



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

25 January 2023

Consumer Data Right Division
Treasury
Langton Crescent
PARKES ACT 2600

By email: data@treasury.gov.au

Dear Sir/Madam,

**Submission in response to:
Consumer data right in non-bank lending - CDR rules and data standards design
paper**

The Australian Collectors & Debt Buyers Association appreciates the opportunity to provide a response to the *Consumer data right in non-bank lending - CDR rules and data standards design paper*.

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 in response to:
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CDR rules and data standards design paper***

January 2023

Introduction

The Australian Collectors & Debt Buyers Association (ACDBA) welcomes this opportunity to respond to the *Consumer data right in non-bank lending - CDR rules and data standards design paper*, released for consultation by Treasury and the Data Standards Body on 5 December 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.

Perspective

ACDBA in a submission to Treasury¹ in response to the *Draft Consumer Data Right (Non-Bank Lending) Designation 2022* (Designation) in September 2022 expressed concern the Designation as drafted would have the unintended effect of broadening the regime to include debt purchasers in scope.

The Designation was not amended and under its definition of *relevant non-bank lenders* inappropriately captures debt purchasers as explained in our earlier submission². Given debt purchasers are not lenders and do not otherwise provide relevant products, this can only be an unintended consequence of the Designation.

ACDBA members remain concerned by the considerable cost impost and significant practical difficulty in participating in the Consumer Data Right (CDR) regime given there is no benefit to consumers noting the *Treasury Laws Amendment (Consumer Data Right) Bill 2019 - Explanatory Memorandum* asserts:

"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".

¹ https://www.acdba.com/images/acdba/submissions/ACDBA_Submission_Treasury_Draft_CDR_Non-bank_Lenders_Designation_Sep22.pdf

² Ibid

Debt purchasers do not offer consumers a 'product' and accordingly consumers have no opportunity to exercise choice in where to take their business.

Responses to consultation questions

In this limited submission, we respond to selected questions and for ease of navigation adopt the question numbering of the design paper:

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

We submit the \$400 million threshold is too low - a more realistic threshold would be \$1 billion given the significant cost impost on financial firms to comply with the CDR regime.

These costs are additional to the escalating compliance costs borne by financial firms in recent years to implement and manage obligations in relation to:

- Design & Distribution Obligations
- RG 271 Internal Dispute Resolution and IDR Data Reporting
- RG78 Breach Reporting
- Australian Financial Complaints Authority membership, which involves increasing costs despite complaint volumes reducing

The low \$400 million threshold means an entity approaching such a threshold and even some a reasonable way beneath the threshold will need to build CDR processes now to ensure compliance when the threshold is breached.

Although the threshold aims to exclude smaller entities from participation obligations and the attendant costs, we submit such costs will still be incurred by firms with well below the \$400 million cap. For example, an entity with a \$250 million loan book and prospects of further growth would need to commence CDR project work well in advance of breaching the \$400 million threshold.

Entities can grow quickly, either in response to opportunity in the market where the entity feels it can offer greater consumer choice and take advantage of opportunity, or through acquisition.

For these reasons we submit in addition to increasing the threshold to \$1 billion, consideration should be given to providing a grace period of at least 12 months to comply with their CDR obligations from the date the entity first breaches the threshold.

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

Although the proposed list of products appears reasonable, we respectfully submit it should expressly exclude products assigned to debt purchasers - debt purchasers do not offer consumers a 'product' and CDR participation provides no benefit to consumers as they have no opportunity to exercise choice in where to take their business.

14. Should ‘financial hardship information’, as defined by the credit reporting regime, be explicitly excluded from data sharing requirements? If so, are there implications for doing so given the interaction with the credit reporting regime?

Yes, such financial hardship information should be excluded as proposed.

15. Are there other data sets that should be explicitly excluded from the scope of ‘required consumer data’ on privacy grounds?

Yes - all data held by debt purchasers is financial hardship information and in the event debt purchasers are to be subject to CDR obligations, such data should similarly be excluded.

Data in relation to accounts outsourced by originating credit providers to contingent collectors should also be excluded for the same privacy reason. Further these accounts, which can include early arrears collections, are typically managed on the separate systems of contingent collectors (with multiple firms often forming a panel of collectors used by the credit provider). If those accounts are not excluded from the regime, non-bank lenders are likely to struggle to meet the reporting obligations in respect to such accounts – resulting in cost imposts and technical challenges for both the non-bank lender and the contingent collectors.

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

ACDBA supports the proposed phasing of CDR obligations for the non-bank lending sector and notes its earlier comment under question 1 in relation providing a similar grace period for entities entering the regime after first breaching the threshold.

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

As mentioned at question 6, products assigned to debt purchasers should be expressly excluded as debt purchasers do not offer consumers a ‘product’ and CDR participation provides no benefit to consumers as they have no opportunity to exercise choice in where to take their business.

Further to our response to question 15, accounts which are referred to a contingent collector, whether the account is open or closed, accelerated or unaccelerated, should be removed from the regime.

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
- Complete Credit Solutions Pty Ltd
- Credit Collection Services Group Pty Ltd
- Credit Corp Group Limited (ASX: CCP)
- 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