



**The Mortgage and Finance Association of Australia (MFAA) –  
Application for revocation of A91396 and the substitution of  
authorisation AA1000432  
Interim authorisation decision  
11 April 2019**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisation A91396 (which expires on 12 June 2019) and has granted interim authorisation in respect of the application for authorisation AA1000432 in substitution for the authorisation suspended.
2. The application for revocation of authorisation A91396 and substitution of authorisation AA1000432 (**re-authorisation**) in relation to the Mortgage and Finance Association of Australia's (**MFAA**) revised Disciplinary Rules (**Revised Rules**), was lodged by the MFAA on 20 December 2018.
3. Following lodgement of the MFAA's application for re-authorisation, the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (the **Royal Commission**) concluded.
4. On 31 March 2019, the MFAA amended application AA1000432 to also seek authorisation of its existing Disciplinary Rules as authorised under A91396 (**Current Rules**). The MFAA also requested interim authorisation to continue to give effect to the Current Rules while it considers making additional changes to its rules and other aspects of its governance regime arising from recommendations of the Royal Commission.
5. The ACCC has decided to grant interim authorisation in respect of the Current Rules (as authorisation A91396 would otherwise expire on 12 June 2019), while the MFAA makes changes to its governance regime.
6. MFAA has indicated that it intends to make these changes in the next three to six months and to provide the ACCC with additional information in respect of its proposed governance regime.
7. After this, as part of its assessment of the substantive application for authorisation, the ACCC will provide a further opportunity for interested parties to make submissions in light of the MFAA's changes to its governance regime, and will publish a draft determination before making its final determination.
8. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

**The application for re-authorisation**

9. The MFAA is the peak national body for professional mortgage and finance brokers, mortgage managers and aggregators providing services and advocacy for its members to assist them to develop, foster and promote the mortgage and finance industry.
10. The MFAA represents over 13 700 members the majority of which are brokers, loan writers, lenders (bank and non-bank) and aggregators. Members include individuals, aggregators/franchise groups and lenders.

11. The MFAA application for re-authorisation was lodged on 20 December 2018 and seeks authorisation for 10 years for its Revised Rules, which include exclusionary provisions to expel members. On 31 March 2019, the MFAA amended application AA1000432 to seek authorisation and interim authorisation for its Current Rules, which are authorised under A91396. The Current Rules enforce the MFAA's Code of Practice, which establishes standards of conduct and behaviour for MFAA members. The Current Rules may constitute a cartel provision within the meaning of Division 1 of Part IV of the *Competition and Consumer Act 2010* (Cth) (the **Act**) or may constitute exclusive dealing within the meaning of section 47 of the Act.

### **The authorisation process**

12. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Act. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

### **Interim authorisation**

13. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the relevant conduct while the ACCC is considering the substantive application.
14. The MFAA requested interim authorisation in respect of its Current Rules on the basis that:
- It wishes to continue operation of its Current Rules while it considers amendments to its governance regime considering the recommendations of the Royal Commission, any subsequent legislative change and likely changes to ASIC guidelines.
  - The amendments to its governance regime will take several months to finalise and its current authorisation, A91396, expires on 12 June 2019.
15. The MFAA has indicated it intends to make these changes in the next three to six months, after which the ACCC will provide further opportunity for interested parties to make submissions in light of the MFAA's changes to its governance regime.

### **Consultation**

16. The ACCC invited submissions on the application for re-authorisation from a range of potentially interested parties including major Australian banks, relevant industry associations, consumer groups, state and federal government and relevant regulatory bodies.<sup>1</sup>
17. The Finance Brokers Association of Australia made a public submission in relation to the MFAA's substantive application for re-authorisation. The ACCC will take FBAA's submission into consideration during its assessment of the application for re-authorisation. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).
18. The ACCC has not conducted a separate public consultation in respect of the request for interim authorisation for the Current Rules, as this maintains the status quo of the rules currently authorised by authorisation A91396, and there will be further opportunities for interested parties to make submissions before any decision on the application for authorisation.

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<sup>1</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).

## **Reasons for decision**

19. In granting interim authorisation in respect of the continued operation of the Current Rules, the ACCC considers that:

- The interim authorisation will maintain the status quo as the ACCC has authorised the same conduct under A91396.
- Without interim authorisation, the MFAA may choose not to enforce any Disciplinary Rules, including taking action for serious misconduct by its members, as it may be at risk of breaching the Act. Interim authorisation will provide the MFAA with sufficient certainty with respect to continuing to give effect to its Current Rules and enable the MFAA to take action to expel or suspend members for breach of its Code of Practice.
- When the ACCC granted authorisation to the MFAA for its Current Rules under A91396, it concluded the likely benefit to the public would outweigh any likely public detriment including from any lessening of competition that would be likely to result. Since it was first implemented in 2004, the ACCC has authorised versions of the MFAA's Disciplinary Rules on three occasions. Based on the information available, the ACCC considers that the public benefit of the continued operation of the Current Rules is likely to continue to outweigh any likely public detriment.

## **Reconsideration of interim authorisation**

20. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final re-authorisation will be granted.