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Sectoral Assessments
Consumer Data Right Division
The Treasury
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## CDR Sectoral Assessment for the Open Finance sector - Non-bank lending

CPA Australia, Chartered Accountants Australia and New Zealand (CA ANZ), and the Institute of Public Accountants (IPA) welcome the opportunity to respond to the consultation paper on the open finance sectoral assessment of expanding the Consumer Data Right (CDR) into non-bank lending.

**Time to consolidate**

We support, in principle, the expansion into non-bank lending, but only after a period of consolidation. We consider Treasury's assessment is accurate that there are clear parallels with the banking sector and that it may provide consumers with data on the full suite of their lending products. However, we do not agree with the claim that the inclusion of the non-bank lending sector will provide 'immediate visibility of the total obligations consumers have' due to the issues emerging through the implementation in banking.

We strongly urge a pause in the expansion of the CDR regime, to any other sector or service, until an independent review of the functionality of the CDR regime in the banking sector is undertaken.

We recommend that Treasury undertakes a series of surveys that seek to build data to answer the following questions:

- If the consumers of the '107 data holder brands'[1] now live in the CDR regime are aware of the CDR, how do they manage multiple dashboards, what is the most common purpose of giving consent to disclosing data and what is their most common concern with using CDR channels?
- How, or if, the 16 active accredited data recipients (ADRs)[2] receive data through CDR channels, the accuracy of that data, the quantum of CDR data to total data held, and the cost of upgrades to their IT infrastructure as the CDR Rules change?
- What are the key barriers for data holders (DHs) in banking, that cover 97 per cent of Australian household deposits[3], to be CDR ready, noting the recent extension for non-major banks of three months to implement joint account data sharing?

We consider such analysis will inform key matters that must be considered by the Minister, including the interest of consumers, the public interest, and the likely regulatory impact and cost to data holders, before designating a new sector. Furthermore, the data collected will validate or disprove the assumptions underpinning the sectorial assessment of the non-bank lending sector.

**Non-bank Lending – Sectorial Assessment**

If Treasury is to pursue expansion into non-bank lending at this time, we would seek further clarification of the underlying assumptions and detailed statistics on the potential DHs.

For example, the paper notes that there are approximately 1,015 Australian Credit Licence (ACL) holders, and while some are large, many are small. As best as can be interpreted from Fintech Australia's ecosystem map, of the 340 companies listed, possibly only 10 per cent would be considered medium or large sized businesses.

[1] Statutory Review of the Consumer Data Right Issues Paper, Ms E Kelly, PSM, March 2022
[2] ibid
[3] ibid

Considering the significant cost and sophisticated IT resources required to participate as a DH, it implies very few of the potential data holders would be capable of participating in the CDR regime, in effect, reducing competition. Without a breakdown of the number of ACLs by business size it is difficult to provide informed feedback in respect of the most effective scope for DHs.

We do not support the proposed approach to have a broad scope and then make exclusions. This adds complexity and imposes an unnecessary and unreasonable burden on a consumer, their trusted advisers, and ADRs who would need to be aware of which data holder is or is not in scope, and then find alternate ways to meet a consumer's data request or disclosure consent. For example, in the situation where a consumer is seeking to disclose to their trusted adviser their total obligations, where one non-bank lender is excluded, or similarly, for where ADRs receive a consumer consent to request data, only to find the non-bank lender is not a designated DH.

We also question the presumption that the regulatory impact in this sector will be similar to the banking sector. DHs in the banking sector were, and are, highly regulated prior to the CDR regime. Non-bank lenders, by comparison, have very little regulation as displayed in the Australian Fintech Regulatory Map. Even with sophisticated compliance systems and deep IT resources, the complexity of the CDR regime has seen DHs in banking seek changes to the implementation schedule, such as removing the build of a channel direct to consumers.

Accordingly, Treasury should include in its assessment the point that potential DHs in non-bank lending are likely to have lower levels of technological sophistication, data security awareness, and *streamlined systems to meet complex regulatory requirements*.

**Non-bank Lending – Trusted Advisers**

Our primary concerns in this area focus on the impact on our members, who are the trusted advisers of consumers, as recognised in the CDR Rules. These concerns have emerged through the implementation of the CDR regime in the banking sector and will be exacerbated with the expansion of the regime into non-bank lending.

These key concerns are:

- The premise that trusted advisers will have 'immediate visibility of the total obligations consumers have with other banks' when the infrastructure to disclose data to trusted advisers has not yet been established or tested. This premise fails to consider that this would be across multiple dashboards and require some form of aggregation tool to make total obligations visible.
- The foreseeable liability for our members when giving advice to consumers on product data sourced through CDR channels, with comparative products not being surfaced if offered by providers that fall under a de minimis threshold. Consequently, applications built using CDR data will become irrelevant as they cannot capture all possible products for a trusted adviser to consider.
- The way ADRs are interpreting security of data requirements for disclosure would force trusted advisers to invest in sophisticated software to meet ADRs requirements to receive CDR data, notwithstanding the fact that data, once disclosed to trusted advisers, is no longer CDR data.
- These demands from ADRs leaves our members, small businesses themselves, not only dedicating time to interpret the CDR Rules and build processes to ensure compliance but exposing our members to changes in the CDR Rules, leading to changes in CDR Standards, creating a significant cost to re-engineer their IT systems and processes.

**Non-bank Lending – Consumer**

Our primary concern in this area remains the lack of intent to build a direct-to-consumer channel, the object of Part IVD 56AA(a)(i) of the *Competition and Consumer Act 2010* (Cth). However, the key driver of the CDR regime is to provide consumers with a secure channel to control their own data. We note that Treasury claims that current methods, such as screen scraping, create significant risk to consumers but has not yet provided any data to support this assertion. Moreover, no data has been provided as to the quantum of financial harm caused by such practices.

Our primary concerns for consumers, of the expansion of the CDR regime to non-bank lending, are:

- The continuing presumption that consumers cannot understand the benefits of the CDR regime, yet will be expected to manage another, nuanced, complicated dashboard to provide informed consent to access data held by some non-bank lenders.
- Being unable to access their own data, consumers would have to pay a third party to gain access to and utilise their own data through CDR channels. The outcome of this is that many will choose to continue to use existing services.
- The paper implies designation of non-bank lending will drive innovation in products for consumers but also recognises that too much information or too many choices can mean consumers experience cognitive overload.
- The product data proposed is generic, rather than consumer-specific, which does not address the concern raised in this paper, as highlighted in the ACCC's 2020 Home Loan Price Inquiry, that when presented with a high number of barely differentiated products consumers may be more likely to seek credit solutions from banks.
- The potential scope for DH and products does not appear to consider emerging products used by sophisticated consumers, the consumer group most likely to utilise CDR channels, such as products offered by blockchain-based decentralised finance platforms.

**Conclusion**

We are of the view that now is the time to consolidate the framework by incentivising consumers to engage with the current regime and drive data across existing CDR channels. This will reveal to CDR participants what works well, what needs to be adjusted, and if there are fatal flaws. This should be supported by a review of the innovative products developed to date. These products are focused on enabling DHs, ADRs, and trusted advisers to meet the complex requirements to participate in the CDR regime, rather than empowering consumers to maximise the utility of their data.

Only with consolidation can sectorial assessments be fully informed when considering the designation of a sector or capturing a service. On behalf of the undersigned, please contact Karen McWilliams at Karen.McWilliams@charteredaccountantsanz.com to arrange a time to discuss our comments and to address any further questions.

Yours sincerely

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