



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

20 March 2018

Productivity Commission
4 National Circuit
Barton ACT 2600, Australia

Email: financial.system@pc.gov.au

Dear Sir / Madam

Re. Competition in the Australian financial system – Draft Report

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback in response to the Productivity Commission's draft findings and recommendations presented in its Competition in the Australian financial system draft report.

The FPA commends the Commission on its consideration of the issues impacting market competition in the financial advice market, and the financial system more broadly. Our feedback on the draft report relates to draft findings and recommendations pertinent to the financial advice market.

The FPA would welcome the opportunity to discuss with you the issues raised in our submission.

If you have any questions, please contact FPA's Head of Policy and Government Relations, Ben Marshan or myself

Yours sincerely

Heather McEvoy

Policy Manager

Financial Planning Association of Australia¹

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The Financial Planning Association (FPA) has more than 12,000 members and affiliates of whom 10,000 are practising financial planners and 5,600 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Mark Vincent, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board.



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

COMPETITION IN THE AUSTRALIAN FINANCIAL SYSTEM - DRAFT REPORT

**FPA submission to
Productivity Commission**

20 March 2018

GENERAL ADVICE

Draft recommendation 12.1 Rename general advice to improve consumer understanding

- *General advice, as defined in the Corporations Act 2001 (Cth), is misleading and should be renamed. The Commission supports consumer testing of alternative terminology to ensure that misinterpretation and excessive reliance on this type of promotional information is minimised.*
- *The term 'advice' should only be used in association with 'personal advice' that takes into consideration personal circumstances.*

The FPA supports the Commission's recommendation to rename general advice to improve consumer understanding; and for the term 'advice' only to be used in association with 'personal advice' that takes into consideration a consumer's personal circumstances.

As recommended in the FPA's previous submission, general advice could be re-named 'general or financial product information' and be limited to the provision of 'factual information and/or explanations' relating to financial products or classes of financial products. However we support the Commission's recommendation for consumer testing of an alternative terminology to ensure that misinterpretation and excessive reliance on this type of promotional information is minimised.

Information request 12.2 Renaming general advice and merits of further changes

In implementing draft recommendation 12.1, we request feedback on:

- *how the scale of transition costs associated with renaming general advice could be minimised, including the effect of varying the transition timeframe*
- *barriers or unintended consequences of such a change, including licensing implications.*

We also seek information on the merits of:

- *redefining the activities that are currently regulated under general advice and providing a more customised regime for some activities*
- *removing licensing and regulatory obligations currently associated with some or all forms of general advice.*

The FPA supports renaming general advice and the term 'advice' only to be used in association with 'personal advice' that takes into consideration personal circumstances.

However, the FPA opposes the 'removal of licensing and regulatory obligations currently associated with some or all forms of general advice'.

The limits of this measure should be a renaming of 'general advice' only. The intent of renaming 'general advice' must be to remove the consumer confusion associated with the term. Consumer protection mechanisms must not be watered down - the regulations that currently apply to 'general advice' should remain under the new name as they provide vital consumer protection mechanisms.

The renamed general advice should be regulated with a warning similar to the existing general advice warning. This warning should make it clear that the information is not financial advice, it is information about a financial product or a class of financial products.

Licensing and all the other forms of regulation which currently apply to 'general advice' should remain in place and apply under the alternative terminology.

Cost

As this should be a change to the name 'general advice' only, the cost and unintended consequences should be minimised. It would require an update of providers' websites, FSGs, and other consumer communication/disclosure material; and staff training.

Consideration would need to be given as to whether a licence would be required to be re-issued by ASIC under the new general advice name. Or, given it is just a name change, whether the transition arrangements could allow licences to be updated with the new name at a renewal period.

Transition arrangements

Parliament recently passed a Bill establishing the new Australian Financial Complaints Authority (AFCA). Licensees are required to include in their disclosure material and on their website, information about the EDR scheme of which they are a member of and how to make a complaint. The commencement of AFCA will require licensees to update their disclosure material and websites.

To avoid a duplication of cost, the transition arrangements for the renaming of general advice should be aligned with the AFCA transition arrangements. This way licensees will only be required to update disclosure material once.

Review current regulations

A key element of the Commission's recommendation 12.1 is to ensure that misinterpretation and excessive reliance on this type of promotional information is minimised under the alternative terminology. We therefore recommend consideration be given to the strength of the current regulations of general advice. In particular, the current licensing exemption for financial product issuers providing general advice under regulation 7.1.33H:

If you are a financial product issuer, you do not need an AFS licence or authorisation to give general advice about the products you issue or the class of products you issue. You must:

(a) advise the client that you are not licensed to give general advice about your product;

(b) recommend that the person obtain a PDS, if appropriate, and read it before making a decision; and

(c) if giving advice about the offer, issue or sale of a financial product, notify the client about the availability or otherwise of a cooling-off regime that applies to the acquisition of the product (or product of the same class or interest in the product): reg 7.1.33H(1)(c). (RG 244.41- RG244.42)

This exemption distorts the market in favour of product issuers and depletes consumer protections. It promotes a sales culture and is counter to and undermines the financial advice best interest duty in the Corporations Act. The Government has spent the last 8 years bolstering consumer protections around the purchasing of financial products through the introduction of the Future of Financial Advice

(FoFA) reforms, the new financial adviser professional standards and ethics regime, and the soon to be introduced product design and distribution legislation and enhanced ASIC regulatory powers. The FPA recommends the removal of the current licensing exemption for financial product issuers under regulation 7.1.33H.

FPA's general advice recommendations

1. The FPA supports the Commission's recommendation to rename general advice to improve consumer understanding; and for the term 'advice' only to be used in association with 'personal advice' that takes into consideration a consumer's personal circumstances.
2. The FPA opposes the 'removal of licensing and regulatory obligations currently associated with some or all forms of general advice'. This should be a renaming of 'general advice' only. Licensing and all the other forms of regulation which currently apply to 'general advice' should remain in place and apply under the alternative terminology.
3. To avoid a duplication of cost, the transition arrangements for the renaming of general advice should be aligned with the AFCA transition arrangements.
4. The FPA recommends the removal of the current licensing exemption for financial product issuers under regulation 7.1.33H

EXPANDING FINANCIAL ADVICE TO INCLUDE CREDIT PRODUCTS

Information request 12.1 Potential to increase the scope of financial advice to include some credit products

The Commission is considering recommending that ASIC-licensed financial advisers be able to provide advice on some credit products, in particular home loans, personal loans and credit cards. We seek views on:

- *the merits of such a proposal*
- *which credit products should be included in this increased scope to provide advice*
- *the nature of any duty advisers would have to their clients*
- *different licensing approaches including the form of the licence*
- *the regulatory costs and impact on the industry.*

As detailed in the Commission's draft report, there is a significant difference in the services provided by mortgage brokers and financial planners. A key differential is the requirement for financial planners to act in the best interest of their clients, to prioritise their client's interest over their own and those of third parties, and adhere to conflicted remuneration obligations. The draft report highlights substantial concerns regarding such matters in relation to mortgage brokers.

While the FPA supports the intent of the Commission's recommendation to expand the scope of financial advice to include credit products, and the consumer benefits this would deliver, consideration should be given to the following concerns associated with this proposal:

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- The disparity in the standards required of financial planners (detailed below) versus mortgage brokers puts financial planners at risk of being associated with and tainted by the issues that still exist for mortgage brokers.
 - The difference between the consumer protection mechanisms for financial advice in the Corporations Act versus those in the National Credit Act.
 - These vastly different regulatory regimes means that it is significantly more expensive to provide financial advice to clients, than it is to provide mortgage broking services. This puts into question clients' willingness to pay for credit advice from a financial planner versus brokerage services from a mortgage broker, and how this cost disparity will be positioned in the market by its participants.
 - The current regulations restrict financial planners' advice in this area – financial planners are currently only permitted to recommend a certain credit provider, not a specific credit product.

These concerns present the risk of an inequitable market for financial planners. For consumers to derive the benefits of a competitive credit advice market there must be a level playing field for all market participants. The FPA recommends:

- The implementation of the Commission's draft recommendation 8.1 - the introduction of an obligation for mortgage brokers to act in the best interest of consumers and to place the consumer's interest ahead of their own and related parties. This should apply to ALL mortgage brokers not just lender-owned mortgage brokers.
- Mortgage brokers should recommend the loan that is appropriate for their client's needs.
- Financial planners be permitted to give advice on credit matters, including recommending credit products.

Financial advice standards

The standards financial planners must meet are significantly higher than both the current and proposed standards for mortgage brokers. Financial planners are already required to:

- Provide advice in the best interest of their clients
- Demonstrate their advice is appropriate for their client and places their client in a better position
- Comply with conflicted remuneration requirements - commissions are banned on super and investment advice and restrictions on soft dollar benefits for example
- Education standards of a minimum of a relevant degree or degree equivalent (to commence for new planners January 2019, with transition arrangements for existing planners)
- Comply with a code of ethics (commencing 1 January 2020)
- Pass an entry exam (by 1 January 2021)
- Meet Continuing Professional Development (CPD) requirements (by 1 January 2019)
- Complete a professional year

When providing personal advice, financial planners consider a client's needs including cash flow, debt management, risk management, investments and structures, and estate planning. Financial advice must be appropriate for each client requiring financial planners to document how their research and considerations, strategy and recommendations are based on their client's circumstances; and how

their advice strategy and recommendations will put their client in a better position if the client follows their advice.

To demonstrate that their advice is in the best interest of their client, is appropriate for their client, and will put their client in a better position, as required by the Corporations Act, financial planners need to:

- identify, set and prioritise, specific and measurable goals and objectives with their client based on their client's circumstances and information.
- Assess the feasibility of their client's stated objectives, giving consideration of the strengths and weaknesses, opportunities and limitations of their client's current financial situation
- Consider their client's personal strengths/weaknesses, capabilities and preferences in the way their client manages money (financial literacy and behavioural economics considerations)
- Determine what their client does not understand about their current situation and future financial needs
- Assess their client's level of financial literacy and understanding of their financial position
- Importantly, financial planners must research products to identify the appropriate product to meet their client's needs based on their client's circumstances, and ensure their client truly understands the features, risks, benefits, disadvantages and costs of the products the planner recommends in order to satisfy the appropriateness obligations (s961G) with the best interest requirements.
- Demonstrate that their client is likely to be in a 'better position' (s961G) if they follow their advice
- If their client does not provide personal information that is vital to identify their circumstances and provide advice, such as income and living expenses, financial planners must determine if they can provide advice that is in their client's best interest without such information.
- clearly explain and document all conflicts of interest the planner or third parties may have in relation to the advice being provided to each client, and prioritise the client's interest
- assess whether they have the expertise required to provide the client advice on the subject matter sought and, if not, they must decline to provide the advice (s961B(2)(d))
- base all judgements in advising the client on the client's relevant circumstances (s961B(2)(f))

This goes beyond the requirements placed upon mortgage brokers under the National Credit Act and as suggested in the Draft Report and the Commission's recommendations 8.1.

The professional and regulatory standards financial planners must adhere to would enable financial planners to appropriately assist clients with their credit needs.

[Licensing](#)

The licensing requirements under the Corporations Act are specific to financial advice and contain higher consumer protection standards than those in the National Credit Act.

Under the Australian Financial Services Licensing (AFSL) regime, a licensee can apply for and hold a range of licence authorisations. Each authorisation comes with its own set of regulatory requirements that must be met and maintained. Licensees then authorise each of its financial advice representatives based on strict competency and other standards. While a licensee may hold a full AFSL with a range of authorisations, representatives may only be authorised to provide limited financial advice based on their competency.

Licensees can already apply for an AFSL authorisation for margin lending advice. This authorisation requires licensees and their authorised representatives who provide such advice, to meet the specific margin lending competency, conduct and disclosure standards as set in ASIC's RG146 and RG219.

The Commission's draft recommendation 12.1 is an extension of the scope of financial advice. The intent is to permit financial planners to provide advice on credit products. Hence the service provided by financial planners does not change – it is still the service of providing financial advice.

Therefore the FPA recommends financial planners be permitted to provide advice on credit products under their AFSL and not required to also hold a credit licence. This could be done via an AFSL authorisation.

This recommendation is in line with the current licensing arrangements for margin lending where issuers and advisers of margin lending facilities are licensed by ASIC under an AFSL, even though margin lending is a credit product.

Credit products

Financial planners currently have clients seeking advice on a range of credit products from basic deposit products to commercial property loans and mezzanine finance (provided by specialist commercial advisers).

The FPA recommends financial planners should be permitted to provide financial advice on all credit products as long as the planner is appropriately authorised under an AFSL, accredited and competent to provide financial advice on the relevant class of credit product.

Should the Commission proceed with its draft recommendation to expand the scope of financial advice to include credit products, this should not be limited to home loans, personal loans and credit cards. It should include all credit products.

FPA's financial advice on credit products recommendations

1. To ensure a consistent approach to consumer protections, the FPA recommends a level playing field for all participants providing advice on credit products. This must include raising the standards and requirements for all mortgage brokers as per the Commission's draft recommendation 8.1 to ensure mortgage brokers recommend a credit product that is in the best interest of the consumer, and is appropriate for the client's needs.
2. The FPA recommends financial planners be permitted to provide financial advice on:
 - a) credit matters, including recommending credit products.
 - b) credit products under their AFSL and not required to also hold a credit licence. This could be done via an AFSL authorisation.
 - c) all credit products as long as the planner is appropriately authorised under an AFSL, accredited and competent to provide financial advice on the relevant class of credit product.

VERTICAL INTEGRATION

Draft recommendation 7.2 Building an evidence base on integration

- *Firms that are undertaking mergers or acquisitions within the financial system — including banks, insurers and other financial services firms — should notify the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission (ASIC) on the nature and size of these acquisitions as they undertake them.*
- *ASIC should maintain a publicly accessible database of the relationships between parent and subsidiary companies, and report annually on all notifications received.*

The FPA has a long held position that financial planners should behave professionally and in the same way regardless of ownership structures. However there must also be a level playing field – all financial planners should be given the same opportunity to provide advice on all products and have access to the same product information to enable planners to consider products and give appropriate advice to their clients, regardless of product and advice ownership structures. Product manufacturers must be agnostic about who and how financial advice is provided on their products.

The FPA supports the Commission's draft recommendations to improve transparency of company ownership. We support the draft recommendation for ASIC to maintain a publicly accessible database of the relationships between parent and subsidiary companies, and to report annually on all notifications received. However ASIC's role in accepting notifications on the nature and size of mergers and acquisitions, should be limited to maintaining a publicly accessible database of the relationships between parent and subsidiary companies and associated reporting. It should not extend ASIC's powers in relation to the approval of mergers and acquisitions. This role should remain the responsibility of the ACCC.

This recommendation should also be expanded to require better disclosure by authorised representatives, to state the parent company under which they are licenced in client communication, including on websites and in emails, in a clear, accessible, and visible manner (ie. not hidden).

FPA's vertical integration recommendations

1. The FPA supports the Commission's draft recommendations to improve transparency of company ownership and for ASIC to maintain a publicly accessible database of the relationships between parent and subsidiary companies, reporting annually on all notifications received. This should not extend ASIC's powers in relation to the approval of mergers and acquisitions.
2. The FPA recommends better disclosure by authorised representatives, to state the parent company under which they are licenced in client communication, including on websites and in emails, in a clear, accessible, and visible manner.

THE FINANCIAL SYSTEM REGULATORS

Draft recommendation 15.1 Statements of expectations for regulators

- *Regulator Statements of Expectations and Statements of Intent, as agreed in the response by the Australian Government to the Murray Financial System Inquiry, should be urgently implemented. They should be written in clear language and updated at regular intervals thereafter.*
- *Statements of Intent should be published by regulators within three months of receiving the Statements of Expectations.*
- *In their annual reports, the financial regulators should provide information on the actions they have taken in line with their Statements of Intent.*

The FPA supports the Commission's recommendation 15.1 regarding Statements of Expectation and Statements of Intent for regulators as a means of improving transparency of the financial system regulators performance.

It is unclear whether the Government and regulators would undertake a consultation process seeking stakeholder views and community expectations in relation to regulators' performance, to develop the Regulator Statements of Expectations and Statements of Intent.

Draft recommendation 17.1 New competition functions for a regulator

- *To address gaps in the regulatory architecture related to lack of effective consideration of competitive outcomes in financial markets, an existing regulator must be given a mandate to take the lead on matters related to competition in the financial system.*

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- *To minimise cost and disruption, this role should be implemented in substantial part through the Council of Financial Regulators (CFR).*
 - *There would be no change under this recommendation to the current legislated responsibilities of the regulators. Rather, the Australian Government should include in its Statement of Expectations for all members of the CFR the practice of reviewing, before they are implemented, regulator actions that may have material effects on competition.*
 - *The competition-related functions of the designated Council member would include:*
 - *transparent analysis of competition impacts tabled in advance of measures proposed by regulators*
 - *testing of the impacts of competition and community outcomes of additional provider integration.*

The FPA agrees that there is a lack of consideration of competitive outcomes by regulators and support the use of the CFR to facilitate consideration of competition in regulator interventions before they are implemented.

The FPA supports the intent of the Commission's recommendation 17.1 however we do not believe it is sufficient for the Government to include in its Statement of Expectations for all members of the CFR the practice of reviewing, before they are implemented, regulator actions that may have material effects on competition.

The FPA would support legislated changes to regulator responsibilities to ensure the effects on competition are given due consideration and review, and the appropriate priority by the Regulator (or Treasury) prior to the implementation of Regulator actions.

ASIC's stated vision is:

"...to allow markets to fund the real economy and, in turn, economic growth. In doing so, we contribute to the wellbeing of all Australians.

We do this by:

- 1. promoting investor and consumer trust and confidence*
- 2. ensuring fair and efficient markets*
- 3. providing efficient registration services."*²

This vision is in line with Section 1(2) of the ASIC Act, neither of which promote or consider competition:

In performing its functions and exercising its powers, ASIC must strive to:

- a) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and

² Chairman's Report, ASIC Annual Report 2016-17, pg 2

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- b) promote the confident and informed participation of investors and consumers in the financial system; and
 - d) administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements; and
 - e) receive, process and store, efficiently and quickly, the information given to ASIC under the laws that confer functions and powers on it; and
 - f) ensure that information is available as soon as practicable for access by the public; and
 - g) take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer functions and powers on it.

We believe it is insufficient to require regulators to consider the impact of their regulatory measures on competition, in the Government's Statements of Expectation. It should be a legislative requirement.

Regulators should also be considering the impact a regulatory action has on competition at the time of creating the proposal and throughout its consultation process. As detailed in our previous submissions to the Commission, we have experience with ASIC and Treasury not taking into account the impact of proposed regulatory measures on competition, even when these issues are clearly raised and evidenced.

This requirement should include Treasury, as a member of the CFR and in its role of identifying and implementing Government policy.

Draft recommendation 17.2 Transparency of regulatory decision making

- *The Council of Financial Regulators (CFR) should implement a process of review before its members put in place regulatory interventions that may have a material impact on competition in a product market.*
- *There must be a member of the CFR designated to take up the role of assessing planned interventions, to establish possible consequences for competition in financial markets.*
- *The assessment of competition impacts should be discussed at the CFR meeting, and the regulator planning the intervention should consider amending its policies to reduce the effects on competition.*
- *Competition analyses, as well as the minutes of the CFR meetings, should be made public in a timely manner.*

The FPA gives in principle support for the Commission's recommendation 17.2 however we raise the following concerns.

Identifying proposed regulatory measures for referral to the CFR

It is unclear who determines which regulatory interventions have a material impact on competition. Our experience supports the Commission's key finding that there is a need for regulators to be "...aware of the effects of their actions on weakening competition and creating consumer detriment". As stated in the draft report, regulators do not currently appropriately consider the impact regulatory interventions have on competition. For ASIC this is not currently a requirement.

For example, the new ASIC Supervisory Cost Recovery model saw a significant change to the funding model, counter to stakeholder feedback during a thorough two year consultation process, resulting in the re-introduction of an inequitable formula that has the potential of charging a sole practitioner more than 35% more per adviser than a large licensee with more the 250 advisers (based on the base financial advice levy only; other levies also apply). As highlighted in our submissions to ASIC and Treasury, the financial advice levy will create a significantly larger burden for small licensee businesses that have the least capacity to absorb such high additional costs. The cumulative impact of the ever increasing regulatory costs threaten to increase the cost of providing financial advice for a small financial planning business (of no more than 5 advisers) by approximately \$50,000 per year.

We appreciate the need to balance regulation with capacity - ASIC's resources mean that it is easier for the Regulator to deal with one large licensee than 500 small licensees. However, regulatory decision making must encourage a competitive financial advice market to drive beneficial improvements for consumers.

We would be concerned if it was left to the discretion of each regulator to determine whether its own interventions were relevant for referral to the CFR for review. The FPA recommends stakeholders participating in consultations regarding new regulatory measures from all CFR members, including ASIC and Treasury, be allowed to request proposed regulatory interventions be referred to the CFR for review of the impact on competition.

The FPA recommends the CFR accept and consider direct requests from all stakeholders, not just referrals made by CFR members, to review the impact of proposed regulatory measures on competition.

Applicable to all markets

These recommendations should not be limited to “regulatory interventions that may have a material impact on competition in a **product market**”.

Financial advice is a highly regulated professional financial service. Due to its unique market composition, financial advice participants are extremely vulnerable to regulatory measures that have an impact on market competition.

As stated in our previous submission and describe in detail in Attachment D of the Commission's draft report, the advice market has a large number of small businesses who hold and operate under their own Australian Financial Services Licence (AFSL) (approximately 57% of licensees have 10 advisers or less³); but there is also a large number of small business financial planning practices that are authorised and operate under the AFSL of a large dealer group. Such dealer groups also usually have employed advisers.

Competition is essential to drive improvements in the quality of advice and positive consumer outcomes in this unique market.

Measures to improve the transparency of regulatory decision making must include all markets in the financial system, including the financial advice market, and not limited product markets.

³ Based on FAR dataset

CFR deliberation outcomes

The Commission's draft recommendation 17.2 includes that "*The assessment of competition impacts should be discussed at the CFR meeting, and the regulator planning the intervention should consider amending its policies to reduce the effects on competition*".

The FPA is concerned about the strength of this proposed outcome of the CFR's deliberations of referred regulatory interventions.

While we appreciate that each Regulator is a specialist in the role it performs in the oversight of Australia's financial system, we are concerned that there is no requirement placed on the CFR to make a recommendation; or on the Regulator planning the intervention to amend its policies to reduce the effects on competition, in line with the CFR's recommendations.

A lack of a clear mandate and meaningful outcome from the proposed CFR deliberations may undermine the intent of the Commission's draft recommendation and hinder the desired change in the Regulators' approach to competition considerations.

Information request 17.1 Which regulator should advance competition in the financial system?

- *The Commission has presented two possible options for a regulator to advance competition in Australian financial system and ensure robust consideration of competition in the regulatory decision making processes of the Council of Financial Regulators:*
 - *Option 1: that ACCC be afforded new proactive functions to supplement its current reactive role in the financial system*
 - *Option 2: that ASIC's existing financial system focus be expanded beyond participant conduct and consumer outcomes to include the advancement of competition.*
- *We welcome feedback on the merits of each option or alternative possibilities.*

The FPA supports a combination of option 1 and 2.

- The ACCC's expertise in assessing competition is vital and would provide a clear mechanism for an objective 'outsiders' assessment of and input into the regulation and oversight of the financial system and its participants.
- ASIC's expertise in the regulation of the financial system's market participants is fundamental for consumer protection but as the Regulator, ASIC may be too deeply absorbed and motivated by the detail of its job of regulating market participants. However it is necessary for ASIC's focus to be expanded to include the advancement of competition to ensure a balance is achieved between consideration of the issues of competition and consumer protection, both of which will deliver enhanced consumer outcomes.
- (Similarly, we would suggest focus of all CFR members, including Treasury and APRA, be expanded to include the advancement of competition.)

We support the inclusion of the ACCC, as the expert regulator of competition, as a member of the CFR. The FPA supports Option 1, that the ACCC be afforded new proactive functions to supplement its current reactive role in the financial system.

FPA's financial system regulators recommendations

The FPA recommends:

1. Legislated changes to regulator responsibilities are necessary to ensure the effects on competition are given due consideration and review, and the appropriate priority by the regulators during policy development and prior to the implementation of Regulator measures.
2. Stakeholders participating in consultations regarding new regulatory measures from all CFR members, including ASIC and Treasury, be allowed to request proposed regulatory interventions be referred to the CFR for review of the impact on competition.
3. The CFR accept and consider direct requests from all stakeholders, not just referrals made by CFR members, to review the impact of proposed regulatory measures on competition.
4. Measures to improve the transparency of regulatory decision making must include all markets in the financial system, including the financial advice market, and not limited to product markets.
5. Consideration be given to requiring the CFR make a clear recommendation to the regulator planning the intervention to amend its policies to reduce the effects on competition.
6. The FPA supports Option 1, that the ACCC be afforded new proactive functions to supplement its current reactive role in the financial system.

FINTECHS

Information request 4.1 Should ASIC's regulatory sandbox be extended?

Should the fintech licensing exemption offered under the Australian Securities and Investments Commission's (ASIC's) regulatory sandbox be extended to prudentially regulated fintechs that want to take retail deposits and issue other eligible financial products? If extended, would:

- *an extension encourage new fintechs to become banks or providers of financial products*
- *any additional consumer protections be necessary to prevent poor conduct and retain consumer confidence?*

The FPA opposes the extension of ASIC's regulatory sandbox.

While innovation has many advantages it does not always enhance competition or consumer outcomes. Consumer protection is paramount.

Fintechs provide automated financial product advice using algorithms and technology and without the direct involvement of a human adviser⁴, and therefore groups consumers based on sample circumstances and provides all consumers in the group with the same advice. Such advice is only based on the information provided by the consumer who may not be best placed to understand the importance of a particular piece of information in relation to the advice they are seeking. These factors significantly increase the risk of consumers receiving financial advice that may not be appropriate for their needs and circumstances. Providing exemptions from regulatory requirements for such service providers does not take into account the inherent increased risk of inappropriate advice for consumers and removes vital consumer protection mechanisms.

If the current regulatory regime is too onerous for new businesses – if it is too costly or too difficult – ASIC’s regulatory requirements should be reviewed and made simpler and more affordable for all participants.

We question the validity of extending exemptions to Fintechs purely because they use technology differently to other financial advice providers. All market participants should be treated fairly.

FPA’s Fintech recommendations

The FPA opposes the extension of ASIC’s regulatory sandbox.

MORTGAGE BROKERS

Draft recommendation 8.1 Duty of care obligations for lender-owned aggregators

The Australian Securities and Investments Commission should impose a clear legal duty on mortgage aggregators owned by lenders to act in the consumer’s best interests. Such a duty should be imposed even if these aggregators operate as independent subsidiaries of their parent lender institution, and should also apply to the mortgage brokers operating under them.

The FPA supports the introduction of an obligation for all mortgage brokers and aggregators to act in the best interest of consumers and to place the consumer’s interest ahead of their own and related parties. The products recommended should also be appropriate for the consumer.

These changes should apply to all mortgage brokers and not limited to lender-owned aggregators.

⁴ ASIC, Proposed Industry Funding Model for ASIC: Supporting attachment to the Government’s Proposals Paper, November 2016, pg.64