FinTech Australia

SUBMISSION PAPER:

Submission to Federal Treasury

CDR Sectoral Assessment for the Open Finance sector - Non-Bank Lending

April 2022

This Submission Paper was prepared by FinTech Australia working with and on behalf of its Members; over 300 FinTech Startups, VCs, Accelerators and Incubators across Australia.

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About this Submission

This document was created by FinTech Australia in consultation with our 300 members.

Submission Process

In developing this submission, a roundtable was held to discuss key issues related to the designation of Open Finance for non-bank lenders.

We also acknowledge the support and contribution of K&L Gates to the topics explored in this submission.

Summary

Fintech Australia recognises the great opportunities that the Consumer Data Right (CDR) presents. We are excited by the potential for CDR to support the rapidly developing, data-driven economy here in Australia. As an important piece of digital infrastructure for Australian consumers and businesses, we welcome the opportunity to provide a submission on the CDR Sectoral Assessment for Open Finance for Non-Bank Lending.

Overall, FinTech Australia supports the expansion of the CDR to additional sectors in general, and to non-bank lenders in particular. However, FinTech Australia encourages the focus to be on ensuring that the Open Banking sector is operating optimally, before tackling the additional complexity of Open Finance. Its members are concerned that the CDR framework and ecosystem are not yet sufficiently mature to warrant expansion to non-bank lenders at this time.

In this context, FinTech Australia encourages the Government to carefully consider the rationale for pursuing Open Finance while there remains an urgent need for important issues to be resolved in the CDR rules to achieve one of the scheme's main objectives; improving access to data for small businesses. Pursuing this goal will encourage more competition across financial services resulting in more products and services for the benefit of customers.

The immediate focus for the CDR should be modifying the Open Banking Rules to encourage participation. In particular, changes are required to expand the benefits of the CDR to small businesses, where the majority of Open Banking benefits will be realised. For example, despite highly productive engagement with Treasury, around 2 million small businesses remain unable to access Open Banking data through their accounting software. Prioritising business participation will result in small business productivity gains and enhanced business-to- business (b2b) Software as a Service (SaaS) innovation.

When the CDR is expanded to include Open Finance, care must be taken to acknowledge the different challenges faced by non-bank lenders as data holders, compared to ADIs. Almost all ADIs are well resourced and heavily regulated, meaning they are well placed to address the additional technology requirements imposed by the CDR regime. Non-bank lenders are not in the same position as ADIs, nor are they in the same position as each other. Non-bank lenders differ greatly in their capacity to allocate resources to prepare for and successfully implement additional regulatory projects. Accordingly, as well as ensuring appropriate exemptions for non-bank lenders below certain thresholds, FinTech Australia considers that the roll out of CDR to

Open Finance should involve a transition and testing period which is at least as long as the transition which was provided to ADIs.

We set out below our comments in relation to some of the questions posed by the consultation paper.

FinTech Australia's Comments

1. Benefits and use cases

1.1. 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?

FinTech Australia believes that, with appropriate foundations, there may be great opportunities to encourage innovation and new use cases for CDR data which includes non-bank lending information. Without non-bank lending information, CDR data cannot provide a complete picture of all consumers' financial positions. For example, non-bank lending information, combined with ADI information, enables a more comprehensive assessment of a consumer's credit profile and risk. Combining this data with data from telecommunications and utilities provides further scope for building a well-rounded picture of a consumer's circumstances.

Some FinTech Australia members have noted that CDR will help to enhance the portability of data, where consumers will be more easily be able to move between lenders of all types, ultimately leading to greater transparency.

However, FinTech Australia is concerned that the complexities involved with expansion into Open Finance (some of which are discussed below) would divert attention away from the important work of ensuring Open Banking is operating as intended. Take up of CDR from a consumer perspective remains limited and FinTech Australia's non-bank lender members are concerned about the return on investment currently in respect of implementing the necessary technology to participate as a data holder, particularly when Open Banking does not yet enable a complete picture of a consumer (e.g. BNPL information).

Waiting until the foundations of CDR are further established will provide better opportunities for innovations and new use cases in Open Finance.
Accordingly, FinTech Australia proposes a voluntary approach to CDR for non-bank lenders in the first instance (albeit with the structure of a designated data set), with a gradual transition to compulsory participation for relevant non-bank lenders, as the ecosystem matures.

Furthermore, to lessen the impact on non-bank lender resources, it may be useful to explore an intermediated model for data holders (in a similar way that the current CDR Rules allow intermediated access models for data recipients). By allowing lenders to use accredited data aggregators, rather than having to integrate directly with the ecosystem themselves, this may lessen the impact on the sector.

1.2. Would the designation of non-bank lending improve competition between lenders, including leveling the playing field with banks, or lead to greater market efficiencies?

Some FinTech Australia members have noted that innovation may flow from allowing consumers to more easily compare and move between lenders across the industry. This will result in more competition in pricing, product offerings and drive improvements in consumer experience.

FinTech Australia's non-bank lender members are not currently concerned about the different CDR treatment of ADIs and non-bank lenders. Given the limited take up by consumers, lenders are not concerned by these differences. Rather, our members consider that permitting non-bank lenders to participate in CDR on a voluntary basis as data holders (and ADRs) would enable any such lenders who see value in participation to do so.

In addition, consideration must be had of the diversity in the non-bank lending space. There are significant differences between non-bank lending products, business models and consumers. Smaller or less digitised non-bank lenders may face significant challenges in accommodating CDR, namely because of opportunity costs of resourcing this. Additionally, there are significant differences also between non-bank lenders and ADIs. For example, ADIs have significantly greater infrastructure and resources to accommodate CDR. ADIs all tend to use core banking platforms provided by a small field of vendors, who were able to assist with developing the necessary APIs, or have large in-house teams to make changes to proprietary systems. By contrast, non-bank lenders exist on a spectrum of technological sophistication. For non-bank lenders currently using simple tools to manage their existing operations, CDR would present a significant shift - driven not by customer demand or management priorities, but by legislative directive. Even for the largest ADIs, CDR obligations proved challenging at first. Processes involved designating non-bank lenders will consume "bandwidth" of smaller entities in the sector.

Any attempts to aid competition between non-bank lenders and ADIs would need to be responsive to this variety of circumstances within and between sectors. It would also need to have regard to the cost impact of complying with CDR for non-bank lenders and the negative impact which that could have on their ability to compete in certain segments. To maintain and enhance competition in the Non-Bank sector we believe that regulation must differentiated, particularly between ADIs and non-bank lenders, to safeguard smaller players and attract new entrants.

During the initial stages, FinTech Australia considers a voluntary approach to non-bank lenders could ensure that those non-bank lenders who see value in participating in CDR (eg those non-bank lenders whose customers make use of tools powered by CDR), could participate, while those who do not could focus their limited resources elsewhere.

After an extended transition period and as the CDR ecosystem matures, participation could shift to become mandatory.

2. Data holder and datasets

2.1. 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)?

If designation occurs, FinTech Australia believes, on balance, that not all entities in the sector should be included in the designation. This is particularly the case for smaller organisations. These entities would find that the need to invest significant capital in CDR processes would delay their early growth or provide a barrier to entry in the first place.

If the sector is designated, FinTech Australia considers that it would be appropriate to align with existing definitions (such as "registrable corporations" under the Collection of Data Act). However, the thresholds set for those purposes may still be too low, particularly for the early stages of the transition. Furthermore, as CDR involves mandatory dispute resolution, there may be value in focusing the designation on entities which are already required to be members of the Australian Financial Complaints Authority (**AFCA**) for other reasons (such as by virtue of holding an Australian Credit Licence). Clearly, however, this is not relevant to business lending.

Within the banking industry, it is relatively common for ADIs to operate through a single corporate entity. However, non-bank lenders adopt a range of corporate and trust structures, often with related and unrelated entities providing financing through a mixture of equity and debt instruments. Some non-bank lenders make use of SPVs to lend on a project by project (or borrower by borrower) basis. Any designation should ensure that lenders using a range of structures are not required to have a multiplicity of entities accredited by the ACCC.

2.2. 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?

Subject to the comments below, the data set for Open Finance could, for the most part, be similar to the Open Banking data set.

2.3. 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?

As noted above, FinTech Australia is concerned that designating Open Finance at this stage will dramatically increase the financial data which needs to be accommodated in the CDR ecosystem, at a time when it is not sufficiently robust to deal with that complexity.

For example, invoice financing is a sophisticated business product which is not readily reduced to a simple set of data points. Furthermore, it is only possible to compare invoice financing products with access to data about the underlying invoices. This would be difficult to capture within CDR. Invoice financing is also just one form of short term credit provided to suppliers and serves a similar purpose as debt factoring and other similar products.

Non-bank lending takes a variety of forms, including credit cards, unsecured personal loans, secured personal loans, home loans, reverse mortgages, leases, hire purchase arrangements, buy-now-pay-later offerings, etc. To provide a comprehensive picture of a consumer's financial situation, it would be necessary to accommodate each of these verticals. This is likely to require some tailoring to the data set.

In addition, the CDR regime assumes that data holders would interact directly with the ecosystem, in a similar way to ADRs. This is appropriate for large ADIs. However, for non-bank lenders, it may be necessary to contemplate an intermediated model (more analogous to the arrangements for CDR Representatives), where lenders can make their CDR data available to accredited data aggregators. This may go some way to reducing the IT development and compliance costs associated with an Open Finance designation.

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

For CDR to be effective (irrespective of ADI or non-bank lending) and present a compelling proposition to consumers, it needs to provide a comprehensive snapshot of their financial position. To do so, relevant government held data sets include data held by:

- ATO
- Centrelink
- NDIS
- Department of Veterans Affairs
- Medicare (for reimbursement related data only, not relating to usage or MBS billing codes)
- State government such as driver's license and registration details

3. Regulatory burden and cost considerations

3.1. 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.

Phase 1 for ADIs offers an example of a well-paced phasing period. FinTech Australia is of the view that any pilot or phasing period for Open Finance should be no faster than it was for Phase 1 for ADIs.

3.2. 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?

FinTech Australia anticipates that smaller non-bank lenders, or those with low levels of digitisation in their existing operations, would be less suitable for CDR designation.

One approach to assisting smaller entities to participate in CDR would be to permit an intermediary approach for data holders (in a similar way to the intermediary approach allowed for data recipients - eg recipients participating as CDR Representatives).

There are significant benefits in having an intermediary approach, such as reducing costs, risk and enhancing returns on investment for individual non-bank lenders.

About FinTech Australia

FinTech Australia is the peak industry body for the Australian fintech Industry, representing over 300 fintech Startups, Hubs, Accelerators and Venture Capital Funds across the nation.

Our vision is to make Australia one of the world's leading markets for fintech innovation and investment. This submission has been compiled by FinTech Australia and its members in an effort to drive cultural, policy and regulatory change toward realising this vision.

FinTech Australia would like to recognise the support of our Policy Partners, who provide guidance and advice to the association and its members in the development of our submissions:

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