
SUBMISSION

Inquiry into Future Directions for the Consumer Data Right: Issues Paper

May 2020

EXECUTIVE SUMMARY

This is the Business Council of Australia's submission to the Treasury's *Inquiry into Future Directions for the Consumer Data Right*.

The Business Council supports giving consumers greater access and control over their personal and transaction data.

The Consumer Data Right (CDR) will provide consumers with the ability to access their own specified data efficiently and conveniently, as well as providing them with the ability to authorise the disclosure of that data to accredited third parties.

To ensure the continued roll out of the CDR promotes competition and delivers a genuine net benefit, without hindering innovation and deterring investment in data retention, policy makers should consider the following:

- How is the rollout of the CDR going to be coordinated with other related policy reviews?
- To what extent has the scope of the current CDR regime, including the ACCC's CDR Rule making powers, been assessed by the Inquiry?
- How will the refinement and implementation of the CDR be managed by businesses that are under financial pressure due to the COVID-19 crisis and do not have spare resources to engage in detailed policy consultation processes?

In addition to exploring how the government can effectively manage the above concerns, this submission will also put forward specific member positions from the banking, energy, telecommunications, retail and aviation sectors.

POLICY RECOMMENDATIONS

- 1. Action: The Inquiry should recommend that the government undertakes a Post-Implementation Review of the CDR (Open Banking) regime 12 months after its full implementation.**

A post-implementation review of the CDR (Open Banking) regime should be conducted approximately 12 months after the full implementation of the current CDR (Open Banking) regime and report to the Treasurer with recommendations, as per Recommendation 6.6 of the [2017 Review into Open Banking](#).

- 2. Action: The Inquiry should recommend that the federal government produce a regulatory road map to provide industry with greater certainty over future regulatory developments affecting the industry and how these interact with each other.**

The government should provide a regulatory road map to explain how the CDR rollout will be coordinated alongside other interrelated policy developments, such as the federal government's review of the Privacy Act 1988 and other reforms being implemented from the ACCC's Digital Platforms Inquiry final report.

3. Action: The Inquiry should recommend that policy makers explore how the CDR can be extended to include consumer data held by government agencies.

Governments hold a broad array of data that could be made more readily available to the public. For example: data on activity and usage of government services and facilities; health, medical and hospital data; environmental data; election data; and police, emergency services and courts data, were all identified by the Productivity Commission as being in demand from the public.

4. Action: The Inquiry should recommend that the government use targeted cost-benefit analysis of individual sectors before committing to the further roll of the CDR in other sectors of the economy

To determine whether expansion of the CDR scheme to the other sectors of the economy is warranted in the future, this inquiry should recommend that policy makers undertake a targeted cost-benefit analysis that looks at issues such as:

- developments in the sector that have been undertaken to improve consumer data portability
- barriers consumers face in this sector and how the CDR would address these, and
- implementation and compliance costs to the sector.

POLICY DISCUSSION

General feedback

The scale of economic and societal disruption caused by the COVID-19 crisis is unlike anything Australia has seen since World War II. In response, the business sector has stepped up and played a key role in helping Australians and small-medium businesses get through to the other side of this crisis.

The Inquiry into Future Directions for the Consumer Data Right commenced in January this year, at a time when the COVID-19 disaster was just beginning to unfold. Four months later, it is important for the federal government to recognise just how difficult it is for businesses to currently prepare for significant regulatory changes such as those proposed by the roll out of the CDR.

Business Council members are focussed on keeping their workers safe, keeping their employees in jobs and managing their businesses through the strained business and economic conditions. We ask that wherever possible, further roll out and expansion of the CDR be progressed cautiously to ensure that businesses are not asked to implement burdensome and costly changes to their business systems while continuing to deal with the impacts of the COVID-19 pandemic.

The Inquiry must give regard to the scale of individual projects and any timeframes and capital expenditure required for industry participants to implement new functionalities.

For the long-term success of the CDR policy initiative, it is imperative to earn and keep the trust of consumers – especially in relation to how personal data is used. Businesses and governments need to work together to reduce the risk of inappropriate collection, sharing or use of data.

To this end, a well-designed and cautious implementation schedule could simultaneously enhance consumers' trust in data use and foster the environment needed for businesses to undertake efficient data-related investment and innovation.

Further adding to concerns about the rollout of the CDR at present is the pipeline of other regulatory interventions that business is having to plan for. For instance, the government has committed to reviewing the Privacy Act 1998 this year, however it is unclear how the findings of this review will be integrated into the CDR's policy framework.

When the rollout of the CDR is coupled with other market interventions stemming from the ACCC's Digital Platform Inquiry, the federal government risks putting Australian businesses at a competitive disadvantage, relative to their international competitors, when investing or innovating in data-related activities.

Finally, this Inquiry should also consider whether policy makers have been provided with robust cost-benefit analysis to properly consider the incremental net-benefit of expanding the scope of the CDR.

Since the CDR policy framework was endorsed by the federal government there have been significant advancements in the way data can be accessed by consumers. This inquiry would benefit from a reassessment of what is needed to supplement what is already occurring in certain sectors of the economy.¹

Feedback by sector

Below we have relayed high level feedback from our members on a sectoral basis.

Banking sector

Reciprocity

Reciprocity of data sharing is critical to provide a level playing field and ensure Australian businesses can remain competitive in the digital economy. The current lack of reciprocity for non-designated sectors adversely impacts the ability of Australian banks to compete with businesses that access banking CDR data sets but are not required to share their own data sets.

The concept of reciprocity should be broadened to ensure that those receiving data and benefitting from the regime are also subject to its obligations to share data, if directed to do so by consumers. The CDR Rules should be amended to specify that any entity ingesting data through the CDR regime is subject to data reciprocity, regardless of whether they fall within a designated sector.

The principle of reciprocity is key to creating a 'network effect' to quickly advance the successful implementation of the CDR. Further, the principle of reciprocity will ensure all participants are incentivised to deliver the right outcome for consumers.

While the CDR can promote competition by empowering consumers and fostering innovation, it should not be used to transfer resources from one sector of the economy to

¹ For example, the Data Transfer Project (<https://datatransferproject.dev/>) was launched in 2018 to create an open-source, service-to-service data portability platform so that all individuals across the web could easily move their data between online service providers whenever they want.

another at no value. Charges for use cases and solutions will need to balance commercial and consumer interests, and market participants should be encouraged to innovate and develop tools and solutions as the CDR matures.

International lessons

Key learnings from overseas implementation of similar schemes include:

- Many jurisdictions have underestimated the complexity and scale of Open Banking implementation. This complexity will be heightened during the era of COVID-19 due to the strain placed on the economy.
- Collaboration and co-operation across industry and regulators will be necessary to agree on practical implementation timeframes, and to facilitate appropriate planning and sequencing of multiple technological changes.
- Where possible regulatory and technical frameworks should allow for the flexibility of industry and market driven solutions by providing open standards over rigid or defined standards.

Switching

Sufficient verification and authentication steps will be needed to provide the consumer protections required to enable safe switching. This will ensure consumer protection remains at the heart of the CDR policy framework.

Specific controls will be required for financial products. For example, fraud detection, extending exemptions to refuse switching where considered necessary to prevent harm or abuse and restrictions on accounts that can be switched, are all measures that policy makers should consider applying.

Write access

General

It is recommended that write access only be considered for inclusion in the CDR after a post-implementation review is undertaken 12 months after the full implementation of the Open Banking regime.

To ensure the system cannot be utilised to fraudulently access consumers' information, we recommend the prioritisation of designing strong security controls to protect consumers from exposure to material risk associated with the introduction of write access.

Personally-identifiable information and customer information

Due to the significant security, fraud and privacy risks, we recommend that the expansion of the CDR to include write access for the purposes of altering or correcting personally identifiable information (e.g. name, address, email, telephone numbers) only occurs after a post-implementation review has been completed, which should commence 12 months after the Open Banking regime has been fully implemented.

While there may be some customer information preferences and fields that could be supported, the CDR should allow data holders to process any write access requests for customer information/preferences in line with their existing approach for such requests.

Payment initiation/payments infrastructure

CDR reforms should aim to complement rather than displace the existing regulatory framework of the payments system.

Given the complex interplay of multilateral co-ordination required for the clearing and settlement of payments, the CDR regime will need to be integrated with the existing governance framework in a way that does not adversely affect existing arrangements.

An expansion of write access to payment initiation services poses an additional risk to the stability and integrity of the financial system. The payments industry and the Reserve Bank of Australia (RBA) Payments System Board (given its explicit authority for payments system safety and stability) should therefore be engaged in any reforms that may have implications for the broader payments system.

Governance

Expansion of the CDR to include write access would see additional regulatory bodies, like the RBA Payments System Board and others, become more relevant to the CDR. Ensuring all regulatory regimes work seamlessly together would need to be a priority in the development of write access. Another priority should be ensuring the governance structure is well resourced and possess the requisite expertise to ensure a successful rollout of the CDR across the economy.

Accreditation

We support a robust accreditation process and a tiered accreditation model that reflects the risk profiles associated with expanded read and write activities, without relaxing the existing obligations concerning security, privacy and consumer consent.

Digital ID

There is an emerging industry in digital identification with digital identity frameworks currently being developed by government and Industry. We believe the existing Digital ID industry should be engaged in a consultative manner to support the CDR by developing open standards which encourage competition and innovation in this space.

Post-implementation review

A post-implementation review of the current read access CDR will provide useful information to policy makers, regulators, industry participants and consumers about its success, and identify areas where it can be improved. In particular, the assessment will provide information concerning behavioural responses to the reforms, as well as information that is necessary to consider before further expansion of the CDR is undertaken.

To ensure the lessons learned are as comprehensive as possible, the post-implementation review should commence once implementation of the Open Banking regime has been completed.

Energy sector

The next stage of the CDR rollout needs to be properly based on empirical evidence. For this to occur, policy makers need to learn the lessons from the CDR rollout in the banking sector. Members are concerned about the rushed nature of the energy designation, including the draft designation instrument being released in May, without a cost-benefit analysis or publicly released privacy impact assessment, with an aim to finalise by 30 June 2020.

Interoperable system

There is a significant amount of uncertainty about how an interoperable system is going to work and already we are seeing early issues with energy designation due to the use of the Australian Energy Market Operator (AEMO) as a designated gateway. It is unclear what, if any, bespoke energy model will be developed through the gateway and therefore what costs this will introduce to market participants.

In regard to reciprocity, the principle is supported to ensure consistency and equality through businesses, but if the energy sector is not using the economy-wide model, and is therefore not interoperable (or not in a cost effective way) then this principle is difficult to achieve.

Cost-benefit assessment

Not only is consumer welfare at risk from a rushed rollout of the CDR to other sectors, failure to properly learn from the CDR's rollout in the banking sector runs the risk of imposing unnecessarily high implementation costs at a time when the economy is already fragile due to the impact of Covid-19.

Because there has been no comprehensive cost-benefit analysis for the energy sector (due in part to the CDR Act exempting the need for one so long as the sector is designated by 1 July 2020), it is difficult to comment on any potential benefits that could be derived. Stakeholders need to understand the baseline of perceived costs and benefits from the CDR regime, in order to assess that baseline accuracy, and then offer any potential opportunity areas (as this Inquiry is aiming to do).

As we note above, compliance costs can act as a barrier to entry. If reciprocity is introduced in the energy sector then decision-makers will either need to require non-energy participants to build systems that feed data through the gateway (which may result in prohibitively high compliance costs) or they will use the economy-wide model, or the principle of reciprocity does not apply to energy data sets, which is counter to the points we have raised above in support of such a principle.

Write access

At this stage, members do not support the expansion of write access under the CDR being recommended by this inquiry. At a minimum, members believe that a separate review into the risks of write access should be taken on a sector by sector basis to identify sector structures and requirements for third parties. We note that this point was raised by the ACCC in the Retail Electricity Pricing Inquiry (REPI) report that noted changes were needed to preferred partner programs and energy laws.

There is a lot of work going on in energy about third party providers at the moment, following the recommendations made by the ACCC in its REPI final report. There is also no real evidence that enabling write access under the CDR would deliver more than marginal benefits for consumers, and these benefits would need to be weighed up against the risks,

particularly to vulnerable consumers (for example, lack of comprehension of giving a business the power to switch their service providers).

Telecommunications sector

Due to past reform efforts, the telecommunications sector has solved the “customer switching” problem that the CDR is targeted toward. Therefore, the incremental benefits to competition in the telecommunications sector from CDR are likely to be marginal.

Internationally, telecommunications sectors adopt very similar regulatory frameworks to facilitate customers switching and to promote competition. This has historically been facilitated by the International Telecommunication Union (ITU), the OECD, and other international regulatory forums. This suggests that there is a consistent view across the international sector that telecommunications sectors are already achieving many of the objectives of Open API frameworks without the need for additional regulation, rules and standards

In terms of how the CDR could be expanded to include ‘write’ access, the concept of trusted third parties initiating payments or changing customer data does not transcribe well to the telecommunications sector. Other than basic customer name and address data, other customer data such as usage data is not “generated” by customers but is rather a function of their usage of services.

Further, law enforcement agencies rely heavily on telecommunications data (including customer details and usage data) for their investigations. If third parties were able to change or add to customer data, this could have unforeseen impacts on those agencies ability to rely on that altered data (especially from an evidentiary perspective in court).

Retail sector

The proposed benefits of the CDR for competition and innovation are inexact for sectors such as retail, which are already characterised by transparent pricing and product information, and customers who do regularly switch or use multiple providers with no barriers or impediments.

Before the rollout of the CDR could be considered suitable for the retailing sector, we recommend more thorough and targeted cost-benefit analysis is undertaken to properly assess whether there are benefits the scheme will deliver to consumers.

Similar to what has occurred in other designated sectors to date, to encourage continued investment and innovation, it is vital that value-added data continues to be excluded from the scope of the CDR as it is rolled out to other sectors of the economy.

Aviation sector

The aviation sector has been the hardest hit by the COVID-19 disruption. Ensuring domestic and international travel can resume safely will be the number one priority for airlines for the foreseeable future.

To ensure this sector is not faced with additional significant cost and compliance burdens, the potential expansion of the CDR to the aviation sector should not progress in the short-to-medium term.

To determine if expansion of the CDR scheme to the aviation sector is warranted in the future, it will be important for policy makers to undertake a targeted cost-benefit analysis that looks at issues such as:

- the barriers consumers face in this sector
- how the CDR would address any such barriers, and
- the implementation and compliance costs to the sector.

CONCLUSION

The Australian Government announced the introduction of a CDR in Australia in November 2017. The Business Council continues to support the CDR policy initiative as a way to promote competition and improve consumer welfare.

However, it is vital that the implementation of the CDR across the economy is carried out in a manner that is cognisant of the changes that have occurred in the world over the last two and a half years.

Firstly, it is important for policy makers to recognise the voluntary actions businesses are taking to provide consumers with more control over their data. Only a targeted and up-to-date cost-benefit analysis will demonstrate where the CDR rollout will, and will not, provide a net-benefit to the economy. Where possible, regulatory and technical frameworks should allow for the flexibility of industry and market driven solutions by providing open standards over rigid or defined standards.

Secondly, the global economy has been devastated by the impact of COVID-19. While ever-increasing regulatory compliance costs has long been a concern for the business sector, more costly regulation will only add to pressures currently on businesses. Therefore, we encourage policy makers to ensure the continued roll out of the CDR is progressed only when business conditions have improved. Wherever possible, implementation and compliance costs should be minimised.

Finally, the Australian Government must be alert to the risks posed by the current wave of regulation facing the technology sector in this country. How the various regulatory interventions in the technology sector relate to each other is not entirely clear and the uncertainty could deter businesses from setting up or expanding in Australia. If the government wants business to continue to invest in Australia's vital technology sector, we cannot have in place a regulatory framework that is out of step with the rest of the world.

The Business Council appreciates the opportunity to make a submission to this inquiry and looks forward to further engagement with the Australian Government on the expansion of the CDR.

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