FinTech Australia

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

Submission

December 2024

fintechaustralia.org.au

About this Submission

This document was created by FinTech Australia in consultation with its members. In developing this Submission, interested members participated in roundtables to discuss key issues and provided feedback to inform our response to the consultation paper.

About FinTech Australia

FinTech Australia is the peak industry body for the Australian fintech sector, representing over 450 fintech companies and startups across Australia. As part of this, we work with a range of businesses in Australia's fintech ecosystem, including fintechs engaging in payments, consumer and SME lending, wealthtech and neobanking, the consumer data right (**CDR**) and the crypto, blockchain and Web3 space.

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

FinTech Australia would like to recognise the support of our Policy Partners, who assist in the development of our submissions:

- Allens;
- Cornwalls;
- DLA Piper;
- Gadens;
- Hamilton Locke;
- King & Wood Mallesons; and
- K&L Gates.

Executive Summary

FinTech Australia recognises the great opportunities that the CDR presents for Australian consumers and businesses. We are excited by the potential for the CDR to support the rapidly developing data-driven economy in Australia. We welcome the opportunity to provide a submission on the exposure draft rules which extend the CDR to the non-bank lending sector and simplify some aspects of the regime as it applies to the bank and non-bank sectors (**Draft Rules**).

In preparing this submission, we consulted extensively with our members. FinTech Australia members are cognisant of the need to maintain a careful equilibrium between encouraging broader participation in the CDR (and the innovation and consumer benefits this brings), and reducing the compliance burden and costs for participants of varying sizes. While FinTech Australia is broadly supportive of the Draft Rules and views them as an important extension of the CDR ecosystem, some members believe the latest changes could better reflect the Government's stated objectives of putting consumers at the heart of the Government's 'reset' of the CDR.[1] With this in mind, our members have provided the following feedback on the revised Draft Rules:

- **Updates to the de minimis threshold**: A number of members expressed concerns about the potential for a higher monetary threshold to hinder broader engagement with the CDR and limit valuable consumer use cases, though some members did not share this concern. There was relatively broad agreement, however, that estimates of the number of NBLs that would likely be excluded from the mandatory data-sharing regime (based on the updated threshold) would help inform an evidence-based assessment of whether the threshold is appropriate.
- **Implementation timeline:** Members, though mixed in their responses, believe a balanced approach is essential and should account for a transition to screenscraping once a transition plan is formalised. A number of members consider the implementation timeline could be brought forward to deliver timely benefits to consumers. Other members emphasised that the significant time and resources required to implement system changes make the current proposed timeline appropriate.
- **Narrowing the scope of products:** Some members do not support the exclusion of foreign currency accounts and asset finance from the scope of products. They note such exclusions could lead to potential unintended effects, including incomplete financial insights, disrupted user experiences, reduced adoption of the CDR, and renewed reliance on less secure methods like screen scraping.
- **Excluding financial hardship and repayment history from 'customer data':** Members are concerned this exclusion undermines the CDR's ability to deliver on its core objectives of empowering consumers, particularly those who may be vulnerable, to compare products and make informed financial decisions.
- **Value of data:** Members also emphasise the importance of ensuring that changes do not dilute the value of data within the regime or inadvertently discourage broader participation.

FinTech Australia recommends that further refinements to the Draft Rules may be needed to better align with these objectives before implementation. We remain committed to working closely with the

[1] The Hon Stephen Jones MP, ' Expanding the Consumer Data Right to non-bank lending' (Media Release, 26 November 2024).

Treasury and the Data Standards Body to help ensure the CDR delivers its intended benefits for all stakeholders.

1 Proposed update to 'de minimis' threshold for non-bank lending

1.1 Monetary limb

As outlined in our previous submission on the initial draft of these Rules,[2] some FinTech Australia members consider that including initial and large providers within scope based on their loan book value does not account for the wide variability in businesses captured by the non-bank lending sector, which range from non-bank mortgage providers to buy now, pay later providers. As an alternative to the currently proposed model, FinTech Australia considers categorising non-bank lenders (**NBL**s) into sub-sectors and designing tranches (or thresholds) on this basis could provide a more useful and efficient approach for the purposes of the diverse non-bank lending sector. For example, capturing a critical mass of providers across each sub-sector of the NBL segment is more useful than capturing the largest providers across the whole NBL sector (which may end up excluding some sub-sectors in the non-bank lending space). This could help better calibrate the de minimis thresholds to balance supporting broader participation and innovation in the CDR ecosystem with reducing barriers and costs for a variety of smaller entities.

Newly proposed $1bn threshold

While members are supportive of reducing the compliance burden and costs for smaller entities, some members believe this threshold may not strike the right balance, as it would almost certainly exclude a range players from the initially estimated 1500 NBLs[3], risking hindering the overarching aim of fostering greater participation and broader engagement in the CDR ecosystem, and reducing the pool of CDR data for valuable use cases. For example, at least one member considers that the higher monetary threshold will exclude NBLs with significant online presences and customer numbers (where customers each hold very small-sized loans or finance leases) and that these NBLs should be brought online in the CDR ecosystem. They believe failure to do so will prevent those customers from better understanding, accessing and controlling the data held by financial service providers.

Some members also expressed concerns about the potential for inconsistent standards between NBLs, subject to the de minimis threshold, and banks, with no such threshold. This may mean that a small bank or credit union would not be subject to CDR obligations (and associated costs) if they were an NBL, as they would fall under the de minimis thresholds for NBLs. For example, the Central Murray Credit Union has a loan book size of $80m, according to its latest annual report, so would not meet the monetary limb of the de minimis threshold, were it a NBL. To avoid the potentially unfair application of inconsistent standards across different parts of the financial services industry, some members prefer, in the absence of a consistent threshold, at least a lower monetary threshold to help level out the discrepancy - for example, the originally proposed $500m.

Other members supported the newly proposed $1bn threshold, maintaining that the CDR must be applied progressively and with a strong focus on the technological and financial capabilities of smaller businesses. Participating in the CDR regime requires significant investment in new technology, people expertise, and ongoing compliance and administrative efforts—resources that many smaller organisations and start-ups may not be able to meet at this stage. They

[2] FinTech Australia's submission 'Consumer Data Right draft rules: Expansion to the non-bank lending sector (Oct 2023).

[3] As of 2022. Source: Consumer data right in non-bank lending CDR rules and data standards design paper <https://treasury.gov.au/sites/default/files/2022-12/c2022-341682_0.pdf>.

consider that applying the higher threshold ensures that designated entities are those with the scale and financial maturity to participate effectively, without imposing undue burdens on smaller businesses. They noted that by allowing smaller firms to focus on reaching financial maturity before undertaking CDR compliance, this fosters innovation both inside the framework (through accredited third parties) and outside the framework (by reducing barriers for smaller players).

Estimates of the number of NBLs excluded from the regime

Despite differing views on the updated monetary threshold, the majority of members were united in the view that estimates of the number of NBLs that would now be excluded from the mandatory data-sharing regime (based on the updated de minimis threshold) would help inform an evidence-based assessment of whether the thresholds are appropriate in achieving the twin aims of fostering greater participation and innovation in the CDR system, with easing compliance burden and cost for smaller entities. With this data, Treasury could undertake a deeper assessment of the likely impact of the higher threshold based on the number of entities excluded.

Voluntary participation by NBLs that do not meet the de minimis threshold

Finally, FinTech Australia welcomes the clarifications made in the Draft Rules that NBLs that do not meet the de minimis threshold can voluntarily participate in the regime (see our detailed response at 2.3 of this Submission). This helps develop the maturity of the NBL sector while enhancing the safety and security of data sharing, ensuring better outcomes for both businesses and consumers.

1.2 Customer number limb

FinTech Australia members are generally supportive of the proposal to set the de minimis threshold at 1,000 or more customers. They believe this approach is a practical means of reducing the compliance burden for smaller entities while encouraging broader participation in the CDR ecosystem. However, members are concerned about the potential for Data Holders to introduce fees for enabling consumers to access their data through alternative arrangements or third-party providers. Such fees could create significant barriers to entry for smaller players and risk stifling innovation within the CDR ecosystem.

2 Clarification of obligations for loan managers, related entities and white labelling

2.1 Loan managers

FinTech Australia members are generally supportive of the proposal for CDR data-sharing obligations to apply to loan managers (i.e. servicer entities) that provide credit on behalf of a principal NBL.

Members are supportive of the proposal to allow businesses to elect to discharge the obligations of another provider per the terms of an agreement (that is, to allow a principal NBL to discharge the CDR obligations of a loan manager). They consider that principal NBLs and the relevant loan managers are best placed to make suitable arrangements.

2.2 *Related entities and white labelling arrangements*

FinTech Australia members generally welcome proposals to simplify the implementation of the CDR regime and consider the proposed related bodies and white labelling arrangements to be a sensible approach to allow businesses with multiple brands to manage the CDR regime under a single umbrella entity. Having the endpoint serviced by the main Data Holder entity is a sensible change, particularly where NBLs do not exhibit the same characteristics as ADIs. If Treasury's ultimate intention with this proposal is to simplify the implementation of the CDR, then members are generally supportive of this proposal.

Some members consider that there is an opportunity for the regulations to make that intention – if that is indeed the intention - clearer, so that businesses are more comfortable with satisfying their obligations under the regime.

Other members raised the point that a consumer may only know about the brand that they are directly dealing with, and not any other related bodies operating under different brands. There are potentially more brands than NBLs, so it can be important for consumers to deal with the brand itself directly, rather than aggregating under one umbrella.

2.3 *Clarification that a non-bank lending data holder, which does not meet the threshold, may choose to join the CDR by notifying the ACCC*

FinTech Australia supports clarifying that NBLs who fall below the de minimis threshold can nevertheless choose to participate in the CDR by notifying the ACCC. Participation in the CDR, even on a voluntary basis, enhances the safety and security of data sharing, ensuring better outcomes for both businesses and consumers.

We note the Draft Rules allow NBL data holders who voluntarily participate in the CDR to share product (including product reference data) or consumer data. At least one member emphasised that they agree NBLs should have the option to make their product reference data available if they believe they are at a competitive disadvantage for it not to be visible.

3 Implementation timeline

FinTech Australia members have expressed differing views about the proposed implementation timeline. Some members believe a 12-month implementation timeline is appropriate, particularly given decreasing industry costs, the changes contemplated in these Draft Rules to simplify compliance and recently enacted operational enhancements to the regime.[4] Others, however, remain cautious, citing the significant time and resources required to implement system changes effectively.

To better support the CDR regime, members have proposed varying timelines to strike a balance between timely implementation and practical feasibility. Some members advocating for a 12-month implementation period believe it provides an achievable timeframe to deliver the necessary system changes. Others suggest a phased approach of a different kind than currently proposed, with product reference data sharing commencing in January 2026, followed by consumer data-sharing obligations within six months. This, they suggest, would be a pragmatic compromise given that consumer data and product data do not need to be implemented in

[4] Competition and Consumer (Consumer Data Right) Amendment (2024 Measures No. 1) Rules 2024

tandem, and product reference data can be quickly deployed to provide consumers with the opportunity to compare NBL and bank products sooner.

As highlighted in our previous submission[5], proportionality and flexibility must be key considerations, particularly given other concurrent CDR developments, including the implementation of action initiation and the planned phase-out of screen scraping which will need to be carefully sequenced given the recent directive[6] to Treasury to develop a plan for a formal ban. Ensuring the correct sequencing of this transition alongside the implementation timeline could help minimise disruption for NBLs and ADRs while aligning with the broader CDR objectives.

While views on the optimal timeline differ, members agree on the importance of a measured approach that acknowledges the operational challenges faced by NBLs while ensuring that the regime delivers timely and meaningful benefits to consumers, businesses, and the broader financial ecosystem.

4 Narrowing the scope of products

FinTech Australia members who provided feedback generally do not object to the exclusion of consumer leases, margin loans and reverse mortgages from the mandatory data-sharing obligations and acknowledge this could meaningfully reduce the compliance burden on smaller entities while not hindering high-value use cases. They do not consider any other types of accounts or products should be excluded from the scope. Some members, however, do not support foreign currency (**FX**) accounts and asset finance being excluded from scope as currently proposed (as outlined further below).

We understand that the 'niche' products for which data sharing is voluntary are those listed above 'or' those with less than 1,000 eligible CDR consumers. Based on this understanding, some members are of the view that the Rules should only exclude the products above from mandatory data sharing obligations if they also each have fewer than 1,000 eligible CDR consumers (with data sharing becoming optional below this threshold). That is, products should only be excluded from mandatory data sharing where they meet both the product type 'and' customer number limbs. This, they contend, would ensure that excluded products are, indeed, 'niche' and unlikely to facilitate high-value use cases of broad appeal.

Foreign Currency accounts

Contrary to the assertion that FX accounts represent a 'niche' product, some members have indicated that these accounts are well used by both individuals and businesses, especially fintech and accounting platforms serving small to medium-sized enterprises (SMEs). Recent data shared by a member reveals that:

- FX accounts account for almost 3% of all consented accounts, rising to 4.5% when focusing exclusively on business accounts; and

[5] FinTech Australia's submission 'Consumer Data Right draft rules: Expansion to the non-bank lending sector (Oct 2023).
[6] The Hon Stephen Jones MP speech to CEDA 'Putting consumers first in the Consumer Data Right' (09 August 2024).

- among medium-sized businesses, this figure exceeds 10%, and for larger or more complex businesses, it may reach as high as 30%, with NZD and USD being the most common currencies.

According to some members, these findings highlight that FX accounts are far from peripheral; rather, they are integral to the operations of many Australian businesses. More critically though, they highlighted the potential significant use cases that could be enabled if FX accounts are brought within the scope of the mandatory data-sharing regime - even with only the targeted inclusion of some FX account product data, such as exchange rates for the most widely exchanged currencies[7]. This would balance utility and compliance feasibility and support valuable tools such as:

- third-party comparison platforms, including government-funded services like Send Money Pacific[8], which help consumers compare international transfer rates; and
- fintech applications that drive greater transparency and competition for FX services, ultimately delivering better outcomes for consumers and businesses.

Members note that the targeted inclusion of FX product data could unlock innovation while supporting CDR's core objectives of increasing data-driven competition and improving consumer outcomes. Similar proposals have been positively received in other jurisdictions, such as New Zealand[9], further demonstrating the potential benefits of FX product data sharing.

Asset Finance

Further, some members consider that given the potential breadth of products included within asset finance, excluding asset finance from the mandatory CDR data sharing could potentially give rise to several unintended effects:

1. **Incomplete financial insights**: By excluding critical data, businesses are left with an incomplete view of their financial position. This can hinder the ability of these businesses, and their financial service providers, to make accurate, informed decisions.
2. **Disrupted user experience**: Users increasingly expect seamless access to comprehensive financial information. A fragmented approach, where some data is accessible via CDR while other data requires alternate methods, creates unnecessary complexity and diminishes user satisfaction.
3. **Lower CDR adoption**: The success of the CDR hinges on its ability to offer a holistic view of a customer's financial landscape. Limiting its scope weakens its value proposition, potentially discouraging businesses and consumers from embracing the framework.
4. **Greater reliance on screen scraping**: Restricting the scope may force businesses to revert to outdated, less secure methods like screen-scraping to gather the data needed for accounting and financial planning. This undermines the CDR's core objective of promoting secure and standardised data-sharing practices.

For these reasons, these members have recommended that asset finance remain within the product scope of the mandatory data sharing obligations or that, at minimum, the category of

[7] For instance, such as exchange rates for the top 30 currencies on a 15-minute rolling API.
[8] E.g., See - https://sendmoneypacific.org/.
[9] New Zealand Ministry of Business, Innovation & Employment, *'Open banking regulations and standards under the Customer and Product Data Bill Discussion Paper'* (Aug 2024).

products within asset finance be more carefully parsed to determine which could be practically excluded without risking the impacts above and still reducing the compliance burden for smaller entities. Given this, we also recommend that Treasury provide further information on the types of products and accounts that would be considered part of this category (beyond the two examples provided) to help better inform an assessment of the likely impact of its exclusion.

5 Other matters

5.1 Historical consumer data

FinTech Australia members are broadly neutral on the proposed reduction of the data retention period from seven years to two years, with many viewing two years as a reasonable compromise between reducing compliance burdens and maintaining data utility. However, members emphasise that the retention period should not be reduced further, as two years represents a practical timeframe that includes the current year's accounts and the previous year's data. Additionally, some members have expressed concerns about the potential impact of this change on existing consents that currently cover data over a seven-year period.

To mitigate these concerns, FinTech Australia recommends Treasury provide clear and detailed guidance on the transitional arrangements for these consents. Providing a seamless transition is essential to upholding trust in the CDR regime and avoiding disruptions to services that depend on access to historical data during the adjustment period.

5.2 Excluding information relating to financial hardship and repayment history from the definition of 'customer data'

The exclusion of financial hardship data and repayment history from the definition of '***customer data***' raises concerns about the accuracy, completeness, and practical utility of CDR data. FinTech Australia has previously highlighted that these exclusions could undermine the ability of the CDR to deliver on its core objectives of empowering consumers to compare products and make informed financial decisions.[10]

Consumers experiencing financial hardship are among those most likely to benefit from the CDR's use cases, such as identifying more affordable or suitable financial products. However, excluding hardship and repayment history information limits their ability to provide a full and accurate financial profile, which is critical for lenders assessing their eligibility or determining appropriate terms. Without this data, consumers may not receive an accurate indication of the true costs or suitability of alternative products.

For lenders, the absence of financial hardship and repayment history in CDR data creates inefficiencies and additional compliance burdens. Lenders would either need to rely on independent non-CDR processes to obtain this information or proceed without a complete understanding of the consumer's financial circumstances, potentially leading to suboptimal or risk-averse lending decisions.

This exclusion risks reducing the attractiveness of CDR data for non-bank lenders, particularly in the context of customer data. The incompleteness of CDR data could dissuade lenders from integrating it into their processes, thereby limiting the overall adoption and utility of the CDR

[10] This was highlighted in the context of exclusions from the definition of 'account data', but we believe the same considerations apply.

regime. Additionally, this could have broader implications for the uptake of action initiation, especially as it relates to lending use cases. Maintaining exclusions for financial hardship data and repayment history could hinder the regime's ability to deliver comprehensive benefits to consumers and the broader financial ecosystem.

5.3 Dispute resolution

Some FinTech Australia members were supportive of designating AFCA as the dispute resolution adjudicator and noted that establishing a separate CDR body for dispute resolution would only add unnecessary complexity to the process. As alluded to in our previous submission, the designation of AFCA as the adjudicator should be accompanied by measures to ensure it is equipped to handle the technical complexities of data-sharing and data standards disputes, which are only set to grow in volume. This will help maintain trust in the CDR regime while mitigating the need to establish a separate adjudication body.

5.4 Nominated representatives

FinTech Australia and its members understand that the issues around appointing nominated representatives are being considered in a separate consultation. Nevertheless, some members noted that aspects of the nomination process, including selections around minimum customer numbers and thresholds on what products are online, should align with the overall goals of the CDR, including the changes being proposed in this round of consultation. As previously mentioned in our separate recent submission on draft consent and operational changes to the Rules[11], to better support key use cases, members recommend that the Rules deem any individual with administrative authority over an account eligible to exercise rights over CDR data. Leveraging existing processes to appoint such individuals as nominated representatives would reduce operational and technical costs for data holders, accelerate system implementation, and enhance the utility of the CDR framework. Importantly, this approach would also discourage reliance on less secure alternatives, such as screen scraping, while promoting broader adoption across the ecosystem.

Small businesses and accounting platforms represent a particularly high-value use case for the nominated representatives' process. The accounting services use case, for example, has the potential to transform how millions of Australian small businesses manage their finances. Many businesses currently rely on outdated and inefficient methods, such as manual processes, screen scraping, or direct bank feeds, to reconcile accounts and perform essential tasks. These methods lack the security, efficiency, and comprehensive insights that the CDR framework is designed to provide.

Members have also identified simplifying the nomination process as critical to enabling small businesses to engage effectively with multiple Data Holders, including ADIs and NBLs. Allowing small businesses to appoint a single nominated representative to interact with multiple Data Holders would reduce complexity and better align the CDR framework with existing business practices, driving adoption and efficiency.

Currently, account administrators share data using traditional methods like file exports or screen scraping. While these practices are commonplace, they lack the security and transparency

[11] FinTech Australia's Submission '*Consumer Data Right Rules: consent and operational enhancements amendments consultation'* (Sep 2024).

provided by the CDR. Granting data-sharing privileges to account administrators by default under the CDR framework would harmonise data-sharing practices with existing norms, eliminate unnecessary barriers to adoption, and empower businesses to securely access the full benefits of the CDR. Recognising the inherent trust placed in account administrators and enabling them to leverage the CDR without friction would promote widespread adoption and reinforce the regime's value proposition.

In another use case, one of our members also highlighted limitations in the nominated representatives' process, particularly for larger businesses managing FX accounts. Despite FX accounts being raised in approximately one in three sales and support interactions, these accounts often fall into the categories that Data Holders refuse to share under the CDR, creating further challenges for businesses seeking comprehensive solutions.

Finally, many businesses rely on trusted advisers, such as BAS agents, accountants, and lawyers, to manage financial records and administrative tasks. These advisers typically have secondary user access, allowing them to view, download, and manage business account information. It is therefore reasonable to allow trusted advisers with such access to provide consent and collect data under the CDR framework for legitimate purposes, such as accounting and business administration.