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Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

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

To whom it may concern,

Consumer Data Right – Consultation on how best to facilitate participation of third party service providers

As the peak national body representing the mortgage broking industry, the Mortgage & Finance Association of Australia (MFAA) welcomes the opportunity to provide this submission to the Australian Competition and Consumer Commission (ACCC) in response to the Consultation on how best to facilitate participation of third party service providers (the Consultation Paper).

The MFAA supports the introduction of Open Banking and the Consumer Data Right (CDR) in Australia. We believe the new framework, provided that it allows equal opportunity across the market, will promote competition across the broking and finance industry, leading to increased options, improved credit decisioning and better outcomes for consumers. Open Banking and the CDR will likewise assist mortgage brokers by facilitating greater data sharing and increasing access to more comprehensive information, thereby helping brokers to assist their consumers to meet their financial objectives.

The MFAA therefore welcomes the opportunity to discuss the role of intermediaries, including brokers. However, for clarification purposes, we note that the Consultation Paper aims to discuss a wide range of different types of intermediaries but talks about intermediaries and third party providers who provide services **on behalf on accredited persons**. When it comes to brokers, brokers usually act for consumers as opposed to lenders, therefore some of the terminology in the Consultation Paper does not align precisely with the role of a broker. Despite this wording, we understand that the ACCC seeks more information about how it should treat intermediaries generally based on the submissions it has received, and is not necessarily only intending to focus on those entities who are direct service providers to accredited people. We have therefore responded on the basis that:

- a. for reasons outlined in previous submissions and stated again below, unrestricted accreditation will not support mortgage broker access to CDR data; and
- b. brokers do not act on behalf of other accredited CDR data recipients, but primarily act for consumers and require access to CDR data, albeit as an 'intermediary' between a consumer and the final provider of credit.

We consider that there are three methods through which broker access to CDR data can be achieved, with our strong preference being for the first Option below.

- i. Brokers are accredited through a separate tier of accreditation.
- ii. Brokers obtain and use CDR data from an accredited third party provider (such as a data aggregation service).
- iii. Brokers obtain and use CDR data through the consumer with the informed consent of the consumer.

This submission begins by providing an overview of the MFAA's role within the industry before setting out a number of relevant points around intermediaries and the challenges faced by brokers with respect to the CDR.

This submission focuses primarily on the actions of finance and mortgage brokers engaged in activities regulated by the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**) which includes lending for the purchase of residential property.

1. About the MFAA

With more than 13,500 members, the MFAA is Australia's leading professional association for the mortgage broking industry with membership covering mortgage and finance brokers, aggregators, lenders, mortgage managers, mortgage insurers and other suppliers to the mortgage broking industry. The stated purpose of the MFAA is to advance the interests of our members through leadership in advocacy, education and promotion. To achieve this aim, the MFAA promotes and advances the broker proposition to a range of external stakeholders including governments, regulators and consumers, and continues to demonstrate the commitment of MFAA professionals to the maintenance of the highest standards of education and development.

2. Access

Mortgage brokers play a critical role in the lending industry. Approximately 55% of all mortgage loans are broker introduced. Brokers are essential to ensuring the competitiveness of the industry by providing consumers with a greater choice of lenders and increasing access to finance. This is particularly true in rural and regional areas where brokers have filled a significant gap produced by lender branch closures.

Brokers also guide consumers through the loan application process, reducing the time, stress and administrative burden associated with securing a loan, and assist consumers in their selection of an appropriate product suited to their financial circumstances and needs.

Fundamentally, Open Banking should not impede competition. To this end, the MFAA strongly submits that mortgage brokers need to be able to obtain equal access to CDR data and not be left at a disadvantage within the new regime as this would impede competition, choice, and access to credit by consumers. By facilitating broker access to more comprehensive information on consumers, Open Banking will directly support better credit decisions and consumer outcomes. Additionally, it will support the future competitiveness of, and access to, the lending market via the broker channel which will also lead to positive consumer outcomes.

Further, excluding brokers from the CDR regime would result in the CDR data potentially being incomplete, and not used to its full potential. It is essential that the CDR regime accommodates all service providers in the finance industry. Brokers are an integral part of the finance landscape, offering an essential service to more than half of all consumers taking out a home loan and excluding brokers from being accredited in their own right risks undermining their role, and thereby undermining the value of the CDR regime itself.

It should be recognised that brokers that deal with consumer credit are required to operate under an Australian Credit Licence. Brokers are well equipped to deal with high volumes of consumer information and consumers are already afforded many protections due to the licensing regime and broker compliance with the Privacy Act. The CDR regime should recognise when industry participants like brokers are already significantly regulated and allow them to participate on this basis when appropriate.

As we have proposed in previous submissions, unrestricted accreditation will not support mortgage broker access to CDR data. This is because a mortgage broker, who is usually a small business or sole operator, is unlikely to be able to support the technology and software services required to manage CDR data as specified in the Draft Rules. Instead, we submit that mortgage brokers should participate in Open Banking either by becoming accredited data recipients under a separate tier of accreditation, or alternatively by having access via a less efficient method such as via a third party provider or a consumer directly.

It is against this background that we respond to the specific questions set out in the Consultation Paper.

3. Consultation Questions: Intermediaries

We consider that brokers should be accredited under a separate tier of accreditation, however we note that should the ACCC decide not to authorise brokers as intermediaries under a separate tier of accreditation, it is essential that consumers be able to direct that brokers are provided with CDR data as unaccredited service providers. This process clearly reduces the efficiency of the Open Banking system by requiring the consumer to actively obtain data in their own right before transferring it to a broker. Alternatively, consumers should be able to direct broker access to CDR data via an accredited specialised third party service provider, however due to the scale of information and the potential costs to brokers, we consider that this option is less desirable and does not correspond with the intention of Open Banking.

Question 1

*If you intend to be an intermediary in the CDR regime, or intend to use an intermediary, please provide a description of the goods or services you intend to provide to accredited persons or to CDR consumers using an intermediary. Do you intend (or intend to use an intermediary) to only **collect** CDR data, or **collect** and **use** CDR data? What value or economic efficiencies do you consider that intermediaries can bring to the CDR regime and for consumers?*

MFAA response: Mortgage brokers require CDR data for the purpose of assessing a consumer's requirements, objectives and financial position, and as such, brokers need to both collect and use CDR data.

Mortgage brokers drive competition, choice and access to credit for consumers enabling them better access to suitable loans and particularly in regional and rural Australia. Brokers act as the first point of contact for more than half of all consumers looking for a loan and assist them to navigate the thousands of available products, and offer insights on the lenders in particular with respect to service delivery, consumer satisfaction and product range. They also assist the consumer to apply in what is often an onerous and overwhelming process and act as a point of contact between the consumer and the lender.

Brokers can only fulfil this role to the best advantage of the consumer when they have access to sufficient data, on equal footing with lenders.

The value that brokers can bring to the CDR regime is to ensure that the CDR regime is being used to maximise competition and efficiencies for the finance industry. If brokers are unable to receive CDR data, it is arguable that the CDR regime is not fulfilling its purpose and is providing the banks and major lenders with a competitive advantage which will in turn result in consumers being offered less choice of credit, and having less access to credit. Further, consumers who use a broker would not be able to take advantage of the efficiencies and speed of service from which they would otherwise benefit. For the CDR regime to truly provide equal opportunity and increase competition, it must be available to all relevant members of the finance industry and will in so doing maximise the benefit it produces for consumers.

Question 2

How should intermediaries be provided for in the rules? In your response please provide your views on whether the rules should adopt either an outsourcing model or an accreditation model, or both and, if so, and in what circumstances each model should apply.

MFAA response: Mortgage brokers should be provided for in the rules under a separate tier of accreditation in order for them to be able to compete and assist consumers on equal terms with other industry participants.

In order to serve their clients, brokers currently deal with a large volume of personal and credit data on behalf of consumers. Without this data, brokers cannot provide their services to consumers. Brokers who deal with regulated loans are required to comply with s47 of the NCCP Act which, amongst other things, states that licensees must have sufficient technological resources and risk management systems in place that ensure that they can comply with the NCCP Act. Additionally, brokers must comply with the Privacy Act. As such, even in their current role, brokers have appropriate systems and safeguards in place to ensure suitable protection for those high volumes of consumer's personal and credit data. Brokers are already accustomed to receiving, storing and safeguarding information of the type that would be received under the CDR.

As such, the MFAA encourages the ACCC to introduce separate tiers of accreditation at the earliest opportunity in order to ensure that competition and access to credit are maintained and increased.

Should the ACCC decide not to implement a separate tier of accreditation, brokers should be able to collect, use and store CDR data from accredited specialist service providers set up for the purpose of passing CDR data on to brokers, or should be able to receive the information directly from an accredited provider with the informed consent of the consumer. However, in our view these two options are not practicable for the following reasons:

- the costs involved in using a third party outsourced solution may be prohibitive for many brokers, the majority of whom operate a small business. If the aim of the CDR is to support enhanced competition, it must also support all members of industry who play a role in ensuring the industry is competitive, including small business brokers;
- brokers already have a direct relationship with consumers, and also with technology providers that deliver data services. Brokers should therefore not be subject to the same restrictive accreditation process, but should be able to participate in the CDR regime in order to continue to service consumers;

- the sheer volume of CDR data that will need to be obtained by brokers will make it inefficient to source that information through a third party service provider;
- it should be recognised that brokers must abide by the Privacy Act, and many hold an Australian Credit Licence (and the remainder must operate under the Credit Licence of another entity) or are credit representatives of a licensee. These existing consumer protections should be taken into account to allow brokers who are already subject to extensive regulation to participate in the CDR regime in a meaningful way, and to preserve the competitive role of the broker in the finance industry; and
- with consent of the consumer, brokers are entitled to receive credit and personal information through the 'access seeker' regime set out in the Privacy Act, acting as agent for the consumer. Given this, it is appropriate that brokers should also be able to be accredited to receive CDR data.

Further, brokers need to be on equal terms with others in the industry not just with respect to having a right to obtain, use and store the necessary data, but with respect to consumer perception about their role. If brokers are not offered accreditation and either must go through a third party provider, or obtain, use and store the CDR data as an unaccredited entity, this may cause consumer concern about the legitimacy of the mortgage broking industry and, potentially, a reluctance to allow brokers access to CDR data. This would be a devastating outcome for consumers as it would greatly limit consumer choice and access to credit and would vastly reduce competition in the lending industry.

In our view, it is therefore essential that brokers are provided for under a separate tier of accreditation.

Question 3

What obligations should apply to intermediaries? For example, you may wish to provide comment on:

- a. if intermediaries are regulated under an accreditation model, the criteria for accreditation and whether they should be the same or different to the criteria that apply to the current 'unrestricted' level, and the extent to which intermediaries should be responsible for complying with the existing rules or data standards;*
- b. if intermediaries are regulated under an outsourcing model, the extent to which contractual obligations should be regulated between accredited persons and intermediaries;*
- c. if the obligations should differ depending on the nature of the service being provided by the intermediary.*

- MFAA response to (a):

If mortgage brokers are regulated under an accreditation model, where possible, brokers should comply with the standards of the 'unrestricted' level, with modifications made to accommodate small business, particularly with respect to the technology and software that is required at the unrestricted level. This does not mean that a broker should be permitted to receive, hold and use CDR data utilising a lower level of security, but the current CDR regime's CX standards are prescriptive in a way which may prohibit small businesses from being able to participate.

As such, due to the importance of the broking industry, it is vital that brokers should be able to participate on the basis that they have systems and software that is:

- reputable;
- secured by multiple levels of password protection that is regularly updated;
- regularly maintained, updated and screened for weaknesses;
- able to receive and organise the CDR data; and
- available to be tested or audited on request.

We note that s47(1)(l) of the NCCP Act requires that brokers holding an Australian Credit Licence must have technological resources and risk management systems in place that enable them to comply with their obligations under the NCCP Act. Brokers are also subject to the Privacy Act. As such, brokers already deal with a large quantity of consumer data, and they currently have appropriate systems and safeguards in place to ensure appropriate protection for consumers and therefore deal with CDR data.

Further, brokers are obliged to:

- obtain informed and express consent before they obtain the data;
- provide consumers with information on the data they hold (if requested); and
- securely destroy the data once it is no longer required to be held.

In addition, naturally we consider that all accredited brokers must:

- be a fit and proper person to manage CDR data;
- have appropriate insurance in place; and
- hold membership with a recognised EDR scheme in relation to consumer complaints.

We confirm that under the current MFAA Code of Practice, all MFAA members are required to meet certain benchmarks including to:

- be a fit and proper person;
- comply with all applicable laws;
- hold adequate professional indemnity insurance;
- maintain an internal dispute resolution process;
- hold membership of the Australian Financial Complaints Authority (AFCA);
- preserve client confidentiality and data privacy;
- have an Australian address for service;
- maintain appropriate training and continuing professional development standards; and
- act with appropriate skill, care and diligence.

Intermediaries should also be held to certain data security standards, but in order to assist small businesses, the extent of these will need to be considered in consultation with brokers. We would suggest that further consultation is undertaken regarding data security measures when the ACCC develops a separate tier of accreditation for intermediaries.

MFAA response to (b):

With respect to brokers, an outsourcing model could take one of two forms, namely brokers could be an outsourced service provider, or they could obtain CDR data from another third party outsourced provider. We consider that neither of these options is workable, or properly reflects the role of brokers.

With respect to brokers themselves being an outsourced service provider, it is incorrect to categorise brokers as a service provider of an accredited person (such as a bank). Brokers primarily provide services to consumers, and any services that may appear to be provided to

banks, such as collating information or lodging a loan on the lender's system, is really a service on behalf of the consumer and not the lender. Therefore, it is not appropriate for brokers to be categorised as outsourced service providers even with contractual arrangements in place between accredited persons and the broker for the disclosure of CDR data.

With respect to brokers accessing CDR data from another third party service provider set up for this purpose, due to the volume of information that brokers need to receive, and the fees that would likely be charged by these providers, we consider this option to be impractical, and will not reflect the true position of brokers in the industry.

As such, our response to question (b) is that an outsourcing model is not practical for brokers, but if it is the only option available, brokers must be permitted to receive information from an outsourced provider, or on the informed consent of the consumer as a service provider to the consumer.

MFAA response to (c):

The obligations on brokers with respect to the collection, use, storage and disposal of CDR data should be the same regardless of whether the broker receives the data as an accredited intermediary, an outsourced service provider, or from another third party service provider, and further, brokers must already protect customer personal and credit information by virtue of s47 of the NCCP Act and the Privacy Act.

Question 4

How should the use of intermediaries be made transparent to consumers? For example, you may wish to comment on requirements relating to consumer notification and consent.

MFAA response: We support full transparency and consent by consumers regarding who receives their CDR data. In order for a broker to receive CDR data, we submit that consumers will need to provide their express and informed consent before their data is provided or used.

Question 5

How should the rules permit the disclosure of CDR data between accredited persons? For example, you may wish to comment on requirements relating to consumer consent, notification and deletion of redundant data, as well as any rules or data standards that should be met.

MFAA response: As above, where CDR data is to be disclosed from an accredited person (for example, a lender) to a broker accredited under a proposed separate tier, we support full transparency with relevant accredited persons and with consumers, including express and informed consent to disclosure of CDR data between relevant accredited persons. We also support the notification of who has received CDR data and prompt deletion of data once it is no longer needed (noting the need for brokers to retain information about how they assessed a loan and how they have acted in the consumer's best interests). Consumers should be given notice of their rights to know exactly who has their CDR data, what it is being used for and how they can access that data and their rights about having their CDR data deleted by a particular person (subject to any legal or contractual requirement a person may have to retain the CDR data).

All data must be transferred and stored securely with minimum base data standards, appropriate for both a small business and taking into account the need for the information to remain secure.

It is important to note that brokers currently hold consumer data of the same type that they would receive as CDR data, albeit received in ad hoc and rudimentary ways, generally by the consumer themselves, for example, bank statements, lender transaction and credit account details, income, asset and liability information. Brokers are therefore accustomed to securely receiving, using and storing high volumes of personal and consumer credit information. As such, most brokers will have robust systems to securely store CDR data.

Question 6

Should the creation of rules for intermediaries also facilitate lower tiers of accreditation? If so, how should the criteria and obligations of new tiers of accreditation differ from the current 'unrestricted' accreditation level, and what is the appropriate liability framework where an accredited intermediary is used?

MFAA response: Where possible, lower tiers of accreditation should comply with the standards of the 'unrestricted' level. However, where the tiers of accreditation will likely need to differ is with respect to the technology and software requirements because small businesses operating in lower cost structures need to be accommodated. That is not to say that lower tiers of accreditation should be permitted to receive, hold and use CDR data utilising a lower level of security, only that the current CDR CX standards are prescriptive in a way which may result in some industry participants being prevented from complying due primarily to cost.

All accreditation tiers should have minimum requirements for being fit and proper people, an obligation to hold AFCA membership and appropriate insurance.

With respect to liability, accredited intermediaries should be liable to consumers for any loss a consumer suffers due to any failings of the intermediary to properly transfer, store, use or otherwise deal with CDR data. Brokers will need to ensure that they have insurance that will cover their participation in the CDR.

Question 7

If the ACCC amends the rules to allow disclosure from accredited persons to non-accredited third parties and you intend to:

a. receive CDR data as a non-accredited third party, please explain the goods or services you intend to provide, the purposes for which you propose to receive CDR data, and how this may benefit consumers;

b. be an accredited person who discloses CDR data to non-accredited third parties, please explain the intended goods or services you intend to provide and how they may benefit consumers.

MFAA response to (a): Mortgage brokers are the link between lenders and consumers in around 55% of all mortgage loans. Brokers offer consumers greater access to a wide variety of lenders, and therefore a greater choice of loans. This is essential to maintain and enhance competition in the finance industry.

Brokers assist consumers to choose a loan that suits their needs from thousands of available products. Brokers also provide consumers with information about lenders, their service delivery

and value proposition, they assist the consumer to complete an application and guide the consumer through the settlement process. Brokers provide consumers with education and help them through what can be an onerous and overwhelming process.

Brokers are a vital part of the finance industry as they force competition between lenders and improve consumer outcomes through providing choice and access to credit. Brokers can only fulfil this role to the best advantage of the consumer when they have access to sufficient data, on equal footing with lenders.

MFAA response to (b): We do not anticipate that brokers will provide any CDR data to non-accredited people. Brokers would usually only provide the information to lenders who will be accredited.

Question 8

What types of non-accredited third parties should be permitted to receive CDR data? Why is it appropriate for those types of third parties to be able to receive CDR data without being accredited?

MFAA response: While it is our preferred approach that brokers should be accredited under a separate tier of accreditation, should the ACCC determine that this cannot occur, in order for brokers to provide full and proper services to consumers, it is essential that they be permitted to receive CDR data with the consent of the consumer. Failing to facilitate a process where brokers can receive CDR data would stifle competition and risk poor consumer outcomes.

Question 9

What privacy and consumer protections should apply where CDR data will be disclosed by an accredited person to a non-accredited third party?

MFAA response: Any non-accredited third party who receives CDR data must be able to demonstrate that they comply with privacy laws (brokers must do so), have suitable data security standards appropriate to receive such data, be a member of AFCA and have appropriate insurance in place.

Further, protections provided by brokers should include informed and express consent before obtaining data, supply of relevant information on the data they hold where requested and secure destruction of the data once it is no longer required to be held. In addition, we consider that all accredited brokers must be a fit and proper person to manage CDR data.

Question 10

What degree of transparency for CDR consumers should be required where an accredited person discloses CDR data to a non-accredited third party? For example, are there particular consent and notification obligations that should apply?

MFAA response: The MFAA considers that CDR data should not be disclosed to a non-accredited third party, including a broker, without the express and informed consent of the consumer. The process should be transparent and easy to understand for the consumer.

The MFAA extends its thanks to the ACCC for the opportunity to provide this submission. Should you require further information, please do not hesitate to contact me on [REDACTED] or [REDACTED] or by emailing [REDACTED]

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Felton', written in a cursive style.

Mike Felton
Chief Executive Officer
Mortgage & Finance Association of Australia