Australian
Finance
Industry
Association

24 December 2024

Claire McKay
Assistant Secretary
Data and Digital Policy
The Treasury
Langton Crescent
Parkes ACT 2600
Via email: CDRRules@treasury.gov.au

Dear Claire,

## CONSUMER DATA RIGHT RULES – NON-BANK LENDING AND BANKING DATA SCOPE

The Australian Finance Industry Association (AFIA) is the only peak body representing the entire finance industry in Australia. We appreciate the opportunity to respond to the 'Consumer Data Right Rules – non-bank lending and banking data scope' consultation. [1][2]

We represent over 150 members, including bank and non-bank lenders, finance companies, fintechs, providers of vehicle and equipment finance, car rental and fleet providers, and service providers in the finance industry. We are the voice for advancing a world-class finance industry and our members are at the forefront of innovation in consumer and business finance in Australia. Our members finance Australia's future.

We collaborate with our members, governments, regulators and customer representatives to promote competition and innovation, deliver better customer outcomes and create a resilient, inclusive and sustainable future. We provide new policy, data and insights to support our advocacy in building a more prosperous Australia.

[1] Australian Finance Industry Association (afia.asn.au).
[2] Treasury, Consumer Data Right Rules – non-bank lending and banking data scope, 2024

## INTRODUCTORY COMMENTS

The AFIA welcomes the proposed amendments to the *Competition and Consumer (Consumer Data Right) Rules* 2020 (CDR Rules), which reflect clear direction and the opportunity to demonstrate tangible value from the CDR. These changes address important issues raised in AFIA's previous submissions and align with the Government's vision of prioritising high-value use cases that deliver clear benefits to consumers and businesses.

Minister Jones spoke of the three benefits of CDR:

1. *'It can drive competition*
2. *Foster innovation to deliver better goods and services for consumers, and*
3. *Streamline time consuming processes.* [3] *'*

AFIA agrees that the recalibrated framework ensures the CDR delivers these stated goals while addressing the unique operational characteristics of non-bank lenders (NBLs).

AFIA also commends Treasury for narrowing the scope of mandatory data sharing to focus on high-value use cases, as well as for providing greater clarity on key definitions such as 'publicly available' and 'low negotiation.' These changes align with AFIA's recommendation for a *'flexible yet clearly defined approach to bespoke and invitation-only products'*[4] to ensure that compliance is both achievable and proportional to the nature of NBLs' product offerings.

Among AFIA members are organisations which are voluntarily contributing to the CDR, and the flexibility within the rules allows businesses to make decisions based on their understanding of their customer base and contribute to the CDR ecosystem in ways that align with their operational priorities and consumer needs.

### Revised implementation timelines

AFIA welcomes Treasury's decision to adopt a phased implementation timeline for NBLs, replacing the previously compressed 12-month schedule. [5] The revised timeline mirrors the extended rollout for Open Banking, providing NBLs with the necessary time to develop and implement robust CDR solutions.

AFIA previously noted that the original timelines in Schedule 3 of the draft rules posed '*implementation difficulties, which may compromise the quality and efficacy of the solutions and*

[3] The Hon Stephen Jones MP, Address to Committee for Economic Development of Australia (CEDA) (9 August 2024)
[4] AFIA Submission on the *Consumer Data Right (CDR) rules and data standards design paper for non-bank lending (NBL) sector* (1 February 2023)
[5] Schedule 1, item 30, clauses 6.1, 6.4 and 6.5 of Schedule 3 *CDR Rules*

*lead to poorer than desired consumer and business outcomes*.'[6] These goals are best supported by a phased and targeted approach, giving providers the time to ensure robust implementation, noting technical and operational challenges for smaller operators.

AFIA supports the recalibrated timeline, which provides NBLs with the opportunity to align their offerings with the framework in a way that supports innovation and ensures high-quality implementation. By providing a phased approach, Treasury has demonstrated a commitment to delivering a practical and sustainable CDR rollout that benefits both consumers and the financial services industry.

### Higher thresholds for mandatory participation

AFIA supports Treasury's proposed changes to the monetary and customer *de minimis* thresholds for mandatory CDR participation, which will better reflect the diversity of participants in the non-bank lending sector. [7]

As AFIA said in a previous submission:

> *'These thresholds are important measures to more equitably balance the cost of compliance for NBLs, and ensure smaller entities with limited resources to comply with the CDR Rules have further preparation time for an effective roll-out.'*[8]

AFIA has also previously recommended '*greater consideration... to the appropriateness of aligning NBLs with banking*', highlighting the distinct operational realities of smaller NBLs and the potential challenges of a one-size-fits-all approach. [9] The updated thresholds reflect this feedback, ensuring the CDR's scope remains proportionate and fit-for-purpose.

### Narrowed scope of mandatory data sharing

AFIA supports Treasury's decision to narrow the scope of mandatory data sharing, which refines the CDR framework to focus on priority use cases while reducing compliance burdens.

As Minister Jones said at CEDA:

> *'It is also clear that we need to ensure the CDR is consumer focused and delivering genuine value. There are investment costs for businesses engaging with the CDR. So we need to avoid spending time on areas where the costs outweigh the benefits and demand of consumers.'*[10]

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[6] AFIA Submission (2023) p. 3
[7] Schedule 1, item 30, clause 6.2 of Schedule 3; Schedule 1, item 23, clause 3.1 of Schedule 3 *CDR Rules*
[8] AFIA Submission (2023) p. 2
[9] AFIA Submission (2023) p. 3
[10] The Hon Stephen Jones MP, 9 August 2024

This recalibration reflects a pragmatic approach that ensures mandatory participation is limited to 'high-value use cases', enabling providers to focus their efforts where they can deliver the most tangible benefits to consumers. AFIA acknowledges this aligns with Minister Jones' comment that '*we need to prioritise high value use cases as the ecosystem matures*.'[11]

AFIA strongly supports the flexibility that voluntary participation provides, particularly for niche or low-volume products, as it allows lenders to innovate and tailor their involvement in the CDR framework to their unique business models. This approach avoids placing regulatory pressure on providers for products with limited consumer applicability, fostering an environment where smaller or specialised participants can focus on growth and experimentation.

## CLARIFICATION OF SCOPE

However, we do have some comments on where there could be further clarity in the rules. These areas are outlined below.

### De minimis threshold for non-bank lending

We welcome the updated de minimis threshold for non-bank lending but seek clarification as to whether the de minimis operates at the *product level **before** operating at the entity level* or alternatively operates at the *entity level **before** operating at the product level*.

As an illustrative example, if an entity has a total book size of $1.2 billion but $700 million of the book size is for products in scope and $500 million for products not in scope, the filtering step of applying the de minimis at the product level first would mean the entity would not have to:

- undertake accreditation with all the associated steps and compliance cost,
- map out systems and processes, and
- build and test to data share.

This would make sense as there would be no requirement to share any data where the products are out of scope.

In the alternative if the de minimis is first applied at the entity level then all those steps would need to be taken, with all the associated cost, and where no data sharing is required.

[11] Ibid.

### Inconsistency in definition

We note that some classes of product are now voluntary within the revised CDR Rules. However, the definitions still refer to resident loans and leases without making this qualification. Treasury might consider reviewing the definitions on p.14 and consider if they are still accurate or need further clarification, as this may affect lenders in determining whether they are over or under the de minimis threshold.

### Consumer direct request service

The ability for consumers to make a direct request to their ADI for data holder information is reflected in the Rules for ADIs but has not been activated in the data standards. Similarly, we would like this to be the case for the NBL sector.

### Trial / Low Volume Products

To reduce compliance costs for data holders, the CDR 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.'* Does this mean a product is acquired, irrespective of whether it remains open or closed (active/inactive) for one full financial year? Is financial year from 1 July?

### Products with <1,000 eligible CDR consumers

We seek clarification on the options available where a lender provides the same covered product e.g. home loans under retail and white label arrangements. Is the customer threshold of 1,000 or more eligible CDR consumers calculated by reference to the underlying covered product itself (i.e. the total number of customers irrespective of whether they are provided the product under a white label or retail arrangement) or is it calculated by reference to each individual arrangement (i.e. customers under one white label arrangement are calculated separately from customers under the retail or other white label arrangement)?

It is noted that, in this example, the different white label arrangements have the option to offer different interest rates, products and fees and charges based on the terms of the white label arrangement. This provides customised lending products for white label arrangement customers.

If the 'covered product' is calculated by reference to the total number of consumers who are provided with the same underlying covered product (i.e. total of all white label and retail loans of the same underlying covered product) – is there the option for a lender to provide one unbranded CDR portal which can be accessed by all white label customers i.e. the lender does

not have to provide separate branded CDR portal access for each white label arrangement. If this is an option, an exemption would be required in relation to the provision of product data (given that there may be variances in e.g. the number of products, features and charges for each white label arrangement). Transaction data would be available to all white label customers.

A non-branded option or carve out on a white label by white label basis is necessary due to the high ongoing compliance costs of implementing separate portals for each white label brand as well as the complexity it adds to implementation. This will result in reduced innovation and consumer choice.

### Ability for NBL specific data standards to be established

The Explanatory Materials to the CDR Rules state on page 7: '*The Amending Rules extend the following existing definitions for classes of CDR data in the banking sector to the non-bank lenders sector.*'[12] We believe it is important for the CDR Rules to recognise that where differences exist in definitions or at the data level (per feedback provided by AFIA to the DSB's DP318 consultation) between ADIs and non-bank lenders, NBL sector data standards can be developed (rather than NBLs having to change their entire data architecture in order to be able to adhere to data standards that work for ADIs). This would go against one of the key policy objectives of the Government in making CDR more feasible for the NBL sector. For example, intra-day balances may not be available on some types of NBL products. This means the CDR Rules need to incorporate flexibility to allow NBL sector data standards to be developed.

### Changes for ADI data holders

Page 2 of the Explanatory Materials states: '*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 …*'[13]. Do these changes also apply to the NBL sector?

### Account Access by Business Customers

We note that the CDR Rules propose granting default CDR access to those who have read-only online banking access. In particular:

- The scope of data that must be provided under a CDR data request is far broader than the data that an individual can obtain via read-only online banking.
- Building default access for certain parties to a business account now will result in additional costs and risk in future when Action Initiation is implemented. This is because

[12] Treasury, Exposure Draft Explanatory Materials, p. 7

[13] Ibid. p. 2

Action Initiation access would require explicit confirmation from the business account owner.

We also note that Treasury is exploring alternative options for simplifying how business consumers can use the CDR in the banking sector and (when operational) the non-bank lending sector. One option is to allow by default any individual with the authority to view online banking and non-bank lending data relating to non-individual or partnership accounts to consent and authorise this data to be shared using the CDR. This would replace the current requirement to appoint an individual as a nominated representative to consent and authorise CDR data sharing for any non-individual CDR consumers. The objective of this approach would be to leverage existing industry practices for managing account authorities to simplify and streamline use of the CDR by business consumers and support increased business adoption of the CDR. We agree with this proposal, however, there has been no mention of this in the current consultation. Would a Power of Attorney be taken into consideration in this process?

### Voluntary participation

If a non-bank lender who is below the threshold for mandatory compliance chooses to participate in the CDR, it must comply with all relevant CDR obligations. Does this mean if an NBL that is not an Initial or Large Provider receives data as an ADR, the NBL must then also be able to disclose data as a data holder?

### Securitisation

We assume that the topic of securitisation has been removed as the non-bank lender that originates the loan is typically the primary entity that receives and holds their customer's information, regardless of whether a loan is to be securitised.

### Definition of online access

We note there is internal inconsistency within the rules regarding definition of online access. We would welcome clarification on this issue.

In particular, Part 2, para 2.1 requires an eligible consumer to have an account that is accessible online. However, Part 3 part 3.2(1) defines 'relevant account' as including '*whether or not the account can be accessed online…*'. This is reiterated in Note 2 below Part 3.2(2) which states: *'So long as the CDR consumer is eligible to make a consumer data request in relation to a particular data holder, they will be able to make a consumer data request that relates to any relevant account they have with the data holder, including closed accounts (subject to subclauses (5) and (6)) or accounts that cannot be accessed online.'*

### Historical transaction data and closed accounts

We would welcome clarification that there is no obligation to share historical data in instances where the customer is no longer an active customer, i.e. has current accounts. Could Treasury please clarify if the following loans are considered 'closed':

- written off account
- account closed then re-activated
- account closed but has balance >$0
- account that is closed but still allow transaction posting (sometimes this can occur to allow re-coup of debt etc. to be confirmed by systems experts.

### Related Entity Definition

We would welcome further clarification from Treasury on the intended meaning of 'related entity' as it is open to broad interpretation. It would be helpful if the explanatory material provides examples of how to apply the definition to the various business structures that exist in banking and non-bank lending.

### Non-standard vehicle finance

We support the inclusion of standard vehicle finance within the CDR regime and welcome confirmation that non-standard vehicle finance products are voluntary for the purposes of CDR.

AFIA considers, for the avoidance of doubt, that standard vehicle finance should be defined as direct to consumer (i.e. sold between a lender and consumer either directly or through a white label arrangement).

Alternatively, that non-standard vehicle finance be defined so that it incorporates vehicle finance sold via dealer, broker or another intermediated channel[14].

We note Part 1.4 of the draft rules define covered products. In particular, a covered product is a product that is publicly offered by or on behalf of a data holder; and the product is offered to customers by way of standard form contracts. Part 3, clause 3.1 sets out that non-standard vehicle finance is voluntary. [15] For the avoidance of doubt, we consider that asset finance continues as a voluntary category, and this includes vehicle finance sold via intermediated channels. For example, as previously discussed and set out elsewhere, vehicle finance sold through a dealer is not offered directly to consumers and businesses. Many providers of vehicle finance that distribute through brokers also do not offer their finance directly to consumers and businesses.

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[14] Including dealers, brokers and others.
[15] Schedule 1, item 23, subclause 1.4(1) of Schedule 3 *CDR Rules*

Further, in the context of vehicle finance there are non-standard vehicle finance contracts beyond those outlined in the Exposure Draft Rules. For simplicity these are best described as those which originate at a dealer through a point-of-sale (POS) exemption or other intermediated channel such as broker and also those that are non NCCP loans (i.e. loans for commercial vehicles). The nature of the product does not lend itself to commercially viable use cases in the context of CDR.

Most vehicle finance providers operate in a way where the customer rate is 'personalised' or highly customised to the individual customer circumstances. Using data points such as credit score, property ownership status, loan-to-value ratio, age of vehicle, term of loan, amount financed and other factors. This differs to other types of homogenous lending products which tend to be product based (e.g. owner occupier home loan vs investor home loan). Pricing-for-risk vehicle finance is in a much more sophisticated environment.

### Exclusions for old data

AFIA supports this practical exclusion for open account transaction data older than two years and direct debit authorisation data older than 13 months. [16] This reduces unnecessary compliance burdens for data holders while ensuring the focus remains on actionable and relevant data.

However, there are further considerations AFIA would like to raise regarding the handling of closed accounts and access to historical data. Where an account is closed, customer access is revoked. For example, where a home loan is closed, any new financing will not come under the previous product – it will create an entirely new one. It is not clear how customers would be able to use this historical data where they cannot access to provide sharing data. Retaining access to closed account data for up to two years could provide benefits for consumers who may need access for applications or disputes, but Treasury should ensure that such obligations are practical and manageable for providers.

Where these obligations are not expected for historical data closed accounts, AFIA requests this be clarified.

### Other clarifications – representative model

We note that there are a range of models by which lenders and others can participate in CDR – including through the CDR representative model and trusted advisors.

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

We note however that the CDR representative model precludes CDR representatives from dealing with CDR business customers. The specific provision is 1.10AA of the CDR Rules:

> **1.10AA Meaning of CDR *representative* and related terms**
> Note: From the point of view of a CDR consumer who is the customer of a CDR *representative, the consumer deals with the CDR representative, as if it were an accredited person, and might not deal with the CDR representative principal at all. The consumer requests the goods or services from the CDR representative; the CDR representative identifies the CDR data that it needs in order to provide the goods and services; the consumer gives their consent to the CDR representative for the collection and use of the CDR data. The consumer is informed that the CDR representative principal will do the actual collecting, but as a background detail.*
> *A CDR representative cannot deal with a person in their capacity as a CDR business consumer.*

It is unclear as to why this provision precludes a business (ABN holder) from dealing with CDR representatives. We understand that the concept of a CDR representative is intended to broaden the types of business consumers that could access CDR without forcing all providers of goods and services being forced into accreditation (on the basis they are tied into a contractual relationship with a CDR representative principle which is an accredited data recipient).

An example of a use case which would be facilitated by clarifying this provision is in the case where a non-bank lender wanted to become a CDR representative of an accredited data recipient (i.e. credit bureau). In this use case the non-bank lender could rely on bureau data to supplement, or replace, data accessed via screen scraping.

## CLOSING COMMENTS

AFIA thanks the Government for its thoughtful approach in recalibrating the CDR framework, particularly in addressing the complexities of expanding the CDR to non-bank lenders. These amendments reflect a balanced and practical reset that prioritises delivering better outcomes for consumers.

AFIA supports the recalibrated framework, which puts consumers at the heart of the reset by targeting high-value use cases and reducing unnecessary regulatory burdens. Raising thresholds ensures compliance costs are directed at larger, more capable players, while voluntary participation for niche or low-volume products encourages flexibility and innovation. Phased implementation and clarified obligations create a smoother path for businesses and

consumers alike, reflecting a *'carefully calibrated implementation'* that balances industry needs with consumer benefits. [17]

AFIA particularly supports the narrowed scope of mandatory data sharing, the focus on priority use cases, and the flexibility offered to providers serving niche markets. These changes demonstrate Treasury's commitment to fostering innovation and reducing compliance costs, ensuring the CDR delivers meaningful benefits across the financial services ecosystem.

AFIA will continue to work closely with the Government and stakeholders to advocate for the participation of NBLs in a way that supports competition and innovation. We remain committed to educating consumers on how the CDR can empower them and to ensuring a smooth transition for providers as they implement the recalibrated framework.

We look forward to continuing this collaboration to ensure the CDR achieves its vision of delivering tangible value for consumers and strengthening the financial services sector.

Should you wish to discuss our submission or require additional information, please contact AFIA Policy Advisor, Kate Melville at kate.melville@afia.asn.au or me at roza.lozusic@afia.asn.au or 0431261201.

Yours sincerely

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Executive Director Policy and Public Affairs

[17] AFIA Submission on *Decision Proposal 318, the Non-Bank Lending Standards* (8 December 2023). ('DP 318')