



Our reference: Ref wi20231005

5 October 2023

**The Treasury
Australian Government and Data Standards Body**

BY EMAIL ONLY: CDRRules@treasury.gov.au

Dear Sir/Madam

Submission in Response to Exposure Draft Amendments to Consumer Data Right Rules (Amending Rules)

We refer to the Exposure Draft Amendments (**Amending Rules**) (released by the Treasury on 25 August 2023). We note that the Treasury is seeking feedback to the Amending Rules which seek to extend the CDR into the non-bank lenders sector. The Australian Catholic Bishops Conference (**ACBC**) through its specific purpose entity CDPF Ltd, is responding on behalf of Catholic Development Funds (**CDFs**) and appreciates the opportunity to provide comments on the Amending Rules.

The ACBC is a permanent institution of the Catholic Church (the **Church**) in Australia and is the instrumentality used by the Australian Catholic Bishops to act nationally and to address issues of national significance.

CDPF Ltd is an ASIC approved Sponsor for the purposes of providing CDFs access to exemption relief from certain provisions of the *Corporations Act 2001* (Cth) (the **Corporations Act**). CDPF Ltd also acts as a promotor of the mission of the Church through the activities of its various CDFs, including the seeking of, and maintaining compliance with, various exemptions available from regulatory requirements.

You will recall from our previous submission in response to the Consumer Data Right Rules and Data Standards Design Paper (**CDR Paper**) (copy **enclosed**) that CDFs are not-for-profit, charitable organisations which play a central role in the delivery of the Church's mission, and we have expanded upon this below.

Introductory comments on Amending Rules

We refer specifically to new clause 1.1A, Division 1.2 of Schedule 3 setting out certain classes of data holders in the banking and non-bank lenders sector to which the CDR Rules do not apply. We are pleased to note that "excluded data holders" include bodies that have been established and operate "solely for religious or charitable purposes". However, we are concerned at the inclusion of the word "retail" at subclause (2)(a)(ii) as well as the requirements relating to constitutions set out in subclauses (2)(a)(i)(A) and (2)(a)(iii) of the definition of "excluded data holders" which if retained, will result in some CDFs being inadvertently excluded from the intended exemption from the CDR Rules.



We address each of these concerns below.

Background to CDFs

CDFs act as a conduit for the Catholic community to apply its savings to support the works of the Church. This has been traditionally done through its accepting of investments principally from Catholic organisations to meet the borrowing requirements of Catholic agencies on terms which are generally more favourable than those offered by banks (if bank lending is available at all).

Each of the CDFs is a charity and works for the mission of their respective diocese, and the mission of the whole Catholic Church, in providing for the surplus that may be generated from their lending activities to be applied towards the broader charitable purposes of the Church and its community, providing funds for schools, churches, retirement villages, aged care facilities and hospitals.

They take a prudent and ethical approach to carefully managing Church and laity deposits for the benefit of the Church and broader community. CDFs provide financial services to Catholic entities within the limited in-house and collegiate environment of the Church and not in the broader consumer commercial environment.

CDFs provide operational and business services for parishes, schools and associated church organisations, as well as investment accounts for individuals. Each CDF has a relationship with a bank, which allows for the provision of the products and services required. The CDFs assist in the accomplishment of the Church's mission by financing capital projects and providing income for dioceses through prudent financial management.

Existing exemptions

Government bodies have already accepted the special nature of the related entities relationship which exists between CDFs (and other charitable development funds) and their customers by the granting of exemptions by the Australian Securities and Investments Commission (**ASIC**) and the Australian Prudential Regulation Authority (**APRA**). Both ASIC and APRA have exempted CDFs from some of the more onerous obligations that usually apply to entities that conduct a banking business or carry on a financial services business, under the ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813 (**ASIC Instrument**) and the Banking Exemption no. 1 of 2021 (**APRA Exemption**) respectively.

This relief, which is conditional on certain protections for investors being met, recognises that the role of a CDF is to raise funds to support the religious and charitable purpose of the CDF.

Our concerns

We set out below our concerns with the current drafting of the Amending Rules, specifically the definition of "*excluded data holders*".

1. Inclusion of the term "*retail products*"

In the context of financial products normally regulated by the *Corporations Act*, CDFs provide certain financial products to Catholic entities. Many CDFs only provide financial products to Catholic Church



entities that would be considered wholesale clients (as opposed to retail clients) while other CDFs have a mix of Catholic Church entities as customers that would be considered either wholesale or retail.

We note that the term “*retail product*” is not defined in the *Corporations Act, Banking Act 1959*, the *Competition and Consumer (Consumer Data Right) Rules 2020* (Cth) nor the *Competition and Consumer Act 2010* (Cth). The term appears in the APRA Exemption and is defined as:

“securities, a financial product or any other arrangement involving the taking of money on deposit offered to a retail investor.”

Use of the term “*retail product*” in the APRA Exemption refers to additional specific conditions that apply only to CDFs that offer such products, but such conditions do not apply to the CDFs that do not offer retail products.

If the term “*retail product*” is retained in the definition of “*excluded data holder*”, not only would this create potential confusion as to the meaning of the term (as it is undefined in the Amending Rules), but it would also result in CDFs that do not offer retail products, that is, CDFs that have only wholesale clients, being unable to access the intended exemption under the Amending Rules. This would leave such “*wholesale*” CDFs in a position to have to comply with the CDR Rules which would be overly burdensome on CDFs, in terms of the administrative burden and cost in compliance (for the reasons outlined in our previous submission, which is **enclosed**).

For consistency, we recommend that the term “*retail product*” be replaced with “*financial product*” which is not only a well understood term defined in the *Corporations Act*, that term is also used in the ASIC Exemption and covers products offered to retail clients and/or wholesale clients.

2. Requirement for constitutions

The definition of “*excluded data holders*” requires body corporates established and operated solely for religious charitable purposes to have these purposes outlined in its constitution. In addition, subclause (2)(a)(iii) of the definition requires a copy of the body’s constitution to be available for inspection on request by the APRA. The term “*body’s constitution*” is not defined in the Amending Rules.

This poses a potential issue for some CDFs, as not all CDFs are governed by documents called “*constitutions*” in the ordinary sense of that word.

We refer to clause 1 of the APRA Exemption which requires a CDF that is eligible for the exemption under that instrument to have its religious and charitable purposes “*stated in a trust deed, ordinance or other foundation document governing the Fund (Fund Constitution)*”. We confirm that all CDFs are governed by written documents that fall within this specific and expanded definition of “*Fund Constitution*”. For consistency, we recommend that the definition of “*excluded data holder*” be amended accordingly to reflect the APRA Exemption terminology.

Our proposed changes to Amending Rules

We refer to the Amending Rules for the Explanatory Materials which state that the intention of the first class of excluded data holders is to “clarify the existing policy setting in relation to certain bodies established for religious or charitable purposes, which are typically not required to be authorised lenders.” We are pleased to note that this is the overarching intent of the exemption and we therefore make the following requested changes to the definition of “excluded data holders”, shown by the strikethrough of the words “set out in its constitution” at subclause (2)(a)(i)(A), the strikethrough of (2)(a)(iii) in whole and the replacing of the word “retail” with the word “financial” at subclause (2)(a)(ii).

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.

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~~ **stated in a trust deed, ordinance or other foundation document governing the body (body’s constitution); and**

(B) operates on a not-for-profit basis; and

(ii) the body offers ~~retail~~ **financial** 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.



Conclusion

CDPF Ltd is concerned about current drafting of the “*excluded data holders*” definition in the Amending Rules, which if retained, would inadvertently prevent some CDFs from accessing the intended exemption and would result in a significant administrative burden and cost of implementation and ongoing management of CDR upon said CDFs and the consequent reduction in charitable funds available to be applied for broader charitable purposes to the Catholic community. We request on behalf of the CDFs that definition of “*excluded data holders*” in the Amending Rules be amended in accordance with our requested changes above so that CDFs may be exempt from the CDR Rules as intended.

Yours faithfully

Jonathan Campton
Secretary
CDPF Ltd