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Dear Sir/Madam

**Consumer Data Right draft rules consultation –  
Combined accredited person (CAP) arrangements  
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 mortgage broking groups. Approximately 2,950 brokers (of which 1,320 are credit representatives of AFG) arrange residential mortgages, commercial finance and other loan products through AFG.

**Consumer Data Right Rules for CAP arrangements**

AFG welcomes the opportunity to respond to the consultation draft of 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) on 22 June 2020 (the **Rules**). For the purposes of this submission, AFG's response is limited to the new draft rules relating to combined accredited person (CAP) arrangements.

**Application to the lender – mortgage broker – customer relationship**

In relation to a loan taken out by a borrower, a mortgage broker acts as an intermediary between the borrower and the lender. The broker will collect information from the borrower and provide it to the lender with, or to supplement, the borrower's application for a loan.

In addition, as AFG acts an aggregator for contracted mortgage brokers, it would fall within the meaning of 'intermediary' in this context. Therefore, potentially both the mortgage broker and AFG would become an 'accredited person' under the Rules.

Our interpretation of the functions of the relevant parties and their potential CDR role as set out in the Rules is set out below.

Function	Party	CDR role
Owens the data	Customer	CDR Consumer
Provides services to the customer	Mortgage broker	Accredited Person (Principal)
Provides services to the broker (holds the data)	Aggregator	CAP (Provider) or outsourced service provider
Analyses the data	Aggregator or third party	CAP (Provider) or outsourced service provider
Manages consents, provides dashboard, and retrieves the data	Third party	CAP (Provider) or outsourced service provider
Holds the data	Lender	CDR Holder

#### Further queries requiring additional clarification

1. As noted above, it is not clear in the Rules whether an aggregator and third parties who handle or otherwise deal with the data (in these specific roles) are required to be an accredited person (under a CAP arrangement) or will otherwise be considered an outsourced service provider. Providing examples of the two roles would be very useful.
2. If an aggregator or third party service provider are able to be an outsourced service provider, what requirements will apply to them?
3. In addition, it is not clear in the Rules whether there is any prohibition or limitation on an accredited person (Principal) having numerous CAP arrangements (or outsourced arrangements) with different parties. Given the different specialist roles that parties in the industry provide, we submit that there should be no limit on the number of CAP or outsourced arrangements that a Principal can enter into.
4. Further, in the scenario where a corporate mortgage broker organisation has multiple employee or contracted loan writers who provide credit assistance to a customer, does each natural person loan writer need to be an accredited person or does the broker organisation receive only one accreditation?
5. In circumstances where an accredited person collects data from a consumer in relation to their home loan, how long is the accredited person allowed to store this data? Given a cause of action in relation to a loan can occur at any time during the life of the loan, we submit this period should be at least the life of the loan plus 6 years.

## **Alternative arrangement for mortgage brokers**

The obligations on accredited persons under the Rules are extensive and will require substantive investment in information technology, in particular, the technology to provide customers with a dashboard and to comply with the information security controls set out in Schedule 2 of the Rules.

Recognising that the majority of mortgage brokers are small businesses, we submit that the cost of establishing this technology and these required processes is likely to be prohibitive for these small brokers to comply, and therefore may put them at a competitive disadvantage as the market continues to evolve. If mortgage brokers are 'priced out' of the open banking initiatives, the use of open banking would be limited to only larger organisations and lenders. Given approximately 55% of all home loans are arranged through mortgage brokers<sup>1</sup>, the majority of consumers taking out home loans would not be able to take advantage of the benefits of open banking in this case.

Mortgage aggregators, such as AFG, who represent a large number of mortgage brokers will typically have sophisticated information technology structures already in place, or will have greater capacity to enter into arrangements with third parties to provide these sophisticated structures, and would be more likely to be able to make these automated processes and systems available to their contracted brokers.

However, even with a CAP arrangement or alternatively an outsourced provider arrangement between a mortgage broker and its aggregator in place, we submit that the financial burden on mortgage brokers of becoming an accredited person would be substantial.

We submit that a more workable solution to the current position in the Rules would be to require only the aggregator to be the accredited person. The aggregator would then, with the consent of the consumer, provide the relevant functions to mortgage brokers who would then collect the CDR data (as an authorised representative of the aggregator). This would open up this function to a larger number of mortgage brokers. These brokers would then be able to serve their customers more efficiently and more readily achieve the aims of improving consumers' ability to compare and switch between products and services and encouraging competition between service providers.

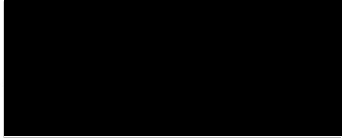
Ultimately, we believe the CDR scheme will be more successful if consumers can access the conveniences and efficiencies it offers through the parties they generally transact with to apply for a loan – whether a loan application be directly to a lender or via a mortgage broker intermediary. It therefore follows that there is a shared benefit for mortgage brokers and consumers in structuring the CDR Rules in a fashion which is not prohibitive to mortgage brokers using the CDR scheme.

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<sup>1</sup> See Mortgage & Finance Association of Australia Industry Intelligence Service Report 9<sup>th</sup> Edition for six month period 1 April 2019 to 30 September 2019 available at [https://www.mfaa.com.au/sites/default/files/users/user2116/J000554\\_MFAA%20IIS9\\_FA.pdf](https://www.mfaa.com.au/sites/default/files/users/user2116/J000554_MFAA%20IIS9_FA.pdf).

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 Rules and look forward to working with you further to ensure the Rules remain fit for purpose and continues to enable competition.

Yours sincerely



**Michelle Palethorpe**  
General Counsel