



via email data@treasury.gov.au

14 April 2022

Consultation on Consumer Data Right (CDR) Open Finance Sectoral Assessment Non-bank lending

We welcome the opportunity to provide our insights on the proposal to expand CDR to non-bank lending for the purposes of informing Treasury's sectoral assessment report. We believe our views will help support the government's overall goal of having these important reforms provide tangible benefits to Australian consumers.

The expansion of CDR to 'Open Finance' data is welcomed as it will build on data that is already available in banking, energy and telecommunications. This expansion not will not only raise the profile of CDR, but also the opportunities for innovation and competition.

Below are the key points of view we would like to put forward with regards to this consultation, and in attachment 1 we provide more detailed responses to the questions posed in the consultation paper:

- Whilst the most practical implementation of a Customer Data Right is via sectors and industries, holistically the government should always consider that any set of CDR rules created should consider the impact on innovators (recipients), consumers, and data holders. One evolving area of potential concern is that consumers will need to consent to provide data to multiple organisations across multiple sectors and industries, having different rules may create confusion, complexity and ultimately fewer benefits to the consumer.
- The non-banking sector holds significant insights into consumer behaviour that were once only held by traditional banks (or not captured due to consumers using cash or other schemes such as layby). Access to this sector's data could be important to innovators (data recipients) as, combined with data already covered by the designated banking sector, it could enable them to provide a more complete view of their liabilities and borrowing. Specific considerations for this sector includes:
 - many organisations captured by non-banking, may not have the capacity to develop and maintain comprehensive data governance frameworks - particularly when compared to the banking sector. As such rules set for this sector should also be accompanied by an active plan to uplift data governance capabilities within the sector to ensure CDR can be optimised for both businesses and consumers.
 - products and services in this sector are often accessed by consumers that don't qualify for traditional credit opportunities, for example bank issued loans, or new cohorts of consumers with no experience with traditional credit opportunities, e.g. young consumers. This requires more emphasis



on consent frameworks where some consumers may not have the financial or commercial literacy that exists in other sectors where CDR rules currently apply. We recommend Treasury ensure that adequate controls are put in place on data recipients (those seeking consumer consent) to ensure that their proposed usage is ethical and that consent frameworks ensure that the use and purpose is meaningfully understood by the customer before consent is given, and before data is shared in the CDR ecosystem.

- The non-banking sector is less standardised, and products are considered more agile and innovative than the traditional banking sector. In developing rules for this sector, Treasury should consider how the CDR rules balance innovation offered through open data, without impacting the typically faster / agile product lifecycle which is in this sector.
- In considering CDR in the non-banking sector, we recommend that Treasury comprehensively assess what products and services fall within the definition of non-banking. The definition outlined in the consultation paper, “A non-bank lender and financier is a business that offers consumers – both individual and business customers – loans, mortgages, personal finance, credit cards and other types of finance, but does not hold a banking license or accept deposits” is very broad. With Open Banking, ADI’s are the data holders, in this sector - as the consultation paper points out - there are no such equivalents. In determining the data holders for non-banking, careful consideration should be given to the scope, such that it is broad enough to meet the objectives of allowing customers to see their data right across a portfolio of liabilities, while being practical enough to ensure the rules can be implemented effectively. In doing so, we recommend prioritising the datasets that can offer the greatest benefit to consumers would be one way.

We would like to take this opportunity to thank the Treasury for the opportunity to contribute to the consultation process. If you need any further information, please feel free to contact me on 0438 565 299.

Yours sincerely,

A handwritten signature in black ink that reads 'Benson' in a cursive script.

Jon Benson
PwC Australia Partner



Attachment 1: Consultation questions

Question	PwC Australia point of view
Benefits and use cases	
<p>How could sharing non-bank lending data encourage innovation or new use cases for CDR data? Are there cross-sectoral use cases that non-bank lending data can support, in particular with Open Finance/Banking?</p>	<p>Open Banking did not provide a full picture of consumer spending behaviour, presenting a risk of innovative solutions being automated on fragmented or incomplete data. By expanding to non-bank lending data, there is potential for a more complete view of customer spending behaviour, opening the door to further innovation.</p>
<p>May the benefits of sharing non-bank lending data vary across particular consumer groups; for example, vulnerable consumers?</p>	<p>Certain consumer segments may tend to leverage non-bank lending over traditional banking products. Without access to this data, insights into segments may be biased toward those that utilise traditional banking, undermining the ability to assess data across all segments, including the most financially vulnerable.</p>
<p>Would the designation of non-bank lending improve competition between lenders, including leveling the playing field with banks, or lead to greater market efficiencies?</p>	<p>We believe there is potential for improved efficiencies.</p> <p>PwC has previously advised that there is merit in considering an agnostic industry/sector model where data is prioritised on its nature rather than who holds it.</p> <p>As such, opening access to consumer spending data regardless of the holder is likely to yield more insight and innovation than would otherwise be able to be achieved.</p>
Data holder and dataset	
<p>If non-bank lending is designated, which entities should be designated as data holders?</p>	<p>We believe the data holder designation should be broad enough to include the products identified in the consultation paper, but also extend to entities that settle transactions with vendors with a contractual obligation for customers to pay down that debt regardless of whether interest is payable, for example Buy Now Pay Later, Hire Purchase</p>



	Agreements, No Interest Loan Providers etc.
How should data holders be described in a designation instrument? Is there potential to leverage existing definitions (for example, the definition of 'registrable corporation' in the Collection of Data Act or 'credit facility' in the ASIC Act)?	There is merit in aligning the definition where practicable with existing acts.
Where lending is securitised or provided to a brand owner by a white labeller, does the same entity retain the legal relationship with the customer, as well as hold the data on the loan?	There will be terms and conditions with the provision of the <i>facility</i> that are made available to the customer. How that facility is provided (including securitisation) may be impractical to be managed through a consumer centric regime such as the CDR. In many cases these mechanisms may be highly confidential and a competitive differentiator for the facility provider.
Are there differences in the data held by non-banks and banks that would require adapting the rules and standards that apply to banks so that those rules and standards would apply to non-bank lenders? If so, why?	There is merit in conducting data modeling of products and services in a trial segment such as the Buy Now, Pay Later sector to validate that the concepts modelled in Open Banking are sufficient.
Are there products offered by non-bank lenders that aren't covered by the existing rules and standards applying to banking data in the CDR? Are there CDR rules and standards that apply to banking data that warrant exclusion for non-bank lenders?	While in many cases products could be equated to banking products, the terms and conditions (and associated transaction metadata) can vary.

<p>Are there any government-held datasets that would be complementary to privately-held datasets and could support possible use cases in non-bank lending?</p>	<p><i>No response provided.</i></p>
<p>What is the level of standardisation across products within business finance? Are there key datasets that are common across different types of business finance products that could be usefully compared? What are the key attributes of a product that would be useful for comparison services?</p>	<p><i>No response provided.</i></p>
<p>Privacy considerations and intellectual property</p>	
<p>Are there privacy concerns specific to non-bank lending that should be taken into account when considering the designation of the sector?</p>	<p>We provide the following comments with regards to all questions in this section:</p> <ul style="list-style-type: none"> • Consumer segments that traditionally opt for non-bank lending products are potentially more vulnerable in our communities. i.e. financially less literate, younger demographics and families on lower incomes. As such there may be limitations in relying on consent-based frameworks. • It may be necessary for the consumer consent framework to be enhanced to ensure less informed persons are able to meaningfully understand what they are consenting when authorising for their data to be moved from one entity to another. • The limitations of the current consent framework, and suggested remedies are currently being explored by the Attorney General's Department as part of the Australian Government's review of the Privacy Act 1988. We recommend Treasury consider this review as part of the sectoral review.
<p>Do you consider the existing privacy risk mitigation requirements contained in the banking rules and standards are appropriate to manage the privacy impacts of sharing non-bank lending data?</p>	
<p>Are there other examples of materially enhanced information specific to the non-bank lending industry?</p>	

	<ul style="list-style-type: none"> • The act of combining datasets may introduce the risk of targeted marketing around financial products to individuals beyond what the person can accommodate. As such it may be necessary to prohibit certain use-cases under Open Finance based on ethical considerations. • It may be necessary for a greater level of monitoring to ensure any restrictions are being complied with (i.e. verifying that the use of personal information complies with the consumer consent provided, and monitoring to detect non-authorized purposes that are deemed not allowed under Open Finance). • Materially enhanced information specific to the non-bank lending industry, could include: <ul style="list-style-type: none"> ○ Instant lending providers - alternative documentation that is submitted when applying for a loan which is offered by an organisation to improve the successful application of lending activities, ○ Buy Now Pay Later - collection of retail transaction data and spending behaviour data, or ○ Vehicle financing and novated leasing - product and transaction data about vehicle financing. <p>The examples would be dependent on the organisations, products and services that fall within the scope of ‘non bank lenders.’</p> • It is recommended prioritising the data sets that come into the scope of Open Finance. This should be prioritised based on the use cases that have the most consumer benefit.
Regulatory burden and cost considerations	
Feedback is sought on the potential	Reciprocation should be the guiding principle to assessing regulatory burden.



<p>costs or regulatory burden implications across the spectrum of potential data holders and scope of product types and datasets that could be captured.</p>	<p>Complying with regulatory programs such as CDR does require an organisation to have capabilities to enable and ensure compliance. This might not always be possible in start-up organisations, which features heavily in this sector.</p>
<p>What datasets would cost more for a data holder to share securely, and why?</p>	<p>In considering suitability for CDR, Treasury should consider market share and product maturity. The smaller the consumer base, and the newer the product, the less likely the cost / benefit threshold will be met.</p>
<p>Which entities, defined either by size or product offering, would be less suitable for CDR data holder obligations from a cost or technological sophistication point of view, and why?</p>	<p></p>
<p>What would be the likely cost of implementation and ongoing compliance with CDR data sharing obligations for your entity? Please provide detail where possible.</p>	<p></p>
<p>What barriers to product data sharing exist for your entity or product offering? Please provide information on the types of systems you use and whether there is the potential to limit access to information, such as where data storage obligations are outsourced to third-parties.</p>	<p></p>
<p>Does your business have consumers that are unable to access their account and transaction information online and, if so, what proportion of your customers are 'offline'?</p>	<p></p>