

9 September 2021

Treasury
Consumer Data Right Division
BY EMAIL: data@treasury.gov.au

Consumer Data Right Strategic Assessment – AFCA feedback

The Australian Financial Complaints Authority (AFCA) welcomes the opportunity to provide feedback to Treasury, on its Consumer Data Right (CDR) Strategic Assessment. The Strategic Assessment will form the foundations of the Government's CDR Implementation Roadmap.

The Government has committed to undertake a three-month Strategic Assessment prior to any economy wide rollout of CDR. The Strategic Assessment intends to operate as a high-level assessment of sectors and datasets across the economy and will also consider feedback about key policy objectives, including benefits for consumers, competition market efficiency, safer and more secure data sharing practices.

AFCA jurisdiction

As a condition of the CDR accreditation process, data recipients are required to hold AFCA membership.

AFCA has specific CDR jurisdiction in its Rules to consider CDR complaints concerning any breach of obligations arising from the operation of the Consumer Data Framework.

As an independent not for profit dispute resolution service, AFCA considers our input in these discussions may be best placed around identification of points of potential conflict between consumers, data holders and accredited data recipients.

Opt-in and informed consent

AFCA recognises that participation in CDR is on an opt-in basis and requires informed consent of the consumer. From experience, we have seen the importance of having disclosure practices that specifically consider the circumstances of vulnerable consumers, including those with reduced literacy (financial or otherwise).

AFCA has seen in other settings, consumers being pressured into providing consent and ultimately offered products, this includes self-imposed pressure to act due to their financial circumstances, without a clear understanding of the product and whether it meets their needs.

We would support a CDR education program about managing and providing consent to share data through the CDR, to work alongside the economy wide CDR rollout. We would also support the consideration of measures that look to reduce any adverse pressure on consumers, especially vulnerable consumers, to provide information:

- in a way that is not in the spirit or definition of informed consent
- where the consumer is not informed about why it is being collected and how it may be used
- that may not reasonably further an approved data recipient's ability to decide whether to offer a product to the consumer and/or may only be used to restrict a consumer from a product in a unfair way.

Sensitive data

Treasury has noted that while certain kinds of data may be considered sensitive, such as location data or internet browsing data, data may also become sensitive when combined with other datasets.

AFCA agrees with Treasury that specific data by its nature may be sensitive and that some data may become sensitive when combined with other datasets. We also highlight that if sensitive data (such as insurance claim or medical data) is combined with other datasets (such as banking/credit datasets), there is the potential that these combinations may further increase sensitivity and have the potential to be used in ways that may be adverse to a consumer.

Treasury highlights that the CDR recognises a consumer's choice to share data will depend on their individual preferences and risk appetite. We therefore consider that any education program should provide guidance on the potential use of combined data sets, especially when sensitive data is involved.

Consumer dashboards

Under the CDR, an accredited data recipient must provide a consumer dashboard that will enable the consumer to see and manage their consents for the collection and use of their CDR data.

The consumer dashboard provided by the data holder must allow the consumer to withdraw authorisations to disclose CDR data at any time. This functionality must:

- be simple and straightforward to use
- be prominently displayed
- be no more complicated than the process for giving the authorisation to disclose the CDR data
- display a message relating to the consequence of the withdrawal.

The dashboard also must allow the consumer to:

- withdraw consent to collect, use and disclose CDR data
- elect that redundant data be deleted at any time
- withdraw any such elections for the deletion of redundant data.

AFCA recognizes the importance of consumers knowing where and how to access the relevant CDR dashboards. At present, guidance is provided that dashboards must be an online service and can be built into existing online banking or mobile apps.

As the CDR is rolled out across the economy, we can see challenges and opportunities for a centralization of CDR dashboards and potential for uniformity (in some form) of consumer dashboards.

While many consumers may be reasonably familiar with navigating online banking and investment platforms (while acknowledging a proportion of the population that may not), there may not be the same level of familiarity for other industries.

This may restrict a proportion of the population from engaging with CDR more broadly and may impact on the ability to easily access a full picture of what consent has been provided/withdrawn by a consumer across all providers.

From our experience, we have seen instances where consumers do not pursue a concern or complaint, after they have been referred to multiple organisations to establish what entity is responsible for the conduct, and the internal dispute resolution 'entry point' is not clear. There may be opportunity for the Strategic Assessment to consider ways to reduce any potential restrictions that would inhibit all consumers ability to participate in CDR.

Thank you for the opportunity to provide a submission as part of Treasury's CDR Strategic Assessment.

If you have any queries or would like further information, please do not hesitate to contact me on 03 9613 7407 or at aclarke@afca.org.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Clarke', is centered on a light yellow rectangular background.

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