

14 April 2022

Claire McKay
Director
Sectoral Assessment
Consumer Data Right Division
The Treasury
Langton Crescent
PARKES ACT 2600
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Dear Ms McKay

CONSUMER DATA RIGHT OPEN FINANCE SECTORAL ASSESSMENT – NON-BANK LENDING

The Australian Finance Industry Association (AFIA) appreciates the opportunity to provide a submission on the Treasury Consultation Paper on the *Consumer Data Right Open Finance Sectoral Assessment, Non-bank lending (consultation paper)*.

AFIA is a leading advocate for the Australian financial services industry. We support¹ our members to finance Australia's future. We believe that our industry can best support Australia's economy by promoting choice in and access to consumer and business finance, driving competition and innovation in financial services, and supporting greater financial, and therefore social, participation across our community.

AFIA represents over 100 providers of consumer, commercial and wholesale finance across Australia. These banks, finance companies, fleet and car rental providers, and fintechs provide traditional and more specialised finance to help businesses mobilise working capital, cashflow and investment. They are also at the forefront of financial innovation in consumer and small business finance.

OUR SUBMISSION

AFIA supports the expansion of the consumer data right (**CDR**) to other parts of the economy including the broader finance sector (**open finance**).

Open banking is part of a global phenomenon which has seen control of financial data shift from financial service entities to the hands of customers.

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

Open finance, like open banking, will allow customers to securely share their data with banks, other financial services entities, other sectors in the economy and third parties. This has the potential to boost competition and innovation in financial services and beyond.

Ultimately the application of CDR to the finance sector will be good for Australian consumers as it will assist consumers in switching to products and services that best suit their circumstances and needs.

While open banking is still in its infancy in Australia, UK experience has pointed to its future potential, with over 5 million users in the UK using services through this platform.² Applications include comparison and switching; account aggregation; budgeting tools; personalisation and insights.

We would caution, however, that the expansion of CDR into the broader finance sector be nuanced. We know that building and implementing the infrastructure of the CDR for banking participants was a complex task and took time and considerable expense, with ongoing compliance and technical costs to ensure systems and processes remain in line with regulation. Mandating compliance with CDR for smaller lenders and fintechs will not only place an undue burden on those entities but also have the effect of conferring competitive advantage to existing accredited data recipients (ADRs).

As far as possible, the move to open finance should be supported by arrangements (such as streamlined accreditation) that would encourage opt-in by non-bank lenders.

Phasing

We welcome the Government's commitment to phase the delivery of open finance. We think it makes sense to expand to standardised products which parallel existing designated products and data sets. This targeted approach would be more useful in facilitating take up and expansion of the CDR regime.

A targeted approach would also ensure that the application of CDR does not inadvertently create an undue regulatory burden on smaller non-bank lenders or capture emerging or novel products which would have the potential to stifle competition and innovation.

We think a phased approach to products also makes sense – commencing with consumer lending products followed by business lending products. This would be in line with the Government's priority to target competition in popular consumer products and would help establish a user base and value proposition for data sharing services.

A phased designation of data sets within product classes would also reduce regulatory burden, by allowing firms a measured pace to develop the institutional knowledge and systems required. We suggest that product data be designated in the first instance, followed by consumer data and then transaction data as has been the case for open banking. Further consultation stages should explore opportunities to minimise data set duplication under this phasing approach, such as for by-now-pay-later firms.³

² Both the Financial Conduct Authority (FCA) the Competition and Markets Authority (CMA) have described open banking as a success which has brought innovative services to retail banking and benefitted the economy as a whole. [Next steps on future oversight of Open Banking announced - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/next-steps-on-future-oversight-of-open-banking-announced)

³ We note that for certain products, such as by-now-pay-later products, transaction data automatically flows through to the consumer's bank account, which is already accessible through Open Banking.

We note that the introduction of open banking has taken place over a period of years, and that many of our members have less scale to absorb new compliance hurdles. Many members will require at least the length of time afforded during the introduction of open banking to build appropriate systems, to ensure consumers see genuine and meaningful value from the introduction of open finance.

We also highlight that the ACCC has granted over 60 exemptions from CDR obligations to ADIs, reflecting the technical difficulty of CDR implementation even for very large institutions. The ability to provide exemptions is crucial for our members to prevent market exit due to regulatory burden, which would diminish competition and consumer choice.

Definition of sector

We note that a key consideration for Government as part of the assessment process is to define the scope of data holders that could be designated as part of open finance and whether an existing statutory definition could be leveraged for this purpose – either to leverage the definition of credit facility in the *Australian Securities Investment Commission Act 2001* (ASIC Act) or the definition of financial sector entity in the *Financial Sector (Collection of Data) Act 2001* (Collection of Data Act).

While leveraging an existing definition is appealing for its simplicity, we would not support the use of either of these definitions on their own. As noted in the consultation paper, there are limitations with both of these – the ASIC Act casts an extremely wide net, while the FSCODA regime is not fit for purpose, being intended for statistical reporting. The size of the non-bank lending sector is large (approximately 1,015 ACL holders) with many ACL holders being smaller operators that offer the same lending products but who are likely to have lower levels of technological sophistication. There are also many specialist non-bank business lenders who aren't required to hold an ACL, or other type of licence and so this would not capture products that don't provide credit in the ordinary sense of the word.

At a minimum we would support the use of a 'de minimis' approach to define the boundary of the sector in the designation instrument, as has been the case in the energy sector. We would urge Treasury to consider revenue and per-product customer number thresholds in conjunction with any baseline definition. This would not only alleviate the burden on smaller fintechs and small lenders, but also facilitate innovation by larger institutions who are trying to develop new products. The ACCC sandbox for CDR compliance would provide an appropriate next step on the journey to CDR compliance.

We suggest a possible institutional revenue threshold of \$100 million, recognising the need to limit impositions on small and medium enterprises. To encourage product innovation and protect nascent small firms, we propose a per-product customer threshold of 100 thousand, before obligations for that product commence if a firm is above the revenue threshold.

We recognise that, as is the case with the existing sector, it is open to entities to opt into the CDR regime by becoming an accredited data recipient in which case they would also be required to become a data holder in a phased way. We encourage further work to lower barriers to participation for fintechs and others, by streamlining accreditation for small firms.

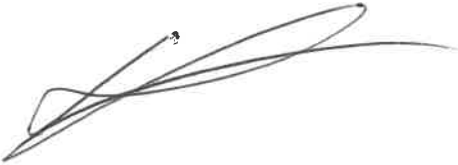
In response to specific questions raised in the consultation paper please see Attachment A.

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

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Roza Lozusic

Executive Director, Policy & Strategy

ATTACHMENT A: CONSULTATION PAPER QUESTIONS & RESPONSES

Benefits and use cases

How could sharing non-bank lending data encourage innovation or new use cases for CDR data? Are there any cross-sectoral use cases that non-bank lending data can support, in particular with Open Finance/ Banking?

Our members identify several use cases for data sharing within or across sectors with potential gains in efficiency, cost of obtaining finance and improved customer experience – dependent on the scope of customer consent and limitations imposed by Privacy laws on the usage of personal information.

We note that many consumer gains are already realised through Open Banking and will continue to do so as Open Banking matures, irrespective of Open Finance adoption.

Responsible Lending

Cross-sharing of financial data would streamline the lending process (for ADRs) and potentially reduce administrative costs for the lender. Essentially, customers may be able to get faster approval without necessarily requiring them to produce additional supporting documentation. Similarly, spending behaviours, expenses or red flags that deem the customer unsuitable for any particular product would be more easily identifiable.

Accurate Credit Assessment

An up-to-date view of a potential borrower's financial data would allow lenders the opportunity to make accurate, tailored decisions about a borrower's suitability for a loan. In particular, it would militate against the negative impact of the traditional credit reporting regime on young consumers' access to finance. It would allow them to demonstrate their financial suitability for credit despite lacking the opportunity to build credit history.

Financial Hardship

Data sharing may enable the lender to process hardship applications and provide assistance to customers more quickly. This may also benefit vulnerable customers who cannot readily access documentation to support their hardship request. Government held data sets (e.g., Centrelink and ATO) would also assist in this context.

Mitigating Application Fraud

Application fraud arises for example when falsified payslips are submitted as part of a loan application. Employers have different payslip formats and are reluctant to confirm employment income due to privacy concerns, making the process of identifying fraudulent payslips challenging. Government held data sets (e.g., ATO) or bank statements would also assist with mitigating fraud risks.

Improving products and services

Having greater access to product data may assist members to identify the suitability of products and services offered to its customers. Access to a wider range of accurate and up-to-date data may allow lenders to be comfortable in the precision of information, and in turn, personalise the customer experience as well as generate more customised offers and rates.

May the benefits of sharing non-bank lending data vary across particular consumer groups; for example, vulnerable consumers?

It is difficult to generalise about vulnerable consumers owing to the specific and unique circumstances of each consumer – they may be vulnerable due to age, income, financial or technological literacy, mental or physical health, or a combination of those and other reasons. However, such consumers may be less willing or able to utilise data sharing services under Open Finance, reducing overall consumer benefit. As noted, Open Banking is in its early stages of adoption in Australia and hence its user base may consist of more technologically and financially attuned 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?

See above. While in the mid to long term designation of non-bank lending could improve competition, in certain segments mandating compliance with CDR for smaller lenders and fintechs could have the opposite effect and confer competitive advantage to existing accredited data recipients (ADRs).

Data holders and datasets

If non-bank lending is designated, which entities should be designated as data holders?

See above. We consider there should be a nuanced approach for the non-bank lending sector as there is no one-size-fits-all definition. The CDR regime should be shaped in a way that reflects and respects the differences between entities.

We suggest Treasury consider a combination of institutional revenue and number of customers per product. We also suggest the bar should be set quite high should there be a mandated approach to designation, with greater reliance on streamlining accreditation and reducing ongoing compliance burden to encourage participation. As stated, we suggest an institutional revenue threshold of \$100 million, and a per-product customer threshold of 100 thousand.

Further, we consider the ACCC's sandbox for CDR compliance to be the appropriate conduit for institutions graduating from the minimum threshold, providing them the space and scale to develop and test systems. This will contribute greatly to ensuring a high-quality experience for users when utilising the CDR.

As above, we consider it makes sense to commence with consumer lending products in initial phases, with business lending products to follow later. Business lending products are often bespoke, meaning that handling of data relating to these products is costlier and less useful than for consumer lending. In addition, consumers are likely to derive greater value from CDR implementation, as they have lesser capacity to analyse competitive offerings and manage their own data. Further consultation should explore a maximum threshold, especially for business lending products, to ensure that the benefits of CDR implementation outweigh compliance costs.

Therefore, and subject to the above size tests, we consider it makes sense for providers of standardised consumer finance products to be designated first, including retail banking, non-bank consumer lending such as home loans, personal loans and credit cards.

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)?

As above, we do not support the use of either of these definitions on their own. The ASIC Act casts an extremely wide net, encompassing a very diverse range of products and business models, while the FSCODA regime is intended for statistical reporting. We consider that neither definition, on its own, is fit for purpose and would need to be adjusted. ACL holders may provide a suitable baseline definition, with appropriate institutional revenue and per-product customer thresholds overlain.

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?

We would welcome further discussion on this question.

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?

Some non-bank lenders provide lending products structured differently to that of banks, and so collect and assess different data. For example, asset lenders who take asset risk, retaining residual value liability, collect different data and undertaken different assessments to other lenders. Further analysis is needed in future consultation stages.

Many non-bank lenders provide lending products structured differently to that of banks, and so collect and assess different data which may require adaptation of rules and standards. For example, motor vehicle financiers offer asset lending with lender assumed residual value liability, which requires different data collection and assessment processes. Further consultation and analysis are needed across the range of non-bank lending products.

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?

We would welcome further discussion on this question. Where the range of covered products is expanded to include those offered by non-bank lenders, we suggest that all institutions, including banks, that provide these products be subject to the same rules.

Are there any government-held datasets that would be complementary to privately-held datasets and could support possible use cases in non-bank lending?

As above, government held datasets such as Centrelink and ATO would assist in use cases to understand financial hardship as would provide a fuller picture of a customer's circumstances.

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?

Our members consider that there are many business products are bespoke offerings that are intrinsically difficult to compare, especially through standardised metrics.

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?

We do not see any new or different privacy concerns between bank and non-bank lending.

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?

Our members are yet to consider the rules and standards in-depth. We would welcome further discussion on this question.

Are there other examples of materially enhanced information specific to the non-bank lending industry?

Our members are yet to consider this in detail. We would welcome further discussion on this question.

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.

Our members are yet to give detailed consideration to implementation of CDR for their organisations. We note, however, the task of implementing CDR in the banking sector was (and continues to be) complex with a significant cost even though those ADIs have considerable resources.

We note that both the potential costs and regulatory burden implications do not solely stem from data holder obligations but also data recipient obligations. We would welcome some guidance from Treasury as to cost ranges incurred by ADIs for both data holder and ADR components.

Factors which we consider would influence the implementation and indicative cost include:

- Minimum SLA or architectural principles that need to be followed for a data provider;
- Metadata requirements or restrictions around what data is sent to whom;
- Restrictions on competitor data handling;
- Criteria for usage of data received;
- Data segregation requirements based on ACN, ABN or brand;
- Product exclusions;
- Data validation;
- Reporting requirements;
- The impact of broadened complaints handling and remediation requirements under revised ASIC Regulatory Guidance; and
- Any tailoring of the rules and standards for different products (rather than one size fits all rules)

Pending a detailed analysis our members can see a range of scenarios where data sets would be more technically complex to provide. These include:

- Data sets pertaining to a fleet product arrangement whereby numerous parties are involved and the business models accommodate both business to business and business to customer relationships; and
- Information about products that are underwritten externally, i.e. insurance. We understand that the early thinking from Treasury is that CDR for general insurance will apply to the product issuer who has the contractual relationship with the insured, rather than the distributor.

Further consultation should foreground measures to reduce the regulatory burden of CDR implementation. We suggest that streamlining accreditation and minimising ongoing compliance costs are crucial to achieving industry uptake.

What datasets would cost more for a data holder to share securely, and why?

We would welcome further discussion on this question.

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?

As stated, we suggest an institutional revenue threshold of \$100 million, and a per-product customer threshold of 100 thousand. We also note that a maximum threshold may be required to ensure derived benefits are greater than CDR implementation costs.

What would be the likely cost of implementation and ongoing compliance with CDR data sharing obligations for your entity? Please provide detail where possible.

We would welcome further discussion on this question.

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.

We would welcome further discussion on this question.

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'?

We would welcome further discussion on this question.

ATTACHMENT B: AFIA BACKGROUND

The Australian Finance Industry Association (AFIA) is the voice of a diverse Australian finance industry.

AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia, which includes:

- major, regional and mutual/community owned banks
- providers of consumer finance, including home loans, personal loans, consumer leases, credit cards, buy now pay later services, and debt purchasers
- providers of land finance, including residential and commercial mortgages and bridging finance
- equipment financiers, including commercial equipment financing ranging from agri-equipment to small ticket equipment financing
- motor vehicle financiers, including consumer motor finance, novated motor finance, small business motor finance and heavy vehicle finance
- fleet leasing and car rental providers
- providers of commercial finance, including secured and unsecured loans and working capital finance to businesses, including small businesses.

AFIA's members range from ASX-listed public companies through to small businesses providing finance, which operate via a range of distribution channels, including through 'bricks and mortar' premises (physical branches and other outlets), via intermediaries (including finance brokers, dealerships, retail suppliers), and through online access or platforms (traditional financial institutions and fintechs).

AFIA's members collectively operate across all states and territories in Australia and provide finance to customers of all demographics from high to low-income earners and to commercial entities ranging from sole traders, partnerships and across the corporate sector in Australia.

AFIA's members provide a broad range of products and services across consumer and commercial finance, a snapshot of these include:

- Consumer: home loans, personal unsecured loans, revolving products (including credit cards and interest free products coupled with lines of credit), personal secured loans (secured by land or personal property); consumer leases of household assets (including household goods, electrical/IT devices or cars) and buy-now, pay later services.
- Commercial: land, asset or equipment finance (finance/operating lease, secured loan or hire-purchase agreement or novated leases); business finance and working capital solutions (secured loans, online unsecured loans; debtor and invoice finance; insurance premium funding; trade finance; overdrafts; commercial credit cards), together with more sophisticated and complex finance solutions.

For further information about AFIA, please see [here](#).