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Daniel McAuliffe
Structural Reform Group
The Treasury
Langton Crescent
Parkes ACT 2600

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By email: data@treasury.gov.au

Dear Mr McAuliffe

Treasury Laws Amendment (Consumer Data Right) Bill 2018

The Australian Finance Industry Association [AFIA] welcomes the opportunity to comment on exposure draft legislation of the *Treasury Laws Amendment (Consumer Data Right) Bill 2018* [the Bill].

AFIA is well placed to advocate for the finance sector given our broad and diverse membership of over 100 financiers operating in the consumer and commercial markets through the range of distribution channels including digital access. Further background on AFIA is available through: www.afia.asn.au.

AFIA appreciates Treasury's ongoing stakeholder engagement on the consumer data right and open banking. We further welcome the ongoing round tables in relation to this policy and in particular the latest set, which AFIA attended in Sydney.

The Bill will set the framework for the consumer data right and data sharing in the Australian economy. Banking will be the first sector designated where data sharing will commence from 1 July 2019. The ACCC will determine the rules for how the CDR will operate in this sector. We look forward to engaging with the ACCC to constructively collaborate on the rules development.

AFIA would like to raise what appears to be a drafting issue in relation to the exposure draft. clause 56AF defines what CDR data, including that which is directly or indirectly derived, associated with. This definition will be used as part of designating a sector (clause 56AC) to specify the types of data, data holders and accredited data recipients will be required to share as part of the consumer right.

As drafted we believe clause 56AF will inadvertently capture all types of derived data that is specified in a designation instrument even when this is not intended. This will occur due to clause 56AF(1)(b) captures

'derived from information covered by paragraph (a)' where paragraph (a) refers to the types of information specified in a designating instrument.

This creates an issue because a designating instrument will not be able to restrict the types of derived information that will be required to be shared. This is because, while the designating instrument may restrict the types of derived information, clause 56AF will override it.

AFIA notes that the Government's intent that in certain sectors, including open banking, that certain types of derived information should be subject to the consumer data right and this would be determined through the designation process and consultation. The current drafting also runs contrary to the Government's commitment to only mandate certain data sets in open banking¹. Further mandating derived data would result in companies being forced to share proprietary information.

AFIA Recommendation:

AFIA recommends that clause 56AF(1)(b) be removed from the final Bill to overcome the issue. The determination (clause 56AC) making power will still allow the Minister to specify which derived data sets should be subject to the consumer data right. Such drafting will allow open banking to proceed as announced without inadvertently mandating further derived information that was excluded by the Government and the Farrell Review. We also note clause 56AF(2) would also need to be amended to appropriately reflect the types of derived data that should be subject to the right in reference to the types of data specified in the designating instrument.

Next steps

Should you wish to discuss our feedback further, or require additional information, please contact me at helen@afia.asn.au or Alex Thrift, Economic & Senior Policy Adviser at alex@afia.asn.au or both via 02 9231 5877.

Kind regards



Helen Gordon
Chief Executive Officer

¹ See <http://sjm.ministers.treasury.gov.au/media-release/049-2018/>