

17 October 2011



General Manager
Retail Investment Division
The Treasury
Langton Crescent
Parkes ACT 2600

***Finance Sector Union Submission
Exposure Draft – Corporations Amendment (Future of Financial Advice
Measures) Bill 2011, Tranche 2***

The Finance Sector Union of Australia (FSU) represents and advocates for the more than 400,000 Australians employed across the finance sector in the banking, insurance, superannuation and related industries.

We welcome the opportunity to provide this brief submission to the proposed list of measures contained in the aforementioned exposure draft.

Overall, the FSU supports tranche 2 of the FOFA legislation as proposed and we do not seek any amendments.

Bank Industry Opposition – further carve outs

The FSU understands that at the recent FOFA consultations, the bank industry is continuing to lobby for further carve outs to aspects of the Bill to allow the banks to continue to make bonus payments to all staff, including planners, based on sales of banking products.

There are no circumstances in which the FSU could or would support such a carve out as amongst other things, we believe that it fundamentally offends the basic principle that permeates the FOFA legislation, the statutory best interest duty.

Statutory best interest duty

Even before the onset of the Global Financial Crisis (GFC), the Australian Government started to express concern that the interests of the finance sector by way of profits was being put before the interests of the consumer.

In 2007, the Howard Government's Treasurer, The Hon Peter Costello, asked the Productivity Commission to conduct a review of Australia's Policy Framework¹.

¹ Review of Australia's Consumer Policy Framework, Productivity Commission Inquiry Report Vol. 1, 30 April 2008

Amongst other things, the Government asked the Productivity Commission to report on *ways to improve the consumer policy framework so as to assist and empower consumers, including disadvantaged and vulnerable consumers, to meet current and future challenges, including the information and other challenges posed by an increasing variety of more complex product offerings and methods of transacting.*

In its summary findings, the Commission found that the high level objective for the future policy framework should be 'to improve consumer wellbeing by fostering effective competition and enabling the confident participation of consumers in markets in which both consumers and suppliers can trade fairly and in good faith.'

The Commission went on to recommend:

The consumer policy framework should efficiently and effectively aim to:

- ensure that consumers are sufficiently well-informed to benefit from, and stimulate effective competition;
 - ensure that goods and services are safe and fit for the purposes for which they were sold;
 - prevent practices that are unfair or contrary to good faith;
 - meet the needs of those who, as consumers, are most vulnerable, or at greatest disadvantage;
 - provide accessible and timely redress where consumer detriment has occurred;
- and
- promote proportionate, risk-based enforcement.

We believe that the sentiments expressed by the Productivity Commission in 2008 very much echo the efforts of the Rudd and Gillard Government's to ensure customers of the finance industry can be confident they are not being taken advantage of.

The FSU submits that a conflict of interest exists when a reward emanates from sales or volume based incentive schemes, irrespective of the existence of a target. It is the FSU's experience that bank remuneration systems that contain bonus or commission payments to employees based on product sales and volume incentive schemes offend the above Productivity Commission principles and the statutory best interest duty contained in the proposed FOFA legislation.

Employee pay and sales targets

The FSU and its members are acutely aware that competition in the bank industry is constantly increasing and this has been accompanied by greater pressure on finance sector staff to increase customer "wallet share". This pressure often takes the form of sales targets and employers were very successful under Work Choices legislation in linking sales results to employee pay rises.

Many of these remuneration systems still sit outside of regulated enterprise industrial instruments and the large banks in particular are very concerned to keep them that way i.e. ensure the targets, the measures, the methodologies, the outcomes and indeed even the appeal mechanisms remain the strict purview of the employer.

The FSU believes that linking variable pay outcomes often leads to systemic psychological bullying of staff by management to meet these targets. These factors encourage and even compel staff to sell products to meet their own job and financial security needs rather than those of the consumer.

In a June 2011 survey² of FSU members which attracted more than 3000 respondents, the vast majority of which came from bank workers, responses included:

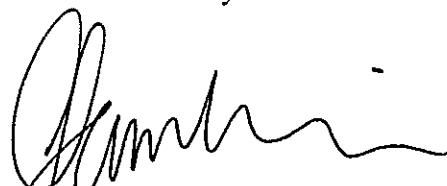
1. more than 41% reported a mix of fixed and variable component of bonus payments or commissions to their take home pay;
2. 87% reported that up to 25% of their take home pay comprised the variable component;
3. 51.5% said they had observed "some customers may have been steered towards or sold products they may not have needed because of the relationship between the customer activity and pay outcomes for employees".

A common theme from bank workers who completed the survey was that they felt their employers placed a premium on the attainment of sales targets and valued very little else.

Additionally, it is the FSU's experience that no two remuneration schemes that contain an element of variable pay in the form of bonuses or commissions based on banking product sales are the same. Indeed the scope of such schemes can vary quite significantly from employer to employer. These employers are also market competitors' and such remuneration schemes inevitably also have an adverse affect on the evenness of the playing field.

In conclusion, the FSU reiterates its support for tranche 2 of the FOFA legislation as proposed and we do not seek to amend the proposed legislation in its present form.

Yours sincerely



Chris Gambian
Acting National Secretary
Finance Sector Union

² FSU All Member Online Survey, June 2011, Finance Sector Union of Australia