



Our ref: AA1000432  
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Dear Sir/Madam

## **Mortgage and Finance Association of Australia application for authorisation AA1000432 – Recommencing assessment**

The Australian Competition and Consumer Commission (the **ACCC**) is recommencing its assessment of the Mortgage and Finance Association of Australia's (**MFAA**) application for authorisation, AA1000432. The purpose of this letter is to update you on the ACCC's consideration of this matter and invite you to comment on the MFAA's recently amended Disciplinary Rules. You are welcome to pass this letter on to others who may wish to make submissions.

### **Background**

On 20 December 2018, the ACCC received an application from the MFAA for revocation of authorisation A91396 (which was due to expire on 12 June 2019) and substitution of authorisation AA1000432.

The MFAA sought re-authorisation<sup>1</sup> under the *Competition and Consumer Act 2010* (Cth) (the **Act**) of its Disciplinary Rules. The Disciplinary Rules outline the processes for the investigation of complaints, expulsion of members and appeals against refused applications for membership or accreditation that arise under the MFAA Constitution and the MFAA Code of Practice. They also provide for the establishment of the MFAA Tribunal which considers disciplinary allegations and membership refusals.

The Disciplinary Rules may constitute a cartel provision within the meaning of Division 1 of Part IV of the Act or may constitute exclusive dealing within the meaning of section 47 of the Act. Authorisation was sought because MFAA members include brokers, loan writers, lenders (bank and non-bank) and aggregators, many of which are likely to be in competition with each other.

On 31 March 2019, the MFAA requested interim authorisation to continue to give effect to its Disciplinary Rules, as previously authorised under authorisation A91396, while it considered making additional changes to its rules and other aspects of its governance regime arising from recommendations of the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*. The MFAA indicated it would need three to six months to make these changes.

On 11 April 2019, the ACCC decided to grant interim authorisation to the MFAA in respect of its existing Disciplinary Rules as authorised under Authorisation A91396, to allow the MFAA

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<sup>1</sup> For information about Authorisations, please see <https://www.accc.gov.au/business/exemptions/authorisation>

to continue to administer those Disciplinary Rules while the MFAA made changes to its governance regime. The ACCC advised it would recommence its assessment of the application for re-authorisation in October 2019 once the MFAA had provided a revised set of documents, including updated Disciplinary Rules and Code of Practice.

On 17 September 2019, the MFAA advised the ACCC that, as a result of ongoing change in the industry and regulatory uncertainty, it would be unable to make the anticipated changes to its governance regime within the estimated timeframe. The MFAA has made some technical changes and refinements to its Rules and has provided the ACCC with a copy of these amended Disciplinary Rules.

The ACCC has decided to proceed with its assessment of the application for authorisation and the amended Disciplinary Rules. The ACCC will consider a shorter period of authorisation, possibly two years, consistent with the period outlined in MFAA's letter. Interim authorisation with respect to the MFAA's existing Disciplinary Rules remains in place until it is revoked or the date the ACCC's final determination comes into effect.

A full copy of the application for revocation and substitution including variations of the Disciplinary Rules are available on the ACCC's [authorisations public register](#).

## **Making a submission**

The ACCC invites you to make a submission on the application for authorisation and the MFAA's amended Disciplinary Rules. Please provide information, evidence, and views about the likely public benefits, effects on competition and any other public detriment that you consider will result from the proposed conduct.

If you intend to provide a submission, please do so by **close of business on Tuesday 15 October 2019**. If you wish to request an extension, please contact us on the details below as early as possible. Submissions after the due date (or after any extension granted) may not be taken into account.

Written submissions should be emailed to [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au) with the subject 'AA1000432 – MFAA – submission'. Alternatively, if you would like to provide comments orally, please contact Simon Bell or Anna Pound via the details at the end of this letter.

Your submissions will be placed on the ACCC's [authorisations public register](#) on the internet unless you have made a request (with reasons) for us to exclude part or all of the submission from the public register (see [Guidelines for Excluding Information from the Public Register for more information on how to make a request and how we assess requests](#)).

## **Timetable**

The ACCC will progress its assessment of the application in a timely manner. An indicative timetable is set out below for your information, and an up to date version (including any changes) will be posted on the public register.

<b>Indicative date</b>	<b>Stage in assessment process</b>
<b>20 December 2018</b>	Lodgement of application and supporting submission.
<b>10 January 2019</b>	Initial consultation process began.
<b>31 March 2019</b>	MFAA requests interim authorisation.
<b>11 April 2019</b>	ACCC grants interim authorisation.
<b>17 September 2019</b>	MFAA submits amended Disciplinary Rules.
<b>27 September 2019</b>	ACCC recommences assessment and commences consultation on amended Disciplinary Rules.
<b>15 October 2019</b>	Consultation ends.
<b>November 2019</b>	Draft determination
<b>November/December 2019</b>	Consultation on the Draft Determination
<b>February 2020</b>	Final determination.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Simon Bell on 02 6243 1232 or Anna Pound on 03 9290 6920 or via email [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au).

Yours sincerely



Susie Black  
Director (A/g)  
Adjudication

## **Interested Party List**

ANZ Bank  
Aussie Home Loans  
Australia Association of Permanent Building Societies  
Australian Finance Group  
Australian Financial Complaints Association  
Australian Securities and Investments Commissions  
Caxton Legal Centre (Qld)  
CHOICE  
Consumer Law Centre of the ACT  
Consumer Action Law Centre (Vic)  
Consumer Affairs Victoria  
Consumer Credit Law Service (SA)  
Consumer Credit Legal Service (WA)  
Consumers' Federation of Australia  
Council of Small Business Organisations of Australia  
Fair Trading (ACT)  
Finance Brokers Association of Australia  
Financial Rights Legal Centre (NSW)  
FSU Australia  
NSW Fair Trading  
NT Consumer Affairs  
Office of Fair Trading (Qld)  
SA Office of Consumer and Business Services  
Tasmanian Consumer Affairs and Fair Trading  
WA Consumer Protection