.

The union has developed its submission based on its extensive experience with employers across the country and direct feedback from members who work in banks, insurance companies, credit unions and superannuation funds across Australia.

The structure of the union's submission is:

1. Introduction
2. Response to specific terms of reference
3. General comments in respect to whistleblower protections
4. Conclusion

The FSU looks forward to discussing these issues with you. Should you require any further information please contact National Secretary Julia Angrisano, or

Yours sincerely

Julia Angrisano
National Secretary

FSU AUSTRALIA

Submission:

Finance Sector Union of Australia

Submission to the

Parliamentary Joint Committee on

Corporations and Financial Services

Whistleblower Protections

FINANCE SECTOR UNION

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1. Introduction

The FSU represents workers who are employed in banks, insurance companies, credit unions and superannuation funds across Australia. These workers are on the front line dealing with the needs of customers every day, in the course of their duties FSU members are often in a position to observe unethical behaviour or corporate misconduct, in addition members have reported to the union that there have been occasions when they have been directed to undertake unethical behaviours.

If you were to listen to the rhetoric of finance sector employers you would hear consistently that they not only value direct feedback from their employees but also actively encourage a version of 'stand up speak up' whenever they observe any behaviour that does not conform to the organisation's ethics and codes of behaviour.

FSU members consistently report that there is a growing gap between their employer's rhetoric, regarding reporting unethical behaviour, and what actually happens when an employee does report unethical behaviour.

The FSU's position is that the existing whistleblower protection laws do not provide sufficient legal protection for a finance sector employees to risk their employment to raise examples of unethical behaviour or corporate misconduct with either internal or external parties.

The union believes that the need for stronger whistleblower protection laws, as they relate to the finance sector, is heightened by the growing number of scandals within the industry and the potential for harm (to both customers and the broader economy) that can occur when unethical behaviours and/or corporate misconduct occurs within the finance industry.

2. Response to Terms of Reference

b) The types of wrongdoing to which a comprehensive whistleblower protection regime for the corporate, public and not-for-profit sectors should apply;

The FSU believes that the laws governing whistle blowing within the finance sector should cover at least the following:

- Any activity that breaches Australian law
- Any activity that breaches an internal code of practice and/or code of behaviour
- Any activity that breaches an accepted industry wide code, for example the Code of Banking Practice
- Management and/or remuneration systems that are designed to drive behaviours that bring a significant risk of disadvantage or exploitation of customers
- Management behaviours that encourage, force or reward behaviours that ignore a customer's best interest in order to secure the sale of a product or service

The reason that the laws need to cover behaviours and work systems is that many of the behaviours that would be considered unethical do not currently breach Australian laws.

d) Compensation arrangements in whistleblower legislation across different jurisdictions, including the bounty systems used in the United States of America;

There should be compensation available for employees who use whistleblower protection to expose unethical behaviours and/or corporate misconduct and that compensation should be paid by the employer. This would act as a significant trigger to improve corporate compliance with their own well written but poorly implemented whistleblower policies.

The following should be taken into account when determining the appropriate amount of compensation:

- Where an employee loses their employment, the compensation should at least equate to the employee's annual salary
- Where the employee can demonstrate a financial disadvantage as a result of acting as a whistleblower, the compensation should at least recompense the employee's loss
- The calculation of loss should include future potential earnings

The compensation scheme should be independently administered and claims should be able to be made and processed without resorting to legalistic procedures.

The union has received feedback from members that a bounty system may encourage employees to act as a whistleblower, as such the union would support further debate regarding the introduction of a bounty system as a part of Australian whistleblower laws.

e) *Measures needed to ensure effective access to justice, including legal services, for persons who make or may make disclosures and require access to protection as a whistleblower;*

A person accessing whistleblower protection should be entitled to free legal advice and support. The government should recover the cost of this support directly from the relevant corporation where validated whistleblowing has occurred.

f) The definition of detrimental action and reprisal, and the interaction between and, if necessary, separation of criminal and civil liability;

Public trust and confidence in the Australian finance sector is essential to the efficient running of the economy. Strong whistleblower laws are essential to rebuilding trust and confidence after a long series of crises and scandals in the sector.

Any institutional action by a finance sector employer or a finance sector employer's representative that seeks to disadvantage an employee who has accessed whistleblower protection and/or limit the ability of an employee to access whistleblower protections should be assessed in the context of the institution's eligibility to retain a financial services license.

During the union's consultation process members detailed examples where employees were warned by middle management not to report unethical behaviour as well as being subjected to micro-management and onerous procedures after reporting suspected unlawful activity by a well-liked high performing co worker.

Where an employee and/or manager commits an action that seeks to disadvantage another employee who has accessed whistleblower protection and/or limit the ability of an employee to access whistleblower protections – that action should count as a strike against their employer and when an employer has 3 or more strikes within a calendar year that it should be considered as an institutional failure.

g) The obligations on corporate, not-for-profit and public sector organisations to prepare, publish and apply procedures to support and protect persons who make or may make disclosures, and their liability if they fail to do so or fail to ensure the procedures are followed;

All employers in the Australian finance sector have whistleblower policies that articulate the process that an employee can use to raise an example of unethical behaviour or corporate misconduct, despite this the number of examples of Australian finance sector workers accessing these policies is low.

When asked the reasons for not accessing these policies, finance workers tell the union the following:

- "It is made very clear that you should not rock the boat by calling out bad behaviours."
- "The system rewards the people who do what they are told."
- "To whom do I report the fact that my pay system rewards me for selling a customer an insurance policy that is worse than their current policy?"

The internal systems and policies within the finance industry are not sufficient to encourage an employee to come forward as a whistleblower or protect an employee who activates whistleblower protections.

h) The obligations on independent regulatory and law enforcement agencies to ensure the proper protection of whistleblowers and investigation of whistleblower disclosures;

The FSU is concerned that current whistleblower management systems are too reliant upon the whistleblower to report adverse activities by their employer.

Given that adverse activities against a whistleblower can be subtle, the union believes that once an employee accesses whistleblower protections the relevant agency (whether internal or external) should be proactive in ensuring that the individual is not disadvantaged, and where the agency is an internal one that they should be held accountable where the individual is disadvantaged.

i) The circumstances in which public interest disclosures to third parties or the media should attract protection;

The FSU supports the proposition that employees should be able to make disclosures to third parties and the media.

This protection is particularly important for finance employees in Australia as they are required to sign and adhere to various statements and policies that specifically restrict their ability to discuss aspects of their employment, internal policies, customer interactions, copy and distribute internal documents or say anything that could be construed as negative in relation to their employer.

j) Any other matters relating to the enhancement of protections and the type and availability of remedies for whistleblowers in the corporate, not-for-profit and public sectors;

3. General Comments In Respect To Whistleblower Protections

Whistleblower advocate
The FSU supports an amendment that would establish a role for ASIC or another body to protect the interests of and generally act as an 'advocate' for whistleblowers.

An independent advocate for whistleblowers may address the feedback from FSU members (who have accessed whistleblower protections) that they were never provided with information regarding the investigation into the claims that they made, including the conclusion reached by the investigation.

Expand the definition of whistleblower
The FSU supports expanding the definition of a whistleblower to include ex employees. Such a change would remove the financial disincentives that many employees state stopped them from speaking up.

Good faith requirement
The FSU does not support the removal of the good faith requirement.

Anonymous disclosures
The FSU does not support expanding whistleblower protections to anonymous disclosures as we are of the view that a strengthening of whistleblower protections will help build trust and confidence in the whistleblower system. However, we note that it is often the case that the lack of effective guarantees to whistleblowers leaves them with a lack of confidence in the reporting process or a real fear of retaliation and therefore an employee should be able to start the process anonymously until proper effect is given to comprehensive protections.

4. Conclusion

The last decade has seen the Australian finance industry introduce remuneration and work systems that seek to exploit every customer interaction as a sales opportunity and reward employees who achieve their 'stretch targets' within a volume based sales remuneration systems that ignore the genuine financial needs of the customer.

It is not a coincidence that the number of scandals involving poor advice and customer exploitation has increased as remuneration and management systems designed to exploit customer interaction have become more prevalent.

In order for FSU members to report the unethical behaviours that they observe each week the whistleblowing laws must provide greater protections and compensation.

For further information, please contact

Yours faithfully

Julia Angrisano
National Secretary
Finance Sector Union of Australia

Attachment A

FSU Member Whistleblower

Case Study

The following case study was provided to the FSU during the union's consultations with members regarding whistleblower protections.

The union has removed the name of the member (at their request).

I worked as a manager in the National Australia Bank Financial Planning Division. My role was to manage four teams (20 staff) of financial planners across NSW. This was my first role that required me to manage people; I came from Wealth Distribution where I acted as a practice manager for self employed advisers. I was both excited and nervous as I took on the role.

I faced many challenges as I got to know the people that reported to me as well as the other managers, and notwithstanding some difficulties I worked hard to develop good relationships with both my colleagues and my direct reports.

Both the planners that reported to me and I understood that there were high expectations regarding the amount of business that we were to generate. We also understood that our ongoing employment would be determined by our results.

The first time that I noted that normal bank processes were not being followed in my area related to the review of client files. As the manager of the four teams it was my role to review client files to ensure compliance with bank policies. The process of selecting the files was meant to involve me selecting the files for review.

I had been trained to use a combination of my assessment of the financial planner's work, ensuring the reviews covered all employees and random selections when determining which files I should review.

As I began the process of identifying the files for review, the Senior Financial Planner informed me that he would be selecting the files that I would be reviewing. Whilst I didn't agree with his decision I decided not to rock the boat.

Over the next 6 to 8 months, as I became more experienced, I was able to select a number of files for review. Whilst reviewing these files I found a number of discrepancies and major compliance issues.

I raised these issues immediately with my people leader and also the Head of Risk.

Based on my report further file reviews occurred (I was involved in these reviews) with the intention of determining whether there was a systemic problem.

During these reviews I noticed a document (which had been signed by me) had been photocopied numerous times and used in separate client interactions. This gave me cause for concern because I had not signed each of these forms in relation to the separate client outcomes; rather the form had been photocopied (with my signature) and used multiple times without my knowledge.

I informed my people leader, senior legal counsel and senior human resource officer that I found these signed documents.

At this time I was also being contacted by customers complaining about their financial planner and in some cases these customers had suffered a financial loss.

During the investigation I discovered that the form with my signature (that had been photocopied and used multiple times) was a blank form that I had signed for a planner. I realised then that I had made a mistake and that I should never have signed a blank form for a planner.

In my discussions with the bank I acknowledged my mistake and accepted the reprimand that was issued by the bank in relation to my actions.

Despite the bank having examples of a planner using the form on multiple occasions and receiving feedback from customers regarding the planner's behaviour the bank took no action against that planner.

That meant that the outcome of the investigation was to issue me with a reprimand for self reporting a mistake but to ignore the actions of the planner who used the form on multiple occasions in transactions with clients.

I found this outcome to be in breach of the bank's policies and its fiduciary obligations to customers and I stated this position to the bank.

Following the outcome of the investigation I then found myself the target of a campaign to convince me to 'let the matter go' and move on. I attended meetings with senior bank personnel, including the State Manager, where it was made very clear to me that my career was in jeopardy if I continued to pursue the matter of the planner's conduct.

Despite continuing to raise the issue with senior manager and the bank's legal counsel the planner's behaviour was neither investigated nor sanctioned.

In the end the pressure became too much and I left the NAB for a similar position with another major bank.

My experience demonstrated to me that an institution can have all of the right policies in place but if the people in charge are not willing to listen and act on information received then those policies are meaningless.

I would have raised my issues with a third party if I knew that my career would not have been in jeopardy or that I could have been compensated if I have of lost my job.

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