19 September 2022

Claire McKay
Director
Consumer Data Right Division
The Treasury
Submitted via email to: data@treasury.gov.au

Dear Ms McKay,

**Consultation on the Exposure Draft of the draft designation instrument for extending the Consumer Data Right (CDR) to Non-Bank Lending (NBL)**

The Australian Finance Industry Association (AFIA)[1] appreciates the opportunity to comment on the *Consumer Data Right (Non-Bank Lenders) Designation 2022* ('the Exposure Draft').

AFIA is the only peak body representing the entire finance industry in Australia. We represent 158 members, including bank and non-bank lenders, neobanks, finance companies, fintechs, providers of vehicle and equipment finance, car rental and fleet providers, and service providers in the finance industry.

We are the voice for advancing a world-class finance industry, with our members who are at the forefront of innovation in consumer and business finance in Australia. Our members finance Australia's future.

We collaborate with our members, governments, regulators and customer representatives to promote competition and innovation, deliver better customer outcomes, and create a resilient, inclusive and sustainable future.

## FOREWORD TO OUR SUBMISSION

AFIA supports the extension of the CDR to certain parts of the NBL sector. This will enable consumers, who are increasingly turning to non-traditional forms of finance, to have control of their financial data.

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[1] www.afia.asn.au

Individual consumers interacting with NBLs should enjoy the same benefits and opportunities that the CDR affords them when interacting with banks, including the secure sharing of data. We believe this has the potential to broaden the positive impact on competition and innovation in financial services and beyond.

The broadening of CDR applicability across the finance sector has the potential to benefit Australian consumers by assisting them to switch between similar products and services, including between bank and NBLs. We believe this could spur growth in innovative products that better serve consumers. Without CDR expansion to NBL, consumers may be constrained to products offered by traditional lenders if they wish to utilise data portability, product comparison, account aggregation, budgeting, personalisation or other tools enabled by the CDR.

AFIA advocates for proportionate, scalable and targeted regulation which minimises regulatory burden. As advocated in our earlier submission[2], we caution that the designation of non-bank lenders (NBLs) will represent a significant compliance burden on the NBL sector. It may also disproportionately impact smaller nascent organisations who are important drivers of innovation in our economy. The extension of CDR to NBL, if not managed appropriately, has the potential to stifle innovation and competition. This would contradict three of the four core principles of CDR, being:

- The Consumer Data Right should be consumer focussed. It should be for the consumer, be about the consumer, and be seen from the consumer's perspective.
- The Consumer Data Right should encourage competition. It should seek to increase competition for products and services available to consumers so that consumers can make better choices.
- The Consumer Data Right should create opportunities. It should provide a framework from which new ideas and business can emerge and grow, establishing a vibrant and creative data sector that supports better services enhanced by personalised data.
- The Consumer Data Right should be efficient and fair. It should be implemented with security and privacy in mind, so that it is sustainable and fair, without being more complex or costly than needed.[3]

We note the regulatory impact assessment in the *Consumer data right: Non-bank lending sectoral assessment Final Report* (**'the sectoral assessment'**)[4] acknowledges the benefits of designating the NBL sector need to be balanced against the expected regulatory impacts of designation.

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[2] https://afia.asn.au/files/galleries/AFIA_Submission_to_Treasury_Consumer_Data_Right_Open_Finance_Sectoral_Assessment_Non-Bank_Lending_14_April_2022-0002.pdf

[3] The development of CDR in Australia has been guided by four key principles since its inception. See: Australian Government, *Review into Open Banking: giving customers choice, convenience and confidence*, December 2017, p v. Review-into-Open-Banking-_For-web-1.pdf (treasury.gov.au)

[4] Treasury (August 2022). Consumer data right: Non-bank lending sectoral assessment - Final report.

Treasury have made quantitative estimates on what they consider to be the likely regulatory impacts of the CDR to be on data holders, based on consultation with a variety of with prospective data holders and IT service providers. These estimates were made using inputs from businesses of different size, age, digital maturity, and consumer type.

We note that Treasury have estimated compliance costs as follows.[5] These are significant compliance outlays.

| | Medium non-bank lender | Large non-bank lender |
|---|---|---|
| Year 1: implementation | $750,000 | $3,000,000 |
| Year 2+: ongoing[6] | $300,000 | $1,000,000 |
| Average annual cost (PV) | $285,707 | $1,002,358 |

We note that Treasury has not included estimates for small NBLs in the above.

We acknowledge the attempt to estimate compliance costs for the sector notwithstanding the lack of data on small NBLs but consider the above significantly underestimates the costs of compliance.

We note, for instance, that the initial estimate of average annual compliance costs of Open Banking, $86.6 million[7], was revised upwards to $105.77 million[8] – a 22% increase. As noted in the sectoral assessment, the greatest cost is in technical infrastructure:

> *The greatest direct cost to data holders is likely to involve the need to upgrade and transform internal systems to enable data sharing to occur. Businesses generally hold data in multiple different systems, which would be required to be centralised for the purposes of data sharing. For businesses where the functionality doesn't already exist to centralise information, such as through business intelligence systems, stakeholders noted that substantial technological upgrades would be required to comply with CDR. Many of those engaged during consultation believed that they would need to upgrade existing functionality if they were subject to data sharing requirements*[9]

We welcome guidance in the draft explanatory statement and sectoral assessment, which note the Government's intention is for small NBLs to be able, but not compelled, to participate in the CDR. We

[5] Ibid, p 24, *Table 2*.
[6] Ongoing estimates are make using OBPR's present value method, using the standard discount rate of 7 per cent.
[7] Meghan Quinn, 'Regulation Impact Statement – Open Banking Review' in *The Office of Best Practice Regulation* <https://obpr.pmc.gov.au/published-impact-analyses-and-reports/open-banking-banking-sector-consumer-data-right>
[8] Rayne de Gruchy, 'Certification of RIS-like process: Competition and Consumer (Consumer Data Right) Rules 2019' in *The Office of Best Practice Regulation* <https://obpr.pmc.gov.au/published-impact-analyses-and-reports/consumer-data-right-rules>
[9] Treasury (August 2022). Consumer data right: Non-bank lending sectoral assessment - Final report, p 74.

would welcome further detailed consultation on what would constitute an appropriate threshold for the category of 'small'. We still have some concerns around what constitutes an appropriate threshold.

We also welcome statements in the sectoral assessment that certain larger corporate customers who use complex bespoke products should not be included in CDR. By their nature such products are inherently complex and do not lend themselves readily to data sharing. Therefore, the benefits of including these arrangements relative to their cost of inclusion is not sufficient to justify mandatory data sharing.

We look forward to further consultation at the rules stage on these issues.

We also welcome further consultation on appropriate phasing for the NBL sector, including for product, consumer and transaction data sets.

**Attachment A** provides AFIA's comments on the Exposure Draft. These comments are designed to ensure the extension of the CDR to NBL is true to the original aims of the CDR – to increase competition, and thereby improve consumer outcomes.

## CLOSING COMMENTS

Thank you for the opportunity to provide this submission. We look forward to participating in ongoing dialogue on this issue.

Should you wish to discuss our submission, or require additional information, please contact me at roza.lozusic@afia.asn.au or 0431 261 201.

Yours sincerely,

Roza Lozusic
**Executive Director of Policy and Strategy**

ATTACHMENT A: AFIA's DETAILED COMMENTS ON THE EXPOSURE DRAFT

EXECUTIVE SUMMARY

This Attachment details comments designed to ensure the extension of the CDR to NBL drives competition and improves consumer outcomes by creating a level playing field for NBLs.

AFIA recommends Treasury consider the following:

1. calibrating the asset threshold for mandatory participation using realistic cost estimates of compliance.
2. including a 'customer-level threshold' for mandatory participation.
3. ensuring harmonisation is maintained in the definition of a product between bank and non-bank lenders.
4. allowing sufficient time for newly designated non-bank lenders to implement changes to become accredited data holders – at least 18 months.
5. not 'switching on' the ability for data recipients to ingest non-bank lender data (i.e. 'reciprocity' arrangements) until non-bank lender data holders have sufficient time for CDR use case implementation – at least 18 months.
6. excluding large corporate customers from designation or later rulemaking.
7. amending the designation instrument to exclude debt buyers.

## COMMENT 1 – TREASURY SHOULD CALIBRATE THE ASSET THRESHOLD FOR MANDATORY PARTICIPATION USING REALISTIC COST ESTIMATES OF COMPLIANCE.

AFIA welcomes guidance in the explanatory statement that an asset test based on the *Financial Sector (Collection of Data) Act 2001 (FSCODA)* would be reintroduced at the rulemaking stage, with a threshold yet to be established.

As noted in the foreword to our submission we have some concerns around how to define an appropriate threshold. We consider a $50 million threshold is too low.

AFIA notes the high cost of system implementation and accreditation and suggests that Treasury use cost estimates obtained from firms that have been designated in other sectors to guide the determination of this threshold, rather than the estimates in the sectoral assessment.

In particular, AFIA notes the potential incompatibility of 'off-the-shelf' products with the systems of many NBLs. This may be due to the NBL being a subsidiary of a larger global firm,

or due to the difficulty and expense involved in integrating the 'off-the-shelf' product with existing systems.

AFIA recommends Treasury rely on actual cost estimates provided by compliant firms – including both construction and accreditation, or purchase and integration – in determining the threshold for mandatory participation.

## COMMENT 2 – TREASURY SHOULD INCLUDE A 'CUSTOMER-LEVEL THRESHOLD' FOR MANDATORY PARTICIPATION.

AFIA notes references to a 'customer-level threshold'[10] in the sectoral assessment. We recommend that consultation at the rulemaking stages includes detailed consideration of such a threshold. We recognise there may be edge cases in which current reporting is insufficient, which would need to be the subject of further consultation at the rulemaking stage.

This threshold may significantly support competition, by allowing NBLs to compete across a range of markets without substantially increasing their compliance costs.

AFIA welcomes the inclusion of a 'trial product' category in recent CDR rules amendments ('expansion to the telecommunications sector and other operation enhancements'[11]), which exempts products with no more than 1,000 customers from data sharing obligations for 6 months. We consider the 'trial product' category should be expanded. Our members have advised that a more appropriate threshold would be at least 20,000 customers and at least 6 months, whichever occurs later.

While NBLs would be able to enter a new market easily under the 'trial product' system, they would be forced to exit at the end of the trial period if they do not achieve sufficient market share success to justify CDR implementation. By contrast, a customer-level threshold would allow continued participation in the market, providing ongoing choice for consumers and competition to market leaders. Therefore, we consider an ongoing customer threshold should be adopted.

## COMMENT 3 - TREASURY SHOULD ENSURE HARMONISATION IS MAINTAINTAINED IN THE DEFINITION OF A PRODUCT BETWEEN BANK AND NON-BANK LENDERS.

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[10] Ibid, p 20.

[11] Treasury (September 2022), *Consumer Data Right rules - expansion to the telecommunications sector and other operational enhancements*

AFIA notes Treasury is consulting on an amendment to the 2019 designation instrument for Open Banking[12], to bring the definition in line with the expanded definition in the Exposure Draft by including 'letting goods on hire, including on hire-purchase'.

AFIA also recognises advice in the explanatory statement that Government intends to 'make corresponding amendments to the rules … to ensure BNPL products offered by authorised deposit-taking institutions are also covered for the CDR'.

We support maintaining a level playing field between banks and NBLs.

### COMMENT 4 – TREASURY SHOULD ALLOW SUFFICIENT TIME FOR NEWLY DESIGNATED NON-BANK LENDERS TO IMPLEMENT CHANGES TO BECOME ACCREDITED DATA HOLDERS.

AFIA welcomes indications from Treasury that data sharing obligations will not commence for a minimum of 12 months following the finalisation of the rules.

Given that many NBLs have limited scale and IT resources, implementation of data sharing will pose a significant financial and resourcing challenge. This may be especially the case in the context of those NBLs for whom technology is not core to their business model. Spreading the implementation over a longer time frame would better enable these NBLs to absorb the substantial compliance costs (noted above).

Hence, AFIA recommends that at least 18 months are given between rule finalisation and the commencement of the first data sharing obligations.

### COMMENT 5 – TREASURY SHOULD ALLOW SUFFICIENT TIME FOR CDR USE CASE IMPLEMENTATION BY NEWLY DESIGNATED NON-BANK LENDERS BEFORE RECIPROCITY COMMENCES.

AFIA notes that ADIs have had substantial time to implement use cases for the CDR.

One such use case is for lending, where ADIs would have had more time to prove credit risk models. This would put newly designated NBLs at a disadvantage as they have not been able to access the input data necessary to create such models. This risks accentuating the information asymmetry between major banks and smaller lenders, many of whom are innovative NBLs that provide essential consumer choice.

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[12] *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019*

AFIA welcomes the inclusion in recent CDR rules amendments[13] of a 12-month delay before reciprocal obligations apply after a non-ADI entity becomes an ADR. This will support NBLs below a future de minimis threshold to voluntarily become accredited.

Building on this, we consider NBLs above the threshold should also have a phase-in period after data sharing obligations commence and during which reciprocity does not apply – i.e., where NBLs are accredited data holders but are not compelled to share data. During this time, NBLs would be able to ingest data as an ADR but would not provide public access to data sharing facilities – these would be 'switched off'.

This period would allow NBLs time to develop use cases including credit risk assessment processes that compete with ADIs, incorporating received CDR data. Importantly, the necessary length will depend on each NBL. AFIA recommends a phase-in period of at least 18 months.

While this departs from the previous implementation of the consumer data right in Australia, and open banking, we note that there is no global precedent to mandating data sharing for non-bank lenders. We consider unique rules for NBLs are justified in this circumstance.

## COMMENT 6 – TREASURY SHOULD EXCLUDE LARGE CORPORATE CUSTOMERS FROM DESIGNATION OR LATER RULEMAKING.

The Exposure Draft presented in the consultation includes all individual and corporate customers of NBLs. The inclusion of large corporate customers substantially increases the potential cost and difficulty of implementation, as products made available to these customers are often bespoke and complex.

As noted in the sectoral assessment it is unclear whether such customers derive much benefit from access to the CDR, given that the bespoke nature of their products would often preclude the standardised statistical analysis that is the basis for consumer use cases.

We consider only retail customers should be included in scope for NBLs. Any larger customers should be considered following a later review of NBL roll out.

## COMMENT 7 – TREASURY SHOULD AMEND THE DESIGNATION INSTRUMENT TO EXCLUDE DEBT BUYERS.

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[13] Treasury (September 2022), *Consumer Data Right rules - expansion to the telecommunications sector and other operational enhancements*

AFIA recommends Treasury explicitly exclude debt buyers from the Exposure Draft. Debt buyers do not provide products to consumers and should therefore be out of scope for the CDR. Accordingly, we consider it would not be appropriate to designate such entities. This issue should be resolved before the rulemaking stage of CDR expansion to NBL.

We note that usage of the term '*registrable corporation*', from section 7 of *FSCODA* would capture debt buyers, despite these entities not originating loans or providing products to consumers. This issue arises from the inclusion of 'the acquisition of debts due to another person' as a form of '*provision of finance*' in section 32(1)(e) of *FSCODA*.

AFIA suggests that an amendment be made to the definition of either 'relevant non-bank lender' or 'product' in section 4 of the Exposure Draft, as follows:

***Relevant non-bank lender*** means a corporation that:

a. is a registrable corporation under section 7 of the Financial Sector (Collection of Data) Act 2001 (but excludes a corporation that is a registrable corporation by reason of section 32(1)(e) of that Act); or….."

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***Product*** means:

a. a good or service that is or has been offered or supplied by the data holder to a person in connection with one or more of the following activities:…"