



# THE FUTURE OF FINANCE & LENDING

## QUADRIPARTITE AGREEMENT

SEPTEMBER 2019

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Much thanks and appreciation goes out to all those who took the time to assist with the discussions, writing and editing of this paper.

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# WE HAVE THE POWER TO SHAPE OUR FUTURE

## THE IMPACT OF THE ROYAL COMMISSION ON NCCP REGULATED LENDING AND MORTGAGE AND FINANCE BROKERS.

With the Final Report of the Banking Royal Commission handed down in February 2019, it became very clear that under the law, our industry is conflicted due to the nature of remuneration. This Report was preceded by over five years of government and sector reviews, and yet to date it is evident the industry does not appear to have a suitable proposition to the Royal Commission that fosters all parties involved, whilst championing the consumer's best interests.

As the market share of Mortgage and Finance brokers is steadily growing- currently pushing toward sixty percent- it puts us in a unique position where we can help reform the industry and drive beneficial change; creating an environment that removes the need for future costly industry and government reviews, and does away with legal conflicts of interest and services the consumer's best interests.

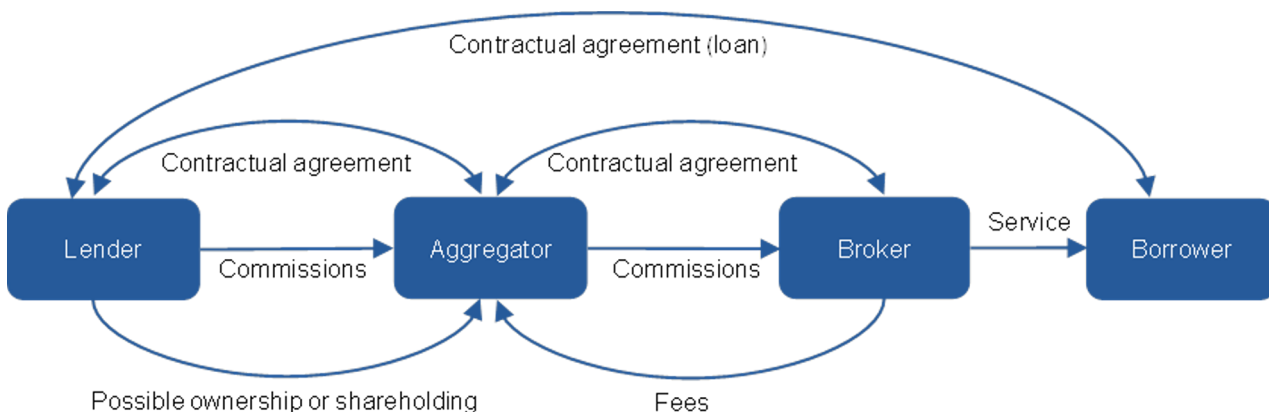
**The question now is, how do we foster an outcome that is beneficial to all parties and drives consumer interests?**

## SO WHAT IS HAYNES MAJOR ISSUE WITH MORTGAGE BROKERS?

As a result of the Royal Commission, there are now seventy-six recommendations to be reviewed and potentially legislated. Yet the main thread of the Royal Commission along with the Productivity Commission and other previous reviews about Mortgage and Finance Brokers, was simply that an industry, brokers are conflicted because they receive commissions for their service from a lender, and not from the consumer to whom they are acting for. Hayne sees this as brokers are acting in the interests of the lender rather than the consumer, as they have not taken formal and legal instruction from the consumer.

## WHY A QUADRIPARTITE AGREEMENT IN THE NCCP LENDING SPACE?

This is the current contractual arrangement:



Source: Australian Government Productivity Commission Inquiry Report Competition in the Australian Financial System, June 2018

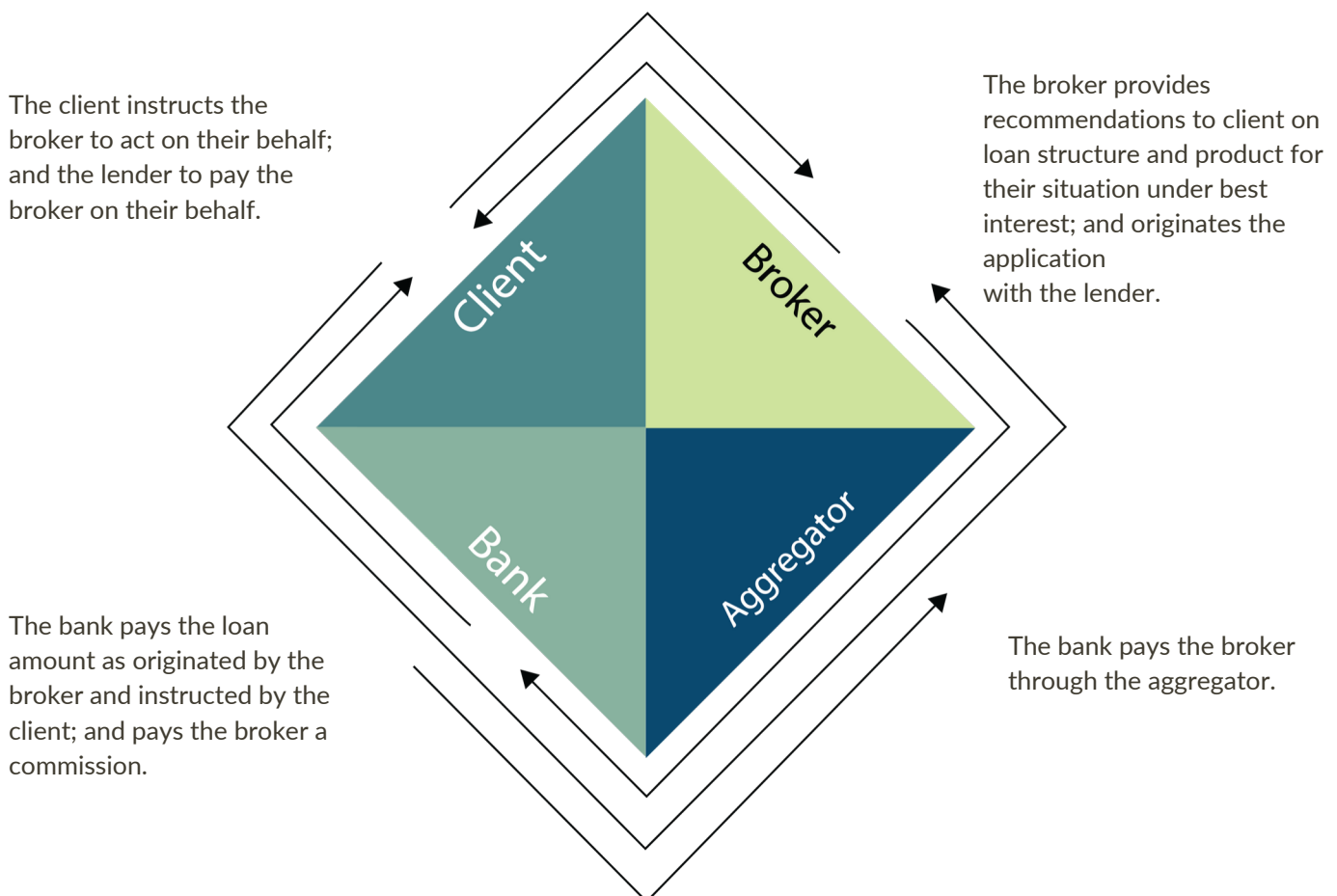
## PROPOSING A QUADRIPARTITE AGREEMENT AS A SOLUTION TO HAYNE'S CONCERNS

All conflicts and concerns that have been raised by all reviews and commissions over the last five years are effectively resolved by a Quadripartite agreement, where the client instructs the broker to originate finance on their behalf, and the lender to then pay the broker on their behalf.

The Quadripartite Agreement is an official legal document informing the consumer, broker or banker and lender of their obligations and responsibilities. It provides transparency in the required legal framework that obligates responsible finance procurement on behalf of consumers, hence removing the legal conflict of interest.

With the intention to promoting a fair and level playing field, a Quadripartite Agreement should apply to all industry stakeholders, being consumers, brokers, aggregators, branch and mobile banking staff along with lenders.

The benefits to all industry stakeholders are highlighted below.





## BENEFITS FOR THE CONSUMER

- Enforces the broker's compliance with legislation, and ensures an ethical approach and industry best practice outcome.
- Provides a framework to assess the client's 'best interest' based on their lending position relevant to their application at that exact time in their life [GM1].
- Removes all legal and conscious conflicts of interest surrounding remuneration.
- Removes the potential of a consumer purchasing a property and being left high and dry after having their lender revoke their lending after a formal approval has been provided.
- Removes the potential of a consumer refinancing a property after divorce and being left high and dry after having their lender revoke their lending after a formal approval has been provided.
- Removes the perception and proposed conflict that a broker is intentionally increasing the amount of a loan at application stage for the broker's financial benefit, when in fact they are increasing the loan based on the client's future potential short term (1-2 years) requirements, such as property renovations, children's expenses or an overseas holiday, where the additional funds sit in an offset account or redraw until required (as the loan amount is an instruction from the client).
- Ensures lenders are required to release lending information to all brokers who have provided an authority for information for a client, enabling brokers to provide appropriate guidance to this client. Currently bank lenders and staff already have access to this information which means a level playing field has not been provided.
- Sets legal responsibility and obligation, including intentions with the borrower for true and accurate disclosure.

- Clearly outlines that the consumer is responsible for their own actions and is obligated to repay their debt facility, and where required should seek independent legal advice guarantor/3rd party securities and 'vulnerable customers'.
- Creates the framework for a Customer defined top three priorities at point of loan submission, and makes them legally relevant. Consumers to select and thus instruct their top three fundamental requirements for applying for finance. This could be the fastest application process, the lender with the highest borrowing capacity or a range of other variables- ie accepts a personal loan as suitable funds to complete a transaction. This will assist the broker to ensure that a consumer best interest duty of at time of application has been complied with, and realign the resources of AFCA.





## BENEFITS FOR THE BROKER

- Eliminates legal conflicts of interest in regard to commission payments by the lender as formal instruction will have been provided by the borrower.
- Removes the perception and proposed conflict that a broker is intentionally increasing the amount of a loan at application stage for the broker's financial benefit, when in fact they are increasing the loan based on the client's future potential short term (1-2 years) requirements, such as property renovations, children's expenses or an overseas holiday, where the additional funds sit in an offset account or redraw until required (as the loan amount is an instruction from the client).
- Ensures all lenders are required to release lending information to all brokers who have provided the proper release of information authority from a client (a post settlement authority), enabling brokers to provide appropriate guidance to this client after loan settlement.
- Enforces the lender's credit assessment process holds accountability for a lending decision, in reference to the discovery of fraudulent borrower behaviour, vulnerable customers, and evidence of financial abuse under the newly proposed Financial Abuse Declaration of the ABA Code of Practice.
- Clearly outlines that the consumer is responsible for their own actions and is obligated to repay their debt facility. This removes liability from a broker for unfit personal and financial decisions of consumers post loan settlement.

## BENEFITS FOR THE AGGREGATOR

- Provision of a clear definition of the relationship between aggregator and broker as separate and independent businesses.
- Clearly portrays the important role played by aggregators in industry professional development, compliance and remuneration facilitation.
- Clearly formalises the aggregator as the conduit between the lender and broker.

## BENEFITS FOR THE LENDER

- Instigates the ability for a lender to recoup early quadripartite termination fees directly from the consumer rather than from the broker's remuneration, just as the telecommunications industry applies a fee for breaking a contract [GM1].
- Eliminates any Privacy Act breach when enabling the release of private client information to broker for both pre and post loan settlement.
- Ensures the integrity of applications received from brokers, enabling profitable processing for the lender as the client has a formalised obligation to provide truthful, accurate and current information to the lender regarding their financial position.

## PROPOSED ROLLOUT

A new Quadripartite agreement will allow for a more transparent and consumer focused position without compromising the integrity of lenders, aggregators or brokers. It also removes the legislative concerns regarding conflicts of interests and makes redundant the requirement for further remuneration reviews within three years.

In terms of a rollout and to ensure there is no drawn out delay to this, our proposal recommends a six-month term to draft and twelve month term to enactment of Quadripartite.

Suggested rollout could be via the Combined Industry Forum however we recommend a legally separate working party made up of equal parts of representation of lender, aggregator and broker via an industry election for fairness, transparency and stakeholder vested interest. It is important that the rollout of this Quadripartite is standardised to ensure cohesion in enactment for simplicity and consumer best outcome.

## CONCLUSION

In bringing all stakeholders together in a legal framework of this kind, we should see the removal of further expensive reviews into the industry, an improvement and longevity in consistent quality of consumer outcomes, and the enhancement to the mental health of an industry which is has been under intense scrutiny for more than five years. We can create lasting positive change with the introduction of Quadripartite, and the resolution of many of the Royal Commission recommendations regarding conflicted remuneration. We need to give credit where credit is due and consumers are more than capable of making smart and educated decisions, and thus instructions for their best interests, provided the framework is suitable, and easy to comprehend and use.

By uniting together as an industry, we have the power to influence, and create long lasting reform. We are treading a very serious line moving forward, where without these proposed considered changes the value to the consumer could be decimated.

Without instigating a Quadripartite Agreement we run the risk of losing quality and experienced brokers due to excessive regulatory change and the reduced profitability of operations. We need to create sustainability in this industry moving forward as we now have sixty percent market share and the trust of the consumer to operate in their best interests.

Once in place, a Quadripartite Agreement creates an environment of fairness and compliance, facilitating a benchmark of professionalism.