



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

16 September 2022

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

By email: data@treasury.gov.au

Dear Sir/Madam,

**Submission in response to consultation:
Draft Consumer Data Right (Non-Bank Lenders) Designation 2022**

The Australian Collectors & Debt Buyers Association appreciates the opportunity to provide a response to Treasury's consultation in relation to the draft Consumer Data Right (Non-Bank Lending) Designation 2022.

Please do not hesitate to contact the writer to discuss any aspect of the attached submission.

Yours sincerely

AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

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***Submission to Treasury Consultation:
Draft Consumer Data Right (Non-Bank Lenders)
Designation 2022***

September 2022

Introduction

The Australian Collectors & Debt Buyers Association (ACDBA) welcomes this opportunity to comment on the draft Consumer Data Right (Non-Bank Lending) Designation 2022, released for consultation by Treasury on 19 August 2022.

ACDBA was established in 2009 for the benefit of companies who collect, buy and/or sell debt. Our members (refer Appendix 1) represent the majority of the collection market in Australia.

Accounts handled by ACDBA members are either on the basis of debt purchase or contingent collections.

Debt purchasing

Debt purchasers are involved in purchasing charged off or non-performing accounts being debts where the credit provider has been unable to collect and where no further credit will be extended. The credit provider generally writes the debts off and assigns its rights to the debt purchaser.

Accounts assigned to debt purchasers typically involve debts where an acceleration clause in the financial agreement has been triggered by the customer's default in making repayments.

Contingent collections

Contingent collections refer to pursuing the recovery of debts on behalf of a creditor under a "principal and agent" agreement for an agreed fee. At all times, the debt is owned by the creditor. Creditors issuing instructions for contingent collections include, amongst others, banks, non-bank lenders, insurers, telcos and utility providers.

Response

Our members are concerned that the proposed Consumer Data Right (Non-Bank Lending) Designation 2022 (Designation) as currently drafted, will have the unintended effect of broadening the regime by including debt purchasers in scope. Debt purchasers do not offer consumers a 'product' in the true sense of the word.

As set out in the *Treasury Laws Amendment (Consumer Data Right) Bill 2019 - Explanatory Memorandum*:

"CDR is designed to give customers more control over their information leading, for example, to more choice in where they take their business, or more convenience in managing their money and services".

This objective appears incompatible with debt purchase services where consumers do not exercise choice in where to take their business.

We note the following definition in the Designation:

relevant non-bank lender means a corporation that:

- (a) is a registrable corporation under section 7 of the *Financial Sector (Collection of Data) Act 2001*; or
- (b) would be such a registrable corporation but for the operation of paragraph 7(2)(i) of that Act.

Note: Section 7 of the Financial Sector (Collection of Data) Act 2001 defines registrable corporations essentially as corporations that are not ADIs, but provide finance as part of their business activities. Paragraph 7(2)(i) excludes corporations whose lending is below a certain threshold.

As drafted, this definition would have the result that any corporation falling within the definition of a registrable corporation under section 7 of the *Financial Sector (Collection of Data) Act 2001* (Act) which is not an ADI even if not a lender would nevertheless be caught by the Designation and therefore the Consumer Data Right (CDR) scheme.

Notably, by operation of section 32(1)(e) of the Act, the definition of a registrable corporation in the Designation will encompass debt purchasers (who acquire CDR data from banks, from whom written off debts are purchased), notwithstanding debt purchasers are not lenders and do not otherwise provide any products to consumers as defined in the Designation.

The broad definition of relevant non-bank lender detailed in the Designation (cited earlier in this submission) captures all registrable corporations under section 7 of the Act, in contrast to the 2019 Designation which was limited to authorised deposit-taking institutions within subsection 5(1) of the *Banking Act 1959*.

In summary, section 32(1)(e) of the Act provides that the 'provision of finance' includes "the acquisition of debts due to another person" and as such, debt purchasers (who acquire written-off debts from ADIs) are registrable corporations for the purposes of section 7 of the Act and would therefore be caught by the definition of relevant non-bank lender in the Designation.

Given debt purchasers are not lenders and do not otherwise provide relevant products, we consider this to be an unintended consequence of the Designation.

Remedy

To remedy this, we respectfully submit the following amendment (marked in red below) be made to the definition of relevant non-bank lender under section 4 of the Designation:

Relevant non-bank lender means a corporation that:

- (a) *is a registrable corporation under section 7 of the Financial Sector (Collection of Data) Act 2001 (but excludes a corporation that is a registrable corporation by reason of section 32(1)(e) of that Act); or...*

In the alternative, we submit the definition of product under section 4 of the Designation could be amended (marked in red below) as follows:

Product means:

- (a) *a good or service that is or has been offered or supplied by the data holder to a person in connection with one or more of the following activities:...*

ACDBA request Treasury acts now to amend the draft Designation, rather than waiting to carve the debt purchasing sector out at a later date under the rules, given the apparent unintended consequence of including the sector in the CDR scheme.

ACDBA members are concerned about the considerable cost impost and significant practical difficulty that would be incurred in participating in the Consumer Data Right regime in circumstances where it was not intended and importantly offers no corresponding benefit to consumers.

Contact

For any enquiry in relation to this Submission, please contact:

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Appendix 1 - Members of Australian Collectors & Debt Buyers Association

- Axxess Australia Pty Ltd
- CCC Financial Solutions Pty Ltd
- CFMG Pty Ltd t/as reminda
- Charter Mercantile Pty Ltd
- CollectAU Pty Ltd
- Collection House Limited (ASX: CCP)
- Complete Credit Solutions Pty Ltd
- Credit Collection Services Group Pty Ltd
- Credit Corp Group Limited (ASX: CCP)
- Debt Force Pty Ltd
- Lyndon Peak Pty Ltd t/as Access Mercantile Services
- PF Australia Pty Ltd
- PRA Australia Pty Ltd
- Recoveries Corporation Holdings Pty Ltd
- Shield Mercantile Pty Ltd
- Standard8 Advisory Pty Ltd
- Strategic Collections Pty Ltd