



FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

Australian Competition and Consumer Commission
Level 20
175 Pitt Street
Sydney NSW 2000

29th October 2020

Dear: ACCC

Draft amendments to ACCC on CDR Amendment Rules

The Financial Planning Association (FPA) welcomes the opportunity to provide feedback on the CDR amendment rules.

To which professional classes do you consider consumers should be able to consent to ADRs disclosing their CDR Data? How should these classes be described in the rules? Please have regard to the likely benefits to consumers and the profession's regulatory regime in your response.

The FPA welcomes the recognition of financial advisers as a 'trusted adviser' for CDR consumers.

In aligning the CDR regime with other legislative frameworks, we recommend both the term 'financial adviser' and 'financial planner' be incorporated into the list. Both terms are protected through enshrinement in the Corporations Act 2001 S923C¹ and are interchangeable restricted terms. Additionally, these terms are defined under the occupation list contained in the Statutory Declarations Regulations 2018².

As further protection, the FPA would recommend in line with the Statutory Declarations Regulations 2018 that the CDR rules also explicitly state that the individual under the occupation list is required to be "currently licensed or registered to practise in Australia". In relation to financial advisers (although more broadly for other occupations), the FPA believes this is an important distinction to ensure no CDR data is going to unlicensed financial advisers who are not subject to the same authorisation, registration or conduct requirements that are overseen by the Australian Securities and Investments Commission, the Tax Practitioners Board and the soon to be established single disciplinary body. Consumers are afforded additional protections with this clarification through legislated internal dispute resolution (IDR) and external dispute resolution (EDR) requirements under the Corporations Act.

These two additional clarifications will align the Consumer Data Right Rules with the protected term 'financial planner' and 'financial adviser' within the existing regulatory framework under which they operate.

¹[Corporations ACT 2001 S923C](#)

²[Statutory Declarations Regulations 2018](#)



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We (ACCC) welcome views on whether these licensee (AFSL) should be included as a class in their own right.

The FPA supports the addition of Australian financial services licensees as their own class. The addition of AFSL as a class will help support the adoption of the CDR and encourage participation in the CDR by the financial advice profession.

While financial advisers operate as professionals in direct engagement with their clients and are subject to individual ethical and education obligations, they are also currently authorised, monitored and supervised through an AFSL, and consumers are provided protection through IDR and EDR frameworks through the AFSL rather than the individual financial adviser. An important aspect of this authorisation and oversight framework are legal requirements to meet record-keeping obligations which require all records of advice provision and services to be available to their AFSL as an obligation under the Corporations Act. Thus, the established relationship between a licensee and financial adviser is currently mandated in law and designed to provide a consumer protection framework, and financial advisers are unable to operate without this authorisation at this point in time. Based on this, it is critical that AFSLs are considered a class of recipient in their own right.

Additionally, where an AFSL is required to be accredited as a data recipient, it would follow that they are subject to the CDR rules in relation to record-keeping, disclosure, and data deletion. Based on the AFSL/financial adviser relationship, these requirements will naturally pass through to the financial advisers as AFSLs set business rules to ensure legal compliance and monitor and supervise the individual's comply with their individual obligations. For this reason, it is important that both sides of the relationship are dealt with as the same class of data recipient otherwise the framework non-accredited person is redundant in the provision of financial advice services. This will also ensure the class of 'non-accredited persons' is able to achieve its full purpose which is to expand the range of CDR participants while also mitigating the risk of unauthorised disclosure of CDR data.

If you have any questions, please contact me directly on [REDACTED] or [REDACTED].

Yours sincerely

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