



Australian Finance Industry Association Limited
ABN 13 000 493 907
L11 130 Pitt Street Sydney NSW 2000
02 9231 5877 www.afia.asn.au

Australian Competition and Consumer Commission

19 October 2018

By email: ACCC-CDR@acc.gov.au

Dear Sir / Madam

Consumer Data Right Rules Framework

The Australian Finance Industry Association [AFIA] welcomes the opportunity to comment on the Consumer Data Right Rules Framework.

AFIA is well placed to advocate for the finance sector given our broad and diverse membership of over 100 financiers operating in the consumer and commercial markets through the range of distribution channels (including digital access). Further background on AFIA is available through: www.afia.asn.au.

AFIA welcomes the ACCC's engagement on the development of the rules for the consumer data right. Informed by the feedback of our members, AFIA provides the following comments on the proposed rules framework. 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.

AFIA's detailed comments follow.

Section 6 –Accreditation

AFIA strongly supports streamlined accreditation (as is proposed for ADIs) for other relevant licence holders including entities that hold an Australian Financial Services Licence (AFSL) or Australian Credit Licence (ACL). Streamlined accreditation should also be extended to financial sector entities registered with APRA under the [\(Cwlth\) Financial Sector \(Collection of Data\) Act](#) (Registered Financial Corporations (RFCs)). In general, RFCs are entities that have statistical reporting obligations to APRA because their lending activities are equal to or exceed \$50 million. This will allow existing financial entities that have, in many respects, similar regulatory obligations as ADIs to access the scheme in a way that achieves the government's underlying consumer policy objective in an efficient and effective way. Streamlined

accreditation for AFSL or ACL holders and RFCs will facilitate the exercise of the data-right by consumers and early adoption enabling the benefits of data sharing through improved competition to be realised more quickly.

Members have also provided additional feedback on the accreditation process for data recipients.

Members request consideration of the following in respect of the accreditation requirements:

- **Appropriate insurance coverage:** members note that while there is currently a market for cyber-security products and insurance to cover associated risk, new products may be needed to be developed to meet the specific risks and liabilities that arise under the Open Banking framework. Therefore, rather than specific particular products or level of coverage, AFIA proposes a principles-based approach be adopted by the Government. This provides the ability for innovation in product development and design to meet identified risk and for the accredited entity to manage the risk in line with their Customer Data Right (CDR) policy.
- **Tiered accreditation:** some members do not support a tiered accreditation regime preferring a single-standard be applied across the scheme. Tiered accreditation could lead to a complex system of accreditation with entities (including intermediaries) with different permission types. This will create operational complexity and uncertainty for consumers. Consumers should be confident that anyone that touches or has access to their data, meets the same robust standards.
- **Accreditation and outsourcing:** some members note that these requirements are too prescriptive and are not required to build trust in the system. Additional requirements will impose an administrative burden no justifiable equivalency in benefit. The requirement that an accredited data recipient be responsible and liable for its outsourced third parties is sufficient. This proposed requirement provides a strong incentive for a data recipient to design and implement controls and processes (e.g. contract terms, monitoring and auditing) to appropriately oversee the actions of a third party.
- **Ongoing information security obligations:** AFIA supports the use of existing standards and guidelines where they exist. This will provide certainty for industry on how the obligations will apply.

Section 8 – Consent

AFIA strongly supports that data should only be shared or used where a consumer gives their express and informed consent. This fundamental principle will assist ensure consumers are protected from the misuse of their data. AFIA acknowledges that the system will work best where there is transparency, clarity and brevity in disclosures to consumers – disclosures designed to facilitate consumer understanding.

Some AFIA members have raised concerns about the level of detail and prescription of the proposed rules framework for consumer consent. Overly prescriptive rules could lead to a poor user experience and negatively impact consumer uptake of the system. More specifically:

- consent to exercise the consumer data right is merely one in a broad range of consents to support or achieve compliance for a range of other components of even the most simple finance transaction. For example, other consents may include to meet requirements of the (Cwlth) Privacy Act permissions to access credit reporting information, (Cwlth) Anti-Money Laundering laws to conduct KYC identity-checks;
- the proposed rules framework will lead to the consent process being unnecessarily clunky, complicated and unwieldy;
- the level of detail proposed, and consequently increased length of the disclosure, may lead to many consumers likely to 'switch off' or not complete the process rather than having a better understanding of what they are consenting to;
- trust should be established through a strong accreditation process. A consumer knowing that the entity that they are dealing with is accredited should be enough and not lead to any surprises about how data about themselves will be used.

Members have also raised concerns about the proposal to limit persistent access authorisations to a set-period of 90 days. We question the need why entities will need to seek reauthorisation every 90 days where a customer has given consent for ongoing access. This proposed rule may work against what a consumer wants from a service detrimentally impacting the relationship with the new provider.

For example, many of the proposed uses for open banking, like personal finance management tools, will rely upon ongoing persistent access to function. Customers using these tools are likely to have a poor customer experience if they are not able to give upfront consent for a reasonable period but are obliged every three months to reauthorise their consent.

A more appropriate outcome is to ensure consumers are made aware of the intention of an accredited entity to seek dynamic access and the reasons to support this as a pre-cursor to obtaining the customer's consent.

Section 12 – Use of data

AFIA raises concerns about the framework as currently drafted that appears to require an accredited entity to transfer data to a non-accredited entity. Unless the actions of the non-accredited entity is subject to the consumer protections under the framework and regulatory oversight, Members believe this could compromise and devalue the system.

Privacy safeguard 7 – Use of disclosure of CDR data for direct marketing

Members have raised concerns about the rules framework apparent prohibition of using CDR data for direct marketing. We note that this is in direct contrast to the exposure draft legislation to the regime, which appeared to allow CDR to be used for direct marketing if the consumer gives consent (see Safeguard 7) and also appears at odds with the information handling-framework of the (Cwlth) Privacy Act – Australian Privacy Principle 7.

Should the prohibition be intended, we would appreciate the opportunity to discuss this further with the ACCC to better understand the basis for this position. In the absence of a policy basis to support it, we submit that provided a consumer has given consent accredited entities should be able to direct market to that customer.

Next steps

Should you wish to discuss our feedback further, or require additional information, please contact me at [REDACTED] or Alex Thrift, Economic & Senior Policy Adviser at [REDACTED]

Kind regards



Helen Gordon
Chief Executive Officer