



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

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By email: anna.dawson@oecd.org

Consumer Finance, Insurance, Private Pensions Division
OECD Directorate for Financial and Enterprise Affairs
Paris, France

Dear OECD Secretariat

Public Consultation on the Draft Proposed Revisions to the Recommendation of G20/OECD High-Level Principles on Financial Consumer Protection

Thank you for the opportunity to provide feedback on the Draft Proposed Revisions to the Recommendation of the G20/OECD High-Level Principles on Financial Consumer Protection (the **High-Level Principles**).

The Consumers' Federation of Australia (**CFA**) is the peak body for consumer organisations in Australia, advocating in the interests of Australian consumers. It promotes and supports its members' campaigns and events, nominates and supports consumer representatives to industry and government processes, develops policy on important consumer issues and facilitates consumer participation in the development of Australian and international standards for goods and services.

Our comments draw on recent policy analyses relating to financial consumer protection in Australia, including the 2019 Final Report of the Royal Commission into Misconduct in the Banking, Finance & Superannuation Industry (the **Banking Royal Commission**), as well as changes to the marketplace since then, as well as experiences of CFA members.

Title of the document

CFA suggests that the principles be on "Financial Consumer Protection and Empowerment" not just protection, because empowering consumers is a very important way to protect them. Also, referring only to protection underplays the role that consumers have in driving changes that help themselves and the marketplace.

Principle 2 - Oversight

The Banking Royal Commission found that a key problem causing misconduct in the finance sector was as lack of consequence for breaking the law. The Final Report states:

"too often, financial services entities that broke the law were not properly held to account. Misconduct will be deterred only if entities believe that misconduct will be detected, denounced and justly punished. Misconduct, especially misconduct that yields profit, is not deterred by requiring those who are found to have done wrong to do no more than pay compensation. And wrongdoing is not denounced by issuing a media release".¹

We recommend that the chapter on Oversight have a specific paragraph about the enforcement role of regulators in financial consumer protection. This should make specific reference to the regulator developing an effective enforcement culture to ensure accountability and effective compliance. Compliance with the law should not be a matter of negotiation with regulators or simple persuasion, but also require robust enforcement including effective penalties and sanctions to ensure deterrence. Adequate deterrence of misconduct also depends upon visible public denunciation and punishment.

Principle 4 – Financial capability rather than literacy

Financial Capability is a more helpful term than Financial Literacy because capability is the objective, and literacy is one of the many ways to achieve capability. Also, literacy tends to be thought of just as the ability to read, yet the need is to be able to understand and take appropriate action.

Principle 7 – Disclosure and transparency

Paragraph 17 of the revised principles states “All financial promotional material should be accurate, honest, understandable, transparent and not misleading”. We agree, but would suggest that:

- The words “legible and prominent” be added – far too much information is provided in very small print and is insufficiently prominent. Being able to easily notice and read printed information is essential to the achievement of consumer awareness and understanding of the information. The term “transparent” does not adequately encompass “legibility and prominence”.
- Disclosure should allow for comparability – one of the main purposes of disclosure is to allow for consumers to shop around and find the product that is best for them. In turn, it means that providers get accurate signals about what consumers want and what they are prepared to pay. Consistent terminology (for example, where the same product, feature, or fee is called different things by different businesses) and the way figures are expressed (for example, total cost over life of product, cost per week, month or year) should as much as practicable be consistent between products and providers

We very much support the additions around the limitations of disclosure and consider that the principles should go further state that disclosure should not be the primary or “first choice” response to risks of consumer detriment or harm.

¹ Royal Commission into Misconduct in the Banking, Finance & Superannuation Industry, Final Report, page 3, available at: <https://treasury.gov.au/publication/p2019-fsrc-final-report>.

More broadly, we consider this principle could be expanded to reference advertising and marketing, including appropriate regulation thereof. It is advertising and marketing that influences consumer decision-making, far more than mandated disclosure documents.

Principle 9 - Responsible business conduct

Another key finding from the Banking Royal Commission was that misconduct has been caused by "greed – the pursuit of short-term profit at the expense of basic standards of honesty."²

Given this, we consider that this principle could be much stronger with the banning of conflicted remuneration and the regulation of intermediaries.

The Final Report of the Banking Royal Commissions states:

"Rewarding misconduct is wrong. Yet incentive, bonus and commission schemes throughout the financial services industry have measured sales and profit, but not compliance with the law and proper standards. Incentives have been offered, and rewards have been paid, regardless of whether the sale was made, or profit derived, in accordance with law. Rewards have been paid regardless of whether the person rewarded should have done what they did".³

The current drafting of this principle mentions avoiding conflicted remuneration; we suggest this should be replaced with elimination as the first-best response. Moreover, the principle could be expanded to deal with other forms of incentive arrangements, such as sales targets.

We welcome new paragraph 27 on advice and 'best interests', and suggest that this should apply to all intermediaries in the financial sector and specifically cover debt advice.

Additional principle - responsible marketing

We strongly suggest an additional principle relating to responsible marketing, including a commitment to ban hawking, unsolicited selling and cross-selling in the finance sector.

As stated by the Banking Royal Commission Final Report, hawking is banned because:

"There is no real check on what is said to the target and often the target is not able to check the truth of what is said. The asymmetry of power and information between the provider of the product and service and the acquirer is very large. Even if the 'hawker' is not fraudulent or unscrupulous (and, too often, cases examined in evidence showed that the hawker was at least unscrupulous) the acquirer is nevertheless 'unsuspecting'. The potential acquirer who has not sought out the product or service comes to the encounter unprepared to look critically at whatever is said. The potential acquirer often does not know what questions to ask."⁴

The Banking Royal Commission made specific recommendations to strengthen bans on hawking and unsolicited selling (including cross-selling) of financial product services in Australian law, and new

² Royal Commission into Misconduct in the Banking, Finance & Superannuation Industry, Interim Report.

³ Royal Commission into Misconduct in the Banking, Finance & Superannuation Industry, Final Report, p2.

⁴ Royal Commission into Misconduct in the Banking, Finance & Superannuation Industry, Final Report, p13.

laws have come into effect in 2021.⁵ We urge the principles to address the substantial risk of consumer harm associated with unsolicited selling.

Principle 10 - Fraud and scams: regulation of payment systems

We welcome Principle 10 which commits to a high degree of protection of consumers' deposits, savings, and other similar financial assets, including against fraud, scams, misappropriation, or other misuses; and that protection mechanisms "should be readily adapted to the way new technology is used and new types of scams, fraud and misuse".

Since the Banking Royal Commission and during the COVID-19 pandemic there has been a significant increase in scam losses. In Australia, regulators are reporting losses in excess of \$AUD2 billion a year. Fraudsters behind scams hold or control bank accounts and exploit payment systems. Given this, banks are well-placed to identify scams and take steps to protect against losses. We urge that the principles require banks to refund customers for losses, recognising that financial institutions are in a better position than consumers to respond to the risk of scams. Consumer protections relating to mistaken payments must cover scam transactions, and recognise that a consumer did not authorise funds when they were under direction of a scammer. Banks should provide refunds for unauthorised transactions. These changes would also provide appropriate incentives to banks to better detect, disrupt and prevent scam activity.

In addition, the principles could be strengthened by better recognising payment systems as a utility fundamental to modern finance systems. The finance sector benefit from electronic commerce, and consumer trust and confidence are only served by an assurance that payment systems are safe. There is much innovation in payment systems which bring about new consumer risks. A stronger statement about the utility and safety of payment systems in this principle would be an enhancement. Likewise would be reference to regulating payment systems as a utility, and the need for a specific regulator responsible for consumer protection of payment systems.

Additional principle - innovation in consumer credit

We consider that the principles should include specific reference to the consumer risks from innovation in consumer credit. New types of products are being marketed in many countries, including buy-now-pay-later, wage advance products and other fintechs. These so-called innovations are often exploiting loopholes in existing laws and are creating new risks of economic hardship. For example, research in Australia shows that around 20 percent of buy-now-pay-later borrowers are experiencing some level of harm.⁶

Over-indebtedness has broader impacts than financial, and can negatively affect mental health, wellbeing, and consumers' ability to contribute to the economy and society. There is a need for the principles to re-affirm the need for consistent, robust consumer credit protections that ensure products are suitable, repayments are affordable, and there is adequate support for those experiencing financial hardship.

As a minor point, we don't understand the difference between "manufacturer" and "provider" in paragraph 21 of the principles. It might benefit from clarification.

⁵ *Financial Sector Reform (Hayne Royal Commission Response) Act 2020 (Cth)*

⁶ Australian Securities & Investments Commission, REP 672 Buy now pay later: An industry update, November 2020.

Should you have any questions about this submission, please contact me at chair@consumersfederation.org.au.

Yours sincerely

CONSUMERS' FEDERATION OF AUSTRALIA

A handwritten signature in black ink that reads "Gerard Brody". The signature is written in a cursive style with a large, prominent initial 'G'.

Gerard Brody, Chair