

7 May 2019

Team Manager  
CDR Rules Consultation Team  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
Canberra ACT 2601

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

Dear Manager

### **Consumer Data Right – Draft rules consultation**

The Australian Financial Complaints Authority (AFCA) is the new independent external dispute resolution scheme for the financial sector. The Appendix provides more information about AFCA and its role.

We welcome the opportunity to provide feedback on the draft rules for the Consumer Data Right in the banking sector released for consultation on 29 March 2019. The feedback in this letter<sup>1</sup> draws on the experience of AFCA and its predecessors – organisations that have handled banking and other financial service complaints for more than 25 years.

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<sup>1</sup> This letter has been prepared by the staff of AFCA and does not necessarily represent the views of individual directors of AFCA.

## Part 6 – Rules relating to dispute resolution

Rule 6.3 requires data holders to comply with Part B of ASIC's Regulatory Guide 165 (RG 165) with certain modifications. As stated in Rule 6.2, this is a requirement to comply with parts of RG 165 as in force at the date on which the rules commence.

RG 165 is being reviewed by ASIC at present and we understand ASIC will shortly be consulting on a number of proposed changes to RG 165, including changes to IDR timeframes. We also anticipate that RG 165 will require further reviews from time to time to address future developments and enhance regulation.

The ACCC will need to keep the consumer data right requirements for dispute resolution up to date. AFCA anticipates that this will involve considering, whenever RG 165 is amended, whether corresponding amendments should be made to the internal dispute resolution requirements set in Part 6 of the rules.

### Rule 5.11 – Obligations of accredited person

Rule 5.11(e) requires a person accredited at the 'unrestricted' level to

have adequate insurance, or a comparable guarantee, in light of the risk of CDR consumers not being properly compensated for any loss that might reasonably be expected to arise from a breach of obligations under any law relevant to the management of CDR data.

The rules do not themselves indicate the amount that would be 'adequate' under Rule 5.11(e) for insurance or a guarantee. We believe this issue requires careful consideration and should be explained in guidance.

In evidence provided recently to a Parliamentary Inquiry, our Banking & Finance Lead Ombudsman, Philip Field, discussed this issue.<sup>2</sup> Key points are:

- If there is a significant data breach, an accredited person could be required to make multiple compensation payments, which could total millions of dollars.
- Businesses can find it difficult to obtain professional indemnity insurance. Affordability is an issue and setting insurance requirements at a particular level could make the insurance unaffordable for some accredited persons.

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<sup>2</sup> See [transcript of evidence](#) provided on 6 March 2019 to the hearing for the inquiry into the Treasury Laws Amendment (Consumer Data Right) Bill 2019 conducted by the Economics Legislation Committee.

- Professional indemnity insurance is not designed to ensure consumers receive compensation that an insured business is ordered to pay to resolve a complaint. The insurance cannot be relied on to serve that purpose.

### Further assistance

If we can assist by discussing issues or providing information, please do not hesitate to contact us. Our contact for this matter is Carolyn Bruns, Policy & Liaison Adviser, at [REDACTED] or on [REDACTED].

Yours faithfully



**Michael Ridgway**  
**Executive General Manager – Corporate Strategy & Services**  
**Australian Financial Complaints Authority**

## Appendix - About AFCA

AFCA is the new independent external dispute resolution scheme for the financial sector. It replaced the Financial Ombudsman Service, the Credit and Investments Ombudsman and the Superannuation Complaints Tribunal.<sup>3</sup>

AFCA's purpose is to provide fair, independent and effective solutions for financial complaints. It does this not only by providing complaint resolution services, but also by working with financial firms to improve their processes and drive up industry standards of service, thereby minimising complaints.

More broadly, AFCA will play a key role in restoring trust in the financial services sector.

In addition to resolving individual financial complaints, AFCA has responsibilities to identify, resolve and report on systemic issues and to notify the Australian Securities and Investments Commission, or other regulators, of serious contraventions of the law.<sup>4</sup>

On 23 April 2018, AFCA was authorised pursuant to the *Corporations Act 2001*. The [AFCA Rules](#), which govern our operations, were approved by ASIC in September 2018. We began to receive complaints under these rules on 1 November 2018.

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<sup>3</sup> For comprehensive information about AFCA, see our website [www.afca.org.au](http://www.afca.org.au).

<sup>4</sup> See [ASIC's Regulatory Guide 267](#) *Oversight of the Australian Financial Complaints Authority*.