

29 September 2016



Mr Darrell Channing
Director
Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 2601

By email to: adjudication@acc.gov.au

Dear Mr Channing

The Mortgage and Finance Association of Australia (MFAA) thanks you and the Australian Competition & Consumer Commission (ACCC) for the opportunity to make a submission on the **Finance Brokers Association of Australia (FBAA) application for authorisation A91554 and A91555**

MFAA Comment on the FBAA Submission

The MFAA has no objection to the authorisation of the application but requests that the ACCC assess the rigor of the FBAA application on the points raised below:

1. The FBAA's disciplinary regime is undertaken in such a way as to eliminate, or at least minimise, the likelihood of bias or conflict of interest by those participating in the investigation, review and decision process.
2. The MFAA has some concerns about the way investigations may be conducted under the FBAA's proposed regime. The FBAA Disciplinary Rules and supporting submission indicate that the Board will conduct investigations and may delegate that responsibility to a third party, such as a legal adviser. As stated above, our concerns centre on the likelihood of bias or conflict of interest by those participating in the investigation, review and decision process.

Further comments

The MFAA's disciplinary regime was established before the passing and implementation of the National Consumer Credit Protection Act and Regulations. Unfortunately, there are those in the market who act unethically or unprofessionally and these types of activities are not generally regulated under the Act or other regulatory obligations and therefore often escape regulatory scrutiny. The MFAA's Rules were designed to also capture these behaviours.

The MFAA's primary objectives relate to recognition of members as trusted professionals and effective representation and advocacy for them. It has always held strong concerns about community protection. This has been very clearly exemplified in the establishment of its Rules. We believe however, that the impact on competition in the market from its disciplinary regime is, and has always been, minimal.

For the benefit of the adjudicator, we attach background information on the MFAA and its disciplinary regime at Annexure 1.

The MFAA would appreciate receiving continuing information on the progress of this application. This should be forwarded to the MFAA's Head of Legal & Compliance, Peter Kennedy, at: peter@mfaa.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris McRostie', with a small dot at the end of the signature.

Chris McRostie
Interim Chief Executive Officer
Mortgage and Finance Association of Australia

Annexure 1

Background - MFAA

Established in 1982, the MFAA is focused on the representation and maintenance of high professional standards for mortgage and finance brokers and other intermediaries, including mortgage management businesses and non-bank lenders.

Its membership profile also includes ADI lending institutions that distribute their products via intermediaries and businesses that provide support services to the mortgage and finance sector. The MFAA's current membership is in excess of 12,800 individual and business members.

The MFAA has been consistent throughout its more than 35 year history in that it has always sought enhanced standards of education and professionalism by mortgage and finance brokers across Australia. Its record supporting these objectives has been publicly exemplified in numerous reports and submissions to government and to regulators over many years.

Background - MFAA disciplinary regime

In its pursuit of enhanced professional standards for the broking sector, the MFAA established a disciplinary regime in 2003. Its existence was publicised in that year and allegations of misconduct by members were from then dealt with by an independent Tribunal following investigation by an external, appointed and appropriately qualified investigator. Neither the Association's Board nor staff take part in investigations nor in Tribunal consideration nor its decisions. This is designed to remove, or at least minimise, any perception of, or actual, bias or conflict of interest.

In the same year, the MFAA established the then, Mortgage Industry Ombudsman Scheme (MIOS), the precursor to the current Credit & Investments Ombudsman, an independent body established to review complaints by the public which included a compensatory mechanism as and where the ombudsman thought appropriate. The MIOS regime and MFAA disciplinary process operated effectively and independently from each other.

The MFAA's disciplinary regime has been a cornerstone of the MFAA's continuing endeavour towards high professional standards to ensure that the community is not disadvantaged by activities of any of its members and where an allegation of 'misconduct' is made against a member, that this is dealt with expeditiously and fairly. MFAA members have strongly supported the establishment and continuation of the Disciplinary Rules (Rules) and the disciplinary process to deal with such matters in order to demonstrate member commitment to enhanced standards and to publicly show its commitment to consumer protection.

Further to the establishment of the Rules, the MFAA's Board decided in 2007 to publicly name any member who had been judged to have engaged in what the Tribunal believed was serious misconduct. Such matters have resulted in either expulsion from the Association or suspension or cancellation of membership. This information is available on the MFAA's website at www.mfaa.com.au.

While some sectors of the industry opposed establishment and authorisation of the MFAA's Disciplinary Rules, the Rules were authorised and have since been reauthorised by the ACCC. The ACCC determined that public benefit far outweighed any public detriment and any effect on competition remained minimal in its decision to authorise the MFAA's Disciplinary Rules.