



Australian Government

Office of the Australian Information Commissioner

Our reference: D2022/019660

Senator the Hon Stephen Jones
Assistant Treasurer and Minister for Financial Services
PO Box 6022
House of Representatives, Parliament House
Canberra ACT 2600

By email: c/o Kate O'Rourke, kate.orourke@treasury.gov.au

Re: Report on the draft Consumer Data Right (Non-Bank Lenders) Designation 2022

Dear Minister

Thank you for consulting me as Australian Information Commissioner on the draft *Consumer Data Right (Non-Bank Lenders) Designation 2022* (the draft designation instrument), which would designate the non-bank lending (NBL) sector under the Consumer Data Right (CDR).

I understand this consultation is occurring under s 56AD(3) of the *Competition and Consumer Act 2010* (Competition and Consumer Act), which requires you to consult with me about the likely effect of making the draft designation instrument on the privacy or confidentiality of consumers' information.

I have analysed the likely effect of making the draft designation instrument. As required by s 56AF(1)(b) of the Competition and Consumer Act, I have prepared the enclosed report about that analysis. As required by s 56AF(2), my report will be published on the Office of the Australian Information Commissioner (OAIC) website.

As a general comment, I note the sectoral assessment report recommends a broad approach to designation in relation to both 'relevant non-bank lenders' as data holders, and the data sets that are proposed for designation. I also note that while the proposed data sets effectively mirror those in the banking designation, the sectoral assessment report acknowledges that there are differences in the NBL sector and has identified specific issues and potential risks that it intends to address at the CDR rule making stage. I consider and recommend that a more detailed Privacy Impact Assessment be conducted to explore the issues in my report.

I acknowledge that the sectoral assessment report and Privacy Impact Assessment (PIA) considered some of the privacy issues relevant to the NBL sector. These issues included the number of entities that would be captured as data holders by the draft designation instrument, the broad range of products offered by non-bank lenders, and the increased potential for consumers in vulnerable circumstances, who typically access NBL products, to start to participate in the CDR.

As currently drafted, the draft designation instrument could capture a wide range of consumer information held by designated non-bank lenders and increase the number of data holders that can participate in the CDR. I am conscious of the benefits that this may bring to consumers including increased competition and innovation and allowing consumers to gain a better understanding of their financial circumstances to make more informed decisions on suitable products.

I am also conscious that designation of the NBL sector increases the privacy and confidentiality risks given the amount of personal and lending information that will be able to flow through the CDR, especially when combined with banking data, and the potential for that information to reveal sensitive insights about a consumer.

I am also mindful of the interaction between credit information that may be able to be shared in the CDR and ensuring relevant non-bank lenders are aware of their credit reporting obligations under Part IIIA of the *Privacy Act 1988*. I consider there is a need to explore these issues to ensure the CDR is easily understood and operationalised to protect against misuse of information or error in the application of the privacy safeguards.

That being said, I appreciate that the ultimate impact of designating information depends on relevant provisions of the Competition and Consumer Act and CDR rules which govern the disclosure and handling of designated data.

On balance, I have concluded that the privacy and confidentiality impact of designating non-bank lending as a CDR sector can be appropriately mitigated and managed within the CDR framework noting the need for a more detailed PIA. The PIA should consider how any adverse privacy impacts raised during consultations can be appropriately mitigated by the rules and standards. My report makes 3 recommendations to this effect, with the aim of ensuring that the privacy and confidentiality impacts of designation are reasonable, necessary and proportionate. Noting the role of the designation instrument in the broader CDR framework, my recommendations highlight opportunities to explore and address privacy risks through a more detailed PIA which includes consultation with consumer advocacy groups and industry. A summary of my recommendations is on pages 4 – 5 of my report.

Should you decide to proceed with designating non-bank lending as a CDR sector, I am able to consider and report further on any significant changes to the instrument as appropriate. I also look forward to considering related privacy matters that may arise in the context of new CDR rules, as required by section 56BR of the Competition and Consumer Act. At that point, I will make any further recommendations required to ensure that the expansion of the CDR to the non-bank lending sector is underpinned by strong privacy and security protections.

Please advise if you would like to discuss any aspect of this letter or my report. For your staff, the contact officer for this letter and my report is Linda King, Director, Regulation & Strategy Branch, who can be contacted on (02) 9942 4045 or linda.king@oaic.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Falk', written in a cursive style.

Angelene Falk
Australian Information Commissioner
Privacy Commissioner

10 October 2022