INSTITUTE OF MERCANTILE AGENTS
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COLLECTORS • INVESTIGATORS • PROCESS SERVERS • REPOSSESSION AGENTS

3 November 2021

Fair Trading Amendment (Commercial Agents) Regulation 2021
Better Regulation Division, Regulatory Policy
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

Dear Sir/Madam,

Proposed Fair Trading Amendment (Commercial Agents) Regulation 2021

The Institute of Mercantile Agents (IMA) is pleased to provide the attached Submission in response to the consultation on the Regulatory Impact Statement issued October 2021: *Proposed Fair Trading Amendment (Commercial Agents) Regulation 2021.*

Please do not hesitate to contact the writer to discuss any aspect of the Submission.

Yours sincerely
INSTITUTE OF MERCANTILE AGENTS

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Submission to

Better Regulation Division, Regulatory Policy

Proposed Fair Trading Amendment

(Commercial Agents) Regulation 2021

November 2021

Introduction

The Institute of Mercantile Agents (IMA) welcomes this opportunity to respond to the Better Regulation Division, Regulatory Policy consultation on the Regulatory Impact Statement issued October 2021: *Proposed Fair Trading Amendment (Commercial Agents) Regulation 2021.*

Established in 1961, the IMA represents collectors, investigators, process servers and repossession agents throughout Australia who generally work as agents for principals such as banks, financiers, lawyers, insurers, government and the business community. The IMA's membership covers the broad spectrum of industry participants from small businesses operating in rural and regional areas through to large corporations offering services across all jurisdictions.

Our members in NSW operating businesses and/or working as commercial agents and private inquiry agents are presently licensed under the *Commercial Agents and Private Inquiry Agents Act 2004* (CAPI Act). The proposed regulatory reform of the CAPI Act to modernise and improve the efficacy of the licensing regime in NSW for commercial agents and private inquiry agents, is welcomed by the IMA.

In this Submission to the Regulatory Policy consultation, the IMA signals where support is provided for aspects of the draft Regulation and otherwise identifies and explains aspects of the draft Regulation warranting appropriate amendment to be fit for purpose.

Responses to consultation questions

1. **Do you agree with the additional reasons and offences for disqualification included in the draft Regulation? If no, please explain why?**

   Yes.

2. **Are there any other grounds which the Fair Trading Commissioner should be able to consider when determining if a person is fit and proper to hold a licence to carry out commercial agent activity? If so, please specify the grounds and explain why.**

   No, however, we are concerned by several grounds included under draft Clause 11H(1) being included as prescribed grounds for the purposes of s60D(3)(d):

   - Clause 11H(1)(a)(iii) refers only to *"an offence against the Privacy Act 1988 of the Commonwealth".* In our view, this is wide ranging and unreasonable. The proposed clause suggests that a person could be found by the Secretary to not be a fit and proper person, for a simple minor breach of the Commonwealth's privacy legislation - this is unreasonable and manifestly harsh.

     We respectively submit this proposed ground requires revision by way of being defined further and/or narrowed down and should be limited to situations where there has been a series of repeated interference by a licence holder with the privacy of an individual (specifically s13G of the Privacy Act 1988 (Cth)).

   - Clause 11H(1)(d) refers to *"the person has failed to pay a monetary penalty imposed on the person under the Act, Part 5 or has failed to comply with a direction given by the Secretary under the Part and the failure continues".*

We respectfully submit, this is also unreasonable and requires revision so as to be limited to situations where the monetary penalty imposed and unpaid is not subject to a review or dispute.

We are further concerned that the Act at s60D(3)(c) includes a ground that the Secretary may consider a person is not a fit and proper person if *"the person has, within the previous 10 years, been convicted of a relevant offence"*. Our concern is that consideration of a conviction of a relevant offence within the previous 10 years may be unreasonable in certain circumstances, such as where the required sentence has been carried out and completed earlier than the 10 years and/or if the conviction was for a minor offence.

We submit any fair consideration pursuant to s60D(3)(c) must also take into account the actual circumstances of the offence and the penalty imposed and served. An overarching concern is the imposition of a fixed period of 10 years in some circumstances may lead to significant hardship and potential breach of other rights of the person, including but not limited to those under the Spent Convictions Scheme exemptions and other human rights protections.

3. Are the changes to Part 2 of the Licensing Act as prescribed in clause 11I suitable? If not, please explain why.

The general provisions of clause 11I are supported, however, we are concerned clause 11I(2) potentially may lead to unintended consequences given it provides for an open ended period where the Secretary "may await the outcome of proceedings on the charge before determining an application".

Delays in determining an application based on awaiting the outcome in proceedings beyond the control of a licence applicant may create unintended and avoidable adverse consequences for such applicant. We contend this would be unreasonable and unjust as awaiting a conviction not yet recorded is against the legal maxim "innocent until proven guilty".

The presumption of innocence[1] imposes the burden of proving any charge on the prosecution and guarantees that no guilt can be presumed until the charge has been proven.

Concerns around delays in proceedings are long standing[2]:

> *There are multiple causes of delay. In relation to a particular court or aspect of a court's jurisdiction, one or more causes may be more or less significant. The courts have varying degrees of control over these factors. Causes include: an increased caseload; increased length of hearings; insufficient court resources; problems with the management of court resources and caseload; inefficient legal procedures and court processes; party delays; and others.*

The COVID-19 pandemic contemporarily demonstrates proceedings can be delayed for reasons beyond the control of courts, plaintiffs and defendants.

[1] https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/presumption-innocence

[2] https://www.parliament.nsw.gov.au/researchpapers/Pages/court-delays-in-nsw-issues-and-developments.aspx- Briefing Paper No. 01/2002 by Rachel Callinan

It is appropriate to point out that a person seeking a commercial agent licence is looking to be able to earn an income, with all costs involved in applying for the licence needing to be met by the applicant well before any income can be earnt. Any delay in the Secretary determining the outcome of the application due to delays in proceedings outside the control of the applicant may impose financial hardship on that person if unable to earn an income while awaiting the outcome of the delayed proceedings.

This concept of an open ended period for a licence application decision is at odds with other provisions under the Act, specifically s60A(1) in relation to disqualified persons, includes:

> *"(d) the person has been convicted, within the last 5 years, of a relevant offence and a sentence of imprisonment or a fine of $500 or more has been imposed on the person following that conviction…"*

Further s60D(2) provides a person is not a "fit and proper person" if

> *"(a) the person is a disqualified person, or*
>
> *(b) the Secretary makes a finding that the person is not a fit and proper person to hold a licence."*

S60D(3) details the grounds on which the Secretary may determine that a person is not a fit and proper person, including:

> *"(c) the person has, within the previous 10 years been convicted of a relevant offence".*

Our concern is that clause 11I(2) of the Regulation sets a different standard by placing licence applicants "in a holding pattern" for a decision on their licence approval and future livelihood until an outcome of proceedings is finalised, compared to existing licensed commercial agents where proceedings are required to be finalised, before a finding that the person is not a fit and proper person is made. In the latter situation, a licensed commercial agent is able to continue with his business.

Given the open ended period has a potential for creating adverse financial consequences for an applicant, we respectfully submit a more reasonable process would be to require the Secretary to determine an application for a commercial agent's licence within 3 months of lodgement and where the outcome of proceedings for a charge is not known by that date, the licence be approved (if appropriate with conditions) and thereafter when the outcome for a charge becomes known, then the Secretary may make a finding in accordance with the provisions of s60D.

4. Do you have any other views on the application of the Licensing Act to this legislation?

No.

5. Do you agree with the information set out in the draft Regulation for inclusion in the Register? If not, please explain why or explain what details you think should be included.

In principle the establishment of a Register accessible to the public via the internet is supported by the IMA as it provides to consumers an opportunity to confirm the bona-fides of a person as a licensed commercial agent authorised to carry out commercial agent activity.

The IMA further supports the range of information to be included in the Register but adds a caveat in relation to the "business address" of a licence holder:

For many licensed commercial agents, their business address is also their private residence, where they live with family members. In such situations, it is inappropriate and potentially unsafe for all residents at the address to be included in the Register to be published on the internet for public access.

It is however appropriate, that the public have access to an address to correspond with a licence holder and for this reason, we recommend that the Register should also include a postal and contact email address for the licence holder - only the postal and contact email addresses and not the business address should be published on the internet for public access purposes.

Staying with the concept of the Register being accessible to the public via the internet, we note the Act at s60J includes in part:

> *(2) The regulations may require all or part of the Register to be published on the internet for public access.*
>
> *(3) Any part of the Register not published on the internet may be inspected by a person on payment of such reasonable fee (if any) as the Secretary may determine.*

Notwithstanding the provision of s60J(2) we note draft clause 11L of the Regulation includes no details in relation to publishing the whole or part of the Register on the internet.

6. Do you agree that 10 years is an appropriate timeframe for convictions, exclusion orders, restriction orders and cancelled licences to be kept on the Register? If not, what would be an appropriate period and why?

We submit that a timeframe of 10 years may in some circumstances be excessive. How long a record of convictions, exclusion orders, restriction orders and cancelled licences should be maintained on the Register and published on the internet for public access, we contend ultimately requires a careful balancing of differing rights.

On the one hand, former licence holders have the same right to seek employment as the wider community and will reach the point of having "served their time" and met the consequences of breaching the obligations of the Act and Regulations. On the other hand, there may be circumstances where a person with a particular record poses an unacceptably high risk if employed in certain occupations. The maintenance of a record for any extended period on the Register should be fairly made on an objective and appropriate basis.

As previously noted, an overarching concern is the imposition of a fixed period of 10 years may lead to significant hardship and potential breach of other rights of the person including but not limited to those under the Spent Convictions Scheme exemptions and other human rights protections.

S60D(3) details the grounds on which the Secretary may determine that a person is not a fit and proper person including that the person has, within the previous 10 years been convicted of a relevant offence.

As the section is drafted in discretionary rather than absolute terms, conceivably the Secretary in considering an application and the bona-fides of an applicant may decide, notwithstanding a conviction in the preceding 10 years, that the applicant is a fit and proper person and approve the licence application.

In such circumstances of the Secretary making an approval in accordance with available discretion under the Act, the continued maintenance of a record for that approved licence holder of a previous conviction on the Register would be incongruous.

A record on the Register for 10 years of an order made to stay in force for an indefinite period appears appropriate, whereas maintaining a record for 10 years of an order made for a specified period (which may be less than 10 years) may be excessive and unreasonable in the specific circumstances - the time kept on the register should be commensurate with the length of the relevant exclusion order/restriction order.

For these reasons, we respectfully submit the record in the Register should be maintained for a minimum period of 5 years except in circumstances where an order was to stay in force for a period longer than that timeframe, such as an order for an indefinite period, in which case the record should be maintained for the period of the order or for 10 years, whichever is the greater.

7. **Do you agree that the 10 year period for records of convictions, exclusion orders, restriction orders and cancelled licences to be kept on the Register should begin from the date that they are entered in the register, rather than from the day that the relevant offence or conduct is committed? If not, please explain why.**

Potentially there could be delays in information being entered in the Register due to forces outside the control of the Secretary or due to administrative error and these delays could lead to a record being in the Register for longer than is necessary or just.

Further to our response to Q6 above, we submit that whatever timeframe for records in the Register is ultimately adopted, it should begin from the date of the relevant conviction, order issued or licence cancelled as otherwise if it were to commence from when a record was first entered in situations of say a lengthy administrative or other delay, this would unfairly extend the consequences of being listed in the Register for the former licence holder.

8. **Do you agree with the limits on contact hours? If not, what alternatives would you suggest? Please explain why.**

We are concerned Rule 10(1) as presently drafted, applies to "*a commercial agent carrying out a commercial agent activity*" which s60(1) of the Act details as meaning any of the following activities:

(a) debt collection
(b) process serving
(c) repossession of goods

Application of this Rule to all types of commercial agent activity we submit will create unintended consequences which will lead to an escalation of costs which will ultimately be borne by the end user – the consumer.

Process serving and repossession of goods should not be included in the provisions of Rule 10 on the following basis:

Existing Reasonable Contact Times

Debt Collection

The Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC) jointly publish the *Debt collection guideline: For collectors and creditors* (guideline).

The guideline applies to both creditors who are directly involved in debt collection and to specialist external agencies who provide debt collection services (that is, commercial agents).

The guideline[3]:

- explains the ACCC's and ASIC's views on the laws that they regulate
- provides examples on how the law has been applied in particular cases and details of court outcomes
- gives guidance on what you should and should not do if you wish to minimise the risk of breaching the Commonwealth consumer protection laws
- notes other laws and regulations not regulated by the ACCC and ASIC that are relevant to debt collection.

Despite not having legal force, since first published, the guideline has substantially contributed to determining the practices and conduct of the Australian collections industry. A significant aspect of the guidance adopted by industry and their clients has been around the nature and times of contacting persons.

Part 2.4 of the guideline sets out the reasonable contact times for debt collection by creditors and collectors as follows:

Contact by telephone	Monday to Friday Weekends	7:30 am to 9 pm 9 am to 9 pm
	National public holidays	No contact recommended
Face-to-face contact	Monday to Friday Weekends	9 am to 9 pm 9 am to 9 pm
	National public holidays	No contact recommended
All workplace contact	Debtor's normal working hours if known, or 9 am to 5 pm on weekdays	

The contact times set out in Rule 10(1)(c) of the Commercial Agent Rules in the Regulation are supported by the IMA for debt collection on the basis they are and will remain consistent with the contact times set out in the ACCC/ASIC guideline.

It is appropriate to point out the guideline is primarily concerned with non-court debt recovery processes and includes specific explanation[4] that it doesn't limit any right of creditors and collectors to:

- take legal action to collect a debt
- conduct legal repossession activities and other legal enforcement of legitimate security interests

[3] Part 1, page 3 of *ACCC/ASIC Debt collection guideline: For collectors and creditors*, April 2021
[4] Part 1, page 4 of ACCC/ASIC Debt collection guideline: For collectors and creditors, April 2021

- seek and obtain pre-judgment remedies, for example, orders to prevent the removal or transfer of property from the jurisdiction
- enforce judgment through a court process - including examination hearings, instalment orders, orders for the seizure and sale of property, garnishment or attachment orders
- undertake all necessary procedures (for example, for serving documents) associated with these actions.

Process Serving

To the IMA's knowledge, other than as is proposed in draft Rule 10(1) no restrictions on contact times for the commercial agent activity of process serving are required by regulations in any Australian jurisdiction.

Australian court jurisdictions do not set contact time limitations for process serving other than in at least one jurisdiction[5] to provide that service cannot be effected on Christmas Day and Good Friday (with the exception of family law matters).

The IMA is unaware of public concerns or other issues providing any imperative for regulatory restrictions on contact times for process serving.

Additionally, contrary to the apparent focus of draft Rule 10(1), it is appropriate to explain that service of process and other documents by commercial agents often involves documents that are not debt related.

Commercial agents are often required to attend to urgent service of a range of non-debt related documents, for example: subpoenas to give evidence; applications for injunctions in equity and other civil matters; applications, subpoenas and orders in family law matters; and other litigated matters. They also serve a variety of documents ranging from legal correspondence through to statutory notices and including eviction notices.

These non-debt related documents are often time sensitive and as a consequence, routinely required to be served outside the hours detailed in draft Rule 10(1)(c). The unintended consequence of the limitation of contact hours for process serving as proposed by draft Rule 10(1) is the risk of jeopardising court proceedings, commercial transactions and litigated matters – delays in proceedings and other matters due to limited contact times would impose additional unreasonable and avoidable costs for the legal consumer.

We note that based on the definition of "commercial agent" under Rule 1 of the Commercial Agent Rules in the draft Regulation, such Rules are intended to apply for anyone in NSW carrying out a commercial agent activity, whether or not they hold a commercial agent licence. Court service rules generally provide process may be served by persons other than commercial agents including plaintiffs, solicitors and their employees, and sheriff officers - as drafted, Rule 10(1) would also constrain those persons for the task of serving process in regard to contact times.

In light of the above, we respectfully submit Rule 10(1) should not apply for the commercial agent activity of process serving.

[5] Uniform Civil Procedure Rules 1999 [QLD] - Rule 101

Repossession of Goods

The situation of contact times for commercial agents tasked with repossession of goods for regulated consumer financial contracts is determined by reference to the National Credit Code[6].

Specifically, Regulation 87 of the *National Consumer Credit Protection Regulations 2010* details that consent by the occupier of premises for entry to the premises is taken to have been given only if the following requirements have been complied with:

(a) a request to the occupier for entry to the premises must be made by the credit provider or agent by application in writing or by calling at the premises concerned;

(b) if the request is made personally, ***it may only be made between the hours of 8 am and 8 pm on any day other than a Sunday or public holiday****;*

(c) the consent in writing must be in accordance with Form 13 and signed by the occupier;

(d) the document of consent is not to be presented to the occupier for signature with, or as part of, any other document (unless the other document, or the remainder of the other document, contains only the provisions of section 99 of the Code).

Other than the above and now as is proposed in draft Rule 10(1) the IMA is unaware of any other restrictions on contact times for the commercial agent activity of repossession of goods being required by regulations in any Australian jurisdiction.

What are the concerns or issues providing the imperative for the proposed additional regulatory restrictions on contact times for repossession of goods in NSW?

It is appropriate to note the vast majority of repossession activities are undertaken by commercial agents on behalf of Australian banks and financiers – not only for regulated consumer finance contracts but also for unregulated contracts including leases and commercial finance arrangements.

Following the initial issue of the joint *ACCC/ASIC Debt Collection Guideline*, banks and financiers in Australia have progressively adopted the guideline as setting the minimum conduct requirements for commercial agents contracted to complete their instructions. The guideline is routinely annexed to the Service Level Agreements between banks/financiers and their agents with adherence to the guideline being an essential term of such agreements.

We note this is confirmed as recently as 29 October 2021 when the Australian Banking Association released its *Industry Guideline: Banks' financial difficulty programs* which included[7]:

> *"Banks will only contract debt collectors that follow the ASIC and ACCC Debt Collection Guideline".*

We respectfully submit that Rule 10(1) should not apply for the commercial agent activity of repossession of goods.

[6] National Credit Code, Schedule 1 of the National Consumer Credit Protection Act 2009
[7] https://www.ausbanking.org.au/wp-content/uploads/2021/10/Industry-Guideline_Financial-Difficulty-Oct-2021.pdf - p6

Proposed Reasonable Contact Times

For debt collection only, the contact times set out in Rule 10(1)(c) of the Commercial Agent Rules in the Regulation are supported by the IMA on the basis they are and will remain consistent with the contact times set out in the ACCC/ASIC guideline.

We recommend that Rule 10(1) be amended as follows:

> *"(1) A commercial agent carrying out the commercial agent activity of debt collection must not contact a person - …"*

Other Concerns with Rule 10

Other issues with the detail included in Rule 10 will be raised in response to Q13 below.

9. Do you agree with the requirements in the draft Regulation relating to trust money? If not, please explain why, including any issues that you feel the Regulation has not adequately addressed.

Yes.

10. Are the requirements relating to keeping trust account records clear and appropriate? If not, please explain why, including any suggested changes to the proposed requirements.

Yes.

11. Do you think the obligations on commercial agents in relation to unclaimed trust money are appropriate? If not, what changes would you make to this provision?

The obligations as drafted in our view are appropriate but incomplete.

We submit Rule 17 of the Commercial Agent Rules should be expanded consistent with previous provisions under the *CAPI Act* being that the licence holder after unsuccessfully making reasonable efforts to identify and locate the owner of unclaimed money pay the amount and lodge a return in respect to that money to Revenue NSW in accordance with the *Unclaimed Money Act 1995*.

12. Is the requirement that a commercial agent take all reasonable steps to resolve a complaint clear and appropriate? If not, please explain why.

Yes.

13. Do you think the Commercial Agent Rules are clear and appropriate? If not, please explain why or propose any changes.

Except for specific matters canvassed in this Submission including in response to this question, the draft Commercial Agent Rules are otherwise supported as being clear and appropriate.

We bring to your attention our concerns in relation to the following provisions of the draft Commercial Agent Rules:

Rule 7 – Entering private residence

The draft Rule is as follows:

> "*A commercial agent must not, for the purpose of carrying out a commercial agent activity, enter, attempt to enter or threaten to enter a private residence without the consent of the owner or occupant of the residence.*"

The main issue is that the term "*private residence*" is not defined in the Act, Regulation or Commercial Agent Rules – this creates uncertainty as to what is meant by the term.

Any uncertainty as to the intended meaning will potentially create problems for all parties with an interest in the activities of a commercial agent. Such parties may include the occupier of premises; police or other authorities including courts; legal advisers; commercial agents and their clients.

In terms of the intended meaning of "*private residence*":

A. Does the term mean the private dwelling or accommodation area only at a private residential property?

B. Alternatively, is the term meant to more widely refer to "*private property*", being the structures and land that make up a parcel of residential property including all egress to the front entry of any residential dwellings on such property?

Commercial agents have no need in the ordinary course of commercial agent activities to enter the private dwelling or accommodation area of a private residential property. It would only be in exceptional and rare circumstances where a commercial agent would be invited to enter a private dwelling or accommodation area of a private residential property and in those circumstances, the invitation of the occupier would be express consent to do so under draft Rule 7.

Commercial agents in the ordinary course of their activities do however need to enter private property in order to knock at the entry door of the private dwelling or accommodation to gain the attention of the occupier so as to attend to tasks of process serving, debt collection or repossession of goods.

If the meaning of "*private residence*" was intended to be as detailed in A above, then the IMA recommends the draft Commercial Agent Rules be amended to include a definition to that effect – this will remove any ambiguity as to what is meant and allow commercial agents to attend to their commercial agent activities.

Alternatively, if the meaning was intended to be as detailed in B above, then Rule 7 is completely unworkable for commercial agents going about their lawful duties, for reasons including but not limited to:

(i) A person who enters private property with a particular purpose (for example a commercial agent) has an implied right to come onto the property and up to the entry door. Rule 7 as currently drafted without a defined restriction as to what the term "*private residence*" means, would effectively and unreasonably negate this fundamental implied right.

Under the law of trespass[8], an occupier retains the right to withdraw consent by asking a person who had entered private property to leave and they must then do so, as they would otherwise then be trespassing.

(ii) Rule 7 imposes an obligation on an agent when "*carrying out a commercial agent activity*" – this would not work for process serving.

Rarely in process serving matters are commercial agents provided with anything beyond the document for service upon a named party at a particular address – it is unusual to be provided with any contact details such as telephone numbers or an email address.

Given such circumstances, how is it envisaged that a commercial agent would be able to obtain consent beforehand so as to be able to attempt to enter a premises for the purposes of serving documents without first attending that address?

The reality of process serving is that at times the person (whether a defendant, respondent or witness) is reluctant to accept service and can actively and determinedly seek to avoid all attempts of being served. Even if a commercial agent was able to make contact by phone or email in advance to seek consent to enter private property to serve documents, a person seeking to evade service is unlikely to grant consent.

(iii) Noting the implied right detailed in (i) above, it is appropriate to note the various service rules of the NSW courts acknowledge that persons may be unwilling to accept service and provide rules (as detailed below) allowing service to be effected by leaving the document in the presence of the person:

> ***UNIFORM CIVIL PROCEDURE RULES 2005***
> *10.21 How personal service effected generally*
> *(cf SCR Part 9, rule 3; DCR Part 8, rules 3 and 14; LCR Part 7, rules 3 and 14)*
> *(1) Personal service of a document on a person is effected by leaving a copy of the document with the person or, **if the person does not accept the copy, by putting the copy down in the person's presence** and telling the person the nature of the document.*
> *(2) If, by violence or threat of violence, a person attempting service is prevented from approaching another person for the purpose of delivering a document to the other person, the person attempting service may deliver the document to the other person by leaving it as near as practicable to that other person.*
> *(3) Service in accordance with subrule (2) is taken to constitute personal service.*

In any event what is meant by "*consent*" in Rule 7? Presumably the consent could be expressed in writing or could be implied.

[8] See Inclosed Lands Protection Act 1901 (NSW)

Rule 10 – Contacting persons

We bring to your attention that the inclusion or draft Rule 10(1)(b) will lead to unintended consequences. Currently Rule 10(1) indicates a commercial agent in carrying out a commercial agent activity must not contact a person in certain circumstances and specifically at Rule 10(1)(b) provides only an exemption in relation to debt collection:

> *"after the person expressly instructed the commercial agent not to contact the person again* ***unless*** *the commercial agent activity is debt collection and …"*

Rule 10(1)(b) as drafted unreasonably interferes with and prevents commercial agent activities relating to process serving and repossession of goods both of which necessarily require the commercial agent to have contact with the person.

We respectfully submit Rule 10(1)(b) should be more narrowly constructed to only refer to debt collection, consistent with the similar rule in s45(2)(m) of the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*.

We suggest a more appropriate drafting of Rule 10(1)(b) could be:

> *"(b) where the commercial agent activity is debt collection and after the person has expressly instructed the commercial agent not to contact the person again unless the contact is solely for the purpose of advising the person the creditor intends to take further action to recover the relevant debt from the person*"

Rule 12 - Costs of carrying out commercial agent activity

This Rule is an absolute embargo on the collection of costs. This fails to accommodate the situation of many financial agreements between credit providers and customers which provide that in the event of a default under the agreement the customer is responsible to reimburse the credit provider for the reasonable costs of collection.

Instructions from banks and financiers to commercial agents in relation to the repossession of goods often are expressed in terms of repossess the security item or alternatively collect a stated amount representing the arrears on the account and the credit provider's reasonable costs of collection.

Rule 11 should be appropriately amended to accommodate this exception.

Definition of process serving (s60(1)(b) of Act)

The current definition of process serving is limited to "*serving legal process on a third party in relation to legal proceedings*".

As noted earlier at Q10, commercial agents attend to service of a range of documents, which may not be in relation to legal proceedings. The use of the term "*legal process*" is limiting and would not include for example notices from regulatory bodies or correspondence from lawyers and others.

Accordingly, we submit the definition for process serving in the Act be amended to include the service of other legal documents, notices and correspondence (which may not be legal process) or alternatively that the Regulation include a definition for "legal process" which is appropriately inclusive of the wider type of documents.

14. Are the proposed penalty infringement amounts appropriate? If not, what would you propose instead?

Yes.

15. Do you have any other feedback on the options proposed under the draft Regulation or Regulation Impact Statement?

We have no additional feedback with respect to the 3 options beyond our responses to the earlier consultation questions.

We record our strong support for Option 1 as an integral step in the modernisation and improvement to the efficacy of the licensing regime in NSW for commercial agents and private inquiry agents.