Australian Banking Association

Consumer Data Right Rules: non-bank lending and banking data scope

Consultation Response

Australian Banking Association

Overview

The ABA welcomes the opportunity to provide comment on the proposed changes to the Consumer Data Right Rules. We appreciate Treasury's constructive engagement with industry – particularly regarding opportunities to ensure investment and focus is directed to high-value use cases that Australians value and benefit from.

The ABA strongly supports reforms aimed at streamlining CDR compliance obligations, recognising that reducing complexity and cost are essential to the success of CDR data sharing. In particular, we endorse the move towards narrowing mandatory product data requirements, ensuring that finite resources are directed to applications with the greatest consumer impact.

The banking industry has welcomed the Assistant Treasurer's recent announcement of a 'reset' and acknowledgement of the need to address implementation challenges and refocus efforts on delivering better outcomes for consumers. The CDR reset builds on the findings of the *Consumer Data Right Compliance Costs Review* by Heidi Richards, which found the expansive breadth of CDR obligations has driven material costs on data holders to share data of limited value.

Going forward, we see significant further opportunities to simplify and refine its scope. The ABA looks forward to continuing our close engagement with Treasury to ensure the CDR evolves into a focused, consumer-driven initiative that delivers meaningful benefits to many Australians.

The ABA's response is structured as follows:

1. Comments on the proposed changes mandatory product scope.
2. Further comments on rule changes.
3. Specific feedback on the exposure draft.

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About the ABA

The Australian Banking Association advocates for a strong, competitive, and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

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Proposed changes to mandatory product scope

The ABA supports data sharing being made voluntary on all the proposed products: *asset finance, consumer leases, foreign currency accounts, margin loans, reverse mortgages.* We support this change as a pragmatic initial step in reducing compliance obligations for low-demand and niche products, congruent with the broader goal of creating a more efficient and targeted CDR framework. However, while this change is welcomed by industry, its effect on overall CDR compliance costs is expected to be minimal.

Incremental changes (like the removal of mandatory obligations on the proposed five products) can deliver minor cost savings – e.g. through reduced compliance complexity, regulatory engagement, and data storage requirements. They also theoretically provide future benefit by reducing the scope of any future standards updates. However, these changes alone are not sufficient to address the substantial cost burden created by the breadth of the current framework – meaningful cost reductions in CDR compliance require a much more comprehensive rationalisation of obligations.

Further simplification of scope remains essential, not only to ease compliance but also to address challenges identified in regulatory focus. Heidi Richards' review observed that the excessively broad scope, encompassing highly niche products and use cases, has resulted in '*disproportionate regulatory focus on special cases.'* Simplifying the scope would ensure that regulatory efforts and resources are aligned with genuine consumer needs and high-value use cases.

The need for further simplification has also been recognised by the Assistant Treasurer, noting in his address to CEDA that *'the scope of the CDR is too broad and imposes costly obligations to share data of limited value.'* While the proposal for voluntary inclusion of these five product categories is strongly supported by industry, it does not go far enough to address the concerns raised in Heidi Richards' review. A more targeted approach is needed to reduce complexity and focus compliance efforts on areas with tangible benefits for consumers and industry alike.

The breadth of CDR scope has required banks to support data sharing on almost every product they offer, irrespective of strategic alignment, product structure or typical customer. For some banks, this has resulted in data sharing being enabled on *hundreds of individual products* – at significant cost. To date, many of these products have had zero or close to zero data sharing requests, while their mandatory obligations dilute focus, imposes substantial costs, and delivers minimal benefit to consumers or the broader economy. The ABA strongly believes that CDR obligations should focus on the highest-value, mass-market products that consumers widely use and engage with frequently. These products include **bank accounts**, **credit cards**, and **home loans** – which collectively compromise ~99% of CDR activity to date.

The ABA supports the proposed voluntary product changes as a positive first step and acknowledges the significant work and wide-ranging engagement undertaken by Treasury to deliver this. It is important that these changes form part of a broader and sustained effort to refine the CDR framework by significantly narrowing its mandatory scope to focus on core, high-demand products. This approach will ensure the CDR achieves its intended objectives while delivering a more sustainable and efficient framework for all stakeholders.

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Additional comments

Closed accounts

In line with our support for the proposed voluntary scope changes, the ABA also welcomes Treasury's efforts to address the complexity and cost burden associated with closed account data obligations. The reduction in the duration of data sharing for closed accounts is a positive step, however, similar to previous comments, these changes alone will have only a marginal impact on compliance burdens.

Closed account obligations remain disproportionately resource-intensive, with minimal demonstrated value for consumers or financial institutions. While the proposed changes may deliver minor cost savings (e.g. on data storage), the only way to achieve meaningful reductions in compliance costs on closed accounts is to remove closed account obligations entirely.

The rationale for retaining mandatory closed account obligations does not appear to justify the complexity and cost associated with maintaining this data. Hypothesised use cases generally focus on lending decisions, such as when lenders require details of previous credit facilities. However, all the necessary information for such purposes – such as credit limits and closure dates – is already available through comprehensive credit reporting systems. Given prospective lenders would in practice query credit reporting bureaus during lending applications, it is unclear what novelty the inclusion of closed accounts provides.

The ABA strongly supports a targeted review to understand the need for closed account obligations and any evidence to support their retention. Without clear and demonstrable value, these obligations only serve to add material costs, diverting resources from higher-value areas of focus. As noted in Heidi Richards' review, the breadth of the CDR framework has often resulted in disproportionate regulatory focus on edge cases, such as closed accounts. Simplifying these obligations aligns with the broader push to reduce the scope of low-value data sharing and concentrate on products and use cases with clear consumer demand and demonstrable benefit.

In this context, while we support the proposed changes, we strongly encourage consideration be given to removing closed account obligations altogether. Doing so would allow the CDR to operate more effectively and sustainably, reducing compliance costs while maintaining its focus on core, high-value applications. This would provide a clearer, more streamlined framework that supports both consumers and data holders alike.

De minimus

There is some ambiguity over whether the threshold applies to all products an entity distributes, or just the CDR in-scope products. We would welcome clarification on this.

Related entities

We accept that the intention may have been to enable a less prescriptive definition given the breadth of the NBL sector, however there is some ambiguity over the intended meaning of 'related entity.' The variability and diversity of the NBL sector may lead to varying interpretations - it would be helpful to have more clarity on defining related entities and examples of how to apply it to the various business structures that exist in banking and non-bank lending.

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Comments on the exposure draft

(1) Account data: 1.3, Sch 3.

Modification of account data definition

The ABA is **strongly opposed** to the proposed amendments to modify the definition of '*account data*' to redefine account balance data to include balances '*at any point in time.*' Excerpts from the exposure draft and explanatory memorandum have been included below for context.

This change would add significant discretion to the Data Standards Chair and provide a means to progress certain data recipient proposed standards changes discussed in recent maintenance iterations (i.e. '***more detailed specification of data sets*** *in the data standards'*). Changes predicated on this revised definition would be deeply concerning as they would:

- Add an entirely new data field in – account balance is a temporal term which varies based on the date. This is not the same as (current) account balance as it stands now.
- Require banks to provide build data sharing for data that is not displayed to customers in normal online channels (which only display current balances).
- Require the calculation, storage and sharing of data that many ADI source systems do not record currently.
- Impose material implementation costs on data holders.
- Require data holders to implement significant change to support a use case that can otherwise be calculated by an ADR for their specific use cases.
- Be contrary to the objectives of a commercially sustainable, high-value focused CDR.

We recognise that the DSB has been working towards a new framework for standards assessment, which would be expected to prevent such standards changes. However, it's important to note that many of the challenges identified in the Richards' review have been unintentionally enabled by the rules. CDR rules act as an important check on standards – we strongly urge that targeted consultation occurs specific to this change to understand the rationale, expected use cases and cost/benefit analysis.

Exposure draft

'account data, in relation to an account in respect of a covered product supplied by a data holder

a) means information that identifies or is about the operation of the account; and

b) includes:

i. the account number, unless it is masked (whether as required by law or in accordance with any applicable standard or industry practice); and

ii. the account name; and

iii. the account balance ***at any point in time****; and*

iv. details of any authorisations on the account, including authorisations for direct debit deductions, and scheduled payments (for example, regular payments, payments to billers and international payments); and

v. any details of payees stored with the account, such as those entered by the customer in a payee address book.'

Explanatory memorandum

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.'*
>
> *'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.'*

(2) Meaning of covered product: 1.4, Sch 3.

Voluntary data under covered products

The inclusion of voluntary product data in the eligibility definition creates ambiguity and operational challenges. Clause 1.4 replaces '*Phase 1, 2 and 3 Products'* with '*covered products*.' The definition of 'eligible' only refers to '*covered products*', which includes voluntary product data.

This suggests a consumer could be eligible even if they only hold a '*covered product*' that falls under voluntary product data. For secondary users, the drafting implies functionality would be required to nominate a secondary user even if the product relates to voluntary product data.

There is concern about whether the intent was to treat voluntary and required product data equivalently for eligibility and secondary user nomination purposes. This could unnecessarily complicate system requirements and diverge from the key objectives of the CDR framework.

(3) Meaning of covered product: 1.4 (2), Sch 3.

Clarity on 'publicly offered'

The explanatory memorandum provides context on where something is not intended to be considered 'publicly offered.' The exposure draft does not include this detail, however.

Explanatory memorandum:

> '*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.'*

The ABA suggests the following changes are made:

1. It would be beneficial to include the explanatory memorandum wording as a note under the provision for added clarity. Given that the ACCC has revised its guidance on this matter several times, greater certainty would be preferable.

2. Include explicitly in the rules that offers made to employees – i.e. staff offers – are not publicly offered products.

(4) Meaning of customer data, account data, transaction data and product specific data: 1.3 (1), Sch 3.

Greater clarity on hardship

The ABA suggests that the following text from the ex-mem is added to **section 1.3 (1)** for clarity.

> *'The exclusion of this information is not intended to override any data sharing obligations in relation to transaction data or any other data sets.'*

(5) Meaning of covered product: 1.4, Sch 3.

Specificity on buy now, pay later

BNPL products have been added as covered products, however BNPL has not been defined. BNPL products are unique amongst other covered products in that they don't have a universal standard structure, and the market is changing rapidly.

Suggest that BNPL is defined in the rules to provide a high-level framework for BNPL and provide greater certainty to industry as the sector continues to evolve.

To illustrate, we think the following characteristics of BNPL products in principle should be noted for clarity and to limit the risk that products offered do not match data fields.

- 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; and
- the imposition of a fixed charge for missing a payment.

(6) Meaning of required product data and voluntary product data – banking sector and NBL sector: 3.1, Sch 3.

Customer threshold for required data

The ABA supports the intention of this change; however, the 1,000 threshold is very low and would typically represent a premature, pilot stage of a new product. We recommend the threshold is raised to 5,000 at a minimum to limit the effect of CDR compliance costs may have on innovation and appetite to experiment with new products.

The ABA supports the intent behind the proposed changes; however, we believe the threshold of 1,000 customers is set too low. A threshold at this level typically reflects the pilot or early testing stage of a new product. Requiring CDR compliance at such an early-stage risks discouraging innovation and experimentation, as the associated compliance costs could outweigh the benefits of

trialling new offerings. To mitigate this, we recommend that the threshold be raised to a minimum of 5,000 customers.

The ABA would welcome further discussions to determine an optimal threshold that balances regulatory goals with fostering innovation in the financial services sector. As it stands, CDR compliance costs remain significant, and the additional requirements for enabling new products can heavily influence commercial decisions to launch or continue supporting these offerings.

This issue was highlighted by Heidi Richards:

> *"Some banks indicated that the CDR has **actually driven some product rationalisation or led to closure of particular product lines** where it was not economic to bring them into CDR compliance."*

It is essential that the CDR supports, rather than hinders, innovation and competition. A more realistic and supportive threshold will help achieve this objective.

(7) Meaning of required consumer data and voluntary consumer data – banking and NBL sectors: 3.1, Sch 3.

Alignment between clauses 3.2 (6) and 3.2 (7)

There is misalignment between (6) and (7) regarding the historical length of transaction data. The relevant excepts from the exposure draft have been provided below.

Exposure draft

> *'(6) Despite subclause (2), if a relevant account is open at a particular time, CDR data relating to that account is not required consumer data at that time if the data is:*
>
> > *(a) **transaction data in relation to a transaction that occurred more than 2 years before that time; or***
>
> *…*
>
> *(7) Despite subclause (2), if a relevant account is closed at a particular time, CDR data relating to that account is not required consumer data at that time if the data is:*
>
> > *(a) account data that relates to an authorisation for direct debit deductions from the account; or*
> >
> > *(b) **if the account was closed no more than 24 months before that time—transaction data in relation to a transaction that occurred more than 12 months before the account was closed; or***
> >
> > *(c) if the account was closed more than 24 months before that time—account data, transaction data or product-specific data relating to the account.'*

The key concern is the expected obligation to disclose data from closed accounts that is older than the data required for open accounts – subsection **3.2 (7).** In practice, if an account was closed ~2 years ago, the obligation would require a further 12 months of data to be discloses – i.e. up to 3 years historical data, creating an inconsistency in the treatment of open and closed accounts.

The ABA recommends the following:

- Disclosure timeframes for closed accounts should be aligned with open accounts.
- The language should be standardised to avoid ambiguity and limit confusion – i.e. using '*2 years'* in **(6)** and *'24 months'* in clause **(7).**

(8) 7.1A Transfer of data sharing obligations between data holders

The current understanding is that data-sharing obligations lie with the organisation that has the contractual relationship with the consumer / the underlying legal entity. For ADIs the responsibility for fulfilling data-sharing obligations generally rests with the entity holding the formal contractual relationship, even if the product is offered through another brand under the ADI.

This does not align to the business structures of ADIs with multiple brands and raises concerns regarding the implementation challenges that some data holders may face determining consumer eligibility at a legal entity level rather than at a data holder brand level.

In principle, the rules should:

- Allow the obligations to be **delegated** to the data holder that offers the product (even if they are not the contracting entity).
- Provide flexibility so that obligations can be fulfilled by **either the contracting data holder or the offering data holder** depending on the specific business arrangement.

The ABA recommends that amendments are made to *Schedule 3* of the *CDR Rules* to provide for the eligibility of CDR consumers to be assessed for each brand at a data holder (brand-based eligibility) and not for the legal entity including all its brands (entity-based eligibility). Suggested amendments have been provided below (*for legibility, suggested amendments are in **red***).

Suggested amendments

1.2 Interpretation

The following amendments be made to *clause 1.2 of Schedule 3* of the Rules:

(1) ADD:

> brand, in respect of a particular data holder, means a particular brand of that data holder that is displayed on the Register of Accredited Persons or the associated database created and maintained by the Accreditation Registrar under rule 5.25.

2.1 Additional criteria for eligibility—banking sector

The following amendments would be made to clause 2.1 of Schedule 3 of the Rules:

(2) AMEND:

> (1) For subrule 1.10B(1), the additional criterion for a CDR consumer to be ***eligible***, in relation to a particular brand of a particular data holder in the banking sector at a particular time, is that:

(a) the CDR consumer is an account holder or secondary user for an account with that brand of that data holder that is open; and

(b) the account is set up in such a way that it can be accessed online.

Note: Subrule 1.10B(1) provides criteria for account holders and secondary users of the account to be eligible. For the banking sector, eligibility is assessed for each brand of a data holder. See also note 3 in clause 3.2(1) of this Schedule 3.

(2) For subrule 1.10B(2), the additional criterion for a CDR consumer who is a partner in a partnership to be ***eligible***, in relation to a particular brand of a particular data holder in the banking sector at a particular time, is that:

(a) the CDR consumer is a partner in a partnership for which there is a partnership account with that brand of that data holder that is open; and

(b) the partnership account is set up in such a way that it can be accessed online.

Note: For a partnership account, subrule 1.10B(2) provides criteria for persons who are partners in the partnership (but who need not themselves be account holders or secondary users) to be eligible. For the banking sector, eligibility is assessed for each brand of a data holder. See also note 3 in clause 3.2(1) of this Schedule 3.

The following amendments be made to ***note 3*** *in clause 3.2(1) of Schedule 3* of the Rules:

(3) AMEND:

So long as the CDR consumer is eligible to make a consumer data request in relation to a particular brand of a particular data holder, they will be able to make or cause to be made a consumer data request that relates to any account they have with that brand (but not other brands) of the data holder, including closed accounts (subject to subclauses (4) and (5)) or accounts that cannot be accessed online.