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To: [FAA Review](#)
Cc: [9\(2\)\(a\)](#)
Subject: Commerce Commission submission on the Issues Paper for review of the FA Act and FSP Act
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The FA Act/FSP Act Review Team, MBIE,

Thank you for the opportunity to make a submission on the Issues Paper released in May in relation to the review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Although the Commission is not directly responsible for enforcing these Acts, we do have an interest in the review and wish to raise four issues for your consideration.

1. Question 7: Does the current categorisation system accurately reflect the level of complexity and risk associated with financial products? If not, how could it be improved? Consumer credit contracts are category 2 products for the purposes of the FA Act. The Issues Paper says that category 2 products have been assessed as being lower risk or less complex and are therefore subject to lower regulatory requirements (page 22). It is worth considering whether this is too simplistic, and should be revisited to better recognise the diversity that exists within the broad class of “consumer credit contracts”. A consumer credit contract (for example a mortgage) can be the most significant financial arrangement a consumer may have, and in fact some mortgages and loans are extremely large commitments. Further, a reverse equity fixed rate mortgage may be a consumer credit contract, but it cannot generally be described as a lower risk or less complex product and we have seen significant consumer detriment associated with these products. High risk products, such as some high-cost credit agreements and payday loans, also exist within the class of “consumer credit contracts”. The need for greater due diligence in relation to high risk, complex or uncommon consumer credit contracts was recently recognised in guidance in the new Responsible Lending Code (see Guidance at 4.6, 4.8, 4.9, 7.2 and 7.11). Consideration should be given to: (a) whether the existing product categories are still appropriate; (b) whether there should be further gradation within these categories, for example monetary thresholds, or by reference to some of the factors used to scale obligations in the Responsible Lending Code; and/or (c) whether a risk/complexity or monetary threshold should be set as a trigger to escalate a product from category 2 to category 1.
2. Question 40: Do you support commission and conflict of interest disclosure requirements being applied to all financial advisers? If so, what requirements are appropriate for different adviser types?
The Issues Paper states that currently only AFAs and QFE advisers have a positive obligation to inform clients of conflicts of interest (paragraph 141). We find it anomalous that RFAs are not actively required to disclose conflicts of interest, and note that this may contribute to the risk of consumer confusion between pure sales arrangements and pure advice arrangements, i.e. whose best interests the adviser is acting in. Many RFAs will be finance brokers who operate in the consumer credit markets. The lack of a requirement by these advisers to disclose their interests appears to run counter to the purpose of recent amendments to the Credit Contracts and Consumer Finance Act 2003

(CCCFA), which aim to improve transparency, ensure borrowers are more informed and have a greater understanding of their credit arrangements, and require lenders to treat borrowers reasonably and in an ethical manner.

3. Question 69: What changes, if any, to the minimum registration requirements should be considered?

A person subject to an order under s108 of the CCCFA is already disqualified under s14(2)(c) of the FSP Act.

(a) Consideration should be given to extending s14(2) to disqualify any person who has been convicted of an offence against the Commerce Act 1986, CCCFA and/or the Fair Trading Act 1986 (FTA), regardless of whether that person is subject to an order under s108 of the CCCFA. This would better protect consumers and help ensure the provision of quality financial advice.

(b) If that is considered too broad, at the very least consideration should be given to extending s14(2) to disqualify:

- i. individuals subject to a management banning order under s46C of the FTA. The ability of a District Court to make a management banning order against an individual under the FTA was introduced in 2013 (by the Fair Trading Amendment Act 2013), and it appears that consideration was not given at that time to a consequential amendment to s14(2) to disqualify such individuals from being financial service providers.
- ii. individuals excluded from the management of a body corporate under s80C of the Commerce Act 1986.

Amending s14(2) in this way would be consistent with other grounds for disqualification and provide better consumer protection than the status quo.

4. Chapter 8 – Role of financial service provider registration and dispute resolution: We find the register of financial service providers to be an extremely useful tool, and it is often consulted by Commission staff. As noted at paragraph 228 of the Issues Paper, the information on financial service providers contained on the Register must be useful and meet the needs of users. Consideration should be given to including an e-mail address for financial service providers on the Register. An e-mail address is often more relevant than a postal address, and could make it easier for users to engage with financial service providers. We also note that deregistered financial service providers are included on the Register, and we wonder if they could be differentiated from registered providers at first glance, in the drop down menu that appears when you start typing the name of a provider in the search box (perhaps by being coloured grey with “(Deregistered)”, like struck off companies in the drop down box that appears when you start typing the name of a company in the search box on the Companies Register). An initial quick check just shows a name and number, and it is not unless you click through to the details page that you can find out an entity is deregistered.

If you have any questions about our submission, please do not hesitate to contact me.

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Competition Matters 2015, Wellington 23 and 24 July. Register [RED](#).

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