Applicants' submission in response to the ACCC's Draft Determination dated 18 September 2023

Establishing a mortgage aggregator assurance program Authorisation number: AA1000640

Application for authorisation lodged by Commonwealth Bank of Australia, Westpac Banking Corporation, Australia and New Zealand Banking Group Limited, National Australia Bank Limited and Macquarie Bank Limited

CONFIDENTIAL INFORMATION

This document contains confidential information which is indicated as follows:

[Confidential to ANZ] […] for Australia and New Zealand Banking Group Limited

[Confidential to CBA] […] for Commonwealth Bank of Australia

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[Confidential to Multiple Applicants] […] for multiple applicants

13 December 2023

Contents

Attachment B	Revised Program Scope
Attachment C	Revised Program documents
Attachment D	Interested party submissions

1 Introduction and executive summary

1.1 Introduction

This submission responds to the Australian Competition and Consumer Commission (**ACCC**)'s draft determination dated 18 September 2023 (**Draft Determination**) proposing to deny authorisation to the Applicants[1] in respect of a mortgage aggregator assurance program (**the Program/Proposed Conduct**) dated 17 April 2023 (AA1000640) (**the Application**).

In response the ACCC's concerns outlined in the Draft Determination, we provide the following in this submission:

- Additional context to assist the ACCC's consideration of the Proposed Conduct and further evidence in support of the Program's likely benefits to the public.
- Proposed modifications to the governance structure and operational processes that support the Program in response to the areas of potential public detriment identified by the ACCC in the Draft Determination and which enhance the public benefits likely to result from the Program.

The Applicants submit that, in light of the contents of this submission, the ACCC should be satisfied that, in all the circumstances, the Proposed Conduct would or is likely to result in benefit to the public that would outweigh any likely public detriment (ss 90(7) and 90(8) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) (the **authorisation test**)).

1.2 Summary of modifications to entrench public benefits of the Proposed Program

The Applicants have made the following modifications to the governance structure and operational processes that support the Program:[2]

- **Representation of other lenders in the operation of the Program:** The Applicants have addressed the ACCC's concern that key decisions about the operation of the Program will be made by the Applicants only (refer to sections 4 and 6.1 below). The proposed modifications will provide smaller lender representation on the Program's Operating Committee (as defined in the UJV Agreement) and ensure that the assurance reviews conducted under the Program are consistent with the interests of all lenders (as all decisions of the Operating Committee will require at least a super majority consent if not unanimous consent).[3]
- **Enhanced standard of assurance reviews conducted under the Program:** The Applicants have addressed the ACCC's concern that assurance reviews under the Program (**Reviews**) could be performed to a lower standard by providing further information to assist the ACCC's consideration of the Proposed Conduct and proposing enhancements to the draft scope submitted to the ACCC dated 2 August 2023 (**Initial Review Scope**) (refer to sections 2 and 6.4 below).[4]
- **Governance protocols and participation of other lenders mitigates any increased risk of coordinated conduct:** The Applicants have proposed

[1] Australia and New Zealand Banking Group Limited (**ANZ**), Commonwealth Bank of Australia (**CBA**), Macquarie Bank Limited (**MBL**), National Australia Bank Limited (**NAB**) and Westpac Banking Corporation's (**WBC**) (together referred to as the **Applicants**).

[2] Draft Determination, p 21- 31.

[3] Draft Determination, p 1.

[4] Draft Determination, p 1.

modifications to the governance structure and operational processes that support the Program to address the ACCC's concern that the Proposed Conduct may increase the risk of inappropriate coordination (refer to sections 5 and 0 below).[5]

- **Tiered cost structure of the Program:** The Applicants have addressed the ACCC's concern that the cost structure favoured large lenders with proposed modifications to the Program's fee structure (refer to section 6.3 below).[6]

- **Multiple Assurance Providers to be appointed to the panel under the Program:** In response to the ACCC's concern about having a single assurance service provider (**ASP**) appointed under the Program, the Applicants have proposed the appointment of multiple ASPs to the panel under the Program (refer to section 6.3 below).[7]

1.3 The modified Program enhances significant public benefits of the Proposed Conduct

As the evidence described in the sections below demonstrates, the Proposed Conduct, supported by the modified governance structure and operational processes, will offer significant benefits to the public with no reduction of competition.

The revised Program will deliver significant public benefits for consumers, lenders, aggregators and mortgage brokers through the following:

- **Material savings for aggregators** (as substantiated below in section 3.2) that will not be available in the absence of authorisation.

- **Savings for lenders** (as substantiated below in section 3.1) from a reduction in the cost of assurance reviews and compliance costs while increasing assurance quality across the lending industry.

- **Material efficiencies** (as substantiated below in section 3) for aggregators and lenders through the significant reduction and in some cases elimination in duplication of reviews which will reduce resourcing impacts for aggregators and improve the governance of aggregators and brokers for those lenders for which the Program will represent an uplift in assurance.

- **Development of more consistent and higher quality assurance standards** which will deliver superior aggregator and broker compliance outcomes at an industry level when compared to a counterfactual where authorisation is not granted (as outlined below in section 2).

- **Improved governance** and oversight of aggregators and brokers for regulators, compliance auditors and other stakeholders (as outlined in section 5).

- **Improved outcomes for consumers** through broader industry-level uplift flowing from more aggregators and brokers addressing deficiencies in their systems and processes identified through the Program, including in relation to responsible lending obligations and best interest duty obligations – as noted by the ACCC in its Draft Determination, the cost of poor practices is otherwise borne by consumers.[8]

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[5] Draft Determination, p 2.

[6] Draft Determination, p 2.

[7] Draft Determination, p 2.

[8] Draft Determination, [5.87].

- **Greater consumer confidence** in lending practices through consistent industry best practice, oversight and independent assurance provided over aggregator policies, processes and controls..

The Program will not lead to any material public detriment because the Program will not lead to any diminution of competition in any relevant market identified by the ACCC in its Draft Determination. The Program will enhance competition in the supply of the following:

- **Mortgage aggregation services to mortgage brokers in Australia:** The Program will reduce ongoing costs for potential suppliers of mortgage aggregation services (through reduction in the duplication and cost of responding to reviews). The Program will also lower the barriers for lenders to access or expand their use of aggregators' distribution services, as they will be able to obtain assurance reviews of aggregators in a more cost-effective way.

- **Mortgage distribution services to lenders in Australia:** The Program will lower the costs for lenders distributing their products through aggregators and incentivise lenders to expand their aggregator distributors as the costs of adding another aggregator will be lower.

- **Assurance services in Australia:** The supply of these services under the Program will be the result of a competitive tender process that is open to selected ASPs. Assurance providers will be selected based on consistently applied criteria (and not on legacy relationships with lenders). Further, the Program will appoint multiple assurance providers, based on their ability to demonstrate that they are appropriately experienced, independent and can provide competitive pricing.

- **Mortgage lending to consumers:** The Program lowers the compliance costs of lenders' use of aggregators as a key distribution channel to borrowers. To the extent the Proposed Conduct lowers cost and allows lenders to expand distribution via aggregators, consumers will have a wider choice of lenders and products made available through brokers by way of aggregators.

2 The standard of assurance reviews conducted under the Program will be enhanced

The Applicants submit the Proposed Conduct will result in a material uplift in the standard of assurance reviews undertaken by the mortgage lending industry as a whole based on the following:[9]

2.1 Lenders currently undertake a broad range of aggregator assurance reviews

Lenders who distribute their products through aggregators currently adopt different approaches to obtaining "assurance" that their aggregators are complying with their regulatory obligations and otherwise meeting industry standards.

The quality and standard of these approaches varies depending on a range of factors including the following:

- **A lender's chosen method of review (and choice *to* review)**: some lenders do not conduct any assurance review and instead rely on their contract with the aggregator (e.g. aggregators warranting that they are complying with their regulatory obligations) or on aggregator attestations to the effect that they are meeting their regulatory obligations – for example, the Australian Finance Group's

[9] Draft Determination, p 1.

submission refers to "*very low touch one page self-declaration confirmations*" employed by some lenders.[10]

- **The party conducting the review**: some reviews are conducted by lenders in-house, while others are conducted by external providers.
- **A lender's appetite for risk**: some lenders may gather information without verification, some with a single round of testing or using one or a combination of different methodologies (e.g. interviews, data validation, sample loan file reviews).
- **A lender's budget and cost constraints**: this will inform all of the above factors as well as the level of coverage that a lender's reviews have (ie, covering some or all of their aggregator partners).

Figure 1 below sets out the types of reviews currently observed in the industry on a continuum from lowest quality level of assurance to the highest quality level of assurance.

Figure 1 Aggregator assurance processes currently undertaken by lenders[11]

As illustrated in Figure 1, the highest quality standard of review is considered to be an independent external review. This type of review involves an expert assurance provider reviewing the aggregator's internal systems, control testing of a representative sample of underlying materials such as loan files to identify any compliance failures or areas to address, and provide recommendations for the aggregator to consider in order to address any areas of concern.

Reviews of this kind are completed by professional service teams with specialist audit-trained, risk and compliance teams with experience in consumer credit. The external providers' core review team are also able to draw on support functions within their organisation to ensure the review team is up to date with respect to industry best practice and developments as well as legislative changes and new regulations.

[10] Australian Finance Group, *Submission to the ACCC – after Draft Determination* (20 October 2023) (**AFG Submission – after Draft Determination**), p 3. Available here.

[11] The Applicants have prepared **Figure 1** on the basis of their own current practices as well as evidence provided by interested parties in submissions to the ACCC including: MFAA, *Submission to the ACCC – after Draft Determination* (27 October 2023) (**MFAA Submission – after Draft Determination**), p 3. Available here; AFG Submission – after Draft Determination, p 3.

The range in hours spent by aggregators to respond to assurance reviews demonstrates the significant variation in type of assurance reviews lenders currently conduct. For example:

- REA Group indicates the time it devoted to each assurance review ranged from 5 hours to over 200 hours, with reviews remaining open from 6 to 218 days;[12]
- According to Connective Credit Services Pty Ltd (**Connective**):
  - "*full audits*" require significant amounts of work, usually a combination of detailed questions (between 40-100) and control testing of sample loan files, with each one occupying up to a full week of a senior member of compliance team member's time (for Connective, this is usually a combination of the National Head, Risk & Compliance and the Group Legal Counsel); and
  - attestations involve a shorter list of questions, requiring a shorter response or a more generic attestation, often with a request for supporting documentation, taking on average between 2-4 hours to complete;[13]
- Lendi Group indicates the time involved in each review ranged from 2 to over 70 hours, with reviews remaining open from 5 to 135 days;[14] and
- the Mortgage and Finance Association of Australia's (**MFAA**) submitted that the 142 audits undertaken in 2022 equated to approximately 4,263 estimated hours of effort from aggregators, an average of 30 hours per review.[15]

2.2 Program would provide improved quality and standard of aggregator reviews for lenders as a whole

The Applicants' external counsel have compiled the table contained in **Confidential Attachment A** to this submission which identifies:

- the type of review each Applicant currently conducts; and
- the areas that their existing review scope does not address, but will be addressed under the proposed Program based on the revised review scope contained at **Attachment B** and outlined further below at section 6.4 (**Revised Review Scope**).

Confidential **Attachment A** demonstrates that if the Program is authorised, it will lift the overall frequency, quality and standard of the aggregator assurance reviews conducted by the Applicants. In particular:

- while some of the Applicant lenders currently engage external providers to complete reviews consistent with the Initial Review Scope, the Revised Review Scope materially augments the Initial Review Scope provided to the ACCC with respect to Responsible Lending, Best Interest Duty and Design and Distribution Obligations among other areas;
- both the Initial Review Scope and Revised Review Scope represent [redacted]

[12] REA Group, *Submission to the ACCC* (22 May 2023) (**REA Group Submission**), p 2. Available here.

[13] Connective Credit Services, *Submission to the ACCC* (22 May 2023), p 2. Available here.

[14] Lendi Group, *Submission to the ACCC – after Draft Determination* (3 October 2023) (**Lendi Submission – after Draft Determination**), p 1. Available here.

[15] MFAA Submission – after Draft Determination, p 2.

[redacted]

- the Initial Review Scope and the Revised Review Scope represent a significant expansion in scope for some of the Applicants and for many other lenders – the MFAA and Lendi Group note in their submissions that the Initial Review Scope is of a higher standard and more comprehensive than what is currently undertaken by some lenders;[16] and

- the Program will increase the frequency of aggregator review assurance processes for some of the Applicants and other lenders, with reviews under the Program being conducted annually.[17]

The Applicants' Revised Review Scope is the 'baseline standard' for reviews under the Program. The Program provides a mechanism for the scope of reviews to continuously evolve to ensure there is adequate oversight and coverage of relevant prudential standards and regulations, consumer credit legislation and regulations and ASIC's best practice recommendations.

2.3 Improved affordability, quality and standard of aggregator reviews for smaller lenders

The Program will deliver significant benefits to smaller lenders who opt-in to the Program as the Program will enhance the quality of their aggregator assurance reviews. The MFAA noted in its submission that several smaller lenders propose to respond to regulatory obligations imposed by APRA through participation in the Program.[18] This is consistent with the data provided in the MFAA's submission which indicates that while the aggregators responding to MFAA had an average of 52 lenders on panel only an average of 16 lenders sought some form of assurance review from each of those aggregators.[19] In circumstances where smaller lenders may only write a small volume of mortgages through an aggregator (if any), the costs of engaging an external assurance review provider in relation to little to no revenue generated through that aggregator channel are often not justifiable.

In the absence of authorisation of the Program, many of these smaller lenders may not conduct or obtain external assurance reports at the frequency and of a quality that is comparable to the Program due to the costs associated with obtaining multiple aggregator assurance reviews.

Where a smaller lender has an assurance process in place already, the quality may be limited by cost and capacity constraints.[20] Consistent with this, we understand that a number of lenders only obtain an attestation from their aggregators that they are meeting their regulatory obligations, with many not conducting an underlying audit of the aggregator's internal policies, documentation, or broker loan files.[21]

Furthermore, the Program will enable smaller lenders to gain access to reviews that have the benefit of drawing from a more representative sample of loan files. A review conducted by a lender will only involve its own files that necessarily will be a smaller

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[16] MFAA Submission – after Draft Determination, p 5; Lendi Submission – after Draft Determination, p 2.

[17] As set out in further detail in the Applicants' response to the ACCC's request for information dated 2 August 2023, a "deep dive review" in one year will be followed by a targeted review in the following year.

[18] MFAA Submission – after Draft Determination, p 2.

[19] MFAA Submission – after Draft Determination, p 2.

[20] MFAA Submission – after Draft Determination, p 5; COBA Submission, p 2.

[21] Ibid.

sample size than available under the Program. For smaller lenders, this disparity is particularly acute. Through the Program, smaller lenders will get access to an external assurance review that is based on a larger and representative sample size of loan file reviews. This will allow smaller lenders to obtain a higher level of assurance that an aggregators' brokers are complying with their regulatory obligations.

The tiered pricing proposed under the Program (and outlined below at section 6.3) will make these high-quality reviews significantly more affordable for smaller lenders than the counterfactual absent authorisation.

2.4 The Program will incentivise quality ASP reviews

Under the Program, lenders, ASPs and aggregators will all have aligned incentives to obtain the highest quality assurance report. This is because:

- For **Lenders,** a principal purpose of ASP reviews is to provide lenders with assurance that the relevant aggregator and their brokers are meeting their regulatory obligations. If an aggregator or their brokers are not meeting their regulatory obligations, individual loan errors can create risk for the lender and, depending on the conduct, a distribution channel may need to be closed. Accordingly, lenders have a commercial incentive for the ASP to provide a high-quality report in a consistent and actionable form.

- For **ASPs,** through the tender process for their appointment to the Program's review panel (as outlined below in section 6), will be incentivised to offer a high-quality 'best practice' review methodology to meet the Program's objectives and the Revised Review Scope in order to be appointed to the Program. To provide regulatory assurance, the ASPs will need to perform a diligent review of the aggregators' internal systems processes, policies, and controls to ensure that they have sufficient and appropriate evidence to support their conclusions.

- For **Aggregators** that currently need to manage the time and administrative burden of engaging with multiple concurrent and varied review processes (as outlined above in section 2.1), they will see a significant reduction in resources required to respond to reviews. These resources can instead be deployed to provide more thorough responses to reviews as well enhancing their compliance systems and processes.

3 Analysis demonstrates significant cost savings and efficiencies to lenders and aggregators

We set out below relevant information to assist the ACCC's consideration of the cost savings and efficiencies arising from the Proposed Conduct. [22]

3.1 Current aggregator assurance costs incurred by the Applicants

The cost of completing an assurance review varies widely depending on a number of factors including scope, type and standard (as outlined in section 2.1 above). This is demonstrated by the range in the average cost per review for each of the Applicants set out in Confidential Figure 2 below.

[22] Draft Determination, [5.27].

Figure 2 Applicants' average cost per review [redacted]

[redacted]

We note some of the Applicants' current costs are not indicative of their future costs in the event the Program does not proceed. [redacted][23]

As such, the appropriate comparison for calculating cost savings is between (a) a scenario where all Applicants independently engage external assurance providers to complete reviews of a similar scope and standard and (b) a scenario where Applicants undertake reviews as part of the Program.

The Applicants do not have access to data on the costs incurred by other lenders in carrying out assurance reviews. However, as we set out in further detail below at section 6.3, under the tiered fee structure non-Applicant lenders will contribute a maximum of $5,000 each to the cost of a review. Obtaining a review report from an external assurance provider for a maximum of $5,000 represents a material cost saving relative to the cost of a lender acquiring that review independently outside the Program.

With limited access to data that would enable the Applicants to predict actual costs of lenders absent the Program and therefore savings of lenders with the Program the Applicants propose to estimate **hypothetical** cost savings on the basis of:[24]

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[23] [redacted]

[24] These inputs are estimates that have been compiled to the best of the Applicants ability but rely on a number of assumptions as detailed above.

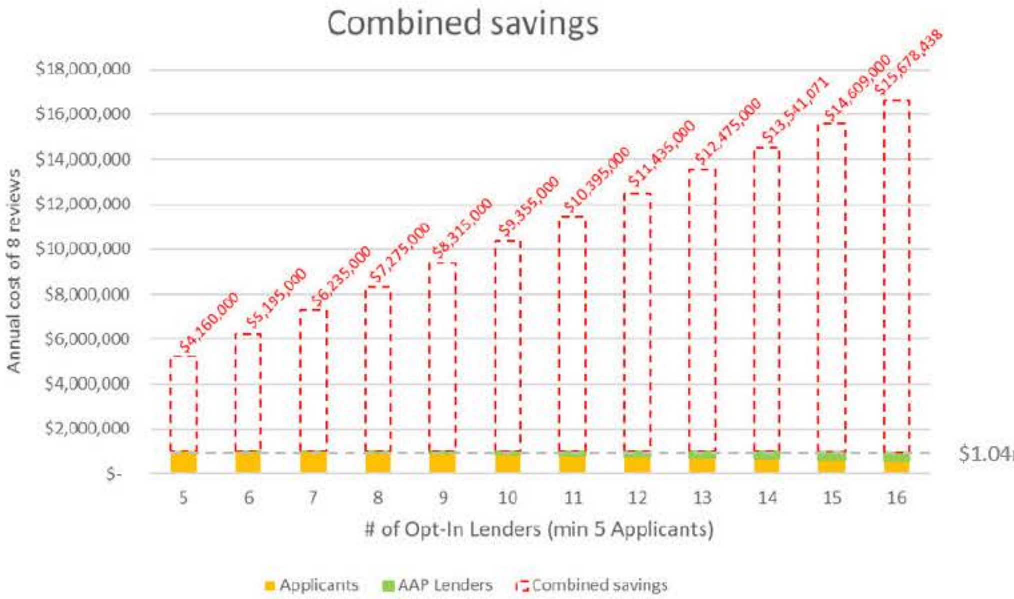
- **16 lenders** (the Applicants and 11 others) completing reviews to the **same standard and scope** as the Program – though this is a hypothetical figure, this is a reasonable estimation of participation as the MFAA indicated in its submission that 9 aggregator members currently completed an average of 16 reviews each in 2022 and, further, these aggregators account for ~93% of brokers in Australia;[25]

- **a cost of $130,000 per review,** being [redacted] and

- **8 aggregators reviewed annually** - this is the median of the number of aggregators reviewed by each of the Applicant lenders annually (where the range is 4-12).

To illustrate the range of cost savings depending on the level of participation, Figure 3 depicts savings in the event that only the Applicants opt-in to 8 reviews annually, and shows potential cost savings up to an additional 11 lenders.

Figure 3 Hypothetical combined cost savings for conducting aggregator assurance reviews under the Program



As shown in this hypothetical at Figure 3, there are significant potential cost savings at every level of participation:

- if **only the Applicants undertake 8 reviews p.a.,** the potential annual cost savings relative to a counterfactual where the Applicants would otherwise independently undertake 8 reviews of a similar scope and standard is **$4.16m;**

- if just **one AAP Lender (i.e. a lender participating in the unincorporated joint venture agreement annexed to the Application (UJV Agreement)) opts in to each of the 8 reviews**, the savings increase to **$5.2m p.a.** – for clarity, these could be different lenders for each of the 8 aggregator reviews (i.e. there is no need for

[25] MFAA Submission – after Draft Determination, p 2. While we do not have access to de-anonymised data from the MFAA, we consider it l kely these 9 aggregators would be engaged by the Applicants as well as at least 11 other lenders as the MFAA indicates these 9 aggregators account for ~93% of brokers in Australia.

the same opt-in AAP Lender to participate in all 8 of the aggregator reviews for this cost saving to be realised); and

- based on an upper estimate of participation, if each of the Applicants and any combination of 11 other Opt-in Lenders (i.e. lenders which opt-in for an assurance review under the Program) opt-in (16 total) and complete 8 reviews, the cost of completing these 8 reviews for 16 lenders is ~$1.04m annually – if instead these 8 reviews were undertaken independently by all 16 lenders (128 reviews) this could cost an additional **$15.7m p.a.**

As participation increases, the base cost of completing 8 reviews under the Program remains static ($1.04m p.a.), while actual costs to both Applicant and other Opt-in Lenders decreases, resulting in greater combined cost savings compared to a scenario where all lenders independently undertake 8 reviews of a similar scope and standard.

[redacted]

3.2 Aggregator cost savings are significant

The ACCC indicated that it would assist if the Applicants provided details of the estimated value of the cost savings that they expected the Program would realise.[26]

Aggregators incur substantial cost and disruption to their operations to respond to multiple assurance reviews for multiple lenders, each tailored to meet the lenders' individual requirements.

MFAA surveyed its aggregator members and the 9 aggregators who responded to the MFAA's request for data collectively reported a total of 142 reviews undertaken in the calendar year 2022, which equated to:

- a total of 4,263 estimated hours of effort responding to lender reviews at an estimated total cost of $723,000 across all aggregator members; and
- on average, 16 reviews per aggregator (an average of 34% of lenders on each aggregator's panel) at a cost of approximately $5,000 per review.[27]

Further, the MFAA's aggregator members anticipate that the number of lenders conducting assurance reviews is likely to increase in the short-term as lenders respond to changing regulatory requirements. They expect a minimum of a further 54 assurance reviews to be conducted by lenders if the Program is not authorised, bringing the total number of reviews anticipated for the next calendar year to at least 196 reviews across 9 aggregators.[28] MFAA estimates that the cost associated with just those additional reviews is approximately $300,000 at a minimum. This means that in the absence of authorisation and implementation of the Program, based on data supplied by MFAA's aggregator members, assurance reviews by individual lenders will cost its aggregator members an average of approximately $1 million per year[29] (or approximately just over $111,000 per aggregator based on 9 aggregators).

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[26] Draft Determination, [5.30].

[27] MFAA Submission – after Draft Determination p 2.

[28] Ibid.

[29] Ibid.

To provide the ACCC with an estimate of the time and cost savings for aggregators in the event the Program is authorised, we have set out in Table 1 the estimated annual cost and time savings per aggregator. The estimated annual cost and time savings per aggregator are estimated to be **approximately 280 hours of saved time** and **approximately $46,667 of saved costs** in responding to multiple lender assurance reviews. These calculations are made on the assumption that the average number of lenders that currently complete reviews opt-in to the Program, being 16 lenders per aggregator based on MFAA's aggregator member survey. As noted in the MFAA submission, its aggregator members have an average of 52 lenders on panel (including an average of 28 ADIs). This level of participation is considered to be conservative given that the MFAA's aggregator members expect that per aggregator, the average number of reviews could increase (at a minimum) from 16 to 23 in the short-term.[30] An increase in the number of lenders conducting reviews from an average of 16 to an average of 23 per aggregator would increase the number of hours spent by an aggregator per year responding to reviews by 210 hours reflecting an additional cost of $35,000 per aggregator.

Table 1 Estimated annual time savings per aggregator

Input	*Average number of hours spent per review*	x	*Average # of lenders completing assurance reviews per aggregator p.a.*	-	*Estimated time required to respond a Program ASP review*		*Time saving per aggregator p.a.*
Source	*MFAA*[31]		*MFAA*[32]		(upper range in time spent by REA Group in responding to assurance reviews)[33]		
Figure	**30 hrs**	**x**	**16**	**-**	**200 hrs**	**=**	**280 hrs**

Table 2 Estimated annual savings per aggregator

Input	*Average cost incurred per review*	x	*Average number of lenders currently completing assurance reviews per aggregator p.a.*	-	*Estimated cost to respond to a Program review* *$5,000 / 30* *(cost per hour)* x *200* *(hrs per review)*		*Cost saved per aggregator p.a.* *(under the Program)*
Source	*MFAA*[34]		*MFAA*[35]		*MFAA*[36] *REA*[37]		
Figure	**$5,000**	x	**16**	**-**	**$33,333**		**$46,667**

Based on the number of aggregators currently listed in the UJV Agreement (11 aggregators) (refer to Schedule 1), the Applicants estimate that the **combined time and cost savings in the event the Program is authorised** would be approximately **3,080**

[30] MFAA Submission – after Draft Determination, p 4.

[31] MFAA Submission – after Draft Determination, p 2. The average number of hours spent per review is the number of hours of effort (4,263) divided by the number of reviews (142) according to the MFAA's data.

[32] Ibid.

[33] REA Group Submission, p 2.

[34] MFAA Submission – after Draft Determination, p 4.

[35] MFAA Submission – after Draft Determination, p 2.

[36] MFAA Submission – after Draft Determination, p 4. The hourly cost is the average cost of review ($5000), divided by the average hours of each review (3 hours) according to the data provided by MFAA.

[37] REA Group Submission, p 2.

hours of saved time and **$513,337 in saved costs per annum** for these aggregators based on the current average number of reviews.

As mentioned above, we understand that 9 of the 11 aggregators identified in the UJV Agreement and who participated in the MFAA's survey regarding the Program anticipate that the number of reviews they are required to participate in will increase by an additional 54 reviews. These reviews could be avoided under the Program if the relevant lenders opt-in to the Program which would in turn increase the cost and time savings estimated under the Program by a minimum of $300,000 as estimated by MFAA.[38]

Although the figures set out above are only informed estimates of the value from likely time and cost savings for aggregators, the Applicants consider that the indicative calculations demonstrate there are likely to be material benefits in the form time and cost savings.

4 Participation by other lenders in the Program

The ACCC has received a number of interested party submissions from lenders and industry associations that demonstrate the Program is likely to have strong lender participation. As observed by the ACCC, the extent of the cost savings delivered by the Program is dependent on the level of participation in the Program by lenders. Although the Applicants consider that the Program already has strong support from lenders, the Applicants have proposed revisions to the Program to incentivise significant lender uptake and participation, including a revised fee structure and expansion of participation in the Operating Committee (refer to section 6 below). The Applicants consider that these amendments will further bolster the lender support for the Program as outlined in several lender submissions to the ACCC. In particular:

- **MFAA's submission** indicates it understands that several smaller lenders propose to utilise the Program in response to increasing regulatory compliance requirements and as such will benefit from associated regulatory cost savings. MFAA considers the Program will in turn alleviate the regulatory cost burden and improve the competitive position of these lenders in the lending landscape.[39]

  Further, the Applicants have raised the revised proposed fee structure (as outlined below in section 6.3) with MFAA and understand that it is supportive of the reduced fee structure of AAP Lenders. MFAA also noted that the revised proposed fee structure would encourage greater lender participation in the Program.

- **Customer Owned Banking Association (COBA)** considers that the Aggregator Assurance Program (**AAP**) will be beneficial to its members and other smaller lenders by greatly simplifying processes for all parties, improving industry standards, creating a standardised assurance program, and making key insights on an aggregator more widely available to all lenders. Further, COBA noted that the Program could make it easier for more of its members to utilise aggregators or expand their use of aggregators as the costs of compliance become more manageable from the Program.[40]

  Further, the Applicants have raised the revised proposed fee structure (as outlined below in section 6.3) with COBA and understand that it is supportive of the reduced fee structure for other lenders.

[38] MFAA Submission – after Draft Determination p 2.

[39] MFAA Submission – after Draft Determination, p 2.

[40] For completeness, we note that COBA also considered that a proportional fee structure would maximise access for smaller lenders wishing to participate in the Program. The Applicants have introduced a revised proposed fee structure for the Program which is outlined below at section 6.3.

- **Australian Banking Association (ABA)** states it is supportive of initiatives that reduce the burden on banks, their customers and third parties.[41]

- **Bendigo & Adelaide Bank** states that it sees the benefits of the Program as not only lowering the costs associated with meeting its numerous and complex assurance obligations but also enhancing the quality of information available to it when making assessments. It considers that this additional information would assist to level the playing field across all lenders in the industry.[42]

- **ING** states that it is supportive of authorisation being granted and notes that regular reviews of mortgage aggregator and broker groups are a very important mechanism to provide assurance to lenders.[43]

- **Auswide Bank** states that it supports the centralisation of an Aggregator Assurance Program that adopts best practice and provides an industry standard approach.[44]

5 Governance structure mitigates coordinated conduct risk

The Applicants and other lenders who may participate in the program compete vigorously in the supply of mortgage lending services and will continue to do so with or without the Program.

The Applicants consider that the strict governance and competition protocols set out in the revised Program documents (**Attachment C**) will provide protections against participants engaging in coordinated conduct. In particular, as the Applicants have outlined below at section 6.5, the UJV Agreement and the 'Competition Protocol' contained in schedules to the UJV Agreement and AAP Lender Deed require the following:

- Individuals participating in the Operating Committee are not involved in competitive strategy or pricing decisions concerning their respective lender's mortgage businesses. This requirement will ensure that the representatives on the Operating Committee are not involved in competitively sensitive decisions concerning the supply of mortgage products. Instead, the Operating Committee nominees will likely be from lenders' risk, assurance, compliance, legal or corporate governance teams.

- Each Applicant, AAP Lender and non-Party Operating Committee member will be required to comply with the terms of the Competition Protocol which strictly prohibits any exchange of competitively sensitive information between any participants in the Program.[45]

- Meetings of the Operating Committee will be conducted in accordance with an agenda decided by the chairperson of the Operating Committee and circulated in advance of each meeting, with all meetings being attended by an external lawyer, including a standing agenda item regarding the application of the Competition Protocol and the meeting itself being appropriately minuted and minutes circulated to representatives following the meeting.

[41] ABA, *Submission to the ACCC* (29 May 2023), p 1. Available [here]().

[42] Bendigo and Adelaide Bank, *Submission to the ACCC* (22 May 2023), p 1. Available [here]().

[43] ING Bank, *Submission to the ACCC* (23 May 2023), p 1. Available [here]().

[44] Auswide Bank also considered that it would need specific details concerning the commercial costs it would incur as part of the Program. The Applicants have sought to address this concern through the introduction of a revised proposed for the Program which is outlined below at section 6.3. The revised fee structure includes a fee cap for smaller lenders, meaning that they will not be required to pay any amount in excess of the cap regardless of the review cost.

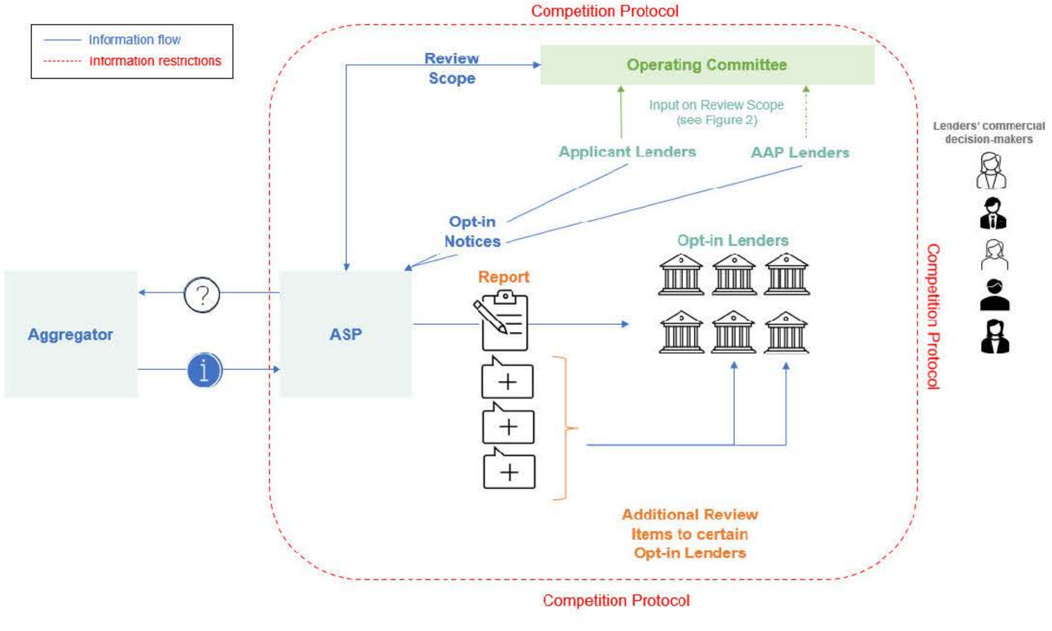
[45] UJV Agreement, cl 2.4(e)-(f), Attachment 1 (Competition Protocol), Attachment 2 (Operating Committee Protocol); AAP Lender Deed, cl 1.2(d), Attachment 1.

Further, the Program only requires the following information flows, which are subject to the protections of the Competition Protocols:

- **with the ASP,** who Opt-in Lenders will notify when they opt-in to an assurance review and from whom they will receive a Report (and any Additional Review Items (as defined in the UJV Agreement) at their election)following completion of an assurance review;
- **AAP Lenders with the Operating Committee**, in the context of consultation regarding changes to the review scope; and
- **representatives within the Operating Committee** (for those lenders directly represented on the Operating Committee) to manage the operations of the Program, including consulting on and settling the review scope and engaging ASPs.

Figure 4 below illustrates the information flows under the Program and the application of the Competition Protocols.

Figure 4 Information flows within the Program



6 Modifications to Program governance to entrench public benefits and mitigate potential detriments

To address the ACCC's concerns that there may be public detriment as a result of the Proposed Conduct certain modifications to the Program are proposed. In particular:

- having smaller lenders join the Operating Committee and providing input into its decisions about the operation of the Program;
- having a panel of ASPs and a biennial tender process;
- modifying the Program's fee structure to reduce the costs for smaller lenders; and
- enhancing the proposed scope of assurance reviews.

The modifications to the Program are set out below and in the enclosed updated Program documentation at **Attachment C**.

6.1 Increasing lender representation in the Program

The Applicants have consulted with industry groups and associations to test whether other lenders (outside the Applicants) would be interested in participating in the Program's Operating Committee to ensure that the Program affords more representative lender input into decisions about the operation of the Program.

The MFAA and COBA have indicated to the Applicants that they are willing to nominate a representative from their membership to the Operating Committee. In the event that either industry association is unable to appoint a nominee, the Operating Committee will seek to appoint two representatives from the other industry body or another suitable lender representative (that is not a representative or related to the Applicant lenders).[46]

By adding two representatives to the Program's Operating Committee from smaller lenders (**Non-Party Representatives**), the Program will have the benefit of smaller lender representation.

The Non-Party Representatives will be able to participate in decision-making processes about the scope of reviews and all operational decisions made by the Operating Committee in the same way as the Applicants. The Applicants consider that this proposal will also address the ACCC's concern that the Program could be developed in a manner that placed priority on the Applicants' own assurance review requirements as decisions of the Operating Committee concerning the standards and scope of ASP reviews will require "Super Majority Consent" of the Operating Committee members, meaning that the Non-Party Representatives will together be able to block a proposal if they do not consider that the Revised Review Scope adequately addresses the needs to smaller lenders.[47]

Relevant amendments:
UJV Agreement: Clause 9.1 (and Attachment 2 – Operating Committee Protocol)

6.2 Appointment of assurance service providers

In response to the ACCC's concerns regarding the single assurance provider model initially proposed under the Program, the Applicants are proposing to implement a competitive tender process every two years for the appointment of **at least two** ASPs for the Program (referred to as **Panel ASPs**).

Following the appointment of the Panel ASPs, each aggregator's review will be assigned to a Panel ASP by the Operating Committee. Each aggregator will have their initial biennial "deep dive review" (**Deep Dive Review**) <u>and</u> a subsequent targeted review 12 months after the Deep Dive Review (**Follow-up Review**) conducted by the same Panel ASPs. The benefits of having the same Panel ASP conduct the Follow-up Review is consistency and a more efficient second review.

At the expiry of the Panel ASPs' two-year appointment, the Operating Committee will conduct a new tender for the upcoming review cycle of Deep Dive Reviews and Follow-up

[46] UJV Agreement, cl 9.4(d)(iii).

[47] UJV Agreement, cl 10.2(b).

Reviews. The Panel ASPs previously appointed by the Operating Committee will not be precluded from reappointment after two years, but they will need to re-tender for the work.

The Applicants consider that the above approach will address the ACCC's concern that there was not sufficient evidence of increased competition for assurances services as a result of the Proposed Conduct.[48]

The Applicants submit that this approach will also deliver several benefits in support of authorisation, including the following:

- **Enhancing the Program's cost benefits** as the work will be awarded every two years following an open competitive tender process. This will ensure that the Program's ASPs are providing good pricing and highest quality of review offering.
- Reducing the overall costs associated with obtaining the ASP review as the **Follow-up Review will likely be lower cost** than switching to another service provider given they will have all the relevant background from conducting the initial Deep Dive Review.
- Allowing the Operating Committee and Opt-in Lenders in the Program to **compare the quality of the reviews and reports completed by each ASP** to ensure they are obtaining the highest quality review and assurance report.
- By conducting a tender process, **ASPs will have the opportunity to tender** for the Program's reviews. In this way, the modified proposed Program will enable both competition for the panel and within the panel. In the absence of authorisation, ASP reviews will be appointed by lenders as they see fit and possibly without any competitive tender process.
- Responding to interested party submissions to the ACCC regarding potential conflicts of interest in ASP appointment, as the Panel ASPs will be required to participate in a competitive tender process overseen by the Operating Committee before being appointed and lenders will have the ability to request that a review is assigned by the Operating Committee to a particular Panel ASP, the risk of a conflict of interest arising is reduced and if a conflict does exist it can be managed.

Relevant amendments:

UJV Agreement: Clause 7.1

AAP Lender Deed: Clause 1.5

6.3 Revised fee structure

In response to the ACCC's concern and certain interested party submissions that equal sharing of the costs of assurance reviews may favour larger lenders, the Applicants have proposed a revised proportional fee structure whereby:

- Non-Applicant Opt-In Lenders will never pay more than a fixed amount of $5,000 per review, with the remainder of the ASP review costs split equally between the 5 Applicants.
- Where the fixed amount of $5,000 is higher than the actual cost per review (i.e. due to greater volume of Opt-In Lender participation), then the non-Applicant Opt-In

[48] Draft Determination, [5.43].

Lenders will pay the lesser amount, calculated as an equal share amongst the non-Applicant Opt-In Lenders of 50% of the total cost.

Error! Reference source not found. below sets out three worked examples illustrating w hich of the above 'limbs' of the fee structure applies depending on the number of lenders participating in a review. For the purpose of these examples, we have applied an assumption that the cost per review is $200,000. While the actual cost per review amount can only be definitively known following the Program's competitive tender process and the appointment of the Panel ASPs, inputting a higher amount than the expected cost will avoid understating the potential cost of review as divided between Applicants and non-Applicant Opt-In Lenders under the revised fee structure.

Table 2 Worked examples of revised fee structure

	Applicants (5)	**Other Opt-in Lenders**		**Applicable 'limb'**
	Cost (per review)	*n*	*Cost (per review)*	(cost of $200,000 per review)
Example A	$39,000 ea ($195,000 total)	1	$5,000 ea ($5,000 total)	$\frac{50\%\ of\ cost}{n} > \$5{,}000$
Example B	$20,000 ea ($100,000 total)	25	$4,000 ea ($100,000 total)	$\frac{50\%\ of\ cost}{n} < \$5{,}000$
Example C	$20,000 ea ($100,000 total)	40	$2,500 ea ($100,000 total)	$\frac{50\%\ of\ cost}{n} < \$5{,}000$

As demonstrated by the examples above, the revised fee structure will ensure that smaller lenders only incur a small percentage of the overall ASP review cost. The Applicants consider that the revised fee structure will incentivise significant uptake of the Program by smaller lenders, particularly with the protection of a cost cap as it allows smaller lenders to budget the maximum ASP review costs they will incur in financial year. The above revisions do not impact the existing structure whereby AAP Lenders that participate in the Program (including any Non-Party Representatives) will not bear any of the ongoing costs of the Program outside of the ASP review costs – under the UJV Agreement these will be borne solely by the Applicants.[49]

Relevant amendments:
UJV Agreement: Clause 3.2
AAP Lender Deed: Clause 1.4

6.4 Proposed scope of assurance reviews

In response to the ACCC's concern that the Initial Review Scope is too high-level, the Applicants have enhanced the Initial Review Scope and included a test procedure with a minimum set of criteria that the Operating Committee will initially use to test the adequacy of any ASPs review proposals submitted in response to the Program's first tender.

[49] UJV Agreement, cl 3.1(e)(ii).

The Applicants consider that this approach will provide certainty to the ACCC that assurance reviews under the Program will adequately address the relevant aggregator and broker compliance standards, while balancing the need for the Program's scope to continually evolve over time in response to industry and regulatory developments. As demonstrated by **Figure 5**, the scope itself ensures reviews are conducted and reports can be produced in a consistent matter but with flexibility for augmentation by the Operating Committee (including in response to feedback from Opt-In Lenders) and by ASPs competing to participate in the Program.

Figure 5 Inputs to the scope, content and methodology of ASP reviews

For completeness, the Applicants have also set out in **Error! Not a valid bookmark self-reference.** below the ACCC's specific concerns in relation to the Initial Review Scope and the revisions they have made to address each concern to produce the Revised Review Scope at **Attachment B**.

Table 3 Addressing the ACCC's concerns regarding the Initial Review Scope

ACCC concern	Proposal to address concern in Revised Review Scope
Review scope (Draft Determination, [5.86])	The Applicants have made a number of modifications to the Initial Review Scope to provide certainty that the Program reviews will adequately address relevant aggregator and broker compliance standards. The Applicants have also included a set of overarching guiding principles for the review to make clear that:[50] • the ASP review should always prioritise evidence-based testing and assessment of the aggregator's systems, processes, policies, controls and overall compliance; • ASP are expected to outline the processes undertaken in reaching the conclusions in their report; • the review scope should not be considered exhaustive, and specific features of any review may also depend on

[50] Revised Review Scope, p. 1.

ACCC concern	Proposal to address concern in Revised Review Scope
	factors specific to the aggregator (such as areas of non-compliance identified in previous reviews); and • where the review identifies gaps in an aggregator's systems or compliance, the review should clearly identify the areas of concern and outline recommendations for the aggregator to consider implementing to address any concerns.
Best interests duty obligations (Draft Determination, [5.88])	The Applicants have supplemented the review objectives to provide further detail in relation to brokers' best interests duty obligations.[51] The Applicants have also amended the Initial Review Scope to ensure there is a requirement for the ASP to identify that aggregators have systems in place to test if and how brokers comply with their best interest duty obligations.[52]
Responsible lending obligations (Draft Determination, [5.88])	The Applicants have added further detail to the Initial Review Scope to ensure the ASP's review adequately covers responsible lending obligations.[53] The Applicants have amended the Initial Review Scope to ensure there is a requirement for the ASP to identify that aggregators have systems in place to test if and how brokers comply with their responsible lending obligations.[54]
Conflicted remuneration (Draft Determination, [5.88])	The Applicants have added amended the Initial Review Scope to ensure the ASP's review in relation to conflicted remuneration assesses how brokers manage the conflict between a mortgage broker's duties to the customer and being paid a commission by the mortgage lender/aggregator. As part of this assessment, the ASP will need to identify that aggregators have systems in place to test if and how brokers comply with their conflicted remuneration obligations.[55]
Systems checking (Draft Determination, [5.88])	The Applicants did not intend for the Aggregator to merely self-declare to the ASP that they are compliant with certain areas. To ensure it is clear that the ASP (at a minimum) needs to conduct its own assessment and review of the Aggregator's systems, the scope has been amended to remove all relevant references to "confirm".

[51] Revised Review Scope, p. 7 [ID G, Objective].

[52] Revised Review Scope, p. 7 [ID G, Test Procedure and Acceptance Criteria].

[53] Revised Review Scope, pp. 5-7 [ID A-F, Objective].

[54] Revised Review Scope, pp. 5-7 [ID A-F, Test Procedure and Acceptance Criteria].

[55] Revised Review Scope, pp. 7-9 [ID G, Objective; ID N, Test Procedure and Acceptance Criteria].

6.5 Further safeguard in relation Operating Committee representation

To address the ACCC's concern regarding the risk of information sharing between lenders participating in the Program and as mentioned above, the Applicants have proposed an amendment to the Program's UJV Agreement and AAP Lender Deed (including the Competition Protocol) that the Operating Committee nominees are not involved in the making of commercial and/or strategic decisions, including pricing decisions of their respective lenders. These obligations will also apply to the Non-Party Representatives.

Relevant amendments:

UJV Agreement: Clause 9.2

AAP Lender Deed: Attachment 1 – Competition Protocol Clause 4

7 Support from interested party submissions

As noted in the ACCC's Draft Determination, lenders, aggregators, ASPs and industry associations indicated support for the Proposed Conduct. Interested parties also supported the public benefit claims submitted by the Applicants, including the increased efficiency and cost savings for both aggregators and lenders. Support from some interested parties was caveated or identified areas where the Program could potentially be improved. In formulating the above revisions to the Program (outlined in section 6 above), the Applicants have carefully considered each of the interested party submissions provided to the ACCC to ensure that the revised Program appropriately addresses each concern. Set out below in **Attachment D** is a list of interested party submissions received by the ACCC (to date) and a summary of how the revised Program responds to any concerns.

8 Conclusion

For the reasons above, the Applicants submit that the ACCC can be satisfied that, in all the circumstances, the Program should be authorised pursuant to s 90 of the CCA.

Attachment A Confidential review of the Applicants' existing review scope against Initial Review Scope

[redacted]

[redacted]

Attachment B Revised Review Scope

Refer to **enclosed** the Revised Review Scope.

We note that the mark-up in this documents represents the modifications the Applicants have made to the Program's governance structure in response to the ACCC's Draft Determination and the interested party submissions received to date.

Attachment C Revised Program documents

Refer to **enclosed** updated UJV Agreement and the AAP Lender Deed.

We note that the mark-up in these documents represents the modifications the Applicants have made to the Program's governance structure in response to the ACCC's Draft Determination and the interested party submissions received to date.

Attachment D Interested party submissions

Interested party	Category	View	Caveats (if applicable)	How the Program addresses any caveats
Customer Owned Banking Association	Industry Association	Supportive with caveats	Equal split cost model could limit accessibility for smaller lenders. Instead, COBA supports a tiered funding model that includes a size metric.	**Addressed:** Refer to revised fee structure for assurance reviews at section 6.3. The Applicants have introduced a fee structure that is designed to increase the accessibility for smaller lenders and encourage them to participate and contribute to the ongoing development of the Program.
Lendi Group	Aggregator	Supportive with caveats	All industry participants should have input into scope and design, and into requirements and expectations of how such matters will be treated under the AAP.	**Addressed:** As set out in Figure 5 above, the Program affords the opportunity for industry participants to have input to the scope, content and methodology for reviews under the Program. The Program scope will constantly evolve to ensure that it represents best industry practice (as outlined above at section 2). For completeness, the Applicants do not consider that it is appropriate for aggregators to have direct influence over the process or methodology of the reviews to ensure the design of the Program is independent and not influenced by aggregators seeking to limit the scope of the Program's reviews.
Astute Financial Management Pty Ltd	Aggregator	Supportive	Nil	N/A
Bendigo & Adelaide Bank	Lender	Supportive	Nil	N/A

Interested party	Category	View	Caveats (if applicable)	How the Program addresses any caveats
Australian Finance Group Ltd (AFG) – submission before Draft Determination and submission after Draft Determination	Aggregator	Supportive with caveats	ASPs should demonstrate adequate IT security to avoid actual/perceived conflicts where they have other relationships with participants (e.g. such as auditors).	**Addressed:** This is a protection that will be built into ASP Agreements under the Program (refer to revised Program documentation at Attachment C, in particular the UJV Agreement at Clause 7.3(b)).
			Aggregators should be able to individually negotiate agreement with lenders.	**Addressed:** Aggregators will always retain the ability to individually negotiate and enter into commercial agreements with lenders regardless of whether the relevant lender participates in the Program.
			AFG supports a two-tiered approach to pricing where majors pay more than smaller lenders.	**Addressed:** Refer to revised fee structure for assurance reviews at section 6.3. The Applicants have introduced a two-tiered approach to pricing, consistent with AFG's submission. As noted above, the revised fee structure is designed to increase the accessibility for smaller lenders and encourage them to participate and contribute to the ongoing development of the Program.
			Agreement on the scope of the reviews should be facilitated by industry associations such as the MFAA.[56]	**Addressed:** The MFAA will have the ability to directly appoint a representative from one of its smaller lender members on its 'National Lender Forum' to the Operating Committee which determines the scope, methodology and process of reviews. Refer to section 6.1 for further discussion regarding industry association representation on the Program's Operating Committee above.
			Appointed ASPs should be rotated every 2 years via a competitive tender process to reduce concerns about homogenous assurance review.[57]	**Addressed:** Refer to revised ASP appointment structure at section 6.2). At least two Panel ASPs will be appointed every 2-year review cycle following a competitive tender process, with one ASP provider conducting each aggregator's Deep Dive Review and Follow-up Review. The appointment of multiple ASPs

[56] Caveat raised in submission after draft determination.

[57] As above.

Interested party	Category	View	Caveats (if applicable)	How the Program addresses any caveats
				will address concerns regarding homogeneity of assurance reviews. For completeness, the Operating Committee will not be precluded from reappointing an ASP that has completed an ASP Panel appointment and successfully retenders for the work. The Applicants consider this to be an important incentive for the Panel ASPs to perform their reviews to a high standard as they will be able to seek another appointment term on the Program's panel.
Loan Market Group Pty Ltd	Aggregator	Supportive with caveats	Change in scope should be subject to consultation with aggregators.	**Addressed:** As noted in this table above, and as set out in Figure 5 above, the Program affords the opportunity for industry participants to have input to the scope, content and methodology for reviews under the Program. The Program scope will constantly evolve to ensure that it represents best industry practice (as outlined above at section 2). For completeness, the Applicants do not consider that it is appropriate for aggregators to have direct influence over the process or methodology of the reviews to ensure the design of the Program is independent and not influenced by aggregators seeking to limit the scope of the Program's reviews.
			ASP term is too short - Loan Market supports 2-year terms to provide better consistency and reduce administration of educating a new provider.	**Addressed:** Refer to revised ASP appointment structure at section 6.2). The Panel ASPs will be appointed every 2-year review cycle following a competitive tender process, with one ASP provider conducting each aggregator's Deep Dive Review and Follow-up Review. This revised structure will increase the efficiency of the review and make the Follow-up Review more streamlined.
Auswide Bank	Lender	Supportive with caveats	Cost of AAP may be prohibitive to smaller lenders.	**Addressed:** Refer to revised fee structure for assurance reviews at section 6.3. The Applicants have introduced a fee structure that is designed to increase the accessibility for smaller lenders and encourage

Interested party	Category	View	Caveats (if applicable)	How the Program addresses any caveats
				them to participate and contribute to the ongoing development of the Program.
REA Group	Aggregator	Supportive with caveats	Reviews should be provided to relevant aggregator as well as Opt-in Lenders.	**Addressed**: A copy of the ASPs report will be provided to the relevant aggregator (the subject of the review) to ensure that they are aware of the outcomes of the review and understand any areas to address. The report will be provided to the aggregator subject to appropriate confidentiality terms to restrict disclosure of the report.
			Change in scope should be subject to consultation with aggregators.	**Addressed:** As noted in this table above, and as set out in Figure 5 above, the Program affords the opportunity for industry participants to have input to the scope, content and methodology for reviews under the Program. The Program scope will constantly evolve to ensure that it represents best industry practice (as outlined above at section 2). For completeness, the Applicants do not consider that it is appropriate for aggregators to have direct influence over the process or methodology of the reviews to ensure the design of the Program is independent and not influenced by aggregators seeking to limit the scope of the Program's reviews.
			The ASP should have robust data segregation and information exchange protocols in place.	**Addressed:** This is a protection that will be built into ASP Agreements under the Program (refer to revised Program documentation at Attachment C, in particular the UJV Agreement at Clause 7.3(b)).
BDO	Provider	Supportive	Nil	N/A

Interested party	Category	View	Caveats (if applicable)	How the Program addresses any caveats
Deloitte Touche Tohmatsu	Provider	Supportive with caveats	Consideration should be given to the methodology used to classify and categorise identified issues and findings within the report that will be most beneficial to the Operating Committee and other lenders who will gain access to the report.	**Addressed:** The revised Program review scope contained at **Attachment B** now includes a set of overarching principles to ensure that any areas to address are clearly identified in ASPs' reports with clear steps for the aggregator to undertake in order to address the issue.
ING Bank (Australia Limited)	Lender	Supportive	Nil	N/A
Mortgage & Finance Association of Australia – submission before Draft Determination and submission after Draft Determination	Industry Association	Supportive	Nil	N/A
Connective Credit Services Pty Ltd	Aggregator	Supportive with caveats	AAP should be opt-in for aggregators (as not all providers have resources/budget to meet scope).	**Addressed:** Participation in an ASP review by an aggregator will not be compulsory. The Applicants consider that the resources and time aggregators currently devote to multiple ASP reviews will be significantly reduced following the introduction of the Program (refer to the analysis above of efficiencies and cost savings for aggregators at section 3).
			Lenders need to ensure privacy and data protection measures in place to the extent they are dealing with loan files.	**Addressed:** This is a protection that will be built into ASP Agreements under the Program (refer to revised Program documentation at Attachment C, in particular the UJV Agreement at Clause 7.3(b)).

Interested party	Category	View	Caveats (if applicable)	How the Program addresses any caveats
			Questions/testing must be reasonable and appropriate (ie, not opportunistic).	**Addressed:** As noted in this table above, and as set out in Figure 5 above, the Program affords the opportunity for industry participants to have input to the scope, content and methodology for reviews under the Program. The Program scope will constantly evolve to ensure that it represents best industry practice (as outlined above at section 2).
			Lenders should continue to pay for reviews (not aggregators).	**Addressed:** Lenders participating in the Program will be responsible for the ASP's review costs. Refer to the revised fee structure proposal at section **Error! Reference source not found.**.
Finance Brokers Association of Australia Ltd (FBAA)	Industry Association	Supportive with caveats	Not clear how benefits are 'public benefits' (they appear to be savings for participants).	**Addressed:** The Program will deliver material public benefits for consumers, aggregators and lenders. Refer to section 2 above which sets out how the Program delivers benefits for each of these groups. The ACCC's Draft Determination also sets out useful analysis and precedent of the benefits that may be considered "public benefits" under the authorisation test at [5.7]-[5.8].
			Risk of AAP becoming mandatory for lenders/aggregators (compliance requires significant expense).	**Addressed:** Participation in the Program is voluntary for both lenders and aggregators. The Applicants consider that the resources and time aggregators currently devote to multiple ASP reviews will be significantly reduced following the introduction of the Program, which in turn will reduce aggregators' compliance costs (refer to the analysis above of efficiencies and cost savings for aggregators at section 3).
			Risk of chosen ASP becoming entrenched, damaging competition.	**Addressed:** Refer to revised ASP appointment structure at section 6.2). The Panel ASPs will be appointed every 2-year review cycle following a competitive tender process, with one ASP provider conducting each aggregator's Deep Dive Review and

Interested party	Category	View	Caveats (if applicable)	How the Program addresses any caveats
				Follow-up Review. The appointment of multiple ASPs will address concerns regarding homogeneity of assurance reviews. For completeness, the Operating Committee will not be precluded from reappointing an ASP that has completed an ASP Panel appointment and successfully retenders for the work. The Applicants consider this to be an important incentive for the Panel ASPs to perform their reviews to a high standard as they will be able to seek another appointment term on the Program's panel.
			ASP should be prevented from sharing information about findings in one review in another review.	**Addressed:** This is a protection that will be built into ASP Agreements under the Program (refer to revised Program documentation at **Attachment C**, in particular the UJV Agreement at Clause 7.3(b)).
Australian Banking Association	Industry Association	Supportive	Nil	N/A