

10 May 2019



Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

To whom it may concern,

Exposure Draft – Competition and Consumer (Consumer Data) Rules 2019

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 exposure draft of the Competition and Consumer (Consumer Data) Rules 2019 (the Draft Rules).

The MFAA supports the introduction of Open Banking and the Consumer Data Right (CDR) in Australia. We believe the new 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. Open Banking and the CDR will likewise assist mortgage brokers by facilitating greater data sharing and increasing access to more comprehensive information, thereby helping brokers to assist their customers to meet their financial objectives.

The MFAA therefore welcomes the release of the Draft Rules by the ACCC. We use this opportunity to raise specific points in connection with Open Banking and the CDR which are of greatest relevance to the mortgage broking industry. This submission begins by providing an overview of the MFAA's role within the industry before setting out a number of relevant points around accreditation, data security and sharing, and consumer education.

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) 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. Accreditation

It is crucial that mortgage brokers have access to CDR data so that brokers may continue to support competition in the lending market and are not placed at a disadvantage to the proprietary channel. Brokers provide customers with wider choice and access to an increased range of products than they would otherwise likely reach without assistance, particularly in rural and regional areas where brokers have filled a significant gap produced by lender branch closures. In an era of increasing product and credit policy complexity, brokers are also able to educate and guide customers through the loan application process, reducing the time, stress and administrative burden associated with securing a loan, and assisting the customer to select an appropriate product suited to their financial circumstances and needs.

Fundamentally, Open Banking should not impede competition. To this end, the MFAA highlights the need to ensure mortgage brokers are able to obtain equal access to CDR data and not be left at a disadvantage within the new system. By facilitating broker access to more comprehensive information on borrowers, Open Banking will support competition in the lending market via the broker channel and contribute to positive consumer outcomes.

Unrestricted accreditation will not support mortgage broker access to CDR data

A single, 'unrestricted' accreditation level is proposed in the Draft Rules. Under Part 5, unrestricted accreditation attaches a number of obligations on the accredited person, including requirements to:

- to be a fit and proper person to manage CDR data;
- have adequate practices, procedures and systems in place to manage and protect CDR data and associated information security risks;
- have internal dispute resolution processes that meet requirements set out in the Draft Rules;
- hold membership with a recognised external dispute resolution (EDR) scheme in relation to CDR consumer complaints; and
- have appropriate insurance, or a comparable guarantee, in place to compensate consumers for any losses arising from a breach of obligations under the CDR regime.

The MFAA does not question the above strong accreditation thresholds set out in the Draft Rules for the initial, unrestricted level.

It is unlikely, however, that an end user mortgage broker will be able to support the technology and software services required to manage CDR data as specified in the Draft Rules. Instead, we propose that mortgage brokers will participate in Open Banking via these two avenues, as outlined below.

Option A: Mortgage brokers will become accredited data recipients under a separate tier of accreditation

At Subdivision 7.2.3, the Draft Rules provide that:

The ACCC is considering rules authorising the disclosure, with the consumer's consent, of a consumer's CDR data by an accredited person to another accredited person (for example an intermediary) or another person (for example a consumer's accountant, lawyer or financial counsellor).

The MFAA strongly supports the proposition to authorise disclosure of a consumer's CDR data by an accredited person to another accredited person such as an intermediary or another

person, under a separate tier of accreditation. Open Banking must facilitate a customer-driven system whereby consumers have the power to dictate how their data is shared, and with whom, provided that appropriate safeguards are in place. The above proposed disclosure authorisation will provide a useful avenue to access necessary customer data, will be of significant value to the broking industry and the competition and customer outcomes it drives, and will encourage wider participation in Open Banking.

We envisage that a separate tier of accreditation will include various obligations, including requirements to:

- be a fit and proper person to manage CDR data;
- have appropriate insurance in place; and
- hold membership with a recognised EDR scheme in relation to consumer complaints.

We confirm that 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;
- have membership of the Australian Financial Complaints Authority (AFCA);
- preserve client confidentiality and data privacy;
- have an address for service;
- maintain appropriate training and continuing professional development standards; and
- act with appropriate skill, care and diligence.

The Draft Rules provide that accredited data recipients will only be able to request and receive consumer CDR data if they hold a contractual arrangement with the consumer to supply goods or services using that data. We take issue with this restriction, because brokers and lenders are prohibited from providing services to consumers until they have made a responsible lending assessment. Accordingly, we suggest the final version of the Rules refers to ‘a *contractual arrangement with the consumer to consider supplying goods or services using that data*’. More broadly, we do not recognise the value in this restriction and believe that proper accreditation standards provide a satisfactory and simple benchmark without this additional measure.

The MFAA encourages the ACCC to introduce separate tiers of accreditation at the earliest opportunity in order to ensure that brokers can access CDR data on equal terms with other Open Banking participants. We welcome any opportunity to engage with the ACCC and be of assistance in the development of a separate accreditation tier.

Option B: Mortgage brokers will access CDR data via customers

Part 3 of the Draft Rules provides that consumer data requests may be made directly by CDR consumers to data holders, using the data holder’s direct request service. The requested data must be disclosed to the consumer in a human-readable format and can then be used by consumers as they consider necessary. This provides a separate way that brokers will be able to access CDR data.

Under this arrangement, a mortgage broker will be required to request that a customer obtain their own CDR data directly from a lender, before transferring the information to the broker.

This process clearly reduces the efficiency of the Open Banking system by requiring the customer to actively obtain data in their own right before transferring it to a broker.

We recommend that brokers should have the option of proceeding under Option A (receiving machine readable data under a separate tier of accreditation) or Option B (receiving human readable data).

3. Data Security

Part 7 of the Draft Rules outlines a robust security framework used to supplement the privacy measures outlined in the *Treasury Laws Amendment (Consumer Data Right) Bill 2019*. These include a requirement that an accredited person must maintain a CDR policy, that the 'consumer dashboard' is updated by accredited persons or data holders when data is collected or disclosed, and further measures around quality, security and correction of CDR data. Schedule 1 of the Draft Rules sets out additional requirements to ensure the security of CDR data held by accredited data recipients (per privacy safeguard 12), adding a new layer of security beyond that required under the Australian Privacy Principles (APPs). These requirements include minimum information security controls, proper record keeping and senior management responsibilities, the requirement for a formal governance framework for CDR data security and an information security policy, and periodic reviews of internal data security response plans.

The MFAA supports the above strong security measures imposed by the Draft Rules for participants that will be accredited under the initial, unrestricted tier of accreditation. We would suggest that further consultation is undertaken regarding data security measures when the ACCC develops a separate tier of accreditation for 'other persons', and we again welcome any opportunity to engage on this issue.

4. Data Sharing

Under Part 2 of Schedule 2 of the Draft Rules, the banking sector will be required to share primary consumer CDR data including customer, account and transaction data, as well as product specific data relating to products used by the consumer. The MFAA supports this comprehensive scope of CDR data included the Draft Rules, noting that complete data sets will improve transparency over a consumer's financial circumstances and support mortgage brokers in assisting customers to meet their financial objectives. Over time, we anticipate that Open Banking will improve competition between lenders, leading to increased innovation and new products on offer at more competitive rates.

We note the requirements under the Draft Rules for accredited data recipients to establish an online consumer dashboard to manage data requests and consent requirements. We envisage that brokers would not be required to maintain a consumer dashboard given that they are not a supplier of credit and financial products but rather an intermediary. The information held by brokers is held for the consumer (as a 'quasi agent' for the consumer), and so is relatively static. The appropriate way for consumers and other data seekers to obtain the information derived by the broker is to obtain it from the data holder that provided the information to the broker. It would be prohibitively expensive for brokers to have to establish a consumer dashboard. Of course, we envisage that some larger brokerages may elect to do so.

We propose that, under both Option A and B above, it should be possible for brokers to request data through a third-party service. Most brokers will not have the financial or technological capacity to develop the level of technology necessary to accomplish this on an individual basis. It is important that technology restrictions do not impose limitations on mortgage broker participation in Open Banking, when considering the contribution made by brokers to competition across the broking and finance industry. Consideration should be given as to whether brokers can pass the data or information derived from this data on to lenders to whom loan applications are made. Brokers generally have a legal obligation to provide lenders with any relevant information and issues may arise if brokers receive information that they cannot pass on.

Similarly, we stress that any online systems required to manage consumer consents must be presented in a straightforward and logical manner, for all consumers to understand regardless of their financial services or technology literacy. We believe that a user-friendly experience is a necessary pre-requisite for the full uptake of Open Banking.

5. Consumer Education

The MFAA is of the view that, in order to ensure sufficient uptake and active participation, consumer education around the CDR (and Open Banking more generally) is of the utmost importance. Without education and broad consumer participation in the new data sharing environment, Open Banking will not produce the full benefits expected by policy-makers. Consumer education must focus on improving public awareness of the data privacy and consent framework attached to Open Banking, together with consumer rights and associated risks. This focus should be balanced with messaging on the benefits of the CDR in order to encourage consumer uptake and participation.

Mortgage brokers can play a central role in consumer education regarding the CDR and Open Banking. Brokers develop one-on-one customer relationships and already offer significant assistance and advice to consumers in navigating the lending process. We anticipate this support will be extended under Open Banking to ensure that customers remain informed of their rights and are empowered to share data in a safe and secure way.

Additionally, the MFAA supports regular reporting and assessment of the Open Banking framework and suggests that any review must have a consumer-centric focus when assessing the effectiveness, benefits or other impacts of Open Banking.

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 by emailing [REDACTED].

Yours sincerely



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