30 July 2021

Consumer Data Right Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: data@treasury.gov.au

RE: Competition and Consumer (Consumer Data Right) Amendment Rules (No. 1) 2021

CPA Australia, Chartered Accountants Australia and New Zealand (CA ANZ), the Institute of Public Accountants (IPA) and the Institute of Certified Bookkeepers (ICB) (together the Joint Bodies) welcome the opportunity to respond to the proposed amendments to the Consumer Data Right (CDR) rules.

Rule 1.10C Trusted advisers
We welcome the recognition of the relationship between consumers and their trusted advisers in the CDR regime. Further, we applaud the classes identified which rely on a trusted adviser being a member of a professional body and subject to existing professional or regulatory oversight, including obligations consistent with safeguarding consumer data.

Our Position
The proposed amendments raise several concerns amongst our members. Following is a summary of those concerns with more detail provided in the Appendix.

In summary:

- Rule 1.10C(1) states that an accredited person may invite a CDR consumer to nominate a trusted adviser. We consider that an accredited person must facilitate the nomination of a trusted adviser if desired by the consumer.

- Rule 1.10C(2) includes a list that reflects many of the trusted advisers used by consumers in the finance sector. However, the reference to tax (financial) advisers in rule 1.10C(2)(c) should be aligned to the Financial Sector Reform (Hayne Royal Commission Response-Better Advice) Bill 2021 currently before the Parliament of Australia. Further, we note the omission of professional bookkeepers. As with other classes, we seek the inclusion of bookkeepers who are members of a professional association.

- Rule 1.10C(2)(a) and (c) provides for a class of individuals. We note that many of these individuals will work in a practice and the transfer of data electronically will be to the API of the practice. As such, for clarity, we seek acknowledgement of the practice where relevant for an individual.

- Insert a new Rule 1.10C(4) that clarifies that (a) data disclosed to a trusted adviser is considered outside of the regime; and (b) the accredited person cannot charge a fee for the disclosure of data when disclosed under a TA disclosure consent.

- Rule 1.14(3)(e)(ii) includes reference to how often data is expected to be collected during the period of consent. We seek clarification if this expectation sets a limit or if it is just a recording function.

- Rule 7.5(3)(a)(iv)(A). We seek clarification on how an accredited data recipient will be held accountable for determining if a consumer may benefit from a new good or service.

- Rule 7.5A(3). We continue to seek removal of the requirement for an accredited person to confirm if the person nominated by a consumer is, in fact, in the class of trusted adviser that they claim.

We also draw your attention to what appears to be a drafting error. On page 23, we note '***trusted adviser*** has the meaning given by rule 1.10B'. We believe the section referred to should be 1.10C.

Further, we advocate for the reinstatement to the CDR phasing table of the requirement for major and non-major data holders to commence direct-to-consumer data sharing. It appears contrary to the purpose of the CDR regime, to give Australians greater control over their data, but then have no timeline for when a consumer will be able to access their own CDR data. The next phase of design must prioritise direct-to-consumer functionality to achieve the aim of the consumer, not accredited persons, controlling their CDR data.

Finally, we emphasise that trusted advisers are known to the consumer and nominated by the consumer. Trusted advisers do not elect to engage in the CDR regime but do so to obtain the data required to fulfil a service for a consumer. Being a known person to the consumer mitigates any risks that may arise in respect of the security and privacy of the data. Trusted advisers are a distinct and unique class of non-accredited person within the CDR regime eco-system.

Please do not hesitate to contact either Jill Lawrence at CA ANZ on +612 9290 5525 or Jill.Lawrence@charteredaccountantsanz.com or Kristen Beadle at CPA Australia on 0413 883 581 or Kristen.beadle@cpaaustralia.com.au should you have any further questions.

Yours sincerely

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Appendix

Further detail on our concerns.

- Rule 1.10C(1) states that an accredited person may invite a CDR consumer to nominate a trusted adviser. We consider that an accredited person must facilitate the nomination of a trusted adviser if desired by the consumer.

  Nominating a trusted adviser should be something that is within the consumer's control. It appears contrary to the objective of the regime to make such a nomination dependent on an invitation from an accredited person. Any perceived liability arising from disclosure by an accredited person to a nominated trusted adviser will be borne by the consumer under a commercial contract with that accredited person.

- Rule 1.10C(2) includes a list that reflects many of the trusted advisers used by consumers in the finance sector. However, the reference to tax (financial) advisers in rule 1.10C(2)(c) should be aligned to the Financial Sector Reform (Hayne Royal Commission Response-Better Advice) Bill 2021 currently before the Parliament of Australia. Further, we note the omission of professional bookkeepers. As with other classes, we seek the inclusion of bookkeepers who are members of a professional association.

  The Financial Sector Reform (Hayne Royal Commission Response-Better Advice) Bill 2021 currently before the Parliament of Australia intends to transfer tax (financial advisers) to the Corporations Act 2001. This highlights the need for changes in the CDR regime to be made in situations where legislation is under consideration across the Commonwealth statute book.

  As bookkeepers that are members of a professional accounting body or bookkeeping association are held accountable to a code of conduct and professional standards they should be included in this list.

- Rule 1.10C(2)(a) and (c) provides for a class of individuals. We note that many of these individuals will work in a practice and the transfer of data electronically will be to the API of that practice. As such, for clarity, we seek acknowledgement of the practice where relevant for an individual.

  We acknowledge that the eligibility to be nominated within a class of trusted adviser rests with an individual. Yet how data is actually transferred is through APIs, most commonly owned and operated by the practice of an individual. Accordingly, we seek words to indicate these relationships, such as Qualified accountants within the meaning of the *Corporations Act 2001* and their practice;

- Insert a new Rule 1.10C(4) that clarifies that (a) data disclosed to a trusted adviser is considered outside the regime; and (b) the accredited person cannot charge a fee for the disclosure of data when disclosed under a TA disclosure consent.

  (a) While the Explanatory Memorandum notes that once data is disclosed to a trusted adviser it is then outside the regime, for clarity and transparency we seek the inclusion of same in the Rules.

  (b) With the introduction of the trusted adviser class, an exclusion to Rule 4.11(d), which allows an accredited person to charge a fee to disclose data, must be inserted.

  The data sought through a trusted adviser disclosure will be the data required to fulfil a specific engagement with a consumer. A trusted adviser disclosure will seek the transfer of data required to fulfil a specific engagement, not a broad data set to develop and market unsolicited products or tools to a consumer.

This distinction is reflected in the process which is, for trusted advisers, that the consent process will be triggered by a consumer after engaging a trusted adviser. By comparison, other participants such as product providers, marketing firms and affiliates will trigger the consent process and, as a secondary step, the accredited person that holds the desired data will seek a disclosure consent from a consumer.

That the accredited person can charge the consumer to pass on their own data required by their trusted adviser is clearly not the policy intent of the CDR regime. We would surmise that the Government supports consumers being able to seek the advice of a trusted adviser to ensure the veracity of information submitted to Government.

- Rule 1.14(3)(e)(ii) includes reference to how often data is expected to be collected during the period of consent. We seek clarification if this expectation sets a limit or if it is just a recording function.

  The complete data required to fulfil a service under an engagement letter with a trusted adviser will not be known until the service is complete. We seek assurance that this 'indication' is for the purpose of record keeping, not a restrictive cap.

- Rule 7.5A(3). We continue to seek removal of the requirement for an accredited person to confirm if the person nominated by a consumer is, in fact, in the class of trusted adviser that they claim.

  This is a relationship between the consumer and their trusted adviser, the CDR regime should not disrupt a relationship that has worked amongst the consumer and their trusted advisers for many decades.

  Further, we anticipate delays if such a requirement is enacted. In addition to the time taken to nominate a trusted adviser, and for this to be updated in dashboards, it could take days for an accredited person to confirm the class claimed by the trusted adviser. The flow on effect being a delay in disclosure of data.

  In the exposure draft, the data sharing examples with a financial counsellor and with an accountant assume an immediate disclosure of the data to a trusted adviser. As noted earlier, we anticipate that data sharing requests to a trusted adviser will be required on numerous occasions and not 'one off' or yearly as outlined in the examples.

- Rule 7.5(3)(a)(iv)(A). We seek clarification on how an accredited data recipient will be held accountable for determining if a consumer may benefit from a new good or service.

  Noting that direct marketing will often be triggered by a participant to an accredited person, with consumer consent sought subsequently, we consider such offers to be unsolicited offers. Our concerns are how the benefit to a consumer will be assessed and what proof will need to be retained by the accredited person. The dispute resolution pathway is also unclear where such a product or service causes the consumer financial harm. Currently the Financial Accountability Regime under consultation only captures APRA-regulated entities.