

Part 1. Questions on Intermediaries:

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?

Comments:

In addition to acting as an ADR for Frollo's consumer business Frollo has indicated it wishes to become an intermediary. As an Intermediary, Frollo would provide a Personal Finance Manager platform to Data recipients, and non-data recipients. The B2B2C platform provides consumers with the means (interactive tools) to better understand and manage their finances. In this role Frollo will aggregate and enrich the CDR data, along with other data to provide money management and product insights. This will include managing the consent process.

Frollo would seek to operate a range of services which span both outsourced and intermediary models. These models have previously been discussed with the ACCC. Data Holders and Data Recipients would both benefit from Frollo services

As an Intermediary, Frollo would both collect and use CDR data for its clients.

Intermediaries could provide value in streamlining take up from new FinTech's without the means to become an unrestricted accredited data recipient. It is not just the technical implementation of banking API's that pose challenges for Fintech's. The initial costs are significant and the ongoing requirements to operate policies and processes will be significant. The policies and processes require a certain element of scale which will mean that the costs will need to be shared through a business model of supporting ADR's and non ADR's. Additional economic benefit would possibly come from limiting ACCC resources to manage and educate many smaller Data Recipients. Testing time would be reduced for new Data recipients. Could help lift the standard of implementations.

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.

Comments:

Need to understand the outsourcing model referred to as not adequately described.

The use of intermediaries to collect data from data holders and provide it to accredited recipients lends itself most naturally to an accreditation model. In these circumstances, the intermediary is not acting on behalf of the data recipients but is providing them with a service. As such, it would be appropriate for the intermediaries to be accredited and

regulated. The Rules currently provide for outsourcing (ie disclosure by a data recipient to their own service providers). This is a separate situation and should still be provided.

From an Intermediary perspective, both models should be used, but legal responsibility needs to be clear. The outsourcing model may be used to limit the responsibilities of the intermediary to a technical pipe/Limited Gateway provider that does not store data. Alternatively, the Intermediary can supply a more complete service which collects stores and derives data. This is like the more complete AISP Intermediary models seen in the UK.

The circumstances for using an Outsourced arrangement would be largely determined by a useful introduction of a lower tier of accreditation for data recipients and a clear legal definition.

The lower tier of accreditation should be more significant than just relying on data privacy standards. The introduction of open banking will create significantly more data in concentrated areas increasing the risks of a data breach that could be incredibly damaging to the open banking framework.

We have some concerns that the Intermediary and ADR accreditation will be significant and that creating a level of Fintech that can access and hold data without accreditation may reduce the value of becoming an ADR.

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, 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;

Comment: The minimum level should be as current 'unrestricted' level, provided their systems are "equally" tested, all controls in place and audited with the *added* perspective of company structure and working capital. The impact on customers is greater if an intermediary accreditation is revoked with a greater number of Data Recipients affected. Therefore, company structure and capital should be more rigorous than an ADR. In addition, the intermediary will need technology, process, staff and policies for working with its clients that will need to be robust enough to operate at scale and protect the consumer.

- b. if intermediaries are regulated under an outsourcing model, the extent to which contractual obligations should be regulated between accredited persons and intermediaries;

Comment: Regulations/guidelines should exist for contracts, the extent of which will be dependent on the accreditation process for intermediaries.

- c. if the obligations should differ depending on the nature of the service being provided by the intermediary.

Comment: Obligation should be dependent on the services provided. For example, an intermediary which acts only a technical pipe which does not store data.

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.

Comment: Consumers should be made aware of the use of an Intermediary. This may be indicated on consent and dashboard screens. The Data Holder may need to know both the identity of the Intermediary and where the data will end up.

On the topic of whether an Intermediary provides consent, both models should be available. That is, an intermediary may or may not be part of the consent flow. It is likely that an Intermediary providing a 'full' service would need to provide a consent UI that is tailored to the product/service of the Data Recipient.

The CDR rules will need to consider that a consumer will be provided services where their data is obtained, held and acted on by both the Intermediary and the data recipient, to different extents depending on the services engaged with the Intermediary.

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.

Comment:

The CDR rules will need to consider obligations of both accredited parties. Since both will have processes and safeguards already in place, the nature of sharing (between accredited parties) becomes more important to consent and dashboard (management and tracking) for the consumer.

New specific Intermediary API's may be required to facilitate data exchange (sharing) in order to simplify the customer experience.

One party would need to be the primary responsible entity to the consumer.

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?

Comment:

Yes, if using an Intermediary, a lower tier may be applicable to the data recipient. However, where the service is just a dumb pipe to access bank data and pass on to the ADR then a lower tier is NOT applicable to the data recipient. Some technical effort and testing time are saved by the ADR. The issues of data privacy will remain with the ADR in this scenario.

Responsibilities around the customer engagement. Eg; Ownership of Issues, complaints, notifications may still lie with the ADR depending on the services offered by the Intermediary.

If the service from the Intermediary collects, stores and provides new features a lower tier for the data recipient would be applicable.

Part 2. Permitting CDR data to be disclosed to nonaccredited third parties

With the consent of a consumer.

The rules permit disclosure of CDR data by an accredited person to an outsourced service provider, provided certain conditions are met, but do not otherwise permit disclosure of CDR data to non-accredited third parties.

Eg. Sharing with non-accredited third parties, such as accountants/Lawyers.

Additionally, the ACCC considers that while the rules may authorise the transfer of CDR data from accredited persons to non-accredited third parties, this would not be a requirement and accredited persons should be able to make commercial decisions regarding whether to offer this functionality to consumers.

Consultation questions: permitting CDR data to be disclosed to non-accredited third parties

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; **Comment: No Intention.**
 - 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. **Comment: Our use case would be to provide data to a Fintech wishing to supply services to end consumer's, such as helping to pay down debt.**

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?

Comment:

Non-Accredited parties who receive CDR data should abide by some rules that safeguard data and ensure controls are in place.

There are already ways for accountants to get data, why via CDR.?

There would be unintended consequences if non accredited parties received and stored data from CDR without any rules.

There could be Intermediary services for specific professions or use cases.

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

Comments:

Some regulation for privacy must exist over the entity receiving the data. Probably greater security and process than the existing Data privacy rules.

Insurance obligations would need to be considered.

Any unauthorised access may compromise the ADR or result in increased complaints to the ADR and DH.

Redundant data and derived data would need to be considered. If an accountant, what is the extent of derived data and can this be further passed on?

Derived data under the rules also makes the non-accredited scenario complex. Could derived data be treated as a lower tier?

Can create inconsistencies with accredited recipients.

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?

Comment:

Specific consent by consumers is required if transferring data to non-accredited recipients.

This should be based on the service provided by the ADR to be allowable. It should not be via a consumer request but part of provision of the ADR service.

Rules that apply to non-accredited parties for notifications to consumers.

It can no longer be an ADR obligation for transferred data to a non-accredited party. Further, any additional rules that would apply to ADR's for this would make CDR even more onerous.