



6 October 2023

Louise Staker
Market Conduct and Digital Division
Treasury
Langton Cres
Parkes ACT 2600

Classification: Public

Via email to: CDRRules@treasury.gov.au

Re: Cuscal response to Treasury's exposure draft amendments to the Competition and Consumer (Consumer Data Right) Rules 2020 (the CDR rules), expansion to the Non-Bank Lending sector.

Cuscal Limited (Cuscal) welcomes the opportunity to provide feedback on the exposure draft rules to enable CDR in the non-bank lending sector (NBL).

The NBL sector is an integral part of the Australian financial landscape and has rapidly grown in an environment of strong competition. The exposure draft rules will pave the way for initialising Open Finance in the CDR ecosystem and will support a more effective product service comparison in the financial sector. The proposed amending rules achieves the objective of alignment with the banking sector striking the right balance required in the NBL sector. As CDR is an economy wide reform it's important to limit the use of sector specific rules to maintain consistency and flexibility for participants and consumers to achieve the desired outcomes.

Background to Cuscal

For over 50 years, Cuscal has leveraged our assets, licensing, and connectivity to provide intermediary and principal outsourcing activities on behalf of our clients. We are an end-to-end payments specialist that services more than 100 established ADI and challenger brand clients within Australia's financial system, including the majority of the mutual banking sector, and a growing number of FinTech and 'PayTech' enterprises. We enable their market connectivity so they may provide innovative products, business models, and drive improved customer outcomes.

We are an Authorised Deposit-taking Institution (ADI), the holder of an Australian Financial Services Licence, and an Australian Credit Licence for Securitisation purposes. Cuscal has Board representation with Australian Payments Plus, NPPA, BPAY, Eftpos, the Australian Payments Network and participates in numerous industry committees. We are also the founder of 86400 (rebranded to ubank, <https://www.ubank.com.au/>), a fully licenced mobile-led digitized bank, acquired by National Australia Bank.

The services that we provide to our client institutions include card scheme sponsorship for issuing and acquiring, payment card issuing, card production services, digital banking applications, access to domestic payment services using direct entry, BPAY, the New Payments Platform (NPP) and Open Banking platform services. We also act as settlement agent for many of our clients through our Exchange Settlement Account with the Reserve Bank of Australia (RBA).

As a fully PCI-DSS accredited ADI, Cuscal is uniquely placed to provide secure and robust capabilities that facilitate access to markets that would otherwise be beyond the reach of some organisations.





Cuscal's Role in CDR ecosystem

Cuscal considers itself as a CDR Intermediary, helping entities to comply with the Consumer Data right regime and support their customers to obtain the most out of the data sharing regime.

Cuscal supports:

- ❑ Data Holders to manage compliance effectively.
- ❑ Consumers to share their banking data with best-practice simplicity, while remaining in control over the data they consent to share via their bank.
- ❑ Entities with technology services by minimising the time, cost, and risk of doing it themselves.

Cuscal has attained accreditation as a data recipient and successfully launched the myCDRdata service in July 2023. The myCDRdata service is an Industry first tool that supports Data Holders with meeting their compliance obligations by providing functionality to test their CDR build in a production environment.

For further information on Cuscal and its services please refer to our website at www.cuscalpayments.com.au

Cuscal agrees with the proposed amending rules in the Exposure draft paper. We believe Treasury has achieved the desired requirements to align the NBL sector with the banking rules by widening the scope of Schedule 3 in the *Competition and Consumer (Consumer Data right) Rules 2020*. The rules and definitions within the banking sector are readily extensible to the NBL sector and we agree with the proposed approach. The below matters provide Cuscal's view around some of the areas within the Exposure draft that requires consideration from Treasury.

- ❑ The exclusion applied for account data, in relation to a particular account includes:
 - 2(c)ii - repayment history information within the meaning of subsection 6V(1) of the *Privacy Act 1988*.The above exclusion should be reconsidered in view of the introduction of Buy Now Pay Later (BNPL) product types. Payment defaults is not uncommon in the context of BNPL product types where late fees and charges are applied to customers. Exclusion of such account data could lead to incorrect assessments by credit providers and lead to greater consumer harm. Inclusion of such data on the other hand will ensure BNPL providers are able to perform checks and assess the right product for the consumer and comply with their code of practise.
CDR rule 3.5 currently provides Data Holders the ability to refuse sharing of consumer data for the avoidance of harm. The rules currently protect vulnerable consumers and are applied by Data Holders in varied circumstances without limiting to payment defaults. Cuscal suggests that the CDR rules should be balanced to ensure consumers are not trapped in unfavourable products resulting from incomplete datasets used to perform financial assessment on a consumer. The outcome would have a significant adverse impact on consumers in such instances.
- ❑ The implementation schedule states 12, 15 & 18 months for participants to comply in the NBL sector. However, once the rules are registered, participants are only awarded 9 - 10 months to meet compliance. It is suggested that Treasury considers the timelines from the dates the amending rules are registered as opposed to defining a date in advance without considering consultation feedback time required before the rules come into effect. This will help reduce the number of Data Holders having to raise non-compliance rectification schedules, improving compliance stature within the ecosystem. Historically, Data holders in both the banking and energy sector have raised rectification





schedules due to tight timelines becoming non-compliant. There are multiple factors that impacts timelines such as hiring of specialised resources in a tight market, setting up infrastructure, vendor engagements, contracts, and the technical implementation. This feedback is intended to capture some of the instances where we have seen shorter timeframes granted to Industry for compliance which is not factored or considered when rules are proposed. For eg: CDR rules V5 was registered on 21 July 2023 with a compliance date for Data holders (DH dashboards) by 1 July 2024 however the industry is still awaiting the finalised Data standards to implement the rules. CDR standards version changes are released every two to three months adding to Data holders ongoing compliance requirements. It should be noted that time for consultations and feedback is much longer when compared to implementation time given to CDR participants for compliance.

- ❑ Cuscal notes that reference to “Reciprocal data holder” is being removed from the legislation. However, noting CDR rules 7.2 – Conditions for accredited persons to be Data Holders, in effect is the same as reciprocal data holder obligations. Recently released CDR rules V5 provides an exemption of 12 months after the non-ADI entity has become a CDR data holder as a result of the operation of subsection 56AJ (3) of the Act. We believe this exemption will need to be extended to ADR’s who are relevant non-bank lenders and required to comply with reciprocity rules.
- ❑ A minor discrepancy noted in the draft exposure documentation, reference to Telecommunications sector should be removed while the rollout is paused in this sector.
- ❑ As DSB’s work progresses with uplifting NFR’s and authentication methods, we presume it may have an impact on the initial rollout of Consumer required datasets in the NBL Sector. Hence it is important that Industry receives sufficient time to incorporate the authentication uplifts and meet the compliance timelines imposed by changing regulations and standards.

In conclusion, Cuscal broadly supports the proposed approach for the NBL sector. We look forward to discussing our submission with you should there be any further clarifications required.

If we can be of any further assistance in the interim, please feel free to contact me at kmckenna@cuscal.com.au or (02) 8299 9000.

Yours sincerely,

Kieran McKenna
Chief Risk Officer

