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To whom it may concern,

CDR Rules Consultation Paper – CDR rules expansion amendments

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 '*CDR rules expansion amendments*' Consultation Paper (**Consultation Paper**).

The MFAA supports the introduction of Open Banking and the Consumer Data Right (**CDR**) in Australia, particularly in the banking industry. We believe the 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.

Assuming that the CDR Rules that are implemented over time will allow broker participation in the CDR system, the CDR will assist mortgage and finance brokers by facilitating greater data sharing and increasing access to more comprehensive information, thereby helping brokers to assist consumers to meet their financial objectives while supporting brokers' compliance with their regulatory obligations. The involvement of brokers in the CDR Rules will also lead to a better customer experience, as such data sharing will simplify the application process and reduce unnecessary process duplication. Such data sharing would also occur via the CDR framework and therefore be subjected to greater control in the manner in which the data release is approved and delivered relative to the provision of data outside of the CDR framework which occurs in a more ad-hoc manner.

The MFAA therefore welcomes the opportunity to discuss the expansion amendments.

This submission begins by providing an overview of the MFAA's role within the industry before addressing the Draft Rules.

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**).

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. How brokers help consumers

Mortgage brokers play a critical role in the lending industry with over half of all mortgage loans being 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 play an important role in assisting vulnerable consumers to navigate the complexities of the home loan market and helping them to access finance that will improve their overall financial position. The more independently sourced information a broker has about a consumer, the better equipped the broker will be to identify any vulnerabilities that the consumer has and tailor their assistance to best suit the consumer's situation and needs. This will both enhance the customer experience and outcomes through the broker channel.

Brokers help the consumer to select an appropriate product suited to their financial circumstances and needs from thousands of possibilities. They then guide consumers through the loan application process, reducing the time, stress and administrative burden associated with securing a loan. Brokers are a valuable part of the finance industry.

We believe that the objectives of open banking/CDR and the value of the mortgage broking channel are greatly aligned in terms of driving competition and seeking to improve consumer outcomes.

3. Broker participation and the CDR Rules

The MFAA welcomes the introduction of new accreditation levels in the CDR regime, and in particular recognition of mortgage brokers as 'trusted advisors'. In order for the CDR regime to succeed, it is imperative that the rules enable and make it is easy for all participants in the finance industry.

However, in order to ensure that the CDR Rules can accommodate brokers, it is important that the ACCC understands how most brokers participate in the banking industry, the dependencies on various service providers in the value chain to assist a customer with their loan application, and the limitations that brokers face. It is also important that the needs of finance brokers are also considered.

The term 'brokers' usually refers to the person dealing directly with the consumer to assist them to find a loan that suits their needs. The vast majority of brokers are small businesses,

and are often sole traders. They may also employ staff to assist with the loan application process for the consumer.

In order to assist consumers, brokers require infrastructure and systems, to access a wide range of lenders, to capture consumer information for that consumer's application and to meet their requirements under law and submit an application to a lender. The vast majority of brokers need to use the services of an aggregator in order to access such infrastructure and systems. Brokers in their own right rarely contract directly with lenders. Aggregators hold the main agreements with the lenders, and provide their brokers with access to lenders as well as systems capability, regulatory, compliance and IT support. Furthermore, aggregators provide IT systems (also known as lodgement engines e.g. Nextgen.net, Simpology) through which brokers can submit a consumer's application, which is the preferred method for information to be transferred in the vast majority of finance applications.

Some brokers are also credit representatives of the aggregator, meaning that the aggregator is the Australian Credit Licensee responsible for the activities of the broker and for their monitoring and oversight. Other brokers hold their own Australian Credit Licence but utilise the systems, scale and support of the aggregator to support their business. Information on how the broker has met their regulatory requirements under NCCP Act, whether they are a credit representative or a licensee, must be retained for compliance purposes beyond lodging of the initial application.

As such, participation of both aggregators and brokers in the CDR regime is vital to the success of the CDR regime when it comes to brokers.

4. Brokers as 'trusted advisors'

The MFAA is supportive of the Consultation Paper and draft CDR Rules specifically calling out mortgage brokers as being trusted advisors to whom CDR data can be disclosed. As we understand, CDR data holders, on express and informed consent of a consumer, will be able to provide CDR data to unaccredited trusted advisors of the consumer.

However, to ensure that this regime works effectively for the benefit of consumers, we consider that the following changes need to be made.

4.1 Definition of a 'mortgage broker'

Central to the question as to whether the recognition of a broker as a trusted advisor will increase participation in the CDR Regime is who will be recognised as a 'mortgage broker'.

(a) Application to 'finance' brokers generally

We consider that 'mortgage broker' should be expanded to any finance broker, whether they submit loans for mortgages or other types of loans for individuals, who holds an Australian Credit Licence. This is because all brokers are subject to the strict requirements of their Australian Credit Licence (described in more detail below), and all brokers can use CDR data to provide better outcomes for consumers. Accordingly, there should be no distinction between a 'mortgage' broker and a finance broker more generally.

(b) Australian Credit Licensees

The Consultation Paper makes reference to Australian Credit Licensees. As we have described above, there are usually a number of entities involved in the submission of a loan by a broker to a lender. These often include the individual broker, the broker's employees,

their brokerage company and their aggregator. The individual broker and their brokerage company (if any) may hold their own Australian Credit Licence, or they may be a credit representative of the aggregator.

It is therefore essential that the CDR Rules make it clear that any definition of 'mortgage broker' (or 'finance broker' as we have described above) includes:

- an Australian Credit Licensee;
- a credit representative of an Australian Credit Licensee;
- an aggregator acting as an intermediary between the broker and the lender.

It is important to note that for NCCP Act regulated loans, all of these entities are subject to licensing, or must be appointed as credit representatives, which means that they are subject to strict licensing conditions and requirements.

Section 47(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. Licensees must ensure that their credit representatives are covered by such systems.

All brokers, whether they hold an Australian Credit Licence or are a credit representative, must:

- be a fit and proper person;
- have appropriate professional indemnity insurance in place; and
- hold membership with the Australian Financial Complaints Authority (**AFCA**) scheme in relation to consumer complaints.

Brokers are also subject to the *Privacy Act 1988* (Cth) (**Privacy Act**).

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 AFCA scheme;
- 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.

As such, given the protections that are in place to protect consumers, we consider that the definition of ‘mortgage broker’ (or ‘finance broker’) should be wide enough to accommodate all entities involved in the submission of loans to lenders – including aggregators and credit representatives, and their employees.

4.2 Obligation to provide CDR data

As currently drafted, a data holder is not obliged to offer consumers the choice to provide CDR data to a trusted advisor. While we appreciate that this may be due to systems limitations, or due to concerns by the CDR data holder about the security of providing this information to an unaccredited person, a CDR data holder could also refuse to provide the data to trusted advisors such as brokers because of the competitive threat they pose to a lender’s proprietary channels. This would not only undermine the intent of the CDR regime, but could also result in sizeable data transfer activity outside of the CDR framework.

We consider that, if a consumer has provided express and informed consent to their CDR data being provided to a broker (including their aggregator), the CDR data holder should be compelled to provide this information in human readable format.

One of the stated aims of the CDR regime, as stated on the ACCC CDR website, is to **‘give consumers greater access to and control over their data’**. It is consistent with this stated aim that, if a consumer specifically requests their data to be disclosed to an advisor, the CDR data holder should be compelled to comply with this request.

Further, as we have highlighted above, consumers are well protected from misuse or data security issues due to the credit licensing regime under which brokers operate. In the case of misuse or a data breach, consumers have recourse to AFCA as well as to the personal indemnity insurance of the broker.

As a point of clarity, it is unlikely that the CDR data that would be obtained by a broker would contain any information that could not be obtained, with the consumer’s full consent, from other sources, including in physical form (i.e. paper), which is arguably much less secure than a broker obtaining the data in electronic form and retaining it in their own businesses system, even if those current systems do not meet the current CDR data and security standards. Equally, allowing brokers to collect such data, with the consent of the customer, will greatly enhance the customer experience as it will save them from the time consuming, and unnecessary, task of collating data from many sources. Brokers are accustomed and 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, and therefore their status as ‘unaccredited’ should not be an impediment to them receiving data directly from the CDR data holder.

Despite the fact that brokers can often obtain data that is very similar, if not the same as, CDR data through other methods, we consider that broker participation in the CDR regime is imperative to ensure that the regime operates as it is intended and gives consumers greater control over their data, the way consent is provided, and the way data is delivered to the trusted advisor.

4.3 Fee charged by CDR data holders for provision of information to a trusted advisor

The Consultation Paper and draft CDR Rules state that a CDR data holder may charge a fee for providing CDR data to a trusted advisor. In order to ensure that CDR data holders cannot

use such a fee as a method of dissuading consumers from making such a request (which can lead to anti-competitive results), we consider that the CDR Rules should be amended to state that the fee must be reasonable. The ACCC should also provide guidance on what is reasonable. CDR data holders should not be able to profit from allowing consumers to direct who their data is provided to.

4.4 An accredited data recipient acting as conduit for non-accredited trusted advisor

The Consultation Paper describes a concern that there may be situations where an accredited data recipient acts solely as a conduit for non-accredited trusted advisors to obtain CDR data.

Given the rise of fintechs and other finance and data service providers, and the usefulness to the credit industry of such service providers, we consider that there is no reason why an entity who meets the accreditation, and who also provides services such as data analysis and enhancement, should not be able to, firstly obtain CDR data, and secondly pass it on to a trusted advisor, so long as these activities are consented to by a consumer. We see great benefit to consumers, lenders and brokers of CDR data being able to be obtained and analysed to improve credit decisions and assist brokers comply with their legal requirements, including the best interest duty legislation which commences on 1 January 2021.

The aim of the best interest duty legislation is an improvement in consumer outcomes. Brokers are much better equipped to comply with this obligation when they have access to as much data as possible about a consumer, and when that data has been analysed in a meaningful way.

As such, we consider that all data holders, whether they are a bank, aggregator or data intermediary, must be able to provide information to trusted advisors with the consumer's consent, and must not first be required to have provided a service to the consumer.

4.5 Data to be in human readable format

The CDR data rules should specify that all CDR data provided to a trusted advisor must be in a human readable format.

4.6 Use of data

Once brokers are provided CDR data as a trusted advisor, it is imperative that they (or an employee of the broker) are able to use the data outside the CDR regime and that there are no restrictions on passing the data, with the consent of the consumer, to their aggregator, a lender, or any other person relevant to the loan submission process, including any system (e.g. lodgement engines) or distribution partner of the aggregator or lender.

The removal of such restrictions will, amongst other things, assist the broker to comply with the record keeping requirements of the best interest duty legislation, which commences on 1 January 2021. Brokers should be able to hold data for the customer has authorised them to, as the broker has obligations under the NCCP Act, including the duty to act in the consumer's best interest.

Aggregators have governance and oversight obligations imposed contractually by lenders, or as a licensee under NCCP Act. Rules should not preclude storing of data when required for these purposes.

Furthermore, information needs to be auditable and retrievable to respond to regulatory requests in future periods.

5. Restricted levels of accreditation

The MFAA considers that flexibility is required by the CDR Rules. As such, we broadly welcome having a range of options available that will widen participation and allow access depending on the nature of the business of the participant, the structure of their business, and the services they offer.

Having said that, the proposed categories of restricted accreditation as currently drafted may not assist mortgage brokers wishing to operate within the CDR framework as an accredited participant for the following reasons:

- the limited data restriction accreditation will not assist brokers as the data sets available are too limited to serve a useful purpose for brokers and their customers;
- the data enclave restriction may be suitable in some circumstances, but the data security and IT requirements are still too onerous for most brokers to meet. Further having to use the CDR data within the enclave may mean that brokers are not able to keep sufficient records of the data that they relied on to meet their regulatory obligations if they are asked to provide such records by ASIC, AFCA or a court; and
- the affiliate restriction will rarely be suitable for brokers and its utility will depend on the commercial relationships a broker or aggregator has. In addition, the data security and IT requirements are still too onerous for most brokers to meet, and the need for the sponsor to ensure that the affiliate complies with their accreditation requirements on an ongoing basis may result in sponsors not wanting this extra liability.

IT limitations

As we have noted in previous submissions, the reason that the MFAA has been requesting multiple levels of accreditation is due to the small scale nature of most brokers. The security requirements provided for in the CDR Rules will not support mortgage broker access to CDR data because a broker, who is usually a small business or sole operator, is unlikely to be able to support the technology platforms and software services required to manage CDR data as specified in the CDR Rules.

Broker participation in the CDR regime under an accreditation model is dependent on brokers not being required to comply with the standards of the 'unrestricted' level and particularly in relation to IT security.

The Consultation Paper and the proposed CDR Rules appear to make very little change to the information security requirements required for accreditation. While participants under a restricted level of participation will not be required to provide an independent assurance report to become accredited, and can rather provide an attestation statement based on self-assessment, both to become accredited and on an ongoing basis, the standards they would need to adhere to are still onerous and likely in most instances to be beyond their capability.

We note that section 3.4 of the Consultation Paper states that the Accreditation Guidelines will be updated to reflect the information security criterion required for restricted level access. In order for brokers to be able to participate, it is imperative that the information security criteria reflect the limited costs and resources available to small businesses. There needs to be a 'business reasonability' test on the information security criteria to ensure that it is

appropriate for the size and scale of the businesses that will be operating using the restricted levels of accreditation.

We are happy to discuss an appropriate level of security for brokers with the ACCC, however we consider that it is appropriate 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 section 47(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 to deal with CDR data. As such, the levels required for accreditation on a restricted basis should take this into account.

6. Consultation questions

As we have provided substantial comments above, we have decided not to respond to the consultation questions as our comments are more wholesale in respect of the approach generally.

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

Yours sincerely



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