

22 May 2020

Scott Farrell  
Chair  
Inquiry into Future Directions for the Consumer Data Right  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [data@treasury.gov.au](mailto:data@treasury.gov.au)

Dear Mr Farrell

## **Inquiry into Future Directions for the Consumer Data Right- Issues Paper**

The Australian Finance Industry Association (AFIA) welcomes the opportunity to provide a response to Treasury's consultation on its Issues Paper for the *Inquiry into Future Directions for the Consumer Data Right* (the Inquiry), in relation to how the Consumer Data Right could be enhanced and leveraged to boost innovation and competition, and support the development of a safe and efficient digital economy in Australia.

AFIA is committed to ensuring that all Australians have continued access to finance as well as enhancing consumer protection and these commitments inform our responses to the Issues Paper.

### **AFIA Background**

AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia including retail banks, finance companies, credit card issuers, and Fintechs, such as buy now pay later providers. For more information about AFIA, please see **Annexure A** to this submission.

AFIA's role as an industry body is to drive industry thought leadership and represent members' views, facilitate self-regulation through industry codes, and to work with the Federal Government, financial regulators, and other stakeholders to promote a supportive environment for industry.

Our guiding principles seek to build the settings to:

- Promote simple, convenient, innovative, and affordable credit to finance Australia's future, including maximising access to credit for customers able and willing to service their commitments and minimising the likelihood or incidence of customers entering into unsuitable credit contracts
- Foster competition and innovation in Australia's financial services industry, which enables our members to grow, expand and thrive as key participants in lending and other markets, and
- Generate greater financial and economic participation by consumers and small businesses in Australia's financial system and economy and improve social participation as a means to create financial wellbeing.

To do so, we focus on the key drivers that provide positive customer outcomes, foster competition, and innovation within industry, and facilitate financial, economic, and social engagement by both customers and industry.

## **Our Submission**

AFIA and its members support the implementation of the Consumer Data Right (**CDR**), the Inquiry and its commitment to have regard to competition, fairness, innovation, efficiency, regulatory compliance costs and consumer protection.

We note that while members have contributed to our submission, the position being put by AFIA may not reflect a particular member's organisationally-specific position on all of the issues. These will get captured through a submission from that organisation.

In principle, AFIA supports new technologies such as open banking, which enable competition with flow on benefits for customers. Improved data access has the potential to drive innovation and facilitate the development of better products and services tailored and enhanced to continue to meet particular customer needs. However, in delivering the above, it will be important to ensure that further functionalities or extensions of the CDR are applied in a manner that does not negatively impact on the broader economy, limit access to credit, or reduce innovation and competition.

We believe market forces and customer demand, supported by evidence-based policy, should drive competition and innovation. Further interventions or changes to the functionality of CDR should be based on these principles and ensure optimal outcomes for consumers, small business and large businesses, the financial system, and the broader economy, and where those interventions are deemed economically necessary and beneficial.

With this context in mind, while we support the expansion of the use of the CDR and its commitment to "promote innovation in a manner that is inclusive of the needs of vulnerable customers," we believe careful consideration is needed before including functionalities that may unduly increase the risk of exploitation of the privacy of consumers, without a strong demonstration of net consumer benefit.

## **Proposed recommendations**

We understand, from the commentary within the Issues Paper, that Treasury is looking for industry views on the following matters being:

- Read Access
- Write access
- Leveraging Consumer Data Right infrastructure
- Consumer Protection
- International Context

### *Read Access Recommendations*

*For read access, we recommend:*

- *A net consumer benefit should be able to be sufficiently demonstrated as part of any consent taxonomy,*
- *The accreditation process for the CDR regime is streamlined, and*
- *A holistic approach is taken to read access that takes into consideration the standards, intermediaries, accreditation and tiering, and looks to how these barriers can be lowered overall, whilst still complying with security principles, in order to encourage participation and therefore maximise consumer benefit.*

At a macro level, we support the idea of "consent taxonomy" and the formalisation of a process in which customers can give, revoke, and manage their various consents when using a third party.

However, as the security risk will always sit with the entity providing the product and not the third party, it will be important that a net consumer benefit can be sufficiently demonstrated, in order to encourage participants to take on the increased risk.

It is important that there when developing the “consent taxonomy” that each sector is considered individually, taking into consideration the nature, scale, complexity, and size of the various entities. A blanket approach across all participants would not be appropriate, and would likely lead to over prescription, causing unnecessary compliance complexities and costs and impeding competition, innovation, customer choice and accessibility. Industry guidelines that are tailored for each sector would ensure terminology and processes are aligned with existing practices in each sector (which in turn would maximise customer participation). AFIA would be happy to assist in drafting these guidelines.

We recommend that the scope for use of tiered accreditation to promote broader access without increasing risk is considered. Importantly, where functionalities replace existing technologies, such as screen scraping, it should be at the same cost level or at a reduced cost for participants to use. Otherwise, the increased cost of obtaining information currently used by smaller lenders will discourage participants, as there is no additional benefit for CDR participation. Importantly, both ASIC and the ACCC have confirmed that they will not be banning screen scraping, with ASIC actually recognising digital data capture as a secure and effective method in its updated RG209<sup>1</sup>.

In light of COVID-19 and the tightening of resources, it is perhaps more important than ever that the accreditation process for the CDR regime is streamlined, in order to encourage voluntary participation. We recommend a holistic approach is taken that takes into consideration the standards, intermediaries, accreditation, and tiering, and looks to how these barriers can be lowered overall, whilst still complying with security principles, in order to encourage participation and therefore maximise consumer benefit.

#### *Write access recommendations*

*For write access, we recommend:*

- *It is pre-emptive to consider this aspect of the CDR, as attitudes and community expectations towards technology and data sharing may shift and change during the COVID-19 crisis and lenders have had to re-prioritise resources in the short term.*
- *When implemented, it should be done so in an economically viable manner for participants, so that it can be used as intended to promote competition and lead to better outcomes for both individual and small business customers*

Our members are generally supportive of expanding the functionality of the CDR to include ‘write’ access. While this expansion would allow customers (and the intermediaries they engage) to apply for and manage a range of products using online application programming interface (API’s), it would also significantly increase the likelihood of fraud occurrences, as criminals gain an additional way of accessing customer information.

Write access has the ability to enable the development of products and services that allow customers to switch efficiently and easily between products that are within the industries covered by the CDR. This is dependent on ‘write access’ being implemented in an economically viable manner for participants, so that it can be used as intended to promote competition and lead to better outcomes for both individual and small business customers.

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<sup>1</sup> <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-209-credit-licensing-responsible-lending-conduct/>

At the same time, AFIA and our members support Treasury's viewpoint presented in the Review into Open Banking where it indicated:

- That "for open banking to succeed, customers need a high level of confidence that their data is secure and that it is only being used for the purpose that consent is given. If write access was created before open banking was fully bedded down, that may put its success at risk. Further, while write access has significant benefits, it may take some time for customers to feel comfortable with third parties acting on their behalf ... for these reasons it would be premature to consider implementing it at this stage."<sup>2</sup>

For CDR legislation to not "preclude the possibility of providing write access in the future. However, that it should only be considered after a post-implementation review of the assessment of the success of read access."<sup>3</sup>

The CDR is still in its initial phase and has yet to be fully implemented in Australia, with further delays to the timeline due to COVID-19.<sup>4</sup> Therefore, at this stage it would be pre-emptive to consider the introduction of 'write' access and other functionalities, as attitudes and community expectations towards technology and data sharing may shift and change during the crisis, with resources being re-prioritised in the short term until a new normal emerges.

The COVID-19 crisis has impacted on the risk appetite of almost all financiers, therefore, it is likely that there will be a slower uptake on Open Banking than expected (for voluntary participants), as finance companies are juggling conflicted priorities and resources at this time. Given the immediate and significant impact of the COVID-19 crisis and the likely ongoing impact across our economy, we believe it is vital that the finance industry is able to target and re-prioritise resources and capital to support their customers and our economy.

#### *Leveraging CDR infrastructure recommendations*

*For leveraging the CDR infrastructure, we recommend:*

- *Security principles and definitions are reviewed on an ongoing basis, so that certain definitions will not exclude appropriate participants – this is even more relevant when assessing new functionalities and extensions*
- *The interplay between the CDR regime and comprehensive credit reporting is regularly reviewed to ensure, where practical, duplication or conflict does not occur*

With Technological innovations advancing at an increasingly fast pace, it is important that security principles and definitions are reviewed on an ongoing basis, so that certain definitions will not exclude appropriate participants.

We recommend that when assessing new functionalities and extensions, a further review of the security principles should be undertaken. For example, there may be a significantly higher increased risk to privacy if looking to extend to the insurance sector (due to the amount and type of personal information stored). Further review of the security principles should be undertaken and tested in the current CDR framework, to ensure they are sufficient, before additional functionalities are considered.

We also recommend consideration of the interplay between the CDR regime (without limiting ourselves as to what it could look like as a comprehensive regime) and comprehensive credit

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<sup>2</sup> The Australian Government, The Treasury, Farrell, Scott, Review Into open banking: giving customers choice, convenience and confidence, December 2017, page 109

<sup>3</sup> Farrell Review, 2017, pages xi and 83

<sup>4</sup> On 24 April 2020, the ACCC announced that July 2020 commencement holds, but they will 'provide some flexibility as authorised deposit-taking institutions (ADIs) and Initial Data Recipients respond to the physical and economic impacts of COVID-19'

reporting. A great CDR regime would almost make CCR redundant if it can incorporate the flow of consumer and business credit data between the lenders, at lower cost, subject to the same privacy standards.

The application of the CDR regime to the energy sector and implications for credit providers in that sector. Whilst the CDR will enable readily accessible data for responsible lending requirements, the CDR regime will need to account for pricing decisions by credit providers and fluctuations in the market. This will be further elaborated on in the AFIA submission on the *Consumer Data Right- energy sector designation instrument*.

#### *Consumer Protection recommendations*

*For consumer protection, we recommend:*

- *A consumer and business education campaign is undertaken in order to increase awareness of benefits and risks of the CDR, so that consumers can understand and accept risks as needed.*
- *When looking to introduce further functionalities or extensions, the actual or perceived risk and benefit of participation in the CDR from the consumers (including business) and the participants' perspectives is considered*

When looking to introduce further functionalities or extensions, we believe it is important to consider the actual or perceived risk benefit of participation in the CDR from the consumers (including small businesses) and the participants perspectives. It is important to assess whether consumers will derive a considerable benefit that outweighs increased risks, and whether participants will not only have the resources necessary to utilise it as intended, but also to ensure that the increased privacy risks can be sufficiently mitigated. It is critical that a trusted framework is first established to maximise consumer adoption.

An established CDR regime would greatly benefit consumers at this time, when more than ever greater flexibility, tailored solutions and faster responses from providers are needed. However, with the CDR's staggered timeline, it is unlikely that consumer will see any benefits for the next couple of years.

A key step in consumer adoption is to increase the level of educational awareness with consumers. Consumers do not have to know the technicalities of the CDR ahead of using, however, the value of the CDR and consumer benefit needs to be clearly articulated.

We recommend that an educational campaign should be conducted by the Government in order to increase awareness of benefits and risks of the CDR, so that consumers can understand and accept risks as needed. We suggest that as part of the campaign, the government include a 1-page fact sheet (which AFIA is able to draft with our members), YouTube videos, social media engagement, and promote awareness of how adoption of the CDR can be utilised in other sectors (such as superannuation).

It is important that when educating customers, the focus is not on the technicalities of the CDR, but rather on how it can improve their financial lives. Data ownership is becoming an increasingly important to consumers, especially following the Facebook-Cambridge Analytica data breach and the ACCC's Digital Platforms Report. It is therefore even more important that customer is provided reassurance that they maintain control of their data by engaging in the CDR.

According to a UK survey carried out in December 2018, only one-in-four people had heard of open banking<sup>5</sup>. This lack of awareness can be reflected in the slow uptake of open banking in the UK. It is

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<sup>5</sup> Unlimited Group Omnibus, Splendid Unlimited, Open Banking Report: Edition , December 2018, page 4

critical therefore, that the Australian government has a strategic campaign approach to boost consumer awareness in order to maximise adoption of the CDR.

#### *International Context recommendations*

*From an international perspective, we recommend:*

- *Australia applies the lessons learnt from the UK, namely the compliance barrier of costs and the lack of consumer awareness in the lead up to the CDR being adopted there.*

In June 2019, the UK market had 66 million open banking transactions in one month, which is estimated to equate to 0.5% of the UK population. It is important that Australia applies the lessons learnt from the UK, namely the compliance barrier costs and lack of consumer awareness.

It is to note that financial technology in Australia is already more advanced in many ways than larger countries like the UK and the USA, and it is important that CDR functionalities are designed with Australian consumers in mind, as certain functionalities that have worked in the UK may not be suitable or demanded for by Australian consumers.

The currently regulatory climate along with financial institutions' risk appetites must also be considered. The finance industry is already facing unprecedented regulatory change, with nearly all credit providers needing to update systems and processes to ensure compliance with new and emerging regulatory requirements. It is critical more than ever in this COVID-19 crisis, that as the CDR develops, further measures are introduced to better streamline the accreditation process, in order to reduce the compliance and technological burden of participating in the CDR. Failure to implement such measures will likely see a substantial lessening of competition amongst firms and creating further barriers of new entry to the market.

In summary, the backdrop of COVID-19 provides participants and regulators a rare opportunity to proactively shape the CDR as an accelerator for digital transformation and help boost economic recovery.

However, in order for this to occur, significant participation and engagement will be needed from multiple stakeholders to ensure improved data access and innovation does not impact on the broader economy, limit access to credit, or reduce competition.

Should you wish to discuss our feedback further, or require additional information, please contact Chalisa Parekowhai, Associate Director Policy at [chalisa@afia.asn.au](mailto:chalisa@afia.asn.au) or 02 9231 5877.

Kind regards



Karl Turner  
**Chief Operating Officer**

## Annexure A

The Australian Finance Industry Association (AFIA) is the voice of a diverse Australian finance sector. AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia which includes:

- major, regional and mutual/community owned banks
- providers of consumer finance, including home loans, personal loans, consumer leases, credit cards, buy now pay later services, and debt purchasers
- providers of land finance, including residential and commercial mortgages and bridging finance;
- equipment financiers, including commercial equipment financing ranging from agri-equipment to small ticket equipment financing
- motor vehicle financiers, including consumer motor finance, novated motor finance, small business motor finance and heavy vehicle finance
- fleet leasing and car rental providers, and
- providers of commercial finance, including secured and unsecured loans and working capital finance to businesses, including small businesses.

AFIA's members range from ASX-listed public companies through to small businesses providing finance, which operate via a range of distribution channels, including through 'bricks and mortar' premises (physical branches and other outlets), via intermediaries (including finance brokers, dealerships, retail suppliers), and through online access or platforms (traditional financial institutions and fintechs).

AFIA's members collectively operate across all states and territories in Australia and provide finance to customers of all demographics from high to low-income earners and to commercial entities ranging from sole traders, partnerships and across the corporate sector in Australia.

AFIA's members provide a broad range of products and services across consumer and commercial finance, a snapshot of these include:

- consumer: home loans, personal unsecured loans, revolving products (including credit cards and interest free products coupled with lines of credit), personal secured loans (secured by land or personal property); consumer leases of household assets (including household goods, electrical/IT devices or cars) and buy-now, pay later services;
- commercial: land, asset or equipment finance (finance/operating lease, secured loan or hire-purchase agreement or novated leases); business finance and working capital solutions (secured loans, online unsecured loans; debtor and invoice finance; insurance premium funding; trade finance; overdrafts; commercial credit cards), together with more sophisticated and complex finance solutions.

For further information about AFIA, please see [here](#).