

**Non-Confidential Public Version**

## **AGGREGATOR ASSURANCE PROGRAM**

**Application for authorisation to the Australian Competition and  
Consumer Commission**

**Contents**

- 1. Application..... 3**
- 2. Overview of the Program and Application for Authorisation ..... 5**
- 3. Background to the Program ..... 8**
- 4. The Proposed Conduct..... 9**
- 5. Interim Authorisation Requested ..... 10**
- 6. Program Structure, Scope and Conditions ..... 11**
- 7. Limits on Information Sharing to Protect Competition and Aggregator Confidentiality ..... 16**
- 8. Rationale For and Public Benefits of the Assurance Program ..... 20**
  - Schedule 1 – UJV Agreement ..... 25**
  - Schedule 2 – List of interested third parties and contact details ..... 26**
  - Schedule 3 - Relevant Compliance Expectations and Requirements applicable to Aggregators and Brokers..... 28**

# 1. Application

## *The proposed Aggregator Assurance Program*

1.1 Authorisation is sought, on an interim and final basis, under Sections 88 and 91(2), respectively, of the *Competition and Consumer Act 2010 (CCA)*, for the Applicant lenders to execute and give effect to the UJV Agreement (annexed), to implement a voluntary industry wide program for participating mortgage lenders. The purpose of the program is to allow mortgage lenders jointly to procure assurance reviews concerning the compliance systems and standards of participating mortgage aggregators (**Assurance Reviews**), in meeting relevant Australian financial services regulations (**Aggregator Assurance Program ("AAP") or Program**).

1.2 While the Program is intended to be open to any mortgage lender in Australia, this Application for Authorisation is made on behalf of the following lenders (**Applicants**):-

Applicant	Address (registered office), telephone number and ACN	contact person's name, position, telephone number and email address
ANZ	833 Collins Street, Docklands, Victoria, 3008	[REDACTED]
Commonwealth Bank of Australia / BankWest	Level 8, 201 Sussex Street, Sydney, New South Wales, 2000	[REDACTED]
Macquarie Bank Limited	1 Shelley Street, Sydney, New South Wales, 2000	[REDACTED]
National Australia Bank Limited	Level 26, 395 Bourke Street, Melbourne VIC 3000	[REDACTED]
Westpac / St George / Bank of Melbourne / Bank of South Australia	Level 10, Tower Two, 200 Barangaroo Avenue, Sydney, New South Wales, 2000	[REDACTED]

## *Public Register and confidentiality*

1.3 There are no claims for confidentiality in respect of this Application and its annexures, save for the contact details redacted at paragraph 1.2 of this Application, the contact details at Schedule 2, clause 8.1 of the AAP Lender Deed (which is at Schedule 3 of the unincorporated joint venture (UJV) Agreement, at Schedule 1 of this Application), and clause 19.1 of the UJV Agreement, at Schedule 1 of this Application. The Applicants have prepared this version of the Application to be placed on the public register (which redacts the information that has been identified as confidential).

## *The role of Mortgage Aggregators*

1.4 The purpose of the Program is for Assurance Reviews in respect of the compliance systems of Aggregators to be procured by mortgage lenders in a more consistent, cost effective and

efficient manner and to streamline and remove duplication for multiple review programs, for the benefit of Aggregators, lenders and the community.

**1.5** In Australia, lenders generally distribute residential and investment property loans via either:

- (a) **the direct channel:** this involves a consumer directly engaging with the lender to arrange the loan. The lender may assist the borrower in determining which product is suitable for the borrower (from the products offered by that lender), preparing all of the necessary documentation, and assessing the borrowers' eligibility, or
- (b) **the intermediary channel:** intermediaries facilitate the comparison and distribution of loan products from a range of lenders. Brokers are the primary intermediary in the mortgage distribution supply chain. According to the MFAA's press release of 29 November 2021 entitled '*More than two in three home loans written by mortgage brokers*',<sup>1</sup> between July and September 2021, mortgage brokers facilitated two thirds of all new residential home loans. Brokers assist customers in comparing products from a range of lenders, preparing the application, and settling the loan. To facilitate the provision of these services to consumers, brokers will typically acquire the services of a mortgage aggregator.<sup>2</sup>

**1.6** ASIC has defined<sup>3</sup> an **aggregator** as-

*"A business which provides aggregation services to a broker business or broker and with which a credit provider has a direct contractual relationship".*

**1.7** Aggregators operate as a single point of contact between large numbers of brokers and particular lenders<sup>4</sup>, and provide a distribution service to those lenders. As demonstrated in the diagram below, aggregators have contractual agreements with the lenders on their panel, which allows their affiliated brokers to arrange loans from those lenders for their customers.

---

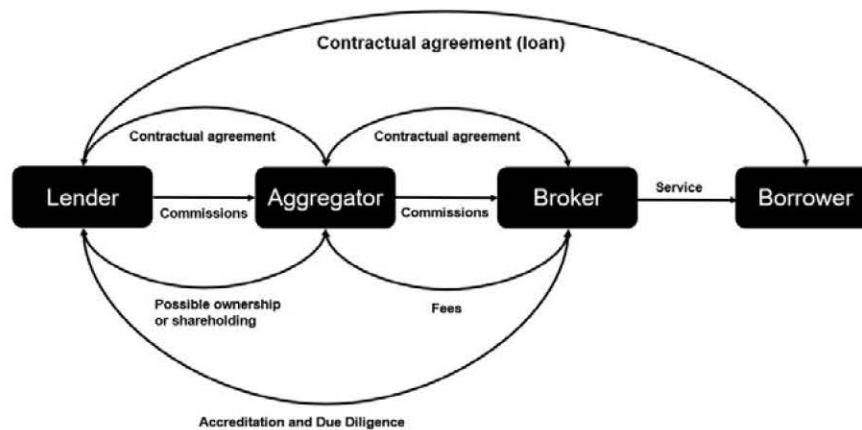
<sup>1</sup> See: <https://www.mfaa.com.au/news/more-than-two-in-three-home-loans-written-by-mortgage-brokers>.

<sup>2</sup> See AFG proposed acquisition of Connective Group Pty Ltd Statement of Issues (SOI) at pp 5-6: [AFG Connective - Statement Of Issues - 12 February 2020.pdf \(acc.gov.au\)](#)

<sup>3</sup> See ASIC Guide RG 273 at <https://download.asic.gov.au/media/5641325/rq273-published-24-june-2020.pdf>.

<sup>4</sup> See Royal Commission into misconduct in the banking, superannuation and financial services industry Final Report at [2.6]: <https://www.royalcommission.gov.au/system/files/2020-09/fsrc-volume-1-final-report.pdf>.

## INDIRECT INTERMEDIARY SUPPLY CHAIN



\*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)

**1.8** Mortgage aggregators provide a range of services to mortgage brokers to assist them with the running of their business<sup>5</sup>:

- (a) access to a panel of lenders- an aggregator may have anywhere between 15 to 60 lenders on their panel<sup>6</sup>;
- (b) customer relationship management software (**CRMs**) is a critical aspect of an aggregator's service offering. A CRM is typically described as an 'end-to-end system for loan application,' providing brokers with the ability to compare products from the lender panel, a borrowing capacity calculator, and product criteria search and purchase and refinancing scenario tools. A CRM may also provide marketing and compliance support systems, internal reporting functions and data security. CRMs are typically developed in-house by the aggregator, but can also be leased from a third party and customised.
- (c) other services provided by mortgage aggregators include administrative support, optional use of the aggregator's Australian Credit Licence (**ACL**), lender information and training and professional development.

**1.9** Generally, a broker will be affiliated with one mortgage aggregator at a time, while lenders tend to sit on a number of mortgage aggregator panels.

## 2. Overview of the Program and Application for Authorisation

**2.1** With rapid changes and growth in the mortgage broker industry, regulatory compliance obligations for mortgage brokers have increased. Prior to, and since, the Royal Commission into misconduct in the banking, superannuation and financial services industry,<sup>7</sup> the mortgage lending industry took a number of steps to improve the consistency and efficiency of

<sup>5</sup> See AFG proposed acquisition of Connective Group Pty Ltd SOI at p7.

<sup>6</sup> If a lender is not on an aggregator's panel, a broker can still recommend customers a loan product from that lender if the broker obtains a direct accreditation with the off-panel lender. Recommending the client to choose a loan off-panel typically only occurs, where the products available through an aggregator's panel fail to meet a particular client's needs.

<sup>7</sup> See Royal Commission into misconduct in the banking, superannuation and financial services industry Final Report. <https://www.royalcommission.gov.au/system/files/2020-09/fsrc-volume-1-final-report.pdf>.

assurance standards in the risk and control environment used by mortgage aggregators in their arrangements with mortgage brokers<sup>8</sup> assisting borrowers to apply for loans.

- 2.2** Currently, most lenders procure their own independent reviews on the governance and oversight approach used by each participating aggregator to manage the risk and compliance obligations of their mortgage broker network.
- 2.3** Consequently, each lender is independently responsible for conducting or procuring its own assurance review of the compliance systems of each aggregator with which the lender deals. However, as set out below, the financial services regulations applicable to lenders and aggregators/brokers are uniform and the relevant regulatory guides and compliance requirements that aggregators must meet are considerably similar.
- 2.4** Given that 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.
- 2.5** To address these issues, the Applicants have developed the Program to allow multiple lenders to procure (and to share the cost of procuring) an independent and appropriately qualified professional firm to carry out a single assurance review in respect of any participating aggregator.

#### ***Overview of Public Benefits of the Program***

- 2.6** The Program is intended to 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. Participants can opt to enter and leave the Program whenever they wish (subject to satisfying basic obligations such as the payment of any outstanding fees).
- 2.7** The Program is structured to generate significant benefits for participating mortgage aggregators, including reducing or simplifying their assurance costs and tasks, and simplifying their compliance obligations in respect of multiple reviews for various lenders of their assurance systems for their financial services compliance (as currently occurs).
- 2.8** The Program mandates strong adherence to information sharing protocols and procedures to ensure that information under the Program is communicated appropriately and that any competition / market sensitive information is not communicated or shared in a manner between lenders or aggregators that may expose any lender or aggregator to risks of anti-competitive behaviour or concerted practices.
- 2.9** The core public benefits of the Program are:-
- (a) ***efficiencies and savings for aggregators***, through reduction in duplication of reviews, savings through review costs being shifted to lenders (as detailed in paragraph 8.3 below), and reduction in disruption from having to submit to separate reviews for each lender;
  - (b) development of ***more consistent industry wide assurance standards*** and the setting of clear expectations for aggregators by participating lenders which will improve assurance outcomes generally across the aggregator networks;
  - (c) ***lower overall industry compliance costs***; if the Program is authorised, the Applicants anticipate it to facilitate industry wide savings, on the expectation the reviews required by most lenders can be procured under the Program at a significantly lower outlay;

---

<sup>8</sup> Ibid at [2.6].

- (d) greater comfort in reporting ***governance and oversight of aggregators*** for regulators, compliance auditors and other stakeholders;
- (e) ***efficiencies and savings for lenders***, through elimination of duplication of reviews of aggregators' systems and related cost savings; and
- (f) ***economies of scale*** assisting lenders to improve their governance of aggregators and brokers, while, at the same time, reducing the resourcing impacts for aggregators in otherwise having to submit or be subject to a multitude of annual reviews from different lenders (as detailed in paragraph 8.1(f) below).

**2.10** An indication of the compliance and record keeping responsibilities of finance brokers and mortgage aggregators is in this section 2. The Applicants refer also to Schedule 3 for a sample of relevant regulatory guidance from ASIC on the compliance and systems requirements for the mortgage broking industry, noting that these requirements are likely to change over time.

**2.11** It is anticipated that the assurance reports following Assurance Reviews will address the following matters about an aggregator's systems:

- (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.

***Controls to Prevent Public Detriment***

**2.12** The Applicants submit that the Program will deliver significant savings in cost and administrative time for lenders and aggregators. Further, the Program will not reduce or affect competition between lenders, as the Program is designed only to provide assurance reports concerning the compliance systems and controls within the business of aggregators.

**2.13** The Program design under the UJV Agreement does not require access to, nor permit any reporting or sharing of specific commercial or competitively sensitive information about an aggregator's business or lender relationship. Assurance reports may be procured under the Program by relevant lenders subject to strict confidentiality requirements set out in the AAP Lender Deed (which lenders participating in the Program must sign to join). There are similar requirements in the proposed UJV Agreement (to be signed by the Applicants). The Program is designed so that assurance reports provided to lenders will not cover or disclose metrics about an aggregator's revenues, lender relationships, client details, broker network or levels of finance arranged.

**2.14** Furthermore, the Program is designed under the proposed UJV Agreement and AAP Lender Deed so that each lender will continue to make its own decisions in response to a Review. The Program agreements will prohibit lenders communicating any views or decisions in response to a Review. The Program includes the requirement that assurance reports from Reviews are only provided to those "Opt-in Lenders" who deal with the subject aggregator, who request a

Review and who agree to meet their share of the Review costs for that Review. Lenders will not be notified as to which other lenders have requested a Review of the same aggregator.

- 2.15** Under the UJV Agreement and AAP Lender Deed, Reviews will be conducted on strict conditions that each Opt-in Lender must keep each assurance report generated from that Review confidential and only use the same for its own internal purposes or for a discussion with the relevant aggregator. Opt-in Lenders receiving assurance reports under the Program will be prohibited under the AAP Lender Deed from discussing or communicating with other lenders in relation to a Review or a lender's response to a Review.<sup>9</sup> Similarly, the Applicants will agree under the proposed UJV Agreement that, if they receive a Report as a relevant Opt-in Lender following a Review, they will not share, disclose or communicate about that Report to any other Party or other third person unless required by law or requested by a regulator.<sup>10</sup> Accordingly, any follow up actions arising from a Review will continue to be a matter for the bilateral relationship between each lender and the relevant aggregator.
- 2.16** Preliminary consultation by the Applicants with aggregators has indicated strong support for the Program because of the perceived benefits of better efficiency, and reducing cost and duplication.

---

### **3. Background to the Program**

- 3.1** Many mortgage lenders have expectations or requirements (which are generally specific to each lender), that the relevant aggregators and brokers which refer loan applications to the lender are compliant with relevant Australian regulations and regulatory obligations as an Australian Credit Licence holder. These expectations or requirements include matters such as the adequacy and accuracy of information provided by loan applicants and the manner in which applications for lending are completed and processed.
- 3.2** Recent regulatory and industry changes introduced by legislation and by ASIC, following recent reviews conducted by Mr. Stephen Sedgwick AO, the Productivity Commission and the Royal Commission, has required increased oversight of aggregators and mortgage brokers by lenders to ensure obligations are met and good customer outcomes are delivered. For example, the release of a new draft prudential standard, CPS 230 (Operational Risk Management) (**CPS 230**) is proposed to apply to all APRA-regulated entities in the banking, insurance and superannuation industries from 1 January 2024. If introduced in its current form, it will consolidate into a single prudential standard significant new requirements in relation to operational risk management as well as updated requirements in relation to service provider risk management and business continuity planning.
- 3.3** In response to Recommendation 1.2 of the Royal Commission, the Australian Government passed legislation<sup>11</sup> to:
- (a) create a duty for mortgage brokers to act in the best interests of their consumers (**best interests duty**); and
  - (b) require mortgage brokers to prioritise their consumers' interests when providing credit assistance (**conflict priority rule**).

---

<sup>9</sup> See clauses 1.7 (Limited right of access to Reports) and 2 (Confidentiality protocol in respect of Reports) of the AAP Lender Deed (at Schedule 1 of the UJV Agreement)

<sup>10</sup> See clause 18.1 of the UJV Agreement.

<sup>11</sup> See *The Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Act 2020 (Mortgage Broker Reforms Act)* inserted these obligations into the *National Credit Act*. The Mortgage Broker Reforms Act also inserted other reforms relating to mortgage broker remuneration.



- 3.4** ASIC has published Regulatory Guide 273 regarding these obligations and, as an illustration relevant to aggregators, ASIC comments<sup>12</sup> that '*product recommendation or aggregator software should not have in-built credit provider or product bias*'. A sample of some of the compliance obligations applicable to aggregators, broker groups and to lenders is included in Schedule 3. These requirements are likely to change over time. These include obligations that arise under responsible lending provisions of the *National Consumer Credit Protection Act*, and potential liability of lenders in relation to broker misconduct under that Act and the linked credit provider provisions of the National Credit Code.
- 3.5** To ensure their aggregator and broker networks have appropriate systems, each lender will typically require its aggregators and brokers to submit to an assurance audit of their compliance systems and policies, so that the lender is not exposed to undue regulatory risk from inappropriate practices in connection with the loan approval process.
- 3.6** 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.

---

## **4. The Proposed Conduct**

- 4.1** Authorisation is requested for the conduct engaged in relation to the Program (described in paragraph 4.4 below), on behalf of:-
- (a) the Applicants;
  - (b) mortgage lenders who opt in to join the program, including but not limited to those identified in this application as supporting the Program as well as those who elect to join the Program in the future; and
  - (c) aggregators who elect to join the Program including but not limited to those identified in this application, and
  - (d) the Assurance Service Provider (**ASP**) appointed from time to time under the Program.
- 4.2** Based on consultations to date, the Applicants anticipate that the Program is viewed positively by aggregators and lenders and the Applicants expect that in the future, other mortgage lenders may also apply to join. Authorisation is sought in respect of all future participants.
- 4.3** A list of the Aggregators that will be invited to join the Program appears in Schedule 2. It is expected that in the future, other aggregators may also wish to join.
- 4.4** Authorisation is requested to permit the Applicants to make and give effect to the agreements and arrangements described below:-
- (a) to establish the Program by an agreement between the Applicants in the form of the UJV Agreement as appears in Schedule 1;
  - (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;
  - (c) to seek proposals from, and engage, an assurance firm as the ASP to provide Assurance Reviews of aggregators' systems under the Program;

---

<sup>12</sup> RG 273.157

- (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 Opt-in Lenders who deal with the aggregator. Assurance Reviews are to generally have a six 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;
- (g) for the Operating Committee to have the power to determine the rules governing the Program and how assurance reports from completed Assurance Reviews may be used, and
- (h) 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,

(the "**Proposed Conduct**").

**4.5** Authorisation for the Proposed Conduct is sought for a five-year period from the date of final determination. The Applicants considers this an appropriate timeframe given the long-term nature of the Program, the clear and demonstrated public benefits arising from it, and the fact that no material public detriments of any kind are identifiable.

**4.6** Authorisation is sought in relation to the Proposed Conduct on the assumption (which is not admitted) that, otherwise, one or more of the following provisions of the CCA might apply -

- (a) **sections 45AF, 45AG, 45AJ and / or 45AK** - making and/or giving effect to one or more provisions which may constitute a *cartel provision*;
- (b) **section 45(1)(a) and / or (b)** - making and/or giving effect to one or more provisions which may have a purpose, or an effect, or likely effect, of *substantially lessening competition* in a market; and / or
- (c) **section 45(1)(c)** - engaging with one or more persons in a *concerted practice* that may have an effect, or likely effect, of substantially lessening competition in a market.

---

## **5. Interim Authorisation Requested**

**5.1** The Applicants are seeking interim authorisation for certain preparatory steps to be undertaken in order to establish the Program in a timely way as described at paragraph 5.2 below, for the period until the ACCC has granted final authorisation in respect of the Proposed Conduct.

**5.2** Interim authorisation is sought for the following steps:-

- (a) Parties to execute the UJV Agreement and appoint the Operating Committee; and to invite non-applicant lenders and aggregators to consider joining the Program;
- (b) The Operating Committee to initiate the RFP to potential assurance firms seeking to identify an appropriate ASP; and
- (c) The Operating Committee to consider and assess the proposals received from eligible assurance firms.

**5.3** The Applicants' intention is to enter into a contract with the ASP and that Assurance Reviews will commence after the ACCC has granted final authorisation. A grant of interim authorisation

will not bring about any substantive changes to the way in which the services described in 7.18 are supplied, or the manner in which mortgage lenders oversee the compliance systems of their aggregators.

**5.4** If Interim authorisation is not available, the long lead time required to establish the Program will result in a delay to the RFP process until late 2023 (or later) and if so, the appointment of the ASP may not be complete until the first quarter of 2024 (or later). That is, the Applicants estimate that it may take up to 5-6 months to appoint the ASP by means of a competitive tender process and to finalise terms of engagement with the selected firm. Interim authorisation either before or after a draft decision will assist to expedite the launch of the Program, after a final decision on authorisation. The Applicants submit there are clear public benefits in the Program being launched before the end of 2023, on the basis of the savings and efficiencies the Program offers for both lenders and aggregators and better standards of oversight over aggregators business models.

**5.5** Currently, assurance programs are cyclical and so for each period the AAP is delayed, another subset of lenders will commence a new round of one-to-one assurance reviews which as described above, leads to inefficiencies and duplication. Given the anticipated length of the RFP process, interim authorisation will allow the Operating Committee to commence the RFP and minimise these inefficiencies.

**5.6** Further the Applicants submit that this Application is suitable for interim authorisation given there are likely to be significant public benefits in the Program commencing as soon as practicable. In particular, interim authorisation will expedite some of the anticipated benefits of the Program for non-applicant lenders and aggregators:

- (a) **Non-applicant lenders:** non-applicant lenders will benefit from the increased level of oversight from Assurance Reviews, which will assist them to assess the quality of aggregator services they are receiving.
- (b) **Aggregators:** the Program will enable aggregators to simplify their compliance reporting and dedicate more of their time and resources towards monitoring and uplifting broker activity, with the overall aim to achieve better customer outcomes. Bearing in mind that the genesis of this Program was borne out of addressing the recommendations in the Royal Commission Report<sup>13</sup>, this will ultimately result in borrowers receiving improved broker services and enhance customer trust.

Moreover, pursuant to current practices, some aggregators undergo annual reviews while others are on different review cycle periods. The Program hopes to address this by creating a unified and coordinated review cycle approach.

---

## 6. Program Structure, Scope and Conditions

### *The proposed UJV Agreement*

**6.1** The Applicants (or Parties) intend to enter into an agreement which will provide for an unincorporated joint venture (**UJV**) structure and allows the Parties to oversee the ASP and the management and delivery of the Program through a joint Operating Committee. A copy of the proposed UJV Agreement is at Schedule 1 and authorisation is sought to make and give effect to the UJV Agreement.

**6.2** The core terms of the UJV Agreement are as follows:

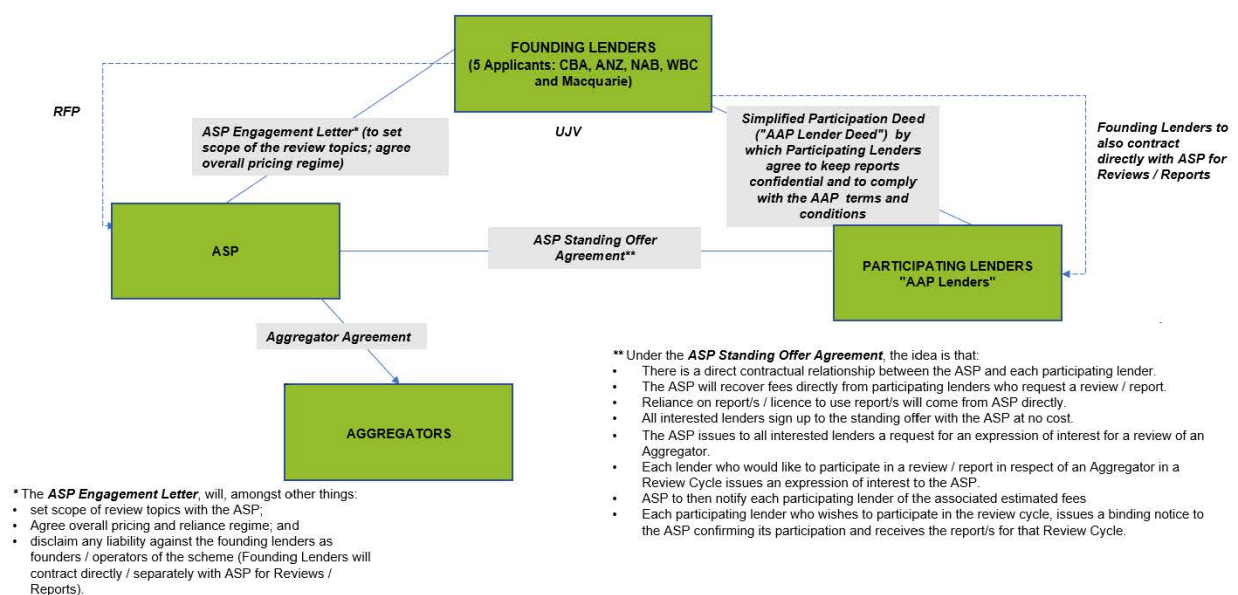
- (a) The Applicants will agree to establish a UJV;

---

<sup>13</sup> Royal Commission Final Report: <https://www.royalcommission.gov.au/system/files/2020-09/fsrc-volume-1-final-report.pdf>

- (b) The UJV will oversee the Program, however participating lenders (referred to as "**AAP Lenders**" in the UJV Agreement) will not need to join the UJV and may participate in the Program by executing the proposed AAP Lender Deed setting out the terms of participation and then engaging the ASP under the Program;
- (c) The Parties expect that the Operating Committee will delegate many of the operational aspects of the Program to the ASP. The ASP is envisaged to be an independent professional firm with expertise in assurance systems which will undertake the day-to day tasks of providing fee estimates for reviews, carrying out reviews, recovering fees from lenders which opt-in for an Assurance Review (referred to as "Opt-in Lenders") and managing the distribution of Assurance Reports from completed Reviews;
- (d) the Program is intended to operate on a '*not for profit*' and user pays/cost recovery basis so that the costs to be borne by participating Opt-in Lenders (including the Applicants) will be the fees payable to the ASP, which will reflect each lender's share of the relevant costs of each Assurance Review which it requests under the Program;
- (e) each AAP Lender will be expected to nominate the Assurance Reviews that it requests be conducted under the Program and to only incur the fees payable to the ASP by that AAP Lender which will reflect its share of costs for those reviews,;
- (f) participation by lenders in requesting Assurance Reviews under the Program and by aggregators will be voluntary;
- (g) no direct additional costs will be charged to an aggregator for participation. The Applicants expect that for each participating aggregator the overall average costs of meeting assurance requirements will be significantly lower under the Program compared to the current costs incurred;
- (h) membership of the UJV Agreement will be open to new or additional lenders; and
- (i) lenders will only be given access to assurance reports from Assurance Reviews for which the lender has met its share of the costs and on terms prohibiting any lender communicating about the review to any other lender.

**6.3** The Program Structure is illustrated in the following diagram:



### ***The Assurance Service Provider(s)***

- 6.4** It is intended that the Assurance Reviews and assurance reports obtained under the Program for each review cycle will be conducted by a single assurance firm that will be selected by the Applicants by a competitive open tender. At a high level, the tender process includes the following steps:
- (a) Developing RFP documentation;
  - (b) Issuing a public request for proposals from prospective ASPs;
  - (c) Evaluating the proposals submitted by prospective ASPs;
  - (d) Selecting a service provider by unanimous consent of the Operating Committee or Applicants as appropriate; and
  - (e) Negotiating the terms of the ASP Agreement with the prospective ASP and entering into an ASP Agreement.
- 6.5** Tenders are likely to be conducted on an annual basis to secure future services so that the Program will be available to any assurance firm with relevant skills and coverage.
- 6.6** Once appointed, the ASP will, with the consent of those aggregators who elect to join the Program, conduct an Assurance Review for each aggregator to produce a single compliance report concerning the aggregator's systems and compliance processes applicable to the brokers within that aggregator's network. The Program will also offer AAP Lenders the opportunity to request that the ASP provide a Review of a particular aggregator which covers additional or bespoke areas nominated by that lender for that reporting to that lender only, and at its cost.
- 6.7** The Operating Committee may, after 12 months of the ASP being appointed, review the ASP's performance. If the Applicants determine the ASP's performance to be inadequate or consider the appointment of the ASP to be inappropriate for any reason, they may seek to appoint a new ASP by a competitive open tender.

### ***Engagement of Assurance Service Provider***

- 6.8** The UJV Agreement provides for the engagement of an ASP on terms set out in the RFP<sup>14</sup> to have the following responsibilities<sup>15</sup>:
- (a) conduct the Assurance Reviews to the standard required by the Operating Committee;
  - (b) prepare the AAP Plan and Budget;
  - (c) allow Opt-in Lenders to receive and rely on each Review;
  - (d) avoid conflicts of interest;
  - (e) act impartially as between lenders;
  - (f) keep aggregator information strictly confidential save for an agreed reporting format; and
  - (g) produce assurance reports and issue them to the Opt-in Lenders.

---

<sup>14</sup> See clause 6 of the UJV Agreement 'RFP process for engagement of ASP'.

<sup>15</sup> See clause 7.3 of the UJV Agreement.

**6.9** Based on feedback from lenders, the Operating Committee will provide oversight to the ASP as to the required contents of a review.

**6.10** The Operating Committee will be responsible for:

- (a) determining and updating the quality standards for the Assurance Reviews to be conducted;
- (b) appointing, renewing or terminating the ASP;
- (c) approval of the AAP Plan and Budget under the UJV agreement;
- (d) approval of additional lenders and aggregators joining the Program which will be a simple process merely requiring those parties to agree to the Program terms and conditions and entering into the AAP Lender Deed;
- (e) removal of a lender or aggregator from the AAP for failure to comply with the terms of participation after failure to comply with a notice to remedy the failures in question; and
- (f) a disputes process for disputes between the Parties and other lenders.

**6.11** The Operating Committee is expected to delegate day-to-day conduct of the Program activities to the ASP.

***Term of Lender Participation***

**6.12** Each lender will be requested to agree to participate in the AAP on a rolling basis. Thereafter such lenders can opt out of the AAP by giving notice to the ASP or their right to participate may be terminated if they fail to remedy any failure to comply with the proposed AAP Lenders Deed (attached to the UJV agreement at Schedule 1).

**6.13** The information sharing procedures and Competition Protocol in the AAP Lenders Deed includes strict conditions prohibiting any communication or sharing of information between lenders as to their actions or responses to the outcome of a Review about any aggregator.<sup>16</sup> Similarly, the Applicants will agree under the UJV Agreement that they would not seek access to any assurance report if they are not an Opt-in Lender for that report, and if they receive a report as a relevant Opt-in Lender, they will not share, disclose or communicate about that report to any third person unless required by law or requested by a regulator.<sup>17</sup> The Applicants (and thereby members of the Operating Committee) are also bound to observe the Competition Protocol attached to the UJV Agreement.

---

<sup>16</sup> See clauses 1.7 (Limited right of access to Reports) and 2 (Confidentiality protocol in respect of Reports) of the AAP Lender Deed.

<sup>17</sup> See clause 18.1 of the UJV Agreement.

### ***Proposed Assurance Reviews***

- 6.14** The Assurance Reviews will report whether the systems and processes used by the aggregator are satisfactory under financial services regulations and likely to meet benchmark compliance requirements satisfactory for the Opt-in Lenders.
- 6.15** The Operating Committee propose to issue an RFP with a view to selecting an appropriate consultant (**ASP**) qualified to manage the Program and conduct an Assurance Review in respect of participating aggregators.
- 6.16** The proposed RFP is intended to seek assurance proposals for nine focus areas set out at paragraph 2.11. The nature of the Assurance Review in these areas of each aggregator's business will be focussed on the systems and processes in place and testing those.
- 6.17** The scope and content of the proposed Assurance Reviews will be set by the Operating Committee and will be subject to consultation with Opt-in Lenders so that lenders have an opportunity to ensure the Assurance Reviews will be fit for their purposes and sufficient to replace their current approach to obtaining assurance. Opt-in Lenders will also be able to request Reviews of additional review items for an additional cost.
- 6.18** As noted above, the Assurance Reviews are not designed to reveal specific information about particular lender's loan terms, lending policies or offers or other client information which might be sensitive to competition between lenders or privacy considerations. Rather they will focus on the overall systems and processes used within aggregator networks to manage their compliance responsibilities.
- 6.19** 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 a report. Any remedial action that may be recommended will be determined by the aggregator in conjunction with each Opt-in Lender.
- 6.20** 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.
- 6.21** The Program is intended to identify systemic issues or failures only and **not** intended to serve as a vehicle to identify to Opt-in Lenders:
- (a) any specific incidents of non-compliance by any identified aggregator; or
  - (b) any remediation of any non-compliant conduct.
- 6.22** 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.
- 6.23** Accordingly, participants in the Program will be required by the AAP Lender Deed not to disclose or identify to other lenders generally, any particular non-complying broker conduct or any "case specific" remedial actions to be taken in response to any such conduct.

### ***The Program will not constrain compliance Approaches***

- 6.24** Under the Program, it will remain open for each Opt-in Lender to agree with each aggregator any bespoke or specific compliance requirements which that lender requires, and the Program will not prevent lenders and aggregators independently agreeing on particular compliance processes that are specific to any lender or aggregator.
- 6.25** The Program envisages that the ASP will be permitted to provide additional assurance related services to an Opt-in Lender who seeks additional reporting about an aggregator, at that lender's cost and on the basis the additional report is only provided to that lender. This

mechanism is intended to be included in the appointment of the ASP and reflected in the Subscription Deed.

#### ***Program Costs for Opt-in Lenders***

- 6.26** The Operating Committee will require the ASP to produce the Initial AAP Plan and Budget) for approval by the Operating Committee (as set out in clause 12 of the UJV Agreement).
- 6.27** Opt-in Lenders will pay a fee to the ASP to receive a Report under the Program which will cover the costs contemplated by the Program.
- 6.28** The cost of Assurance Reviews will be determined by the ASP under the supervision of the Operating Committee (which will seek to ensure that Reviews are conducted on a 'value for money' basis) and then shared between the relevant Opt-in Lenders who transact with a particular aggregator and request a Report (referred to in the UJV Agreement as "**Opt-in Lender Fees**").

#### ***Open Participation in Program***

- 6.29** Participation in the Program will be offered generally across the mortgage industry to any lender and aggregator which wishes to participate and meet its obligations under the Program. The Program does not create barriers to new entrant lenders on the basis that the Program makes it easier for new entrant lenders to obtain Assurance Reviews than is currently the case, as the cost and administrative burden can be shared across participating lenders. As noted in paragraph 8.1(e), it remains open for all lenders to continue to engage ASPs or other assurance services outside of the Program framework.

---

## **7. Limits on Information Sharing to Protect Competition and Aggregator Confidentiality**

#### ***Limited sharing of Assurance Reviews Across Lenders***

- 7.1** As explained in paragraphs 6.18 to 6.23 above, the Program is designed to limit the type of information shared between lenders to an appropriate level and to avoid any sharing of competitive 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 Competition Protocol in the AAP Lender Deed and UJV Agreement ).
- 7.2** The type of information that will be shared under the Program is described at clause 2.11.

#### ***Information sharing protocols***

- 7.3** A key requirement for the Program is strong adherence to protocols and procedures to ensure that information under the Program is communicated appropriately and that any competition / market sensitive information is not communicated or shared in a manner between lenders or



aggregators that may expose any lender or aggregator to risks of anti-competitive behaviour or concerted practices.<sup>18</sup>

**7.4** These protocols will be included in the AAP Lender Deed and UJV Agreement and will observe the following principles.

- (a) An assurance report about any particular aggregator may only be shared individually with the Opt-in Lenders who requested that review in respect of that aggregator;
- (b) Details of the 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;
- (c) The ASP, lenders and aggregators will be required not to discuss or exchange any non-public or commercially or competitively sensitive information relating to the Program; and
- (d) The ASP will be required to commit not to provide any specific information which could be used to identify (to any lender) any broker or other lender or borrower related to any non-complying conduct.

**7.5** The AAP Lender Deed and UJV Agreement will provide that the information accessed through an Assurance Review, which cannot be disclosed by the ASP to Opt-in Lenders or other parties, includes:

- (a) borrower/customer information or data;
- (b) any other lenders' views or opinions about the performance or compliance of particular aggregators or brokers;
- (c) any other 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
- (d) any other lenders' current or future decision-making process in relation to aggregators and brokers.

**7.6** Accordingly, the ASP will be required to ensure and to have appropriate systems in place to ensure that it 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 in respect of any identified aggregator. Similarly, AAP Lenders will be restricted by the AAP Lender Deed not to discuss or communicate with any other lender what steps should or might be considered to be taken in response to an assurance report in respect of any identified aggregator.

**7.7** This Program is therefore structured not to affect competition between lenders. Strong controls will apply to limit the content of Assurance Reviews and the sharing of information from joint reviews. No competitively sensitive information is intended to be shared under the Program.

**7.8** Furthermore, the Program only provides a reporting function to lenders. Any decision by a lender as to the response to be made to an Assurance Review will remain a matter solely for

---

<sup>18</sup> As referred to in s45(1)(c) of the *Competition and Consumer Act 2010*.

that lender and that response will lie outside the scope of the Program and outside the scope of any information shared between lenders.

- 7.9** Similarly, the decision of any lender about its requirements of or relationship with any particular mortgage aggregator will fall outside the scope of the Program and the Proposed Conduct.

***Any Remedial Actions Concerning Aggregators Compliance Systems Outside the Program***

- 7.10** As noted above, the Program is designed only to provide for delivery of an Assurance Review concerning a particular aggregator to the relevant Opt-in Lenders, and with a copy of the report from the Assurance Review to the subject aggregator.

- 7.11** The Program does not deal with any subsequent actions by a lender in response to an Assurance Review. Any subsequent remedial actions or recommended changes in the Assurance Review concerning the aggregator's systems or compliance processes will be a matter for that aggregator to consider, in conjunction with its lenders on a bilateral basis and not form part of the Program.

- 7.12** Accordingly, the steps or actions that may be recommended or taken by any lender following receipt of an assurance report under the Program, will continue to remain a bilateral matter between each lender and an aggregator.

- 7.13** The Program does not provide for or permit any joint discussions about a review by or between relevant lenders who deal with common aggregators, and such actions are prohibited by the AAP Lender Deed. Failure to comply with the AAP Lender Deed may result in a lender's participation in the Program being terminated under clause 7.2 of the AAP Lender Deed.

- 7.14** Accordingly, authorisation is not sought in respect of any joint action or communications by or between lenders in relation to a completed Assurance Review. The actions and responses of any lender to an Assurance Review will remain a matter for each lender to determine independently of other lenders.

- 7.15** Each lender will continue to be required to comply with the provisions of the CCA while also observing the strict conditions in respect of communications between lenders in the AAP Lender Deed, and to avoid joint or collective responses or discussions relating thereto between lenders, insofar as any lender considers the outcome of an Assurance Review and its relationship with the subject aggregator.

- 7.16** The Program will not change the position that it is a matter for each lender to agree with each aggregator that it deals with:

- (a) what is an appropriate risk assurance framework for the aggregator;
- (b) what remedial or other steps an aggregator should take for any identified shortcomings or improvements required; and
- (c) what steps a lender may take, should the aggregator fail to meet the compliance framework agreed with that lender.

- 7.17** In this way, nothing in the Program should alter the current dynamics that it is a matter for each lender to agree with each aggregator what risk controls and other systems that lender requires.

***Markets relevant to the Program***

- 7.18** The Applicants do not consider the scope of the relevant markets need to be precisely defined. However, in order to assist the ACCC with its assessment, the Applicants consider that the

Aggregator Assurance Program can be considered in the context of the following services although note that not all may be impacted by the Program:

- (a) the supply of mortgage aggregation services to mortgage brokers in Australia;
- (b) the supply of mortgage distribution services to lenders in Australia;
- (c) ultimately, the supply of mortgage lending to consumers via broker channels; and
- (d) the supply of assurance services to firms in Australia, including lenders.

**7.19** The Program will be open to any lender or aggregator participating in these markets which complies with the terms and conditions of the Program.

---

## 8. Rationale For and Public Benefits of the Assurance Program

### *Public Benefits*

**8.1** The development of this Program is supported by lenders and aggregators who recognise the mutual benefits of an industry wide assurance program from consistency, cost and business impact perspectives. Benefits include:

(a) *Increased efficiency and minimising duplication*

The Program generates substantial savings for aggregators in having one review conducted for a number of lenders rather than separately providing assurance reports to each lender. This will reduce unnecessary duplication while delivering greater comfort in reporting, governance and oversight of aggregators to regulators, internal and external compliance auditors, government department and consumer group.

(b) *Consistency and clear expectations for Aggregators Compliance Systems*

The Program provides for Assurance Reviews of participating aggregators to be conducted and managed in a consistent manner for all relevant lenders with clear expectations set for aggregators. The Program seeks to introduce a minimum level of oversight which is anticipated to be more comprehensive than what some of the non-applicant lenders have presently.

It is anticipated that the Assurance Reviews will not require aggregators to implement different systems or IT requirements, that could give rise to significant costs for those aggregators. Rather, the Assurance Reviews have the specific purpose of monitoring whether aggregators have an adequate control environment and the resources to ensure their brokers are compliant and well trained. The Aggregator Reviews may also trigger the need for changes to aggregator systems if gaps are identified, as an action that the aggregators decide to action themselves or as actions lenders agree with the aggregators post the review.

The outcome of each Review will be managed by each AAP Lender separately in conjunction with the relevant aggregator. AAP Lenders are not permitted under the Program to share or discuss any remedial steps with other lenders.

In effect, aggregators will be receiving an independent review of their operations and processes which will outline enhancement and uplift opportunities that the aggregator may not otherwise be aware of and which the aggregator can assess. Moreover, improving the aggregator control environment in turn will result in better outcomes for borrowers.

(c) *Competitive opportunity for the supply of assurance services*

There is a competitive opportunity for the supply of assurance services by firms competing in the tender process. The Applicants consider that assurance services are supplied to customers across a range of disciplines and functions, including lenders.

There are clear efficiencies and cost savings in appointing one ASP under the Program particularly in relation to managing the quality of deliverables and the methodology applied as well as oversight over and management of any potential conflicts of interests.

Appointment of the ASP is not likely to reduce competition in respect of assurance services because of the competitive RFP process and the limited term of the engagement.

As the initial appointment of the ASP is for a period of 12 months, with a chance to extend, there would be regular opportunities for other ASPs to compete for

subsequent appointments and the tender process will give the Applicants insight into other potential ASPs for consideration in the future. Moreover, the Program take up of assurance service provider services by aggregators will potentially improve because of this Program.

(d) *Reduced Disruption from multiple Assurance Reviews*

Currently substantial time and duplication of efforts must be made by aggregators for their participation in separate assurance reviews conducted for each lender. The Program will bring about substantial savings in that time and commitment for each participating aggregator.

(e) *Improvement in compliance standards to the benefit of all lenders*

The need to address lender risk applies to all lenders (irrespective of size). The Program aims to improve overall compliance standards with financial services regulations across the mortgage lending industry, and thereby generate substantial public benefits while lowering overall compliance costs for all participants. It remains open for all lenders to continue to engage ASPs or other assurance services outside of the Program framework. The Program simply provides lenders with an *additional* avenue to obtain Assurance Reviews in a potentially more cost effective way. As noted in paragraph 6.29, this is particularly the case for new entrant lenders who can obtain Assurance Reports more easily, as they can share the cost and administrative burden with other participating lenders.

(f) *Increased Oversight, opportunities to participate and economies of scale for non-applicant lenders*

The Program will enable non-applicant lenders to increase their oversight and governance of aggregators and mortgage brokers while at the same time reducing the resourcing impacts for aggregators to host anywhere up to 20 different lenders a year seeking to conduct an onsite review. This gives non-applicant lenders an opportunity to reduce their costs on assurance reviews, by allowing the Applicants to incur the costs of establishing the program, and then sharing the cost of Reviews with Opt-in lenders in the Program.

The Program offers lenders a standard assurance framework but does not limit the scope for non-applicant lenders to obtain additional assurance services.

In addition, the Program includes opportunities for non-applicant lenders to have input into the Program design through consultation with the Operating Committee which is expected to consult widely with lenders to promote uptake of the Program and to meet their compliance expectations.

Non-applicant lenders may also attend Operating Committee meetings as observers and contribute to the deliberations of the Operating Committee.

In addition, a non-applicant lender can directly engage with the ASP to contract for any specific assurance services it requires from the ASP.

### **Cost Savings**

**8.2** Currently, lenders spend a significant amount per annum on assurance reviews of mortgage aggregators, as each lender looks to satisfy itself independently about the systems and processes used by each aggregator with which it deals.

**8.3** Currently, aggregators bear a substantial proportion of these costs due to the need to allocate internal resources to respond to multiple assurance reviews a day. Where an aggregator deals with multiple lenders, that cost for each lender's assurance requirements may amount to a significant overall burden. Under the Program, the AAP Lenders will bear the cost of the Program through the fees payable under the proposed ASP Standing Offer as described in clause 3.1(a) of the UJV Agreement, which will represent a substantial saving for each

aggregator. Aggregators will not be required to pay the ASP any fees for their services, and will instead only cover the costs related to resourcing as needed to manage the AAP process on their end. That cost will be significantly lower than would be required if the aggregator was having to manage multiple lender reviews (as is presently the case). Anticipated savings for aggregators cannot be quantified based on the Applicants' knowledge, however these savings are expected to be significant based on anecdotal evidence from aggregators. The Program is expected to greatly improve aggregators' experience and allocation of internal resources.

- 8.4** If the Program is authorised, the Applicants estimate that substantial overall industry wide savings may be available on an aggregated basis, on the expectation the reviews required by most lenders can be procured under the Program at a significantly lower outlay. This saving of costs will make the aggregator industry more efficient.

***Public detriments***

- 8.5** The Applicants contend that there are no competitive or other detriments associated with the application, particularly given that the information sharing protocols in the AAP Lender Deed and UJV Agreement will clearly set out which actions are permitted by the AAP Lenders and Operating Committee.

- 8.6** In particular, the limits on the content and use of assurance reports following Reviews which will be provided under the Program will not have any impact on competition between lenders on the basis that, each lender will continue to manage its own relationship and compliance expectations with each aggregator and any decisions that impact that aggregator on a separate and bilateral basis.

- 8.7** The Applicants do not consider there would be any public detriment to aggregators (particularly as the Program envisages appointing one ASP at a time). Participation is optional for aggregators and offers substantial savings in cost and disruption to their business. Likewise, participation is optional for lenders- if they choose not to participate in the Program, they can continue to obtain their own assurance reviews outside of the Program.

***Conclusion***

- 8.8** For the reasons set out above, the Applicants apply for authorisation to engage in the Proposed Conduct and interim authorisation as set out in paragraph 5.2.

- 8.9** 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.

- 8.10** 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, which would occur if different lenders each required every aggregator to provide an assurance report on its compliance systems.

- 8.11** The Applicants would welcome the opportunity to discuss this Application with the ACCC.

## Declaration by Applicant(s)

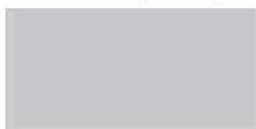
Authorised persons of the Applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).

This 14th day of April 2023



---

Signature of authorised person

---

Partner, Clayton Utz, authorised to sign on behalf of the **Commonwealth Bank of Australia** (ABN 48 123 123 124)

Office held

**Elizabeth Richmond**

(Print) Name of authorised person



---

Signature of authorised person

Partner, Clayton Utz, authorised to sign on behalf of **Westpac Banking Corporation** (ABN 33 007 457 141)

**Elizabeth Richmond**

(Print) Name of authorised person



---

Signature of authorised person

Partner, Clayton Utz, authorised to sign on behalf of **Australia and New Zealand Banking Group Limited (ABN 11 005 357 522)**

---

Office held

**Michael Corrigan**

(Print) Name of authorised person



---

Signature of authorised person

Partner, Clayton Utz, authorised to sign on behalf of **National Australia Bank Limited (ACN 004 044 937)**

---

Office held

**Michael Corrigan**

(Print) Name of authorised person



---

Signature of authorised person

Partner, Clayton Utz, authorised to sign on behalf of **Macquarie Bank limited (ABN 46 008 583 542)**

**Michael Corrigan**

(Print) Name of authorised person

*Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.*



**Schedule 1 – UJV Agreement**

**Schedule 2 – List of interested third parties and contact details**

Entity Name	Entity Type	Contact Name and Title	Contact Email
Connective	Aggregator	[REDACTED]	[REDACTED]
AFG	Aggregator	[REDACTED]	[REDACTED]
Finsure	Aggregator	[REDACTED]	[REDACTED]
Loan Market Group (including Plan, Choice and FAST)	Aggregator	[REDACTED]	[REDACTED]
Aussie (Lendi Group)	Aggregator	[REDACTED]	[REDACTED]
Outsource Financial	Aggregator	[REDACTED]	[REDACTED]
Mortgage Choice	Aggregator	[REDACTED]	[REDACTED]
Specialist Finance Group	Aggregator	[REDACTED]	[REDACTED]
nMB	Aggregator	[REDACTED]	[REDACTED]
YBR / VoW	Aggregator	[REDACTED]	[REDACTED]
Astute	Aggregator	[REDACTED]	[REDACTED]
MFAA (Mortgage and Finance Association of Australia)	Industry Body	[REDACTED]	[REDACTED]
FBAA (Finance Brokers Association of Australia)	Industry Body	[REDACTED]	[REDACTED]
ABA (Australian Banking Association)	Industry Body	[REDACTED]	[REDACTED]

KPMG	ASP	[REDACTED]	[REDACTED]
Deloitte	ASP	[REDACTED]	[REDACTED]
PWC	ASP	[REDACTED]	[REDACTED]
EY	ASP	[REDACTED]	[REDACTED]

## Schedule 3 - Relevant Compliance Expectations and Requirements applicable to Aggregators and Brokers

1. New mortgage broker obligations were legislated by the Parliament in response to Recommendation 1.2 of the Financial Services Royal Commission. From 1 January 2021, mortgage brokers are required to act in the best interests of consumers and to prioritise consumers' interests when providing credit assistance.
2. Regulatory Guide 273 Mortgage brokers: Best interests duty (RG 273) sets out ASIC's views on how mortgage brokers may comply with their best interests obligations at key stages of the credit assistance process. It provides guidance on:
  - (a) the effect of the range of credit providers and products brokers can access
  - (b) recommending packages of credit products
  - (c) the types of records that may be kept to demonstrate compliance.
3. ASIC Guide **RG 273** provides that

*"The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Royal Commission**) considered mortgage broking in Australia and, in its final report, made recommendations relating to mortgage brokers, including **Recommendation 1.2 (best interests duty)** and **Recommendation 1.3 (mortgage broker remuneration)**.*

**RG 273.2** *In response to **Recommendation 1.2**, the Government passed legislation to:*

*(a) create a duty for mortgage brokers to act in the best interests of their consumers (best interests duty); and*

*(b) require mortgage brokers to prioritise their consumers' interests when providing credit assistance (conflict priority rule).*

*Note: **The Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Act 2020 (Mortgage Broker Reforms Act)** inserted these obligations into the **National Credit Act**.*

*The **Mortgage Broker Reforms Act** also inserted other reforms relating to mortgage broker remuneration.*

**RG 273.3** *These obligations—collectively referred to in this guide as the 'best interests obligations'—give statutory recognition to consumers' expectations.*

*The Replacement Explanatory Memorandum to **the Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Bill 2019 (Replacement Explanatory Memorandum)** outlines the objective of the obligations at paragraph 3.11: The objective of the new law is to improve consumer outcomes. Firstly, by requiring mortgage brokers to act in the best interests of their clients and secondly, by reducing the potential for conflicts of interests to impact the advice consumers receive from mortgage brokers.*

*Mortgage brokers, and, where relevant, other credit licensees, must comply with these obligations from 1 January 2021.*

.....

**RG 273.5** *The best interests obligations apply only in relation to credit products that are regulated under the National Credit Act—that is, products provided to*

consumers for personal, domestic or household purposes or for the purchase or improvement of residential investment property.

4. ASIC guidance is structured around the key steps common to the credit assistance process of brokers, such as gathering information, individually assessing products, and presenting information and recommendations to the consumer.

5. ASIC Guidance includes the following explanation of the brokers best interests duty -

*"Mortgage brokers must act in the best interests of each individual consumer to whom credit assistance is provided. We consider that the obligations require mortgage brokers to assess what product(s), and what credit assistance, would be in each consumer's best interests.*

**RG 273.17** *The broker's consideration of the individual circumstances of the consumer and their needs, goals and financial situation is particularly relevant to complying with the obligations. The risk of non-compliance is substantially increased if a broker's processes typically lead to a 'one-size-fits-all' outcome for consumers. Note: For a non-exhaustive list of factors which may need to be considered when making an assessment of the individual circumstances of a consumer, see RG 273.48.*

**RG 273.18** *Brokers will need to exercise their judgment when determining what is in the consumer's best interests. In some situations, this will include challenging the consumer's perception of their best interests. Although it is the consumer's decision whether to accept or decline the recommendation and proceed with an application, it is the sole responsibility of the broker to ensure the recommendation is in the consumer's best interests.*

6. For aggregators the ASIC Guide gives the following example-

#### **"Scenario 21 Licensee Systems**

*XYZ Corporation (XYZ Corp) is a credit licensee that **provides aggregation services** to mortgage brokers who are its credit representatives.*

*XYZ Corp's corporate group includes an entity—XYZ Loans—which is a credit provider offering home loan products.*

*XYZ Corp updates its **aggregator platform software** to change how home loan products are presented to mortgage brokers. The new algorithm prioritises loans offered by XYZ Loans when brokers sort available products.*

**Commentary** *XYZ Corp has an obligation to take reasonable steps to ensure that its broker representatives comply with the best interests duty. Providing platform software that prioritises XYZ Loans' products may be inconsistent with the obligation to take reasonable steps to ensure XYZ Corp's mortgage broker representatives comply with the conflict priority rule.*

*Whether or not a conflict exists, or whether an XYZ Loans product is in the consumer's best interests, will depend upon the consumer's circumstances.*

*Software platforms have the potential to help mortgage brokers to comply with their obligations, and enable licensees to take reasonable steps to ensure this.*

*Using software that sorts products by relevance (based on the consumer's individual circumstances) or by price or in manner that is credit provider neutral, would appear to be more consistent with the obligations."*

7. In addition, ASIC has issued RG 209 which covers the responsible lending obligations under the *National Consumer Credit Protection Act* and deals with lenders using information provided by brokers at RG 209.126 to RG 209.132.

8. At RG 209.128 ASIC notes:

*As the lender, you need to form your own view on whether information that is provided to you by a broker, or any other third party that is involved in the application, is reliable and up-to-date. If you have reason to believe that is it not, you should undertake your own inquiries and verification steps to confirm that it is complete and accurate to meet your own obligations.*

9. At RG 209.129 ASIC note that lenders should have assurance processes in place to ensure the reliability of information collected by third parties and suggest approaches which include:

*ensuring you only use information in preliminary assessments from intermediaries that you are reasonably satisfied have robust compliance arrangements.*

10. At RG 209.132, ASIC concludes that:

*If you receive applications through third parties you should have processes in place to enable you to identify recurring circumstances that raise doubts about information, and to take additional steps to ensure that information provided by such third parties is genuine and reliable.*

11. Finally, lenders require levels of assurance because of a range of significant circumstances when lenders may be liable for the activities of brokers. For example: Lenders can have linked credit provider liability in relation to the conduct of brokers under Part 7 of the *National Consumer Credit Protection Act*. This will apply if a lender's contract finances the payment of a broker's fee and if the relationship between the lender and the broker falls within the categories to which the Part applies. These categories include where the broker, regularly, by arrangement with the lender, refers credit applicants to the lender. Lenders have a defence to some of the liability that arises under this Part if:

- (i) they have conducted due inquiries before becoming a linked credit provider and are satisfied with the reputation of the broker in respect of the broker's financial standing and business conduct; and
- (ii) after becoming a linked credit provider but before the contract was entered into that was the subject of the liability, the lender had no cause to suspect that the liability might arise and that the broker was insolvent