



19 October 2018

Email: ACCC-CDR@accc.gov.au

To whom it may concern

Consumer Data Right Rules Framework

Prospa welcomes the opportunity to comment on the Consumer Data Right Rules Framework.

Our submission is informed by our more than six years of small business lending experience in Australia. We are largely supportive of the proposed CDR rules and believe that swift implementation of open banking will deliver new ways for customers to control their finances, increased competition and opportunities for innovation.

Introduction

Since 2012, Prospa has delivered over \$750m to more than 15,000 small businesses, making us the leading online small business lender in Australia. We help small businesses access finance to seize opportunities and manage their cash flow. With access to finance, owners can develop, build and ultimately create jobs and contribute to economic development. Prospa is Australian-owned and operated and our proprietary technology platform was built specifically to suit the needs of Australian small business.

Using our smart technology platform and an online application, we can approve and fund loans of between \$5,000 and \$250,000 in less than one business day. We focus on the health of a business to determine creditworthiness, rather than the personal credit score of the owner. Prospa loans are often made in circumstances where traditional bank lending would require a long lead time and an asset, such as the family home, would be required as security.

Overview

Prospa welcomes the ACCC's engagement on the development of the rules for the consumer data right (CDR).

Prospa recognises the importance of developing settings for the CDR that translate across sectors, with Open Banking leading the application of the proposed rules.

At a high level, Prospa is of the view that Open Banking reforms should be implemented as soon as possible, and in as open a manner as possible.

Prospa is also of the view that in order for the benefits of open banking reforms to be enjoyed as widely as possible, the reforms should maximise participation across the economy. That means fast, easy and robust access to customers' data by, and participation from, third parties, sooner rather than later.

That said, Prospa also recognises that open banking should be implemented in a manner that will ensure the confidence of the Australian people and therefore their maximum participation and benefit.

The right reforms will bring a virtuous cycle of implementation of open banking, resulting in participation and benefit, leading to confidence in the open banking system, increased participation, enhanced benefit, further increases in competition and the perception of Australia as a leading financial technology hub, among other long term benefits.

Prospa generally supports the submission to the ACCC by the Australian Finance Industry Association dated 19 October 2018 – particularly in relation to accreditation, consent, and use of data for direct marketing.

In terms of regulatory approach, Prospa believes that the application of the ACCC's responsibilities with respect to competition in financial services and the technology space is a relatively new area that may require the ACCC to grow and build capability quickly to meet the deadlines set forth in the Farrell Review.

Prospa would be pleased to engage in robust and regular dialogue as a stakeholder, along with other participants in the sector to ensure the ACCC is able to gain a strong appreciation of the more subtle nuances as you prepare for the coming regime.

Consumer Data Right rules

The Rules should as much as possible align with rules being developed amongst key trading partners to ensure that investors are able to relatively quickly understand and have confidence in the developing Australian landscape. At present this is likely to include standards and rules being developed in the UK and the EU.

Prospa notes that Open Data initiatives are taking place at pace throughout the world, particularly in the UK and EU where the roll-out of GDPR is well underway. Of note, several key features of GDPR, such as the right to forget, may have implications for the design of the regime in Australia.

Rules should be developed with a view to maximising competition and the opportunity for participation of third parties in open banking.

Our detailed response is as follows:

Accreditation

Accreditation will ensure confidence in Open Banking is established and maintained with privacy protection a key imperative of the system.

Prospa supports a robust accreditation process for data recipients.

Accreditation methods should be developed with a view to maximising competition and the opportunity for participation of third parties in open banking.

Prospa supports a tiered risk-based approach that emphasises a seamless accreditation process to minimise costs and barriers to entry. Prospa believes that there should be ongoing engagement with stakeholders around matters such as existing accreditations.

Prospa only supports this recommendation on the basis that tiers would be designed to facilitate more and faster accreditations. Tiered accreditation ought to be designed to ensure it is available with the expenditure of reasonable resources and that full accreditation should also be made reasonably available to third parties.

Prospa notes the comment of the Farrell Review that "...accreditation should not require

that unnecessarily intensive, or expensive, official certifications be obtained.”¹

Prospa is “wary of the need to have an accreditation regime that is based on two different dimensions (type of data as well as risk of organisation or use-case).” This is clearly a matter which must be considered closely through development and implementation of Open Banking.

Prospa believes it is important to properly assess data and security risks and safeguard the consumer, whilst allowing innovative new entrants to participate and thrive.

To minimise this risk and also minimise double-handling in regulation (which creates additional compliance burdens for both the participants and the regulators), the accreditation regime should provide automatic or streamlined access to certain tiers of accreditation for companies already holding licences such as an AFSL or ACL. There are already extensive and regularly audited risk, information security, and data use/disclosure obligations in place for such licensed entities that are undertaken by ASIC, with the ultimate goal of the regulator being much the same as for Open Banking.

We strongly recommend the ACCC work in collaboration with the DSB to build, test and review the accreditation processes before launch.

It is appropriate that the authority responsible for accreditation is also responsible for maintaining a public address book showing who is accredited.

Prospa believes the accreditation regime should:

- Have a clearly defined process and timeframe appropriate for all parties (in particular, this may require additional resourcing and advance preparations by the Regulators to ensure turnaround times for accreditation are fast, particularly at lower risk tiers);
- Take account of existing levels of compliance, for example holding an ACL or bank licence;
- Not be over-onerous from a cost perspective, and seek to take advantage of other accreditation regimes that exist where possible; and
- Be considerate of how it may be utilised in other CDR related verticals (but not at the expense of momentum - especially if a regular process to review and potentially revise the regulations is also simultaneously created).

Section 8 - Consent

Prospa is of the view that under an Open Banking regime, customer data should be obliged to be shared by parties holding that data – where the customer gives their express and informed consent.

Open Banking, in order to be effective, ought to enable customers to direct the sharing of their digital information with any accredited party whatsoever. A data recipient might be a third party financial services provider, whom the customer wishes to take care of their financial position, or indeed they may operate a platform from which the customer wishes to direct their finances. Provided parties are properly accredited, it should be possible for data to be directly shared with a data recipient.

¹ Page 24 of the Review

Prospa supports the position of AFIA as stated in their submission that “overly prescriptive rules could lead to a poor user experience and negatively impact consumer uptake of open banking.”

Duration of consent

Prospa disagrees with the proposal to limit persistent access authorisations to 90 days. Prospa is of the view customers should be able to direct how long a third party may have access to their data, whether one-off, hourly, monthly or otherwise. Where express informed permission has been given, the customer should be able to give consent for ongoing access. This will enable consumers to receive what they want from a service.

For example, access by a fintech to a customer’s transaction account on a regular basis may be required in order to perform ad hoc credit assessments and keep open access to a line of credit product. Customers that have to re-authorise access will not have a seamless experience and be less likely to switch from their bank to a different credit provider, or to use that product, thus reducing the potential for increased competition.

Prospa strongly believes data transactions should be as frictionless as possible. Persistent authorisation is consistent with ongoing confidence in open data exchange.

Prospa is of the view that maximising authorisation will provide the most benefit to customers.

Giving consent

It is important the rules provide clear guidance around the terms used to direct release, and that there is a clear protection from liability for a party releasing data, where they have been lawfully directed to do so. Any lawful release should be strictly protected.

Directions for release of data should be made clearly, in a common lexicon, in order to ensure clarity for both the customer and also the provider of services.

It is preferable that some form of indication of what is acceptable information is included in the scheme. Reforms should be clear about what constitutes being “fully informed”.

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

Prospa strongly disagrees with the prohibition of direct marketing using CDR data under the rules framework. We note this is in direct contract to the exposure draft legislation which allows the use of CDR for direct marketing if the consumer gives [express and informed] consent. We also note APP7 allows for direct marketing, and consistency of rules is a highly desirable outcome in any regulated area.

Prospa believes accredited entities should be able to undertake direct marketing to consumers that have provided consent. If the data holder has consent to undertake direct marketing, Prospa believes separate consent should be sought by the data recipient, for the data recipient to undertake direct marketing. In other words, a consumer’s consent to be marketed to is not transferred with the data.

Conclusion

Prospa strongly supports the speedy and broad implementation of Open Banking in a robust manner which will build long term confidence in Open Banking.

The logo for Prospa, featuring the word "prospa" in white lowercase letters on a green rectangular background.

Prospa stands ready to be consulted and participate in the ongoing development and implementation of the CDR and Open Banking in Australia.

Yours sincerely

Beau Bertoli
Joint CEO, Prospa

A handwritten signature in black ink, appearing to read "Beau Bertoli".

Contact for more information:
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