15 April 2022

Sectoral Assessments  
Consumer Data Right Division  
Treasury  
Langton Cres  
Parkes ACT 2600

Via email to data@treasury.gov.au

Classification Public

**Re: Cuscal response to the Consumer Data Right Open Finance sectoral assessment –   
non-bank lending**

Cuscal Limited (Cuscal) appreciates the opportunity to respond to the above consultation paper issued by the Treasury.

**Background to Cuscal**

For over 40 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 payment plus, NPPA, Australian Payments Network and participates in numerous industry committees. We are also the founder of 86400 (www.86400.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 Data holder 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 Role in Open Banking**

To help our clients benefit from the CDR, while minimising their cost and risks, Cuscal has invested in a Collaborative Data Exchange. This technology platform will position Cuscal as a CDR Intermediary that helps each of the three CDR participants obtain the most out of the CDR:

* Data Holders can manage compliance effectively.
* Consumers can share their banking data with best-practice simplicity, while remaining in control over the data they consent to share via their bank.
* Data Recipients can create better digital services, enabled by the data that consumers consent to share, but minimising the time, cost, and risk of doing it themselves.

Cuscal will be attaining the accredited data recipient role in future, to enable a broad range of services for our CDR participants. For further information on Cuscal and our services please refer to our website at [*www.cuscalpayments.com.au*](https://www.cuscalpayments.com.au/)

We have set out our key comments below regarding the consultation paper:

* As introductory comments Cuscal supports the addition of Open Finance in Australia’s consumer data right regime. Cuscal agrees with the statement that expansion into Open Finance will unlock consumer centric innovation to support an accelerated CDR ecosystem growth. From a consumer perspective the expansion of the CDR will reduce information asymmetry and support use cases that helps search and compare a full set of financial products to improve financial wellbeing.
* In providing feedback, stakeholders were encouraged to consider how datasets across all four areas i.e. non-bank lending, merchant acquiring services, Superannuation, and Insurance along with data already in the CDR system could together support product innovation, streamline business processes, and improve consumer outcomes. Though Cuscal agrees with the overall intent of expanding CDR and inclusion of Open Finance we would like to highlight that the datasets across the four areas targeted are quite different and as such needs to be treated in that manner. For e.g: the non-bank lending data is very much aligned with Banking datasets and should be seen as an extension to Open banking. Whereas Superannuation datasets are quite different to banking data and is already standardized by the ATO under Superannuation Superstream regime. It should also be recognised that the various data sets have been developed and matured around various regulatory, industry and consumer experience requirements. Sharing of the core data will require tight and uncompromising security standards.
* The consultation lists a number of questions, and our responses are shared based on their application to real life use cases and our general view regarding CDR expansion.

*Benefits and use cases*

1. How could sharing non-bank lending data encourage innovation or new use cases for CDR data?   
   Are there cross-sectoral use cases that non-bank lending data can support, in particular with Open Finance/Banking?

Response: A non-bank lender or financier offers individuals and businesses loans, mortgages, personal finance, credit cards and other types of finance. AUSTRAC’s 2019 report identified 600 non-bank lenders and financiers in the Australian market, providing a range of services. The sector accounts for approximately seven per cent of debt financing in Australia and estimated total assets in 2019 by RBA was $356 billion. Hence this market plays an important role in the financial product sector and continues to compete with authorized deposit taking institutions providing a much competitive cost-effective option to Australian consumers. Inclusion of non-bank lending will help create greater interconnectedness among market participants. A mentioned, the various services offered by this sector includes Personal finance, payday lending, buy now pay later services, residential property finance, loan offset accounts, motor vehicle finance, equipment and leasing finance, Commercial finance, and credit cards. It is important to identify which services will bring the most value in CDR along with open banking data in its current state of the ecosystem and therefore those elements should be prioritized.

Cuscal believes datasets under open banking should be extended to non-bank lenders to build deeper understanding of a consumer’s financial life. This will allow for “more rigorous financial checks” by opening access to fast, accurate and up to date transactional data to support responsible lending.   
This includes:

* + - information about the consumer or their associate (for example, contact details)
    - information about the use of a product by a consumer or their associate (for example, transaction data)
    - information about a product (for example, terms and conditions, fees).

1. May the benefits of sharing non-bank lending data vary across particular consumer groups, for example, vulnerable consumers?

Response: As the open data framework moves across the financial sector the inclusion of non-bank lending data will provide a complete view of an individual’s liabilities. This will enhance responsible lending and ensure vulnerable consumers are not provided with products detrimental to their financial situation. For e.g: the inclusion of small loans through paylending can help the fin-tech lender market with enhanced data for decisions to write loans above the designated limit in order to comply with responsible lending requirements.

1. Would the designation of non-bank lending improve competition between lenders, including leveling the playing field with banks, or lead to greater market efficiencies?

Refer to response under #1.

**Data holder and datasets**

1. If non-bank lending is designated, which entities should be designated as data holders?

Response: The primary customer-type for the non-bank lending and financing sector is individuals. Hence non-bank lenders and white label products providing personal finance, residential property finance, loan offset accounts, motor vehicle finance and credit cards should be designated as data holders. The identified services will provide the most value-based use cases for individuals.

The entities providing buy now pay later services, equipment and leasing finance, Commercial finance can be included at a later stage as the ecosystem grows across the whole economy. Similar to the banking sector the more complex types of accounts and services should be added later given the size of such clients and the slow uptake by existing sectors. The low transactional value products should also be excluded such as small-value loans or credit contracts (also known as payday loans) that are unsecured loans with a credit limit of $2,000 and a term ranging between 16 days and one year.

1. How should data holders be described in a designation instrument? Is there potential to leverage existing definitions (for example, the definition of ‘registrable corporation’ in the Collection of Data Act or ‘credit facility’ in the ASIC Act)?

Response: In principle Cuscal agrees that existing definitions in the collection of Data act, credit facility, Australian credit license can be leveraged. However, it is important to acknowledge that not all loans are regulated in Australia such as Buy now pay later and small business lending. Also, such unregulated services are also not captured by AFCA leaving a gap for consumer redress and grievances.

1. Where lending is securitised or provided to a brand owner by a white labeller, does the same entity retain the legal relationship with the customer, as well as hold the data on the loan?

Response: The behaviour should follow a similar approach to the Open Banking regime and the handling of white label in the banking sector. The sector relies heavily on brokers and aggregators to deliver their products to customers. A number of entities in the sector offer white labelled credit cards, personal loans, and mortgages, and have agreements with retail outlets to provide customer finance in store. White labelling arrangements are generally associated with operationally diminished oversight of customer activity by the issuing entity (in this case, the non-bank lender and financier). The entity holding the contract with the end consumer should be treated as the holder of the data. Additionally, the most important factor in the CDR is the identity of accredited data recipient, not the brand.

1. Are there differences in the data held by non-banks and banks that would require adapting the rules and standards that apply to banks so that those rules and standards would apply to non-bank lenders? If so, why?

Response: Cuscals view is that the data standards between Open Banking and non-bank lender should be identical because Data Recipients will be using both for the same use-cases (like lending origination) for both. If the CDR data standards for Open Banking and Open Lending diverge, then each Data Recipient will be forced to translate between the data sets. The added cost of maintaining an ongoing link between datasets will inhibit the growth of CDR and increase the operational costs.

1. Are there products offered by non-bank lenders that aren’t covered by the existing rules and standards applying to banking data in the CDR? Are there CDR rules and standards that apply to banking data that warrant exclusion for non-bank lenders?

Response: The buy now pay later service are not regulated services and hence including them under the open banking regime will increase the risk posture resulting from weak risk practises and lack of regulatory scrutiny.

1. Are there any government-held datasets that would be complementary to privately held datasets and could support possible use cases in non-bank lending?

Response: N/a

1. What is the level of standardisation across products within business finance? Are there key datasets that are common across different types of business finance products that could be usefully compared? What are the key attributes of a product that would be useful for comparison services? Privacy considerations and intellectual property

Response: The generic financial product data such as Product features, fees, rates, terms and conditions, contract length etc can help in facilitating comparison on the full suite of various financial products in the market to develop new innovative products. For e.g: non-bank lenders issuing credit cards and products offered by merchant acquiring services. Add to this consumer data including consumer use of a particular product and service for e.g: card transaction data to understand consumer behaviours with various product suites and create a market for competitive and personalized products supporting wealth management.

1. Are there privacy concerns specific to non-bank lending that should be taken into account when considering the designation of the sector?

Response: Like any consumer product channel, the non-bank lending and financing sector is exposed to cyber-enabled fraud, including fraudulent online loan applications and attempts to obtain loans using stolen or fraudulent identities. Further, as entities further adopt online 24/7 platforms there will be an ever increasing frequency of cyber attacks and cyber risk generally, as highlighted by APRA and the RBA ever vigilant focus needs to continue on this front. The impact of cyber risks increase as the economy becomes more and more interconnected. Large banks have substantial resources deployed to increase their cyber defences however smaller entities have difficult maintaining an equivalent level of 24/7 defence and cyber capability. This will also drive higher compliance costs to maintain the necessary high level of IT security standards. There is an assumption in this space that all non-bank lenders are regulated by ASIC under the Australian credit licensing regime and as such will meet the Australian privacy principles as part of license conditions. There exists a gap in licensing and market requirements for some non bank entities to meet or be required to comply with agreed industry resilience, data, and security standards.

To limit compliance costs and manage cyber risk it is crucial regulators support the CDR participants by providing an industry level cyber response framework and plan. This will allow all participants to work together and be prepared to manage a cyber incident to limit the degree of exposure and impacts.

1. Do you consider the existing privacy risk mitigation requirements contained in the banking rules and standards are appropriate to manage the privacy impacts of sharing non-bank lending data?

Refer to the response under #11

1. Are there other examples of materially enhanced information specific to the non-bank lending industry? Regulatory burden and cost considerations.

Response: Cuscal believes it is hard to generalise across all of the industries clustered together in Open Finance, and we would prefer they are treated separately. Each can therefore be seen to have different types of materially enhanced information:

* + - If Open Wealth is included: Financial advisers are required to maintain a fact-find, Product data and risk profile activities that might be considered materially enhanced information
    - Open Insurance: Claims data, for example reasons for denying claims (and the overall “deny rate”) could be materially enhanced information.
    - Open Super: details about asset classes and the investment mix and the reasons for changing them could be materially enhanced information. Overall returns on investments and fee structures might be useful materially enhanced information that would aid with switching scenarios.

1. Feedback is sought on the potential costs or regulatory burden implications across the spectrum of potential data holders and scope of product types and datasets that could be captured.

Response already provided as part of other questions. The cost should not be seen as a burden, more so a ticket to play in a data secure environment. Entities need access to capital to compete in the market and should be able to withstand stress tests that is required as part of the licensing requirements.

1. What datasets would cost more for a data holder to share securely, and why?

Response: Cuscal as an intermediary provides a CDR compliant platform for its Data holder clients. The cost of compliance is attributed by a number of reasons based on our experience in CDR. These include changing CX standards, short timeframes to meet compliance timelines (6 months generally), complex CX guidelines, NFR’s that do not meet ecosystem traffic needs will add compliance costs on middle to small sized non-bank lenders to maintain compliance status with CDR.

Data Recipients need a common set of data clusters. Letting large providers share a full set of data, and small providers share a sub-set imposes a large cost on Data Recipients’ technology and business processes. CDR data from bank Data Holders and non-bank lender Data Holders would need be held EXACTLY to the same data standards for switching scenarios to work.

1. Which entities, defined either by size or product offering, would be less suitable for CDR data holder obligations from a cost or technological sophistication point of view, and why?

Response: If Open Wealth is included in the scope: independent financial advisers would struggle to meet the requirements of being a Data Holder.

Open finance companies that are below a certain headcount or asset base could be unsuitable to register as a Data Holder, although if they wanted to accredit as a data recipient the *principle of reciprocity* should apply.

1. What would be the likely cost of implementation and ongoing compliance with CDR data sharing obligations for your entity? Please provide detail where possible.

Response: Depending on the size of the entity and data sets it can be between say $500k per annum and $3-4 million. Cuscal is an intermediary, and our response is based on experience with our mutual clients and technological implementation of the open banking platform. The delays in finalizing rules and standards for complex account types such as Joint accounts, Business accounts, secondary users amount to the compliance burden for CDR participants. In addition, the changing rules, and standards as more and more sectors are made available under CDR regime creates an ongoing backlog for CDR participants with competing priorities both from a compliance and strategic perspective. Cuscal’s view is to include account types and datasets that are currently designated under open banking for easing the compliance burden and as the regime grows with more use cases slowly add the datasets covering low usage account types.

The inclusion of Open Finance to Open Banking will highlight that there is no reasonable way for a Consumer to obtain consent from multiple Data Holders in a single session. It should be also noted that it is hard for Data Recipients to reconcile multiple consents from a single consumer in an anonymous system.

1. What barriers to product data sharing exist for your entity or product offering? Please provide information on the types of systems you use and whether there is the potential to limit access to information, such as where data storage obligations are outsourced to third-parties.

Response: Nil at the time of submitting this response.

1. Does your business have consumers that are unable to access their account and transaction information online and, if so, what proportion of your customers are ‘offline’?

Response: N/a

In closing, parts of the proposed Open Finance present a problem in asking consumers to nominate the Data Holder. This is because where the consumer is under advice, products like superannuation or life insurance, are managed by financial advisers. Consumers under advice will often not be able to name their Superannuation fund or the products within it, but could name their financial advisor, or the licensee managing it. Should financial advisers and licensees be included in Open Finance (as Open Wealth) at some stage? Would CDR consent and Action Initiations, acting as an instruction layer (allow financial advisors) to manage scenarios like switching, or changes to the investment mix?

We trust that our above responses help Treasury in forming a holistic view of the non-bank lending market and the extension of CDR regime economy wide.

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

Yours sincerely,

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