

29 October 2020



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Dear Sir/Madam

**Consumer Data Right Rules consultation –
CDR Rules expansion amendments
Submission by Australian Finance Group Ltd ACN 066 385 822**

Australian Finance Group Ltd (**AFG**) was founded in 1994, was listed on the Australian Securities Exchange in 2015, and has grown to become one of Australia's largest finance broking groups. Approximately 2,950 brokers (of which approximately 1,400 are credit representatives of AFG) arrange residential mortgages, commercial finance and other loan products through AFG.

CDR rules expansion amendments

AFG welcomes the opportunity to respond to the consultation paper dated 30 September 2020 (**Consultation Paper**) in relation to the proposed amendments to the *Competition and Consumer (Consumer Data) Rules 2020* (as amended by the *Competition and Consumer (Consumer Data) Amendment Rules (No. 1) 2020*) issued by the Australian Competition and Consumer Commission (**ACCC**) (the **Draft Rules**).

AFG does not consider that the Draft Rules relating to the three restricted level accreditations are workable for brokers given the information security obligations that apply to these categories. For the purposes of this submission, AFG's response is limited to the new Draft Rules relating to disclosures to 'trusted advisers' set out in section 5 of the Consultation Paper.

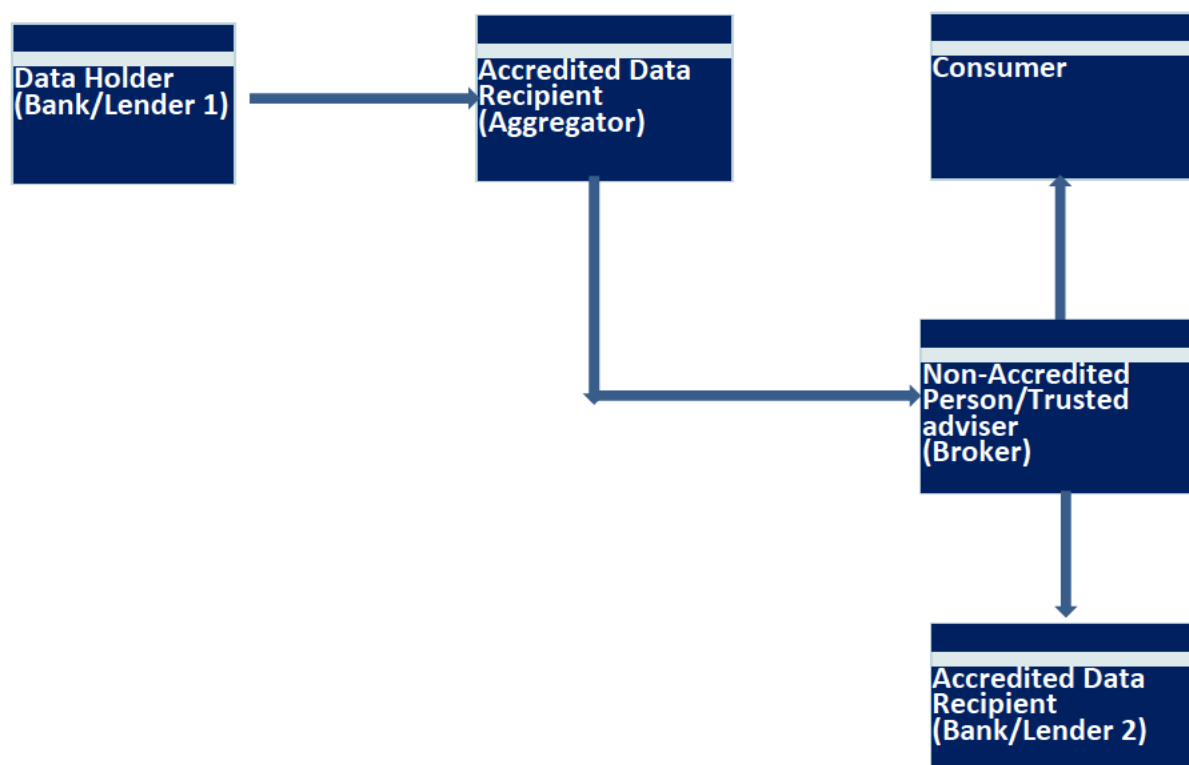
Disclosures to non-accredited persons/trusted advisers

Use case – Broker assisting a consumer to apply for credit

Brokers need to understand the consumer's current situation and what they want to achieve. To do this the broker will request financial information, including income, expenses, assets and liabilities from the consumer. This often comes in the form of detailed transaction statements from the consumer's existing bank/credit providers. Using this information, the broker will assist the consumer in finding an appropriate product and then further assist in applying for credit with a lender. In applying for credit the broker may be required by the

lender to provide supporting evidence in the form of bank statements/credit card statements to confirm the customer's current financial situation.

In the lender – aggregator - broker – customer relationship, in relation to an application for credit by the consumer, the following diagram represents the disclosures of data (which is a slight modification of the diagram contained on page 28 of the Consultation Paper):



In the diagram above:

- a Data Holder, being Bank/Lender 1, holds information about a Consumer who wishes to apply for credit;
- the Aggregator, who is an Accredited Data Recipient (ADR) has a contractual relationship with a Broker, who is a 'trusted adviser' of the Consumer;
- the Aggregator seeks the consent of the Consumer (through the Broker who has the day to day relationship with the Consumer) to access the Consumer's data from Bank/Lender 1 specifically for the purpose of providing it to the Broker to provide credit assistance for the application for credit by the Consumer;
- the Aggregator provides that data to the Broker to allow the Broker to apply for credit on behalf of the Consumer to Bank/Lender 2; and
- the Broker passes that information to Bank/Lender 2 (who is also an ADR) as part of the application for credit process.

Benefits of the trusted adviser model

We submit that the trusted adviser model will lead to substantial benefits to consumers without the disproportionate costs to brokers of becoming an ADR which is likely to be prohibitive to the majority of brokers who are in most circumstances, small businesses.

This model will allow brokers to continue to operate efficiently with their customers which will in turn drive competition in the market. Without this model, those brokers who are not able to become an ADR because of the large investment required, will have limited access to information. This will mean their customer facing propositions become inferior to a larger broker group or financial institution. We submit that this would ultimately threaten the level of competition and choice brokers deliver to the credit market.

Benefits to consumers include:

1. The ability to assist in verifying the identity of applicants for finance more easily by using identity documents already collected and held by a data holder (provided these are recent) for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and the various VOI procedures of the State land titles offices. It also allows a broker to compare the identity details provided by a consumer with those held by the data holder for accuracy and verification.
2. The ability to pre-populate credit applications with income and expenditure fields without the consumer having to provide this information which can lead to human error and inadvertent omissions.
3. More accurate and reliable verification of income and expenditure information on a credit application without the consumer having to source this information from several different financial institutions.
4. The ability to reduce or more easily identify fraud in credit applications where the information provided by the consumer does not match the information provided by the financial institutions.
5. A reduction in the risk of cybercrime as consumers are not emailing or sending this highly sensitive personal and financial information to their broker electronically and the broker is able to source this information from the issuing financial institution.
6. The ability to reuse the income and expenditure verification information for multiple potential lenders if the consumer is required to submit more than one credit application.
7. It avoids the consumer being asked to provide information to the broker after an application for credit has been made for the purpose of a compliance audit of a broker by an aggregator where loan application files are reviewed.
8. Better consistency and reliability of consumer data as there will be one source of data which must adhere to the relevant standards under the Draft Rules. Under the current system a broker may need to 'scrape' bank statements from multiple banks/lenders using several different software platforms. The reality is that brokers are already receiving this information from their customers in order to assist them to lodge credit applications and this regime will simplify the method of obtaining the information and increase the security controls around this sensitive information.

Obligation on Data Holder to provide data

Currently, the trusted adviser model does not compel the Data Holder to provide information to the trusted adviser. We submit that in circumstances where the consumer has clearly consented to their data being provided by a Data Holder to a trusted adviser, the Data Holder should be required to provide that data in a timely manner. We do not oppose the Data Holder having the ability to charge a fee for providing this data, however the fee should always be reasonable and a genuine estimate of the actual costs of providing the data (i.e. a small administration fee). It would not be equitable for a Data Holder to profit from this service.

Relevant consultation questions

16. *To which professional classes do you consider consumers should be able to consent to ADRs disclosing their CDR Data? How should these classes be described in the rules? Please have regard to the likely benefits to consumers and the profession's regulatory regime in your response.*

We submit that, in the context of brokers, it is appropriate that a broker who:

- holds an Australian Credit Licence (**ACL**); or
- is a credit representative of an ACL holder authorising the broker to provide credit assistance; or
- a broker who arranges only non-regulated commercial finance (and is therefore not required to hold an ACL);

are the professional classes that consumers should consent to ADRs disclosing their CDR Data.

The likely benefits to consumers are listed above and also include the fact that brokers who arrange regulated finance for consumers are regulated by the Australian Securities and Investments Commission (**ASIC**) under the ACL regime. Brokers are also required under their ACL to be a member of the Australian Financial Complaints Authority external dispute resolution scheme, have an internal dispute resolution mechanism, are required to hold a minimum level of professional indemnity insurance and comply with all laws (including the *Privacy Act 1998* (Cth)). In addition, the majority of mortgage brokers are members of the peak industry professional bodies, the Mortgage & Finance Association of Australia (**MFAA**) or the Finance Broker Association of Australia (**FBAA**), and will be subject to enforceable codes of conduct.

In addition, the upcoming mortgage broker Best Interests Duty and conflicted remuneration amendments to the *National Consumer Credit Protection Act 2009* (Cth) (which will be effective on 1 January 2021), will provide a further level of oversight of mortgage brokers and protections for consumers dealing with mortgage brokers.

We submit that commercial finance brokers who are not required to hold an ACL, should also be included in the relevant category as this will allow small business customers to also benefit from the Open Banking regime and encourage the flow of credit to this important sector of the economy.

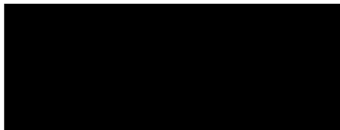
17. Should disclosures of CDR data to trusted advisers by ADRs be limited to situations where the ADR is providing a good or service directly to the consumer? If not, should measures be in place to prevent ADRs from operating as mere conduits for CDR data to other (non-accredited) data service providers?

In our example above, the aggregator, being the ADR, does not have a direct relationship with the consumer, and is therefore not providing a good or service directly to the consumer.

We submit that in this circumstance where the aggregator has a contractual relationship with the broker and therefore oversees its conduct via this contract (and a credit representative agreement for those brokers that are credit representatives of the aggregator), as well as oversight by ASIC via the ACL regime, the aggregator is not acting as a mere conduit for CDR data to other data service providers. We submit that these governance controls already provide adequate measures to prevent misuse of the CDR data by brokers.

Please do not hesitate to contact AFG if you require any further detail about the matters raised in this submission. We appreciate the opportunity to provide input into the development of the Draft Rules and look forward to working with you further to ensure the Draft Rules remain fit for purpose and continue to enable competition.

Yours sincerely



Michelle Palethorpe
General Counsel
Australian Finance Group Ltd