

BCA

Business Council of Australia

Consumer Data Right Strategic Assessment

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1. About this submission

This is the Business Council's submission to the Treasury regarding the Strategic Assessment for the implementation of an economy-wide Consumer Data Right (CDR). The Treasury is conducting a Strategic Assessment to deliver a roadmap for the economy-wide roll-out of the Consumer Data Right.

The Business Council represents businesses across a range of sectors, including manufacturing, infrastructure, information technology, mining, retail, financial services and banking, energy, professional services, transport, and telecommunications.

2. Overview

The collection, sharing, and use of data will drive growth and boost prosperity across the economy. The expansion of the Consumer Data Right (CDR) will, if appropriately targeted and rolled out, fundamentally reshape how businesses and consumers engage and benefit from data.

There are many potential benefits the CDR may deliver, including greater competition, better consumer outcomes, and improved efficiency. However, these benefits will not be realised in the same way for all sectors, and they are not cost free: the regulatory costs associated with meeting the requirements set out for designated sectors under the CDR can be significant to business, which are facing more pressures than ever before with COVID-19.

This submission sets out points on how Treasury could shape future designations to support businesses being included within the CDR regime in a cost-effective way. We also highlight some of the key factors to consider ahead of designating any future sectors or factoring them into future rollouts, to ensure any designation deliver benefits greater than the costs.

2.1 A cost-effective rollout of the CDR

2.1.1 Aligning with other major reforms

The CDR is also one of many data-related policy initiatives currently happening across government (including digital identity, the review of the Privacy Act, the Data Availability and Transparency Act, proposed expansion of critical infrastructure regimes, various ACCC processes and inquiries into marketplaces and digital platforms services, potential cyber security regulations, among many others). Treasury will need to consider the cumulative regulatory burden of other government initiatives apart from the CDR (particularly where they are sector specific) as part of the Strategic Assessment.

The range of other data-related initiatives also highlights the need for government to set out a clear position on data in the economy. The government is currently developing a national Data Strategy. The Strategic Assessment will need to closely align with any principles set out in the Data Strategy to avoid confusion or tension between regulatory frameworks in different portfolios.

As part of the position the government will need to consider the value it places on digital innovation by companies, and how that could be potentially undermined by the CDR. In particular, will a company be incentivised to be a first-mover in relation to data-driven insights if that company will later be required to disclose sensitive or key datasets to approved data recipients who may aggregate those datasets with others and thereby undermine the investment made.

2.1.2 Clarity on the rollout

To help businesses plan future investments, the Strategic Assessment should include a clear statement of the expected outcomes and key performance indicators Treasury expects to see through each of the sectors that are being identified.

For some of the proposed sectors that were referenced in the Consultation Paper it is difficult to see where designation under the CDR will lead to greater competition or consumer outcomes. In the retail sector for example, there is already a high rate of competition, with low barriers for consumers to switch, a low level of complexity for consumers, and a greater understanding of product and spend. This sector has already been hit hard by COVID-19 and many retailers are working hard to ensure consumers are able to continue to obtain essential goods and services without interruption. There is a real question whether diverting resourcing to CDR-readiness at this time is in the best interest of consumers.

While the Treasury is looking at a range of factors in determining new sectors, the focus should remain on competition and enabling consumers to obtain information to enable decisions to be made about whether to switch between providers of complicated goods/services. The CDR scheme appears less valuable in relation to sectors such as loyalty schemes and retail where consumers engage with multiple concurrent providers and are regularly switching between them.

2.1.3 Business and consumer awareness

To ensure businesses and consumers can obtain benefits from the CDR, consumers and businesses will need to have a good understanding of the scheme and how it functions. The market will need to be inspired and educated to make full usage of the investments all businesses have made to be compliant with the regime. The roundtables Treasury has held across a number of sectors have been helpful in building awareness of the CDR across a number of sectors.

In the future, it would be helpful to share some of the common challenges and 'lessons learned' from sectors that have already been designated under the CDR. This will help ensure that in future designated sectors, businesses are able to comply with the CDR at lowest possible cost.

2.1.4 Consumer and retail data

In progressing the Strategic Assessment, Treasury will need to closely consider the limitations associated with data sets held by businesses. Datasets should not necessarily include any underlying IP created by businesses or any data derived from those raw or basic data sets.

Treasury will also need to consider how data is held by businesses. As discussed further below, businesses operating in the same sector may not hold data in consistent formats. It might be helpful for Treasury to identify areas where data sets are held in a common format or standard.

Further, within individual businesses and sectors it is important to note that the data held is not always linked back to any identifiable individual and therefore there is information asymmetry. For retailers for example, the overwhelming majority of transactions are made in person via credit card (or less commonly now by cash) which does not enable the retailer to determine who the customer is. Generally speaking, retailers will not be able to identify a customer, unless the purchase is made online through a logged-in account or a loyalty card is associated with the transaction. Even then, consumers can transact using pseudonyms. These factors mean the benefits of any general retail data right for consumers may be limited as the data set will be largely incomplete. Similarly, in the telecommunications sector, data on an individual's call logs or data usage is increasingly irrelevant for consumers choice in plans as uncapped call and text plans and unlimited downloads for internet plans become the norm.

2.2 Assessing the costs and benefits

We support the detailed consultation process Treasury is undertaking to consider the appropriate roadmap for the rollout of the CDR across the economy. A key part of this analysis will need to be a quantification of the costs and benefits associated with designating a sector. Where costs are greater than potential economic and consumer benefits (discounted appropriately) a designation of the sector should not be made.

Appropriate competition protections for existing data holders will need to be maintained. It would be a poor economic outcome if third parties are able to seek accreditation and obtain data about customers from existing market participants purely to offer competing products. This would see existing businesses paying regulatory costs to be replaced by their competitors who could combine this data with other datasets obtained about the customer enabling them to have a richer dataset to compete against the providers of the information.

Investment in intellectual property are used to create competitive differentiation and customer benefits. If intellectual property and efforts can simply be cherry-picked by competitors, existing businesses (such as those offering loyalty programs) may simply withdraw their investment. This would have a negative impact on the value of loyalty programs for consumers

It's also likely the implementation costs for future sectors will be substantially higher than the two sectors that have already been designated. These sectors are already highly regulated and hold data that 'looks' the same across players in the sector. For sectors that are not heavily regulated or that offer products that are substantially differentiated, this kind of uniformity in data held by different businesses is less likely. This will mean significant costs for data holders, who will have to invest to bring their data into alignment with any potential standards set under CDR.

It's not clear that all the sectors being considered as part of this assessment will present the same opportunity for consumers as those already designated. Consumer concerns around fixed term contracts, or complex plan and price structures are not generally concerns raised in relation to retail, for example. Similarly, loyalty schemes are voluntary, allow switching, do not require consumers to limit themselves to any one program and are generally provided at zero monetary cost to the consumer.

The two sectors already designated involve a relatively small number of businesses, whereas some of the other sectors nominated in the discussion paper (such as retail or loyalty schemes) have hundreds, or even thousands of potential businesses that would be in scope. This could create substantial regulatory costs, including for SMEs. However, if the government starts 'picking and choosing' individual businesses in the sector for a designation, it will distort the market and create an uneven playing field.

Finally, the expansion of the CDR across new sectors will have sizeable effects for all designated businesses and affected consumers. We recommend the Strategic Assessment and any future work include clear review points, to assess the effectiveness of any designations, including whether they are delivering the projected benefits.

This will be particularly important given the ongoing review of the Privacy Act, the final outcomes of which may conflict with or make obsolete CDR requirements. Any review could build on and reflect the outcomes of the *Future Directions for the Consumer Data Right* report, undertaken by Scott Farrell in 2020.

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