



Australian Government



Consumer
Data Right

Consumer data right: Non-bank lending sectoral assessment

Final report

August 2022

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1. Executive summary

Following the release of the Strategic Assessment Outcomes report on 24 January 2022 (which identified the non-bank lending sector, merchant-acquiring services and key datasets in the general insurance and superannuation sectors as the next priority areas to expand the consumer data right (CDR)), Treasury conducted a public consultation to inform its sectoral assessment for applying the CDR to the non-bank lending sector. Informed by stakeholder feedback, this sectoral assessment report outlines Treasury's analysis of the costs and benefits associated with expanding the CDR to non-bank lending and serves to inform the Minister's decision on designating the sector.

Having regard to the statutory factors and feedback received during consultations, Treasury recommends the non-bank lending sector be designated. Extending the CDR to non-bank lending is likely to result in significant benefits for individual and business consumers - namely better service and greater potential for innovation.

To maximise the benefits of data sharing and deliver the use cases identified during consultation, Treasury proposes the designation support data sharing similar to that in the banking, energy and telecommunications sectors.

Accordingly, Treasury recommends designating generic and publicly available information about non-bank lending products, information about a CDR customer (such as contact information) and information about the use of a non-bank lending product.

Combining non-bank lending datasets with other 'Open Banking' datasets already being shared through the CDR will support consumers to easily access and share a complete picture of their lending information and make more informed decisions about which products suit their needs. By streamlining non-bank lending application processes, the CDR may also help lenders make more accurate and efficient lending decisions, while reducing the administrative burden of receiving consumers' financial information.

Further, a cross-sectoral data pool that combines consumers' datasets from non-bank lending, energy, telecommunications and other proposed Open Finance areas may encourage industry to develop innovative products and services. For example, entities could use cross-sectoral data to help consumers make informed decisions during significant life events such as buying and setting up services to a house. They could also use cross-sectoral data to provide advice on sound financial management so consumers can plan for their future.

Stakeholders noted the potential regulatory impacts on non-bank lenders of implementing and complying with the CDR, particularly the cost of compliance on smaller, less resourced lenders, which could have adverse flow-on effects for innovation and competition in the sector. Treasury is also aware there may be enhanced privacy risks for vulnerable consumers sharing their financial information through the CDR, given the non-banking sector serves different demographics, functions and purposes to the banking sector¹ However Treasury notes the CDR is a safer alternative to other data sharing mechanisms currently being used outside of the CDR, such as email and screen scraping, because of its increased privacy protections and data security requirements.

Treasury considers the privacy and adverse regulatory impacts raised during consultations can be appropriately mitigated by the rules and standards, which are likely to closely mirror those currently in operation in the banking sector. Treasury recommends the rules:

¹ For example, the non-bank lending sector includes buy now, pay later products and payday lending (or small amount credit contracts). In July 2022, the Government announced its intention to strengthen consumer protection safeguards for pay day lending and consider the overall regulation of buy now, pay later products.

- apply a *de minimis* threshold, which would have the effect of excluding non-bank lenders below a certain threshold from mandatory data sharing obligations
- consider whether there are additional consent protection mechanisms that could apply to high-cost products, such as further direct marketing restrictions.

Further consultation will inform design and implementation decisions, such as the phased commencement of data sharing obligations and the prescribed list of products within scope of mandatory sharing obligations. Consultation will also occur on changes to the Banking Rules which will be required to facilitate the sharing of information relating to buy now, pay later products.

2. Designating a sector under the CDR

2.1. The Consumer Data Right

The Consumer Data Right is a pioneering economic reform that gives consumers the right to use the data businesses hold about them for their own benefit. It is a foundation stone of the digital economy, designed to allow Australians to safely and securely unlock the value of information held about them by businesses. It is also the first of its kind in the world.

CDR places consumers at the centre of a data sharing system that protects their privacy and gives them the ability to opt in and determine when and how they share their data with other businesses and professionals of their choosing.

CDR is an interoperable online system governed by rules, standards and protocols to protect privacy and data security and allow different IT systems to communicate seamlessly.

Businesses who want to receive and use a consumer's information must be accredited. Accreditation is a rigorous process that ensures businesses in the CDR system can meet the strict legal, technical and compliance obligations. There are penalties that apply to any participant who does not meet the obligations set or who mishandles a consumer's data.

Over time, we expect more and more accredited participants will begin to offer CDR-powered products and services that will help consumers extract value from their information by offering entirely new ways of doing things, solving problems, making administration more convenient or simplifying complex decisions.

2.2. The CDR sectoral designation process

The Minister may designate a sector of the Australian economy to be subject to the CDR under section 56AC of the Competition and Consumer Act 2010 (the Act). A sector is designated by legislative instrument, which specifies the broad classes of information (or data) subject to the CDR and the class or classes of persons who hold the designated information (data holders). The Act provides that before a sector can be designated, certain matters under section 56AD(1) (collectively, the statutory factors) must be considered by the Minister. These statutory factors include:

- the interests of consumers
- promoting competition
- the efficiency of relevant markets

- promoting data-driven innovation
- the privacy or confidentiality of consumers' information
- any intellectual property in the information
- the public interest
- the likely regulatory impact of designation.

Before designating a sector, the Minister must be satisfied that the Secretary of the Department (Treasury) has arranged for consultation and analysis about designation and published a report about that analysis and consultation² - this report meets that requirement for the proposed designation of the non-bank lending sector. As part of its consultation on the non-bank lending sector, Treasury consulted with the Australian Competition and Consumer Commission (ACCC), Office of the Australian Information Commissioner (OAIC), and the Australian Securities and Investments Commission.³ The Minister cannot designate the non-bank lending sector until 60 days after Treasury publishes this report. Prior to designating the non-bank lending sector, the Minister must also consult the OAIC about the likely effect of the designation on the privacy and confidentiality of consumers' information.⁴

2.3. Effect of designation

Once a sector has been designated, CDR rules and standards for that sector can be made in accordance with statutory processes and consultation requirements.

The designation instrument specifies broad 'classes of information' or data that may be subject to CDR data sharing obligations. The designation of a sector does not itself impose substantive obligations. Requirement to share data sits in the CDR rules, which establish within the broad 'classes of data' what is 'required' CDR data that must be shared in response to a valid request, as well as what information data holders may share on a voluntary basis. In turn, the sector-specific data standards specify the technical fields and formats for data sharing.

The CDR rules have been developed to apply universally across sectors to the extent possible, with sector-specific provisions and modifications catered for within sector-specific schedules. Once designation of a sector occurs, sector-specific issues (for example, external dispute resolution arrangements specific to that sector) are considered, as well as the development of sector-specific data standards.

3. Non-bank lending sectoral assessment

3.1. Open Finance

On 24 January 2022, Treasury released the CDR Strategic Assessment Outcomes report, identifying 'Open Finance' as the next priority area to expand the CDR.⁵ Open Finance will build upon banking data that is already available, and energy and telecommunications data which is being brought into the CDR ecosystem.

² S56AE(1) of the Act

³ S56AE(1)(c) of the Act.

⁴ S56AD(3)

⁵ The Treasury, [Consumer Data Right - Strategic Assessment Outcomes](#), 24 January 2022.

Open Finance includes the phased assessment and designation of sub-sectors including non-bank lending, merchant acquiring services, and key datasets in the general insurance and superannuation sectors. Taking a phased approach to Open Finance sub-sectors will enable Government to designate key datasets in a more rapid and targeted manner.

This sectoral assessment covers the proposal to expand CDR to non-bank lending, while considering the possibility of cross-sector use cases that may flow from the sharing of non-bank lending data. Treasury will progressively assess the other sub-sectors of Open Finance over the coming year, commencing with superannuation.

3.2. Consultation

On 15 March 2022, Treasury published a consultation paper as part of the Open Finance non-bank lending sectoral assessment.⁶ The paper requested feedback and comments on the proposed designation of non-bank lenders including, the potential regulatory impacts.

Consultation closed on 15 April 2022 and Treasury received 29 submissions. The consultation process included a roundtable and bilateral meetings with industry stakeholders, consumer groups and government departments.

3.3. Overview of stakeholder views

Stakeholders' submissions contained different perspectives on the potential designation of non-bank lending and its role within the broader Open Finance sector. Most stakeholders recognised the benefits that would come from designating the non-bank lending sector, namely that it would:

- complement Open Banking data already shared in the system
- result in non-bank lending data being pooled with soon-to-be-added energy and telecommunications data
- provide valuable use cases for both consumers and industry.

Feedback supported taking a broad approach to designating non-bank lenders to ensure it captures all entities providing lending products to consumers.

Numerous stakeholders noted that the non-bank lending sector includes many small businesses, which play a useful role in bringing innovation and competition to the lending market. These small businesses may not have the capacity to absorb CDR compliance costs. As such, stakeholders noted the importance of ensuring mandatory obligations target entities only to the extent to which they are capable of complying.

Stakeholders that self-identified as a potential 'data holder' generally supported the datasets proposed by the consultation for designation - essentially those already being shared through Open Banking. However, they noted that the CDR would need to be adaptable via bespoke or tailored arrangements, particularly in the small business space.

Regulators and consumer groups noted the non-bank lending sector typically has a higher proportion of vulnerable consumers (people who are unable to access credit through banks). As such, they stated it was important for the CDR to meet vulnerable consumers' needs.

Submissions consistently mentioned:

- the importance of giving industry sufficient time to comply with the new obligations

⁶ The Treasury, [CDR Sectoral Assessment for the Open Finance sector - Non-Bank Lending](#), 15 March 2022 - 15 April 2022.

- the need to balance the overall speed of rolling out the sub-sectors within Open Finance against other potential enhancements to the framework that were recommended by stakeholders
- the need to ensure the quality of data being shared.

4. Impact of designating non-bank lending data for individual and business consumers

This section analyses the benefits of designating non-bank lending datasets, informed by submissions received to the non-bank lending consultation. It combines the assessment of 4 separate but interrelated statutory factors:

- the interests of consumers
- the efficiency of relevant markets
- promoting data-driven innovation
- promoting competition.

Treasury considers that the designation of non-bank lenders to the CDR will result in significant benefits for individual and business customers. The extension of the CDR to non-bank lending has the potential to improve outcomes for individual and business consumers by unlocking consumer-centric innovation, encouraging competition between lenders and giving consumers greater control over their financial lives. Extending the CDR to non-bank lending would complement the CDR banking rollout and allow consumers to easily access and share a complete picture of their lending information.

4.1. Benefits of designation

Empowering individual and business consumers to make more informed decisions about non-bank lending products

By providing access to consumer data held by non-bank lenders, as well as digitalised and standardised data about products offered by non-bank lenders, the CDR can reduce information asymmetries.⁷ It can also facilitate more informed consumer participation in the lending sector, leading to better outcomes for individuals and businesses.

Merging non-bank lending data with banking data already being shared through the CDR can improve product comparison by enabling consumers to compare a broader range of lending products and obtain personalised product recommendations from accredited lenders and third parties. For example, an accredited lender could use a consumer's data to assess whether they could provide a prospective borrower with a better product suited to their needs and/or for a lower cost.⁸ Comparator websites expressed a desire during consultation to use CDR non-bank lending data to power lending product recommendations and noted this data could support a use case where an accredited data recipient (ADR) alerts the consumer to any suitable lower cost products on the market via its website or app.⁹ Better product comparison can encourage the development of more innovative and competitive lending products across both the bank and non-bank sectors.¹⁰

⁷ Customer Owned Banking Association submission (COBA), p.1.

⁸ ACCC submission, p.4.

⁹ Some comparator websites do not hold a credit license as they are not currently engaging in a credit activity, however it may be that they would need a credit license if they used CDR data to assist an individual consumer with a particular product.

¹⁰ COBA, p.1; ACCC submission, p.8.

The CDR can improve the utility of existing comparison websites in the market by eliminating the need for consumers to manually input their own data, potentially risking errors, and by promoting greater standardisation and transparency around lenders' product pricing. As product and consumer data from more sectors is added into the CDR, ADRs providing comparison tools will be able to recommend personalised bundles which bring together products and services that span multiple sectors. This may be particularly beneficial for business consumers that typically have more complex needs than individual consumers and can find it difficult to find products and services tailored to their specific business needs and circumstances.

Reducing barriers to switching and improving lending decisions

Extending the CDR to non-bank lending could reduce the friction for consumers associated with switching between lenders or applying for new lending products. Stakeholders emphasised the potential for the CDR to streamline and improve the lending application process.¹¹

To obtain a new lending product or refinance a loan, customers are typically required to provide past transaction and savings account information and loan repayment data to a prospective lender. These documents are often manually provided by the consumer to the lender via unsecure methods such as screen-scraping or email.

Designating Open Finance datasets to the CDR, including non-bank lending, would provide consumers with access to a broader range of financial data. It would enable consumers to share their financial information safely and quickly with a chosen accredited lender, which may result in more efficient and accurate credit assessments.¹² Extending the CDR to the non-bank lending sector can help consumers to overcome the time and effort associated with manually transferring copies of documents, as well as limiting security concerns that can result from screen scraping.¹³

Smaller businesses typically also have less evidence and shorter financial histories, which can make it harder and more costly for authorised deposit-taking institutions (ADIs) and non-bank lenders to acquire the required information to make accurate assessments of small businesses' creditworthiness. Improved access to small business data could support lenders with more streamlined and cost-effective loan assessment processes.

Stakeholders also stated that providing lenders with a comprehensive view of a consumer's finances, including all liabilities, would support efficient lending decisions¹⁴ and improve the accuracy of lender's responsible lending decisions.¹⁵ FinTech Australia submitted:

Non-bank lending information, combined with ADI information, enables a more comprehensive assessment of a consumer's credit profile and risk. Combining this data with CDR data from other sectors, such as telecommunications and energy data, provides further scope for building a well-rounded picture of a consumer's circumstances.¹⁶

¹¹ CitoPlus submission, p.1; Australian Retail Credit Association (ARCA) submission, p.3; Australian Finance Industry Association (AFIA) submission, p.5; ACCC submission, p.7

¹² Cuscal submission, p2.

¹³ ACCC submission, p.7.

¹⁴ TrueLayer submission, p.3.

¹⁵ Joint submission by the Financial Rights Legal Centre (FRLC), Financial Counselling Australia (FCA) and Consumer Action Law Centre (CALC), p.1.

¹⁶ FinTech Australia submission, p.5.

Most stakeholders noted the importance of including buy now, pay later (BNPL) information in the CDR to ensure use cases requiring a comprehensive view of a consumer's financial situation, such as this, could be fully realised. For example:

The Mortgage & Finance Association of Australia (MFAA) states that “as part of responsible lending obligations, lenders are increasingly requiring information from customers about their BNPL use and commitments to assess loan applications, and accordingly is of the view that the true value of the CDR in Open Finance will only be realised when comprehensive datasets, including BNPL, are within the system that give a whole of finance view of the customer”.¹⁷

The Financial Data and Technology Association (FDATA) noted “their [buy now pay later] inclusion in Open Finance will be critical to enforcing responsible lending frameworks and creating enhanced use-cases for consumers across all market segments”.¹⁸

Brighte sees the inclusion of BNPL consumer and product data as “instrumental from a consumer benefit perspective to both facilitate the creation of new business models, and help existing businesses strengthen their own processes and procedures”.¹⁹

While Afterpay owner Block noted that BNPL transaction data is largely visible in bank accounts that are already subject to the CDR²⁰, that visibility is limited. There is not the same information available if the purchase were made on a credit or debit card, such as the total amount for the purchase (and therefore the term of the arrangement) and source of individual purchases. The additional information regarding the transaction or transactions behind the BNPL amount could be of use to ADRs and not including this detail could create a hole in an ADR's analysis of a consumer's financial activity.

BNPL products represent a growing way for consumers to finance their purchases in Australia,²¹ therefore including BNPL products under the CDR is recommended as the relevance of such data will increase over time.

Extending the CDR to Open Finance could also make it easier for certain cohorts of consumers, such as consumers without credit history and consumers with unstable incomes, to demonstrate their creditworthiness.²² The Australian Finance Industry Association (AFIA) stated:

An up-to-date view of a potential borrower's financial data would allow lenders the opportunity to make accurate, tailored decisions about a borrower's suitability for a loan. It would mitigate against the negative impact of the traditional credit reporting regime on young consumers' access to finance. It would allow them to demonstrate their financial suitability for credit despite lacking the opportunity to build credit history.²³

Spurring innovation, improving financial planning and capability

The CDR ecosystem continues to grow, with new ADRs entering the system and existing ADRs offering innovative new services to more participants under recently introduced data

¹⁷ MFAA submission, p.3.

¹⁸ FDATA submission, p.14.

¹⁹ Brighte submission, p.3.

²⁰ Block submission, p.4.

²¹ Australian Competition and Consumer Commission submission, p.10.

²² Block submission, p.7.

²³ AFIA submission, p.5.

access models.²⁴ These innovations are leveraging existing data and new datasets that are planned for rollout under the CDR framework. CDR growth is facilitating new business models, with more data holders choosing to become ADRs and some expanding into new sectors in anticipation of their inclusion in the CDR framework.

Access to non-bank lending data combined with data already being shared by banks could support ADRs to provide a more complete view of consumers' liabilities, borrowing and spending behaviour, which can assist consumers to make more financially capable decisions and enable further innovation.²⁵ Block stated:

Pooling financial information from multiple sources gives consumers - and accredited third parties - an enhanced understanding of individual financial circumstances in more detail - helping provide tailored solutions to empower consumers to take control of managing their money, such as by supporting better budgeting and financial literacy.²⁶

As more sectors are designated under the CDR, the availability of cross-sector data can encourage innovation in financial technology, which can help consumers plan for their future, prepare for life events and understand their finances.²⁷ For example, the CDR will support budgeting and personal finance tools that allow consumers to bring together information about the energy, telecommunications and financial products they hold with different providers, providing consumers with a comprehensive picture of their day-to-day finances and enabling them to better manage their household services.²⁸ As the range of CDR datasets expands, the associated CDR data standards will continue to provide flexibility so that they don't restrict the range of products available in a particular sector, just as Open Banking data standards have not prevented new products development in the financial services sector.

Allowing new datasets to be combined with existing datasets also creates opportunities for further innovation as network effects take shape. Brighte stated that access to BNPL data would:

facilitate the innovation of use cases that give customers greater oversight over their finances, thus preventing them from overextending themselves. For instance, a BNPL account aggregation platform that allows customers to see all their BNPL accounts in one place. This will become even more beneficial once 'write-access' is implemented and said account aggregation apps are able to initiate payments.²⁹

The CDR can also facilitate consumers to share their financial data with trusted advisers, such as financial advisers and financial counsellors. This could reduce the administrative burden of receiving informed financial advice and assist consumers to make more financially capable decisions. The Association of Financial Advisers (AFA) stated the extension of the CDR to Open Finance, including non-bank lending, will improve the efficiency of the fact-finding process for providers of financial advice, noting:

²⁴ Recent amendments to the CDR rules provide new pathways for industry participation in the CDR by allowing CDR participants that are accredited to sponsor other parties to become accredited or allow them to operate as their representative. Consumers are also able to share their data with certain trusted professional advisers (such as their accountant or tax agent) and to disclose limited data insights outside the CDR for a specific purpose if they choose (such as to verify their bank account balance).

²⁵ PwC submission, p.3.

²⁶ Block submission, p.7.

²⁷ TrueLayer submission, p.3.

²⁸ Raised by stakeholders during face-to-face consultations.

²⁹ Brighte submission, p.3.

The completion of the fact find process is typically a very challenging exercise as clients often do not have ready access to documentation on all their assets and liabilities. Often, they do not have a complete understanding of their sources of income and particularly their spending practices. Extracting information from product providers can also often be time consuming for financial advisers.³⁰

The AFA added that by providing access to real-time client specific data, the CDR can reduce the time and cost to provide financial advice, for both the provider and client, and enhance the value of financial advice services.³¹

As well as making existing processes smoother, CDR data can be used to innovate. Further examples of financial data innovations that could leverage Open Banking and non-bank lending data include:

- Financial wellbeing or financial health check tools that independently analyse an individual's or small business' available financial data to determine their eligibility for further finance, providing useful information to inform decision making before consumers, including vulnerable consumers, are offered additional credit.
- Financial advisory tools that go beyond fact-finding to make comparisons and recommendations on available products from the financial and non-financial sectors. These advisory tools can also facilitate the transition into products offered later in the individual or business life cycle, such as retirement annuities or loans for business expansion.
- Tools that allow lenders to bid for pricing on products, based on financial data shared with a third party that brings lenders and brokers together.

To support these innovations, entities need a comprehensive picture of a consumer's financial situation. Stakeholders noted this will not be possible unless the full range of non-bank lending data is available for analysis from non-bank lenders with the largest customer bases. Proposed enhancements to CDR will enable "action initiation". Action initiation will allow consumers to instruct an accredited third party to initiate actions on their behalf and with their consent. Expanding the CDR to enable action initiation will increase opportunities for consumers using the CDR and for businesses offering innovative consumer services. Use cases could include making payments and switching products. Non-bank lending consumers will only benefit from the potentially new services if their data is included in the system.

While the inclusion of lenders in CDR is intended to support innovation, it is recognised that some lenders are already innovating. Introducing CDR obligations, and associated compliance burdens, may have an impact on smaller businesses and start-ups as they attempt to bring innovative products and business models to market to disrupt the incumbents.

It is important to support innovation where possible, including through the operation of proportional or scaled regulatory arrangements, while still facilitating the objectives of the CDR. For this reason, Treasury will consider the application of *de minimis* thresholds at the rule making stage. Firstly, ensuring start-ups and small businesses are still able to innovate will inform consideration of a *de minimis* threshold to exclude smaller players from mandatory obligations.

³⁰ AFA submission, p.2.

³¹ AFA submission, p.2.

Block also noted the possibility of applying a *de minimis* threshold to specific products, regardless of entity size, allowing companies to:

...experiment and innovate in established product categories and build customer momentum, without the pressures of regulatory compliance where there is little consumer benefit. Incorporating such thresholds has the potential to mirror the success of ASIC's enhanced regulatory sandbox, which allows businesses to test certain innovative financial services or credit activities without first obtaining an Australian financial services licence or Australian credit licence.³²

The concept of a *de minimis* threshold on new products, essentially allowing lenders some time to trial a new product prior to mandatory CDR obligations applying, will also be considered further at the rules-stage. For example, a threshold could apply based on the number of customers on a product.

Promoting competition

The non-bank lending sector can support economic growth by providing an alternative form of funding for individuals and businesses, thereby providing an important source of competition to the banking sector.³³ TrueLayer similarly submitted that non-bank lenders will play an important role in using the CDR to compete with banks in providing lending and credit products to consumers and doing so with innovative and differentiated offerings.³⁴ The ACCC noted:

Effective competition requires informed purchasing decisions by consumers. Extending the CDR to non-bank lenders would help overcome barriers to consumers' access to information relevant to their purchasing decisions. At present, consumers can use the CDR to compare different loan products from banks. The inclusion of non-bank lenders in the CDR will improve consumers' ability to assess whether a bank or non-bank loan would best suit their personal circumstances and broaden competition across providers.

As outlined above, the extension of the CDR to non-bank lending may make it easier for consumers to identify and ultimately switch to better value lending products. The ACCC considers borrowers in the non-bank lending market could benefit from easier switching due to the changing market dynamics that occur from having a credible threat of customers switching lenders.³⁵

Several submissions noted that bringing non-bank lenders into the CDR would foster a more competitive environment, by levelling the regulatory playing field between banks and non-bank lenders that provide similar products and hold similar data.³⁶ However, submissions also raised concerns that the introduction of the CDR to non-bank lending could have an adverse impact on competition in the sector if small and less-resourced lenders are required to participate as data holders.³⁷ As noted by TrueLayer:

Determining the scope and timetable for extension of the CDR to non-bank lending will require an appropriate balance to be found between encouraging competition through

³² Block submission, p.7.

³³ Reserve Bank of Australia (RBA), [Financial Stability Review - April 2019 Box D: Non-bank Lending for Property](#), April 2019, p. 51.

³⁴ TrueLayer submission, p.3.

³⁵ ACCC submission, p.5.

³⁶ COBA submission, p.1; ACCC submission, p.7.

³⁷ AFA submission, p.4; Joint submission by CPA Australia, Chartered Accountants Australia and New Zealand, and the Institute of Public Accountants submission, p.2.

mandatory provision of data by non-bank lenders, and ensuring that the ability of non-bank lenders to compete in the lending market is not unduly impaired by CDR compliance costs.³⁸

The impact of imposing data sharing obligations on smaller providers, and the possible implications for competition in the non-bank lending sector, is discussed further in the Regulatory impacts section of the report.

Supporting vulnerable consumers' market participation

Extending the CDR to non-bank lending has the potential to lead to the development of new financial products and services for vulnerable consumers experiencing financial hardship which are better tailored to their needs and circumstances and support these consumers to better manage their debt.³⁹ The ACCC noted:

The CDR could enable a consumer to consent to a third party, such as a financial counsellor, accessing their data from multiple different sectors where the CDR has been rolled out to get a more holistic picture of a consumer's financial hardship and the support available to them. The financial counsellor could use this data to provide advice on options or liaise with providers on the consumer's behalf to manage the debt.⁴⁰

Not-for-profits are using CDR data to get a deeper understanding of a consumer's financial situation to support those in financial hardship to manage their debt; they can access the CDR data under the new CDR representative model.⁴¹

Some stakeholders noted that a broad designation capturing all of a consumer's financial commitments would help support these types of services. The Australian Banking Association (ABA) supported '...a broad approach to the non-bank lending designation that includes a wide source of datasets, including data from BNPL lenders and fringe credit providers (also known as payday lenders)'.⁴² It asserted that a broad designation could enable industry to create additional tools that help educate and assist individuals and consumers experiencing financial hardship, further noting Government could be enabled 'to reach out to these individuals more effectively' to provide appropriate support.⁴³

The CDR may also enable the lender to process hardship applications and aid customers more quickly. Data sharing may also benefit vulnerable consumers who cannot readily access documentation to support their hardship request.⁴⁴

However, a few stakeholder submissions raised concerns about the potential for misuse of CDR data to contribute to harm for vulnerable consumers, because the non-banking sector serves different demographics, functions and purposes than the ADI banking sector, and specialises in providing loans for 'non-conforming borrowers'.⁴⁵ Non-conforming borrowers are those with credit profiles that do not meet banking-sector standards, such as:

³⁸ TrueLayer submission, p.3.

³⁹ Block submission, p.7.

⁴⁰ ACCC submission, p.5.

⁴¹ A Sridharan, '[Basiq announces five new customers to access Open Banking](#)', *FinTech Australia*, 2 May 2022

⁴² ABA submission, p 1.

⁴³ ABA submission, p 1.

⁴⁴ AFIA submission, p.5.

⁴⁵ Joint submission by FRLC, FCA, and CALC, p.6; ACCC submission, p.4; OAIC submission, p.6.

...those who may be self-employed, have a poor credit history or are experiencing financial hardship, and who struggle to obtain finance from the banking sector. Such consumers may also be more likely to obtain high interest, short term credit products, such as payday loans, which can trap them in difficult to escape debt cycles.⁴⁶

Consumer groups raised concerns that including non-bank lending data was likely to lead to high and untenable rates of credit for these types of consumers:

The speed and analytical power that the CDR can bring to - and is core to mooted benefits of the regime - will concurrently play a central role in increasing risk segmentation and the targeting of financial hardship through inappropriate price discrimination and high-cost credit. The CDR has the potential to widen the gap between the credit-haves and the credit-have-nots.⁴⁷

Lenders will seek information from borrowers for a range of reasons, including to meet regulatory requirements such as responsible lending obligations or to assess the risk of the borrower. This may happen currently, with information shared through less secure means, such as emails and screen-scraping. It may also mean lenders make decisions on less complete information, such as that contained in the credit reporting system, which makes it difficult for some borrowers to demonstrate their creditworthiness.

As such, Treasury considers there is a role for the CDR in supporting lenders to make more informed lending decisions, by providing easier and secure access to the information needed to make accurate credit assessments and ensure consumers are not accessing credit they cannot afford. As noted by AFIA, it will also allow those who have had periods of hardship to demonstrate they are back on their feet more quickly.⁴⁸

Some stakeholders also raised concerns about the possible interactions between CDR and comprehensive credit reporting (CCR), specifically that CDR will allow the sharing of information to entities that would not otherwise have received it through the CCR. Stakeholders noted the potential for CDR data, namely transaction data, to indicate when a consumer is demonstrating signs of financial hardship.⁴⁹ However, Treasury considers there is overall benefit in this information being available in the system as consumers are in control of what data they share and for what purpose. For example, consumers experiencing financial hardship should be able to opt-in to share their information to support financial counselling or budgeting services.⁵⁰

For the reasons set out above, Treasury recommends not explicitly excluding financial hardship information in the designation instrument. This recognises that as the CDR ecosystem evolves, there may be possible use cases to support these consumers where this information is valuable. However, at this time Treasury did not find sufficient use cases and therefore recommends this information, in particular financial hardship information as defined by the CCR regime, be excluded at the rule-making stage. This is consistent with the approach taken in Energy and the approach being consulted on in Telecommunications.

While not an issue specific to the designation of non-bank lending sector, a couple of stakeholders noted the potential for ADRs to use information in the CDR to facilitate poor

⁴⁶ ACCC submission, p.4.

⁴⁷ Joint submission by FRLC, FCA, and CALC, p.6; ACCC submission, p.6.

⁴⁸ AFIA submission, p.5.

⁴⁹ Joint submission by FRLC, FCA, and CALC, p.5; OAIC submission, p.6.

⁵⁰ Refer to Attachment A - Privacy Impact Assessment for more information on the interaction between the CCR and CDR.

lending practices and target those in financial hardship - behaviours seen by some predatory non-bank lenders.⁵¹ For example, it was recommended Treasury give consideration at the rule-making stage on to how to mitigate the risk of vulnerable consumers being exploited by data recipients obtaining access to consumer data and misusing that data for their own benefit, for example to upsell inappropriate products or set discriminatory pricing or interest rates.⁵²

In addition to regulatory obligations on credit providers under the *National Consumer Credit Protection Act 2010* (the Credit Act), including recently announced Government reforms,⁵³ there are also other existing mechanisms within the broader regulatory framework which specifically seek to address these types of issues. For example, ASIC's design and distribution obligations⁵⁴ or their product intervention power⁵⁵. However to the extent that any gaps remain, Treasury will consider at the rule making stage the need for additional consumer protection measures, such as considering options for direct marketing consents on certain high-cost products.

Importantly, at a high level, the CDR is an alternative and secure means for consumers to share their personal information for the purpose they intend, such as to support a loan application. The CDR seeks to operate alongside the applicable regulatory frameworks for the relevant sectors, such as the Credit Act, but does not seek to impose additional regulatory obligations outside of those required to facilitate the CDR. Treasury considers the CDR should not be seen as a means of bringing about regulatory reform in a sector, where the sector's regulatory framework is more appropriate to give effect to reform. Further examination and Treasury's response to this issue is outlined below in the Privacy section of the report.

Complementary government datasets

Stakeholders noted the potential for government datasets to support CDR use cases, such as streamlined applications for consumer and small to medium-sized entity (SME) lending.

The other core financial data that would help unlock SME lending is tax data held by the Government (ATO tax debt, ATO notices of assessment, tax returns, tax statement of accounts and BAS returns). This would help streamline the application process with both bank and non-bank lenders.⁵⁶

To inform the rollout of the CDR to government datasets, the Treasury is considering the benefits and risks of including such government datasets in consultation with relevant agencies. This process will be informed by alignment of the potential use cases for individuals and SMEs including those raised during the non-bank lending sectoral assessment consultation with the objectives of the CDR.

⁵¹ Joint submission by FRLC, FCA, and CALC, p.5; OAIC submission, p.6.

⁵² ACCC submission, p.5.

⁵³ In July 2022, the Government announced its intention to strengthen consumer protection safeguards for payday lending and consider the overall regulation of buy now, pay later products.

⁵⁴ Design and distribution obligations require firms to design financial products to meet the needs of consumers and to distribute their products in a more targeted manner.

⁵⁵ The product intervention power is a regulatory tool available to ASIC to improve consumer outcomes. It allows ASIC to temporarily intervene in a range of ways, including to ban financial products and credit products when there is a risk of significant consumer detriment.

⁵⁶ CitoPlus submission, p.2.

5. Approach to designation

5.1. Recommended datasets

Consistent with banking, energy and telecommunications, designation of the non-bank lending sector that would support data sharing is recommended with:

- information about products that is already publicly available
- information about the user of a product
- information about the use of a product.

Treasury recommends that the designation instrument closely mirrors what occurred in banking, essentially a broad inclusion of datasets, given the expected similarities in data sharing between the two sectors and that consultation did not identify any unique arrangements to be supported. For example, the energy designation was required to facilitate a different model of data sharing arrangements, given a third party to the retailer holds some of the consumer information to be included in CDR. In telecommunications, while the three broad classes of information were included, the designation instrument explicitly excluded particularly sensitive datasets in the sector which were considered not suitable for CDR at the time, for example location data.

The recommended designation could support the following data sharing examples at the rule-making stage:

Table 1 - Classes of information proposed for designation

Class of information	Scope of class	Relevant data holder/s of the information	Potential required datasets in CDR rules for non-bank lending sector
Product information⁵⁷			
Information about products	Information about products including information that: <ul style="list-style-type: none"> • identifies or describes such products • is about the price of, including a fee, charge or interest rate associated with the product • is about the terms and conditions of such products • is about the term or duration of such products 	provider of finance ⁵⁸	Designating this class of information would enable the CDR rules to impose mandatory obligations for data holders to share what is commonly referred to in the CDR as 'generic product reference data'. In the non-bank lending sector, product data is likely to include the type of information typically included in a Key Facts Sheet ⁵⁹ .

⁵⁷ Product data is subject to limitations set out in section 56BF of the Act and is data for which there are no CDR consumers.

⁵⁸ As per the definition of a registrable corporation in section 7 of the *Collection of Data Act*.

⁵⁹ The Credit Act requires most lenders to provide consumers with a 'Key Facts Sheet' on certain products when requested, including information about loan terms, rates and ongoing costs.

Class of information	Scope of class	Relevant data holder/s of the information	Potential required datasets in CDR rules for non-bank lending sector
	<ul style="list-style-type: none"> is about a feature or benefit of a product, e.g. a discount or bundle offered in connection with the product 		
Consumer information			
Information about the user of the product	Information about a customer or borrower from a non-bank lender, including information that person has provided to the supplier of the product (or another person on behalf of the supplier) in connection with the supply or use of the product.	provider of finance	<p>Designating this class of information would enable the CDR rules to impose mandatory obligations for data holders to share what is commonly referred to in the CDR as ‘customer data’.</p> <p>In the banking and energy sectors, at the rule-making stage, this has included basic contact details like name, address and phone number.</p> <p>Under the current CDR rules, date of birth has not been included.</p>
Information about the use of the product	<p>Information about a consumer’s use of a product including:</p> <ul style="list-style-type: none"> information about accounts such as account numbers and product usage relating to the account information about transactions, current and previous balances, due dates, and details of how to make payments information about arrangements for payments to be made (such as direct debit details, details about online payments and BPAY details) <p>Also, bespoke product information described above relevant to the consumer.</p>	provider of finance	<p>Designating this class of data would enable the CDR rules to impose mandatory obligations for data holders to share information typically available to consumers.</p> <p>It also allows for the sharing of what is commonly referred to in the CDR as ‘product-specific data’.</p> <p>Product specific data enables product data to be shared as a type of consumer data. For example, if a consumer is on a particular rate that differs from the advertised rate for a product, or uses a product that is no longer publicly available, that specific product information that relates to the product a consumer uses could be shared as consumer data.</p>

Most stakeholders agreed that supporting a broad designation would capture all credit products, using a broad definition of credit, offered to both individuals and small business, and that would capture new credit offerings in the future.⁶⁰ As such, Treasury recommends using a consistent definition of ‘product’ in the banking and non-banking designations, to ensure it covers the breadth of products needed. This will also help ensure consistency with data that is currently being, or may be, shared in banking.

At a high-level, Treasury proposes that the non-bank lending designation extend to the ‘making of advances of money’ and goods and services that have been supplied in connection with the letting on hire of goods (leases), including on hire-purchase. The rules-stage will consider the prescribed list of products within scope of mandatory sharing obligations, although it is expected to include the types of lending products being shared through Open Banking.

5.2. Data not recommended for designation

Treasury considers the same datasets designated for Open banking should apply to non-bank lenders. As in Open Banking, there will be exclusions for materially enhanced data⁶¹ (discussed below) and credit information⁶² where its disclosure is regulated by the *Privacy Act 1988*. The exclusion of specified types of credit information will reduce regulatory overlap between the CDR and the Privacy Act.

5.3. Intellectual property

CDR data is ‘data outlined in the instrument designating a sector and any information that is derived (wholly or partly) from that data’.⁶³ The designation instrument for the banking sector excludes ‘materially enhanced information’ about the use of a banking product from the specified classes of information subject to required data sharing.⁶⁴ The concept of ‘materially enhanced information’ refers to data that is the result of the application of insight, analysis or transformation to significantly enhance its usability and value in comparison to its source material.⁶⁵ Data holders cannot be required to disclose materially enhanced data about the use or sale/supply of products under the CDR but may be authorised to disclose it through the CDR on a voluntary basis.

The consultation paper outlined examples of materially enhanced information in the banking context⁶⁶, and requested input from stakeholders on possible non-bank lending specific examples. The ACCC’s submission recognised that non-bank lenders may hold data that has been generated following a process of innovation or ‘value add’ by the lender themselves. It cited the example of detailed customer and property data generated in the process of assessing a non-conforming borrower that reveals proprietary information about the lender’s credit risk assessment process and that this type of data may be subject to legitimate intellectual property rights.⁶⁷

⁶⁰ For example, ARCA, ABA, TrueLayer, Commonwealth Bank of Australia.

⁶¹ As per s10 of the *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019*.

⁶² As per s9 of the *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019*.

⁶³ Section 56A1 of the Act.

⁶⁴ Section 10 of the *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019*

⁶⁵ Explanatory statement, *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019*.

⁶⁶ The examples provided were: the outcome of an income, expense or asset verification assessment; or a categorisation of transactions as being related to groceries or rent; or significantly improved descriptions of transactions utilising geolocation or business name data from external sources.

⁶⁷ ACCC submission, p.8.

With the exception of those examples already contemplated by the banking designation instrument, no additional examples of materially enhanced information were identified during consultation.

5.4. Defining data holders

Open Banking identified ADIs as data holders. There is currently no such equivalent for non-bank lenders that neatly captures the relevant entities, therefore existing statutory definitions need to be leveraged to identify non-bank lender data holders.

Through consultation stakeholders were asked to provide views on two existing definitions that could be drawn on to define data holders or to identify a suitable alternative: ‘credit facility’ found in the *Australian Securities and Investments Commission Act 2001* (ASIC Act)⁶⁸; or the definition of a registrable corporation (RFC) in section 7 of the *Financial Sector (Collection of Data) Act 2001* (Collection of Data Act).⁶⁹

Given stakeholders supported a broad designation capturing a wide range of credit products, this also requires capturing a broad range of data holders. However, there were diverging views among stakeholders regarding the most appropriate way this could be achieved – some supported drawing on existing definitions,⁷⁰ while others considered it would be more appropriate to develop a bespoke definition for the specific purpose of the CDR.⁷¹

Based on the balance of consultation against the intended objective of the designation, Treasury recommends using the Collection of Data Act definition. This will ensure the definition is sufficiently broad to cover the range of credit products currently available, and future products that could develop in this space. Entities are currently aware of, and engage with, this definition though their business removing the complexity that would come from creating a new definition. This definition is preferred to the definition of ‘credit facility’ in the ASIC Act, which stakeholders noted is too open-ended and would capture significantly more data holders than just those offering the types of products intended for CDR. However, the \$50 million entity size limb will be removed to ensure the Collection of Data Act definition is sufficiently broad to cover the credit-product-providing non-bank lenders intended to be captured by the CDR.

If the Collection of Data Act definition is used as the definition of ‘data holder’ in the non-bank lending designation instrument, not every entity subject to this Act would necessarily be required to participate in the CDR and comply with mandatory data sharing obligations. Rather, the designation instrument specifies the broad class or classes of persons that hold the designated data (the data holders). It is the rules that establish what is ‘required CDR data’ that must be shared and by whom.

The CDR rules can narrow the scope of data holders required to share CDR data by applying a *de minimis* threshold, which would have the effect of excluding data holders below a certain threshold (e.g. using a metric such as business type, customer level or revenue) from mandatory data sharing obligations. While the \$50 million entity size limb is being removed to ensure all entities are captured by the designation, that is to guarantee

⁶⁸ The definition of credit facility, as defined in Regulation 2B to the Corporations Act, is generally accepted to be broad and open-ended, including the provision of credit for any period and a facility for making non-cash payments.

⁶⁹ The Collection of Data Act definition covers those entities that are engaged in the provision of finance in the course of carrying on business in Australia.

⁷⁰ For example, COBA and ACCC.

⁷¹ For example, AFIA and Brighte.

that entities no matter their size can participate in CDR on a voluntary basis.⁷² The possible application of a *de minimis* threshold in the non-bank lending sector is explored in further detail later in the report.

Entities within scope

The designation is intended to be broad in order to capture all the entities that are providing finance, or ‘credit-like’ products. Specifically, the designation is intended to capture providers of products generally known as BNPL.

The current CDR rules do not mandate the sharing of data about BNPL products, meaning banks are not able to share information about these products. However, if non-bank lender data holders were mandated to share this data Treasury recommends the rules applying to ADIs should also be amended to include this as a mandatory dataset for sharing. This would ensure consistent treatment between banks and non-banks and ensure the full realisation of the use cases detailed above.

5.5. Application of a *de minimis* threshold

Encouraging start-ups and facilitating growth of smaller non-bank lenders

As noted above, when considering the CDR’s role in the sector, it is important to assess proposed obligations and compliance costs (discussed in more detail under Regulatory impact) against the potential benefits of CDR. This recognises that there are benefits to consumers, competition and innovation from small businesses or start-ups. It also recognises that the imposition of regulatory obligations at a time when they could not absorb the costs would stifle their potential to grow their business or generate these benefits.

Treasury considers the obligations should commence at a time when small businesses and start-ups are better placed to absorb the cost. For example, once they have achieved some scale. Alternatively, small businesses and start-ups may choose to engage sooner if they decide it is in their best interest to do so.

The non-bank lending sector, unlike the banking sector, has a very long tail of small players where mandatory CDR would not be appropriate. Accordingly, a *de minimis* threshold is recommended for the non-bank lending sector, as has been implemented in energy and is being considered in telecommunications. The rule-making stage will consider the appropriate metric and threshold for the *de minimis* in further detail, however the following summarises initial views from stakeholders received during consultation.

Customer-level threshold

The energy sector adopted a threshold using customer numbers reported to regulators, however no equivalent reporting exists in the non-bank lending sector. While there is scope to gauge the number of products a lender provides to customers, it may be a challenge to standardise how this is measured where multiple products are bundled.

⁷² An entity must fall within the scope of the definition of data holder in a designation instrument of the CDR to share data within the CDR.

Balance-sheet threshold

Given non-bank lenders will accumulate balances on their balance sheets⁷³ as their loan books grow, balance sheet size is one proxy for entity size that could be used to apply a *de minimis* threshold for data-holder obligations. There are existing reporting obligations that could be leveraged to achieve this, such as those applying to Registered Financial Corporations (RFCs) that must report financial data to the Australian Prudential Regulation Authority (APRA) under the Collection of Data Act and its reporting standard.

A balance-sheet threshold of between \$50 million to \$500 million could apply. This would give smaller entities some time to grow their business before facing data-holder obligations, while still imposing obligations on approximately 30-40 lenders (and those with a similar sized operation to banks). Given that the CDR applies to data for Australian residents, Treasury considers it would be suitable for the balance-sheet threshold to apply to resident loan balances only. This metric is already reported to APRA under current obligations applying to RFCs.

Revenue threshold

Revenue reporting is another measure that may help identify those entities more suitable for data holder obligations. There is a correlation between revenue size and the size of the balance sheet used to generate interest margin. However, the margins that apply to different types of lenders and the operating costs applying to entities at different stages of their life cycle does mean that revenue is not always an accurate indication of an entity's ability to absorb further costs.

5.6. Securitisation models and special purpose funding entities

The non-bank lending sector uses a diverse range of sources to receive funding for its lending activities. One such model is via securitisation of loans they originate. Securitisation can come about via the conversion of receivables on the balance sheet to asset-backed or mortgage-backed securities, or by converting receivables held by a special purpose funding entity (SPFE) to securities. As noted by the Australian Securitisation Forum:

The non-bank lender who provides a product to a consumer is the primary entity that receives the consumer's information. Therefore, the non-bank lender who sells the products to a consumer should be the designated data holder, not a corporate trustee who, although named as the lender in documentation, performs an ancillary role in the financing structure. A trustee of a securitisation SPFE is also exempt as a credit provider under the Credit Act regime.⁷⁴

Treasury notes that the data holder should only be the originator of the loan, not any other entity established to support a securitisation model. The rules-stage will consider whether further clarifications are required.

⁷³ Entities that use securitisation models to fund their loans may also accumulate balances in special purpose funding entities, these balances will also need to be captured in any *de minimis* calculation.

⁷⁴ Australian Securitisation Forum submission, p.3.

6. Privacy and confidentiality

6.1. Impact of non-bank lending designation on privacy and confidentiality

A privacy impact assessment (PIA) that considers the privacy impacts of designating the non-bank lending sector on the privacy and confidentiality of consumers is at Attachment A.

PIAs were previously conducted on the proposed implementation of the CDR in the banking, energy and telecommunications sectors. The non-bank lending designation PIA supplements and builds upon the analysis contained in these reports and focuses on privacy issues specific to designating non-bank lenders. The PIA considers the privacy impact of designating the non-bank lending data holders and datasets proposed for designation, as well as other general privacy considerations regarding the designation of non-bank lenders that are not specific to datasets.

As required by the *Privacy (Australian Government Agencies - Governance) APP Code 2017*, the PIA considers the potential impact that designation of the non-bank lending sector may have on individuals' privacy. The requirements do not apply to business data. However, where the sharing of business data could impact individual privacy, this has been considered as part of the PIA. The overall security of CDR data, including business data, is protected by the CDR's strong privacy and security protections, including the 13 Privacy Safeguards under the Competition and Consumer Act, and the CDR rules relating to the privacy and confidentiality of CDR data.

As outlined above, the implementation of the CDR to non-bank lending can be viewed as a logical extension of Open Banking as the datasets proposed for designation are the same datasets to those currently being shared by bank data holders. The consultation paper noted that the privacy risks of sharing banking data are currently being appropriately mitigated by the banking CDR rules and standards and outlined Treasury's view that sharing of non-bank lending data as a result of designation is likely to be appropriately managed through these existing mitigation strategies. Several stakeholders provided support for this proposition⁷⁵, with TrueLayer noting:

There are no additional privacy considerations for non-bank lending datasets that have not already been thoroughly considered in the course of implementation of Open Banking in the CDR.⁷⁶

The ACCC noted that the non-bank lending sector would enhance the privacy protections available to consumers by ensuring that CDR privacy safeguards apply when consumers' CDR data is shared. It added that these additional privacy protections already apply to consumers sharing CDR data in the banking sector.⁷⁷

As outlined in the Benefits of Designation section, some stakeholders raised concerns about non-bank lenders accessing and using consumer data to facilitate poor lending practices and target consumers in financial hardship.⁷⁸ The designation instrument specifies which data holders can be required to share data by the CDR rules. Accordingly, these concerns are relevant to non-bank lenders becoming ADRs or accessing CDR consumer data via CDR's accreditation access models, and not necessarily to non-bank

⁷⁵ TrueLayer submission, p.6; AFIA submission; p.8; Bright submission, p.6.

⁷⁶ TrueLayer submission, p.6.

⁷⁷ ACCC submission, p.7.

⁷⁸ Joint submission by FRLC, FCA, and CALC, p.5; ACCC submission, p.4-5.

lenders being designated as data holders. However, before a non-bank lender can receive and use CDR consumer data, it must be accredited by the ACCC or become a representative of someone who has been accredited. Further, the CDR operates alongside regulatory frameworks for a particular sector and does not seek to introduce regulatory reform where a sector's regulatory framework is more appropriate. For example, in the non-bank lending sector the Credit Act contains a range of protections to prevent lenders from targeting consumers with inappropriate lending products.

While this issue is not related specifically to the designation of the non-bank lending sector, the PIA does examine the privacy impact of accredited non-bank lenders having access to customer data and the possible implications for vulnerable consumers.

For the reasons outlined in the PIA, Treasury considers the privacy risks associated with the non-bank lending datasets and the data holders proposed for designation are not of a nature that should prevent those datasets or data holders from being designated. This PIA also identifies privacy issues that will be given further consideration at the rule-making stage.

7. Regulatory impact assessment

The benefits of designating the non-bank lending sector need to be balanced against the expected regulatory impacts of designation- essentially determining the net benefits.⁷⁹ While the benefits of designating non-bank lending are provided earlier in the report, this section contains analysis on the potential costs of designation.

To assess the potential regulatory impact for data holders of extending the CDR to non-bank lending, Treasury conducted a regulatory impact assessment. Information was gathered through bilateral meetings with a range of stakeholders, including prospective data holders and IT service providers that help data holders comply with their CDR obligations.⁸⁰ Treasury sought information to determine the nature and extent of compliance costs. The following regulatory impact analysis was informed by information provided during these bilateral meetings as well as in stakeholder submissions to the consultation paper.

Stakeholders that participated in the regulatory impact discussions were asked to assume several variables:

- IT upgrades will be required to meet the requirements of the CDR, including authenticating consumers, support the sharing of CDR data through APIs, and providing consumers with a dashboard to maintain consents.
- There will be costs associated with ongoing compliance with the CDR, including meeting data sharing obligations and reporting requirements.
- Sector-specific obligations, such as the scope of datasets to be shared and consumers eligible to use the system, would be broadly consistent as that applied in Open Banking.

⁷⁹ This is consistent with the Government's Regulatory Impact Statement (RIS) framework as set out by the Office of Best Practice Regulation. A RIS (or equivalent) is required for any decision by the Government that is likely to have a more than minor impact. A report can be certified as 'RIS-like' if it contains analysis that is equivalent to a RIS.

⁸⁰ Outsourced service provides help entities, such as data holders and ADRs, to meet their CDR needs by providing specialised capacity or expertise in areas

7.1. Estimate of regulatory impact

Treasury has made quantitative estimates of the regulatory impact of the CDR on data holders, based on discussions with prospective data holders and IT service providers. The estimates were made using inputs from businesses of different size, age, digital maturity, and customer type. As such, the estimates provided are for a representative business and may not represent the experiences of a particular business. They may vary based on a range of factors, including those outlined below. The below estimates are made assuming that a *de minimis* threshold would be introduced in the rule-making stage, as recommended by this report. Therefore, a cost estimate for small non-bank lenders has not been included.

Table 2 - Estimated compliance costs of implementing CDR

	Medium non-bank lender	Large non-bank lender
Year 1: implementation	\$750,000	\$3,000,000
Year 2+: ongoing ⁸¹	\$300,000	\$1,000,000
Average annual cost (PV)	\$285,707	\$1,002,358

Stakeholders noted a number of factors that would have an impact on cost - both implementation and ongoing costs. While some factors can be addressed by taking decisions at the rules stage to reduce compliance costs, other factors are outside the scope of influence of the rules, for example those decisions which relate to internal decision making of entities. The types of regulatory impacts outlined below are not an exhaustive list and may not apply to each business. They represent the types of regulatory impacts businesses expect to face.

Technical infrastructure

The greatest direct cost to data holders is likely to involve the need to upgrade and transform internal systems to enable data sharing to occur. Businesses generally hold data in multiple different systems, which would be required to be centralised for the purposes of data sharing. For businesses where the functionality doesn't already exist to centralise information, such as through business intelligence systems, stakeholders noted that substantial technological upgrades would be required to comply with CDR. Many of those engaged during consultation believed that they would need to upgrade existing functionality if they were subject to data sharing requirements. Some noted they would seek to perform other system upgrades alongside CDR-specific upgrades, while one stakeholder noted it had been preparing for the CDR under a broader digital transformation project. Complementary or simultaneous upgrades may be synergistic with CDR-specific transformations and could support broader innovation and improve services. The extent to which CDR data sharing would require upgrades is a function of the designated datasets and the CDR rules.

Use of intermediaries

Whether to use intermediaries or in-house expertise to adapt internal IT systems to the CDR is an important decision for prospective data holders. Stakeholders provided a range of responses to this question. Consultation suggested costs may be higher by opting for in-house expertise over external parties. Internal teams may need to upskill and overcome knowledge barriers regarding the CDR that an external IT service provider specialising in CDR data compliance may be able to provide more efficiently. However, there may be

⁸¹ Ongoing estimates are made using OBPR's present value method, using the standard discount rate of 7 per cent.

benefits from completing the work in-house. In-house implementation would give the business greater control over how it interacts with CDR and provide greater control over the data, both within and outside of the CDR. In-house teams may be able to address other IT issues or complete complementary projects that enhance other processes. Internal staff will be upskilled and better able to handle ongoing maintenance and compliance issues without the need for a subscription to an external provider. There may be positive spillovers to the business of conducting the work in-house.

On the other hand, outsourcing to a service provider may provide a faster and more cost-effective solution, by using the existing expertise of experienced CDR specialists. Ready-made solutions may be integrated into a business's systems, providing a relatively efficient solution. While outsourcing may reduce upfront costs, it may require an ongoing subscription, which may increase costs into the future.

A high proportion of stakeholders consulted indicated they would complete the work in-house because of the additional benefits that may result. Some also noted their willingness to become an ADR, for which there may be synergies by completing the work internally. Larger businesses may have a greater willingness and ability to complete the work internally.

Industry readiness

Stakeholder consultation revealed that, in general, non-bank lenders have greater awareness of the CDR relative to other sectors. They demonstrated greater knowledge of technical aspects of the CDR, and some had commenced investigation into how they may choose to comply with CDR data holder obligations. Some had considered becoming an ADR under the CDR and would be more likely to do so if they were designated as data holders.

There is a great disparity within the non-bank lending industry with respect to readiness to undertake the digital transformation required of becoming a data holder. The sector has a range of participants, from larger businesses with sophisticated in-house teams to smaller players with limited capabilities. Some businesses have legacy systems that will require substantial upgrading, while some of the relatively new entrants are using more nimble systems. The industry is carrying out preliminary assessments of a general nature on how to adapt its systems to the CDR. Some stakeholders noted that recent or current technical advancements being made to systems driven by non-CDR considerations, such as greater agility in their IT systems and greater functionality for consumers, would assist with meeting potential future obligations. Further, more technical work can only be carried out once the scope of datasets has been determined.

Scope of datasets and customers

The non-bank lending sector consists of different businesses serving many types of customers. Some businesses cater to large corporate customers, to whom they offer complex, bespoke products. Given the nature of these arrangements, this type of customer is not expected to be heavy users of CDR. However, these products would present a high degree of complexity in terms of creating CDR rules and standards. As such, the benefit of including these types of arrangements, relative to their cost of inclusion, is not sufficient at this stage to justify mandatory data sharing arrangements. For this reason, the regulatory impact assumes that decisions will be taken at the rule-making stage to appropriately balance the benefit of including information on these types of customers with the cost of its inclusion.

AFIA noted that a targeted approach to designating the sector would ensure the CDR does not ‘capture emerging or novel products which would have the potential to stifle competition and innovation’.⁸²

Timing and implementation

The timeframe for implementing the CDR in non-bank lending may affect the overall cost of complying as a data holder. The interval between designation and rollout affects the demand for skilled workers and IT service providers that are required to carry out the work. A faster rollout may increase monetary costs and result in key milestones being delayed. Staging the rollout by entity size or product type may reduce demand for workers and has been suggested by some stakeholders. However, other stakeholders have noted that this approach can be inefficient; it is more efficient for businesses to share all required datasets in one discrete project.

While timing and implementation considerations affect regulatory impact, they are best considered at the rule-making stage.

Labour market constraints

Stakeholders almost uniformly noted the lack of available skills required to transform their IT systems, which would increase the costs and timeframes of complying with data sharing requirements. It was noted that the labour market is very tight, there is strong demand for the very specific set of skills involved in adapting IT systems to the CDR, and foreign labour was not currently abundant to fill domestic labour shortages. It was noted that these factors have pushed up labour costs and pushed out timeframes for completion in the near term. There were suggestions to delay the implementation, or rollout the sector in phases, to manage demand for scarce labour.

7.2. Other regulatory costs

Businesses, especially small businesses, spoke of the opportunity cost that CDR compliance would represent to them. Many are in a growth stage, expanding into new products, markets and geographies. They noted the opportunities that would be foregone if they were required to comply with the CDR as a data holder. Businesses are capital-constrained; investments would be postponed and expansion plans deferred in order to allocate capital to CDR compliance. Many small businesses experience high rates of growth and take many years to achieve financial stability and profitability, suggesting the opportunity costs for these types of businesses are especially high. The ABA argued that a ‘participation threshold to exclude small firms’ be considered⁸³, while AFIA noted that many of its members ‘have less scale to absorb new compliance hurdles’.⁸⁴

While these costs are hard to discern, they are real and substantial, and must be considered, especially at the rules stage where any decision on *de minimis* thresholds is made. In addition to a *de minimis* threshold based on business size, a *de minimis* threshold is also recommended for new products, where compliance with the CDR would be required only when the number of customers exceeds a threshold.

⁸² AFIA submission, p. 2.

⁸³ ABA submission, p 2.

⁸⁴ AFIA submission, p. 2.

8. The public interest

The CDR gives consumers and businesses the ability to harness information about themselves for their own benefit. For the CDR to be in the public interest by bringing maximum benefit to consumers, it should not exclude financial data from entities competing in the same lending market based on an arbitrary factor external to the CDR, such as whether an entity is an ADI or not.

The CDR's value will continue to grow as consumers are provided with a more comprehensive view of their financial situation from which to then gain value. From a data sharing perspective, this means including new datasets relating to products that have grown in popularity since the most recent scoping of the product schedule. While expanding, the CDR should not raise barriers to entry or disproportionately impact smaller competitors and product innovators in the same market. Achieving a balance between these factors will require an approach that prioritises common datasets and use cases without imposing costs on data holders that ultimately exceed the aggregate value for consumers.

9. Matters recommended for consideration relating to the CDR rules

Stakeholders commented on a broad range of issues relating to the implementation of the CDR in the non-bank lending sector in submissions and discussions that will be appropriately addressed (and consulted on further) in the rule-making stage. This is consistent with the role of the designation instrument and CDR rules in the CDR regulatory framework and the current approaches applied in considering similar issues in the banking and energy sectors.

Treasury will hold further public consultations at the rule-making stage (which is expected to occur concurrently with development of data standards for the sector) to inform implementation design and obligations in the CDR rules.

9.1. Eligible CDR consumers

The concept of an 'eligible' CDR consumer refers to consumers who can make consumer data requests to access or transfer their data. The CDR rules contain a sector-neutral definition of 'eligible' CDR consumer, however this can be modified as required on a sector-specific basis. A consumer for Open Banking is 'eligible' if they are an account holder or a secondary user for an account that is open and accessible online. The CDR-eligible consumer can be an individual (18 years or older) or a business customer.

Given the complementary nature of the Open Banking and non-bank lending datasets proposed for designation, Treasury expects the definition of 'eligible' CDR consumer in the non-bank lending rules to align with the banking sector definition.

9.2. Phasing of data sharing obligations

The specific datasets required for sharing and the timeline for sharing will be set out in the CDR rules. Data holder obligations were phased in Open Banking, with major ADIs required to provide consumer data earlier than non-major ADIs, and data sharing prioritised for home and personal loans ahead of less common types of finance. Similarly, non-bank lenders of various sizes or product types could be introduced to the CDR in a staggered manner if the benefits of such an approach are apparent.

Given that the designation of non-bank lenders is (in some respects) an extension of the obligations already established under Open Banking, Treasury expects implementation to be more efficient and require less phasing. However, the resourcing constraints mentioned in the Regulatory Impact section are also a factor that may support some form of phasing, if only to ensure there are sufficient implementation resources available in the CDR ecosystem to support non-bank lenders with the rollout.

Phasing by data or product type

Some submissions favoured the prioritisation of data sharing for more common or standardised products ahead of those products that are either more recently introduced or less commonly used. This approach can help introduce data for more common use cases earlier, but it could also risk prolonging implementation for data holders that might be more efficiently handled as a single project. AFIA went further to recommend:

A phased designation of data sets within product classes would also reduce regulatory burden, by allowing firms a measured pace to develop the institutional knowledge and systems required. We suggest that product data be designated in the first instance, followed by consumer data and then transaction data as has been the case for Open Banking.⁸⁵

The introduction of product data could be expedited due to the reduced security requirements involved. Phasing of consumer data sharing may no longer be necessary given that most datasets have already been established and standardised in Open Banking.

Phasing by entity size

Introducing data holder obligations for larger entities earlier would most likely capture the largest customer cohorts earlier. It could also have adverse competition effects if data relating to smaller entities was not available for comparison until later. However, this effect may be reduced if product data sharing obligations were imposed for all designated entities at the same time, allowing consumers to compare products across all providers.

It is important to note that the banking sector did not have a *de minimis* threshold, as is recommended for the non-banking sector, which meant the whole industry was subject to mandatory obligations. As such, phasing based on entity size may be less appropriate when a *de minimis* is operational.

⁸⁵ AFIA submission, p.2.

Glossary

ACCC	Australian Competition and Consumer Commission
Act	Competition and Consumer Act 2010 (Cth)
ADI	Authorised deposit-taking institution, commonly referred to as a bank
ADR	An accredited data recipient is a person accredited by the ACCC to receive CDR data with a consumer's consent
API	An application programming interface is software designed to help other software interact with an underlying system
ASIC	Australian Securities and Investments Commission
BNPL	Buy now, pay later enables consumers to delay payment when making purchases
CCR	The Comprehensive Credit Reporting Regime
CDR	The Consumer Data Right is a right for Australian consumers – individuals and businesses – to access data held about them, and the framework that facilitates such access
CDR consumer	The term 'CDR consumer' is defined at section 56AI(3) of the Act and includes natural persons and businesses. An eligible CDR consumer can give consent to an accredited person to collect their CDR data from a data holder
CDR rules (rules)	Competition and Consumer (Consumer Data Right) Rules 2020
Consent	Communication to an accredited person of the datasets and actions that the consumer is allowing them to access or perform, and the purposes for which the consumer agrees to their data being used and actions being initiated on their behalf
Credit Act	National Consumer Credit Protection Act 2009 (Cth)
Data holder	A party that holds and must share data upon a consumer's request
Data / Datasets	Data is information translated into a form for efficient storage, transport or processing, and is increasingly synonymous with digital information. It includes product data (data related to the product/service advertised for example: descriptions, prices, terms, and conditions) and consumer data (data related to the consumer of the product/service for example: consumer contact details, or information relevant to their eligibility for a service)
Data sharing	The transfer of product and consumer data, usually referring to sharing under the CDR framework with consent
Designation	Designation refers to the inclusion of a dataset or data holder in a designation instrument, as defined below
Designation instrument	A legislative instrument made by the Minister under section 56AC of the Competition and Consumer Act 2010 (Cth)
<i>De minimis</i>	A threshold below which mandatory data sharing obligations do not apply
Materially enhanced	The concept of materially enhanced information refers to data that is the result of the application of insight, analysis or transformation to significantly enhance its usability and value in comparison to its source material

OAIC	Office of the Australian Information Commissioner
Open Banking	As the first designated sector, Open Banking was launched in July 2020 and gives consumers the ability to share banking data with third parties that have been accredited by the ACCC through APIs
Open Finance	The next priority area for expansion of the CDR which encompasses general insurance, superannuation, merchant acquiring and non-bank lending service providers
Standard/s	The technical data standards made by the Data Standards Chair for the purpose of the Consumer Data Right

Attachment A - Privacy Impact Assessment

Context

The non-bank lending PIA supplements and builds upon the analysis contained in the energy, telecommunications and in particular, the banking PIAs and focusses on privacy risks specific to non-bank lenders.

Treasury released a consultation paper which sought stakeholder views on a range of factors associated with designating the non-bank lending sector, including the privacy risks associated with this sector (noting that the type of information to be shared is consistent with that already being shared through Open Banking). The privacy risks examined in the PIA were identified through consultation with stakeholders, as well as engagement with the OAIC and specialist privacy consultants. The PIA also examines privacy risks that were raised by stakeholders to related CDR consultations, such as the telecommunications sectoral assessment consultation, where it was considered they would also be applicable to the non-bank lending sector. The PIA outlines the existing mitigation strategies contained in the CDR rules and standards, and comments on the adequacy of these strategies for reducing or eliminating any negative privacy impacts. The PIA makes several recommendations for Treasury to consider at the rule making stage, including that the rules examine certain privacy issues in further detail and consider the appropriateness of additional privacy protections which are specific to the non-bank lending sector.

Analysis of risks

Part I: Privacy impacts associated with the proposed scope of designation

No.	Item	Privacy impact	Existing mitigation strategies	Gap analysis and recommendation regarding designation with respect to privacy
Designation of information about the user of the product				
1.	Information about a user may encompass a broad class of data including information that identifies an individual, such as contact details, and other information that an individual	While this information (categorised as 'customer data' under the CDR rules for banking and energy) is often required to be shared to identify or contact a consumer, if the information is accessed by an unauthorised person it could be misused and impact an individual's	The risk of customer data being used inappropriately is mitigated by the CDR accreditation process, under which third parties must meet rigorous privacy and security requirements before they can receive and use CDR data from data holders. These requirements must be maintained when a person has become accredited, and include implementing a security governance framework,	Customer data has been designated under the banking, energy and telecommunications designation instruments and is currently being shared in the banking sector (it is required data for the purpose of mandatory data sharing obligations). Treasury considers the privacy impact of including customer data in a non-bank lending designation (with a view to customer data being

No.	Item	Privacy impact	Existing mitigation strategies	Gap analysis and recommendation regarding designation with respect to privacy
	has supplied to a data holder about themselves.	privacy; for example, for direct marketing purposes.	<p>maintaining a comprehensive information security capability, managing and reporting security incidents, and strict requirements around who has access to data within an ADR's CDR data environment. There are also strict requirements around who an ADR can disclose CDR data to, including outsourced service providers and trusted advisers of consumers in particular circumstances.</p> <p>Under the <i>Competition and Consumer Act 2010</i> (the Act), ADRs must comply with the 13 privacy safeguards which relate to collection, management, disclosure and use of CDR data. The privacy safeguards prohibit ADRs from direct marketing to consumers unless they have specific consumer consent (as required by the CDR rules) to do this. A breach of the privacy and security protections in the framework can result in enforcement action being taken against the relevant ADR for non-compliance of civil penalty obligations. The ACCC and OAIC have a joint CDR Compliance and Enforcement Policy and complaints about data handling can also be lodged with the OAIC. The OAIC also has a statutory function to promote compliance with the privacy safeguards, including by making guidelines for the</p>	required data under the rules) would be appropriately mitigated by the CDR's rigorous accreditation process and ongoing obligations on accredited persons, which ensure that ADRs have robust privacy and security measures in place to protect against the unauthorised access to or misuse of customer data.

No.	Item	Privacy impact	Existing mitigation strategies	Gap analysis and recommendation regarding designation with respect to privacy
			<p>avoidance of acts or practices that may breach the privacy safeguards and undertaking educational programs for the purposes of promoting the protection of CDR data.⁸⁶</p> <p>Strong individual authentication requirements are embedded in the CDR data sharing process with strong customer authentication required for data holders to authenticate CDR consumers, before they can disclose CDR data to an ADR.</p>	
Designation of information about the use of a product				
2.	<p>Information about the use of a product by the person or an associate of the person who is also supplied with the product.</p> <p>This includes the type of information that a customer would typically see on a statement or account, such as the current balance,</p>	<p>Information about the use of a product could reveal sensitive insights about a consumer, including a consumer’s financial capacity, which could lead to price discrimination and/or impact the goods and services subsequently offered to them. Stakeholders consider this privacy risk may be enhanced for vulnerable consumers.</p> <p>Submissions considered there is a risk of vulnerable consumers being exploited by data recipients obtaining access to consumer data</p>	<p>Before a non-bank lender can receive and use CDR consumer data, it must be accredited by the ACCC or become a representative of someone who has been accredited. The risk of customer data being used inappropriately is mitigated by this accreditation process under which third parties must meet rigorous privacy and security requirements before they can receive and use CDR data. These requirements must be maintained when a person has become accredited, and include implementing a security governance framework, maintaining a comprehensive information security capability, managing and reporting</p>	<p>Information about the use of a product has been designated and is currently being shared in the banking sector (it is required data for the purpose of mandatory data sharing obligations). Mechanisms within the rules, such as the consent collection, use and disclosure obligations and the accreditation process the exist to mitigate the risks associated with sharing this information for both vulnerable and non-vulnerable consumers. Treasury recommends further consideration be given to whether, in addition to existing mitigation strategies in the framework, supplementary rules or particular consumer experience</p>

⁸⁶ Section 56EQ of the Act.

No.	Item	Privacy impact	Existing mitigation strategies	Gap analysis and recommendation regarding designation with respect to privacy
	<p>loan repayment data and transaction data (including debits and credits on the account and when these occurred, and to whom payments were made).</p>	<p>and misusing that data for their own benefit, as non-bank lenders have a higher proportion of vulnerable consumers compared with banks.⁸⁷ The joint consumer group, ACCC and PwC submit that consideration should be given to whether the extension of the CDR to the non-bank lending sector could support and increase poor non-bank lender behaviour, by enabling non-bank lenders to use financial data, such as balance and loan repayment data, to target those in financial hardship with inappropriate and unsuitable products or set discriminatory pricing or interest rates.⁸⁸</p> <p>The OAIC submitted that as the consumer segment that opts for NBLs are potentially more vulnerable, there may be limitations in relying on consent-based frameworks. Where vulnerable consumers feel reliant on services or payment, they may be unable to make meaningful choices about the collection and</p>	<p>security incidents, and requirements around who has access to data within an ADR's CDR data environment. ADRs are also bound by the 13 privacy safeguards which relate to how an ADR uses and handles CDR data. A breach of the privacy and security protections in the framework can result in enforcement action being taken against the relevant ADR.</p> <p>The consent rules ensure that ADRs are required to obtain informed consent from CDR consumers in relation to the collection and use of their data, and this includes actively selecting which data they share and for what purposes. ADRs are restricted in how they can use CDR data and only permitted to use the data in accordance with a consumer's consent.</p> <p>Privacy Safeguard 7 prohibits ADR from using or disclosing CDR data for direct marketing, unless the consumer consents and such use or disclosure is required or authorised under the CDR rules. Direct</p>	<p>standards for consent to mitigate against any sector specific risks, particularly for vulnerable consumers.</p> <p><i>In particular, Treasury recommends the rules examine the operation of direct market consents and consider whether additional restrictions are required in relation to certain high-cost products.</i></p> <p><i>We also recommend the rules consider whether there are particular non-bank lending products that should be excluded from the CDR system for privacy reasons.</i></p> <p>More generally, as outlined in the report, submissions identified a number of use cases supported non-bank lending data which could improve outcomes for consumers experiencing vulnerability, such as tools provided by financial counsellors to help consumers manage their debt. The report also notes that to obtain a new lending product from either a bank or a non-bank lender, consumers are typically required to provide past</p>

⁸⁷ ACCC submission, p.4; OAIC submission, p.3. As noted in the report, the non-banking sector serves different demographics, functions and purposes than the ADI banking sector, specifically in the non-bank lending sector, a range of lenders specialise in providing loans for “non-conforming borrowers”, such as those who may be self-employed, have a poor credit history or are experiencing financial hardship.

⁸⁸ ACCC, p.5; Joint submission by FRLC, FCA, and CALC, p.2; PWC submission, p.6.

No.	Item	Privacy impact	Existing mitigation strategies	Gap analysis and recommendation regarding designation with respect to privacy
		<p>disclosure of their data.⁸⁹ The OAIC recommends consideration be given to whether particular NBL products such as those provided by non-bank lenders with poor business practices should be excluded from scope and to whether more safeguards are required to support vulnerable consumers.⁹⁰ Stakeholders considered these consumers require additional resources and support in order to meaningfully understand and provide consent that is fully informed and freely given to the sharing of their consumer data in the CDR.⁹¹</p> <p>The joint consumer group does not consider that the Privacy Safeguards (in particular PS3) and other mechanisms in the rules surrounding the collection of solicited personal information are not sufficient to protect against possible abuse of the consent provisions and consider the rules do not sufficiently prevent lenders from selling or providing this</p>	<p>marketing in the CDR context involves the use or disclosure of CDR data to promote goods and services directly to a consumer, such as by sending an email to a consumer promoting financial products using the consumer's data.</p> <p>In addition, the rules include a 'data minimisation principle' which ensures CDR data is only collected and used if it is necessary to provide the good or service a consumer has requested. Therefore, information about a called party cannot be collected and used if it is superfluous to the good or service ultimately being delivered to the consumer.</p>	<p>transaction information and loan repayment data to the new lender to support their loan application. Currently outside of the CDR, this information is shared via unsecure methods such as emailing PDF statements or sharing login credentials with companies that screen scrape this data and provide it to the lender. Designating this information to the CDR will enable consumers to securely transfer this email to accredited lenders with informed consent, which represents a general uplift in privacy protections relative to other data sharing methods.⁹⁴</p> <p>Additionally, the <i>National Consumer Credit Protection Act 2001</i>, which regulates the provision of credit to individuals, contains a range of protections to ensure that consumers do not land up in products that they cannot afford. In particular, the responsible lending obligations which puts the onus on lenders to consider the circumstances of the borrower before providing</p>

⁸⁹ OAIC submission, p.8-9.

⁹⁰ OAIC submission, p.9.

⁹¹ OAIC submission, p.3.

⁹⁴ While the CDR does not prevent screen scraping occurring, it is anticipated that as the CDR develops, entities will phase out screen scraping in favour of the CDR.

No.	Item	Privacy impact	Existing mitigation strategies	Gap analysis and recommendation regarding designation with respect to privacy
		<p>information to other related or unrelated businesses who target people in financial hardship such as debt management firms.⁹²</p> <p>Relatedly but not relevant to the non-bank lending designation, the ACCC and the joint consumer group recommended Treasury consider whether there is a need for a fiduciary interest test, which would require CDR participants to use consumers' CDR data in the consumer's best interest.⁹³</p>		<p>credit.⁹⁵ The Government regularly reviews the operation of the Credit Act to ensure it remains fit for purpose. For example, the Government has announced its intention to introduce additional consumer protection measures for payday lending and to consider the regulation of buy now, pay later products.⁹⁶</p> <p>Accordingly, having regard to the range of statutory factors, including the benefits to consumers and vulnerable consumers outlined in the report, and the existing regulatory framework in the sector, Treasury considers the privacy impact of sharing information about a use of a product is not sufficient to necessitate the exclusion of this information from designation.</p> <p>With respect to the ACCC's and the joint consumer group's recommendation regarding the need for a fiduciary duty, Treasury will consider this</p>

⁹² Joint submission by FRLC, FCA, and CALC, p.4-5.

⁹³ ACCC submission, p.5.

⁹⁵ Buy now, pay later products are not regulated by the Credit Act. However, BNPL is subject to the Government's design and distribution obligations which are intended to help consumers obtain appropriate financial products, as well as the majority of the BNPL market is subject to AFIA's BNPL Code of Practice which sets best practice standards for the sector and strengthens consumer protections

⁹⁶ <https://ministers.treasury.gov.au/ministers/stephen-jones-2022/speeches/address-responsible-lending-and-borrowing-summit-sydney>

No.	Item	Privacy impact	Existing mitigation strategies	Gap analysis and recommendation regarding designation with respect to privacy
				recommendation in the context of the broader CDR framework.
3.	Consumer datasets held by government entities (for example, tax information held by the ATO). ⁹⁷	The OAIC raised concerns about the potential designation of government held datasets. The OAIC considers that privacy risks are heightened in government-held personal information, which is often collected on a compulsory basis ⁹⁸ as such data is often sensitive or can become sensitive when linked with other datasets. ⁹⁹	Government held datasets are not proposed for designation as part of the proposed extension to non-bank lending. Should government datasets be proposed for designation in the future, a separate assessment examining the impact of designating those datasets on the privacy of consumers will be conducted at that time.	
Designation of 'registrable corporations' as data holders				
4.	'Registrable corporations' as defined in section 7 of the <i>Financial Sector (Collection of Data)</i> ¹⁰⁰ Act 2001, are proposed for designation as data holders. This definition captures entities that are engaged in	The OAIC considers privacy risks could arise in the NBL sector due to the level of technological sophistication, privacy and data security awareness and governance maturity of certain non-bank lenders. The OAIC notes the potential NBL data holder cohort appears to engage in a broader range of activities and practices than the data holder cohort in the banking	The designation instrument specifies the broad class or classes of persons who hold the designation data (the data holders) and the rules specify what is 'required' CDR data that must be shared and by whom. The rules can narrow the scope of data holders required to share CDR data by applying a <i>de minimis</i> threshold, which would have the effect of excluding data holders below a certain threshold (using a metric like business type, customer level or revenue for example) from mandatory data sharing	As outlined in the Report, feedback received during consultation supported taking a broad approach to designating non-bank lenders to ensure the designation instrument captured all entities that provided lending products to consumers. A broad approach means that entities that provide lending products to consumers but which are excluded from mandatory data sharing obligation through the application of a <i>de minimis</i> threshold would still be able to share their data with ADRs on a voluntary

⁹⁷ Australian Retail Credit Association submission, p.5; Australian Securitisation Forum submission, p.5.

⁹⁸ For example, under the *Income Tax Assessment Act 1936 (Cth)* or to enable individuals to receive a statutory entitlement or government benefit.

⁹⁹ OAIC submission, p.9.

¹⁰⁰ However, to ensure it is sufficiently broad to cover the range of non-bank lenders that provide credit products intended to be captured by CDR, the \$50 million entity size limb will be removed.

No.	Item	Privacy impact	Existing mitigation strategies	Gap analysis and recommendation regarding designation with respect to privacy
	<p>the provision of finance in the course of carrying on business in Australia.</p>	<p>sector and potentially interacts with consumers who are unable to access the banking sector.¹⁰¹</p> <p>The OAIC also notes that the potential data holder cohort for NBL is likely to contain a higher proportion of entities that have fewer resources and less capability to comply with regulatory frameworks such as the CDR. The NBL sector may have greater variation in regulatory capability when compared to the banking sector.</p> <p>The OAIC also raised a related concern about the capability of entities that are not subject to the <i>Privacy Act 1988</i> Cth and the Australian Privacy Principles¹⁰² to meet data handling-related CDR obligations in the event these entities are able to participate in the CDR using other pathways that allow for “lower levels of accreditation”, for example through sponsored accreditation.¹⁰³</p>	<p>obligations. A <i>de minimis</i> threshold has been implemented in the energy rules and is being considered in telecommunications. Entities under the <i>de minimis</i> threshold are not subject to mandatory data sharing obligations, however they are able to elect to share CDR data on a voluntary basis.</p> <p>A data holder must comply with privacy obligations relating to: Privacy Safeguards 1 (open and transparent management of CDR data), 10 (notifying of the disclosure of CDR data), 11 (quality of CDR data) and 13 (correction of CDR data). Entities that fall under the threshold who voluntarily elect to participate in the CDR as data holder would be subject to these same privacy obligations.</p> <p>Regarding the OAIC’s concern about entities not subject to the Privacy meeting data-related CDR obligation, entities accessing CDR data through either a CDR representative or sponsorship arrangement are still required to comply with the CDR’s information security and data privacy</p>	<p>basis, should the entity see commercial value in doing so.</p> <p>If the Collection of Data Act definition is ultimately leveraged as the definition of data holder in the non-bank lending designation instrument as is proposed, not every entity subject to this act would necessarily be required to participate in the CDR and comply with mandatory data sharing obligations. The report recommends that the rules impose a <i>de minimis</i> threshold excluding smaller non-bank lenders from designation. <i>When considering the appropriate metric and threshold for the de minimis at the rule-making stage, Treasury recommends the rules take into account the regulatory maturity, technological sophistication and privacy and data security awareness of potential NBL data holders, as well as the size.</i></p>

¹⁰¹ OAIC submission, p.6.

¹⁰² As they may fall within the small business exemption (which generally applies where an entity’s annual turnover is less than \$3 million).

¹⁰³ OAIC submission, p.6.

No.	Item	Privacy impact	Existing mitigation strategies	Gap analysis and recommendation regarding designation with respect to privacy
			<p>safeguard requirements. A person with sponsored accreditation, as an accredited person, is required to fulfil the same obligations as other accredited persons, including the obligations to comply with the CDR's information security requirements, privacy safeguards and consent rules. The CDR representative model enables unaccredited persons to provide goods and services to consumers using CDR data in circumstances where they are in a contractual arrangement with an unrestricted accredited person who is liable for them. A CDR representative's principal ADR breaches the CDR rules (and potentially face enforcement action) if its CDR representative does not comply with the privacy safeguards and other mandatory requirements. Treasury also notes the OAIC's concern is not specific to the non-bank lenders, a separate PIA (and agency response) considering the privacy impact of entities accessing CDR data through new accreditation pathways was conducted at the time these rules changes were being contemplated.</p>	

Part II: general privacy impacts of designation

No.	Item	Privacy impact	Existing mitigation strategies	Gap analysis and recommendation regarding designation with respect to privacy
5.	<p>Extension of the CDR to non-bank lending may enable non-bank lenders to circumvent the Comprehensive Credit Reporting (CCR) Regime</p>	<p>The ACCC and the joint consumer group have raised concerns about the potential for non-bank lenders to use the CDR to circumvent the limitations on sharing information about a consumer’s credit history imposed by the Comprehensive Credit Reporting (CCR) Regime, which may enable financial hardship information to be used to disadvantage consumers and impact their ability to obtain credit, and potentially discouraging consumers from seeking out hardship arrangements with their lenders.¹⁰⁴</p> <p><u>The Comprehensive Credit Reporting Regime</u></p> <p>Lenders in Australia share information about consumers’ credit accounts, including consumers’ repayment history with credit reporting bodies under the CCR regime. The regime enables lenders to have detailed and contextual information about how an individual interacts with credit, including positive financial behaviour. The scheme is mandatory for the big four lenders and voluntary for other lenders including non-bank lenders.</p>	<p>As previously noted, the consent rules ensure that ADRs are required to obtain informed consent from CDR consumers in relation to the collection and use of their data, and this includes actively selecting which data they share and for what purposes. ADRs are restricted in how they can use CDR data and only permitted to use the data in accordance with a consumer’s consent. Data sharing arrangements are to be time-limited, with the consumer also able to choose to end data sharing arrangements at any time and to require the ADR to delete their data.</p> <p>In addition, the rules include a ‘data minimisation principle’ which ensures CDR data is only collected and used if it is necessary to provide the good or service a consumer has requested.</p>	<p>Concerns raised by submissions relate to the sharing of transaction data and the potential insights that could be gained from looking at a consumer’s transaction data. The interaction with CCR was considered at the time of establishing CDR. The Privacy Act ensures that credit reporting bodies cannot use CDR to receive information other than that allowed in CCR. This ensured CCR continued to operate as originally intended.</p> <p>As outlined above, consumers’ transaction information is already being shared through Open Banking. The rules contain various mechanisms to ensure consumers, including vulnerable consumers, are empowered and informed in choosing which data to record, store and share and for what purpose, and require ADRs to only use CDR data in accordance with consents received from consumers. As noted above, this information is shared via unsecure methods outside of the CDR. Designating this information to the CDR will enable consumers to securely transfer this information to accredited lenders with informed consent, which represents a</p>

¹⁰⁴ ACCC, p.5; Joint submission by FRLC, FCA, and CALC, p.6.

No.	Item	Privacy impact	Existing mitigation strategies	Gap analysis and recommendation regarding designation with respect to privacy
		<p>Only license credit providers can share and receive repayment history information under the CCR regime. The regime restricts the use of repayment history information and financial hardship information, and limits are in place to restrict what a lender can do with such information when they do find out. For instance, a lender cannot use the information as the sole basis for closing a credit card or reducing a limit. Additionally, financial hardship information cannot be included in the calculation of any credit scores developed by credit reporting bodies and is deleted from credit reports after 12 months.</p> <p>The joint consumer group submits that the application of CDR to the non-bank lending sector, however, has the real potential to undermine these policy settings and limitations by enabling financial hardship information to be used to disadvantage consumers and circumvent these limitations. The joint consumer group stated that this can occur by CDR providing greater access to a consumer's entire</p>		<p>general uplift in privacy protections relative to other data sharing methods.</p> <p>'Hardship information' is a specific type of information in the CCR regime, to become available from 1 July 2022. While serving a very important function, ensuring that lenders do not pre-emptively rule out consumer from accessing credit because they have faced a period of stress, lenders are encouraged to seek further information from the consumer to ensure they can service the credit they are applying for - this is a standard part of the credit application process.¹⁰⁶</p> <p>Further, the existing consent framework ensures the consumer controls when to share their information and, importantly, has to power to cease sharing information. A consumer may choose to consent to share their information when they are experiencing periods of financial stress as it will support accredited third parties providing financial counselling or budget management services which would be highly valuable at such a time.</p>

¹⁰⁶ See Explanatory Memorandum to National Consumer Credit Protection (Mandatory Comprehensive Credit Reporting and Other Related Measures) Amendment Bill 2019 which states "The Government intends that financial hardship information prompts a credit provider to make further enquiries in order to make a holistic assessment of a consumer's financial situation".

No.	Item	Privacy impact	Existing mitigation strategies	Gap analysis and recommendation regarding designation with respect to privacy
		<p>financial history, such that lenders will be able to undertake analysis that provides insights in line or equivalent to that captured under the credit reporting system. Without the CCR-imposed restrictions, the joint consumer group suggests that consumers may be discouraged from proactively seeking out hardship arrangements due to fear of affecting their credit rating.¹⁰⁵</p>		<p>Having regard to all the statutory factors required for designation, Treasury considers this information is appropriate for designation and that no further mitigation strategies are required.</p>
6.	<p>Cumulative privacy and security risk associated with combining datasets from multiple sectors</p>	<p>While not a specific issue raised by stakeholders during the non-bank lending consultation, stakeholders have previously raised concerns about the privacy and security risks of data recipients collecting consumer data from multiple sectors. These include security risks associated with the creation of data ‘honeypots’ attractive to cyber-criminals and privacy risks associated with increasingly detailed information about individuals being brought together and analysed.¹⁰⁷</p> <p>The OAIC previously submitted that combining data from different sectors means richer and more granular</p>	<p>These risks are mitigated by the strong privacy and consumer protections in the CDR framework. In order to become accredited under the CDR, an ADR must first meet, and maintain, robust information security requirements. ADRs must also comply with safeguards around the deletion and de-identification of CDR data, requirements that restrict an ADR’s use of data in accordance with a consumer’s informed consent (including how long it can be used for and the purposes for which it can be used) and the principle of data minimisation.</p>	<p>The CDR is intended to be an economy wide reform legislative framework and as such, the CDR’s security and privacy framework was developed to ensure the safe and secure handling of data from multiple sources and sectors. As the CDR matures and considers technological developments, additional requirements in relation to information security will be managed at the rule and standards making stages as appropriate.</p> <p>The OAIC, as the regulator of the privacy aspects of the CDR, has a range of investigative and enforcement powers under the Act which can be utilised in the event a consumer’s data is mishandled. The OAIC also has a</p>

¹⁰⁵ Joint submission by FRLC, FCA, and CALC, p.6-7.

¹⁰⁷ Australian Information Security Association submission made to telecommunication sectoral assessment consultation, p.2.

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		<p>insights may be derived about individual CDR consumers, meaning the sensitivity of the data and the overall privacy risks for consumers may increase.¹⁰⁸ Consumers may be unaware of the potential for sensitive conclusions to be drawn from combining their CDR data related to several sectors for example, banking data with telecommunications data, and these risks may be exacerbated for vulnerable consumers.¹⁰⁹</p>	<p>Privacy safeguard 12 and the CDR rules set out the minimum steps that ADRs must take to protect CDR data and ensures that data is protected to a high standard and the capability of an ADR's security posture is regularly reviewed.</p>	<p>statutory guidance function to educate CDR participants about their privacy obligations and to promote compliance.</p>

¹⁰⁸ OAIC submission made to the telecommunication sectoral assessment consultation, p. 5.

¹⁰⁹ OAIC submission made to the telecommunication sectoral assessment consultation, p.5.