

25th May 2020

By email: data@treasury.gov.au

Submission to The Treasury:
Inquiry into Future Directions for the Consumer Data Right: Issues Paper

Dear Secretariat,

The Consumer Policy Research Centre (CPRC) thanks you for the opportunity to respond to Treasury's ***Inquiry into Future Directions for the Consumer Data Right – Issues Paper***.

CPRC is an independent, not-for-profit consumer research organisation. Our goal is to achieve a fair outcome for all consumers. We conduct research across a range of consumer markets, with a focus on consumer decision-making, consumer data, energy, and online marketplaces. We work collaboratively with academia, industry, government, and the community sector to inform policy reform and build capability in practice.

We welcome Government efforts to date in seeking to design and implement a Consumer Data Right (CDR) that operates with consumer focus as its first principle, while encouraging market competition and opportunities that are both fair and efficient. We similarly welcome this Inquiry's commitment to ensuring that the CDR promotes innovation in a manner that is inclusive of the needs of all consumers, particularly those who are experiencing short- or long-term vulnerabilities.

CPRC hopes that future directions for the Consumer Data Right actively contributes to a data economy in which consumers are empowered by strong consent mechanisms, baseline protections and accountability mechanisms. This can work to ensure consumers can exercise agency and build confidence and trust in how their data is used; and in turn can guard against misuse in digital markets such as data leakage, privacy breaches, and potentially harmful practices such as predatory data profiling and pricing.

Our key message in responding to the Inquiry's March 2020 Issues Paper is to emphasise that future directions for the CDR must continue to be envisaged as *for the consumer, about the consumer, and seen from the consumer's perspective*. We also continue to recommend urgent economy-wide reforms to outdated protection frameworks – such as those proposed by the ACCC Digital Platforms Inquiry including reviews of the Privacy Act and ongoing reforms to the Australian Consumer Law¹ – to provide consistency and protection for consumers (and markets), and embedding principles of fairness, safety, and privacy through consistent policy approaches and regulatory provisions for consumer data.

The Consumer Data Right must be considered within the broader reality of significant digital transformation of the economy, many parallel and related policy processes, and an ongoing lack of policy coordination across the areas of consumer protection, privacy, competition and

¹ [Regulating in the digital age: Government Response and Implementation Roadmap for the Digital Platforms Inquiry](#) (2019), The Australian Government, The Treasury.

human rights frameworks which ultimately limits Australia's ability to respond to, and secure the benefits of the Fourth Industrial Revolution. No single policy reform can be considered in isolation due to the complexity of challenges and opportunities. Instead, CPRC continues to recommend the development of an integrated policy and protection framework economy-wide to reap the significant consumer benefits of data and digital transformation.

This submission outlines some priority issues for exploration and action in the following areas:

- **Consumer needs, expectations, and outcomes**
- **Consent dashboards and consent taxonomy**
- **Staging and evaluation of reforms**
- **Supporting consumers experiencing vulnerability**
- **Building a stronger, more effective CDR**

Broadly, we suggest further investigation into how the Consumer Data Right infrastructure, and the accreditation and technical standards roles of the Australian Competition and Consumer Commission (ACCC) and Data Standards Body (DSB), might be leveraged to support data security and productivity throughout the digital economy in ways that ensure a strong and consistent approach to consumer rights. Development of a centralised consumer consent dashboard (with rules set by the ACCC and operationalised and managed by the DSB) is one potential approach that we have previously proposed², and which is revisited in this submission. We note that expansion and oversight of a broader remit will require commensurate resourcing for the regulatory bodies involved.

Consumer needs, expectations, and outcomes

Future directions for the Consumer Data Right will present significant opportunities to achieve positive consumer outcomes, providing the environment in which CDR operates is both trusted and trustworthy.

CPRC's consumer research tells us that Australian consumers currently experience significant power and information imbalances in their relationships with data holders and with providers of data-driven services³, with one focus group participant explaining "I'm not comfortable with them having all of my information, but if you want to be involved in whatever the site is about, you don't get options"⁴. The majority of Australian consumers (73%) believe government has a responsibility for enabling consumer choice and consent in these processes, and for regulating consumer protections associated with commercial data sharing⁵. Two-thirds of respondents to our 2018 nationwide survey also expected that the government should develop safeguards to ensure consumers are not unfairly excluded from essential products or services based on their data. The role of government becomes more relevant as digital markets continue to facilitate services that are necessary to daily life, particularly during the COVID-19 events; and highlights the vital importance of continuing to shape the CDR as a key instrument in unlocking data use in ways that are both innovative and equitable. Our research clearly shows that questions of trust, safety, consent, and

² CPRC (2018), [Submission by CPRC to ACCC Consumer Data Right Rules Framework](#), 12 October 2018.

³ Phuong Nguyen & Lauren Solomon (2018) [Consumer data and the digital economy: emerging issues in data collection, use and sharing](#).

⁴ Ibid, p38.

⁵ Ibid, p37.

equitable access represent key consumer concerns that Treasury must continue to prioritise as it considers future directions and flow on effects of the CDR.

CPRC research repeatedly shows the need for consumers to have greater agency when it comes to their data and information, and the risk of harms and disenfranchisement when they do not⁶. A healthy data economy is contingent on consumer trust in information sharing and data exchange platforms, and on supports and protections that allow individuals to meaningfully participate in uses of their consumer data. If competition in data-driven services is to flourish over time, the enabling policy frameworks such as the CDR should first and foremost deliver tangible and quantifiable benefits to consumers driven by their needs and preferences⁷.

Consent dashboards and consent taxonomy

Obtaining and providing visibility over consent in ways that are express, informed, and time-limited is vital to ensuring consumer wishes are being respected in decisions and actions regarding use of their data. This is especially important where the use of consumer data informs or has material impact on choices affecting financial security, access to essential services (including energy, telecommunications, and housing), health or wellbeing.

As we have noted at an earlier stage of development of the CDR, CPRC is supportive of consumer dashboards as having potential to strengthen the capabilities of consumers through the creation of tools that facilitate inclusion, understanding, visibility, and consumer agency over data consents⁸. We are, however, concerned that the necessity to access multiple dashboards across different providers will pose a burden for consumers hoping to maintain visibility of data consents across providers and data holders with whom they have established relationships. Accordingly, we strongly support the development of a centralised consumer consent dashboard. A platform of this kind would greatly improve the ability of consumers to comprehend and meaningfully assess how and where their data is being shared. We reiterate that it is not realistic to expect consumers will log into multiple dashboards via accounts with every provider for whom they have granted permission to share data in order to track the state of their data consents – nor is it practical as a comparison method to do so. We also note that further stakeholder consultation would be needed to fully consider risks and sensitivities of a centralised data source holding metadata about consumer accounts, identity, and consents.

While a single ‘life-admin’ dashboard as discussed in the issues paper may, at some point, offer commercial opportunity to manage consumer *accounts*, we suggest that a gap currently exists within the CDR framework for consumers to effectively manage *consents* across those accounts. To help address this gap, we propose the Data Standards Body could be responsible for managing a holistic consent dashboard, with associated Rules to be set by the Australian Competition and Consumer Commission.

⁶ Brigid Richmond (2019), [A Day in the Life of Data](#), CPRC, pp 34-39.

⁷ CPRC (2019), [Submission by Consumer Policy Research Centre to Australian Treasury consultation on the ACCC Digital Platforms Inquiry Final Report](#), 12 September 2019.

⁸ CPRC (2018), [Submission by CPRC to ACCC Consumer Data Right Rules Framework](#), 12 October 2018, p8.

Benefits of this approach include:

- Improved transparency, building the trustworthiness of CDR and accountability of data holders and recipients by providing consumers one-stop clarity over what data-sharing consents they have given (both active and expired) and for what duration.
- Improved comprehensibility, ensuring undue mental load is not placed on consumers seeking to review their consents.
- Improved CDR capability within companies / industry by embedding focus on consumer rights to data and prioritising a culture of consumer care.
- Improved consumer control over their data as precursor to increased participation in the wider data economy.

We support greater consideration of a consent taxonomy and associated use cases that would provide consumers (as well as businesses and regulators) with a clear reference point for what their consents entail in real terms, and a consistent benchmark for evaluating and taking action where breaches occur.

Staging and evaluation of reforms

To date, the CDR has been proceeding on a staged roll-out. This approach benefits consumers: incorporating inclusive design, evaluating impact, and applying learning along the way. We appreciate the more recent efforts of policymakers in ensuring CDR data standards and interfaces are subject to user testing; and we strongly recommend monitoring the experiences – positive and negative – that consumers have with initial CDR implementation within banking (and energy) sectors, and reflecting these lessons in future iterations of the CDR.

Expanding the functionality and footprint of CDR so that it boosts innovation across the economy is not an end in and of itself. Rather, this innovation – which could well be fast-paced and unpredictable – needs to be guided by economy-wide protections which incentivise companies to deliver positive outcomes for consumers, while also taking proportionate steps to manage risks. Achieving this balance is a well-documented challenge for governments, explored in the World Economic Forum's white paper on *Values and the Fourth Industrial Revolution*⁹. To meet this challenge, the UK government is adopting a more agile approach to regulation that supports innovation while protecting citizens and the environment.¹⁰ Elements of this approach include:

- Being on the front foot in reforming regulation in response to technological innovation.
- Ensuring protections are sufficiently flexible and outcomes focussed to enable innovation to thrive.
- Enabling greater experimentation, testing, and trialling of innovations under regulatory supervision.¹¹

Regarding the last point above – regulation and policy will particularly benefit from enabling the experimenting, testing and trialling of how innovations meet the varying consumer needs across the full spectrum of society. However, seeking to iterate quickly must not come at the

⁹ World Economic Forum (2016), [Values and the Fourth Industrial Revolution – Connecting the dots between value, values, profit and people](#), p6.

¹⁰ HM Government UK (2019), [Regulation for the fourth Industrial Revolution – White Paper Presented to Parliament by the Secretary of State for Business, Energy and Industrial Strategy](#), p8.

¹¹ Ibid, p9.

expense of consumer experience testing of the CDR to those groups who are less able to engage on a fast-moving timeframe. Consumers experiencing vulnerabilities may face a range of barriers to participation in future products or processes the CDR enables. This should be factored into the design and evaluation of CDR reforms and future directions – and a measured approach should be adopted when seeking to overcome such barriers. The more the CDR is designed to be usable by diverse consumers, the more it will drive competition, including as part of the COVID-19 recovery.

A positive step towards a more agile regulatory approach involves evidencing the real-world consumer experience of the CDR as it rolls out across different sectors in the coming months, demonstrating where risks and rewards are highest. We recommend government investment in testing of this kind, to work in conjunction with a mandated requirement for consumer indicators and impacts to be explicitly addressed as a condition of future reforms. Both the consumer experience and the overall robustness of the CDR framework will benefit from the development of criteria to consistently and transparently measure and benchmark how proposed reforms might affect or influence consumer experiences and vulnerabilities. This would further benefit policymakers by establishing an evidence base sensitive to local conditions that provides valuable inputs to shape future directions of the CDR – helping to increase the confidence consumers and business have in the safety and credibility of systems and technologies associated with data portability.

We note that this aligns with and expands on Treasury’s own findings of the *Review into Open Banking* which recommended that enhancements to CDR functionality such as write-access and digital identity authentication should be contingent on review of the initial CDR implementation¹². More broadly, the staging and evaluation of CDR reforms will be well served by moving in coordination with wider reforms to consumer protections that set clear expectations regarding fairness, safety, and privacy for consumers and their data.

Supporting consumers experiencing vulnerability

We note the terms of reference to The Treasury Inquiry into Future Directions for the Consumer Data Right specifically includes a brief to: *Ensure the Consumer Data Right promotes innovation in a manner that is inclusive of the needs of vulnerable consumers*¹³. We believe CPRC is well placed to offer feedback on the opportunities to support the most vulnerable parts of our society with the Consumer Data Right, and to provide advice on the nature, scale, and impact of vulnerabilities experienced by Australian consumers.

As effects of the 2019-2020 Australian bushfires and the COVID-19 pandemic are currently showing across a range of sectors (including the banking, housing, and energy markets), consumer agency and protections for people facing adverse circumstances are a crucial factor in maintaining broader social and economic stability. The unprecedented events we are currently living through may offer a unique opportunity to leverage the CDR in rebuilding a fairer and more inclusive economy. Our recent report for the Australian Energy Regulator (AER)¹⁴ underscores how vulnerability affects the choices and interactions consumers have with markets. It highlights areas where markets and providers may exacerbate harms, and

¹² Scott Farrell (2017), *Review into open banking: giving customers choice, convenience and confidence*, The Australian Government, The Treasury, page xi.

¹³ Inquiry into Future Directions for the Consumer Data Right, [Terms of reference](#): 1.2.

¹⁴ Emma O’Neill (2019), [Exploring regulatory approaches to consumer vulnerability – a report for the Australian Energy Regulator](#), CPRC.

pinpoints why a nuanced understanding of real-life experiences is necessary to creating inclusive market reforms.

In common with international jurisdictions such as the UK (where a major study into consumer vulnerability produced by the Competition and Markets Authority in 2019 has put vulnerability firmly on the agenda for consumer markets and regulators¹⁵), Australian regulators are moving to prioritise a deeper understanding of how the design of markets and services impacts on vulnerable consumers. As our report for AER elaborates, consumer vulnerability encompasses a wide and overlapping range of circumstances, which may occur as transient or entrenched conditions in consumers' lives¹⁶. Consumer vulnerabilities can be caused by poor market, product and service design (such as where firms use strategic complexity to confuse and mislead customers) or occur persistently across market sectors (being linked to an individual's situation or attributes); or they may be a combination of both. Factors contributing to consumer vulnerability include, but are not limited to: mental health; illness or injury; natural disasters; family violence; un- or under-employment; financial stress; low literacy; low digital capability; physical or cognitive disabilities; gender identity; CALD identity; Aboriginal and Torres Strait Islander identity; youth or advanced age; and living in a regional, rural, or remote location.

Quantifying some of these indicators is useful to understanding the extent of consumer vulnerability in Australia. For example: 44% of Australians have low literacy; 20% identify as having a disability; 20% speak a language other than English at home; and 66% experience financial stress of some kind¹⁷. Demonstrating how vulnerabilities overlap, National Debt Helpline data for 2019 indicates one in five callers with energy issues also disclosed experiencing mental health problems¹⁸. As well, we note that the latest report of the Australian Digital Inclusion Index found "gaps between digitally included and excluded Australians are substantial and widening for some groups"¹⁹. The rate of digital inclusion is reported by the Index to be significantly higher in capital cities, yet approximately one third of Australians live outside these areas²⁰. As digital markets evolve it is important that consumers residing outside capital cities are not left behind, and that consumers experiencing vulnerability of all kinds are able to obtain equitable access to benefits of the CDR and associated reforms.

We share concerns raised by consumer advocates that increased availability of consumer data through the CDR, if not well regulated, is likely to see increased competition for 'high value' customers at the expense of vulnerable consumers²¹, and we emphasise the importance of distributional impacts of this kind being monitored by government. We also caution that many of the proposed benefits of the CDR (including tailored financial support services; micro savings schemes; and enhanced choice and visibility to mitigate so called 'loyalty taxes') remain unlikely to be realised for vulnerable consumers without direct or

¹⁵ [Consumer vulnerability: challenges and potential solutions](#), UK Government, Competition and Market Authority (2019).

¹⁶ Emma O'Neill (2019), [Exploring regulatory approaches to consumer vulnerability – a report for the Australian Energy Regulator](#) CPRC.

¹⁷ Ibid, p5.

¹⁸ Ibid.

¹⁹ Thomas, J, et.al. (2019), [Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2019](#), RMIT University and Swinburne University of Technology, Melbourne, for Telstra, p6.

²⁰ SARRAH: Services for Australian Rural and Remote Allied Health <https://sarrah.org.au/content/demography-and-population>

²¹ *Submission by the Financial Rights Legal Centre and the Consumer Action Law Centre to the Senate Select Committee on Financial Technology and Regulatory Technology* (2019).

incentivised government investment to support the design and application of ‘data for good’ technologies in competitive market settings.

Managing consumer risk is particularly important given the CDR’s interaction with essential services as it pilots within the finance, energy, and telecommunications sectors. The impact of harms to consumers facing vulnerabilities is likely to be compounded in these markets and should be carefully monitored before scaling up future functionality for the CDR, particularly when considering options for third-party write access to financial and essential services data.

We welcome deeper exploration by The Treasury and other stakeholders into how the CDR and associated infrastructure can help improve short- and long-term outcomes for all consumers – particularly those experiencing vulnerabilities. Equally, we urge policymakers and regulators to carefully consider where the CDR might inadvertently enable predatory behaviours to flourish²², and to reflect on how emerging approaches by Australian regulators such as the AER, ASIC and the ACCC, and UK regulators such as the CMA, the Financial Conduct Authority, Ofwat and Ofgem, are working to better understand and support consumers experiencing vulnerability through recognition of the scale and diversity of consumer vulnerability and the use of inclusive design approaches. We would be happy to further brief the reform team on our research into ways to better support vulnerable consumers.

Building a stronger, more effective CDR

We support the position of the Issues Paper that legislators and regulators must ensure that *as the CDR develops it does so in a manner that is ethical and fair as well as inclusive of the needs and choices of all consumers*. Retaining its mandate as consumer centered is key to maximising strengths and opportunities of the CDR on current and future trajectories.

We suggest the following will help build a stronger, effective Consumer Data Right:

- Ongoing commitment to economy-wide reforms and policy frameworks that reflect the interconnection between economic growth and consumer trust and protections. Specifically, we support prohibition on unfair trading practices as recommended by the ACCC digital platforms inquiry, and introduction of a general safety provision into the Australian Consumer Law.
- Technical and service innovations that: are driven by consumer need; generate significant value for consumers; have clear purpose; and demonstrate meaningful understanding of consumer experiences within the digital economy and data ecosystem (including consumer vulnerabilities), underpinned with by-design technology.
- An iterative approach that allows for the CDR implementation to be learned from, maintaining flexibility for government and regulators to manage risks and build consumer trust, and moderate frameworks and future directions responsively.

²² Chapters 7 and 8 of the Australian Competition and Consumer Commission’s *Digital platforms inquiry - final report* (2019) provide context regarding the capacity of digital markets and data portability frameworks to cause substantial harms if not appropriately regulated.

The Consumer Data Right aims to drive socially beneficial innovation, market choice, and positive consumer outcomes through improved consumer agency and protections in data access and portability. Achieving these aims requires cross-government and cross-sector commitment to supporting the technical, industry, and community initiatives necessary to build greater consumer trust and confidence in data sharing through the CDR.

CDR also presents opportunity for Australia to step up as a global leader on the data rights and reform stage: building data infrastructure and ecosystems that facilitate sustainable growth and productivity by strengthening consumer agency, capabilities, and protections. Key to this will be a CDR that recognises the full spectrum of consumer rights and vulnerabilities, and which rewards a “by-design” culture: embedding rights by design; and privacy by design into building systems and capabilities based on meaningful understanding of consumer experiences of the digital economy, its data ecosystem and the technologies within it.

We welcome opportunities to provide further input into The Treasury’s *Inquiry into Future Directions for the Consumer Data Right*. For discussions regarding our research or this submission, please contact Emma O’Neill, Research and Policy Director, at emma.oneill@cprc.org.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lauren', with a long horizontal flourish extending to the right.

Lauren Solomon

**Chief Executive Officer
Consumer Policy Research Centre**