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To whom it may concern,

Consumer Data Right Rules Amendments (Version 3)

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 exposure draft amendments to the Consumer Data Right rules (**Amendments**).

The MFAA supports the introduction of Consumer Data Right (**CDR**) in Australia, particularly in the banking industry. We believe the framework, provided that it allows equal opportunity across the market, could promote competition across the broking and finance industry, leading to increased options, improved credit decisioning and better outcomes for consumers. That said, the Amendments as currently drafted, for reasons explained below, will not enable broker participation in the CDR system.

Assuming that the CDR Rules will be appropriately amended to 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 whilst ensuring that data is managed in a standardised and safe manner. This will help brokers to achieve the goal of both the broker and consumer which is to assist consumers to make good financial choices. Participation in the CDR will also support brokers' compliance with their regulatory obligations.

The involvement of brokers in the CDR Rules will lead to a better customer experience, as such data sharing will simplify the application process and reduce unnecessary process duplication. Ensuring that such data sharing occurs via the CDR framework means consumers have greater control in the manner in which their data is released and delivered as opposed 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 Amendments.

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

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 13,800 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 60% 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, needs and objectives 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 intrinsically linked in terms of driving competition and seeking to improve consumer outcomes.

While the Amendments cover a range of topics, this submission focussing on brokers as 'trusted advisors' as this is the level of participation that will suit the vast majority of brokers.

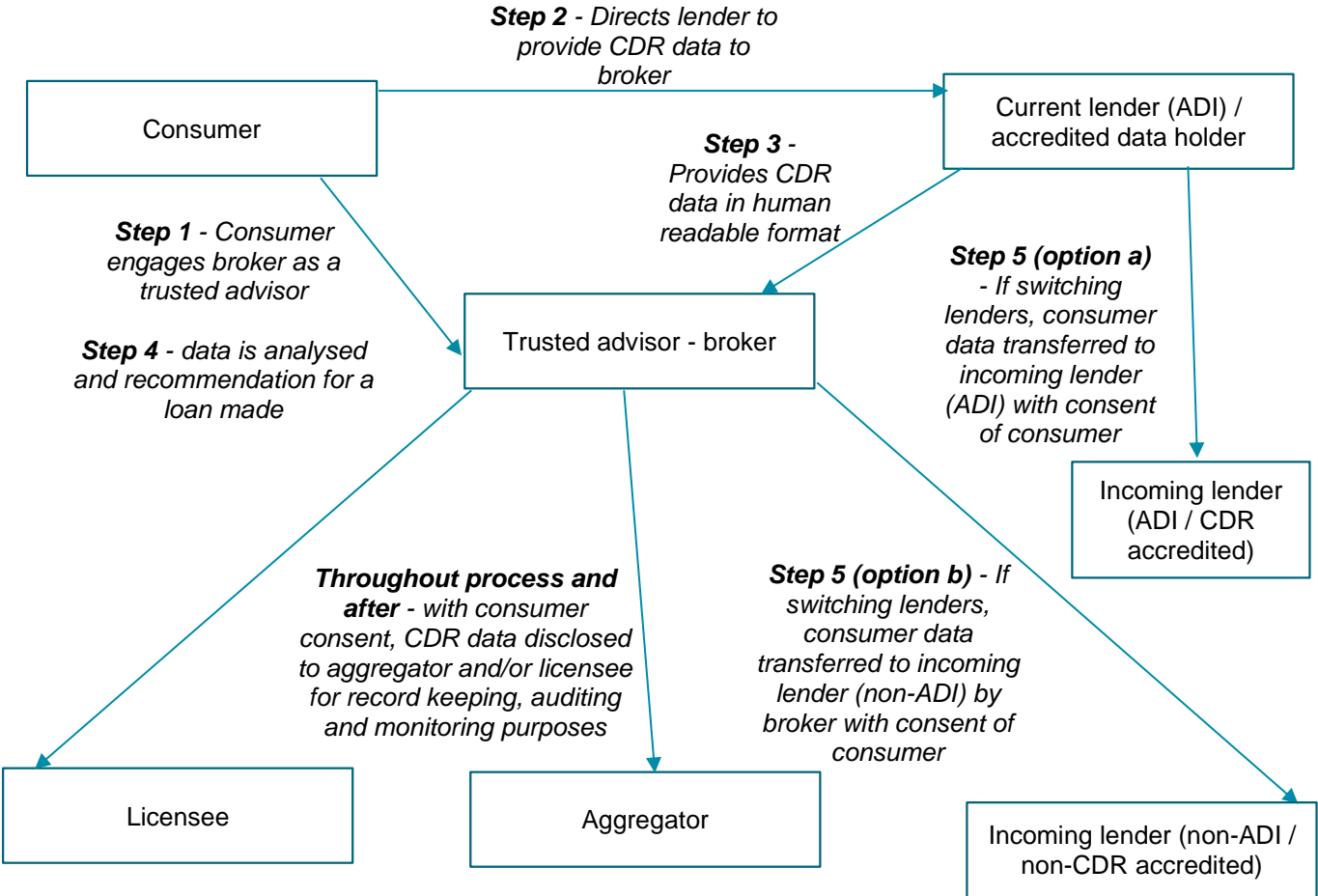
2. Sponsored accreditation and the CDR representative model

The MFAA welcomes the different methods of participation that have been introduced by the Amendments. 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 accreditation as currently drafted will not assist mortgage brokers wishing to operate within the CDR framework. As such, our submission is focussed on brokers as trusted advisors and the importance of this model of participation working efficiently for the finance industry.

3. Background and flow of information

It is important that the flow of information in a loan transaction, and how it needs to work from a CDR perspective is understood. We have represented this diagrammatically below.



It is also important to recognise the role of aggregators. 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. Broker’s 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 access to 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. Some brokers

may have a different licensee and aggregator meaning that both their aggregator and licensee will have oversight obligations with respect to that broker.

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. In order to fulfil their responsible lending obligations, brokers are required to make reasonable inquiries about a consumer's financial circumstances, and then take reasonable steps to verify the information provided by the consumer. Broker access to CDR data would either allow such information to be accessed directly from a verified source (leading to an improved customer experience) or would allow the broker to be able to obtain data to assist them to verify the information provided by the consumer.

We recognise that some aggregators may become accredited under the CDR regime. However, not all aggregators will have the resources or infrastructure to achieve this. It is vital that brokers are able to operate as trusted advisors and receive CDR data (with the consent of the consumer) in order to create a level playing field and ensure that there is no disadvantage for brokers who operate using smaller or unaccredited aggregators. If a broker can only access the CDR regime through their aggregator this will potentially slow the flow of information, reduce competition within the broking industry, and create disadvantages that will flow through to the consumer.

4. Definition of mortgage broker

The MFAA is very pleased to see that the Amendments call out mortgage brokers as 'trusted advisors'. As we understand, the Amendments aim to allow CDR data holders, on express and informed consent of a consumer, 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 Amendments as presently drafted, do not operate in a manner that will best serve consumers and brokers.

Currently the Amendments define brokers as:

'mortgage brokers within the meaning of the National Consumer Credit Protection Act 2009'.

'Mortgage broker' within the *National Consumer Credit Protection Act 2009 (NCCP Act)* has a specific definition which is:

- (1) *A licensee is a mortgage broker if:*
 - (a) *the licensee carries on a business of providing credit assistance in relation to credit contracts secured by mortgages over residential property; and*
 - (b) *the licensee does not perform the obligations, or exercise the rights, of a credit provider in relation to the majority of those credit contracts; and*
 - (c) *in carrying on the business, the licensee provides credit assistance in relation to credit contracts offered by more than one credit provider.*
- (2) *A credit representative of a licensee is a mortgage broker if:*

- (a) *the credit representative carries on a business of providing credit assistance in relation to credit contracts secured by mortgages over residential property; and*
- (b) *neither the credit representative nor the licensee performs the obligations, or exercises the rights, of a credit provider in relation to the majority of those credit contracts; and*
- (c) *in carrying on the business, the credit representative provides credit assistance in relation to credit contracts offered by more than one credit provider.*

You will note that this definition applies only to brokers who provide credit assistance in relation to loans secured by real property – it does not extend to other types of brokers such as brokers who assist consumers to arrange personal loans or vehicle finance.

We consider that 'mortgage broker' should be expanded to any finance broker – that is any holder of an Australian Credit Licence (**ACL**) or credit representative who provides credit assistance to consumers.

It is important to recognise that all brokers are subject to the strict requirements of their ACL or the ACL of their licensee (when they are a credit representative), 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.

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.

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 'broker' must be wide enough to accommodate all types of brokers and not be restricted to brokers who arrange home loans.

If finance brokers are excluded from the regime, this means that they will not be able to utilise the CDR for the benefit of consumers. Given the aim of the CDR is to increase competition and drive better consumer outcomes, to exclude a segment of the industry would be contrary to this aim.

5. Obligation to provide CDR Data to trusted advisors

As currently drafted, a consumer is not entitled to instruct a data holder to provide their data to an unaccredited trusted advisor but rather needs to be invited to do so. A data holder is also not obliged to offer consumers the choice to provide CDR data to a trusted advisor.

The wording in the Amendments is:

*'An accredited person **may** invite a CDR consumer to nominate one or more persons as trusted advisors of the CDR consumer for the purposes of this rule'. [our emphasis]*

As currently drafted a consumer is not entitled to instruct a data holder to provide their data to an unaccredited trusted advisor and a CDR data holder is not obliged to offer a consumer the opportunity to provide data to a trusted advisors. This could result in CDR data holders who are lenders being reluctant to allow consumers to give their data to trusted advisors like brokers because of the competitive threat the broker may 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, 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 a trusted advisor, the CDR data holder must comply with this request.

It is worth noting that the analysis of a consumer's data by the broker occurs prior to the broker making a lender recommendation. The incumbent lender is likely to have little incentive to invite the consumer to share information with a mortgage broker (trusted advisor) who could well arrange for the consumer's loan to be refinanced away from the incumbent lender. A prospective lender would also not have as yet been selected by the broker and will accordingly not be available to invite the consumer to share their data with the mortgage broker.

It is therefore important that the consumers are able to initiate the requests to the data holder to make their data available to their trusted advisors rather than being invited to do so by an accredited person.

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.

Despite the fact that brokers can usually 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. It should not be up to the discretion of the CDR data holder whether a consumer is invited to send their own data to a trusted advisor.

6 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.

7 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 and/or licensee, 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, which would be undertaken in compliance with the Privacy Act.

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 commenced 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 and licensees have governance and oversight obligations imposed contractually by lenders, or as a licensee under NCCP Act. Rules should expressly permit transfer and storing of data when required for these purposes.

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

The MFAA extends its thanks to Treasury for the opportunity to provide this submission. If 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