

20 June 2023

Application for Authorisation of the Aggregator Assurance Program by the Commonwealth Bank of Australia, Westpac Banking Corporation, Australia and New Zealand Banking Group Limited, National Australia Bank Limited and Macquarie Bank Limited (Applicants)

Applicants' Response to Submissions from Interested Parties

The Applicants are pleased to provide this response to the submissions from interested parties in respect of the application dated 17 April 2023 for authorisation of the Aggregator Assurance Program (**AAP** or the **Program**) under the *Competition and Consumer Act 2010* (Cth) (**CCA**) (the **Application**).

Capitalised terms used in this letter which are not defined, have the meaning given to them in the Application.

This response may be included on the Australian Competition and Consumer Commission's (**ACCC**) public register, and the Applicants make no claims of confidentiality in respect of the following.

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1. Executive summary

1.1 The Applicants acknowledge the 15 submissions provided to the ACCC in response to the Application and welcome the opportunity to respond to the issues raised.

1.2 In summary, the Applicants' response is that:

- (a) the AAP is designed to provide significant public benefits for participating lenders which will outweigh any potential disadvantage created by the equal cost model, which the Applicants note is the simplest and most appropriate cost model for a number of reasons referred to below;
- (b) it is contemplated that participating aggregators will be consulted in the process of developing the scope and "baseline objectives" which are to be covered by AAP Assurance Reviews, and that aggregators will, at no cost to them, receive the benefit of independent compliance reviews;
- (c) at all times, participation in the AAP will remain voluntary for aggregators, brokerages and lenders;
- (d) lenders have their own policies and the Applicants do not intend to, and indeed, cannot vary pre-existing bilateral agreements between lenders and aggregators. The AAP does not preclude lenders from engaging in reviews in addition to the scope of an AAP review. The Applicants submit that it would be unlikely that participating lenders in the AAP will seek additional reviews of aggregators which are duplicative or unnecessary;
- (e) on managing conflicts in reviews, the Applicants will require the Assurance Service Provider (**ASP**) to implement strict and appropriate control mechanisms to prevent perceived or actual conflicts from arising;
- (f) the Applicants' intention is that participating aggregators will have the opportunity to mutually agree the timing for a review with the ASP and the relevant lenders;
- (g) the AAP has been designed as a cost sharing mechanism adopting the 'user pays' principle, and there is no expectation that the Applicants or the AAP will deliver a profit; the Applicants have incurred the set-up costs for the AAP at their own expense;
- (h) the AAP will promote competition in the market for assurance service providers by delivering an opportunity for these providers to compete by tender for the right of appointment under the AAP; and
- (i) the Applicants will include appropriate information sharing controls as part of the development of the Master Services Agreement (**MSA**) between the unincorporated Joint Venture entity and the ASP.

2. Proposed equal cost model

2.1 *In relation to the proposed equal cost model, some submissions to the ACCC outlined concerns that participating in the AAP as proposed may be unfair or cost prohibitive for "smaller" lenders.*

2.2 The Applicants have proposed the AAP as a voluntary scheme for lenders to share in the cost of assurance reviews of particular aggregators' compliance environments, where doing so will likely bring efficiencies and costs savings to the relevant lender and aggregators, compared to the current approach.

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- 2.3 The Applicants envisage that, under the AAP, an ASP will be appointed by a competitive Request for Proposal (**RFP**) process to offer to provide assurance reviews on a cost effective and value for money approach.
- 2.4 Before any lender considers whether to share the costs of an Assurance Review, the ASP will provide a fee estimate to that lender in respect of the review of a particular aggregator, which will subsequently be divided between the number of lenders who express interest in sharing the costs of a review of that aggregator. A lender may at that stage elect not to join that review, if it considers the estimated review cost is not reflective of the value of the services to be provided. Subject to the terms of existing bilateral contractual arrangements between a particular lender and a particular aggregator, the Applicants anticipate that a lender may, in these circumstances, choose to conduct their own review of the aggregator as an alternative to joining the Assurance Review under the Program.
- 2.5 In this way the AAP is intended to provide an optional mechanism which is designed to achieve efficiencies and to provide full transparency of the proposed costing to lenders before they commit to join any Assurance Review and to share the cost for that Assurance Review.
- 2.6 The Applicants expect these costs will, once shared between participating lenders, be significantly less than the costs which would be incurred by each lender arranging for its own review to be conducted by an assurance service provider. A participating lender is free to 'opt in' to a particular review, every 6 months, and is not obliged to participate in any particular Assurance Review.¹
- 2.7 The Applicants consider it is preferable that the chosen cost structure is operationally simple to manage. The Applicants have considered various cost structures for the AAP and submit that equal sharing of the review costs between lenders is the preferred model, regardless of their size or the depth of their relationship with a particular aggregator.
- 2.8 Applying a tiered cost structure based on factors such as lender size or market share or value of business with an aggregator generates a range of complexities. It could lead to the possibility of inappropriate information disclosure between lenders as to their relevant size of loan book or as to their relationship with an aggregator, or subjectivity in the interpretation or application of the tiered structure, leading to prolonged and costly disputes. For example, issues might arise such as, who would determine the tiering structure? Or what would happen if lenders moved between tiers?
- 2.9 To manage a tiered cost structure would likely involve significant additional expense as the Applicants may be required to engage a third-party consultant to oversee and manage the fees payable under a tiered structure to avoid the sharing of commercially sensitive and confidential information between lenders. It is possible that disputes could arise as to the application of the criteria. This additional expenditure may outweigh the cost benefits which the Program is designed to achieve and defeat the key objectives of the Program.
- 2.10 The Applicants also submit that the Program seeks to identify distribution risks associated with the mortgage broking industry that are the same for all lenders, irrespective of their size.
- 2.11 The AAP is designed to enable the provision of higher quality reviews with greater consistency and comfort in the reporting, governance and oversight of aggregators.
- 2.12 Currently, for a lender to independently procure high quality in-depth assurance reviews from a professional services firm may be costly. The Applicants submit that the AAP will be most successful if it has good levels of lender participation which will drive greater efficiencies and lower the cost to each participating lender. As such the Applicants are motivated to encourage

¹ AAP Lender Deed, clause 1.5(a).

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use of the AAP by all lenders, as that will bring greater benefits to all lenders joining the Program.

- 2.13 The AAP will afford a range of lenders the opportunity to maintain the same level of oversight over aggregators, with some level of saving anticipated compared to the cost of procuring these reviews independently. If the AAP does not proceed, one of two outcomes may eventuate:
- (a) lenders' costs may be higher if they choose to conduct reviews independently; or
 - (b) lenders may not receive the benefit of conducting reviews at the same standard or frequency.
- 2.14 However, nothing in the Application will compel any lender to join the Program and if lenders believe the costs are unattractive by comparison, they will be free to continue to obtain reviews independently under the status quo.
- 2.15 Finally, from a cost sharing perspective, the Applicants note that they have borne significant costs in the process of establishing the AAP, preparing the proposed structure, engaging with stakeholders and lodging the Application with the ACCC. The Applicants will likely be required to invest further costs in establishing and implementing the AAP.² The Applicants have no intention that this significant expenditure will be recovered or reimbursed by the lenders who will participate in and benefit from the AAP.
3. **Aggregator participation in the AAP**
- 3.1 *Some market participants submitted to the ACCC that aggregators should be thoroughly involved with the implementation of the AAP to ensure that the scope and content of Assurance Reviews is appropriate.*
- 3.2 The Applicants recognise that, for the AAP to be successful, it is critical that industry aggregators are convinced of the merits of participation. The Applicants have already consulted widely and intend to continue to consult widely with the aggregator industry in relation to the workings of the AAP and the proposed scope of Assurance Reviews.
- 3.3 The Applicants note that, for each aggregator, the decision whether to submit to a review under the Program will be voluntary and a matter for its assessment as to the benefits and scope of the review. Aggregators who agree to participate in the AAP, will not incur any additional charges in doing so.
- 3.4 At this stage, the Applicants are still in the process of developing and designing the scope of the reviews to be completed through the AAP with a view to finding an agreed scope that will be sufficient for lenders and reasonable for aggregators (**Review Scope**). Prior to finalising the Review Scope, the Applicants intend to share a draft copy of the Review Scope with relevant aggregator and broker industry associations. The Applicants will consider in detail any feedback submitted throughout the consultation process and will consider implementing amendments (where appropriate) to the Review Scope in a way that will help to make the Program successful for all participants.
- 3.5 The Applicants recognise that different lenders require varying levels of assurance depending on a number of factors including but not limited to lenders' risk appetites and policy requirements.

² This was acknowledged in the [submission](#) of the Customer Owned Banking Association, at page 2.

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3.6 Notwithstanding these differences, and as outlined in paragraph 8.1(b) of the Application, the Applicants seek to introduce a program that will provide a "baseline level of oversight" over aggregators' operational controls and compliance environment.

3.7 Accordingly, the AAP will not seek to cover all lenders' assurance requirements, rather the focus will be on introducing baseline review objectives and procedures that are reasonable, proportionate (e.g., scalable sample sizes) and appropriate.

3.8 The costs of the AAP are to be borne by lenders rather than aggregators, and the AAP will ultimately benefit aggregators through a lack of duplication and efficiency savings. Further, aggregators will benefit from the AAP as they will receive an independent review of their risk and compliance environment, at no cost to them.

4. **Lender and aggregator participation in the AAP is voluntary**

4.1 *One submission to the ACCC highlighted a concern that the AAP may become mandatory for lenders, brokerages and aggregators as the costs of non-participation may become unsustainable.*

4.2 The AAP has been designed as a voluntary scheme for both lenders and aggregators to opt in to as they consider appropriate.

4.3 Nothing in the AAP requires any party to participate. Mandating the AAP is outside the scope of the conduct sought to be authorised by the Application and is not contemplated by any of the Applicants.

4.4 If a lender chooses not to participate in the AAP, they can continue to obtain their own assurance reviews independently of the AAP, as is the case today.

4.5 Similarly, if an aggregator chooses not to participate in the AAP, then lenders will continue to obtain reviews of those aggregators independently of the AAP, as is the case today.

4.6 This was recognised in the submission of ING Bank Australia Limited:

*"...we see no public detriment that would result due to a lender choosing not to participate in the program as it would **always have the option of continuing to perform its own reviews of aggregator and broker groups**" (emphasis added).³*

4.7 The Applicants maintain that participation by lenders in requesting Assurance Reviews under the AAP and participation by aggregators in the AAP will always be voluntary.

4.8 Further, as a matter of principle, the Applicants will not in future require any aggregator to participate in the AAP as a condition of dealing with that aggregator.

5. **Separate lender reviews**

5.1 *One submission outlined the concern that in addition to the Assurance Reviews conducted through the AAP, participating lenders may also request additional reviews of an aggregator, independently of the AAP, thereby defeating the efficiency created by the Program.*

5.2 The Applicants do not expect that where a lender participates in an Assurance Review under the AAP and also seeks to conduct its own independent review of an aggregator, that this will duplicate work already addressed in substance by the AAP Assurance Review, and therefore create any duplication of work or inefficiencies for aggregators. Addressing issues already covered thoroughly by AAP Assurance Reviews again through independent reviews is not in

³ ING Bank (Australia) [Submission](#) dated 23 May 2023, at page 1.

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the financial interests of the Applicants or any other participating lenders, as it would result in a duplication of cost and work for no additional return.

- 5.3 However, the design of the Program does not have the capacity to affect bilateral agreements between lenders and aggregators, which will continue to apply. If an aggregator has granted a lender the right to unlimited auditing of that aggregator, the Applicants cannot vary those agreements.
- 5.4 As such, an aggregator's participation in an AAP Assurance Review cannot and does not preclude any lender from performing additional, more targeted reviews.
- 5.5 Once a report is issued after an Assurance Review, each lender will manage their own subsequent actions in order to address their own risk appetite, contractual agreements and unique circumstances.
- 5.6 However, even if the testing conducted by an additional review were to overlap with the testing performed under the AAP, or if the nature of the matter being investigated overlaps with a particular review item under the AAP review, lenders should not be precluded from being able to conduct these reviews where they deem it necessary.

The obligation of aggregators to respond to the ASP

- 5.7 The Applicants also note the related suggestion that aggregators should only be required to provide one initial response to the ASP conducting the review.
- 5.8 The Applicants do not propose to introduce a limitation of this nature. While the need for efficiencies is recognised and supported, a strict limitation of this kind may remove the ability for aggregators to provide clarifications if the original outcomes of an Assurance Review are unclear or require explanation, which will lead to a lack of certainty and Assurance Review reports which are of little utility.
- 5.9 It is desirable that the AAP allows for flexibility so that a lender or an aggregator may engage in post Assurance Review communications with the ASP if they have concerns with the outcome of an Assurance Review, or as required. If a specific finding in an Assurance Review warrants further review by a particular lender, then each lender reserves the right to perform any additional reviews, regardless of whether the issue was within the scope of the original review.

6. Conflicts for the Assurance Service Provider

- 6.1 *One submission outlined a concern that the Assurance Reviews conducted through the AAP may give rise to potential conflicts between aggregators and the ASP and that separation may be required between the Assurance Review team and other personnel within the ASP if perceived or actual conflicts may arise.*
- 6.2 The Applicants acknowledge this concern and will address the management of conflicts with the ASP in the Master Services Agreement between aggregators and the ASP (**MSA**), which will be signed prior to the completion of any Assurance Review under the AAP.
- 6.3 The Applicants intend to impose strict conflict requirements on the ASP to protect the participants' interests. Again, this is seen to be necessary in order to ensure that aggregators are supportive of the AAP. For example, the Applicants' current intention in relation to conflicts within the ASP is to require providers who bid on the ASP role to implement adequate arrangements in place 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.

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6.4 It is proposed that the ASP 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 AAP personnel are not involved in other client work for lenders or aggregators, personal signed confidentiality undertakings, and audit rights as are appropriate.

7. **Timing of Assurance Reviews**

7.1 *One submission outlined a concern that the Assurance Reviews conducted through the AAP may give rise to unworkable review timeframes for aggregators.*

7.2 The Applicants consider that it is reasonable that the timing for the review of an aggregator by an ASP should be mutually agreed between the relevant lenders and the relevant aggregator.

7.3 The Applicants reiterate that there will be adequate communication and lead time provided to all participating lenders and aggregators, in advance of the commencement of any Assurance Review.

8. **Cost savings and the AAP not being conducted for profit**

8.1 *In relation to the benefits of the proposal, one submission questioned whether any profit gained through the operation of the AAP may ultimately be retained by the lender participants, with the benefits of the AAP not being passed through to consumers.*

8.2 The Applicants have always envisaged the AAP as providing a means of sharing costs to support all participating lenders to obtain reviews in an efficient manner for the benefit of those lenders and aggregators. There is no intention for the AAP to generate a profit. The Applicants will establish an operating committee to oversee the Program but no costs will be charged to participants in relation to the management of the AAP by that committee.

8.3 The AAP has been designed so that the costs of participation only relate to sharing the fees charged by the ASP and those fees are calculated and invoiced by, and payable to the ASP not to the Applicants. No fees are charged by the Applicants to join the Program.

8.4 The Applicants have developed the Program at their own cost and are not seeking to recover the establishment cost or their ongoing monitoring costs from other lenders. It is not envisaged that the AAP will generate profits, nor is it the intention of the AAP to generate profits for participants.

8.5 The Applicants note this intention in the UJV Deed at clause 3.1(f). Some parties have noted that clause 3.2(a)(ii) of the Deed, which was intended to define the rights of the Applicants in the AAP Joint Venture, referred to a residual right to share in 'any net profit...if any'. That provision was included as a residual acknowledgement only and was not intended to signal that any profits were in fact intended to be generated from the operation of the Program.

8.6 The Applicants will further consider the utility of clause 3.2(a)(ii). The inclusion of this clause does not change the Applicants' intention that the purpose of the AAP is not to generate any profit for any of the Applicants.

8.7 The Applicants submit that the AAP will deliver considerable benefits for both participating lenders and aggregators:

- (a) Participating lenders are likely to receive the benefit of reduced costs of assurance reviews, compared to their current costs of engaging an assurance service provider, with the cost being reduced further as more lenders opt to participate; and
- (b) Participating aggregators will benefit from the greater availability of time and resources to reallocate to other initiatives. The Applicants note that from July 2021

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to March 2022, it has been estimated that an assurance review required between 5 and 200 hours (with an average of 42 hours) of work for an aggregator.⁴ An anticipated benefit of the Program for aggregators is that the more lenders that opt-in, the less review requests the aggregator is anticipated to receive in a given period.

8.8 There are a number of examples of initiatives which aggregators have suggested they may be able to reallocate their time and resources to, which will result in better consumer outcomes, including:

- (i) providing further training and oversight;⁵
- (ii) spending additional time auditing their own brokers;⁶ and
- (iii) working on controls to supervise and monitor their mortgage brokers.⁷

9. Impact on the assurance service provider market

9.1 *One market participant submitted to the ACCC that the AAP may limit competition among assurance service providers.*

9.2 Firstly, the Applicants note 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.

9.3 The Applicants submit that the AAP will deliver an opportunity for assurance service providers to compete by tender for the right of appointment. Competition of this nature is well recognised and will drive greater efficiencies as participating AAP lenders can use their joint purchasing power to secure the best available services at a reasonable cost. This will be a direct result of the efficiency gain, costs savings and public benefits created by the Program.

9.4 The Applicants maintain that the AAP will increase competition in the market for assurance service providers, as the AAP will facilitate a competitive tender process to select the ASP.

9.5 That the AAP will increase competition is acknowledged by a number of assurance service providers who made submissions to the ACCC, see for example:

- (a) *“...we believe the application of a consistent assessment methodology across all aggregators, and the reduction of the burden presented by multiple reviews being performed, should promote better competition amongst aggregators through the industry-wide focus on strengthening compliance and efficiency in operations, which in turn promotes better consumer outcomes as a result”⁸ and*
- (b) *“The competitive opportunity for the supply of the assurance services by firms competing in the tender process, and with the appointment of a single ASP, clear cost savings and efficiencies and audit quality will result...superior outcomes...will be achieved if the competitive tender process includes a greater number of ASPs beyond those noted as ASP interested parties in the application for the Aggregator*

⁴ REA Group Ltd [Submission](#) dated 22 May 2023, at page 2.

⁵ REA Group Ltd [Submission](#) dated 22 May 2023, at page 2.

⁶ Australian Finance Group Ltd [Submission](#) dated 22 May 2023, at page 1.

⁷ Connective Credit Services Pty Ltd [Submission](#) dated 22 May 2023, at page 3.

⁸ Deloitte Touche Tohmatsu [Submission](#) dated 22 May 2023, at page 3.

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Assurance Program (i.e. PwC, EY, KPMG, Deloitte). This will in turn give the Applicants access to other potential ASPs for consideration, which may also offer more competitive pricing.”⁹

9.6 Currently it is proposed that the performance of the ASP will be reviewed every 12 months, however the current design of the AAP does not include a requirement to re-tender for the ASP position at specific intervals.

9.7 The Applicants are considering whether introducing a requirement to regularly review the ASP position and offer periodic re-tenders may be beneficial. The Applicants appreciate this may further enhance the competition to be created by the AAP, however, the Applicants also wish to balance this consideration with the value that aggregators ascribe to consistency and note that regularly changing the ASP may bring inefficiency to the Assurance Review process.¹⁰

10. Information sharing

10.1 *One submission to the ACCC raised concerns about confidentiality and queried whether there may be inadequate mechanisms in place for the policing of any improper information sharing among AAP participants.*

10.2 The Applicants acknowledge that this is important and note that they will include appropriate information sharing controls as part of the development of the MSA between the unincorporated Joint Venture entity and the prospective ASP.

⁹ BDO Audit Pty Ltd [Submission](#) dated 22 May 2023, at page 2.

¹⁰ Loan Market Group Pty Ltd [Submission](#) dated 22 May 2023, at page 3.