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Exposure Draft: National Consumer Credit Regime

The Finance Sector Union of Australia (FSU) welcomes the opportunity to comment on the draft National Consumer Credit Protection Bill (the Bill).

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.

The FSU strongly supports the transfer of regulatory responsibility to the Commonwealth and the general principles behind the Bill.

We note that the Bill and the explanatory materials run to well over 600 pages, consequently our comments and recommendations are based on our understanding of the proposed framework and the general principles expressed in the materials. We have not attempted to analyse the legal complexities involved in the operation of the Bill.

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

Responsible lending, sales targets and commissions

We welcome the inclusion of provisions to mandate responsible lending in the Bill – the FSU has long argued for such measures¹ and notes that the Bill appears to include a number of measures recommended in the FSU *Charter of Responsible Lending* that was launched in October 2008.² We welcome the requirement for all credit providers to be a member of an external disputes resolution scheme and encourage the Government to ban unsolicited pre-approved credit offers during phase 2 of the credit reform program.

The FSU also advocates that financial institutions should offer an ‘opt-out’ mechanism for consumers, similar to the ‘do not call register’. This would allow customers to indicate that they do not wish to receive unsolicited offers of products either when dealing directly or indirectly with their financial institution. This would ensure that consumers who are not interested in additional products do not feel

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

pressured by constant unwanted offers and ensure that finance sector employees do not have to persistently make such offers.

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.

We accept that a major aim of any business is to make profits, however the sale of major credit products has ethical dimensions as well as wider implications for society, especially where inappropriate lending practices become widespread. Institutions that engage in riskier home lending practices may lose a percentage of profits when things go wrong, however they will usually have some form of security or mortgage insurance to minimise these losses. In contrast, the potential impact on consumers may be devastating and have wide ranging effects such as increased demand for welfare services, lower work productivity due to stress and absenteeism, and greater reliance on support networks to survive. The majority of the negative impacts when things go wrong are primarily absorbed by the consumer and society – not the institution engaging in the practice.

Purchasing any financial product is a serious matter, especially a home loan which is usually the biggest financial commitment a person will make in their lifetime. The Bill represents a significant move towards a financial regulatory system that should ensure that the majority of loans are appropriate and do not result in people becoming overly financially committed.

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 FSU believes that the trend towards linking all pay increases to sales targets is disturbing and calls for it to cease. As part of a raft of measures, we believe that there should be some form of disclosure that informs the consumer there is a financial incentive for the employee to sell them a product.

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.

We welcome the broad definition of ‘commission’ that has been adopted in relation to information that must be disclosed to the consumer. Our reading of the various provisions³ suggest that if a finance sector employee is subject to sales targets then this would need to be disclosed to the consumer. If this is not the case then we strongly recommend that it should be amended to ensure it does.

Section 3.113 of the commentary on the Bill notes that the purpose of commission disclosure is to “make explicit to the consumer significant factors that have the ability

³ R130(2(e)), R180(2)

to influence the contract an employee, director or credit agent enters a consumer into”. 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.

The FSU also strongly believes that sales targets for finance industry staff should only be linked to remuneration if a living wage and across the board, guaranteed minimum salary increases are already in place. We understand and accept that the Bill does not deal with issues related to industrial relations or base salary; however sales targets have far more potential to be detrimental to consumers if they must be achieved for finance sector staff to maintain a living wage. If basic wage increases are tied to sales targets then staff are effectively compelled to try and make sales at every opportunity. If basic wage increases are secure for finance sector staff then the potential detrimental effect of sales targets through inappropriate sales will be less.

The inclusion of provisions⁴ 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 of the Bill 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 – the FSU advocates reward structures that reflect professional service and responsible behaviour.

Unfortunately the culture of sales targets is often coupled with systemic psychological bullying of staff by management to meet these targets. In these situations staff who do not meet their targets will not simply experience a financial loss but may also suffer heightened job insecurity. These factors encourage and even coerce staff to sell products to meet their own job and financial security needs rather than those of the consumer.

A 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 will begin to address the issue of transparency; however if inappropriate credit sales are

⁴ R165; R190; R265; R290.

banned and sales targets are still used as the only way to gain pay rises then inappropriate influences will continue to be exerted in the sales environment.

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 our National Communication and Policy Manager, Rod Masson, on (03) 9261 5330.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L Carter', with a stylized flourish at the end.

Leon Carter
National Secretary
25 May2009