

6 March 2017

Christine Cupitt
Policy Director – Retail
Australian Bankers Association
Level 3, 56 Pitt Street
Sydney NSW 2000



Dear Christine

ABA Better Banking Initiative #4 - Bad Apples Register

Thank you for the opportunity to offer input into the ABA's proposed bad apples register.

We are aware that the ABA has recently officially rebranded this initiative as a conduct background check but we note that in the 3rd interim report on his independent oversight of the implementation of the ABA initiatives on 20 January 2017 Mr Ian McPhee included a reference to the work being undertaken by the "Industry Register Working Group" made up of bank representatives (page 3). The body of Mr McPhee's report makes multiple references to the register (pages 11, 12).

More recently Mr Andrew Thorburn, current Chair of the ABA referred to the "bad apples register" when meeting with the House of Representatives Economics Committee in Canberra on 3 March 2017.

Despite the comment in Mr McPhee's interim report that the ABA has, "settled the design principles with banks and other stakeholders" of a "Conduct Background Check Protocol for bank employees", the FSU has not agreed with this approach or the so-called design principles. FSU is a stakeholder.

FSU has from the first announcement of ABA's six point plan been concerned about this initiative. From the outset we have been worried about issues such as privacy, defamation, restraint of trade, procedural fairness, appeals, confidentiality, legal complexity, disproportionate punishment, improper use and unintended consequences. These matters remain largely unresolved.

At the heart of the issue is trust. The industry is desperate to rebuild trust and confidence from the community but that rebuilding must start with those who work in the industry being able to trust the industry to treat them fairly.

In the past 18 months literally thousands of bank employees have been investigated around suspected breaches of code of conduct or alleged compliance failures and

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many staff now feel that this is blame shifting by those who drive culture onto those who have to live with it. Whenever a CEO responds to pressure from politicians or the media with a "body count" of investigated or sacked workers, more damage is done to confidence inside the industry. Too many employees have been subjected to false or trivial accusations and been forced through the trauma of threatened or actual investigation.

The crackdown on alleged compliance and code of conduct breaches has significantly undermined the confidence of the work force that their employers can be trusted to implement this initiative fairly.

The FSU cannot support the bad apples register or the accompanying conduct background check when it is not administered by an independent body accountable to more than the ABA and member banks.

Part of our research and consultation on this matter included understanding the experience of former Wells Fargo Bank workers in the USA who fell afoul of the American banking industry's Uniform Termination Notice (U5 Report). It is reported that Wells Fargo managers unfairly effectively "black listed" former employees who refused to follow Wells Fargo's entrenched misselling practices. The risk of similar unfair reporting with no suitable recourse is too high for us to tolerate. We encourage ABA to review the relevant reports about the Wells Fargo experience here:

<https://iapp.org/news/a/wells-fargo-used-u5-forms-to-tarnish-reputations-of-former-employees/>


In order to obtain the perspective of Australian bank employees FSU surveyed 1000 employees in the industry over a two week period in late February about this issue and the results are conclusive:

1. Employees in the industry do want to rebuild trust and confidence in their industry,
2. The major cause of the loss of community trust is the management's culture of targets and cost control,
3. Employees do not trust the industry to administer a bad apples register internally,
4. Employees are overwhelmingly concerned that a register run by the industry would be used against them in preventing them from securing alternate employment,
5. Employees would support a government controlled and operated register that included the names of those who were proven to have broken the law.

A copy of the survey results together with a small selection of some of the comments is attached to this letter for your reference. It includes one comment from an employee who says, *"In August 2016 when discussing an action plan, the manager threatened that I would be on the ABA register."* The only conclusion available to us is that the industry must look for a better option than the one under consideration now.

We are committed to working with the ABA and member banks to rebuild the reputation of the industry.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Geoff Derrick', written in a cursive style.

Geoff Derrick
National Assistant Secretary

(encl.)

Attachment to FSU letter to ABA re Bad Apples Register – 6 March 2017

FSU Survey

Many senior managers and executives in our industry have said that it is necessary to rebuild trust and confidence in our financial system. Do you agree?

response Answer

88% A) Yes
11% B) No
1% *skipped*

What do you think has been the major contributor to the loss of trust and confidence in our financial system?

response Answer

55% A) management culture around targets and cost control
10% B) individual "bad apples" breaking the rules around code of conduct
18% C) pay models that encourage poor behaviour
10% D) understaffing
6% E) inadequate staff training
1% *Other or skipped*

Do you trust the employers to run and operate a "bad apples" register (sometimes known as a reference checking process) that records and reports on; a) dismissals b) resignations c) alleged code of conduct breaches d) investigations (whether wrong doing was proven or not)

response Answer

9% A) Yes
90% B) No
1% *skipped*

Do you have any concerns about whether a bad apples register (sometimes known as a reference checking process) could be used unfairly against you in your search for alternate employment?

response Answer

89% A) Yes
11% B) No
0% *skipped*

Would you support a government (ASIC) controlled and operated register that includes only those people who have been proven to have broken a relevant law (e.g. stealing, fraud, breach of FOFA)?

response Answer

82% A) Yes
17% B) No
1% *skipped*

Have you or someone that you have worked with ever been subject to code of conduct or compliance investigation at work?

response Answer

50% A) Yes
50% B) No
0% *skipped*

Have you or anyone you have worked with ever been unfairly accused of breaching your employer's code of conduct?

response Answer

40% A) Yes
59% B) No
1% *skipped*

Have you or anyone you know ever had trouble getting a job because of what a former employer has said about you?

response Answer

29% A) Yes
70% B) No
1% *skipped*

Extracts from comments

1. I would worry about what other justifications a manager for either personal or political reasons could rise against an individual to have them registered.
2. This leaves it too open for personal opinions and differences to unfairly be applied to people by their managers out of spite or bad judgement.
3. A few years ago I was issued with a 1st and final warning and was given no warning it was coming or that I'd done anything wrong at the time.. once issued with it I questioned why and I wasn't satisfied it was a valid reason so I fought the warning.. after quite some time going back and forth to the union and management they finally withdrew the warning and all was forgotten.. I'm still bitter to this day that management have the power to destroy you when you have done nothing wrong and because they may not like you as a person and intentionally go out of their way to make your name known as a trouble maker, I think it's wrong and unfair and 100% disagree with the bad apple register and want to fight to not put it in place because I'd be on it if it was up to the managers.

4. I am strongly against this register being implemented. On the other hand, the revised Whistleblower Policy could prove to be favourable due to the anonymity and having an independent reviewer to handle all cases raised instead of having the fear of loss of job and negative ramifications
5. I personally do not agree to this as this could be misused and the system be abused
6. THIS IS OUTRAGEOUS
7. I do not agree with this at all. If a register is kept it should be on a serious issue like fraud. It is too open to misunderstanding
8. We have already seen many people in positions of power who make incorrect judgement calls and now we want them to have the ultimate power over us as individuals. No way.
9. I have been in banking & finance for 40 years. With a considerable time in senior management. The lack of trust in bank management is the root cause of their reputation. Bullying, totally unfair workloads, rewards systems that encourage & reward disgusting behaviour, prejudice, discrimination etc. are rampant & they are getting away with it. They only pay lip service to fairness, responsible lending, occ health & safety.
10. Just think this will be a privacy breach
11. I was Amber gated at nab for not completing compliance /accreditation within 6 months partly due to parental and carers leave. Gate is irreversible and will affect this FY bonus and career opportunities
12. A bad apples register will only be successful if it is regulated by a high authority. If it is not regulated, it could be used unfairly
13. The way the bank/s are heading my concern is that if I didn't follow the new line that the bank is pushing they would put me on the register.
14. On many occasions, I would be in my car before work crying uncontrollably for periods of up to 30 minutes as I gathered myself to do my job as a leader for both staff and customers, this was becoming increasingly difficult due to the behaviours I had been witnessing and been subjected to. In August 2016 when discussing an action plan, the manager threatened that I would be on the ABA register.
15. Lack of training and support can often lead to staff being accused of breaching code of conduct.... As a lender there is little or no support around adequate training...
16. At the moment you always have the option to quit and find a role elsewhere, however if you are threatened with being blacklisted from getting a job anywhere - that is a powerful weapon. I have two kids and I have been asked to do many things I have felt were unethical in my time in financial services.
17. I have been in a situation where a new branch manager took a dislike to me and went out of her way to make my life a misery, picking on me at any opportunity, trying to find fault where there was none. If such a register existed then, I am sure I would have been placed on it.

18. Pressured to sign document re breach of policy which hadn't occurred. Didn't sign it
19. This appears to be blame shifting, again the workers have to cop the brunt of bad decisions but not just with customers also in the industry that they are employed
20. I have previously been accused of doing something that was not my fault and totally out of my control. I received a warning - imagine what could have happened if a bad apples register had been in force
21. I imagine it can be easy to do something wrong without even knowing it... Losing your job and learning from the mistake is one thing, but to be black listed from your industry at any age could make it impossible for someone to re-enter the work force, which could destroy that person's life. I'm against a register all together. If there must be a register it should be operated by a third party and should only contain extremely serious breaches where staff have knowingly broken the law.
22. I'm concerned about a register because if not administered appropriately are open to abuse by managers. I've had instances where a manager had used a development comment by a former manager to justify their position that I be given a "Needs Development" rating in a performance review which in turn prevented me from getting a pay rise or being able to participate in the rewards and recognition programs for a year. ... I would worry about what other justifications a manager for either personal or political reasons could rise against an individual to have them registered