



28 October 2020

Consumer (Consumer Data Right) Rules Consultation  
Australian Competition and Consumer Commission (ACCC)

To whom it may concern,

As one of the leading specialist mortgage brokerages in Australia, [Home Loan Experts](#) welcomes the opportunity to provide a submission to the Australian Competition and Consumer Commission (ACCC) in response to the proposed changes to the CDR Rules.

Being a specialist mortgage broker, we focus on assisting good borrowers who for whatever reason are not well-serviced by our industry. Typically, this is because their situation is complex and requires more expertise or because the major lenders don't work with that type of customer.

This requires us to deal with a wider range of lenders than other brokers. As such, we're required to keep our finger on the pulse when it comes to changes in our industry and the impact that these changes will have on our customers. We've written this submission to give the ACCC a point of view as it relates to mortgage brokers (trusted advisors).

We strongly support the introduction of CDR and open banking in Australia. We also believe that the goal of the CDR to foster increased competition, reduce turnaround time for credit decisions for better customer outcomes will be considerably dependent on wider participation by 'trusted advisors' in the regime.

We fully welcome the proposed rules which will enable authorised data recipients (banks) to share consumer data with a consumer's 'trusted advisor' such as a mortgage broker or financial adviser.

Currently, the assessment of a consumer as carried out by mortgage brokers during the home loan process involves a large amount of paperwork. The process involves the consumer requesting and collecting their bank statements, loan statements etc. directly from the bank and then sharing that data with mortgage brokers.

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With the full roll-out of CDR, we hope it will enable consumers to disclose the data to trusted advisors in a safe and secure manner without them needing to handle their data or gather copious amounts of documentation.

Consumers being able to share their data with mortgage brokers quickly and with their explicit consent will speed up the credit assessment process for home loans. The availability of accurate, in-depth information will allow mortgage brokers to quickly assess a consumer's full credit worthiness leading to better consumer outcomes and allow mortgage brokers to better meet the requirements of Best Interests Duty.

## Consultation questions

We would also like to give our thoughts on a couple of consultation questions as mentioned in the CDR rules expansion amendments - consultation paper - 30 September 2020.

- 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.

We consider the current list of trusted advisors which includes mortgage brokers to whom consumers can consent to ADRs disclosing their CDR Data as a good starting point.

The definition of mortgage brokers as set out in the *"National Consumer Credit Protection Act 2009 - Sect 15B Meaning of mortgage broker"* can be used to sufficiently describe mortgage brokers in the CDR rules.

Mortgage Brokers are regulated via the ACCC under Australian Credit Licence (ACL) regime with the broker either operating as an ACL holder or as a credit representative under an ACL. This regime allows the ACCC to govern the actions of mortgage brokers. In regards to the wider definition of trusted advisors, similar rules should be in place.

In reviewing the framework for becoming an ADR, many mortgage brokers would fulfil the requirements to become ADR's in their own right, all mortgage brokers are

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required to have an internal dispute resolution process, be a member of an external dispute resolution scheme and have appropriate insurances in place. This should be the minimum requirement for any participant in the scheme.

The best interests duty for mortgage brokers which will come into effect on 1 January 2021 differentiates us significantly from the banks as the statutory obligation for mortgage brokers to act in the best interests of consumers (best interests duty) and to prioritise consumers' interest when providing credit assistance (conflict priority rule) only applies to us and not the banks.

- Should disclosures of CDR data to trusted advisors by ADRs be limited to situations where the ADR is providing a good or service directly to the consumer? If not, should measures be in place to prevent ADRs from operating as mere conduits for CDR data to other (non-accredited) data service providers?

We believe that the disclosure of CDR data **should not be limited** to situations where the ADR is providing a good or service directly to the consumer. This has the potential to significantly limit the effectiveness of CDR.

Before the GFC, the home loan application process was predominantly managed by the banks. What has happened over time is more and more work has been diverted to mortgage brokers, who are now doing a full assessment before submitting a home loan application to a bank.

Mortgage brokers as part of their assessment to ascertain suitability of a home loan for an applicant are required to understand their living expenses, prior to open banking this was undertaken via a manual assessment of a customer's bank statements. With the advent of Open Banking, service providers such as Illion provide this service. Illion acts as a conduit and does not provide any direct good or service to the end consumer.

Moreover, consumers want to share CDR data from an ADR without intending to receive a service from the ADR. In a lot of cases, consumers simply want the ADR to handle the secure collection, management and disclosure of their data.

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Therefore, we would like to affirm that disclosures to 'trusted advisors' should occur where a customer wishes to do so, and not only when an ADR wishes to offer this functionality.

Finally, we would like to highlight the proposed rules which state that *"The ADR would not be precluded from charging a fee for this service."*

Currently, ADR's do provide their service and charge a fee. This cost is currently borne by the trusted advisor. In the case of Illion mentioned earlier, the mortgage broker currently bears the cost. What does need to be considered is can this cost be on-charged to the end consumer. Some other services during the mortgage application process can be passed on to the consumer (e.g. valuation costs). CDR should not be precluded.

## On data security and unintended consequences

As many others have rightly noted that as advisers we are at the end of the data flow and not in the middle.

Moreover, as part of the NCCP Act, a mortgage broker is required to hold supporting documents (data) used in the assessment for at least 7 years. The data we hold is also subject to regulatory requirements, including under professional regulatory regimes and protections set out in the Privacy Act 1988.

*What is not clear is what happens to the data after it's used. Which rules overrules which rule?*

It could be that the open banking (CDR) data doesn't need to be held to the same degree and duration as other customer data that forms part of the home loan application. The questions around how long the data needs to be held or managed by trusted advisors need to be addressed.

Regarding the other issue of unintended consequences: we think that if the punitive measures are harsh enough, it will go some way to stopping that. Stopping unintended consequences should be the regulator's mandate and one they need to keep a close eye on going forward.

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In conclusion, our hope is that the proposed changes intended to expand the Rules and allow for the entry of a greater number and type of businesses in Consumer Data Right are implemented after a wider discussion with industry bodies such as the Mortgage and Finance Association of Australia (MFAA) and Finance Brokers Association of Australia (FBAA) for broader broker participation.

Sincerely,

Alan Hemmings  
Chief Executive Officer  
Home Loan Experts

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