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

I, Stephen Jones, Assistant Treasurer and Minister for Financial Services, make the following rules.

Dated

Stephen Jones [**DRAFT ONLY—NOT FOR SIGNATURE**]
Assistant Treasurer and Minister for Financial Services

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1 Name

This instrument is the *Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|------------------------------|--|--------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| The whole of this instrument | The day after this instrument is registered. | |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 56BA of the *Competition and Consumer Act 2010*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendments

Part 1 General amendments: non-bank lenders

Schedule 1—Amendments

Part 1—General amendments: non-bank lenders

Competition and Consumer (Consumer Data Right) Rules 2020

1 Rule 1.4 (paragraphs beginning ‘Schedule 3’ and ‘Schedule 4’)

Repeal the paragraphs.

2 Subrule 1.6(12)

Repeal the subrule, substitute:

- (12) Schedule 3 to these rules contains details that are relevant to the banking and non-bank lenders sectors. Schedule 3:
- (a) sets out particular classes of data holder in those sectors to which these rules do not apply; and
 - (b) sets out the specific CDR data in respect of which requests under these rules may be made; and
 - (c) sets out the circumstances in which CDR consumers are eligible in relation to data holders in those sectors; and
 - (d) deals with the progressive application of these rules to those sectors.

3 Paragraph 1.6(13)(b)

Repeal the paragraph, substitute:

- (b) sets out the circumstances in which CDR consumers are eligible in relation to data holders in the energy sector; and

4 After rule 1.6

Insert:

1.6A The Schedules

The Schedules have effect.

Note: The sector Schedules may modify the operation of Parts 1 to 9 of these rules in relation to a relevant sector (whether or not a provision in those Parts specifically provides for a sector Schedule to deal with a particular matter).

Example: A sector Schedule may provide that these rules do not apply in relation to a particular class of data holders in the relevant sector.

5 Subrule 1.7(1), definition of *sector Schedule*

After ‘particular designated sector’, insert ‘or sectors’.

6 Subrule 1.7(1), amendment of listed definitions—banking and non-bank lenders sectors

Omit ‘banking sector’, substitute ‘banking and non-bank lenders sectors’ in the notes to the following definitions:

- (a) *eligible*;
- (b) *law relevant to the management of CDR data*;
- (c) *meet the external dispute resolution requirements*;
- (d) *meet the internal dispute resolution requirements*;

- (e) *required consumer data*;
- (f) *required product data*;
- (g) *voluntary consumer data*;
- (h) *voluntary product data*.

7 Subrule 1.7(3) (note)

Repeal the note, substitute:

Note: These rules will progressively apply to a broader range of data holders. For the banking and non-bank lenders sectors, see Part 6 of Schedule 3. For the energy sector, see Part 8 of Schedule 4.

8 Rule 2.1 (paragraph beginning ‘A product data request’)

Omit ‘banking sector’, substitute ‘banking and non-bank lenders sectors’.

9 Rule 3.1 (paragraph beginning ‘A request may be’)

Repeal the paragraph, substitute:

A request may be for the CDR consumer’s required consumer data, their voluntary consumer data, or both. Schedule 3 to these rules sets out:

- what is required consumer data and voluntary consumer data for the banking and non-bank lenders sectors; and
- the circumstances in which CDR consumers are eligible to request their CDR data for those sectors.

10 Rule 4.2 (note)

Repeal the note, substitute:

Note 1: The flowchart does not cover how consumer data requests are made using CDR representatives.

Note 2: Schedule 3 modifies the application of this Part in some respects where a data holder moves from the non-bank lenders sector to the banking sector.

11 Rule 4A.3 (note)

Repeal the note, substitute:

Note: The CDR data that can be requested on behalf a CDR consumer is governed by the relevant general provisions in the sector Schedules, so that, for example, customer data that relates to another joint account holder cannot be covered by a consumer data request (see paragraphs 3.2(4)(b) of Schedule 3 and 3.2(4)(b) of Schedule 4).

12 Rule 5.5 (notes)

Repeal the notes, substitute:

Note 1: See the Schedules to these rules for other circumstances in which this provision might operate differently for different designated sectors.

Note 2: For the banking sector, see clause 7.3 of Schedule 3.

13 Subrule 5.25(1) (note)

Repeal the note.

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Schedule 1 Amendments

Part 2 Schedule 3 amendments: extension to the non-bank lenders sector

14 Amendments of listed provisions—banking and non-bank lenders sectors

Omit ‘banking sector’, substitute ‘banking and non-bank lenders sectors’ in the following provisions:

- (a) rule 1.10B (note to heading);
- (b) subrule 1.15(1) (note 2);
- (c) subrule 2.3(1) (note);
- (d) subrule 2.4(2) (note);
- (e) subrule 2.4(3) (note 1);
- (f) subrule 3.3(1) (note);
- (g) subrule 3.3(3) (note);
- (h) subrule 3.4(2) (note);
- (i) subrule 3.4(3) (note 1);
- (j) subrule 4.4(2) (note 2).
- (k) subrule 4.5(1) (note);
- (l) subrule 4.5(2) (note 1);
- (m) subrule 4.5(3) (note 1);
- (n) subrule 4.6(2) (note 1);
- (o) subrule 4.6(4) (note 1);
- (p) subrule 4.7B(1) (note);
- (q) subrule 5.12(1) (notes 4 and 5);
- (r) rule 6.1 (note 1);
- (s) rule 6.2 (note 2).

Part 2—Schedule 3 amendments: extension to the non-bank lenders sector

Competition and Consumer (Consumer Data Right) Rules 2020

15 Schedule 3 (heading)

Omit ‘banking sector’, substitute ‘banking and non-bank lenders sectors’.

16 Schedule 3, Parts 1, 2 and 3

Repeal the Parts, substitute:

Part 1—Preliminary

Division 1.1—Simplified outline

1.1 Simplified outline of this Schedule

This Schedule deals with how these rules apply in relation to the banking and non-bank lenders (*NBL*) sectors.

Part 1 of this Schedule excludes certain data holders in the banking and NBL sectors from the application of these rules, and defines certain terms relevant to those sectors.

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Amendments **Schedule 1**

Schedule 3 amendments: extension to the non-bank lenders sector **Part 2**

Part 2 of this Schedule deals with eligible CDR consumers in relation to the banking and NBL sectors.

Part 3 of this Schedule deals with CDR data that may or must be disclosed when product data requests and consumer data requests are made in relation to the banking and NBL sectors.

Part 5 of this Schedule deals with dispute resolution requirements in relation to the banking and NBL sectors.

Part 6 of this Schedule deals with the staged application of these rules to the NBL sector. Over time, as set out in that Part, these rules will apply to a progressively broader range of data holders and types of requests in relation to that sector. Part 6 also affects the application of these rules to the banking sector in some respects.

Part 7 sets out modifications of these rules, and also deals with other, miscellaneous matters, in relation to the banking and NBL sectors.

Part 8 makes certain modifications to the operation of these rules in cases where an entity moves from the NBL sector to the banking sector.

Division 1.2—Application of these rules in relation to the banking and NBL sectors

1.1A Application of these rules

- (1) These rules do not apply in respect of an excluded data holder in the banking sector or the NBL sector.

Note: Among other things, this means that a request cannot be made under Part 2, 3 or 4 of these rules in respect of an excluded data holder for the relevant sector.

Meaning of excluded data holder

- (2) In this Schedule, *excluded data holder* means:
- (a) a data holder that is a body corporate where:
 - (i) the body:
 - (A) was established, and operates, solely for religious or charitable purposes set out in its constitution; and
 - (B) operates on a not-for-profit basis; and
 - (ii) the body offers retail products for the sole or dominant purpose of furthering its religious or charitable purposes; and
 - (iii) a copy of the body's constitution is available for inspection on request by the Australian Prudential Regulation Authority; or
 - (b) an ADI that is:
 - (i) a foreign ADI; or
 - (ii) a foreign branch of an Australian ADI; or
 - (iii) a restricted ADI.

Division 1.3—Definitions

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Schedule 1 Amendments

Part 2 Schedule 3 amendments: extension to the non-bank lenders sector

1.2 Interpretation

In this Schedule:

account data has the meaning given by clause 1.3 of this Schedule.

accounting standard means an accounting standard made under section 334 of the *Corporations Act 2001*.

banking business has the meaning given by the banking sector designation instrument.

banking sector means the sector of the Australian economy that is designated by the banking sector designation instrument.

banking sector data means CDR data covered by the banking sector designation instrument.

banking sector designation instrument means the *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019*.

covered product has the meaning given by clause 1.4 of this Schedule.

customer data has the meaning given by clause 1.3 of this Schedule.

excluded data holder has the meaning given by clause 1.1A of this Schedule.

foreign ADI has the meaning given by the *Banking Act 1959*.

NBL sector, or **non-bank lenders sector**, means the sector of the Australian economy that is designated by the NBL sector designation instrument.

NBL sector data means CDR data covered by the NBL sector designation instrument.

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

product has the meaning given by the banking sector designation instrument or the NBL sector designation instrument, as applicable.

product specific data has the meaning given by clause 1.3 of this Schedule.

relevant non-bank lender has the meaning given by the NBL sector designation instrument.

transaction data has the meaning given by clause 1.3 of this Schedule.

1.3 Meaning of *customer data*, *account data*, *transaction data* and *product specific data*

For this Schedule, a term listed in column 1 of the table has the meaning given by column 2.

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Amendments **Schedule 1**

Schedule 3 amendments: extension to the non-bank lenders sector **Part 2**

| Meaning of customer data, account data, transaction data and product specific data | |
|---|--|
| Column 1 | Column 2 |
| 1 customer data , in relation to a particular person | <p>(a) means information that identifies or is about the person; and</p> <p>(b) includes:</p> <ul style="list-style-type: none">(i) the person's name; and(ii) the person's contact details, including their:<ul style="list-style-type: none">(A) telephone number; and(B) email address; and(C) physical address; and(iii) any information that:<ul style="list-style-type: none">(A) the person provided at the time of acquiring a particular covered product; and(B) relates to their eligibility to acquire that product; and(iv) if the person operates a business—the following:<ul style="list-style-type: none">(A) the person's business name;(B) the person's ABN;(C) the person's ACN (within the meaning of the <i>Corporations Act 2001</i>);(D) the type of business;(E) the date the business was established;(F) the registration date;(G) the organisation type;(H) the country of registration;(I) whether the business is a charitable or not-for-profit organisation; and <p>(c) if the person is an individual—does not include the person's date of birth.</p> |
| 2 account data , in relation to a particular account | <p>(a) means information that identifies or is about the operation of the account; and</p> <p>(b) includes:</p> <ul style="list-style-type: none">(i) the account number, other than to the extent that an account number is masked (whether as required by law or in accordance with any applicable standard or industry practice); and(ii) the account name; and(iii) account balances; and(iv) any authorisations on the account, including:<ul style="list-style-type: none">(A) direct debit deductions, including, to the extent available:<ul style="list-style-type: none">(I) identifying information for the merchant or party that has debited the account; and(II) the amount the merchant or party has debited on the last occasion; and(III) the date the merchant or party has debited the account; and(B) scheduled payments (for example, regular payments, payments to billers and international payments); and(C) details of payees stored with the account, such as those entered by the customer in a payee address book; and <p>(c) does not include:</p> |

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Schedule 1 Amendments

Part 2 Schedule 3 amendments: extension to the non-bank lenders sector

| Meaning of customer data, account data, transaction data and product specific data | |
|---|---|
| Column 1 | Column 2 |
| | (i) financial hardship information within the meaning of subsection 6QA(4) of the <i>Privacy Act 1988</i> ; or (ii) repayment history information within the meaning of subsection 6V(1) of the <i>Privacy Act 1988</i> . |
| 3 transaction data , in relation to a particular transaction | (a) means information that identifies or describes the characteristics of the transaction; and (b) includes: (i) the date on which the transaction occurred; and (ii) any identifier for the counter-party to the transaction; and (iii) if the counter-party is a merchant—any information that was provided by the merchant in relation to the transaction; and (iv) the amount debited or credited pursuant to the transaction; and (v) any description of the transaction; and (vi) the “simple categorisation” of the transaction (for example, whether the transaction is a debit, a credit, a fee or interest). |
| 4 product specific data , in relation to a particular covered product | (a) means information that identifies or describes the characteristics of the covered product; and (b) includes the following data about the covered product: (i) its type; (ii) its name; (iii) its price, including fees, charges and interest rates (however described); (iv) associated features and benefits, including discounts and bundles; (v) associated terms and conditions; (vi) customer eligibility requirements. |

1.4 Meaning of covered product

- (1) In this Schedule, a product mentioned in column 2 of the table below (however described) is a **covered product** for a sector mentioned in column 1 if:
- (a) the product is publicly offered by or on behalf of a data holder in that sector; and
 - (b) the product is offered to customers by way of standard form contracts, the terms of which are subject to only low levels of negotiation.
- (2) A product need not be available to all members of the public in order to be publicly offered.

Note: A product may be offered subject to eligibility requirements. For instance, it may be available only to a person operating a particular type of business. This does not prevent it from being “publicly offered” if it would otherwise fall within the ordinary meaning of that term.

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Amendments **Schedule 1**

Schedule 3 amendments: extension to the non-bank lenders sector **Part 2**

| Products that may be covered products | |
|--|---|
| Column 1: Sector | Column 2: Products |
| Both the banking and NBL sectors | (a) a personal credit or charge card account; (b) a business credit or charge card account; (c) a residential home loan; (d) a home loan for an investment property; (e) a mortgage offset account; (f) a personal loan; (g) business finance; (h) a loan for an investment; (i) a line of credit (personal); (j) a line of credit (business); (k) an overdraft (personal); (l) an overdraft (business); (m) asset finance (including leases); (n) a consumer lease; (o) a reverse mortgage; (p) a buy now, pay later product. |
| Banking sector only | (a) a savings account; (b) a call account; (c) a term deposit; (d) a current account; (e) a cheque account; (f) a debit card account; (g) a transaction account; (h) a personal basic account; (i) a GST or tax account; (j) a cash management account; (k) a farm management account; (l) a pensioner deeming account; (m) a retirement savings account; (n) a trust account; (o) a foreign currency account. |

1.5 Meaning of *trial product*

- (1) For these rules, in relation to the banking and NBL sectors, a covered product is a ***trial product*** if the product is offered:
- (a) with the description “pilot” or “trial”; and
 - (b) with a statement of a period for which it will operate as a pilot or trial that ends no more than 6 months after the initial offering (the ***trial period***); and
 - (c) on the basis that the number of customers supplied with the product for the purposes of the trial will be limited to no more than 1,000; and
 - (d) with a statement that the product may be terminated before the end of the trial period and that, if it is, the CDR data in relation to the product may not be available.

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Schedule 1 Amendments

Part 2 Schedule 3 amendments: extension to the non-bank lenders sector

- (2) However, such a product ceases to be a *trial product* at the earlier of the following times:
 - (a) the end of the trial period, if the product continues to be supplied or offered after the end of the trial period;
 - (b) the time (if any) that the product is first supplied to more than 1,000 customers.

Part 2—Eligible CDR consumers—banking and NBL sectors

2.1 Additional criteria for eligibility—banking and NBL sectors

For subrules 1.10B(1) and (2), the additional criterion for a CDR consumer to be *eligible*, in relation to a particular data holder in the banking sector or the NBL sector at a particular time, is that the account is set up in such a way that it can be accessed online.

Note: Subrule 1.10B(1) provides criteria for account holders and secondary users of the account to be eligible. For a partnership account, subrule 1.10B(2) provides criteria for persons who are partners in the partnership (but who need not themselves be account holders or secondary users) to be eligible.

2.2 Meaning of *account privileges*—banking and NBL sectors

- (1) This clause is made for the purposes of the definition of *account privileges* in subrule 1.7(1) of these rules.
- (2) For the banking and NBL sectors, a person has account privileges in relation to an account with a data holder if:
 - (a) the account is for a covered product; and
 - (b) the person is able to make transactions on the account.

2.3 Consumer dashboard—application of rule 1.15

For subrule 1.15(1), if a data holder receives a consumer data request from an accredited person on behalf of a CDR consumer who is eligible in relation to the data holder, then the data holder must provide the CDR consumer with the consumer dashboard.

Part 3—CDR data that may be accessed under these rules—banking and NBL sectors

3.1 Meaning of *required product data* and *voluntary product data*—banking and NBL sectors

- (1) For these rules, *required product data*, in relation to the banking sector or the NBL sector, means CDR data for which there are no CDR consumers:
 - (a) that is banking sector data or NBL sector data (as applicable); and
 - (b) that is about the eligibility criteria, terms and conditions, price, availability or performance of a covered product; and
 - (c) if the CDR data is about availability or performance—that is publicly available; and
 - (d) that is product specific data about a covered product; and

(e) that is held in a digital form.

Note: Paragraphs (b) and (c) are based on subsection 56BF(1) of the Act.

- (2) For these rules, **voluntary product data**, in relation to the banking sector or the NBL sector, means CDR data for which there are no CDR consumers:
- (a) that is banking sector data or NBL sector data (as applicable); and
 - (b) that is product specific data about a covered product; and
 - (c) that is not required product data.

3.2 Meaning of **required consumer data** and **voluntary consumer data**—banking and NBL sectors

- (1) In this clause:

relevant account, in relation to a CDR consumer means an account that is held with a data holder of banking sector data or NBL sector data and relates to a covered product, and that:

- (a) is held in the name of the CDR consumer alone; or
- (b) is a joint account for which the CDR consumer is an account holder; or
- (c) is a partnership account for a partnership in which the CDR consumer is a partner; or
- (d) is an account for which the CDR consumer is a secondary user;

whether or not the account can be accessed online, and, subject to subclauses (4) and (5), whether or not the account is open.

- (2) For these rules, subject to this clause, **required consumer data**, in relation to the banking sector or the NBL sector, means CDR data for which there is at least one CDR consumer:
- (a) that is banking sector data or NBL sector data (as applicable) of a kind mentioned in clause 1.3 relating to a relevant account of the CDR consumer; and
 - (b) that is held by the data holder in a digital form.

Note 1: Paragraph (a), as it applies to product specific data mentioned in clause 1.3, could include the following:

- any product prices that were negotiated individually with a CDR consumer;
- the interest rates that are current at the time of the request, as well as any other interest rates applicable to the covered product, and any terms and conditions associated with those interest rates;
- any features and benefits negotiated individually with a CDR consumer.

Note 2: So long as the CDR consumer is eligible to make a consumer data request in relation to a particular data holder, they will be able to make or cause to be made a consumer data request that relates to any relevant account they have with the data holder, including closed accounts (subject to subclauses (5) and (6)) or accounts that cannot be accessed online.

Note 3: A person is not a data holder of CDR data that was held by or on behalf of them before the earliest holding day (see paragraph 56AJ(1)(b) of the Act). Accordingly, such data cannot be requested under these rules.

- (3) For these rules, subject to this clause, CDR data is **voluntary consumer data** in relation to the banking sector or the NBL sector if:
- (a) there is a CDR consumer for the CDR data; and
 - (b) the CDR data relates to a covered product; and
 - (c) the CDR data is not required consumer data.

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Schedule 1 Amendments

Part 2 Schedule 3 amendments: extension to the non-bank lenders sector

- (4) In this clause:
- (a) CDR data is neither *required consumer data* nor *voluntary consumer data* at a particular time if the data is:
 - (i) account data, transaction data or product specific data in relation to a joint account or partnership account for which any of the individuals who are account holders or partners in the relevant partnership is less than 18 years of age at that time; or
 - (ii) CDR data relating to a debt of a CDR consumer, if the data was acquired by a data holder acting in its capacity as a debt collector or debt buyer; and
 - (b) for a consumer data request made by or on behalf of a particular person, customer data in relation to any account holder or secondary user other than that person is neither *required consumer data* nor *voluntary consumer data*.

Exception to required consumer data—open accounts

- (5) Despite subclause (2), for a relevant account that is open at a particular time, the following CDR data is not *required consumer data* at that time:
- (a) transaction data in relation to a transaction that occurred more than 7 years before that time;
 - (b) account data that relates to an authorisation on the account for a direct debit deduction that occurred more than 13 months before that time.

Note: As a result, such CDR data would be *voluntary consumer data* unless otherwise excluded by this clause.

Exception to required consumer data—closed accounts

- (6) Despite subclause (2), for a relevant account that is closed at a particular time, the following CDR data is not *required consumer data* at that time:
- (a) account data that relates to an authorisation on the account for direct debit deductions;
 - (b) if the account was closed no more than 24 months before that time—transaction data in relation to a transaction that occurred more than 12 months before the account was closed;
 - (c) if the account was closed more than 24 months before that time—account data, transaction data or product-specific data relating to the account.

Note: As a result, such CDR data would be *voluntary consumer data* unless otherwise excluded by this clause.

17 Schedule 3, Part 5 (heading)

Repeal the heading, substitute:

Part 5—Dispute resolution—banking and NBL sectors

18 Schedule 3, clause 5.1 (heading)

Omit ‘banking sector’, substitute ‘banking and NBL sectors’.

19 Schedule 3, subclause 5.1(1)

Omit ‘For the banking sector, a CDR participant’, substitute ‘For the banking and NBL sectors, an accredited person or data holder’.

20 Schedule 3, subclause 5.1(2) (note)

Repeal the note, substitute:

Note: Regulatory Guide 271 could in 2023 be accessed from the Australian Securities & Investments Commission's website (<https://asic.gov.au>).

21 Schedule 3, clause 5.2

Repeal the clause, substitute:

5.2 Meeting external dispute resolution requirements—banking and NBL sectors

For the banking and NBL sectors, an accredited person or data holder *meets the external dispute resolution requirements* if it is a member of the recognised external dispute resolution scheme operated by the Australian Financial Complaints Authority Limited for the relevant sector.

22 Schedule 3, Part 6

Repeal the Part, substitute:

Part 6—Application of these rules to the banking and NBL sectors

Division 6.1—Staged application to the NBL sector

6.1 Interpretation

(1) In this Part:

complex request means a consumer data request that:

- (a) is made on behalf of a secondary user; or
- (b) relates to a joint account or a partnership account; or
- (c) is made on behalf of a CDR consumer who has nominated a representative to give, amend or manage authorisations to disclose CDR data for the purposes of these rules on the consumer's behalf.

Note: For paragraph (c)—see paragraph 1.13(1)(c) of these rules.

tranche 1 date means 1 November 2024.

tranche 2 date means 1 February 2025.

tranche 3 date means 1 May 2025.

tranche 4 date means 1 August 2025.

tranche 5 date means 1 November 2025.

Meaning of initial provider

(2) In this Part, a relevant non-bank lender is an *initial provider* if, on the commencement day:

- (a) the total value of the lender's resident loans and finance leases:
 - (i) was over \$10 billion for the calendar month preceding that day; and

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Part 2 Schedule 3 amendments: extension to the non-bank lenders sector

- (ii) averaged over \$10 billion during the 11 previous calendar months;
and
- (b) the lender is a data holder of NBL sector data.

Meaning of large provider

- (3) In this Part, if a relevant non-bank lender that is not an initial provider meets the large provider qualification on the commencement day, or on a day after the commencement day, it is a **large provider** on and from the first of those days.
- (4) For subclause (3), a relevant non-bank lender meets the large provider qualification on a particular day if:
 - (a) the total value of the lender's resident loans and finance leases:
 - (i) is over \$500 million during the calendar month preceding that day;
and
 - (ii) averages over \$500 million for the period of the previous 11 calendar months; and
 - (b) the lender has more than 500 customers on that day; and
 - (c) the lender is a data holder of NBL sector data on that day.
- (5) For subclause (3), a relevant non-bank lender that is not an initial provider also meets the large provider qualification on a particular day if:
 - (a) the lender is an accredited person on that day; and
 - (b) the lender is a data holder of NBL sector data on that day.

Calculating resident loans and finance leases balance

- (6) The total value of the lender's resident loans and finance leases includes the value of all resident loans and finance leases that must be consolidated on the lender's balance sheet in accordance with:
 - (a) applicable accounting standards; and
 - (b) standards made by the Australian Prudential Regulation Authority under the *Financial Sector (Collection of Data) Act 2001* dealing with the provision of information to the Authority relating to the loans and finance leases of an ADI or registered financial corporation.
 - Note: In 2023, the relevant standard was set out in *Financial Sector (Collection of Data) (reporting standard) determination No. 9 of 2022*.
- (7) In this clause:

commencement day means the day on which the *Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2023* commences.

finance lease has the meaning given by the accounting standard known as AASB 16 – *Leases*.

loan, in relation to a non-bank lender, means a financial asset that is:

- (a) created when the lender lends funds directly to a debtor; and
- (b) evidenced by non-negotiable documents.

resident loan, in relation to a non-bank lender, means a loan issued by the lender to:

- (a) a person (including an individual) whose principal place of residence or principal place of business is in Australia; or

- (b) a group of individuals forming a household whose principal place of residence is in Australia.

6.2 Application to initial providers

These rules apply in relation to a relevant non-bank lender that is an initial provider as set out in the following table:

| Application to initial providers | |
|---|----------------------------------|
| Column 1 Type of request | Column 2 Application of rules |
| 1 A product data request under Part 2 of these rules | On and after the tranche 1 date |
| 2 A consumer data request under Part 4 of these rules, other than a complex request | On and after the tranche 2 date. |
| 3 A complex request under Part 4 of these rules | On and after the tranche 3 date. |

6.3 Application to large providers

- (1) In this section, where a relevant non-bank lender is a large provider, its *LP date* is the date that it became a large provider.
- (2) These rules apply in relation to such a large provider with an LP date that is on or before 1 November 2023 as set out in the following table:

| Application to large providers with LP date on or before 1 November 2023 | |
|---|----------------------------------|
| Column 1 Type of request | Column 2 Application of rules |
| 1 A product data request under Part 2 of these rules | On and from the tranche 1 date |
| 2 A consumer data request under Part 4 of these rules, other than a complex request | On and from the tranche 4 date. |
| 3 A complex request under Part 4 of these rules | On and from the tranche 5 date. |

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- (3) These rules apply in relation to such a large provider with an LP date that is after 1 November 2023 as set out in the following table:

| Application to large providers with LP date after 1 November 2023 | |
|---|--|
| Column 1 | Column 2 |
| Type of request | Application of rules |
| 1 A product data request under Part 2 of these rules | On and from the day 12 months after its LP date |
| 2 A consumer data request under Part 4 of these rules, other than a complex request | On and from the day 15 months after its LP date. |
| 3 A complex request under Part 4 of these rules | On and from the day 18 months after its LP date. |

6.4 Application to other providers

Subject to clause 6.6, these rules do not apply in relation to a relevant non-bank lender that is not an initial provider or a large provider.

6.5 Consumer data requests under Part 3 of these rules

Part 3 of these rules does not apply in relation to NBL sector data.

Division 6.2—Disclosing CDR data voluntarily: banking and NBL sectors

6.6 Authorisation to disclose CDR data voluntarily

Despite anything else in this Schedule, a data holder in the banking or NBL sector, other than an excluded data holder, may choose to:

- (a) receive a request on behalf of an eligible consumer under Part 2 or Part 4 of these rules; and
- (b) disclose required or voluntary product or consumer data in response to the request;

in which case, these rules apply in respect of the request and the data holder.

Note: This clause means that, among other things, a data holder who elects to receive and respond to such a request must comply with all aspects of these rules relevant to handling it. For instance, the data holder would need to provide the consumer dashboard in accordance with subrule 1.15(1) upon receiving a request under Part 4, and would need to meet the internal and external dispute resolution requirements.

Division 6.3—Application to data holders in the banking sector

6.7 Consumer data requests under Part 3 of these rules

Part 3 of these rules does not apply in relation to banking sector data.

6.8 Entities that become ADIs after specified date

- (1) This clause applies to a person who becomes a data holder in the banking sector after the commencement of the *Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2023*.
- (2) Subject to clause 6.6, these rules apply in relation to the person:
 - (a) in respect of a product data request—on and from the day that is 12 months after the day the person became a data holder in the banking sector; and
 - (b) in respect of a consumer data request made by an accredited person, other than a complex request—on and from the day that is 15 months after the day the person became a data holder in the banking sector; and
 - (c) in respect of a complex consumer data request made by an accredited person—on and from the day that is 18 months after the day the person became a data holder in the banking sector.

6.9 Providers of buy now, pay later products

- (1) In this section, where a data holder in the banking sector offers a covered product that is a buy now, pay later product (a **BNPL product**), its **BNPL date** is the date that it first offered a BNPL product.
- (2) These rules apply in relation to such a data holder with a BNPL date that is on or before 1 November 2023, in respect of CDR data that relates to a BNPL product, as set out in the following table:

| Application to data holder with BNPL date on or before 1 November 2023, in respect of CDR data that relates to a BNPL product | |
|---|---------------------------------|
| Column 1 | Column 2 |
| Type of request | Application of rules |
| 1 A product data request under Part 2 of these rules | On and from the tranche 1 date |
| 2 A consumer data request under Part 4 of these rules, other than a complex request | On and from the tranche 4 date. |
| 3 A complex request under Part 4 of these rules | On and from the tranche 5 date. |

- (3) These rules apply in relation to such a data holder with a BNPL date that is after 1 November 2023, in relation to BNPL data, as set out in the following table:

| Application to data holder with BNPL date on or before 1 November 2023, in respect of CDR data that relates to a BNPL product | |
|---|---|
| Column 1 | Column 2 |
| Type of request | Application of rules |
| 1 A product data request under Part 2 of these rules | On and from the day 12 months after its BNPL date |

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| Application to data holder with BNPL date on or before 1 November 2023, in respect of CDR data that relates to a BNPL product | |
|--|--|
| Column 1 | Column 2 |
| Type of request | Application of rules |
| 2 A consumer data request under Part 4 of these rules, other than a complex request | On and from the day 15 months after its BNPL date. |
| 3 A complex request under Part 4 of these rules | On and from the day 18 months after its BNPL date. |

Division 6.4—Application to trial products

6.10 CDR data relating to trial products during the trial phase

- (1) Subject to clause 6.6, these rules do not apply in respect of banking sector data or NBL sector data that relates to a trial product, during the period that the product is a trial product.
- (2) However, once a covered product ceases to be a trial product under subclause 1.5(2), these rules apply in respect of banking sector data or NBL sector data relating to that product (including CDR data generated while the product was a trial product).

23 Schedule 3, Part 7 (heading)

Omit ‘banking sector’, substitute ‘banking and NBL sectors’.

24 Schedule 3, clause 7.1 (heading)

Omit ‘banking sector’, substitute ‘banking and NBL sectors’.

25 Schedule 3, clause 7.1

Omit ‘banking sector’, substitute ‘banking and NBL sectors’.

26 Schedule 3, paragraph 7.2(2)(a)

Omit the paragraph, substitute:

- (a) the person is an ADI or a relevant non-bank lender; and
- (aa) under Part 6 of this Schedule, these rules already apply to the person in their capacity as a data holder of other CDR data;

27 Schedule 3, after Part 7

Insert:

Part 8—Entities that move from NBL to banking sector

8.1 Moving from the NBL sector to the banking sector

Clause applies where data holder moves from NBL to banking sector

- (1) This clause applies where:

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- (a) a person ceases to be a data holder in the NBL sector at a particular time (the *transition time*); and
- (b) immediately after, the person becomes a data holder in the banking sector; and
- (c) immediately before the transition time:
 - (i) a request was on foot under Part 2 or 4 of these rules in respect of CDR data of the data holder in the NBL sector; or
 - (ii) a current authorisation or consent given under Part 4 of these rules in respect of CDR data covered by such a request was in existence.

Request taken to be made in respect of banking sector

- (2) The request, consent or authorisation mentioned in subclause (1) remains effective as though it had instead been made in respect of the data holder and the CDR data in the banking sector.
- (3) To avoid doubt, without limiting subclause (2):
 - (a) these rules apply as though a reference in the request, authorisation or consent to the data holder and the CDR data in the NBL sector were a reference to the data holder and CDR data in the banking sector; and
 - (b) the consent or authorisation does not expire merely because the data holder has changed sectors.

CDR consumer must be notified of change of sector

- (4) As soon as practicable after the transition time, the data holder must give a written notification to each CDR consumer in respect of whom a request mentioned in subclause (1) is on foot that:
 - (a) the data holder has ceased to operate in the NBL sector; and
 - (b) the data holder is now operating in the banking sector; and
 - (c) the CDR consumer may, under clause 4.13 or 4.25 of these rules, choose to withdraw an authorisation or consent given under Part 4 in respect of the request.
- (5) As soon as practicable after the transition time, the data holder must give a written notification to each accredited person who made a consumer data request mentioned in subclause (1) that:
 - (a) the data holder has ceased to operate in the NBL sector; and
 - (b) the data holder is now operating in the banking sector.
- (6) Where an accredited person would be required to update the consumer dashboard of a relevant CDR consumer under clause 4.19 of these rules as a result of the sector change mentioned in subclause (1):
 - (a) the accredited person is not required to update the consumer dashboard as soon as practicable after the information required to be contained on the dashboard changes; and
 - (b) the accredited person must instead update the consumer dashboard within a reasonable period after receiving the notification mentioned in subclause (5).

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Part 3 Schedule 4 amendments: modification of energy sector rules

Part 3—Schedule 4 amendments: modification of energy sector rules

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28 Rule 9.8, Table

At the end, add:

| | |
|----|-------------------------------|
| 94 | Schedule 4, subclause 4.2(2) |
| 95 | Schedule 4, subclause 4.2(3). |

29 Schedule 4, subclause 4.2(2)

Substitute:

- (2) However, if a retailer chooses to provide an online service that can be used to make product data requests:
- (a) the service must comply with rule 1.12 (that is, it must be a product data request service); and
 - (b) if the retailer receives a product data request for required product data, it must transfer the request to the AER or the Victorian agency, as appropriate, in a way that conforms with the data standards.

Note: This subclause is a civil penalty provision (see rule 9.8).

- (3) A retailer that has not chosen to provide a product data request service must nevertheless, if:
- (a) it becomes aware that a CDR consumer is attempting, or has attempted, to make a product data request for required product data to it or through it; and
 - (b) the standards set one or more processes for forwarding such a request to the AER or the Victorian agency as appropriate;
- forward the request using one of those processes in a way that conforms with the relevant data standards.

Note: This subclause is a civil penalty provision (see rule 9.8).

Part 4—Application provisions

30 Application of these amendments

The amendments made by Part 2 of this Schedule do not apply in respect of a request under Part 2 or 4 of the *Competition and Consumer (Consumer Data Right) Rules 2020* that was made before the commencement of this instrument.

Note: A request made in relation to the banking sector before the commencement of this instrument is to be handled as though the relevant amendments had not been made.