



# Consumer Data Right in non-bank lending: Exposure draft rules

ACCC Submission

October 2023

# Introduction and Role of the ACCC

1. The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to comment on the Treasury's consultation on the Consumer Data Right (CDR) exposure draft rules for the expansion of CDR to non-bank lending.
2. The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses, and the Australian community. The ACCC's primary responsibilities are to enforce compliance with the competition, consumer protection, fair trading, and product safety provisions of the *Competition and Consumer Act 2010* (Cth) (CCA), regulate national infrastructure and undertake market studies. The ACCC also has a Competition Enforcement and Financial Services Branch that examines competition issues in the financial services sector through market studies, advocacy and investigative work.
3. The ACCC's CDR roles include accrediting potential data recipients, establishing and maintaining a Register of accredited persons and data holders, assessing applications for exemption from CDR obligations, monitoring compliance with the *Competition and Consumer (Consumer Data Right) Rules 2020* (the CDR Rules) and taking enforcement action in collaboration with the Office of the Australian Information Commissioner (OAIC), and providing guidance to stakeholders about their obligations under the CDR. The ACCC also plans, designs, builds, tests, manages and secures enabling technologies for the CDR. As implementer and regulator of the CDR, the ACCC looks forward to working with Treasury, the Data Standards Body and the OAIC in expanding CDR to non-bank lending.

## Executive Summary

4. As outlined in the ACCC's submission to the sectoral assessment,<sup>1</sup> the ACCC supports the expansion of CDR to non-bank lending. This will help 'round out' the CDR banking rollout as non-bank lenders often offer similar lending products and generate similar types of data to authorised deposit taking institutions (ADIs) in the already designated banking sector.
5. As a result of parallels between non-bank lenders and ADIs, the ACCC supports Treasury's general approach of harmonising the non-bank lending rules with the existing rules applying to the banking sector, with appropriate tailoring for the non-bank lending sector. This should minimise confusion for participants and consumers by ensuring a consistent experience when using CDR across sectors and encourage cross-sectoral use cases.
6. In assessing the impact of the draft non-bank lending rules, the ACCC has analysed the factors referred to in section 56AD(1)(a) and (b) of the CCA in particular,<sup>2</sup> including the likely effect of making the rules on the interests of consumers, promoting competition and data-driven innovation, the efficiency of relevant markets, and the public interest.
7. The ACCC considers the inclusion of non-bank lending in the CDR will make it easier for consumers to compare products across the banking and non-bank lending sectors, and

---

<sup>1</sup> ACCC, *ACCC Submission – Treasury sectoral assessment of Open Finance – non-bank lending – for the Consumer Data Right* (April 2022), <https://treasury.gov.au/consultation/c2022-253782>.

<sup>2</sup> See s56BR *Competition and Consumer Act 2010* (Cth). When consulted under paragraph 56BQ(c), the Commission must analyse the kinds of matters referred to in paragraphs 56AD(1)(a) and (b) in relation to the making of the rules.

to use data about their use of these products to aid decision making. As a result, expanding CDR to non-bank lending should help promote competition, market efficiency and data-driven innovation across both bank and non-bank lenders.

8. The ACCC has also considered the regulatory impact of the draft rules, and has provided specific suggestions regarding the application of the CDR Rules to non-bank lenders and the nature of regulatory activities required to promote compliance.
9. The ACCC's submission strongly emphasises the importance of building robust consumer protections into the CDR Rules and supports measures to protect consumers' information. Ensuring consumer data is safe and secure, and that consumers retain control over how their data is used is essential for the success and growth of CDR.
10. The *Statutory Review of the CDR - Report* recognised the importance of consumer advocacy groups as representatives for consumers. The Report noted that some submissions had raised concerns that the consultation on CDR developments has favoured those deeply engaged with the CDR ecosystem (such as fintechs and businesses in designated sectors) that have the resources to participate, and has lacked adequate consideration of the consumer voice. The Report highlighted the need for a well-represented consumer perspective to balance the voices of other participants in the system, and ensure CDR remains focussed on its core objective of consumer benefit.<sup>3</sup> In its response to the Report, the Government noted the recommendation<sup>4</sup> that additional funding may be needed to support consumer advocacy groups to meaningfully participate in government consultations, including on CDR issues.<sup>5</sup> It noted that a deliberately staged roll-out with fewer CDR specific consultations would support stakeholder groups to target their resources when engaging in CDR consultation.
11. Noting the difficulties consumer groups continue to face in engaging with CDR consultation processes<sup>6</sup>, the ACCC's submission highlights the need to remain focussed on the consumer impact of proposed rules. With this in mind, our submission emphasises the importance of ongoing monitoring of the impact of the expansion of CDR to the non-bank lending sector on vulnerable consumers. This recognises that, compared to banks, non-bank lenders may be more likely to provide loans to 'non-conforming borrowers' such as those who have a poor credit history. We recommend Treasury appoint an appropriate body to conduct a review of the operation of CDR in the non-bank lending sector 12 months after implementation. This will provide an opportunity to assess the impact of the rollout on consumers and consider whether any additional protections are needed.

## In scope products

12. The ACCC notes the proposed list of in scope products and data sets for CDR in the non-bank lending sector. Banks and non-bank lenders supply similar products to consumers. The proposed list of in scope products for non-bank lending is broadly consistent with the current list of in scope lending products for the banking sector.<sup>7</sup> Deposit related

---

<sup>3</sup> Elizabeth Kelly PSM, [Statutory Review of the Consumer Data Right – Report](#), Treasury, September 2022, p. 68.

<sup>4</sup> Ibid. Recommendation 3.3, p. 68.

<sup>5</sup> Treasury, [Government statement in response to the Statutory Review of the Consumer Data Right](#), June 2023, p. 10.

<sup>6</sup> We note Treasury is consulting on CDR issues in 4 current consultation processes. In addition to consultation on exposure draft rules for the non-bank lending sector these include: [Screen scraping – policy and regulatory implications](#), [CDR Consent Review – CDR rules and data standards design paper](#), [Operational enhancements – CDR rules design paper](#)

<sup>7</sup> See CDR Rules, schedule 3, clause 1.4.

accounts are not in scope for non-bank lenders given they are unable to offer these products.<sup>8</sup>

13. The exposure draft rules also list reverse mortgages and buy now pay later (BNPL) products as in scope products for both the banking and non-bank lending sectors. The ACCC notes the inclusion of BNPL products in the CDR reflects that BNPL is a growing way for consumers to finance their purchases in Australia.<sup>9</sup> The inclusion of these products should improve the reliability of information about a consumer's financial position. It could also improve the usefulness of budgeting or payment management tools for consumers who use BNPL products.
14. Similarly, the ACCC notes the exposure draft rules propose to specifically include reverse mortgages in the list of in scope products for both the banking and non-banking lending sectors. This will confirm that these products are in scope for CDR and ensure that a more complete array of lending products is included in the CDR. This will provide consumers with easier access to information about these products and their suitability to their financial circumstances.
15. The general alignment of in scope products for the banking and non-bank lending sectors should allow for better integration of data from bank and non-bank lenders. This should support innovative use cases and make it easier for consumers to compare similar products between different types of lenders. This should promote stronger competition between bank and non-bank lenders across these products and increase the overall efficiency of the market for consumer and business lending products.
16. However, the ACCC notes that some non-bank lenders specialise in providing loans to 'non-conforming borrowers' such as those who have a poor credit history. These lenders may be more likely to offer high interest, short term credit products to consumers, such as payday loans. These products may not be appropriate substitutes for mainstream banking products and can trap consumers in difficult-to-escape debt cycles. We recommend Treasury monitor the impact on consumers of the inclusion of these products in CDR, to ensure there are no unintended consequences. We note that increasing CDR functionality through enabling action initiation may further increase the risk of harm to vulnerable consumers associated with inclusion of these products in CDR.
17. To ensure appropriate consideration of consumer impacts, the ACCC recommends a review of the operation of CDR in the non-bank lending sector be conducted 12 months after obligations commence for large providers. Treasury should appoint an appropriate body to conduct an independent review, with a focus on the impact on vulnerable consumers. This would ensure the expansion of the CDR continues to promote consumers' best interests. The proposed review should be separate to the Strategic Assessment Treasury is planning to commence in 2024 and should be completed before implementing any further expansion to CDR functionality, including to enable action initiation. Such a review could consider whether current settings, for example disclosure options for joint accounts, remain appropriately tailored to adequately protect vulnerable consumers.

---

<sup>8</sup> Non-bank lenders are not required to hold a banking license from the Australian Prudential Regulation Authority (APRA). As a result, non-bank lenders cannot carry on banking business and accept deposits from customers. This means they are unable to offer certain products such as savings, chequing or foreign currency accounts, see *Banking Act 1959 (Cth)* s 5 and s 8.

<sup>9</sup> The value of BNPL transactions increased by around 36% in 2021/22 to \$16 billion, see The Reserve Bank of Australia, Payments System Board Annual Report, 2022.

## Publicly offered products

18. The exposure draft rules define a 'covered product' to include products listed in clause 1.4 of schedule 3 that are 'publicly offered' by or on behalf of a data holder 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, and need not be available to all members of the public to be considered publicly offered.
19. The ACCC supports the proposed definition of a 'covered product' which aligns with the ACCC's existing guidance for data holders on how to assess whether a product is in scope for CDR.<sup>10</sup> The ACCC's guidance indicates a product will generally be considered publicly offered if it is available to customers, or a group of eligible customers. In particular, if the product is available to customers as a 'standard form contract' that involves only low levels of negotiation, then it is very likely to be publicly offered and within scope for the CDR.
20. The ACCC considers that the proposed definition of 'covered product' in the exposure draft rules, supported by the explanation of 'low levels of negotiation' in the explanatory materials,<sup>11</sup> formalises this approach. Incorporating this definition in the CDR Rules should provide greater certainty to participants as to what products must be included for CDR data sharing.
21. However, the ACCC notes the term 'standard form contract' is currently undefined in the draft rules and suggests Treasury consider clarifying this term. The ACCC notes s 27 of the Australian Consumer Law (ACL)<sup>12</sup> and s 12BK of the *Australian Securities and Investments Commission (ASIC) Act*<sup>13</sup> set out matters a court must take into account when determining whether a contract is a standard form contract. Courts may also take into account any other matter they think relevant. Treasury could consider clarifying the meaning of 'standard form contract' with reference to existing legislation or providing further explanation of this term in the rules or explanatory materials.
22. In the absence of a definition or explanation as to the meaning of 'standard form contract', CDR participants may have different understandings of the meaning of a 'standard form contract' and subsequently, the criteria for a covered product. A definition or explanation could promote greater consistency of approach amongst data holders, thereby ensuring data on equivalent products is available to consumers.

## Trial Products

23. The ACCC supports applying the definition of a 'trial product' in the current CDR Rules<sup>14</sup> to the non-bank lending sector and excluding trial products below a specified threshold from data sharing obligations.
24. An exclusion for trial products can encourage innovation by allowing data holders to publicly test new products without being subject to data sharing obligations. We

---

<sup>10</sup> ACCC, [Guidance for data holders – assessing whether a product is in scope for CDR](#) (November 2020).

<sup>11</sup> The Exposure Draft Explanatory Materials state that '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'.

<sup>12</sup> *Competition and Consumer Act 2010* (Cth) schedule 2, 'The Australian Consumer Law', s 27.

<sup>13</sup> These sections in the ACL and ASIC Act are mirror provisions, with the ASIC Act definitions applying only to financial products and services while the ACL definitions apply economy wide.

<sup>14</sup> See CDR rules, Schedule 3, clause 1.5.

understand that pilot programs need to be of a sufficient scale to be useful for CDR participants to fully test their products and systems. Smaller CDR participants may have difficulty reaching a sufficient scale for product testing with only their own employees.

25. The proposed trial products exclusion should allow smaller data holders to open their pilots to members of the public without incurring upfront costs associated with CDR compliance. Smaller non-bank lenders would be able to conduct an effective pilot program and thoroughly test their new products before connecting them to the CDR. This should foster innovation and promote competition between a broader range of data holders in the market.

## Financial hardship information

26. The ACCC supports the proposed exclusion of financial hardship information<sup>15</sup> and repayment history information<sup>16</sup> from data sharing in the banking and non-bank lending sectors. The proposed approach will prevent the CDR from being used to circumvent existing protections such as restrictions on sharing this data under the Comprehensive Credit Reporting regime.<sup>17</sup>
27. Restricting financial hardship information from being shared through CDR in banking and non-bank lending will help prevent this information being relied upon to change a consumer's credit limit. This is prohibited by existing legislation<sup>18</sup> which states that a credit provider cannot refuse further credit or reduce a customer's credit limit merely because relevant financial hardship information exists.
28. Similarly, the exclusion of repayment history information is consistent with existing legislation restricting the sharing of this data and complements the exclusion of financial hardship information from CDR data sharing. This is because the existence of a financial hardship arrangement may affect a consumer's ability to make their obliged payments.<sup>19</sup>
29. The exposure draft rules also propose the exclusion of data held by a data holder in its capacity as a debt collector or debt buyer from data sharing in the CDR. The explanatory materials explain the proposed exclusion would protect potentially vulnerable consumers as the mere fact that an individual's debt is with a debt collector is likely to signal financial hardship.
30. The ACCC agrees the proposed measure would mitigate the risk of CDR participants gaining access to information that may indicate a consumer is experiencing financial hardship, and subsequently misusing that data for their own benefit. However, we note

---

<sup>15</sup> *Privacy Act 1988* (Cth) s 6QA(4) defines 'financial hardship information' for permanent hardship variations as "information, relating only to the first monthly payment affected by the arrangement, that indicates that the monthly payment is the first monthly payment affected by a financial hardship arrangement of that kind". For temporary variations or deferrals of obligations, 'financial hardship information' is defined as "information, relating to each monthly payment affected by the arrangement, that indicates that the monthly payment was affected by a financial hardship arrangement of that kind." Financial hardship information does not include the underlying transaction data on which an assessment of hardship is made.

<sup>16</sup> *Privacy Act 1988* (Cth) s 6V(1) defines 'repayment history information' for an individual who receives consumer credit from a credit provider, as information regarding "whether or not the individual has met an obligation to make a monthly payment that is due and payable in relation to the consumer credit; the day on which the monthly payment is due and payable; if the individual makes the monthly payment after the day on which the payment is due and payable—the day on which the individual makes that payment." Repayment history information does not include the underlying transaction data that may indicate when repayments were made.

<sup>17</sup> See *Privacy Act 1988* (Cth) s 6QA.

<sup>18</sup> *National Consumer Credit Protection Act 2009* (Cth), sch 1 'National Credit Code', s 67(1A).

<sup>19</sup> See *Privacy Act 1988* (Cth) s 6V(1A) Note.

that restrictions on sharing financial hardship information and repayment history information under CDR will not prevent sharing of the underlying transaction data on which this information is based.

31. We recommend Treasury give further consideration to the need for future rule changes to mitigate the risk of vulnerable consumers being exploited by data recipients obtaining access to consumer data and misusing that data for their own benefit (e.g. to upsell inappropriate products, or set discriminatory pricing or interest rates). For example, further consideration should be given to whether there is a need to amend the CDR legislative framework to require CDR participants to use consumers' CDR data in the consumer's best interests when providing them with a good or service.<sup>20</sup>

## Application of the Rules to the banking and NBL sectors

32. The exposure draft rules propose a size threshold for mandatory participation of non-bank lenders in the CDR. The exposure draft rules categorise non-bank lenders as initial providers,<sup>21</sup> large providers<sup>22</sup> or other providers.<sup>23</sup> Initial and large providers must participate in CDR as data holders, while other providers may participate voluntarily. The ACCC agrees that only non-bank lenders above an appropriate threshold should have mandatory CDR obligations. This ensures smaller lenders who may lack the resources to comply with CDR obligations are not required to build CDR capability.<sup>24</sup> This prevents disproportionate burden being placed on smaller lenders while ensuring that providers with greater resources and a substantial customer base are required to participate.
33. While the de minimis threshold appropriately excludes smaller lenders from mandatory participation in the CDR, the ACCC notes that even large and initial providers may face challenges building a CDR compliant solution, and complying with relevant information security requirements. This is on the basis that non-bank lenders have historically been subject to lower levels of regulation than traditional banks. Treasury should ensure non-bank lenders are aware of their obligations under the CDR Rules well in advance of commencement, to ensure they can develop appropriate systems resulting in the safe and secure transfer of CDR data.
34. The ACCC supports the staged implementation of data sharing obligations for the non-bank lending sector. The proposed implementation requires initial and large providers to begin sharing data in response to product data requests from the tranche 1 date (1 November 2024). This is followed by the introduction of obligations to comply with non-complex and complex consumer data requests for initial providers and then large

---

<sup>20</sup> The ACCC has previously suggested Treasury consider whether there is a need to introduce a fiduciary interest test to the CDR legislative framework. The test could include elements such as a duty of care to the consumer, and requirements to ensure confidentiality and avoid conflicts of interest. For more information, see ACCC, [Supplementary submission to the Statutory Review of the Consumer Data Right – ACCC Supplementary submission](#), June 2022, p.2; ACCC, [Consumer Data Right: Exposure draft legislation to enable action initiation – ACCC submission](#), October 2022, p. 6; ACCC, [ACCC submission – Treasury sectoral assessment of Open Finance – non-bank lending – for the Consumer Data Right](#), April 2022, p. 5.

<sup>21</sup> A relevant non-bank lender is an 'initial provider' if on the commencement day, it is a data holder of NBL sector data, and the total value of the lender's resident loans and finance leases was over \$10 billion for the calendar month preceding that day and averaged over \$10 billion during the 11 previous calendar months (see clause 6.1(2) of Schedule 3).

<sup>22</sup> A relevant non-bank lender is a 'large provider' on the commencement day or any later day if it is a data holder of NBL sector data and has over 500 customers on that day and the value of its resident loans and finance leases exceeds \$500 million during the calendar month preceding that day and, on average over the previous 11 months (see clause 6.1(4)).

<sup>23</sup> Relevant non-bank lenders that are not 'initial providers' or a 'large providers' are considered 'other providers'.

<sup>24</sup> A smaller non-bank lender that does not meet the de minimis threshold for an 'initial provider' or 'large provider' may participate voluntarily in the CDR if it is not an excluded data holder (see proposed clauses 1.1A and 6.6 of Schedule 3).



providers over a further 4 tranches. This approach will ensure product data from all providers is available as soon as possible, while allowing initial and then large providers to progressively increase their CDR functionality in relation to consumer data requests. The staged approach also allows the ACCC to more readily manage its resources to ensure support for participants as they complete onboarding and accreditation activities.

## Tranche 2 date

35. The exposure draft rules specify a tranche 2 compliance date of 1 February 2025. Initial providers would be required to facilitate non-complex consumer data requests by this date. Based on our experience with compliance dates for obligations in other sectors, the ACCC considers that the timing of the commencement of this obligation soon after the December / January period could pose difficulties for initial non-bank lenders, including due to availability of key personnel and third-party service providers. The ACCC suggests deferring the tranche 2 date until the end of March 2025, at the earliest.
36. Initial non-bank lenders are expected to complete relevant preparatory work, including building the necessary systems to enable them to receive and respond to consumer data requests prior to the tranche 2 date. If the tranche 2 date is in February, this work would likely need to be completed in the December/January period where there may be fewer staff available. Furthermore, a data holder may find it difficult to efficiently negotiate with vendors and set up their CDR solution as there may also be fewer staff available in the technology industry over the same period. This may impact a non-bank lender's ability to build its CDR solution and comply with its CDR obligations by the tranche 2 date.
37. The timing of the proposed tranche 2 date may also affect the capacity of CDR agencies to respond to enquiries, prepare guidance and provide other assistance to data holders (for example, to consider exemption requests). CDR participants benefit from liaison with CDR agencies. This liaison often increases in the lead up to a compliance date when both CDR agencies and data holders are engaged in intensive preparatory work. Deferring the tranche 2 date will better enable data holders to be adequately resourced and complete the necessary preparatory work prior to the compliance date.

## Large providers

38. The draft rules state that a non-bank lender that is a data holder of non-bank lender sector data will be considered a large provider on the commencement day or any later day if it meets the de minimis threshold on that day. That is, the non-bank lender has over 500 customers on that day and the value of its resident loans and finance leases exceeds \$500 million during the calendar month preceding that day and on average over the previous 11 calendar months.

## Timing of the de minimis threshold for large providers

39. We note that a non-bank lender will be classified as a large provider if it reaches the de minimis threshold on the commencement day or on a later day. That is, a non-bank lender could become a large provider on any day from the commencement day. The ACCC recognises the proposed approach ensures CDR data sharing obligations commence for data holders as early as possible. However, this approach could cause confusion for data holders, and may create difficulties for the ACCC in monitoring compliance.



40. Under the draft rules, the ACCC would be required to complete ongoing verification and engagement activities to determine whether a non-bank lender has met the de minimis threshold and hence, has data sharing obligations. Building a CDR solution may be a long and complex process and we generally engage with new data holders well in advance of their obligations commencing. However, under the proposed approach, the ACCC may be unable to complete this early engagement due to the uncertainty regarding which providers meet the threshold and when this will occur. The proposed approach would impose a significant monitoring burden on the ACCC and impact our ability to undertake other compliance and enforcement activities which are also beneficial to the CDR.
41. The draft rules state that a non-bank lender may be a large provider on a particular day if it has more than 500 customers and its total value of resident loans and finance leases is over \$500 million during the calendar month preceding that day and averages over \$500 million for the period of the previous 11 calendar months. The proposed approach differs from the energy sector where larger retailers are required to meet the de minimis threshold either on the amendment day or at all times during a financial year that begins on or after the amendment day.<sup>25</sup> If the energy retailer meets the threshold at all times during a financial year that begins on or after the amendment day, it will become a larger retailer 12 months after the end of that financial year.
42. Hence, energy retailers that meet the de minimis threshold at all times during a financial year that begins on or after the amendment day will only ever be considered to be a 'larger retailer' on and from the day that is 12 months after the end of the relevant financial year, with the practical result that they will have a further 12 months to prepare for their CDR obligations. However, it appears non-bank lenders may meet the threshold for a 'large provider' in any month of the year. The timing for commencement of CDR obligations will hinge on when non-bank lenders meet this threshold. If a non-bank lender becomes a large provider after 1 November 2023, it is required to comply with PRD requests 12 months from the date it became a large provider, and to comply with consumer data sharing obligations for non-complex and complex requests after 15 months and 18 months respectively.<sup>26</sup>
43. We support the staggered approach to commencement of obligations for non-bank lenders that reach the threshold after 1 November 2023. However, the approach undertaken in the energy sector to when a retailer is considered a larger retailer provides greater certainty for potential data holders in relation to when data sharing obligations commence. This is because data sharing obligations will always commence on and from the day that is 12 months after the end of the relevant financial year a data holder has met de minimis threshold at all times.
44. Furthermore, the energy sector approach allows the ACCC to assess whether new data holders have met the threshold at the end of each financial year, rather than requiring this assessment on an ongoing monthly basis. This provides a higher degree of certainty for prospective data holders and enables the ACCC to better target these assessments.
45. The ACCC suggests the rules require the monthly average of a non-bank lender's resident loans and finance leases to exceed the relevant threshold for the period of one financial year that begins on or after the commencement day, in order for the non-bank lender to meet the large provider threshold after the commencement day. This approach would simplify threshold assessments while continuing to ensure that non-bank lenders

---

<sup>25</sup> See CDR Rules, schedule 4, clause 8.3(1).

<sup>26</sup> See CDR Rules, schedule 3, clause 6.3.

have met the threshold for a sufficient period of time to justify the application of CDR obligations.

## Customer threshold for large providers

46. In addition to meeting the financial threshold, the draft rules also require a provider to have more than 500 customers on the commencement date or on any day after the commencement date, to be considered a large provider. However, it may be difficult to determine whether a non-bank lender meets the customer threshold and hence, whether it may be classified as a large provider. Data from the Australian Prudential Regulation Authority (APRA) can be used to determine the value of a non-bank lender's resident loans and finance leases. However, the number of customers is not recorded by APRA and there is currently no requirement for non-bank lenders to report this information. The ACCC encourages Treasury continue exploring relevant datasets in relation to the customer base of non-bank lenders. An independent evidence base would allow the ACCC to have better oversight and ability to monitor whether a non-bank lender has met the de minimis threshold.
47. In the absence of a relevant dataset or reporting channel, the ACCC suggests Treasury consider including a provision in the CDR Rules to explicitly place the onus on a non-bank lender that exceeds relevant financial thresholds to satisfy the ACCC that it has 500 customers or less and is, therefore, not a large provider for CDR purposes. That is, if APRA data indicates that a non-bank lender exceeds the \$500 million threshold for resident loans and finance leases, it would be presumed to also meet the customer threshold and have data sharing obligations, unless it can establish otherwise.
48. Under this approach a non-bank lender would not be subject to CDR obligations if it exceeds the financial threshold but provides sufficient evidence to prove that it has 500 or less customers. However, the non-bank lender would be responsible for notifying the ACCC if its number of customers subsequently increases and exceeds the customer threshold. This approach would allow the ACCC to better monitor which non-bank lenders meet the de minimis threshold and hence, have data sharing obligations. The ACCC would retain the ability to verify customer numbers as appropriate.

## Modification of energy sector rules

49. The Australian Energy Regulator (AER) and the Victorian Department of Energy, Environment and Climate Action (Victorian agency) are the designated data holders for energy product reference data (PRD) and must provide a product data request service.<sup>27</sup> The AER publishes endpoints to access both its energy PRD and the Victorian agency's PRD on its website. Instructions for accessing energy PRD are also available on the CDR website. However, this information is not available in a machine-readable form, and so the ACCC supports efforts to make this information available in an easily accessible machine-readable form.
50. Energy retailers are not designated data holders for PRD and are not required to provide a product data request service, though they may choose to do so. The exposure draft rules include an obligation for energy retailers to forward product data requests to the AER or the Victorian agency, in accordance with the Standards. This applies whether or

---

<sup>27</sup> Energy retailers are holders of product data. The *National Energy Retail Law* (NERL) and the *Electricity Industry Act 2000* (Vic) (the Victorian Act) require energy retailers to provide this product data to the AER or Victorian agency. Hence, the AER and Victorian agency are designated data holders for product data in the energy sector.

not a retailer chooses to provide its own product data request service. We note that the exact mechanism for forwarding requests will have significant implications. The approach selected may need to make it possible to distinguish between data holders who are providing their own product data request service, and data holders who are forwarding requests to the AER, in order to allow the ACCC to appropriately assess compliance.

51. The proposed amendments will enable an ADR or other person to access energy PRD from the same energy retailer endpoints that they use to access information on status and outages. While there may be some advantages to the co-location of this public facing information, it is difficult to assess the regulatory and technical impact of the proposed rule in the absence of further detail about supporting standards. This also makes it difficult to assess this option against alternatives, such as a Register facilitated solution. We understand that the technical requirements will be further consulted on by the Data Standards Body as it progresses work to develop relevant data standards. We recommend Treasury consult further with retailers regarding the anticipated costs associated with compliance as the data standards are developed.
52. Treasury should ensure retailers have sufficient time to adapt their solutions to comply with the new obligation in the energy rules. This may be a lengthy process as retailers negotiate with their vendors to determine the most appropriate option to build their solution.
53. Finally, the wording of clause 4.2(3) implies that only a CDR consumer can request required product data from a retailer. However, under the current CDR Rules, any person may request a data holder disclose product data.<sup>28</sup> That is, a person does not need to be an eligible CDR consumer to be able to request product data. Hence, the ACCC suggests Treasury refer to a 'person' rather than a 'CDR consumer' in the relevant provision.

## Minor comments

Relevant draft rules	Description and/or relevant extracts	ACCC comments
CI 6.1(4)	A relevant non-bank lender may be a large provider on a particular day if it has over 500 customers, is a data holder of NBL sector data, and its total value of resident loans and finance leases is over \$500 million during the calendar month preceding that day and averages over \$500 million for the period of the previous 11 calendar months.	The ACCC suggests Treasury clarify the measurement of the financial threshold for large providers. It is unclear whether the requirement for non-bank lenders to average over \$500 million in resident loans and finance leases over the previous 11 calendar months includes the month immediately preceding the day the non-bank lender becomes a large provider. That is, we are unsure whether the average of the previous 11 calendar months referred to in clause 6.1(4)(a)(ii) includes the calendar month referred to in clause 6.1(4)(a)(i) or is instead, measured prior to the calendar month mentioned in clause 6.1(4)(a)(i).
CI 6.6	A data holder in the banking or NBL sector, other than an excluded data holder, may choose to receive a request on behalf of an eligible consumer under Part 2 or Part 4 of the CDR Rules; and	The wording of this provision implies a data holder could decide whether or not it wants to deal with a request on a request-by-request basis, rather than being required to opt into CDR data sharing altogether (which is the approach taken for voluntary application of Part 4 to small energy retailers). We question whether this is the intention.

<sup>28</sup> See CDR Rules, rule 2.2 and rule 2.3(1).

	disclose the relevant data in response to the request.	We also query how the drafting of this provision interacts with rules 2.2 and 2.3 of Part 2. Rule 2.2 and rule 2.3 state that <u>a person</u> may initiate a product data request. That is, a person is not required to be an eligible consumer to make a request under Part 2 of the CDR Rules.
<b>Cl 6.8</b>	This clause sets out the commencement dates for an ADI who becomes a data holder after the commencement of the NBL rules.	<p>The ACCC notes the title of this clause is 'Entities that become ADIs after specified date'. However, clause 6.8(1) states that it applies to a person who becomes a data holder in the banking sector after the commencement date. Hence, we suggest Treasury amend the title of this clause and refer to 'data holders in the banking sector' rather than 'ADIs'. This would ensure the title is consistent with the provision.</p> <p>The ACCC queries whether this clause includes restricted ADIs that become unrestricted ADIs. The ACCC considers that the proposed delay for the data sharing obligations for entities that become an ADI after the commencement date should also apply to restricted ADIs that become unrestricted ADIs. We note that a restricted ADI is an excluded data holder under the proposed clause 1.1A of Schedule 3 and is exempt from data sharing in the CDR. Hence, a restricted ADI should not need to commence its CDR build until it has regulatory certainty that it has been approved for unrestricted ADI status. Therefore, the CDR rules should apply to a restricted ADI 12 months after it has become an unrestricted ADI. That is, a restricted ADI should have at least a 12-month delay in their data sharing obligations when it becomes an ADI, consistent with the compliance dates in clause 6.8 of schedule 3.</p>
<b>Cl 8.1(6)</b>	An accredited person must update the consumer dashboard within a reasonable period after receiving a notification from the data holder that it has transitioned from operating in the NBL sector to the banking sector.	<p>The ACCC suggests Treasury reconsider the allowed timeframe for an accredited person to update the consumer dashboard resulting from a sector change. The proposed rules state that an 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 in relation to a sector change, but rather within a reasonable period after being notified by the data holder.</p> <p>The ACCC notes that this proposed rule only applies to changes in relation to the sector change referred to in subrule (1) and an accredited person is required to update the consumer dashboard as soon as practicable in all other circumstances within the CDR.<sup>29</sup> Therefore, Treasury should consider whether it would be more appropriate for accredited persons to update the consumer dashboard as soon as practicable in all circumstances to ensure overall consistency in the CDR Rules.</p>

<sup>29</sup> See CDR Rules, rule 4.19(1).