



Consumer Data Right Open Finance Sectoral Assessment

Non-bank lending

March 2022

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Consultation Process

Request for feedback and comments

Interested parties are invited to comment on the issues raised in this paper by 12 April 2022.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

Publication of submissions and confidentiality

All information (including name and address details) contained in formal submissions will be made available to the public on the Australian Treasury website, unless you indicate that you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain confidential should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

Consultation process to support the sectoral assessment

Treasury's consultation process for the sectoral assessment will involve consulting broadly with representatives from the non-bank lending industry, industry associations, start-ups, consumer and privacy advocates and other interested parties.

Feedback received during this process will inform a final report, which will make a recommendation to the Minister on whether to extend the Consumer Data Right to non-bank lending. The sectoral assessment consultation process will also incorporate consultation activities including a stakeholder roundtable and targeted bilateral meetings.

Closing date for submissions: 12 April 2022

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The principles outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles might operate.

1. Introduction: Expansion to Open Finance

Australia's future prosperity will depend on how it adapts to changes in technology and the digital frontier. The potential benefits of the digitalisation of the Australian economy have been estimated at \$315 billion over the next decade,¹ and will benefit all aspects of Australian society. The Consumer Data Right (CDR) is a key aspect of Australia's Digital Economy Strategy 2030. The CDR is a new pillar of competition policy, aiming to enhance competition and innovation in key industries, especially service industries, which comprise a large share of the economy but may struggle with productivity growth. The CDR is also a fundamental right for Australian consumers and businesses to have power over data generated about them, to share and extract value from this data and help to access the many benefits of progress in digital infrastructure and capability.

On 24 January 2022, the Minister for Superannuation, Financial Services, the Digital Economy and Women's Economic Security and the Treasurer announced that the next priority area for the economy-wide implementation of the CDR is expansion to 'Open Finance' data, building on banking data that is already available, and energy and telecommunications data which is being brought into the CDR. Expansion to Open Finance will be delivered in a phased approach to facilitate a more rapid and targeted approach to designating the key datasets across each of these subsectors that build-on and complement existing designated datasets. Phase 1 expansion will also explore the extent to which there are complementary consumer datasets held by government and the benefits for consumers having access to these datasets through the CDR.

As announced, phase 1 of Open Finance will include the assessment and designation of the non-bank lending sector, merchant acquiring services, and key datasets in the general insurance and superannuation sectors. This consultation paper invites feedback on the proposal to expand CDR to non-bank lending for the purpose of informing Treasury's sectoral assessment report.

Separate consultation processes will specifically explore the scope and merits of expansion to merchant acquiring services, general insurance and superannuation datasets. These consultation processes have been designed to work together to facilitate feedback on the combined effect of datasets across the four subsectors to deliver phase 1 of Open Finance, with particular regard to unlocking consumer-centric innovation while balancing the cost of implementation and supporting accelerated ecosystem growth.

In providing feedback, stakeholders are encouraged to consider how datasets across all four areas along with data already in the CDR system could together support product innovation, streamline business processes and improve consumer outcomes. The assessment and designation of phase 1 of Open Finance will be completed in 2022. The timing and focus of any future phases will depend on the implementation of phase 1 and will likely consider a broader range of datasets from the merchant acquiring services, superannuation and insurance subsectors.

¹ Australian Government. *Australia's Digital Economy*. 2021. Accessed June 2021 at: <https://digitaleconomy.pmc.gov.au/strategy/executive-summary>

Why Open Finance?

Open Finance has been identified as the next priority area for expansion based on a strategic assessment conducted by Treasury in 2021 that explored how to best prioritise and sequence economy-wide implementation. The findings of the assessment were informed by extensive consultation and published by Treasury on 24 January 2022. The report concludes that:

- Future expansion should be based on identifying key datasets that either alone or combined with other datasets contribute to concrete consumer outcomes and benefits.
- To support rapid growth of the innovation ecosystem the immediate focus should be on datasets that build-on and complement existing datasets to support a broader range of use cases.
- Expansion of the CDR should be data holder agnostic and consider both consumer data held by businesses and government as appropriate.

Application of the CDR to Open Finance, including non-bank lending, can enhance the economic wellbeing of Australians by assisting individuals and businesses to switch to better-value deals that match their needs in products that fall within some of the most fundamental areas of one's life - banking, insurance and superannuation. Providing more information about financial products reduces information asymmetries and can help consumers search for and compare a full set of financial products, and have greater confidence when dealing with the financial sector.

Non-bank lending

Non-bank lending has clear parallels with the already designated banking sector, and could provide consumers with a more complete view of their liabilities and borrowing and facilitate comparison of the full suite of lending products on the market, spurring more competitive and personalised products and services across both the banking and non-bank lending sectors.

Merchant acquiring services

Merchant acquiring services facilitate merchants to process payments and therefore are critical to running a small business. Extension of the CDR to merchant acquiring services could improve transparency of product information and support product comparison, particularly for card transaction data. The Reserve Bank of Australia (RBA)'s *Review of Retail Payments Regulation* found that this may address market inefficiencies, and reduce merchants' search and switching costs.

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General insurance

The lack of standardised information about general insurance products and services makes it difficult for consumers to understand and assess the value and relevance for them of competing product and services offerings, which can lead to consumers either paying for products and services not well suited to their circumstances, underinsurance or actions on their part that unwittingly invalidate their insurance policy. There are many potential use cases that could support expansion of the CDR to a range of general insurance and other insurance type products and datasets. A phased approach to expansion has been proposed based on early feedback about the potential for immediate benefit from enhancing consumer access to an equivalent form of generic product data.

Superannuation

Superannuation often represents an individual's most significant personal asset and therefore is a significant element of consumer financial wellbeing. Enhanced access to key consumer information such as superannuation account balances has been highlighted as an efficient way to increase consumer engagement with and knowledge of their superannuation. When combined with other financial datasets, access to key account information through the CDR could improve consumer's understanding of their finances and support life-span wealth management.

Government-held consumer data

Expanding the CDR to complementary government-held datasets may also significantly enhance the user experience and utility of the CDR. Treasury is exploring the potential for the CDR to expand to government-held consumer datasets as part of Open Finance.

Combining Open Finance with banking datasets already in the CDR could support the creation of new and innovative services such as personal finance and life administration apps to take the time, cost and complexity out of everyday tasks and make big financial decisions less risky for consumers. Banking and non-bank lending data can be used for financial planning and loan assessment purposes, and an even richer picture of someone's financial circumstances can be revealed when banking data is combined with superannuation and insurance data.

More convenient data-driven services like budgeting and financial management apps can help consumers spend less time on 'life admin' and reduce transaction costs. Combining banking and Open Finance datasets has the potential to support consumers to plan for and better manage significant financial events, such as applying for a home loan or making longer-term decisions about retirement.

As more sectors are designated to the CDR, the possibilities from combining datasets grow, presenting greater opportunities for innovation and enhancing benefits to consumers. Accredited data recipients (ADRs) offering account aggregation services could bring together information about energy, telecommunications and financial services products

their customers hold with different providers in one place, providing consumers with a holistic picture of their finances and enabling consumers to better manage their household services. This could help consumers achieve savings goals, get better deals and change their consumption behaviours to better suit their lifestyle and needs.

Ellyse manages her finances

Ellyse has accounts with multiple banks and non-bank lenders so she can get competitive interest rates on her loans and the best reward schemes from her credit card providers. The implementation of Open Finance datasets means Ellyse can use CDR enabled budgeting apps to bring the data from her different accounts into one easy-to-use dashboard. She uses the dashboard to compare loans and credit card deals across different bank and non-bank providers.

As well as finding the best loan and credit card rates, Ellyse can use data from energy and telecommunications providers to find better phone or electricity plans, which helps her to meet her loan repayment goals faster. Ellyse can also have her scheduled payments included in the app, so it notifies her when payments are due or when she should move funds between her loan and deposit accounts to reduce interest payments.

Account management tools are another way the data could be used, allowing a consumer to be notified by an ADR when their upcoming payments to both bank and non-bank lenders are due, and to forecast when there may be difficulties making these payments ahead of any amounts becoming overdue.

1.1. The process for assessing and designating sectors and datasets

The process for expanding the CDR to cover new sectors and datasets involves a formal assessment and designation process that is specified in legislation. Section 56AC of the *Competition and Consumer Act 2010* (the Act) empowers the relevant minister (the Minister for the Digital Economy) to make a legislative instrument designating a sector of the Australian economy to be subject to the CDR, and the specific classes of information (data) and the class or classes of persons who hold the designated information (data holders). In doing so the Minister must consider the following factors:

- the interests of consumers;
- promoting competition;
- the efficiency of relevant markets;
- promoting data-driven innovation;
- the privacy or confidentiality of consumers' information;
- any intellectual property in the information;
- the public interest; and
- the likely regulatory impact of designation.

To inform the Minister's consideration of these factors, the Secretary of the Department (the Treasury) must provide a report addressing each of these factors informed by public consultation and consultation with the Australian Competition and Consumer Commission (ACCC), Office of the Australian Information Commissioner (OAIC), and the primary regulator of the relevant sector (section 56AE(1)(c)). The Minister is also required to consult the OAIC about the likely effect of the instrument on the privacy and confidentiality of consumers' information (section 56AD(3)).

1.2. The effect of designation

The making of a designation instrument enlivens the rule-making power in relation to the sector by specifying the parameters for the classes of information that may be required to be shared under the CDR in a particular sector, as well as who is required to share it. Once a sector has been designated, CDR rules and standards for that sector can be made in accordance with statutory processes, including extensive consultation requirements.

Designation involves specifying 'classes of information' or data to be designated, but designation of a sector does not itself impose substantive obligations. Rather, the requirement to disclose particular data arises from the CDR rules, which establish what is 'required' CDR data that must be shared in response to a valid request, as well as what information data holders are 'authorised' to share on a voluntary basis. More information on the operation of the CDR regulatory framework is available at Attachment A.

2. Non-bank lending in Australia

A non-bank lender and financier is a business that offers consumers - both individual and business customers - loans, mortgages, personal finance, credit cards and other types of finance, but does not hold a banking license or accept deposits. Non-bank lending in Australia continues to grow in both balance sheet size and range of products, in many cases offering specialised products to consumer segments that are not prioritised by banks.

Non-bank lending products are an increasingly important source of credit for individual consumers and businesses. Consumers engage with a range of non-bank lending products including credit cards, home loans, personal and business loans on a regular basis instead of, and as well as, banking products supplied by authorised deposit-taking institutions (ADIs; commonly referred to as banks).

Non-bank lenders are also active in the small business lending space. Approximately 40 per cent of non-bank lenders' loan volumes are sourced from business customers.² Adding non-bank lending data into the CDR system could complement datasets already being shared in the banking sector and consumers including businesses will benefit from the ability to access and share CDR data in relation to the full range of credit and lending products available in the market.

2.1. Non-bank lending products

Non-bank lenders offer a range of products, including:

- **Home loans:** Typically the largest item on the balance sheet of non-bank lenders. In some cases, the loans originated by these large non-bank lenders are securitised and sold to investors.
- **Credit cards:** Credit cards remain a common form of credit for Australian individual and business consumers; 19 per cent of Australian transactions are paid using a credit card.^{3,4} Credit cards incur monthly interest charges on outstanding balances, as well as potentially other fees, such as an annual fee.
- **Personal loans:** Non-banks are prominent in the personal loan segment, sometimes offering specialised lending products to customers whose circumstances make them less suitable for banking products. These loans could be used to pay for smaller items such as cars, holidays or home renovations and can be secured or unsecured. This category includes payday lenders or cash advance providers, who can quickly provide consumers with short-term loans, but with high levels of fees attached that make them more expensive than conventional personal loans.

² Reserve Bank of Australia, *RBA Statistical table: B10 Finance Companies and General Financiers*, RBA, n.d., accessed February 2022.

³ RBA, [How Australians Pay](#), accessed February 2022.³ RBA, [How Australians Pay](#), accessed February 2022.

⁴ These transactions also incur fees for the merchant. These merchant acquiring services are also subject to a CDR sectoral assessment.

- **Consumer leases:** A consumer lease lets consumers rent an item, often a household appliance, for a set amount of time. The customer makes regular rental payments, 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 and the asset; this means there may be limited value from incorporating only the credit component into CDR.

- **Margin loans:** A margin loan lets a consumer borrow money to invest in shares, exchange-traded-funds (ETFs) and managed funds. Usually these loans come with requirements to keep the loan to value ratio (LVR) below an agreed level; once it goes above the agreed level the investor must pay a margin call or sell some investments. Providers of margin loans are typically ADIs, however some non-bank lenders offer this product.
- **Business finance:** Non-banks are large providers of business financing. The market is diverse covering traditional loans, interest free products, invoice financing, and asset finance and leasing. Some non-banks may target their products to a particular segment of the market, such as small business, or particular loan sizes.

Given the diverse range of offerings which fall within business finance, some products may be more appropriate for inclusion in CDR than others once factors such as potential use cases, standardisation of datasets across industry and costs of inclusion to lenders are considered.

2.2. Potential to improve individual and small business outcomes

Empowering consumers to make more informed decisions about non-bank lending products

For customers, it can be a complex task to differentiate between available lending products offered by banks and non-banks to determine which best suits their needs. The ACCC's 2020 Home Loan Price Inquiry found that switching a home loan from one lender to another is more complex than switching between suppliers of many other products and services, due to the large number of home loan products on the market (nearly 4,000 in 2019) and the multi-stage process required to switch between lenders.⁵ Faced with complexity, many customers base their decisions on 'rules of thumb' or shortcuts, such as choosing a well-known institution or an institution with which they have an existing banking arrangement.⁶ This can place non-banks at a competitive disadvantage, as consumers may be more likely to seek credit solutions from banks even if a better value deal is offered by a non-bank.

⁵ ACCC (Australian Competition and Consumer Commission), [Home loan price inquiry - final report](#), ACCC, 2020, February 2022, p 18.

⁶ The Treasury, [Review into Open Banking in Australia; Final Report](#), Treasury, 2017, February 2022, p 6.

Consumers who do not take advantage of more competitive offers in the market can be negatively impacted in the longer term. The RBA has shown that as borrowers' loans get older, the gap between what they pay and what borrowers with new loans pay widens, with older loans typically having higher interest rates than new loans, even for borrowers with similar characteristics.⁷

The CDR could make it easier for consumers to identify, compare and ultimately switch to more personalised lending products.

As the CDR ecosystem develops and consumers become more aware of the services provided by ADRs, this will likely drive both non-banks and banks to offer more personalised and competitive products and services by improving access to information. It may also reduce the prevalence of practices that hinder competition, and therefore switching, such as discretionary discounts which customers can only become aware of through discussions directly with the lender.

Spurring innovation, reducing barriers to switching and streamlining existing application processes

The time and effort required to change arrangements can deter some customers from switching. The CDR can reduce barriers to switching and further streamline lending application processes by giving consumers the ability to safely access and share data about them that is held by banks and non-banks. For example, as part of a home loan application, prospective borrowers are typically required to provide to the lender their transaction history, credit card and personal loan statements as well as details of other accounts or loans, over a certain period of time.⁸ These documents are often manually provided by the consumer to the lender via unsecure methods like screen scraping or email. Consumers could benefit from the ability to securely transfer sensitive information through the CDR to an accredited lender or third party in a fraction of the time it would take to provide this information through channels outside of the CDR.

The designation of non-bank datasets will look to complete the information available on customers lending accounts through CDR - currently only accounts with banks can be shared. Authorised lenders, or trusted advisers such as mortgage brokers, would have immediate visibility of the total obligations consumers have with other banks and non-banks (for example, whether a customer has a personal loan), which can support a lender's assessment of a customer's credit worthiness and in turn assist lenders with credit licences to comply with responsible lending obligations. Oversight of a customer's complete financial position could streamline the application process for both the lender and consumer, resulting in faster assessment times. The 2020 Australian Competition and Consumer Commission (ACCC) Home loan price inquiry recognised the important role the CDR has in addressing the impediments to switching between lenders of home loan products.

⁷ RBA, [Statement on Monetary Policy - February 2020](#), p 55.

⁸ ACCC, [Home loan price inquiry - final report](#), p 15.

Businesses also 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. Smaller businesses typically also have less documentation and shorter financial histories, which can make it harder and more costly for ADIs and non-bank lenders to acquire the required information to make accurate assessments of small businesses' creditworthiness.⁹ Improved access to small business data could support lenders with more streamlined and cost-effective loan assessment processes.

2.3. What non-bank lending data should be included in the designation?

As in previous CDR sectors, both 'generic' product data and consumer specific data are proposed for designation in non-bank lending. Product data has tended to include the kind of information that is generally available about a product, for example, in a disclosure document (terms and conditions, fees, charges, contract length). Consumer data has tended to include information about consumers, as well as information about their use of a particular product or service.

Datasets held by non-bank lenders cover the broad range of products they offer and the customer interactions with those products as factors such as payments, charges, rates and repayment schedules are updated. Where the same products are offered, the data is expected to be the same as that held and provided by bank data holders under the CDR (these are outlined broadly in the Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019).

These datasets are defined in the banking designation as information about the user of a product, information about the use of a product and information about a product. The CDR Rules break these down into the following categories:

Designation of classes of information (data)	Category of data under the rules:	Broadly what it supports sharing of:
Information about products	Product data	Publicly available generic product information including name, type, price, and terms and conditions. May also include publicly available product performance data.
Information about customers/users	Customer data	Information about a customer, such as general contact information including a name, address, and phone number.
	Account data	Information about an account, such as account identifying information.
Information about use of products	Transaction/billing data	Information about use of a service, including information about transactions and amounts due or charged.
	Product specific data	Information about a product that a particular consumer uses, including bespoke rates a customer may be subject to.

⁹ The Treasury, [Review into Open Banking in Australia; Final Report](#), Treasury, December 2017, accessed February 2022, p 8.

The broad range of lending products offered by bank lenders is covered under schedule 3 to the *Competition and Consumer (Consumer Data Right) Rules 2020* (the CDR Rules), which include:

- Personal and business credit or charge card accounts
- Home loans, residential and investment
- Personal loans
- Business finance
- Investment loans
- A line of credit, personal and business
- Asset finance
- Consumer leases

It is expected that the rules and standards applying to non-bank lender datasets would leverage those already implemented in the CDR. If a product offered by a non-bank lender varies significantly from the bank equivalent, the rules and/or standards applying to this data can be updated to accommodate it where necessary. Similarly, should this process consider, and identify for sharing through CDR, products that were not considered at the time of Open Banking, changes to the banking schedule in the Rules will be made to ensure there is consistent information being shared across both banks and non-banks.

Intellectual property

CDR data is data outlined in the instrument designating a sector and any information that is derived (wholly or partly) from that data. The designation instrument for the banking sector excludes 'materially enhanced information' about the use of a banking product from the specified classes of information subject to required data sharing. The concept of materially enhanced information refers to data that is the result of the application of insight, analysis or transformation to significantly enhance its usability and value in comparison to its source material.

Data holders cannot be required to disclose materially enhanced data about the use or sale/supply of products under the CDR but may be authorised to disclose it through the CDR on a voluntary basis. For example, in the banking context, materially enhanced information may include: the outcome of an income, expense or asset verification assessment; or a categorisation of transactions as being related to groceries or rent; or significantly improved descriptions of transactions utilising geolocation or business name data from external sources.

A similar approach to excluding materially enhanced information is proposed if the non-bank lending sector is designated.

2.4. What data holders might be suitable for designation?

Generally, the entities that offer the products mentioned above are the entities that manage the relationship with the customer, and would be considered data holders for any proposed designation instrument. Where entity structures are less simple, such as for securitised loans or white labelled products, the general principle that the entity holding the legal relationship with the customer should be the data holder would still apply.¹⁰

The non-bank lending sector includes a wide range of entities offering services that can sometimes complement or overlap with others. In some instances there may be more than one entity that holds a particular dataset that reveals how a product is used. Where this occurs it would be optimal for CDR data holder obligations to only be imposed on one entity to avoid duplication of effort.

The size of the non-bank lending industry is partly demonstrated by the number of Australian Credit Licence (ACL) holders, which at approximately 1,015¹¹ represents only a component of the industry.¹² While some are large household names competing with banks, many ACL holders are smaller operators that offer the same lending products but are likely to have lower levels of technological sophistication or data security awareness. There are also many specialist non-bank business lenders who aren't required to hold an ACL, or other type of licence.

In Open Banking, ADIs were identified as data holders. There is no such equivalent for non-banks that neatly captures the relevant entities, therefore a key issue for consideration in the assessment process is the scope of data holders that should be designated, and the potential to leverage existing statutory definitions. For example, to capture the broad scope of entities providing finance, a non-bank lending data holder could draw on the definition of 'credit facility' in the *Australian Securities and Investments Commission Act 2001* (ASIC Act) or be an entity that is engaged in the provision of finance in the course of carrying on business in Australia, as per the definition of a registrable corporation in section 7 of the *Financial Sector (Collection of Data) Act 2001* (Collection of Data Act).¹³ Once this scope has been set, exclusions could be made either in the designation instrument or at the rule-making stage based on various factors such as business type (for example, money market corporation, intra-group financier),

¹⁰ White label products are typically created and operated by one entity (a white labeller), then branded and retailed to consumers by another entity (a brand owner). A consumer's contract is typically with the white labeller and the white labeller is typically responsible for complying with all financial services regulatory obligations, and for operational delivery of the product to the consumer. Under existing banking rules, the bank (white labeller) has the CDR obligations as the entity that holds the contractual relationship with the customer.

¹¹ As of 15 February 2021. Source: ASIC.

¹² Not all finance companies are required to be ACL holders, for example business lenders are not covered by the *National Consumer Credit Protection Act 2009* and therefore do not need to hold an ACL.

¹³ In general, the Collection of Data Act applies to any corporation which engages in the provision of finance in the course of carrying on business in Australia. Corporations which are not registrable corporations include corporations whose assets in Australia do not exceed \$50,000,000 in aggregate value.

product type or some other threshold using metrics such as balance sheet, revenue or customer level.

A key consideration will be striking the right balance between designating a broad scope of data to support product comparisons (for example), and the cost of making these datasets available across the broad spectrum of non-bank lenders participating in the market. In energy, only a subset of designated data holders are required to share data through the application of a de minimis threshold, as for smaller retailers it was considered the cost of the CDR obligations would outweigh the benefits to consumers. Below the threshold, entities are not subject to mandatory data sharing obligations (unless they are subject to reciprocal arrangements as an ADR), but can choose to share data voluntarily.

2.5. Privacy and regulatory burden considerations

In addition to identifying and considering the potential consumer benefits, competition and innovation outcomes that might flow from designating non-bank lending data, the assessment will consider any associated potential risks, sensitivities and costs.

Privacy and confidentiality

An assessment of the privacy implications was initially conducted on the proposed implementation of the CDR regime in the banking sector, with further privacy assessments completed examining the impact of the proposed implementation of the CDR in the energy and telecommunications sectors.

Banking data is already shared in the regime and any risks appropriately mitigated in the rules and standards. Any sharing of non-bank lending data (which is likely to be the same type of data as for banking loan accounts) as a result of designation is likely to be appropriately managed through these existing mitigation strategies.

Regulatory impact

Assessing regulatory impact involves considering potential compliance costs at a general and high level and using assumptions to produce estimates of those costs. The Minister can then weigh the estimated costs against the potential benefits for different datasets and data holders before making a decision on whether to designate them.

The CDR does not seek to create new sets of data for entities to collect, but instead creates a framework for existing datasets to be shared securely. Following the implementation of the CDR in the banking, energy and telecommunications sectors, non-bank lending would be the fourth sector for which the CDR is activated. Accordingly, it is anticipated that the types of regulatory impacts would be similar to those experienced by previous participants, particularly those in the banking sector. Experience with implementation of the CDR to date may allow regulatory impacts for non-bank lenders to be reduced compared to earlier sectors. For example, third party vendors¹⁴ with

¹⁴ Such as software providers, IT contractors, compliance specialists and advisers and intermediaries.

experience implementing the CDR in the banking sector will be able to draw on this for non-bank lenders.

Open Banking set the threshold for eligible consumers at the level where they are able to access their account online. While online account management is a common feature, smaller non-bank lenders may not operate at the level required to fully meet CDR obligations in terms of data sharing, customer authentication and information security. These entities are likely to have a customer level small enough to make the marginal cost of compliance with CDR obligations prohibitive for their business. If suitable, a de minimis threshold can be applied to data holder obligations, however it would need to be able to be applied clearly and consistently across the spectrum of non-bank lenders.

The sharing of CDR consumer and product data comes with different costs.

- Consumer data requires strict security and authentication controls that can be costly to implement.
- Product data reveals information about a product, not a consumer, and is shared through unauthenticated Application Programming Interfaces (APIs).

It may be possible to still impose product data sharing obligations on non-bank lenders of a smaller size without the onerous responsibilities of being a consumer data holder. This would allow data recipients to compare the products of a wide range of non-bank lenders with their competitors in both the non-bank lending and banking segments. Extending product data sharing across the widest range of non-bank lenders will give consumers more choice than ever before when comparing products, and can potentially provide lesser known non-bank lenders with a low cost means of communicating the price and features of their new products.

Information on many consumer credit products is highly standardised due to obligations under the Credit Act to make available 'key fact sheets' and therefore is well suited for sharing through CDR. Required information for home loan fact sheets includes interest rates, applicable fees and monthly repayments. Required information for credit card fact sheets includes minimum repayment, interest rates to purchases, and any applicable fees.

As such, were non-bank lender product data designated for consumer credit products it may only be an incremental increase in regulatory cost to require the same information to be made available in a digital, machine-readable format via APIs.

Questions:

Benefits and use cases

- How could sharing non-bank lending data encourage innovation or new use cases for CDR data? Are there cross-sectoral use cases that non-bank lending data can support, in particular with Open Finance/Banking?
- May the benefits of sharing non-bank lending data vary across particular consumer groups; for example, vulnerable consumers?
- Would the designation of non-bank lending improve competition between lenders, including leveling the playing field with banks, or lead to greater market efficiencies?

Data holder and datasets

- If non-bank lending is designated, which entities should be designated as data holders?
- How should data holders be described in a designation instrument? Is there potential to leverage existing definitions (for example, the definition of 'registrable corporation' in the Collection of Data Act or 'credit facility' in the ASIC Act)?
- Where lending is securitised or provided to a brand owner by a white labeller, does the same entity retain the legal relationship with the customer, as well as hold the data on the loan?
- Are there differences in the data held by non-banks and banks that would require adapting the rules and standards that apply to banks so that those rules and standards would apply to non-bank lenders? If so, why?
- Are there products offered by non-bank lenders that aren't covered by the existing rules and standards applying to banking data in the CDR? Are there CDR rules and standards that apply to banking data that warrant exclusion for non-bank lenders?
- Are there any government-held datasets that would be complementary to privately-held datasets and could support possible use cases in non-bank lending?
- What is the level of standardisation across products within business finance? Are there key datasets that are common across different types of business finance products that could be usefully compared? What are the key attributes of a product that would be useful for comparison services?

Privacy considerations and intellectual property

- Are there privacy concerns specific to non-bank lending that should be taken into account when considering the designation of the sector?

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- Do you consider the existing privacy risk mitigation requirements contained in the banking rules and standards are appropriate to manage the privacy impacts of sharing non-bank lending data?
- Are there other examples of materially enhanced information specific to the non-bank lending industry?

Regulatory burden and cost considerations

- Feedback is sought on the potential costs or regulatory burden implications across the spectrum of potential data holders and scope of product types and datasets that could be captured.
- What datasets would cost more for a data holder to share securely, and why?
- Which entities, defined either by size or product offering, would be less suitable for CDR data holder obligations from a cost or technological sophistication point of view, and why?
- What would be the likely cost of implementation and ongoing compliance with CDR data sharing obligations for your entity? Please provide detail where possible.
- What barriers to product data sharing exist for your entity or product offering? Please provide information on the types of systems you use and whether there is the potential to limit access to information, such as where data storage obligations are outsourced to third-parties.
- Does your business have consumers that are unable to access their account and transaction information online and, if so, what proportion of your customers are 'offline'?

3. Examples of rules considerations

A range of issues relating to the implementation of the CDR in non-bank lending are appropriately addressed (and consulted on further) at the rule-making stage. This is consistent with the role of the designation instrument and CDR rules in the CDR regulatory framework, and approaches applied to considering similar issues in the banking, energy and telecommunications sectors.

While further public consultation will occur at the rule-making stage (which is expected to occur concurrently with development of data standards) to inform implementation design and obligations in the rules, to the extent feedback is provided on these issues as part of the sectoral assessment consultation, it will be considered in developing rules should the sector be designated.

3.1. Eligible customers

Non-bank lenders service a broad range of customers, from individuals (or sole traders) to small to medium sized enterprises and large corporations. Data sharing obligations relating to these different customer types may be of varying utility depending on the nature of the relationship between these customers and service providers. For example, particularly large and complex businesses may acquire services in light of extensive negotiation, and may be unlikely to require the services of CDR accredited apps which are marketed to individuals or small to medium businesses. The CDR rule making stage offers an opportunity for stakeholders to comment on which types of customers should be covered by the CDR in a particular sector.

The CDR rules include the economy-wide concept of an 'eligible' CDR consumer, being a consumer eligible to initiate data sharing requests. The generic eligibility requirements include that a consumer is over 18 (if they are an individual) and has an open account with the relevant data holder. Sector-specific eligibility requirements are possible in addition to the economy-wide definition. For example, in the banking sector, consumers are required to have an online account to be eligible.

Relatedly, the rules deal with how data sharing requests can be initiated in the context of business partnerships, joint accounts, and companies.

3.2. Phasing of data sharing obligations

The rules specify when mandatory data sharing obligations commence for data holders. Based on existing precedents in banking and energy, which may also be considered in telecommunications, commencement of obligations may apply in phases by reference to different data holders, different datasets or by reference to particular functionality. For example, in the banking sector, the four major banks were required to commence sharing data earlier than other authorised banks, and commencement dates for sharing datasets have been phased. This is a mechanism that enables sector participants to manage implementation and technical build programs, resources, and delivery risks.

Glossary

ACCC	Australian Competition and Consumer Commission
ACL	An Australian Credit Licence is required of finance companies covered by the <i>National Consumer Credit Protection Act 2009</i>
Act	<i>Competition and Consumer Act 2010 (Cth)</i>
ADI	Authorised deposit-taking institution, commonly referred to as a bank
ADR	An accredited data recipient is a person accredited by the ACCC to receive CDR data with a consumer's consent
API	An application programming interface is software designed to help other software interact with an underlying system
ASIC	The Australian Securities and Investments Commission
CDR	The Consumer Data Right is a right for Australian consumers - individuals and businesses - to access data held about them, and the regime that facilitates such access
CDR consumer	The term 'CDR consumer' is defined at section 56AI(3) of the Act and includes natural persons and businesses. An eligible CDR consumer can give consent to an accredited person to collect their CDR data from a data holder
CDR rules (rules)	<i>Competition and Consumer (Consumer Data Right) Rules 2020</i>
Consent	Communication to an accredited person of the datasets and actions that the consumer is allowing them to access or perform, and the purposes for which the consumer agrees to their data being used and actions being initiated on their behalf
Credit Act	<i>National Consumer Credit Protection Act 2009 (Cth)</i>
Data holder	A party that holds and must share data upon a consumer's request
Data / Datasets	Data is information translated into a form for efficient storage, transport or processing, and is increasingly synonymous with digital information. It includes product data (data related to the product/service advertised for example: descriptions, prices, terms, and conditions) and consumer data (data related to the consumer of the product/service for example: consumer contact details, or information relevant to their eligibility for a service)

Data sharing	The transfer of product and consumer data, usually referring to sharing under the CDR framework with consent
Designation	Designation refers to the inclusion of a dataset or data holder in a designation instrument, as defined below
Designation instrument	A legislative instrument made by the Minister under section 56AC of the <i>Competition and Consumer Act 2010</i> (Cth)
Materially enhanced	The concept of materially enhanced information refers to data that is the result of the application of insight, analysis or transformation to significantly enhance its usability and value in comparison to its source material
OAIC	Office of the Australian Information Commissioner
Open Banking	As the first designated sector, Open Banking was launched in July 2020 and gives consumers the ability to share banking data with third parties that have been accredited by the ACCC through APIs
Open finance	A CDR sector including general insurance, superannuation, merchant acquiring and non-bank lending service providers
Standard/s	The technical data standards made by the Data Standards Chair for the purpose of the Consumer Data Right