



1 February 2023

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

Dear Ms McKay,

Consultation on the Consumer Data Right (CDR) rules and data standards design paper for non-bank lending (NBL) sector

The Australian Finance Industry Association (AFIA)¹ appreciates the opportunity to comment on the *Consumer Data Right rules and data standards design paper* for the NBL sector ('the Design Paper').

AFIA is the only peak body representing the entire finance industry in Australia. We represent over 150 members, including bank and non-bank lenders, 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.

¹ www.afia.asn.au

SUBMISSION

Comment 1 – ‘*De Minimis*’ Threshold

AFIA welcomes the continued inclusion of a *de minimis* threshold for data sharing obligations for NBLs that are designated data holders.² This is an important measure to ensure that the substantial cost of compliance with the CDR regime does not unduly weigh on investment or force NBLs out of the Australian market, which as the Design Paper notes could have ‘adverse flow-on effects for innovation and competition’.³

AFIA suggests the threshold nominated in the Design Paper may not be adequately targeted to avoid these effects, and that a higher threshold should be considered. The proposed threshold of \$400 million would, for example, be breached by just 562 typical home loans, well below the already low 1,000-customer threshold proposed for trial products.⁴ While AFIA has made other comments on this issue previously, the threshold proposed in this Design Paper is qualitatively different to AFIA’s previous proposals. This is because it is a single-facet threshold, without the overlay of per-product thresholds on book size, turnover, or customer number. Therefore, a higher threshold is needed to ensure minor entities and product providers are not inadvertently and inappropriately hampered.

Additionally, AFIA is concerned the immediate effectiveness of the *de minimis* threshold reduces the practical threshold beyond which NBLs must invest in CDR implementation, due to the inherent unpredictability of loan book size. An NBL that sits below the threshold must account for the possibility of growing their loan book in the near future and thus breaching the threshold, after which (according to the proposal in the Design Paper) data sharing obligations would immediately apply.⁵ Therefore, the NBL would face an assessment of the probability of breaching the threshold against the cost of compliance, potentially reducing the effective threshold or disincentivising loan book growth.

Feedback from AFIA members has indicated a 12-month window should be provided to NBLs that breach the threshold before data sharing obligations apply. This would allow the NBL to invest in systems and develop business and compliance processes that fulfil its data sharing obligations and provide the best product outcomes for consumers. This would remove most of the uncertainty an NBL faces in the timeline for their data sharing obligations and ensure the

² Commonwealth Treasury, *Consumer Data Right in Non-Bank Lending – CDR Rules and Data Standards Design Paper* (December 2022), 6: [Consumer data right in non-bank lending – CDR rules and data standards design paper \(treasury.gov.au\)](https://www.treasury.gov.au/publications/2022/12/consumer-data-right-in-non-bank-lending-cdr-rules-and-data-standards-design-paper).

³ Ibid.

⁴ The median house price in Australia in September 2022 was \$889,800. Assuming an 80 per cent loan-to-value ratio gives a loan size of \$711,840. See: Australian Bureau of Statistics (September 2022), [Total Value of Dwellings](https://www.abs.gov.au/australian-bureau-of-statistics/publications/2022/09/total-value-of-dwellings), series A83728647F.

⁵ Commonwealth Treasury, *Consumer Data Right in Non-Bank Lending – CDR Rules and Data Standards Design Paper* (December 2022), 6-7.

de minimis threshold actually applies at its intended level, rather than at a lower and indeterminate point.

Careful consideration should be given to a potential extension of the 12-month reciprocity delay for voluntary ADRs, introduced in recent operational enhancements to the CDR, to data requests initiated by other NBLs.⁶ It is important to ensure a level playing field between NBL participants, which is a foundational aspect of the CDR regime's focus on increasing competition.

Comment 2 – White Labelling and Securitisation

AFIA supports the pragmatic approach to white labelled products detailed in the Design Paper, which focuses on the actual holder of the data as the preferred party to respond to data sharing requests while recognising the contractual relationship between credit provider and borrower.⁷

We encourage continued dialogue with the NBL sector to clarify arrangements for products that differ substantially from those covered by Open Banking. For example, vehicle loan customers may have accompanying motor vehicle insurance. Clarification is needed that such insurance products would remain out-of-scope as insurance is not yet a designated sector. This should mean both product and transaction data for insurance products remains out of scope. Additionally, in the eventuality that such an insurance product is in-scope, clarity is needed on the distribution of data sharing obligations and the nature of required contracting between credit providers and white labelled product providers.

There remain other white labelling details that require consideration during rules development, for instance in cases where a white labeller services many brands. For providers to practically action data sharing requests, requests would need to make specific reference to the brand under which the product is provided, and reference specific accounts under that brand. Further, Treasury clarification on the bounds of 'white labellers' would be welcome, to ensure loan book servicers that are not in reality white labellers are not inadvertently included.

AFIA is supportive of the approach taken to securitisation in the Design Paper and agrees with the principle that CDR obligations need only fall on one entity and can be managed between the parties.⁸ Typically, the NBL that originates the loan will be best placed to respond to data sharing requests.

⁶ Treasury, [Consumer Data Right rules - expansion to the telecommunications sector and other operational enhancements](#).

⁷ Commonwealth Treasury, *Consumer Data Right in Non-Bank Lending - CDR Rules and Data Standards Design Paper* (December 2022), 7.

⁸ *Ibid*, 7-8.

Comment 3 – Products in Scope

AFIA notes the inclusion in the Design Paper of consumer leases as an in-scope product for NBLs. The explanatory statement accompanying the *Consumer Data Right (Non-Bank Lenders) Designation 2022* defines a consumer lease as follows:⁹

*A consumer lease lets consumers rent an item, often a household appliance, for a set amount of time. The customer makes **regular rental payments [emphasis added]**, typically weekly or fortnightly, until the lease ends. At the end of the lease the leasing company still owns the item but may offer the customer the option to purchase it. Compared to other non-bank finance providers, consumer leasing operators generally are smaller in size.*

*When the consumer is making a decision on the product, they are making a decision on both the **credit product [emphasis added]** and the asset; this means there may be limited value from incorporating only the credit component into CDR.*

AFIA urges confirmation that car rental products are not subject to the CDR under the consumer lease provision. This is important because the duration of the rental is paid upfront, with additional charges debited from a customer's nominated card. This means car rental products are not credit products. They are not treated as such under law for two main reasons. Firstly, capacity to pay is not assessed and typically no credit check is performed. Secondly, customers do not make regular rental payments. These are two key factors referred to in the explanatory statement above.¹⁰

We note that the anatomy of products captured by Open Finance tends to long-term products/contracts that a consumer cannot easily switch between. For instance, products may carry an outstanding balance or have longer loan terms. By contrast, car rental services are typically based on short timeframes and a consumer can easily switch provider on future occasions.

Further, we note the aims of expanding the CDR to the NBL sector do not apply to the car rental sector, including:

- maximising consumer choice and promoting convenient switching between products and providers
- facilitating management of consumer finances and product services by taking into account consumers' actual circumstances
- enhancing consumers' control over their own information.

⁹ Explanatory statement, *Consumer Data Right (Non-Bank Lenders) Designation 2022*, 2.1.

¹⁰ Note that a credit check may be performed on businesses customers to confirm there have been no registered defaults or strike off action by ASIC.

Car rental product information is already publicly available – critically, pricing and vehicle type information. Consumers rent cars for discrete periods, meaning they can assess this information each time and are able to choose products at will. Further, car rental providers are subject to Australian Privacy Principle 12, meaning consumers have an existing legislative right to access their personal information which is held by car rental providers.¹¹

AFIA therefore seeks confirmation that car rental and car subscription services are out-of-scope. These products involve fixed length subscriptions with no change of ownership, and do not involve any element of finance.

We strongly urge that Treasury consults specifically with the car rental sector on this issue.

Comment 4 – Trial Product Exemption

AFIA welcomes the trial product exemption, which has been advanced in the course of engagement between Treasury and industry.¹² This is an important component of the CDR rules if the regime is to achieve its objective of boosting competition, rather than suppressing it through large upfront compliance burdens for innovative firms.

Engagement with industry has indicated that the proposed timeframe for the exemption is not long enough to allow for a useful trial period, which must allow time for enough product volume and ongoing monitoring of pricing and performance metrics. A period of 18 to 24 months would prove a substantially more appropriate exemption. It would allow firms to experiment with new products and markets confidently. Further, it would provide them sufficient time to gather insights into product viability and customer uptake before committing to the technological and process investment required to bring a new product into the CDR framework.

Additionally, the 1,000-customer limit presents an impediment to experimentation with new products and markets, partially undermining the usefulness of the trial product exemption. This low limit may, for example, prevent effective assessment of market size and consumer uptake of a product. We suggest a higher limit of 5,000 to 10,000 customers, which would ameliorate these concerns and provide a genuine opportunity for innovation and product creation.

¹¹ *Privacy Act 1988* (Cth), Schedule 1, Australian Privacy Principle 12 – Access to personal information

¹² Commonwealth Treasury, *Consumer Data Right in Non-Bank Lending - CDR Rules and Data Standards Design Paper* (December 2022), 9-10.

Comment 5 – Closed Accounts and Legacy Products

AFIA supports a pragmatic approach to data sharing obligations for closed accounts. While former customers may derive some limited benefits from access to data generated during the term of their product, this must be balanced against the ongoing (albeit time limited) future liability for NBLs of responding to data sharing requests.¹³

Consideration should be given to the merits of including legacy products in data sharing obligations. Product and transactional data relating to legacy products, whether the latter was produced by accounts that are now either open or closed, may substantially differ in content and format than that relating to non-legacy (i.e. currently offered) products. This presents a substantial increase in regulatory compliance costs for NBLs, as it expands the volume of system adaptation work required to become CDR compliant, with minimal benefit for the limited number of customers affected.

Comment 6 – Debt Collectors

Accounts that are referred to contingent debt collectors present a particular point of concern. Contingent debt collectors do not originate any loans or create any products, and instead collect debt on behalf of credit providers. Outsourced debts are typically managed through the contingent debt collector's systems, rather than those of the loan originator. It may not be practical for these entities to enable data sharing for referred debts, as it may be too complex and costly to maintain systems compatible with each lender with which they work, as product features, fee structures and data formats vary.

AFIA urges engagement with industry to determine the practicality of CDR participation for contingent debt collectors, as well as an analysis of the costs and benefits of the inclusion of debt purchasers.

Comment 7 – Eligible Customers

As compared with banking, the NBL sector contains products that occasionally involve multiple persons where these persons are not the primary 'customer'. AFIA encourages ongoing dialogue with industry to clarify which persons are eligible customers for the purpose of the CDR, with a view to preventing NBLs being required to respond to requests from multiple entities regarding the same data, in a duplicative fashion.

For example, a business may take out lease with a motor financier. However, the leased vehicle will likely be driven by an employee or contracted driver. Further, a novated leasing product involves a tripartite arrangement between the business, the financier, and the employee for whom the car is intended. We encourage engagement with industry to develop sensible boundaries defining which persons are and are not considered eligible customers.

¹³ Ibid, 11.

Comment 8 – Bespoke Products

AFIA welcomes recognition in the Design Paper of the prevalence of negotiated, bespoke and ‘invitation only’ products in the NBL sector, which may preclude useful inclusion in Open Finance.¹⁴ We largely support paralleling the banking rules, which require products to be included in the CDR regime if they are publicly offered.

Furthermore, AFIA notes that in many cases the same product can span the range from standard to bespoke depending on the nature of the customer. For example, small businesses may proceed with a product largely along publicly offered terms, with standard features and little negotiation, whereas a medium or large business may seek greater negotiation and customisation to better fit with the complexity of their business and existing systems.

We encourage consideration of a flexible view of bespoke products, based on customer segment and/or adherence with publicly offered features and terms, rather than purely on the product itself. We also welcome indications that large corporate customers, for whom most products will fall into the bespoke category, may be excluded from the regime.¹⁵ Engagement will be needed to determine appropriate thresholds for small, medium and large businesses, which would be able to enable a segmented approach to the spectrum of products, from completely standardised to entirely bespoke.

Additionally, we note the prevalence of bespoke arrangements in the NBL sector compared with banking, and the propensity for these to be weighted towards larger corporate customers, may make it reasonable to consider a low threshold for ‘corporate customers’ in the NBL context. This would efficiently exclude most products where little customer benefit relative to provider cost would be derived from CDR participation.

Comment 9 – Staged Implementation

AFIA welcomes Treasury’s commitment to staged implementation of Open Finance and recognises that phasing by size of lender and data type are sensible ways of limiting excess regulatory burden. However, AFIA encourages Treasury to maintain all other aspects of phasing from the rollout of Open Banking, to provide NBLs the same on-ramp to CDR entry as was provided to ADIs. This includes phasing by product type (for example, consumer products followed by business products), and other aspects like joint and closed accounts.¹⁶

While it may be the case that NBLs do build API functionality across product types simultaneously, as suggested in the Design Paper, staging by product type would give more time to conduct the assurance and compliance checking involved in responsibly meeting CDR

¹⁴ Commonwealth Treasury, *Consumer Data Right in Non-Bank Lending - CDR Rules and Data Standards Design Paper* (December 2022), 14-15.

¹⁵ Ibid.

¹⁶ Australian Banking Association, [Open banking timeline](#).

standards.¹⁷ This may ease the compliance burden, especially for small/medium NBLs, rather than taking on the assurance task across all products at once.

We suggest that standardised consumer lending products should be prioritised first, given these have obvious analogues in Open Banking. These products can leverage existing technical solutions for CDR compliance and support existing data sets within the CDR ecosystem. NBL products that are less standardised, such as business products, and those that diverge from products offered by banks, should be staged later as the compliance task is greater and they lack equivalence with existing data sets exposed under Open Banking.

Additionally, we note that the Open Banking rollout occurred over an extended period, especially for smaller ADIs. From the announcement of a phased implementation plan in May 2018, it was not until four and a half years later in November 2022 that smaller ADIs reached a deadline to implement products included in the third and final phase of the rollout (including business finance, asset finance and consumer leases).¹⁸ Recognising both the more settled nature of the CDR ecosystem and the smaller scale of most NBLs, even when compared with minor ADIs, we suggest it would be appropriate for the rollout of Open Finance to occur over a similar time frame.

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

¹⁷ Commonwealth Treasury, *Consumer Data Right in Non-Bank Lending - CDR Rules and Data Standards Design Paper* (December 2022), 15.

¹⁸ Australian Banking Association, n 16.