

20 July 2020



CDR Rules Team  
CDR Rules Consultation  
Australian Competition and Consumer Commission

By email: [ACCC-CDR@accc.gov.au](mailto:ACCC-CDR@accc.gov.au)

To whom it may concern,

### **CDR Rules Consultation – Draft rules that allow for accredited collecting third parties**

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 Consultation – Draft rules that allow for accredited collecting third parties (the Draft Rules).

The MFAA supports the introduction of Open Banking and the Consumer Data Right (CDR) in Australia. 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 the CDR Rules that are implemented in time 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 MFAA therefore welcomes the opportunity to discuss the CDR as it relates to brokers.

For completeness, it should be noted that we consider that there are three methods through which broker access to CDR data can be achieved that is not currently contemplated under the CDR Rules. Our strong preference being for option (i) below:

- i. Brokers to be accredited through a separate tier of accreditation.
- ii. Brokers to obtain and use CDR data from an accredited third-party provider (such as a data aggregation service).
- iii. Brokers to obtain and use CDR data through the consumer with the informed consent of the consumer.

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**) which includes lending for the purchase of residential property.

## **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. CDR Rules Consultation – Draft rules allowing accredited collecting third parties**

The Draft Rules contemplate a fully accredited 'principal' using the services of another fully accredited 'service provider' to collect and/or use data. While this model may assist with broker participation in some limited circumstances, these Draft Rules will have very limited application to the vast majority of brokers who are unlikely to be able to achieve full accreditation.

Where the Draft Rules may be relevant is in relation to the following situations:

1. allowing a bank, that is accredited, to use the services of an aggregator (that is, an entity who accredits and manages broker access to lenders), that is also accredited, to obtain information for the bank in support of an application for credit arranged by or through that aggregator;
2. allowing an aggregator, that is accredited, to use the services of a software provider or data analyst, that is also accredited, to obtain and analyse borrower information.

The Draft Rules accommodate the limited situations above, however even if aggregators have access, it does not immediately follow that brokers will have access to the CDR system and data. Given most brokers will still be excluded from the CDR, the outcomes for the 55% of all customers taking out a home loan through a mortgage broker may still be compromised.

Leaving aside the exclusion of brokers and focussing solely on the Draft Rules as they may apply to the two limited situations above, the main issue in these situations will be liability for errors or data breaches, and the Draft Rules propose that both parties must fulfil their accreditation obligations and that the principal is responsible for the actions of the provider. This is the liability regime we would expect. We note that there should however be no restrictions on commercial indemnities between the parties for any monetary loss.

## **3. 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 consumer has, and tailor their assistance to best suit the consumer's situation and needs.

Brokers help the consumer to select an appropriate product suited to their financial circumstances and needs from the 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.

#### **4. Wider broker participation and the need for further changes to the CDR Rules**

Broker access to the CDR regime will support the future competitiveness of, and access to, the lending market via the broker channel which will also lead to positive consumer outcomes and improved innovation.

The future of the CDR regime must contemplate the role of brokers as not doing so would result in the CDR not being utilised to its full potential. If brokers are not provided for by the CDR Rules, they will not have access to consumer data which will place them at a competitive disadvantage to lender proprietary channels which will likely compromise the consumer outcomes produced whilst potentially reducing competition in the home lending market. It may also restrict a broker's ability to act in the best interests of the consumer – an obligation which commences on 1 January 2021.

The MFAA therefore strongly submits that mortgage brokers need to be able to obtain equal access to CDR data and not be left at a disadvantage within the CDR regime as this would hinder competition, choice, and access to credit by consumers.

To this end, we consider that it is essential that brokers are provided for in the rules under a separate tier of accreditation in order for them to be able to compete and assist consumers on equal terms with other industry participants.

If brokers are regulated under an accreditation model, where possible, brokers should comply with the standards of the 'unrestricted' level, with modifications made to accommodate small business, particularly with respect to the technology and software that is required at the unrestricted level. This does not mean that a broker should be permitted to receive, hold and use CDR data utilising a lower level of security, but the current CDR regime's CX standards are prescriptive in a way which may prohibit small businesses from being able to participate.

As such, the MFAA encourages the ACCC to introduce separate tiers of accreditation at the earliest opportunity in order to ensure that competition and access to credit are maintained and enhanced over time.

While we appreciate that the ACCC may be legally prohibited from doing so currently, we provide this information so that the ACCC is fully aware of the need for broker participation in the CDR regime.

The MFAA extends its thanks to the ACCC for the opportunity to provide this submission. Should 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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