



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

**BUSINESS
RESOURCE
MARKETS**



Regulatory System Assessment

Consumer and Commercial System Owner Response

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1 Purpose

This document provides the system owner response to the Consumer and Commercial Regulatory System Assessment (**the Assessment**) carried out by a Regulatory Systems Performance project team in November 2018. It provides comment on the findings raised in the Assessment and outlines the actions being taken to address them.

This document is intended to be read in conjunction with the Consumer and Commercial Regulatory System Assessment document (Consumer and Commercial Regulatory System Assessment - FINAL.docx).

2 Summary of the Overall Assessment

The core regulatory actors in the Consumer and Commercial Regulatory System (**the system**) are MBIE and the Commerce Commission. As stewards of the system, MBIE has the primary responsibility for maintaining, monitoring, evaluating and improving the system, and therefore developed this response.

There are a number of other actors who undertake important roles in this regulatory system. This includes non-governmental organisations that provide advice and assistance, and advocate on behalf of consumers and businesses. Although they are not formal regulatory actors, these groups perform functions that contribute to and indeed, are essential to, the effective functioning of the system.

Despite the broad scope and the diversity of actors in it, the Assessment found that the system works reasonably well for the majority of consumers. There have also been significant improvements in cooperation between key actors in this regulatory system and consultation across the system in recent years.

However, there are a number of findings regarding the overall scope of the system and the way that certain parts of it function. The areas identified for improvement are set out in the findings below, alongside the system responses.

3 Issues raised in the Consumer and Commercial Regulatory System Assessment

3.1 Finding 1: the system is fit for purpose and is not vulnerable to systemic risks or harms, but there is room for improvement

The system assessment found that that overall the system is working reasonably well for the majority of consumers and businesses. Stakeholders identified resourcing pressures on the

system, but did not expose any systemic risks or failures. There have been improvements in coordination across the system.

Response

We agree. We have identified specific opportunities for improvement under each of the findings below.

3.2 Finding 2: while the scope of the system is reasonably well understood at a general level, some elements might fit better in another regulatory system

The Assessment found that the design of the system largely makes sense, but some elements of the system do not sit comfortably in it. These were the Personal Property Securities Act 1999 (PPSA) and insurance contract statutes.

The assessment argued that while the PPSA is used for consumer transactions, it is primarily intended to be a tool for business, enabling financing through personal property rather than real estate. Therefore, the benefits the PPSA delivers for consumers are secondary. For this reason, the PPSA may fit better in the Corporate Governance Regulatory System.

Insurance contract statutes were identified in the Consumer and Commercial Regulatory System Regulatory Charter¹ as being the joint responsibility of the Consumer and Commercial Regulatory System, and the Financial Markets Regulatory System. The charter noted that it was possible that responsibility may shift during the course of the review of insurance contract law. The Panel consistently heard from stakeholders that insurance matters are a better fit within the Financial Markets Regulatory System.

Response

We agree. Some elements of the consumer and commercial regulatory system do not sit comfortably in it.

In response, the system owners of both systems have agreed to move the PPSA to the Corporate Governance Regulatory System and insurance contract statutes to the Financial Markets Regulatory System. We think that these elements fit better in these systems.

3.3 Finding 3: it is important for the system to continuously seek to improve coordination of, and cooperation between, key regulatory actors

The Assessment outlined the importance of the system continuously seeking to improve coordination of, and cooperation between, key regulatory actors. The system is complex and

¹ The charter sets clear expectations for what the system intends to achieve and sets out the roles and functions of various parts of the system. The charter can be found at <https://www.mbie.govt.nz/dmsdocument/3080-regulatory-charter-consumer-commercial-pdf>

involves many actors. As a result, there is a need for practical mechanisms to ensure the system is fully functional.

Given the horizontal nature of this regulatory system, the Assessment argued that MBIE is best placed to take a leadership role in driving best practice in relation to consumer protection issues. Stakeholders also suggested that business interests are less represented than consumer ones, therefore MBIE should ensure active cooperation and coordination with businesses and organisations that represent business interests.

Response

We agree. We must continue to improve system coordination and cooperation.

This was identified by system stakeholders as a high priority. Coordination and cooperation within the system should drive work to be more well-rounded, efficient and effective.

The key forum for coordination and cooperation between the system's regulatory actors is the Consumer Protection Partnership Forum. MBIE is leading ongoing discussions at the Consumer Protection Partnership Forum on how to improve co-ordination across the consumer system. This will continue to a priority.

MBIE is also examining how the consumer system interacts with other regulatory systems in order to better coordinate across systems. This could involve extending the Consumer Protection Partnership Forum or setting up a different framework to strengthen and broaden coordination and cooperation on consumer issues across systems.

There has been reluctance from the Consumer Protection Partnership Forum to include businesses because of concerns that they could overshadow consumer voices. However, MBIE will continue engaging with businesses about issues concerning them throughout our processes. We will also consider whether a business focussed forum could be beneficial.

3.4 Finding 4: there are perceived issues with respect to enforcement and access to dispute resolution mechanisms

The Assessment states that there are perceived issues with respect to enforcement and access to effective dispute resolution mechanisms, particularly for the more vulnerable consumers in the system. The Assessment argued that self-enforcement works for the majority of consumer-business transactions, but less well in some situations. These issues are most acute for persons considered vulnerable consumers (i.e. those at higher risk of facing barriers, making poor consumer decisions and being taken advantage of), who are discussed under Finding 5.

Awareness of some dispute resolution mechanisms is also low. The Assessment found that despite awareness-raising campaigns on the part of the financial service providers' disputes resolution schemes, awareness levels around them and how to access them remain low. The financial dispute resolution schemes in particular do not appear to be well regarded,

understood or used by consumers. The Assessment also found that there is little consistency in the entry gateways between the schemes.

The Assessment also presented mixed feedback about public enforcement. While some stakeholders noted that the Commerce Commission has been more active in relation to consumer issues in recent years, others expressed concern about the number of unresolved complaints and noted that there is a lot of harm unaddressed by the system. A number of stakeholders consider that the range of regulatory tools available to the Commerce Commission should be reconsidered.

Response

We agree. There continue to be issues with awareness and access to dispute resolution mechanisms.

The New Zealand Consumer Survey 2018 showed that 72% of people who experienced a recent problem took action and 28% of consumers took no action. Most consumers not taking action reported facing a barrier such as lacking time, or knowledge, of what to do and where to go. When consumers did take action, 49% resolved the problem to their satisfaction. The 2018 survey also shows that there is low awareness of some dispute resolution schemes.

In response, MBIE has begun targeting some information and advocacy outreach resource in two areas:

- a new Information and Education (**I&E**) community engagement programme is being finalised and launch is expected in early 2020. This programme will increase the amount of engagement with consumers in communities at greater risk of consumer harm.
- the broader I&E outreach programme focusing on resolving post-purchase issues was launched in Q3/Q4 of this year. This also targets consumers who are at greater risk of consumer harm.

Although this is a good first step, increased and diversified consumer awareness initiatives may be needed to effectively address this issue. If further resources are obtained or become available, MBIE could consider other innovative ways to support vulnerable consumers.

We note that it is not possible to aim for zero unresolved complaints. While this may not be ideal for some stakeholders, some prioritisation of limited resources is necessary.

Key agencies in the system are undertaking actions to improve access and enforcement to dispute resolution.

On the financial service providers' disputes resolution schemes, the Banking Ombudsman Scheme is developing a complaints dashboard for the banking sector based on data from the Banking Ombudsman Scheme and the complaints that banks resolve internally. This aims to help the banking sector to better understand emerging complaint trends so they can be acted on to improve banking for consumers, while also enhancing trust and confidence in banking through transparency about complaint volumes and themes.

The Government Centre for Dispute Resolution (GCDR) is developing system-level standards to support best practice dispute resolution. This work includes considering specific standards for providing services that are accessible to everyone who may need them, including vulnerable communities. If adopted by the four financial disputes schemes, the standards will enable the effectiveness of dispute resolution to be monitored.

The Safer Credit and Financial Inclusion Strategy includes actions to prevent disputes, improve access to financial dispute resolution schemes, and engage with hard-to-reach and vulnerable groups to understand barriers to accessing dispute resolution. Financial dispute resolution providers contribute to the objectives of both the Consumer and Commercial System and the Financial Markets Regulatory System.

We expect these initiatives across agencies to support and increase awareness and stronger enforcement action on consumer issues. The Consumer Protection Partnership Forum will monitor and discuss these initiatives as they develop.

The Commerce Commission has received additional resourcing and a number of their regulatory tools are being expanded

In Budget 2019, the Commission was provided with an additional \$4 million per annum for advocacy and enforcement of obligations under the Credit Contracts and Consumer Finance Act (CCCFA).

Additionally, the Commission's powers are being expanded and reviewed through:

- The Credit Contracts Legislation Amendment Bill, which is currently before Parliament, and introduces a range of new penalties and enforcement tools in respect of breaches of obligations under the CCCFA.
- The current review of the Fair Trading Act may result in changes to enforcement. A discussion paper is likely to be released in the coming months.

3.5 Finding 5: the system does not serve vulnerable consumers well

The Assessment found that the system does not serve consumers who are vulnerable well because of factors such as a lack of financial capability, poverty or hardship. These factors are a barrier to the utilisation of information and support that is available to consumers, affecting the choices available to them as well as their willingness and ability to pursue remedies in the event of something going wrong with a transaction.

Response

We agree. Serving vulnerable consumers is an ongoing and challenging issue.

MBIE intends to carry out a high-level assessment of the current resourcing of the Consumer Information appropriation, including addressing the key findings raised by the Assessment. In particular, this will focus on how this area is serving vulnerable consumers. It may also look into other findings, such as improving awareness of, and fostering engagement with, dispute resolution mechanisms, and reliance on non-governmental actors. This will identify

opportunities to optimise resources, assess if additional resourcing is required and how it could be used to effectively address the key assessment findings.

Initiatives to serve vulnerable consumers better should include:

- Services that support vulnerable consumers to avoid and resolve issues, such as financial mentors and budget advisors empowering vulnerable consumers to exercise their rights and increase their capability.
- Provision of alternative 'safer' products, such as exploring alternatives to unaffordable credit.
- Shifting responsibility to traders to act more responsibly, such as under the CCCFA.
- Increase public enforcement, particularly in industries causing harm to vulnerable consumers. This includes forthcoming amendments to the CCCFA that strengthen enforcement, and increases to Commerce Commission funding.
- More targeted information and education, such as Consumer Protection's I&E community engagement programme in Mangere with the Mangere community network group Nga Manga o Mangere. This was completed Q3/Q4 this year. This was a cross-system pilot including employment, housing and insolvency regulatory systems. As a result, Consumer Protection is reviewing their community print resources, which will be completed in the 2020/21 financial year. A new community toolkit has also been designed to help community groups facilitate discussions on buying a motor vehicle, focusing on acceptable quality, buying on car finance and vehicle safety.

A number of aspects of this framework above have been adopted, or are being advanced, for credit issues, but this approach may not generally be applicable to other sectors. The applicability of these different mechanisms to particular sectors should be considered in future policy work streams to ensure we are effectively considering and serving vulnerable consumers.

Serving vulnerable consumers should be the key focus of the proposed review of the Consumer Information appropriation, in order to ensure vulnerable consumers are supported through community engagement, empowered to exercise their rights, increase their capability and have access to the right information at the right time.

We also note that MBIE is working with MSD, the Commerce Commission and FinCap (a non-governmental organisation) to upgrade the client management system for financial mentors: Client Voices. This will enable anonymised reporting from NGO client management systems so that we can better understand the circumstances for people and whānau in hardship. It will mean better monitoring of issues and trends for vulnerable consumers.

3.6 Finding 6: there is a heavy reliance on non-governmental actors

The Assessment found that the system relies on non-governmental organisations (NGOs) to advocate on behalf of, provide advice and support to both consumers and businesses. Some of the work done by these NGOs is publicly funded and some of it is not.

The Assessment suggested that there is scope for the regulatory actors and Government in general to be more coordinated and strategic in their interactions with the NGOs. This reduces duplication, drives common understandings about issues and objectives in the system, and ensures that the publicly funded resources provided to these actors are used as efficiently and effectively as possible.

Response

We agree. The Consumer Protection Partnership Forum will be used to continue fostering cooperation and coordination between NGOs and government actors.

3.7 Finding 7: there is a series of generic and recurring consumer issues that arise across multiple sectors and systems

The Assessment found that there are a number of generic consumer issues across the economy and across a number of regulatory systems. In particular, issues with contracts were identified in a number of contexts including insurance, building and telecommunications. These areas seemed to be ones where the products offered to consumers were particularly technical or complex in nature.

Response

We agree. Some consumer issues occur across multiple regulatory systems.

MBIE considers that these issues are best addressed through a combination of:

- Strengthening generic consumer protections in the Consumer and Commercial Regulatory System.
- Furthering engagement with regulatory actors in other systems on improving system-specific protections. There are strong links between the Competition and Consumer Policy team and the policy teams currently undertaking work in the insurance, building and electricity sectors.

3.8 Finding 8: there is a tension between principles-based legislation and the desire for certainty

The Assessment argued that there is an inherent tension between the principle-based legislation that applies across all sectors of the economy and which is flexible and adaptable, and the strong demands from both businesses and consumers for certainty.

Response

We note this tension.

This finding was identified by some system actors as a low priority response area because it is largely unavoidable for generic legislation that applies to a wide range of goods and services. However, there are a number of areas where work is underway to improve the certainty of our consumer legislation for the benefit of both businesses and consumers:

- The Credit Contracts Legislation Amendment Bill is introducing more prescriptive regulations for certain lender responsibilities, such as requirements to perform affordability and suitability assessments, and responsible advertising.
- The review of the Fair Trading Act may consult on a more prescriptive list of contract terms that are deemed to be unfair contract terms.
- The work on Country of Origin disclosure for food will no longer rely on the generic provisions of the Fair Trading Act, creating more legal certainty.

More generally, we consider there is merit in exploring whether MBIE can give stronger guidance on some matters – for example, the scope of various provisions of the Consumer Guarantees Act. This will be considered by the Competition and Consumer Policy team in future work.

3.9 Finding 9: there is a need to collect and make better use of data and evidence

The Assessment found that there are issues surrounding the extent to which the system captures and uses data and evidence in formulating policy, and developing I&E and enforcement initiatives. The system has improved in terms of collecting and collating data in recent years, but there is room for improvement.

Response

We agree. Better use of data and evidence is critical to achieving good outcomes.

To improve data and evidence in the system, MBIE has undertaken a variety of initiatives:

- Consumer Protection has restarted system-wide monitoring through the 2016 National Consumer survey and 2018 New Zealand Consumer Survey. It has been agreed that these surveys will be conducted every two years to monitor the health of the system until at least 2022.
- MBIE conducted a stocktake of data/research related to consumers in early 2019.
- The Consumer Protection Market Intel Group was established. The group meets quarterly to share and discuss their organisations' research and consumer enquiries. This group has discussed and will continue discussion on how they can better connect data across the system.

NGOs are also making improvements to their Customer Relationship Management (CRM) systems, such as with Client Voices mentioned under Finding 5, which should allow more detailed reporting on consumer issues.

The repeal of the State Sector Act 1988 and the introduction of the new Public Service Act should benefit data sharing. Particularly, it should allow agencies to join together to invest in shared systems and tools such as joint data and analytics platforms to allow for better information sharing and decision making.

As areas for data sharing are identified, MBIE will work to find better ways to share data as resourcing permits.

3.10 Finding 10: work is needed to address future issues and pressures for the system

The Assessment discussed looming issues that the consumer and commercial regulatory system needs to prepare for. These include new technologies, disruptive business models and changes in consumer behaviour. A number of these issues are further complicated by the fact that they have cross-border dimensions. Individual actors are thinking about potential impacts of these issues, but the system may benefit from a more coordinated approach.

Response

We agree. More work needs to be done to address future issues and pressures for the system.

This has been discussed at the Consumer Protection Partnership Forum. Efforts to identify emerging issues are closely tied with the response to Finding 9, with regard to making better use of data.

Current work being done in this area includes Competition and Consumer's consumer data rights work and the inclusion of future issues in policy reviews as the opportunity arises (for example, future issues were incorporated in the Fair Trading Act evaluation report).

More broadly, the Market Services (branch at MBIE) plan has prioritised identifying emerging trends, risks and opportunities early to inform policy and operations work. Market Services are currently establishing an environmental scanning cycle to identify upcoming 'big picture' issues, and identifying existing cross-government forums to share information or discuss emerging opportunities. As necessary, they will look into establishing new cross-government mechanisms we can use to share information or discuss emerging issues.

4 Summary of Next Steps

Prioritisation of work

We intend to address all of the findings, but some findings are of higher priority.

Finding 5 is our top priority with the greatest need for immediate action. Substantial and meaningful gains need to be made in serving vulnerable consumers. Therefore, this will be the key focus of the proposed high-level assessment of the Consumer Information appropriation. We want to be sure that current resourcing is being targeted effectively to empower vulnerable consumers to exercise their rights and to improve their capability for decision-making. Vulnerable consumers need to get the right information at the right time.

Finding 4 is also a high priority, with the response strongly linked to Finding 5. We have a wide range of strong consumer protection laws in place. But many consumers do not take action to resolve their disputes or enforce their rights. Improving enforcement and access to dispute resolution mechanisms is a system priority.

Table of findings and responses		
Finding 1: the system is fit for purpose and is not vulnerable to systemic risks or harms, but there is room for improvement		
Summary of response: <i>Agree - specific responses are outlined under each finding.</i>	Progress against response: <ul style="list-style-type: none"> We agree and have identified specific opportunities for improvement below. 	Status: Scoping
Finding 2: while the scope of the system is reasonably well understood at a general level, some elements might fit better in another regulatory system		
Summary of response: <i>Agree - some elements would fit better in another system.</i>	Progress against response: <ul style="list-style-type: none"> System owners have agreed to move the PPSA to the Corporate Governance Regulatory System and insurance contract statutes to the Financial Markets Regulatory System. 	Status: Complete
Finding 3: it is important for the system to continuously seek to improve coordination of, and cooperation between, key regulatory actors		
Summary of response: <i>Agree - coordination and cooperation within the system should drive work to be more well-rounded, efficient and effective.</i>	Progress against response: <ul style="list-style-type: none"> MBIE is leading ongoing discussions at the Consumer Protection Partnership Forum on how to improve co-ordination across the consumer system. This will continue to a priority. MBIE is also examining how the consumer system interacts with other regulatory systems in order to better coordinate across systems. MBIE is committing to engaging with businesses about issues concerning them throughout our processes and will also consider whether a 	Status: In progress

	business focused forum could be beneficial.	
Finding 4: there are perceived issues with respect to enforcement and access to dispute resolution mechanisms		
Summary of response: <i>Agree.</i>	Progress against response: <ul style="list-style-type: none"> • A new I&E community engagement programme is being finalised and launch is expected in early 2020. This programme will increase the amount of engagement with consumers in communities at greater risk of consumer harm. • Consumer Protection’s broader I&E outreach programme focusing specifically on resolving post-purchase issues, particularly for more vulnerable consumers. This was launched in Q3/Q4 this year. • The Banking Ombudsman Scheme is developing a complaints dashboard for the banking sector based on data from the Banking Ombudsman Scheme and the complaints that banks resolve internally. • GCDR is developing system-level standards to support best practice dispute resolution. This includes considering standards for providing services that are accessible to everyone who may need them, including vulnerable communities. If adopted by the four financial disputes schemes, this will enable the effectiveness of dispute resolution to be monitored. • The Safer Credit and Financial Inclusion Strategy includes actions to prevent disputes and improve access to financial dispute resolution schemes, and engage with hard-to-reach and vulnerable groups to understand barriers to accessing dispute resolution. <p>The Commerce Commission’s powers are being expanded and reviewed through:</p> <ul style="list-style-type: none"> • The Credit Contracts Legislation Amendment Bill, which is currently before Parliament, and introduces a range of new penalties and enforcement tools in respect of breaches of obligations under the CCCFA. • The current review of the Fair Trading Act may result in changes to enforcement. A discussion paper will be released in the coming months. 	Status: In progress
Finding 5: the system does not serve vulnerable consumers well		
Summary of response: <i>Agree - this is an ongoing and challenging issue that must be</i>	Progress against response: <ul style="list-style-type: none"> • To further identify room for opportunities, MBIE intends to carry out a high-level assessment of 	Status: In progress

<p><i>addressed.</i></p>	<p>the current resourcing of the Consumer Information appropriation. This will particularly focus on how this area can best serve vulnerable consumers and may also address other key findings. The assessment will also identify opportunities to optimise resources, assess if additional resourcing is required and how it could be used to most effectively address the key findings.</p> <ul style="list-style-type: none"> • The framework identified in the response is being actively used for credit issues, but it will be used across future policy work streams to ensure vulnerable consumers are being served well. • MSD and MBIE with Commerce Commission and FinCap are currently upgrading financial mentors' client management system; Client Voices; to gain improved monitoring and insights of vulnerable consumers. 	
<p>Finding 6: there is a heavy reliance on non-governmental actors</p>		
<p>Summary of response:</p> <p><i>Agree.</i></p>	<p>Progress against response:</p> <ul style="list-style-type: none"> • The Consumer Protection Partnership Forum will be used to continue fostering cooperation and coordination between NGOs and government actors. 	<p>Status:</p> <p>In progress</p>
<p>Finding 7: there is a series of generic and recurring consumer issues that arise across multiple sectors and systems</p>		
<p>Summary of response:</p> <p><i>Agree.</i></p>	<p>Progress against response:</p> <ul style="list-style-type: none"> • Work is underway to strengthen generic consumer protections in the Consumer and Commercial Regulatory System. • Competition and Consumer Policy will engage with regulatory actors in other systems on improving system-specific protections, particularly in the insurance, building and electricity sectors. 	<p>Status:</p> <p>In progress</p>
<p>Finding 8: there is a tension between principles-based legislation and the desire for certainty</p>		
<p>Summary of response:</p> <p><i>Agree, although we regard this as a low priority response area because it is largely unavoidable for generic legislation that applies to a wide range of goods and services.</i></p>	<p>Progress against response:</p> <ul style="list-style-type: none"> • The Credit Contracts Legislation Amendment Bill is introducing more prescriptive regulations for certain lender responsibilities, such as requirements to perform affordability and suitability assessments, and responsible advertising. • The review of the FTA may consult on a more prescriptive list of contract terms that are deemed to be unfair contract terms. 	<p>Status:</p> <p>In progress</p>

	<ul style="list-style-type: none"> • The work on Country of Origin disclosure for food will no longer rely on the generic provisions of the FTA, creating more legal certainty. • Competition and Consumer intend to explore whether MBIE can give stronger guidance on some matters – for example, the scope of various provisions of the Consumer Guarantees Act. 	
Finding 9: there is a need to collect and make better use of data and evidence		
<p>Summary of response:</p> <p><i>Agree, the system has improved in terms of collecting and collating data in recent years, but there is room for improvement.</i></p>	<p>Progress against response:</p> <ul style="list-style-type: none"> • The Consumer Protection Market Intel Group has discussed and will continue discussion on how they can better connect data across the system. • As areas for data sharing are identified, MBIE will work to find better ways to share data as resourcing permits. 	<p>Status:</p> <p>In progress</p>
Finding 10: work is needed to address future issues and pressures for the system		
<p>Summary of response:</p> <p><i>Agree.</i></p>	<p>Progress against response:</p> <ul style="list-style-type: none"> • Competition and Consumer Policy are working on consumer data rights and the inclusion of future issues in policy reviews as the opportunity arises. <p>The Market Services plan has prioritised identifying emerging trends and risks early to inform policy and their work:</p> <ul style="list-style-type: none"> • They are currently establishing an environmental scanning cycle to identify upcoming ‘big picture’ issues, and identifying existing cross-government forums that they can use to share information or discuss emerging opportunities. • As necessary, they will look into establishing new cross-government mechanisms they can use to share information or discuss emerging issues. 	<p>Status:</p> <p>In progress</p>