

20 May 2011

Mr. Stephen Boyd
Secretary
House Standing Committee on Economics
House of Representatives,
PO Box 6021,
Parliament House, Canberra ACT 2600

By email to: Stephen.Boyd@aph.gov.au

FSU Submission to the House Standing Committee on Economics - Inquiry into the National Consumer Credit Protection Amendment (Home Loans and Credit cards) Bill 2011.

Introduction

The Finance Sector Union appreciates the opportunity to provide this brief submission to the Committee on the aforementioned Bill. We will of course be pleased to expand on any aspect of this submission and any other matters relevant to the Committee at our public hearing appearance next week.

The Finance Sector Union (FSU) is the relevant and registered trade union representing the more than 400,000 Australians employed in the finance sector. We have a long history of advocacy for our industry and in particular, for reforms that we believe will strengthen the industry and provide better outcomes for employees and consumers.

We have previously provided views on the issues contained in this Bill as part of the stakeholder consultation process. FSU industry public policy positions can be found at www.fsunion.org.au

Currently, we are pleased to be participants in the Government's consultative processes in forums considering reforms to our industry including Consumer Credit Reform and the Future of Financial Advice.

The Bill

The FSU is of the view that the clear intention and purpose of the Bill is to improve the application of responsible lending in the area of credit through a stronger regulatory framework. This is consistent with outcomes the FSU has been advocating for over a long period of time through our industry policy positions.

The Bill however does highlight in our view a significant industrial issue that contradicts the Bill's intention and purposes and that is the conflicted remuneration systems that operate in the banking industry.

Conflicted remuneration systems are the internal business practices that drive the behaviours which offend the notion of responsible lending. They are predicated on increased take home pay outcomes

for employees subject to meeting sales targets of debt products. These sales targets are unilaterally set by the employer.

The FSU can assure the Committee that the often reported generosity afforded to senior bank executives in terms of base rates of pay, not to mention bonuses, do not flow throughout the workforce.

Unintended Consequences – Liability for Penalties and Sanctions

The purpose of the examination of the Bill by this Committee is to identify any unintended consequences that may occur through the Bill.

The FSU's principal concern which, subject to how it is dealt with, does give rise to further consequences which are of an industrial relations nature. The main issue centres on *to whom is the liability intended in relation to the proposed criminal sanctions and penalties contained in the Bill - Part 3-2B, Division 3, Sections 133BC and 133 BD?*

Industry representatives have approached the FSU suggesting that the proposed criminal sanctions and penalties would extend to both licensees and the individual employees whose actions trigger a breach. Industry has suggested to the FSU that the liability for the sanctions and penalties for employee's would exceed the liabilities contained in other existing and relevant instruments such as the Corporations Act.

In other words, industry representatives suggested to the FSU that the Bill contained new penalties, sanctions and liabilities for employee's that had never before been seen in the industry.

The FSU has raised this matter with Treasury and we have been engaged in an ongoing dialogue with them.

We await official Treasury advice as they seek legal opinion on certain language in the Bill. However, our conversations with Treasury have given the FSU some comfort that to the extent the Bill does contain new penalties and sanctions, it would seem that they were designed in line with existing licensee and employee obligations contained in earlier mentioned instruments.

The FSU supports the liability for legislative compliance resting with the licensee.

The FSU will of course reserve their final position until our interactions with Treasury conclude on this aspect of the Bill.

Conflicted Remuneration in Banks

As previously stated, employers use their performance management systems to drive a culture of debt selling thereby creating and encouraging an environment of conflicted remuneration which ultimately must offend the concept of responsible lending.

The FSU respectfully submits that no employer could reasonably suggest that they can maintain an environment where employees are rewarded on the basis of how much debt they sell whilst at the same time, ensure that debt is sold responsibly. At a pinch, it may be possible when all affected

employees are on significant levels of fixed pay, but that simply does not exist in Australia and is therefore nothing more than a hypothetical scenario.

At the coalface, the reality for employees when the Bill is implemented will be that on one hand, the conflicted remuneration systems (performance management) will be used to reward them for debt product sales. On the other, they will be used punitively for a lack of sales or for any non compliance with the legislation.

Industry employers have already confirmed with the FSU that the scenarios and employer remedies we describe above will be adopted.

The FSU urges the Committee to take the opportunity to establish an ongoing dialogue with the industry and the FSU to examine the affect of employee legislative compliance in relation to:

- The application of performance management business models that operate in the industry and where they offend the concept of responsible lending; and,
- The potential impacts of these clashes on employee wages (fixed pay and bonuses), career advancement and job security

Further Steps for Implementation

Given the concerns expressed above regarding the potential adverse impacts for employees upon the Bill's implementation, the FSU submits that it would be prudent for the Committee to obtain from licensees the following undertakings:

1. the licensee to provide and fund training for affected employeees;
2. licensees to provide adequate resources to ensure compliance with the Bill;
3. licensees be required to develop best practice IT systems that ensure customer intentions are not overlooked.

Thank you for the opportunity to provide this brief submission and the FSU looks forward to providing the Committee with any further information it requires.

Yours faithfully,



Leon Carter
National Secretary
Finance Sector Union