



ASIC
Australian Securities &
Investments Commission

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Bruce Cooper
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ACCC
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Dear Mr Cooper

ASIC welcomes the release of the Consumer Data Right (CDR) Rules Framework, and the opportunity to comment on the proposals.

We understand the proposed rules framework is intended to outline the approach for implementing the CDR, therefore it mainly outlines ACCC's substantive and/or 'in principle' position when making rules rather than the drafting for specific rules. We also understand that it is intended to take the recommendations in *Review into Open Banking in Australia – Final Report* as a reference point.

In light of the above, the aim of this submission is to follow-up on the two issues ASIC raised in our submission to the Review's final report:

- streamlined accreditation for existing holders of an Australian Financial Services (AFS) Licence or Australian Credit Licence; and
- dispute resolution.

1. Streamlined accreditation

ASIC supports the ACCC's proposed approach to not allow streamlined accreditation for Open Banking applicants that already hold an AFS or Australian Credit Licence. This is consistent with ASIC's submission. As the process to obtain authorisation under the AFS and credit licensing regimes only involves a suitability assessment to carry on specific credit or financial services at the point of entry, it would not provide adequate indication of an entity's suitability to participate in Open Banking.

2. Dispute resolution

Internal dispute resolution

ASIC supports the ACCC's proposal to align the approach for dispute resolution under the CDR regime to the existing internal dispute resolution (IDR) and external dispute resolution (EDR) regimes for financial services (which will be adapted for complaints relating to the CDR regime).

Consistent with the ACCC's proposed approach, the IDR proposals in the CDR rules framework largely replicate the requirements in ASIC Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165). In this context, we note that:

- some of the requirements in RG 165 are likely to be revised as part of the IDR reforms introduced by the *Treasury Laws Amendment (Putting Customers First – Establishment of the Australian Financial Complaints Authority) Act 2018* (e.g. the requirement to provide a final response to a complainant within 45 days); and
- we are planning to publicly consult on a broad review of RG 165 in January 2019 (including introduction of an IDR data reporting framework), with a view to publishing the updated RG165 in late June 2019 – that is, around the same time the CDR rules framework is scheduled to commence.

Since ACCC's objective is to replicate the IDR requirements under the CDR regime with those outlined in RG 165, ASIC suggests that, at the time of commencement, the CDR rules framework could include a brief paragraph to note that:

- the IDR requirements will be updated once the revised RG 165 has been finalised;
- existing holders of an AFS or Australian Credit Licence, which are already required to comply with RG 165, should apply the requirements and standards in RG 165 to the handling and managing of CDR-related complaints during the transition period; and
- FinTechs that do not hold an AFS Licence or Australian Credit Licence are encouraged to reference RG 165.

External dispute resolution

In relation to EDR, ASIC supports the proposal to require *all* Open Banking participants to be a member of the Australian Financial Complaints Authority.

Alternative dispute resolution

For disputes between CDR participants, ASIC agrees with ACCC's view that in practice it would be more efficient for these disputes to be resolved via arbitration and mediation. Therefore, we support ACCC's proposal to introduce rules relating to alternative dispute resolution at a later stage.

ASIC looks forward to continuing to work closely with the ACCC on the development of the CDR rules framework, including engaging on the progress of the IDR reforms.

Please contact us if you have any questions or would like further details on any of the issues raised in this submission.

Yours sincerely



Greg Kirk
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