Australian Banking Association

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Mr Simon Pomery
Director, Compliance and Enforcement
Consumer Data Right Branch
Australian Competition & Consumer Commission
Level 2 / 23 Marcus Clarke Street Canberra 2601

by email: ACCC-CDR@accc.gov.au

Dear Simon

# ACCC consultation on Rule 9.4 draft reporting forms

The Australian Banking Association (ABA) welcomes the opportunity to comment on the draft reporting forms for Data Holders (DHs) and Accredited Data Recipients (ADRs) under Rule 9.4 of the *Competition and Consumer (Consumer Data Right) Rules 2020* (the Rules).

The ABA is committed to supporting the successful implementation of Open Banking as the first sector of the Consumer Data Right (CDR).

## Key issues

The annexure contains ABA recommendations on how the proposed reporting templates for DHs and ADRs can be improved upon. The ABA recommends that the ACCC undertake a second round of consultation once they have considered the feedback received on this version of the draft reporting forms.

In summary:

- The draft reporting form for DHs assumes significant data management requirements. Data storage, data access, as well as existing bank processes and systems, such as customer complaints management, will need to be reengineered or new processes and systems, such as complaints by ‘other CDR participants’, will need to be developed. The manual data entry processes implied by the form add further complexity and subjectivity to the reporting process.
- Complaint data requirements may impact banks’ obligations under ASIC’s Regulatory Guidance (RG165). The ABA recommends the ACCC undertake analysis to confirm alignment with ASIC RG165.
- The ABA recommends the ACCC base its requirements for DH reporting of complaints resolved through an external dispute resolution (EDR) process on the report format issued by the EDR body. This will ensure that the banks can meet the obligations for reporting Open Banking complaints which have undergone an EDR process.
- The ABA recommends the development of a centralised process for Open Banking complaints management for complaints raised by ‘other CDR participants’ in order to ensure that systemic issues are captured by the ACCC.

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- The ABA requests additional detail on ‘refuse to disclose’ reporting requirements in order to ensure accurate reporting of the data by DHs.
- The reporting from ADRs should be further strengthened so that the ACCC can satisfy itself that data deletion, deidentification, and data minimisation requirements are being adhered to.

## About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers.

We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

Thank you for the opportunity to make this submission. I am available to answer any questions arising from this submission and look forward to continuing to work with the ACCC on the CDR.

Kind regards

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# Annexure: ABA feedback on proposed reporting forms

## 1. Rule 9.4 Data Holder report template

### 1.1 General

The completion of the form requires significant manual input by the DH. The ABA suggests that most of the data required by the form can be made via an API call. For example, 'request refusal' once defined, is readily codifiable in API format. It is acknowledged that some data, such as EDR resolutions, may not be as simply codified.

The ABA recommends that the ACCC consider how reporting requirements could be automated. Such automation could be planned for in the medium term, noting that the development of a reporting API would not be achievable in time for the launch of Open Banking for the initial DHs and subsequent DHs. Automated reporting would be aligned with the intent of the CDR which is to facilitate efficient flow of data through the economy.

The ABA notes that the requirement to submit the reports to both the ACCC and the OAIC will be less efficient than one point of submission. Given this, the ABA proposes a single body be nominated to receive a single copy of the reports.

### 1.2 Part 2 summary of CDR complaint data

**Subsections 2.2.1 – 2.2.4**: Rule 9.3(1)(f) requires 'CDR complaint data' to be to be maintained and does not require DHs to use to sub-categories such as those proposed in the draft reporting template. The data requirements under 2.2.1 through to 2.2.4 therefore introduce additional, detailed record keeping for Open Banking complaints. Members will require more time to analyse and determine the effort required to build these requirements.

Given that the report takes complaint data to an additional level of detail, further scoping work is needed to ensure that the sub-categories are accurate and complete. Taking subsection 2.2.1 by way of example, the two types of integrity complaints listed raise further questions:

- Are these the only categories?
- Should all participants report according to this taxonomy for consistency and comparability?
- Are there exceptions to these categories? For example, if a customer makes a complaint about an incorrect address of which the bank was never informed, should this be reported? If so, will it count as a complaint caused by the bank?

The ABA understands that Open Banking complaints will be incorporated into each bank's existing IDR processes. However, this is likely to prove challenging as banks' Internal Dispute Resolution (IDR) processes are not currently designed to work with Open Banking and instead structured to service retail banking consumers. Given this, reporting specific to Open Banking will require a detailed assessment of such systems and processes in order to map the Open Banking reporting requirements into the redesign. Detailed assessment will ensure that banks processes remain compliant with response times for complaints handling for customers under ASICs Regulatory Guidance 'RG165'. The ABA recommends that the ACCC consult with ASIC in respect to impacts on RG165 and to ensure consistency with the way banks are required to manage consumer complaints.

**Subsection 2.6**:

The proposed data requirements under subsection 2.6 require further consultation by the ACCC with the EDR body (such as AFCA[1]) and the industry in order to ensure that the correct type and format of information is available for reporting. The ABA recommends the ACCC base its requirements for DH reporting of complaints on AFCA's 'final determination'.

**Subsections 2.7-2.9**

It is not clear to which entities the term 'other CDR participants' refers. The ABA assumes the reference to 'other CDR participants' refers to other DHs and ADRs in the CDR eco-system.

For background, depending on the relationship of the complainant to the bank, there are several ways in which complaints are handled. Each bank's processes will vary, however as a general representation:

(a) Retail consumer complaints are managed by front-line staff. This process is governed by regulatory requirements, notably ASICs RG165.

(b) Corporate or wholesale customer related issues are handled via direct relationship with the customer's representative.

(c) Supplier complaints (e.g.: of a service or contractual non-banking nature) are managed through the relevant department of the bank.

The ABA does not believe that 'other CDR participants' will fit into any of the above categories and will require new a complaints process to be established.

The ABA recommends that the complaints of 'other CDR participants' should be standardised and are better handled centrally. This is supported by learnings from the implementation of the NPP in Australia and Open Banking in the UK where complaints management is coordinated for logging, resolving and reporting. The ACCC would receive all complaints between participants and enforce resolutions as appropriate. This approach would allow the ACCC to have enhanced monitoring on the type of complaints, the parties involved, and any systemic issues can be managed across the regime.

Under a centralised complaints process, sections 2.7-2.9 will not be required. Instead, the ACCC would report on complaints data across the CDR as well as to individual participants. If this suggestion cannot be adopted, the ABA recommends that 2.7-2.9 should be combined into one reporting statistic in order to prevent double counting as complaints will likely cross-over the Consumer Data Right Act, the Rules and the data standards.

## 1.3 Part 3 number of data requests

**Subsection 3.1**: The ABA recommends the ACCC provide additional detail in respect to the format in which this data is to be supplied by DHs. For example, is the data provided by brand, including white labelled products, or by end point?

**Subsection 3.2**: If this requirement refers to direct consumer CDR request, the ABA notes that under the revised timeline, direct consumer CDR requests is not required for implementation until November 2020.

[1] AFCA is the Australian Financial Complaints Authority, an external dispute resolution scheme for the financial services sector.

**Subsection 3.3**: The ABA recommends additional guidance as to the interpretation of this requirement is needed. For example, does it refer to the number of times data is disclosed via end-point API (after consent is granted) or number of times consent is granted?

## 1.4 Part 4 refusal to disclose

**Subsection 4.1**: The ABA raises the following points in respect to the requirement to state the number of refusals.

(1) A piece of data 'number of refusals' cannot be accurately interpreted and requires context. For example, the significance of the two DHs each report ten refusals cannot be understood based on that data alone. It may be that the first DH is reporting ten out of 20 requests whereas the second DH is reporting ten out of 1000 requests. Without context, for example of the number of times the ADR calls the DH per day/month or the volume of customers impacted, the number cannot be usefully interpreted and will not support comparability across DHs.

(2) The term 'refusal' requires further definition. The ABA supports the view that there is a distinction between valid and invalid refusals. Examples of situations where a refusal may be valid are:

- a refusal where the customer is under 18 years of age,
- a refusal could be due to an existing error code (systemic non-sharing),
- a refusal due to a DH intervention where the DH became aware of a potential harm to a customer or because of a complaint which was received into the bank,
- a refusal could be due to an invalid API.

(3) The ABA recommends that data relating to invalid API requests be reported separately via the existing Metrics API and not be treated as a 'refusal' to disclose CDR data. The Metrics API already includes status of calls resulting in errors due to server execution over time, and calls rejected due to traffic thresholds, and it could potentially be expanded to also include 'invalid API request'.

(4) The ABA requests confirmation as to whether it is intended for 4.1 to include scenarios where a consent record may not be accepted by a DH, resulting in a refusal of authorisation (as per the CDR Rules 4.7 (C) of the Rules).

The ABA recommends that the ACCC Reporting forms be restricted to active refusals to disclose data in circumstances where there is a risk of harm rather than bad API calls. This aligns with Section 4.7 of the CDR Rules.

**Subsections 4.2 and 4.3**: The ABA recommends the removal of these subsections. They involve significant human intervention as legal, business and technical expertise is required to assess each refusal ex-ante. Such a prescription is not in keeping with the automation envisaged by the API driven CDR.

# 2. Rule 9.4 Accredited Data Recipient report template

## 2.1 Section 3 - Goods or services offered to CDR consumers

The ABA supports Section 3 to ensure the ACCC can effectively monitor an ADR's compliance with the 'Data Minimisation Rule', and for ensuring that customer data is not used beyond the consent provided. The ABA considers that Section 3 could be further strengthened to protect customers by requiring the following additional monitoring steps to ensure compliance with this Rule:

- Goods or services offered to other 3rd parties, using CDR Data.
- Disclosure of how CDR data used for the benefit of the ADR.
- Disclosure of an ADR's use of derived data from CDR Data (e.g. in an aggregated, or enriched form).

The ABA raises the following specific comments on subsections:

## 2.2 Section 4 - Consumer data requests and data deletions

The ABA considers that data deletion and de-identification is an essential feature of the CDR regime. The ABA recommends that the ACCC put in place the following additional monitoring steps to ensure compliance with the Deletion and de-identification requirements:

- Requests received to either 'Delete' or 'De-identify' CDR Data.
- Time taken to action a customer's request for Deletion of CDR Data.

# 3. Rule 9.5 Reporting for Consumer requests of data

The ACCC requested feedback whether there would be benefit to DHs for the ACCC to set the form for CDR consumers to request copies of particular records under rule 9.3 as well as the form for data holders to respond to these requests (as per rule 9.5). The ABA recommends that the ACCC defer this consideration until the requirements for reporting under 9.4 are finalised.

Additional points to be taken into consideration include:

- the need to consider how this reporting might interact with the rules relating to the consumer dashboard under Rule 1.15
- the requirement for rule 9.3(1)(f) is dependent on the outcome of reporting for Rule 9.4 as the way in which complaints data is to be reported should be consistent for Rules 9.4 and 9.5.