

Director
CDR Framework Unit
Treasury
Langton Cres
Parkes ACT 2600

23 December 2024

By email: CDRRules@treasury.gov.au

Dear Director,

CONSUMER DATA RIGHT (CDR) RULES – NON-BANK LENDING AND BANKING DATA SCOPE

The Mortgage and Finance Association of Australia (**MFAA**) welcomes the opportunity to comment on the Competition and Consumer (Consumer Data Right) Amendment (2024 Measures No. 2) Rules 2024 (the **draft Rules**).

Mortgage brokers make a significant contribution to lending in Australia, facilitating 74.6% of all new residential home loans¹ in Australia. Under the CDR framework, mortgage brokers are recognised as trusted advisers, enabling them to, with consent, access their clients' financial information, allowing them to provide more personalised services to their clients.

Lending, credit and broking use cases have emerged as the leading uses cases for CDR, proving the value of the CDR to consumers through mortgage brokers as trusted advisers.²

Pleasingly, we are seeing a continued increase in adoption of CDR-powered products by brokers, with these products continuously being enhanced and integrated into existing systems. For example, NextGen's ApplyOnline platform³ has observed significant growth in the adoption and usage of its integrated Open Banking service among brokers.⁴ The MFAA is encouraged by this momentum and encourages the Federal Government to continue its investment in expanding the CDR framework for the benefit it brings to competition in the lending landscape.

OUR SUBMISSION

We understand the draft Rules:

¹ MFAA media release, [Mortgage broker market share reaches new record highs](#), 3 December 2024.

² FinTech Australia, [Australian Open Banking ecosystem map and report, 4th edition](#), May 2024.

³ ApplyOnline is the platform used by more than 60 lenders and 97% of the mortgage broking industry to facilitate electronic lodgement for lending related to property transactions.

⁴ NextGen have told the MFAA that from July to November, the number of unique brokers utilising the ApplyOnline Open Banking service increased by 60%, while invitations sent to consumers to leverage the Open Banking service rose by 125%. Additionally, successfully completed Open Banking requests initiated by mortgage brokers increased by 114% during the same period.

1. Sets out the rules for non-bank lending (with feedback included from an earlier consultation) and
2. Narrows the scope of banking and non-bank lending data holders to share CDR data for particular products considered to be 'niche products' or that does not add 'significant value' to consumers.

We deal with each of these aspects below.

1. Updated rules for non-bank lending

We are pleased to see that our recommendation⁵ to include related entities as part of the threshold test has been adopted in the revised Rules. This inclusion ensures a more comprehensive assessment of non-bank lenders' operations, promoting participation by non-bank lenders in the CDR system.

As noted in our previous submission,⁶ expanding the CDR framework to include non-bank lending will enhance consumer outcomes by enabling brokers to access more comprehensive data sets, allowing them to deliver more tailored and personalised recommendations to their customers.

Comprehensive and accurate consumer data is essential for mortgage brokers to help borrowers explore their options, optimise household budgets, and secure tailored solutions, including refinancing and repricing opportunities.

We recognise the importance of balancing the need for sufficient data within the CDR framework to present a comprehensive view of a consumer's finances with the necessity of managing compliance costs for smaller organisations. This balance is crucial because, for lending use cases, it is essential for the CDR to function as a single source of truth for customer financial information, eliminating the need to seek data outside the system.

Within this context, we make the following observations with respect to the revised rules.

(a) Updates to the 'de minimis' threshold

The proposed de minimis threshold seeks to recognise this and offer a balanced approach to non-bank lenders participating in the CDR. There is a risk, however, that it minimises the pool of data within the system, eroding the value of the CDR as that single source of truth. While the Rules provides for voluntary participation in the CDR,⁷ there is a risk this voluntary option will have limited take-up.

The 'de minimis' threshold sets the criteria for determining whether a non-bank lending data holder must implement CDR data sharing. This criterion has been revised to a total value of resident loans and finance leases exceeding \$1 billion (an increase from the \$500 million threshold in the previous proposal) and a customer threshold of more than 1,000 customers (up from 500 in the earlier proposal).

While as noted we understand the need to balance compliance requirements for smaller organisations, we remain concerned about the potential implications of 'casting the net too narrowly'.

We recommend that Treasury conduct a detailed analysis to determine how many non-bank lenders in the market would be excluded or not captured under the proposed thresholds. This analysis would provide a clearer understanding of the potential impact of these changes and help ensure that the

⁵ MFAA submission [Consumer Data Right Rules – Expansion into non-bank lending sector](#), 10 October 2023.

⁶ MFAA submission [Consumer Data Right Rules – Expansion into non-bank lending sector](#), 10 October 2023.

⁷ Exposure draft, Schedule 1, Part 2, Division 6.3 – Disclosing CDR data voluntarily: banking sector and NBL sector.

thresholds are set in a way that maximises the effectiveness of the CDR framework while minimising unintended exclusions.

(b) The clarification that data holders with related entities or in white labelling arrangements may discharge each other's obligations should be extended to managers/servicers

We support the data-sharing obligations that allow one data holder to comply with the rules on behalf of another, as this approach could potentially increase the number of lenders meeting the 'de minimis' thresholds. This, in turn, would positively impact the number of lenders and products available within the CDR ecosystem.

In general, white-label mortgage products and managers/servicers share similarities in that both act as intermediaries providing tailored solutions while relying on third-party funding. They often handle key elements of the loan process, such as origination, processing, and customer service. Therefore, it would be logical and consistent for the rules that apply to white-label arrangements to also cover managers/servicers, enabling these entities and primary lenders to discharge each other's obligations under the rules.

With respect to the clarification related to managers of loans, we could not locate clear guidance within the draft rules.⁸ It appears this may be addressed within the NBL sector designation instrument, and Treasury will need to exercise care around the drafting of the instrument as there are different types of managers and servicers. With respect to managers/servicers, we recommend that Treasury consult with stakeholders to refine the definition of an NBL in the designation instrument.

2. Narrowing the scope of bank and non-bank lending products

While we understand the intent to reduce costs and administrative burdens, excluding niche and small-scale products risks limiting the scope and value of the CDR framework particularly for lending use cases.

For both new application and refinancing use cases, mortgage brokers are required to make reasonable inquiries as to a prospective borrower's financial situation. This means brokers need to understand the entirety of a customer's financial situation, including their income, expenses, assets, and personal liabilities, including for example any consumer leases they may hold.

Therefore, it is important that all financial products that a consumer holds are included as mandatory to allow brokers to not just obtain a holistic view of a customer's financial position, but also to obtain that information from one source. Should exceptions be created, brokers will be required to source that information from elsewhere—directly from the consumer, for example or continue to rely on screen scraping—which not only disrupts the consumer experience but makes the objective of the CDR redundant.

Specific comments in relation to the threshold test

We understand that the 'niche' products for which data sharing is voluntary include those listed in the Rules or those with fewer than 1,000 eligible CDR consumers. Based on this understanding, we believe the Rules should only exclude products from mandatory data sharing obligations if they meet both criteria: being one of the specified product types and having fewer than 1,000 eligible CDR consumers.

By applying both criteria, this would ensure that only genuinely 'niche' products are excluded.

⁸ [Exposure draft explanatory materials](#).

Specific comments in relation to asset finance, consumer leases and reverse mortgages

A consumer lease is regulated under the National Consumer Credit Protection Act 2009 and imposes liabilities on consumers that are critical for responsible lending assessments. In fact, ASIC Regulatory Guide 209 notes that the presence of consumer leases could indicate 'red flags' of potential harm and should be included in the steps taken to verify a consumer's financial situation.⁹

Given this regulatory framework and the nature of these obligations, consumer leases should not be treated as voluntary under the CDR framework. Treasury should clarify the basis on which consumer leases have been deemed voluntary and provide a justification for this decision.

We understand that the exclusion for 'asset finance products' is specific to non-standard vehicle finance with examples in the Explanatory Materials (EM) including novated leases and fleet finance.¹⁰ We understand the premise for the exclusion from mandatory CDR data sharing obligations because these products cater to specific and specialised needs, i.e. novated leases are typically used as part of salary packaging arrangements, while fleet finance is designed for businesses managing multiple vehicles. As such these products are unlikely to be included as part of a responsible lending assessment, we are comfortable with their exclusion.

However novated leases and fleet finance are a very small segment of asset finance. Given the depth and breadth of products in this category we are concerned about its broad exclusion from the CDR. In our view this exclusion could lead to unintended consequences, such as incomplete financial insights, a fragmented user experience, reduced CDR adoption, and continued reliance on screen scraping.

As such, we suggest it is important to clarify what else is considered to fall under the category of non-standard vehicle finance and at a minimum, we recommend that Treasury provide further information on the types of products and accounts that would be considered part of this category (beyond the two examples provided) to help better inform an assessment of the likely impact of its exclusion.

Some members also consider that reverse mortgages should be included as a compulsory product under the CDR framework. These loans are vital for retirees, enabling them to access home equity to manage living costs and maintain their lifestyle. As home loans are a core CDR use case, these members view the sharing of information in relation to reverse mortgages should not be deemed voluntary. Excluding reverse mortgages from the CDR framework risks denying these customers the benefits of enhanced competition, transparency, and the ability to compare and switch products, which are core objectives of the CDR.

Specific comments on financial hardship and repayment history information

The Rules propose a revision of customer data to not include 'financial hardship information' and 'repayment history information'.¹¹ Whilst we acknowledge the importance of having a comprehensive view of a consumer's financial information implies also understanding where there are hardship arrangements, for a mortgage and finance broker, the information can be obtained through the credit reporting system and which provides clear rules to ensure its proper and responsible use.

3. Timing

⁹ See RG 209 paragraph 209.87-209.88.

¹⁰ Exposure draft explanatory materials, page 12.

¹¹ Exposure draft explanatory materials, page 7.

The EM outlines a staggered implementation timeline for integrating non-bank lenders into the CDR framework, with obligations phased in across five tranches starting from 13 July 2026.¹² Initial providers will first comply with product data sharing under Part 2 of the CDR Rules, with consumer data sharing phased in gradually for both initial and large providers, culminating in full compliance for complex consumer data requests by 13 September 2027. This staged approach recognises the varying readiness of non-bank lenders and seeks to balance the need for comprehensive data sharing with the practical challenges of implementation.

We reiterate that any proposed timeline for implementing a plan to ban on screen-scraping¹³ must be aligned with the broader implementation schedule for non-bank lending within the CDR framework.

CLOSING REMARKS

This submission has been made with thanks to MFAA members Stryd, Sherlock and NextGen. If you wish to discuss this submission or require further information, please contact either me at naveen.ahluwalia@mfaa.com.au or Stefania Riotto at stefania.riotto@mfaa.com.au.

Yours sincerely

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¹² Exposure draft explanatory materials, page 15.

¹³ Assistant Treasurer Stephen Jones' speech to CEDA, [Putting consumers first in the Consumer Data Right](#), 9 August 2024.

Attachment A - About the MFAA

The MFAA's membership includes mortgage and finance brokers, aggregators, lenders, mortgage managers, mortgage insurers and other suppliers to the mortgage and finance broking industry.

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 foster competition and improve access to credit products and credit assistance for all Australians.