20 May 2020

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

By email: data@treasury.gov.au

Classification: Public

Inquiry into Future Directions for the Consumer Data Right

Cuscal Limited (Cuscal) appreciates the opportunity to provide this submission in response to the Treasury issues paper for the 'Inquiry into Future Directions for the Consumer Data Right'.

Background to Cuscal

For over 40 years, Cuscal has leveraged our assets, licensing and connectivity to provide intermediary and principal outsourcing activities on behalf of our clients. We are an end-to-end payments specialist that services more than 100 established and challenger brand clients within Australia's financial system, including the majority of the mutual banking sector, and a growing number of FinTech and 'PayTech' enterprises. We enable their market connectivity so they may provide innovative products, business models, and drive improved customer outcomes.

We are an Authorised Deposit-taking Institution (ADI), the holder of an Australian Financial Services Licence, and an Australian Credit Licence for Securitisation purposes. Cuscal has a seat on the Board of eftpos, NPPA, the APN and numerous industry committees. We are also the founder and majority shareholder of 86400 (www.86400.com.au), a new fully licenced digital bank.

The services that we provide to our client institutions include: card scheme sponsorship for issuing and acquiring, payment card issuing, card production services, digital banking applications, and access to domestic payment services using direct entry, BPAY and the New Payments Platform (NPP). We also act as settlement agent for many of our clients through our Exchange Settlement Account with the Reserve Bank of Australia (RBA).

As a fully PCI-DSS accredited ADI, Cuscal is uniquely placed to provide secure and robust capabilities that facilitate access to markets that would otherwise be beyond the reach of some organisations.

For further information on Cuscal and our services please refer to our website at www.cuscalpayments.com.au.

Our comments regarding the Issues paper

Our response in this submission has (by exception) been structured in line with the questions in the consultation paper.

Future role of CDR

The Inquiry invites submissions on the future roles that could be performed by the Consumer Data Right, the future outcomes which could be achieved, and what is needed for this to happen. For example, enabling product comparison, data aggregation, or simplifying 'life admin'.

In a joint publication with KPMG and KWM ('*Get set for Open Banking*' - available via this link), Cuscal outlined some of the thinking and the opportunities that CDR (and Open Banking) presents.

We commented that CDR can deliver benefits for consumers (i.e. users) by providing:

- better choice, convenience, control and confidence;
- the ability to share information;
- increased ability to negotiate better deals;
- easier ability to switch providers or products; and
- better value for money.

We also highlighted in the joint paper that:

- the most notable factor for success in CDR as a channel is 'control', where the consumer can control who has access to their data, and what those third parties can see and do. The consumer must have confidence this is being done safely between authorised organisations; and secondly
- effective communication with consumers will be essential in order to generate awareness of CDR and to drive uptake. Communicating in terms that consumers understand is critical given the 'opt in' nature of participation. Individuals and businesses will need to understand the value and any risks of sharing data.

To create and progress future CDR opportunities, it is important that industry and stakeholders execute effectively on the current Open Banking initiatives and timeline. The journey for CDR has only just begun and without a solid foundation, Open Banking consumers will not be educated, informed nor trusting in the developments CDR can bring.

Where there is sector, industry and regulatory alignment on CDR operating and technology principles, consumer benefits could be achievable for most of the financial and utility ('life admin') products a consumer can originate or manage through an online or digital channel.

While other sectors or industries can leverage the rules and principles developed for Open Banking, a future multi-industry CDR environment will require greater coordination, technology planning and resources. How the model(s) are funded will require engagement by the ACCC and Treasury with all stakeholders.

Switching

The Inquiry invites submissions on how the Consumer Data Right could be used to overcome behavioural and regulatory barriers to safe, convenient and efficient switching between products and providers, whether those barriers are sector-specific or common across industries.

In banking, it is becoming evident that effective account aggregation tools can slow the need for consumers to switch providers. For example, the UK banking experience is now showing that the introduction of Open Banking has reduced the propensity for account switching – refer to UK account switching statistics.

If CDR is to assist sectors or industries with switching, this will be best driven through an efficient consent management model, coupled with a digital identity and trust framework that supports instructions. We do note these arrangements can be achieved under the existing 'read regime'.

Read access

The Inquiry welcomes input from interested parties on the following 'read expansion' topics – including their benefits and costs – as well as any other 'read' access functionality that the Inquiry should consider.

a. a 'consent taxonomy', i.e. standardised language for consents across providers and sectors
b. consent management and tracking for consumers
c. promotion of industry cooperation on standards for 'voluntary' data sets
d. how the creation of a safe and efficient ecosystem of participants and service providers could be accelerated, and
e. the scope for use of tiered accreditation to promote broader access without increasing risk.

We agree that a consent taxonomy and consent management/tracking would assist consumers and participants – indeed we are of the firm view that over time the consent regime should be mandatory. If these are effective, then the need for voluntary data sets diminishes. While there is merit in sharing voluntary data sets in terms of industry cooperation and sharing of experience, this is largely referential or categorisation style data that is not essential for day one processing.

In terms of a safe and efficient ecosystem, we have previously provided feedback to the ACCC on industry testing management and an appropriate tiered accreditation/sponsorship regime for Open Banking. The same principles can be applied more broadly to CDR initiatives, as we believe that testing and ongoing accreditation of participants is necessary to protect the integrity of the CDR regime.

Cuscal proposes an accreditation and sponsorship structure similar to that adopted by the payment card schemes. At a minimum this would include the following accreditation tiers:

- **Accredited Data Recipient - Unrestricted level:** as per current Open Banking rules
- **Accredited Intermediary:** Intermediaries offer considerable benefits to the CDR regime, however they can also create a greater point of failure and therefore require a higher level of performance, technical and security scrutiny.
- **Sponsored Data Recipient:** the increased scrutiny placed on Intermediaries will allow FinTechs, smaller banks, etc, to safely and securely participate in the CDR ecosystem without the full burden of the accreditation requirements. In essence Cuscal believes it should, as an accredited Intermediary, be able to 'sponsor' participants into the CDR regime by providing data collection and storage services that comply with the strictest standards. A sponsored recipient should still apply to the ACCC to join the registry, state the product or service it intends to provide, and to attest its compliance to the CDR rules. The restriction placed on the sponsored recipient should reflect the extent to which their responsibilities/liabilities are absorbed by the Intermediary.
- **Restricted (Non-Accredited) Recipient:** while Cuscal does not support the sharing of CDR data with unaccredited participants we believe strict requirements should be in place if the ACCC includes this in the rules. This should include reliance on an Intermediary (to ensure consent, security, insurance and dispute obligations are met) or Outsourced Service Providers, relevant industry licences (eg. Registered Tax Agent), restricted use cases and restricted data (ie. no/limited access to raw data).

In relation to testing, Cuscal believes a model similar to the Payment Card Schemes may be a relevant point of reference:

Description of role/accountability	Card Scheme model	CDR model
Sets rules and holds parties to account.	Card Scheme	ACCC
Assesses data security practices against a standard	Independent Assessors accredited by PCI Security Standards Council	Independent Assessors accredited by ACCC
Directly accountable to the Scheme Operator	Principal Member	Data Recipient or Intermediary

Description of role/accountability	Card Scheme model	CDR model
Sponsors others into the Scheme by taking on some of their responsibilities	Principal Member	Intermediary
Accountable to both Scheme Operator and Sponsor	Sponsored Member	Sponsored Data Recipient
Provides services to the above	Service Provider	Outsourced Service Provider

All these roles have a form of accreditation to participate and must maintain this status and abide by rules and regulations in this regard to operate.

Liability should be limited to the services participant controls and this should be clearly determined in agreements as this will differ depending on which services are being provided (eg. CDR data storage).

Write access

The Inquiry is interested in views on 'write access' issues. Write access could allow consumers to authorise trusted third parties to apply for, manage, change or even close products on their behalf through APIs. In the context of Open Banking, the Inquiry is particularly interested in interested parties' views on how the Consumer Data Right could best enable payment initiation. Expansion and application of write access CDR to other industries, such as the identified energy and telecommunications sectors, can also be considered.

In addition to considering potential uses and benefits of write access across sectors, the Inquiry will consider barriers to enabling write access, including possible regulatory barriers, compliance costs and risks involved. This includes issues such as who should bear responsibility for payments made, and for changes made to data, and whether write access should extend to the ability to change details which identify a customer (and if so, how any associated security risks could be minimised).

Write access concepts are possible under the constructs of a uniform and comprehensive accreditation, consumer consent and digital identification ecosystem. The Government and Industry would need to undertake pilot tests in selected sectors so that all systems, procedures and rules are tested and understood. It will also enable work on accurate cost estimates to be undertaken.

In the payments industry, we are seeing demand for new features in the area of 'payment initiation' and 'workflow'. These go beyond the conventional elements of payments and intersect with business and consumer expectations to be able to integrate payments with the software and services they use on a daily basis.

To meet the expectations of the service providers and businesses, which will be the major drivers of Payment Requests, it is critical to ensure:

- security of and proper use of data and personal information;
- contracts and operations deliver accountability and meet regulatory and industry standards;
- capability to fully automate end-to-end processing;
- customers must be given the ability to establish and withdraw consent for fast payments (recurring or ongoing requests); and
- the customer experience is seamless and the ecosystem is trusted.

Use cases in Enterprise Resource Program systems, especially for payroll and accounts payable where payment is initiated by the debtor, form part of their business process rather than simply creating payments.

Many payment systems are increasing the security, testing and resilience of systems and controls for participants (billers/merchants, service providers, end customers). Payments is a specialised field that requires specific oversight. It will be important that any application of CDR that involves payments does not undermine the security, integrity and trust in the payment systems that are behind the CDR (as the CDR will not be a payment system, just a means to ensure access).

Security surrounding the data and infrastructure must be maintained at the highest levels of resiliency to ensure the infrastructure contributes to strengthening the integrity of the Australian payments system. To that end CDR should leverage the NPP ecosystem for the purpose of payment initiation.

A further, critical advantage of leveraging NPP capability is that it avoids the unnecessary duplication of infrastructure setup. This would save considerable cost, time and effort, not only in the establishment of the infrastructure, but also ongoing maintenance and compliance costs and resource requirements. In doing so, this can provide new entrants with the optimal balance between cost and leveraging capability from an established channel.

More broadly, we would strongly advocate that the industry should always look to avoid duplication of infrastructure, compliance and resources, otherwise CDR runs the risk of being too expensive to implement in addition to maintaining other legacy channels.

Linkages and interoperability with existing frameworks and infrastructure

The Inquiry welcomes input from interested parties on potential linkages and interoperability with other consumer-directed domestic and international data portability regimes, and accreditation frameworks that focus on data risk management. This can be cross-sectoral, for example, how customer authentication requirements for the Consumer Data Right relate, or could link, to other digital identification and verification processes.

In the context of Open Banking, the Inquiry will consider how the Consumer Data Right, were it expanded to enable write access, could relate to or interact with existing and future payments systems and infrastructure, such as the New Payments Platform (NPP), Bulk Electronic Clearing System, and EFTPOS.

Cuscal supports the use of NPP as the payment initiation methodology for CDR in write access mode.

NPPA published its Functionality Roadmap in October 2019. The roadmap includes the development and implementation of the Mandated Payments Service (MPS) which includes the "capability to enable third party payment initiation on the NPP, governed by a rules framework that provides for the processing of the payment initiation messages as well as a robust and comprehensive liability model."

This capability will enable consumers to authorise third parties to initiate payments from their bank accounts using the NPP. It will provide a uniform and secure industry-based approach to how payments are initiated, coupled with a standardised customer consent model.

The MPS by NPP will provided a range of direct and indirect access options for third parties who wish to initiate payments from a customer's account. This can be undertaken without the need to establish arrangements with multiple banks or to replicate infrastructure.

Leveraging Consumer Data Right infrastructure

The Inquiry welcomes views on how Consumer Data Right infrastructure can be leveraged as well as any broader role that other legal or organisational aspects of the Consumer Data Right regime could play in supporting productivity and data security in the digital economy. For example, the data security, privacy or accreditation standards and regimes set up for CDR may have uses elsewhere, in particular in relation to data portability and custodianship of data.

Given infrastructure, markets and consumer needs are continually evolving, it is crucial that the CDR Group at the ACCC develop a technology and governance roadmap, alongside a longer-term industry engagement and participation model. This will help establish where CDR infrastructure can be leveraged for other purposes.

The development of the standards and regimes for CDR has involved broad participation and interest from various sectors to date. Going forward the participants in CDR (ADIs at this stage) are funding their own developments and will require more engagement on timelines, testing and scope.

In line with our earlier comments, it should be an established principle that in creating new CDR channels the Government and industry seek to leverage existing infrastructure and technology capabilities.

Infrastructure availability would need to be enhanced if payments were to be integral to CDR as customer expectations for payment reliability is that this is always available. This is another reason to ensure interoperability with payment systems and use CDR to enable simpler access rather than enhance CDR components to operate at payment system levels.

Consumer protection

The Inquiry invites submissions from interested parties on how to ensure that, as the Consumer Data Right develops, it does so in a manner that is ethical and fair, as well as inclusive of the needs and choices of all consumers. This includes ways to encourage socially beneficial uses for the Consumer Data Right.

Consumer and privacy protections should not be dependent on who receives CDR data, but instead the sensitivity of the data shared. The same restrictions – consent, security, privacy, notification, etc. – should apply whenever a consumer's CDR data is collected, held or used by another entity.

Therefore, whoever receives CDR data should have the same obligations as all other Data Recipients to protect the consumer's data.

In closing, we look forward to discussing our submission and assisting the Inquiry with any further material or insights during its review.

Yours sincerely,

Kieran McKenna
Chief Risk Officer