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Australian Competition and Consumer Commission

23 May 2019

By email: [ACCC-CDR@acc.gov.au](mailto:ACCC-CDR@acc.gov.au)

Dear Sir/Madam

**Exposure Draft - Competition and Consumer (Consumer Data) Rules 2019**

The Australian Finance Industry Association (AFIA) welcomes the opportunity to comment on the exposure draft Competition and Consumer (Consumer Data) Rules 2019.

AFIA is well placed to represent the finance industry given its broad and diverse membership of over 100 financiers operating in the consumer and commercial markets through the range of distribution channels, including digital access. Additional information about AFIA can be found at <https://www.afia.asn.au/>.

AFIA provides the following comments on the proposed rules framework informed by our members' feedback. We also note in introduction, that while members have contributed to our submission, the position being put by AFIA may not reflect a particular member's organisationally-specific position on all of the issues. These will get captured through a submission from that organisation.

**Refusal to disclose in response to consumer data request**

With respect to paragraphs 3.5 and 4.7, Members consider additional clarity is required as to when a refusal can be made. Without such clarity, operational experts in member organisations are concerned the process will be difficult for entities to manage.

**Ongoing notification requirement—consents to collect CDR data**

Members' feedback is that the obligation in paragraph 4.14 that *"the accredited person must notify the CDR consumer who gave the consent, each 90 days, that the consent is still current"* is onerous and will likely be difficult to manage the notification process of many smaller entities.

**Obligations of accredited person at the "unrestricted" level**

In relation to paragraph 5.11 (a) and (e), Members seek clarity on how adverse decisions by the Australian Financial Complaints Authority could impact this assessment. We further note that obtaining insurance could be onerous given this is a new market and may challenge risk-assessment

and therefore pricing. Also there will be range participants involved with the significant demand likely to impact the responsiveness of insurance underwriters.

### **Revocation, suspension, or surrender of accreditation**

AFIA supports a process in paragraph 5.14 to that allows swift intervention in situations where there is potential for a high level of consumer detriment. We contend however that such a process also requires an obligation to consult with the accredited entity before such action occurs.

### **Schedule 1 - Steps for privacy safeguard 12 - security of CDR data held by accredited data recipients**

On assessment, AFIA submits that the obligations imposed on accredited entities as outlined in Schedule 1 may be overly prescriptive. What is currently considered to be best practice may well change over time. To ensure the Rules keep up with market and technological developments, we submit that it would be more practical to adopt an Industry Code that can be updated over time to retain contemporaneity with technology. Alternatively, the adoption of a framework similar to the US National Institute of Standards and Technology (<https://www.nist.gov/cyberframework>) or ISO/IEC 27001:2013, could deliver tangible benefits to consumer data security.

### **Concerns Regarding Data Policy Development in Australia**

AFIA notes that the policy development in relation to data management is currently fractured. Federally, the Treasury, Attorney-General's Department, ACCC, ASIC and the OAIC all are developing policies in this area. This is leading to unintended outcomes and consequences.

For example, ASIC is currently consulting on revisions to its responsible lending guidance [ASIC RG209]. In its Consultation Paper [CP309] ASIC has suggested that personal information collected for one purpose (eg collecting account data for checking affordability) could be used by the data-recipient for a secondary purpose that it was not originally collected for (eg using it to identify vulnerability indicators/hardship). In contrast, as currently drafted, the Draft CDR Rules make clear that use of data collected relying on the CDR should be minimised wherever possible, presumably to the original purpose of collection. The tension between these two regimes will potentially create a compliance issue for Members due to the mismatch between regulator expectations.

While this issue is outside the scope of the consultation, AFIA requests that there would be value in greater collaboration between regulators and policy makers as part of the preliminary stage of processes involving the development of privacy law/data management. This could operate to minimise, if not avoid, the potential for variance with flow-on challenges to compliance design or even

the potential to be a risk of breach and action by one regulator for doing no more than comply with the framework overseen by another.

**Next steps**

Should you wish to discuss our feedback further, or require additional information, please contact me at [REDACTED] or Alex Thrift, Associate Director, Policy & Technology, at [REDACTED] or both on [REDACTED].

Kind regards

A handwritten signature in black ink, appearing to read 'Helen M. Gordon', with a horizontal line underneath.

Helen Gordon  
Chief Executive Officer