



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

6 September 2018

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

By email: data@treasury.gov.au

Dear Mr McAuliffe

Treasury Laws Amendment (Consumer Data Right) Bill 2018

We support the general objective of the Consumer Data Right (CDR) with expected benefits to consumers and small business through improved information sharing. Small business will be both owners and recipients of the data. However our views on the Bill are constrained by lack of access to the draft instrument covering Australian Deposit Taking Institutions (ADIs) and proposed rules by the Australian Competition and Consumer Commission (ACCC).

Section 56AA (b) and other similar provisions are concerning in the breadth of the words 'any recipient'. The potential recipients capable of accessing CDR information (even if reasonably de-identified) require clear definition and clear purposes that align with benefits to the consumer rather than the user. Conflicting interests between consumers and users/recipients cannot be discerned without access to the proposed sector by sector legislative instruments and the ACCC rules.

The Bill refers to the ability to charge fees, such as section 56BC and we understand there is an intention that a primary CDR request should not attract fees to the consumer. Again we cannot accurately comment on small business impacts without access to the Rules. Our concern is that competition amongst banks and other financial providers such as second tier lenders and fintechs can be significantly reduced through fees and charges imposed by tier one banks.

The scope of data, potential formats (section 56BI (2)) and uses that fall within the Bill are opaque without the benefit of the draft instruments that will cover sectors with the first applying to the banking sector (section 56GH 2 Transitional – banking sector). This provision specifically excludes other legislation pending the instrument and rules to apply to the banking sector. This information gap is concerning with regards to existing market power of the banking sector. We are also concerned to ensure that accreditation requirements for information recipients will allow a level playing field for small and medium sized businesses entering the market rather than a bias to the incumbents.

Some provisions have protections that require firmer wording to streamline processes and promote a culture of data and rights protection for consumers and small business. For example section 56ED (7) should mandate provision of a CDR participant's privacy policy; section 56EG should require immediate destruction of the CDR data if received as unsolicited data; section 56EJ should narrow consent to a specific consent rather than a generalised 'valid' consent and section 56EO should specify a timeframe for correction of CDR data.

The impacts on small business both as owners of a CDR and recipients and users of information are opaque without the complete documents that will impact the implementation of the CDR. We welcome the opportunity to confer further following release of the draft instrument by the Treasury and draft rules by the ACCC.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Jill Lawrence on 02 6263 1558 or at jill.lawrence@asbfeo.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Kate Carnell', written in a cursive style.

Kate Carnell AO

Australian Small Business and Family Enterprise Ombudsman