



GPO Box 144, Sydney, NSW 2001
Suite 902, Level 9, 130 Pitt Street, Sydney, NSW 2000
T: +61 (0)2 8905 1300
W: www.mfaa.com.au

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

10 October 2023

By email: CDRRules@treasury.gov.au

Dear Ms Staker

CONSUMER DATA RULES – EXPANSION INTO NON-BANK LENDING SECTOR

As the peak body representing the mortgage and finance broking industry, the Mortgage & Finance Association of Australia (**MFAA**) welcomes the opportunity to respond to Treasury's consultation on the Consumer Data Right Rules – Expansion into Non-Bank Lending Sector (**the Consultation**). For more information about the MFAA, please see **Annexure A**.

Due to the number of consultation processes in which the MFAA and its members are currently involved, our submission is necessarily quite general and confined to high level commentary. We wish to acknowledge and support the submission by FinTech Australia, the peak advocacy body for financial technology companies in Australia. We particularly agree with the concerns raised by Fintech Australia in relation to the treatment of financial hardship data and repayment history, white labelled products and the voluntary and required consumer data exclusions. We also in our submission below build upon commentary in relation to the definitions of Initial and Large Providers.

OUR SUBMISSION

The MFAA continues to support the expansion of the Consumer Data Right (**CDR**) in Australia. Provided that the CDR framework is easy, simple, and frictionless to implement, that it will promote competition across the finance industry, leading to increased options, improved credit decisioning and better outcomes for consumers.

Non-bank lending has grown rapidly in Australia since 2015 and accounts for approximately 5% of total system assets.¹ Non-bank lenders tend to focus on borrowers and market segments that have been underserved by banks and while most lending is for housing, in recent years, non-banks have increasing diversified product sets, including vehicle financing, lending to self-managed super funds and other sectors where access to finance through banks can be more challenging. This innovation

¹ Hudson, C, Kurian, S and Lewis M, 16 March 2023, [Non-bank Lending in Australia and the Implications for Financial Stability | Bulletin – March 2023 | RBA](https://www.rba.gov.au/publications/bulletin/2023/mar/non-bank-lending-in-australia-and-the-implications-for-financial-stability.html) <<https://www.rba.gov.au/publications/bulletin/2023/mar/non-bank-lending-in-australia-and-the-implications-for-financial-stability.html>>

contributes to competition and creates more choice for consumers. It also leads to an increasing number of diversified financial products that available in market for consumers. As such, more consumers now have a diversified range of financial products across multiple providers including with non-bank lenders. From a responsible lending perspective, access to this information is important for brokers to enable them to conduct a thorough assessment of that consumer's financial position for further lending, including importantly for a home loan.

As we have noted in our meetings with Treasury,² we consider that there are five components to be realised for the use of CDR data to be embedded within the credit assistance process for mortgage broker customers. These included improvements in the consent framework to facilitate a better customer experience (currently underway), improvements in data integrity, expansion in terms of data coverage (i.e., including non-bank lending datasets) and product development leveraging CDR data, and integration of those products into systems used by the broker industry to facilitate lending.

The MFAA therefore is very pleased to see the development of rules to extend the CDR to the non-bank lending sector. Including non-banking lending data into the CDR framework will facilitate equal opportunity across the market, promoting greater competition across the finance industry and will lead to greater choice and access to finance, improved credit decisioning and better outcomes for consumers.³

We were specifically pleased that the Consumer Data Right Sectoral Assessment for Non-Bank Lending Final Report agreed with the MFAA's recommendation to include buy now pay later (**BNPL**) information in the CDR, to ensure use cases requiring a comprehensive view of a consumer's financial situation is realised.⁴

In addition to our commentary above, we have two further comments to make with respect to the draft rules, these are:

- The definition of Initial and Large Providers, considering that these definitions can be improved to support the intended purpose of the legislation, and
- Timeframe for implementation should be well considered - and balance the competing interests of maturing the framework but without compromising data quality.

Classification definitions

The draft rules classify non-bank lenders into one of two categories – Initial Provider and Large Provider. There is concern that the proposed classification parameters do not take into account the non-bank lender's corporate structure, which would then result in an initial provider otherwise being classified as a large provider.

The RBA in its publication *Non-bank lending in Australia and the implications for financial stability*⁵ reports non-bank lending is undertaken by registered financial corporations and some types of managed investment funds, including hedge funds. If the draft rules apply to entities within non-bank lenders, this will mean that non-bank lenders with a multitude of corporate entities or subsidiaries will potentially be incorrectly classified as a Large Provider, rather than an Initial provider, potentially giving an unfair advantage to other non-bank lenders.

For example, and hypothetically, a lender with \$15 billion in total loans across three corporate entities divided equally by \$5 billion would be classified as a Large Provider rather than an Initial Provider (given each entity has total loans less than \$10 billion). This would give this lender an advantage

² Including meetings with Ms Louise Staker on 20 June 2023, and with Mr James Kelly and Mr Adrian Storer on 4 August 2023.

³ See MFAA submission on Open Finance [here](#).

⁴ See [Consumer Data Right Sectoral Assessment for Non-Bank Lending Final Report](#) pg 10.

⁵ The Report can be found [here](#).

over another competitor of similar size simply due to its corporate structure and distribution of assets across entities.

We seek consideration for a consolidated view for related entities when applying the rules to determine the non-bank lender's classification.

Timeframes for implementation should be reasonable

In addition, some of our non-bank lender members are concerned that the proposed timeframes for compliance could lead to issues with data quality.

A recent report⁶ by the ACCC observed a range of data quality issues which is supported by a report by Open Finance Advisors which notes 72% of data holders had not complied with implementation timelines.⁷ Further, Government's response is to agree to Recommendation 2.5 of the Statutory Review of the Consumer Data Right, which is to focus on system maturity, functionality and data quality, seeking a 'balanced pace of expansion and improvements to existing arrangements.'⁸ In light of this, and that non-bank lenders are generally not as resourced as Australian banks, the timeframes noted for non-bank lenders may need to be reconsidered.

To that end, it would be remiss of us not to note Recommendation 2.1 of the Independent Statutory Review of the CDR - that screen scraping should be banned in the near future in sectors where the CDR is a viable alternative and the Government's proposal to regulate screen-scraping. While we are extremely supportive of the transition from the use of screen-scraping, this needs to be managed in a reasonable manner. Therefore, regulation in this area should take into consideration implementation timelines for non-bank lending into CDR.

We will expand on our commentary in our response to Treasury's discussion paper on the proposed regulation of screen scraping.

Closing Remarks

We extend our thanks to the Treasury for the opportunity to provide this submission. If you wish to discuss this submission or require further information, please contact me at naveen.ahluwalia@mfaa.com.au or Stefania Riotto at stefania.riotto@mfaa.com.au.

Yours sincerely,

Naveen Ahluwalia

Naveen Ahluwalia

Head of Policy and Legal

Mortgage & Finance Association of Australia

⁶ ACCC, [Data quality in the Consumer Data Right \(accc.gov.au\)](https://www.accc.gov.au) April 2023

⁷ See [Australian Open Banking Ecosystem Map and Report 1st Edition December 2022](#) pg 10.

⁸ Treasury, [Government statement in response to the Statutory Review of the Consumer Data Right](#), June 2023.

Annexure A – About the MFAA

The MFAA is Australia's leading professional association for the mortgage and finance broking industry, with over 14,500 members. Our members include mortgage and finance brokers, aggregators, lenders, mortgage managers, mortgage insurers and other suppliers to the mortgage broking industry. Brokers play an important part in Australia's home loan industry, facilitating two thirds of all new residential home loans and four in ten small business loans in Australia.⁹

The MFAA's role, as an industry association, is to provide leadership and to represent its members' views. We do this through engagement with governments, financial regulators and other key stakeholders on issues that are important to our members and their customers. This includes advocating for balanced legislation, policy and regulation and encouraging policies that drive competition and improve access to credit products and credit assistance for all Australians.

⁹ [MFAA | Mortgage broker market share reaches new December quarter record](#)