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Inquiry into the National Consumer Credit Protection Bill 2009 and related bills

The Finance Sector Union of Australia (FSU) welcomes the opportunity to contribute to the inquiry into the Credit Bills. The FSU strongly supports the transfer of credit regulation to the Commonwealth and the responsible lending provisions that have been developed; however we have strong reservations about the removal of certain provisions relating to licensees that are credit providers under credit contracts.

The FSU represents 50,000 members employed in the finance sector across Australia. Our members deal with the day to day operation of financial services and have an active interest in promoting a professional, efficient, sustainable and fair marketplace for financial products.

Our submission focuses on two broad areas relevant to finance sector staff – responsible lending and training.

Responsible lending, sales targets and commissions

We welcome the inclusion of provisions to mandate responsible lending into the regulation of credit – the FSU has long argued for such measures¹ and notes that the Bill includes a number of measures recommended in the FSU *Charter of Responsible Lending* that was launched in October 2008.²

The FSU developed the *Charter* in response to the fact that a large amount of activity in the finance sector marketplace is primarily based on short term competition for growth or market share rather than sustainable and responsible practices. This type of activity is often expressed as sales targets for finance sector staff and applies to a wide range of financial services, particularly the sale of credit and the increase of credit card limits. The culture of sales targets is, by definition, designed to maximise sales which (even inadvertently) leads to a higher risk of inappropriate sales occurring. When staff are constantly under pressure to achieve sales it will inevitably lead to some consumers being sold products that they may not be capable of repaying or may not even need.

¹ FSU submission to *Inquiry into competition in the banking and non-banking sectors*, House of Representatives Standing Committee on Economics, 2008; FSU submission to the *Green Paper on Financial Services and Credit Reform*, 2008; *Inquiry into Home Loan Lending Practices and Processes*, House of Representatives Standing Committee on Economics, Finance and Public Administration, 2007.

²http://www.fsunion.org.au/Upload/Policies%20and%20Submissions/FSU_Charter_of_Responsible_lending_Final.pdf

Sales targets carry the implicit message that ever increasing sales are good and desirable – the FSU does not share this view and believe it is detrimental to consumers, finance sector staff and the provision of good customer service.

The principle and practice of disclosure is widely accepted in the finance sector. Sales targets may not have the same direct link between the individual sale and the specific financial incentive that exists in other areas; however the fundamental issue is that sales targets do create a link which should be made transparent to the consumer.

In the draft Bill that was released for consultation by Treasury on 27 April the FSU welcomed the broad definition of ‘commission’ that was adopted in relation to information that must be disclosed to the consumer. The relevant provisions³ in the draft Bill suggested that if a finance sector employee was selling credit products solely for their employer and was subject to sales targets then that would need to be disclosed to the consumer.

Unfortunately the current Bill (as tabled in Parliament) does not appear to have the same effect. The relevant part⁴ prescribes the responsible lending requirements around suitability of the contract and the consumer’s capacity to pay; however there is **no** requirement for the credit guide to disclose any commissions or incentives such as sales targets for employees.

The FSU does not understand why the requirement has been removed and considers it a backwards step. The purpose of disclosures in the context of credit sales is to make explicit to the consumer significant factors that have the ability to influence the nature and size of the credit contract being proposed. There is no doubt that sales targets influence the behaviour of finance sector employees in relation to selling credit products and should therefore be disclosed to the consumer. For many finance sector employees basic wage increases are tied to sales targets – consequently staff are effectively compelled to try and make sales at every opportunity.

The inclusion of provisions in the Bill to ensure that products are not unsuitable for a consumer is consistent with the principles advocated by the FSU *Charter* and reflects the important nature of credit products in society. If the new regulatory regime ensures that credit products can only be sold in appropriate circumstances then ultimately this should reduce the overall number of credit products being sold. This should be seen as a positive consequence of the new regime.

The responsible lending provisions will ultimately require finance sector staff to not make sales in certain circumstances. The FSU believes this is entirely consistent with the provision of professional customer service and sincerely hopes that companies will begin to recognise this in their remuneration arrangements. The culture of sales targets simply reward sales; in contrast the FSU advocates reward structures that reflect professional service and responsible behaviour.

³ R130(2(e)), R180(2) and R280 – numbering taken from the Draft Bill.

⁴ **Part 3-2** — *Licensees that are credit providers under credit contracts*

A recent survey of FSU members, predominantly in the established banking sector, found that:

- 59 per cent felt pressured to make inappropriate sales to meet sales targets.
- 52 per cent of workers felt obliged to try and sell debt products even when a customer didn't need them; and
- 63 per cent felt that inappropriate sales targets are having a negative impact on their ability to provide responsible customer service.

Financial products should be sold on the basis of suitability and sustainability for all those involved in the transaction – this can only be achieved through transparency and incentives that meet consumer requirements and recognize employee needs.

The FSU believes that the Bill can be a large step in the right direction to address the inappropriate sale of credit products. The disclosure of sales targets to consumers is critical to begin to address the issue of transparency. If inappropriate credit sales are banned and sales targets are not disclosed (but still used as the only way to gain pay rises) then inappropriate influences will continue to be exerted in the sales environment. We strongly advocate that the Bill be amended to include commission disclosure in relation to licensees that are credit providers under credit contracts.

Recommendation: That section 126(2) be amended to include a requirement for the credit guide to disclose any commissions, bonuses or sales targets that may apply to finance sector employees for selling a credit product. A provision similar to that contained in section 113(2)g should be inserted.

Training

The FSU believes that the training of representatives is a critical component of the legislation, although it is not discussed in detail in the proposed Bill.

The FSU believes it is important there are consistent minimum standards for training compliance across the industry. Staff employed by holders of an Australian Credit License should receive quality training that enables them to meet the responsible lending requirements proposed by the Bill.

The FSU believes that ASIC needs to do more than just provide guidance on what it considers are the relevant competency standards. As well as doing this, ASIC should also play a strong role in ensuring that the implementation of compliance training actually results in staff being able to comply with what is required of them. ASIC should also have a role in assessing whether the training being provided to representatives is of an appropriate standard.

Currently ASIC is responsible for RG146 which outlines compliance training requirements for people providing financial advice under the *Financial Services Reform Act 2001*. ASIC's lack of involvement in the implementation and assessment of the required training has resulted in enormous diversity in its application throughout the industry. For many finance employees providing financial advice, their RG146 compliance training has been of a very poor standard, leading to questions as to whether it achieves the intent of the legislation.

The FSU would strongly recommend that the competency standards and training requirements for representatives are aligned with and embedded in the Australian Qualifications Framework and the Financial Services Training Package. This would embed the training into a well established, independent, government and industry supported system that already provides consistency in how skills are recognised and

assessed in the finance industry. This will help to ensure that a standard, broadly understood and transparent quality of training is provided. This would benefit both the individuals undertaking the training as well as the licensees. It would also make it more likely that the intent of the Bill is achieved.

The FSU also recommends that the Bill clearly identifies the responsibilities of licensees compared to the responsibilities of representatives and that the responsibility for training representatives is clearly identified as the responsibility of the licensee.

The potential exists for the costs of the training to be transferred to employees, through licensees not meeting the actual costs of training, not providing training in work time or not covering costs associated with assessment of current competency. The potential also exists for understaffing and excessive workloads to interfere with the provision of training. This is already a significant issue in the sector.

It is important to ensure that the costs of compliance are not borne by individual employees. Similarly, it is important that representatives are not penalised because they have received poor compliance training.

It is critical that the burden of compliance training is not inappropriately placed on representatives. For example, the competencies required by ASIC may already be held by representatives. In such a situation, the representatives should have the option of applying for Recognition of Prior Learning rather than having to complete a training course that is designed for those that don't already hold these competencies. This situation could be prevented if ASIC ensures that its relevant competency standards are aligned with the Financial Services Training Package which has Recognition of Prior Learning built into it.

Alignment with the Financial Services Training Package will also make the training more valuable for representatives who will be able to use this training as a stepping stone to a nationally recognised qualification. If training is not aligned to the training package, it will not lead to a nationally recognised qualification and will therefore be of less value to the representative and to the broader finance industry.

ASIC should be required to provide clear information to representatives about what is and what is not required of them under the Bill. Representatives should not have to rely solely on the licensee for this information.

It is likely that some of the smaller operators in the industry will struggle to meet the compliance training requirements placed on them. Where possible, it would be valuable if these types of organisations could access Government training grants that would help them to provide quality training for their representatives.

If you have any questions in relation to this submission please contact Rod Masson, National Communication and Policy Manager, on (03) 9261 5330 or James Bennett, Senior Policy and Research Officer on (03) 9261 5405.

Yours sincerely



Leon Carter
National Secretary
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