

16 September 2022

Sectoral Assessments
Consumer Data Right Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: data@treasury.gov.au

Consumer Data Right (Non-Bank Lenders) Designation 2022

Chartered Accountants Australia and New Zealand, CPA Australia, and the Institute of Public Accountants together represent over 290,000 professional accountants and a further 55,600 provisional accountants, many of whom are key participants in the financial sector who support individuals and businesses to comply with statutory obligations and plan a secure financial future.

Our members are well placed to support and drive the adoption of the CDR across the Australian economy by demonstrating the ways CDR data can provide benefits to both individuals and businesses. While we support designating the non-bank lending sector in due course, we do not consider such a designation should be made until significant shortcomings in the implementation to date are addressed.

Those shortcomings include:

- the costs of compliance which act as a barrier to participation for smaller, less resourced data holders;
- that Part 4 of the CDR Rules moves control of a consumer's data from the data holder to accredited data recipients (ADRs) as they may, but are not required to, respond to consumer requests; and
- the unintended blocks to participation created by the definition of CDR data, unique to the Australian jurisdiction, which captures, not only the CDR data disclosed by a data holder to an accredited data recipient (ADR), but also any data derived solely or partially from the initial data received by the ADR.

With the CDR being active in the banking sector for some time, we recommend the designation of the non-bank lending sector be placed on hold until the shortcomings identified above are addressed.

On behalf of the undersigned, to arrange a time to discuss our comments and to address any further questions, please contact Jill Lawrence at Jill.Lawrence@charteredaccountantsanz.com.

Yours sincerely

Simon Grant FCA
Group Executive
Advocacy and Professional
Standing
Chartered Accountants
Australia and New Zealand



Gary Pflugrath FCPA
Executive General Manager
Policy and Advocacy
CPA Australia



Vicki Stylianou
Group Executive Advocacy
and Policy
Institute of Public Accountants



Appendix A

The following provides greater detail on the significant shortcomings identified.

Cost to participate

While the Final Report from the consultation on the potential designation of the non-bank lending sector concludes that designation will provide greater potential for innovation, it also acknowledges that the cost of compliance on smaller, less-resourced, lenders could have an adverse flow-on effect on innovation and competition. Yet, rather than address the cost of compliance, Treasury recommends excluding those smaller, less resourced data holders from the designation.

The outcome for our members, who provide a wide range of accounting, audit and financial advice services to consumers will be additional complexity. With some lenders included, and some lenders not included, in the CDR, it will remain impossible for our members to build a complete picture of a consumer's lending information. When providing advice, our members will not be able to access a cross-sectoral data pool to identify the best product to meet a consumers' needs.

While proposing to exclude small data holders, the Final Paper provides estimated compliance costs for the remaining potential data holders, but does not provide the estimated costs for potential ADRs. We consider this an oversight as a consumer cannot access CDR data directly and must go through an ADR. As such, any designation instrument should also consider the compliance cost impact for potential ADRs, that are the only means for a consumer to access their own data.

Without Treasury data on the estimated cost to participate as an ADR, we refer to an article by Adatree which—recognising that the cost to participate in the CDR in any way is in the hundreds of thousands of dollars—emerged as an innovative business offering turnkey solutions to participate in the CDR as a data holder, ADR or trusted adviser. Of particular concern, as outlined in the article on the tasks required to become accredited, of the significant financial investment required to comply, Adatree notes it '...is a massive list and more than 90% of the work items are addressing non-functional requirements that... do not contribute to retrieval of CDR data for solving the business problem.'¹ Then, to ongoing costs, 'The CDR specification is updated every three months and Data Recipients must keep up to date with mandatory changes,'²

Accordingly, we do not support the claim in the Final Report that the designation of the non-bank sector will level the playing field between banks and non-bank lenders. A more accurate claim would be that it may level the playing field between banks and non-bank lenders with sufficient resources to participate in the CDR.

Further, we do not consider Treasury's proposition to designate the non-bank lending sector on the basis of excluding less resourced non-bank lenders meets the Australian Competition and Consumer Commission's (ACCC) remit to promote competition and fair trading across the Australian economy. Participation in the CDR, a digital infrastructure platform funded by, and intended to benefit, consumers, should not be determined by the depth of resources of a potential participant.

We recommend Treasury works with industry and seeks innovative alternatives, such as a Government data holder into which smaller players can plug into, to address the compliance cost burden of participation in the CDR.

¹ https://www.adatree.com.au/adatreenews/simplified-integration-with-cdr-ecosystem-enables-fast-product-delivery?utm_campaign=Newsletter&utm_medium=email&_hsmi=214342487&_hsenc=p2ANqtz-9UjwvrrFf5vLTztHng1A-hPzzqkG1P810T0aGphtYpHBhsabgdqr64tyOa3BawNx5JOOypauQuAGhBSV3iLJO-sezp_c0qYH76-NJpwT7ZMKi6r-xjPFEYpAl1k8ViClxPuGQ2&utm_content=214342487&utm_source=hs_email, 6 December 2021

² *ibid*

Part 4 – May, but are not required to

Part 4 of the CDR Rules allows ADRs to decline valid CDR requests from accredited persons, other ADRs and consumers with no conditions on when such requests can be declined.

This has a significant impact on our members as we consider it very likely that the providers of the many tools in use today to host consumers' accounting data will choose to become ADRs. Unlike ADRs, data holders must provide data against a valid consumer request and must provide that data free of cost to the ADR. On becoming an ADR, a provider of a tool will transition to the entity that controls access to the consumer's data it hosts.

Such a change in the relationship, from providing a tool to a consumer to controlling access to a consumer's data will cascade through a consumer's trusted adviser network. As an ADR, the provider may, but is not required to, accept the nomination of a trusted adviser and may, but is not required to, action a valid consumer disclosure consent to provide data to that trusted adviser. As an ADR, the provider would stand between the consumer and their accountant. As an ADR, they may decline the nomination of a consumer's existing accountant even though that accountant will provide services under a letter of engagement and is held accountable for privacy, ethics and professional standards.

We consider the shift of control over a consumer's data from a data holder to an ADR is unintentional and seek amendments to the CDR Rules of the specific circumstances, as the Rules provide for data holders, under which an ADR may decline the nomination of a trusted adviser and may decline to disclose data against a valid consumer request.

CDR data definition

Many unintended barriers to participation arise from Australia's unique definition of CDR data in Part 56A1 of the *Competition and Consumer Act 2010* (Cth). This definition not only captures data transmitted in machine-readable form from a data holder to an ADR, i.e., the raw data, but also data *directly or indirectly derived* from that raw data. Subsequently, active ADRs that receive some of a consumer's data through CDR channels will need to categorise all data hosted for that consumer as CDR data.

Accordingly, many potential ADRs are hesitant to participate as it will draw into the CDR regime trusted advisers on, and innovative service providers to, online platforms. For accountants, all accounting data will be considered CDR data where even one financial transaction has been received through a CDR channel. For providers of innovative products over online platforms, if they cannot afford to directly participate in the CDR, they will need to withdraw their product from that platform and from existing consumer users.

We consider the adverse impact of the current definition of CDR data, which creates barriers to accessing accounting data, inhibits innovation and distorts the competitive landscape. This far outweighs the perceived security risk of data derived from CDR data at rest or subsequently disclosed. We recommend the definition of CDR data is amended to capture only data in transit from a data holder to an accredited person or ADR.

With the CDR being active in the banking sector for some time, we recommend the designation of the non-bank lending sector be placed on hold until the significant shortcomings identified above are addressed.