



6 October 2023

Louise Staker
Director
Consumer Data Right Rules Unit
The Treasury
Langton Crescent
Parkes ACT 2600
Submitted via email to: data@treasury.gov.au

Dear Ms Staker,

CONSUMER DATA RIGHT RULES – EXPANSION TO THE NON-BANK LENDING SECTOR

The Australian Finance Industry Association (AFIA) is the only peak body representing the entire finance industry in Australia.¹ We appreciate the opportunity to respond to the draft amendments to the *Competition and Consumer (Consumer Data Right) Rules 2020* ('the CDR Rules').²

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 and our members 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. We provide new policy, data and insights to support our advocacy in building a more prosperous Australia.

¹ [Australian Finance Industry Association \(afia.asn.au\)](https://afia.asn.au).

² Commonwealth Treasury, *Consumer Data Right rules – expansion to the non-bank lending sector* (August 2023), <https://treasury.gov.au/consultation/c2023-434434-expansion>

FOREWORD TO OUR SUBMISSION

AFIA supports the expansion of the CDR to certain parts of the Non-Bank Lending ('NBL') sector, to empower consumers to have better control of their financial decisions.³ However, as discussed in our previous submissions, the benefits of including the NBL sector in the sector must be balanced against the regulatory burden and barriers to effective participation.⁴

AFIA has also advocated for an increased *de minimis* threshold in our previous submission,⁵ and welcomes the \$10 billion threshold for 'initial providers' and \$500 million threshold for 'large providers'.⁶ These thresholds are important measures to more equitably balance the cost of compliance for NBLs, and ensure smaller entities with limited resources to comply with the CDR Rules have further preparation time for an effective roll-out.⁷

We note that the Open Banking implementation occurred from May 2018 to November 2022 for Authorised Deposit-taking Institutions (ADI) to reach the third and final phase.⁸ The timeline and phasing proposed by Treasury for the NBL sector is shorter, with only a year to comply.⁹ As AFIA has previously suggested, it would be more appropriate for a timeline similar to Open Banking.¹⁰ This would not preclude non-bank lenders who are interested in early participation from doing so.

AFIA also welcomes the staged implementation by product category, as a sensible way to limit excess regulatory burden. AFIA is supportive of phasing in a similar manner to the Open Banking roll-out, which provided for a longer implementation period for more complex products, for example for business and asset finance.¹¹ As discussed in our previous submission, some standardised consumer lending products have analogues in Open Banking, and NBLs can leverage existing CDR solutions in some areas.¹² However, this is not always possible and where appropriate analogues do not exist, staging provides time to develop appropriate solutions for NBLs unique products.

Furthermore, as AFIA has previously advocated, the exact alignment between the rules for banking and the NBL sector may incorrectly treat the two sectors as homogenous. While the two sectors may share some similarities, the significant variation in product offerings, user types and usage necessitate that greater consideration should be given to the unique nature and characteristics of NBLs.

³ AFIA Submission, 1 February 2023, *Consultation on the Consumer Data Right (CDR) rules and data standards design paper for non-bank lending (NBL) sector*. https://afiawebsitefiles.blob.core.windows.net/websitecontent/Submission/Consumer_Data_Right_Rules_and_data_standards_design_paper_for_N_Final_Submission_to_Treasury_.pdf

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

⁵ AFIA Submission (2023) 2

⁶ Commonwealth Treasury, *Consumer Data Right rules – expansion to the non-bank lending sector exposure draft rules ('CDR Rules')* (August 2023), (Part 6, Division 6.1), <https://treasury.gov.au/sites/default/files/2023-08/c2023-434434-expansion-dr.pdf>

⁷ AFIA Submission (2023) 2

⁸ Australian Banking Association, *Open banking timeline*.

⁹ Schedule 3, Part 6, Division 6.1, Clause 6.1(1) *CDR Rules*

¹⁰ AFIA Submission (2023) 8

¹¹ Australian Banking Association, *Open Banking Timeline*, <https://www.ausbanking.org.au/insight/open-banking-timeline/>.

¹² AFIA Submission (2023) 8

NBLs are undergoing a period of significant legislative and regulatory change, and the compliance burden will be felt keenly by smaller NBLs. It is important to consider the CDR expansion in this context, to ensure NBLs can undertake a smooth roll-out which balances consumer and organisational needs.

AFIA recommends Treasury consider the following:

- Treasury should increase the implementation timeframe and product phasing to more closely mirror the Open Banking rollout. The proposed 12-month timeframe for NBLs is significantly shorter than the four-and-a-half-year rollout for Open Banking, posing implementation challenges for NBLs.¹³
- Clarification is also needed around definitions for non-bespoke product definitions and criteria like 'publicly available' within the CDR framework.¹⁴ Treasury should consider a flexible yet clearly defined approach to bespoke and invitation only products.
- The 6-month trial exemption for products offered to under 1,000 customers should be extended to avoid limiting innovation opportunities in the NBL sector.¹⁵
- Greater consideration should be given to the appropriateness of aligning NBLs with banking, taking into account the unique operational models and product diversity of NBLs.
- The “resident loans” definition for commercial lenders is unclear. AFIA recommends Treasury consider elaborating and clarifying these definitions.¹⁶
- Clarification is needed on the jurisdiction of dispute resolution schemes like AFCA, especially concerning the scope of CDR complaints they can handle and the size of businesses included.¹⁷

¹³ Schedule 3, Part 6, Division 6.1, Clause 6.1(1) *CDR Rules*

¹⁴ Schedule 3, Part 1, Division 1.3(1.4) *CDR Rules*

¹⁵ Schedule 3, Part 1, Division 1.3, Clause 1.5, *CDR Rules*.

¹⁶ Schedule 3, Part 5, *CDR Rules*

¹⁷ Clause 1.2(f), 32, [AFCA Rules](#),

COMMENT 1 - TIMEFRAME

AFIA notes the proposed timeframe is too short. As discussed in our previous submission,¹⁸ the Open Banking rollout occurred over a four-and-a-half-year period, whereas this timeframe is far shorter at only 12 months for initial providers and large providers.¹⁹ Most NBLs operate on a much smaller scale to ADIs, with a diversity of product offerings, and have fewer resources. NBLs should have at least a similar timeframe to the banking sector, to facilitate a more resilient and effective CDR system.

We also note the banking sector relied on a range of external consultants and vendors to assist implement CDR. While we understand the ecosystem is richer, our members are concerned there may be difficulties in accessing and competing for the required resources within a short timeframe. A longer timeframe would provide more flexibility to engage and hire these necessary skills, and undergo the IT uplift needed.

NBLs also require time to create appropriate CDR solutions for their diverse range of product offerings.

As discussed in our previous submission:

[S]taging by product type would give more time to conduct the assurance and compliance checking involved in responsibly meeting CDR standards. This may ease the compliance burden, especially for small/medium NBLs, rather than taking on the assurance task across all products at once.²⁰

The present timelines in Schedule 3 of the draft rules are likely to result in implementation difficulties, which may compromise the quality and efficacy of the solutions and lead to poorer than desired consumer and business outcomes.

Where non-bank lenders are in the process of developing online access for customers there should be a transition period before compliance with CDR applies. The transition period should commence from the date at which online capability is offered to customers.²¹

AFIA suggests it would be more appropriate for a longer implementation period, and more specific product phasings to account for the diversity of product offerings available in NBL. This would align the compliance period with the banking sector.

¹⁸ Schedule 3, Division 6.1, Clause 6.1, *CDR Rules*

¹⁹ Australian Banking Association, Open Banking Timeline, <https://www.ausbanking.org.au/insight/open-banking-timeline/>.

²⁰ AFIA Submission (2023), 7

²¹ Schedule 3, Part 2, Division 2.1, *CDR Rules*

COMMENT 2 - BESPOKE PRODUCTS

AFIA welcomes the inclusion of 'low negotiation' and 'publicly available' products, which are common in the NBL sector.²² We note there are many products which have a range of negotiation from standard features to more complex negotiation. AFIA recommends Treasury provide more clarity on the level of negotiation which qualifies as 'low negotiation', and on what 'publicly available' is intended to capture. In our previous submission, we suggested Treasury adopt:

*'[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.'*²³

COMMENT 3 - TRIAL PRODUCT EXEMPTION:

AFIA has previously advocated for a trial product exemption and welcomes its continued inclusion in the Rules. In our last submission we discussed the importance of trial exemptions to boost competition.²⁴ Our suggestion was for an 18-to-24-month trial period, and/or a customer limit of 5,000 to 10,000 customers.

The trial period in the CDR Rules exemption is limited to products offered to under 1,000 customers and lasts 6 months.²⁵ This timeframe and customer base is restrictive for testing new products in the market. This more limited trial period and customer base might hinder effective market testing for new products. AFIA advocates for a broader trial product exemption to foster greater innovation and product creation.

COMMENT 4 - ALIGNMENT OF BANKING AND NBL RULES AND DATA STANDARDS

The exposure draft amendments to the CDR Rules align the NBL sector with the banking sector, due to the 'similarity between the banking and non-bank lenders sectors.'²⁶ While the two sectors may share some similarities, the significant variation in product offerings and user types and usage will make a catch-all design less effective.

AFIA has previously recommended the NBL sector be considered separately to banking.²⁷ NBLs, with their diverse range of products and distinct customer usage patterns, necessitate a unique

²² Schedule 3, Part 1, Division 1.4

²³ AFIA Submission (2023), 7

²⁴ AFIA Submission (2023), 5

²⁵ Schedule 3, Part 1, Division 1.3, Clause 1.5, CDR Rules.

²⁶ Commonwealth Treasury, Exposure Draft Explanatory Materials – Competition and Consumer Act 2010, Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2), 2023, 1

²⁷ AFIA, Decision Proposal 316 response, ([August 2023](#)).

approach. Products in fleet services, for example, do not have analogous arrangements to the terms ‘secondary user’, ‘partner’ or ‘joint account’ ADIs.²⁸

As discussed in our previous submission to Decision Proposal 316:

Some NBL products differ entirely in structure, purpose and provision from any banking products, which may render existing banking standards inapplicable for those products.²⁹

The NBL sector requires a distinct set of standards. NBLs often cater to niche markets, offer specialised products, and operate under different financial models. For instance, the way non-bank lenders handle customer data, assess creditworthiness, or even interact with other financial entities can differ markedly from their banking counterparts.

Furthermore, a bespoke set of standards and rules for the NBL sector would not only ensure that those organisations can operate efficiently within the CDR framework, it would also guarantee that their customers receive the same level of data protection and transparency as those in the traditional banking sector. Such an approach would promote healthy competition and innovation while safeguarding consumer interests.

Finally, establishing separate standards and rules from the outset would enable the NBL standards and rules to grow and diverge appropriately from that of the banking sector, without creating an unnecessarily complicated series of special cases and conditional requirements.

Attempting to introduce new, potentially complex, and variably applicable product features from across both the banking and NBL sectors to an amalgamated set of rules and standards risks creating, over time, an unsustainable compliance burden for businesses and maintenance burden for Treasury and the Design Standards Body.

Reducing the complexity cost of expanding and enriching the CDR regime in the future is a key design feature that will permit more avenues of consumer benefit to be unlocked in subsequent revisions of the rules and standards. Separate, bespoke standards are a clear method of separating concerns and simplifying regulation.

As such, applying a generalised framework, designed primarily with traditional banks in mind, may not address the specific challenges and nuances of the NBL sector. We recommend Treasury re-consider this approach.

²⁸ Schedule 3, Part 1, Division 1.3, Clause 1.7, *CDR Rules*.

²⁹ AFIA, Decision Proposal 316 response, (August 2023).

COMMENT 5 – PRODUCT DEFINITIONS

In addition to the alignment of the banking and NBL sectors, AFIA recommends several definitions be clarified for their application to NBLs. Firstly, Treasury's definition of 'resident loans' refers to 'persons' or 'households', which omits corporates.³⁰ We encourage Treasury to refine this definition for clarity.

Furthermore, some of the data required under Schedule 3 of the CDR Rules are broad and may cause confusion. For example, Schedule 3 requires 'any information that the person provided at the time of acquiring a particular covered product' and 'associated terms and conditions'.³¹ Industry would benefit from further clarification and guidance on how to approach these elements.

COMMENT 6 - DISPUTE RESOLUTION

Under the draft rules, accredited persons and data holders will need to join an external dispute resolution (EDR) scheme, such as AFCA.³² However, clarity is sought on whether AFCA's jurisdiction is confined to CDR complaints or extends to all services provided by the data holder. If a non-bank lender joins AFCA solely for CDR purposes, then its jurisdiction should be restricted to CDR complaints. Furthermore, Regulatory Guide 271 for internal dispute resolution (IDR) is designed for complaints from individuals and small businesses, so consideration should be given to how this would operate appropriately in a CDR context.³³

AFCA's current jurisdiction doesn't cover complaints from entities larger than small businesses, defined as having fewer than 100 employees.³⁴ Further clarity is also needed to whether AFCA's jurisdiction will then extend to the entirety of the CDR-regulated entities services, or will be limited to CDR complaints only.

COMMENT 7 – Draft Privacy Impact Assessment

We note Treasury's finding in the Draft Privacy Impact Assessment (PIA) that the CDR extension to NBLs will have positive impacts on consumer privacy.³⁵ However, the assumption in Recommendation 2 that Buy Now Pay Later (BNPL) products and consumer leases are 'high cost', is inexact.³⁶ These are not high cost products, but are designed to be free where there are no missed

³⁰ CDR Rules, Schedule 3, Part 6, Division 6.1, Clause 6.1.

³¹ CDR Rules, Schedule 3, Part 1, Division 1.3, Clause 1.3.

³² CDR Rules, Schedule 3, Part 5.

³³ RG 271.37, *Regulatory Guide 271: Internal Dispute Resolution*, 2021

³⁴ AFCA Rules, Clause 1.2(f), 32.

³⁵ Commonwealth Treasury, *Draft Privacy Impact Assessment (PIA)*, July 2023, <https://treasury.gov.au/sites/default/files/2023-08/c2023-434434-expansion-pia.pdf>

³⁶ Recommendation 2, PIA

payments, with fixed and capped fees. AFIA research shows BNPL users had \$337 million in gross benefits from increased savings interest and other benefits in FY22.³⁷

AFIA recommends a reconsideration of the characterisation of 'high cost' products in the PIA.

CLOSING COMMENTS

AFIA believes that these considerations, if addressed, will lead to a more robust and effective CDR framework for the NBL sector. We look forward to collaborative discussions with the Treasury to refine these aspects.

I would appreciate the opportunity to discuss our recommendations and provide the Inquiry with further information about the specialised products, services and technologies offered by smaller lenders. Should you wish to discuss our submission or require additional information, please contact AFIA Senior Policy Adviser, Sebastian Reinehr at sebastian.reinehr@afia.asn.au.

Yours sincerely



Roza Lozusic
Executive Director of Policy and Public Affairs

³⁷ AFIA, 'The Economic Impact of Buy Now Pay Later', February 2023, <https://afiawebsitefiles.blob.core.windows.net/websitecontent/8%20February%202023%20-%20BNPL%20Research%20Report.pdf>