EXPOSURE DRAFT EXPLANATORY MATERIALS

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Competition and Consumer Act 2010

Competition and Consumer (Consumer Data Right) Amendment (2024 Measures No. 2) Rules 2024

Section 56BA of the *Competition and Consumer Act 2010* ('the Act') provides that the Minister may, by legislative instrument, make consumer data rules for designated sectors in accordance with Part IVD of the Act.

A 'designated sector' is a sector of the Australian economy designated, by legislative instrument made under section 56AC of the Act ('designation instrument'), as subject to the consumer data right ('CDR'). The designation instrument for a sector also specifies the data ('CDR data') that is subject to the CDR and the classes of persons who hold the CDR data. Those persons, and certain other classes of persons covered by section 56AJ of the Act, are 'data holders' of CDR data in that sector.

The CDR framework is set out in Part IVD of the Act and the *Competition and Consumer (Consumer Data Right) Rules 2020* ('CDR Rules'). Following a sector designation, the Minister must make consumer data rules before any rights or obligations can begin to apply in relation to that sector.

Under the CDR, individuals and businesses ('CDR consumers') may, through trusted third parties, request access to certain data sets relating to them. Data holders are required or authorised to provide access to the data, subject to controls ensuring the data's quality, security and confidentiality. Data holders are also required or authorised to provide access, on request, to publicly available information on specified products that they offer.

Rules applying generally across all designated sectors are set out in Parts 1 to 9 and Schedules 1 and 2 to the CDR Rules. Sector-specific rules are set out in Schedule 3 (relating to the banking sector) and Schedule 4 (relating to the energy sector).

The purpose of the *Competition and Consumer (Consumer Data Right) Amendment (2024 Measures No. 2) Rules 2024* ('Amending Rules') is to extend the CDR to the non-bank lending sector and narrow the scope of CDR data for the banking and non-bank lending sectors.

The non-bank lenders sector was designated as subject to the CDR on 21 November 2022. Extending the CDR to this sector is expected to facilitate more informed consumer engagement with both banks and non-bank lenders, leading to improved financial outcomes for individuals and businesses. From a broader perspective, expansion of the CDR to non-bank lenders will increase the availability of data, encouraging innovation in financial technology and helping consumers to better understand and manage their finances.

Stakeholder feedback has been taken into account in developing the Amending Rules, including that provided during the following consultation processes:

- In December 2022, the Treasury released a consultation paper on rolling out the CDR to the non-bank lenders sector. Consultation closed on 31 January 2023.

- In August 2023, the Treasury released exposure draft rules, explanatory materials and a draft Privacy Impact Assessment to expand the CDR to the non-bank lenders sector. Consultation closed on 6 October 2023.

Because of the similarity between the banking and non-bank lenders sectors, the policy intention is to maintain regulatory consistency where possible. For this reason, Schedule 3 to the CDR Rules (‘Schedule 3’) has been selected as the vehicle for bringing non-bank lenders into the CDR.

The Amending Rules apply the following core elements of Schedule 3 to non-bank lenders:

- eligibility requirements for consumers seeking to make requests for CDR data;

- criteria setting out the scope of non-bank lenders subject to CDR data sharing obligations;

- the process for additional non-bank lenders to choose to participate in the CDR;

- provisions specifying in-scope products and data sets that may, or must, be provided on request;

- requirements for internal and external dispute resolution.

The Amending Rules also make changes to the core provisions that affect the obligations of data holders that are authorised deposit-taking institutions (‘ADIs’) under Schedule 3, including the following:

- narrowing the scope of products and data sets that must be provided on request;

- relieving data holders from having to comply with formatting requirements of the data standards when sharing product data on a voluntary basis;

- enabling related data holders and data holders in white labelling arrangements to discharge each other’s data sharing obligations;

- introducing data sharing in relation to ‘buy now, pay later’ products (subject to a deferral timetable to allow affected ADIs to make the necessary IT enhancements);

- excluding information relating to financial hardship and repayment history from the definition of ‘customer data’;

- excluding consumer data relating to debts bought by debt buyers or debt collectors from the definitions of ‘voluntary consumer data’ and ‘required consumer data’;

- deferring obligations for entities that become ADIs after the commencement of the Amending Rules, with the aim of allowing CDR consumers timely access to product data while permitting new ADIs to complete the IT uplift needed to facilitate banking data requests.

The Amending Rules set out timeframes for the staged implementation of the CDR in the non-bank lenders sector. In addition, they make minor consequential amendments to the body of the CDR Rules to reflect the widened scope of Schedule 3.

Details of the Amending Rules are set out in the Attachment.

The Amending Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Rules are to commence on the day after they are registered on the Federal Register of Legislation.

In citations of provisions in this explanatory material, unless otherwise specified, references to rules are to the CDR Rules.

ATTACHMENT

Details of the *Competition and Consumer (Consumer Data Right) Amendment (2024 Measures No. 2) Rules 2024*

Section 1 – Name of the Rules

This section provides that the name of the Amending Rules is the *Competition and Consumer (Consumer Data Right) Amendment (2024 Measures No. 2) Rules 2024*.

Section 2 – Commencement

This section provides that the Amending Rules commence on the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Amending Rules are made under the Act.

Section 4 – Schedules

This section provides that each instrument specified in the Schedules to the Amending Rules is amended or repealed as set out in the applicable Schedule items, and that any other Schedule item has effect according to its terms.

Schedule 1 – Amendments

General amendments: references to non-bank lenders and miscellaneous minor changes

Part 1 of Schedule 1 to the Amending Rules contains consequential amendments to provisions of the CDR Rules outside Schedule 3. These update existing references to the banking sector to add a reference to the non-bank lenders sector, and make a number of minor machinery changes to other provisions in the CDR Rules. These amendments include the following:

- removal of paragraphs from the simplified outlined in rule 1.4 for brevity. ***[Schedule 1, item 1, rule 1.4]***
- reframing the overview of the CDR rules in rule 1.6 to more accurately describe Schedules 3 and 4. ***[Schedule 1, item 2, subrules 1.6(12) and (13)]***
- replacing the notes to the heading of rule 1.7 with a single note that removes unnecessary existing text and aligns with current drafting practice. ***[Schedule 1, item 4, note to rule 1.7 (heading)]***
- updating the definition of 'sector Schedule' in rule 1.7 so that it denotes a Schedule to the CDR Rules that deals with 'a particular designated sector or sectors'. This aligns with the expansion of Schedule 3. Also included is a new provision that explicitly activates the Schedules. This allows the Schedules to modify the operation of core provisions of the CDR Rules in respect of

particular sectors without being explicitly empowered to do so by the provision in question. ***[Schedule 1, items 3 and 5, subrule 1.7(1) and rule 1.6A]***

- clarifying that a data holder must provide an online service that can be used to make product data requests, but only in relation to data that it holds. This is consistent with data holder practices and puts beyond doubt that a data holder is not required to provide an online service that can be used to make product data requests for data it does not hold. ***[Schedule 1, item 7, paragraph 1.12(1)(a)]***

- removing wording in the simplified outlines of Parts 2 and 3 of the CDR Rules that that did not provide further assistance. ***[Schedule 1, items 8 and 10, rules 2.1 and 3.1]***

- removing the obligation on a data holder to make a disclosure in accordance with the data standards if disclosing voluntary product data. This amendment is designed to reduce compliance costs associated with disclosures of voluntary product data, reflecting the broader scope of voluntary product data as a result of these Amending Rules. A data holder must still only disclose voluntary product data using the product data request service it provides under rule 1.12, which must conform with the data standards. ***[Schedule 1, item 9, subrule 2.4(2A)]***

- repealing various notes that do not provide further assistance, to improve readability and align with current drafting practice. ***[Schedule 1, items 6, 11 to 14 and 16 to 18, various notes in rules 1.7, 3.3, 3.4, 4.2, 5.5 and 5.25]***

- including a note in the simplified outline of Part 4 (which deals with consumer data requests made by accredited persons) which clarifies that Schedule 3 to the CDR Rules modifies the application of Part 4 where a data holder moves from the non-bank lenders sector to the banking sector. ***[Schedule 1, item 15, rule 4.1 (after the boxed text)]***

The Amending Rules clarify that remuneration is not payable in respect of an appointment to a Data Standards Advisory Committee established under Division 8.2 of the CDR Rules. ***[Schedule 1, item 19, subrule 8.4(3)]***

Part 3 of Schedule 1 to the Amending Rules adds ‘non-bank lenders sector’ to references to ‘banking sector’ in notes in various provisions in the CDR Rules.

Part 3 also substitutes ‘CDR Accreditor’ for ‘Data Recipient Accreditor’ in various provisions in the CDR Rules. This is needed following the corresponding change made by the *Treasury Laws Amendment (Consumer Data Right) Act 2024*. ***[Schedule 1, items 37 and 38, multiple provisions in the CDR Rules]***

Amendments to extend the consumer data right to the non-bank lenders sector

Consistent with the CDR Rules and to support reader understanding, the Amending Rules include a simplified outline for Schedule 3, which now deals with both the banking and non-bank lenders sectors. The heading to Schedule 3 is also amended to include the non-bank lenders sector. ***[Schedule 1, items 22 and 23, Schedule 3 to the CDR Rules (heading) and clause 1.1 of Schedule 3 to the CDR Rules]***

Excluded data holders

The Amending Rules exempt certain data holders from complying with the CDR Rules. Excluded data holders in the banking and non-bank lenders sectors are:

- registered religious bodies, such as religious charitable development funds, that offer retail lending products in advancing their charitable purposes; and
- foreign ADIs, foreign branches of domestic ADIs and restricted ADIs.

The second class of excluded data holder reflects the current exemption of foreign ADIs, foreign branches of domestic ADIs and restricted ADIs from data-sharing obligations under Schedule 3. ***[Schedule 1, item 23, clause 1.1A of Schedule 3 to the CDR Rules]***

New or updated defined terms relating to the banking and non-bank lenders sectors

The following definitions are being added to clause 1.2 of Schedule 3:

- 'accounting standard' means an accounting standard made under section 334 of the *Corporations Act 2001*;
- 'banking sector data' means CDR data covered by the *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019*;
- 'covered product' has the meaning explained further below;
- 'excluded data holder' has the meaning explained above;
- 'NBL sector', or 'non-bank lenders sector' means the sector of the Australian economy designated by the NBL sector designation instrument;
- 'NBL sector data' means CDR data covered by the NBL sector designation instrument;
- 'NBL sector designation instrument' means the *Consumer Data Right (Non-Bank Lenders) Designation 2022*;
- 'relevant non-bank lender' has the meaning given by the NBL sector designation instrument (essentially, this definition covers registrable corporations for the purposes of section 7 of the *Financial Sector (Collection of Data) Act 2001*, but without the $50 million threshold in that section applying).

In addition, the definition of 'product' has been broadened to reflect the meaning of that term in either the banking sector designation instrument or the NBL sector designation instrument, as applicable.

[Schedule 1, item 23, clause 1.2 of Schedule 3 to the CDR Rules]

Redundant defined terms

The Amending Rules repeal the following defined terms that are no longer used in Schedule 3:

- ‘accredited ADI’;
- ‘any other relevant ADI’;
- ‘associate’;
- ‘initial data holder’;
- ‘phase 1 product’, ‘phase 2 product’ and ‘phase 3 product’.

[Schedule 1, item 23, clause 1.2 of Schedule 3 to the CDR Rules]

Defined terms relating to classes of CDR data in the banking and non-bank lenders sectors

Existing clause 1.3 of Schedule 3 defines banking data sets by means of broad descriptors, combined with minimum inclusions and exclusions of key data. This approach allows flexibility for further refinement and permits the more detailed specification of data sets in the data standards.

The Amending Rules extend the following existing definitions for classes of CDR data in the banking sector to the non-bank lenders sector.

- ‘Customer data’ means information that identifies or is about a person, including their name, contact details, and information provided at the time they acquired a covered product that relates to their eligibility to acquire that product. Eligibility information may include whether the product is only available to the person because they are an existing customer or a member of a particular class of customers (for example, concession card holders). For an individual, ‘customer data’ does not include the individual’s date of birth.

- ‘Account data’ means information that identifies or is about the operation of an account, including the account number, account balances and details of any authorisations on the account, such as direct debit deductions and scheduled payments, and details of payees stored with the account.

- ‘Transaction data’ means information that identifies or describes the characteristics of a particular transaction on an account under a covered product, including the amount, the date on which the transaction occurred, any identifier and other information provided by the counter-party to the transaction, and a description of the transaction, including how the transaction would ordinarily be characterised in the sector (such as debit, credit, fee or interest).

- ‘Product specific data’ means information that identifies or describes the characteristics of a covered product, such as its type, name, price, terms and conditions, customer eligibility requirements, features and associated benefits.

In addition, the definition of ‘customer data’ is revised so it does not include ‘financial hardship information’ and ‘repayment history information’ within the meanings of subsections 6QA(4) and 6V(1) of the *Privacy Act 1988* respectively, where the information is disclosed by or to a credit reporting body for credit reporting purposes. Financial hardship information relates to an individual’s inability to meet

their obligations in relation to consumer credit and the resultant introduction of an altered repayment arrangement. Repayment history information relates to an individual's compliance in meeting their consumer credit payment obligations in a particular month. In practice, this information is presented as a code in tabular form on a consumer's credit report. The exclusion of this information is not intended to override any data sharing obligations in relation to transaction data or any other data sets.

[Schedule 1, item 23, clause 1.3 of Schedule 3 to the CDR Rules]

Covered products for the banking and non-bank lenders sectors

The Amending Rules replace the concept of phase 1, 2 and 3 products with the concept of a 'covered product'. As CDR requirements now apply in respect of all banking products associated with the 3 phases, this change does not of itself alter the obligations of ADIs.

The intention is that the list of covered products in clause 1.4 should capture retail products offered by banks and non-bank lenders. A 'covered product' will be subject to data sharing if it is publicly offered under a standard form contract. ***[Schedule 1, item 23, subclause 1.4(1) of Schedule 3 to the CDR Rules]***

A product does not need to be available to all members of the public in order to be publicly offered. For example, a product offered to consumers who meet certain eligibility requirements, such as small business consumers, could be publicly offered. An example of a product that is not intended to be considered publicly offered is an 'invitation-only' product offered to select individuals based on criteria that are not publicly available or are commercially sensitive. ***[Schedule 1, item 23, subclause 1.4(2) of Schedule 3 to the CDR Rules]***

Buy now, pay later products

Buy now, pay later ('BNPL') products will be specified for both sectors. As outlined above, this creates new data sharing obligations for ADIs. Key characteristics of a BNPL product are intended to include, but not be limited to, the following:

- the involvement of a third-party financing entity;
- the provision of finance for consumers, which can be used to pay for purchases of goods, services and bills (but not for the purposes of supplying cash);
- the imposition of a fixed charge for providing credit under a prescribed limit instead of charging interest;
- the imposition of a fixed charge for missing a payment.

[Schedule 1, item 23, clause 1.4 of Schedule 3 to the CDR Rules]

Reverse mortgages

Sharing of product and consumer data in relation to reverse mortgages is voluntary. These products were assumed to be covered by the previous list of phased products

for the banking sector. Therefore, to avoid doubt, reverse mortgages are also explicitly included as covered products. Their explicit inclusion is not intended to create new banking-sector obligations; instead, the voluntary sharing of data is intended to reduce costs. ***[Schedule 1, item 23, clause 1.4, and subclauses 3.1(2) and (3) of Schedule 3 to the CDR Rules]***

Trial products

The *Competition and Consumer (Consumer Data Right) Amendment Rules (No. 1) 2023* introduced the concept of 'trial products' to the CDR Rules. It provides that the CDR Rules do not apply to banking sector data relating to a trial product during the trial period, but that once a product ceases to be a trial product, the rules will apply, including to data that was generated while the product was a trial product. The Amending Rules extend the application of these provisions relating to trial products to the non-bank lenders sector. ***[Schedule 1, item 23, clauses 1.5 and 6.12 of Schedule 3 to the CDR Rules]***

Eligible CDR consumers, account privileges and consumer dashboards

The Amending Rules broaden the existing additional eligibility requirements for the banking sector in Part 2 of Schedule 3 by inserting references to the non-bank lenders sector as appropriate. This Part sets out eligibility requirements in addition to those imposed by rule 1.10B of the CDR Rules, defines 'account privileges' in respect of secondary users in both sectors, and requires data holders in both sectors to provide eligible CDR consumers with consumer dashboards.

Rule 1.10B states that, in order to be eligible in relation to a data holder, a CDR consumer:

- must be an individual who is 18 years or older, or a person who is not an individual; and
- must be an account holder or secondary user of an open account with the data holder, or a partner in a partnership for which there is an open account with the data holder.

Rule 1.10B also stipulates that any additional criteria set out in a sector Schedule must be satisfied.

For the banking and non-bank lenders sectors, the additional criterion is that the account mentioned in rule 1.10B must be set up in such a way that it can be accessed online. The intention is that online access to an account may involve a range of modalities, including access via an online portal (whether by logging in or using a one-time password) or app-based access. ***[Schedule 1, item 23, clause 2.1 of Schedule 3 to the CDR Rules]***

Under the CDR Rules, a 'secondary user' of an account with a data holder in a designated sector is a person over 18 who has account privileges in relation to the account and is endorsed by the account holder as a secondary user. 'Account privileges', for a sector, has the meaning set out in the Schedule relating to that sector. (See subrule 1.7(1) of the CDR Rules for both definitions). A person with 'account

privileges' is defined in Schedule 3 as a person able to make transactions on an account for a covered product. ***[Schedule 1, item 23, clause 2.2 of Schedule 3 to the CDR Rules]***

If a data holder in the banking or non-bank lenders sector receives a consumer data request on behalf of an eligible CDR consumer, the data holder must provide the consumer with the consumer dashboard. This remains consistent with existing settings in the banking sector and is applied to the non-bank lenders sector. ***[Schedule 1, item 23, clause 2.3 of Schedule 3 to the CDR Rules]***

Banking and non-bank lenders sector data that may be accessed under the CDR Rules

The Amending Rules repeal and substitute Part 3 of Schedule 3. This Part deals with CDR data that may be accessed under the CDR Rules.

The Amending Rules reproduce what is required product data for the banking sector, with some modification and simplification, and apply it to both the banking and non-bank lenders sectors. Required product data for both sectors is data in the respective sector that is product specific data about a covered product and is held by the data holder in a digital form. To reduce compliance costs for data holders, the Amending Rules exclude certain data that relates to covered products from being required product data. These products are:

- products that have not been supplied to 1,000 or more eligible CDR consumers for at least one full financial year; and
- foreign currency accounts, consumer leases, reverse mortgages, margin loans, and asset finance that is non-standard vehicle finance. Non-standard vehicle finance is intended to include products such as novated leases and fleet finance.

CDR data on these products may still be shared voluntarily. ***[Schedule 1, item 23, clause 3.1 of Schedule 3 to the CDR Rules]***

The Amending Rules introduce the concept of a 'relevant account' that is applicable to Schedule 3 of the CDR Rules. This amendment achieves consistency with Schedule 4 to the CDR Rules and is not intended to affect the practical operation of how consumer data will continue to be shared in the banking sector. A relevant account in relation to a CDR consumer means is an account that is held with a data holder of banking or non-bank lending sector data that:

- is in the name of the CDR consumer alone; or
- is a joint account of which the CDR consumer is one of the account holders; or
- is a partnership account for a partnership in which the CDR consumer is a partner; or
- is an account for which the CDR consumer is a secondary user.

[Schedule 1, item 23, subclause 3.2(1) of Schedule 3 to the CDR Rules]

The Amending Rules also reproduce what is ‘required consumer data’ for the banking sector, with some modification and simplification, and apply it to both the banking and non-bank lenders sectors. Required consumer data is banking or non-bank lenders sector CDR data that relates to a CDR consumer’s relevant account and is held by the data holder in digital form. ***[Schedule 1, item 23, subclause 3.2(2) of Schedule 3 to the CDR Rules]***

To reduce compliance costs for data holders, as for required product data, the Amending Rules exclude certain data from being required consumer data (although data about these excluded products may still be shared voluntarily). These products are:

- products that have not been supplied to 1,000 or more eligible CDR consumers for at least one full financial year; and
- foreign currency accounts, consumer leases, reverse mortgages, margin loans, and asset finance that is non-standard vehicle finance. Non-standard vehicle finance is intended to include products such as novated leases and fleet finance.

[Schedule 1, item 23, subclauses 3.2(2) and (3) of Schedule 3 to the CDR Rules]

The Amending Rules largely preserve the existing circumstances in which data is not required consumer data but could be voluntary consumer data, and apply these exclusions to the non-bank lenders sector. These exclusions cover the following:

- historical data relating to transactions occurring more than 2 years before the time a data request is made, where the relevant account is an open account (down from the previous 7-year rule);
- direct debit deductions authorised more than 13 months before the time a data request is made, where the relevant account is an open account; and
- data that relates to a relevant account that is a closed account, being:
  - account data, transaction data and product specific data where an account has been closed for more than 24 months before the time a data request is made; or
  - transaction data for a transaction that occurred more than 12 months before the account was closed, where an account has been closed for less than 24 months before the time a data request is made; or
  - data on direct debit deductions where an account has been closed for any period of time.

The rationale for the change to exclude historical data relating to transactions older than 2 years (for open accounts), instead of 7 years, is to:

- avoid significant build costs to non-bank lending data holders;
- recognise that smaller data holders may incur disproportionate costs from making older data available; and

- relieve data holders of costs retaining and maintaining readiness to respond to data requests in relation to data unlikely to be valuable for priority use cases.

[Schedule 1, item 23, subclauses 3.2(4), (6) and (7) of Schedule 3 to the CDR Rules]

In addition, the Amending Rules specify that certain data sets are excluded from data-sharing under the CDR regime. This is done by setting out circumstances in which the relevant data is neither required nor voluntary consumer data.

A new exclusion relates to CDR data in respect of the debt of a CDR consumer, if the data was acquired by a data holder in its capacity as a debt collector or debt buyer.

This aims to exclude balances bought from other lenders where the customer is in financial hardship and has defaulted on their payments. Individuals who are subject to debt collection are likely to be in financial hardship. Accordingly, the mere fact that an individual's debt is with a debt collector is likely to signal financial hardship. To protect such individuals, such data is outside the scope of the CDR in the banking and non-bank lenders sectors.***[Schedule 1, item 23, subclause 3.2(5) of Schedule 3 to the CDR Rules]***

Dispute resolution processes in the non-bank lenders sector

Under the CDR Rules, the expressions 'meet the internal dispute resolution requirements' and 'meet the external dispute resolution requirements' have sector-specific meanings. Existing Part 5 of Schedule 3 sets out what it means to meet these requirements in the banking sector. This Part will be extended to cover the non-bank lenders sector. Broadly, the intention is to reflect prevailing dispute resolution arrangements in the non-bank lenders sector rather than to impose new obligations. This is discussed in more detail below. ***[Schedule 1, items 24 to 29, Part 5 of Schedule 3 to the CDR Rules]***

Meeting internal dispute resolution requirements

Accredited persons and data holders must comply with the Australian Securities and Investments Commission's Regulatory Guide 271. That guide deals with matters such as commitment and culture, the enabling of complaints, resourcing, responsiveness, objectivity and fairness, complaint data collection or recording, and internal reporting and analysis of complaint data. ***[Schedule 1, items 25 to 28, clause 5.1 of Schedule 3 to the CDR Rules]***

Meeting external dispute resolution requirements

Accredited persons and data holders must be members of the external dispute resolution scheme operated by the Australian Financial Complaints Authority Limited (AFCA).

The scheme operated by AFCA is recognised as an external dispute resolution scheme in relation to the banking sector under the *Competition and Consumer (Consumer Data Right – Recognised External Dispute Resolution Schemes) Instrument 2021* (made for the purposes of section 56DA of the Act). The intention is that that instrument will be amended to extend the recognition of AFCA to the non-bank lenders sector.

The policy intent in relation to external dispute resolution scheme membership is to reflect existing arrangements in the non-bank lenders sector. It is expected that accredited persons and most, if not all, data holders would already be members of the recognised scheme. If either the Office of the Australian Information Commissioner (OAIC) or the Australian Competition and Consumer Commission (ACCC), as co-regulators of the CDR, receives a CDR consumer complaint in relation to the non-bank lenders sector, the matter will be transferred to AFCA. This ‘no wrong door’ approach reflects that taken in previous sectors, allowing disputes to be handled by the appropriate body and facilitating a seamless, consumer-centric experience. ***[Schedule 1, items 29, clause 5.2 of Schedule 3 to the CDR Rules]***

Staged application of the CDR Rules to the non-bank lenders sector

The Amending Rules repeal existing Part 6 of Schedule 3 and substitute a new Part 6 dealing principally with staged implementation for the non-bank lenders sector. Obligations are switched on progressively on the basis of both classes of non-bank lenders and categories of data to be shared. The new Part 6 preserves the ability for banks to voluntarily participate in data sharing and extends this option to non-bank lenders. ***[Schedule 1, item 30, Part 6 of Schedule 3 to the CDR Rules]***

<u>Classes of non-bank lenders</u>

Non-bank lenders with data sharing obligations are classified as initial or large providers.

An ‘initial provider’ is a data holder of NBL sector data that, on the commencement of the Amending Rules or a later date:

- has more than $10 billion in resident loans and finance leases for the calendar month preceding that date; and
- has averaged over $10 billion in resident loans and finance leases over the previous 12 months.

A ‘large provider’ is a data holder of NBL sector data that is not an initial provider and, on the commencement of the Amending Rules or on a 1 July of a later year:

- has over $1 billion in resident loans and finance leases for the calendar month preceding that date; and
- has averaged over $1 billion in resident loans and finance leases over the previous 12 months; and
- has more than 1,000 customers.

The total value of the lender’s resident loans and finance lease balances is to be calculated in accordance with the applicable accounting standards and standards made by the Australian Prudential Regulation Authority under the *Financial Sector (Collection of Data) Act 2001.*

In calculating the averaged value of resident loans and leases reported over the 12-month period, the value for any month for which no report was made by the lender is zero.

In addition, for both initial providers and large providers, the total value for a lender includes the resident loans and finance leases provided by the lender itself, and those provided by each of its associated non-bank lenders. An 'associated non-bank lender' means either a related body corporate (within the meaning of subsection 4A(5) of the Act) of the first-mentioned lender, or a non-bank lender that administers resident loans or resident finance leases on behalf of the first-mentioned lender, such as through a white-label lending model.

'Resident finance lease' means a finance lease within the meaning of the accounting standard known as *AASB 16 – Leases,* if the lease is issued to persons who are resident institutional units for the purposes of *Reporting Standard ARS 701.0 – ABS/RBA Definitions for the EFS Collection*. That standard is currently set out in the *Financial Sector (Collection of Data) (reporting standard) determination No. 5 of 2024*.

A 'loan' is a financial asset that has been created by the lender directly lending funds to a debtor which is evidenced in non-negotiable documents. A 'resident loan' is a loan issued by the lender to a person or group of individuals whose principal place of residence or business is in Australia.

Non-bank lenders that hold NBL sector data and are also accredited persons are deemed to be large providers for the purposes of the phase-in timetable. Obligations for both product and consumer data sharing apply to such data holders. However, if such a non-bank lender ceases to be an accredited person on a later day, they are taken to also cease to meet the large provider qualification on that day.

Once a non-bank lender becomes a 'large provider' by meeting the total value and customer number criteria, the intention is that it must comply with all relevant CDR obligations, even if it subsequently ceases to meet any of the criteria. For example, if a non-bank lender meets the definition of a 'large provider' but subsequently drops below 1,000 customers, it will continue to be subject to data sharing obligations. This is on the basis that the definition of a 'large provider' requires a lender to have met the applicable criteria for a year, so it is likely that such a lender will have ongoing capacity to meet their CDR obligations. ***[Schedule 1, item 30, clause 6.2 of Schedule 3 to the CDR Rules]***

<u>Notifying ACCC about customer numbers</u>

To simplify administration, a relevant non-bank lender that meets the requisite total value of resident loans and leases thresholds described above must notify the ACCC as soon as practicable after it has met the total value threshold but not the 1,000 customer threshold. This will ensure that the ACCC does not treat non-bank lenders as large providers when they do not meet both tests. The non-bank lenders separately provide information relevant to the total value threshold to APRA. In addition, if requested by the ACCC, non-bank lenders must provide the total value of resident loans and leases and indicate whether the lender also satisfies the customer numbers threshold. ***[Schedule 1, item 30, clause 6.3 of Schedule 3 to the CDR Rules]***

Timetable for the staged implementation

The Amending Rules include indicative dates for the staged implementation of data sharing obligations, which may be adjusted in response to stakeholder feedback.

Tranche 1 of the rollout begins on 13 July 2026, when Part 2 of the CDR Rules, which deals with product data requests, begins to apply to initial and large providers. This will result in product data being made available as early as possible to consumers while allowing non-bank lenders time to prepare the necessary infrastructure for responding to consumer data requests.

Tranche 2 of the rollout begins on 9 November 2026, when Part 4 of the CDR Rules, which deals with consumer data requests, begins to apply to initial providers, except in respect of complex requests. The Amending Rules introduce into Schedule 3 a definition of 'complex request' as a consumer data request that:

- is made on behalf of a secondary user of the consumer; or
- relates to a joint account or a partnership account; or
- is made on behalf of a non-individual CDR consumer whose authorisations are handled by a nominated representative.

The timing for consumer data requests factors in the time required to uplift consumer authentication standards and associated IT builds, and has been decided in consultation with stakeholders.

Tranche 3 of the rollout begins on 15 March 2027, when Part 4 of the CDR Rules begins to apply to initial providers in respect of complex requests.

Tranche 4 of the rollout begins on 10 May 2027, when Part 4 of the CDR Rules begins to apply to large providers, except in respect of a complex request.

Tranche 5 of the rollout begins on 13 September 2027, when Part 4 of the CDR Rules begins to apply to large providers in respect of complex requests.

[Schedule 1, item 30, clauses 6.1, 6.4 and 6.5 of Schedule 3 to the CDR Rules]

This timetable is modified in respect of certain large providers, as set out below.

Deferred compliance arrangements for certain data holders

As noted above, a deferral schedule applies to large providers on the basis of when they attain that status. They are divided into two classes: those that were large providers on or before 13 July 2026 (that is, the tranche 1 date), and those that become large providers after that date. A large provider in the latter class is required or authorised to share CDR data from the following dates:

- for product data requests under Part 2 of the CDR Rules – 12 months after the day it became a large provider (its 'LP date');

- for consumer data requests under Part 4 of the CDR Rules, other than complex requests – 15 months after its LP date;
- for complex consumer data requests under Part 4 of the CDR Rules – 18 months after its LP date.

[Schedule 1, item 30, clause 6.5 of Schedule 3 to the CDR Rules]

An entity that becomes an unrestricted ADI after the commencement of the Amending Rules has the same deferred compliance periods of 12, 15 and 18 months in relation to the 3 types of data requests set out above, starting from the day it became a banking sector data holder. ***[Schedule 1, item 30, clause 6.9 of Schedule 3 to the CDR Rules]***

Compliance schedule for providers of buy now, pay later products

The Amending Rules set out new data sharing obligations for banking data holders that offer BNPL products. The commencement of data sharing obligations for these data holders depends on when the data holder starts offering BNPL products.

If a banking data holder has offered BNPL products on or before 13 July 2026 (that is, the tranche 1 date), it must share data from the following dates:

- for product data requests under Part 2 of the CDR Rules – the tranche 1 date;
- for consumer data requests under Part 4 of the CDR Rules, other than complex requests – the tranche 2 date;
- for complex consumer data requests under Part 4 of the CDR Rules – the tranche 3 date.

If a banking data holder starts to offer a BNPL product after 13 July 2026 (that is, the tranche 1 date), the data sharing obligations depend on when the data holder started to offer that product. It may or must share such data from the following dates:

- for product data requests under Part 2 of the CDR Rules – 12 months after the day it first offered the BNPL product;
- for consumer data requests under Part 4 of the CDR Rules, other than complex requests – 15 months after the day it first offered the BNPL product;
- for complex consumer data requests under Part 4 of the CDR Rules – 18 months after the day it first offered the BNPL product.

However, the deferred compliance arrangements cease on the tranche 5 date. That is, for a banking data holder that starts offering BNPL products after 13 September 2027, all data sharing obligations apply immediately.

[Schedule 1, item 30, clause 6.10 of Schedule 3 to the CDR Rules]

Voluntary participation by non-bank lenders

Non-bank lenders that do not qualify as 'initial providers' or 'large providers', are not 'excluded data holders', and are not accredited, are exempt from having to provide product and consumer data, but can do so voluntarily.

If a non-bank lender chooses to participate in the CDR, it must comply with all relevant CDR obligations.

Non-bank lenders in all classes may choose to disclose data in accordance with the CDR Rules before their compliance date. For example, early data sharing may be undertaken for testing purposes. ***[Schedule 1, item 30, clause 6.11 of Schedule 3 to the CDR Rules]***

Non-applicability of Part 3 of the CDR Rules

As is the case with the energy sector, direct-to-consumer data sharing is not enabled for the banking and NBL sectors. ***[Schedule 1, item 30, clauses 6.7 and 6.8 of Schedule 3 to the CDR Rules]***

Other rules and modifications relating to the banking and non-bank lenders sectors

Part 7 of Schedule 3 to the CDR Rules sets out modifications of the CDR Rules for the banking sector and contains other miscellaneous provisions. The heading of Part 7 and the heading and text of clause 7.1 (about laws relevant to management of CDR data) are amended by adding "NBL sector" to existing references to "banking sector".

In addition, clause 7.2, which sets out conditions that accredited persons must meet in order to become data holders for the purposes of subsection 56AJ(4) of the Act, is amended to include non-bank lenders. The Amending Rules also clarify that this mechanism only applies if the ADI or non-bank lender in question is already subject to data sharing obligations in their capacity as a data holder of other CDR data.

[Schedule 1, items 31 and 33 to 35, Part 7 (heading) and clauses 7.1 and 7.2 of Schedule 3 to the CDR Rules]

Data holder may elect to comply on behalf of another data holder

A new clause is added to allow a data holder in the banking or NBL sector to elect to comply with the CDR rules in the place of another data holder in the same sector in relation to a covered product, where either:

- the first-mentioned data holder enters into the contract with the consumer to provide the product, but the second-mentioned data holder offers the product on behalf of the first-mentioned data holder; or
- both data holders are related bodies corporate for the purposes of the Act.

Such an election must be made in writing, and once made, the CDR Rules apply to the first-mentioned data holder in relation to the product as if it were the second-mentioned data holder. ***[Schedule 1, item 32, clause 7.1A of Schedule 3 to the CDR Rules]***

Where data holders have agreed to an election as described above, the first-mentioned data holder must keep a record of the election in accordance with their record-keeping obligations under rule 9.3. ***[Schedule 1, item 20, paragraph 9.3(1)(db)]***

New Part 8 – entities transitioning from NBL sector to banking sector

The Amending Rules provide clarity on the CDR obligations of an entity that ceases to be a non-bank lender in the NBL sector and, immediately afterwards, becomes a data holder in the banking sector.

In these circumstances, if a product or consumer data request was in progress in the NBL sector, that request is taken to relate to the banking sector data of the data holder, and must be dealt with accordingly. That is, if a consent or authorisation relates to such a request, the consent or authorisation does not expire merely because the entity has become a data holder in the banking sector.

As soon as practicable after an entity becomes a data holder in the banking sector, it must notify its CDR consumers that it has ceased to operate in the NBL sector, is now operating in the banking sector, and that consumers may choose to withdraw any consents and authorisations given in respect of existing consumer data requests. The entitlement to withdraw consents and authorisations is created by rules 4.13, 4.20J and 4.25 of the CDR Rules. ***[Schedule 1, items 15 and 36, rule 4.1 and Part 8 of Schedule 3 to the CDR Rules]***