

Submission to Treasury on the Implementation of an economy-wide Consumer Data Right – Strategic Assessment consultation paper

26 August 2021

Kate O'Rourke
First Assistant Secretary
Consumer Data Right Division Treasury

By email: data@treasury.gov.au

Dear Ms O'Rourke

The Consumer Policy Research Centre (CPRC) welcomes the opportunity to comment on Treasury's consultation paper on the Implementation of an economy-wide Consumer Data Right.

CPRC aims to create fairer, safer and inclusive markets by undertaking research and working with leading regulators, policymakers, businesses, academics and community advocates. Data and technology issues are a research focus for CPRC, including emerging risks and harms and opportunities to better use data to improve consumer wellbeing and welfare.

We would like to raise with the consultation team the significant number of consultation processes underway across government in relation to Australia's digital landscape, specifically regarding the management, sharing and release of data impacting consumers. The ability of policymakers to fully consider the benefits and risks of such reforms relies upon the ability for consumer organisations to participate in such processes. CPRC strongly encourages the Australian Government to – in light of the rapid transformation required in the digital economy – make provisions to adequately fund consumer representatives to participate in these processes.

While an economy-wide consumer data right strategy has the potential to bring benefits to all Australians, its development and implementation should be thoughtful and reflective of the needs of consumers. Appropriate steps need to be put into place to mitigate risks to consumers to achieve what was originally intended for Consumer Data Right – **giving consumers greater control over their data.**

We note that the consultation questions in the paper mainly focus on identifying cross-cutting data sets and improving market efficiencies, with very little focus on mitigating consumer risk, potential harms and building consumer trust in the regime which was originally designed for their protection.

As noted in previous submissions, we are concerned that the scope of CDR applicability continues to grow, while processes underpinning data sharing to enable basic transactions and comparisons within the banking sector are not yet seeing benefits flow through to consumers. Industry representatives which argue for opening up of more CDR data and weakening of protections because "*this is happening already*" fail to recognize and acknowledge the importance of a government-endorsed consumer data regime needing to meet a much higher standard of consumer protection and safety in order to build consumer

trust and confidence. Our research indicates that 94% of Australian consumers are uncomfortable with how their personal information is collected and shared online, while 88% of Australian consumers do not have a clear understanding of how their personal information is being collected and shared¹. Initiatives that have implications on personal data need to ensure that they are developed in good faith and heed the concerns of consumers who are the intended beneficiaries. The original intention of the CDR regime was just that – to provide a superior framework offering consumers with higher degree of control and protections over their data, not to mildly improve on current data harvesting and sharing practices which are already causing consumer detriment and are out of line with consumer and community expectations.

Our submission specifically aims to respond to the consultation question relating to steps for strengthening the CDR regime to enhance economy-wide roll-out.

Are there other steps we could take to strengthen or develop the CDR regime to enhance the economy-wide roll-out?

Below we have outlined some initiatives that we believe will help strengthen the CDR regime so it has the capability to effectively implement an economy-wide roll-out that is in line with consumer and community expectations:

Implement a sector-neutral, use case focussed economy-wide roll-out

We urge Treasury to reconsider the sector-by-sector approach for the economy-wide roll-out, and instead consider implementing a sector-neutral model where the focus is on seamless implementation of specific use cases. Attempting to solve ‘all sectors for all use cases’ at the same time creates an extremely complex environment for all involved, regulators and consumers included.

As there are likely to be similarities in use cases across several sectors, ensuring use cases are practical and sector neutral would assist in fast-tracking measurable outcomes for consumers. For example, a staged implementation could focus on refining the delivery of set use cases at each stage that could be applied simultaneously across multiple sectors. This would give consumers the opportunity to gain tangible benefits and help build confidence and trust in the regime. It is likely to also increase consumer engagement and with more consumers participating in the regime, their lived experiences of the use cases in each stage could help enhance other use cases in future stages.

Identify clear consumer-centric success metrics for the economy-wide roll-out of CDR

Australian consumers have clearly indicated through our own research² that they expect the laws governing the collection, sharing and use of their data to deliver:

- **Fairness** – entities do not collect, share and use data in a way which is unfair, exploitative or extractive
- **Safety and security** – entities are obligated to keep consumers safe
- **Choice and control** – consumers are provided with genuine, meaningful control and choice over their data

¹ CPRC, “CPRC 2020 Data and Technology Consumer Survey”, (December 2020), [CPRC 2020 Data and Technology Consumer Survey - CPRC](#).

² CPRC, “CPRC 2020 Data and Technology Consumer Survey”, (December 2020), [CPRC 2020 Data and Technology Consumer Survey - CPRC](#); and CPRC, “Report Summary: Consumer Data and the Digital Economy”, (July 2018), [Report Summary: Consumer Data and the Digital Economy - CPRC](#).

- **Transparency** – entities are required to be transparent about why, what and how data is being collected, shared and used with consumers and citizens
- **Accountability** – entities and individuals are held to account for data misuse, enforcement is effective, and remedies are easily obtained.
- **Inclusion** – consumers are not excluded nor receive detrimental outcomes as a result of data collection, sharing and use by entities.

Outlined below are some suggested metrics that could be applied when measuring success of the economy-wide roll-out for consumers:

- **Consumer wellbeing:**
 - Ability to secure products and services that genuinely improve their lives without comprising data protection.
 - Extent to which consumers are reporting that they are better-off as a direct result of the protections offered through the regime.
 - Identification of real-life, specific use cases that are relatable and show a direct consumer benefit that's measurable.
- **Empowerment and choice:**
 - Extent to which consumers clearly comprehend the information and adequately understand the journey map of their data.
 - Ability to offer genuine choice to consumers on products and services, where a superior product/service is not offered at the expense of weakened protection measures for consumer data.
 - Extent to which consumers are reporting that they feel they are in genuine control of their data and that the infrastructure is set up in a way to ensure this at all times.
 - Extent of products and services that are accessible and inclusive across the customer base.
- **Safety and security**
 - Ability to protect consumers against data breaches, scams and fraud.
 - Implementation of a dispute resolution scheme with an appointment of a Digital Ombudsman.
 - Capacity and capability to provide a clear pathway for consumers to notify issues and disputes and have those effectively resolved without placing significant onus on the consumer.
 - Ability to effectively audit and enforce the framework to identify rogue entities and make them accountable.
- **Building trust**
 - Extent to which consumers feel they can trust those participating in or linked with others participating in the regime.
 - Extent of open and transparent reporting of the regime.
 - Identification of real-life, specific use cases that are relatable and show a direct impact on trust that's measurable.

Conduct a cost-benefit analysis identifying direct benefits to consumers

We also strongly recommend that a cost-benefit analysis be undertaken to truly identify the value that economy-wide regime will bring and to whom will it benefit the most – consumers,

or entities with a commercial interest in gathering the data. A key element of the cost-benefit analysis should also give due consideration to vulnerability factors for consumers. Our research on vulnerability for the Consumer Data Right regime notes the importance of integrating vulnerability principles in the work program and developing clear aims, indicators and measures that are specific to consumer vulnerability.³ This is also a concept that is currently being applied in the UK Office of Gas and Electricity Markets where cost-benefit analysis now includes a specific weighting for vulnerability⁴.

Implement *Privacy Act* reforms to ensure the environment surrounding the CDR provides sufficient protection for consumers as their data is opened up

With the review of the *Privacy Act* currently underway, as noted in previous submissions to Treasury, we continue to recommend urgent economy-wide reforms to outdated protection frameworks. A new *Privacy Act* that addresses the increasing ubiquity of data collection, use and disclosure in the economy would also help inform parts of the CDR regime that intersect with these elements.

Privacy Act reforms will ensure the environment surrounding the CDR regime provides sufficient protection for consumers. Clearer market stewardship is required from government to ensure that emerging digital markets both work for and deliver benefits for Australian consumers. As part of this economy-wide approach to CDR, it is essential that the strategy aligns with other economy-wide reforms.

Outline the process of auditing and enforcing the CDR regime

Currently it is unclear how and by whom the regime will be audited or enforced. CPRC has raised this in numerous submissions and consultations. This becomes particularly problematic as the economy-wide roll-out and the previously proposed amendments from July 2021 introduce various actors that sit outside of the CDR regime or will be new to the regime.

There is an urgent need to progress with transparent consultation regarding the audit and enforcement model that is being proposed for the CDR regime. If the rules are not enforceable, then they cannot be relied upon to provide sufficient protection for consumers.

What will the regulator model look like in an economy-wide approach? How will the regulator, for example, ensure that data that has been shared is being used by entities in line with the consent that has been provided by the consumers? This includes the practicality of any proposed audit trail with any non-accredited entities to identify practical implications of monitoring the CDR landscape.

Undertake comprehensive consumer experience (CX) testing

As noted in our previous submissions, while there has been some limited CX testing conducted with a small handful of consumers⁵, CPRC strongly encourages Treasury to continue to produce further CX research with statistically significant consumer samples (ideally including consumers experiencing vulnerability). This is particularly important to test

³ O'Neill, E, "Consumer Data Right Report 1: Stepping towards trust Consumer Experience, Consumer Data Standards, and the Consumer Data Right", Consumer Policy Research Centre, (February 2021), [Consumer Data Right Report 1: Stepping towards trust Consumer Experience, Consumer Data Standards, and the Consumer Data Right - CPRC](#).

⁴ Presentation by Meghna Tewari, Head of Retail Market Policy (Ofgem) at the 2021 ACCC/AER Regulatory Conference (Session 2B – Consumer vulnerability and market design).

⁵ Consumer Data Standards, Consumer Experience Research Phase 3: Round 3 – Joint Accounts and De-identification and Deletion, April 2020, p. 36.

https://consumerdatastandards.gov.au/wpcontent/uploads/2020/05/CX-Report-_Phase-3-_Round-3.pdf
<https://consumerdatastandards.gov.au/engagement/reports/reports-cx/>

consumer comprehension of rights and risks, and the implications of sharing their own data in particular use-cases. Regulatory sandboxes can help to explore, trial, and iterate key aspects or elements of the regulatory framework for CDR before they are published, after which it would be far more costly/onerous to reverse or redesign problematic aspects of the regulation.⁶

Establish a Digital Ombudsman

The CDR regime, alongside the broader impacts of digital transformation current faces gaps in the consumer protection framework impacting the lives of consumers. There must be effective dispute resolution pathways to enable consumers to seek redress for when things go wrong using the CDR regime. Given the Australian Government's goal of rolling CDR out economy-wide, we strongly advise that the establishment of a Digital Ombudsman be fast-tracked. Referral of issues to sector-specific Ombudsmen will not effectively resolve the nature of complaints likely to arise from the CDR regime and data-driven products and services it will facilitate because many issues will fall outside of existing jurisdiction. The Digital Ombudsman should be adequately resourced, and meet *Benchmarks for Industry-based Customer Dispute Resolution*⁷ to ensure consumers can effectively resolve any disagreements that will arise.

Our key message in responding to the Digital Platform Inquiry's March 2020 Issues Paper emphasised that future directions for the CDR must continue to be envisaged, for the consumer, about the consumer, and placing the control of data in the hands of the consumer. Our stance continues to remain the same, especially as Australia aims to become a world-leading digital economy by 2030.

We are concerned with the pathway that Treasury is currently undertaking with the roll-out of CDR rules will undermine consumer and community trust in the regime, resulting in a significant missed opportunity to build a trusted, world-class consumer data sharing regime in the interests of consumers. We would welcome the opportunity for a detailed discussion regarding the economy-wide roll-out. For further discussion regarding our research and the contents of this submission, please contact Chandni Gupta, Policy and Program Director at chandni.gupta@cprc.org.au.

Yours sincerely



Lauren Solomon
Chief Executive Officer
Consumer Policy Research Centre

⁶ See for example <https://www.fca.org.uk/firms/innovation/regulatory-sandbox>.

⁷ <https://treasury.gov.au/publication/benchmarks-for-industry-based-customer-dispute-resolution>