Consumer Credit Reforms

Finance Sector Union

Finance Sector Union
Local Executive Secretary VIC/TAS: Nicole McPherson
3/341 Queen Street
Melbourne VIC Australia 3000

Ph: 1300 366 378
E: fsuinfo@fsunion.org.au

www.fsunion.org.au

Consumer Credit Reforms

Contents

Introduction

The Finance Sector Union (FSU) is a registered industrial organisation under the *Fair Work (Registered Organisations) Act 2009*. FSU represents members in the finance and insurance industry in Australia.

The FSU is concerned about the proposed changes to the National Consumer Credit Protection Act 2009. These proposed changes weaken responsible lending laws. This will facilitate a return to the toxic practices uncovered by the Royal Commission into Misconduct in the Banking, Superannuation, and Financial Services Industry and by the FSU's own research.

These work practices underpinned by a culture of 'profit at all costs' has had detrimental effects on people working in banking, customers and the community. Research by the FSU and consumer advocacy groups has uncovered poor mental and physical health outcomes for frontline staff who were tasked with the upselling of products under a harsh regime of sales targets. [1] Additionally people working in banks have had a difficult time during COVID dealing with customers in emotional distress facing financial hardship.

Although bank profits have marginally declined during the Covid pandemic the FSU is concerned that the banks are using the cover of a global pandemic to lobby for relaxation of the laws in order to be able to lend to people who simply cannot afford it. The existing legislation provides no impediment to people accessing credit who can afford to repay it. The proposed laws merely facilitate access to those who can least afford it.

The post pandemic recovery must be led by sensible investment in productive areas of the economy and prudent consumer lending and not by saddling the most vulnerable members of society with debt they cannot afford.

After the Government announced its intention to water down responsible lending laws, bank shares surged. [2] With profits down and more than a year after the Royal Commission the banks are under pressure to increase their profits again. This cannot be off the backs of their staff and vulnerable customers.

The FSU believes the impact of these proposed changes on workers will be catastrophic. They will be a return to situations where workers are crying in their cars before work, knowing they will be pressured all day to sell credit to people who cannot afford it.

Australian society cannot afford these amendments.

Key Points:

- The removal of consumer protections transfers responsibility from lenders to consumers.
- The faulty assumption(s) that the law as it currently stands hinders access to credit.
- Giving the banks the even greater ability to market and sell debt will have a detrimental effect on the morale and health of front-line bank staff whose job it is to sell debt products. These issues have been well documented by the Hayne Royal Commission and the FSU's own research.
- The power imbalance between banks and consumers leads to poor outcomes for both. Watering down credit protections will leave individuals and families at severe risk of being pushed into credit arrangements that will hurt in the long term. For example, the consequences for people who suffer

[1] Justice Tempered, A report for the Finance Sector Union, Bottomley Et Al, 2019.
[2] www.choice.com.au/money/banking/everyday-banking/articles/removing-lending-protections-will-continue-bad-bank-behaviour.

from domestic and family abuse could be severe:

Chief Executive Officer of the Financial Rights Legal Centre Karen Cox argues that:

> "This is an important role in identifying and preventing the financial abuse of vulnerable women. These critical protections serve a vital purpose, requiring the lender to make inquiries as to the loan's purpose, suitability and affordability". [3]

Recommendation.

The FSU does not support the proposed amendments to the National Consumer Credit Protection Act 2009 (Credit Act).

[3] Financial Rights Legal Centre /joint-media-release-repeal-lending-protections-will-hurt-women-facing-domestic-violence, November 16 2020.

National Consumer Credit Protection Act 2009 (Credit Act)

The National Consumer Credit Protection Act 2009 (Credit Act) was put in place more than ten years ago as a response to the Global Financial Crisis (GFC). The Credit Act introduced principles aimed at ensuring lenders do not provide unsuitable loans to consumers by shifting responsibility from borrowers to lenders.
Essentially lenders, by law, must take reasonable steps to check that a person is able to repay a loan before approving it. The proposed changes by the Australian government will remove this requirement.

Financial Abuse

Consumer and Family violence campaigners believe the watering down of responsible lending obligations will have drastic consequences for people experiencing financial abuse:

> "Coerced debt is a common factor preventing victim survivors from leaving a violent relationship and re-establish their lives. Rates of family violence and economic abuse have risen sharply during the COVID-19 pandemic. Removing these critical protections at a time when so many women are more vulnerable than ever to economic abuse could have devastating results." [4]

Chief Executive Officer of the Financial Rights Legal Centre Karen Cox said our current lending obligations prescribe important steps which often identify red flags in domestic and family abuse.

> "Australia's lending laws require lenders to undertake an assessment process that will often put them on notice when loans should not be approved.
>
> "This is an important role in identifying and preventing the financial abuse of vulnerable women." [5]

Access to Credit

The Government has claimed that changes to the National Consumer Credit Protection Act 2009 are required to ensure there are no unnecessary barriers to the flow of credit as the economy recovers from the Covid pandemic. [6]

There is no issue with access to credit currently – lending is still growing significantly with Australian households already the second most indebted in the world after the Swiss. The ABS July 2020 data on loan commitments shows that the number of new housing loans issued was 11.8% higher than July 2019. (See – ABS, Lending Indicators 2020). [7] The number of households in Australia with debt three or more times their income has been rising: up from 23% of households with debt in 2006 to 28% in 2018. That year, the Hayne Royal Commission showed that exploitative practices still abound in the industry, as witness after witness detailed how their lives had been marred by debt.

Comments made by ANZ CEO Shayne Elliott support the view that it is prudent consumer behaviour rather than issues with credit laws driving economic outcomes:

---

[4] Financial Rights Legal Centre /joint-media-release-repeal-lending-protections-will-hurt-women-facing-domestic-violence, November 16, 2020.
[5] Financial Rights Legal Centre /joint-media-release-repeal-lending-protections-will-hurt-women-facing-domestic-violence, November 16, 2020.
[6] Consumer Credit Reforms, Australian Government, p,2.
[7] https://www.abs.gov.au/Ausstats/abs@.nsf/exnote/5601.0.

"In Australia, we achieved strong growth in our targeted home loan segments with above system growth in the owner-occupier market, driven particularly by the refinancing market. Deposits remained strong as customers took a sensible approach to managing their household balance sheet. We also saw an accelerated shift away from the use of cash due to the pandemic and we introduced new processes to help customers move to online banking". [8]

In addition, evidence provided by Commonwealth Bank CEO Matt Comyn to a parliamentary committee in September of this year suggested that the flow of credit is above pre-COVID levels and that lending is growing at a strong pace. [9]

The Royal Commission into Banking, Finance, and Insurance Sector: Work Culture & Practice

In his interim report Justice Hayne said:

> "Too often, the answer seems to be greed – the pursuit of short-term profit at the expense of basic standards of honesty. How else is charging continuing advice fees to the dead to be explained? But it is necessary then to go behind the events and ask how and why they came about.
>
> Banks, and all financial services entities recognised that they sold services and products. Selling became their focus of attention. Too often it became the sole focus of attention. Products and services multiplied. Banks searched for their 'share of the customer's wallet'. From the executive suite to the front line, staff were measured and rewarded by reference to profit and sales". [10]

Gerard Brody, CEO of the Consumer Action Legal Centre said:

> "At Consumer Action, our financial counsellors speak every day to people who are overwhelmed by their debt. Some of them are suicidal. Some of them are considering bankruptcy. Others are on the verge of homelessness. And so, we are concerned that these rollbacks will contribute to exacerbating these sorts of harms." [11]

An FSU research paper 'Tempered Justice' told the stories of eight FSU members whose personal ethics were systematically crushed by the Bank's daily justification of profit maximisation. These workers suffer a range of work-related harms as a consequence of their employers' devotion to boosting sales targets and profit margins. The finance industry's captivity to the ethic of profit maximisation violates worker's ethical self-understanding and disregards the wider meaningfulness which they attach to work – and in doing so, does harm to them in a variety of ways. [12]

Justice Hayne advised that responsible lending laws should either stay the same or, if found to be deficient, be tightened:

---

[8] ANZ Annual Review 2020, p,6.
[9] Consumers lash 'responsible lending' rollback, AFR September 25, 2020.

[10] Interim Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, p,401.

[11] Brody Gerard, https://www.choice.com.au/money/banking/everyday-banking/articles/why-you-should-care-about-responsible-lending-laws.
[12] Tempered Justice Op Cit.

> "I am not persuaded that the NCCP Act's framework for responsible lending to consumers' needs change. The responsible lending issues identified during the Commission's hearings will be resolved by banks applying the law as it stands." (p.117). [13]

In our response to the Hayne Royal Commission we argued that Australian Banks don't see themselves as having a deep-rooted culture problem and bad behavior is a case of a few 'bad apples'. [14] The Banks lobbied aggressively against a royal commission and having been lobbying just as aggressively for the winding back of responsible lending laws.

Finance sector employers' disregard for workers' ethics harmed workers' personal health and wellbeing, leading to deterioration in their mental health and a loss of morale at work. Their reported symptoms were pathologised and treated as mental illness or punished as a behavioural discipline issue. The harm experienced by finance sector workers shows that, contrary to public perceptions created by the findings of the Royal Commission that finance sector workers are greedy, exploitative opportunists, they are instead victims of an industry culture whose captivity to capitalist ethics disregards and degrades their humanity. [15]

The Australian banking sector has made progress since the Hayne Royal Commission which has been of benefit to our community. These proposed amendments put any progress at risk. The Finance Sector Union supports an ethical, productive finance sector that supports its workers, customers and the community. For that reason, we oppose these proposed amendments.

[13] https://www.royalcommission.gov.au/sites/default/files/2019-02/fsrc-volume-1-final-report.
[14] Submissions of the Finance Sector Union in respect of the Interim Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.
[15] Tempered Justice Op Cit.