

Consumer Data Right Policy and Engagement Branch
Market Conduct and Digital Division
The Treasury
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SUBMISSION TO THE CONSULTATION PROCESS ON SCREEN SCRAPING – POLICY AND REGULATORY IMPLICATIONS

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Summary

We strongly welcome the Government’s decision to consult on the future of screen scraping (‘SS’) practice in finance and offer our views on the matter.

In particular, we, for the reasons outlined below,

1. emphasise that the risks for consumers associated with the credential sharing in finance are real and serious, particularly for vulnerable consumers who are denied access to mainstream sources of credit;
2. underline that the acceptance of SS in finance erodes the effectiveness of the Consumer Data Right (‘CDR’) – a world-leading framework that ensures a substantially higher level of data safety and security in data sharing;
3. therefore endorse in the strongest possible terms the recommendation of the Statutory Review of the Consumer Data Right (‘Statutory Review’) to proscribe the practice of credential sharing and impersonation of consumers where the CDR is a viable alternative.¹

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The authors gratefully acknowledge the financial support of the ARC Laureate Fellowship on regulating the data revolution (FL200100007). See ‘The Financial Data Revolution: Seizing the Benefits, Controlling the Risks’ (Web Page, 2023) <<https://fintechrevn.org/>>. These views are solely the authors’ and not necessarily those of the Australian government or Research Council.

¹ The Australian Government the Treasury, *Statutory Review of the Consumer Data Right: Report* (Report, September 2022), recommendation 2.1 (‘Statutory Review of the Consumer Data Right’).

To support our views, we attempted a payday loan application with City Finance – a payday lender that uses SS to provide its services.² The screenshots documenting the application process are included in Attachment 1. More comprehensive arguments in favour of outlawing the practice of credential sharing in finance are in the paper [here](#).

We now set out our responses to specific questions in the Discussion Paper.

1. Our views on the comparability of SS and the CDR (Question 8)

In the last two decades, SS or ‘digital data capture’ – a technique that employs software agents to retrieve, parse, and structure online data – has seen extensive use across a variety of domains, including price comparison,³ real estate,⁴ job advertising and recruitment,⁵ web content and data analytics,⁶ academic research,⁷ and journalism.⁸ As of 2019, these software agents were estimated to make up about 25% of the entire internet traffic.⁹ Given the persistent demand for automated data collection and the growth of data-driven and web-based applications and services, it is not unreasonable to speculate that this percentage has likely increased in the years since.

While SS has proven beneficial in many commercial and non-commercial applications by facilitating data collection, analysis, and information dissemination, it has also raised strong concerns in certain contexts. As rightly highlighted in the Discussion Paper (pp 4 and 6-8), the use of SS in the provision of *financial services* is particularly concerning because it involves consumers sharing their online banking credentials with third parties who ‘scrape’ data from a customer’s internet banking interface and use it to offer financial products and services that may complement or serve as alternatives to those offered by the consumer’s own bank.

² Payday loans are usually ‘small amount credit contracts’ under the *National Consumer Credit Protection Act 2009* (Cth), that is loans to consumers of up to \$2,000 where the credit provider is not an authorised deposit-taking institution and the contract term is between 16 days and 12 months, see *National Consumer Credit Protection Act 2009* pts 1-2.

³ Price comparison (‘PC’) is extensively used in retail, with PC websites employing SS to collect and compare product prices from various online retailers. Likewise, travel websites extract and display real-time flight, hotel, and rental car information from a variety of sources to help users find the best deals.

⁴ Real estate platforms use SS to gather property listings and related data from multiple sources, simplifying property search for users.

⁵ Job search engines and recruitment platforms use SS to aggregate job listings from various sources to provide a comprehensive view of employment opportunities.

⁶ Marketers and data analysts use SS to extract data from websites and social media for market research, sentiment analysis, and trend monitoring.

⁷ Researchers use SS to collect data from academic journals and other online sources for research and analysis.

⁸ News outlets use SS to gather information and data for reporting. See generally Han-Wie Liu, ‘Two Decades of Laws and Practice around Screen Scraping in the Common Law World and Its Open Banking Watershed Moment’ (2020) 30(1) *Washington International Law Journal* 28, 28.

⁹ Ioannis Drivas, ‘Liability for Data Scraping Prohibitions under the Refusal to Deal Doctrine: An Incremental Step toward More Robust Sherman Act Enforcement,’ (2019) 86 *University of Chicago Law Review* 1901, 1904.

By sharing their login credentials, consumers engage in intrinsically unsafe online conduct: they provide the third party with nearly unlimited access to their accounts and greatly expand the surface area for cyberattacks.¹⁰ Credential sharing also places consumers at risk of losing their protections under the E-Payments Code and bearing the losses of unauthorised transactions occurring as a result of credential sharing.¹¹ We therefore unreservedly concur with the Discussion Paper’s conclusion that data sharing under the CDR – which ‘does not require consumers to share their login details and offers protections around what data is collected and how this data can be used and disclosed’ – is safer for consumers.¹²

We emphasise that reliance on credential sharing in the lending sector, notably in the small loans market, such as payday lending, is particularly troubling. This practice disproportionately affects vulnerable consumers, specifically those who on grounds of unemployment or poor credit history are denied access to conventional credit lines and forced to turn to lending options with significantly higher interest rates, often around 100% per annum, and at times very much higher.¹³

As illustrated in Attachment 1, these individuals may not even be able to obtain the needed credit by submitting their bank statements, as payday lenders may exclusively provide credit based on shared login information. Consumer rights organisations also warn that certain non-bank lenders retain and reuse online banking credentials to monitor account balances and inundate the consumer with direct marketing for high-cost loans when the account is low on funds and the consumer exquisitely vulnerable, thus potentially trapping the consumer in a perpetual cycle of debt.¹⁴

Banning the practice of asking consumers to provide their online banking credentials would yield significant benefits: it would reduce predatory lending practices in Australia and incentivise credit providers to join the more secure CDR regime.

Another rationale for regulatory intervention on SS in finance is the problem of industry inertia which, if left unaddressed, may slow the rollout of the CDR. Joining the regime involves meeting stringent regulatory requirements to keep consumers safe. In the absence of an outright ban on SS, businesses that consider data sharing via the CDR too onerous, such as payday lenders or debt management firms, will continue relying on user credentials.¹⁵

¹⁰ See also The Australian Government the Treasury, *Screen Scraping – Policy and Regulatory Implications: Discussion Paper* (August 2023) 6 (*‘Discussion Paper’*).

¹¹ See also *Discussion Paper* (n 10), 8.

¹² See *Discussion Paper* (n 10), 10.

¹³ See Natalia Jevglevskaia and Ross Buckley, ‘Screen Scraping in Australian Finance’ (2023) 42(2) *University of Queensland Law Journal* 277, 303 (*‘Screen Scraping in Australian Finance’*).

¹⁴ Financial Rights Legal Centre, Financial Counselling Australia, and Consumer Actions Law Centre, Submission to the Treasury, *Consumer Data Right: Sectoral Assessment for Non-Bank Lending* (14 April 2022) 5. See also Consumer Action Law Centre, *The Debt Trap: How Payday Lending Is Costing Australians* (Report, November 2019) 4; the report notes that ‘over a five-year period, around 15% of payday loan borrowers fall into a debt spiral.’

¹⁵ ‘Screen Scraping in Australian Finance’ (n 13), 303-305.

2. Are there particular restrictions related to data use and disclosure under the CDR that influence choices to continue using SS, or vice versa? (Question 8b)

It is often argued that SS – specifically *credential sharing* – is convenient for customers, and the consent requirements under the CDR are complex or burdensome for consumers to navigate and likely to limit their participation in the regime.¹⁶

During this year’s Intersekt Conference in Melbourne¹⁷ some fintechs argued vehemently that the CDR will never meet the level of simplicity provided by credential sharing. In their view, customers looking for efficient online service may only need to pull up their username and password and other data (such as personal information) will often be fed in automatically (for example, where it has previously been saved on a computer or a mobile device). In contrast, the CDR – because of its detailed consent flow designed to ensure the data recipient can only see the data (sets) the consumer is willing to share – will only be able to provide a relatively slower customer experience.

This argument merits consideration. In today’s digital age, there is a growing expectation for services to be delivered efficiently and with minimal delay, if not instantaneously. This expectation is driven by several factors, including advancements in technology that have made real-time interactions and services feasible and available 24/7, and competitive markets where businesses increasingly provide services as swiftly as possible to attract and retain customers.

Even so, it is vital to balance this expectation for instant service and ease of use with considerations of information security and privacy, and ethical data use. We are not convinced that the success of the CDR hinges on the ability to display the consent flow in a single screen.

Consent is at the heart of the CDR and is designed to enable *informed* decision making by consumers.¹⁸ As demonstrated by Attachment 1, no such informed decision making is possible under business models reliant on credential sharing. In fact, such business models are obscure by design. As illustrated in our example, consumers are led to believe that their credentials are shared solely for the purposes of obtaining the required bank statement (‘submit your 90 day Bank Statement through our secure site’). In practice, however, as mentioned earlier, lenders routinely retain the credentials for various other reasons, including to exploit customers when their funds are low. Under SS models, consumer data can be stored in a data collector’s database (be it a service providing fintech such as a payday lender, or a data aggregator acting as an intermediary between lender and consumer) and accessed without restriction for as long as customer credentials do not change or permission for data access is not revoked. Crucially, in our example, no information is given to loan applicants as to how their login credentials will be used, how long they will be retained, what kind of data may be collected from their bank account(s) and whether permission to access those accounts can be revoked, and, if so, how. While some detail may be included in the Terms and Conditions which consumers would have – most likely unthinkingly – ‘ticked off’ prior to being

¹⁶ *Statutory Review of the Consumer Data Right* (n 1), 43-44.

¹⁷ *Intersekt/23* (Web page, accessed 25 October 2023) <<https://www.intersektfestival.com/>>.

¹⁸ *Competition and Consumer Act 2010* (Cth) s 56BC. *Competition and Consumer (Consumer Data Right) Rules 2020* (Cth) divs 4.3 and 4.3A.

directed to the page that requests their online banking credentials, no clear information is given to consumers about what they are ‘consenting’ to.

We therefore strongly advise against this idea that ‘convenience’ should take precedence over transparency and security. *We should not elevate a bad habit of some to a standard for everyone.* It helps, perhaps, to draw an analogy between the use of SS in financial services and speed limits. Just as the latter are set to ensure road safety and prevent accidents, the CDR’s rules and standards, including those on consumer consent, exist to protect consumers and ensure data safety and security. These requirements are in place to serve a broader purpose, even if they may not align with individual preferences for ‘absolute’ convenience.

3. Our views on a ban on SS where the CDR is a viable alternative (Question 9b)

For the reasons stated above (and outlined in further detail in Attachment 2) we are convinced the risks to consumers from credential sharing in finance warrant the prohibition of such practices. Furthermore, allowing SS in finance to continue undermines the rollout of the CDR, as businesses can choose between using SS or the CDR, and inertia and path dependence strongly favours doing the former, which we believe is not in the interests of consumers or the nation.

We note the Discussion Paper (by reference to the recommendation of the Statutory Review) speaks of a potential future ban on ‘screen scraping’. It is important to note in that regard that the three constitutive components of conventional SS practice in finance include: accessing customer account credentials, ‘scraping’ data from the customer-facing online interface, and impersonating the customer. While the technique of ‘data scraping’ is neutral in nature (and may have numerous beneficial applications as illustrated in section 1 above), the acts of *sharing login credentials* and the *impersonating the customer* warrant serious criticism. We believe what the Discussion Paper had in mind is not the technique of data scraping as such, but the latter two elements of SS that do require specific regulatory attention.

Conclusion

This submission strongly welcomes the decision of the Government to gather information on the practice of screen scraping (‘SS’) in finance. Despite this practice being long-standing and widespread, information accessible to the research community and the general public has so far been limited, making it challenging to fully evaluate its practical workings. Undoubtedly, the consultation material will prove to be a valuable resource, in Australia and other jurisdictions.

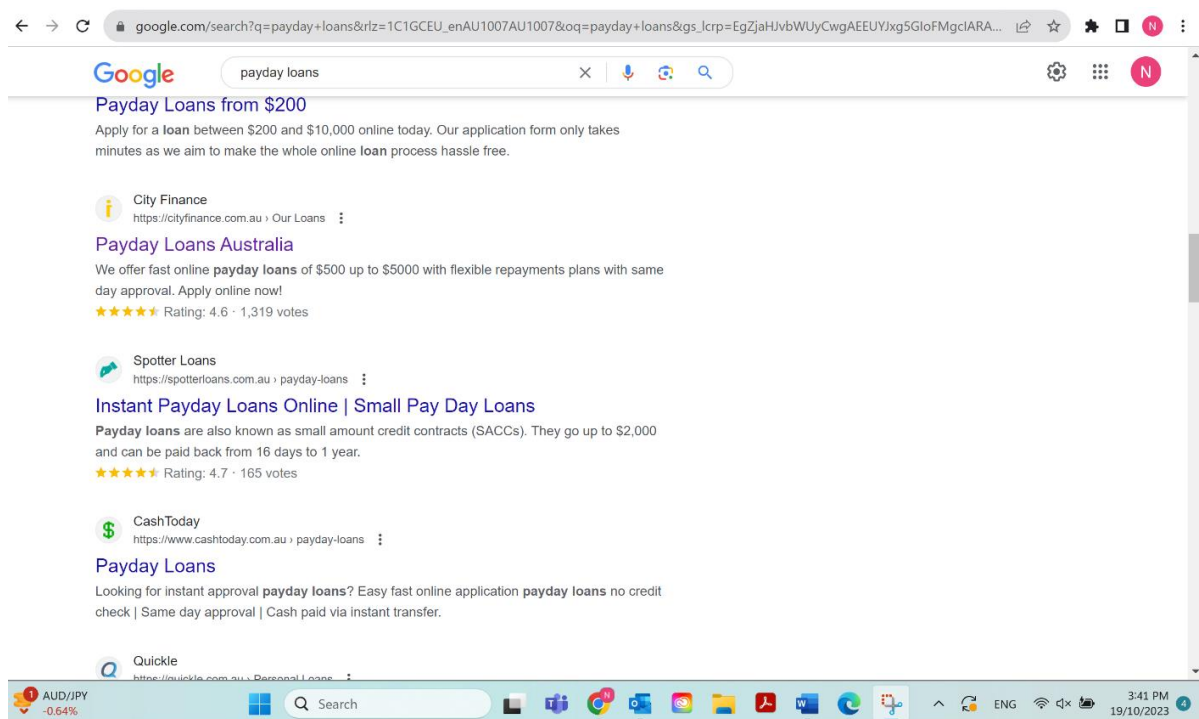
This submission argues against tolerating SS practices in financial services. It places a strong emphasis on consumer protection, data security, and the importance of the CDR as a more secure framework for data sharing. Because of anticipated industry inertia, we are convinced the government should lead in shaping Australia’s digital economy and prohibit SS in finance when the CDR provides a viable alternative.

ATTACHMENT 1:

To support our argument, we attempted a payday loan application with City Finance.

The following slides illustrate the application process which started with a Google search for providers of payday loans in Australia (Step 1), then moved to selection of provider (Step 2), initiation of the application (Step 3), selection of loan amount (Step 4), provision of personal information (Step 5), selection of one's bank from the list of available options (Step 6), and redirection to the page asking for online banking credentials (Step 7). We then terminate the application (Step 8), receive an email reminder about the incomplete application (Step 9), and seek to apply for the loan by providing a self-prepared bank statement (Step 10). Our attempt concludes with the response by City Finance saying that manually prepared statements are not acceptable and that to complete the application online banking credentials must be shared.

1) Initial search on Google for payday lending options in Australia:



2) Choosing 'City Finance' on the basis of high customer ratings:

The screenshot shows the City Finance website's payday advance loan page. The URL is cityfinance.com.au/our-loans/payday-advance-loans/. The page features a teal header with the City Finance logo and navigation links: OUR LOANS, OUR COSTS, LOAN TYPES, BY AMOUNT, CONTACT US, and an APPLY NOW button. The main content area is a teal box with the heading "Payday advance loans" and a sub-heading "Need money in your bank account quickly? Secure a payday loan in 3 simple steps!". Below this, there are four bullet points: "Payday advance loans up to \$5,000", "Fast Online Application & approval", "Flexible repayment options", and "If approved – receive funds the same day!". To the right, there are sliders for "LOAN AMOUNT \$1,000" and "LOAN TERM 17 weeks", and a dropdown for "ESTIMATED REPAYMENTS \$80.00 weekly". A summary table shows "Your loan amount" with "Credit Amount \$1,000", "Credit Costs + \$360", and "Total Payable \$1,360". A chat bubble is visible in the bottom right corner.

CityFinance
here when you need us

OUR LOANS OUR COSTS LOAN TYPES BY AMOUNT CONTACT US APPLY NOW

Payday advance loans

Need money in your bank account quickly? Secure a payday loan in 3 simple steps!

- Payday advance loans up to \$5,000
- Fast Online Application & approval
- Flexible repayment options
- If approved – receive funds the same day!

LOAN AMOUNT **\$1,000**

LOAN TERM **17 weeks**

ESTIMATED REPAYMENTS

\$80.00 weekly

Your loan amount

Credit Amount	Credit Costs	Total Payable
\$1,000	+ \$360	\$1,360

Got any questions? I'm happy to help.

Repayments are indicative only and based on our assessment of your application. Minimum repayment term is 12 weeks and maximum is 52 weeks. Max APR is 48%.

3) Starting a new application:

The screenshot shows the City Finance website's "Get Started" application page. The URL is portal.cityfinance.com.au/consumer_application?_gl=1*hfhqdq*_gcl_au*MTg5MjUyNTAyNy4xNjk3Njg4MDcy. The page features a teal header with the City Finance logo and navigation links: Who we help, Branches, Blog, FAQ, Contact, and a Call 07 3458 9200 button. The main content area is a white box with the heading "Get Started!" and a sub-heading "We're here for you through life's ups and downs, specialising in fast flexible personal loans". Below this, there is a question "Have you had a City Finance loan before?" with two buttons: "Yes - Login" and "No - Start A New Application". Below the buttons, there is a section titled "Do you really need a loan today?*" with a warning that "It can be expensive to borrow small amounts of money and borrowing may not solve your money problems." and a list of options to check before borrowing: "For information about other options for managing bills and debts, ring 1800 007 007 from anywhere in Australia to talk to a free and independent financial counsellor." and "Talk to your electricity, gas, phone or water provider to see if you can work out a payment plan." A chat bubble is visible in the bottom right corner.

CityFinance
here when you need us

Who we help Branches Blog FAQ Contact Call 07 3458 9200

Get Started!

We're here for you through life's ups and downs, specialising in fast flexible personal loans

Have you had a City Finance loan before?

Yes - Login **No - Start A New Application**

Do you really need a loan today?*

It can be expensive to borrow small amounts of money and borrowing may not solve your money problems.

Check your options before you borrow:

- For information about other options for managing bills and debts, ring 1800 007 007 from anywhere in Australia to talk to a free and independent financial counsellor.
- Talk to your electricity, gas, phone or water provider to see if you can work out a payment plan.

Got any questions? I'm happy to help.

- Choosing the loan amount and specifying the reasons for the application: ‘Travel from Sydney to Melbourne and back.’

portal.cityfinance.com.au/consumer_application?...gl=1*fhfqdq*_gcl_au*MTg5MjUyNTAyNy4xNjk3Njg4MDcy

CityFinance
Here when you need us

Who we help | Branches | Blog | FAQ | Contact | Call 07 3458 9200

Fast flexible personal loans

Real people, faster loan process

Step 01: Loan Details | Step 02: Personal Information | Step 03: Bank Statements

Loan Details

Tell us how much you need & what you'll use it for

Loan Amount: \$1,000.00 | Term (in weeks): 17

Weekly Repayments: \$80.00

Credit Cost: \$360.00 | Total Payable: \$1,360.00

What will you use it for: Travel | Please specify: Domestic Flights

Additional Information: Travel from Sydney to Melbourne and back

Continue

23°C Sunny | Search | ENG | 3:44 PM 19/10/2023

- Filling in personal information:

portal.cityfinance.com.au/consumer_application?...gl=1*fhfqdq*_gcl_au*MTg5MjUyNTAyNy4xNjk3Njg4MDcy

Fast flexible personal loans

Real people, faster loan process

Step 01: Loan Details | Step 02: Personal Information | Step 03: Bank Statements

Personal Information

Fill in all these personal details

Name: M | Surname: Screen

First Name: | Last Name: Screen

Address: Sydney | State: NSW

Country: Australia

Sex: Male | Date of Birth: 01/01/2000

Home Address: 1 Pitt St, Sydney NSW 2000, Australia

Enter address manually

Street Number: 1 | Street Name: Pitt Street

Suburb: Sydney | State: NSW

Postcode: 2000 | Country: Australia

OR Select (Where possible or use one form of ID)

Driver's License | Medicare Card | Passport (Australia only) | Birth Certificate

Medicare Card Number: 7724 29774 1 | Reference Number: 1 | Card Color: Green

Valid to: 03/01/08

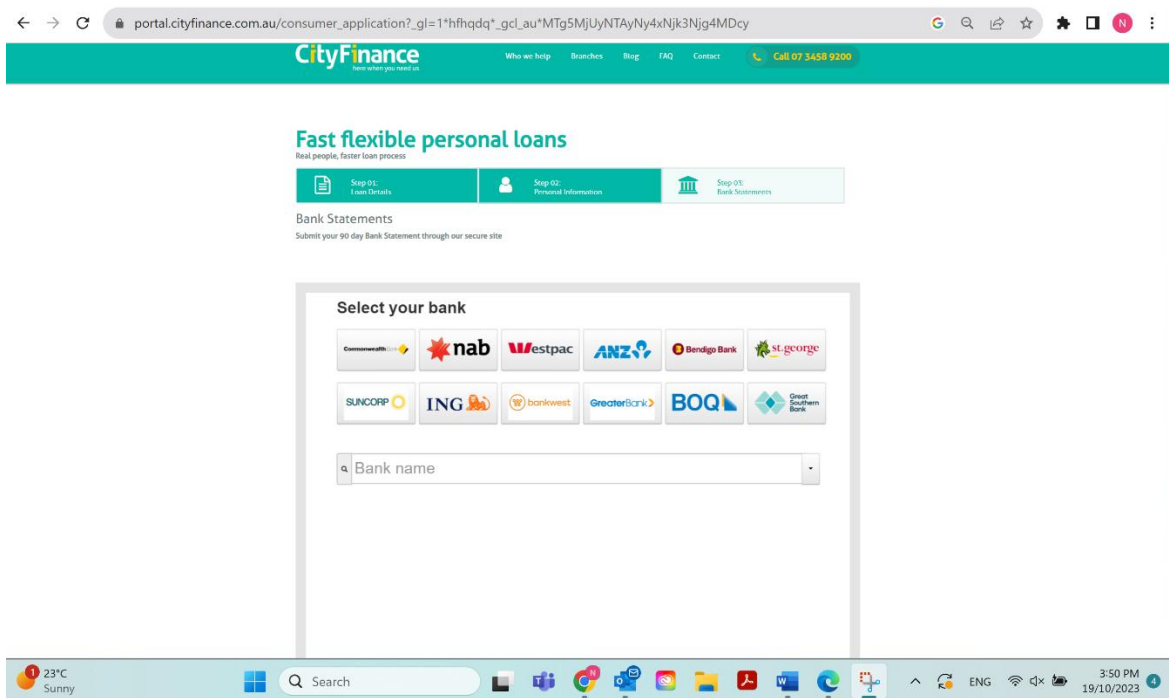
I have reviewed, understood and accept the Terms & Conditions and Privacy Statement and I consent to be contacted about products and services that may interest me

I confirm that I am authorised to provide the personal details presented and I consent to the information being checked with the document issuer or official record holder via third party systems for the purpose of confirming my identity.

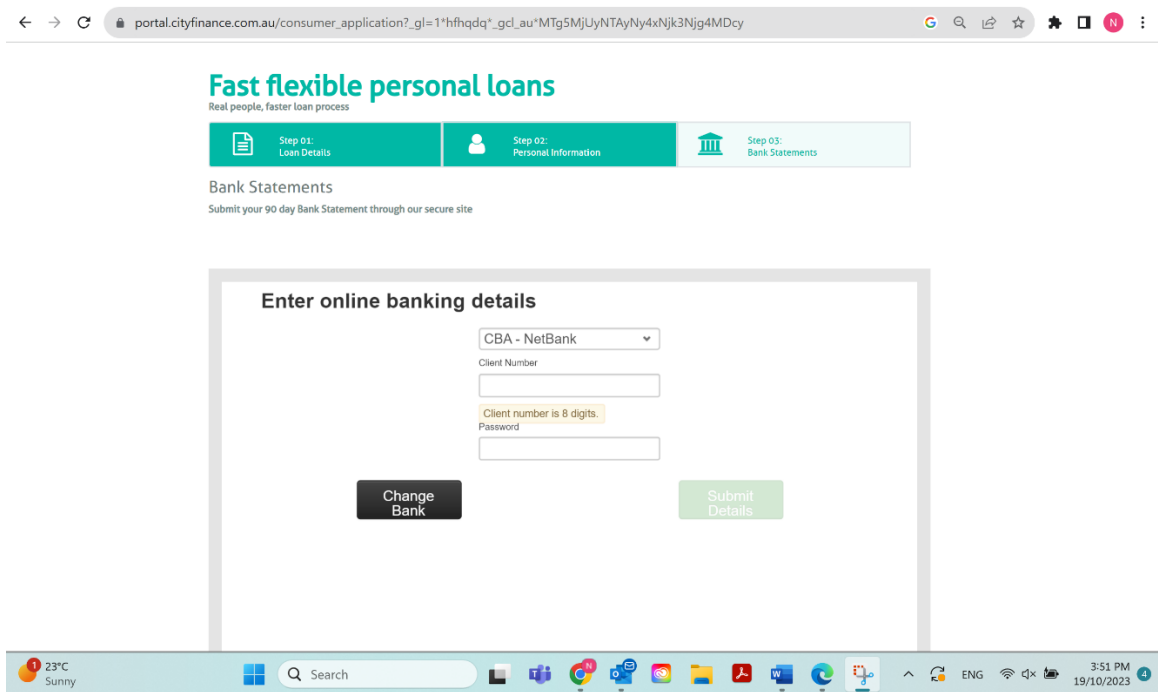
Back | Continue

23°C Sunny | Search | ENG | 3:48 PM 19/10/2023

- 6) Selecting the bank to 'submit [one's] 90 day Bank Statement through [the provider's] secure site':¹⁹



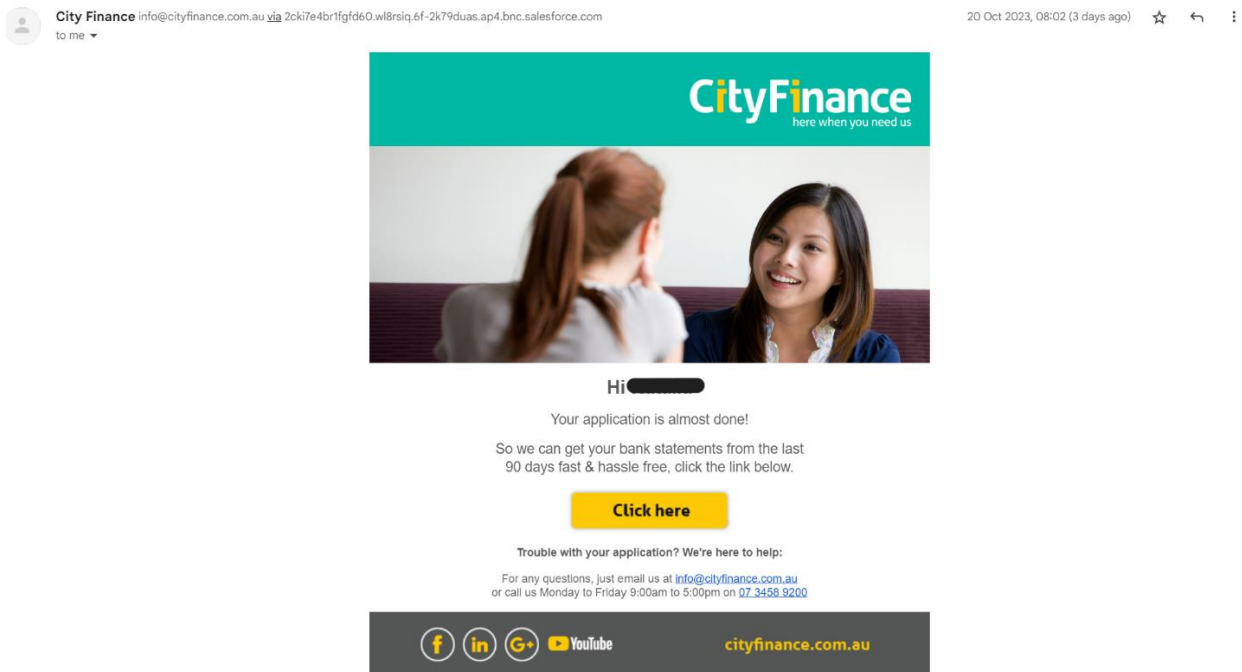
- 7) Being redirected to the page asking for online banking credentials:



¹⁹ The original instruction says: 'Submit your 90 day Bank Statement through our secure site'.

8) Stopping the application.

9) Receiving an email reminder from City Finance about the incomplete loan application:



10) Asking City Finance about the option to provide self-prepared bank statements:

to City ▾

Hi City Finance Team,

Further to your email below, would you accept a print out copy of my bank statement for the last 90 days? The web version of the application did not offer me that choice -- there was no functionality allowing me to attach pdf files.

Does this mean that the only way for me to get the loan is to provide my bank login credentials?

Kind regards,

...

11) Receiving a response from City Finance: ‘Thank you for your email. Unfortunately, we are unable to receive manual bank statements. You will need to provide us the Bank statement through the link so we can proceed with the application.’


C Info
to me ▾
20 Oct 2023, 14:35 (3 days ago) [red icon] [reply icon] [more icon]

Hi [redacted]

Thank you for your email. Unfortunately, we are unable to receive manual bank statements. You will need to provide us the Bank statement through the link so we can proceed with the application.

Regards
Paul

City Finance Support Team



T: 07 3458 9200 E: info@Cityfinance.com.au
Brisbane Technology Park
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www.CityFinance.com.au

