MORTGAGE AND FINANCE ASSOCIATION OF AUSTRALIA

mfaa.com.au
info@mfaa.com.au
1300 554 817
Suite 18.02, Level 18, 477 Pitt St, Sydney NSW 2000

Reducing barriers to business dynamism inquiry
Productivity Commission
LB2 Collins Street East
Melbourne VIC 8003

3 July 2026

By electronic lodgement

REDUCING BARRIERS TO BUSINESS DYNAMISM IN AUSTRALIA

Dear Business dynamism inquiry team,

The Mortgage & Finance Association of Australia (**MFAA**) appreciates the opportunity to respond to the call for submissions in relation to the Productivity Commission's inquiry into reducing barriers to business dynamism (**inquiry**). More information about the MFAA can be found at Attachment A.

Mortgage and finance brokers improve competition within Australia's financial system by connecting consumers and small businesses with a broad range of lenders. As more than 80 per cent of residential lending now occurs through brokers, the productivity of broker businesses has direct implications for competition, access to credit and economic growth.[1]

As small businesses themselves, broker businesses face the same challenges as other small businesses including managing cash flow, attracting and retaining talent, growing sustainably and building a business that can ultimately be sold or transferred.

The MFAA has consistently advocated for proportionate and coordinated regulation, reduced friction in business and lending processes, and greater use of digital technology and data sharing to improve productivity and consumer outcomes, including through our submissions to the Productivity Commission's *Five Pillars of Productivity* inquiry and Treasury's 2026-27 Pre-Budget process.[2]

This submission builds on those earlier recommendations. We provide a background to what is required to establish a mortgage and finance broking business and the practical challenges those business owners face in starting, growing and selling a broking business. In this context, the recommendations that follow aim to reduce unnecessary barriers to business dynamism, strengthen the sustainability of broker businesses and support a more productive and competitive lending market for Australian consumers and small businesses.

[1] MFAA News, 10 June 2026, *Mortgage brokers reach record 81% market share in Australian home lending*, https://www.mfaa.com.au/news/mortgage-brokers-reach-record-81-market-share-in-australian-home-lending.
[2] MFAA submissions, 17 September 2025 and 30 January 2026, https://www.mfaa.com.au/policy-and-advocacy/submissions.

OUR SUBMISSION

For broker businesses, barriers to dynamism are not limited to regulation itself, but also how it is experienced in practice. Rising costs, compliance complexity, capability gaps and operational friction can make it difficult to start, grow and successfully transition a business.

Background

Starting a mortgage and finance broking business requires significantly more than obtaining a qualification and opening a business. New entrants must complete education requirements, join an aggregation group, obtain lender accreditations, establish licensing arrangements, implement compliance systems and, for many, complete a two-year mentoring program before they can build a sustainable business. The MFAA's *Pathway to Broking* outlines the substantial planning, financial commitment and professional development required to successfully establish a broker business.[3]

New brokers must also navigate a highly regulated operating environment from day one. There are approximately 55 separate regulatory and compliance obligations that may apply to a mortgage and finance broking business, spanning licensing, disclosure, professional standards, privacy, dispute resolution, record keeping, risk management and ongoing monitoring requirements.[4] Many of these obligations are necessary and support consumer protection. However, the cumulative effect can create a significant administrative burden, particularly for sole operators and small businesses with limited resources.

Starting a broking business also requires significant upfront investment and financial resilience. New brokers often experience a period of low or no income while establishing their business, with a sustainable revenue stream often taking six to twelve months to achieve. Supporting successful business formation in mortgage broking therefore requires not only appropriate professional standards and consumer protections, but also regulatory settings that are proportionate, coordinated and practical for small businesses to navigate.

RECOMMENDATION 1: STRENGTHEN ENTRY PATHWAYS INTO MORTGAGE BROKING

The practical challenge

The role and reach of a mortgage and finance broker has evolved significantly over time, and most significantly after the introduction of the Best Interests Duty in 2021. Mortgage brokers now facilitate over eighty percent of all new residential home loans and increasingly assist consumers with complex financial circumstances, including self-employed borrowers, company and trust structures, and broader business lending needs.[5]

New entrants require stronger technical capability and a deeper understanding of risk management, complex lending structures and consumer obligations than was contemplated when the current qualification requirements were introduced. The current minimum education requirement of a Certificate IV in Finance and Mortgage Broking, introduced in 2009, no longer reflects the complexity of modern mortgage broking.

At the same time, broker businesses face growing challenges attracting and developing new talent. Through the MFAA's 2025 Business Growth Roundtable Series, which brought together more than

---

[3] MFAA resource, *Your pathway to a rewarding career in mortgage and finance broking*, https://www.mfaa.com.au/become-a-broker.

[4] MFAA resource, 9 September 2021, *Regulation and compliance checklist*. Refer Attachment B.

[5] MFAA News, 10 June 2026, *Mortgage brokers reach record 81% market share in Australian home lending*, https://www.mfaa.com.au/news/mortgage-brokers-reach-record-81-market-share-in-australian-home-lending.

fifty experienced brokers and industry leaders from across Australia,[6] members consistently highlighted that many high-performing brokers struggle to scale because training and mentoring new staff takes significant time away from serving clients and growing the business.[7] As businesses expand, they face additional pressures in finding talent, developing staff, maintaining culture and managing increasingly complex compliance obligations.

A dynamic economy depends on a skilled workforce and successful business formation. A qualification framework that does not reflect the realities of modern broking can leave new entrants underprepared for the complexity of running a broking business and meeting their regulatory obligations. This can increase compliance risks, place additional pressure on mentors and businesses supporting new entrants and affect the long-term sustainability of broker businesses.

Better prepared entrants are more likely to establish sustainable businesses, adapt to changing market conditions and contribute to industry growth and competition. For existing broker businesses, a stronger pipeline of capable entrants reduces the burden of training and supervision, improves succession opportunities and supports business expansion.

The MFAA recommends:

To ensure new entrants are better prepared to operate independently and build sustainable businesses in an increasingly complex and technology-driven profession:

- modernise the Diploma of Finance and Mortgage Broking Management and recognise it as the minimum qualification for new entrants,[8]
- support structured mentoring and supervised development pathways; and
- encourage practical, work-based learning that develops both technical capability and business skills.

RECOMMENDATION 2: IMPROVE CONSISTENCY OF STATE-BASED TAX LEGISLATION TO SUPPORT BUSINESS GROWTH AND LABOUR MOBILITY

The practical challenge

Mortgage brokers and aggregators increasingly operate across multiple jurisdictions and rely on a range of business models, including independent contractor arrangements and aggregation structures. However, payroll tax rules differ significantly between states and territories, with varying thresholds, exemptions and approaches to the application of contractor provisions.

The inconsistent treatment of genuine business-to-business arrangements creates uncertainty for broker businesses and aggregators, particularly those operating nationally or seeking to expand into new markets. Differing rules and administrative approaches increase compliance costs and complexity and can influence decisions about where businesses operate, employ staff and invest. For businesses looking to scale, these inconsistencies create unnecessary barriers to expansion and reduce the efficiency benefits of operating across state borders.

[6] MFAA News, 3 December 2025, *Business growth guides launched to help brokers thrive in 2025*, https://www.mfaa.com.au/news/business-growth-guides-launched-to-help-brokers-thrive-in-2026.
[7] MFAA resource, 2025, *Roundtable Series Insights Guide – People, culture & succession*, https://www.mfaa.com.au/resources.
[8] The MFAA is participating in the Future Skills Organisation review of the of the Certificate IV in Finance and Mortgage Broking and Diploma of Finance and Mortgage Broking Management, https://www.futureskillsorganisation.com.au/fns-update-finance-and-mortgage-broking-diploma-and-certificate-iv/.

The MFAA has raised these concerns in previous submissions to the New South Wales Parliamentary Inquiry into the operation of payroll tax[9] and in submissions to state revenue authorities, highlighting the disproportionate impact of inconsistent payroll tax settings on mortgage and finance broking businesses.

In the context of this inquiry, payroll tax complexity is a practical example of how inconsistent state-based regulation can impede business dynamism by increasing the compliance costs, discouraging labour mobility and creating unnecessary barriers for businesses seeking to scale and operate efficiently across jurisdictions.

The MFAA recommends:

- The Australian Government work with states and territories to improve the consistency of payroll tax settings and administration, including thresholds, exemptions and guidance on contractor provisions, to reduce unnecessary complexity and barriers to business expansion.

RECOMMENDATION 3: STRENGTHEN DIGITAL CAPABILITY AND CYBER RESILIENCE IN SMALL BUSINESS

The practical challenge

Small broker businesses increasingly rely on technology to deliver services, manage client relationships and meet compliance obligations. At the same time, cyber risks are intensifying, and new technologies such as artificial intelligence are creating both opportunities and risks.

MFAA member feedback highlighted several practical challenges, including:[10]

- staff using unapproved AI tools and data leaving controlled systems;
- clients continuing to send sensitive information through insecure channels;
- uncertainty about which technologies to adopt and how to assess their value; and
- the time and capability required to implement new systems and cyber practices effectively.

These capability gaps can lead to underinvestment in technology, slower adoption of productivity-enhancing tools and increased exposure to cyber and fraud risks. This can limit the ability of businesses to innovate, scale and respond to changing market conditions.

Increasingly, digital capability is becoming a key determinant of small business productivity and competitiveness, rather than simply a technology issue. Businesses that can confidently adopt and implement digital tools are better placed to improve efficiency, grow and adapt to changing market conditions.

The Government has already recognised the need to uplift cyber capability across the small business sector through initiatives such as the CyberSmart Program[11] and the Cyber Wardens Program.[12] The next step is to leverage these initiatives through trusted delivery channels, including industry associations to provide practical, sector-specific guidance on cyber resilience, technology adoption and the safe use of artificial intelligence (**AI**).

---

[9] MFAA submission, 7 February 2025, *NSW Inquiry into Contractor Provisions of the Payroll Tax Act 2007*, https://www.mfaa.com.au/policy-and-advocacy/submissions.
[10] MFAA resource, 2025, *MFAA Roundtable Series Insights Guide – Technology, efficiency and cyber resilience*, https://www.mfaa.com.au/resources.
[11] Department of Home Affairs, *2023-2030 Australian Cyber Security Strategy*, *https://www.homeaffairs.gov.au/about-us/our-portfolios/cyber-security/strategy/2023-2030-australian-cyber-security-strategy*.
[12] Cyber Wardens, https://cyberwardens.com.au/campaign/mfaa/?source_campaign=cosboa-mfaa-members&source_course_enrolment_level_1=cosboa-mfaa-members

The Consumer Data Right (**CDR**) is also an important example of how government-backed digital infrastructure can help address many of these challenges. The MFAA has consistently advocated for greater adoption of Open Banking and expansion of the CDR ecosystem because it enables consumers to securely share financial information, reduces reliance on sensitive documents being transmitted by email, improves data quality and reduces manual administration for brokers.[13] We have also highlighted that Open Banking can deliver meaningful productivity benefits by reducing data collection and verification time, allowing brokers to spend more time supporting clients and growing their businesses.

Supporting practical, industry-led approaches to digital capability and cyber resilience, alongside continued investment in digital infrastructure such as the CDR, will help small businesses adopt technology with confidence, improve productivity and resilience, and reduce barriers to innovation and growth.

The MFAA recommends:

- Partnering with industry associations to deliver practical cyber resilience and digital capability programs for small businesses.
- Continued investment in secure digital infrastructure, including the CDR and Digital ID.

RECOMMENDATION 4: SIMPLIFY REGULATION AND REDUCE CUMULATIVE COMPLIANCE BURDEN

The practical challenge

Mortgage and finance broking is a highly regulated profession, and brokers support strong consumer protections and professional standards. However, for many broker businesses, the challenge lies in the cumulative effect of overlapping obligations, duplicative processes and inconsistent requirements across regulators, lenders and industry participants.

For small businesses with limited resources, managing these obligations can require significant time and investment, diverting attention away from serving clients, investing in people and technology and pursuing opportunities for growth.

Examples raised by members include:

- Multiple reporting and information requests from regulators, aggregators, lenders, insurers and professional bodies, often requiring similar information in different formats and at different times.
- Data collection, verification and retention obligations, including obligations under the *National Consumer Credit Protection Act 2009 (Cth)*, the *Privacy Act 1988 (Cth)* and various lender requirements.
- Implementation of new regulatory obligations, whether financial services related, or other, such as for the introduction of Pay Day Super .
- Cumulative regulatory levies and fees, including the ASIC industry funding levy, the Compensation Scheme of Last Resort (CSLR) levy, AFCA membership and user-pays fees and other compliance costs.

[13] Find MFAA submissions at https://www.mfaa.com.au/policy-and-advocacy/submissions.

In practice, administrative complexity and cumulative impact of the compliance burden can impede business dynamism by increasing the cost of doing business, slowing the adoption of new technologies and reducing the capacity of businesses to innovate and scale. [14]

The MFAA recommends:

- Apply the Government's Small Business Regulatory Impact Statement effectively to all new regulation, including consideration of cumulative costs and implementation impacts.
- Simplify and standardise information collection, reporting and customer verification processes across government and industry.
- Continuing simplifying and modernising regulatory guidance and improving digital interactions with regulators.
- Ensuring regulatory levies and implementation costs are proportionate and risk based.

RECOMMENDATION 5: SUPPORT SUCCESSFUL SMALL BUSINESS SUCCESSION AND OWNERSHIP TRANSITION

The practical challenge

The mortgage and finance broking industry is maturing, with increasing consolidation, growing interest in acquisitions and stronger valuations for quality broker businesses and trail books. At the same time, more founders are approaching retirement and considering succession and exit options.[15]

For many mortgage and finance brokers, their business is their primary asset and a key component of their retirement planning. Broker businesses are typically built over many years through investment in client relationships, goodwill and recurring revenue.

Recent changes to the taxation of capital gains and discretionary trusts have created uncertainty for the future after-tax value of their business and the structuring of ownership transitions.[16] This uncertainty can discourage investment, delay succession planning and impede the successful transfer of productive businesses, particularly in service-based industries such as mortgage broking where much of the value is self-generated and realised only upon sale.

Efficient business transfer is an important component of business dynamism. Where business owners lack certainty about succession and exit arrangements, there is less incentive to invest in growing a business and fewer opportunities for productive businesses to transition successfully to the next generation of owners.

The MFAA recommends:

- Providing clear and practical guidance for small businesses on business valuation, ownership transition and the application of recent capital gains tax changes as well as small business succession planning and business transfer options.
- Monitoring the impact of recent capital gains tax changes on small business investment, succession planning and business transfers, and remain open to refining settings if unintended consequences emerge.

---

[14] MFAA Submission, 13 October 2025, *ASIC Report 813 Regulatory Simplification*, https://www.mfaa.com.au/policy-and-advocacy/submissions.
[15] MFAA resource, 2025, *Roundtable Series Insights Guide – People, culture & succession*, https://www.mfaa.com.au/resources.
[16] Treasury Laws Amendment (Tax Reform No. 1) Bill 2026 and Income Tax Rates Amendment (Tax Reform No. 1) Bill 2026.

CLOSING REMARKS

Reducing unnecessary barriers to business dynamism is not about reducing consumer protections. It is about ensuring regulation is proportionate, coordinated and supports productive businesses to enter, grow, innovate and successfully transition over time. The mortgage and finance broking industry provides a practical example of how well-designed policy can strengthen both competition and productivity.

For further information, please contact me at [redacted] or Stefania Riotto at [redacted].

Yours sincerely,

Naveen Ahluwalia

Executive, Policy and Legal
Mortgage and Finance Association of Australia

Attachment A – About the MFAA

The MFAA's membership includes mortgage and finance brokers, aggregators, lenders, mortgage managers, mortgage insurers and other suppliers to the mortgage and finance broking industry.

Brokers play a critical role in intermediated lending, providing access to credit and promoting choice in both consumer and business finance. Mortgage and finance brokers are an essential part of Australia's financial ecosystem, supporting over 37,000 jobs and contributing $4.1 billion to the Australian economy each year.[17]

Over time, consumers have increasingly sought the services of a mortgage and finance broker with the latest MFAA quarterly market share showing mortgage brokers facilitated 81.0% of all new residential home loans[18] and approximately four out of ten small business loans[19] in Australia.

The MFAA's role, as an industry association, is to provide leadership and to represent its members' views. We do this through engagement with governments, financial regulators and other key stakeholders on issues that are important to our members and their customers. This includes advocating for balanced legislation, policy and regulation and encouraging policies that foster competition and improve access to credit products and credit assistance for all Australians.

[17] Deloitte, *The value of mortgage and finance broking 2025*, https://www.mfaa.com.au/policy-and-advocacy/research.
[18] MFAA News, 10 June 2026, *Mortgage brokers reach record 81% market share in Australian home lending*, https://www.mfaa.com.au/news/mortgage-brokers-reach-record-81-market-share-in-australian-home-lending.
[19] Productivity Commission, *Small business access to finance: The evolving lending market Research paper*, September 2021, https://www.pc.gov.au/research/completed/business-finance/business-finance.pdf, pg 44.

Attachment B – Regulation and compliance checklist

MFAA REFERENCE 91261033.2

MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA

REGULATION AND COMPLIANCE CHECKLIST

9 September 2021

MFAA REFERENCE 91261033.2

This document does not comprise legal advice and the MFAA does not accept any responsibility for it. It is provided in good faith to assist members. It does not take into account changes to the law or practice after 9 September 2021.

Checklist – Regulation and Compliance for Brokers

This is a brief and not necessarily complete check list of requirements for participants in the credit and finance industry.

The requirements are described only in brief and reference should be made to more detailed information. Finance broking is a heavily regulated business and brokers need to have a good understanding of the rules within which they must work.

MFAA's website provides more detailed information on many of these initiatives in the member only area.

Some requirements apply to brokers only and some to lenders only as indicated in the text.

Item	Comment
ACN – if a company, show ACN on the first page of all 'public documents'.	Use ACNs and not ABNs in documents and legal contracts except for tax invoices which must show an ABN. This is because an entity may have more than one ABN.
ACL – show ACL on disclosure documents 'Australian Credit Licence' must be stated in full. The abbreviation 'ACL' is not acceptable.	The relevant disclosure documentation is: · credit guides; · quotes; · Proposal Disclosure Documents (PDDs); and · documents lodged with ASIC that relate to the provision of regulated credit.
ACL – show ACL on prescribed documents. 'Australian Credit Licence' must be stated in full on the prescribed documents. The abbreviation 'ACL' is not acceptable.	The prescribed documents are: · copies of credit assessments; · printed advertisements that relate to the provision of regulated credit (but if the advertisement mentions more than one licence, then only one licence need be quoted); · documents required to be created, produced, given or published by a provision of the NCC; and · credit contracts.
Advertising	Take care not to mislead (even if no intention to do so). See MFAA Advertising Guidelines. If an interest rate, a repayment amount, or a comparison rate is included in an advertisement – see Comparison Rates Module.

Item	Comment
AFSL licence or appointed as an authorised representative.	If conducting any financial services activities, including arranging pooled mortgages or investments.
AML/CTF	This is a process of collecting and verifying information concerning a customer's identity required to be undertaken by lenders (but not brokers). Lenders often outsource this activity to brokers. See also VOI below.
AML/CTF Compliance Program	Lenders and lessors must have their own program. Servicers will often need an AML/CTF Program because lenders (typically trustees) will delegate these functions to servicers. Finance brokers and mortgage managers are not required to have their own program, but often will be required to conduct customer identification for lenders and lessors. Lenders and lessors must enrol with AUSTRAC and make reports as required by AUSTRAC.
Approval	Don't inform a customer that a loan is approved until **unconditional approval** is provided in writing by the lender. Lenders must not approve a Code regulated loan until responsible lending activities are complete.
ASIC reporting – ensure you report using the correct procedures and within the required period.	· Appointment of credit representatives within 15 business days of appointment. · Change or cessation to credit representatives within 10 business days of change or cessation. · Trust account statement within three months of the end of each financial year, if applicable. A trust account is only required if trust money is received. · Annual compliance certificate must be lodged within 45 days of each anniversary of the grant of your licence.
Best interests duty – mortgage brokers	Mortgage brokers are required to act in favour of consumers' best interest and resolve any conflict in favour of consumers.
Breach reporting – mortgage brokers	The breach reporting obligation applies when the licensee 'knows' that there has been or will be a significant breach and also where the licensee knows that there are reasonable grounds to believe that it is the case. See MFAA training module on breach reporting.

Item	Comment
Breach register – record material breaches of law	Include details of: - when and how breach was identified; - when the breach occurred; - how long the breach lasted; - what the breach was - whether a representative or credit representative was involved in the breach - how the breach was rectified; and - steps taken to avoid future breaches of the same kind.
Business Purpose Declaration – assists establishing that a loan is not regulated by the Credit Code.	Don't rely on the declaration – ensure the facts establish that the loan is not regulated. Keep records of the facts and your reasons.
Code of Practice – ABA	Applies only to banks that have subscribed to the Code. Some banks may have subscribed on conditions.
Code of Practice – Customer Owned Banking Code of Practice (COBCOP)	Applies only to credit unions, mutual banks, and mutual building societies that have subscribed to the Code. Some subscribers may have subscribed on conditions
Code of Practice – ePayments Code (previously the EFT Code of Conduct)	Only applies if the business subscribes to this Code. Usually only applies to lenders who provide electronic transaction methods.
Comparison rates – required to be shown in advertisements which state a repayment, interest rate, or a comparison rate.	Applicable to NCC loans only. Must contain a mandatory warning and comply with other detailed requirements – see MFAA guide on Comparison Rates.
Complaint register	Maintain a register showing what each complaint is about, how it was resolved, and how long it took to resolve it.
Complaint handling	See IDR and EDR below.
Conflicted Remuneration	The law prescribes that certain types of payment are prohibited 'conflicted remuneration'. Brokers must not accept conflicted remuneration being payments that could reasonably be expected to influence the advice they give.

Item	Comment
Conflicts of Interest	Any conflict must not create any disadvantage to the customer. Are there strategies in place to identify and avoid conflicts of interest? A conflicts of interest register should be maintained to: · register any identified conflicts and · show how identified conflicts have been addressed.
Consumer guarantees in the Competition and Consumer Act (CCA). The CCA prescribes certain guarantees (warranties) that cannot be contracted out of.	For the supply of services, the guarantees are: · exercise due care and skill; · the service is fit for purpose; and · the service will be supplied within a reasonable time.
Consumer remediation	Mortgage brokers must follow prescribed procedures if a breach or likely breach is likely to cause consumer's loss in relation to a mortgage secured over residential property. See MFAA's Notify, Investigate and Remediate Learning Module.
Credit assessment and assessment that a loan is not unsuitable – in the case of brokers the assessment is called a '**preliminary credit assessment**'.	It is mandatory to record assessments for NCCP transactions only but is wise for all credit businesses. Must state period for which it applies – maximum 90 days, except 120 days for assessments by lenders financing purchases of residential property.
Credit assessment – simplified copy for borrower upon request.	NCC loans only. Brokers must provide the assessment if credit assistance is provided (generally if a loan application is lodged) irrespective of whether the loan is approved. Lenders and lessors must provide the assessment only if finance is provided.
Credit decline letter	This notice must be provided by lenders and lessors (but not brokers) if: · credit is refused within 90 days of receiving a credit report from a Credit Reporting Body (regardless of whether the refusal is based on the credit report or other factors); and · a lender refuses consumer credit based on a credit report received from a Credit Reporting Body, irrespective of when the report was received.

Item	Comment
Credit licence	Obtain and maintain the appropriate licence for your business activities. There are three main authorisations, namely to provide 'credit services' as: • a lender • other than a lender; and or • as a debt management business Licence conditions are not shown on ASIC's website, so if you want to know the conditions attached to a licence, ask for a copy.
Credit representatives - procedure and documentation for appointment, variation, and termination.	Ensure that credit representatives: • are properly appointed (remember that if a company is appointed as a credit representative, the directors, secretaries and employees of the company need to be separately appointed or sub-appointed as credit representatives in addition to the company being appointed); • have provided indemnities for civil and criminal penalties arising from their conduct; and • are covered by the licensee's PI policy or hold their own PI. Ensure their appointment or changes to their appointment are reported to ASIC promptly and within the time periods allowed by law.
Credit representatives – ensure properly authorised	Ensure there is a process for: • ensuring that your business only conducts credit business with licensees or credit representatives authorised to conduct that business (there are penalties for conducting credit business with unauthorised persons); and • checking that these businesses are properly licensed or authorised at least annually.
Credit representatives – monitoring and reporting	Ensure you have a method to monitor and report on all representatives. (The term 'representatives' in the law covers employees, directors, and external credit representatives).

Item	Comment
Deferred sale model for add-on insurance	A principal or associated third-party may not sell an add-on insurance product and cannot offer, request or invite a customer to ask for, apply for, or purchase such a product (except in writing) for four days after the sale of the principal product or service.
Design and Distribution Obligations (DDO)	Product issuers must define a target market for their products and ensure the product issuer and any third-party distributors, sell and distribute the product in a manner which is consistent with the defined target market. Mortgage brokers are distributors and must comply with DDO although some relief is available. See MFAA Learning Module on DDO.
Direct debit default notice (section 87 of the Code)	A prescribed notice must be sent promptly after a direct debit is dishonoured (on the first occasion authority dishonour occurs under a single direct debit authority and not each time a dishonour occurs under a single direct debit authority).
Direct Marketing	Make sure you do not breach the Do Not Call Register. Observe the call hour restrictions. See 'SPAM' below.
Disclosure regime. Brokers have obligations to provide: • credit guides; • quotes (customer facing brokers only); • Proposal Disclosure Documents (customer facing brokers only); and • Copies of preliminary credit assessments.	Required for NCC loans only. See MFAA Disclosure Module.
Door to Door Sales (and other unsolicited sales)	Certain practices are prohibited. .
External Dispute Resolution Scheme (EDR). Licensees and credit representatives are obliged to join the only scheme called AFCA (Australian Financial Complaints Authority).	Membership is required for businesses undertaking 'credit activities' (broking and lending) in respect of loans regulated by the National Credit Code only. However, once a business becomes a member of an EDR scheme, disputes regarding unregulated loans to individuals and small businesses can be referred to EDR by those customers.

Item	Comment
Financial Resources – review at least quarterly	Licensees are required to be able to certify that they have adequate financial resources to conduct their business.
Hardship applications	If you are a broker, refer the customer to the lender promptly. Lenders and lessors must have written hardship policy and procedures in place.
Hawking prohibitions in the *Corporations Act*	Regulates the sale of financial products (not credit) to retail clients, prohibiting unsolicited telephone calls or meetings.
Internal Dispute Resolution Policy (IDR) and procedures.	Licensees must have an IDR policy and procedures for internal use and should have a 'complaint information sheet' for customers. Maintain a register of disputes, detailing the procedure for dealing with the dispute and the outcome.
Insurance	**LMI** - Ensure that your customer is informed of purpose if **LMI** required. CCI – if borrower protection is offered– ensure CCI is not mis-sold. Maximum commission and disclosure requirements apply. PI – see below.
IT Resources – procedures should be adequate	Checks should include: · How often are back-ups completed? · Who monitors and controls the back-up process? · How is security maintained? · What are the contingency plans to address major IT issues?
Key Fact Sheets for standard home loans and credit cards are required to be issued by licensed lenders of record. A KFS is a personalised cost comparison document which must be in the prescribed form.	The Key Fact Sheet must be available on the lender's web site if it is possible to apply for, or make enquiries about, a loan on the web site. Otherwise, a KFS must be available on request by consumers. Some lenders want brokers and mortgage managers to provide KFSs on their behalf.

Item	Comment
Key Fact Sheet for credit cards	These KFS's must be available on the lender's web site if it is possible to apply for, or make enquiries about, a loan on the website and must be provided with any application form, or if not previously provided, with the credit contract. Otherwise, available on request by consumers.
Licensed or appointed as a credit representative under the NCCP Act (NCC regulated transactions only).	A licence or credit representative appointment is necessary if: (a) providing a credit service, namely providing credit assistance (broking); or (b) or acting as an intermediary (in the introduction chain),or (c) acting as a servicer or manager.
Licensed under the NCCP Act	A licence is required If acting as a lender or lessor of record including legal assignees). Lenders and lessors cannot be credit representatives, but need to hold their own licence (unless exempt)
MFAA Code of Practice	See MFAA website. Members must comply with this Code.
MFAA Disciplinary Rules	See MFAA website. Members agree to be bound by these rules.
National Credit Code (NCC)	Loan documents must comply with NCC. These requirements are extensive and quite technical. Ensure you use only legally approved documents for regulated lending or consumer leases.
PI Insurance	Mandatory for finance brokers and other credit assistance providers. Credit representatives can be covered by their licensee's policy. Does your PI cover all risks? If you have sub-brokers, check that your policy will cover you if their policy doesn't. Ensure 'run-off' cover included. To become an eligible 'Identity Agent' under ARNECC's Participation Rules to conduct VOI on behalf of mortgagees, finance brokers' insurance must include cover for verification of identity.
Preliminary credit assessment	See 'credit assessment' above.

Item	Comment
Privacy consent form	Brokers need their own consent form so that they can use and disclose customer information for their own purposes (as distinct from the lender's consent form which covers use and disclosure by the lender) – See MFAA Privacy Act Module. It is usually not sufficient for brokers to rely on the lender's privacy consent form, and brokers should have their own consent.
Privacy Act – compliance	Your Privacy policy must be up to date. Understand the difference between 'credit information' and 'personal information' because different rules apply to the collection, storage and use of these two types of information.
Privacy policy	This is separate from the privacy consent and must be available to customers on request. See MFAA Privacy Act Module. It is also wise to have a separate document governing website terms and conditions and for both the Privacy Policy and the Website Terms to be displayed on the licensee's website.
Records	Retain copies of documents (including file notes) for seven years – can be electronic.
Reference checking protocol	Licensees must undertake a reference check on an individual seeking to be employed or authorised as a financial adviser or mortgage broker. Licensees must keep records of employees and representatives for five years to enable them to respond to these inquiries.
Referrers – register of referrers, agreement with referrers, and register of customers referred.	Applies to NCC loans only. If relying on the exemption in reg 25(5), you need to: · say prescribed words once the referral is received; and · check that specified statements are made at the time of first contact with borrowers whose contact details have been passed on by referrers.

Item	Comment
Responsible lending	The law requires licensees to enquire not only into purpose (eg buy a home), but also requirements and objectives (eg retain home as a long term investment, pay it off as soon as possible). Have written procedures concerning how you discharge your responsible lending obligations.
Responsible managers	Review the function and performance of responsible managers at least annually. In all but 'one man' businesses, keep a written record of the activities. Maintain 20 hours Continued Professional Development each year for licence requirements (30 hours for MFAA membership). Responsibilities that need to be managed include: • legal risk management plan; • compliance plan; • human resources plan; • IT • disaster recovery; • marketing restrictions; • regulatory compliance • understand and promote compliance culture; • have incident escalation protocols; and • in larger organisations, record allocation of responsibility. Have a written plan to audit representatives (both internal and external). Ensure compliance with procedures. If practice differs from procedures, amend the procedures because ASIC and the courts often focus on whether written procedures are followed.

Item	Comment
SPAM Act	Do not send unsolicited commercial messages without consent. See MFAA website 'Spam Act' module.
Trust account – audited annually	A trust account is only required if you hold trust money. Most businesses don't.
Unfair contract terms	Unfair contract terms are void. Unconscionable conduct can result in a transaction being set aside or varied.
Verification of identity (VOI)	VOI refers to the requirement in some jurisdictions to verify the identity of mortgagors of real estate. This identification may or may not include a face-to-face meeting. Mortgagors of real estate must usually be subject to VOI – and often mortgagees outsource this activity to brokers. The requirements often differ between mortgagees.

NCC Rules for lenders and lessors

The NCC applies where the debtor is a natural person or strata corporation (as distinct from companies or trusts) and the credit is predominately for personal, domestic or for household purposes. It also includes lending predominantly for residential investment purposes.

The following list is a brief and not necessarily complete check list of requirements for lenders and lessors.

Item	Comment
Caps on CCI Commission	The maximum commission that can be paid by an insurer to a credit provider, supplier or agent in connection with consumer credit insurance is 20% or the premium (excluding government charges).
Copy of the contract must be provided to debtor	A copy of the contract must be given to each debtor to keep. This usually occurs when the contract is sent to the debtors to sign but can be provided within 14 days of the agreement being made.
Credit contract - information that must go into a contract document	Credit contracts must contain prescribed information. In summary, this includes: · credit provider's name; · amount of credit; · annual percentage rate or rates;

Item	Comment
	- calculation of interest charge; - total amount of interest payable; - details about the number of repayments, the total of repayments and/or the method used to calculate; - credit fees and charges; - changes affecting interest and credit fees and charges; - statements of account; - default rate; - enforcement expenses; - details of any mortgage or guarantee; - commission (excluding certain types of fees); - insurance financed by the contract; and - other information and warnings required by the regulations.
Financing Insurance	A lender can only require a debtor or guarantor to take out the following types of insurance: - compulsory third party injury insurance; - LMI; and - insurance over mortgaged property. The lender can generally not require insurance with a particular insurer. Lenders must not provide a loan to pay for insurance over mortgaged property for a period longer than one year.
Linked Credit Provider	If a credit provider has an arrangement with a supplier of goods to provide credit, is regularly referred to by a supplier or allows credit applications/offers to be signed at the suppliers premises, they are a 'linked credit provider'. A linked credit provider is generally liable for representations made by the supplier about the product or the credit contract and the consumer has a right to damages against both the supplier and credit provider. However, lenders can obtain an indemnity from suppliers and there are other defences available.

Item	Comment
No higher/lower rate	Regulated loans must not use the higher/lower rate regime. This is a regime under which the higher rate applies to the whole of the debt if there is a default. However, a higher rate can apply to amounts in arrears and the whole debt once the whole debt has been accelerated (ie made due for payment).
Provide accounts	A credit provider must give a debtor periodic statements for specified periods of time unless an exception applies.

MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA

MFAA

Mortgage & Finance Association of Australia
Suite 2, Level 9, 130 Pitt Street, Sydney NSW 2000

T 1300 554 817 (calling within Australia)

www.mfaa.com.au