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Claire McKay and Craig Merry  
Consumer Data and Digital Division, Markets Group  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [data@treasury.gov.au](mailto:data@treasury.gov.au)

Dear Claire and Craig

**Consumer Data Right (CDR) in non-bank lending – Consultation on design of CDR rules and data standards – Australian Securitisation Forum responses to Design Paper dated December 2022**

On behalf of the Australian Securitisation Forum (ASF) and its members, we are writing in response to Treasury’s consultation on non-bank lending rules and data standards as described in Treasury’s Design Paper dated December 2022 (consultation paper).

The ASF is the peak body representing the securitisation industry in Australia and New Zealand. The ASF’s role is to promote the development of securitisation in Australia and New Zealand by facilitating the formation of industry positions on policy and market matters, representing the industry to local and global policymakers and regulators and advancing the professional standards of the industry through education and market outreach opportunities. The ASF is comprised of a National Committee, specific subcommittees and a national membership of over 180 organisations.

**ASF responses to the consultation paper**

The ASF’s responses to the questions in the consultation paper (as set out in the section titled “Issues for Feedback”) are limited to information received from ASF members who are in the business of providing finance but are not ‘*authorised deposit-taking institutions*’ and therefore not regulated by APRA.

The ASF supports the application of the CDR to the wider economy including the finance sector (open finance) by giving customers the option to securely share their data with banks, financial services firms and other sectors enabling them to switch to products and services that will suit their needs. This has the potential to generate competition and product innovation across the finance industry with greater choice and access to finance available to consumers.

However, as previously highlighted to Treasury in the ASF's first submission dated 9 May 2022, the ASF's non-bank members have expressed concerns in relation to their ability to implement the CDR requirements including data sharing in the same way as other designated entities due to resource and cost constraints. This is due to the difference in scale between the larger and longer established non-banks and institutions, including ADIs, in both compliance and technical development capabilities. For all non-banks to be faced with CDR expansion in the same way and within a similar timeframe, in which ADIs have been required to comply, may result in a competitive advantage to existing CDR participants, particularly those who provide services that compete with products provided by various non-banks. If the same data standards that are applied to banks were applied to the non-bank lending sector, where there is a higher need for specification to reflect product diversity, this will likely result in higher compliance costs.

The ASF would strongly recommend that CDR implementation only be mandated for those entities where data sharing has matured. For newer entrants or those smaller in scale (even with a niche product offering), they must be given an opportunity to 'ramp up' to CDR to enable them to progressively and more realistically absorb the substantial development and operational changes and costs required. This might be achieved by way of a trial of business models, products and services to test CDR eligibility. This approach is more likely to lead to a more level playing field and preserve the relevance and importance of non-banks and the valuable contribution each makes to lending for the benefit of consumers.

#### **Issues for Feedback – Consultation questions and ASF responses**

The ASF has engaged with representatives of its non-bank lender members and has incorporated various views in the following responses to the questions posed in the consultation paper:

##### **What data holders should be required to share CDR data**

*Q1 - What are stakeholder views on the threshold proposed by this paper, i.e. \$400 million in total resident loans and finance lease balances? Are there other measures that could be considered for a threshold?*

The ASF and its members have no objection to the alignment of thresholds between APRA Reporting and CDR Design Rules. At the Treasury briefing on the CDR Design Rules in December 2022, there was discussion about the situation where entities balances decreased below \$400 million. This should follow the approach for APRA Reporting, so as to maintain alignment.

*Q2 - Is the proposed \$400 million threshold likely to capture entities with sufficient regulatory maturity and capability to comply with mandatory data holder obligations?*

In a general sense, an entity with the regulatory maturity and capacity to undertake APRA Reporting should be able to comply with CDR Design Rules.

##### **White labelled products**

*Q3 - Are there any sector-specific considerations for white labelling that need to be taken into account when making guidance and/or rules for the non-bank lending sector? Is it common practice for the brand owner to hold the contractual relationship with the consumer?*

It is the ASF's understanding that white labelling arrangements are bespoke and the contractual relationship with consumers will be dependent on the contractual arrangement or terms. Therefore, the CDR Design Rules should allow the reporting responsibility of the data holder to be determined on an arrangement by arrangement basis.

*Q4 - Are changes required to facilitate white labelling arrangements in non-bank lending? For example, should there be changes to the CDR Register Standards describing data holders to support more complicated white labelling arrangements such as product panels?*

The ASF does not have a view on this consultation question.

*Q5 - Can securitisation arrangements be appropriately managed under the existing mechanisms, or are there specific considerations that need to be accounted for?*

Most securitisation sponsors would adopt the approach of the Reserve Bank of Australia (RBA) for repo eligible asset backed securities which identifies that “reporting can be done by whichever entity in the relevant securitisation structure is best placed to do the reporting. It is recognised that this may be an originator or servicer, and not the issuer”. If a default responsibility is required, it should be the servicer. This then allows for the situation whereby the servicer changes and is different from the originator. The servicer has ongoing responsibility for managing the loan book and therefore logically should have responsibility for CDR Design Rules compliance.

#### **What products are in scope**

*Q6 - Is the proposed list of products in scope for the CDR appropriate for the non-bank lending sector?*

There is no objection to the list of products listed but should only apply to approved loan amounts under \$4 million. Please also refer to the comment on related party peer-to-peer lending in response to Question 27.

*Q7 - For the avoidance of doubt, should reverse mortgages be specifically referenced in the product list?*

There is no objection to reverse mortgages being referenced in the product list.

*Q8 - When can banks make information relating to buy now, pay later products available?*

The ASF does not have a view on this consultation question.

#### **Data sharing obligations in relation to trial products**

*Q9 - Is the proposed trial period appropriate for the non-bank lending sector?*

Some members have expressed a concern that a trial period of six months for a new product is insufficient to establish a portfolio with scale and volume to gain insight into future credit outcomes and customer behaviours. This period might need to take into account the resolution of a system and regulatory issues before determining the viability of the product. Ideally an extended trial period of 12 to 18 months would be more appropriate to fully evaluate a product's potential.

## **What is required data sharing?**

*Q10 - Does the banking account detail schema meet the requirement of the non-bank lending sector?*

Some members have expressed the view that modification is required to appropriately allow for alternative finance products, such as Sharia-compliant finance. For further details, please refer to the response to Question 31.

*Q11 - Are there additional datasets describing the assets under lease or hire or buy now, pay later products that should be included as required data?*

The ASF does not have a view on this consultation question.

*Q12 - Is this data clustered appropriately and in a way that reflects existing non-bank lending data structures?*

Non-bank lenders have a variety of internal data structures and clusters. Accordingly, the transformation to enable CDR will vary from one organisation to another. The key focus for non-bank members is whether the time for implementation will be adequate.

## **Historical data and closed accounts**

*Q13 - Is the proposed approach to historical data and closed accounts appropriate for the non-bank lending sector?*

The ASF does not have a single response to this question but to ensure consistency in the system, a practically efficient approach might be to limit historical data to 5 years to align with ATO document retention requirements.

## **What data is excluded from data sharing requirements?**

*Q14 - Should 'financial hardship information', as defined by the credit reporting regime, be explicitly excluded from data sharing requirements? If so, are there implications for doing so given the interaction with the credit reporting regime?*

Yes. Otherwise, the incentive to participate in the Comprehensive Credit Reporting (CCR) regime is reduced. We note that CDR transaction and account data may provide a de-facto limited ability for ADRs to assess non-payment of loan obligations.

*Q15 - Are there other data sets that should be explicitly excluded from the scope of 'required consumer data' on privacy grounds?*

Please refer to the response to Question 27, in relation to peer-to-peer loans whereby the borrower and funder/investor are related parties. We note there is current a heightened focus of consumers in relation to data retention of personal identifiable information (PII) and public debate about the potential application within Australia of "the right to forget" similar to EU privacy regulations. The consent process should enable a consumer to instruct a data holder to notify all previous ADRs receiving consumer data to purge such data. This should also occur when the data holder purges the data in accordance with their internal processes so as to comply with

the Privacy Act. Otherwise, the process of data redaction from a customer viewpoint may become unwieldy. This should be incorporated into the upfront design of the CDR Design Rules (even if not activated initially), so as to avoid the cost and effort of retrofitting.

*Q16 - Are there any other interactions between the CDR and the credit reporting regime that present compliance issues or where entities have conflicting obligations?*

Other than as outlined in the responses to Questions 14 and 15, there are no other significant compliance obligation conflicts.

#### **Eligible CDR consumers in the non-bank lending sector**

*Q17 - For non-bank lenders, what proportion of your customers would be excluded if a requirement for 'online' account access was included in the definition of eligible consumer?*

Whilst the proportion of online account access varies between institutions, it is a common feature of financial institutions are registered for online access. With the expansion of CDR to non-banks, it is expected that online account access will increase. It is practical requirement for an eligible consumer to have an online account because it is necessary to manage consents. Establishing a parallel manual process for consents for non-online customers would incur both additional costs and increase the inherent risk of data breaches due to its manual nature.

It is the choice of consumers as to whether their data is shared and to enable that they will need to activate online capabilities. Like ADIs, the consent process can be managed through customer portals.

*Q18 - Are there specific features of the non-bank lending sector, or products, that mean sector-specific variations to the concepts of secondary users, joint accounts or nominated representatives will need to be considered?*

Possibly no although the ASF does not have a view on this consultation question.

*Q19 - Is there a hierarchy of users, for example, where different users have different authorisations or levels of access? Should all users in a hierarchy benefit from CDR data sharing or should access be limited in some way?*

We are advised by several of our non-bank members that usually account holders determine the level of access on an account for secondary users with a minimum level of access set for guarantors consistent with NCCP disclosure obligations. There is no reason why this approach should not also apply to CDR whereby the account holder can determine the access of other users and the extent of data that secondary users can consent to sharing.

*Q20 - In relation to secondary users, joint accounts, or nominated representatives, do you have any concerns about access to consumer dashboards or concerns about authentication of such users?*

As noted in the response to Question 19, it is already common for primary account holders to control the level of access for secondary users. For such users to be authenticated, they would need to be created with a specific profile in a customer portal.

## **Large corporate accounts**

*Q21 - Are there sector-specific matters relevant to inform Treasury's consideration of whether a large corporate account exclusion is appropriate in the non-bank lending sector? How could an exclusion operate? For example, could it relate to accounts with loans over a certain threshold?*

Our non-bank lender members advise that there are a number of financial products that have prices on application with both bespoke pricing and loan conditions. For example, there could be a threshold of \$5 million at which point price is on application. Residential mortgage funding warehouses provided to non-bank lenders usually include loan size limits, which vary by funder, and are typically in the range of \$2 million - \$4 million. These types of loan guides provide appropriate benchmarks for setting an exclusion threshold for CDR, and an amount of \$4 million is reasonably acceptable.

## **Staged implementation**

*Q22 - Are there views on the option to phasing set out above? Are there other approaches that could be taken to phase the commencement of obligations in the non-bank lending sector?*

The consensus among the non-bank lender members is that the implementation of CDR to non-bank lending sector should definitely be carried out in a phased or staged manner more in line with the small and medium sized credit unions which are often of a similar size to non-banks. Those entities will have encountered the same compliance, process and IT challenges that non-banks will. It has been suggested that staging occur with six monthly release intervals, such as product data – 18 months; customer data – 24 months; account data – 30 months; and transaction data – 36 months. Leniency should be given for extensions given the complexity of issues broadly associated with implementation.

## **Internal dispute resolution**

*Q23 - Are the internal dispute requirements outlined in Regulatory Guide 271 an appropriate standard for the non-bank lending sector?*

More likely yes although the ASF does not have a view on this consultation question.

*Q24 - Are there other IDR regimes that entities within the sector must comply with?*

The ASF does not have a view on this consultation question.

## **External dispute resolution**

*Q25 - Is AFCA the most suitable EDR provider for CDR consumer complaints in the non-bank lending sector?*

More likely yes although the ASF does not have a view on this consultation question.

## **Additional consumer protection measures**

*Q26 - What are the specific behaviours by non-bank lenders that are of concern where consideration should be given to additional rules for consumer protection purposes?*

The ASF does not have a view on this consultation question.

*Q27 - Are there any non-bank lending products that should be excluded from the CDR?*

Non-bank members have expressed the view that peer-to-peer lending where the funders/investors are related parties of the borrower (e.g., parent to child loan to assist in first home ownership) should be excluded from CDR. Effectively, this is a personal lending relationship for which loan management has been outsourced.

*Q28 - Should the rules prohibit Accredited Data Recipients from seeking certain types of consents, such as a direct marketing consent, from a consumer in relation to certain high-cost products, such as short term consumer credit contracts (also known as payday loans) and consumer leases?*

The ASF does not have a view on this consultation question.

*Q29 - Are there other measures that could be considered in the rules for the purposes of meeting consumer protection outcomes?*

The ASF does not have a view on this consultation question.

### **Consumer experience considerations**

*Q30 - Are the existing sector-agnostic Data Standards appropriate for the non-bank lending sector? Do any sector-specific accommodations need to be considered?*

We are informed by non-bank members who provide Sharia-compliant Islamic finance that specific data accommodations do need to be taken into account. For example, to be Sharia-compliant, finance products cannot have interest. Instead rent is charged. The CX Data Standards identify products as having interest rates and fees. Whilst rent details could be stored in interest rates data structures, this would undermine the Sharia-compliant nature of the product. Therefore, the Data Standards should allow for appropriate diversity in finance products to cater for consumers seeking highly specialised solutions such as Sharia-compliant products. Alternatively, Sharia-compliant finance (and perhaps other non-standard / niche products) should be excluded from the CDR Design Rules.

*Q31 - How does the non-bank lending sector currently describe the recommended required data to consumers? Are there synergies with the existing banking data language standards, or do revisions and expansions need to be considered?*

Please refer to the response to Question 30.

*Q32 - Is the current approach to authentication and authorisation appropriate for the non-bank lending sector? Are there sector-specific considerations that need to be made, such as lower levels of digital adoption or alternative approaches to authentication?*

Please refer also to the response to Question 17.

*Q33 - What unique user identifiers are available for non-bank lending customers? E.g. customer IDs used for online access.*

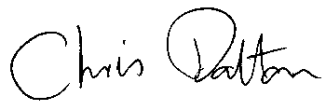
Portal IDs provide a unique external identifier for non-bank lending customers. With the current concerns about PII data, non-bank members have expressed that view that introducing additional external datapoints and identifiers introduces additional unnecessary data risk.

*Q34 - What delivery channels exist for non-bank lending customers to receive a one-time password (OTP)? Are there differences for online versus offline customers?*

We are advised by our non-bank members that SMS messaging is mostly used for an OTP for online customers, whereas OTP facilities do not exist for offline customers.

As always, the ASF appreciates your consideration of the matters raised in this letter and is more than happy to discuss them in further detail with Treasury at any time and participate in any ongoing dialogue relating to the Australian securitisation market.

Yours sincerely,

A handwritten signature in black ink that reads "Chris Dalton". The signature is written in a cursive, flowing style.

Chris Dalton, Chief Executive – Australian Securitisation Forum