# Submission to Treasury Consultation titled “Consumer Data Right Rules – non-bank lending and banking data scope”

The Consumer Data Advocate (CDA) appreciates the opportunity to provide feedback on the proposed Consumer Data Right (CDR) rule changes proposed by the Federal Treasury.

The purpose of the Consumer Data Advocate is to provide feedback, and thought leadership, in Australia on data policy issues with a perspective that this explicitly aligned to the interests of the Australian consumer.

The feedback provided in this submission, while aggregated from feedback provided by our members, has been curated to remove commercial, or political, interests other than those of the general Australian consumer.

## Summary of Feedback

The CDA welcomes the expansion of the CDR to the non-bank lending (NBL) sector, as it has the potential to deliver significant benefits and added value to consumers.

However, the CDA is concerned that the proposed changes in this consultation appear to prioritize the interests of data holders over consumers. This represents a notable departure from the positions previously consulted upon by Treasury and is also inconsistent with the public statements made by the Minister.

The CDA urges the government to reconsider these changes, as they seem to place disproportionate emphasis on minimizing compliance costs for highly profitable industries, such as banks, rather than advancing critical consumer-focused outcomes like housing affordability and price transparency. We believe that the original intent of the CDR - enhancing consumer choice, promoting competition, empowering consumers to make use of their own data - should remain the central focus of this initiative.

Specifically, the CDA believes that the following aspects of the draft rules are explicitly anti-consumer and should be reconsidered:

- The increased de minimis threshold for non-bank lender inclusion in the CDR,
- Applying the de minimis threshold to product reference data in the NBL sector,
- Descoping an arbitrary set of banking products that have been in scope for years,
- Descoping banking products with less than 1,000 customers,
- The reduction in how far back in a time a consumer’s transaction data can be shared.

These changes have been proposed without any evidence, whether in formal communications or informal engagements, that an assessment of the negative impacts on consumers has been considered in proposing these changes in position.

In addition, the CDA is opposed to making voluntary data exempt from data standards compliance when the data is shared via the CDR. While this change does not directly impact the consumer like the above changes do, the likely impact on the functioning of the CDR ecosystem would have flow on negative impacts to consumer benefit.

## Detailed Feedback

### *Increase in Non-Bank Lending de minimis threshold*

Since the NBL sector was designated over two years ago the Treasury has been consulting over the level of a de minimis threshold for mandatory inclusion of non-bank lending providers into the CDR regime. According to the first design document published in early 2023 this de minimis threshold is needed due to the long tail of very small non-bank lenders.

Last year this resulted in a proposed threshold of $500B in loans and leases. This level appeared to be a reasonable threshold and accommodated the feedback provided to date.

In this consultation this threshold has been doubled with no explanation as to the implications for consumers. We do not know how many consumers will be disenfranchised or how many of the 1500 non-bank lenders will be included.

The justification for lifting the threshold is therefore unclear. A review of the submissions provided to the previous consultation indicates consensus support for the previous threshold. The feedback provided, even by the industry bodies, addressed the practicalities of assessing the threshold or indicated that the threshold may be too high and will effectively exclude some sub-sectors of the NBL sector entirely. The Australian Banking Association even suggested that a de minimis threshold should not exist for the sector at all.

In this context the previous threshold does not appear to be opposed by industry, unless such opposition has been provided via non-transparent channels.

The change will, however, obviously reduce consumer empowerment and agency leading to a reduction in consumer benefit. We therefore **recommend that the previous proposed thresholds remain in place**.

### *Applying a de minimis threshold to Product Reference Data*

A de minimis threshold has never been applied to Product Reference Data (PRD) in the CDR. It is also demonstrable, based on the last six years of implementation experience, that the cost of PRD compliance is minimal when compared to the compliance costs of exposing Consumer Data.

At the same time, the value of PRD comes from price transparency, discoverability of products and the ability to compare products across the market automatically. The value of PRD is therefore enhanced by increasing the breadth of exposure. This value is a direct and clear benefit to consumers as it increases a consumer's ability to select the best financial product for them in their specific context.

Considering the obvious benefits to all consumers of improved price transparency it is not obvious that any de minimis threshold for PRD is justifiable. If, however, a de minimis for PRD is seen as required, then it should be set separately and should be lower.

We therefore **recommend that the de minimis threshold for PRD obligations be set lower than the de minimis threshold for Consumer Data**.

### *Descoping arbitrary banking products*

A set list of products has been proposed by the Treasury to be descoped from the existing banking sector on the justification that this will reduce compliance costs.

The CDA supports actions that will reduce compliance costs for participants as this will ultimately benefit all consumers. Efficiency in implementation is likely to benefit consumers more than inefficiency.

Descoping specific product classes will not reduce costs for all banks that supply those product types. The cost of compliance is not driven by product type but by the technical architecture of each individual bank.

If a bank uses *a different system* for normal mortgages and reverse mortgages, then descoping reverse mortgages from CDR *will reduce* their costs.

If a bank uses the same system for normal mortgages and reverse mortgages, then descoping reverse mortgages from CDR *will not reduce* their costs.

If reducing compliance costs for specific scenarios that are inequitable is a goal of the Treasury, then simply descoping product types will not achieve that goal. Other, much better, mechanisms do exist to achieve this outcome. For instance, the ACCC (as regulator) could be empowered to grant specific exemptions for banks that can demonstrate that, in their specific

context, that the cost of compliance is exceptional or egregious. Alternatively, a principle could be introduced that products that are visible through digital channels - which are both digitally enabled already and also subject to screen scraping - should be in scope but products that are not visible through digital channels are not.

Simply descoping arbitrary product types will harm consumers of those products and will not meaningfully reduce costs for banks. We therefore **recommend that this change be postponed until more extensive analysis and solution development can be undertaken**.

### *Descoping banking products with less than 1,000 customers*

The proposal to descope products with less that 1,000 customers raises similar issues to the descoping of arbitrary product types.

While the CDA supports the exclusion of trial products from scope as it facilitates innovation that will ultimately help consumers, the descoping of any product with less than 1,000 customers is highly problematic for three key reasons.

1. This change will not reduce cost as the technology costs for a bank generally scales with total number of customers and accounts, not with number of product types. Product types increase cost according to their complexity, rather than their number. A bank with a core banking platform with fifty, simple, mortgage products could easily have less overall cost that a similarly sized bank with five, highly complex, mortgage products.

2. The implementation of this rules would be very difficult as it is not possible to objectively determine the number of customers that have a single banking product. This is because banks *offer* products, but customers *have* accounts. Once an account is originated it may exist for decades after the original product offer is decommissioned and product offers change continuously. The CDR data standards already acknowledge this. In response to bank feedback the standards declining to link product IDs with account IDs because his linkage is often impossible to define. This is also a known issue in PRD where some banks present a standard mortgage as a single product with many rate variations and other banks present the same scenario with many products each with a single rate.

3. For smaller banks this could effectively remove all their accounts from scope and therefore introduce an accidental de minimis threshold. Their costs would not be meaningful reduced, however, as they would still be required to fully implement the CDR so that a consumer could share their personal data.

While the CDA supports the intent of reducing costs for edge cases, there is serious concerns that this change will introduce side effects that will harm consumers. We therefore **recommend**

**that this change be postponed until more extensive analysis and solution development can be undertaken**.

### *Reduction in historical transaction data sharing*

On the service this change appears to be reasonable as it reduces bank costs and aligns with most internet banking implementation.

The CDA is seriously concerned about this change due to the impact on consumers as the Australian economy becomes increasingly digital.

Currently, there are several legislative requirements for consumers to reduce financial records for varying lengths of time. An example is the requirement that information supporting a tax return must be retained for five years after the return is submitted.

Historically, it was relatively easy to maintain multiple years of transactions simply by filing monthly bank statements. Now that paper has transitioned to digital (for good reason) it is increasingly difficult for consumers to maintain this information as different banks provide data in different forms and through different channels. Additionally, consumers must maintain this data digitally in some form which makes it subject to hacking in a way that a filing cabinet full of paper never was.

A much better solution to this problem, and one of the original justifications for a seven-year sharing window, is to leave the data with the bank, where it is safe, and only share the data when there is a need.

This proposed change undermines that outcome and potentially causes great harm.

If the Treasury is proposing to make this change to reduce the costs of the banking sector (despite their recent super profits) then it is equitable that this change should be matched with a reduction on the requirements of individual consumers to share data by an equivalent period of time.

The CDA therefore **recommends that the period of sharing of transaction data for banks be reduced once the requirements on individual consumers to share data with the government is similarly reduced**.

### *Non-compliant sharing of voluntary data*

The Treasury is proposing that the sharing of voluntary data via CDR should not be required to be shared according to the data standards. The purpose of this change is, presumably, to encourage the sharing of voluntary data by banks without undue burden.

The CDA supports this intent and is an enthusiastic advocate of using the CDR, which is one of the most secure and consumer centric data sharing mechanisms in Australia, for industry innovation and extension.

Unfortunately, this specific proposal, has the potential for significant side effects that could undermine the regime.

It is also unnecessary as the data standards already include a mechanism for extensibility that allows for voluntary data sharing that is safe and has minimal overhead. This was proven in practice in early 2024 when the 'simple account origination' experiment demonstrated the use of the extensibility model in the standards to augment the existing standard to introduce an account application into the CDR.

The reason the CDA believes this change to be technically dangerous can be described as follows.

Assume that ACME bank offers four products, a transaction product, a credit card, a mortgage, and an insurance product. Three of these products are in CDR scope but the insurance product is not. The sharing of the insurance product would be voluntary.

A compliant response to the *Get Products* API would look like this:


```
{
    "data": {
        "products": [
            {
                "productId": "aaa33344-1111-2222-3333-aaabbbcccdd1"
                "brand": "ACME",
                "name": "ACME Everyday",
                "description": "The ACME transaction account for everyday use.",
                "isTailored": false,
                "lastUpdated": "2024-11-22T00:02:43.407Z",
                "productCategory": "TRANS_AND_SAVINGS_ACCOUNTS"
            },
            {
                "productId": "aaa33344-1111-2222-3333-aaabbbcccdd2"
                "brand": "ACME",
                "name": "ACME Low Rate Card",
                "description": "The low rate ACME credit card.",
                "isTailored": false,
                "lastUpdated": "2024-11-22T00:02:43.407Z",
                "productCategory": "CRED_AND_CHRG_CARDS"
            },
            {
                "productId": "aaa33344-1111-2222-3333-aaabbbcccdd3"
                "brand": "ACME",
                "name": "ACME Home Loan",
                "description": "The ACME home loan for retail customers.",
                "isTailored": false,
                "lastUpdated": "2024-11-22T00:02:43.407Z",
                "productCategory": "RESIDENTIAL_MORTGAGES"
            }
        ]
    }
    ...
}
```

Under the new rules the insurance product could be shared but would not have to comply with the standards in any way. This creates a situation where part of the payload must be compliant, but part of the payload does not have to be compliant. So, the augmented payload could possibly be as follows:


```
{
    "data": {
        "products": [
            {
                "productId": "aaa33344-1111-2222-3333-aaabbbcccdd1"
                "brand": "ACME",
                "name": "ACME Everyday",
                "description": "The ACME transaction account for everyday use.",
                "isTailored": false,
                "lastUpdated": "2024-11-22T00:02:43.407Z",
                "productCategory": "TRANS_AND_SAVINGS_ACCOUNTS"
            },
            {
                "productId": "aaa33344-1111-2222-3333-aaabbbcccdd2"
                "brand": "ACME",
                "name": "ACME Low Rate Card",
                "description": "The low rate ACME credit card.",
                "isTailored": false,
                "lastUpdated": "2024-11-22T00:02:43.407Z",
                "productCategory": "CRED_AND_CHRG_CARDS"
            },
            {
                "productId": "aaa33344-1111-2222-3333-aaabbbcccdd3"
                "brand": "ACME",
                "name": "ACME Home Loan",
                "description": "The ACME home loan for retail customers.",
                "isTailored": false,
                "lastUpdated": "2024-11-22T00:02:43.407Z",
                "productCategory": "RESIDENTIAL_MORTGAGES"
            },
            {
                "id": "aaa33344-1111-2222-3333-aaabbbcccdd4"
                "product-name": "ACME Car Insurance",
                "desc": "Car insurance from ACME.",
                "type": "insurance",
                "update-date": "23 March 2022"
            }
        ]
    }
    ...
}
```


In the best case, a client reading this payload would identify that the fourth product is non-compliant and cannot be processed. It would not be able to understand the data and would simply ignore it. Sharing the data has provided no value.

In the worst case, the client may expect there to be a `"productId"` field and would crash when it could not be found. A developer would then be alerted to this issue, troubleshoot why it occurred, and then have to write custom code to prevent the crash in future.

There is no benefit provided, but there is potentially a significant problem introduced.

The CDA therefore **recommends that voluntary data, when shared via the CDR, remain subject to the data standards**.

To address the positive intent of the Treasury, the CDA further **recommends that the DSB be encouraged to accommodate voluntary data in the data standards without undue burden**.