



Determination

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

in respect of

establishing a mortgage aggregator assurance program

Authorisation number: AA1000640

11 April 2024

Commissioners: Keogh
Carver

Summary

The ACCC has decided to grant authorisation with conditions in respect of an application for authorisation lodged by the Commonwealth Bank of Australia, Westpac Banking Corporation, Australia and New Zealand Banking Group Limited, National Australia Bank Limited and Macquarie Bank Limited (the Applicants). Authorisation is granted with conditions for the Applicants and other industry participants to develop and implement a program to collectively acquire assurance services in relation to mortgage aggregators.

Mortgage aggregators are an intermediary between mortgage brokers and lenders. Many lenders individually procure assurance reviews on the governance and oversight approach used by aggregators to manage the risk and compliance obligations of their broker network. The Aggregator Assurance Program (the Program) would allow multiple lenders to engage (and to share the cost of engaging) a single assurance firm to carry out a single assurance review of each relevant aggregator.

In September 2023, the ACCC released a draft determination proposing to deny authorisation. In proposing to deny authorisation, the ACCC was concerned that there was a risk that assurance reviews under the Program would be performed to a lower standard which in turn would increase the risk of inappropriate lending practices.

The ACCC also considered that by increasing the frequency and points of interaction between the major bank lenders, the Program was likely to increase the risk of the market being more conducive to coordination.

The ACCC was also concerned that:

- because decisions about the operation of the Program would be made by an Operating Committee made up exclusively of the Applicants, being 5 of Australia's largest banks, the Program may be operated in a manner that favoured their interests over other lenders, and
- as all participating lenders, regardless of size, would share the costs of assurance reviews equally, the Program's fee structure would disproportionately favour larger lenders.

In response to the draft determination, the Applicants made significant changes to the Program including:

- affording more representative lender input into decisions about the operation of the Program (the Operating Committee must now have at least 2 independent members)
- changing the Program's fee structure to make it more affordable for smaller lenders
- substantially improving the scope of assurance reviews proposed to be undertaken, and
- changing the Program's competition protocol to require that Applicant representatives on the Operating Committee must not be responsible for making commercial decisions about the lender they represent, and that each Operating Committee meeting must be attended by an external lawyer

instructed to immediately advise the attendees if, during the course of the meeting, there is a risk of breach of the competition protocol.

The ACCC considers that these changes address the concerns raised in the draft determination.

The Applicants and industry stakeholders also provided substantial new information about the time and expense currently involved in lenders each separately undertaking assurance reviews which they submitted will be significantly reduced under the Program.

Having regard to these changes and the new information provided, the ACCC considers that the conduct it has authorised with conditions is likely to result in significant public benefits in the form of:

- efficiencies and cost savings for aggregators and lenders – in particular, participating aggregators will be subject to fewer assurance reviews, therefore reducing the duplication of resources and information currently required of both aggregators and lenders for aggregators to separately demonstrate to each lender that the aggregator meets that lender’s assurance standards**
- improved standards of assurance reviews, because the standard of assurance reviews under the Program is likely to be higher than most lenders would undertake if they continued to separately conduct assurance reviews.**

The ACCC considers the conduct it has authorised with conditions is likely to result in some public detriment in the form of the risk that the home loan market becomes more conducive to coordination between the major bank lenders. However, the ACCC considers that the conditions it has specified in relation to the Program mitigate this risk.

The ACCC considers that the conduct it has authorised with conditions is unlikely to result in a substantial public detriment in the form of reduced competition in the supply of mortgage lending to consumers or reduced competition for the supply of assurance services.

For these reasons, the ACCC is satisfied that the conduct it has authorised, with conditions, would be likely to result in a public benefit and this public benefit would outweigh any likely detriment to the public from the conduct.

Many of these conditions require the implementation of the key elements of the Program, such as the changes noted above. The ACCC also is specifying additional conditions which require that:

- the Operating Committee report to the ACCC any instances in which an application for a lender to participate in the Program is refused or a lender’s participation in the Program is suspended or terminated, and**
- the Operating Committee notify the ACCC in writing of any decision to change the review scope and provide the ACCC with a copy of the review scope as amended.**

These conditions will provide additional transparency regarding the exercise of the Operating Committee’s discretion in relation to these matters.

The ACCC considers that the conditions it has specified are important to the ACCC being satisfied a public benefit in the form of improved standard of assurance reviews is likely to be realised, and to mitigate any potential public detriment from

the Operating Committee exercising its powers in making decisions about whether other lenders can participate in a manner that places other lenders at a competitive disadvantage.

On balance, with the conditions it has specified, the ACCC is satisfied in all the circumstances that the conduct being authorised is likely to result in a public benefit that would outweigh the detriment to the public that would be likely to result from the conduct being authorised. The ACCC has granted authorisation for 5 years, until 3 May 2029.

1. The application for authorisation

- 1.1. On 17 April 2023, the Commonwealth Bank of Australia, Westpac Banking Corporation, Australia and New Zealand Banking Group Limited, National Australia Bank Limited and Macquarie Bank Limited (the **Applicants**)¹ lodged application for authorisation AA1000640 with the Australian Competition and Consumer Commission (the **ACCC**). The Applicants are seeking authorisation for 5 years to make and give effect to agreements and arrangements, defined at paragraph 3.1 below, to establish a voluntary industry-wide program for mortgage lenders to jointly procure assurance reviews of participating mortgage aggregators' compliance systems and standards (the **Program**).
- 1.2. This application for authorisation was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). If granted, an authorisation provides the relevant parties with protection from legal action under the specified provisions in Part IV of the Act in respect of the specified conduct. The ACCC has a discretion to grant authorisation, but must not do so unless it is satisfied in all the circumstances that the 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 Act (the **authorisation test**)).
- 1.3. On 18 September 2023, the ACCC published a draft determination in which it proposed not to grant the authorisation sought by the Applicants, as the ACCC was not satisfied the authorisation test was met in all the circumstances.
- 1.4. The Applicants also requested interim authorisation to take certain preparatory steps to establish the Program while the ACCC is considering the substantive application. Because the ACCC's preliminary view in its draft determination was that it was not currently satisfied in all of the circumstances that the proposed conduct would be likely to result in a benefit to the public that would outweigh the detriment to the public that would be likely to result from the proposed conduct, the ACCC did not to grant interim authorisation.

¹ Westpac Banking Corporation includes St. George Bank, Bank of Melbourne and Bank of South Australia. Commonwealth Bank of Australia includes BankWest.

2. Background

The role of mortgage aggregators²

- 2.1. Home loans in Australia are distributed by lenders via either the direct channel (a consumer engaging directly with a lender) or via an intermediary, usually a mortgage broker. It is estimated that between July and September 2021, two-thirds of Australian home loans were facilitated by mortgage brokers.³
- 2.2. To facilitate the provision of their services to consumers, brokers use a mortgage aggregator. Aggregators operate as a single point of contact between large numbers of brokers and lenders. Aggregators are businesses which provide aggregation services to broker businesses or brokers and with which a credit provider has a direct contractual relationship.⁴ Aggregators assist brokers with access to a panel of lenders, customer relationship management software and administrative support and training. Generally, a broker will be affiliated with one mortgage aggregator at a time, while lenders tend to engage with a number of mortgage aggregators.
- 2.3. The increased use of mortgage aggregators has developed over the past decade in conjunction with the growth of the mortgage broking industry. Home loan lenders enter into head agreements with mortgage aggregators rather than individual mortgage brokers, in which they agree to allow member brokers of an aggregator the ability to submit loan applications subject to meeting various terms and conditions. These lender head agreements usually contain obligations on the aggregator to conduct initial checks of its members brokers and to supervise and monitor their activities on an ongoing basis.⁵
- 2.4. The Applicants provided the below figure to illustrate the intermediary supply chain for the distribution of residential and investment property loans:

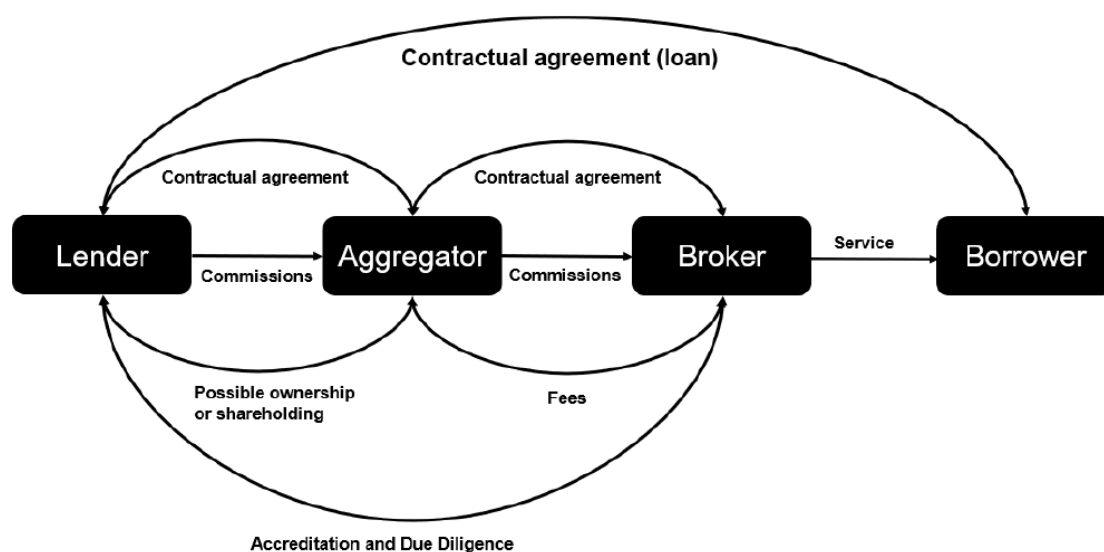
² Unless otherwise noted, information in this section is taken from the Applicants' submission in support of the application for authorisation.

³ Mortgage & Finance Association of Australia, [Media release – More than two in three home loans written by mortgage brokers](#), Mortgage & Finance Association of Australia, 29 November 2021, accessed 29 August 2023.

⁴ Australian Securities and Investments Commission, [Regulatory Guide 273 – Mortgage brokers: Best interests duty](#), Commonwealth of Australia, 2020, p 49.

⁵ [Connective Credit Services Pty Ltd submission](#), 22 May 2023, p 1.

Figure 1 – Indirect intermediary supply chain



^a This model outlines only business and contractual arrangements, and does not include the licensing regime outlined in the *National Consumer Credit Protection Act 2009* (Cth)

Current approaches of mortgage lenders to conducting assurance reviews of aggregators

- 2.5. Many lenders currently procure independent assurance reviews of the governance and oversight approaches taken by affiliated aggregators to manage risk and compliance obligations of their mortgage broker network, so that the lender is not exposed to undue regulatory risk from inappropriate practices in connection with the loan approval process. The Applicants submit that each lender is independently responsible for conducting or procuring its own assurance review of the compliance systems of each aggregator the lender deals with.
- 2.6. The ACCC understands that different lenders require varying levels of assurance depending on a number of factors including, but not limited to, the lenders' risk appetites and policy requirements. Although there are common themes that each lender focuses on when procuring assurance reviews of the operational controls and compliance environment of an aggregator, lenders typically vary in their method and in their level of detail required to satisfy their requirements. The Applicants submit they do not believe there is currently a 'clear, uniform minimum standard' that all aggregators are required to satisfy.⁶
- 2.7. The Applicants submit that lenders who distribute their products through aggregators currently adopt different and individual approaches to obtaining assurance that their aggregators are complying with their regulatory obligations and otherwise meeting industry standards. The Applicants submit that the quality and standard of these approaches vary depending on a range of factors, including a lender's appetite for risk and its budget and cost constraints. Based on their own current practices and evidence provided by interested parties in submissions, the Applicants submit that aggregator assurance processes currently undertaken by lenders range from no review process or attestation without or with supporting documents, to in house

⁶ [Applicants' response to ACCC request for further information](#), 2 August 2023, p 4.

reviews conducted by lenders or engagement of an external assurance provider. The Applicants note that reviews conducted by an external third-party provider are completed by professional service firms with specialist audit-trained risk and compliance teams with experience in consumer credit.⁷

- 2.8. In submissions to the ACCC, aggregators provided information about the time and resources they submit are associated with current assurance reviews. In particular, REA Group Ltd (**REA Group**) highlighted the varying amount of time it can take to complete a review of an aggregator, noting that from 1 July 2021 to 31 March 2022, the 32 assurance reviews it participated in ranged from 5 hours to more than 200 hours, and the reviews remained open from 6 days to 218 days.⁸ Connective Credit Services Pty Ltd (**Connective**) highlighted the different types of assurance review approaches, submitting it completed reviews with 14 different lenders in 2022 which broadly fell into 2 categories:⁹
- a) Full audits: these required significant amounts of work, usually a combination of detailed questions (between 40–100) and control testing of sample loan files. Each audit can occupy up to a week of a senior member of Connective’s compliance team time (usually a combination of the National Head, Risk & Compliance and the Group Legal Counsel). In 2022, Connective completed 8 lender reviews that fell into this category.
 - b) Attestations: these involved a shorter list of questions, requiring a shorter response or a more generic attestation, often with a request for supporting documentation. On average these take between 2–4 hours to complete. In 2022, Connective completed 6 lender attestations that fell into this category.
- 2.9. The Mortgage and Finance Association of Australia and the Applicants submit (in response to the draft determination) that there are smaller lenders that do not currently conduct any aggregator assurance activity. Specifically, the Mortgage and Finance Association of Australia states that it conducted a survey of its aggregator members with the responses provided by these members indicating that an average of 34% of lenders on each aggregator panel conducted audits of that aggregator in the 2022 calendar year.¹⁰

Royal Commission and other recent regulatory and industry changes

- 2.10. Following the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the **Royal Commission**), and other reviews into the sector, new regulatory and industry changes were introduced to improve standards and impose new duties and obligations on mortgage brokers.¹¹ Notably, mortgage brokers are now required to act in the best interests of the borrower and prioritise the interests of customers when providing credit assistance.¹²

⁷ [Applicants' submission in response to ACCC draft determination](#), 13 December 2023, p 4.

⁸ [REA Group Ltd submission](#), 22 May 2023, p 2.

⁹ [Connective Credit Service Pty Ltd submission](#), 22 May 2023, p 2.

¹⁰ [Mortgage and Finance Association of Australia submission](#), 27 October 2023, p 2.

¹¹ Australian Securities and Investments Commission, [Consultation Paper CP 327 – Implementing the Royal Commission recommendations: Mortgage brokers and the best interests duty](#), Commonwealth of Australia, 2020, pp 6–9.

¹² *National Consumer Credit Protection Act 2009* (Cth), ss 158LA, s 158LE. These changes were borne out of Recommendation 1.2 of the Royal Commission’s Final Report, see: Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, [Final Report, – Volume 1](#), Commonwealth of Australia, 2019, p 20.

- 2.11. The Royal Commission report outlined that Australian financial services licence and Australian Credit Licence holders (such as banks, mortgage brokers and aggregators) have an obligation to 'do all things necessary to ensure' that their financial services or credit activities are provided 'efficiently, honestly and fairly'. They are also required to maintain their own competence to provide the licenced services and to ensure that their representatives are both adequately trained and competent to provide those services.¹³
- 2.12. Responsible lending obligations apply to banks as lenders, including when using information provided by brokers. For example, ASIC Guide RG 209 states that lenders should have assurance processes in place to ensure the reliability of information collected through third parties such as brokers during applications and be reasonably satisfied that such intermediaries have 'robust compliance arrangements'.¹⁴
- 2.13. The Australian Prudential Regulation Authority (**APRA**) recently finalised prudential standard CPS 230 for operational risk management, which requires APRA-regulated entities (including banks) to monitor and report to senior management on material service provider arrangements (such as mortgage brokers), including their performance, effectiveness of controls to manage risks associated with the use of service providers and compliance of both parties with the service provider agreement.¹⁵
- 2.14. The Applicants note that aggregators have a large portion of their broker members as credit representatives under their Australian Credit Licence, and accordingly aggregators themselves must gain a level of assurance that these credit representatives are operating in a manner that complies with the aggregator's *National Consumer Credit Protection Act 2009* obligations.

Rationale for the Program

- 2.15. The Applicants submit that the Program is designed to be consistent across a multitude of lenders in a way that saves costs, achieves good regulatory outcomes, avoids duplication across lenders and reduces the level of intrusion and interference in the aggregators' business. The Applicants submit that the Program is intended to work in the public interest to support and report on better compliance with financial services regulation, as recommended by the recent Royal Commission and other recent regulatory and industry changes.
- 2.16. The Applicants submit that, given many lenders deal with the same aggregators, and most lenders will require some level of assurance, the need for assurance of an aggregator's systems can result in substantial duplication of assurance reviews, and consequently, increased cost and disruption to the aggregators concerned in meeting their lender requirements.
- 2.17. The Applicants submit that they have developed the Program to reduce this duplication by allowing multiple lenders to jointly procure (and to share the cost of procuring) an independent and appropriately qualified professional firm to carry out a single assurance review of any participating aggregator.

¹³ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, [Final Report – Volume 1](#), Commonwealth of Australia, 2019, pp 8–10.

¹⁴ Australian Securities and Investments Commission, [Regulatory guide 209 – Credit licensing: Responsible lending conduct](#), Commonwealth of Australia, 2019, p 49.

¹⁵ [Deloitte Touche Tohmatsu submission](#), 22 May 2023, p 3.

- 2.18. Further, the Applicants submit that the mortgage lending industry is seeking to address the key risks of the mortgage origination and underwriting process by creating a consistent approach to the assurance process, monitoring and assuring broker activities (via the aggregators). This approach includes encouraging a well-informed credit risk assessment for the lenders and compliance with various regulatory obligations concerning the offering of financial services to consumers. The Applicants submit that the Program provides an avenue for both lenders and aggregators to proactively assess their practices, and their operational and compliance environment on a periodic basis to prevent incidents that could otherwise negatively impact consumers. By performing a single review and reducing the burden on aggregators to respond to individual lender reviews, the Applicants submit that the Program will enable aggregators to use more time and resources to proactively identify concerns relating to misconduct.
- 2.19. The Applicants also submit that the Program aims to provide a standardised process to reduce the burden on aggregators and to assist lenders to obtain an improved level of assurance. However, the Applicants note that the Program is not designed to be exhaustive or to prevent some lenders continuing to adopt individual requirements, as discussed further below.

3. The Program

- 3.1. The Applicants are seeking to establish a program for participating mortgage lenders to jointly procure assurance reviews of the compliance systems and standards of participating mortgage aggregators. Specifically, the Applicants sought authorisation to make and give effect to the following agreements and arrangements:
- a) to establish the Program by an agreement between the Applicants in the form of the UJV Agreement as appears in Schedule 1 of the Application (**UJV Agreement**)
 - b) to invite lenders to join the Program voluntarily on the terms of the proposed AAP Lender Deed as appears at Schedule 3 of the UJV Agreement (**AAP Lender Deed**)
 - c) to seek proposals from, and engage, assurance firms as Assurance Service Providers to provide assurance reviews of aggregators' systems under the Program
 - d) to invite aggregators to consent to assurance reviews being conducted under the Program terms
 - e) to enable completed assurance reviews about the compliance systems of any particular aggregator to be shared with the aggregator and lenders who opt-in to participate in an assurance review cycle for the aggregator (**Opt-in Lenders**) who deal with the aggregator. Assurance reviews are to generally have a 6-monthly lender opt-in cycle with each aggregator being reviewed at least once every second financial year
 - f) to invite other lenders (through the support of industry bodies) and future aggregators to join the Program, and
 - g) for the 'Operating Committee' to have the power to suspend / terminate the participation in the Program of a lender or an aggregator, in accordance with the UJV Agreement, which fails to comply with one or more rules of the

Program and which fails to address or remediate that failure as required under the Program rules.

(referred to in this determination as **the Program**).

- 3.2. The Applicants state that some of the subsidiary or operational agreements under the UJV Agreement have not yet been developed. The Applicants consider a degree of consultation with the relevant Assurance Service Provider (when appointed), and with participating aggregators will be necessary and desirable to finalise the operational aspects of these subsidiary agreements.¹⁶
- 3.3. Authorisation is sought on behalf of:
 - a) the Applicants
 - b) mortgage lenders who opt in to join the Program, including but not limited to those identified in the application as supporting the Program as well as those who elect to join the Program in the future
 - c) aggregators who elect to join the Program including but not limited to those identified in the application
 - d) any Assurance Service Provider appointed from time to time under the Program.
- 3.4. The Applicants propose that the Program will be governed by the UJV Agreement and AAP Lender Deed, and the Applicants propose to oversee the management and delivery of the Program and Assurance Service Provider through a joint committee (the Operating Committee, discussed in more detail below). Lenders may participate in the Program by executing and delivering the proposed lender deed as appears at Schedule 3 of the UJV Agreement. A lender who agrees to join the Program (**AAP Lender**) can then choose to opt-in to participate in an assurance review cycle for any aggregator (therefore becoming an Opt-in Lender with respect to the assurance review of that aggregator).
- 3.5. Following the ACCC's draft determination proposing to deny authorisation, the Applicants made a number of substantive changes to the Program which were intended to address the concerns raised by the ACCC. These changes are discussed as relevant in the ACCC's assessment of the Program set out in section 5 of this determination.
- 3.6. Authorisation is sought for 5 years. The Applicants submit that this period is appropriate due to the long-term nature of the Program and its associated public benefits.

The Program

- 3.7. The Applicants submit the Program will be open for the benefit of a broad cross spectrum of mortgage lenders in Australia who offer residential and property investment lending through mortgage aggregators and mortgage brokers.
- 3.8. The Applicants will cover the costs of establishing the Program, while non-Applicant lenders who participate in the Program will be required to pay their share of the cost of conducting the assurance reviews they elect to opt-in to.

¹⁶ [Applicants' clarification and amendment re the Proposed Conduct](#), 28 August 2023, p 2.

- 3.9. The Applicants provided a draft review scope and evaluation criteria prior to the draft determination and a substantially enhanced review scope after the draft determination of the matters to be addressed in each report prepared by an Assurance Service Provider following an assurance review of an aggregator (the **Review Standard**). A copy of the Review Standard is at **Attachment B**.
- 3.10. The areas of focus of the Review Standard are:
- broker onboarding and accreditation processes
 - licensing and membership requirements
 - broker governance and professional development
 - management of regulations (including responsible lending, best interests duty, conflicts of interest, design and distribution obligations, breach reporting and reference checking)
 - IT and system access controls
 - privacy and customer data security
 - outsourced / offshore third-party management.
- 3.11. For each of these areas of focus, the Review Standard identifies the inherent risk sought to be addressed, sets out a risk mitigation approach (being the processes an aggregator should have in place to mitigate this risk) and evaluation criteria by which the Assurance Service Providers will assess this.

Review process

- 3.12. Assurance reviews are to be conducted at least once every 2 years for each aggregator. There will be a 6-month period preceding each review where lenders will be offered the opportunity to opt-in to the review of the aggregator. The Applicants note that it is intended that the Operating Committee will clearly communicate to all lenders (and aggregators) with significant lead time when a review will be commencing, to ensure that lenders have enough time to consider participating in any review cycle. The Program will have 2 types of reviews of aggregators:
- 1) Deep dive reviews of aggregators' systems will take place every 24 months from as soon as practicable after the date the UJV Agreement is executed (unless otherwise determined by the Operating Committee).
 - 2) Targeted reviews will be offered and conducted generally the year after the deep dive reviews were conducted, primarily to review any material changes of the business of the aggregator, having regard to any applicable regulatory requirements and the implementation or progress of action plans by the aggregator arising from prior deep dive reviews.
- 3.13. Opting-in to the review of a particular aggregator will oblige the lender to pay a share of the cost of the review and entitle the lender to receive the report from the review. The costs involved (namely, fees payable to the relevant Assurance Service Provider) are to be divided proportionally between those Opt-in Lenders who request a review of the particular aggregator. For each review, opt-in Applicant lenders will collectively pay *at least* 50% of the review cost (divided equally between them) and opt-in non-Applicant lenders will collectively pay *up to* 50% of the review cost (divided equally between them).
- 3.14. The fee for any individual non-Applicant lender who opts into a review will be capped at \$5,000. If the total fees payable by opt-in non-Applicant lenders, capped at \$5,000

for each lender, is insufficient to cover 50% of the review cost, opt-in Applicant lenders will make up the difference (divided equally between them).

- 3.15. Opt-in Lenders may also request an Assurance Service Provider, as part of the broader review being undertaken, undertake a review of additional specific elements of the aggregator's operations that may be of interest or relevance to the individual lender (the 'additional review items' referred to above). Where this is the case, the lender will cover the full cost of these additional elements of the review and a report on these matters will only be provided to that lender.
- 3.16. Reviews will focus on the overall systems and processes used within aggregator networks to manage their compliance responsibilities. Each review will result in a single compliance report concerning the aggregator's systems and compliance processes applicable to the brokers within that aggregator's network. Reviews will report on whether aggregators are meeting requirements under financial services regulations and benchmark compliance requirements satisfactory to Opt-in Lenders. If reviews identify issues with aggregators' compliance systems, recommendations will be identified in reports provided to Opt-in Lenders.
- 3.17. Where an assurance report identifies that an aggregator has problems or weaknesses in its compliance systems, or that remedial action is recommended, those recommendations will be identified to the Opt-in Lenders who receive the report. Any remedial action that may be recommended will be determined by the aggregator in conjunction with each Opt-in Lender. Remedial actions in response to a review fall outside the Program and will be a matter for each lender to independently determine and discuss with the aggregator. Participating aggregators will be able to access dispute resolution mechanisms as set out in their agreement with the relevant Assurance Service Provider.¹⁷
- 3.18. The Program aims to identify systemic issues or failures and not to serve as a vehicle to identify to Opt-in Lenders any specific incidents of non-compliance by any identified aggregator or any remediation of any non-compliant conduct. Those matters are normally (and will continue to be) dealt with under contractual arrangements between the aggregator and each lender with an interest in that finding or conduct and as required by law.
- 3.19. Lenders will also remain free to undertake or procure assurance reviews of aggregators individually separate to the Program.
- 3.20. Lenders who do not opt-in to the review of a particular aggregator during the opt-in period will not be able to receive a copy of the review report at a later date. However, they can opt-in during the next review cycle. The Applicants submit that it would be operationally challenging to manage requests for late or subsequent lender access to previous review outputs, as fees for funding the review would have already been calculated, and charged, under the cost sharing model. The Applicants submit that accepting late requests to access review outputs would require a complex retrospective assessment of the 'late lender's' share of the review costs and then providing for an abatement of part of the fees paid to the original lenders, which will then result in a requirement for the relevant Assurance Service Provider to process part-reimbursements to the original participating lenders.

¹⁷ Clause 11.2(e) of the UJV Agreement.

Role of Operating Committee

- 3.21. The Operating Committee will consist of one representative from each of the Applicants and at least 2 non-Applicant representatives (**Independent Representatives**) nominated by the Customer Owned Banking Association and the Mortgage and Finance Association of Australia. The representatives appointed to the Operating Committee must not be responsible for the making of commercial and/or strategic decisions, including pricing decisions, that may (directly or indirectly), involve or impact upon competition between the Applicants, in relation to businesses for which there is competitive overlap with the businesses of the Applicants and/or an AAP Lender.
- 3.22. The UJV Agreement requires that each meeting of the Operating Committee must be attended by an external lawyer instructed to immediately advise the attendees if, during the course of the meeting, there is a risk of breach of the competition protocol.
- 3.23. The Operating Committee has full powers of management and control of any business activity of the Program. The Operating Committee is responsible for determining and updating the quality standards for assurance reviews, the appointment, termination or renewal of Assurance Service Providers that will conduct the aggregator assurance reviews, approving the Program's plan and budget, approving additional lenders and aggregators joining the Program, removing participants from the Program in the case of failure to comply with terms of participation, and a disputes process should disputes arise between the Applicants and other lenders.
- 3.24. Each Operating Committee member (i.e. the 5 Applicant representatives and at least 2 Independent Representatives) will have equal voting rights. Most decisions require super majority consent of the Operating Committee, meaning any decision made, voted, resolved or passed at any time with the consent of 80% or more of the Operating Committee representatives. Unanimous consent of the Operating Committee is required for any decisions relating to:
 - any creation or amendment to any activity or purpose of the Program, or any change in strategic direction of the Program
 - the creation, and any subsequent amendment, of the quality standards for reviews to be conducted, including the Review Standard
 - any approval or amendment of any Program plan and budget
 - the participation by, removal or suspension of an AAP Lender from the Program
 - the appointment or removal of an Assurance Service Provider and determination of matters or disputes in relation to fees to be paid to an Assurance Service Provider
 - the transfer of any Program asset to another entity
 - any decision expressly required to be made, voted, resolved or passed by unanimous consent of the Operating Committee
 - the delegation of any power or function of the Operating Committee to any person(s)
 - any amendments to the competition protocol

- issue or release of any statements, or submissions or responses to information requests by media, any regulator, public agency or other third party which relate to the Program.
- 3.25. With respect to changes to the Review Standard, the Operating Committee must consult with Opt-in Lenders prior to making any revisions. Further, any proposed revision must not reduce or limit the scope and/or standard of review as set out in Review Standard at Attachment B.
- 3.26. With respect to approving other lenders joining the Program, the UJV Agreement provides that the intention is that the opportunity to join the Program will be open to any mortgage lender in Australia which:
- deals with one or more aggregators and wishes to obtain access to the reviews on the terms on an AAP Lender Deed, and
 - executes and complies with the terms of the APP Lender Deed including obligations regarding the use of the reviews and reports.
- 3.27. With respect to suspension or termination of a mortgage lender's participation in the Program, the APP Lender Deed provides that this can occur if the lender:
- fails to rectify a breach of, or liability under the AAP Lender Deed within a specified period of being issued with a 'Material Default Notice' from the Operating Committee requiring performance or rectification of the breach, or
 - is subject to an insolvency event.
- 3.28. The AAP Lender Deed also provides for a dispute resolution process, including referral to an expert to be appointed to determine the matter in accordance with the Resolution Institute Expert Determination Rules.

Assurance Service Providers appointment

- 3.29. The Operating Committee will delegate operational matters of the Program to the engaged Assurance Service Providers. There will be at least 2 independent professional assurance firms engaged with expertise to carry out reviews and other day-to-day tasks as part of the Program, such as recovering fees from Opt-in Lenders and distributing assurance reports from completed assurance reviews.
- 3.30. The Applicants submit that the firms chosen as Assurance Service Providers will be selected by a competitive open tender process, including a public request for proposals. Selection of Assurance Service Providers must be by unanimous consent of the Operating Committee, and is subject to negotiating the terms of (and entering into) the Assurance Service Provider agreement with the prospective Assurance Service Providers. The Operating Committee will appoint the Assurance Services Providers for a period of 2 years, with the opportunity for re-appointment following another competitive tender process.

Information sharing protocols

- 3.31. The Applicants submit that the Program is designed to limit the type of information shared between lenders to an appropriate level and to avoid any sharing of competitively sensitive information such as metrics about an aggregator's revenues, broker network or finance arranged and in any case, is subject to information sharing procedures and the 'competition protocol' in the AAP Lender Deed and UJV Agreement.
- 3.32. As per the competition protocol and information sharing provisions, a number of principles will apply around information sharing, including that:

- an assurance report may only be shared individually with the Opt-in Lenders who requested a review of a particular aggregator
 - details of assurance reviews and their outcomes will not be provided or disclosed to any other lender or party without the consent of the Opt-in Lenders and relevant aggregators
 - the Assurance Service Providers, lenders and aggregators will be required to not discuss or exchange any non-public or commercially sensitive information relating to the Program
 - the Assurance Service Providers will not provide specific information that could identify (to any lender) a broker, other lender or borrower relating to any conduct that does not comply with the terms of the AAP Lender Deed and/or UJV Agreement.
- 3.33. Additionally, the AAP Lender Deed and UJV Agreement provides that the information that cannot be disclosed to Opt-in Lenders, or other parties by the Assurance Service Providers includes sensitive information such as borrower/customer data, other lenders' views on the performance or compliance of particular brokers or aggregators, and other lenders' intentions, proposed actions or decision-making process regarding aggregators or brokers.
- 3.34. The Assurance Service Providers will be required to ensure they have systems in place to ensure that they will not facilitate or assist any lender to discuss or communicate with any other lender what steps should or might be considered to be taken in response to an assurance report about an aggregator. Similarly, the AAP Lender Deed restricts lenders from discussing or communicating with any other lender about these issues.
- 3.35. Each lender will separately receive a report about the aggregator from assurance reviews which the lender has met its share of the costs and separately consider what, if any, action to take in respect of any issues identified in the report.

4. Consultation

- 4.1. The ACCC invited submissions from a range of potentially interested parties including major competitors, suppliers, customers, relevant industry associations or peak bodies, consumer groups, state and federal government and relevant regulatory bodies.

Submissions prior to draft determination

- 4.2. The ACCC received 15 submissions from interested parties in relation to the application.¹⁸
- 4.3. Lenders, aggregators, assurance service providers and industry associations indicated support for the Program, but this support was in some cases caveated.

¹⁸ [Australian Banking Association submission](#), 29 May 2023; [Astute Financial Management Pty Ltd submission](#), 22 May 2023; [Australian Finance Group Ltd submission](#), 22 May 2023; [Auswide Bank submission](#), 22 May 2023; [Bendigo & Adelaide Bank submission](#), 22 May 2023; [BDO Audit Pty Ltd submission](#), 22 May 2023; [Connective Credit Services Pty Ltd submission](#), 22 May 2023; [Customer Owned Banking Association submission](#), 22 May 2023; [Deloitte Touche Tohmatsu submission](#), 22 May 2023; [Finance Brokers Association of Australia Ltd submission](#), 31 May 2023; [ING Bank \(Australia\) Limited submission](#), 23 May 2023; [Lendi Group submission](#), 22 May 2023; [Loan Market Group Pty Ltd submission](#), 22 May 2023; [Mortgage & Finance Association of Australia submission](#), 22 May 2023; [REA Group Ltd submission](#), 22 May 2023.

Some interested parties raised issues around the design and scope of the Program, the proposed equal cost model, potential conflicts between aggregators and the Assurance Service Provider, data protection and privacy, information sharing and the Program's impact on competition in the assurance services market.

- 4.4. The Applicants responded to the issues raised in interested parties' submissions on 20 June 2023. The Applicants also provided further information on 2 August and 28 August 2023 in response to questions raised by the ACCC.¹⁹

Submissions following the draft determination

- 4.5. On 18 September 2023, the ACCC issued a draft determination proposing to deny authorisation. A pre-decision conference was not requested following the draft determination.
- 4.6. The ACCC received 3 submissions from interested parties in response to the draft determination, from Lendi Group, Australian Finance Group Ltd (**Australian Finance Group**) and the Mortgage and Finance Association of Australia. These submissions reiterated support for the Program, provided further information about potential cost savings and efficiencies that they considered may be realised through the implementation of the Program and proposals for potential changes to the Program in response to the concerns outlined in the draft determination.²⁰
- 4.7. On 13 December 2023, the Applicants provided their response to the draft determination which provided additional information and proposed changes to the Program.²¹
- 4.8. The ACCC invited submissions from interested parties on the Applicants' response to the draft determination and the proposed changes to the Program. The ACCC received submissions from the Mortgage and Finance Association of Australia, the Customer Owned Banking Association and Australian Finance Group. These submissions all broadly supported the Applicants' changes to the Program.²²
- 4.9. Public submissions are available on the [public register](#) for this matter, and are discussed in more detail in the Assessment section below where relevant.

5. ACCC assessment

- 5.1. The Applicants have sought authorisation in relation to the cartel provisions in Division 1 of Part IV of the Act, and section 45 of the Act. Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result.
- 5.2. The ACCC notes that the Applicants have sought authorisation for relevant industry participants to give effect to a range of agreements that underpin the Program which,

¹⁹ [Applicants' response to interested party submissions](#), 20 June 2023; [Applicants' response to ACCC request for further information](#), 2 August 2023; [Clarification and amendment re the Proposed Conduct](#), 28 August 2023.

²⁰ [Australian Finance Group Ltd submission](#), 20 October 2023; [Lendi Group submission](#), 3 October 2023; [Mortgage & Finance Association of Australia submission](#), 27 October 2023.

²¹ [Applicants' submission in response to ACCC draft determination](#), 18 September 2023

²² [Australian Finance Group Ltd submission](#), 23 January 2024; [Customer Owned Banking Association submission](#), 25 January 2024; [Mortgage & Finance Association of Australia submission](#), 22 January 2024.

in total, are approximately 98 pages long (inclusive of the changes made to the agreements seeking to address the concerns raised by the ACCC in the draft determination). However, there are also a large range of clauses within these agreements which the giving of effect to would be unlikely to raise competition law concerns.

- 5.3. The ACCC considers that a more appropriate approach to authorisation in all the circumstances here is to define the conduct for which authorisation is granted, with conditions (the **Relevant Conduct**). The conditions reflect the key elements that the ACCC considers are necessary to be implemented in order for it to be satisfied that the authorisation test is met with respect to the conduct.
- 5.4. The Relevant Conduct, including the conditions, is defined in section 6 of this determination.

Relevant areas of Competition

- 5.5. To assess the likely effect of the conduct for which authorisation is sought, the ACCC identifies the relevant areas of competition likely to be impacted.
- 5.6. The ACCC is of the view that it is not necessary to precisely define relevant markets for the purpose of assessing this application for authorisation. The ACCC considers that the relevant areas of competition that could be affected are:
 - the supply of mortgage aggregation services to mortgage brokers in Australia
 - the supply of mortgage distribution services to lenders in Australia
 - the supply of assurance services in Australia, including the supply of those services to lenders, and
 - the supply of mortgage lending to consumers.

Future with and without the Relevant Conduct

- 5.7. In applying the authorisation test, the ACCC compares the likely future with the Relevant Conduct to the likely future in which the Relevant Conduct does not occur.
- 5.8. The ACCC considers that, in the future without the Relevant Conduct, lenders would be likely to continue to individually undertake a range of assurance processes concerning the compliance systems and standards of their aggregator and broker networks, themselves or through third-party assurance service providers appointed separately by individual lenders. The ACCC notes that these assurance processes currently range from detailed reviews conducted by external assurance service providers to, in the case of some smaller lenders, simple aggregator attestations or no assurance review at all.

Public benefits

- 5.9. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as

*one of its principal elements ... the achievement of the economic goals of efficiency and progress.*²³

- 5.10. The Applicants submit there are a number of public benefits resulting from the Relevant Conduct, which broadly include efficiencies and savings for aggregators and lenders; improvement in, and more consistent, industry-wide assurance standards; competitive opportunities for the supply of assurance services; lower overall industry compliance costs; greater comfort in reporting governance and oversight of aggregators; and economies of scale.
- 5.11. A number of these claimed public benefits reflect a broader benefit from increased efficiencies and cost savings. The ACCC has considered these claimed public benefits under the following headings:
- increased efficiency and cost savings
 - improved standards of assurance reviews, and
 - increased competition for assurance service providers.

Increased efficiency and cost savings

- 5.12. In the draft determination, the ACCC considered that the Program is likely to result in some public benefit in the form of efficiencies and cost savings for aggregators and lenders who do participate in the Program. This was because fewer assurance reviews would need to be conducted, reducing the duplication of resources and information required to be reviewed. However, the ACCC considered that the extent of these efficiencies and cost savings is dependent on take up of the Program amongst lenders. The ACCC was concerned that the way the Program was proposed to be structured and administered at that time may mean some lenders would be less likely to participate in the Program, meaning the efficiencies and cost savings likely to be realised by aggregators and lenders as a result of the Program would be lower.
- 5.13. The section below considers likely take up of the Program by lenders having regard to the changes made by the Applicants following the draft determination. This is followed by an assessment of whether implementation of the Relevant Conduct is likely to result in a public benefit in the form of efficiencies and cost savings for aggregators, lenders and assurance service providers, having regard to the ACCC's conclusions about the likely level of participation from lenders.
- 5.14. In the draft determination, the ACCC considered that take up of the Program amongst lenders may be impacted by a lack of lender input (other than the Applicants themselves) into decisions about the operation of the Program and by the Program's fee structure.
- 5.15. In particular, the ACCC was concerned that the decision-making power with respect to approving and updating the scope of assurance reviews to be undertaken rested solely with the Operating Committee which, at that time, was proposed to be made up of a representative of each of the 5 Applicants, being 5 of Australia's largest mortgage lenders. Other lenders, including smaller mortgage lenders as a cohort, had no role in this decision-making process. The ACCC considered that, to the extent that there may be divergent interests and priorities in respect of assurance reviews between mortgage lenders, or types of mortgage lenders, this raised the possibility

²³ Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

that the Review Standard terms could be set in a manner that prioritised the interests of the Applicants over other lenders.

- 5.16. The ACCC considered that focusing on their own interests and having less regard to the interests of other mortgage lenders in setting Review Standard terms may reduce the level of participation in the scheme. To the extent that this did occur, and it resulted in less take up of the Program by other mortgage lenders, the efficiencies and cost savings likely to be realised by aggregators as a result of the Program would also be lower.
- 5.17. Following the draft determination, the Applicants made a number of changes to the way it is proposed that the Program will operate to address this. The Applicants have amended the Program to provide that the Operating Committee must include at least 2 non-Applicant members nominated by the Mortgage and Finance Association of Australia and the Customer Owned Banking Association. Most decisions of the Operating Committee require super majority consent, meaning at least one of the 2 non-Applicant members of the Operating Committee would need to approve the decision. As summarised at paragraph 3.24, certain key decisions, such as changing the assurance review standards, require unanimous consent.
- 5.18. The ACCC considers that, by affording more representative non-Applicant lender input into decisions about the operation of the Relevant Conduct, these changes address the concerns raised about this issue.
- 5.19. In relation to the fee structure, it was originally proposed that all lenders who opt-in to participate in the review of an individual aggregator would, regardless of size or the extent to which they use a particular aggregator, share the costs of the review of that aggregator equally.
- 5.20. In the draft determination, the ACCC considered that the cost savings to smaller lenders under an equal cost sharing model, relative to the amount they currently spend on aggregator assurance reviews, were likely to be smaller than for larger lenders such as the Applicants. This would place smaller lenders at a relative cost disadvantage to larger lenders in obtaining joint aggregator assurance reviews.
- 5.21. Following the draft determination, the Applicants made changes to the fee structure including placing a \$5,000 cap on the fee that any non-Applicant lender will have to pay to participate in a review of an individual aggregator. Under the new fee structure, Applicant lenders who participate in the review will always together pay at least 50% of the cost of a review, with the remaining cost to be divided equally between the participating non-Applicant lenders. However, each non-Applicant lender will never have to pay more than \$5,000. In the event that the contribution of non-Applicant lenders (capped at \$5,000 per lender) is less than 50% of the cost of a review, Applicant lenders will make up the difference.
- 5.22. The ACCC considers that this revised fee structure, by providing a more affordable means for small lenders to participate in the Program, largely addresses concerns about smaller lenders being placed at a relative cost disadvantage to larger lenders in participating in the Program.
- 5.23. Accordingly, the ACCC considers that these changes to the Program address the concerns that some lenders may not participate in the Program because of the way it is structured and administered. These changes are reflected in the Relevant Conduct that the ACCC has considered.
- 5.24. Having regard to these changes, the ACCC's assessment of whether implementation of the Relevant Conduct is likely to result in a public benefit in the form of efficiencies and cost savings for aggregators, lenders and assurance service providers follows.

Participating aggregators

- 5.25. The Applicants submit that one of the core public benefits of the Relevant Conduct is the efficiencies and savings for aggregators by reducing unnecessary duplication. This is because one assurance review for an aggregator can be conducted for a number of lenders, rather than each aggregator separately being subject to assurance reviews for each lender.²⁴
- 5.26. The Applicants also submit that the Relevant Conduct will generate savings and efficiencies for aggregators through review costs being shifted to lenders. The Applicants submit that, currently, aggregators bear a substantial proportion of the review costs due to the need to allocate internal resources to respond to multiple assurance reviews. The Applicants submit that the AAP Lenders will bear the cost of procuring assurance reviews, which will represent a substantial saving for each aggregator. Aggregators will not be required to pay the Assurance Service Providers any fees for their services, and will instead only cover the costs related to resourcing as needed to manage the process on their end. The Applicants submit that this cost will be significantly lower than would be required if the aggregator was having to manage multiple lender reviews.²⁵
- 5.27. The public benefit claim of increased efficiency and cost savings for aggregators was supported by interested parties, including aggregators themselves, industry associations and assurance service providers.²⁶ In summary, interested parties submit that:
- Individual lenders engage assessors each year to conduct assurance reviews of each aggregator. The reviews are resource intensive, time consuming and ultimately inefficient for all parties involved, and multiple reviews taking place simultaneously can cause fatigue and business disruption given the significant time investment required from aggregators.
 - The Relevant Conduct will lessen the number of audits and assurance activities currently undertaken and experienced by industry participants, and the breadth of information requested by the participating lenders will be streamlined into one request. The Relevant Conduct will therefore increase efficiencies by reducing costs and duplication for aggregators as the reviews will be conducted in a more structured and efficient way.
- 5.28. The ACCC received submissions from a number of aggregators who provided examples of the duplication and costs that currently exists in assurance reviews, and which they consider would be reduced under the Relevant Conduct.²⁷ For example, Astute Financial Management Pty Ltd (**Astute Financial**) submits it has been subject to separate assurance programs from many lenders over the past 3 years and has

²⁴ [Applicants' submission in support of the application for authorisation](#), 17 April 2023, p 20.

²⁵ [Applicants' submission in support of the application for authorisation](#), 17 April 2023, pp 6, 21–22.

²⁶ [Astute Financial Management Pty Ltd submission](#), 22 May 2023, p 1; [Australian Finance Group Ltd submission](#), 22 May 2023, p 1; [BDO Audit Pty Ltd submission](#), 22 May 2023, pp 1–2; [Connective Credit Services Pty Ltd submission](#), 22 May 2023, p 2; [Customer Owned Banking Association submission](#), 22 May 2023, pp 1–2; [Deloitte Touche Tohmatsu submission](#), 22 May 2023, p 1; [Lendi Group submission](#), 22 May 2023, pp 1–2; [Loan Market Group Pty Ltd submission](#), 22 May 2023, p 1; [Mortgage & Finance Association of Australia submission](#), 22 May 2023, p 3; [REA Group Ltd submission](#), 22 May 2023, p 2.

²⁷ [Astute Financial Management Pty Ltd submission](#), 22 May 2023, p 1; [Australian Finance Group Ltd submission](#), 22 May 2023, p 1; [Australian Finance Group Ltd submission](#), 20 October 2023, p 3; [Connective Credit Services Pty Ltd submission](#), 22 May 2023, p 2; [Lendi Group submission](#), 3 October 2023, p 1; [REA Group Ltd submission](#), 22 May 2023, p 2.

engaged with 3 different consultants from the Big 4 accounting firms, where the assurance programs they ran were very similar, where it had to provide near identical data for each review and explain its business and processes to each consultant. Astute Financial notes it has over 40 lenders on its lending panel, and it estimates the time taken for each assurance audit can be from 2 to 4 weeks.²⁸

- 5.29. In the draft determination, the ACCC considered that the Program is likely to result in some public benefit in the form of efficiencies and cost savings for aggregators and lenders who do participate in the Program, because fewer assurance reviews will need to be conducted. However, the ACCC considered that the Applicants had not substantiated the extent of this public benefit.
- 5.30. Following the draft determination, the Applicants and a number of industry stakeholders provided further information about this issue.
- 5.31. The Mortgage and Finance Association of Australia provided estimates of the costs its aggregator members incurred in 2022 in participating in assurance reviews, and estimates of additional costs likely to be incurred as a result of an increase in the number of individual assurance reviews if the Relevant Conduct does not proceed. Based on a survey of 9 of its aggregator members, the Mortgage and Finance Association of Australia estimates its members would save approximately a combined \$1 million per year – approximately \$111,000 for each of the 9 aggregators who responded to its survey.
- 5.32. This is based on the aggregators who participated in the survey reporting that, on average, they have 52 lenders on panel (including an average of 28 authorised deposit-taking institutions). Aggregator members who responded to the Mortgage and Finance Association of Australia's request for data collectively reported a total of 142 audits undertaken in the 2022 calendar year. This 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. The Mortgage and Finance Association of Australia submits that this equates to, on average, 16 audits per aggregator (i.e. an average of 34% of lenders on each aggregator panel) at a cost of approximately \$5,000 per audit.
- 5.33. The Mortgage and Finance Association of Australia submits that, in light of increasing demands for assurance, its aggregator members also expect a minimum of a further 54 audits to be conducted by lenders if the Relevant Conduct was not implemented, bringing the total number of audits anticipated for the next calendar year to at least 196 audits. The Mortgage and Finance Association of Australia estimates the cost associated with these additional audits to be at least \$300,000.
- 5.34. The Applicants also provided estimations of aggregator savings in response to the draft determination. The Applicants submit that based on the average number of lenders completing assurance reviews per aggregator, and the estimated number of hours required to respond to individual reviews versus a joint review, there would be savings estimated as \$46,667 per aggregator. Given that 11 aggregators are currently listed in the UJV Agreement, the Applicants estimate that the combined time and cost savings for aggregators would total approximately 3,080 hours of time saved, and \$513,337 in costs saved per annum, with the potential for these savings to be greater by at least \$300,000 if the estimated increase in the number of reviews were to occur.²⁹

²⁸ [Astute Financial Management Pty Ltd submission](#), 22 May 2023, p 1.

²⁹ [Applicants' submission in response to ACCC draft determination](#), 13 December 2023, pp 11–12.

- 5.35. Australian Finance Group submits that it conservatively estimated it spends around \$100,000 to \$150,000 on substantive assurance reviews, and that a joint review would cost it approximately 10% of the current costs.³⁰
- 5.36. Lendi Group submits that its Aussie Home Loans branch completed 14 assurance reviews in the 2021–2022 financial year, which remained open from between 5 days and 135 days. Lendi Group estimates the length of time involved for each review was between 2 hours to over 70 hours.³¹
- 5.37. The ACCC considers a public benefit from increased efficiency and cost savings for participating aggregators is likely to result from the Relevant Conduct, as participating aggregators will likely be subject to substantially fewer assurance reviews, reducing the duplication of resources and information currently required to separately demonstrate to lenders that they meet each lender’s assurance standards.
- 5.38. The extent of these cost savings is dependent on the level of participation in joint reviews by mortgage lenders. The higher the number of mortgage lenders that participate, the larger the efficiencies and cost savings to aggregators that are likely to be realised by the Relevant Conduct. As discussed below, the ACCC considers that the Relevant Conduct is likely to result in substantial cost savings and efficiencies for lenders, which is likely to incentivise their participation.
- 5.39. Accordingly, while the ACCC is not in a position to verify the quantum of cost savings for aggregators submitted by the Mortgage and Finance Association of Australia and other stakeholders, based on the available information, the ACCC considers that these cost saving are likely to be significant.
- 5.40. With respect to the Applicants’ submission that the Relevant Conduct will result in cost savings for aggregators through participating lenders bearing the cost of assurance reviews, the ACCC does not consider the mere shifting of costs, from one party to another, to be a public benefit, over and above the public benefit likely to result from the Relevant Conduct in the form of cost savings and efficiencies as identified above.

Participating lenders

- 5.41. The Applicants submit that the Relevant Conduct will provide non-applicant lenders an opportunity to reduce their costs on assurance reviews, by allowing the Applicants to incur the costs of establishing the aggregator assurance program, and then sharing the cost of reviews with Opt-in Lenders. The Applicants submit that, if the Relevant Conduct is authorised, there may be substantial overall industry wide savings, on the expectation the reviews required by most lenders can be procured under the Relevant Conduct at a significantly lower outlay.³²
- 5.42. Interested parties also supported the public benefit of cost savings for lenders resulting from the Relevant Conduct:
- Bendigo and Adelaide Bank Limited submits that the Relevant Conduct has the benefit of lowering the costs associated with meeting its numerous and complex assurance obligations.³³

³⁰ [Australian Finance Group Ltd submission](#), 20 October 2023, p 3

³¹ [Lendi Group submission](#), 3 October 2023, p 1

³² [Applicants’ submission in support of the application for authorisation](#), 17 April 2023, pp 21–22.

³³ [Bendigo and Adelaide Bank Limited submission](#), 22 May 2023, p 1.

- ING Bank (Australia) Limited (**ING Bank**) submits that the Relevant Conduct can derive the core public benefits listed in the application for authorisation.³⁴
- Auswide Bank Ltd (**Auswide Bank**) submits it supports the centralisation of an aggregator assurance program that adopts best practice and provides an industry standard approach.³⁵
- Lendi Group and the Customer Owned Banking Association submit that the Relevant Conduct would reduce time, labour, costs and duplication for both participating mortgage lenders and aggregators.³⁶
- Assurance firm BDO Audit Pty Ltd (**BDO Audit**) submits that the Relevant Conduct will increase efficiency and minimise duplication by reducing the number of reviews conducted for lenders.³⁷

5.43. As was the case in relation to likely cost savings and efficiencies for aggregators, in the draft determination the ACCC considered that the Program is likely to result in some public benefit in the form of efficiencies and cost savings for lenders because fewer assurance reviews will need to be conducted, reducing the duplication of resources and information required to be reviewed. However, the ACCC considered that the Applicants had not substantiated the extent of this public benefit.

5.44. In response to the draft determination, the Applicants provided estimates of expected cost savings to lenders as a result of undertaking joint assurance reviews. The Applicants estimate that the Relevant Conduct could result in cost savings of:

- \$4.16 million annually if only the Applicants undertook 8 reviews of aggregators
- \$5.2 million annually if one AAP Lender were to also opt into each of the 8 reviews
- \$15.7 million if each of the Applicants and 11 other AAP Lenders opted-in and completed 8 reviews.³⁸

5.45. These estimates are based on the following assumptions:

- 16 lenders (the Applicants and 11 others) currently individually completing reviews to the same standard and scope as the proposed joint assurance reviews – the Applicants submit that though this is a hypothetical figure, this is a reasonable estimation of participation as the Mortgage and Finance Association of Australia indicated in its submission that 9 aggregator members currently completed an average of 16 reviews each in 2022 and, further, these aggregators account for approximately 93% of brokers in Australia
- a cost of \$130,000 per joint assurance review, 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).

³⁴ [ING Bank \(Australia\) Limited submission 23 May 2023](#), p 2.

³⁵ [Auswide Bank submission, 23 May 2023](#), p 1.

³⁶ [Lendi Group submission](#), 22 May 2023, p 1; [Customer Owned Banking Association submission](#), 22 May 2023, p 2.

³⁷ [BDO Audit Pty Ltd submission](#), 22 May 2023, p 1.

³⁸ [Applicants' submission in response to ACCC draft determination](#), 13 December 2023, pp 9–10.

- 5.46. The Applicants also provided (on a confidential basis) estimates of the current average costs per assurance review incurred by each of them in individually conducting reviews.
- 5.47. The cost savings available to lenders were also supported by submissions from the Mortgage and Finance Association of Australia and Customer Owned Banking Association:
- The Mortgage and Finance Association of Australia submits that it considers that the costs of individually meeting assurance requirements for smaller lenders would likely far outweigh the proposed fee of \$5,000 per lender per review.³⁹
 - The Customer Owned Banking Association noted that, while the previous funding model had been of significant concern, the \$5,000 cap per review and obligation for Applicant lenders to pay at least 50% towards the cost of the review makes the costs of review reasonable and affordable for many customer-owned banks compared to the costs of conducting their own review to a similar standard. The Customer Owned Banking Association estimated that its sector could save a combined \$1.68 million per year (\$210,000 per bank) through participation in joint assurance reviews, based on conservative assumptions about its largest members and their use of aggregators.⁴⁰
- 5.48. The ACCC considers that the Relevant Conduct will reduce the costs for lenders who participate as they can share the cost and resources of the reviews. The ACCC considers there is a public benefit from increased efficiency and cost savings as the shared costs of, and resources required to undertake these reviews will be lower for participating lenders than the current cost for each lender to do a separate review.
- 5.49. The ACCC considers that the potential cost savings estimated by the Applicants may be overstated. For example, the Applicants have based their estimates on an assumption that 16 participating lenders all currently individually undertake assurance reviews to the same standard and scope as will be the case under the Relevant Conduct. Based on the information provided by the Applicants and interested parties, this does not appear to always be the case.
- 5.50. However, notwithstanding this, the ACCC considers that the information provided by the Applicants and other stakeholders following the draft determination about the amount lenders currently spend on assurance reviews, including the confidential information provided by the Applicants about the costs they incur in conducting reviews, indicates that there are likely to be substantial cost savings for many lenders who participate in the joint assurance reviews.
- 5.51. The ACCC notes that some lenders currently only incur comparatively small aggregator assurance review costs. In this respect, the Mortgage and Finance Association of Australia submits, based on a survey of its aggregator members, that in 2022 an average of 34% of lenders on each aggregator panel conducted an assurance review. These reviews ranged from full audits (interviews, sample testing and the collection and verification of information on matters ranging from broker onboarding and accreditation to IT system testing and controls) to simple and complex attestations.

³⁹ [Mortgage and Finance Association of Australia submission](#), 22 January 2024, p 2.

⁴⁰ [Customer Owned Banking Association submission](#), 25 January 2024, p 3.

- 5.52. Cost savings to some of these lenders in undertaking their assurance process under the Relevant Conduct rather than individually are unlikely to be material and their costs may in fact increase if the lender chooses to participate in the Relevant Conduct. However, access to a higher standard of review for a comparatively small cost (a maximum fee of \$5,000) is likely to be sufficiently attractive for some of these lenders that they will be willing to accept a relatively small increase in costs.
- 5.53. Given the value associated with access to this standard of review, the ACCC is of the view that significant overall cost and resource savings are likely to be realised across the sector.
- 5.54. As such, the ACCC considers that the Relevant Conduct is likely to result in a public benefit in the form of efficiencies and cost savings for lenders.

Participating assurance service providers

- 5.55. As noted above, the Applicants submit that the Relevant Conduct will result in substantial overall industry-wide savings. The Applicants submit that there are clear efficiencies and cost savings in collectively appointing Assurance Service Providers under the Relevant Conduct, particularly in relation to managing the quality of deliverables and the methodology applied as well as oversight and management of any potential conflicts of interest. Deloitte Touche Tohmatsu (**Deloitte**) also submits that it will be beneficial for an Assurance Service Provider and aggregators to engage with one entity, being the Operating Committee, which will facilitate more efficient communication and engagement as opposed to liaising with multiple parties.⁴¹
- 5.56. As with the aggregators and lenders, the ACCC considers that the Relevant Conduct is likely to result in a public benefit through reducing duplication for Assurance Service Providers thereby freeing up assurance providers' resources for other uses.
- 5.57. However, unlike the cost savings to aggregators and lenders, the Applicants have not attempted to quantify the value of these cost savings, which would assist the ACCC in deciding how much weight to attribute to this claimed public benefit. On the information available to it, the ACCC is not satisfied that the extent of this public benefit is likely to be large.

Improved standards of assurance reviews

- 5.58. The Applicants submit that the Relevant Conduct aims to improve overall compliance standards with financial services regulations across the mortgage lending industry, and thereby generate substantial public benefits. The Applicants submit that this is particularly the case for new entrant lenders who can obtain assurance reports more easily if they participate in joint reviews, as they can share the cost and administrative burden with other participating lenders.⁴²
- 5.59. Interested parties submitted:
- The Program will help drive improvements in the quality of assurance standards across the industry by making available high-quality reviews to more lenders (Customer Owned Banking Association).⁴³

⁴¹ [Deloitte Touche Tohmatsu submission](#), 22 May 2023, p 2.

⁴² [Applicants' submission in support of the application for authorisation](#), 17 April 2023, p 21.

⁴³ [Customer Owned Banking Association submission](#), 22 May 2023, p 2.

- The move to the joint assurance program will remove one of the impediments to adding a new lender to aggregators' lender panels, ensuring that aggregators can continue to offer a wide choice of products to help meet its best interests duty to consumers. An independent third party will remove any potential bias from the relevant lender's perspective (REA Group).⁴⁴
 - The Program is expected to uplift the assurance standards and oversight for some non-Applicant lenders, particularly where the Assurance Service Provider has a high level of independence, and aggregators are more likely to implement the better recommended practices under the Program, knowing that most lenders require and agree on the recommended uplifts and there will be a structured approach to the review of the issue rectification (BDO Audit and Deloitte).⁴⁵
 - Smaller lenders may not have the capacity or in-house skills to perform these types of reviews across aggregators, typically using remote compliance or monitoring functions to assess brokers and aggregators. Under the recently introduced CPS 230 (described in paragraph 2.13 above), lenders who perform less rigorous work and oversight now will likely need to increase monitoring and testing of aggregators. The Program will benefit these smaller lenders in the industry through consistent and robust aggregator and mortgage broker monitoring and compliance (Deloitte).⁴⁶
- 5.60. In the draft determination, the ACCC did not accept that the Program was likely to improve compliance standards. The ACCC considered that the proposed scope of assurance reviews was very high-level, providing significant discretion about the nature and scope of assurance reports, creating uncertainty about the extent to which assurance reviews will adequately address aggregator and broker compliance standards.
- 5.61. The Applicants had provided a draft review standard to provide an indication of the proposed baseline standard for reviews. The ACCC was concerned that the focus of reviews provided for in the indicative draft review standard appeared to be primarily on the systems regarding the interactions between aggregators and brokers, with less regard to the key elements of any assurance review, compliance with responsible lending requirements in brokers' dealings with consumers. The ACCC considered that this is particularly important in circumstances where, while a significant objective under the Program is the realisation of savings and efficiencies for industry participants, the cost of poor practices engaged in is borne by consumers.
- 5.62. For example, the ACCC considered the draft scope of review lacked sufficient detail in relation to areas including best interests duty obligations, responsible lending obligations and conflicted remuneration.
- 5.63. The ACCC also considered that the Program may lead to more homogeneous aggregator assurances reviews and a common benchmark of reviews. The ACCC considered that there was uncertainty about whether this common benchmark was likely to be of a higher or lower standard than some lenders would adopt themselves in the absence of the Program.

⁴⁴ [REA Group Ltd submission](#), 22 May 2023, p 2.

⁴⁵ [BDO Audit Pty Ltd submission](#), 22 May 2023, p 2; [Deloitte Touche Tohmatsu submission](#), 22 May 2023, pp 2–3.

⁴⁶ [Deloitte Touche Tohmatsu submission](#), 22 May 2023, p 2–3.

- 5.64. In response to the draft determination, the Applicants substantially revised the proposed review standard including, among other changes, strengthening the provisions in relation to best interests duty obligations, responsible lending obligations and conflicted remuneration. The Applicants submit that the Review Standard is a 'baseline standard' for reviews conducted under the Relevant Conduct. The Applicants also introduced a requirement that the Operating Committee cannot reduce or limit the scope of reviews conducted compared to the Review Scope at Attachment B, and any changes to the Review Standard must be consulted on with participating lenders.⁴⁷
- 5.65. The Applicants changed the process for appointing Assurance Service Providers to stipulate that at least 2 providers would be appointed.
- 5.66. The Applicants provided further submissions that the Relevant Conduct would result in a material uplift in the standard of assurance reviews undertaken by the mortgage lending industry as a whole because:
- Lenders currently undertake a broad range of aggregator assurance reviews based on factors such as the lender's budget and appetite for risk. The quality and standard of review approaches varies from no review process to 'light touch' reviews such as attestation only, or attestation and supporting documents, to more in-depth reviews such as lender review or external assurance provider review.
 - The proposed Review Standard represents a significant expansion in scope for some of the Applicants and for many other lenders, and participating in joint assurance reviews will increase the frequency of aggregator review assurance processes for some of the Applicants and other lenders.
 - Participating in joint assurance reviews will improve affordability, quality and standard of aggregator reviews for smaller lenders. The Applicants submit that without this option, many smaller lenders may not conduct or obtain external assurance reports at the frequency and of a quality that is comparable to the proposed Review Standard due to the costs associated with obtaining multiple aggregator assurance reviews.
- 5.67. The Applicants provided confidential information about the reviews they each individually undertake, submitting that the initial review standard and the revised Review Standard represents a significant expansion in scope for some of the Applicants and for many other lenders. The Applicants submit that the proposed cycle of joint reviews will increase the frequency of aggregator review assurance processes for some of the Applicants and other lenders, with reviews being conducted annually.⁴⁸
- 5.68. In response to the draft determination, a number of interested parties also provided submissions on this issue. In particular, interested parties noted what they consider to be the low standard of many assurance reviews currently undertaken by lenders:
- The Mortgage and Finance Association of Australia submits that the Relevant Conduct provides the opportunity to all lenders to participate in assurance reviews with access to full audit findings, and can only have the effect of enhancing the assurance activity of smaller lenders who currently only rely on

⁴⁷ Clause 10.5(a) of the UJV Agreement, 4 March 2024.

⁴⁸ [Applicants' submission in response to draft determination](#), 13 December 2023, p 6.

attestations (or have no program in place) to meet their compliance obligations, resulting in a more robust and higher quality oversight regime across the industry.⁴⁹

- Australian Finance Group submits that, as an aggregator, it has experienced a broad range and level of assurance reviews from lenders, from extremely in-depth reviews involving external consultants auditing all aspects of Australian Finance Group's relevant business over several months, to very light touch one-page self-declaration confirmations. Australian Finance Group expects the scope of the joint reviews to be undertaken to be on the more detailed side of this scale, and if smaller lenders can have access to the more fulsome detailed reviews, this will allow them to tailor their compliance responses and areas of concentration to improve lending practices.⁵⁰
- Mortgage aggregator Lendi Group similarly submits that a consolidated assurance program administered by a single service provider would result in a more detailed and comprehensive scope of review than exists currently pursuant to the individual review process. Lendi Group also submits that a consistent benchmark and greater familiarity with the review process would allow it to upskill its internal compliance resources and systems, and develop procedures for responding to reviews.⁵¹

5.69. The ACCC considers that the revised Review Standard more comprehensively deals with the content of reviews to be undertaken, including with regard to the specific areas where the ACCC raised concerns in the draft determination. The ACCC considers that adopting the revised Review Standard will mean that assurance reviews conducted are likely to be of a higher standard than those currently conducted by many lenders, and of a significantly higher standard than some medium and small lenders some of whom, particularly smaller lenders, currently have little to no assurance review processes in place.

5.70. The ACCC considered that for some lenders, particularly larger lenders, there is a possibility that assurance reviews may be conducted to a lower standard under the Relevant Conduct than they would individually. While a lender that was concerned about the standard of reviews under the Relevant Conduct compared to their individual review processes has the option to opt out and conduct individual reviews, they may be less likely to do so because:

- their contribution to the cost of obtaining a joint assurance review of the aggregator is likely to be substantially lower than the cost of conducting an individual review, and
- an understanding that their competitors are conducting a review to a lower standard may also influence their decision.

5.71. Similarly, for some lenders there is a risk that common assurance reviews will not be as responsive to their individual needs. In addition to opting out in these instances, individual lenders are able to request that additional, lender-specific issues be considered as part of the jointly conducted assurance reviews, with the individual lender (or lenders) responsible for covering the cost of these additional aspects of the review. For the same reasons discussed directly above, the option of reviews

⁴⁹ [Mortgage Finance Association of Australia submission](#), 27 October 2023, p 5.

⁵⁰ [Australian Finance Group Ltd submission](#), 20 October 2023, p 3.

⁵¹ [Lendi Group submission](#), 3 October 2023, p 2.

conducted to a common standard may make it less likely that individual lenders will seek to have any additional issues specific to their needs covered in reviews.

- 5.72. However, as discussed above, based on the information provided by the Applicants and other interested parties about the level and frequency of assurance reviews conducted by individual lenders, the ACCC considers that assurance reviews conducted in accordance with the revised Review Standard are likely to be of a higher standard, at lower or not substantially greater cost, than those which most lenders currently conduct individually. The ACCC considers this to a significant public benefit that would be likely to outweigh any potential public detriment from a smaller cohort of lenders potentially reducing, to some extent, the standard of their reviews.
- 5.73. The ACCC also considers that the Applicants' change following the draft determination to include at least 2 Assurance Service Providers somewhat reduces the likelihood that assurance reviews will be more homogenous as different Assurance Service Providers may adopt different approaches. More generally, while the ACCC considers it likely, even with 2 Assurance Service Providers, that there will be more homogeneity about assurance reviews, the ACCC considers that any potential detriment is mitigated by the higher standard to which these reviews are likely to be conducted.
- 5.74. The ACCC notes that under the Relevant Conduct the scope of reviews cannot be diminished. Further, the Operating Committee will be required to report to the ACCC any changes to the Review Standard.
- 5.75. In conclusion, given the significant revisions to the Review Standard and the increased likelihood of take up of joint reviews by non-Applicant lenders, including smaller lenders, as a result of the revised cost structure and greater non-Applicant lender input into the operation of the program (as discussed at paragraphs 5.18 to 5.23), the ACCC considers that the Relevant Conduct is likely to result in a public benefit in the form of improving the standard of aggregator assurance reviews.

Increased competition for assurance service providers

- 5.76. Prior to the draft determination, the Applicants submitted that the Program would provide a competitive opportunity for the supply of assurance services by firms competing in the tender process. The Applicants submit that, as was initially proposed with the initial appointment of the Assurance Service Provider for a period of 12 months, with a chance to re-tender, there would be regular opportunities for other assurance service providers to compete for subsequent appointments and the tender process will give the Applicants insight into other potential providers for consideration in the future.⁵²
- 5.77. Assurance firm BDO Audit also noted the benefits of 'the competitive opportunity for the supply of the assurance services by firms competing in the tender process...' in its submission.⁵³
- 5.78. The ACCC considers that information received through the public consultation process, including through submissions provided by assurance service providers, indicates that there is currently strong competition between assurance service

⁵² [Applicants' submission in support of the application for authorisation](#), 17 April 2023, pp 20–21.

⁵³ [BDO Audit Pty Ltd submission](#), 22 May 2023, p 2.

providers.⁵⁴ The ACCC has not been presented with any information that would indicate that this is not the case.

- 5.79. In the draft determination, the ACCC was not satisfied that the Program was likely to result in a material public benefit in the form of an increase in competition for assurance service providers. The ACCC noted that aggregating participating lenders' assurance service requirements into a single contract was likely to be more attractive to potential assurance service providers, and tender responses would be expected to reflect this. However, given there currently appears to be strong competition for the supply of these services, the ACCC considered there was not sufficient evidence to support the submission that the Program would result in a material public benefit through increased competition for assurance services. The ACCC invited further submissions on this claimed public benefit.
- 5.80. Following the draft determination, and as discussed at paragraph 5.65, the Applicants amended the Program to include at least 2 Assurance Service Providers appointed through the competitive tender process every 2 years.
- 5.81. The Applicants submit that (amongst other benefits) this proposal will promote competition to be appointed to the panel and between appointed Assurance Service Providers during the term of appointments. The Applicants submit that, in a future without the authorisation, assurance service providers will be engaged independently by lenders for aggregator assurance reviews as they see fit, and possibly without any competitive tender process.
- 5.82. The ACCC considers that the Relevant Conduct will likely provide an attractive opportunity for potential assurance service providers and prospective providers will likely compete in the tender process for one of the appointed positions. The ACCC also notes that, once appointed, the Assurance Service Providers will likely compete on quality and/or price for the opportunity to be reappointed.
- 5.83. However, the ACCC has received no additional information following the draft determination to indicate that there will not continue to be strong competition to supply assurance services to lenders individually in the future without the Relevant Conduct. Accordingly, the ACCC considers that there is not sufficient evidence to support the submission that the Relevant Conduct would result in a material public benefit through increased competition for assurance services.

Public detriments

- 5.84. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:
- ...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.*⁵⁵
- 5.85. The ACCC has considered the following public detriments:
- increased risk of home loans market being more conducive to coordinated behaviour among participants

⁵⁴ [BDO Audit Pty Ltd response to ACCC request for further information](#), 3 August 2023, pp 1 & 3; [Applicants' response to interested party submissions](#), 20 June 2023, p 8.

⁵⁵ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

- reduced competition in the supply of mortgage lending to consumers
- potential for reduced competition for the supply of assurance services.

Increased risk of home loans market being more conducive to coordinated behaviour among participants

Information sharing between lenders

- 5.86. The Applicants submit that the Relevant Conduct is designed to limit the type of information shared between lenders to an appropriate level to avoid the sharing of any commercially sensitive information and is subject to information sharing procedures and a 'competition protocol'.⁵⁶ The Applicants note that a lender may be removed from the Program if it is in breach of the confidentiality protocols. These protocols are summarised in paragraphs 3.31 to 3.33 above.
- 5.87. The Applicants state that assurance reviews are not designed to reveal specific information about particular lenders' loan terms, lending policies or offers or other client information. Rather, they will focus on the overall systems and processes used within aggregator networks to manage their compliance responsibilities.⁵⁷
- 5.88. Prior to the draft determination, interested parties submitted that, given the potential for coordinated behaviour through information sharing amongst participants, the Applicants would need to ensure there were sufficient safeguards to protect privacy and ensure information was not shared improperly so that it may give rise to coordinated behaviour. In particular:
- Connective submitted that lenders would need to ensure appropriate levels of privacy and data protection, particularly with regard to loan files, where it is critical that these are de-personalised and appropriate protections put in place.⁵⁸
 - Finance Brokers Association of Australia submitted that while the deed includes restrictions on sharing of information and strict requirements that in theory should address concerns, these in practice can be difficult to police and large institutions have a history of sharing information in official and unofficial channels. Finance Brokers Association of Australia stated that there should be full examination of how ACCC authorisation could be exploited to 'give a group of powerful organisations complete authority to exchange market-sensitive information'. Finance Brokers Association of Australia further submitted that bank behaviour around interest rate rises and other practices indicate that large financial institutions move in close connection with each other, and while some of this may constitute 'copycat behaviour', it may also involve structured conduct (involving information sharing).⁵⁹
- 5.89. In the draft determination the ACCC considered that by increasing the frequency and points of interaction between the major bank lenders, the Program is likely to increase the risk of the market being more conducive to coordination.

⁵⁶ [Applicants' submission in support of the application for authorisation, 17 April 2023](#), p.14.

⁵⁷ [Applicants' submission in support of the application for authorisation, 17 April 2023](#), p 15.

⁵⁸ [Connective Credit Services Pty Ltd submission](#), 22 May 2023, p 3.

⁵⁹ [Finance Brokers Association of Australia submission, 31 May 2023](#), p 3.

- 5.90. In response to the draft determination, the Applicants amended the Program to include additional requirements:
- an appointed Operating Committee representative must not be responsible for the making of commercial and/or strategic decisions, including pricing decisions, that may (directly or indirectly), involve or impact upon competition between the Applicants, in relation to businesses for which there is a competitive overlap with the businesses of the Applicants and/or an AAP Lender⁶⁰
 - each meeting of the Operating Committee must be attended by an external lawyer engaged by the Applicants and instructed to immediately advise the attendees if, during the course of the meeting, there is a risk of breach of the competition protocol.⁶¹
- 5.91. The Applicants submit that the strict governance and competition protocols set out in the revised Program documents will provide protections against participants engaging in coordinated conduct.
- 5.92. The Customer Owned Banking Association provided a submission in response to the Applicants' proposed additional requirements, noting that it supports the proposed additions which support the governance and competition protocols of the Program. The Customer Owned Banking Association also submits that the expansion of the Operating Committee to include the Independent Representatives (non-Applicant representatives) should help discourage any inappropriate interactions or coordination between the major banks.⁶²
- 5.93. The ACCC notes that the competition protocol provides that lenders will not share any information that may be regarded as commercially sensitive or which relates to the competitive market activities of any of the lenders. This includes any fee, cost or price-related matters.
- 5.94. Information provided for the purpose of assurance reviews is provided directly to the relevant Assurance Service Provider by each lender and is not shared between lenders. The report prepared by the relevant Assurance Service Provider is then provided separately to each participating lender. Any discussions, or actions, a lender chooses to take based on the review is a matter for the lender and the aggregator that is the subject of the review. Discussions or sharing of information between lenders about a review or any action a lender proposes to take in response to a review is also prohibited.
- 5.95. More generally, the assurance reviews will address matters in relation to the aggregator's systems and processes, such as broker onboarding and accreditation, responsible lending, IT systems and data security. The reviews are not intended to deal with commercial aspects of the aggregator's operations in relation to its dealings with lenders.⁶³
- 5.96. However, the risk of coordinated behaviour is particularly relevant in relation to concentrated markets, such as that for home loans where, at a national level, major banks make up the vast majority of the market share of home loans (according to

⁶⁰ Clause 9.2 of UJV Agreement; Clause 4 of competition protocol.

⁶¹ Clause 9.9(k) of UJV Agreement; Clause 5.4 of competition protocol.

⁶² [Customer Owned Banking Association submission](#), 25 January 2024, p 2.

⁶³ [Applicants' submission in support of the application for authorisation, 17 April 2023](#), p 7.

APRA statistics, the major banks make up approximately 75% of home loans nationally and only 12 authorised deposit taking institutions have more than a 1% share).⁶⁴ The Relevant Conduct would allow the major banks to work together to endeavour to lower the costs of one input to the operation of their businesses and also provides another point of contact between the major banks and increases the frequency of interaction between major bank lenders.

- 5.97. In this respect, any interaction of the kind the Applicants propose carries with it an inherent risk of coordination beyond that authorised.
- 5.98. However, the ACCC considers that the additional requirements summarised in paragraph 5.90 above and the expansion of the Operating Committee to include non-Applicant lenders reduces the risk of a propensity for the lenders participating in the joint reviews to coordinate in relation to other aspects of the supply chain.
- 5.99. Accordingly, the ACCC has concluded it is likely that the Relevant Conduct will result in some public detriment through an increased risk that the home loans market becomes more conducive to coordination between major bank lenders. However, the ACCC considers, having regard to the proposed changes to the Program following the draft determination, that the increased risk, and associated public detriment, is not likely to be significant.

Information sharing by the Assurance Service Provider

5.100. Prior to the draft determination, the Applicants proposed that a single Assurance Service Provider would be appointed to conduct assurance reviews under the Program. Interested parties raised concerns around the possibility that the appointed Assurance Service Provider could have a conflict of interest based on any existing relationship with Program participants:

- Australian Financial Group noted that the entities expected to bid for the role of Assurance Service Provider may have existing commercial relationships, including as auditors, with Program participants. It therefore submitted that the Program ought to be designed to allow potential Assurance Service Providers to demonstrate adequate information security arrangements to avoid actual or perceived conflict between separate services provided to participants.⁶⁵
- REA Group submitted that the Assurance Service Provider will need to ensure it has robust data segregation and information exchange protocols in place to ensure information uncovered or reported through a review is not disseminated to other aggregators, internally within the Assurance Service Provider or its other clients.⁶⁶

5.101. The Applicants responded to these submissions noting that they intend to impose strict conflict requirements on the Assurance Service Provider to protect the participants' interests in the 'Master Services Agreement' between aggregators and the Assurance Service Provider, which will be signed prior to the completion of any

⁶⁴ Australian Competition and Consumer Commission, [Reasons for Determination - Application for merger authorisation MA1000023 lodged by Australian and New Zealand Banking Group Limited](#), Commonwealth of Australia, 4 August 2023, paragraph 6.46.

⁶⁵ [Australian Finance Group Ltd submission, 22 May 2023](#), p 2.

⁶⁶ [REA Group Ltd submission, 22 May 2023](#), p 3.

assurance review. The Applicants submit that this will be necessary to ensure that aggregators are supportive of the Program.⁶⁷

- 5.102. The Applicants stated that their intention was to require providers who bid on the Assurance Service Provider role to implement adequate arrangements to ensure no conflict, actual or perceived, may arise between their assurance team and other personnel in that firm who may have relationships, including as auditors with other participating lenders, or with aggregators.⁶⁸ It is proposed that the Assurance Service Provider will be required to establish adequate information security arrangements including, for example, systems controls on access to files/information, clean team separation measures so that personnel are not involved in other client work for lenders or aggregators, personal signed confidentiality undertakings, and audit rights as are appropriate.⁶⁹
- 5.103. In the draft determination, the ACCC noted that the risk of an assurance provider sharing information with other clients with which it has relationships exists both with and without the Program. Absent the Program, lenders are likely to continue to engage third party assurance service providers to undertake assurance reviews of their aggregator networks. The ACCC considered however that appointing a single Assurance Service Provider, as was proposed under the Program, increased this risk compared to the future without the Program. Individual mortgage lenders seeking to engage an assurance service provider have a range of potential suppliers to choose from, making it easier to avoid contracting with a supplier that may have existing relationships with a competitor or competitors of the lender. Under the Program, with a single appointed Assurance Service Provider, the risk of the appointed supplier sharing information with other clients with which it has a relationship would need to be managed rather than avoided.
- 5.104. Notwithstanding this, in the draft determination the ACCC considered that the process that the Applicants propose to undertake is likely to be adequate to manage this risk, particularly in the context where lenders and aggregators will require a sufficient level of assurance as to the manner in which this risk is managed in order to agree to participate in the Program.
- 5.105. Following the draft determination, the Applicants amended the Program to propose to appoint at least 2 Assurance Service Providers. The Applicants submit that at the expiry of the appointed Assurance Service Providers' 2-year terms, the Operating Committee will conduct a new tender, with previously appointed providers able to compete to be reappointed. The Applicants submit that this would reduce concerns about potential conflicts of interest by allowing lenders to request that reviews be assigned to a particular Assurance Service Provider.
- 5.106. The ACCC considers that the appointment of 2 Assurance Service Providers further reduces the risk that the Relevant Conduct is likely to result in information sharing by the Assurance Service Provider.

⁶⁷ [Applicants' response to interested party submissions, 20 June 2023](#), p 6.

⁶⁸ [Applicants' response to interested party submissions, 20 June 2023](#), p 6.

⁶⁹ [Applicants' response to interested party submissions, 20 June 2023](#), p 7.

Reduced competition for supply of mortgage lending to consumers

Costs of acquiring aggregator assurance services

- 5.107. As noted, initially the Applicants proposed that all lenders participating in a review of an aggregator under the Program would share the cost of the review equally. Some interested parties raised concerns that, while they supported the Program in principle, the equal cost model may be unfair or cost prohibitive for smaller lenders.⁷⁰
- 5.108. In the draft determination, the ACCC considered that the cost savings to smaller lenders under an equal cost sharing model, relative to the amount they currently spend on aggregator assurance reviews, are likely to be smaller. This in turn is likely to have some impact on the ability of smaller lenders to compete in the supply of mortgage lending to consumers, which the ACCC considered to be a public detriment. The ACCC considered that steps could be taken to appropriately manage any such concerns, to ensure that smaller lenders are not placed at a relative cost disadvantage to larger lenders in obtaining joint aggregator assurance reviews.
- 5.109. Following the draft determination, the Applicants changed the Program's cost structure, as summarised at paragraph 5.21. This includes capping the fee which any non-Applicant lender will pay to participate in a review of an aggregator at \$5,000.
- 5.110. The Customer Owned Banking Association provided a submission about the revised funding model.⁷¹ The Customer Owned Banking Association notes that some of its members raised a concern that the funding model could more appropriately distinguish between mid-sized banks (such as Suncorp, Bank of Queensland and Bendigo and Adelaide Bank) and smaller banks (such as customer-owned banks). However, the Customer Owned Banking Association itself is of the view that, on balance, the revised funding model addresses its original concerns about inequity and limitations imposed on smaller banks' access to the scheme, and that the absence of an additional tier should not prevent the ACCC from granting authorisation. The Customer Owned Banking Association also submits that the Applicants most likely have not adopted more than 2 tiers due to their desire to minimise the complexity of the funding model.
- 5.111. The Customer Owned Banking Association submits that it supports the cap of \$5,000 per review for non-Applicant lenders as it considers it to be reasonable and affordable for many customer-owned banks, when compared to the costs of them conducting their own reviews to a similar standard. For its members conducting annual attestations, they have noted that paying up to \$5,000 per review is reasonable due to the quality of the reviews that will be gained compared to their current practice.
- 5.112. The Mortgage and Finance Association of Australia also provided a submission supporting the revised fee structure, as the costs of meeting assurance requirements for smaller lenders in conducting or acquiring individual assurance reviews are likely to be far greater than the proposed capped fee of \$5,000 per lender per review. The Mortgage and Finance Association of Australia also states that its smaller lender members support the revised fee structure, and it understands that several smaller

⁷⁰ [Customer Owned Banking Association submission, 22 May 2023](#), p 2; [Australian Finance Group Ltd submission, 22 May 2023](#), p.2–3; [ING Bank \(Australia\) Limited submission, 23 May 2023](#), p 1.

⁷¹ [Customer Owned Banking Association submission](#), 25 January 2024, p 2.

lenders propose to address material service provider oversight requirements through their participation in joint assurance reviews.⁷²

- 5.113. The ACCC notes that there is a significant variation in the size of non-Applicant lenders who may wish to participate in joint assurance reviews. While a pricing structure with a number of tiers based on size of the non-Applicant lender would be likely to further reduce any relative cost disadvantage, this needs to be balanced against the additional complexities in managing fee structures that it would introduce. In this respect, the ACCC considers that a fee cap of \$5,000 per non-Applicant lender sufficiently addresses this concern.
- 5.114. The ACCC notes that the information provided by the Mortgage and Finance Association of Australia and Customer Owned Banking Association indicates that many smaller lenders are currently paying less than \$5,000 for each of their individual assurance reviews, and in some cases, not conducting reviews at all. For these lenders, the ACCC considers the Relevant Conduct represents an opportunity to obtain assurance reviews to the standard that large lenders require for a fraction of the cost of obtaining such a review individually. The ACCC considers that some smaller lenders may value such reviews sufficiently to incur the additional cost, compared to their current spending on assurance reviews, in obtaining them.
- 5.115. The ACCC considers it also likely that other smaller lenders will not value these reviews. Each lender undertakes its own assessment about the standard of assurance review it considers appropriate having regard to factors including the cost of conducting or obtaining reviews. In this respect, the Relevant Conduct represents an additional option for obtaining assurance reviews. For those lenders who seek to minimise their assurance review spending through relying on simple attestations or not conducting reviews at all, obtaining reviews under the Relevant Conduct, at a potential cost of up to \$5,000 per review, may not be an attractive option. However, the ACCC considers that this primarily reflects the lenders' assessment about the standard of assurance review it considers appropriate, having regard to factors including the cost of conducting or obtaining reviews, which would likely be the case in a future without the Relevant Conduct.
- 5.116. The ACCC considers that this revised fee structure substantially reduces the extent to which smaller lenders may be placed at a relative cost disadvantage to larger lenders in obtaining joint assurance reviews, and mitigates the extent of the impact on the ability of smaller lenders to compete in the supply of mortgage lending to consumers. Therefore, the ACCC considers that with this revised fee structure the Relevant Conduct is unlikely to result in a public detriment in the form of reduced competition for supply of mortgage lending services to consumers.

Approval process for lenders to join the Program

- 5.117. Decisions about admitting lenders to the Program and the suspension and termination of membership are made by the Operating Committee. Initially it was proposed that the Operating Committee consist of one representative of each of the Applicant lenders. The Applicants submit that they do not anticipate the Operating Committee would decline any lender's application, if that lender agrees to the Program's terms and conditions.
- 5.118. Following the draft determination, the Applicants have proposed changes to the Program so that the Operating Committee will also include at least 2 non-Applicant lenders as Independent Representatives.

⁷² [Mortgage and Finance Association of Australia submission](#), 22 January 2024, p 2.

- 5.119. The Applicants submit that the open nature of the Program to all industry participants is a core requirement. They submit that there is very little or no discretion for the Operating Committee to not admit a lender who is willing to comply with the Program's terms. Nor will the Operating Committee have any material discretion to remove a party if the party has complied with its obligations.⁷³
- 5.120. The Applicants submit that if the Operating Committee acted outside of the terms of the Relevant Conduct, then it is understood such conduct would fall outside the scope of the authorisation and therefore the Applicants would be at risk of exposure to the terms of the Act for any such conduct.⁷⁴
- 5.121. Although not a concern expressly raised by interested parties, the ACCC has considered risks associated with the Applicants being the decision-maker in relation to allowing other lenders to join the Program.
- 5.122. The ACCC notes that exclusion from the Program would be likely to increase the relative costs of the excluded lender in obtaining assurance reviews of aggregators with which it deals (i.e. costs incurred by the excluded lender compared to costs incurred by lenders who did participate in the Relevant Conduct). While participating lenders are likely to be able to obtain aggregator assurance services at a lower cost, and have to expend less resources on doing so, an excluded lender would have to continue to make its own, individual, arrangements. Therefore, the ACCC considers that exclusion from the Relevant Conduct would be likely to have an adverse effect on the lender concerned by increasing its cost of obtaining aggregator assurance services relative to that of the lenders it competes with in supplying mortgage lending services.
- 5.123. In this respect, the ACCC notes that it is other lenders, specifically representatives of each of the Applicants, that will make up the Operating Committee that decides on the participation by, and removal or suspension of, lenders from the Program. The unanimous agreement of the Operating Committee is required for all such decisions. The ACCC would be concerned if having this decision-making power vested with the Applicants would lead to it being used in a way that denied other lenders the opportunity to access the anticipated benefits of the Program.
- 5.124. However, the ACCC notes the inclusion of 2 non-Applicant representatives on the Operating Committee and that, under the UJV Agreement, participation in the Program is intended to be open to all lenders. In order to participate, lenders need only agree to comply with the terms of the AAP Lender Deed, including obligations regarding the use of reviews and reports and then have their participation approved by the Operating Committee. These terms are straightforward, they are not onerous, and there is no cost involved.
- 5.125. A lender's participation in the Program can only be suspended or terminated on reasonable grounds. The Relevant Conduct also includes a dispute resolution process that is fair and reasonable, and which enables disputes ultimately to be determined by an independent external person if required.
- 5.126. However, notwithstanding this, decisions about a lender's participation in the Program will be made by some of their competitors. While the ACCC does not consider that this risk is likely to be high, the ACCC does consider that if decisions were made that increased the costs of, or made it more difficult for, a lender or

⁷³ [Applicants' response to ACCC request for further information](#), 2 August 2023, p 3.

⁷⁴ [Applicants' clarification and amendment re the Proposed Conduct](#), 28 August 2023, p 6.

lenders to obtain assurance review services relative to their competitors, through their exclusion from the Relevant Conduct, this would be likely to result in a material public detriment.

- 5.127. The ACCC considers that the addition of 2 non-Applicant lenders nominated by the Customer Owned Banking Association and the Mortgage and Finance Association of Australia further mitigates this risk. The ACCC has also imposed a condition of authorisation requiring that the Operating Committee report to the ACCC any instances in which an application for a lender to participate in the Program is refused or a lender's participation in the Program is suspended or terminated.

Potential for reduced competition for the supply of assurance services

- 5.128. As noted above, prior to the draft determination, the Applicants proposed that a single Assurance Service Provider would be appointed to conduct assurance reviews under the Program. Under this original proposal, the Finance Brokers Association of Australia submitted that the creation of the Program is likely to stifle the opportunity for competition among assurance service providers.⁷⁵ It submitted that it may become extremely difficult for an incumbent to be dislodged. Finance Brokers Association of Australia suggested that the Program could include a requirement to change the Assurance Service Provider at set periods if a change has not occurred sooner through the annual tender process. This would also address a risk of capture and interdependence between the participants and the Assurance Service Provider – namely, that the Assurance Service Provider could entrench itself as the clear choice for reviews conducted under the Program and become an obvious choice for a renewal of its contract.⁷⁶
- 5.129. In response, the Applicants submitted that assurance reviews are one specific service provided by assurance service providers, who offer many other assurance services to many clients and industries in their portfolio.⁷⁷ The Applicants further submitted that the competitive tender process facilitated by the Program would increase competition and drive greater efficiencies and note similar submissions provided by assurance providers which supports this.
- 5.130. In the draft determination, the ACCC considered whether the Program may reduce competition for the provision of assurance services, to lenders, or more generally by aggregating demand for aggregator assurance services, across potentially a wide range of lenders, into one contract to be serviced by a single assurance service provider. This means it is likely that a range of assurance service providers who are not successful in the tender process will have fewer opportunities to compete to supply these services. The ACCC also considered whether the Applicants would be able to exercise enhanced buyer power in the procurement of aggregator assurance services.
- 5.131. The ACCC noted that assurance service providers have not raised any concerns in this respect. Submissions from assurance service providers, and market inquiries undertaken by the ACCC, indicate that while the provision of aggregator assurance services is an important component of their work, it is not a large component of their work. Further, there do not appear to be significant barriers to entry in providing these services. The ACCC understands that providing aggregator assurance services does

⁷⁵ [Finance Brokers Association of Australia submission 31 May 2023](#), pp 2–3.

⁷⁶ [Finance Brokers Association of Australia submission, 31 May 2023](#), p 2.

⁷⁷ [Applicants' response to interested party submissions](#), 20 June 2023, p 8.

not require significant specialist skills that would preclude businesses that supply audit or assurance services in other industries from competing to supply aggregator assurance services in the future.

- 5.132. With respect to competition to supply aggregator assurance services to the lenders participating in the Program, the ACCC also noted that the Applicants have a detailed understanding of, and considerable experience in, acquiring these services. It would not be in their interest to implement an arrangement that risks lessening competition for the supply of these services to them in the future.
- 5.133. For these reasons, the ACCC considered that the Program is unlikely to result in a public detriment in the form of reduced competition for the supply of aggregator assurance services or assurance services more generally. Having regard to the range of other work opportunities available to assurance service providers, the ACCC also considered that the Program is unlikely to enable the Applicants to exercise enhanced buyer power in the procurement of aggregator assurance services.
- 5.134. As discussed in paragraph 5.105 above, following the draft determination, the Applicants amended the Program to appoint at least 2 Assurance Service Providers with periodic re-tendering every 2 years. The Applicants submit that this would provide competition for appointment as Assurance Service Providers and facilitate competition during the term of appointment between the appointed multiple Assurance Service Providers.
- 5.135. The ACCC considers that this further reduces any risk of the Relevant Conduct resulting in a public detriment in the form of reduced competition for the supply of aggregator assurance services or assurance services more generally.

Balance of public benefit and detriment

- 5.136. The ACCC considers that the Relevant Conduct is likely to result in a public benefit in the form of efficiencies and cost savings for aggregators and lenders. Under the Relevant Conduct, fewer assurance reviews will be conducted, reducing the current duplication of resources and information required for each participating aggregator to separately demonstrate to each participating lender with which it deals that the aggregator meets the lenders' assurance standards. Given the number of reviews currently being individually undertaken, the ACCC considers that the cost savings and efficiencies likely to be realised under the Relevant Conduct are likely to be significant.
- 5.137. The ACCC considers that the Relevant Conduct is also likely to result in a public benefit in the form of improved overall standards of aggregator assurance reviews. The standard and depth of details of reviews currently undertaken by lenders varies considerably. Some, particularly larger, lenders undertake extensive assurance reviews, often engaging third party assurance firms to do so. Other, particularly smaller, lenders often conduct less in-depth reviews. In some cases, these are attestations only, with or without supporting documents, or no review is undertaken at all.
- 5.138. The ACCC considers that the Relevant Conduct represents an opportunity for all lenders to access comprehensive aggregator assurance reviews of a higher standard than those currently conducted by many lenders, without having to incur substantial costs.
- 5.139. The ACCC considers that some larger lenders may already be conducting assurance reviews of a comparable standard. Accordingly, there is a risk a common review standard may not be of the same standard, or at least not as responsive to their individual circumstances. However, the ACCC considers that providing all lenders

with access to reviews conducted to a high standard at a comparatively low cost is likely to improve the overall standard of aggregator assurance reviews across the mortgage lending industry.

- 5.140. The ACCC considers the Relevant Conduct is likely to result in some public detriment in the form of the risk that the home loan market becomes more conducive to coordination between the major bank lenders. This is because the major bank lenders' role in managing the Relevant Conduct increases the frequency and points of interaction between them. However, the ACCC considers that the requirement to have at least 2 Independent Representatives on the Operating Committee and the structure of the Relevant Conduct mitigate this risk. In particular, the Relevant Conduct includes a competition protocol addressing this issue. Operating Committee members cannot be responsible for making commercial decisions about the lender they represent, and each meeting must be attended by an external lawyer with competition law experience with instructions to advise the meeting attendees if, during the course of the meeting, there is a risk of breach of the competition protocol or competition laws.
- 5.141. With these processes in place, the ACCC considers that the Relevant Conduct is unlikely to result in a material public detriment in the form of increased risk that the home loan market may become more conducive to coordination between the major bank lenders.
- 5.142. The ACCC also considers that the Relevant Conduct is unlikely to result in a public detriment in the form of reduced competition in the supply of mortgage lending to consumers or reduced competition for the supply of assurance services.
- 5.143. The cost structure and eligibility criteria for lenders to participate means that it is likely to be easily accessible for all lenders. In respect of the Assurance Service Providers, the range of other opportunities available to them means that the Relevant Conduct is unlikely to enable the Applicants to exercise enhanced buyer power in the procurement of aggregator assurance services.
- 5.144. For the reasons outlined in this determination, the ACCC is satisfied that the Relevant Conduct, with the conditions at paragraph 6.13, would be likely to result in a public benefit and this public benefit would outweigh any likely detriment to the public from the Relevant Conduct.
- 5.145. These conditions primarily reflect the key elements of the Program as submitted by the Applicants that the ACCC consider are necessary to be implemented in order to be satisfied that the authorisation test is met. For example, these conditions require, amongst other things:
- compliance with the competition protocol
 - independent (non-Applicant representation on the Operating Committee)
 - the standard of reviews be at least as broad as proposed by the Applicants in their amended Review Standard (i.e. the standard of reviews can not be reduced from that proposed at the time authorisation is granted)
 - the cost to non-Applicant lenders of participating in any individual aggregator review must not exceed \$5,000.
- 5.146. The ACCC has also imposed 2 additional conditions that go beyond the requirements of the Program as submitted by the Applicants. These are requirements that:

- the Operating Committee report to the ACCC any instances in which an application for a lender to participate in the Program is refused or a lender's participation in the Program is suspended or terminated, and
- the Operating Committee notify the ACCC in writing of any decision to change the Review Standard and provide the ACCC with a copy of the Review Standard as amended.

5.147. The ACCC considers that these conditions are important to the ACCC being satisfied that the authorisation test is met, including in relation to the likely realisation of a public benefit in the form of improved standard of assurance reviews and the minimisation of any potential public detriment from the Operating Committee exercising its powers in making decisions about whether other lenders can participate in the Relevant Conduct in a manner that places other lenders at a competitive disadvantage.

Length of authorisation

5.148. The Act allows the ACCC to grant authorisation for a limited period of time.⁷⁸ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the likely detriments for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

5.149. The Applicants seek authorisation for 5 years. The Applicants submit this an appropriate timeframe given the long-term nature of the Relevant Conduct, the clear and demonstrated public benefits arising from it, and because no material public detriments are identifiable.

5.150. The ACCC has decided to grant authorisation with conditions for 5 years.

6. Determination

The application

- 6.1. On 17 April 2023, the Applicants lodged application AA1000640 with the ACCC, seeking authorisation under subsection 88(1) of the Act.
- 6.2. The Applicants seek authorisation for the Program defined at paragraph 3.1.

The authorisation test

- 6.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the conduct.
- 6.4. For the reasons outlined in this determination and with the conditions below, the ACCC is satisfied, in all the circumstances, that the conduct which the ACCC has decided to authorise, with conditions, would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from that conduct, including any lessening of competition.

⁷⁸ Subsection 91(1) of the Act.

6.5. Accordingly, the ACCC has decided to grant authorisation with conditions.

Conduct which the ACCC has decided to authorise

6.6. The below terms used in this section have the following meanings:

Applicants means each of the Commonwealth Bank of Australia, Westpac Banking Corporation, Australia and New Zealand Banking Group Limited, National Australia Bank Limited and Macquarie Bank Limited.

Participating Lenders means any mortgage lender other than the Applicants that participants in all or any part of the Authorised Program from time to time.

ASPs means all assurance service providers engaged to provide services as part of the Authorised Program.

Aggregators means all providers of mortgage aggregation services that provide services to any Program Participant from time to time.

Prospective ASPs means any assurance service provider that seeks to be engaged to provide services as part of the Authorised Program.

6.7. The ACCC has decided to grant authorisation AA1000640 with conditions to the Applicants and all Participating Lenders (collectively, the **Program Participants**) to develop and implement a program to collectively acquire assurance services in relation to mortgage aggregators (**Authorised Program**).

6.8. The ACCC has also decided to grant authorisation to all ASPs, Aggregators, and Prospective ASPs (collectively with the Program Participants, the **Program Parties**), and all Independent Representatives, that are involved in the Authorised Program from time to time.

6.9. Authorisation is not granted in relation to any exchange of information (for example, decisions or responses by a Program Participant in relation to an Aggregator, following a review), or the making or giving effect to of any contracts, arrangements or understandings between Program Participants following each instance of collective acquisition of assurance services.

6.10. The ACCC has decided to grant authorisation in relation to Division 1 of Part IV of the Act, and section 45 of the Act.

6.11. The ACCC has decided to grant authorisation AA1000640 for 5 years until 3 May 2029.

Conditions of authorisation

6.12. The ACCC may specify conditions in an authorisation. The legal protection provided by the authorisation does not apply if any of the conditions are not complied with.⁷⁹

6.13. Authorisation AA1000640 is granted with the following conditions:

Condition 1 – Each Program Party must comply with the competition protocol set out in Attachment A with respect to its involvement in the Authorised Program. Any proposed changes to the competition protocol must be approved in writing by the ACCC.

⁷⁹ Subsection 88(3) of the Act.

Condition 2 – Each Program Participant must:

- a) not disclose commercially or competitively significant information to another Program Participant as part of the Authorised Program, and any confidential information required to be disclosed to an ASP as part of the Authorised Program must be disclosed directly to that ASP;
- b) maintain the confidentiality of all confidential information of other Program Participants that is disclosed to it as part of the Authorised Program; and
- c) not disclose or use (including internally within the Program Participant's business) any confidential information of another Program Participant for any purpose other than participating in the Authorised Program.

Condition 3 – The Authorised Program must be non-exclusive, in each of the following senses:

- a) all Program Participants must be able to acquire mortgage aggregator assurance services outside of the Authorised Program;
- b) all ASPs and Prospective ASPs must be able to provide mortgage aggregator assurance services outside of the Authorised Program; and
- c) all mortgage lenders operating in Australia with an existing distribution arrangement with an Aggregator must be eligible to participate in the Authorised Program.

Condition 4 – The Authorised Program must be run by an operating committee or similar governing body with the following characteristics (Operating Committee**):**

- a) The Operating Committee must be comprised as follows:
 - i. It must include no more than one representative of each of the 5 Applicants (each an **Applicant Representative**), with no Applicant Representative being responsible for commercial and/or strategic decisions, including pricing decisions, for any part of an Applicant's business for which there is competitive overlap with any other Program Participant's business;
 - ii. It must include no fewer than 2 representatives who are members of appropriate industry bodies or Participating Lenders approved in writing by the ACCC (each an **Independent Representative**), with each Independent Representative required to be and remain independent of the Applicants; and
 - iii. It must not include any other person;
- b) As at the commencement of this authorisation, the Customer Owned Banking Association (ABN 98 137 780 897) and the Mortgage & Finance Association of Australia Limited (ACN 006 085 5052) are approved by the ACCC for the purposes of condition 4(a)(ii).
- c) Without overriding any other condition of this authorisation, the Operating Committee must not make any unreasonable decision that favours the interests of the Applicants (or any of them) over the interests of any Participating Lender;

- d) The quorum for all meetings of the Operating Committee must be at least 2 Applicant Representatives and at least 2 Independent Representatives, unless this would require the presence at a meeting of any representative that is not entitled to vote on a matter to be decided at that meeting pursuant to provisions intended to address conflicts of interest in relation to decisions of the Operating Committee;
- e) Without overriding any other condition of this authorisation, each of the following decisions must be unanimously approved by the attendees present at the Operating Committee meeting at which it is voted upon:
 - i. any decision regarding, or change to, the scope and/or standard of a review to be conducted as part of the Authorised Program, and/or any proposed change to the scope and standard of review set out in Attachment B;
 - ii. the appointment or removal of any ASP;
 - iii. the removal or suspension of any Program Participant;
 - iv. the delegation of any power or function of the Operating Committee; or
 - v. any amendments to the competition protocol;
- f) Without overriding any other condition of this authorisation, each of the following decisions must be approved by at least 80% of the attendees present at the Operating Committee meeting at which it is voted upon:
 - i. all decisions relating to the engagement of ASPs (including fees to be paid); and
 - ii. the management (including resolution) of any disputes regarding the Authorised Program;
- g) A lawyer with expertise in competition law must be present at each meeting of the Operating Committee, and must be instructed to advise the attendees at that meeting immediately if, during the course of the meeting, there is a risk of breach of the competition protocol or the competition laws.

Condition 5 – No fewer than 2 ASPs must be appointed to provide and offer to provide services to Program Participants as part of the Authorised Program, and each term of appointment for an ASP must not exceed 2 years (with no limitation on the number of times an ASP may be re-appointed).

Condition 6 – All negotiations with, and the appointment of, ASPs must be conducted by the Operating Committee.

Condition 7 – The Operating Committee must be responsible for the management and oversight of ASPs consistent with these conditions of authorisation, and the Operating Committee must have appropriate powers and processes to discharge this role.

Condition 8 – The Operating Committee must ensure that each ASP is obliged to:

- a) avoid conflicts of interest relating to any Program Participant;
- b) act impartially between Program Participants;

- c) maintain the confidentiality of all confidential information of other Program Participants and/or Aggregators that is disclosed to it, including regarding which Program Participants are acquiring services from it and/or a particular Aggregator, and the services being acquired); and
- d) comply and demonstrate compliance with all laws relating to privacy and the protection of personal information.

Condition 9 – The costs of each individual review conducted pursuant to the Authorised Program must be shared equally amongst the Program Participants involved in that review, except that each Participating Lender must not be required to pay, as its share of any individual review in which it is involved, more than the lesser of:

- a) AUD\$5,000 (excluding GST).; or
- b) an amount calculated by dividing half (50%) of the total cost of the review by the number of Participating Lenders that were involved in that review.

Condition 10 – The administrative costs of establishing and operating the Authorised Program, including all costs associated with the Operating Committee, must be borne by the Applicants, and must not be passed on to any other party.

Condition 11 – The scope of reviews to be conducted pursuant to the Authorised Program must be at least as broad, and the standard of reviews to be conducted pursuant to the Authorised Program must be at least as stringent, as the scope and standard of review set out in Attachment B (**Review Standard**).

Condition 12 – The Review Standard must not be reduced, limited, or diminished, during the period of authorisation.

Condition 13 – The ACCC must be notified in writing by the Operating Committee within 21 days of any decision to change the Review Standard, and provided with a copy of the Review Standard as amended.

Condition 14 – No less frequently than every 2 years, each Applicant must, either independently or through the Authorised Program, conduct a detailed and comprehensive assurance review of each Aggregator supplying services to it.

Condition 15 – The Operating Committee must require an ASP to give each Program Participant a reasonable opportunity to:

- a) elect to be involved in each assurance review of a mortgage aggregator; and
- b) for each assurance review in which they participate, specify any additional review items they require the review to include (with the cost of any additional review items to be shared equally amongst the Program Participants requiring them to be included in that review).

Condition 16 – The Operating Committee must consult with all affected Program Participants in relation to any proposed change to the scope and/or standard of a review of a particular Aggregator, including by providing at least one month's notice of the proposed change, and by taking into account any views provided by Program Participants.

Condition 17 – The Authorised Program must provide a dispute resolution process that is fair and reasonable, and which enables disputes ultimately to be determined by an independent external person if required, to manage disputes between any Program Parties in relation to the Authorised Program.

Condition 18 – A mortgage lender must not be excluded or suspended from the Authorised Program unless:

- a) the exclusion or suspension occurs on reasonable grounds;
- b) the dispute resolution process has been made available to that mortgage lender in relation to the exclusion or suspension; and
- c) the ACCC is notified in writing by the Operating Committee within 21 days of the exclusion or suspension, and provided a detailed report regarding the exclusion or suspension.

6.14. The ACCC may authorise a Committee or Division of the ACCC, a member of the ACCC, or a member of the ACCC staff, to exercise a decision making function under these conditions of authorisation on its behalf.

7. Date authorisation comes into effect

7.1. This determination is made on 11 April 2024. If no application for review of the determination is made to the Australian Competition Tribunal it will come into force on 3 May 2024.

Protocol for lenders participating in the Aggregator Assurance Program

1. Background

- 1.2 This Protocol applies to all participants (including the Parties, AAP Lenders, ASPs and OC Representatives) which participate in the **Aggregator Assurance Program (Program)**.
- 1.3 Capitalised terms have the same meaning as in the Deed between the Parties (ANZ, CBA, Macquarie, NAB and Westpac) to establish the Program (**Program Deed**) unless specified otherwise. A lender may agree to join the Program by executing and delivering the **AAP Lender Deed (AAP Lender)**.
- 1.4 This Protocol is to be read subject to and as supportive of the confidentiality obligations applicable (respectively) to each Party under the Program Deed and to each AAP Lender under the AAP Lender Deed. In the event of any inconsistency between any provision of this Protocol, and anything in the Program Deed or AAP Lender Deed, the Program Deed and / or the AAP Lender Deed (as appropriate) will prevail.

1.5 Purpose of the Aggregator Assurance Program (Purpose)

- (a) Mortgage lenders each require appropriate assurance that their broker and aggregator channels have well established compliance systems to meet legal and regulatory requirements in relation to mortgage lending.
- (b) Recent regulatory and industry changes require increased oversight by lenders of aggregator groups and their mortgage broker networks to ensure regulatory obligations are met and good customer outcomes are delivered.
- (c) The Parties to the Program Deed have developed the Program to offer the opportunity to any lender which wishes to participate in the Program to 'opt in' to request assurance reviews (**Reviews**) in respect of participating aggregators and their compliance systems.
- (d) The Purpose of the Program is for Reviews in respect of the compliance systems, controls, processes and policies of Aggregators to be procured in a more consistent and efficient manner and to streamline and remove duplication for multiple review programs, for the benefit of Aggregators, lenders and the community.
- (e) The Program contemplates the engagement of an Assurance Service Provider (**ASP**) to provide standing terms of engagement to any AAP Lender to "opt in" to engage an ASP to conduct a Review of a participating Aggregator and to provide a confidential Report to that Opt-In Lender and to any other Opt-In Lender which requested the same Review.
- (f) Development of and participation in the Program, and all communications for this purpose, are to be subject to the guidance in this Protocol.

2. Reasons for this Protocol

- 2.1 These guidelines have been prepared to assist personnel from the Parties and AAP Lenders to comply with the *Competition and Consumer Act 2010* (Cth) (**CCA**), which prohibits certain anticompetitive conduct and anticompetitive contracts, agreements and understandings.

particular, the CCA prohibits:

- (a) **cartel conduct** regardless of the effect it has on competition. Cartel conduct includes an agreement (a contract, arrangement or an understanding) between competitors that has a purpose or effect or likely effect of price fixing, or that has the purpose of allocating markets/territories/customers, restricting output or acquisition levels or bid rigging. A cartel agreement can be informal or oral, and include a 'gentlemen's agreement' or a 'nod and a wink';
- (b) any agreement (a contract, arrangement or an understanding) between competitors that has a purpose or effect or likely effect of **substantially lessening or hindering competition** in a market; and
- (c) **anti-competitive concerted practices**, which is a prohibition intended to capture information sharing that might not otherwise constitute cartel conduct. A concerted practice is prohibited if it has the purpose, effect or likely effect of substantially lessening or hindering competition in a relevant Australian market. A concerted practice is defined as: *any form of cooperation between two or more firms (or people) or conduct that would be likely to establish such cooperation, where this conduct substitutes, or would be likely to substitute, cooperation in place of the uncertainty of competition.*

2.3 For competing organisations to agree on a particular course of action in some circumstances may give rise to risks of cartel arrangements and/or concerted practices.

2.4 These guidelines therefore apply to any engagement or communications between representatives of any of the Parties and AAP Lenders and OC Representatives, whether in person, via email or telephone or some other means, in relation to the Purpose and the proposed Program, including:

- (a) evaluating options for establishing, and designing, the Program;
- (b) preparing and issuing the RFTs to assurance firms;
- (c) engaging an ASP to conduct a Review and provide a Report; and
- (d) considering a Report and communication with other AAP Lenders or taking decisions in relation to the recommendations or other findings of any Report.

2.5 These guidelines proceed on the basis that the Program will not be implemented as a joint program by any lender until authorisation or interim authorisation has been granted by the Australian Competition and Consumer Commission (**ACCC**).

2.6 These guidelines are provided to the Parties and AAP Lenders as general guidelines only and are not a substitute for legal advice.

3. Information and Matters which can be shared and discussed by the Parties and AAP Lenders

3.1 The Parties may discuss and share relevant and lawful information for the purposes of establishing and conducting the Program in the recognition that the Parties will not share any information that may be regarded as competitively sensitive or which relate to the competitive or market activities of any of the Parties or any AAP Lenders.

3.2 Participation in the Program will be voluntary for any aggregator or lender and it is understood no Party or AAP Lender will require any aggregator to consent to participate in the Program.

3.3 The Program will be designed to report on systems and process compliance within an aggregator and will not provide any specific information which could be used to identify any specific broker or lender or borrower or any specific conduct in relation thereto.

3.4 Each ASP will be instructed to provide a Report to the Opt-in Lenders and Aggregator for the relevant Review, which will address the following matters about the Aggregator's systems including:

- (a) Broker onboarding and accreditation processes (upfront)
- (b) Broker accreditation processes (ongoing)
- (c) Broker licensing and industry memberships
- (d) Broker development and ongoing training
- (e) Responsible Lending / Regulatory Management
- (f) Broker oversight and consequence Management
- (g) IT and System Access Controls
- (h) Data Security and Privacy, and

- (i) Outsourcing and Third Parties, and
 - (j) such other matters as may be approved by the Operating Committee from time to time.
- 3.5 Each ASP will be instructed to ensure that any remedial recommendations in a Review will be system or process related and not specific to resolving or addressing any particular conduct relating to a particular transaction, finance application, broker or borrower.
- 3.6 Nothing in relation to the Program will require any Party or AAP Lender to procure or agree to procure assurance services from any particular assurance firm that may be appointed to provide services under the UJV Agreement or AAP Lender Deed (as applicable). Each lender remains free at all times to engage any assurance firm(s) that it wishes so as to receive any assurance or other services in relation to its aggregator network or otherwise.
- 3.7 Information which may be shared, provided to and received from the Parties, AAP Lenders and OC Representatives for the Purpose includes:
 - (a) relevant publicly available information;
 - (b) information as to the regulatory and compliance risks intended to be addressed by the Program;
 - (c) the number of aggregators a lender deals with and expects to consent to participate in the Program;
 - (d) the proposed mechanics and operations of the Program, including:
 - (i) the formal structure of the Program;
 - (ii) the operations of the Operating Committee appointed by the Parties to oversee the Program;
 - (iii) the types of compliance issues and level of information which lenders may request assurance services to cover;
 - (iv) expectations for the scope, frequency and format of the assurance services;
 - (v) the terms of the RFT and the Scope of Work for an ASP;
 - (vi) engagement with relevant aggregators regarding participation in the Program; and
 - (vii) how to structure the delivery of information and Reports by an ASP to ensure compliance with applicable laws; and
 - (e) for the sole purpose of seeking ACCC authorisation for the Program.
- 3.8 The guiding principles regarding information shared between Parties, AAP Lenders and OC Representatives is that it must:
 - (a) be limited to the minimum necessary to facilitate legitimate feasibility / planning for the Purpose; and
 - (b) not affect the continuing independent conduct of the lenders' respective businesses.
- 3.9 In the instance of uncertainty about whether a specific piece or type of information can be shared between Parties AAP Lenders and/ or OC Representatives, specific legal advice should be sought by the concerned parties.

4. Criteria for OC Representatives

Neither the Parties or Operating Committee will appoint an OC Representative that is (or is intended to be) responsible for the making of commercial and/or strategic decisions, including pricing decisions, that may (directly or indirectly), involve or impact upon competition between the Parties, in relation to businesses for which there is a competitive overlap with the businesses of the Parties and/or an AAP Lender.

5. Process for Operating Committee and Party Discussions

- 5.1 An agenda should be prepared and circulated for any meetings, including online, between the Parties in relation to the Program, and discussions generally confined to the agenda items unless otherwise agreed at the time.
- 5.2 Minutes recording discussions and attendance of meetings of the Operating Committee and /or Parties related to the Program to be taken and circulated to attendees.
- 5.3 Where appropriate any documents circulated for legal review or legal comment should be marked "confidential and privileged", and legal advice received should be kept confidential so that legal professional privilege may be maintained.
- 5.4 Each meeting of the Operating Committee must be attended by an external lawyer engaged by the Parties and instructed by the parties to immediately advise the attendees if, during the course of the meeting, there is a risk of breach of this Protocol.
- 5.5 OC Representatives should exercise control over the dissemination within their organisation of the materials generated jointly for the Purpose on a confidential and "need to know" basis.
- 5.6 The Parties may discuss and agree as to the Program scope features and assurance regime for which they propose to invite proposals for participation from aggregators and AAP Lenders.
- 5.7 Decisions as to selection of successful ASPs will be made by the Operating Committee.
- 5.8 The costs of Reports / fees payable to an ASP are to be borne by Opt-In Lenders, in accordance with the UJV Agreement and AAP Lender Deed.

6. Information and matters which cannot be shared and discussed by the Parties and AAP Lenders

- 6.1 Representatives of the Parties and AAP Lenders and OC Representatives must not discuss or exchange any non-public or commercially or competitively sensitive information not relating to the Program. By way of general guidance, information is "competitively sensitive" if a business manager would be concerned about sharing it with a competitor or any other lender outside of the context of the proposed Program.
- 6.2 The information which cannot be discussed between participating lenders (including Parties and / or AAP Lenders) includes:
 - (a) any fee or cost or price-related matters, including the price lenders currently pay or the costs they incur for assurance services, or broker services or any other prices or fees paid to any third party;
 - (b) customer/borrower/applicant information or data;
 - (c) lenders' views or opinions about particular aggregators or brokers;
 - (d) lenders' intentions or proposed actions upon receipt of assurance information in relation to a particular aggregator or broker, including where that information is negative or positive; and

- (e) lenders' current or future decision-making process in relation to aggregators and brokers.

6.3 Each lender will make its own separate decisions as to what steps it may take in respect of any Aggregator the subject of any Report.

6.4 Accordingly, no Party or AAP Lender should discuss or communicate to any other lender what steps should, or might be considered to be taken in response to a Report in respect of any identified aggregator.

7. Confidentiality

7.1 In this section:

Confidential Information means:

- (a) all information that relates to a Party or AAP Lender or any of its related bodies corporate, the Party or AAP Lender's business or the Permitted Use and is disclosed by or on behalf of the Party or AAP Lender to a representative of another Party or AAP Lender or OC Representative subject to a clear statement that it is 'confidential' (whether orally, in writing or in any other form); and
- (b) does not, however, include any information that was publicly known prior to the time of disclosure, becomes publicly known after disclosure through no action or inaction of the recipient, is already in the possession of recipient at the time of disclosure, or is obtained by recipient from a third party lawfully in possession of such information and without a breach of such third party's obligations of confidentiality.

Permitted Use means:

- (a) for the Parties and / or AAP Lenders to evaluate and engage in discussions in relation to the Program,
- (b) for OC Representatives to carry out their duties and exercise their powers as members of the Operating Committee; and
- (c) for Opt-in lenders to use a Report of a Review in accordance with the terms of permitted use under the Program (meaning the UJV Deed or AAP Lender Deed applicable to the Report when delivered to that lender).

7.2 Any information shared by Parties, AAP Lenders and OC Representatives during the course of participating in the Program must only be used for the Permitted Use and not for any other purpose.

7.3 Upon receipt of another lender's Confidential Information, a the recipient and its representatives must:

- (a) keep the Confidential Information confidential and must not use, disclose, reproduce or otherwise provide the Confidential Information to a third party or permit the Confidential Information (or any copy of it) to go out of its possession, custody or control;
- (b) use the Confidential Information only for the Permitted Use; and
- (c) at the request of the lender to whom the Confidential Information relates, either return or destroy the Confidential Information.

Accepted by:

NON-CONFIDENTIAL PUBLIC VERSION - DRAFT - 4 March 2024

Name _____

Signature _____

Title _____

Representative of _____

Date _____



DRAFT

Industry Aggregator Assurance Program

Review Scope and ASP Evaluation Criteria

This document sets out the Review Scope and ASP Evaluation Criteria. The Operating Committee will assess the ASP's proposal against the Evaluation Criteria to ensure ASP's proposal will deliver the Review at the minimum required standard of Reviews under the Program.

Principles of Review

- The Scope of this Review applies to all brokers within the Aggregator Group network i.e. ACL Holders and Credit Representatives.
- The Scope of this Review may be varied from time to time by resolution of the Operating Committee, including in response to legislative and regulatory changes as well as industry best practice.
- In completing Reviews, ASPs will prioritise evidence-based methodologies over self-assessment or attestation.
- The criteria set out in this document represents the minimum standard required for the Scope of Reviews conducted under the Program. The Operating Committee will consider innovative proposals from ASPs that would evaluate Aggregator Groups that go beyond the criteria set out in this document.
- Any deficiencies identified by a Review will be identified in the Report and recommendations will be provided to the relevant Aggregator for consideration.

Area of Focus 1: Onboarding & Accreditation of Brokers

Inherent Risk

Insufficient broker onboarding and ongoing due diligence processes completed by an Aggregator Group may result in a lender accreditation being provided to unsuitable individuals.

Risk Mitigation approach

To mitigate this Risk, a lender would expect an Aggregator Group to have:

- i. a centralised onboarding & accreditation policy / framework in place that applies to all Australian Credit Licensee (ACL) and Credit Representative (CR) brokers;
- ii. a set of competency and qualifications criteria for prospective brokers seeking accreditation (where relevant, these qualifications should be consistent with industry standards e.g. MFAA and FBAA);
- iii. a due diligence review process for all new brokers seeking to join the Aggregator Group, which requires checking, at least, the following:
 - Broker identification;
 - Employment history and references, including, where relevant, references available under the ASIC reference checking protocol
 - Criminal history;
 - ASIC Banned & Disqualified Persons register;
 - Bankruptcy/Credit history;
 - Comprehensive negative media screening e.g. World Check; and
 - Sanctions and PEP Screening
- iv. a due diligence review process (similar to the checks outlined in (iii) above) for existing brokers on an ongoing, periodic basis to confirm that the relevant broker continues to meet the Aggregator Group's policy requirements;
- v. a due diligence review process (post onboarding and on an ongoing basis) to confirm that the broker's business, Directors and Responsible Managers maintain the required standards under ASIC Regulatory Guide 209 (Credit licensing: Responsible lending conduct);
- vi. a process to manage exceptions (i.e. when a prospective or existing broker does not satisfy the Aggregator Group's criteria / due diligence requirements); and
- vii. a process to manage broker offboarding (e.g. transfers / exits).

Evaluation Criteria:

At a minimum, an Assurance Service Provider should assess this by:

- a) reviewing the Aggregator Group's Onboarding & Accreditation policy / framework;
- b) testing the effectiveness of the Aggregator Group's policy / framework by:
 - confirming whether relevant processes / procedures exist and are being performed in line with the relevant policy / framework;
 - sampling a list of brokers to confirm whether they hold applicable industry memberships;

- sampling a list of newly accredited brokers and existing brokers (accredited > 12 months ago) to confirm that the relevant onboarding and ongoing due diligence processes are being adhered to;
 - sampling a list of terminated brokers (adverse and non-adverse) to confirm that the relevant offboarding processes are being adhered to;
 - sampling copies of references issued by the Aggregator Group, under ASIC's reference checking protocol, to confirm that the content is accurate and meaningful; and
 - in all processes, confirm that exceptions to processes that are raised, are appropriately managed by the Aggregator Group;
- c) assessing the appropriateness of an Aggregator Group's record keeping practices, including but not limited to:
- a register containing a list of all brokers' membership status;
 - a register containing a list of all brokers' credit license or credit representative status;
 - an exceptions management register; and
 - a register of all exited brokers and stored copies of any references provided under ASIC's reference checking protocol; and
- d) confirming that where required, communications to a lender was issued by the Aggregator Group in a timely manner (e.g. adverse terminations of brokers).

Area of Focus 2: Licensing & Membership Requirements

Inherent Risk:

Failure by an Aggregator Group to perform upfront and ongoing licensing checks and / or monitor compliance with licensing requirements may result in unlicensed individuals providing credit assistance.

Risk Mitigation Approach:

To mitigate this Risk, a lender would expect an Aggregator Group to have:

- i. a centralised register containing all applicable licence requirements for all brokers, including CRs and ACLs. The register should contain licence numbers and licence conditions;
- ii. a process in place to identify structures / related parties of broker businesses operating under the Aggregator Group;
- iii. a process in place to monitor changes made to structures / related parties of broker businesses, including for potential instances of shadow broking;
- iv. a process in place to monitor and ensure that brokers are not providing financial product advice outside the licensing requirements (e.g. AFSL); and
- v. processes in place to ensure accredited brokers compliance with licensing and industry body membership requirements, including but not limited to:
 - ASIC Breach Reporting requirements, consistent with ASIC Regulatory Guide 78;
 - internal dispute resolution mechanisms, consistent with ASIC Regulatory Guide 271;¹
 - external dispute resolution mechanisms, consistent with ASIC Regulatory Guide 257;²
 - professional indemnity insurance policy, consistent with ASIC Regulatory Guide 210;³ and
 - minimum training and qualification requirements, consistent with ASIC Regulatory Guide 206.⁴

Evaluation Criteria:

At a minimum, an Assurance Service Provider should assess this by:

- a) obtaining evidence to confirm that the Aggregator Group maintains a register of all accredited brokers' (CRs and ACLs):
 - license numbers;
 - licence authorisations and conditions; and
 - certificate expiry and renewal dates.

¹ NCCPA, s 47(1)(h).

² NCCPA, s 47(1)(l).

³ NCCPA, ss 47(1)(l), 48 (Requirements for compensation arrangements).

⁴ NCCPA, s 47(1)(g); ASIC Regulatory Guide 206 (Credit licensing: Competence and Training).

- b) sampling a list of brokers against the ASIC register to confirm that the Aggregator Group's centralised register is regularly maintained and updated, e.g. expired licenses / statuses are appropriately managed by the Aggregator Group;
- c) sampling a list of brokers to confirm ongoing monitoring of brokers' compliance with all licensing and industry membership requirements is performed by the Aggregator Group. Where expiry or breaches of licensing requirements are identified, the ASP should also confirm that there is a process in place to notify lenders and brokers (and seek remediation);
- d) sampling a list of all broker businesses operating under the Aggregator Group to confirm that the Aggregator Group takes reasonable steps to address any identified issues or changes with a broker business' structure / related parties / licensing structure; and
- e) confirming that where required, communications to a lender was issued by the Aggregator Group in a timely manner (e.g. expired licenses or policy breaches relating to licensing requirements).

Area of Focus 3: Broker Governance and Professional Development

Inherent Risk:

Ineffective governance and oversight of broker practices, conduct and compliance with obligations, including ongoing professional development, may result in poor client outcomes.

Risk Mitigation Approach:

To mitigate this Risk, a lender would expect an Aggregator Group to have:

- i. ***in relation to the Aggregator Group's Risk Management*** – a centralised risk management policy and/or framework that details its risk appetite and strategy (e.g. risk assessment and action plan for risks that arise outside of the Aggregator's appetite);
- ii. ***in relation to Broker Conduct Monitoring*** - a process in place to monitor broker conduct and broker's adherence to key obligations and legislative requirements. This process should include, but is not limited to, loan file reviews and assurance activities;
- iii. ***in relation to Consequence Management*** - a defined consequence management policy / framework, that is applicable to all brokers accredited under the Aggregator Group;
- iv. ***in relation to Complaints management*** - a defined complaints management policy / framework;
- v. ***in relation to Referral Sources oversight*** - effective oversight over the eligibility and utilisation of referral sources within the Aggregator Group, including maintaining an appropriate referral source register;
- vi. ***in relation to Broker Training & Development*** - a broker training and development policy / framework (for onboarding and on an ongoing basis) to ensure all accredited brokers remain at a high level of competency and fitness to provide credit assistance, consistent with ASIC Regulatory Guide 206 (Credit licensing: Competence and Training);
- vii. the ability to track and monitor all accredited brokers' compliance with Continuing Professional Development (CPD) requirements; and
- viii. a mentoring program to support new to industry and/or less experienced brokers.

Evaluation Criteria:

At a minimum, an Assurance Service Provider should assess this by:

- a) reviewing the Aggregator Group's Risk Management policy / framework to confirm that the Aggregator Group has a defined risk appetite and assessment criteria;
- b) obtaining evidence (e.g. quality assurance and compliance program) to confirm that the Aggregator Group performs ongoing monitoring of all brokers' conduct (ACLs and ACRs) and practices to ensure compliance with key obligations. This program should have:
 - a defined grading of broker risk e.g. a 'broker score';
 - a defined file sampling methodology, including standards that trigger an independent review; and

- a range of loan file reviews that covers in-progress and settled loans for all credit representatives and all credit license holders;
- c) reviewing the effectiveness of the Aggregator Group's consequence management policy / framework. This should involve:
- obtaining evidence to confirm that there is a process to identify, escalate and manage material broker issues, breaches and events and that process is operating effectively. This should also include evidence of notifying internal senior stakeholders, governance committees and lenders;
 - confirming that there is a process to ensure that relevant regulatory and industry bodies are appropriately notified of material breaches and/or events (i.e. to the same effect as section 912D of Corporations Act) and that process is operating effectively;
 - confirming that there is a process to inform and remediate clients who may have been impacted; and
 - assessing the appropriateness of an Aggregator Group's documentation of consequence management outcomes;
- d) sighting the Aggregator Group's complaints register and confirming that:
- complaints data are regularly and appropriately reviewed / analysed for trends;
 - complaints are appropriately escalated and managed by the Aggregator Group;
 - where required, lender/s have been notified of a complaint (e.g. complaint relating to a lender's Design & Distribution Obligations) in a timely manner; and
 - where required, the relevant broker has been notified of the complaint and an action plan devised by the Aggregator Group to resolve the complaint;
- e) reviewing the operational effectiveness of the Aggregator Group's management of referral sources by confirming that the Aggregator Group has:
- a defined eligibility criteria for referral sources;
 - a register containing a list of all known referral sources;
 - the ability to identify / monitor loans introduced via referral sources; and
 - evidence of consequence management actions taken against referral sources / brokers where processes have not been followed;
- f) Reviewing the Aggregator Group's Training and Development policy / framework; and
- g) testing the effectiveness of the Aggregator Group's Training and Development policy / framework by:
- obtaining evidence to confirm that the Aggregator Group has the ability to track completion of mandatory ongoing training modules and CPD requirements for all brokers, credit representatives and credit license holders;
 - sighting the Aggregator Group's list of mandatory initial onboarding training modules and ongoing training modules to ensure that there is adequate coverage of key legislative requirements (e.g. AML / CTF, Privacy, Responsible Lending);
 - sampling cases of compliance and non-compliance with all training requirements (including CPD) and reviewing the effectiveness of the Aggregator Group's consequence management actions;
 - sampling examples of where the Aggregator Group has followed the process in place to provide training support to brokers that have not submitted a loan for an period greater than 6 months; and
 - confirming the Aggregator Group has an adequate mentoring program in place to support new to industry brokers (this should include clear requirements for mentoring

relationships). Including sampling of mentor training plans for new to industry brokers and assessment of suitability.

Area of Focus 4: Management of Regulations

Responsible Lending

Inherent Risk:

Insufficient frameworks and/or monitoring of broker's compliance with Responsible Lending obligations by an Aggregator Group may result in a breach of legislative requirements and poor customer outcomes.

Risk Mitigation approach:

To mitigate this Risk, a lender would expect an Aggregator Group to have:

- i. a centralised Responsible Lending policy / framework that applies to all ACL and CR brokers;
- ii. clear guidance, training, and processes for all brokers to comprehensively understand their Responsible Lending obligations, including but not limited to brokers:
 - making reasonable inquiries into the customer's financial situation and requirements & objectives;
 - taking reasonable steps to verify the customer's financial situation;⁵
 - making a preliminary assessment of the mortgage loan application based on the customer's financial situation and requirements and objectives;⁶
 - assessing whether a mortgage loan is 'not unsuitable' for a customer applying the statutory presumptions;⁷
 - keeping a record of materials that form the basis of the preliminary assessment;⁸ and
 - refraining from suggesting that customers should enter or remain in unsuitable credit contracts;⁹
- iii. appropriate controls and guidance for all brokers to ensure the issue, collection and storing of key documents that support compliance with Responsible Lending obligations (e.g. Broker interview guide, Preliminary Assessment Form etc.) is adhered to;
- iv. appropriate controls to manage in-flight changes to a loan contract and variations to existing loan contracts;
- v. appropriate controls to ensure that all brokers are complying with AML and CTF / KYC obligations and appropriately disclosing their "method of interview" and "method of identification"; and
- vi. a quality assurance/loan file review process to ensure all brokers are complying with their Responsible Lending obligations. Sampling should include loan files for all brokers, credit

⁵ *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**), ss 117 (reasonable inquiries and reasonable steps to verify).

⁶ NCCPA, s 116 (preliminary assessment of unsuitability).

⁷ NCCPA, ss 118 (criteria for assessing unsuitability – entering contract or increasing the credit), 119 (When the credit contract must be assessed as unsuitable—remaining in credit contract).

⁸ To ensure the broker is capable of complying with any requests made by an applicant for a copy of a preliminary assessment under NCCPA, s 120.

⁹ NCCPA, ss 123 (suggesting or assisting consumers to enter, or increase the credit limit under, unsuitable credit contracts), 124 (suggesting to consumers to remain in unsuitable credit contracts).

representatives and credit licence holders and be linked to the Aggregator Group's grading of broker risk e.g. 'broker score'.

Evaluation Criteria:

At a minimum, an Assurance Service Provider should assess this by:

- a) sighting the Responsible Lending policy / framework and confirming that this policy / process is operating in line with the relevant Responsible Lending legislation and regulatory requirements;
- b) confirming that the Aggregator Group actively reviews and implements changes in legislation where it relates to Responsible Lending;
- c) sampling loan application files that have been reviewed by the Aggregator Group's loan file review program during a test period to check the following:
 - sufficient inquiries and verification steps have been completed by the broker;
 - preliminary assessments of the customer's financial situation, requirements & objectives have been completed;
 - required supporting documentation and information (e.g. broker interview guide, preliminary assessment form, income verification documentation, broker notes) have been retained in loan file records;
 - in-flight changes made to a loan application or contract variation request should be documented and assessed against responsible lending requirements;
 - where required, communication of key findings and/or feedback to brokers have been completed by the Aggregator Group; and
 - where non-compliance is identified, appropriate consequence management has been issued to the broker and this is reflected in an updated grading of broker risk e.g. 'broker score'; and
- d) confirming that the Aggregator Group has a process in place to comply with AML and CTF / KYC requirements including maintaining oversight of brokers' "method of interview" and "method of identification".

Best Interest Duty (BID)

Inherent Risk:

Insufficient training, system and ongoing monitoring of controls in place to ensure broker's compliance with Best Interest Duty obligations may result in a breach of legislative requirements and poor customer outcomes.

Risk Mitigation approach:

To mitigate this Risk, a lender would expect an Aggregator Group to have:

- i. clear guidance, training, and processes for all brokers to comprehensively understand their BID obligations, including to act in the best interests of the clients¹⁰ and prioritising the clients' interest in the event of a conflict of interest (including to the extent that there is a conflict of interest between an applicant and a mortgage broker e.g. due to commission)¹¹;
- ii. a process to manage system changes to key broker interfaces, including CRM, to uphold compliance with BID; and
- iii. a process to monitor broker conduct to ensure compliance with BID and where required, perform remediation activity.

Evaluation Criteria:

At a minimum, an Assurance Service Provider should assess this by:

- a) reviewing the Aggregator Group's BID policies and/or processes (if any) and confirming that this policy / process is operating in line with the relevant BID legislation and regulatory requirements;
- b) sighting the Aggregator Group's training modules and sample communications delivered to brokers to reinforce BID obligations;
- c) reviewing system controls (i.e. within CRM) and compliance controls that assist the Aggregator Group in maintaining oversight over brokers' adherence to BID requirements. This may involve reviewing audit checklists and loan file review reports to identify if previous findings of non-compliance with BID were appropriately remedied;
- d) reviewing the Aggregator Group's Conflict of Interest policy / framework; and
- e) obtaining evidence to confirm that the Aggregator Group appropriately records, monitors and manages conflicts of interest and instances of conflicted remuneration/soft dollar benefits. This should include sampling of individual conflicts to assess how they are being managed on an ongoing basis. Where non-compliance is observed, assess whether appropriate consequence management has been applied.

Conflicts of Interest

Inherent Risk

Insufficient training and oversight in place to ensure that Conflicts of Interests are appropriately identified, reported and managed may result in a breach of legislative requirements and poor customer outcomes.

Risk Mitigation approach:

To mitigate this Risk, a lender would expect an Aggregator Group to have:

- i. a Conflict of Interest policy / framework covering the identification, reporting and management of potential conflicts of interest;

¹⁰ NCCPA, ss 158LA (Licensee must act in the best interests of the consumer), s 158LE (Credit representative must act in the best interests of the consumer).

¹¹ NCCPA, ss 158LB (Conflict between consumer's interests and those of the licensee etc), 158LF (Conflict between consumer's interests and those of the credit representative etc).

- ii. a policy that governs the giving and receiving of potentially conflicted remuneration, including soft dollar benefits and an associated register to record actual and/or potential instances; and
- iii. a register to record conflicts of interest and/or potential conflicts of interest, which is reviewed and updated regularly.

Evaluation Criteria:

At a minimum, an Assurance Service Provider should assess this by:

- a) reviewing the Aggregator Group's Conflict of Interest policy / framework; and
- b) obtaining evidence to confirm that the Aggregator Group appropriately records, monitors and manages conflicts of interest and instances of conflicted remuneration/soft dollar benefits. This should include sampling of individual conflicts to assess how they are being managed on an ongoing basis. Where non-compliance is observed, assess whether appropriate consequence management has been applied.

DDO

Inherent Risk:

Insufficient support provided or oversight of mortgage brokers' compliance with DDO by an Aggregator Group may result in a breach of legislative requirements and poor customer outcomes.

Risk Mitigation approach:

To mitigate this Risk, a lender would expect an Aggregator Group to have:

- i. clear guidance, training, and processes for all brokers to comprehensively understand their obligations under DDO regulations;
- ii. adequate controls or 'reasonable steps' to ensure that brokers:
 - do not distribute a product without a Target Market Determination (TMD);¹²
 - are selling the lender's products within the relevant lender's TMD;¹³ and
 - utilise marketing and promotional materials that are consistent with the relevant TMDs;
- iii. a process in place to ensure that complaints relating to a lender's products are appropriately recorded and escalated to the relevant lender within the prescribed timeframes; and
- iv. a process in place to identify significant dealings and notify the relevant lender of any such occurrence.¹⁴

Evaluation Criteria:

¹² *Corporations Act 2001 (Cth) (Corporations Act)*, s 994D.

¹³ *Corporations Act*, s 994E(3).

¹⁴ *Corporations Act*, s 994G.

At a minimum, an Assurance Service Provider should assess this by :

- a) sampling communications of lenders' TMDs issued by the Aggregator Group to all brokers to confirm adequacy and timeliness in communication;
- b) evidence of TMDs being made available/accessible to brokers;
- c) sighting the Aggregator Group's controls or 'reasonable steps' taken to comply with DDO requirements;
- d) sighting the Aggregator Group's process for identifying and recording complaints relating to a lender's product. If available, evidence should be obtained to demonstrate that escalation of these complaints to the relevant lender occurred within the prescribed timeframes; and
- e) sighting the Aggregator Group's process for identifying and recording significant dealings relating to a lender's product. If available, evidence should be obtained to demonstrate that notification of significant dealings to the relevant lender occurs within the prescribed timeframes.

Breach Reporting

Inherent Risk:

If an Aggregator Group has inadequate frameworks or processes in place to manage compliance with the applicable Breach Reporting legislation, this may result in regulatory and reputational impact to the lender.

Risk Mitigation approach:

To mitigate this Risk, a lender would expect an Aggregator Group to have:

- i. a process in place to identify and report significant breaches to a regulator (irrespective of whether the breaches are committed by the Aggregator Group, individual broker or brokers under an independent ACL); and
- ii. a process in place to notify the relevant lender of any reportable breaches that relate to that lender.

Evaluation Criteria:

At a minimum, an Assurance Service Provider should assess this by:

- a) reviewing the Aggregator Group's process for identifying and reporting significant breaches to a regulator;
- b) sampling reportable breach notifications reported by the Aggregator Group to assess for compliance with the relevant ASIC Breach Reporting requirements; and
- c) reviewing evidence to demonstrate that the Aggregator Group has a process to notify Lenders impacted by any reportable breaches.

Reference Checking

Inherent Risk:

If an Aggregator Group is not compliant with their obligations under the applicable legislative framework for reference checking, this may result in regulatory and reputational impact to the Lender.

Risk Mitigation approach:

To mitigate this Risk, a lender would expect an Aggregator Group to have a process in place to perform reference checking (and provide references upon request) on individuals seeking to be employed or authorised as a broker in the Aggregator Group.¹⁵

Evaluation Criteria:

At a minimum, an Assurance Service Provider should assess this by obtaining evidence of appropriate reference checking being completed (including samples of references provided) by the Aggregator Group.

¹⁵ NCCPA, s 47(1)(EA).

Area of Focus 5: IT and System Access Controls

Inherent Risk

If an Aggregator Group does not maintain adequate frameworks and appropriately identify, monitor and test key IT systems, unauthorised or unintended access to customer data may occur.

Risk Mitigation approach

To mitigate this Risk, a lender would expect an Aggregator Group to have:

- i. an IT Policy / Framework in place covering its key systems and platforms;
- ii. current and accurate mapping of information flows between an Aggregator Group's loan application platform to the relevant Lender gateway (e.g. ApplyOnline and Simpology);
- iii. appropriate user access system validation controls, which are performed and tested on a periodic basis to prevent inappropriate access to the Aggregator Group's systems;
- iv. an IT Change Management Policy / Framework in place to guard against inappropriate deployment of:
 - changes to applications / software (e.g. back – up processes, password policy, retention of hard copy files, cloud services availability); and
 - modifications to data (e.g. clear processes and controls around data migration activities); and
- v. clear processes and controls around data migration / modification activities (e.g. performance of testing and reconciliation).

Evaluation Criteria

At a minimum, an Assurance Service Provider should assess this by:

- a) reviewing the Aggregator Group's IT Policy / Framework and IT Change Management Policy / Framework;
- b) testing the effectiveness of the Aggregator Group's Policy / Framework by:
 - confirming whether relevant processes / procedures exist and are being performed in line with the relevant Policy / Framework;
 - obtaining evidence to confirm that information flows are being monitored for accuracy and where required, remediated effectively;
 - obtaining evidence (e.g. internal reports or sampling) to confirm that user access validation testing is periodically performed, reviewed and where required, that steps are taken to remove superseded access requirements;
 - obtaining evidence to confirm that the Aggregator Group performs data migration testing, prior to commencing migration / modification, (e.g. to ensure loan application data is transferred completely and accurately); and
 - obtaining evidence to confirm that appropriate steps are taken to remedy any identified defects in any IT and System Access controls.

Area of Focus 6: Privacy and Customer Data Security

Inherent Risk

If an Aggregator Group (and their associated mortgage brokers) do not appropriately secure customer information, in compliance with applicable privacy laws and regulations, this may result in regulatory and reputational impact to the lender, as well as poor customer outcomes.

Risk Mitigation approach

To mitigate this Risk, a lender would expect an Aggregator Group to have:

- i. a Privacy policy / framework, which outlines key requirements under the Australian Privacy legislation and regulations (including Office of the Australian Information Commissioner reporting obligations and process for identifying, escalating and managing notifiable data breaches);
- ii. appropriate training provided to its staff and brokers to ensure compliance with Australian Privacy legislation and regulations;
- iii. protocols in place to ensure that customer and broker information collected / retained is only used for the purpose for which it was collected / retained, in accordance with the applicable Privacy legislation and regulations;
- iv. adequate controls in place to monitor the transfer of customer data from the Aggregator Group's key systems to external parties and / or between brokers;
- v. a clear understanding of how and where their customer data is sourced / stored (e.g. if customer data is stored in a particular jurisdiction, that privacy implications of that jurisdiction are identified and appropriately managed);
- vi. a process in place to manage changes made to a "broker of record", including but not limited to, notifications to the relevant lender and the re-obtaining of customer consent (where required), prior to the new broker having access to customer information;
- vii. appropriate security measures (e.g. firewalls and anti-virus software) that are regularly tested to address the threat of malicious electronic attacks;
- viii. appropriate management of physical IT equipment (e.g. hardware);
- ix. an appropriate Business Continuity Plan (BCP) and Disaster Recovery Plan (DRP); and
- x. a process in place to ensure regular testing and back-up of data and critical systems is performed.

Evaluation Criteria

At a minimum, an Assurance Service Provider should assess this by:

- a) reviewing the Aggregator Group's Privacy policy / framework and confirming that this policy / framework is operating in line with the relevant Australian Privacy legislation and regulatory requirements;
- b) testing the effectiveness of the Aggregator Group's policy / framework by:
 - sighting the Aggregator Group's privacy training and data breach requirement modules to assess the effectiveness of these training programs (i.e. that Aggregator Group's staff and brokers have a clear understanding of key privacy requirements and that where required, appropriate remedial action (e.g. re-training) is assigned);

- sighting protocols and processes relating to data collection, transfer, destruction and retention arrangements (applicable to Aggregator Group's staff and brokers);
 - sampling a list of "broker of record" changes in the test period to confirm that this process is managed appropriately;
 - obtaining evidence to confirm that appropriate and adequate security testing (for software / cloud and physical IT environments) is being performed and that findings are remediated; and
 - sighting the Aggregator Group's BCP and DRP and obtaining evidence to confirm that appropriate and regular testing is performed; and
- c) confirming that where required, communications to a Lender was issued by the Aggregator Group in a timely manner (e.g. notifiable data breach notifications, broker of record changes).

Area of Focus 7: Outsourced / Offshore Third-Party Management

Inherent Risk:

If an Aggregator Group does not have adequate upfront and/or ongoing governance and oversight on outsourced or offshore functions, third party organisations could be onboarded or maintained in a manner that is inconsistent with industry standards or contractual agreements.

Risk Mitigation approach:

To mitigate this Risk, a lender would expect an Aggregator Group to have:

- i. an outsourcing/ offshoring policy that covers appropriate due diligence, including, for example, Privacy, AML/CTF and World Checks;
- ii. appropriate contractual agreements in place to document third-party arrangements and obligations;
- iii. a process in place to identify and assess risks associated with third party organisations, in line with the Aggregator Group's risk appetite; and
- iv. a process in place to regularly monitor the performance of offshored and/or outsourced functions, to ensure compliance with obligations stipulated in contractual agreements and Service Level Agreements (SLA).

Evaluation Criteria:

At a minimum, an Assurance Service Provider should assess this by:

- a) sighting the Aggregator Group's outsourcing/offshoring policies;
- b) sampling outsourcing/offshoring third party contractual arrangements, to ensure that appropriate due diligence has been performed and approved by senior management; and
- c) obtaining evidence of monitoring being performed by the Aggregator Group to ensure adherence to obligations stipulated in contractual agreements and SLAs.