

**Submission**

**Consumer Data Right  
Open Finance Sectoral  
Assessment  
Non-Bank Lending**

**Commercial & Asset Finance  
Brokers Association of Australia**

**April 2022**

**CAFBA**

Commercial & Asset Finance Brokers  
Association of Australia

Sectoral Assessments  
Consumer Data Right Division  
The Treasury  
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## **Submission in response to the open finance sectoral assessment: non-bank lending**

The Commercial & Asset Finance Brokers Association of Australia Limited (CAFBA) is a strong voice for issues within the commercial finance sector, and we welcome the opportunity to comment on the extension of the current bank-focussed consumer data right (CDR) regimen to the non-bank sector.

CAFBA members are professional commercial finance brokers committed to providing the best quality service to our business clients. Our members are keen to ensure that the proposed CDR Rule changes enables SMEs in Australia to have greater flexibility in access to finance. CAFBA is pleased to see that the proposed changes will expand the use of the current open-banking framework and allow consumers to make better-informed choices by providing access to the data they need, helping save time and money.

This submission outlines the need to ensure professional commercial finance brokers that operate under strict self-regulatory guidelines, are included under the legislation as a Trusted Advisor.

The CAFBA board members, staff, and our members are pleased to continue working with Treasury and are willing to make ourselves available to assist you with the development of final recommendations.

Yours sincerely,



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## Background on CABFA

CAFBA is the industry association for professional commercial finance brokers in Australia, whose prime area of business is the distribution of commercial finance facilities to their clients. Our members include over 1,000 firms and brokers nationwide and our affiliate members are represented by Australia's major finance providers.

CAFBA works on behalf of our members to promote and encourage policies that advance the commercial finance industry and access to finance in Australia through government and legislative lobbying, education, and professional development.

In 2020, CAFBA commissioned East & Partners, a global leading banking and business advisory firm, to undertake a Broker Channel Analysis in the Australian Asset and Equipment Finance Markets. The research concluded that 72% of new commercial equipment finance is sourced through commercial brokers, up from 64% in 2017.

CAFBA is a member of the Council of Small Business Organisations Australia ("COSBOA") and The Australian Finance Industry Association ("AFIA").

CAFBA members know that providing Australian small businesses with access to finance is crucial to economic growth. Although brokers are commonly associated with home loans, CAFBA members work in a complex environment to provide a boutique service. Without the work of CAFBA's professional members, many Australian small business owners would struggle to navigate the complexities involved with commercial and equipment finance.

CAFBA embodies the strengths of its members in a unified approach for dealing with financiers and legislators at a national level and regularly seeks the views of members. As an association, CAFBA provides the framework and support to professionally assist our members in their daily activities. This involves education and training, legislative and regulatory updates and forums where the members can interact and exchange ideas with their peers.

CAFBA prides itself on being self-regulating and maintains strict membership standards on probity, continuing professional development, industry experience, and reputation. It is a condition of CAFBA membership that commercial finance brokers must belong to an ASIC-approved External Dispute Resolution Scheme.

## Trusted Advisor Model

CAFBA wishes to ensure that CAFBA members, or commercial finance brokers who have the same standards as CAFBA members, be included as trusted advisors. To not do so would deny small business access through their commercial broker to CDR, which would be detrimental to competition and better customer outcomes. Small business require access to finance in a timely and efficient manner and rely on their commercial broker to provide this on their behalf. Access to CDR would be imperative for this to efficiently continue.

### Trusted Advisor

Under 'the trusted adviser model' it will allow consumers to consent to an ADR disclosing their CDR data outside the CDR system with professionals that are **sufficiently regulated** to receive CDR data, particularly due to consumer protection mechanisms that form part of their regulatory framework. This will facilitate access to relevant data to those working within these

professions, while ensuring that disclosure of data can only occur with a consumer's consent.' The key to this is the concept of 'sufficiently regulated'.

The list of trusted advisors is limited to the likes of lawyers, accountants, etc, as well as financial counsellors and licensed 'mortgage brokers.'

In principle, there is no reason why a trusted advisor should be restricted to mortgage brokers. All licensed brokers (which includes a number of CAFBA members) should qualify, given the nature of their licensing obligations, e.g. honest, efficient and fair conduct, responsible lending, no conflicts of interest to consumer disadvantage, adequate resources, compliance, insurance, AFCA membership etc. To do so would assist CAFBA members holding an Australian Credit Licence. They would meet the 'sufficiently regulated' criterion.

However not all commercial brokers operate in the regulated finance space, and therefore do not hold an Australian Credit Licence (ACL). They do however operate under the same framework as those that hold an ACL.

In 2017 CAFBA sought independent verification of our membership standards by QED Risk Services. This advice concluded that CAFBA's requirements for membership either meet or exceed the requirements under the National Consumer Credit Protection Act 2009 and the regulatory guidance of the Australian Securities and Investments Commission (ASIC) for a person to meet the "fit and proper person" test for an Australian Credit Licence (ACL). If, in addition to this, a person has two years' experience with a Licensee that holds the same authorisations that the person is seeking and they (including their organisation) have compliance arrangements and systems in place that meet the requirements of AS/ISO19600-2014 (Compliance Management), then that person meets the requirements for obtaining an ACL.

Therefore, for CAFBA members who are not licensed, we seek acceptance of them as a 'trusted advisor'. In one sense, the basis for financial counsellors being accepted as trusted advisors is not based on a professional framework – it is purely on an exemption criterion from aspects of the financial services regime, with a similar exemption from the NCCP regime. A key for the financial counsellors is professional association membership. All CAFBA members have this, supported by additional measures such as professional standards, CPD, AFCA membership, insurance etc.

### **The requirements for CAFBA membership**

To be eligible to apply for a Full Membership of CAFBA applicants are required to have:

- Professional Indemnity Insurance cover of not less than \$2m per claim and in the aggregate, including 12 months' run-off cover.
- Current membership of the Australian Financial Complaints Authority (AFCA)
- An Internal Dispute Resolution policy for the firm.
- FOUR professional referees from finance/lending institutions

For each Associate member that operate under the member firm, new members are required to have:

- Agreement to abide by CAFBA's Professional Standards
- Police Check for all Associate members (no more than 3 months old)
- Credit and Bankruptcy Check for all Associate members (no more than 3 months old)
- AML Training Certificate (no more than 12 months old)
- Diploma of Financial Services (FNS51815) Complex Issues in Commercial Lending or equivalent for all Associate members as the minimum education requirement
- Resume outlining relevant commercial finance experience.
- Certificate of completion of the Ethics course with Institute of Strategic Management.

Applicants for membership with CAFBA are required to submit a Police, Credit & Bankruptcy check as part of their application. These checks must be no more than 3 months old at the time of application.

CAFBA Members are required to provide an updated Police Check every 3 years and Credit & Bankruptcy Check every 5 years at their renewal.

### Recommendation

To include CAFBA commercial brokers as a Trusted Advisor is consistent with changes intended 'to facilitate current consumer practices of sharing their data with trusted third parties in order to receive advice or a service and increase convenience and control for consumers by enabling them to use the CDR to share their data with their chosen trusted advisers. In turn, this will encourage greater participation in the CDR by accommodating existing and new use cases which rely on the ability to disclose data to third parties to be accommodated in the CDR'.

With commercial brokers currently assisting the majority of businesses access commercial equipment finance, it is important they are not the subject of an unintended omission from the Trusted Advisor category.

As stated in the notes, businesses typically have more complex needs than individual consumers, and it can be difficult to find lending products tailored to their specific business needs and circumstances. Improved access to small business data could support lenders with more streamlined and cost-effective loan assessment processes. Commercial finance brokers must be able to utilise this for the benefit of their clients.

CAFBA members operate under a strict self-regulating regime that meets or exceeds the standards of other Trusted Advisors in this category.

Should you require further information please do not hesitate to contact the signatories to this submission.

We appreciate this opportunity to contribute.