EXPOSURE DRAFT EXPLANATORY MATERIALS

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

Competition and Consumer Act 2010

Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2023

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

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

The CDR framework is set out in Part IVD of the Act and the *Competition and Consumer (Consumer Data Right) Rules 2020* ('CDR Rules'). Under the CDR, individuals ('CDR consumers') may, through trusted third parties, request access to certain data sets relating to them. Data holders are required or authorised to provide access to the data, subject to controls ensuring the data's quality, security and confidentiality. Data holders are also required or authorised to provide access, on request, to publicly available information on specified products that they offer.

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

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

In December 2022, the Treasury released a consultation paper on rolling out the CDR to the non-bank lenders sector. Consultation closed on 31 January 2023. Stakeholder feedback provided during this process has been taken into account in developing these rules ('Amending Rules').

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

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

- eligibility requirements for consumers seeking to make requests for CDR data;
- provisions specifying in-scope products and data sets that may, or must, be provided on request;
- requirements for internal and external dispute resolution.

The Amending Rules also make minor changes to these core provisions that affect the obligations of authorised deposit-taking institutions ('ADIs') as existing data holders under Schedule 3. Such changes include the following:

- introducing data sharing in relation to 'buy now, pay later' products (subject to a deferral timetable to allow affected ADIs to make the necessary IT enhancements);
- excluding information relating to financial hardship and repayment history from the definition of 'account data';
- excluding consumer data relating to debts bought by debt buyers or debt collectors from the definitions of 'voluntary consumer data' and 'required consumer data';
- deferring obligations for entities that become ADIs after the commencement of the Amending Rules, with the aim of allowing CDR consumers timely access to product data while permitting new ADIs to complete the IT uplift needed to facilitate banking data requests.

The Amending Rules set out timeframes for the staged implementation of CDR in the non-bank lenders sector. In addition, they make minor consequential amendments to Parts 1 to 6 of the CDR Rules to reflect the widened scope of Schedule 3.

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

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

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

ATTACHMENT A

Details of the *Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2023*

Section 1 – Name of the Rules

This section provides that the name of the Amending Rules is the *Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2023*.

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1 – Amendments

Schedule 1, Part 1 – General amendments: references to non-bank lenders and miscellaneous minor changes

Part 1 of the amending Schedule primarily contains consequential amendments to provisions of the CDR Rules outside Schedule 3. In general, these amendments update existing references to the banking sector by either:

- adding a reference to the non-bank lenders sector; or
- in the case of a provision no longer relevant to the banking sector, but applicable to the non-bank lenders sector – mentioning the latter sector in place of the former.

Part 1 also makes several minor machinery changes not wholly related, or unrelated, to Schedule 3.

[Schedule 1, items 1-3 and 6-14; various provisions of the CDR Rules]

In addition, Part 1 of the amending Schedule broadens the definition of 'sector Schedule' in rule 1.7 so that it denotes a Schedule to the CDR Rules that deals with 'a particular designated sector or sectors'. This aligns with the expansion of Schedule 3. Also included is a new provision that explicitly activates the Schedules. This allows the Schedules to modify the operation of core provisions of the CDR Rules in respect of particular sectors without being explicitly empowered to do so by the provision in question.

[Schedule 1, items 4 and 5; subrule 1.7(1) and new rule 1.6A of the CDR Rules]

Schedule 1, Part 2 – Schedule 3 amendments: extension of the CDR scheme to the non-bank lenders sector

Excluded data holders

New clause 1.1A of Schedule 3 exempts certain data holders from complying with the CDR Rules. Excluded data holders in the banking and non-bank lenders sectors are:

- entities, such as religious charitable development funds, that offer retail lending products for the sole or dominant purpose of furthering religious or charitable purposes; and

- foreign ADIs, foreign branches of domestic ADIs and restricted ADIs.

The second class of excluded data holder reflects the current exemption of foreign ADIs, foreign branches of domestic ADIs and restricted ADIs from data-sharing obligations under Schedule 3. The first class is intended to clarify the existing policy setting in relation to certain bodies established for religious or charitable purposes, which are typically not required to be authorised lenders.

[Schedule 1, item 16; subclause 1.1A(4) of Schedule 3 to the CDR Rules].

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

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

- 'accounting standard' means an accounting standard made under section 334 of the *Corporations Act 2001*;

- 'banking sector data' means CDR data covered by the *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019*;

- 'covered product' has the meaning given by clause 1.4 of Schedule 3 (see the discussion of that clause, below);

- 'NBL sector', or 'non-bank lenders sector' means the sector of the Australian economy designated by the NBL sector designation instrument*;*

- 'NBL sector data' means CDR data covered by the NBL designation instrument;

- 'NBL sector designation instrument' means the *Consumer Data Right (Non-Bank Lenders) Designation 2022*;

- 'relevant non-bank lender' has the meaning given by the NBL designation instrument (essentially, this definition covers registrable corporations for the purposes of section 7 of the *Financial Sector (Collection of Data) Act 2001,* but without the $50 million threshold in that section applying).

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

[Schedule 1, item 16; clause 1.2 of Schedule 3 to the CDR Rules]

Redundant defined terms

The following defined terms are no longer used in Schedule 3, and are to be repealed:

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

[Schedule 1, item 16; clause 1.2 of Schedule 3 to the CDR Rules]

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

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

The Amending Rules apply the following existing definitions for classes of CDR data in both the banking and non-bank lenders sectors.

- 'Customer data' means information that identifies or is about a person, including their name, contact details, information provided at the time they acquired a covered product and information relating to their eligibility to acquire that product. Eligibility information may include whether the product is only available to the person because they are an existing customer or a member of a particular class of customers (for example, concession card holders).

- 'Account data' means information that identifies or is about the operation of an account, including the account number, account balances and any authorisations on the account, such as direct debit deductions and scheduled payments. However, 'account data' does not include 'financial hardship information' or 'repayment history information' within the meanings of subsections 6QA(4) and 6V(1) of the *Privacy Act 1988* respectively. Essentially, financial hardship information relates to an individual's inability to meet their obligations in relation to consumer credit and the resultant introduction of an altered repayment arrangement. Repayment history information relates to the details of an individual's repayment arrangement.

- ‘Transaction data’ means information that identifies or describes the characteristics of a particular transaction relating to a covered product, including the amount, the date on which the transaction occurred and the party to whom the transaction was made.

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

The Amending Rules apply these definitions to both the banking and non-bank lenders sectors.

[Schedule 1, item 16; clause 1.3 of Schedule 3 to the CDR Rules]

Covered products for the banking and non-bank lenders sectors

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

The intention is that the list of covered products in clause 1.4 should capture retail products offered by banks and non-bank lenders. A ‘covered product’ will be subject to data sharing if it is publicly offered under a standard form contract. A product is not considered to be publicly offered unless the relevant contractual arrangements are subject to only low levels of negotiation. Products offered under modified standard form contracts that result in more advantageous terms for particular customers would be regarded as having low levels of negotiation. ***[Schedule 1, item 16; subclause 1.4(1) of Schedule 3 to the CDR Rules]***

A product need not 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 publicly offered is an ‘invitation-only’ product offered to select individuals based on criteria that are not publicly available or are commercially sensitive. ***[Schedule 1, item 16; subclause 1.4(2) of Schedule 3 to the CDR Rules]***

Buy now, pay later products

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

- the involvement of a third-party financing entity;

- the provision of finance for consumers which can be used to pay for purchases of goods, services and bills (but not for the purposes of supplying cash);

- the imposition of a fixed charge for providing credit under a prescribed limit instead of charging interest;

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

[Schedule 1, item 16; clause 1.4 of Schedule 3]

Reverse mortgages

For the avoidance of doubt, reverse mortgages have been included as covered products. These products were assumed to be covered by the previous list of phased products for the banking sector. Hence, their explicit inclusion is not intended to create new banking-sector obligations. ***[Schedule 1, item 16; clause 1.4 of Schedule 3 to the CDR Rules]***

Trial products

The *Competition and Consumer (Consumer Data Right) Amendment Rules (No. 1) 2023* introduced the concept of 'trial products' to the CDR Rules by inserting clause 1.5 in Schedule 3. It provides that data sharing obligations do not apply to banking products while they are trial products, but that CDR data generated during a product's trial period is subject to data sharing when the trial period ends.

The Amending Rules extend the application of clause 1.5 to the non-bank lenders sector. ***[Schedule 1, item 16; clause 1.5 of Schedule 3 to the CDR Rules]***

Eligible CDR consumers, account privileges and consumer dashboards

Existing Part 2 of Schedule 3 will be broadened by inserting references to the non-bank lenders sector as appropriate. This Part sets out additional eligibility requirements to those imposed by rule 1.10B of the CDR Rules, defines 'account privileges' in respect of secondary users in both sectors, and requires data holders in both sectors to provide eligible CDR consumers with consumer dashboards. ***[Schedule 1, item 16; Part 2 of Schedule 3 to the CDR Rules]***

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

- must be an individual who is 18 years or older, or a person who is not an individual; and

- must be an account holder or secondary user of an open account with the data holder, or a partner in a partnership for which there is an open account with the data holder.

For the banking and non-bank lenders sectors, the account mentioned in rule 1.10B must be set up in such a way that it can be accessed online. Online access to an account may involve a range of modalities, including access via an online portal (whether by logging in or using a one-time password) or app-based access.

Under the CDR Rules, a 'secondary user' of an account with a data holder in a designated sector is a person over 18 who has account privileges in relation to the account and is endorsed by the account holder as a secondary user (see subrule 1.7(1)). A person with 'account privileges' is defined in Schedule 3 as a person able to make transactions on an account relating to a covered product.

If a data holder in the banking or non-bank lenders sector receives a consumer data request on behalf of an eligible CDR consumer, the data holder must provide the consumer with the consumer dashboard.

Non-bank lenders sector data unable to be accessed under the CDR Rules

The Amending Rules repeal and substitute Part 3 of Schedule 3. That Part deals with CDR data that may be accessed under the CDR Rules. Certain data sets are excluded from data-sharing under the CDR regime. This is done by setting out circumstances in which the relevant data is neither required nor voluntary consumer data.

Data relating to accounts other than 'relevant accounts' is largely excluded. This new defined term denotes an account with a data holder of banking sector data or non-bank lenders sector data and relating to a covered product. The account must be held by a CDR consumer in their name alone or as a joint account holder, or be the account of a partnership of which the consumer is a partner.

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

This exclusion aims to exclude balances bought from other lenders where the customer is in financial hardship and has defaulted on their payments. Individuals who are subject to debt collection are likely to be in financial hardship. Accordingly, the mere fact that an individual's debt is with a debt collector is likely to signal financial hardship. To protect such individuals, such data is outside the scope of the CDR in the banking and non-bank lenders sectors.

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

- historical data relating to transactions occurring more than 7 years before the time a data request is made or direct debit deductions occurring more than 13 months before the time a data request is made (where the relevant account is an open account);

- data that relates to a relevant account that is a closed account, being:

  – account data, transaction data and product specific data where an account has been closed for more than 24 months before the time a data request is made; or

  – transaction data for a transaction that occurred more than 12 months before the account was closed, where an account has been closed for less than 24 months before the time a data request is made; or

  – data on direct debit deductions where an account has been closed for any period of time.

[Schedule 1, item 16; Part 3 of Schedule 3 to the CDR Rules]

Dispute resolution processes in the non-bank lenders sector

Under the CDR Rules, the expressions 'meet the internal dispute resolution requirements' and 'meet the external dispute resolution requirements' have sector-specific meanings. Existing Part 5 of Schedule 3 sets out what it means to meet these requirements in the banking sector. This Part will be extended to cover the non-bank lenders sector. Broadly, the intention is to reflect prevailing dispute resolution arrangements in the non-bank lenders sector rather than to impose new obligations. This is discussed in more detail below. ***[Schedule 1, items 17-21; Part 5 of Schedule 3 to the CDR Rules]***

Meeting internal dispute resolution requirements

Accredited persons and data holders must comply with the Australian Securities and Investments Commission's Regulatory Guide 271. That guide deals with matters such as commitment and culture, the enabling of complaints, resourcing, responsiveness, objectivity and fairness, complaint data collection or recording, and internal reporting and analysis of complaint data.

Meeting external dispute resolution requirements

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

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

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

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

The Amending Rules repeal existing Part 6 of Schedule 3 and substitute a new Part 6 dealing principally with staged implementation for the non-bank lenders sector. Obligations are switched on progressively on the basis of both classes of non-bank lenders and categories of data to be shared. The new Part 6 preserves the ability for banks to voluntarily participate in data sharing and extends this option to non-bank lenders. ***[Schedule 1, item 22; Part 6 of Schedule 3 to the CDR Rules]***

Classes of non-bank lenders

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

An 'initial provider' is a data holder of NBL sector data that, on the commencement of the Amending Rules:

- has more than $10 billion in resident loans and finance leases for the calendar month preceding the commencement date; and
- has averaged over $10 billion in resident loans and finance leases over the previous 11 calendar months.

A 'large provider' is a data holder of NBL sector data that, on the commencement of the Amending Rules or a later date:

- has over $500 million, but less than or equal to $10 billion, in resident loans and finance leases for the calendar month preceding that date; and
- has averaged over $500 million, but less than or equal to $10 billion, in resident loans and finance leases over the 11 previous calendar months; and
- has more than 500 customers.

The total value of the lender's resident loans and finance lease balances is to be calculated in accordance with the applicable accounting standards and standards made by Australian Prudential Regulation Authority under the *Financial Sector (Collection of Data) Act 2001.* In calculating the total value of the relevant loans and leases, the lender must account for all loans and leases that are required to be consolidated on the lender's balance sheet in accordance with those standards. In 2023, the relevant standard is set out in the *Financial Sector (Collection of Data) (reporting standard) determination No. 9 of 2022.*

'Finance lease' has the meaning given by the accounting standard known as *AASB 16 – Leases.* A 'loan' is a financial asset that has been created by the lender directly lending funds to a debtor which is evidenced in non-negotiable documents. A 'resident loan' is a loan issued by the lender to a person or group of individuals whose principal place of residence or business is in Australia.

Non-bank lenders that are also accredited persons and do not satisfy the criteria for being a 'large provider' on a particular day are nonetheless deemed to be large providers as of that day for the purposes of the phase-in timetable. Obligations for both product and consumer data sharing apply to such data holders.

Once a non-bank lender becomes a 'large provider' by meeting all applicable criteria, it must comply with all relevant CDR obligations, even if it subsequently ceases to meet any of the criteria. For example, if a non-bank lender meets the definition of a 'large provider' but subsequently drops below 500 customers, it will continue to be subject to data sharing obligations. This is on the basis that the definition of a 'large provider' requires a lender to have met the applicable criteria for a year, so it is likely that such a lender will have ongoing capacity to meet their CDR obligations.

Timetable for the staged implementation

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

Tranche 1 of the rollout begins on 1 November 2024, when Part 2 of the CDR Rules, which deals with product data requests, begins to apply to initial and large providers. This will result in product data being made available as early as possible to consumers while allowing non-bank lenders time to prepare the necessary infrastructure for responding to consumer data requests.

Tranche 2 of the rollout begins on 1 February 2025, when Part 4 of the CDR Rules, which deals with consumer data requests, begins to apply to initial providers, except in respect of complex requests. A 'complex request' is a consumer data request that:

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

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

Tranche 3 of the rollout begins on 1 May 2025, when Part 4 of the CDR Rules begins to apply to initial providers in respect of complex requests.

Tranche 4 of the rollout begins on 1 August 2025, when Part 4 of the CDR Rules begins to apply to large providers, except in respect of a complex request.

Tranche 5 of the rollout begins on 1 November 2025, when Part 4 of the CDR Rules begins to apply to large providers in respect of complex requests.

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

Deferred compliance arrangements for certain data holders

As noted above, a deferral schedule applies to large providers on the basis of when they attain that status. They are divided into two classes: those that were large providers on or before 1 November 2023, and those that become large providers after that date. A large provider in the latter class is required or authorised to share CDR data from the following dates:

- for product data requests under Part 2 of the CDR Rules – 12 months after the day it became a large provider (its 'LP date');
- for consumer data requests under Part 4 of the CDR Rules, other than complex requests – 15 months after its LP date;

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

An entity that becomes an ADI after the commencement of the Amending Rules has the same deferred compliance periods of 12, 15 and 18 months in relation to the 3 types of data requests set out above, starting from the day it became a banking sector data holder.

[Schedule 1, item 22; Part 6 of Schedule 3 to the CDR Rules]

Compliance schedule for providers of buy now, pay later products

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

If a banking data holder has offered BNPL products prior to 1 November 2023 (12 months before the tranche 1 date), it must share data from the following dates:

- for product data requests under Part 2 of the CDR Rules – the tranche 1 date;
- for consumer data requests under Part 4 of the CDR Rules, other than complex requests – the tranche 4 date;
- for complex consumer data requests under Part 4 of the CDR Rules – the tranche 5 date.

If a banking data holder starts to offer a BNPL product after 1 November 2023, the data sharing obligations depend on when the data holder started to offer that product. It may or must share such data from the following dates:

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

Voluntary participation by non-bank lenders

Non-bank lenders that do not qualify as 'initial providers' or 'large providers', and are not 'excluded data holders', and are not accredited, are exempt from having to provide product and consumer data, but can do so voluntarily. This is achieved by extending the coverage of clause 6.6. That clause has also been simplified for clarity and ease of understanding.

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

Non-bank lenders in all classes may choose to disclose data in accordance with the CDR Rules before their compliance date. For example, early data sharing may be undertaken for testing purposes.

[Schedule 1, item 22; Part 6 of Schedule 3 to the CDR Rules]

Non-applicability of Part 3 of the CDR Rules

As is the case with the energy sector, direct-to-consumer data sharing is not enabled for the banking and NBL sectors.

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

Part 7 of Schedule 3 sets out modifications of the CDR Rules for the banking and non-bank lenders sectors and contains other miscellaneous provisions. ***[Schedule 1, Items 23-26; Part 7 of Schedule 3 to the CDR Rules]***

These provisions include conditions for accredited persons to become data holders for the purposes of section 56AJ(4) of the Act. An accredited person to which banking or NBL data relating to a CDR consumer is disclosed may become a data holder of that data, if:

- the person is an ADI or a relevant non-bank lender; and
- the CDR consumer has acquired a product from the person; and
- the person reasonably believes the data is relevant to providing the product; and
- the person has explained to the consumer how the change of status will affect coverage of the privacy safeguards in respect of the data, the manner in which it proposes to treat the relevant CDR data and why it is entitled to provide the CDR consumer with this option; and
- the person has outlined the consequences to the consumer of not agreeing to the change of status; and
- the person has received the consumer's agreement to the change of status; and
- if the person became a data holder at the relevant time, they would not be an excluded data holder (that is, they would not be a religious charitable development fund, a foreign ADI, a foreign branch of a domestic ADI or a restricted ADI) or a data holder to whom these rules do not yet apply by virtue of Part 6 of this Schedule.

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

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

In these circumstances, if a product or consumer data request was in progress in the NBL sector, that request is taken to relate to the banking sector data of the data

holder, and must be dealt with accordingly. That is, if a consent or authorisation relates to such a request, the consent or authorisation does not expire merely because the entity has become a data holder in the banking sector.

As soon as practicable after an entity becomes a data holder in the banking sector, it must notify its CDR consumers that it has ceased to operate in the NBL sector, is now operating in the banking sector, and that consumers may choose to withdraw any consents and authorisations given in respect of existing consumer data requests. The entitlement to withdraw consents and authorisations is created by rules 4.20J and 4.25 of the CDR Rules.

[Schedule 1, item 27; Part 8 of Schedule 3 to the CDR Rules]

Schedule 1, Part 3 – Schedule 4 amendments: modification of energy sector rules

The Amending Rules include an additional obligation for energy retailer data holders, requiring them to transfer, in accordance with the data standards, any requests they receive for required product data to the Australian Energy Regulator or the Victorian Agency (as defined in Schedule 4 to the CDR Rules). Because both of these agencies remain the only data holders of required product data in the energy sector, retailers are only required to facilitate sharing of such data. The new obligation is expected to improve access to information about consumer energy plans offered by retailers. The new obligation would be a civil penalty provision.

[Schedule 1, items 28 and 29; clause 4.2 of Schedule 4 to the CDR Rules]

Treasury seeks feedback from interested parties as to the appropriate commencement date for this obligation.

Schedule 1, Part 4 – Application provision

An application provision preserves Schedule 3 in its unamended state in respect of data requests made under Part 2 or 4 of the CDR Rules before the commencement of the Amending Rules. However, it is intended that the amendments about entities transitioning from the NBL sector to the banking sector (see item 27 above) will apply to such requests. ***[Schedule 1, item 30]***