

18 May 2020



Secretariat
Inquiry into Future Directions for the Consumer Data Right
The Treasury
Langton Crescent
PARKES ACT 2600

By email: data@treasury.gov.au

To whom it may concern,

Consumer Data Right – Inquiry into Future Directions for the Consumer Data Right

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 Treasury in response to the Consultation on the future direction for the Consumer Data Right (the Consultation Paper).

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. The CDR will likewise 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 future of 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. Our strong preference being for option (i) below:

- i. Brokers are accredited through a separate tier of accreditation.
- ii. Brokers obtain and use CDR data from an accredited third party provider (such as a data aggregation service).
- iii. Brokers 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 a number of relevant points raised in the Consultation Paper.

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. Access

Mortgage brokers play a critical role in the lending industry. Approximately 55% of all mortgage loans are 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 also guide consumers through the loan application process, reducing the time, stress and administrative burden associated with securing a loan, and assist consumers in their selection of an appropriate product suited to their financial circumstances and needs.

Fundamentally, the CDR Regime should not impede competition, and must aim to enhance competition. To this end, the MFAA 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. By facilitating broker access to more comprehensive information on consumers, the CDR regime will directly support better credit decisions and consumer outcomes. In particular, if brokers have access to more information about a customer, they can more readily identify any vulnerabilities that the customer has, and tailor their assistance to best suit the customer's situation and needs.

Additionally, 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.

Further, the future of the CDR regime must contemplate the role of brokers as not doing so would result in the CDR data potentially being incomplete, and not utilised to its full potential. It is essential that the CDR regime accommodates all service providers in the finance industry and contemplates how the roles of brokers may be expanded in future.

Brokers are an integral part of the finance landscape, offering an essential service to more than half of all consumers taking out a home loan. It is therefore imperative that the future of the CDR takes brokers into account so that the value of the CDR regime is not undermined.

It should be recognised that brokers that function in the consumer credit environment are required to operate under an Australian Credit Licence. 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. The CDR regime should recognise when industry participants like brokers are already significantly regulated and allow them to participate on this basis when appropriate.

As we have proposed in previous submissions, unrestricted accreditation as provided for in the CDR Rules will not support mortgage broker access to CDR data. This is because a mortgage 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.

Instead, the future for CDR needs to ensure that mortgage brokers can participate in the CDR Regime either by becoming accredited data recipients under a separate tier of accreditation, or alternatively by having access via a less efficient method such as via a third party provider or a consumer directly.

3. Future role and outcomes of the Consumer Data Right

The Consultation Paper acknowledges that the benefits of the CDR Regime are wide ranging, and that the framework introduces standardisation and systems that support trust between participants. As brokers are such an integral part of the finance industry, and are already highly trusted by the consumers they service, prohibiting brokers from being part of the CDR Regime is paramount to undermining their role and value in the industry, and potentially to destabilising competition.

Given brokers are already trusted by their clients, clients will be able to benefit from any expansion in broker activities that the CDR Regime can facilitate. This may include brokers being able to open and close accounts on behalf of customers, authorise changes to accounts, authorise variations and account switches and otherwise assist the consumer to manage their finance with their consent.

As noted in the Consultation Paper, often consumers are time poor, and may not have the time, patience or knowledge to look after their finance needs. Consumers will therefore benefit substantially from allowing trusted, licensed and accredited brokers to act on their behalf. Unless brokers are able to undertake this role, the CDR Regime will not reach its full potential for consumers.

In order for this to occur, brokers firstly require to be accredited under a separate tier of accreditation (which we consider needs to occur as an absolute minimum), and they secondly need to have not only 'read' access to data, but 'write' access as well. 'Write' access is considered in more detail in section 6 below.

4. Switching

Mortgage brokers drive competition, choice and access to credit for consumers enabling them to access a better deal. Brokers are particularly important in regional and rural Australia allowing consumers access to loans from lenders who do not have a local presence in that consumer's community. Additionally, brokers play an important role in assisting vulnerable consumers who need help to access finance that will improve their overall financial position. Some consumers may not know what options are available to them and require assistance to help them understand the different types of loans and relevant features available.

Brokers act as the first point of contact for more than half of all consumers looking for either a new loan, or to refinance, and assist them to navigate the thousands of available products, and offer insights on available lenders in particular with respect to service delivery, consumer satisfaction and product range. They also assist the consumer to apply in what is often an onerous and overwhelming process and act as a point of contact between the consumer and the lender. Often, it is not until a consumer contacts a broker that they understand that they may be able to obtain a better deal on their finance.

As stated in the Consultation Paper, there is evidence to suggest that consumers could be getting a better deal, but due to a lack of meaningful information, poor consumer outcomes often prevail.

Due to the role played by brokers in the finance industry, their participation in the CDR Regime is imperative to ensuring consumers can switch easily between lenders. Allowing brokers to fully participate in the CDR Regime means that they will more easily be able to provide consumers with the meaningful information they are currently lacking about switching loans. This naturally will lead to an increase in competition and better consumer outcomes.

Brokers can only fulfil this role to the best advantage of the consumer when they have access to sufficient data, on equal footing with lenders. Further, as discussed below, brokers having 'write' access would also facilitate customers more easily switching to a better deal.

Brokers will be able to use the CDR information to more quickly and easily guide consumers into a loan which better suits their needs and will more quickly and easily be able to fulfil their responsible lending obligations given they will have more efficient access to a wider array of information.

Further, from 1 January 2021, brokers will have a duty to act in the best interests of their customer. For brokers to fully comply with this obligation and ensure that their customers are best served, brokers need to have access to as much information as possible including CDR information.

5. Read access

As the MFAA has explained in earlier submissions to the ACCC, brokers should be provided for in the CDR 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. This should definitely allow 'read' access and should extend to 'write' access in appropriate circumstances (discussed further in section 6 below).

If brokers are permitted to participate in the CDR Regime under an accreditation model, regardless of whether they have 'write' access or not, 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, due to the importance of the broking industry, it is vital 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 s47(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.

Further, brokers are obliged to:

- obtain informed and express consent before they obtain the data;
- provide consumers with information on the data they hold (if requested); and
- securely destroy the data once it is no longer required to be held.

In addition, naturally we consider that all accredited brokers must:

- 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;
- hold membership of the Australian Financial Complaints Authority (AFCA);
- 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.

Intermediaries should also be held to certain data security standards, but in order to assist small businesses, the extent of these will need to be considered in consultation with brokers, and should take into consideration whether they need both 'read' and 'write' access, or just 'read' access.

It is important to note that brokers currently hold consumer data of the same type that they would receive as CDR data, albeit received in ad hoc and rudimentary ways, generally by the consumer themselves, for example, bank statements, lender transaction and credit account details, income, asset and liability information. Brokers are therefore accustomed to securely receiving, using and storing high volumes of personal and consumer credit information. As such, most brokers will have robust systems to securely store CDR data.

6. Write access

As mentioned in section 3 above, giving brokers 'write' access will allow them to not only advise consumers on their finance needs, but assist consumers to actually act on the advice. This will have the advantage of ensuring that consumer inertia does not prevent consumers from following through on a refinance or switch proposal.

Consumers should be given the option of granting trusted advisers, such as licensed brokers, with the ability to open and close accounts, authorise changes to accounts, authorise variations and account switches and otherwise assist the consumer to manage their finance with their consent.

This will result in brokers more easily assisting consumers to obtain a better deal on the home loans, credit cards and personal loans they might seek.

At present brokers mainly assist consumers with home loans. By allowing brokers to fully participate in the CDR Regime, it will be easier for brokers to assist consumers with their credit card and personal loan needs also. This will create efficiencies for the consumer, and also ensure that the consumer understands their options and can access finance that better suits their needs.

The Consultation Paper raises the issue of regulatory barriers, compliance costs and risks, as well as liability for payments and errors and changes to customer identification details.

We do not contemplate that brokers should be able to change consumer identity data. The role of the broker should be limited to changes related to the credit, which they have advised the consumer about, and which the consumer has authorised.

Brokers who apply for 'write' access to data will need to ensure that they have effective security in place, allow only authorised personnel to access and change data and have strong systems and record keeping in place to ensure consumer consent and relevant instructions.

All data must be transferred and stored securely with minimum base data standards, appropriate for both a small business and taking into account the need for the information to remain secure.

We would suggest that further consultation is undertaken regarding data security measures as the CDR Regime develops.

7. Consumer protection

Whether a broker has 'read' or 'write' access to the CDR regime, or both, we support full transparency with relevant accredited persons and with consumers, including express and informed consent to any use, disclosure or change to that information.

We also support the notification of who has received CDR data and prompt deletion of data once it is no longer needed (noting the need for brokers to retain information about how they assessed a loan and how they have acted in the consumer's best interests). Consumers should be given notice of their rights to know exactly who has their CDR data, what it is being used for, how they can access that data and their rights about having their CDR data deleted by a particular person (subject to any legal or contractual requirement a person may have to retain the CDR data) and who has write access to that data. Consumers should be able to revoke their consent, in particular, 'write' access quickly and easily.

We note that by allowing brokers to participate in the CDR Regime, they will be better equipped with information that will indicate whether a consumer is vulnerable or experiencing hardship. This will mean that the broker can better take the consumer's circumstances into account when providing credit assistance. The more information a broker has, the better the broker can understand the consumer's needs.

Of course, brokers will also need to ensure that they can continue to offer their services to consumers who do not wish to participate in the CDR Regime, and we see no issues with this. The CDR Regime must be careful not to narrow a consumer's choices by limiting how they can deal with banks and the finance industry.

The MFAA extends its thanks to The Treasury for the opportunity to provide this submission. Should you require further information, please do not hesitate to contact me on 0472 879 598 or (02) 8905 1301 or by emailing Mike.Felton@mfaa.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mike Felton', written in a cursive style.

Mike Felton
Chief Executive Officer
Mortgage & Finance Association of Australia