

# CODE OF PRACTICE

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11 November 2023



## Key initiatives of this Code

Members involved in Credit activities must:

- be a Fit and Proper person;
- comply with all relevant laws;
- not engage in Misconduct;
- maintain appropriate education and training standards;
- be covered by adequate professional indemnity insurance;
- arrange appropriate finance for Customers;
- act promptly and properly in relation to the management of finance applications;
- disclose commissions and other benefits received (Brokers only);
- maintain Internal Dispute Resolution (IDR) processes and be covered by AFCA membership; and
- consider hardship applications submitted by Customers in a timely and appropriately detailed manner.

## **SECTION 1. NAME OF CODE**

- 1.1. This Code is the Mortgage & Finance Association of Australia (**MFAA**) Code of Practice. Capitalised words are defined at the end of this document.

## **SECTION 2. OBJECTIVES OF THE CODE**

- 2.1 The objectives of this Code are to:
- (a) promote and establish professional standards between Customers and Members and between Members in the mortgage and finance industry;
  - (b) promote commitment by Members to compliance with laws and regulations and the spirit of those laws and regulations;
  - (c) promote the maintenance of the high public standing of MFAA membership; and
  - (d) promote ethical and fair business practices.

## **SECTION 3. APPLICATION OF THE CODE**

- 3.1 Unless otherwise specified in this Code, this Code applies to, and is binding on, all Members.
- 3.2 The Board may from time to time:
- (a) amend this Code;
  - (b) prescribe that part or all of this Code applies to one or more classes of Members.

## **SECTION 4. GENERAL STANDARDS**

- 4.1 Members must be aware of this Code.
- 4.2 Members must always comply with this Code.
- 4.3 Members must not engage in Misconduct.
- 4.4 Members must be, and continue to be, of good character and repute and a Fit and Proper person.
- 4.5 Members must keep up to date with, and comply with, all relevant laws, regulations and practices relevant to the conduct of their business.
- 4.6 If the requirements of any law or regulation impose a higher standard than specified in this Code, then the higher standard will apply.
- 4.7 If any provision of this Code conflicts with any law or regulation, that provision will not operate, however the balance of the Code will apply.
- 4.8 Members must satisfactorily complete education standards as determined by the

Board from time to time.

- 4.9 At all times, Members must ensure that they only employ or otherwise engage with Brokers who:
- (a) hold any relevant or required licence or authorisation; and
  - (b) who have the qualifications and experience necessary to deal competently and professionally with Customers.
- 4.10 Members must always conduct their business in a way which does not contravene this Code and complies with the MFAA Constitution, the MFAA Disciplinary Rules and all relevant laws.
- 4.11 Members are liable for the conduct of any employee or representative in connection with Credit activities irrespective of whether that conduct is within the scope of the employee's or representative's authority.
- 4.12 Members must:
- (a) act with appropriate skill, care and diligence and do all things necessary to ensure that their business is conducted efficiently, honestly, and fairly;
  - (b) deal with all persons with whom they may come into contact in the course of their business activities in good faith;
  - (c) create and maintain appropriate records;
  - (d) not engage in any acts or omissions likely to be of a misleading or deceptive nature;
  - (e) not engage in any acts or omissions of a dishonest or fraudulent nature;
  - (f) ensure that their advertising is not false, misleading, deceptive, dishonest or likely to mislead or deceive;
  - (g) not engage in unconscionable conduct;
  - (h) fully disclose to any Customer or potential Customer any actual, apparent or potential conflict of interest of which a Member is or ought to be aware to the extent that such a conflict of interest may reasonably concern a Customer;
  - (i) refrain from any conduct which may embarrass, impugn, or discredit the MFAA or bring the MFAA into disrepute; and
  - (j) adhere to the reasonable instructions of Customers.

## **SECTION 5. PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 Full Members must maintain professional indemnity insurance as required by the MFAA Constitution and approved by the Board from time to time.

## **SECTION 6. BROKERS OBLIGATIONS**

- 6.1 Brokers are required to record the essential terms of an agreement to provide

services to a Customer. It is best practice to have the agreement signed by the Customer and the Broker. If an agreement is entered into, the Broker must retain a copy of the document for at least seven years after it is made. The Broker must provide the Customer with a copy of the document upon request from the Customer.

- 6.2 Further to any disclosures required by law, Brokers who charge a fee for the provision of Credit assistance to a Customer must clearly, and in writing:
- (a) describe the nature of Credit assistance to be provided for which the fee will be charged;
  - (b) state the amount of the fee to be charged; and
  - (c) specify when the fee is payable.
- 6.3 Brokers must never charge a Customer a non-refundable fee for preparation and submission of a Credit application:
- (a) if the Broker knows or suspects that there is little, or no chance, of the application being approved; or
  - (b) unless the Customer agrees to such a fee in writing before a preliminary assessment is completed.
- 6.4 Brokers must express written terms and conditions of their services in plain language in English. This provision does not preclude a Broker from also providing such written terms and conditions in a language/s other than English.
- 6.5 Brokers must undertake continuing education programs recognised by the Board and complete a sufficient number of hours of Continuing Professional Development (CPD) to maintain membership as determined by the Board from time to time.
- 6.6 Brokers must suggest or recommend to Customers only Credit that Brokers reasonably believe is appropriate to the needs of that Customer, after undertaking an appropriate assessment of the Customer's capacity to service the proposed Credit.
- 6.7 Brokers must not receive a commission, payment, or other incentive for negotiating the refinancing of Credit for a Customer in circumstances where the Customer does not receive a beneficial result from the refinance, except where the Broker has acted under the specific instructions of the Customer, after appropriate advice has been given to the Customer by the Broker.
- 6.8 Brokers must always make such enquiries as are reasonable in all the circumstances to determine a Customer's capacity to service any proposed Credit.
- 6.9 Brokers dealing with Customers must always keep Customers informed of all relevant information known to them relating to a proposed or current Credit application.
- 6.10 If a Broker is lodging an application for Credit where the Broker or an immediate family member of the Broker will directly or indirectly receive some or all of that Credit (other than for payment of broking services), the Broker must inform the relevant lender and (if the Broker is a credit representative) the Broker's licensee of that fact in writing on or before the application for Credit is lodged. An immediate family member is a spouse, a de facto or life partner, child, or stepchild.

- 6.11 Brokers must appropriately verify the identity of Customers.
- 6.12 Brokers must advise Customers of the outcome of a submitted Credit application within two business days of the Broker being notified of the outcome.
- 6.13 If a commission or other benefit will or may be paid by or to a Broker for, or in connection with, provision of Credit to a Customer, the Broker must prior to the Customer proceeding with the transaction disclose to the Customer that fact (and in addition to other disclosures required by law), must also disclose:
  - (a) the name of the person by whom the commission or other benefit is payable;
  - (b) the name of the person to whom the commission or other benefit is payable;
  - (c) if ascertainable, the amount of the commission or other benefit; and
  - (d) if the exact amount of the commission or other benefit is not ascertainable, the basis of or formula for such commission or other benefit.

## **SECTION 7. DISPUTE RESOLUTION – IDR, EDR, AND THE MFAA TRIBUNAL**

- 7.1 Members must establish IDR procedures in accordance with guidelines issued from time to time by ASIC. Members must make information about their IDR scheme available to all Customers and prospective Customers.
- 7.2 Members must ensure that their complaints' contact person has the authority to determine and respond to any complaint made by a Customer.
- 7.3 Members must maintain a written IDR policy which is made available to any person on request and posted on the Member's website, if any.
- 7.4 Members must ensure that a complainant is treated courteously when making a complaint.
- 7.5 Members must not impose any fee in relation to a complaint on a Customer who makes a complaint.
- 7.6 Members must be a member of the EDR scheme AFCA. Members must make information about the EDR scheme available to all Customers and prospective Customers, and that information must be posted on the Member's website, if any.
- 7.7 Members must respond in writing to written requests from AFCA concerning a complaint promptly and in any event within the time designated by AFCA.

## **SECTION 8. MFAA DISCIPLINARY PROCEDURES**

- 8.1 Members must respond in writing to written requests from the MFAA Investigation Officer promptly and in any event within 10 business days.
- 8.2 Members must respond in writing to written requests from the MFAA Tribunal promptly and in any event within ten 10 business days.
- 8.3 Members must respond in writing to written requests from the MFAA Membership Secretary promptly and in any event within 10 business days.

- 8.4 Members must maintain a written record of complaints made against them and supply a copy to the MFAA Investigation Officer or MFAA Tribunal on request.

## **SECTION 9. MONEY HELD ON TRUST**

- 9.1 Members who receive trust money must deposit that money into a trust account maintained by the Member with an authorised deposit-taking institution within two business days.
- 9.2 Members must account for any money held in trust which has become payable to third parties within five business days.
- 9.3 Members who hold trust money must keep such books and records that correctly record and explain the transactions in the trust account and have the account audited by an independent external auditor at least annually.

## **SECTION 10. HARDSHIP APPLICATIONS**

- 10.1 In addition to any obligations at law, if a Member becomes aware, or is advised by a Customer, that the Customer is or may be in financial difficulties, the Member will consider in good faith whether it is reasonably appropriate to vary the payment terms of the credit facility and suggest that the Customer contact the Credit Provider and request the Credit Provider to vary the Customer's repayment terms.
- 10.2 Where appropriate, the Member must:
- (a) have regard to the Customer's financial circumstances and consider in good faith and within a reasonable time the Customer's request to vary the payment terms; and
  - (b) suspend any action to recover any payments due in relation to the Credit and, if it has not listed a default already, not list a credit default in respect of the Credit facility against the Customer until:
    - (i) the Member informs the Customer in writing whether or not it will vary the payment terms; and
    - (ii) if the Member and the Customer agree to vary the payment terms, the Customer fails to meet the varied payment terms; and
  - (c) encourage the Customer to make payments the Customer can afford, pending the Member informing the Customer of its decision; and
  - (d) have a documented policy and procedure in place for receiving and assessing requests to vary credit contracts upon hardship grounds and must provide information about that hardship policy to a Customer on request.
- 10.3 Members must act reasonably in assessing a Customer's request to vary payment terms. Amongst other things, Members must not require:
- (a) the Customer to apply for the early release of any part of the Customer's superannuation entitlements; or
  - (b) the Customer to obtain funds from family members, friends or other third



parties;

prior to the Member considering whether to, or agreeing to, vary the payment terms.

- 10.4 Members who decide to vary the payment terms must promptly and in any case within 21 calendar days give the Customer written notice setting out particulars of the varied payment terms.
- 10.5 Members who decide not to vary the payment terms must promptly and in any case within 21 calendar days give the Customer written notice of:
- (a) its decision and the reasons for its decision; and
  - (b) the Customer's right to make a complaint to the Member's IDR and EDR schemes (including providing contact details for those schemes) if the Credit falls within the jurisdiction of those schemes.

## **SECTION 11. DEFINITIONS AND INTERPRETATION**

### **11.1 Interpretation**

In this document, unless the context requires otherwise:

- (a) clause and sub-clause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to any agreement or document includes that agreement or document as amended at any time;
- (g) the use of the word *includes* or *including* is not to be taken as limiting the meaning of the words preceding it;
- (h) the expression *at any time* includes reference to past, present and future time and performing any action from time to time;
- (i) each obligation is a separate obligation and does not act to qualify any other obligation;
- (j) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force; and
- (k) if the law or regulations impose a higher standard of conduct than specified in this Code, the higher standard of conduct applies.



## 11.2 Definitions

In this Code, the following words and phrases have the meanings and references set out below:

<b>AFCA</b>	the Australian Financial Complaints Authority or successor body
<b>ASIC</b>	the Australian Securities and Investments Commission
<b>Board</b>	the Board of the MFAA as defined in the MFAA Constitution
<b>Broker</b>	a Member when advising on or arranging Credit for Customers commonly called a finance broker or mortgage broker excluding Members when acting as Mortgage Managers, Credit Providers, Servicers, or Introducers
<b>Code</b>	this MFAA Code of Practice as adopted by the MFAA from time to time
<b>Customer</b>	a natural person (i.e. an individual) or a small business (that is, a business that employs fewer than 100 people) who engages a Member to provide services relating to the provision of Credit
<b>Credit</b>	financial accommodation provided to Customers, including lease finance, hire purchase, mortgage loans and personal loans irrespective of whether that credit is regulated by the National Credit Code
<b>Credit Provider</b>	a person that provides Credit to Customers, and where the context admits, includes Servicers and Mortgage Managers acting for credit providers
<b>EDR</b>	AFCA and any other external dispute resolution scheme approved by ASIC for the purposes of the <i>National Consumer Credit Protection Act 2009</i> (Cth)
<b>Fit and Proper</b>	a person determined by the Board, the MFAA Tribunal, or the MFAA to be fit and proper having regard to the criteria specified below and any relevant law or ASIC guidance and taking into account the activities the person has undertaken, or proposes to undertake. The determination may consider all relevant information including whether a person has:

- (a) appropriate knowledge, skills, experience, competence, judgment, character, honesty and integrity;
- (b) been subject to criticism, discipline, sanction, disqualification or removal by a professional or regulatory body, court or tribunal;
- (c) been banned or had a licence or authorisation revoked by a regulatory body in a related sphere, including in financial services;
- (d) been subject to adverse findings in criminal or civil proceedings;
- (e) been refused a licence or registration for a commercial or professional activity;
- (f) failed to manage personal debts satisfactorily;
- (g) been a responsible officer in an entity at a time the entity failed;
- (h) been inappropriately critical of a relevant self-regulatory body;
- (i) demonstrated a lack of willingness to comply with regulatory or professional requirements;
- (j) been involved in business activities that are considered negligent, deceitful or otherwise improper;
- (k) been or is considered of bad repute; or
- (l) surrendered, lost, or failed to maintain an essential qualification, authorisation to act, requirement to be admitted to membership or to remain a Member of the MFAA, or such qualification or authorisation or requirement has been terminated, suspended or cancelled, whether this qualification, authorisation, or requirement arises under the MFAA Constitution, the MFAA Disciplinary Rules or another requirement of the MFAA, or under law.

## **IDR**

## **Internal Dispute Resolution**

<b>Introducer</b>	a person who acts as a mere referrer in relation to Credit when undertaking that activity
<b>Member</b>	a person that is a Member of the MFAA as defined in the MFAA Constitution
<b>MFAA Membership Secretary</b>	the person appointed to that position by the MFAA from time to time
<b>MFAA</b>	Mortgage & Finance Association of Australia ACN 006 085 552
<b>MFAA Constitution</b>	The constitution of the MFAA, as amended from time to time
<b>MFAA Disciplinary Rules</b>	the MFAA Disciplinary Rules adopted by the MFAA from time to time
<b>MFAA Investigation Officer</b>	an Investigation Officer of the MFAA as defined in the MFAA Disciplinary Rules
<b>MFAA Tribunal</b>	the Tribunal as defined in the MFAA Constitution
<b>Misconduct</b>	<p>a breach of or failure to comply with any provision of this Code or conduct involving any one or more of:</p> <ul style="list-style-type: none"> <li>(a) a breach of any relevant legislation or regulation;</li> <li>(b) an act of fraud or dishonesty;</li> <li>(c) activities that are likely to be misleading or deceptive;</li> <li>(d) knowingly making a false statement;</li> <li>(e) gross negligence;</li> <li>(f) a failure of appropriate skill, care and diligence;</li> <li>(g) refusal, neglect, or failure to comply with a provision of the MFAA Constitution the MFAA Disciplinary Rules, or a determination by AFCA;</li> <li>(h) refusal, neglect, or failure to comply with a direction or order given to a Member under the MFAA Disciplinary Rules;</li> <li>(i) refusal, neglect, or failure to comply with an obligation placed on Members by the Board;</li> </ul>

- (j) failing or refusing to provide information or refusing to co-operate with the MFAA Investigation Officer or the MFAA Tribunal;
- (k) misrepresentation or omission of material facts in relation to an application to become a Member of the MFAA;
- (l) misrepresentation or omission of material facts in relation to mentoring of a Member;
- (m) misrepresentation or omission of material facts, making a false statement or being grossly negligent concerning continuing professional development hours earned or to be earned as a Member;
- (n) misrepresentation or omission of material facts, making a false statement or gross negligence in relation to any borrower, guarantor, proposed borrower or proposed guarantor, Credit application or Credit variation application;
- (o) activity that involves serious criminal or serious civil misconduct; or
- (p) a breach of any legislation, regulation or other legal requirement relating to the Member's business activities including without limitation conduct which may, in the Board's view, bring the MFAA or the industry into disrepute;

but only if the conduct:

- (q) indicates a failure to understand or practice the principles of honesty and fair dealing in relation to other participants in the mortgage and finance industry;
- (r) indicates a substantial or systemic failure to maintain reasonable standards of efficiency and competence in the conduct of business in the mortgage and finance industry;
- (s) is prejudicial to the reputation or interests of the MFAA;
- (t) is a failure to comply with any direction, determination, decision, sanction, or order of the Tribunal imposed on the Member; or

- (u) is unethical conduct or conduct unbecoming of a Member.

**Mortgage Manager**

a Member who manages Credit on behalf of a Credit Provider when conducting that activity.

Note: A Member may be both a Mortgage Manager and a Broker (subject to complying with all laws and regulations and must comply with the provisions of this Code applicable to Brokers when acting as a Broker.

**Servicer**

a Member who provides services for a Credit Provider when conducting that activity.

Note: A Member may be both a Servicer and a Broker (subject to complying with all laws and regulations) and must comply with the provisions of this Code applicable to Brokers when acting as a Broker.



**MFAA**

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