



SUBMISSION PAPER:

Submission to Australian Consumer and Competition Commission on Competition and Consumer (Consumer Data) Rules 2019 - Exposure Draft dated 29 March 2019

May 2019

This Submission Paper was prepared by FinTech Australia working with and on behalf of its Members; over 300 FinTech Startups, VCs, Accelerators and Incubators across Australia.



Table of Contents

About this Submission	2
Submission Process	3
Context: Open Banking in Australia	3
Competition and Consumer (Consumer Data) Rules 2019	4
Consumer dashboard (rule 1.13, 1.14)	4
Refusal to provide (rule 3.5, 4.7)	4
Data minimisation (rule 4.4)	4
Third party access (rule 4.8)	5
Consent process (rule 4.10(2)(c))	5
Consent (rule 4.12, 4.18)	5
Dispute resolution (rule 5.11(d))	6
Revocation of accreditation (rule 5.14)	6
Suspension of accreditation (rule 5.18)	6
Notification and destruction (rule 5.21)	7
Data definitions (Schedule 2, item 1.3)	7
Joint accounts (Schedule 2, item 3.2)	7
Accredited person and accredited data recipient	8
Governance process	8
Conclusion	8
About FinTech Australia	9

About this Submission

This document was created by FinTech Australia in consultation with its Open Data Working Group, which consists of over 120 company representatives. In particular, the submission has been compiled with the support of our Working Group Co-leads:

- Melissa Mack, MoneyPlace
- Rebecca Schot-Guppy, FinTech Australia

This Submission has also been endorsed by FinTech Australia members:

- Certified By Pty Ltd
- FinTech Australia – Submission on the Draft Rules 2



- Gilbert Verdian, Quant Network Ltd (UK)
- Priviti
- Equitise
- Look Who's Charging
- ZIP
- Banjo Loans
- ID Exchange
- Plenty Wealth
- Spotcap Australia Pty Ltd
- Map My Plan
- Fact Fin
- Wealth Fury
- MoneyPlace
- AgriDigital
- Intuit Australia's
- Stone & Chalk
- Moneytree
- Harmoney Australia
- Birchal
- Prospa
- Tanggram
- Raiz Invest Limited
- Sharesight
- Moneytech Payments
- Frolo
- myprosperity
- Centelon Pty Ltd.
- Reinventure Group
- Brighte
- Moula

Submission Process

In developing this submission, our Open Data Working Group held a series of teleconferences to discuss key issues relating to the Competition and Consumer (Consumer Data) Rules 2019

We also particularly acknowledge the support and contribution of DLA Piper and K&L Gates to



the topics explored in this submission.

Context: Open Banking in Australia

FinTech Australia has been a consistent advocate for policy reform to drive the implementation of an Open Financial Data framework in Australia before the end of 2019. We have made numerous submissions to Federal Treasury, the Productivity Commission, the Open Banking Inquiry and Data 61 on the need for an Open Financial Data framework and on the details of that framework.

FinTech Australia will continue to engage on these broader issues, including by liaising with the Australian Competition and Consumer Commission (**ACCC**) in relation to the development of the Rules Framework, Data61 on the Consumer Data Standards and Treasury in relation to laws and privacy impacts.

While it is beyond the scope of this consultation, FinTech Australia notes with concern the recent delays to the commencement of the Open Financial Data regime. Specifically, many of our members were disappointed at the announcement of a pilot program from July this year and FinTech Australia is keen to ensure that the delayed timetable does not inhibit the great progress already being made across the industry. Furthermore, FinTech Australia encourages all parties to use the beta testing period to ensure consumers can have full confidence in the disclosure, use, accuracy, storage and security of CDR data they own.



Competition and Consumer (Consumer Data) Rules 2019

FinTech Australia welcomes the opportunity to put forward its position on behalf of members in relation to the exposure draft dated 29 March 2019 of the Competition and Consumer (Consumer Data) Rules 2019 (**Draft Rules**).

We have highlighted below a selection of key issues which we believe are important as the ACCC formulates the Draft Rules.

1. Consumer dashboard (rule 1.13, 1.14)

FinTech Australia seeks clarification in the Draft Rules that a data holder or an accredited person is only required to maintain a dashboard in respect of consents provided to it by a consumer, not to all consents given by that consumer. We presume this is the intention.

Furthermore, in light of the retention of records requirements in rule 9.3(3), FinTech Australia members seek clarification about whether a consumer dashboard needs to show all expired consents.

2. Refusal to provide (rule 3.5, 4.7)

FinTech Australia understands that the intention is that data holders would only refuse to provide access in exceptional circumstances. FinTech Australia considers additional detail is needed to delineate the circumstances in which requests can be refused, for example to describe the type of privacy or financial harm which is contemplated. FinTech Australia also seeks an ability for accredited persons to request a review of any decision by a data holder to refuse a request under this rule.

3. Data minimisation (rule 4.4)

FinTech Australia's members are concerned that a data holder may seek to refuse a request merely because they consider it may not comply with the data minimisation principle. FinTech



Australia seeks clarification in the Draft Rules that data minimisation is solely the responsibility of the accredited person and should not be grounds for a data holder to refuse a request.

4. Third party access (rule 4.8)

The Draft Rules permit data to be passed on to an outsourced service provider of the accredited person, but would not allow data to be shared with a third party which itself wishes to provide services to a consumer. This could disrupt aggregation service models. FinTech Australia seeks more flexibility for the sharing of data to enable, for example, one entity or multiple entities to collect data from data holders and another entity or multiple other entities to provide services to consumers using that data.

In this respect, we refer to the ACCC's note to rule 7.5 which says that the ACCC is considering rules which would allow CDR data to be shared between accredited persons. We consider this would go some way to addressing the above concerns. We also note that additional consequential changes to the Draft Rules would be needed to address this issue.

5. Consent process (rule 4.10(2)(c))

FinTech Australia supports the intention of this rule to make the consent process as simple as possible. We continue to engage with the Data61 consultation process in relation to the consent flow and note that we have concerns about how consumer friendly that process currently is.

In any event, we consider greater flexibility is needed to allow accredited persons to refer to other documents when seeking consent. For example, we consider it may be necessary for accredited persons to refer to, and include links to, their privacy policy, terms and conditions of the relevant service, etc.

6. Consent (rule 4.12, 4.18)

FinTech Australia understands the need to balance privacy considerations against the other aims of the CDR regime. Nonetheless, some of our members are concerned that a 12 month lapse period will be impractical for services which are designed to collect and process data over a long time period (such as an interest rate change notification service or some personal finance



management tools). Such members seek the flexibility for consumers to choose the period of consent they wish to provide or for consumers to be able to set consents to “auto-renew”.

In any event, if the 12 month consent lapse is retained, FinTech Australia seeks a streamlined process for consents to be refreshed before expiry, such that users do not have to start from scratch every 12 months. For example, FinTech Australia members request that data holders be required to enable consumers to renew consents through the data holder’s dashboard.

FinTech Australia members also seek greater clarity about how consent will be impacted when data holders make more data available, either voluntarily or as a result of changes to the applicable data standards. If a consumer has consented to the sharing of certain data, it would be undesirable to require them to consent again to share similar data from the same data holder.

7. Dispute resolution (rule 5.11(d))

While FinTech Australia accepts the need for an accredited persons’ activities pursuant to the Draft Rules to be subject to some form of external dispute resolution, FinTech Australia is concerned about the potentially expansive jurisdiction of the external dispute resolution scheme. In other contexts, external dispute resolutions schemes (such as AFCA’s predecessor organisations) have taken the view that, regardless of the reason an entity needed to become a member, once the entity was a member, all of its activities were subject to the scheme’s jurisdiction. We consider this would be unduly burdensome for accredited persons, where their unrelated activities are currently outside the scope of any requirement for external dispute resolution.

Accordingly, FinTech Australia seeks clarification that accredited persons would only be subject to external dispute resolution in relation to their compliance with the Draft Rules and not in relation to the totality of their services.

8. Revocation of accreditation (rule 5.14)

Revocation of accreditation is a drastic step and FinTech Australia considers that it should not be triggered by, for example, a single contravention of the data standards. Revocation would



have a profoundly disruptive effect on an accredited person's business and, if it were to occur lightly, this would present a significant and unworkable business risk.

9. Suspension of accreditation (rule 5.18)

Suspension of accreditation is a drastic step and FinTech Australia considers that there should be stricter controls on when suspension can occur without prior notice to the accredited person. As with revocation, suspension would have a profoundly disruptive effect on an accredited person's business. This would present a significant and unworkable business risk.

10. Notification and destruction (rule 5.21)

FinTech Australia considers that the obligations to notify consumers and destroy information should not apply until the accredited person has had an opportunity to engage with the Accreditor about their concerns (in the case of a suspension) or to apply for a review to the AAT under rule 9.2 (in the case of a revocation or suspension).

11. Data definitions (Schedule 2, item 1.3)

As the data standards are still under development, FinTech Australia notes that it will be necessary to ensure that the definitions in the Draft Rules remain consistent with the latest data standards.

12. Joint accounts (Schedule 2, item 3.2)

FinTech Australia considers that the proposed treatment of joint accounts is not entirely appropriate. There are a range of different scenarios in which accounts are held jointly, as well as more complex account types (eg trust accounts). These scenarios have not yet been fully mapped out in the Draft Rules.



We consider that there may be scope to link the consent process for joint accounts to the processes data holders already follow for determining whether one or multiple account holders have authority to operate a joint account.

In any event, if the Draft Rules will set out detailed rules for joint accounts, we consider that, where joint account holders have elected (under item 3.2(2)(b)) that they can only give consent jointly, it would be appropriate for any one joint account holder to revoke a consent (rather than requiring them both to revoke the consent, as the Draft Rules currently provide). This would appear to more accurately reflect the intention behind the election.

13. Accredited person and accredited data recipient

FinTech Australia is concerned that the use of the terms “accredited data recipient” and “accredited person” somewhat interchangeably in the Draft Rules could lead to confusion. If possible, it would be preferable for these terms to be consolidated or any difference clearly described.

14. Governance process

FinTech Australia is concerned about the lack of an ongoing governance process and mechanism for ongoing consultation with stakeholders in the Draft Rules.

We consider that the introduction of a Consumer Data Right could have a transformative effect on the relationships between consumers and the businesses they interact with. While these Draft Rules only apply to the banking industry, they will no doubt be used as a template for the other sectors which are to follow. As a result, we consider more work needs to be done to ensure that learnings from the implementation of the CDR as it relates to the banking industry and appropriately captured, considered and (if relevant) acted upon. We recognise that implementation of the consumer data right will require a new way of thinking for data holders and, as such, we suggest that processes for ongoing review and consultation are put in place, to ensure the banking industry (and other impacted industries) are adapting as intended and that the consumer data right is operating effectively.



Conclusion

FinTech Australia thanks the ACCC for the opportunity to provide inputs and recommendations on the Draft Rules. We will continue to engage on the broader issues in relation to Open Banking and Consumer Data Rights more generally.



About FinTech Australia

FinTech Australia is the peak industry body for the Australian fintech Industry, representing over 300 fintech Startups, Hubs, Accelerators and Venture Capital Funds across the nation.

Our vision is to make Australia one of the world's leading markets for fintech innovation and investment. This submission has been compiled by FinTech Australia and its members in an effort to drive cultural, policy and regulatory change toward realising this vision.

FinTech Australia would like to recognise the support of our Policy Partners, who provide guidance and advice to the association and its members in the development of our submissions.