

Jan McClelland  
Review of the Code of Banking Practice  
GPO Box 3419  
Sydney NSW 2001  
[janmcl@bigpond.net.au](mailto:janmcl@bigpond.net.au)

## **RE: Code of Banking Practice**

The Finance Sector Union of Australia (FSU) welcomes the opportunity to contribute to the review of the Code of Banking Practice (the Code). The FSU represents approximately 50,000 members employed in the finance sector across Australia.

The FSU and its members support the need for effective policy and regulatory instruments to protect consumers and ensure a professional financial services marketplace.

Our submission is divided into two parts:

1. Concerns about the Review process and awareness of the Code; and
2. Comments on specific Code provisions.

### **Part 1**

Unfortunately the review process has not been well publicised. The FSU saw the ABA press release on 21 December 2007 and continued to check the review website (<http://www.reviewbankcode2.com.au/>) for information every few weeks. Around mid-February the website was still 'under construction'. The FSU subsequently made contact with Heather Wellard from the ABA to express an interest in the Review—Heather was unwilling to give our contact details for the reviewer but undertook to pass our details on – no subsequent contact was made with the FSU.

On 25 March we obtained the reviewers email through informal channels and commenced a dialogue about the review.

We appreciate that FSU is now able to participate in the review but our concern is that the review process seems to have a low level of visibility. This is a concern given that the Code is meant to be central to the relationship between Code participants and the majority of banking consumers in Australia. We submit that the review can only benefit from wider publicity than has been the case so far.

Our other concerns are of a similar nature but at a more macro level about the Code. We believe that awareness of the Code amongst customers and even banking staff is fairly low given its purported importance in consumer banking. At this stage we do not have statistical data regarding this issue but we note that even the Code Compliance Monitoring Committee (CCMC) states that "The Committee experience would indicate that overall awareness of the Code remains low amongst bank customers."<sup>1</sup>

---

<sup>1</sup> Code Compliance Monitoring Committee Submission, Code of Banking Practice Review, 11 March 2008

Section 8 of the Code specifically gives the ABA a responsibility to promote the Code; we believe it can and should do more to fulfil this obligation.

We also concur with the CCMC submission that there are ambiguities in regard to mechanisms for dispute resolution, enforcement and compliance with the Code that are not widely understood by stakeholders, let alone the wider public.

For self regulatory instruments, such as the Code, to be effective there must be high levels of public awareness regarding their existence and content. In addition there must also be clear enforcement mechanisms. We submit that the Code may currently fall short on both criteria.

## **Part 2**

### **Section 22 – Privacy and confidentiality**

There has been an increasing global trend for companies to relocate various parts of their operations to locations outside the country where the service is being delivered. This practice is often referred to as ‘off-shoring’ and has become widespread in the finance sector.

Under the current regulatory framework Australian consumers are not automatically asked for consent or notified if their personal data are being transferred overseas.<sup>2</sup> The FSU and other unions have advocated<sup>3</sup> that express permission should be obtained from a consumer before their data can be transferred to an overseas location – research has shown that consumers strongly support such a requirement being introduced.<sup>4</sup>

We believe that section 22 of the Code should be amended accordingly.

### **Section 25 – Provision of Credit**

#### ***Sales targets and lending***

The FSU and its members understand that the provision of credit is an important and necessary service offered by the finance industry. FSU members want to provide professional customer service and ensure that all loans and credit products are genuinely suitable for the consumer.

Competition in the finance industry is constantly increasing and this has been accompanied by intense pressure on finance sector staff that often takes the form of sales targets that must be achieved to gain pay rises. Unfortunately these targets are increasingly used as the only way staff can access increased remuneration.

---

<sup>2</sup> National Privacy Principles – *Principle 9 – Transborder data flows*

<sup>3</sup> *Off-shoring: A joint policy paper by:*

- Finance Sector Union of Australia
- Australian Services Union
- Communications, Electrical and Plumbing Union (Communications Division)
- Community and Public Sector Union

June 2006

<sup>4</sup> *Attitudes to Offshore Labour* – Report prepared for Services Unions of Australia - May 2006. McNair Ingenuity Research.

We understand that the Code does not cover HR practices, however we believe it is important to understand the context that many finance sector employees operate within and how it may influence behaviours that are covered by the Code.

We stress that the FSU does not object to the principle of performance pay or bonuses. The FSU's policy on performance pay and targets<sup>5</sup> is that they should only exist once a guaranteed CPI type increase system is operating. If wages for finance sector employees cannot go backwards, then the pressure to meet sales targets will inevitably be lower.

The FSU believes that the trend towards linking all pay increases to sales targets is disturbing. These factors encourage and even compel staff to try and sell products to meet their own employment and financial security needs rather than those of the consumer.

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

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

The FSU believes that section 25 of the Code should be strengthened to ensure a more rigorous assessment is mandated before credit is sold. We have attached our *Draft Charter of Responsible Lending* that we are currently finalising – this document sets out the type of process that we believe should be followed before credit can be purchased by a consumer.

### **Section 30 – Advertising**

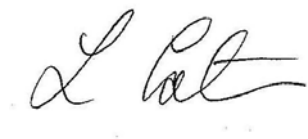
The FSU would support some form of “opt-out” mechanism that would allow consumers to indicate they do not wish to be offered any products or advertising in any of their dealings with their bank. This would make sure consumers do not feel harassed by constant unwanted offers and ensure that finance sector employees do not have to persistently make such offers. This mechanism would be similar to the ‘do not call’ register that was recently established by the Australian Government and could be used by finance sector companies as a way of marketing themselves as offering ‘superior’ customer service.

---

<sup>5</sup> FSU Policy - *Regulation of Performance Based Pay – 2007* ([www.fsunion.org.au](http://www.fsunion.org.au))

If you have any questions in relation to this submission please contact James Bennett,  
Senior Policy & Research Officer on (02) 6247 7172.

Yours sincerely

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

Leon Carter  
National Secretary

22 April 2008

## **Finance Sector Union – Charter of Responsible Lending DRAFT - March 2008**

The Finance Sector Union of Australia calls on all members of the finance industry and the Australian Government to adopt, implement and adhere to a national Charter of Responsible Lending. The key principles and regulatory initiatives underpinning the Charter are as follows:

- Credit products and providers, including third parties, must be immediately regulated under a Commonwealth regulatory regime, consistent with the provision of other financial products;
- All loans and credit products must be based on a genuine assessment of the consumer's needs, the suitability of the product to meet those needs, and demonstrated capacity to meet the repayments;
- No unsolicited pre-approved credit offers should be made to consumers;
- 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;
- Consumers must be informed of any commissions, bonuses, incentives or remuneration implications that those making the sale may receive as a result of selling a financial product;
- Consumers must be allowed to 'opt-out' of receiving unsolicited product offers in their dealings with their financial institution;
- Information about assistance mechanisms for people facing financial hardship must be made easily available;
- All institutions must be members of an alternative dispute resolution scheme with the powers to resolve disputes without redress to the courts;
- Financial literacy and education programs must be encouraged and supported by the industry and governments and provided to the community, particularly to vulnerable or disadvantaged groups.

## **Background**

The finance industry plays an essential role in Australian society as a provider of capital, insurance, investment, personal credit, financial advice, assessment and deposit taking. In Australia, the finance industry makes up approximately 40% percent of the value of our stock market and employs around 400,000 people.

The people and practices in the finance industry determine public goodwill and confidence in its reputation and sustainability – without these it could unravel causing enormous damage to the Australian economy.

The Finance Sector Union (FSU) accepts and understands that the finance industry must be a very competitive industry; however finance products can have serious or long term implications if sold inappropriately.

Purchasing any financial product is a serious matter, especially a home loan which will usually be the biggest financial commitment a person makes in their lifetime. Financial institutions should always try to ensure that products are appropriate to a persons circumstances and do not result in people becoming overly financially committed.

Australia's level of personal debt is at record highs and continues to rise. In 1981 personal debt as a proportion of GDP was 50% by early 1999 it had risen to 100% and in 2007 it was 156%. If the current trend continues, it will reach 200% of GDP by 2015.<sup>6</sup> Given this trend the FSU advocates that all financial institutions adopt and that Government's enact the necessary regulation to give affect to this Charter of Responsible Lending to preserve the good reputation of our industry, the financial welfare of our citizens and the economy of our community.

### ***Regulatory arrangements***

Under the current national regulatory regime, most financial service providers are required to hold an Australian Financial Services (AFS) licence. This includes banks, credit unions, insurance companies and financial advisors. Licensing conditions include training requirements and membership of an industry alternative dispute resolution scheme.

However, the provision of credit is regulated under the Uniform Consumer Credit Code which is enacted through State based legislation. Under this regime credit providers are not automatically required to hold an AFS licence and consequently may not be members of a dispute resolution scheme.

The FSU also calls for the regulation of credit to be brought into a Commonwealth regulatory regime, consistent with other financial products to ensure that consumers have the same level of protection and avenues for redress. In addition there should be national legislation to regulate the conduct of finance brokers in the marketplace.

---

<sup>6</sup> *Deeper in Debt - Australia's Addiction to Borrowed Money*, Dr Steve Keen September 2007.

As part of such a regulatory regime, all providers of credit must be members of an alternative dispute resolution scheme.

### ***Credit assessment and increases***

Institutions must not sell credit products to a customer unless they have carried out a genuine assessment of the customer's needs and capacity to repay the credit product.

This process must sufficiently consider the debtor's financial situation to satisfy a diligent and prudent credit provider that the debtor has a reasonable ability to repay the amount of credit provided or to be provided.

Institutions should obtain information about the customer's financial position with specific regard to:

- level and type of income; and
- all credit accounts and applicable limits and balances;
- other repayment commitments; and
- credit history.

If this process suggests that a consumer will have difficulty meeting the repayments then approval should not be given unless changes are made that would ensure the consumer has sufficient capacity to make repayments.

Institutions should not increase the amount of credit available unless the consumer has requested the increase in writing, and the credit provider has carried out a satisfactory assessment as previously outlined.

Where credit limit increases are offered they should include details about what the new minimum repayments would be if the consumer accepted the increased limit.

Unsolicited offers of credit, including credit cards and increasing credit card limits must not be made.

### ***Sales targets and finance sector employees' remuneration***

The FSU is concerned that the industry is increasingly moving towards a culture of sales targets and incentive based remuneration for employees. Achievement of targets is now explicitly linked to remuneration outcomes – unfortunately, achieving targets is now becoming the only way employees can access pay increases.

The culture of sales targets is, by definition, designed to maximise sales which (even inadvertently) will lead to a higher risk of inappropriate sales occurring. The FSU policy on performance pay<sup>7</sup> clearly states that sales targets or performance hurdles should only be linked to remuneration outcomes where across the board, minimum pay adjustments already exist to provide employees with sustainable cost of living and real wage growth increases. Base salary levels should reflect the professional nature

---

<sup>7</sup> FSU Policy - Regulation of Performance Based Pay, 2007 – [www.fsunion.org.au](http://www.fsunion.org.au)

of the service being provided and reflect the need to attract and retain a skilled and responsible workforce.

In addition, consumers must be informed of any commissions, bonuses, incentives or remuneration implications that finance sector employees may receive as a result of selling a financial product.

### ***'Opt out'***

Financial institutions that wish to offer superior customer service should offer consumers an 'opt-out' mechanism. Under such mechanisms, customers can indicate 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 pressured by constant unwanted offers and ensure that finance sector employees do not have to persistently make such offers.

### ***Assistance for people facing financial hardship***

A proportion of consumers will experience financial difficulty at some stage of their lives. In many cases this will be temporary and institutions can help consumers to manage these periods if they have policies and procedures in place to provide assistance, advice and information.

These procedures should include:

- clear contact points for people experiencing financial difficulty;
- discretion to grant relief mechanisms such as deferred repayments or penalty waivers;
- contacting customers who appear to be having difficulty managing their repayments;
- referral to free and independent financial counselling where appropriate; and
- information regarding dispute resolution procedures.

### ***Financial Literacy and Education***

Given the increasing complexity and essential nature of financial services it is critical that people have access to education and information to increase their level of financial literacy. This is particularly important for young people and other potentially vulnerable groups. Industry should take a leading role along with Government in providing these education programs and include them as part of the mainstream curriculum in secondary schools.