

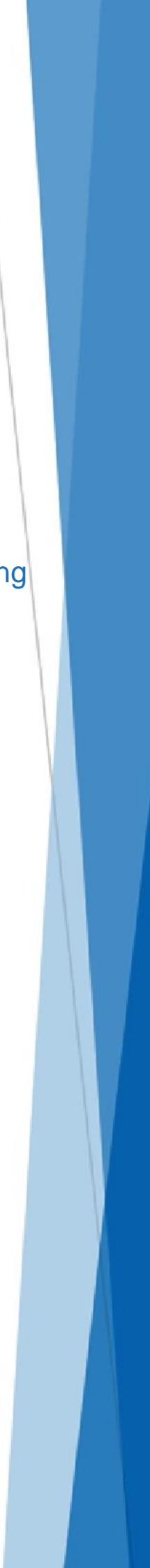


Australian Banking
Association



Consumer Data Right Rules – Expansion to the non-bank lending
sector consultation
Submission to Treasury

6 October 2023



ABA Submission

The Australian Banking Association (**ABA**) welcomes the opportunity to comment on the Department of Treasury's (**Treasury**) consultation on the Consumer Data Right (**CDR**) rules – expansion to the non-bank lending sector and associated exposure draft amendments to the *Competition and Consumer (Consumer Data Right) Rules 2020* (the *CDR Rules*), explanatory materials and a draft Privacy Impact Assessment for consultation.

Given the significant resource to establish the CDR by industry and government, this submission is made with the strong recommendation that Treasury prioritise their consideration of a cost-benefit analysis of not only new CDR initiatives (including improvements to the Standards), but the overall success of the CDR policy itself.

The ABA endorses the stated policy objective outlined in the explanatory materials to maintain regulatory consistency where possible between the banking and non-bank lending sectors. However, we have identified two potential issues which may conflict with the objective of achieving a level-playing field between the banking and non-bank lending sectors. The issues are best articulated by reference to Exposure Draft Explanatory Materials (**EM**) at page 10 which specify the two classes of non-bank lenders with data sharing obligations as being 'initial providers' and 'large providers'.

The first issue relates to the potential that, as drafted, entities that predominantly or exclusively offer Buy Now Pay Later (**BNPL**) products will be excluded from designation under the proposed rules. The EM establishes as a criterion for eligibility to share data for both an 'initial provider' and a 'large provider' to be entities that provide 'resident loans and finance leases' over a specified calendar period (EM, page 10). The ABA is concerned that large mono-product BNPL entities will not fit within this criterion and will therefore not be subject to the non-bank lender designation instrument. If this interpretation is the case, this leaves a significant gap in the coverage of the legislation. As this does not appear to be the policy intention of Treasury, the ABA recommends amending the draft CDR Rules to provide additional clarity on how BNPL providers are covered within the definition of non-bank lenders. One suggested amendment is to remove the reference to 'resident loans and finance leases' and instead replace it with more general terminology to ensure exclusive BNPL providers are covered by the legislation.

The second issue relates to the de minimis threshold (EM, page 10). Whilst the ABA is generally not averse to the concept of a de minimis threshold for non-bank lending providers proposed in the CDR Rules, we note that such an approach is not aligned with the way in which the CDR was deployed through the banking sector. For banks, there was no de minimis threshold, all ADIs were designated for data provision. Therefore, this approach creates an unlevel playing field between banking and non-banking entities and uneven opportunities for customers depending on whether they deal with a non-bank lender that falls over or below the de minimis.

By way of an example, many Buy Now, Pay Later (BNPL) providers who have a significant number of customers with small outstanding balances are unlikely to meet the proposed de minimis threshold. As such, a large portion of the NBL sector will be excluded on a seemingly permanent basis.

Whilst a threshold might be acceptable for various maturity and capability considerations, we recommend that the Government incorporate timeframes of no more than two years to remove the de minimis threshold. This will lead to greater coverage of the non-bank lending sector with the aim of eventually creating a more level playing field with the banking sector.



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The ABA notes the draft CDR Rules appropriately excludes information relating to financial hardship and repayment history from the definition of 'account data'. This is essential to ensuring that consumer privacy is protected within the CDR, particularly considering the close nexus between financial hardship information and vulnerable customers.

The ABA supports the draft amendments to the CDR Rules subject to the above considerations.

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About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.